

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

Report on Law and Order Issues

TOGETHER WITH THE MINUTES OF PROCEEDINGS, OFFICIAL REPORT,
CORRESPONDENCE AND OTHER PAPERS RELATING TO THE REPORT

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Committee on the Preparation for Government

Under the terms of the Northern Ireland Act 2006, the Secretary of State for Northern Ireland, the Rt Hon Peter Hain MP, directed on 26 May 2006 that a Committee should be established on the necessary business relating to the preparation for Government. On 12 June 2006, the Secretary of State directed that the Deputy Presiding Officers, Mr Jim Wells and Mr Francie Molloy, should chair the Committee.

Membership

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

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

* Mr McNarry replaced Mr Michael McGimpsey on 10 July 2006

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

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

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Executive Summary

Introduction

1. At a meeting on 24 July 2006 the Preparation for Government Committee agreed to take forward a number of issues, identified by the Secretary of State for Northern Ireland, within the Committee itself rather than through sub-groups as had originally been proposed. At a further meeting on 26 July the Committee considered how to take forward the work on the issues which had been identified (during party presentations made in a series of meetings in June 2006) for consideration in preparation for Government. It was agreed that the Committee would meet each Wednesday to address law and order issues. The Committee sought a meeting with the Secretary of State to discuss a number of issues related to the devolution of policing and justice. The earliest available date for this meeting was 18 September 2006, which was after the Committee had completed its formal consideration of these matters. The Official Report of the meeting will be published separately.

Law and Order Issues

2. The first meeting of the Committee dedicated to matters of Law and Order took place on 2 August 2006. The Committee considered the options for grouping issues for discussion and the sequence in which they should be considered. It was agreed that the composition of the groups and the order of consideration should be as follows:
 - Devolution of Policing and Justice
 - Policing
 - Intelligence Services
 - Policing Issues
 - Police Ombudsman
 - Justice Issues
 - Community Restorative Justice
 - Residual Justice Issues
 - Rule of Law
 - Criminality
 - Decommissioning
 - Paramilitarism
3. As the discussions progressed, the issues of the intelligence services and policing issues were subsumed into the more general debate on Devolution of Policing and Justice.
4. The proposals put to the Committee and their outcome are set out in the Report.

Devolution of Policing and Justice

5. Discussion on the Devolution of Policing and Justice centred around: the structure of a policing and justice department (or departments) and Ministerial arrangements; the degree to which policing and justice powers should be devolved; the issue of collective responsibility; and accountability for Ministers and the question of Ministerial support for the rule of law.
6. The Committee **agreed** that a single department should be established to administer policing and justice but left the matter of the Ministerial arrangements to be discussed by all the parties collectively.
7. The Committee considered a range of proposals on when policing and justice should be devolved but was **unable to reach agreement**.
8. In paragraph 3.2 of the Northern Ireland Office (NIO) Discussion Paper ‘Devolving Policing and Justice in Northern Ireland’ (http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf) the Government set out in broad terms the areas that it would envisage devolving should the Assembly wish it. The Discussion Paper suggested that there were fundamental linkages between the various elements of the policing and justice system and that devolving it piecemeal would be likely to undermine its capacity to operate as a coherent system. The Committee **agreed** that all of the reserved matters identified in paragraph 3.2 should be devolved.
9. The NIO Discussion Paper also identified a number of areas within the general heading of policing and justice where devolution was not so straightforward and which required further consideration. These matters are clearly set out in Table 1 of the NIO letter of 15 August 2006¹. Members discussed these matters in detail and **reached agreement** on the extent of devolution proposed for the following:
 - Prosecutions.
 - Community Safety Partnerships.
 - Chief Inspector of Criminal Justice for Northern Ireland.
 - Explosives.
10. There were a number of headings within Table 1 of the letter of 15 August on which the Committee focused its attention. The Government indicated specific instances where it felt that devolution was either inappropriate or required detailed consideration by the political parties. Members had extensive discussions on all of these matters as detailed in paragraph 52 of this Report, however, the Committee **did not reach agreement** on the extent of devolution proposed for the following:
 - The criminal law and offences and penalties.
 - The prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings.
 - Treatment of offenders (including children and young persons, and mental health patients involved in crime).

¹ NIO letter dated 15 August 2006 in Appendix 4

- Compensation.
- Public Order.
- The police and the policing accountability framework.
- Co-operation between the PSNI and Garda Síochána in relation to a specific series of matters.
- Firearms.
- The Courts.
- The Northern Ireland Law Commission.

Policing Issues

11. The Committee considered a number of matters related to the Police Ombudsman including the appointment arrangements, public confidence in the Office, accountability arrangements and operational independence. A proposal was made relating to a role for the Assembly in the appointment arrangements for the Police Ombudsman but the Committee **did not reach agreement** on this matter.

Justice Issues

12. The Committee considered the issue of Community Restorative Justice (CRJ) including: the relationship between the CRJ schemes and the police; the application of formal guidelines; the dangers of being too restrictive; accredited training for those involved; accountability mechanisms; inspection and review and the protection of vulnerable people.
13. A number of proposals were considered concerning the operational standards to be applied, the links between such schemes and the policing and justice agencies and the vetting of those involved. The Committee **did not reach agreement** on any of these matters.
14. Under ‘Residual Justice Issues’, Members discussed exiling, the respective roles of District Policing Partnerships and Community Safety Partnerships, greater openness in relation to the Public Prosecution Service and the work of the Youth Justice Agency.
15. The Committee **agreed** to a proposal condemning the practice of exiling, and noted the work of the Youth Justice Agency and the Probation Board. Members **did not reach agreement** on a proposal that, to be included in government, political parties should support the police and encourage others to do so.

Rule of Law

16. The Committee discussed a wide range of matters under the composite heading of criminality, decommissioning and paramilitarism. These included: the role of political parties in encouraging paramilitary organisations to engage with the Independent International Commission on Decommissioning (IICD); creating confidence in the decommissioning process within the Unionist community; support by political parties for the criminal justice agencies; enforcing

the rule of law; the performance of the police in tackling crime and high standards of transparency and accountability for all criminal justice agencies.

17. A number of proposals were considered concerning: the publication of an inventory of all material decommissioned; political parties encouraging people to join the police; calling upon paramilitary organisations to co-operate fully and without delay with the IICD; and that the appropriate agencies should publish as fully as possible details of persons involved in crime. The Committee **did not reach agreement** on any of these matters.

Conclusions

Table 1: Proposals agreed

Paragraph	Proposal
19	That models 3 and 4 (paragraphs 4.3.3 and 4.3.4 of the NIO Discussion Paper on the Devolution of Policing and Justice) should be excluded from the Committee's discussions
21	That there should be a single department but that the Ministerial arrangements and appointment procedures would require to be addressed later
22	That this Committee welcomes the progress made to date on departmental structures and accepts that it requires renewed consideration by all the parties collectively
34	That the powers listed at paragraph 3.2 of the NIO Discussion Paper should be devolved within policing and justice
38	That the arrangements for dealing with criminal records and disclosures should be regulated on a European basis
40	That the Policing Board should retain its current powers
41	That responsibility for explosives licensing should rest with the Minister responsible for public safety
43	That this Committee believes that political representation on the Policing Board should be at MLA level
44	That this Committee believes issues surrounding membership of an Assembly scrutiny committee and its relationship with the Policing Board should be addressed by Assembly Standing Orders
59	That the Committee condemns the practice of exiling and calls for it to be ceased forthwith
60	That the Committee notes the work of the Youth Justice Agency in youth conferencing and the Probation Board in dealing with offenders
62	That this Committee calls on the Government to review policy on the publication of reasons where there has been a failure to prosecute and the collapse of prosecutions
63	That this Committee agrees that the role of District Policing Partnerships and Community Safety Partnerships should be reviewed in order to ensure best practice and effectiveness and to maintain the accountability of the policing arrangements

Table 2: Issues identified as requiring further discussion

Paragraph	Issue
23	Ministerial arrangements for a single Policing and Justice Department
32	Timing of devolution of policing and justice
36(1)	Devolution of the criminal law and offences and penalties
36(2)	Devolution of prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings
36(4)	Devolution of treatment of offenders (including children and young persons, and mental health patients, involved in crime)
36(5)	Devolution of compensation
36(8)	Devolution of public order
36(9)	Devolution of the police and the policing accountability framework
36(10)	Devolution of co-operation between the PSNI and Garda Síochána in relation to a specific series of matters
36(11)	Devolution of firearms.
36(12)	Devolution of the courts
36(13)	Devolution of The Northern Ireland Law Commission
51	Issues relating to the Police Ombudsman
57	Issues relating to community restorative justice
64	Residual justice issues

Table 3: Issue identified by at least one party as requiring resolution prior to restoration of the Institutions

Paragraph	Issue
71	Rule of law

Introduction

1. The Committee on the Preparation for Government met on 35 occasions between 5 June 2006 and 13 September 2006. At the first meeting on 5 June, the Committee considered the direction from the Secretary of State dated 26 May 2006 and the term ‘consensus’ in the direction relating to decisions of the Committee. A discussion followed and it was agreed that the Committee would regard consensus as ‘general all party agreement’. (A copy of the directions issued by the Secretary of State for Northern Ireland, which are relevant to the work of the Committee is attached at Appendix 6).
2. At the first three Committee meetings the Members debated the arrangements for chairing the Committee but were unable to reach consensus on what these should be. The Secretary of State was advised on 7 June that the Committee was unable to select a Chair. On 12 June, the Secretary of State directed that the Deputy Presiding Officers, Mr Jim Wells and Mr Francie Molloy, should chair the Committee.

Referral by the Secretary of State

3. At the meeting on 12 June the Committee noted that on 26 May, under the provisions of section 1(1) of the Northern Ireland Act 2006, the Secretary of State had referred the following matter to it:

‘To scope the work which, in the view of the parties, needs to be done in preparation for Government.’

4. During June, each of the parties made a detailed presentation on the issues that it considered needed to be scoped in preparation for Government. These began with presentations from the Alliance Party and the DUP on 20 June. The presentation from Sinn Fein took place on 21 and 22 June and was followed by the presentation from the SDLP on 26 June. The presentations concluded with the UUPAG on 28 June. The minutes of proceedings and minutes of evidence relating to these discussions can be found on the Committee web page. (http://www.niassembly.gov.uk/theassembly/Committees_Homepage.htm)

Establishment of sub-groups

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

published by the two Governments on 29 June (copy attached at Appendix 7). These were on changes to the institutions and on the devolution of justice and policing.

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

Issues to be considered in preparation for government

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

Law and Order Issues

10. The first meeting of the Committee dedicated to matters of law and order took place on 2 August 2006. During this meeting, the Committee considered the provisional list of issues related to law and order that had been drawn up during the Committee meeting held on 26 July 2006. This list was as follows:
 - Criminality
 - Community Restorative Justice
 - Decommissioning
 - Devolution of policing and justice
 - Intelligence services
 - Paramilitarism
 - Policing
 - Rule of Law

11. The Committee considered this list and concluded that two further issues should be added – ‘Police Ombudsman’ and ‘Residual Justice Issues’. The Committee also considered the options for grouping these issues and the sequence in which they should be considered. The Committee agreed that the composition of the groups and the order of consideration should be as follows:
 - Devolution of Policing and Justice
 - Policing
 - Intelligence Services
 - Policing Issues
 - Police Ombudsman
 - Justice Issues
 - Community Restorative Justice
 - Residual Justice Issues
 - Rule of Law
 - Criminality
 - Decommissioning
 - Paramilitarism
12. The Committee also considered the question of whether to call witnesses to give evidence on these issues. It was agreed that, with the exception of an invitation to the Secretary of State to attend at a future date, the Committee would not call witnesses unless a clear need for information was identified.
13. Subsequently, the Secretary of State agreed to meet with the Committee on 18 September 2006 to discuss a range of matters related to the devolution of policing and justice that had been identified by Members. As these discussions took place after the Committee had completed its formal consideration of these matters, the Official Report of the meeting will be published separately.
14. The Committee met on seven occasions in August and September to discuss these matters. Its deliberations and conclusions in relation to these issues are set out below.

Report

15. At the Committee meeting on 13 September 2006 it was agreed that this report should be printed as the second report from the Committee on the Preparation for Government.

Consideration of Law and Order Issues

Devolution of Policing and Justice

16. The Committee met on 9 August 2006 to consider the issues surrounding the devolution of policing and justice. Further discussions on the Ministerial arrangements took place on 30 August 2006. Members agreed that this discussion should be separated into three parts - firstly, the options for ministerial and departmental structures, secondly, the timing of devolution of policing and justice, and thirdly, matters for devolution.

Options for Ministerial and Departmental Structures

17. Regarding the options for ministerial and departmental structures, the Committee discussed this in the context of the Northern Ireland Office (NIO) proposals as set out in the Discussion Paper - 'Devolving Policing and Justice in Northern Ireland.
http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf.
18. Issues discussed in relation to ministerial and departmental structures included:
- The possibility of a shared approach among the parties to foster public confidence in the departmental structures and in any division of policing and justice responsibilities between ministers.
 - The question of whether powers in relation to policing and justice should be devolved to the maximum possible threshold.
 - The parameters laid down in the Patten Report.
 - The matter of collective responsibility within the Executive Committee and the accountability of individual ministers within the Executive.
 - The matter of the accountability of the Executive Committee to the Assembly.
 - The most appropriate ministerial arrangements for administering policing and justice.
 - The appropriateness of devolving policing and justice to the Office of the First Minister and Deputy First Minister.
 - The number of Civil Service departments and the impact of creating a policing and justice department on the structure of the Civil Service.
 - Issues surrounding the rule of law and membership of the Executive Committee.
 - The role of the all-Ireland institutions in administering policing and justice.

Proposals

19. It was agreed that:

Models 3 and 4 (paragraphs 4.3.3 and 4.3.4 of the NIO Discussion Paper on the Devolution of Policing and Justice) should be excluded from the Committee's discussions.

[Model 3 was a proposal to add the policing and justice functions to those of the First Minister and Deputy First Minister, perhaps supported by additional junior Ministers.]

[Model 4 proposed two distinct departments (say, 'Policing' and 'Justice') with the two Ministers each coming from a different tradition.]

20. The Committee considered a proposal for a single department with shared ministerial responsibilities. **There was not consensus and the proposal fell.**

[This proposal related to Model 2, a single Justice Department, headed by two ministers, with decisions requiring the agreement of both.]

21. It was agreed that:

There should be a single department but that the Ministerial arrangements and appointment procedures would require to be addressed later.

22. It was agreed that:

This Committee welcomes the progress made to date on departmental structures and accepts that it requires renewed consideration by all the parties collectively.

Conclusion

23. **Ministerial arrangements for a single Policing and Justice Department was identified as a matter that required further discussion.**

Timing

24. The Committee, on 16 and 23 August and 6 September 2006, considered the matter of 'timing' for the devolution of policing and justice. Issues discussed in relation to this matter included:

- The importance of public confidence as a precursor to devolution.
- A suggestion that sufficient public confidence leading to restoration of the institutions should be deemed sufficient for devolution of policing and justice.
- The problem of how to establish the level of public confidence that would be needed.
- The possibility of establishing a shadow department to prepare for devolution of policing and justice.
- Whether the Executive Committee should be seen to be working collectively before devolution occurs.
- The level of importance to be attached to Ministers making a commitment to support the rule of law.

Proposals

25. The Committee considered a proposal that a timeframe should be set for devolution in the context of the date of restoration. **There was not consensus and the proposal fell.**
26. The Committee considered a proposal that a target date for the devolution of policing and justice should be set at two years after restoration of the Assembly. **There was not consensus and the proposal fell.**
27. The Committee considered a proposal for devolution of policing and justice as soon as possible. **There was not consensus and the proposal fell.**
28. The Committee considered a proposal that policing and justice be devolved immediately on formation of an Executive and, if not, within six months of that formation. **There was not consensus and the proposal fell.**
29. The Committee considered a proposal that all parties support the devolution of policing and justice powers as soon as community confidence exists. **There was not consensus and the proposal fell.**
30. The Committee considered a proposal that policing and justice should be devolved as soon as possible, given levels of public confidence. **There was not consensus and the proposal fell.**
31. The Committee considered a proposal that this Committee believes that policing and justice should be devolved as soon as possible, but is not at this time able to define when. **There was not consensus and the proposal fell.**

Conclusion

32. **Timing of devolution of Policing and Justice was identified as a matter that required further discussion.**

Matters for Devolution

33. This issue was discussed during the meetings held on 9, 16, 23 and 30 August and 6 September 2006. The Committee discussed the matters proposed for devolution in the NIO Discussion Paper - 'Devolving Policing and Justice in Northern Ireland'. In paragraph 3.2 of the Discussion Paper, the Government set out in broad terms, the areas that it would envisage devolving should the Assembly wish it. The Discussion Paper suggested that there were fundamental linkages between the various elements of the policing and justice system and that devolving it piecemeal would be likely to undermine its capacity to operate as a coherent system. The Committee **agreed** that all of the reserved matters identified in paragraph 3.2 should be devolved.

Proposal

34. It was agreed that:

The powers listed at paragraph 3.2 of the NIO Discussion Paper should be devolved within policing and justice.

35. The NIO Discussion Paper also identified a number of areas within the general heading of policing and justice where devolution was not so straightforward and which required further consideration. The Committee then turned to these matters, which were identified by the NIO as ‘What won’t devolve/Issues remaining’ in Table 1 attached to the NIO letter of 15 August 2006.² The Committee wrote to the Secretary of State on a number of occasions³ seeking information and/or clarification of issues in the Discussion Paper and letter of 15 August 2006. In reply, the Committee received letters from the NIO dated 22 August 2006, two dated 29 August 2006 and one dated 5 September 2006⁴. Other documents available to the Committee were ‘Devolution of Policing and Justice - Scope of Powers’⁵, ‘The Role of the Lord Chancellor’⁶, ‘Firearms Devolution in Scotland’⁷, ‘Firearms - Options for Devolution’⁸ and ‘Definitions of Ceasefire’⁹ (all papers prepared by the Northern Ireland Assembly Research Service). Discussion on this matter ranged over a number of issues including:
- The demarcation line between ordinary policing matters deemed by the NIO as appropriate to be handled at devolved administration level and those matters such as national security and serious organised crime that are deemed by the NIO to be appropriate to be handled at national Government level and by the national security agencies.
 - The future role of the PSNI in relation to the handling of national security matters in Northern Ireland.
 - The recommendations of the Patten Report in relation to the responsibilities of the PSNI for national security matters.
 - The protocols being developed to deal with the relationship between MI 5 and all relevant agencies in Northern Ireland.
 - The accountability mechanisms and other safeguards that are being prepared in relation to the operation of MI 5 in Northern Ireland.
 - The proposed role of the Serious Organised Crime Agency (SOCA) in Northern Ireland.
 - The proposed role of the Army in support of the police in relation to public order.
 - The proposed devolution of the Secretary of State’s power to advise the Crown on the appointment of the Police Ombudsman.
 - The proposed devolution of the Secretary of State’s power to issue guidance to the Police Ombudsman on transferred matters.
 - The powers of the Chief Constable to challenge a determination of the Parades Commission.

² NIO letter dated 15 August 2006 in Appendix 5

³ Committee letters dated 3, 10, 17, 23 and 31 August in Appendix 5

⁴ NIO letters dated 22 and 29 August (two) and 5 September 2006 in Appendix 5

⁵ Research Service paper in Appendix 4

⁶ Research Service paper in Appendix 4

⁷ Research Service paper in Appendix 4

⁸ Research Service paper in Appendix 4

⁹ Research Service paper in Appendix 4

- The proposed devolution of the Secretary of State's power to review a determination of the Parades Commission.
- The appointment arrangements to the Parades Commission.
- The power of the Secretary of State to issue statutory guidance to the Police Ombudsman.
- The arrangements for dealing with criminal records and disclosures.
- The 50/50 recruitment arrangements for the Police Service of Northern Ireland (PSNI).
- The appointment of Members of the Legislative Assembly (MLAs) as members of the Northern Ireland Policing Board (NIPB).
- The role of an Assembly 'Policing and Justice' scrutiny committee and its relationship with the Policing Board.
- The appointment arrangements for the Police Ombudsman.
- North/South co-operation on policing and justice and co-operation between the PSNI and the Garda Síochána.
- The question of whether responsibility for legislating on firearms and explosives should be devolved.
- The detail of the arrangements for devolution of firearms administration in Scotland.
- The health and safety aspects of explosives administration.
- The role of the Lord Chancellor in Northern Ireland and the degree to which his functions will be devolved.
- The functions of the Lord Chancellor in respect of the Northern Ireland Judicial Appointments Commission.

36. The Committee discussed these matters in the order presented in Table 1 of the NIO letter dated 15 August 2006.

1. The criminal law and offences and penalties – The Committee **did not reach agreement** on the extent of devolution proposed in respect of terrorist offences.

Devolution of the criminal law and offences and penalties was identified as a matter that required further discussion.

2. The prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings – The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters of national security. This was identified as a matter to be discussed during the proposed meeting with the Secretary of State.

Devolution of prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings was identified as a matter that required further discussion.

3. Prosecutions – **The Committee agreed the proposals for devolution on this matter.**
4. Treatment of offenders (including children and young persons, and mental health patients, involved in crime) - The Committee **did not reach agreement** on the extent of devolution

proposed with respect to matters related to the treatment of offenders (particularly with respect to ‘terrorist’ offences)

Devolution of treatment of offenders (including children and young persons, and mental health patients, involved in crime) was identified as a matter that required further discussion.

5. Compensation - The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters related to the compensation scheme provided for in the ‘Terrorism Act’.

Devolution of compensation was identified as a matter that required further discussion.

6. Community Safety Partnerships - **The Committee agreed the proposals for devolution on this matter.**
7. Chief Inspector of Criminal Justice for Northern Ireland – **The Committee agreed the proposals for devolution on this matter.**

8. Public Order – The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters related to the role of the Army in support of the police in public order situations. This was identified as a matter to be discussed during the proposed meeting with the Secretary of State. The matter of appointments to the Parades Commission was dealt with by the Committee in the context of discussions in relation to rights, safeguards, equality issues and victims. The Committee **did not reach agreement** on the extent of devolution with respect to matters related to appointment to and the operation of the Parades Commission.

Devolution of public order was identified as a matter that required further discussion.

9. The police and the policing accountability framework - The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters related to the devolution of the 50/50 temporary recruitment provisions for the PSNI and the arrangements for advising the Crown on the Police Ombudsman’s appointment. Regarding the relationship between a prospective Assembly Scrutiny Committee on Policing and Justice and the Policing Board, the Committee concluded that this was a matter that could best be resolved through the Assembly’s Standing Orders.

Devolution of the police and the policing accountability framework was identified as a matter that required further discussion.

10. Co-operation between the PSNI and Garda Síochána in relation to a specific series of matters - The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters related to the possible extension of the arrangements for co-operation that presently exist.

Devolution of co-operation between the PSNI and Garda Síochána in relation to a specific series of matters was identified as a matter that required further discussion.

11. Firearms and Explosives - The Committee agreed that responsibility for explosives licensing should be devolved to the Minister responsible for public safety. The Committee **did not reach agreement** on the extent of devolution with respect to legislating on firearms and the general oversight of firearms.

Devolution of firearms was identified as a matter that required further discussion.

12. The Courts - The Committee **did not reach agreement** on the extent of devolution proposed with respect to matters relating to functions of the Lord Chancellor that the NIO Discussion Paper indicated would not be devolved.

Devolution of the courts was identified as a matter that required further discussion.

13. The Northern Ireland Law Commission - The Committee **did not reach agreement** on the extent of devolution proposed with respect to the extent of the powers of the Commission.

Devolution of The Northern Ireland Law Commission was identified as a matter that required further discussion.

Proposals

37. During the discussions on the 'Matters for Devolution', a number of motions were proposed and these are set out in the following paragraphs.

38. It was agreed that:

The arrangements for dealing with criminal records and disclosures should be regulated on a European basis.

39. The Committee considered a proposal that the First Minister and Deputy First Minister, through the Assembly, should advise the Crown on the appointment of the Police Ombudsman. **There was not consensus and the proposal fell.**

40. It was agreed that:

The Policing Board should retain its current powers.

41. It was agreed that:

Responsibility for explosives licensing should rest with the Minister responsible for public safety.

42. The Committee considered a proposal that the Committee should support the Patten recommendation that the Chief Constable should have responsibility for matters in Northern Ireland that involve national security. **There was not consensus and the proposal fell.**

43. It was agreed that:

This Committee believes that political representation on the Policing Board should be at MLA level.

44. It was agreed that:

This Committee believes issues surrounding membership of an Assembly scrutiny committee and its relationship with the Policing Board should be addressed by Assembly Standing Orders.

45. The Committee considered a proposal that the Committee agrees to full devolution in respect of prohibited and non-prohibited firearms. **There was not consensus and the proposal fell.**
46. The Committee considered a proposal that the Committee agrees to full devolution in respect of non-prohibited firearms on restoration or as soon as possible. **There was not consensus and the proposal fell.**

Policing Issues

47. The Committee met on 16 August 2006 to begin its consideration of the issues surrounding the Intelligence Services, Policing and the Police Ombudsman. Further consideration was given to the Police Ombudsman on 30 August 2006. Members agreed that the issues relating to the Intelligence Services and Policing had been discussed exhaustively in the earlier discussions relating to the Devolution of Policing and Justice. No further new issues were identified for debate and the Committee decided to move directly to discuss the Police Ombudsman.

The Police Ombudsman

48. The matters discussed in relation to the Police Ombudsman included:
- Arrangements for making the appointment.
 - Public confidence in the Ombudsman's Office.
 - Accountability mechanisms.
 - Resources.
 - Operational independence of the Ombudsman.

Proposal

49. The Committee considered a proposal that the appointment of the Police Ombudsman should be devolved, subject to appropriate community safeguards. **There was not consensus and the proposal fell.**
50. There were no further proposals relating to the Police Ombudsman and the Committee decided to leave this matter unresolved.

Conclusion

51. **Issues relating to the Police Ombudsman were identified as a matter that required further discussion.**

Justice Issues

Community Restorative Justice

52. The Committee met on 23 August 2006 to consider the issues surrounding Community Restorative Justice (CRJ). Matters discussed in relation to CRJ included:
- The relationship between CRJ schemes and the mainstream criminal justice agencies in terms of co-operation and referral of cases.
 - Concerns about CRJ being perceived as an alternative to mainstream justice and the potential for paramilitary influence.
 - The application of formal guidelines and whether these should apply to both criminal and anti-social behaviour cases.
 - The possibility that imposing excessive restrictions on the operation of CRJ schemes could strangle their ability to operate effectively.
 - A system of accredited training for everyone involved in delivering CRJ.
 - Accountability mechanisms for CRJ schemes and an independent complaints procedure established by statute and with full powers of investigation.
 - A mechanism to measure the performance of CRJ schemes and the benefit they bring to the community.
 - A formal system of inspection and review.
 - The protection of vulnerable young people and the question of vetting of people seeking to work in CRJ.

Proposals

53. The Committee considered a proposal to agree that there should be a full range of the highest safeguards and standards covering the CRJ schemes including: an independent statute based complaints system; accreditation from and training governed by an independent and dedicated agency; independent oversight mechanisms and all appropriate powers; referrals to the scheme by the justice system; and that the protocol should govern all work of schemes. **There was not consensus and the proposal fell.**
54. The Committee considered a proposal that the Committee believes that acceptance of the rule of law and full co-operation with police and justice agencies is essential to the proper working of Community Restorative Justice schemes and public confidence. **There was not consensus and the proposal fell.**
55. The Committee considered a proposal that vetting for anyone working on Community Restorative Justice schemes should be carried out by the police. **There was not consensus and the proposal fell.**
56. The Committee considered a proposal that the Committee request written evidence from Community Restorative Justice groups. **There was not consensus and the proposal fell.**

Conclusion

57. **Issues relating to community restorative justice were identified as a matter that required further discussion.**

Residual Justice Issues

58. Consideration of residual justice issues took place on 23 August and 6 September 2006. Matters discussed in relation to residual justice issues included:

- The practice of exiling.
- The respective roles of District Policing Partnerships and Community Safety Partnerships.
- Greater openness by the Public Prosecution Service regarding information about prosecutions and trials that have not been proceeded with.
- The work of the Youth Justice Agency and the Probation Service.

Proposals

59. It was agreed that:

The Committee condemns the practice of exiling and calls for it to be ceased forthwith.

60. It was agreed that:

The Committee notes the work of the Youth Justice Agency in youth conferencing and the Probation Board in dealing with offenders.

61. The Committee considered a proposal that for parties to be included in Government, they have to support the institutions of the police and encourage the public to support the police. **There was not consensus and the proposal fell.**

62. It was agreed that:

This Committee calls on the Government to review policy on the publication of reasons where there has been a failure to prosecute and the collapse of prosecutions.

63. It was agreed that:

This Committee agrees that the role of District Policing Partnerships and Community Safety Partnerships should be reviewed in order to ensure best practice and effectiveness and to maintain the accountability of the policing arrangements.

Conclusion

64. **Residual justice issues were identified as a matter that required further discussion.**

Rule of Law

Criminality, Decommissioning and Paramilitarism

65. The Committee met on 30 August 2006 to begin its consideration of the issues surrounding the rule of law comprising criminality, decommissioning and paramilitarism. Further discussions took place on 6 September 2006. It was agreed that these three matters were cross-cutting and should be discussed together. Matters discussed in relation to these issues included:

- The meaning of the term ‘ceasefire’ and its application to the ongoing activities of paramilitary organisations.
- The role of political parties to influence and encourage all paramilitary organisations to engage with the Independent International Commission on Decommissioning (IICD) and undertake their own acts of decommissioning in a verifiable manner.
- The degree of confidence within the Unionist community about the decommissioning process.
- The possibility of publishing evidence (a detailed inventory) that weapons have been decommissioned.
- The question of whether weapons have been retained by dissident paramilitary groups.
- Building a lawful society.
- Enforcement of the rule of law without exception.
- Support from political parties for all the criminal justice agencies both in principle and in practice.
- The damaging effect on the public perception of authority, of the failure to act against paramilitary organisations acting unlawfully.
- The importance of good performance by the police in tackling crime, in order to enhance public confidence in policing.
- The importance of public support for and co-operation with the police, to making the police more effective in tackling crime.
- The steps needed to establish trust in the police within all sides of the community.
- Enhancing public confidence by establishing high standards of transparency and accountability for all policing and justice agencies.
- The role of the International Monitoring Commission (IMC) in enhancing public confidence in the rule of law.
- The role of political parties in providing leadership to the public in extending and enhancing support for the police in terms of recruitment, assisting investigations, etc.
- Issues arising from CRJ groups being represented as an alternative to the police.
- Addressing the perception that there are links between political parties and paramilitary organisations that may be funded by the proceeds of crime.

- The transformation of the paramilitary organisations into non-paramilitary, non-criminal associations.

Proposals

66. The Committee considered a proposal that a detailed inventory of all material decommissioned be published urgently to enhance public confidence in the process. **There was not consensus and the proposal fell.**
67. The Committee considered a proposal that this Committee calls on all parties to recommend that people join the police, assist the police with enquiries including into organised crime, encourage people to participate in the policing structures and co-operate with other agencies addressing crime and organised crime. **There was not consensus and the proposal fell.**
68. The Committee considered a proposal that this Committee endorses the work of the IICD and calls upon paramilitary organisations to co-operate fully and without delay with the IICD in putting illegal weapons verifiably beyond use, and for the IICD to conclude its work as it has publicly indicated. **There was not consensus and the proposal fell.**
69. The Committee considered a proposal that this Committee believes that the appropriate agencies should, subject to due process, publish as fully as possible, details of individuals, gangs or organisations involved in crime. **There was not consensus and the proposal fell.**
70. The Committee considered a proposal that this Committee believes that association with, or support for, those involved in criminal activity is incompatible with the holding of Ministerial office. **There was not consensus and the proposal fell.**

Conclusion

71. **Rule of law issues were identified by at least one party as a matter that required resolution prior to restoration of the Institutions.**

Appendix 1

**Minutes of Proceedings
Relating to the Report**

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

In the Chair: Francie Molloy

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

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

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

The meeting commenced at 10.06am.

1. **Previous Minutes**

The minutes of the meeting of 17 July 2006 were agreed, subject to the following:-

'Item 9. The date of the next meeting should read - 24 July 2006.'

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

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

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

Alliance - David Ford Kieran McCarthy

SDLP - P J Bradley Dr Sean Farren

Sinn Fein - Conor Murphy John O'Dowd

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

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

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

Dr McDonnell MP joined the meeting at 10.18am.

Mr McFarland joined the meeting at 10.25am.

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

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

The meeting adjourned at 11.25am

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

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

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

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

Observing Francie Molloy (Chairperson) (until 12.18pm)

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

The meeting commenced at 10.10am.

1. **Previous Minutes**

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

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

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

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

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

The meeting was suspended at 10.33am.

The meeting reconvened at 10.55am.

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

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

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

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

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

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

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

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

‘Culture – Ethnic Communities
Nationalist
Unionist’

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

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

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

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

Challenges facing Northern Ireland. Those on the list would chair the meetings of the sub-group on an alternating basis.

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

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

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

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

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

Mr Molloy took the Chair at 12.18pm.

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

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

The meeting adjourned at 12.24pm.

Wednesday, 2 August 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells

Present: Alex Attwood
Wilson Clyde
Fred Cobain
David Ford
Arlene Foster
Dolores Kelly
Naomi Long
Raymond McCartney
Alan McFarland
Conor Murphy MP
Peter Weir

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

Observing: Ciaran Kearney (Sinn Fein researcher)
Philip Weir (DUP researcher)

Apologies: Mr Durkan MP (Mr Attwood attended the meeting as SDLP representative in place of Mr Durkan MP)
Dr Farren
Ms Gildernew MP
Mr Kennedy
Dr McCrea MP (Mr Weir attended the meeting as DUP representative in place of Dr McCrea MP)
Dr McDonnell MP (Ms Kelly attended the meeting as SDLP representative in place of Dr McDonnell MP)
Mr McGuinness MP (Mr McCartney attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)
Mr McNarry (Mr Cobain attended the meeting as UUPAG representative in place of Mr McNarry)
Lord Morrow (Ms Foster attended the meeting as DUP representative in place of Lord Morrow)
Mr Paisley (Mr Clyde attended the meeting as DUP representative in place of Mr Paisley)

The meeting commenced at 10.06am.

1. **Declaration of Interests**

Members declared the following interests:

Alex Attwood – member of Policing Board

Fred Cobain – member of Policing Board

David Ford – member District Policing Partnership

Arlene Foster – member Policing Board

Dolores Kelly – member Policing Board

Naomi Long – member District Policing Partnership

Peter Weir – member Policing Board

2. **Paper on Issues agreed by Committee**

Each party gave a short presentation on law and order issues and answered questions from the other parties.

Ms Long joined the meeting at 10.34am.

Mr Weir joined the meeting at 10.46am.

It was agreed to add ‘Policing Ombudsman’ and ‘residual justice issues’ to the list of issues to be discussed.

It was agreed to retain ‘Rule of Law’ as a heading for discussion.

It was agreed to group the issues as follows:

1. Devolution of Policing and Justice

2. Policing

- Intelligence Services
- Policing Issues
- Police Ombudsman

3. Justice Issues

- Community Restorative Justice
- Residual justice issues

4. Rule of Law

- Criminality
- Decommissioning
- Paramilitarism

The revised list will be sent to Members.

It was agreed that this was the order in which these would be included in the Committee's work programme.

It was agreed that the Clerk should produce a briefing paper on the NIO discussion paper on Devolving Policing and Justice in Northern Ireland.

It was agreed to invite the Secretary of State, when available, to the Committee to discuss law and order issues.

3. **Sub-group on Economic Challenges facing Northern Ireland**

It was agreed to include those nominated by the Alliance Party and the UUPAG as additional Chairpersons on the list to chair meetings of the sub-group.

The Committee agreed to a request from the sub-group for a one week extension to 25 August 2006 as the date for reporting.

4. **Next Meeting**

The Committee will next meet at 10.00am on Friday 4 August 2006 in Room 144, Parliament Buildings to discuss issues relating to rights, equality, safeguards and victims.

It was agreed that the meeting on Wednesday 9 August 2006 to discuss the devolution of policing and justice should be an all-day meeting with lunch provided.

The meeting adjourned at 12.07pm.

Wednesday, 9 August 2006 in Room 144, Parliament Buildings.

- In the Chair:** Francie Molloy (until 12.40pm)
Jim Wells from (from 12.40pm)
- Present:** Alex Attwood
Fred Cobain
Arlene Foster
Dolores Kelly
Gerry Kelly
Danny Kennedy
Naomi Long
Alban Maginness
Alex Maskey
Raymond McCartney
Alan McFarland
Sean Neeson
Peter Weir
Sammy Wilson MP
- In Attendance:** Debbie Pritchard (Principal Clerk)
Martin Wilson (Principal Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)
- Observing:** Stephen Farry (Alliance researcher)
Ciaran Kearney (Sinn Fein researcher)
Philip Weir (DUP researcher)
Mark Neal (UUPAG researcher)
- Apologies:** Mr Durkan MP (Mr Maginness attended the meeting as SDLP representative in place of Mr Durkan MP)
Dr Farren (Mr Attwood attended the meeting as SDLP representative in place of Dr Farren)
Mr Ford ((Mr Neeson attended the meeting as Alliance representative in place of Mr Ford)
Ms Gildernew MP (Mr McCartney attended the meeting as Sinn Fein representative in place of Ms Gildernew MP)
Dr McCrea MP (Mr Weir attended the meeting as DUP representative in place of Dr McCrea MP)
Dr McDonnell MP (Ms Kelly attended the meeting as SDLP representative in place of Dr McDonnell MP)

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

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

Lord Morrow (Ms Foster attended the meeting as DUP representative in place of Lord Morrow)

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

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

The meeting commenced at 10.07am.

1. Declaration of Interests

Members declared the following interests:

Alex Attwood – member of Policing Board

Fred Cobain – member of Policing Board

Arlene Foster – member Policing Board

Dolores Kelly – member Policing Board

Danny Kennedy – member Policing Board

Naomi Long – member District Policing Partnership

Peter Weir – member Policing Board

2. Previous Minutes

The minutes of the meeting of 2 August 2006 were agreed.

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

The Committee noted the letter from the Chairperson to the Secretary of State dated 3 August 2006 regarding the latter's attendance at a meeting of the Committee.

4. Revised List on Law and Order Issues

The Committee noted the revised list of issues for discussion.

5. Discussion on Policing and Justice

It was agreed that the order of discussion for the meeting would be:

Options for Ministerial and Department structures

Timing of devolution of policing and justice

Matters for devolution

Mr Wilson joined the meeting at 10.15am.

Mr Kennedy joined the meeting at 10.53am.

It was agreed that Models 3 and 4 (paragraphs 4.3.3 and 4.3.4 of the NIO consultation Paper on the Devolution of Policing and Justice) should be excluded from the Committee's discussions.

Mr Weir joined the meeting at 11.46am.

Mr Kelly proposed a single Department with shared Ministerial responsibilities. There was not consensus and the proposal fell.

It was agreed that there should be a single Department but that the Ministerial arrangements and appointment procedures would require to be addressed later.

Mr Kelly proposed that the Committee should set a timeframe for devolution within the context of the date of restoration. There was not consensus and the proposal fell.

Mr Wells joined the meeting at 12.25pm.

Ms Long proposed that a target date for devolution of policing and justice should be set at two years after restoration of the Assembly. There was not consensus and the proposal fell.

Mr Wilson proposed the devolution of policing and justice as soon as possible. There was not consensus and the proposal fell.

The meeting was suspended at 12.40pm.

The meeting reconvened at 1.10pm with Mr Wells in the Chair

Mr Wilson left the meeting at 1.11pm.

It was agreed that the powers listed at paragraph 3.2 of the NIO discussion paper should be devolved within policing and justice.

It was agreed that a paper should be prepared for the Committee listing Excepted and Reserved matters, including the functions not mentioned in the 1998 Agreement; that the Northern Ireland Office be asked for a written definition of 'national security' and to provide copies of protocols on National Security with the main security agencies in Great Britain and advise the Secretary of State that the Committee wishes to discuss this matter with him.

It was agreed that a paper should be prepared detailing the powers of both the Scottish Parliament and Welsh Assembly in relation to law and order and national security issues.

6. Revised Committee Work Programme

The Committee noted the revised work programme.

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

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

8. **Letter from the Northern Ireland Policing Board dated 7 August 2006**

The Committee agreed a response to Prof Sir Desmond Rea's letter of 7 August 2006.

9. **Letter from Clerk to the Economic Challenges Sub-group**

It was agreed that the Committee and its sub-group should retain its flexibility and continue to allow substitutes, as and when necessary.

Mr Attwood joined the meeting at 2.10pm.

It was agreed that those nominated as Chairpersons for the sub-group could continue in their joint roles of member and chairperson.

10. **Next Meeting**

The Committee will next meet at 10.00am on Friday, 11 August 2006 in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

It was agreed that the meeting on Wednesday, 16 August 2006 would be an all-day meeting with lunch provided.

The meeting adjourned at 2.15pm.

Wednesday, 16 August 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells

Present: Alex Attwood
Fred Cobain
Arlene Foster
Dolores Kelly
Gerry Kelly
Danny Kennedy
Naomi Long
Fra McCann
Alan McFarland
Sean Neeson
Peter Weir
Sammy Wilson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Neil Currie (Assistant Clerk)
Pauline Innes (Clerical Officer)
David Douglas (Clerical Officer)
Tim Moore (Senior Researcher)

Observing: Aodhan Mac Ant Saoir (Sinn Fein researcher)
Philip Weir (DUP researcher)
Mark Neal (UUPAG researcher)

Apologies: Dr Farren (Mr Attwood attended the meeting as SDLP representative in place of Dr Farren)
Mr Ford (Mr Neeson attended the meeting as Alliance representative in place of Mr Ford)
Dr McCrea MP (Mr Weir attended the meeting as DUP representative in place of Dr McCrea MP)
Dr McDonnell MP (Ms Kelly attended the meeting as SDLP representative in place of Dr McDonnell MP)
Mr McGuinness MP (Mr Kelly attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)
Mr McNarry (Mr Cobain attended the meeting as UUPAG representative in place of Mr McNarry)
Lord Morrow (Ms Foster attended the meeting as DUP representative in place of Lord Morrow)

Mr Murphy MP (Mr McCann attended the meeting as Sinn Fein representative in place of Mr Murphy MP)

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

The meeting commenced at 10.04am.

1. Declaration of Interests

Danny Kennedy declared the following interests: – member of Policing Board.

Mr Kennedy pointed out that he had declared this interest at the meeting on 9 August 2006, but the minutes had not recorded this.

2. Previous Minutes

Other than Mr Kennedy's declaration of interests, the minutes of the meeting of 9 August 2006 were agreed.

3. Matters arising

The following papers, which had been requested by the Committee, were tabled at the meeting:

- NIO paper on national security issues/excepted and reserved matters contained within Schedules 2 and 3 to the Northern Ireland Act 1998
- Assembly Research Service paper on excepted and reserved matters/powers of the Scottish Parliament
- Assembly Research Service paper on the role of the Lord Chancellor in Northern Ireland

It was agreed to suspend the meeting for one hour to allow Members to examine these papers.

The meeting was suspended at 10.14am.

The meeting reconvened at 11.20am.

Mr Wilson joined the meeting at 11.20am.

4. Letter from the Secretary of State dated 9 August 2006

Mr Kennedy left the meeting at 11.39am.

It was agreed that the Secretary of State should be urged to attend a meeting of the Committee at the end of August or beginning of September.

5. **Discussion on Intelligence Services**

Mr Cobain left the meeting at 12.15pm.

Mr Kennedy rejoined the meeting at 12.19pm.

It was agreed to request, from the Secretary of State, copies of the slides used by ACC Sheridan at a recent presentation to a District Policing Partnership, along with any papers presented at the meeting.

Mr Cobain rejoined the meeting at 12.23pm.

It was agreed to request, from the Secretary of State, up-to-date information on the protocols being developed to deal with the relationship between MI5 and all relevant agencies in Northern Ireland.

It was agreed to request, from the Secretary of State, up-to-date information on the accountability mechanisms and other safeguards that are being prepared in relation to the operation of MI5 in Northern Ireland.

Ms Long left the meeting at 12.24pm.

The meeting was suspended at 12.24pm.

The meeting reconvened at 12.48pm.

6. **NIO paper on excepted and reserved matters contained within Schedules 2 and 3 to the Northern Ireland Act 1998**

Paragraph 9(c) of Schedule 3: The prevention & detection of crime and powers of arrest and detention in connection with crime or criminal proceedings

It was agreed to request, from the Secretary of State, up-to-date information about the proposed role of the Serious Organised Crime Agency in Northern Ireland.

Mr Cobain left the meeting at 1.16pm.

It was agreed that the arrangements for dealing with criminal records and disclosures should be regulated on a European basis.

9(d): Prosecutions

It was agreed to defer consideration of this matter to the meeting on 23 August.

9A: Chief Inspector of Criminal Justice for NI

The Committee noted the position.

10: Public Order

Mr Cobain rejoined the meeting at 1.33pm.

It was agreed to request, from the Secretary of State, clarification on the broad ground rules and further information regarding the reference to the army operating in support of the police.

It was agreed to request, from the Secretary of State, clarification on the powers of the Chief Constable to challenge a determination of the Parades Commission. In particular, the checks, balances and safeguards that are to be established.

It was agreed to refer to the PfG Committee meeting on 18 August, the issue of whether the Assembly might wish to seek devolution of ‘appointments to the Parades Commission and its operation’.

11: The Police and the policing accountability framework

Mr Kennedy rejoined the meeting at 1.36pm.

It was agreed to request, from the Secretary of State, clarification and further information regarding the reference to the power of the Secretary of State to issue statutory guidance to the Police Ombudsman. In particular, the Committee asked for clarification regarding the proposal that, following devolution, the devolved Minister would also have this power. Members were concerned to hear how this shared responsibility would work in practice.

Ms Foster left the meeting at 1.48pm.

Mr McFarland proposed that the First Minister and Deputy First Minister, through the Assembly, should advise the Crown on the appointment of an ombudsman. There was not consensus and the proposal fell.

The meeting was suspended at 2.09pm.

The meeting reconvened at 2.20pm.

It was agreed that the Policing Board should retain its current powers.

Mr Cobain left the meeting at 2.38pm.

It was agreed to give further consideration to the interface between the Policing Board, a Minister for policing and an Assembly Committee on

Policing and Justice.

12: Firearms & explosives

It was agreed that a paper should be prepared for the Committee on the extent of devolution in Scotland with regard to firearms and explosives, including clarification on what constitutes ‘automatic’ and ‘semi-automatic’ weapons.

Ms Kelly left the meeting at 3.02pm.

It was agreed to refer to the PfG Committee meeting on 21 August, the issue of whether responsibility for explosives regulation should fall to the Minister for Public Safety or to a Minister for policing and justice.

Ms Kelly rejoined the meeting at 3.04pm

15A: The Northern Ireland Law Commission

The Committee noted the position.

7. Discussion on the Police Ombudsman

Following discussion it was agreed to defer this matter.

8. Any Other Business

(a) Press Release

The Committee agreed a press release outlining the continuing work of the Committee and the Sub-group, for issue to key media outlets along with copies of the latest Official Report of PfG Committee proceedings.

(b) Sub-group on the Economic Challenges facing Northern Ireland – Evidence from Ministers

The Committee considered a letter from the Principal Clerk of the Sub-group on the Economic Challenges facing Northern Ireland, and gave its approval for the Sub-group to invite Maria Eagle MP to an evidence session in early September.

9. Next Meeting

The Committee will next meet at 10.00am on Friday, 18 August 2006 in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

It was agreed that the meeting on Wednesday, 23 August 2006 would be an all-day meeting with lunch provided.

The meeting adjourned at 4.00pm.

Wednesday, 23 August 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: Alex Attwood
Fred Cobain
Danny Kennedy
Alban Maginness
Fra McCann
Raymond McCartney
Sean Neeson
Peter Weir
Sammy Wilson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Debbie Pritchard (Principal Clerk)
Neil Currie (Assistant Clerk)
Gillian Lyness (Assistant Clerk)
David Douglas (Clerical Officer)
Tim Moore (Senior Researcher)

Observing: Aodhan Mac Ant Saoir (Sinn Fein researcher)
Philip Weir (DUP researcher)
Mark Neal (UUPAG researcher)
Stephen Farry (Alliance researcher)

Apologies: Mr Durkan MP (Mr Maginness attended the meeting as SDLP representative in place of Mr Durkan MP)
Dr Farren (Mr Attwood attended the meeting as SDLP representative in place of Dr Farren)
Mr Ford (Mr Neeson attended the meeting as Alliance representative in place of Mr Ford)
Dr McCrea MP (Mr Weir attended the meeting as DUP representative in place of Dr McCrea MP)
Mr McGuinness MP (Mr McCartney attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)
Mr McNarry (Mr Cobain attended the meeting as UUPAG representative in place of Mr McNarry)
Mr Murphy MP (Mr McCann attended the meeting as Sinn Fein representative in place of Mr Murphy MP)

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

The meeting commenced at 10.05am.

1. **Declaration of Interests**

Raymond McCartney declared the following interests: – his brother is a member of a Community Restorative Justice group.

2. **Previous Minutes**

The minutes of the meeting of 16 August 2006 were agreed.

3. **Matters arising**

Letter from the Secretary of State dated 22 August 2006

It was agreed that the Secretary of State be asked to make himself available to the Committee before mid-September.

Mr Wilson joined the meeting at 10.24am.

It was agreed that the Secretary of State be asked to indicate when he might be able to share with the parties the developmental work that is in hand, in relation to national security accountability.

It was agreed that the Secretary of State be asked to provide an indicative list of all the powers the army might require post normalisation.

It was agreed that the Secretary of State be asked to provide a definition of ‘normalisation’ and ‘ceasefire’.

Firearms and Explosives

It was agreed that responsibility for explosives licensing should rest with the Minister responsible for public safety.

It was agreed to defer further consideration of firearms and explosives to the meeting on 30 August.

Policing Issues

Mr Maginness proposed that policing and justice be devolved immediately on formation of an Executive and if not, within 6 months of that formation. There was not consensus and the proposal fell.

Mr Wilson proposed that all parties support the devolution of policing and justice powers as soon as community confidence exists. There was not consensus and the proposal fell.

4. **Discussion on Justice Issues**

Mr Weir left the meeting at 12.21pm.

The meeting was suspended at 12.21pm.

The meeting reconvened at 12.46pm.

Mr Attwood proposed that this Committee agrees that there should be a full range of the highest safeguards and standards covering Community Restorative Justice schemes including an independent statute based complaints system, accreditation from and training governed by an independent and dedicated agency, independent oversight mechanisms and all appropriate powers, referrals to the scheme by the justice system and that the protocol should govern all work of schemes. There was not consensus and the proposal fell.

Mr Attwood proposed that the Committee believes that acceptance of the rule of law and full co-operation with police and justice agencies is essential to the proper working of Community Restorative Justice schemes and public confidence. There was not consensus and the proposal fell.

Mr Wilson proposed that vetting for anyone working on Community Restorative Justice schemes should be carried out by the police. There was not consensus and the proposal fell.

Mr McCann proposed that the Committee request written evidence from Community Restorative Justice groups. There was not consensus and the proposal fell.

It was agreed that the Committee condemns the practice of exiling and calls for it to be ceased forthwith.

It was agreed that the Committee notes the work of the Youth Justice Agency in youth conferencing and the Probation Board in dealing with offenders.

Mr Wilson proposed that the Committee believes that for parties to be included in Government they have to support the institutions of the police and encourage the public to support the police. There was not consensus and the proposal fell.

It was agreed to defer to the meeting on 30 August, two further proposals from Mr Attwood.

5. **Any Other Business**

Ministerial Pledge of Office

At the PfG Committee meeting on 14 August dealing with the Institutions, it was agreed to refer to this meeting for consideration the suggestion that the Pledge of Office should incorporate support for the rule of law.

The Committee discussed the matter, but no proposals were made.

6. **Next Meeting**

The Committee will next meet at 10.00am on Friday, 25 August 2006 in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

It was agreed that the meeting on Wednesday, 30 August 2006 would be an all-day meeting with lunch provided.

The meeting adjourned at 1.27pm.

Wednesday, 30 August 2006 in Room 14 4, Parliament Buildings.

In the Chair: Francie Molloy

Present: Alex Attwood
Fred Cobain
David Ford
Dolores Kelly
Danny Kennedy
Alban Maginness
Alex Maskey
Raymond McCartney
Alan McFarland
Ian Paisley Jnr
Peter Weir
Sammy Wilson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Neil Currie (Assistant Clerk)
Gillian Lyness (Assistant Clerk)
David Douglas (Clerical Officer)
Tim Moore (Senior Researcher)

Observing: Richard Bullick (DUP researcher)
Mark Neale (UUPAG researcher)

Apologies: Mr Durkan MP (Mr Maginness attended the meeting as SDLP representative in place of Mr Durkan MP)

Dr Farren (Mr Attwood attended the meeting as SDLP representative in place of Dr Farren)

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

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

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

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

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

The meeting commenced at 10.07am.

1. **Declaration of Interests**

Ian Paisley Jnr declared the following interests: – member of Policing Board.

2. **Previous Minutes**

The minutes of the meeting of 23 August 2006 were agreed.

Mr Cobain joined the meeting at 10.10am.

Mr Maginness joined the meeting at 10.14am.

3. **Matters arising**

Letter from the Secretary of State dated 29 August 2006

It was agreed to write back to the Secretary of State regarding: his attendance at a meeting of the Committee; to ask if information on developmental work on accountability for policing matters that bear on national security will be shared with the parties; and to ask if the indicative list of powers the army might need post-normalisation is exhaustive, or are there other issues under consideration?

Firearms and Explosives

It was agreed that the five options on the devolution of firearms and explosives be brought back for consideration at the meeting on 6 September.

Residual Justice Issues

It was agreed to defer to the meeting on 6 September, two proposals from Mr Attwood relating to residual justice issues.

4. **Discussion on Rule of Law Issues**

Mr Maginness left the meeting at 10.35am.

It was agreed that research should be undertaken on the definition of ‘ceasefire’.

Mr Maginness rejoined the meeting at 10.59am.

Mr Paisley proposed that a detailed inventory of all material decommissioned be published urgently to enhance public confidence in the process. There was not consensus and the proposal fell.

Mr Attwood proposed that this Committee endorses the work of the IICD and calls upon paramilitary organisations to co-operate fully and without delay with the IICD in putting illegal weapons verifiably beyond use, and for the IICD to conclude its work as it has publicly indicated. There was not consensus and the proposal fell.

It was agreed to defer to the meeting on 6 September, the following proposal from Mr Paisley: “This Committee believes that association with, or support for, those involved in criminal activity is incompatible with the holding of ministerial office.”

Mr Attwood proposed that this Committee believes that the appropriate agencies should, subject to due process, publish as fully as possible details of individuals, gangs or organisations involved in crime. There was not consensus and the proposal fell.

Mr Weir left the meeting at 12.12pm.

It was agreed to defer to the meeting on 6 September, the following proposal from Mr Paisley: “This Committee believes that consideration should be given to incorporating in the Ministerial Pledge of Office, support for the rule of law and commitment to urging all others to do so.”

It was agreed to refer the following proposal to the PfG Committee meeting on 4 September: “This Committee believes that a breach of the Ministerial Pledge of Office should be actionable in the courts and followed by disqualification from office.”

Mr Attwood proposed that this Committee calls on all parties to recommend that people join the police; assist the police with enquiries, including into organised crime; encourage people to participate in the policing structures; and to co-operate with other agencies addressing crime and organised crime. There was not consensus and the proposal fell.

The meeting was suspended at 12.19pm.

The meeting reconvened at 12.47pm.

5. **Any Other Business**

Law and Order matters left unresolved

It was agreed that this Committee welcomes the progress made to date on departmental structures and accepts that it requires renewed consideration by all the parties collectively.

Mr Wilson proposed that this Committee believes that policing and justice should be devolved as soon as possible, given levels of public confidence. There was not consensus and the proposal fell.

It was agreed to defer to the meeting on 6 September, the following proposal from Mr Attwood: “This Committee believes that policing and justice should be devolved as soon as possible, but is not at this time able to define when.”

Mr Attwood proposed that the Committee should support the Patten recommendation that the Chief Constable should have responsibility for matters in Northern Ireland that involve national security. There was not consensus and the proposal fell.

It was agreed that this Committee believes that political representation on the Policing Board should be at MLA level.

Mr Cobain left the meeting at 1.12pm.

It was agreed that this Committee believes that issues surrounding membership of an Assembly scrutiny committee and relationship with the Policing Board be addressed by Assembly Standing Orders.

Mr Attwood proposed that this Committee believes that the appointment of the Police Ombudsman should be devolved, subject to appropriate community safeguards. There was not consensus and the proposal fell.

6. Next Meeting

The Committee will next meet at 10.00am on Friday, 1 September 2006 in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

It was agreed that the meeting on Wednesday, 6 September 2006 would be an all-day meeting with lunch provided.

The meeting adjourned at 1.27pm.

Wednesday, 6 September 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: Dominic Bradley
Fred Cobain
Diane Dodds
Sean Farren
David Ford
Gerry Kelly
Raymond McCartney
Alan McFarland
Lord Morrow
Sean Neeson
Sammy Wilson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Neil Currie (Assistant Clerk)
Elaine Farrell (Clerical Supervisor)
Tim Moore (Senior Researcher)

Observing: Jim Wells (Chairperson)
Ciaran Kearney (Sinn Fein researcher)
Richard Bullick (DUP researcher)
Mark Neale (UUPAG researcher)

The meeting commenced at 10.03am.

1. **Apologies**

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

Mr Kennedy

Ms Long (Mr Neeson attended the meeting as Alliance representative in place of Ms Long)

Dr McCrea MP (Mrs Dodds attended the meeting as DUP representative in place of Dr McCrea MP)

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

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

Mr Murphy MP (Mr McCartney attended the meeting as Sinn Fein representative in place of Mr Murphy MP)

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

2. **Previous Minutes**

The minutes of the meeting of 30 August 2006 were agreed.

3. **Matters arising**

■ **Letter from the Secretary of State dated 5 September 2006**

The Committee noted the letter from the Secretary of State and agreed that the evidence session with the Secretary of State would be held in public.

■ **Firearms and Explosives – Options for Devolution**

Mr Wilson joined the meeting at 10.16am.

Mr Kelly proposed that this Committee agrees to full devolution in respect of prohibited and non-prohibited firearms. There was not consensus and the proposal fell.

Mr Bradley proposed that this Committee agrees to full devolution in respect of non-prohibited firearms on restoration or as soon as possible. There was not consensus and the proposal fell.

■ **Residual Justice Issues**

Mr Bradley proposed that this Committee calls on the Government to review policy on the publication of reasons where there has been a failure to prosecute and the collapse of prosecutions. There was consensus and the proposal was agreed.

Mrs Dodds joined the meeting at 10.36am.

Mr Cobain joined the meeting at 10.41am.

Mr Farren joined the meeting at 10.45am.

Mr Bradley proposed that this Committee agrees that the role of District Policing Partnerships and Community Safety Partnerships should be reviewed in order to ensure best practice and effectiveness, and to maintain the accountability of the

policing arrangements. There was consensus and the proposal was agreed.

■ **Definition of ‘Ceasefire’**

The Committee noted a paper prepared by the Assembly Research Service on the definitions of ‘ceasefire’.

■ **Rule of Law Issues**

Mr Ford left the meeting at 10.55am.

Mr Wilson proposed that this Committee believes that association with, or support for, those involved in criminal activity is incompatible with the holding of ministerial office. There was not consensus and the proposal fell.

It was agreed to refer the following proposal to the PfG Committee on Institutional Issues (meeting on 13 September): “This Committee believes that consideration should be given to incorporating in the Ministerial Pledge of Office, support for the rule of law and commitment to urging all others to do so. “

■ **Devolution of Policing and Justice**

Mr Ford rejoined the meeting at 11.02am.

Mr Cobain left the meeting at 11.10am.

Mr Bradley proposed that this Committee believes that policing and justice should be devolved as soon as possible, but is not at this time able to define when. There was not consensus and the proposal fell.

■ **Devolution of appointments to, and operation of, the Parades Commission**

Mr Cobain rejoined the meeting at 11.16am.

The Committee noted the response from the PfG Committee on Rights and Equality, that the Committee did not reach consensus that appointments to, and operation of, the Parades Commission should be devolved.

4. **Draft PfG Committee Report on Law and Order Issue**

Mr McFarland left the meeting at 11.32am.

Members considered the draft report and suggested amendments.

The Chairman proposed that the Committee agree the NIO proposals for devolution of Community Safety Partnerships. There was consensus and the proposal was agreed.

Mr McFarland rejoined the meeting at 12.14pm.

5. **Any Other Business**

Official Report (Hansard)

The Committee noted that copies of the draft Official Report (Hansard) could be emailed to Members.

6. **Next Meeting**

The Committee will next meet at 10.00am on Friday, 8 September 2006 in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

The next meeting on Law and Order issues will be held on Wednesday morning, 13 September 2006.

The meeting adjourned at 12.26pm.

Wednesday, 13 September 2006 in Room 144, Parliament Buildings.

- In the Chair:** Jim Wells
- Present:** Dominic Bradley
Fred Cobain
David Ford
Gerry Kelly
Danny Kennedy
Naomi Long
Alban Maginness
Fra McCann
Raymond McCartney
Alan McFarland
Ian Paisley Jnr
Peter Robinson MP
Sammy Wilson MP
- In Attendance:** Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Neil Currie (Assistant Clerk)
David Douglas (Clerical Officer)
Tim Moore (Senior Researcher)
- Observing:** Ciaran Kearney (Sinn Fein researcher)
Richard Bullick (DUP researcher)
Stephen Barr (UUPAG researcher)

The meeting commenced at 10.07am.

1. Apologies

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

Dr Farren (Mr Maginness attended the meeting as SDLP representative in place of Dr Farren)

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

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

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

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

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

Mr Murphy MP (Mr McCartney attended the meeting as Sinn Fein representative in place of Mr Murphy MP)

2. **Previous Minutes**

The minutes of the meeting of 6 September 2006 were agreed.

3. **Matters arising**

Meeting with the Secretary of State on 18 September 2006

The Committee agreed that the meeting with the Secretary of State would be held in the Senate chamber.

Mr Wilson joined the meeting at 10.25am.

The Committee agreed a press release regarding the Secretary of State's meeting with the Committee.

Mr Robinson joined the meeting at 10.45am.

The Committee agreed the matters for discussion with the Secretary of State and their order.

The Committee agreed that other matters to be raised with the Secretary of State would be sought from the Institutions PfG Committee meeting scheduled for that afternoon.

4. **Draft PfG Committee Report on Law and Order Issues**

Mr Maginness joined the meeting at 11.21am.

The meeting was suspended at 12.20pm.

The meeting reconvened at 12.43pm.

The Committee agreed the report.

The Committee agreed that the report should be printed as the second report from the Committee on the Preparation for Government.

5. Motion for Debate of Report

It was agreed to table the following motion:

‘That the Assembly approves the second report from the Committee on the Preparation for Government, on Law and Order Issues; agrees that it should be submitted to the Secretary of State for Northern Ireland and, pending restoration of the Institutions, calls on the Secretary of State and others to address those matters identified in the report as requiring resolution or further discussion.’

Mr McCartney left the meeting at 1.04pm.

Mr Wilson left the meeting at 1.07pm.

It was agreed the motion should be referred to the Business Committee but with no suggested date for Plenary.

It was agreed that the report would be embargoed until the commencement of a debate in the Assembly but that embargoed copies should be issued to MLAs, the media and the Secretary of State prior to the debate in Plenary.

The Committee agreed a press release regarding the publishing of the report.

6. Any Other Business

The Committee agreed that the Chairperson should agree the minutes of the meeting, relevant to the consideration of the report, so that they could be incorporated in the printed report.

7. Next Meeting

The Committee will next meet at 2.00pm this afternoon in Room 144, Parliament Buildings to discuss issues relating to Rights; Safeguards; Equality and Victims.

The next meeting on Law and Order issues will be held on Monday, 18 September 2006 at 9.45am.

The meeting adjourned at 1.15pm.

Appendix 2

**Official Reports
Relating to the Report**

Monday 24 July 2006

Members:

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

The Committee met at 10.06 am.

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

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

Members indicated assent.

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

38. The DUP is abdicating a clear responsibility, as far as the terms of reference of this Committee are concerned, to help the rest of us to understand its position. Since the DUP

is not participating in helping the rest of us to understand its position on those issues, I am sceptical of the views that it expresses.

10.15 am

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

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

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

the two issues that are being identified this morning. The economic working group is different as it was agreed following debate in the Assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.30 am

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.45 am

90. We identified many sub-areas within the issue of policing and justice. When criminality and paramilitary activity were not being discussed in that subgroup, William McCrea said that the DUP wanted those issues on the agenda. That makes a lot of sense, because there are many areas within criminality that we need to explore in a subgroup — whether organised crime is carried out by individuals, who sanctions such activities, and other questions.

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

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

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

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

95. **Mr McFarland:** I absolutely do; but if there are no subgroups, there will be no debate. The problem is that we are trying to get debates. We need debates in the Assembly, with everybody present, so that the public can see that we are operating properly. If the subgroups

do not identify detailed areas of discussion, the Secretary of State will have problems producing debates. That will be unfortunate.

96. **Mrs Long:** Further to what David Ford asked earlier, the DUP seems to agree that the scoping exercise, which is the job of this Committee, is incomplete, in that there is still further work to be done. The question is how we go about doing that.

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

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

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

100. **Lord Morrow:** There are a couple of points that Mrs Long has got right, and others on which she is wrong. She said that, by our admission, the Subgroup on Economic Challenges was working well. I never mentioned that subgroup in our deliberations,

and neither did Diane Dodds. I do not know whether it is working well.

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

102. How many subgroups do we need?

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

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

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

106. **Mrs Long:** And —

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

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

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

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

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

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

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

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

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

116. **Mr McFarland:** I am confused as to why Maurice is unhappy with the subgroups. I could understand his objections if the subgroups had powers to negotiate, in the same way as I could understand objections to this Committee having those powers. However, if the subgroups will not be negotiating, but rather scoping and identifying issues in finer detail, what is the difficulty with them? Is it because they will operate a non-consensual voting system or because the terms of reference are not right? I am trying to understand why the DUP is saying that it will not sit on the subgroups.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We must find a compromise whereby those reports can be compiled through the Committee.

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

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

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

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

136. Do we go for a subgroup that my party may not participate in, or do we try to facilitate to keep us all together? It seems a nonsense that people may abstain — my party included —

from a subgroup and yet discuss the reports of the subgroups on changes to the institutions and the devolution of criminal justice and policing — a point that has already been made.

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

11.00 am

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

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

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

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

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

143. **Dr Farren:** He is unlikely to accede to that request. However, we could agree to scope those issues in this Committee. Would the DUP

be happy for us to proceed without the subgroups and to scope the issues in here in this format?

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

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

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

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

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

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

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

151. Sinn Féin objected to every plenary session of the Assembly except for the failed

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

152. Sinn Féin has made clear its position on this Committee: it is a Preparation for Government Committee, not a preparation for debates committee. It seems that Alan thinks that the emphasis of this Committee is on facilitating a debate in September. The emphasis from our perspective is to get down to talking about some of the serious issues that need to be discussed in order to meet the deadline for restoration on 24 November. That is Sinn Féin's purpose. If part of that work involves debating some of those matters in the Assembly, and those are genuine debates in relation to work that has been done in this Committee, we are happy to co-operate.

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

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

155. Following the questioning of the DUP's position, I was surprised to hear the Ulster Unionists suggest in the last intervention that

they might not participate in the subgroups. That question was asked of them earlier today, and no indication of their position was given until the end.

156. If we are going to proceed with the subgroups, there must be a commitment from all parties to be present. We could proceed with the subgroups without the DUP — and I understand its frustration with this discussion — but that would be pointless, because all parties around the table need to make some kind of submission and be party to the discussions. The non-participation of any party would not be helpful to any of us, and that is why we are having this hour-long circular discussion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173. **Mr McFarland:** Hold on; I am trying to go through the logic of this. The DUP's objection to the subgroups was nothing to do with scoping, because what was to be discussed in the subgroups is the same as what we discussed in this format. Therefore, the

objection must be to the lack of a requirement for consensus on the subgroups, because the issues and the terms of reference are the same. The difference is in the formats of this Committee and the subgroups. If the DUP is happy with that, its problem must be something other than the scoping exercise.

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

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

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

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

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

179. **Mr McFarland:** All the issues that we identified fit into one of the three subgroups. You can see that. That is why we have established subgroups. The Secretary of State wants subgroups to identify particular issues. We are trying to agree the format because, as others have said, to have one of the major

parties, the DUP, not playing its part clearly does not help the work of this Committee at all.

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

11.15 am

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197. **Lord Morrow:** We need clarification that further scoping will be wide-ranging and on an issue-by-issue basis. We also need clarification that, if members — and I include the DUP in that — feel that it is necessary, further scoping is possible on the report that has already been produced. In fairness, Seán Farren mentioned “any other issues”.

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

Members indicated assent.

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

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

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

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

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

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

216. **Mr McFarland:** We now have a chunky programme of work to discuss: the institutional issue; the policing and justice issue; and all that

relates to those topics. We must report by 18 August, is that correct?

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

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

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

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

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

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

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

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

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

226. Wednesday at 10.00 am, is that OK?

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

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

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

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

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

Adjourned at 11.25 am.

Wednesday 26 July 2006

Members:

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

The Committee met at 10.10 am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.15 am

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

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

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

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

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

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

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

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

265. It continues:

“Members indicated assent.”

266. Then Mr Molloy called for nominations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.30 am

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee was suspended at 10.33 am.

On resuming —

10.55 am

321. **The Chairman (Mr Wells):** The meeting is reconvened. Members have had a chance to look at the list. As I have not heard any dissention on the principle of trying to group

items, can I take it that members are happy that we go down the list and make sure each is in the right pocket, as it were?

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

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

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

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

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

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

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

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

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

331. **Dr Farren:** There are institutional issues within the Good Friday, or the Belfast Agreement. The Belfast Agreement is much more comprehensive than the institutional

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

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

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

11.00 am

334. The Good Friday Agreement has effectively been accepted as an international agreement between two Governments. The broad headings allow, as they should, all parties on the Preparation for Government Committee to discuss any issue of their choice. The DUP can spin that how it likes, but the agreement is the template from which all participants on this Committee are working.

335. **The Chairman (Mr Wells):** I have a slight concern: we are not debating the merits,

or otherwise, of the Belfast Agreement. If we go down that route, we will occupy the next six hours.

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

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

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

339. Is there any objection to that?

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

341. **The Chairman (Mr Wells):** I suggest that members comment only on whether they feel that a particular point should be included in that category, rather than what they feel about the issue. There will be ample opportunity for comment when we debate the issues.

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

352. **The Chairman (Mr Wells):** If we get consensus, I am happy to put it in at number 12, because it is an important issue for the Alliance Party. Is there consensus?

353. **Mr M McGuinness:** I think that there is an acceptance — although I do not wish to tempt providence — that some of the headings allow for all sorts of issues to be discussed.

Sectarianism and racism are important issues that will have to be dealt with at some stage of our deliberations. The broad headings adequately deal with all the issues that are of concern to all parties around the table. If we try to outline the detail of each issue, we will be making unnecessary work for ourselves.

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

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

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

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

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

371. **Mr McNarry:** Yes.

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

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

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

375. **Mrs D Dodds:** We should not lump “Parades” and “Peaceful summer” together. Parading is an important issue. It is an issue of human rights, culture and identity for the unionist community. It is extremely important, and it must be dealt with on its own. It must be sorted out, as it poses an important question.

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

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

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

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

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

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

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

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

384. If some parties want to place “Parades” at point 9 and “Peaceful summer” at point 10, treating them as separate categories, Sinn Féin is more than happy to do that. The summer is

rolling on, but Sinn Féin wants to work towards an even better summer next year. If we can deal with the matter, we should do so.

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

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

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

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

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

390. **Dr Farren:** Although, in one sense, the issue of a peaceful summer is of grave concern, it sits uneasily among the issues to be addressed in order to prepare for Government. Sectarianism, of whatever kind, is, of course, an issue. I could cite incidents in North Antrim that are not dissimilar to those to which Diane referred, but the shoe was on the other foot, if I can put it that way.

391. An entire nest of issues related to community relations and sectarianism underlie what I understand to be the concerns about a

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

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

11.15 am

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

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

395. **The Chairman (Mr Wells):** Again, we are in danger of starting a debate on sectarian attacks on halls or parading or whatever. The only issue that members are addressing here is whether they perceive an issue to be of such importance to one party that it should have a

separate heading. Remember, and I am sure Mr Molloy will agree with me on this, when it comes up for debate at the hearings, no Chairman will stop any member raising these valid points under whatever heading they feel fit, because these are important issues. Everyone accepts that.

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

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

398. **Mr McNarry:** Yes.

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

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

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

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

403. **The Chairman (Mr Wells):** No. As we move issues into other categories, we go back to the original category to see whether anything in it needs to be changed or deleted. We have consensus on that. Now we are back to "Law and order". We have "Criminality", "Decommissioning", "Devolution of Policing and Justice", etc. "Parades" has gone; "Paramilitarism" stays, as do "Policing" and "Rule of Law." Are there any issues to be added?

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

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

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

418. **Ms Ritchie:** To cover MI5, would it not be better to have "policing and intelligence services", or a separate title under intelligence services? That would cover any other matter under that umbrella.

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

440. **The Chairman (Mr Wells):** Dr Farren is wise, because that issue could arise. It could be argued that it was not implicit that we would discuss ethnic issues or nationalist culture. One suggestion was to have a broad heading of

“Unionist culture, nationalist culture and ethnic communities”. That would give the two Chairmen clear direction that those issues would have to be discussed. Even though nationalist culture was not raised in the scoping exercise, it will be discussed. The Ulster Unionist Party and the DUP raised the issue of unionist culture, but there was no reference to nationalist culture.

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

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

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

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

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

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

Members indicated assent.

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

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

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

Members indicated assent.

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

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

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

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

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

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

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

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

11.30 am

458. **The Chairman (Mr Wells):** Am I right in thinking, Lord Morrow, that that is in case another issue emerges? Perhaps an issue will develop in the media which has not been included in any of these headings, and despite

the assurances that I have given that I would allow it, you want a catch-all category just in case.

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

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

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

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

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

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

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

466. **Mr McNarry:** I want to come back to what I said earlier about the Secretary of State’s role in this. As that category is included, it is

incumbent on the Secretary of State that he does not go on “Lone Ranger” jobs during the course of our deliberations, and that the Committee might be given some advance notice — even if it is through the Deputy Speakers. There should be no surprises.

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

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

“In addition to these matters” —

469. meaning the DUP’s list —

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

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

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

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

473. If, as Maurice has said, there is a more benign interpretation of what that means, the sentence should be changed to refer to dealing with other issues that may be of concern or interest to the parties. It is important that the

DUP offer some clarification on the “issues”. The import of the last sentence of what you read from the DUP’s submission is that the issues are preconditions for the return of devolution. If so, this Committee is entitled to know that they are.

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

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

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

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

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

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

480. If the issues have already been raised and are additional to what we have heard about from the DUP, we should be told what they are. It is

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

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

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

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

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

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

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

487. **The Chairman (Mr Wells):** I have a suggestion. Lord Morrow’s comments are now on the record, and we understand their import. The Committee Clerks are suggesting a heading: “Other issues that may be of concern or interest to the parties”. Mr Molloy and I have listened to the discussion, and we understand those issues. If an issue emerges like a rabbit from a hat, we will know whether it meets Lord Morrow’s assurance.

488. **Mr M McGuinness:** I am content with the Committee Clerks’ suggestion.

489. **Lord Morrow:** Do other parties have to give the same assurance?

490. **The Chairman (Mr Wells):** If a party raised an issue that we had been notified about and that had not emerged out of the blue, we would have to apply the same criteria.

491. **Lord Morrow:** I suspect that, from time to time over the next couple of months, all the political groupings around this table will air their concerns at meetings with the British or Southern Governments. Perhaps the parties will have meetings with other people or organisations. Nobody could deny the parties those meetings. Parties are good at putting their concerns into the public domain.

492. **The Chairman (Mr Wells):** We have a suggestion for a heading: "Other issues that may be of concern or interest to the parties". We understand the context of that suggested heading. Do we have consensus?

Members indicated assent.

493. **The Chairman (Mr Wells):** Mr Molloy, do you agree with what has been established? We need to understand how we are to proceed.

494. **Mr Molloy:** Some of the issues may have been raised with the Secretary of State, or someone in the Northern Ireland Office may raise other issues. It might be worthwhile for the Committee to write to the Secretary of State asking that his views come through to this Committee. He may not do that, but at least he would have the opportunity to do so.

495. **The Chairman (Mr Wells):** That is Mr McNarry's point. We should let the Secretary of State know exactly what we are doing, although I suspect that he will know five minutes after this meeting is over. We ask him not to take on any initiatives that may pre-empt or torpedo our work, at least not without consulting us.

496. **Mr McNarry:** We do not want any surprises.

497. **The Chairman (Mr Wells):** We want no surprises from the media.

498. **Dr Farren:** Does that mean that the DUP no longer stands over the penultimate sentence of its initial submission to the Committee? It reads:

"In addition to these matters there are also a significant number of issues which we have raised with the Government which also require delivery before the return of devolution."

499. The unidentified issues referred to in that sentence are the bone of contention.

500. **Mr McNarry:** We have dealt with that issue. This is the second time that Dr Farren has come back on an issue after consensus had been reached.

501. **Dr Farren:** Correct me if I am wrong, but has consensus not been reached on issues that may be raised in future?

502. **Mr McNarry:** Consensus has been reached about the wording of this heading. A proposal was made, and it was accepted.

503. **Lord Morrow:** Mr Deputy Speaker, I want to reinforce what David has said. Did you not invite the second Deputy Speaker, Mr Molloy, for his clear understanding, which was to draw a line under the entire issue?

504. **Dr Farren:** With all due respect, Mr Chairman, I must ask for clarification. If the Chairman says that I am incorrect, I will stand corrected. I accept that we now understand the meaning of the sentence concerning matters that may be raised in the future. I am not referring to that sentence but to the penultimate sentence of the DUP's initial submission. It reads:

"In addition to these matters there are also a significant number of issues which we have raised with the Government which also require delivery before the return of devolution".

505. Will all those matters be included under the various headings outlining the Committee's future business? Is that what is being said?

506. **The Chairman (Mr Wells):** I think that I raised that point and that the DUP said that it came under confidence-building measures in point 2. Those have been well highlighted publicly. However, perhaps I picked up Lord Morrow wrong on that.

507. **Lord Morrow:** No.

508. **Dr Farren:** I apologise for wasting the Committee's time if I did not pick up on that

point. However, I thought that it was very important that I had the meaning clarified. Like other members, I do not want the SDLP to find itself in the situation in which matters that have already been addressed by the two Governments and that are pertinent to the restoration of the institutions are not being addressed here.

11.45 am

509. **The Chairman (Mr Wells):** I can see the logic of what you are saying — we need to get the point clarified.

510. **Mrs D Dodds:** There are no issues that have not been discussed over and over again. This is an irrelevant discussion.

511. **The Chairman (Mr Wells):** That is the real issue, Dr Farren; you do not want to see the rabbit out of the hat.

512. **Dr Farren:** I am sorry if I have misunderstood.

513. **The Chairman (Mr Wells):** It is a valid point to want to have clarified.

514. We seem to have reached agreement on the main headings of what we will discuss. However, we have not agreed how we will discuss those matters. Before I ask Mr Molloy to return to his normal position, I will check whether members have any other problems with the headings. In fact, I will ask Mr Molloy to stay because we will have to move on to the nitty-gritty of how to proceed. Do members have any final points about the headings? I am sure that this section of Hansard will be well quoted in future, especially if anything is brought up that members feel is unacceptable.

515. **Mrs D Dodds:** Will we return to points 2 and 3 under the “Government” heading?

516. **The Chairman (Mr Wells):** Yes; it is a separate item.

517. Are we agreed on the content?

Members indicated assent.

518. **The Chairman (Mr Wells):** I thank members for their help on that.

519. We now have to agree the modus operandi of how we proceed: how often we will meet; whether we will call witnesses; and

whether we will ask parties to submit papers in advance of the meetings. We have a heavy schedule ahead of us, and we should expect to meet at least twice a week as a full Committee over the next few weeks. I am sure that you are all very pleased to hear that — I can see why Mr Kennedy went on holiday.

520. Can we perhaps get the practical points out of the way? Should we meet twice a week or more? When should we meet?

521. **Mr McFarland:** The Committee now has three issues with which to deal. We agreed that we would bring in our experts on these issues — we have people who deal with human rights, victims, and so forth, who would obviously want to attend meetings on those matters. The logic is that we would have at least three meetings a week, with one on each topic. Ideally, we would want two meetings a week on each topic. That would mean that we would have six meetings of this Committee a week, plus the twice-weekly meetings of the subgroup on the economy. That adds up to at least eight meetings that Mr Wells and Mr Molloy will chair. A while ago it was suggested that we have more chairmen in order to facilitate such meetings. That idea was rejected at the time, but I wonder whether it is worth revisiting. Otherwise, Chairman, you will be fairly ragged if you have eight meetings a week — there are only five days in a week.

522. **Dr Farren:** There are seven days in a week.

523. **Mr McFarland:** There are five working days. Members will have spotted immediately that that does not compute with two Chairmen.

524. **Dr Farren:** Why not?

525. **The Chairman (Mr Wells):** Today is my twenty-third wedding anniversary, and I have lost brownie points for being here instead of at home.

526. **Mr McFarland:** The question is whether, with the experts involved, we will run the meetings in parallel. On some days, this Committee may meet several times and in different formats. If it remains in the one format, there will be time constraints for the Chairmen, for example. We could follow the

standard Assembly procedure of calling witnesses and hearing evidence, but members will know from previous experience that if one particular witness is called and not everybody else, we could get into the most awful trouble in the media for not taking things seriously. I am thinking of victims' groups, for example.

527. There are major issues to be discussed as to how we deal with this.

528. **The Chairman (Mr Wells):** There was a proposal for additional Chairmen, but there was no consensus.

529. **Mr McFarland:** Might we revisit it now in the light of current developments?

530. **The Chairman (Mr Wells):** I am advised that we can revisit it. The proposal that the Secretary of State suggested was that with our agreement by consensus we could have one SDLP, one Alliance and one Ulster Unionist Chairman, which would give us five — one per working day, basically.

531. I will put that proposal again. Is it acceptable to the Committee?

532. **Dr Farren:** Yes.

533. **Mr McFarland:** It would certainly ease the burden that the two current Chairmen will carry in trying to cover what is potentially eight Committees a week.

534. **The Chairman (Mr Wells):** If there were consensus on this we would advise the Secretary of State, and he would then ask the parties to nominate their representatives.

535. **Lord Morrow:** Deputy Speaker, you are going down the road of —

536. **The Chairman (Mr Wells):** I stress that that is if there were consensus.

537. **Lord Morrow:** But that is tantamount to going into subgroups and taking it away from the Committee.

538. **Mr Ford:** Even in the terms that Maurice has just outlined, presumably it would not be objectionable to him to have alternate Chairpersons taking the Chair of the economic matters subgroup, which would relieve the two of you of a share of the burden.

539. **The Chairman (Mr Wells):** You mean keeping the same two Chairmen for the PFG Committee?

540. **Mr Ford:** Yes. I do not accept Maurice's argument, but if that is his feeling, surely it still merits considering alternate Chairs for the subgroup.

541. **Mr McFarland:** This is a difficult issue in that if the PFG Committee adopts different guises, as in this case, the make-up of the Committee will be different for each subject it tackles. We will have different party experts in to explore institutional issues, policing, human rights and equality. Although they are not subgroups, the make-up of the Committee will change. Each of these "Committees" will try to get on with the issues involved, some of which are extremely difficult to identify. If we get into hearing witnesses, each of these groupings might work for three or four days a week. This is a major problem, particularly in terms of chairmanship.

542. Also, when we had subgroups, the Secretary of State had decreed that each should be made up of one member of the Committee and one expert. Presumably that is no longer the case, because there is no rule in the PFG Committee to stop substitution. The three SDLP members currently in attendance need not stay; Dr Farren, who is almost always here, could technically leave and have two substitutes sitting here as members.

543. Although one member from this Committee from each party must sit on a subgroup, because the subgroups on changes to the institutions and on policing and justice do not exist, the make-up of the delegations that attend the Committee on the Preparation for Government can be different for each of the issues to be discussed. Is not that correct? It is up to the parties to choose their representatives.

544. Therefore, it is possible that different pairs from each party will be looking at each of the three areas for discussion. Sittings will not constitute meetings of subgroups but rather meetings of this Committee. However, if three different pairs can represent each party at those meetings, and the Committee is under time

constraints, the issue arises about how meetings can be chaired by two people only.

545. **The Chairman (Mr Wells):** It would be helpful if the role of Chairman of the Subgroup on the Economic Challenges facing Northern Ireland could be rotated. That is a separate group that deals with economic rather than political issues. A compromise would be to spread that load and continue with two Chairmen for the PFG Committee.

546. **Mr McNarry:** What is the Speaker's position? What is she doing?

547. **The Chairman (Mr Wells):** The Speaker will have absolutely nothing to do with this. She has made it very clear that she will not be participating. It was only on the Secretary of State's directive that the Deputy Speakers are here.

548. Do we have consensus on rotating the chairmanship of the Subgroup on the Economic Challenges facing Northern Ireland?

549. **Mr M McGuinness:** What would that mean? Would the chairmanship rotate between the five parties on the subgroup or the three parties that do not chair this Committee?

550. **The Chairman (Mr Wells):** It would rotate among the five parties. It is to be hoped that to do so would make it less onerous for Mr Molloy and me, who will be locked up here for most of the week chairing this Committee. The problem is that Mr Molloy and I are present at almost all meetings. Although we may miss the occasional meeting, we have effectively signed up for all of them. It is very difficult to take the Chair the following day unless we are present to watch developments.

551. **Mrs D Dodds:** You definitely make the point about your needing to chair this Committee by emphasising the need for continuity in the Chair.

552. **The Chairman (Mr Wells):** I said that continuity in the Chair is not as important for the Subgroup on the Economic Challenges facing Northern Ireland.

553. **Lord Morrow:** You still make the point.

554. **Mrs D Dodds:** We see the difficulty, but you make the point very well for the two Deputy Speakers to chair this Committee continuously.

555. **The Chairman (Mr Wells):** What is your view on sharing the chairmanship of the Subgroup on the Economic Challenges facing Northern Ireland among the five parties?

556. **Mrs D Dodds:** That could be shared between the five parties.

557. **The Chairman (Mr Wells):** It looks as though we have agreement to nominate three other Chairmen to rotate as part of the five for the Subgroup on the Economic Challenges facing Northern Ireland.

558. **Mr McFarland:** Will you be one of the five, Mr Chairman?

559. **The Chairman (Mr Wells):** Yes. Mr Molloy and I will be among the five.

560. **Mr McFarland:** Therefore, we have four groups. Each group can meet once a week, and one can meet for a second time each week, unless we are to meet in both the morning and the afternoon.

561. **The Chairman (Mr Wells):** Yes. There could be a Committee meeting in the morning and a separate Committee meeting in the afternoon.

562. **Dr Farren:** It was generally understood that, given the volume of work that seems to be before us, it is unlikely that we will produce final reports by the end of August. Let us not overload people, particularly the secretariat, which will have work to do before and after each meeting. I suggest that the Subgroup on the Economic Challenges facing Northern Ireland meet as it can determine and that this Committee, meeting three days a week, deal with the other three issues.

563. Let us leave it to the parties to nominate whom they wish. That is not a matter for us. If they wish to send the same people or different people to all three meetings, that is their business.

564. If this Committee were to meet three days a week and the Subgroup on the Economic Challenges facing Northern Ireland were to

meet twice a week, that would mean a meeting on each day of the working week.

565. We might need advice on whether we could be serviced if we met quite so extensively and frequently.

566. **The Chairman (Mr Wells):** The Clerks had developed a system for covering three subgroups.

567. **Dr Farren:** Are they saying that they could —

568. **The Chairman (Mr Wells):** The Hansard reports would be slow, because a large burden would be placed on the staff. However, the meetings would have been recorded.

569. **Dr Farren:** I can certainly live with that.
12.00 noon

570. **The Chairman (Mr Wells):** Have we reached consensus on the appointment of three additional Chairmen for the economic subgroup?

Members indicated assent.

571. **The Chairman (Mr Wells):** Debbie Pritchard will inform the Secretary of State of that, and he will ask the parties to make nominations. That will help to relieve the load on Mr Molloy and me.

572. Dr Farren has made a scaled-down proposal, to the effect that rather than meet twice a week — as Mr McFarland suggested — we meet every day, with the economic subgroup meeting twice a week. In other words, on Monday, we would deal with institutional issues; on Tuesday, we would deal with law and order; and on Wednesday, we would deal with rights and safeguards, etc.

573. **Dr Farren:** Or whatever.

574. **The Chairman (Mr Wells):** Yes; that is not hard and fast. Perhaps we could meet on Monday, Wednesday and Friday, with the economic subgroup meeting on Tuesday and Thursday.

575. **Mr M McGuinness:** From a practical point of view, given that parties will send different people to the various meetings, and given that you and the other Deputy Speaker

will chair most of those meetings, are you both available to do that throughout August?

576. **The Chairman (Mr Wells):** I am. Mr Molloy?

577. **Mr Molloy:** Yes.

578. **Mr M McGuinness:** You are gluttons for punishment.

579. **The Chairman (Mr Wells):** We shall meet on Monday, Wednesday and Friday. The economic subgroup will meet on Tuesday and Thursday. I presume that those meetings will begin at 10.00 am. The staff will rejig their rotas accordingly.

580. How shall we deal with the running order? Shall we start with institutional affairs or with law and order?

581. **Dr Farren:** Start with the institutions.

582. **The Chairman (Mr Wells):** The first week will be institutions, law and order, and then rights, safeguards, etc.

583. **Mr McFarland:** Law and order on Wednesday, and rights on Friday. Is that correct?

584. **The Chairman (Mr Wells):** Yes. We have got that out of the way.

585. **Mr Ford:** I wish to follow on from a point that Alan made about parties sending their experts to meetings. Some time ago, we discussed the question of parties' entitlement to bring research staff, or whomever, as back-up to their negotiators — I am sorry; I should not use that word in front of the DUP.

586. Given that we are seeking to go into some detail, I wonder whether other parties have a view at this stage on allowing party staff to attend as note-takers, note-providers, or whatever.

587. **The Chairman (Mr Wells):** That is entirely up to the parties. We took that decision before we decided to bring in Hansard. Everything is a matter of public record, so there is nothing to be gained by secrecy.

588. **Mr Ford:** Not only has that changed, but so has the intensity of the work that we are planning.

589. **Mr McFarland:** Another issue is that parties have various people who are away. It

would be useful to have some form of continuity. Perhaps someone could sit at the back of the room to ensure that members do not drop bombs — metaphorically speaking — on different weeks.

590. **The Chairman (Mr Wells):** If parties have whizz-kids who are experts in particular issues, they could sit at the back of the room. We may need to move to a bigger room. That raises the difficult issue of whether we allow the press to sit in on meetings.

591. **Mr McFarland:** One of our successes is that, although we have Hansard reports, we are building relationships through people's ability to speak to one another. If a press chap is here, the moment a member says something outrageous, he will be out the door, and when we leave the Committee, it will be on the one o'clock news.

592. The workings of the Committee will be easier if the reports are in Hansard, and we can do our stuff later. However, if we effectively do it live, we will all be bouncing in and out of meetings to make comments to the press or to appear on 'Talkback', or whatever. That stands to wreck our work, which is building quite sensibly among the parties. We are getting some proper work done.

593. **The Chairman (Mr Wells):** There is much merit in what you say, Mr McFarland.

594. The Committee Clerk has suggested that we decide whether we discuss institutional affairs on a Monday, and revisit it on consecutive Mondays, or whether we discuss institutional affairs three days in a row next week. Institutional affairs will be the time-consuming issue. What sort of continuity will we have if we discuss institutional affairs on a Monday, have another bite at it a week later and a further bite the week after that?

595. **Mr McFarland:** Chairman, you are involved in only two of every five meetings. The Subgroup on Economic Challenges facing Northern Ireland is to meet twice a week. Technically, there is nothing to stop this Committee discussing institutional affairs on a Monday. If somebody other than you or Mr

Molloy were to chair the Tuesday meeting of the economic challenges subgroup, you would both be free on Tuesdays and Thursdays to chair another meeting of this Committee.

596. **The Chairman (Mr Wells):** Remember that the only difficulty is that a substantial proportion of the membership of this Committee will also sit on the economic challenges subgroup.

597. **Mr McFarland:** No; they are different. I said that different people are involved in this.

598. **The Chairman (Mr Wells):** At least one member from each party must sit —

599. **Mr McFarland:** No. That was the case for the two proposed subgroups, which no longer exist.

600. **The Chairman (Mr Wells):** The economic challenges subgroup was established under the regulations for subgroups.

601. **Mr McFarland:** Yes, and Mr McNarry represents our party on that subgroup. He is the only person who is out of the loop. *[Laughter.]*

602. My point is that, in discussions on institutional issues, law and order issues and safeguards issues, our party can be represented by two Members other than Mr Kennedy, Mr McNarry or me. There are no rules in this Committee about that, because substitute members can sit on the PFG Committee.

603. **Dr Farren:** We will need to have a big recruitment drive.

604. **Mr McFarland:** Had the subgroups been formed, either Mr Kennedy or I would have had to sit on it.

605. **The Chairman (Mr Wells):** On that basis, 99 of the MLAs will have eventually sat in this room.

606. **Mr McFarland:** Absolutely. There are no rules for this Committee, other than that substitute members can sit on it.

607. **Mrs D Dodds:** Would it not be wise to leave the make-up of the delegations to the parties?

608. **Mr McFarland:** Yes, but the make-up of party delegations is directly related to how many times a week we can meet.

609. **Dr Farren:** Parties must answer to themselves.

610. **The Chairman (Mr Wells):** Is there anything, for example, to stop this Committee meeting on Tuesday to discuss institutional affairs?

611. **Dr Farren:** No.

612. **The Chairman (Mr Wells):** The economic challenges subgroup would meet in the morning and this Committee could discuss institutional affairs on Tuesday afternoons, if needs be. Are you suggesting that as a practical way forward, Mr McFarland?

613. **Mr McFarland:** A programme needs to be set out. If you chair a meeting on a Monday, Mr Molloy is present. Similarly, if Mr Molloy chairs a meeting on a Wednesday, you are present. If both Chairmen attend a Committee meeting, they cannot chair another meeting. Although it is useful to have the other Chairman present, it is neither effective nor efficient. If you were a time and motion man, you would be sacked for suggesting that.

614. The question is whether both Chairmen can afford to continue attending the same meetings. I argue that they cannot. It is very useful and helpful, but you will not be able to sustain that if there are other meetings because, logically, if you chair a meeting on a Monday and Mr Molloy chairs a meeting on a Wednesday, you cannot chair the economic challenges subgroup. Do you see what I mean?

615. **Mr M McGuinness:** As we have agreed the number of groups and so forth, I am not that sure that we should begin to work out the detail of how the issues will be taken forward. A more sensible way to proceed is for the two Deputy Speakers to meet a representative from each party to devise a programme for the coming weeks. If we continue as we have, we will be here until midnight.

616. **Mrs D Dodds:** There is no reason why we cannot agree to Seán Farren's suggestion that this Committee meet on Mondays, Wednesdays and Fridays and the economic challenges subgroup meet on Tuesdays and

Thursdays. This Committee can sit into the afternoon, if it so desires.

617. **Lord Morrow:** Or into the night.

618. **Mrs D Dodds:** That would resolve the issue.

619. **Mr Molloy:** If it is decided on a Monday that the Preparation for Government Committee must meet on Tuesday, members who do not sit on the economic subgroup could attend the Committee. If membership of the economic subgroup were kept separate from that of this Committee, the Committee could meet on any day of the week.

620. **Mr M McGuinness:** The problem is that we are thinking on our feet about this matter. Members must reflect on today's discussion and send a representative to meet the Chairmen to work out a programme of meetings. The arrangements for how and when the Committee and the economic subgroup will meet are likely to be made through an ongoing process of amendment and change.

621. **Mr McNarry:** Members of the economic subgroup were issued with a schedule. Therefore, they know what commitments they have until 18 August. A similar schedule would be helpful for the business of the Committee. Members have other commitments at their constituency offices and other people to meet. Committee staff should be able to organise a schedule for future meetings.

622. **The Chairman (Mr Wells):** The Committee is staffed by two experienced Clerks, who have formulated schedules for other Committees. We need to decide whether we wish to spend three days in a row discussing one topic, such as institutions, followed by, if required, three days in a row on law and order, or do we want to take forward business on a Monday-Wednesday-Friday basis? For example, each week, the Committee could concentrate on institutions on a Monday, law and order on a Wednesday, etc.

623. What is the best way to deal with those issues? That is the only guidance that the Clerks need. Beyond that, we should let them use their expertise. What do members think? Should the

Committee discuss institutions every Monday, or should it take one subject and discuss it on Monday, Wednesday and Friday?

624. **Dr Farren:** I can see the attraction of trying to achieve much on one of the issues in one week. However, we need to engage others. Next week, we should start with institutions on Monday, use Wednesday for law and order, and discuss rights and safeguards on Friday. One subject — for example, institutions — may gather a head of steam and need more and more time devoted to it. If we address the issues in parallel, the other subjects are less likely to get pushed down the agenda.

625. **The Chairman (Mr Wells):** Are members agreed that we must build in flexibility to ensure that if one issue needs further discussion, that can take place?

626. **Dr Farren:** Yes.

627. **Mr M McGuinness:** Absolutely.

628. **The Chairman (Mr Wells):** That is a good compromise.

629. **Dr Farren:** That would be wise.

630. **The Chairman (Mr Wells):** Members must decide whether to ask the parties to submit papers. May I assume that we will call witnesses?

631. **Mr McFarland:** Time is against our inviting witnesses, unless they could substantially enlighten the Committee. Members have been discussing many of these issues for four or five years, or longer. In some areas, we may need expert witnesses, but we have no time. If we are to have one meeting a week on each of the issues, and we have to report in three weeks' time —

632. **The Chairman (Mr Wells):** Can we leave it that, in principle, if we decide that we need to call witnesses, we will do so? That does not mean that we must call witnesses, but that the mechanism is there should witnesses be required.

12.15 pm

633. **Mr McFarland:** We should err on the side of caution with witnesses because of the

time factor and the trouble that we could get into by not inviting of all the interested parties who may wish to give evidence.

634. **The Chairman (Mr Wells):** That brings us to an important issue. To assist the Committee, do parties wish to produce papers for each meeting? If so, papers for Monday meetings will need to be with Committee staff by the previous Friday.

635. **Mr McFarland:** There is an awful shortage of time and many different topics to cover. Parties will be pushed enough to get this done with the personnel that they have. Hansard is recording the meetings, and, obviously, parties will be organised within their own systems.

636. If we are to produce papers for each of the topics, the key people will have to spend all their time engaged in that when they should be at one of the subgroups. Parties may need to submit a paper on a particularly complex issue, but if we have to produce a paper on each topic, we will run out of time, effort and hours available.

637. **Dr Farren:** The institutional issues are essentially inter-party ones, and we should not have to call expert witnesses on them. The parties had already prepared papers, some long and some short, in the run-up to the Leeds Castle discussions and what flowed from them and during the review that was undertaken a few years ago. There is unlikely to have been a great deal of change since. We have already initiated the procedure to produce a briefing paper on the issues, and if anything is missing, we will take it from the list that the Committee Clerks have prepared and from what we have prepared ourselves. We can have a paper ready for circulation on Friday. It is helpful if parties can produce brief papers on the issues. Otherwise, no one is very clear about people's approaches until they start to talk.

638. **The Chairman (Mr Wells):** The problem is that we need to have some structure for Monday's meeting. At the moment, all we have is 10 or 11 points. It would help if the parties could at least provide sub-headings to each point.

639. May I apologise to the Committee: I simply have to attend an incapacity tribunal in Newry, so Mr Molloy will be taking over from me in five minutes' time.

640. Do the parties agree that they will be able to produce something for the Clerks on the institutional issues, no matter how brief, by lunchtime on Friday? Then at least we will have some structure to the discussions that Mr Molloy will be chairing. I do not have to worry too much about it. Is everyone happy with that?

Members indicated assent.

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

641. **The Chairman (Mr Molloy):** Could we have papers on the law and order issues by lunchtime on Monday and papers on rights and safeguards by lunchtime on Wednesday? It is also helpful for Hansard if the parties, and any witnesses that they may call, provide papers in advance.

642. The next item of business is the future work programme. Members will have the work plan that was issued by the Secretary of State after the meeting held by the Prime Minister and the Taoiseach. There is also the suggested work plan for the Programme for Government, which is to be dealt with today.

643. Can we take the work plan issued by the Secretary of State?

644. **Mrs D Dodds:** Mr Deputy Speaker, are there spare copies of the work plan?

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

646. Can we close the windows? There is a terrible smell of diesel.

647. The Committee needs to decide whether to accept the work programme and how our work will fit into it. Do members have any views?

648. **Mr McFarland:** Originally, it was discussed whether the Committee would report by 18 August. Can I get an update? Is there a date by which the Committee must have its work completed in order for the debates on the report to be held at the beginning of September?

649. **The Chairman (Mr Molloy):** We need to go the Business Committee by 25 August in

order to meet the date of the proposed plenary meeting on the report.

650. **Mr McFarland:** Working back from that date, at what stage do we have to meet as a full Committee to agree the report?

651. **The Chairman (Mr Molloy):** The deadline for the economic challenges subgroup is 18 August. Because this Committee is not forming subgroups, it will have a wee bit of extra time to meet. The date that we are working to is 25 August, at which time we will go to the Business Committee, provided that the report is finalised by that date.

652. **Mrs D Dodds:** This Committee must also consider the report from the economic challenges subgroup.

653. **Dr Farren:** How fixed in stone are the dates of the plenary meetings? In order to gain a little more flexibility in the Committee's work programme, and that of the subgroup, would the Secretary of State concede a week's delay?

654. **The Chairman (Mr Molloy):** My understanding is that, unless the Preparation for Government Committee proposes subjects for plenaries, the dates are not fixed at this stage. If the completion of the report were to be delayed by a few days, the Business Committee and the parties, rather than the Secretary of State, would be flexible in arranging plenary meetings.

655. **Dr Farren:** It would allow us a little flexibility, and we would not be shackled to dates to which we need not be shackled.

656. **The Chairman (Mr Molloy):** There could be another way around it: if the economic challenges subgroup's report were ready, it may be debated in a plenary meeting before the debate on this Committee's report. The economic challenges subgroup has been asked to submit a report early so that this Committee can consider it. That will take slightly longer than the other way.

657. The Programme for Government is one of the tasks set by the Secretary of State for this Committee to conclude by October. A draft Programme for Government and a draft min-

isterial code will be finalised. That will obviously be completed after the September deadline.

658. Do members have any opinions on that? Parties obviously need to agree the order of work.

659. **Mr O'Dowd:** I am getting a headache from the diesel fumes. Can we adjourn to get some fresh air?

660. **The Chairman (Mr Molloy):** The fumes could be coming from a generator.

661. **Mr McFarland:** It seems that the fumes are being pumped into this room.

662. **The Chairman (Mr Molloy):** The order of work is the final issue to be dealt with. Shall we discuss it at a future date?

663. **Mr O'Dowd:** Perhaps we can discuss it in future.

664. **The Chairman (Mr Molloy):** We can note the issue today, and parties can return to the Committee with an opinion. We obviously cannot decide everything today. We will meet again next Monday at 10.00 am.

Adjourned at 12.24 pm.

Wednesday 2 August 2006

Members:

The Chairman, Mr Jim Wells
Mr Alex Attwood
Mr Wilson Clyde
Mr Fred Cobain
Mr David Ford
Mrs Arlene Foster
Mrs Dolores Kelly
Mrs Naomi Long
Mr Raymond McCartney
Mr Alan McFarland
Mr Conor Murphy
Mr Peter Weir

The Committee met at 10.05 am.

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

665. **The Chairman (Mr Wells):** Good morning. I will check on the substitutes, as I see some new faces. I will start with the DUP. What is the line-up this morning, Mrs Foster?
666. **Mrs Foster:** Peter Weir will join us before 11.00 am, and Wilson Clyde and I are here instead of the other main players. I am Lord Morrow, and Wilson is Ian Paisley Jnr, so to speak.
667. **Mr McFarland:** Mr Kennedy sends apologies; he is on holiday. Mr Cobain is representing Mr McNarry as our policing spokesperson.
668. **Mr Ford:** I am me again, and I am expecting Naomi Long shortly.
669. **Mr Attwood:** I am Dr Farren.
670. **Mrs D Kelly:** I am me.
671. **Mr Murphy:** Raymond McCartney is replacing Martin McGuinness, and I am the only other Sinn Féin representative today.
672. **The Chairman (Mr Wells):** I remind members that the quorum for this Committee is seven. We must be careful not to drift below that number, as we would have to stop immediately.
673. We do not have minutes to approve today as this is the first meeting of the institutions section of the Committee on the Preparation for Government (PFG). The minutes of this meeting will be carried forward to the next meeting of the PFG in this format.
674. As there is a relatively high turnover of members, I must ask you to declare any relevant interests.
675. **Mrs Foster:** I declare membership of the Northern Ireland Policing Board.
676. **Mr Attwood:** Fred Cobain might not want to declare that. *[Laughter.]*
677. **The Chairman (Mr Wells):** Mr Cobain, you may wish to declare at this point.
678. **Mr Cobain:** I am also a member of the Northern Ireland Policing Board.
679. **Mrs D Kelly:** Alex and I are also members, Mr Chairman.
680. **Mr Ford:** I should declare my membership of Antrim District Policing Partnership, and, on Naomi's behalf, declare her membership of Belfast District Policing Partnership.
681. **The Chairman (Mr Wells):** Are no members of the PSNI or intelligence services present? I suspect that they would not declare an interest even if they were here.
682. **Mr Murphy:** They are so intelligent that they would not be here. *[Laughter.]*
683. **The Chairman (Mr Wells):** We will bring a declaration of interest as an agenda item into each meeting in case new members have something to declare.
684. Those of you who attended Monday's meeting will know that it was decided that we would not be calling for papers from each party

today. Therefore we will move straight into the substantive part of the meeting. I suggest that each party gives a five-minute presentation on the important issues, as it sees them, under the subject headings that are listed. I will call the parties in alphabetical order, with Mr Ford to speak first. After each party has given its views, we will open the question session on their positions. That follows the format that was adopted for the institutional strand of the Committee, but without papers.

685. Are members content with that as a way to start the ball rolling? I cannot see any other way to start the discussion. Members do not have to deal with every issue on the list — there may be issues that some groups do not want to take part in — but it will be useful to get the ball rolling. I am sure that you are all familiar with the routine: it will be the Alliance Party, DUP, Sinn Féin, SDLP and the Ulster Unionist Party Assembly Group (UUPAG).

686. **Mr McFarland:** Does everyone have a copy of the list? It would be quite useful for people fresh to the Committee.

687. **The Chairman (Mr Wells):** There is a copy in members' folders. It is important that new members have the list in front of them during today's discussion. The topic is "Law and order issues", starting at point 1, which is "Criminality" and ending with point 8, which is "Rule of law".

688. **Mr Murphy:** There are two additional issues that are not mentioned, or perhaps they are in a different order.

689. **The Chairman (Mr Wells):** "Intelligence Services" and "Community Restorative Justice" have been included. They have been inserted in alphabetical order rather than added to the end of the list.

690. Mr Ford, are you happy to start the ball rolling and give us the views of the Alliance Party?

691. **Mr Ford:** A precedent, Mr Chairman.

692. With regard to criminality and the rule of law, the Alliance Party, having proposed the Independent Monitoring Commission (IMC),

believes that it will have a major role over the coming months in assessing criminality by various organisations. I want to put on record that we think it would be better if that opinion were given by the IMC rather than by Government Ministers doing pre-emptive spin on the IMC. However, there is a significant issue on the rule of law as to whether the Pledge of Office that Ministers are currently required to take is actually a commitment to solely peaceful and democratic means. We believe that the Pledge of Office needs to be strengthened in that respect.

693. The Alliance Party believes that there are still clearly gaps in current Government proposals on community restorative justice (CRJ). There are merits in CRJ as a system. However, we have major concerns about ensuring that those engaged are fully vetted and about ensuring full co-operation with the police as an institution in the operation of CRJ schemes — in particular how dealing with antisocial behaviour measures, which do not fall within the criminal justice scheme, can be applied by CRJ schemes.

694. The major issue — the devolution of policing and justice — is, it seems to me, almost an institutional one. As the Alliance Party has made clear, we do not believe that any of the four models proposed by the Government satisfy the need to ensure that the community as a whole engages in policing with the confidence of all parties in the Assembly. That can only be done within a single department of justice, which would cover all devolution issues — and we believe that list of devolution issues is more or less accurate. A single department of justice could only operate across the community with respect if it were covered within the context of collective responsibility within the Executive. We do not believe that the current proposal for power division, or, alternatively, mutual veto in the Office of the First Minister and the Deputy First Minister (OFMDFM) style, provides a suitable recipe.

695. The significant issue of timing appears to have been addressed in the most recent Westminster statement. There is, effectively, the

triple lock — a cross-community vote in the Assembly, approval by the Secretary of State and approval by Parliament. This is probably on the basis that we need to see a year or so of reasonable progress before we could be sure that an Executive would be capable of dealing with those matters collectively and with confidence.

696. Those are the key points as we see them. I have not addressed everything, but I have stuck within the time limit.

10.15 am

697. **The Chairman (Mr Wells):** You certainly have. Mrs Foster, would you present the DUP submission?

698. **Mrs Foster:** Yes. The DUP sees the IMC as having a role, as Mr Ford mentioned, in relation to the issues of criminality and paramilitarism, but we take a wider view. The Northern Ireland Affairs Committee recently published its report 'Organised Crime in Northern Ireland'. We will take that into consideration and, indeed, take other soundings on criminality and paramilitarism, because that is a huge issue for the whole community.

699. Members will be aware that the Government have recently issued a protocol for CRJ. Like the Alliance party, the DUP believes that there are still gaps in that protocol with regard to dealing with recognised schemes. This Committee has the power to call witnesses. They do not have to come — they are not compellable — but it would be useful if somebody from David Hanson's office could speak to the Committee about community restorative justice from the Government's point of view. Presumably we will return to the list later, but community restorative justice could very easily be broken down in relation to the protocols that Mr Hanson has issued. He has broken that down, and I will come back to it later.

700. Devolution of policing and justice is not a time-limited matter for the DUP. It can occur only when there is broad community support for it, and it obviously needs cross-community support within the Assembly. The touchstone for the devolution of powers is confidence in the institutions and their integrity, and that

cannot be brought about by a timescale alone. In fact, a prescriptive timescale would have the opposite effect on confidence as the timescale would become the focus and not the institutions and their workings and outworkings.

701. Rule of law is a primary issue for the DUP. The party had a huge issue with the on-the-runs legislation when it was before Parliament because it compromised the rule of law. It strongly believes that any devolution of powers must give primacy to the rule of law.

702. I notice that the office of the Police Ombudsman for Northern Ireland is not on the list. The DUP would certainly like it to be added to the list so that we can discuss in full its role, remit and accountability, about which we have concerns.

703. I could obviously go into more detail, but, like David Ford, I will limit my comments for now. We can return to these issues.

704. **The Chairman (Mr Wells):** Mrs Foster has raised two important issues. First, it is entirely within the gift of this Committee to add items or subsections to the law-and-order section such as, for example, the Police Ombudsman's office, which she suggested. Other members are perfectly entitled to do likewise, and we will discuss the matter of calling witnesses later. Mrs Foster suggested that we should invite Mr Hanson to appear before the Committee, and the decision on whether we call expert witnesses and Government Ministers can be taken at a later stage.

705. To return to our batting order, next to speak is Sinn Féin. Mr Murphy, I assume that you will speak?

706. **Mr Murphy:** I will give a brief introduction. The Committee's task is, as its official title suggests, to prepare for Government. Members have different perspectives on that; some see its purpose as simply to scope issues. Engaging in more focused work on the issues that the Committee has identified provides an opportunity to resolve some of those issues. Thus the policing and justice issue presents an opportunity for parties to find some sense of agreement or to explain positions that rule out agreement.

707. Given that this is the Preparation for Government Committee, the devolution of policing and justice powers is a key issue. Although we have made progress on negotiations on policing and justice matters since the Good Friday Agreement, Sinn Féin's stance is that it wants to see the Patten package completed. Sinn Féin wants a time frame for the transfer of powers, agreement on the departmental model and the powers to be transferred, and it wants the British Government to enact the necessary legislation to transfer the powers to a local Assembly and into all-Ireland arrangements.

708. There is also an issue with regard to the role of British intelligence services in the North and their impact on the proper accountability mechanisms that must be built in to policing.

709. Therefore there are issues around that, and no doubt the Committee will address them. I see that as one of the priorities given that this is a Committee on the Preparation for Government.

710. Members have listed issues such as criminality, decommissioning and paramilitarism, and Sinn Féin is happy to discuss those items if members wish to. We have expressed our view that devolution could be restored tomorrow morning and that there are no issues outstanding which would preclude the re-establishment of the institutions. The issues listed here could be dealt with as that is happening. Those relating to loyalist activity and loyalist weapons are of concern to the community that I represent, but no issue is so great as to prevent the immediate reinstatement of the institutions.

711. We had a lengthy exchange — some might say interrogation — with the DUP and other parties about criminality, decommissioning and paramilitarism. We would like to ask other parties, particularly the DUP, about the weapons of Ulster Resistance and the influence that the DUP may have with that organisation in putting weapons out of circulation and out of action.

712. There has been an unfortunate, misplaced and politically-orientated hysteria around the operation of CRJ. Not only has CRJ been well

able to defend itself and stand up for its own record, but it has been evaluated and assessed by justice oversight mechanisms which have found that to be so. It has also been assessed by human rights agencies, which have found that its methods stand up to scrutiny. However, Sinn Féin is happy to talk about CRJ, and if people want to call witnesses, we will be prepared to talk to them.

713. One must bear in mind the time frame for the Committee's work and deliberations. That might mitigate against getting into a series of witnesses, because inevitably one person's evidence will spark the need for balance and for other witnesses to be called. However, if that is how the Committee wants to proceed, then we will consider it.

714. There is a broad range of items under "Law and order issues", and today's meeting will be useful in ordering them. Some of the eight items are practically the same, and there is significant overlap. Today's meeting should be useful in arranging them, as we did on Monday with "Institutional issues".

715. This section of the Committee — given that it is not a subgroup because the DUP would not partake in a subgroup to deal with policing and justice or the institutions — should proceed with putting the items in the order in which they should be addressed.

716. Given that this is the Committee on the Preparation for Government, devolution and all related issues should be high on the agenda.

717. **Mr Attwood:** One anticipates that there will be a significant difference of opinion on the eight items — or maybe there are more than eight now. However, the SDLP feels that the Committee may come to a greater agreement on some items when they are probed than is expected. I will concentrate on the "Devolution of policing and justice" and the "Intelligence services".

718. The Patten report recommended two approaches to national security: first, that MI5 take primacy in 2007, which the British have adopted; secondly, that the Chief Constable of the PSNI report to the Secretary of State, or a possible successor body, on national security

matters. The SDLP would like to discuss with members why the second recommendation is the better option for the North. If MI5 takes primacy on national security, there will be risks around lack of accountability, mission creep and control. The preferred model is one in which the PSNI retains responsibility for national security and all other intelligence. That is the best way of sustaining policing and political confidence, and it is something that people around this table can sign up to.

719. I was interested to hear Jeffrey Donaldson MP MLA, on behalf of the DUP on the Floor of the House of Commons during St Patrick's week, asking some probing questions of the British Government Minister at that time about his concerns on the proposed primacy role being given to MI5 in the North.

720. The second issue on which we can make useful progress is the devolution of policing and justice. That is in the paper that the SDLP will submit. We outline several principles to govern that matter. We believe that parties round the table can sign up to those principles in order to inform the nature and structure of the devolution of justice, if and when that arises.

721. Included in those principles is the requirement that there be no encroachment upon the Patten policing institutions by any other models of devolution of justice that might be introduced; that there would be devolution, not just into strand one, but into strand two, given that there is a range of all-Ireland justice issues that are of concern to everyone around the table; that there would be cross-community safeguards in respect of sensitive devolved powers, such as the removal of the 50/50 requirement or the power of the Chief Constable to challenge a decision of the Parades Commission.

722. There are several other principles, which we believe form the correct basis on which to conduct a conversation on policing and justice and which, to a greater or lesser extent, parties can sign up to.

723. We welcome having that hard and heavy conversation as soon as possible, because there is more that we can agree on than is indicated

by the public positions that one or all of us have taken from time to time.

724. The third matter that I want to raise is policing, which, I recognise, is more limited. Given what the Secretary of State said in his Glenties speech, and other things that are being speculated on, there is a danger that, with regard to policing in the North, we are heading towards a situation in which there are two legitimacies. That is: the legitimacy of the new policing arrangements to which all the parties subscribed; and some other legitimacy, in which one party does not sign up to those institutions and has a different approach when it comes to relationships with the police and signing up to lawful authority and the rule of law.

725. That is a strategic threat to that part of the Good Friday Agreement, which, over the past few years, has worked best: namely, the policing arrangements. More fundamentally, however, it destabilises not just the prospect of the restoration of the institutions, but their sustainability thereafter. Though that is a limited point, given the range of views around the table, it is one that this Committee needs to resolve. That is why I concur with the DUP that we should call witnesses — though not in large numbers — including the Secretary of State, so that we can probe what he meant in his Glenties speech, and representatives of MI5. I would prefer to hear someone from London, but if not, then Richard Dennis.

726. **Mr McFarland:** As you do. *[Laughter.]* Eliza, get your stuff ready.

727. **Mr Attwood:** If she is willing to come. Assuming that she is not going to come — although she might surprise us — then I would want to hear from Richard Dennis, who is the head of MI5 in the North.

728. The party has a draft paper on all of these matters, but given that you are not compelling us to hand it over, Mr Chairman, it will be submitted in the next couple of weeks. I concentrated on those two or three issues because there is useful work that we can do. I am not diluting issues that others have talked about.

729. **The Chairman (Mr Wells):** Thank you, Mr Attwood. That witness session would certainly be an interesting one, if ever it comes about. The Press Gallery will be packed.

730. **Mr McFarland:** I was much encouraged by Monday's meeting, in which, for the very first time, we had first elevens from each party. I am equally encouraged today, because it looks as if everyone is sitting down for the first time ready to discuss policing.

731. I want to take a quick look at how my party sees the current situation on some of the issues.

10.30 am

732. The last IMC report stated that the republican leadership appeared to be serious but that there was still a level of criminality in the organisation. Martin McGuinness and Gerry Adams were then challenged on the issue of criminality in various forums. Their response was that the authorities should deal with it, and that was encouraging. Shortly after that, there were raids in south Armagh. I will not go into detail on that, as we have had that discussion, and the case is still presumably before the courts.

733. However, a fortnight ago a report by the Organised Crime Task Force confirmed that there had been a reduction in republican criminality. That too is encouraging. Nonetheless, we will have to await the publication of the next IMC report on normalisation at the beginning of September, as that will include a threat assessment. That will be followed by another IMC report at the beginning of October. Last week, the Secretary of State said that criminality and republican paramilitarism had gone. He was perhaps slightly over-enthusiastic in his assessment, but, no doubt, the IMC will inform us in due course.

734. The DUP raised the issue of decommissioning in its original submission, and that is why it appears on the list. We have on record that William McCrea and Ian Paisley Jnr accepted that decommissioning had taken place, but the IMC report stated that some part of the IRA had held weapons back. Martin McGuinness and Conor Murphy denied that. However, I was

taken aback by a recent report in the 'Sunday Tribune' that the south Derry IRA had left, taking with it the cache of weapons that it had held back. Perhaps that will account for those weapons that had been held back. If so, presumably the next IMC report will state that those weapons are now outwith the organisation. We will have to wait and see.

735. We need to address the issue of where the IRA is going. If it turns itself into a republican legion that meets every Tuesday to tell war stories, that is fine. However, if it is to remain as a fully functioning army, albeit without its weapons, we must question why it should remain in existence in that format, given what the leadership tells us. It will be useful to see movement or to have an idea of where the IRA is going, because it directly impinges on the issue of policing and armies existing in the state. The fact that there may be a second army running around excites the Republic. It is an issue that will affect policing and justice here.

736. The last take that we had on the devolution of policing and justice was the comprehensive agreement. William McCrea said that it is the DUP's document, and everyone else should get their hands off it. Minister Hanson said in the House of Commons that the Government would deliver it in the autumn. Peter Robinson said in the Assembly that that was not the case, and I think he confirmed that on Monday. Therefore there is some confusion, but it is worth reminding ourselves of Sinn Féin's statement on the comprehensive agreement, which read:

"As a result of our discussions we now have a commitment from the British Government and the DUP to the transfer of powers on policing and justice to the Assembly as soon as possible, a DUP commitment to a speedy, time framed discussion on the departmental model and the powers to be transferred with a view to agreement by the time the Executive is established".

737. I think that was in December, and the modalities were discussed in February, according to the timetable. It was encouraging that there was a speedy intent at some sort of discussion on the issue.

738. I wish to cover the intelligence services briefly. Part of the reason we are discussing this is due to the fact that the SDLP has spent the past four years complaining bitterly about Special Branch, what a ghastly organisation it was, and how intelligence handling should be removed from Special Branch immediately, because it was a force within a force. No doubt, the Government listened to the SDLP, as they usually do, and decided to transfer intelligence gathering on republicans outside Special Branch.

739. Is the SDLP surprised, given all its shouting and demands, that the Government have decided to move intelligence handling somewhere else? It has gone to MI5, partly because it is hard to get one's head round the prospect of Gerry Kelly as minister for policing and justice overseeing a police service handling republican informants. There are logical reasons why it has gone to the intelligence services.

740. Community restorative justice was an issue when I sat on the Policing Board with Mr Cobain, as it was for other colleagues on the first Policing Board. Various organisations spoke to us. Community restorative justice continues to be an extremely vexed issue, and it is still not right. No doubt we will have healthy discussions on that.

741. **The Chairman (Mr Wells):** I thank everyone for being so succinct and keeping to time. We are in danger of becoming a well-organised Committee. I am sure that somebody will sort that out.

742. We have suggestions for new sub-headings. Some interesting points have been raised, and some extremely interesting suggestions for witnesses. We have the basis for some probing questions on those presentations.

743. Mrs Foster has already indicated that she wishes to ask a question. Does anyone else want to come in at this stage?

744. Is everyone happy? That is unusual.

745. **Mr McFarland:** The suggestion that we need to sort these into some sort of order is quite useful.

746. **Mrs Foster:** I want to pick up on some of the comments that were made after I spoke, Chairman, if that is in order.

747. **The Chairman (Mr Wells):** Yes. Obviously members took the opportunity to come back on the various presentations. It is only right that you get a chance to answer. I am surprised that no one wants to follow Mrs Foster.

748. **Mrs Foster:** I am sure that they will. Alex Attwood is right about the Secretary of State's Glenties speech; dangers present themselves from the distinction that he is trying to create between "constitutional" and "practical" arrangements. It would be worthwhile to hear his thinking. Sometimes he makes these statements and it is hard to clarify where he is coming from. There are inherent dangers if he is suggesting that Sinn Féin can involve itself in what he would call practical support, but not constitutional support, for the police.

749. In relation to paramilitarism, loyalism and republicanism, a member of the PUP is now sitting on the Policing Board. That does not mean that the UVF is not involved in criminality and paramilitarism, and that needs to be brought out into the open. Just because a party takes its position on the Policing Board does not inherently mean that that party supports policing and justice, and that must be discussed.

750. Alan McFarland mentioned comments made by colleagues in the Committee about decommissioning. The DUP has accepted that decommissioning took place. However, the manner in which it took place did not bring about the maximum amount of confidence in the community as a whole — that has always been our position. Recent reports from Scotland suggest that weapons are being sold. Therefore, we still say that decommissioning remains an issue because of the lack of confidence surrounding the event that took place some time ago.

751. Alan McFarland also referred to the comprehensive agreement. The deputy leader of the DUP made it clear where the party stands on that matter. He stated on Monday that the comprehensive agreement was not signed up to by his party or Sinn Féin. Alan quoted from the

Sinn Féin document, so it is unlikely that the DUP would have had any input into that.

752. **Mr Attwood:** I have a few brief comments. Although the issue of loyalism, raised by Arlene Foster, is already included under the broader subject of paramilitarism, it should be put firmly on the agenda. The various loyalist-related public displays and activities in recent days, the speculation about the UVF and whatever is going on between the British Government and elements within loyalism mean that there is the potential to be productive on issues surrounding loyalism, if they are properly handled. Conversely, loyalism may endure and ultimately destabilise the restored institutions because of what loyalists may, or may not, get up to.

753. I am also concerned that the loyalist display of strength over the weekend provided evidence that, despite organisations saying that they are going out of business, they maintain their power base and retain their ability to impose their will or culture of control in their communities, something that is not necessarily restricted to loyalist groupings. The broader issue, and the future of loyalism in particular, should concern us.

754. Alan commented on the SDLP's efforts in relation to Special Branch. The question is not whether there should be a Special Branch, because Patten said that there should be; rather, it is about the nature of intelligence gathering and the management and accountability of any Special Branch or intelligence branch within the Police Service of Northern Ireland. Due to the work on the Stevens, Blakey and Crompton Reports by Alan McFarland and others on the Policing Board, the Oversight Commissioner has said that:

“Intelligence standards now comply with best international practice”.

755. Although high vigilance must be maintained on intelligence matters, there is no doubt that many corners have been turned, including the deactivation of very large numbers of agents.

756. Accountability has increased and the standard of intelligence gathering has been raised to an international level. Yet MI5, which has no such standards or accountability, will have primacy over intelligence gathering in the North. Even a senior MI5 operative conceded to me at a meeting in the NIO that there was a danger of mission creep, whereby MI5 would realise that given the unique criminal and terror world in the North —

757. **The Chairman (Mr Wells):** Sorry, Alex. Will you explain what “mission creep” means?

758. **Mr Attwood:** MI5, the police and anyone who looks at the North realises that the situation here is unique because the threat to national security and the criminal threat both emanate from the same source. The view of the British Government is that the threat to the stability of the state emanates from republican groups that are also involved in crime. Consequently, intelligence that emanates from the criminal side of an organisation's enterprise gives an insight into the national security threat that it poses and vice versa.

759. Therefore, there is a need for a joined-up intelligence approach in the North. As a result of the work of the Policing Board and the various reports that have been produced, the PSNI has begun to adopt such an approach by applying the best standards to intelligence gathering and accessing that intelligence, wherever it may be, within the criminal and terror organisations.

760. The danger is that MI5, which was intended to have a strictly national security responsibility, will quickly realise that in order to understand what is happening within the organisation that carries the national security threat, it is also necessary to gather intelligence from the criminal side of that organisation — and indeed MI5 already knows that.

761. Mission creep happens when MI5 does not restrict itself to gathering intelligence on the national security threat but broadens its intelligence base to access information from the criminal side of the organisations, because that is where information relating to the national security threat may arise. When that happens

MI5 will begin to crowd into the area for which the British Government propose that the PSNI should have exclusive responsibility, namely gathering intelligence on the criminal side.

762. That is the danger and the risk. On a positive note, the views and concerns of the DUP, Sinn Féin and members of the Policing Board on that can be worked through, and we can arrive at a far better place.

10.45 am

763. I want to echo some of the concerns raised about restorative justice. The protocol deals inadequately with some issues and fails to deal with many others. By a happy coincidence, the life of the Preparation for Government Committee may mirror the life of the consultation period for restorative justice. This Committee will be discussing restorative justice at the same time as the British Government are consulting on their protocol. There is justified hysteria about restorative justice, and a weight of evidence about bad practice. Over the past 10 days, many commentators have stated that we must get restorative justice right.

764. **The Chairman (Mr Wells):** If there were to be a question about “mission creep” on a TV quiz show, I would be able to answer it. *[Laughter.]* It might take me two hours, mind you.

765. **Mr Ford:** The issues highlighted by Arlene and Alex are significant for all parties and several organisations. The issues have significant relevance for two of the groups on this Committee. I look forward to all parties, including Sinn Féin, playing a constructive role in future policing. We must examine that role in relation to participation in the institutions and respect for the rule of law and the Police Service. For example, the Alliance Party is not represented on the Policing Board, but it fully respects the position of the PSNI as being the legitimate institution maintaining the rule of law in Northern Ireland. On the other hand, the PUP has a representative in the institutions, but I doubt whether its associates fully respect the rule of law as I, and most people, understand it. We must examine attitudes towards the institutional side of participation, which is why I initially flagged up the matter of the

ministerial Pledge of Office. The Pledge of Office covers only Ministers, but many other people should also be covered.

766. There are differences between loyalist and republican paramilitaries in relation to the intelligence services. Alex said that the national security threat and the criminal threat share the same position. I am not sure that that is the view of the British Government, given the manner in which they deal with loyalist crime. Loyalist paramilitaries are not seen as a threat to national security, although they are, potentially, a destabilising threat in Northern Ireland. If the Police Service is left to deal with all matters relating to loyalist crime, and MI5 deals with republican criminal activity, there will be major concerns about all sections of society being treated equally in demanding respect for the rule of law. That issue could be teased out with the Secretary of State and the head of MI5 — when they turn up.

767. **Mr McFarland:** I want to clarify the expression “mission creep”. Your mission is to take a glass of water to the door. You get halfway around the room when somebody says: “Will you open the window on your way out?” You open the window and are halfway between the window and the door when somebody says: “Will you take the jug out with you and fill it up with water?” The basic idea is that you have an original mission and, as you embark on it, the mission grows.

768. **Mr Ford:** That is the difference between a lawyer and a soldier.

769. **Mr Murphy:** We could have a broad general discussion on all these topics. One of the drawbacks of having a Hansard report is that members feel obliged to set the record straight because it will be read in the future. I would prefer that we got down to identifying specific areas for discussion. We can go round and round, restating our positions on a range of topics, but most of the parties’ positions are well known.

770. It is time that we got to work on them.

771. **The Chairman (Mr Wells):** There have been various suggested additions and amendments

to the list. Perhaps this is an appropriate time to seek agreement on those. We can then move on to the matter of witnesses, which Mr Attwood and Mrs Foster have already raised.

772. **Mrs Foster:** Mr Chairman, do you believe that some issues on that list could be linked? I have added to the list, but perhaps members could try to make it more succinct.

773. **The Chairman (Mr Wells):** First, are there any glaring omissions? Secondly, can we combine some of the items? Do we wish to create sub-headings?

774. **Mr Attwood:** If Arlene has concerns about the Police Ombudsman, that topic should be incorporated under the “Policing” heading, rather than be a dedicated one.

775. **The Chairman (Mr Wells):** Mrs O’Loan would be keen to state that her office is entirely separate from the policing institutions, and that she heads a completely independent body. However, we could certainly create a “Policing/Police Ombudsman” heading.

776. **Mrs Foster:** I have no difficulty with those items being linked, despite the accountability mechanisms being completely different.

777. **Mr McFarland:** Mr Chairman, may I tease something out? Colleagues will know that this list was produced from issues that the parties raised during their opening submissions. Criminality, decommissioning and paramilitarism are fairly clear; those matters were raised by the DUP. The SDLP raised the matter of the intelligence services. Community restorative justice (CRJ) was raised as a common issue. The devolution of policing and justice is obviously part of the modalities.

778. However, the matters of the rule of law and policing — other than where they are bound up with criminality and the general acceptance of policing — are not clear. In particular, Sinn Féin is the only party that does not accept policing or the police. What does “rule of law” mean in that context?

779. **The Chairman (Mr Wells):** The Alliance Party specifically wanted the heading of “Rule of law” to be included. Members took the

principled decision that if a party thought a matter was important, it was included. We did not argue that point.

780. **Mr Ford:** The Alliance Party raised the rule of law as one of the topics that were covered early on. That does not necessarily mean that it wishes to highlight it as an individual issue. I suspect that it may well be bound up with criminality in the context of any meaningful discussion.

781. **Mr McFarland:** Logically, we can do that. I believe that the Police Ombudsman is a separate issue because it concerns oversight, which has been a running issue for a number of years. That matter could fit in at item 8. The other items are fairly clear in that they have a particular slant on the discussion and have particular issues attached to them.

782. **The Chairman (Mr Wells):** Before Mr Weir speaks, I wish to point out that we received a declaration of interest from each member at the beginning of the meeting. Mr Weir, I think that you may have something to declare.

783. **Mr Weir:** Apart from my genius? *[Laughter.]*

784. Presumably, that declaration is that I am a member of the Northern Ireland Policing Board.

785. **The Chairman (Mr Wells):** Are you also a member of a district policing partnership (DPP)?

786. **Mr Weir:** No. The two positions are mutually exclusive, as I believe Dolores Kelly can attest. I believe that she had to resign from a DPP in order to join the Policing Board.

787. **The Chairman (Mr Wells):** I am sorry that I had to ask for that declaration, but it was an important step before you make your first contribution.

788. **Mr Weir:** I take on board the points that have been raised by my colleague Arlene Foster, by Alan McFarland and by David Ford. On the matter of combining issues, if the rule of law were included with criminality, it is important — as the Alliance Party and others were driving at — that there must be an acceptance by all parties of the rule of law and, indeed, support for the police and the institutions of the law. On

one level, that is a slightly separate issue than simply not being involved in criminality, although it can certainly be linked to criminality. Those two matters are inter-related, but it may be helpful to combine them.

789. Members should not feel restricted to the eight issues listed, if they can think of additional matters. There has not been any discussion on the order of dealing with the items or, indeed, whether we call witnesses. I presume that the topics are simply in alphabetical order at this stage?

790. **The Chairman (Mr Wells):** Yes. The order is no indication of importance at all. The topics are simply in alphabetical order.

791. **Mr Ford:** Peter Weir's suggestion has been helpful. We have talked in the past about matters such as a "culture of lawfulness", which means slightly more than "not criminality". Moreover, Peter used the word "parties", and we have emphasised that "Paramilitarism" is not simply a republican issue; it affects society in general.

792. **Mrs Foster:** I am loath to lose "Rule of law" from the list, because that is the most fundamental of all the law and order issues. It underlies most of what we shall discuss. If members want to remove it from the list, that is all very well, but, for us, the rule of law is the most fundamental building block in all of this.

793. **Mr Ford:** I was attempting to be helpful in agreeing with your colleague that we made the heading "Criminality/Rule of law", and "Rule of law" was removed somewhere along the way.

794. **Mrs Foster:** My point is that we could have "Rule of law/Paramilitarism", "Rule of law/Policing", or even "Rule of law/Everything". The rule of law underlies everything before us. We have not really talked about the criminal justice system in any meaningful way this morning. Obviously, the rule of law also underlies that. I am loath to lose "Rule of law" from the list.

795. **The Chairman (Mr Wells):** We must have consensus, so it is worth saying, Mrs Foster, that if you maintain that position, "Rule

of law" will stay on the list. I just want to point that out, Mr Ford.

796. **Mr Ford:** I was seeking to assist the Committee in shortening the list. No doubt, even in this slightly different format, the Committee will continue to be as creative as usual in covering topics.

797. **Mr Weir:** The list's length does not matter greatly as long as the topics are being covered. It does not matter ultimately whether issues are grouped. If we end up with a list of 14 issues, we will cover the 14 issues. We could group exactly the same number of issues under three or four different headings, but the same amount of work has to be done one way or the other, and the same number of topics is to be covered. It is not overly helpful to get too fixated with having a short list; what is important is that the topics get covered.

798. **Mr Murphy:** My suggestion is along similar lines. At Monday's Committee sitting, we agreed a couple of broad, generic headings for the institutional issues, with sub-headings underneath those.

799. It strikes me that there are a number of issues. One is around the issue of devolution, and there are issues that come under that heading, including intelligence. Then there is the broad issue that members are calling "Rule of law", and all the issues that fit into that. Separate issues may be the Ombudsman's Office and community restorative justice.

800. If we could agree, the Committee could discuss a broad topic, under which would be a number of sub-headings, at its next meeting, and take a day to deal with that topic. If we were to take a list of eight headings, there would be a substantial amount of overlap, and one day's business would drift into another day's or would revisit a previous meeting's discussions. It might be more helpful to proceed as we did on Monday, where three or four broad, generic headings were agreed, under which members were happy to have a list of sub-headings that they wished to see included.

801. **The Chairman (Mr Wells):** I sat in on Monday's sitting, and the way in which the

matter was dealt with by that Committee, which is this Committee but with a very different membership, was very useful.

802. Before I call Mr McFarland, it is worth saying that if the fear is that the Chairman will not allow for debate some burning issue that a member or a party wishes to raise because it is not on the list, Mr Molloy and I both gave an assurance at last week's meeting that that would not happen. If an issue is related to law and order, it will be ruled admissible, so no one will be restricted.

803. To follow on from Mr Murphy's comments, once we agree headings, we will try to insert the sub-headings. That was done much more easily at Monday's sitting, because the parties had given their views in writing on what the sub-headings should be. We do not have views in writing before us today, but we do have the opportunity to discuss the matter now.

804. **Mr McFarland:** We agreed on Monday that a useful template was to dig out the Belfast Agreement, because it contained headings for the institutions. I wonder whether the agreement contains headings for policing and justice. Do we have a copy handy?

805. **The Chairman (Mr Wells):** We will soon find out for you.

806. **Mr McFarland:** The agreement may only contain one heading, in which case it will not be helpful. However, the agreement proved quite useful in providing headings for institutional changes, because it divided up the institutions into bite-sized chunks, as it were.

807. **The Chairman (Mr Wells):** We will look at that for you, Mr McFarland.

808. **Mr McFarland:** Does it have sub-headings under which each of these might readily fall?

11.00 am

809. **Mr Weir:** The problem with many law and order issues is that because the agreement essentially set up the Patten inquiry, they were put on the long finger. Many law and order issues will not be mentioned at all.

810. **Mrs Foster:** Can we have three sub-headings? The generic term "Policing" would cover policing and the Police Ombudsman. The second generic term "Rule of law" would cover criminality, paramilitarism, decommissioning and community restorative justice.

811. **The Chairman (Mr Wells):** Can you take it slowly? It is good stuff, but we are trying to write it down.

812. **Mrs Foster:** The third heading would be "Devolution of policing and justice", which would include the intelligence services.

813. **The Chairman (Mr Wells):** Has everyone been able to —

814. **Mrs Foster:** That is all the subheadings that I have to suggest.

815. **The Chairman (Mr Wells):** Are those suggestions simply vehicles for discussion?

816. **Mrs Foster:** Yes.

817. **Mr McFarland:** Might CRJ not fit more readily under policing as an issue or is it essentially a paramilitary issue?

818. **Mrs Foster:** I have no firm views about under which heading it might fit.

819. **Mr McFarland:** It could fit under one or the other; it depends on how it is viewed.

820. **Mr Weir:** It depends on whether it is viewed a paramilitary issue.

821. **Mrs Foster:** It could be viewed as a rule of law issue.

822. **Mr Ford:** Is there an argument, on the basis of what Mr Attwood was saying, for making CRJ a stand-alone item, given the significance of the consultation taking place on it?

823. **Mrs Foster:** We could have four sub-headings.

824. **The Chairman (Mr Wells):** Do members have any comments? Remember, we have to reach consensus.

825. **Mrs Long:** I wish to declare an interest: I am a member of Belfast District Policing Partnership.

826. What specific sub-headings were suggested under "Policing"?

827. **Mrs Foster:** “Policing”, which was at number 7; and the “Police Ombudsman”.

828. **The Chairman (Mr Wells):** Do members have any suggestions on that position? Do they feel that it might prejudice their position? We went through this same routine on Monday, which I found very helpful.

829. **Mr McFarland:** Is everyone happy with CRJ? It makes sense to have it as a stand-alone issue, as it would be possible to deal with it and produce a sub-report on it that relates directly to the consultation period. That would save it getting caught up in other issues.

830. **Mr Raymond McCartney:** I do not understand why CRJ should be seen as a separate issue from the devolution of policing and justice. We could say that MI5 and criminality should be under one sub-heading.

831. **Mr McFarland:** It was a purely practical suggestion.

832. **Mr Raymond McCartney:** There is a danger of people weighting the issues in a particular way. The suggestion that CRJ should be in a sub-heading with paramilitarism shows the intention of some people. I cannot understand why CRJ should be a stand-alone issue.

833. **The Chairman (Mr Wells):** Where should CRJ be placed?

834. **Mr Raymond McCartney:** It could go under “Devolution of policing and justice”.

835. **Mr Ford:** I suggested that CRJ should stand alone because I saw it not just as an issue of paramilitarism. It is not the same as devolution, which is more to do with the institutional issues. CRJ concerns a range of issues, but because it is a hot topic — and Mr Attwood mentioned the consultation period — I suggested that it stand alone.

836. **Mr Attwood:** It is hard to find the best place to put CRJ. If we put it under “Policing”, we will create a sense that CRJ is a policing project, which it is certainly not meant to be. Also, it does not sit naturally under the heading “Devolution of policing and justice”. I agree with Raymond that putting it under the heading “Rule of law and criminality” would make it

very loaded, so that is not the place in which to put it.

837. A fourth category could be created: some justice issues need to be flagged up.

838. **The Chairman (Mr Wells):** Mr McCartney’s view is that there should not be a separate category.

839. **Mr Attwood:** Such a category would be for justice issues and could include restorative justice.

840. **The Chairman (Mr Wells):** That is a possible way forward.

841. **Mr Attwood:** There are some residual items. A fourth category could obviate any difficulties that might be created by making CRJ a stand-alone item, as Mr McCartney put it, and would integrate it into something broad, which is more appropriate.

842. **The Chairman (Mr Wells):** Everyone seems to be happy with that compromise.

843. **Mrs Foster:** I suggested that “Intelligence services” should go under the heading “Devolution of policing and justice”, but I wonder whether it should go under the heading “Policing issues”.

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

845. **Mrs Foster:** Therefore the first category would be “Policing issues” and would cover policing itself, the Police Ombudsman and the intelligence services.

846. **Mr Murphy:** It will be a burning issue in the devolution of policing and justice. However, as you say, where issues are formally listed does not preclude their being raised under other headings. This issue is very relevant to the transfer of powers: in fact, it will be key to the transfer of powers.

847. Because issues are in one box or another does not prevent them from being raised during discussions on policing. The issue fits into both categories, and there will be a degree of overlap in some topics that will have an impact across a broad range of areas.

848. **The Chairman (Mr Wells):** It might be worth putting on record that we have moved

various items back and forth. As things stands, the first heading will be “Policing issues” and will include the intelligence services, the Police Ombudsman and policing itself.

849. The second heading will be “Rule of law” and will include criminality, paramilitarism and decommissioning.

850. The third is “Devolution of policing and justice”, which will include justice and CRJ.

851. **Mrs Foster:** CRJ is a separate issue.

852. **The Chairman (Mr Wells):** That is correct. It has been scribbled out.

853. **Mrs Foster:** Under the sub-heading “Justice”, you could put residual justice issues.

854. **The Chairman (Mr Wells):** Do we have agreement on the content so that it can be minuted and so that we know exactly where we stand on each strand of issues? We will then need to prioritise them.

855. **Mrs Foster:** Will a new list be issued?

856. **The Chairman (Mr Wells):** Yes. A new list will be sent out.

857. We need to prioritise the issues in order of importance — those, presumably, with which we will want to deal first. That will concentrate our minds on the witnesses that we may need to call for each section. It might be more difficult to reach agreement on that. Which is the priority: policing, the rule of law, devolution of policing and justice, or justice?

858. **Mr Murphy:** I made the point in my initial submission that, since we are the Preparation for Government Committee, devolution should be given priority, although I accept that all the issues are important. We can discuss the rule of law, but we could end up spending six and a half hours restating the Sinn Féin position and more than four hours restating the DUP position. That can be useful, but in order to get work done we should hone issues on which there is likely to be some agreement among the parties, and the devolution of policing and justice is the most likely to offer opportunities for resolving issues.

859. **Mr McFarland:** There are some issues into which the Committee can have direct input because all five parties are represented; there are others on which we would wish to state our opinions but on which the Committee’s direct effect is less. That may influence our thinking.

860. Logically, we would pick the easiest issues, agree them and stash them away. Unfortunately, these issues are neuralgic, and I am not sure that we will get any quick fixes.

861. As Conor said, rather than restating party positions, which are noted in the Hansard reports of the first month and a half of meetings, it is a question of deciding what the Committee can usefully do to make a difference.

862. **The Chairman (Mr Wells):** Can the other parties give their views on this?

863. **Mr Attwood:** As was said at the beginning, the SDLP thinks that common positions can be found on the devolution of policing and justice and intelligence services. Given that that potential exists, the SDLP would like the devolution of policing and justice to be dealt with first. Thereafter, the SDLP is not dogmatic about where the Committee should go. Policing and intelligence services seem to be the natural second topic, and, as I said, the SDLP is relaxed about what should be discussed third and fourth.

864. The four categories are useful. Given the time frame to which the Committee is working, the categories show a natural order and a realistic amount of work.

865. **Mr Ford:** Like the SDLP, the Alliance Party is fairly relaxed on this. However, there is logic in Conor’s comments that, as this is the Committee on the Preparation for Government, the institutional links between the Monday discussions and the devolution of policing and justice indicate that it would be logical to deal with those issues first. I will certainly not veto other members’ thoughts on what should happen after that.

866. **The Chairman (Mr Wells):** Three parties are in favour of discussing the devolution of policing and justice first. It will be interesting to

see whether the Committee reaches consensus on this.

867. **Mrs Foster:** This is where the wheels come off. *[Laughter.]*

868. I have already stated that rule of law is the DUP's priority. Other parties might believe that the devolution of policing and justice is the most important item on the list, but the DUP cannot subscribe to that. However, if the Committee is trying to agree a work plan, without prioritising the issues, that is a different matter. I do not want it to be recorded that Arlene Foster felt that the rule of law was less important than the devolution of policing and justice. Therefore, to me, prioritisation is the issue. I want to clarify that.

869. **Mr Ford:** In my presentation this morning, I did not suggest anything other than that the rule of law was very important — it was the first thing that I highlighted. However, formulating a work plan is not the same as overall prioritisation.

870. **Mrs Foster:** Yes, I am just clarifying that because the Chairman initially said that members were to prioritise. If that is the case, the rule of law would be the DUP's top priority.

871. **Mr Weir:** Our particular reason for highlighting this is that if the Committee is considering these issues to prepare for government — the reason that the Committee was created — the DUP regards acceptance of the rule of law and support for policing institutions as fundamental and of key significance to preparation for government.

872. From a timetabling point of view, the DUP can be flexible as to where issues are slotted in. However, although the Committee has a reasonable amount of time, if there are opportunities to agree a broad view, there may be merit in having a debate on restorative justice, on which there has, at least, been consultation.

873. It depends on future discussions, but I would caution members that if they think that the devolution of policing and justice will be an easy issue to crack, they are being overly

optimistic. There may not be the consensus that members expect.

874. **Mrs Foster:** The second issue that I want to address is that, if the Committee is to call witnesses, Committee staff will need some time to set up those meetings. Members do not want to be here next Wednesday without the witnesses that they felt should attend. I do not know how long those arrangements would take.

875. **The Chairman (Mr Wells):** Members will need to take a decision on that today.

876. **Mr McFarland:** Chairman, you will be aware that a key element of the initial submissions from the UUP and DUP was that it is difficult to see any progress being made without an end to criminality and paramilitarism and an acceptance of policing, by republicans in particular. That remains the case, and until an IMC report is published that says that those issues have been sorted out, it is difficult to see how discussions on policing will progress seriously.

11.15 am

877. Having said all that, I return to the point of whether it would be more useful for the Committee to attempt to tease out the issues on which the parties can have some influence, rather than the parties simply restating their positions on activities that, pending the IMC's reporting that they have stopped, will continue to block the devolution of policing. It would be wrong to think that, because the Committee is trying to deal with issues on which it can do proper work, those issues take priority; clearly they do not.

878. Party positions on the background to this are recorded in Hansard. The question is, would the Committee be better off spending its time examining new issues on which it could have some practical bearing in the event of the conditions for the devolution of policing and justice being right?

879. **Mrs Long:** I reiterate that as far as the Alliance party is concerned, the rule of law is the foundation on which all the other structures will be built. Whatever the architecture for devolution of policing and justice, the transition

must be built on a foundation whereby everybody has a similar view as to what the rule of law entails and concept of what justice and policing are about. It must be a shared definition because, when policing and justice are devolved, there will be a degree of collective responsibility for them. It is important that that be established. Putting it further down the list in no way diminishes its importance. As far as the Alliance Party is concerned, it is the key that will unlock the whole issue.

880. Alan McFarland talked about criminality “by republicans in particular”. I am not sure why that should be the case. His Assembly party has structural links to armed, active paramilitary organisations, so it seems ludicrous to suggest that only republicans need to address the issues of paramilitarism and criminality. The Committee needs to consider paramilitarism and criminal activity across the board.

881. The point was made that republican paramilitarism could be viewed as a threat to national security, but both loyalist and republican criminality and paramilitarism have a destabilising effect on Northern Ireland. Also, those activities have a negative effect on local people and a huge bearing on the effectiveness of policing across the community. Members need to go into this with open minds and balanced viewpoints, not in finger-pointing mode, which would not be constructive.

882. **The Chairman (Mr Wells):** I will allow Mr McFarland to answer that.

883. **Mr McFarland:** The reason I was —

884. **Mrs D Kelly:** Sorry, Chairman, but my point was essentially the same. Members have sat here for over an hour and have yet to hear one mention of loyalist paramilitarism from the Ulster Unionist Party. That causes grave concern, given the level of activity by loyalist paramilitaries, not only in Belfast but across the North.

885. **Mr McFarland:** There is no doubt that loyalist and republican paramilitarism needs to be sorted out, but members need to remember why we are here. We are members of a Preparation for Government Committee. We are not in Government trying to sort this out. Sinn

Féin is the only party with its own private army that could end up in Government.

886. **Mrs D Kelly:** What about the UUPAG?

887. **Mrs Long:** I must contend that my point was that your Assembly group now has a direct link, through the PUP, to the UVF. Therefore, it is not sufficient to say that Sinn Féin is the only party at the table with a direct link to paramilitarism. That needs to be recognised. The UUP has gained benefits from its link to the PUP, but there will also be disbenefits, including the link that it now has to the UVF.

888. **Mr McFarland:** The Committee has spent five hours on this, with the Alliance Party getting very exercised. We went through it in enormous detail.

889. **Mrs Long:** It clearly has not sunk in.

890. **Mr McFarland:** The ins and outs are all in here. If you want to have a row, we can have a row.

891. **The Chairman (Mr Wells):** We are discussing the prioritisation of topics.

892. **Mr McFarland:** The reason I said “in particular” was that Sinn Féin “in particular” might be going into Government.

893. **Mr Ford:** Will Alan McFarland confirm that by that statement he means that he does not expect the UUPAG to be in Government?

894. **Mr McFarland:** Nobody is going into Government until this Committee sorts out what is happening. These are not issues at the moment, but when the time comes, we will see whether they are. My point is that —

895. **The Chairman (Mr Wells):** Things were going too smoothly, so that was bound to end. Let us get back to the issue.

896. **Mrs Foster:** For clarity, and to bring the discussion back on track, we are not talking about priorities; we are talking about a work plan.

897. **The Chairman (Mr Wells):** “Priorities” was perhaps the wrong word; “sequencing” would have been better.

898. **Mr Attwood:** To emphasise Arlene’s point, the rule of law and the acceptance of democracy are the parents of this. Everything

arises and flows from those. Therefore any work plan is not meant to make any issue any less of a priority.

899. Alan talked about the business of this Committee, but we should also consider what is happening in the real world. There are several issues to consider in the natural order of things. First is the devolution of policing and justice. That is a meaty issue that is relevant to the restoration of the institutions.

900. Policing is a pretty natural place to go for our second item, given the live debate around it, which was demonstrated by the Secretary of State's speech in Glenties. Policing is a real-world issue.

901. Restorative justice is the third topic that we should discuss, given its fundamental and primary impact on the rule of law and given that we will have consultation on the protocol soon.

902. The fourth subject should be the more global issue of the rule of law and criminality. It suits our time frame, given the report that is due in October on the rule of law and criminality, which Alan mentioned.

903. **The Chairman (Mr Wells):** One of the great benefits of having Hansard is that everyone has now explained that, by agreeing to a certain sequence, we are not putting any weight of importance on particular matters. You may be hung out to dry on that decision because you have made it very clear.

904. We seem to be reaching broad agreement. Assuming that that is the case, we need to consider two issues. First, should we call witnesses? I am very conscious of Mr McFarland's point about how calling witnesses could create a long process for the Committee.

905. Secondly, given those concerns, whom do we call? I take it that the devolution of policing and justice is agreed as the first subject — although perhaps not the most important — with which we deal. If we accept Alex's suggestion that policing, including the intelligence services becomes the second issue, members seem to be reasonably relaxed about what become the third and fourth.

906. **Mrs Foster:** I am happy to say that the DUP is OK with that work plan. If the rule of law is the last topic, it is almost like a catch-all that will deal with anything that has been missed in the previous three.

907. **The Chairman (Mr Wells):** On that basis, we have our sequence: the devolution of policing and justice; policing; justice issues; and the rule of law. Is everyone happy with that?

Members indicated assent.

908. **The Chairman (Mr Wells):** Good; I am very pleased to hear that.

909. We need to discuss witnesses. I have scribbled down a few ideas.

910. **Mr Cobain:** Before we start discussing that, I should say that we are a time-bound Committee. I do not mind calling witnesses, provided that they will add to the debate. I am not in favour of calling witnesses so that we can have a bit of a brickbat with them. Some of the issues that we have talked about are irrelevant. There is no possibility of having an in-depth discussion about the intelligence services in this Committee; that goes over my head.

911. We have no direct link to the Police Ombudsman, who reports directly to the Secretary of State and then to Parliament. If we are looking to enhance the debate or bring witnesses to give us a better understanding of the subject, that is fine, but I am not happy with bringing them here for no reason other than to have a bit of a brickbat with them.

912. **The Chairman (Mr Wells):** The economic subgroup has dived in, invited a huge number of witnesses and heard some wonderful stuff. However, my experience of the subgroup has been that members can get bogged down in an awful lot of material. We accept that we must be very selective. Some core people must be invited because, without their input, we will get nowhere. However, I will be guided by the Committee on how extensive that list should be.

913. **Mr McFarland:** Chairman, I raised this issue on Monday. Everyone around the table has been at this for a number of years: members have had discussions within their own parties,

with other parties and in Leeds Castle or wherever. Indeed, three Northern Ireland Policing Board members are present. Within this room, there is a fair degree of expertise on most of the issues. Fred is right: if we are unsighted on certain issues, or do not have the necessary details, it may be worth calling witnesses who can enlighten us. However, we do not have time to fire people in just to have a tilt at them.

914. **The Chairman (Mr Wells):** Obviously the NIO must be on that list, whether at ministerial or permanent secretary level, no matter how we deal with the issue. The Police Service of Northern Ireland or the IMC are other suggestions, but I am just throwing out ideas.

915. The devolution of policing is an NIO issue. That brings us to the decision: will we invite the Secretary of State — or one of his Ministers — to this Committee, and is he likely to come?

916. **Mr Murphy:** I am not averse to the Committee calling any of those witnesses or taking the time that it needs. However, the devolution of policing and justice involves deciding on modalities, the powers that members would like transferred, time frames, types of departmental models and so on. We know what policing and justice powers currently rest with the NIO and Whitehall — all we have to do is get a list. The parties will have to agree on the type of model. It will not be handed down to us from the NIO as this virtual Hain Assembly was.

917. As I said, I am not averse to calling witnesses, but we can resolve many of the issues ourselves. Given that Hansard records all our positions and we ensure that we reinforce them for that record, there may a tendency to call witnesses simply to balance previous evidence. I take a more minimalist approach to calling witnesses unless there is a very clear and compelling case to hear evidence.

918. Much of the first element of work on devolution matters that we have agreed to undertake involves matters that parties have been discussing for several years; within their own party, with other parties and certainly with

both Governments. The institutional section of this Committee has decided not to call any witness because the parties can deal with those matters themselves. That approach may be more conducive to getting business done quickly than the economic subgroup's approach.

919. **The Chairman (Mr Wells):** From a procedural point of view, if folk want to discuss any particularly sensitive issues, the Committee can at any stage — by consensus — decide to have sessions without Hansard.

920. **Mr Murphy:** My point is that members feel obliged to take their party's perspective, and I understand that. For instance, Arlene Foster felt obliged to say that the DUP's priority was rule of law, and, from the DUP's perspective, that is fair enough. I refer to Hansard because it is inevitable that if a witness is called there will be a need to balance their evidence by calling a counter-witness to give an alternative or contrary view. Therefore as far as some of these topics are concerned, we should think long and hard about the need to call witnesses at all.

11.30 am

921. **Mr Weir:** Some subject matters lend themselves more to the calling of witnesses than others. We should call witnesses on the basis of real need.

922. As with almost any subject, one could call witnesses for meetings once a week from now until Christmas 2008, but it is questionable how productive that would be. Witnesses should only be called where it will be of benefit.

923. Representatives from the police should be invited to give evidence at some stage, and to get the best use out of witnesses they should not be tied down to one subject. Someone from the police, for instance, might not want to be drawn on the devolution of policing and justice, because it is such a political issue, but they would have things to say on policing and intelligence. They might also be questioned on community restorative justice and certain aspects of rule of law. There is no point in having a police representative here one week to talk on a subject and then another representative

two or three weeks later to talk about something else. We must use our time constructively.

924. I am not convinced that getting a witness from the NIO would be helpful when discussing the devolution of policing and justice, because they would merely give a technical list of the aspects that they regard as being covered under policing and justice. I suspect that they are trained not to answer particular questions — like in a police cell in Castlereagh or some other organisations. The NIO will fit in with whatever agreement is reached on the modality, timing and circumstances. It will take a neutral position and throw it back to the parties. In ways the NIO is right to do that, because these things should not be imposed over our heads. Therefore, there would be no benefit in getting witnesses from the NIO, apart from getting a technical list to make sure that we are covering all aspects of policing and justice.

925. I am keeping an open mind that someone will suggest a suitable witness for discussions on devolution of policing and justice; I cannot think of anyone. It would be useful if someone could come up with a relevant witness, but it is a matter for the parties.

926. **Mr Murphy:** There is also the option of asking for written papers and submissions.

927. **Mr McFarland:** We have our list, so I suggest that we start and see how we go on this. If we hit blockages of information, we may need to call witnesses. However, we should get going on it. The police might be useful witnesses towards the end, because we might build up the odd question here and there. As Peter Weir suggested, we could do a wrap-up of some questions to the police on areas that we are not sure about and on which we need further information.

928. We should start off and see what witnesses we need as we go along.

929. **The Chairman (Mr Wells):** There are expert witnesses who are not directly involved. John Simpson spoke at yesterday's economic subgroup meeting, and he produced some excellent ideas and novel views that stimulated the subgroup's thinking. The Committee on the

Preparation for Government could go down that route as well as asking for the real players.

930. Agreement must be reached because of the modalities of what we are doing. Letters to potential witnesses would have to go out today to give them adequate warning. Would it be useful if the Clerk gave you a briefing paper on the NIO devolution document?

Members indicated assent.

931. If we do not reach consensus on witnesses, we will not have any. However, no one is dying in the ditch on this either way. I can hear various views being espoused.

932. **Mr Attwood:** I agree with the last two members who spoke. I do not think there is any need for witness evidence on the devolution of policing and justice. There are probably questions that need to be raised with the NIO arising from the consultation document because, while it is a fairly neutral document, it does have a few dark corners.

933. As for the other three categories, from my party's point of view, we might have to call three witnesses: someone from the police to discuss relevant matters; the Secretary of State, to discuss the global policing issue; and perhaps an official to talk about justice and CRJ concerns. It will be a small number — that is the best way to go. However, for the purposes of next week and the immediate work programme, we can proceed without witnesses.

934. **The Chairman (Mr Wells):** You would not call the IMC or the intelligence services?

935. **Mr Attwood:** I would like to see someone from the intelligence services, but I do not see the need for any more than three or four witnesses in total.

936. **Mr McFarland:** The parties have met the IMC at various stages. We would get no more from the IMC than the contents of its most recent report. The police are currently preparing their report on normalisation for publication at the end of August. We will probably get nothing new from the police until they have told the IMC and the IMC has produced its next report at the beginning of September.

937. There is an issue there about what useful new information we are likely to get from these organisations. We have three meetings in which to sort this out before the end of August. We got an agreement from last Monday's meeting that we could work into the first week of August, so we are asking the Secretary of State to put the first debate back to 11 September.

938. **The Chairman (Mr Wells):** We will be coming back to that later.

939. **Mr McFarland:** So we have time, but there is not a great deal of it and some of these issues, particularly devolution and policing and justice, are potentially complicated.

940. **The Chairman (Mr Wells):** We will not need witnesses next week, but just to give staff some guidance, Alex has suggested a small core group of witnesses. There does not seem to be much enthusiasm for calling in the Police Ombudsman or the IMC. It would be interesting to see whether the Secretary of State would come if we invited him. We need to tie up these loose ends.

941. **Mr McFarland:** Should we not call someone from the police so that, towards the end of the week, we can wrap up questions that have arisen? We might get something from Assistant Chief Constable Sheridan, for example, or indeed, the Chief Constable himself, if there were policing issues of concern. Perhaps we should warn them now that we might want to speak to them. The question is whether they would be willing to come.

942. **Mr Murphy:** In relation to issues such as CRJ, my party would reserve the right to make further suggestions depending on which witnesses the Committee agrees to call. That is why I would have argued for a minimalist approach. We must think long and hard about what value can be added, but we will reserve the right to look at the witnesses that have been called and determine whether we wish to call others ourselves.

943. **The Chairman (Mr Wells):** Issues may develop in such a way as to make that apparent.

944. **Mr Cobain:** As far as witnesses are concerned, the devolution of policing and

justice is really a matter for the parties. We have skirted around this for long enough, and there is no added value in bringing individuals in to talk about policing. It is for the parties to agree, and the Secretary of State will play it with a straight bat when he comes anyway, so it is a waste of time.

945. As far as CRJ is concerned, all of the protocols are in the public domain. If the Committee wants to produce a report on CRJ, all of the information is accessible. Conor Murphy is right. If we bring one witness in we will have to balance that with another. It is a matter for the Committee if it can reach a consensus on CRJ to make a report. We cannot get involved in bringing one witness from one side and one from another. If the Committee has a view on community restorative justice then it should make that view known.

946. These are important issues. We could produce a report that would go some way to assisting the debate on the issues, but the time frame will not allow us to have a stream of witnesses. However, if a report is produced with which some parties are uncomfortable, they will naturally want to redress the balance by questioning witnesses. There is a great deal of information in the public domain, so the Committee can make pronouncements on those issues. Who needs witnesses about CRJ? All the issues are in the public domain, and members are au fait with CRJ. I cannot imagine how inviting witnesses to talk about CRJ would enlighten the UUP's view on it.

947. **Mr Attwood:** I will think about that, because it is a valid point. We have been around the houses on that issue and others. Even though our overall work programme is heavy, it is critical to the Committee's understanding of the issues to call the Chief Constable, the Secretary of State and a representative from MI5 as witnesses.

948. **Mrs Long:** They may be key players in the implementation of decisions or agreements, but to call them as witnesses may not shed any light on our discussions. We need to strike a balance. There was a kernel of an idea that the Committee does not need to call witnesses, but, if questions arise, we may need to seek expert

advice in future. We would be better to proceed as best we can, on the understanding that we reserve the right to re-open the issue about witnesses if expertise is needed to guide and inform our discussions. At this stage, no one has identified any witnesses for at least one session, possibly two, and it would be a waste of time to invite them for the sake of it.

949. **Mrs Foster:** I am also conscious of the time frame, for more than one reason. If we proceed on the basis that we do not intend to call witnesses — with one exception, and that is the Secretary of State, because of what he said in Glenties in County Donegal about policing — we need clarification on that point, and that would not take long. If experts could provide written evidence to the Committee, that would short-circuit the process. Other members have also suggested that. However, we need to speak to the Secretary of State about what he said. I presume that he is going on holiday at some stage.

950. **Mr Weir:** There would be an opportunity for him to be flown back at vast public expense.

951. We need to question the Secretary of State on what he said. One advantage of adopting a flexible approach, which is not to depend on witnesses at this stage, but to consider where they are needed, is that — with the possible exception of the Secretary of State — we may be able to identify individuals. However, almost all the potential witnesses represent institutions or bodies. They do not tend to be individuals; for example, they may be representatives from the police or the IMC.

952. Other Committees try to focus on a couple of individuals, but the advantage of adopting a flexible approach is that, if the Committee decided that it would be useful to invite someone from the police in a fortnight's time, we would not be tied to a specific individual. The bodies concerned should be able to provide senior representatives at short notice, if necessary.

953. That is what gives us a degree of flexibility, unlike the economic subgroup, which has a range of individuals and is a much smaller organisation in that regard. I support Arlene's comments.

954. The Committee has had enough lectures from the Secretary of State over the past few months, and it would be nice to be able to question him. We would all appreciate that.

11.45 am

955. **The Chairman (Mr Wells):** We have different ideas floating around. We have Mrs Long's view that we do not call witnesses unless something materialises during our discussions that we feel requires us to take evidence. We have the DUP's view that we do not call anyone other than the Secretary of State to answer questions, particularly in relation to his Glenties speech.

956. **Mr Weir:** We are not precluding other witnesses. Apart from asking the Secretary of State to attend, our view is similar to Mrs Long's.

957. **The Chairman (Mr Wells):** There is also Alex Attwood's view that we should call a very select number of witnesses — maybe two or three — including ones from the intelligence services.

958. **Mr Attwood:** You can reconcile those positions. You can decide on the Secretary of State now, and keep a small number of witnesses under review.

959. **The Chairman (Mr Wells):** We are in danger of having seven agreements in a row at one meeting, which would be an astonishing achievement.

960. Is there consensus to call the Secretary of State to answer questions on policing issues and then, taking up Mrs Long's proposal, if any other issues arise to call witnesses as and when we need them by consensus?

961. Do we have agreement on that?

962. **Mr Murphy:** I am OK with that. However, Sinn Féin reserves the right to review matters when the other witnesses are known. Flexibility is important. I am not confident that the Secretary of State will agree to come along.

963. **The Chairman (Mr Wells):** You could well be right.

964. It is important to understand that the Committee will ask the Secretary of State to

come along, today fortnight, to answer questions on general policing issues — not on the devolution of policing and justice. That gives us two weeks to fly him home from wherever he is.

965. **Mr Weir:** If the Secretary of State does come, the Committee may not get an enormous amount out of him if he is pushed on the devolution of policing and justice. However, I would not preclude particular questions. The general topic will be law and order issues. I do not think we should say to the Secretary of State that he would not be questioned on particular issues.

966. **The Chairman (Mr Wells):** If the Committee managed to get the Secretary of State to attend next week's meeting, as opposed to today fortnight, would that cause any difficulties? Of course, we do not know what his diary is like.

967. **Mr Weir:** I think that he is away.

968. **Mr McFarland:** I have two problems: first, if he comes next week, we can write off the session, because we will not get into the devolution of policing and justice issue until the following week; secondly, he may decide, given his previous dealings with the Committee, that he is not the best person to come and speak to us and produce one of his officials.

969. Is the issue to get information out of the Secretary of State, in which case the official can give it and that will be OK, or is it to have a go at the Secretary of State? Will we be happy with an official if the Secretary of State does not want to come?

970. The Committee must get a head start on its business. It should start with the key issue next week, even if it all falls apart two weeks later. The Committee may need to talk to the Secretary of State, but that should be done at a later stage rather than have it interfere with its work up front.

971. **The Chairman (Mr Wells):** That is a useful comment.

972. **Mr Weir:** I agree in part with what Alan McFarland has said. It would be foolish to ask

the Secretary of State to attend next week's meeting. Some work needs to be done before then. Also, I suspect that he is on holiday. The Committee should hold out for someone at a political level. I would not be happy to be palmed off with an official. The Committee wants to know the Government's direction on policing. An official may reflect the official line, but we would get a lot more depth from the Secretary of State.

973. I would accept Paul Goggins, in his role of Security Minister, as a replacement for the Secretary of State, but I would certainly not be happy with an NIO official.

974. I want to question the Secretary of State on the remarks that he made about policing and justice and law and order in his Glenties speech and on other occasions. It is important to hear the Government line, and that must come from a politician rather than from an NIO official reiterating what the Secretary of State has said. I want the Secretary of State to be properly questioned. There is no value in the Committee being offered an official from the NIO as a replacement witness.

975. **Mr McFarland:** Is that essentially related to CRJ?

976. **The Chairman (Mr Wells):** No; it relates to the general policing issue.

977. **Mr McFarland:** An earlier statement related to the rule of law and the operation of parallel policing systems.

978. **The Chairman (Mr Wells):** On Wednesday week we will ask to hear from the Secretary of State. We can then request any further witnesses that we deem necessary as the discussions develop. May I put that to the meeting?

979. **Mr Murphy:** A way round that may be for the Clerks to write to the Secretary of State telling him that the Committee is dealing with certain issues and that it is interested in hearing his views. They could ask whether he is willing to come and, if so, when he is available.

980. If the Secretary of State comes before the Committee, there will be a range of questions

for him on every topic; his evidence would not fit neatly into one single-issue discussion. I suspect that he may not be willing to appear before the Committee, but it may be better to ascertain that rather than try to slot him into our agreed work programme. If the Secretary of State agrees to come, the Committee may decide to take the time to engage in discussion with him.

981. **The Chairman (Mr Wells):** Is everyone happy? For the seventh time in a row, I was about to say that we have consensus, but perhaps not.

982. **Mr Cobain:** I do not mind witnesses attending meetings of this Committee, provided that they have something to add to the discussion. I thought that this Committee was working towards the devolution of policing and justice. At the end of the day, irrespective of what the Secretary of State may say, that will only happen if this Committee is happy with it.

983. If the Secretary of State is brought to this Committee, people will want to make political points about his recent speech. I do not know how that would add to the work of the Committee. I am becoming lost in all this. His statement about whether people are bound into the constitutional issue has obviously antagonised some people, but what has that to do with the work of the Committee?

984. **The Chairman (Mr Wells):** Mr Murphy and others made the point that the Secretary of State would not be questioned solely about his Glenties contribution and that other issues would be raised.

985. **Mr Cobain:** Such as?

986. **Mr Murphy:** I am not jumping out of my skin to have the Secretary of State as a witness, as I think that it would lead to a political discussion, although some members think that his coming here would help in the overall generic discussion on policing and justice. However, his availability or otherwise should not interfere with this Committee's work programme. If he is available to come at a certain time and members want to quiz him on a range of issues, that is well and good.

987. We should make a start on the programme of work — whether the Secretary of State comes or not could be a distraction to that. If the Secretary of State indicates a willingness to come — and I will be surprised if he does — we should slot him in whenever we can and members can ask him whatever they want.

988. **Mr Weir:** We should have an opportunity to question the Secretary of State on a range of issues. We all know that just about any issue involving law and order or policing will have some political overtone. Even if there is consensus on a particular issue, there will be political overtones. Politics will be behind just about everything that is discussed in this Committee. We cannot get away from that.

989. **The Chairman (Mr Wells):** Mr Cobain, I thought that we had reached consensus. Will you oppose that?

990. **Mr Cobain:** No.

991. **The Chairman (Mr Wells):** The Secretary of State may not come, so time may not be an issue.

992. **Mr Cobain:** My concern relates to the principal task of this Committee and to the fact that it is time-bound. The issues are on the table, and the arguments of all parties have been well rehearsed.

993. To reiterate: it is my view that very few witnesses could add to the discussions on these issues. I am concerned that if a witness were to appear before the Committee, there would be political toing and froing, but members would get little out of it.

994. **Mrs Foster:** For the record, Chair, the Glenties speech was ground-breaking in so far as the Secretary of State had moved away completely from anything he had said previously. He spoke about the dichotomy between support for the institutional arrangements for policing and support for practical policing on the ground. We wanted to clarify that issue with him, which is why I feel strongly that we should invite him to appear before the Committee. Members may wish to raise other issues. He may not come to the Committee, but we should still invite him.

995. **The Chairman (Mr Wells):** We are agreed that we should write to the Secretary of State and ask him when he is available. We are not wedded to Wednesday 16 August; we will have to meet his diary commitments and slot him in on another date. We have reached consensus on that issue, and now strikes me as being a suitable stopping point. “Quit when you are ahead” is the phrase that is going through my mind. Are members content that we call it a day on the substantive business?

996. There are a couple of practical issues. We agreed that the economic subgroup would have five Chairpersons. The Committee Clerks wrote to the Secretary of State, who has now written to the parties. The Ulster Unionist Party has been very diligent; it has nominated Jim Wilson as its representative to chair the economic subgroup. It would be very helpful to Mr Molloy and me if we could adopt Mr Wilson almost immediately into our work programme. Have the Alliance Party and the SDLP given any thought to their nominations?

997. **Mrs Foster:** We will have to come back to you on the nominations issue.

998. **The Chairman (Mr Wells):** Unfortunately, as far as the DUP is concerned, you are stuck with me.

999. **Mrs Foster:** As I said, we will have to come back to you on that. *[Laughter.]*

1000. **The Chairman (Mr Wells):** Has the SDLP communicated with the Secretary of State?

1001. **Mr Attwood:** I do not know. We will get an answer to him by close of business today.

1002. **The Chairman (Mr Wells):** Has the Alliance Party communicated with the Secretary of State?

1003. **Mr Ford:** I am not aware of having yet received a communication from the Secretary of State.

1004. **The Chairman (Mr Wells):** The letter was dated 1 August and was addressed to: Mr Ford, Alliance Party of Northern Ireland, 88 University Street.

1005. **Mr Weir:** In Mr Ford’s defence, and from our party’s experience with the Speaker’s

Advisory Group, letters about wind-up arrangements sent out under the Secretary of State’s name were not received by many DUP Members. Certain items seem to get lost in the post, and perhaps Mr Ford’s letter has gone walkabout.

1006. **Mr Ford:** I anticipated this situation and am happy to confirm that, in the democratic structures of the Alliance Party Assembly group, we agreed yesterday to nominate Naomi Long. I will formally communicate that nomination in writing before I leave the Building today.

1007. **The Chairman (Mr Wells):** I am sure that the SDLP is dealing with this important issue as we speak. Can we factor those names into the work programme?

1008. The Preparation for Government Committee meets on Mondays, Wednesdays and Fridays, which is quite a commitment for Mr Molloy and me. It would help us enormously to have all five Chairpersons working in rotation. I am here every day this week because of commitments to this work.

1009. At yesterday’s meeting of the economic subgroup, we agreed that I would write to myself — given that I chair this Committee and the subgroup — asking for an extension. The economic subgroup faces a huge workload. We have called many witnesses from the public and private sectors. There have been some excellent presentations and some very useful discussions between members and witnesses.

1010. Things are moving along very well in that subgroup, but we are having difficulty with timetabling, so I have written to the Committee to ask for an extension until 25 August. That will create a knock-on effect, and we may need to revisit the matter of plenary meetings. Do members feel that it is reasonable to give the subgroup an extra week?

12.00 noon

1011. **Mr Ford:** As someone who has sat on that subgroup, I believe that it is entirely reasonable to allow an additional week for its work to be done properly. As you say, that will have a knock-on effect on plenary meetings. It

would be logical at this stage for this Committee to recommend to the Speaker and to the Business Committee that we delay the first plenary meeting in September by a week.

1012. **The Chairman (Mr Wells):** We have already contacted the Secretary of State on this issue. We have had no response, and this is all predicated on his agreement. If he does not agree to that, we shall have great problems.

1013. **Mr McFarland:** We have had our ears bent all summer about the importance of sending business from this Committee to plenary meetings. The Secretary of State had pencilled in 4, 5, 11 and 12 September for those meetings. Logically, we asked on Monday of last week that he give us an extra week, so that the plenary meetings start on 11 September. That seems sensible, given that we did not get started as quickly as we had hoped. That ties into the subgroup's business. I cannot see how that should be a problem; I would be very surprised if it were. We should get neuralgic if that is a problem.

1014. **The Chairman (Mr Wells):** On principle, are members agreed that we ask for that extension, and that we write to the economic subgroup?

1015. **Mr Murphy:** Write to yourself?

1016. **The Chairman (Mr Wells):** No, we would write to Mr Molloy on this occasion — he is chairing tomorrow's meeting — to say that that has been agreed. We would then have to wait for the Secretary of State's decision on plenary business.

1017. Are there any other issues?

1018. **Mr McFarland:** Given that we are now starting our proper business, may I suggest — as was agreed during Monday's meeting on institutional matters — that we meet all day on each of our allotted days next week?

1019. **The Chairman (Mr Wells):** That is exactly what I was about to propose. It is very good that that came from the floor, rather than as a diktat from the Chairman. This could be our ninth area of consensus, which may be a record. Can we agree to meet all day next

Wednesday, with lunch provided in the middle of the day to enable members to continue, perhaps finishing at 4.00 pm or 4.30 pm? That is a council night for many members who are councillors.

1020. **Mr Weir:** Speak for yourself.

1021. **The Chairman (Mr Wells):** The first Monday of the month is normally our council night. Dolores, does that present a problem for you?

1022. **Mrs D Kelly:** No. I have another point.

1023. **The Chairman (Mr Wells):** Can we reach agreement on this?

1024. **Mr Ford:** As I plan to be on holiday next week, I am very happy to give consent to the rest of you working late.

1025. **The Chairman (Mr Wells):** I am sure that Mr McCarthy, or whoever it is, will be delighted with an all-day sitting. Are we agreed that Wednesday will be a full day?

Members indicated assent.

1026. **Mrs D Kelly:** Mr Chairman, you mentioned at the outset that each party would today be asked to give only a short oral presentation. However, you then said that papers would follow in relation to party positions on the issues.

1027. **The Chairman (Mr Wells):** I thought that the request for papers was aimed at outside bodies. However, that is an interesting point. Should we look at that matter?

1028. **Mr McFarland:** It was originally intended that each party — for each meeting on Monday, Wednesday and Friday — would produce a paper to which they would speak. On Monday, some parties did that, and some did not. However, we agreed that parties were going over exactly the same ground as they covered a month ago. If there was something new that a party wished to add to the mix, they could produce a paper on it, but otherwise, we agreed to get on with our business. That is what we did this morning.

1029. Technically, we had been asked to produce papers for today. On Monday, most

members agreed to dispense with that and to go straight into our discussions. Most of the issues raised by most of the parties are in the Hansard reports of a month and a half ago. Obviously, we will discuss those matters in turn in more detail as we go through next week. Therefore, I do not see the need for papers.

1030. **The Chairman (Mr Wells):** Mrs Kelly has raised an issue. We have skirted around the question of whether we call for papers from outside bodies on policing and justice. I cannot recall our tying down a decision on that.

1031. **Mr Murphy:** When we discussed witnesses, we said that there was the option to call for papers, rather than call for people to appear before us. We should apply the same broad flexibility that we have applied to calling witnesses: as our discussions progress, if we feel that somebody should appear before the Committee or that somebody should provide us with a paper, we will agree on that.

1032. **Mr McFarland:** Most of the issues that we are about to discuss are well documented; we have been at them for some years. The Government have an entire discussion paper on devolving policing and justice, and that, presumably, is our starting point. We have asked Committee staff to prepare a briefing paper on their analysis of that paper. As Conor says, we may need to call on extra advice as we go on, and that advice can be in written form or in the form of oral evidence. We can deal with that matter when it arises.

1033. **Mrs D Kelly:** Two separate points were raised, one of which was to do with witnesses. My point, however, concerned party positions on the different issues that were outlined and put before us today. We understood that a paper would be required from each party. Those papers would be succinct, but at least they would reveal parties' common understandings and show how easily agreement could be reached. As a result, some success could be made of this Committee.

1034. **The Chairman (Mr Wells):** We have decided not to do that. The DUP produced a paper, but nobody else did.

1035. **Mrs D Kelly:** We have produced a paper.

1036. **Mr Attwood:** We have produced a paper, which, subject to some correcting for accuracy, we shall circulate. You never know, it might inform people.

1037. **The Chairman (Mr Wells):** That decision is voluntary. The next meeting of the Committee will take place on Friday, and it will deal with safeguards, equality issues, rights and victims. There will probably be different personnel in attendance, but our next meeting will be at 10.00 am on Friday.

Adjourned at 12.06 pm.

Wednesday 9 August 2006

Members:

The Chairmen,
Mr Francie Molloy and Mr Jim Wells
Mr Fred Cobain
Mrs Arlene Foster
Mrs Dolores Kelly
Mr Gerry Kelly
Mr Danny Kennedy
Mrs Naomi Long
Mr Raymond McCartney
Mr Alan McFarland
Mr Alban Maginness
Mr Alex Maskey
Mr Sean Neeson
Mr Peter Weir
Mr Sammy Wilson

The Committee met at 10.06 am.

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

1038. **The Chairman (Mr Molloy):** I remind members, as usual, to switch off their mobile phones, as they interrupt recording, and we have lost some proceedings before because of them. We will break for lunch at 12.20 pm, which we will have in this room. Jim Wells will chair the afternoon session, as I am going to a wedding. I have to get my priorities right.

1039. Are substitutes present?

1040. **Mr McFarland:** Mr Chairman, we expect Mr Kennedy shortly; Mr Cobain is standing in for Mr McNarry today.

1041. **Mr G Kelly:** I have no idea who I am deputising for; I just came along. *[Laughter.]*

1042. **Mr Raymond McCartney:** I am deputising for Martin McGuinness.

1043. **Mr A Maginness:** I am standing in for Mark Durkan.

1044. **Mrs D Kelly:** I am standing in for Alasdair McDonnell.

1045. **Mr Neeson:** David Ford sends his apologies.

1046. **Mrs Long:** I am here as me.

1047. **Mrs Foster:** I am here for Lord Morrow; Sammy Wilson will be joining me soon for Ian Paisley Jnr; and Peter Weir will be here for Rev McCrea.

1048. **The Chairman (Mr Molloy):** Do members have any relevant interests to declare?

1049. **Mrs D Kelly:** I am a member of the Northern Ireland Policing Board.

1050. **Mrs Long:** I am a member of Belfast District Policing Partnership (DPP).

1051. **Mrs Foster:** I declare Policing Board membership.

1052. **Mr Cobain:** I too declare Policing Board membership.

1053. **The Chairman (Mr Molloy):** Gerry, do you have any interests to declare?

1054. **Mr Cobain:** The Policing Board. *[Laughter.]*

1055. **Mr G Kelly:** How did you hear?

1056. **The Chairman (Mr Molloy):** Our next agenda item is the draft minutes of last week's meeting. Are members content?

Members indicated assent.

1057. **The Chairman (Mr Molloy):** Under "Matters arising", Mr Wells wrote to the Secretary of State seeking his attendance at this Committee. However, we have not received a reply. There has been communication between the Committee Clerk and the Northern Ireland Office (NIO), but there has been no reply.

1058. We also have the revised list of law and order issues, which was agreed at last week's meeting. The first heading on the revised list is "Devolution of policing and justice"; the second is "Policing", under which are "Intelligence Services", "Policing issues" and "Police

Ombudsman”; the third heading is “Justice issues”, under which fall “Community Restorative Justice” and “Residual justice issues”; the fourth heading is “Rule of law”, under which come “Criminality”, “Decommissioning” and “Paramilitarism”.

1059. Members should be aware that those issues will be discussed in the following sessions, so we will try to avoid straying into them today.

1060. Today, we will discuss two sections of the revised list: devolution of policing and justice; and the Northern Ireland Office discussion paper ‘Devolving Policing and Justice in Northern Ireland’. It is up to members how we handle this, but it has been suggested that the discussion on devolving policing and justice be separated into two categories: the option for ministerial and departmental structures; and matters for devolution. Are members content?

Members indicated assent.

1061. **The Chairman (Mr Molloy):** Everyone has a copy of the discussion paper, which contains the models. I suggest that members discuss the paper, and then I will take proposals arising from that discussion, rather than interrupting the discussion with proposals that may be counteracted later on. We will take it as we go, but if members are happy to have the general discussion followed by proposals and recommendations at the end, we will proceed.

1062. **Mrs Long:** There are three issues around the devolution of policing and justice matters: the structures; matters which will be devolved; and the timing of devolution. There are, therefore, three components to be discussed. We have decided how to deal with the first two, but when will we discuss the timing?

1063. **The Chairman (Mr Molloy):** The timing should be the next issue to be discussed.

1064. **Mr G Kelly:** I hazard a guess that the longest discussion will be on the NIO discussion paper, so it might be helpful to discuss the timing first or second.

1065. **The Chairman (Mr Molloy):** Are you suggesting that we discuss timing in the first session?

1066. **Mr G Kelly:** I am open to that, but since you suggested discussing the models first, let us do that. However, timing is relevant and, I hope, discussions on it will not take as long as those on the actual discussion paper will take.

1067. **The Chairman (Mr Molloy):** Nothing is ruled out in these discussions, and I have said that from when the PFG Committee meetings started. Both Chairmen are content to permit discussions on whatever members think relevant.

1068. **Mr McFarland:** Following the meetings of the past six weeks, it is obvious that a number of parties are still not confident that the background scenario is one in which the devolution of policing and justice or devolved government could be easily dealt with at present. Part of the reason why members were content that the “Rule of law” was put at the end of the list was because they realised that it would cause the drama. Members will be asking if the conditions are right for the devolution of policing and justice, and they will be stating whether they are comfortable and confident that all the parties have fulfilled their obligations to enable it to occur.

1069. The question of timing, one would argue, is directly related to that confidence and the last issue on the list, “Rule of law”. Therefore, while timing is important — and I understand that it must be discussed — it would be beneficial to tease out the practical steps that are not directly related to whether parties feel comfortable to have devolution of policing and justice yet. One could argue, therefore, that timing is directly related to the last topic for discussion, “Rule of law”, and it could be discussed alongside criminality, decommissioning and paramilitarism. Those areas will all have an important bearing on when parties will feel comfortable with the devolution of policing and justice. We must remind ourselves that none of this will happen until there is an Assembly vote on the issue.

1070. It makes sense to leave the discussion on the timing of devolution of policing and justice until the end of today, or perhaps until we discuss “Rule of law”, which impacts on timing.

The Committee can discuss detailed structures without prejudice, but, as soon as we begin to discuss timing, we will enter into other complex issues that may interfere with the flow of our day.

10.15 am

1071. **Mr G Kelly:** Was it agreed that the devolution of policing and justice would take place midway through a sitting of the Assembly, or in an equivalent period? Have we moved away from that?

1072. **Mr McFarland:** The Committee has worked hard to deal with the straightforward matters, and the more fundamental issues have been put off until the end. The DUP has spent six weeks having a go at Conor and Martin over various matters, including whether paramilitarism and criminality have stopped. Such matters cannot be resolved in advance of the publication of Independent Monitoring Commission (IMC) reports confirming that they have stopped. We can sit here all day arguing about that; we have done that, and those discussions have been reported in Hansard. All parties have stated their positions on the issue.

1073. If we try to address the timing issue, the question will arise about whether other parties feel that Sinn Féin is ready to address policing, and whether Sinn Féin is ready to address policing and support the rule of law. If Sinn Féin says that it is ready, the DUP will say that it is not, and we will not get anywhere. I suggest that we stick to the business of examining the models, as that is philosophical and uncontentious. If we started with timing, we would spend the next two hours having a barney, rather than getting on with some solid work.

1074. **Mr G Kelly:** If Mrs Long and the other parties are content, I am happy to discuss the models, and then we can come back to the other issues.

1075. **The Chairman (Mr Molloy):** Sammy, do you have any interest to declare?

1076. **Mr S Wilson:** No.

1077. **Mr Neeson:** I was a member of the Police Authority for Northern Ireland before the ceasefires.

1078. **The Chairman (Mr Molloy):** Those issues are relevant to all the parties.

1079. **Mrs Long:** With regard to the options for ministerial and departmental structures, the Alliance Party wishes to comment on the four models.

1080. The Alliance Party believes that the Patten Commission proposals represented a fundamental review of policing and the creation of a single professional police service. Those proposals have been largely implemented. Therefore, we would like to see progress, with all parties accepting the rule of law as the baseline and becoming involved in the various structures and offering their unequivocal support to the police.

1081. Unlike other parties, the Alliance Party does not simply view this as an issue for Sinn Féin, which is the most notable absentee from the Policing Board. Other parties must also show their support for the rule of law when it is exercised. Often, parties are critical of how the police exercise the rule of law in their communities, but, when they exercise it in someone else's community, they are supportive of it. We would like people's approach to policing to be consistent.

1082. The Alliance Party believes that it would be unhelpful if policing and justice were to become politicised by its devolution and become an issue of contention. Policing and justice will cut right to the core of people's sense of security, and, from that perspective, it is important that the entire community has confidence in how it is devolved, operated and managed.

1083. The structural issues relating to the devolution of policing and justice cannot be divorced from those concerns that the Alliance Party raised during the institutional strand of discussions: different sections of the community will still perceive that there is the potential for policing and justice matters to be devolved into the wrong hands. That concern cuts right across the community, not only one section.

1084. The Alliance Party's preference is for policing and justice to be devolved in the context of an Executive that assumes collective

responsibility and within which there is a higher degree of accountability over ministerial decision-making and decision-taking than under the previous arrangements. It is also important that matters relating to the accountability structures between the Executive and the Assembly are resolved.

1085. I wish to comment on the four models of ministerial and departmental structures that have been proposed. It is worth noting that in Iraq, where there is collective and ethnic tension in regard to policing, much pressure was applied to ensure that policing and justice matters were not placed into the hands of any particular section of the community, but were taken on by a neutral body.

1086. The existing Executive structures are inadequate to deal with devolution, because they provide few incentives for moderation and accommodation. Therefore, the review of the institutional dimension is critical in getting the devolution of structures right. None of the structures offered in the joint declaration provides an ideal way forward. I assume that the Committee will consider each model in detail, but I will take a cursory look at them now.

1087. If, as suggested in model 1, policing and justice were devolved to a single Department under the current arrangements, without the Executive having full collective responsibility, the fear throughout the community would be that policing and justice matters could somehow be manipulated, or that the Minister could interfere, with little recourse, in operational matters.

1088. Model 2 suggests a single justice Department with two Ministers. That throws up the same questions that we have already discussed relating to the unwieldiness of OFMDFM structures in the last Assembly, and to productivity having been fairly low in comparison to the amount of effort made. A single Department with two Ministers is also something of a curate's egg. In the institutional format of this Committee, we talked about trying to strip away some powers and vest them back in other Departments. That would conflict with giving policing and justice to a Department led by two Ministers.

1089. Model 3 proposes extending the remit of OFMDFM to cover policing and justice. Although a single justice Department with two Ministers operating in conjunction may give people a sense of confidence, as the two Ministers would have to agree on every decision, it is unlikely to prevent a political tug of war.

1090. The Alliance Party's concern about model 4, which suggests two distinct Departments with separate functions, is twofold. First, there is already a division between the powers to be devolved and those that Westminster will retain. Model 4 involves a further split between a policing Department and a justice Department. The substantial capacity for confusion among the general public as to where the remit for individual issues of policing and justice would lie would be unhelpful.

1091. Furthermore, that model would not address the specific concern about the unfettered power of Ministers in each Department. Although policing and justice would be divided between two Departments, each with a lower remit, the powers to take decisions without recourse to colleagues would be the same. Therefore, model 4 does not address the structural issue.

1092. Currently, the Alliance Party is not particularly exercised about the matters to be devolved and is fairly happy with the list that has been drawn up. However, we have a concern about issues relating to security and the security services.

1093. The policing and security structures in Great Britain are not as politically accountable as the proposed structures in Northern Ireland, and the Alliance Party is therefore concerned about the retention of security issues, such as MI5 and so on, because of that lack of accountability.

1094. There is a significant disparity in how republican terrorism and loyalist terrorism are viewed. The Government view republican terrorism as a national security threat to be dealt with by MI5. Loyalist paramilitarism, however, is seen more as criminal activity and is dealt with by the police at a local level and under the devolved structure as it is not perceived to be a

threat to national security. However, the Alliance Party sees no difference between them. Its main concern is that there is a disparity in how the two are dealt with; it wants to see that disparity resolved so that people will have confidence that the paramilitary threat is being dealt with in the same way and through the same accountable structures — regardless of where it emanates from.

1095. The Alliance Party has more detailed papers on this issue, and it is happy to submit them for consideration, but, as an opening statement, that is probably more than enough.

1096. **The Chairman (Mr Molloy):** Can members keep to the first part? The models are divided into two parts, and the matters for devolution are in the second part.

1097. **Mrs Foster:** Like the Alliance Party, the DUP believes that this issue must be set in the context of an institutional review, accountability structures, and the scaling-down of Departments to make way for whatever will be proposed on policing and justice. That is an acknowledgement of what the DUP has been saying about timescale, and I note what Alan said about that. If we had started off with a timescale, there would have been a brief discussion, Chairman. The Committee organises itself on consensus, and as far as the DUP is concerned, the timescale — if put in place — would have done more damage to confidence in the DUP's community than anything else. It is not about a timescale; it is about gaining the confidence to put structures in place.

1098. The DUP has difficulties with all the various models that have been put before the Committee, and that is what we are here to discuss. The DUP also believes that there would be difficulties about agreement and that the problems that have arisen with OFMDFM would also arise with a single justice Department. It would be unwieldy and would, in many cases, lead to deadlock. We were all aware of the unfettered powers of Ministers in the previous Assembly, and a single justice Department would bring difficulties.

1099. OFMDFM's remit is large enough already, without extending it to cover policing and justice. Putting something as important as

policing and justice into OFMDFM would be a non-starter.

1100. Policing and justice are inextricably linked, and dividing them into two distinct Departments would lead to severe difficulties — especially if one were held by a unionist and the other by a nationalist or republican. That must be addressed.

1101. We are dealing solely with ministerial and departmental structures. However, in relation to policing, Naomi was right when she said that GB does not have the same accountability structures as Northern Ireland does. Following the Patten Report, policing here is one of the most scrutinised — if not the most scrutinised — matters in the world, with the Police Ombudsman, the Oversight Commissioner and the Policing Board.

1102. Many policing matters have been sorted out. The Committee may take that into account in considering departmental structures. The DUP is suggesting a single justice Department with senior and junior Ministers, the junior Minister having responsibility for policing. Policing relates mainly to operational matters; justice would be the more senior portfolio. That is something to be discussed. My party will not be prescriptive about that. Those are my initial thoughts.

10.30 am

1103. **Mr G Kelly:** I begin by putting the discussion into context. When we are talking about models, the context must be borne in mind. The Alliance Party and the DUP have discussed institutional problems and their difficulties with Executive power. Transfer of power is the mainstay of the model of policing envisaged by the Patten Commission. Without that, the potential for a new beginning for policing is seriously undermined. In paragraph 7 of the policing and justice section of the Good Friday Agreement, the two Governments agreed to a transfer of powers on policing and justice. From Sinn Féin's point of view, that requires taking power away from London and out of the hands of the British seurocrats in Whitehall and Stormont Castle.

1104. Recommendations 20 and 21 of the Patten Report of 1999 explicitly recommended the transfer of powers to enhance, not diminish, the new arrangements for policing. The 'Review of the Criminal Justice System in Northern Ireland' in 2000 also supported the transfer of powers to local democratically accountable arrangements.

1105. The Patten Commission envisaged that the transfer of powers would have positive implications for policing arrangements in many ways, for example, the appointment of chief police officers and civilian equivalents would become subject to approval by members of the power-sharing Executive, who would also be empowered to call upon the PSNI Chief Constable to resign in certain circumstances. The Patten Commission also foresaw the First Minister and the Deputy First Minister as jointly assuming responsibilities previously exercised by the British Secretary of State following the transfer of powers, such as the appointment of independent members of the Policing Board, determining the remuneration and expenses of board members, and so on.

1106. The key distinction between Sinn Féin's position and those of other parties is that Sinn Féin wants to achieve that which was set out in the agreement as the basis for a new beginning for policing. For that to happen, agreement on a time frame is needed. This is important. Previous negotiations were already centring what that time frame should be. Agreement is also required on the departmental model, which we are dealing with now, and, perhaps most importantly, the powers to be transferred. Unlike Mrs Long, I believe that there are issues in the document that will necessitate the longest discussion we will have. The first step in the enactment of the necessary legislation was taken a week or two ago, and Gerry Adams has said that he will go to our party's national executive and call a special Ard-Fheis.

1107. Sinn Féin has been pressing the British Government to honour its commitments by transferring power to local democratically accountable arrangements under an Assembly. However, the all-Ireland arrangements are also

important. They are interdependent institutions, set up under the Good Friday Agreement, and must also become a part of the Committee's discussion.

1108. A huge issue, which is getting bigger, is Peter Hain's statement that MI5 should have primacy in policing the Six Counties. That is after the long negotiations that have taken place and would be a reversal of the Patten recommendations. It is not only Sinn Féin that strenuously opposes that. The SDLP has spoken publicly about it. The Irish Government, the Police Ombudsman for Northern Ireland, the Oversight Commissioner and the Northern Ireland Human Rights Commission are now forcefully voicing their opposition. Sinn Féin wants to see the role of British securocrats in our country reduced and ended; not supported and expanded. That should apply not only to MI5 but also to those anti-agreement elements and securocrats still operating in the PSNI and in other associated agencies.

1109. Fundamental principles should underpin the transfer of power: a speedy, time-bounded process; maximum transfer of powers on policing and justice in so far as they relate to the island of Ireland; democratic accountability within the Six Counties and in all-Ireland arrangements; freedom from partisan political control; entrenchment and primacy of human rights; and the safeguarding and demarcation of roles and responsibilities.

1110. The following items will also necessitate long discussion, depending upon which type of ministry is decided upon: the Northern Ireland Policing Board; the Police Ombudsman for Northern Ireland; the Chief Constable of the PSNI; and the number of protocols necessary in implementing and validating the transfer of powers.

1111. With regard to the type of models that have been proposed, and in the light of all the issues that have been raised previously, I should say from the outset that, from Sinn Féin's point of view, trust is an issue. Whatever happens in the longer term, we must take some sort of shared approach to this matter. Naomi talked about neutrality, but the fact remains that

sections of the community are affected by this matter in different ways and should therefore be involved in this. While Sinn Féin is very open to discussing different models, the party's immediate attitude is that a shared approach must be adopted so that both sections of the community — in political terms — can be involved. We are open to suggestions as to what the combination should be; although, unlike the DUP, I think that the suggested model of a single ministry with two Ministers is possibly pushing slightly ahead.

1112. **Mr A Maginness:** It would be premature to be prescriptive this morning. In effect, a number of different models have been proposed by the British Government, but it is very difficult to evaluate them without agreeing a set of principles, which can then form a basis for evaluating individual models and reaching a collective conclusion on one of the models under discussion today, or another model. The SDLP believes that we must get the principles right before we can construct a model that could be blessed by consensus around this table.

1113. The whole discussion on the devolution of policing and justice powers must be viewed in the context of power sharing and partnership. The Executive, and the parties within it, must be generally supportive of the different Ministers and Departments, so that there can be collective goodwill and a sense of shared responsibility. A sense of shared responsibility creates partnership, that partnership creates goodwill, and, in turn, that goodwill creates good government for all the people of Northern Ireland. That is an opening contextual basis for discussing policing and justice, and devolution.

1114. The SDLP also believes that the current policing institutions — the Policing Board, the DPPs, the Police Ombudsman and the Police Oversight Commissioner, whose office will exist until the end of May 2007 — should continue as at present in the event of devolution of policing powers in the future. That is an important principle to assert; there should be no interference with what is presently established.

1115. The devolution of powers must not only involve strand one of the Good Friday Agreement,

which deals with Northern institutions, but also strand two, which deals with North/South institutions. The latter is part of the current basis for government on the island, and therefore should be the basis for the administration of justice and policing on the island.

1116. The fourth principle concerns the need for detailed consideration of the future structure of the justice Department or Departments, the number of Ministers, etc. That must be consistent with the second principle on the protection of the present institutions. That should also be consistent with the Patten Report.

1117. The fifth principle is that there is a range of important and sensitive powers held by the British Government that the SDLP believes should be devolved, with necessary cross-community protections. Those would include: appeal powers by the Chief Constable against a ruling of the Parades Commission — a power that has not been used to date, but is still a residual power held by the Secretary of State; the protection of fifty-fifty police recruitment, which currently requires renewal every three years; and protection against a devolved Minister from one community vetoing a Policing Board inquiry without cross-community agreement. The SDLP emphasises the importance of those sensitive and potentially crucial powers that are held by the British Government.

1118. The sixth principle is that the gathering and managing of all intelligence must remain with the PSNI. The SDLP has been very firm on that point. That includes national security intelligence, the threats presented by organised and serious crime, and international terrorism. It is important to develop and maintain confidence in policing. If intelligence gathering were removed from the PSNI, which would be left with a fairly minor residual function, PSNI capacity would be effectively weakened. The SDLP believes that that would be wrong.

1119. The seventh principle is that — independent of the requirement for elements of justice and policing powers to be devolved — there are particular issues that require all-Ireland integration as part of strand-two arrangements. The SDLP believes that an all-

Ireland assets recovery agency should be created and that there should be an upgrading of all-Ireland mechanisms to address organised crime. The SDLP believes that that is of critical importance.

1120. The eighth principle is that the British Army and security services should have no role in the North aside from that outlined in the Hillsborough declaration and in the Patten Report. In particular, the British Army should have no function in relation to intelligence gathering, management, or other intelligence capacity. That should be a principle that parties should adopt as a prerequisite for proper negotiation on the devolution of justice.

1121. Our ninth principle is that there is a requirement for the transfer of powers to the maximum threshold. That would be healthy for the credibility and authority of a restored Assembly and would protect against undue influence from the Government or agencies in London. After examination of the discussion paper, the SDLP believes that that area must be fully assessed and robustly challenged to ensure the maximum transfer of powers. That should include matters where constitutional conventions exist or where issues are not fully governed by statute.

1122. The tenth principle is that there should be a fixed and firm deadline for the devolution of justice. That would create a degree of certainty, avoid doubt, and create momentum. At an earlier stage, the SDLP argued that a target date of six months was realisable. Arguably, a more limited time frame is now justified.

10.45 am

1123. The devolution of justice is a further test against which to judge each party and against which each party can judge itself. We strongly urge other political parties, the Governments and other interested parties to adopt the principles that we suggest. That is the best way to ensure that, should the devolution of justice arise, it is done correctly. If we get the principles right, we can move on to considering the specifics of the modalities and search for as wide an agreement on a preferred modality as

possible within the context of these political discussions.

1124. **Mrs Foster:** Will the SDLP share its paper with the rest of us?

1125. **Mr A Maginness:** We will present it in due course.

1126. **Mrs Foster:** Does that mean that it is not sharing it at this time?

1127. **Mr A Maginness:** No, not at the moment — we may want to make some adjustments to it.

1128. **Mrs Long:** We discussed the submission of papers. The Alliance Party is happy to submit one, if it is decided that that is necessary. It may be worth discussing at the end of this initial session whether parties want to present written papers.

1129. **The Chairman (Mr Molloy):** I do not want to disrupt Alan's flow, so please continue.

1130. **Mr McFarland:** It was agreed at the previous meeting that if parties had papers they should circulate them. Some have; others have not. If parties have a tome of wisdom, they should circulate it.

1131. **The Chairman (Mr Molloy):** It was not a precondition.

1132. **Mr McFarland:** I know that.

1133. It is worth reminding ourselves of the context of all this, because it is key to the discussions. The first point is that none of this will get up and running until the Assembly is up and running. For that to happen, there has to be agreement between the DUP and Sinn Féin, and the DUP has to accept that Sinn Féin has met all the commitments that the DUP believes that it should. In theory, we are discussing this matter against a background of a new era of harmony. That does not mean that there are not any safeguards, but that is the context in which all this will happen. Current difficulties may not exist when we get to that stage. We must remind ourselves that what we are talking about can be triggered only by cross-community vote in the Assembly; therefore everybody must be in agreement. It is important to keep that in mind.

1134. There is clearly a question about the number of Departments. All the parties are agreed — and it is in legislation — that there cannot be any more than 10. Therefore if there is to be a Department or Departments for policing and justice, then either the law must be changed to allow 11 or 12 Departments, or we consider a regrouping of the Departments to make them more effective and efficient. Every party that contested the previous election said that it wanted to look at that issue, which cross-fertilises into the institutional talks that we have on Mondays.

1135. There is a fair amount of agreement that it would be more efficient to have policing and justice together in the system. In England, where those functions are separate, consideration is being given to drawing the two together to make them more effective and efficient. In that case, it seems daft for us to split them. The Government also expressed that view in their paper, which suggests strongly that those functions should be kept together as an entity.

1136. The other thing to remember — and I think that this was brought out in the paper that has been prepared for us — is that much of policing and justice is not under anyone's direct control. The Chief Constable is independent, so we cannot interfere in his operational policy.

1137. The Policing Board is probably the biggest conundrum. Ten Assembly Members sit on the Policing Board. If there were a Department for policing and justice, it would presumably need a Committee, so that would account for another 11 Members. That adds up to 21 MLAs. The question is whether the same people could sit on both.

1138. **Mr S Wilson:** The rest could be fitted in somewhere.

1139. **Mr A Maginness:** We will run out of Members.

1140. **Mr McFarland:** Are we perhaps looking at having a Policing Board that is made up of independent members? A Policing Board with agency status would conduct the hands-on, day-to-day work, but the Committee with responsibility for policing and justice would

supervise it. Some fairly major issues must be sorted out down the line. The Northern Ireland Prison Service operates independently, as does the Police Service of Northern Ireland (PSNI), and the criminal justice and legal profession has always been, as Arlene will confirm, a slightly ethereal world.

1141. **Mrs Foster:** I will not confirm that.

1142. **Mr McFarland:** The judiciary is independent and almost runs itself. Of course, input is provided when selecting people for positions, and so forth, but, by and large, the Northern Ireland Court Service and the courts system operate independently. We are discussing organisations that are already well on their way to being stand-alone agencies, unlike, for example, at the Department for Regional Development (DRD) or the Department of Health, Social Services and Public Safety (DHSSPS), where the Minister is in the middle of everything and has a direct input. A Minister would not be able to wade into and tinker with policing and justice at will; that is not the way in which policing and justice work. We should bear that in mind.

1143. The issue of cross-border policing and justice between two sovereign Governments must be debated. How do we deal with two police forces and two justice systems on the island? As far as I can see, there is a major drive on the part of the two Governments to slot in as many cross-border policing and justice measures as possible before any of those heathen MLAs from Northern Ireland get their hands on policing and justice. There seems to be a major push to implement cross-border agreements, policies and protocols before the Assembly is given responsibility for policing and justice.

1144. What safeguards will be in place? Let us say that the DUP and Sinn Féin hold the posts of First Minister and Deputy First Minister respectively and are hugging each other in Government, and all the problems that those parties had with each other have been resolved.

1145. **Mr S Wilson:** An ethereal world.

1146. **Mrs Foster:** He is back in dreamland.

1147. **Mr McFarland:** It will still take the communities some time to accept that one or other — or, indeed, any — of the parties can be allowed unfettered access to the post of Minister for policing and justice. Therefore, safeguards are necessary.

1148. Do we have only one Department, dealing with both policing and justice? Could we afford to have two Ministers at a time when we are downscaling Departments and complaining about costs? How could we justify having two Ministers, each on £76,000, or whatever a Minister is paid these days?

1149. Do we give the policing and justice portfolio to the First Minister and the Deputy First Minister? As some colleagues have already described, the First Minister and the Deputy First Minister in the previous Assembly lived in a schizophrenic world in which they were the ambassadors for and the face of the Assembly, opening shopping centres and glad-handing the world, while, at the same time, trying to run a Department that had responsibility for odds and sods and had to carry out other strange functions. At Monday's meeting of the PFG Committee dealing with institutional changes, it was pointed out that we are required to completely re-examine OFMDFM's responsibilities. Therefore it would appear slightly overenthusiastic to give the First Minister and the Deputy First Minister responsibility for policing and justice on top of all their other responsibilities.

1150. If we opt for one Department, how do we provide safeguards? Two Ministers would prove quite expensive. We could decide to have a Minister and a junior Minister, and to alternate their roles. Should that junior Minister be what might be termed a "super junior Minister", who would have access to all the papers? Although only one Minister would be paid £76,000, the Minister and the "super junior Minister" would be required to operate in the same way in which the First Minister and the Deputy First Minister operated. The "super junior Minister" would have to agree any changes that the Minister proposed. That would provide a safeguard.

1151. There are both costs and benefits with all of those models, and we will need to tease those out as we proceed.

1152. **The Chairman (Mr Molloy):** Danny, you have just come in recently. Members of the Policing Board and other organisations have been making declarations of interest.

1153. **Mr Kennedy:** I am a member of the Policing Board.

1154. **The Chairman (Mr Molloy):** Thank you. Members, we have had discussions on the issues. Have we any definite proposals?

1155. **Mrs Long:** That might be somewhat premature. I would like to go back on a few things that have been said. First of all, I wish to confirm, in case it was not explicit in my original statement, that Alliance is in favour of the devolution of policing and justice. As someone who is always slightly sceptical, I have a tendency to focus on the problems and on trying to resolve them. The questions for us are: "How?", "What?" and "When?", not whether it should happen. I want to make that quite clear.

1156. The SDLP said that there should be a firm time frame, and there has been some discussion about that. We believe that to set a firm timescale would be counterproductive. We need to set a target date so that people can see when it may be able to happen — two years from the restoration of devolution seems sensible. That would allow time for devolution to establish itself and become stable. However, we do not want to be prescriptive about it. I am intrigued that the SDLP has said that it thought that it could happen in fewer than six months, yet today it said that it would be premature to discuss the structures. If we are not prepared to do that in some detail now, I do not know how we could be ready for policing and justice to be devolved in fewer than six months. I would like to explore that a bit.

1157. With regard to the neutrality of the Department — and I think Gerry Kelly raised this — it is not just about the Ministers having no political affiliations or opinions; that is not conceivable. We are talking about the community having confidence in Ministers

discharging their duties in an impartial way, particularly given the sensitivities of those roles. We are not talking about which Ministers could hold the posts; we are talking about how they would discharge their functions. That is why we feel that the ministerial code and Pledge of Office are important. People from the unionist community, for example, do not lose interest in policing and justice simply because a republican or nationalist happens to head that Department, just as they do not lose interest in education or any other matter. It would be important for the Ministers to discharge their functions in a neutral way, as opposed to the individuals being politically neutral.

1158. Those are the main issues that I felt that I should come back on in order to clarify Alliance's position.

1159. **Mr A Maginness:** We want agreement on the principles. Once they are agreed, the chosen model can be worked on and there would be a greater chance of agreement there — it is as simple as that. Without having agreed principles, it would be premature to decide on the model.

1160. **The Chairman (Mr Molloy):** Mr Maginness listed a set of principles. Does the Committee want to explore further the matter of what principles it would want to put in place before it talks about the models? Do we want to deal with that in more detail?

1161. **Mrs Foster:** You cannot take the all-Ireland devolution of powers as a principle in a vacuum; you need to know what powers you are going to put in. It strikes me that that goes entirely against the principle of consent that was meant to underlie the Belfast Agreement. I do not see any possibility of agreeing principles such as that. That is why I asked to see the SDLP paper. I am not being prescriptive in any way, but you cannot just state blandly and in a vacuum that you want to see the devolution of powers to all-Ireland institutions.

11.00 am

1162. **Mr A Maginness:** We are willing to share our thoughts on the principles that I have briefly outlined as soon as we can, and further discussion might come from that. Equally, we

would like the other parties to put their thoughts on paper to allow us to evaluate them and to judge them against our thoughts. It would be good if parties submitted in writing the principles on which they feel that the model for the devolution of policing and justice should be based.

1163. **Mr McFarland:** The difficulty is that the Committee has a fortnight, or perhaps three weeks, comprising two or three meetings, to get through its entire remit. At that point, it is expected to produce a report to be debated in the Assembly, and, as Peter Robinson said at the last meeting, the report may well form the basis of discussions and talks in the autumn. If nothing else, it will clarify the minds of the five parties as to what is not possible. We may well have to negotiate what is possible, and the report would be helpful for that.

1164. During the review in 2004, the parties were able to exchange papers and parse them and examine them, but the essence of having the parties in the same room is that we can actually discuss these issues. There is no time to pass papers round and for the parties to examine them. We need to have a discussion. We may need to pause and park issues from one meeting to the next, but the momentum must be kept up.

1165. At Monday's meeting it was clear that certain issues could not be decided: either the Committee needed further advice on them or they were too complex. Those issues were parked and the Committee moved to the next item on the agenda. The idea is to filter out a common understanding of what is not achievable. That leaves the Committee a number of options. Members may not be able to decide those here, but at the negotiations in the autumn, the subjects for discussion will be fairly clear, which will be quite helpful.

1166. The danger of having papers is that MLAs are quite busy. The idea behind being in a room together was to give momentum to the discussion.

1167. **Mr S Wilson:** If members want to have a productive discussion rather than simply talking in generalities, Mr McFarland's suggestion of filtering the issues on which we can have sensible discussions from the party wish lists

that we know we will not reach consensus on — or that we know will be decided above our heads — is useful.

1168. Mr Maginness has been the most specific on the principles. We might as well cut to the chase: there are a number of issues on which it would be pointless for the Committee to expend a great deal of time. We would not get very far with them.

1169. The first issue relates to the discussion at the start of the meeting. There is no point in our having a long discussion about timing and setting a maximum period for devolution. From a unionist perspective, the devolution of policing and justice will not occur until there is sufficient confidence that the context and atmosphere have changed. It will not be achieved by the setting of a deadline of six months or two years. Deadlines can be counterproductive. Devolution of policing and justice will depend on how parties behave. I do not want to get into a wrangle with Sinn Féin, but it will depend on that party's attitudes to the police and security. It would be a waste of time for the Committee to have a long discussion on that issue.

1170. The second point is exercising both Sinn Féin and the SDLP. I do not know whether there is any point in having a long discussion about intelligence-gathering. As I understand it, that decision has already been made. Protocols have been put in place between the police and MI5 to ensure a flow of information. We can discuss it, and members can express their views, but we will be wasting our time, because that is fairly well advanced.

1171. When this first came up at the Policing Board we had some discussion about it; I am no longer on the Board, but the matter has moved on. The Police Service of Northern Ireland would be the only service in the United Kingdom to retain national intelligence-gathering within its remit. I do not see that happening. Any argument that we could have would be fairly contentious, and what would be the point?

1172. Alban Maginness is obviously keen to add another political layer to cross-border police co-operation. He mentioned it two or three times, as did Sinn Féin. We are not against

cross-border co-operation on policing or asset recovery. Wherever we can learn from the Republic and harmonise what we do with what happens in the Republic to make policing and dealing with organised crime more effective, we are happy to do. However, it must be in the context of co-operation between our police service and justice system and the guards. There does not need to be a political layer at strand two laid down for that.

1173. From my own experience in the Policing Board, I think that what probably works more effectively is when individual officers from the two police services on the island decide to work together on projects and ventures. To introduce a further political layer in strand two would be counterproductive. Much good work is being done and is getting support from both nationalists and unionists in the structures that exist.

1174. **Mr G Kelly:** I do not want to get into a wrangle between Sinn Féin and the DUP either, but a couple of things need to be said. The DUP position on the devolution of policing is the same as its position on the institutions. We should not talk as if this is a clear issue that only deals with policing. The DUP is demanding all sorts of things before the institutions are set up, and, if the institutions are not set up, the argument over models can become redundant.

1175. Mr Wilson mentioned intelligence-gathering. The original statement was made by Paul Murphy. The matter is at an advanced stage, but the issue is not about the flow of information; it is about accountability. It is not only national security, to use the British term; they have talked about becoming involved in areas such as serious crime. They have talked about a difference between gathering intelligence on republicans and gathering intelligence on loyalists. I find it hard to accept that any party in an Executive would give up easily the necessary accountability for the area that they represent and over which they pass laws.

1176. I also take a different view on the cross-border issue, as might be expected. Sammy Wilson needs to say what he means. This ministry will be a Department in an Executive. Every other Department is involved in the

North/South Ministerial Council; is he arguing that this Department should not be involved? If he is talking about the cross-border implementation bodies or areas of co-operation, let him say either that he agrees that it should be an area of co-operation or that it should be an implementation body, which is more formal. I do not think that anyone will argue about the practicalities of what it means if someone says: “This is what it means practically and this would work better, or that would work better”.

1177. To take a position that runs contrary to what happens with every other Department and rule out the all-Ireland aspect, especially at this stage in this discussion, is putting a brake on the discussion rather than having a sensible debate.

1178. **Mrs Foster:** Regardless of who is Minister with responsibility for policing and justice in whatever departmental structure is agreed, they will not be responsible for national security — that is an excepted matter. That is why MI5 will retain primacy over national security.

1179. **Mr McFarland:** There should not be a problem with MI5’s position because, following this, the only thing that MI5 will be dealing with will be al-Qaeda terrorism. Republicans will be completely peaceful.

1180. **Mr Kennedy:** It did not seem like that in Newry last night.

1181. **Mr G Kelly:** Danny makes a fair point. It has been said that MI5 is taking over responsibility for serious and organised crime, so the definition of national security is not as narrow as Mr McFarland makes it. I also have a difficulty with accepting who decides what national security encompasses. To give an easily understood example: is a PSNI officer who is doing work for MI5 still accountable to the Chief Constable and the Police Ombudsman as regards investigations, or are they taken entirely outside that accountability structure, because it is an excepted matter, and can do anything that they want. If that is the case, we are travelling backwards in time.

1182. Therefore, “national security” will not mean the same here as it does from the British

point of view. The British Government have made statements — I have not made them up — about serious and organised crime coming under national security. They have singled out two sections of intelligence-gathering — loyalist and republican — and have said that the Committee’s opinion does not count; the Executive do not count; none of us will count; and they will do whatever they want.

1183. As a republican, I want MI5 to go. However, even if I were not a republican but merely someone involved in a democratic institution, I would want to know what the accountability mechanisms would be. I am surprised that unionists do not want to know that as well.

1184. **Mr McFarland:** Serious and organised crime is a matter for the Chief Constable and the PSNI. I think that Gerry is concerned that an overlap may be construed as occurring when a republican organisation is involved in organised crime, for example. However, we are trying to get to a stage where republicans are not involved in serious and organised crime. The DUP and the Ulster Unionist Party have made it clear that we are not getting involved in Government with Sinn Féin while republicans remain involved in organised criminality.

1185. Devolution can only happen if those involved in organised crime are unconnected to republicans or, indeed, loyalists. By then, it is envisaged that only “ordinary” criminals will be involved in criminality and that they will be dealt with by the police. There may be a period during which some people who were active republicans, and whose activities were not sanctioned by the leadership, cannot give up criminality. In such cases — as Martin McGuinness and Gerry Adams have said publicly — let the authorities deal with them.

1186. If, by then, MI5 is dealing with national security issues, threats by al-Qaeda and other external issues, we will be in the same position as the rest of the United Kingdom. Sinn Féin does not believe that we are the same as the rest of the UK, but that is how the agreement worked. Until we get consent from the people of Northern Ireland, we will remain part of the

UK, and, under UK law, MI5 deals with national security.

1187. At the last meeting, I said that this has all come about because of the enormous fuss that Sinn Féin and the SDLP made about Special Branch. They went on and on about Special Branch for four or five years. The Government clearly listened to them and removed responsibility for investigating republican activity from Special Branch, because it upset nationalists and republicans, and gave it to MI5. One could argue that they have been hoist by their own petards. Logically, when republican criminality ceases, the fact that MI5 will be dealing with al-Qaeda should not exercise republicans.

11.15 am

1188. **Mr G Kelly:** I do not want to accuse Alan of being naive, but if Gerry Adams's phone is bugged it will not be because he is in al-Qaeda. If a conversation between a British Minister and Martin McGuinness is bugged, I presume that it will not be because the British Minister is in al-Qaeda. It would be for some other purpose. Forgive me, but it is simply naive to think that everything will be hunky-dory because the issue in the North has been sorted out.

1189. I ask Mr McFarland again: is it acceptable that a PSNI officer — for whom certain members fought quite hard, argued for, and agreed accountability measures for — can be taken outside those accountability mechanisms?

1190. It is not only Sinn Féin and the SDLP that are worried about that. The Oversight Commissioner and the Police Ombudsman are also worried about it. The type of accountability that we are discussing does not cover repo powers and other powers. The Assembly should be given power to do something about that. Mr McFarland is accepting that this matter should be simply handed over to MI5 and that things will be OK.

1191. **Mr McFarland:** My understanding is that PSNI officers who are involved in intelligence-handling for MI5 will remain part of the PSNI and under the supervision of the Police Ombudsman. There is no question of any PSNI officer not being supervised by the Police

Ombudsman. She may be trying to extend her empire to include MI5 operatives here, but that is a different issue entirely. She also attempted to extend her empire into supervision and surveillance of the Army here. It has been reduced to garrison status and although most of the soldiers' families are here, the soldiers themselves are in Afghanistan or Iraq. Alban Maginness raised an issue about the Army, but that will probably not be an issue in a few years.

1192. We must be clear about whether there is a problem. Protocols are being developed, and there are issues about them. The Policing Board, of which I was a member until April, is taking a very close interest in them. The Intelligence and Security Committee at Westminster and the Police Ombudsman are also interested in what the protocols will be.

1193. There are issues about the production of intelligence, who handles it and what the protocols will be. For example, if information on organised crime is uncovered by MI5, can we guarantee that it will be passed to the Chief Constable? That is technically what the protocols will ensure. The protocols will be safeguard mechanisms, and there is a need for them. We do not want any organisation to withhold information for political reasons because it does not suit.

1194. I heard an accusation on the radio this morning that the Bloody Sunday Inquiry is being prevented from publishing its report because it may interfere with the political process. If information has been gathered on organised crime that may reflect badly on republicans, it would be wrong for MI5, under Government influence from London, to withhold that information and not pass it to the PSNI.

1195. Colleagues who are still sitting on the Policing Board can keep me right on the date, but I believe that those key protocols are due to be introduced by November. I agree with Mr Kelly that it is vital to get the protocols right. However, his fears are greater than they need to be.

1196. **Mrs D Kelly:** Members seem to forget that the British Government had the choice either to agree with Patten, whereby national security remained the responsibility of the Chief

Constable, who would then report to the Secretary of State, or to decide that MI5 should have supremacy. The British Government chose the latter option. The earlier comments about the Ombudsman and PSNI officers were unfair.

1197. The real problem concerned the handling of agents: what they were allowed to do and the level of criminal activity in which many could become involved. Many people who examine the handling of both republican and loyalist agents will wonder whose war it was. Did the situation here merely provide a training ground for many British policies?

1198. We are straying from the agenda and getting bogged down in the question of MI5, as opposed to discussing models and principles. The MI5 debate is important, but it is not right to say that the British Government did not have the choice of adopting an alternative approach — they could have been true to Patten.

1199. **Mr McFarland:** As the Policing Board is true to Patten.

1200. **Mr Kennedy:** As, indeed, is fifty-fifty recruitment.

1201. **Mrs Long:** Alan has said that the restoration of devolution would happen in the context of an end to paramilitarism. However, we must bear in mind that it could happen in the context of ongoing paramilitarism.

1202. The Alliance Party raised the issue of the different approaches to — and responsibilities for — republican and loyalist terrorism. The former would be addressed at a UK level, because it is also seen as a threat to national security, whereas the latter would be addressed at a Northern Ireland level, because it is seen to be more characterised by criminal activity.

1203. That differentiation would remain even if everyone were confident that the IRA had completely disappeared, because any remaining republican dissidents would be perceived as a threat to national security. Therefore, republican paramilitarism would be dealt with differently from loyalist paramilitarism, which could continue in the context of devolution, as it did previously.

1204. Attempts to ensure that all paramilitarism is dealt with in a fair and equitable manner and that the accountability structures are balanced and equal are not of concern only to those with a particular interest in paramilitarism. It is in everyone's interest to know that when paramilitarism becomes a threat to society, it will be properly dealt with and that accountability structures are in place.

1205. The Alliance Party has already expressed its concerns about the lack of UK-wide accountability structures. Part of the solution lies in more generalised reform of UK structures for tackling issues such as terrorism and national security. Although this Committee has no control over that, it must be part and parcel of our discussions.

1206. The context in which loyalist and republican paramilitarism may be treated as two completely different entities does not exist in Northern Ireland, because both threaten the stability of the society in which we live. The difficulty in regard to intelligence-gathering and defining where the PSNI remit ends and the MI5 remit begins is that none of the paramilitary organisations operating in this region can be easily separated into those with criminal empires and those without.

1207. There will be some crossover, because some of the criminal activity that the PSNI will be tackling is directly related and inextricably linked to a paramilitary organisation and its orchestration of such activities. It would, therefore, be difficult to see where that division starts. This area needs further exploration, because it comes down to the rule of law and people's understanding of that. One cannot simply say that the problem will be resolved because paramilitarism will not exist after the restoration of devolution.

1208. We must have structures that can withstand any resurgence of post-devolution paramilitarism, although we hope that that will not be the case. We would prefer devolution without any paramilitary threat. However, the structures must be robust enough to deal with that threat, should the need arise.

1209. **The Chairman (Mr Molloy):** Can we conclude discussions on this section? We are talking about various subjects, and it is unlikely that we will get consensus on the form of the models at this stage. Alban Maginness suggested a discussion about the principles. Do members agree that we should set first out the principles that would govern the type of model?

1210. **Mr Cobain:** Alban Maginness made the point that we do not have the time for that. Three meetings have been allocated to discuss policing and justice, and I have not yet seen the principles. We talked about discussing the principles next week. We cannot progress until we discuss the principles. We are still discussing the models, and that leaves only one week.

1211. **The Chairman (Mr Molloy):** We are discussing the models this morning, although members may be straying from the point.

1212. **Mr Cobain:** Alban Maginness's point is that we cannot move on and discuss the models until we agree the principles, and the principles lead on to the discussion about the models. We are discussing the models this morning, but, as far as Alban is concerned, it is akin to putting the cart before the horse. I want to discuss the models this morning so that we can reach some consensus. We have spent an hour and a half talking about an issue over which we have no control. I want to spend the rest of the day talking about issues over which we do have some control, such as models for the devolved institutions.

1213. **Mr S Wilson:** The Committee does not have the SDLP's paper, but I listened carefully to the 10 principles enunciated by Alban Maginness. I am not sure how many of them — if any — would inform us about the shape of the Departments or the models that we need. Some examples of those principles are: no role for the Army in intelligence-gathering — that is his view, but I do not know how that informs us about which models might be most suitable; protection of the present institutions in policing — again, I am not sure how that informs us about models 1, 2, 3, or 4; intelligence-gathering capacity to remain with the PSNI; and an all-Ireland assets recovery agency. I jotted

down some points on Alban's list, but I cannot make out some of my own writing.

1214. Some of those matters may exercise the SDLP. However, to come back to Fred Cobain's point, we could discuss those matters for one or two days, but would we be any nearer to a conclusion on whether model 1, 2, 3 or 4 — or some other model — would be the most appropriate? I agree with Fred Cobain; we might have an interesting discussion if we started to go through the principles, or if we produced our own principles.

1215. We are up against a tight timescale of three weeks, when we may not be any further forward. However, if that is our objective, rather than having a good chinwag about the issues, we should steer away from that route.

1216. **Mr G Kelly:** The discussion was about the models. It would be better if we had a discussion on the principles surrounding the models. Must policing and justice be shared among the parties in the medium to long term? There are four models. Could some of the models be ruled out? Everyone is opposed to the model of extending the remit of OFMDFM to cover policing and justice, so that could be ruled out for a start.

1217. I get the impression that everyone is arguing against the fact that the Minister might come from a specific party; that is a matter for d'Hondt.

1218. Is there a view that there should be some sort of shared approach to policing and justice? Do those have to be dealt with as one? That might at least narrow it down.

11.30 am

1219. **The Chairman (Mr Molloy):** I take it from the views expressed, by the Democratic Unionist Party in particular, that there is not the consensus that we need to deal with the principles before we move on to the models. We should look at the models one by one.

1220. **Mr S Wilson:** We want to get down to business, Chairman.

1221. **The Chairman (Mr Molloy):** I am all for that. By all means, let us cut to the chase. What

should the Committee rule in and rule out? That is on the basis of the structures being in place, not on the preconditions.

1222. **Mr S Wilson:** There has been a degree of consensus that at least two models could be ruled out. Almost every party has said explicitly that the Committee should try to cut back the remit of the Office of the First Minister and the Deputy First Minister. That structure did not work very well — it was a mishmash. To narrow the discussion down, model 3 could be taken out; no one feels any attachment to it

1223. Mr McFarland also made a point about this. The Committee is probably being directed away from recommending two distinct Departments. Members' instincts would be to reduce the number of Departments rather than manufacture more. The Committee should focus on models 1 and 2 and rule out models 3 and 4. My party is happy to do that because one has been shown not to work, and the other one runs contrary to our ideas for slimming down Government.

1224. **Mr Neeson:** Following on from what Mr Wilson said, there is a form of consensus that a single Department would be the most suitable option. If members could agree on that, we can move forward.

1225. **Mr G Kelly:** That is the reason why I raised the matter. There were discussions about that among some parties, although those probably did not include the DUP. We have no attachment to models 3 and 4.

1226. **The Chairman (Mr Molloy):** The proposal is that models 3 and 4 be excluded from discussion. Are members agreed?

Members indicated assent.

1227. **The Chairman (Mr Molloy):** We have narrowed down the discussion to models 1 and 2, unless any party wants to suggest a completely new model.

1228. **Mr G Kelly:** We have agreed one principle. It is shared.

1229. **Mr Kennedy:** The Swedish model, no?

1230. **A Member:** We are all agreed on that.
[Laughter.]

1231. **The Chairman (Mr Molloy):** Hansard is still recording proceedings.

1232. Let us focus on which of the two models members prefer.

1233. **Mr Neeson:** One important aspect that the Committee needs to consider is that, whichever model is chosen, there must be acceptance of collective responsibility. When we had devolution before, there was no collective responsibility.

1234. Equality is another consideration. In the last Assembly, voting was largely on sectarian lines. I refer in particular to the debate about maternity services and whether they should be located at Belfast City Hospital or at the Royal Victoria Hospital. If we are to move forward, any agreed set-up must be based on collective responsibility, equality and, to a certain extent, neutrality.

1235. **The Chairman (Mr Molloy):** That strays into the old issue of the institutions and the need for collective responsibility within them. Can the Committee focus on the two models under discussion in particular? The difference is that one model proposes two Ministers and the other proposes one Minister and a junior Minister.

1236. **Mrs Long:** Sean said that the context would predetermine the outcome. If the Alliance Party were asked to state its preference, it would opt for a single ministry with a single Minister. However, that would have to be in the context of an Executive with collective responsibility and the right accountability structures so that, if Ministers took decisions or were seen to apply pressure or to act beyond their remit, they could be stopped.

1237. That was not the case in the previous Executive, and it remains to be seen whether it will be the case, as changes to the institutional arrangements are still being discussed. We cannot prejudge the outcome of those discussions. Nonetheless, the Alliance Party would prefer an Executive with some type of collective responsibility and sense of direction.

1238. Our party believes that the proposed Department should be headed by a single Minister, who would no longer act on behalf of

his or her party but as a member of a collective Executive. That is completely different from a mandatory coalition Government, with a single Minister, in charge of a Department, yet acting in his or her party's interest, and with no accountability structures in place to inhibit that in any way. In that case, model 2 would be the preferred option.

1239. **Mr S Wilson:** Naomi, can I interrupt? A fairly strict ministerial code is needed to ensure that there is confidence in that Minister.

1240. **Mrs Long:** Absolutely. The Alliance Party stated that the ministerial code and the Pledge of Office would have to be strengthened in order to achieve that. Model 2 must be considered. Institutional arrangements cannot be divorced from this discussion because we are essentially discussing institutional arrangements for a particular Department — albeit one of the most sensitive ones. We must consider this matter in that overall context.

1241. The Alliance Party's position is reasonably clear. We now need to hear how other parties feel about collective responsibility because that cannot be divorced from the issue of policing and justice.

1242. **Mr Maskey:** It is good that the Committee has narrowed its focus on this matter. A fairly clear consensus seems to be emerging that models 1 and 2 are preferable. However, as Gerry Kelly said, we should not dismiss any option at this stage of the game, because the context may change. There may or may not be a reduction in the number of Departments — that has not yet been decided. In a sense, therefore, this is a hypothetical, without-prejudice discussion. Nothing should be ruled out because it might be decided in the fullness of time that the separation of ministries is a good idea.

1243. The clear attraction of models 1 and 2 is that one Department will be created to focus on these very important issues. Sinn Féin's reading of those models is that they include an element of joint working between both communities, which is very important as regards the partnership element embodied in the Executive.

1244. I do not know how much more detail can be covered in this discussion. However, if members feel that models 1 and 2 are looking good — if I may put it that way — and if the Committee could set that aside for a moment, it would be a good idea to begin discussing the transfer of powers. It was said that a time frame could not be agreed. I do not think that anybody here wants to set a date. However, we could start to discuss the transfer of powers in principle. Sinn Féin certainly wants powers to be transferred as soon as possible.

1245. Are members prepared to discuss the transfer of powers? I am not saying that they must commit to a time frame. However, if everything was all right and all things were equal — without prejudice to what anybody thinks that that may be — are members generally in favour of an early transfer of power?

1246. **Mr McFarland:** As the Committee will recall, our task is to mine down into the issues. That is going fairly well. As regards having one Minister or two, I am thinking about the public's view of the Assembly. Currently, the perceived wisdom is that we are a complete waste of time and rations and cost a fortune. Members probably saw last night's 'Belfast Telegraph', in which there was yet another attack on our pensions. The article said that the only part of the Assembly that has continued to work during suspension is the section that deals with Members' pensions.

1247. **Mr Maskey:** It does not look as though you will be needing one anyway.

1248. **Mr McFarland:** How can we argue that there is a need for two Ministers on the grounds of effectiveness and efficiency? That troubles me slightly.

1249. If we are going to have trouble explaining to the public that there is a need for two Ministers, we are back, in theory, to the suggestion that there should be only one. There are several options as regards having one Minister. Logically, in a new Assembly the d'Hondt system would be run and one party would choose policing and justice as its favourite ministry. It would then be logical for that ministry to be selected as part of the pecking order. However, that does not get us

away from the difficulties regarding safeguards. Although we might have Utopia, with agreement, collective responsibility, the ministerial code, and with parties being comfortable — halcyon days ahead indeed — the difficulty is that our communities have not yet reached that point.

1250. The republican community is still fairly far away from full inclusivity on policing, and unionists are still fairly far away from full inclusivity for republicans. Indeed, republicans and nationalists are still fairly far away from inclusivity for loyalists. Such issues will not be resolved quickly, and we will end up needing some safeguards, as much for public perception and protection as for ourselves as parties.

1251. What if we decided that it would be healthy for the Assembly if Ministers took turns within a term of office? If you need a safeguard then you are into the area of having some form of junior Minister. There are two options. First, you could have a junior Minister who is a “super junior Minister” and sees all papers, and who, as with the arrangement for the First Minister and the Deputy First Minister, would have to agree matters with the Minister. It would be an arrangement that involves a safeguard and some form of agreement.

1252. Secondly, you could have a system whereby you rotate the office. The difficulty with that is that you would have to change a Minister’s pay and status perhaps every six months or every year. For example, a short time ago Gerry Kelly might have been Minister for policing, and we might have booked him to go to some kind of function in Rosemount in Derry next year. Then we find that Sammy Wilson turns up because he has become Minister of policing in the interim. That could lead to a lot of confusion, and it might take you back to having a Minister who is slotted in under the d’Hondt system —

1253. **Mr S Wilson:** Mr McFarland has outlined issues such as pay and engagements. However, the real difficulty is that no one would be able to get a handle on the job because he or she would be doing it for such a short time. The ministry would be very ineffectual.

1254. **Mr McFarland:** Sammy is right; turnover is an issue.

1255. **Mrs D Kelly:** Just like the DUP the last time around.

1256. **Mrs Foster:** It keeps the continuity, Dolores.

1257. **Mrs D Kelly:** Revolving-door ministries.

1258. **Mr McFarland:** There are issues about whether you go for “super junior Ministers” who have blocking and safeguard powers or for the turnover system, which has the drawbacks that I described. It strikes me that that is the ground that we are on.

1259. **The Chairman (Mr Molloy):** Is it possible to tie this down to one model?

1260. **Mr S Wilson:** You are very ambitious, Mr Chairman.

1261. **The Chairman (Mr Molloy):** I know, but you have to be at this stage.

1262. **Mrs Foster:** I do not see them as two separate models. Both provide for a single justice Department. The difficulty arises in deciding whether there is a single Minister, a Minister and a junior Minister, or two Ministers in the one Department. We have reached some degree of consensus in so far as people have indicated that there should be a single Department. Frankly, that is as far as we can go.

11.45 am

1263. **Mr A Maginness:** On examination, models 1 and 2 are essentially the same; the difference is marginal. The rotation of the Minister in the first model is similar to Ministers acting jointly in the second. One of the important questions is: what mechanism will be used to appoint the Ministers? Will a straightforward d’Hondt procedure be used, or will the process be similar to the appointment of the First Minister and the Deputy First Minister? That must be thrashed out.

1264. Essentially, models 1 and 2 are variants of the same model; they are the same in substance and in practice. However, that reflects my earlier point about shared responsibility and Mr Neeson’s point about collective responsibility. A

measure of trust is being placed in the Minister or Ministers to carry out their duties and to defend the interests of the people who elected them.

1265. It would be very difficult for the parties represented here to come to a specific conclusion about models 1 or 2. We have general agreement on having one Department and on a form of sharing within that Department. That is a major step forward in trying to achieve consensus on the modality.

1266. **The Chairman (Mr Molloy):** I ask members to address that issue as we proceed. Do we have agreement that the ministerial arrangements in a single Department should be addressed at a later stage? That discussion will include the ministerial code and various connected issues.

1267. **Mrs Long:** As I have already stated, the Alliance Party would be happier with a single ministry. Model 1 is not actually a model; it is a series of options for a model. Therefore, we are talking about a single justice Department with a single Minister. Then come the different options about how that Minister would work. The second model offers joint ministerial power, so there is only a slight difference. Alban is right to say that we are talking about the checks and balances that are needed in a single ministry. The later discussion will need to focus on that.

1268. The difficulty is that we often design unwieldy architecture to try to create accountability in situations in which we do not have confidence. That is the experience with the Good Friday Agreement. The principles in that were correct — and they are still valid — but some of the architecture was very unwieldy.

1269. Public confidence is a key issue when considering the rotation of Ministers. We said in our initial statement that that confidence is important because it goes to the core of people's sense of security. We should also bear in mind that that relates not only to unionists' or nationalists' sense of security: it relates to the sense of security of those of us who are neither unionists nor nationalists, people who come to Northern Ireland as foreign nationals, and those who are from ethnic minority backgrounds and who may not judge the matter in the same way as others.

All of those people need to have confidence in policing and justice. Therefore, wider community confidence must be considered.

1270. The Alliance Party does not believe that a rotating ministry sends out a particularly confident message. We are concerned that it looks almost as though one is playing games with one of the most important Departments. There is something about the idea of Ministers coming and going on a six-monthly or annual basis that suggests an impermanence and lack of direction in policing and justice. That may not be the case, but that is what it would suggest to the public. When we are looking at the structures and considering accountability, we need to look at public confidence in those structures so that people feel that the Executive is taking those matters seriously.

1271. **The Chairman (Mr Molloy):** Arlene made the point earlier that the furthest that the parties can go today is to reach consensus on whether to have a single Department for policing and justice. Ministerial arrangements would require further discussion.

1272. **Mr McFarland:** Can we agree that no party would be happy for there to be a single Minister running a policing and justice Department unfettered? Therefore can we remove option 1 from model 1? Is that generally agreed?

1273. **Mrs Long:** No. Chairman, we have stated that that would be our preferred option if the accountability mechanisms in the Executive and the Assembly were correct.

1274. **The Chairman (Mr Molloy):** Therefore we do not have agreement on that.

1275. **Mrs Long:** Yes.

1276. **Mr McFarland:** There is another issue here. Most of the options in model 1 are to do with the Minister and/or junior Minister being elected under the d'Hondt system. I notice that option 5 is unrelated to d'Hondt. Presumably, the First Minister and the Deputy First Minister would appoint, after agreement, those from their respective parties who will look after policing and justice. It is important to make clear that model 1 deals with two separate appointment systems: one employs d'Hondt and the other is

that the First Minister and the Deputy First Minister divide up the posts between their parties.

1277. **The Chairman (Mr Molloy):** That is set out in the 2006 Act.

1278. **Mr McFarland:** Yes, it is, but the distinction does not necessarily jump off the page. Option 5 would mean that the two biggest parties decide who will have responsibility for policing and justice, and the other options mean that everybody has an opportunity, under d'Hondt, to go for the portfolio. The two largest parties have a choice as to whether they choose policing and justice early on and therefore get it, or risk another party getting it.

1279. When we look at the matter in due course, whether that be in October or whenever, it is important that we separate those two outcomes. The smaller parties may be unhappy with the DUP and Sinn Féin carving up policing and justice between them.

1280. **Mr A Maginness:** May I just comment on that without prejudice to any final position that the SDLP might adopt? There is an implicit assumption here, which we do not necessarily accept, that, given the Assembly's present configuration, either the DUP or Sinn Féin should run a Department of justice. We certainly would not heed that position. We would say robustly that all parties on the Executive should at least have an opportunity to be appointed or elected as a Minister for justice and policing. I make that point because of the language that is used in option 2 of model 1. It reads:

"A single Minister acting on his/her own but rotating between the parties at set intervals".

1281. People usually use "between" when they mean "among"; however, it should be "among" in this instance, because to use "between" is to assert that only two parties provide the Minister.

1282. If we are to embrace the concepts of collective responsibility and shared responsibility, it is important that parties should not be excluded from holding the policing and justice portfolio.

1283. **Mr G Kelly:** To some extent, I agree with Arlene Foster. I do not think that we necessarily need to get into that level of detail. It is

important that those points have been raised, but in order to get into or, at least, to come to an agreement on the detail that Alban and Alan talked about, we must realise that all the options in model 1 are interconnected.

1284. At this stage, it is enough that most parties agree on a shared approach. That is not being prescriptive, because we must talk about time frames and what exactly is to be transferred, and all that has an impact. Naomi has an entirely different view on the overall institutional arrangements, which could also have an impact. We could end up agreeing clear details, which could go into the middle of negotiations and come to nothing. It could look as if parties had reached agreement on details but wanted to reverse them. A Department for policing and justice must have a scrutiny Committee, and the relationship between that Committee and the Policing Board is important. Alan said earlier that it could be a Mickey Mouse ministry. However, a Minister can make laws, and the Executive can make laws, so it will be an important ministry.

1285. I am happy if there is agreement that we are moving towards a shared model. The responsibilities and structures of OFMDFM are already agreed. Members have said that policing and justice should not be in OFMDFM's remit because that Department already covers too many areas — that is the position of all the parties — but that does not wipe out the OFMDFM model of jointery. I am not worried about the unwieldiness. Let us find out the issues on which we can agree on and work out the rest later.

1286. **Mr Neeson:** Alan raised a useful point. We have been discussing the need for a Minister to have the confidence of the public. It is also important that a Minister has the confidence of the Assembly. Whatever mechanism is chosen to appoint a Minister, it is important that he or she should have that confidence.

1287. **Mr S Wilson:** We do not want to go any further than we have gone today. Say we had gone for the last option on which Alan had a query, and an appointment were made by the First Minister and the Deputy First Minister —

that should be subject to a cross-community vote by the Assembly.

1288. **Mr Neeson:** It is important for any appointment to have the support of the Assembly.

1289. **Mrs Foster:** I was going to make that point. If there were one Minister, he or she could be straightforwardly appointed using d'Hondt. There could be a cross-community vote or there could be an OFMDFM appointment, subject to a cross-community vote. The cross-community-vote option would not exclude parties such as the SDLP and the Ulster Unionist Party from taking the ministry. I do not want to be prescriptive or exclusive about our list of issues for appointing a Minister, but we could put down a heading "Appointment Structure" and list the different options.

1290. **Mrs Long:** That would fit in entirely with what the Alliance Party has been saying about the institutional strand. The Executive should be endorsed by a cross-community vote as part of that overall package, particularly in relation to justice issues.

1291. **Mr G Kelly:** I do not want to prolong this discussion, but sometimes people take consensus as meaning assent. The DUP and the Alliance Party arguments about the institutions do not correspond to Sinn Féin's position. The idea that a Department for policing and justice should have a cross-community vote — whereas, for example, the Department of Education should not — is a new configuration for which the DUP has been arguing for some time; Sinn Féin is against that proposal. We are straying into a different process.

1292. **Mrs Long:** Can we have some clarity on this issue? Reference has already been made to OFMDFM structures, and you are arguing that that Department requires a cross-community vote, separate from the rest of the Executive.

1293. **Mr G Kelly:** That is not what I said.

1294. **Mrs Long:** That is the argument that has been made in the institutional structures strand. OFMDFM is already distinctive because of the importance of its particular roles. We are not arguing for specific arrangements for the

policing and justice ministry. Our view is that the entire Executive should be endorsed by a cross-community vote.

12.00 noon

1295. **The Chairman (Mr Molloy):** Can we keep the two issues separate?

1296. **Mrs Long:** The two issues are completely interdependent. It is impossible to keep them separate.

1297. **The Chairman (Mr Molloy):** With due respect, it is possible. They are separated into institutional issues and law and order issues because there are separate groupings to deal with them. It could be interpreted that these discussions involve matters that are not within the Wednesday remit.

1298. **Mrs Foster:** I am not making a determination. I am just highlighting the options that may be available.

1299. **The Chairman (Mr Molloy):** We will leave that issue to Monday's meeting, which will deal with the institutions.

1300. **Mr McFarland:** Are we agreed, therefore, that there is another option, which Naomi mentioned? Parties would nominate MLAs to the policing and justice ministerial positions, subject to a cross-community vote, in the same way as for the posts of the First Minister and the Deputy First Minister. Is that the proposal?

1301. **Mrs Long:** That is not a new proposal. It is included in the Alliance Party's proposals for the institutional changes. Although members have been advised that we are not to refer to those proposals at this meeting, I fail to see how we can discuss the devolution of policing and justice without referring to the institutional arrangements. I understand, however, the need to confine the discussion.

1302. **The Chairman (Mr Molloy):** At this stage, we are dealing with the models.

1303. **Mr McFarland:** When we deal with policing and justice, if we decide to opt for a joint ministry, is it proposed that we would structure it in the same way as the joint team in the Office of the First Minister and the Deputy First Minister?

1304. **The Chairman (Mr Molloy):** That matter is for the Preparation for Government Committee dealing with institutional changes to —

1305. **Mr McFarland:** No. Hold on. I am saying that there are several options, one of which would be to use the same appointments process as exists for the posts of the First Minister and the Deputy First Minister. Parties would nominate their candidates, and MLAs would vote —

1306. **The Chairman (Mr Molloy):** That is stipulated in legislation.

1307. **Mr McFarland:** I understand that, but, as members know, it is up to the Preparation for Government Committee to propose anything that its members wish. The Secretary of State has said that on numerous occasions. If the Committee decides to go in a particular direction, that is permitted.

1308. **The Chairman (Mr Molloy):** However, the Secretary of State did not say that he would agree with the Committee's decisions.

1309. **Mr McFarland:** I know that he did not say that he would agree with the Committee, but the Committee is free to make proposals as its members see fit.

1310. If the Committee agrees to opt for two Ministers for policing and justice, rather than allowing for the First Minister and the Deputy First Minister to appoint them, will those appointments be made by MLAs in the Chamber in the same way as for the appointment of the First Minister and the Deputy First Minister? Would Members be allowed to jump up and nominate, for example, Ian Paisley and Gerry Adams for the First Minister and the Deputy First Minister, and Sammy Wilson and Gerry Kelly as Ministers for policing and justice? As is the case with the posts of the First Minister and the Deputy First Minister, would there be a cross-community vote? Is that a suggested option for the appointment of the Ministers for policing and justice?

1311. **Mr G Kelly:** We are miles ahead of the earlier discussion on which we had reached some sort of conclusion. We have shot off on a tangent. There is a fair amount of consensus for

the concept of a single Department on a shared ministerial basis, which is far enough to be going for now. There was not a particularly deliberate attempt to do it, but we have ended up in a whole different discussion on the institutional —

1312. **Mr McFarland:** No, Chairman, I am not —

1313. **The Chairman (Mr Molloy):** Hold on for a second, please.

1314. **Mr G Kelly:** If Mr McFarland has another option, he should produce it and say that it is another option.

1315. **Mr McFarland:** I thought that Naomi was suggesting that the two policing and justice Ministers were —

1316. **Mrs Long:** May I clarify?

1317. **Mr McFarland:** If that is not the case —

1318. **The Chairman (Mr Molloy):** One member at a time, please.

1319. **Mrs Long:** I was not suggesting that; I was responding to a comment made by Arlene Foster, who said that there would be a number of options to ratify the appointments. May I also —

1320. **The Chairman (Mr Molloy):** We agreed that the Committee would return to that issue.

1321. **Mrs Long:** Yes, we did, but I want to make it clear that the concept of a single ministry, not necessarily headed jointly, was agreed by assent. I want to make that clear because —

1322. **The Chairman (Mr Molloy):** Nothing has been agreed yet.

1323. **Mrs Long:** Gerry Kelly inferred that a single ministry had been agreed.

1324. **Mr G Kelly:** Nobody has said —

1325. **The Chairman (Mr Molloy):** I wish to make this clear: nothing has yet been agreed.

1326. **Mr A Maginness:** Our discussion is becoming a bit raggedy. At this point, we must not be overambitious. Members have agreed on a single Department.

1327. **The Chairman (Mr Molloy):** We have not actually agreed on that. We are trying to get to that stage.

1328. **Some Members:** We have.

1329. **The Chairman (Mr Molloy):** We have a proposal.

1330. **Mr A Maginness:** We have not yet formally agreed on that. It might be wise to not formally agree until —

1331. **Mr McFarland:** Until everything is agreed. [*Laughter.*]

1332. **Mr A Maginness:** By discussing methods of selection by the Office of the First Minister and the Deputy First Minister, or by the Assembly, we are getting too far ahead of ourselves. We need to consult within our parties before we plough ahead.

1333. **Mr Weir:** Nothing has been agreed or ruled out on models 1 and 2. Confusion has arisen because there are two sets of options. There seems to be broad agreement that a single Department is needed, whether responsibility is shared or not. There are a range of options for how that single Department should be run, which are outlined under models 1 and 2. That can range from a single Minister acting alone to two Ministers. There are options as to how the Department should be run, and there is a separate issue about how the Minister or Ministers should be appointed. Those two matters are becoming meshed together and confused. The second issue flows from the first, to some extent.

1334. **The Chairman (Mr Molloy):** Mr Kelly's proposal was that we agree on a single Department with shared ministerial responsibilities. Do we have consensus on that?

Members indicated dissent.

1335. **The Chairman (Mr Molloy):** We do not have consensus. Mrs Foster proposed that we agree on a single Department, but that the ministerial arrangements need to be addressed later.

1336. **Mr G Kelly:** We are dealing with concepts. A number of people, including DUP members, have said that they want to go back to their parties on this matter. However, there is a fair degree of consensus on the concept, although there is some disagreement about whether

responsibility should be shared. I am happy enough with that.

1337. **Mr Maskey:** Most members talked about models 1 and 2. The first bullet point refers to a single Minister acting alone, but it goes on to refer to rotation. There must be some sharing of responsibility.

1338. **The Chairman (Mr Molloy):** We do not have consensus on that at this stage. We seem to have consensus that there should be a single Department, with the ministerial arrangements to be sorted out at a later stage.

1339. **Mr Maskey:** If people want to decouple the concept of a single Department from the notion of sharing responsibility, that is different option from what is proposed.

1340. **Mrs D Kelly:** We have agreed that there should be sufficient safeguards for both communities to have confidence.

1341. **The Chairman (Mr Molloy):** Have we agreed that there should be a single Department?

Members indicated assent.

1342. **The Chairman (Mr Molloy):** Does the Committee want to come back to the ministerial arrangements at a later stage and leave the issue of mechanisms to the PFG Committee dealing with institutional arrangements?

1343. **Mr G Kelly:** Although we do not want to enter into a long, drawn-out discussion on timing, the issue is affected by it. Those matters are all parts of one discussion. We have gone some distance on this matter; let us deal with some of the other issues.

1344. **Mr S Wilson:** We must come back to this matter; we cannot leave it as vague as it is at present. It could be discussed at our next meeting.

1345. **The Chairman (Mr Molloy):** Have we agreed to return to the question of ministerial arrangements, and to pass the issue of structures to the PFG Committee dealing with institutions?

Members indicated assent.

1346. **Mrs Long:** If we are to come back to this matter, can we also agree when we are coming back to it? It is important that everyone should

come prepared for that discussion so that we do not end up doing what we have done today, which is to go around the houses with no outcome.

1347. **The Chairman (Mr Molloy):** The Clerks will try to arrange that. Timing is the other issue.

1348. **Mr Kennedy:** It may be important to have a preliminary discussion at least to expand on this matter before we refer anything to the PFG Committee dealing with institutional matters, because matters are slightly vague at the moment.

1349. **The Chairman (Mr Molloy):** We will meet again first.

1350. **Mr Kennedy:** Will the matter be referred to the PFG Committee dealing with institutional matters after that?

1351. **The Chairman (Mr Molloy):** Yes.

1352. What about the issues of the timing of the devolution of policing and justice?

1353. **Mr G Kelly:** In 2003 and 2004, there was some idea of a time frame. Sinn Féin wanted a fairly sharp time frame of around 12 months, and there were arguments and discussions on a two-year time frame years. As Alban pointed out, the SDLP wanted a time frame of six months and then 18 months, and there should be some discussion on that. Some people argue that time frames are not helpful, but, in the negotiation process, time frames have been important in moving the process on, although there have been some exceptions.

1354. **Mr McFarland:** What was the agreed timescale within the comprehensive agreement? I believe that the DUP had agreed to a timescale for the devolution of policing and justice.

1355. **Mrs Long:** The timescale was two years from restoration.

1356. **Mr G Kelly:** Naomi is right. The DUP will speak for itself, but the timescale was two years from restoration or halfway through a four-year Assembly mandate.

1357. **Mrs Foster:** I do not want to labour this point, but Alan is fully aware that the DUP did not sign up to the comprehensive agreement. Unfortunately, I must reiterate that every time

that Alan says so. He knows full well that the comprehensive agreement is the two Governments' document, and that neither the DUP nor Sinn Féin signed up to it. He can keep making that point ad nauseum or he can deal with the realities.

1358. **Mr S Wilson:** The DUP has made its position clear, and there are three strands attached to it. First, we want to see the devolution of policing and justice. Secondly, we do not believe that there is any point in moving towards devolution of policing and justice if we do not have confidence in the behaviour of those who represent republicans. Thirdly, certain things still have to be done. The quicker that they are done, the better.

1359. That answers Alex Maskey's earlier question when he asked whether the Committee could at least take a view on whether we want devolution of policing and justice as quickly as possible. Those were not his exact words, but it was something along those lines. We do.

1360. If our indication that we want the devolution of policing and justice to happen sooner rather than later helps to affect Sinn Féin's behaviour, we will be more than happy, and the community will be more than happy. However, if a timescale is set — and this is the difficulty — people are not encouraged to address the issues that are preventing the devolution of policing and justice; they just sit and wait for the specified time. However, if devolution of policing and justice is based on certain conditions being met, those who make the decisions are encouraged to move towards meeting those conditions.

12.15 pm

1361. Therefore, the DUP's position on achieving the devolution of policing and justice is a positive one. We have stated the conditions that must be met, and they have been well articulated. I could go into detail, but that is not necessary. If those conditions are met, the DUP will be up for the devolution of policing and justice. If they are not met, it will not happen anyway, because there will not be sufficient votes in the Assembly or sufficient confidence in the community to make it happen.

1362. **Mr G Kelly:** I am trying to resist reacting to the DUP being judge and jury on when it thinks that Sinn Féin, or anyone else, has reached the mark that it has set. The difficulty is that the DUP has set an arbitrary mark as a precondition. Nevertheless, Arlene and I have agreed on a great deal today. She is correct in saying that no one signed up to the comprehensive agreement.

1363. In fairness to Mr McFarland, however, he merely stated the point that had been reached in discussing the devolution of policing and justice — he did not mention an agreement. The DUP's view was that it would happen at some time around two years after restoration, but Sinn Féin wanted it to happen sooner. Let us deal with some sensible time frame.

1364. The preconditions that the DUP set down are also the preconditions for setting up the institutions. We will not resolve this matter unless the institutions are restored anyway, so there will be a time frame after that. It is not the same discussion. However, one may assume that, at that point, the DUP will have accepted that we are in an entirely new situation and, therefore, the time frame will not be an unlikely discussion. The time frame that we are discussing is in the context of the institutions being set up, so what is the problem?

1365. **Mr McFarland:** I stand to be corrected on this, but I recall Dr Paisley saying in Downing Street that there was only issue left to be resolved, and that was decommissioning. That is why I keep raising the matter.

1366. The Committee has spent six weeks with William McCrea telling us that we should all keep our hands off the comprehensive agreement, because it was a DUP deal with the Government, and the Government would deliver on it in the autumn. In the House of Commons, Minister Hanson also said that it was a DUP deal, and that he would deliver on it in the autumn. Since then, Peter Robinson and Arlene Foster have said that that is not the case. While that is encouraging, it is also confusing.

1367. Dr Paisley stated that decommissioning was the only outstanding issue, and the DUP agreed to begin modality discussions in February. Within two years, or halfway through

an Assembly mandate, devolution of policing and justice would take place. That is not to say that the DUP has not changed its mind, but, at that time, that was its position.

1368. **The Chairman (Mr Molloy):** We do not wish to get into that debate again.

1369. **Mrs Foster:** I wish that Alan would read our statement in the comprehensive agreement, as there is no mention of time limits in it. I will share that with him over lunch if he wishes, but it will probably give him indigestion.

[Laughter.]

1370. **The Chairman (Mr Molloy):** Is there agreement that we should set a time frame in the context of the date of restoration?

Members indicated dissent.

1371. **Mr Weir:** The DUP has stated its position that the conditions are qualitative, rather than quantitative.

1372. **Mr G Kelly:** Can I seek clarification on that?

1373. **Mr Weir:** The DUP wants devolution, but it can only be in a context in which there is trust in the community. We do not accept a specific time frame.

1374. **Mr G Kelly:** When the institutions have been set up, does the DUP agree that it will have accepted that Sinn Féin is ready for Government?

1375. Therefore, if Sinn Féin is ready for Government, the logic is that it is also ready to be involved in policing. That is the DUP's view. Sinn Féin is ready any time. Where is the logic in the DUP's position of not agreeing a time frame for the restoration of the institutions now, and that it will still not agree a time frame, even when the institutions have been set up?

1376. **Mrs Long:** The question is whether to set a deadline or outline a potential time frame. My understanding was that the comprehensive agreement set a two-year target. Setting a target is slightly different to setting a deadline and saying that devolution of policing and justice will happen in two years. Both the comprehensive agreement and the Northern Ireland (Miscellaneous Provisions) Act 2006, which

includes controls for each of the four models, take into account that the conditions in society must be right.

1377. This should not be about targeting individual parties, in this case Sinn Féin. All parties must make it clear to the community that they have given their commitment to policing. However, simply sitting on a Policing Board while hotly criticising the police and playing games with policing issues does not fulfil that requirement.

1378. It is not a question of whether a particular party is fit to have the policing ministry, but whether the institutions are sufficiently robust and stable to take on one of the most contentious and sensitive issues to be devolved. Therefore, a two-year time period would ensure that we had lived through most of what was required to know that that was the case. From the Alliance Party's perspective, it is not simply about saying whether an individual party is fit to take the ministry, but whether the institutions can withstand the pressure.

1379. **Mr A Maginness:** The discussion today has been useful.

1380. First, it has been useful to hear Sinn Féin's view that there is no obstacle to embracing policing or justice arrangements, other than the devolution of those powers to the Assembly. Secondly, the DUP's statement that timing was not the issue, and that a qualitative assessment was necessary, was useful, although the SDLP does not necessarily accept that. The DUP is saying that it is happy for policing and justice to be devolved to the Northern Ireland Assembly, if Sinn Féin fulfils certain conditions.

1381. If those statements are definitive, they are important. It means that timing is not a problem, other than in relation to the administrative and operational problems that would arise with the actual transfer of policing and justice powers to Northern Ireland. I do not know how that would be carried out; it is an administrative operation that may take a certain amount of time. Nonetheless, if everything were in order, both the DUP and Sinn Féin agree that timing is not really the problem.

1382. Both Sinn Féin and the DUP are uncomfortable about mentioning the comprehensive agreement: perhaps a DNA test of that agreement should be carried out to see exactly who its parents are.

1383. **The Chairman (Mr Molloy):** May I remind members — and it may speed things up — that the food is outside. *[Laughter.]*

1384. **Mr G Kelly:** I thank Alban for summing up Sinn Féin's position.

1385. There is nothing new in Sinn Féin's statement that it perceives the transfer of policing and justice powers to be the key and core outstanding issue on policing. However, it is totally erroneous to say that the time frame is irrelevant. That could lead to a situation where, 10 years after the decision has been made, powers are still being transferred.

1386. I was at a debate with Nelson McCausland last night during which he said that criminality, equality and human rights were now the key issues that the DUP had to sort out before that point was reached. That is hilarious. We are getting mixed messages. The main issue concerning the transfer of powers is accountability.

1387. We must agree the time frame. We must also get to the discussion paper containing the detail of what is transferred. We have not even started on that discussion paper, but I hope that we will some time soon. The people who are against the transfer of powers, especially within the system, have been spending their time trying to shift the status of powers from reserved to excepted, making that transfer ever more difficult. Considerable debate is still needed.

1388. **Mr Kennedy:** We would do well to remind ourselves that the Northern Ireland (Miscellaneous Provisions) Act 2006 confirms that the devolution of policing and justice, and when that happens, is a matter for the Assembly to determine.

1389. **Mr Maskey:** Gerry Kelly was very clear when he tried to focus on the DUP's position on timing. Sammy Wilson said that the DUP wanted the transfer to happen as soon as possible. Sinn Féin does not agree with the DUP's argument on timing and so-called

benchmarks. This discussion is in the context that the institutions will be up and running, so we will have already met all the benchmarks that the DUP has set up. Let us presuppose that we have already got over all the obstacles and that the institutions are up and running. The timing is important, because we need an indication from parties as to what they feel the time limit could be. It is not a matter of a deadline; it is about how long we think that it will take. We must do whatever is practical to make the transfer of power a reality.

1390. We must decouple the argument from the need to be satisfied. In other words, from the DUP's point of view, it must satisfy itself that its conditions have been met. This discussion should concern the context of functioning institutions. We must focus the discussion or we will never resolve that issue. That is why we are having this conversation on policing and justice.

1391. **The Chairman (Mr Molloy):** We have a proposal that the date for devolution of policing and justice should be set when the conditions have been agreed between the parties.

1392. **Mr Maskey:** My point — and the point that Gerry Kelly made and on which he tried to get a response from the DUP — was that this discussion should presuppose that those conditions have already been met, whatever they are. Obviously, Sinn Féin does not agree with all those conditions, but this discussion should be set in the context that the institutions are fully functioning. Therefore, there is no reason why any party would not want the transfer of powers. We should be discussing the practical steps that need to be taken to secure the transfer of powers and how long we think that will take.

1393. **Mr S Wilson:** There are certain requirements that the DUP feels are necessary for devolution, and Gerry Kelly seems to know them very well. Naomi Long put it very well when she said that this would probably be one of the most difficult and most contentious issues that the Assembly will have to handle.

1394. Given the special significance of policing and justice, the problems associated with that in the past, the functioning of the Assembly, the

powers that it will have, how parties handle those powers and how they handle the situation after devolution will provide a measure of confidence, or lack thereof, within the community as to whether or not devolution can take place.

12.30 pm

1395. A decision on when that level of confidence has been reached will depend on all of the following variables: how the Assembly functioned; how the parties behaved in the Assembly; and what has been happening in the community. That is why it is impossible to attach a timescale to the devolution of policing and justice.

1396. Sinn Féin sought an assurance, but the best that our party can do at the moment is to say that we are not being obstructionist, nor are we seeking an excuse to delay devolution of policing and justice for 10 years, as Mr Kelly said. Our stance is aimed at ensuring that, when this important function is devolved, the situation will be workable, will not create difficulties, and the parties and the community are comfortable with it.

1397. The assurance that I have given is the best that can be hoped for at present. My party wants the devolution of policing and justice to happen as soon as possible, but not in a context in which it will create political difficulties and difficulties for the Assembly. I do not believe that setting deadlines or timescales — whatever euphemism is used for fixing a date to which everyone will point — is the best way of ensuring that people meet the conditions for confidence-building.

1398. **Mr G Kelly:** My difficulty, as we get further into the mire, is that we now have two sets of preconditions from the DUP: one for setting up the institutions, and another for deciding when people are fit for government. The DUP will decide arbitrarily when those preconditions are met. We are trying to secure an agreed time frame for all the parties that would sit in an Assembly. That is not an imposed time frame, yet the Committee cannot agree even an indicative time frame.

1399. **Mr S Wilson:** Let us stop at that point. All parties and the two Governments agreed that policing and justice would be devolved a step after the Assembly was set up. Everyone recognised that there was something different about policing and justice, which meant that they could not be a part of the initial package. We all know why they are so significant. This is not a new set of preconditions. It is an acceptance of a position that everyone has taken: given the significance of policing and justice, devolution of those issues should take place a step after restoration.

1400. **Mr G Kelly:** It is a new bar.

1401. **Mr S Wilson:** Not at all.

1402. **Mr G Kelly:** To return to Mr McFarland's point, the DUP were in those negotiations and clearly understood the time frame. The DUP will not agree even an indicative time frame. I repeat this with some sadness: even by its own criteria, the DUP is declaring that it does not care up to what bar Sinn Féin, the nationalist people or the republican people measure. After the institutions have been restored, the DUP will put Sinn Féin through all that again, and the DUP will be the arbiter of when the bar is met. Never mind the Assembly — the DUP will decide when devolution of policing and justice will take place. The whole idea of the step-by-step approach that Mr Wilson mentioned was precisely the steps that were needed. That was how the time frame was worked out. People were already working on the basis of a time frame.

1403. **Mr Weir:** The legislation states that the Assembly will decide when policing and justice will be devolved, and we are happy to stick with that. I am not going to flog a dead horse; there comes a stage where the argument goes round in circles. Policing and justice have been treated separately throughout this entire process. As part of the Belfast Agreement, they were not devolved in 1998. Far be it from me to defend the Belfast Agreement. *[Laughter.]*

1404. **Mr G Kelly:** Is that on the record?

1405. **Mr Weir:** I am more than happy for the phrase: "Far be it from me to defend the Belfast Agreement" to be on the record.

1406. When the initial institutions, including the Executive and the Departments, were set up in 1999, policing and justice powers were not devolved because it was felt that they were a separate issue; those powers were clearly beyond those given to the other Departments. The same approach was taken on each occasion that other institutions were set up between 1999 and 2002. The idea that the issue of policing and justice is not separate and different from the issues dealt with by run-of-the-mill Departments is not accurate, politically or historically. The DUP has made its position extremely clear on that.

1407. **The Chairman (Mr Molloy):** I do not think that the Committee is going to reach consensus on this matter.

1408. **Mrs Long:** For policing and justice powers to be devolved, the First Minister and the Deputy First Minister must put a motion jointly to the Assembly, which would be subject to a cross-community vote. The Secretary of State would then have to ensure that the appropriate conditions were in place, and a vote would be held in Westminster. That is laid out in the Northern Ireland (Miscellaneous Provisions) Act 2006. Therefore, the powers cannot be devolved unless they achieve cross-community confidence.

1409. Taking that as read, is it possible to set a target date by which policing and justice powers can be devolved? It is possible to suggest that conditions must be right and, at the same time, suggest that a target date should be set — those propositions are not mutually exclusive. Setting such a date puts down a marker — members are not saying that devolution of those powers will happen in two years' time, but simply that it is their wish that it should happen then. It shows that they are prepared to commit to working towards it. That is important for those who believe that the issue of devolution is a key part of this negotiation process. Indicating at least a willingness to move forward does not mean that in two years' time all the other locks can be unpicked. It is simply a matter of showing willing, and it is important that members are willing to set a date.

1410. I do not want to set a prescriptive date or deadline. It would be pointless to suggest that if this issue were not cleared up in two years' time, the entire matter should fall apart on that hook. However, it is important to set a target towards which we can work in respect of the legislative framework, and so on. At a certain point, the Secretary of State will also need to introduce legislation to allow for policing and justice powers to be devolved. A process must be entered into, and a two-year target is not an unreasonable one.

1411. **Mrs D Kelly:** Naomi has covered the theory of the restoration of the institutions quite well. However, for the past 10 minutes we have heard the DUP and Sinn Féin grant mutual vetoes to each other. On the one hand, the DUP says that if Sinn Féin signs up to policing, it will have confidence in Sinn Féin's ability, and Sinn Féin says that it will not sign up to policing unless a date for devolution of policing and justice powers is established. Therefore, they seem to be giving each other a by-ball.

1412. **Mrs Long:** Chairman, I am still not clear what the very vague term "sign up to policing" means.

1413. **The Chairman (Mr Molloy):** We must draw this matter to a conclusion because we are running way over time.

1414. Is there consensus that a target date for the devolution of policing and justice should be set at two years after restoration?

Members indicated dissent.

1415. Is there consensus that the devolution of policing and justice should occur as soon as possible?

1416. **Mrs D Kelly:** Chairman, I think that the consensus —

1417. **The Chairman (Mr Molloy):** Do we have consensus or not?

Members indicated dissent.

1418. **Mr Weir:** Who said no?

1419. **Mr G Kelly:** I did.

1420. **Mr A Maginness:** Chairman, could you repeat the question?

1421. **The Chairman (Mr Molloy):** I asked whether the devolution of policing and justice should occur as soon as possible.

1422. **Mr G Kelly:** That does not mean anything.

1423. **Mr A Maginness:** I think it could mean something.

1424. **The Chairman (Mr Molloy):** We do not have consensus on it.

1425. **Mr McFarland:** My sense is that this will play a key part in the October discussions.

1426. **The Chairman (Mr Molloy):** Mr Jim Wells will take the chair after lunch.

The Committee was suspended at 12.39 pm.

On resuming —

1.09 pm

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

1427. **The Chairman (Mr Wells):** First, I wish to apologise. I intended to be present a bit earlier this morning, but I had a meeting with the Speaker that overran, so I did not arrive until the tail end of the previous discussions. The Committee Clerks have brought me up to date with what took place, but forgive me if I do not completely follow members' train of thought for a few moments.

1428. I do not know whether there have been any changes in personnel over the lunch break, but I understand that we are up to the issue of matters to be considered for devolution, which is paragraph 12 of the NIO discussion paper.

1429. Alban, your team looks a bit thin. Are there more to come?

1430. **Mr A Maginness:** Yes. Alex Attwood has been held up at a Policing Board meeting. Dolores Kelly should be here in a few minutes.

1431. **The Chairman (Mr Wells):** Are you happy to proceed alone? You can handle that.

1432. **Mr A Maginness:** Yes.

1433. **Mr Maskey:** Gerry Kelly has been delayed. He will be here.

1434. **The Chairman (Mr Wells):** Members have before them a list of the matters that are to be considered for devolution to a Minister for policing and justice, when he or she is appointed. Without discussing who should be the Minister, when policing and justice powers should be devolved and what must happen before they are devolved, it would be best to go through these matters and ask members whether they are content that these issues be included within the remit after the aforementioned has been sorted out.

1435. We will then move on to those issues that have been excluded. We need to check whether members are content that the matters identified in paragraph 12 are in line with their views.

1436. The first matter is "Criminal law and creation of offences and penalties". Does

anyone have any strong feelings about that power eventually being devolved to a Minister?

1437. **Mr McFarland:** It strikes me that the matters identified in paragraph 12 all fall within the remit of policing and justice. There is probably not a great deal of contention in them. The paragraph on areas in which the devolution of functions would not be possible, may not be appropriate or should be subject to further consideration is perhaps more important.

1438. **The Chairman (Mr Wells):** That is my reading of it, Alan, but I did not want people to say that I did not give them a chance to state their point of view on one particular issue. The subjects all look pretty innocuous, but I do not know parties' positions on them. Does anyone want to point out anything with which he or she has a difficulty?

1439. **Mr McFarland:** As Mr Molloy said earlier, parties have the option of adding to and modifying the list as we progress. If an issue that pertains to one of these matters has not been spotted now but arises later, it is up to parties to raise it.

1440. **The Chairman (Mr Wells):** In my experience, the fact that parties have not responded does not mean that they have had a diligent meeting, worked it all out and reached that position. Sometimes the speed at which this Committee moves means that the issue is overlooked.

1441. I take it that the various parties' silence means that, if and when policing and justice is sorted out, you are happy enough with the powers listed in paragraph 12 being devolved?

Members indicated assent.

1442. **Mr A Maginness:** The Court Service is currently an agency. If the powers outlined in 3(k) of paragraph 12 were devolved, would that change? Can you provide clarification on that?

1443. **The Chairman (Mr Wells):** No, it would change. A devolved Minister rather than a direct rule Minister will head the Court Service.

1444. **Mr A Maginness:** On the judicial responsibilities of the Lord Chancellor, my understanding is that the Lord Chief Justice of

Northern Ireland is the head of the judiciary; it was formerly the Lord Chancellor. May I receive some clarification on that?

1.15 pm

1445. I do not expect an answer now, but a change was made. I am not certain as to what that change means in practical terms. If, for example, an individual had wanted to query a judge's performance in court, he or she would have written to the Lord Chancellor. It is now the Lord Chief Justice of Northern Ireland's office that replies. What is the significance of that change? Perhaps there is no significance at all. Could I receive clarification on that?

1446. **Mrs Foster:** It might have more to do with changes that have been made to the Department for Constitutional Affairs at Westminster.

1447. **Mr A Maginness:** That could well be the case.

1448. **Mr McFarland:** Mr Chairman, paragraphs 15.4, 15.5 and 15.6 in 'Devolving Policing and Justice in Northern Ireland: A Discussion Paper' relate to that.

1449. **The Chairman (Mr Wells):** I am conscious that I am surrounded by a posse of barristers and solicitors, so I will be very careful to seek out the explanations that you have requested.

1450. **Mr McFarland:** At paragraph 15.4, it says:

1451. "The Lord Chancellor is responsible for the administration of the Northern Ireland courts."

1452. Paragraph 15.6 states:

"The Lord Chief Justice of Northern Ireland, as head of the Northern Ireland judiciary, is responsible for functions relating to sittings of courts and the times and places of those sittings".

1453. Therefore there may a dual role. The Lord Chancellor's slice of those duties passes to a Northern Ireland Minister for policing and justice upon devolution.

1454. **The Chairman (Mr Wells):** Either way, Alban, do you foresee a concern from the SDLP on the matter?

1455. **Mr A Maginness:** I am merely seeking clarification. I do not foresee any serious problem.

1456. **The Chairman (Mr Wells):** We can provide that clarification.

1457. **Mr Raymond McCartney:** Notwithstanding some of the conversations that we had this morning on the definition of British national security, we will deal with any issues as they arise. However, we have some reservations. We have clear views on national security issues.

1458. **Mr Maskey:** There is quite a lot in the document, and the NIO has provided notes on the discussion paper. We want to see the maximum powers, as they relate to the whole island, transferred as soon as possible. We covered some of that this morning.

1459. **Mr Weir:** I was not aware that Westminster could transfer powers to the whole island. I do not know what the member is driving at there, apart from it being a general point of principle.

1460. **Mr Maskey:** Powers are to be transferred to a Department. Its Minister will be on the Executive, and the Executive and the North/South Ministerial Council are related.

1461. **Mr Weir:** That is almost a separate issue. It is a step beyond us. When we talk about the transfer of policing and justice powers, we are talking about the transfer of those powers from Westminster to a Northern Ireland Department. If, at some stage, the Executive agreed to work with the Irish Republic on those matters, that would be a separate issue. Initially at least, powers will only go directly to the Department. The level of co-operation is a separate issue.

1462. **Mr Maskey:** In a way, there is no point in the issue being bandied about. Peter was quick to point out this morning that he was not in agreement. The interdependence of members of the Executive is not really an issue.

1463. **Mr Weir:** That is not what I am arguing. Policing and justice powers are to be transferred from Westminster to a Northern Ireland Department, and whether that Department

shares any of those powers with the Irish Republic is a separate matter.

1464. **Mr Maskey:** We can agree to disagree, because it is not a major issue. I am merely making the broad statement that Sinn Féin wants the maximum number of powers to be transferred as soon as possible.

1465. I want to put on the record that Sinn Féin is concerned that there seems to be an attempt to plunder the reserved matters and to make a number of them excepted matters. I will elaborate on that concern when we come to discuss those matters.

1466. **The Chairman (Mr Wells):** I see the point that you are trying to make, Mr Maskey, but it refers to excepted matters, which we are to discuss next. You seem to have indicated that although Sinn Féin is content with the list of excepted matters, it wishes to add to it. There will be opportunity for that when we discuss paragraph 13.

1467. **Mr Maskey:** Some of these issues are vague. Therefore, for the record, just because Sinn Féin has not challenged specific issues, it does not mean that it supports them.

1468. **The Chairman (Mr Wells):** Hansard has recorded your point. Therefore, if the subject comes up again, you will be covered, as it were.

1469. **Mr A Maginness:** The Northern Ireland Judicial Appointments Commission (NIJAC) seems to have been excluded.

1470. **The Chairman (Mr Wells):** If members wish to discuss issues that have been excluded, are they happy that we park those issues that have been included and move on to paragraph 13?

Members indicated assent.

1471. **Mr A Maginness:** I have not examined the excluded list in any great detail, but is there an explanation for its contents? The Northern Ireland Court Service and the Public Prosecution Service for Northern Ireland have been included, and the omission of NIJAC seems to have been deliberate. Whether it is —

1472. **The Chairman (Mr Wells):** Would paragraph 13(p) cover that?

1473. **Mrs Foster:** Perhaps I can be of assistance. I think that Alban is saying that we do not want to place anything from paragraph 13 on to the lists of reserved or excepted matters and that we are happy that everything on that list will be transferred. Is that correct?

1474. **Mr A Maginness:** Yes.

1475. **The Chairman (Mr Wells):** Can we agree that? If so, we can have a free and unfettered discussion on paragraph 13 and the issues that we would like to be included.

1476. **Mrs Foster:** Yes.

1477. **Mr A Maginness:** NIJAC is not on the list; that is a significant omission.

1478. **The Chairman (Mr Wells):** We will come back to that. Am I right to assume that no one is dying in a ditch about the current list?

Members indicated assent.

1479. **The Chairman (Mr Wells):** Paragraph 13 includes a list of specific exclusions, which runs to over 20. I suspect, therefore, that the discussion on it will take quite a while. Members may agree with some of the exclusions, but I suspect that some will be the source of quite a bit of debate.

1480. Paragraph 13(a) states:

“the Secretary of State should retain responsibility for offences related to terrorism and treason — these are excepted matters”.

1481. Is treason something that members would like the Assembly to take within its bailiwick?

1482. **Mrs Foster:** I would be quite happy to try some people for treason.

1483. **Mrs D Kelly:** That is an internal DUP matter. Leave Jim Wells alone.

1484. **The Chairman (Mr Wells):** I know the feeling. Some of us have been through that process already.

1485. **Mr Kennedy:** Your private life is no concern of ours. *[Laughter.]*

1486. **Mrs Foster:** As far as the DUP is concerned, offences related to terrorism and treason sit naturally as excepted matters.

1487. **The Chairman (Mr Wells):** Do any of the other parties feel differently about that?

1488. **Mr A Maginness:** I will reserve the SDLP's position for the moment. It may be more appropriate for a Northern Ireland Assembly, rather than the Westminster Government, to deal with some issues that relate to anti-terrorist legislation.

1489. **Mr Raymond McCartney:** Sinn Féin feels that responsibility for offences relating to terrorism and treason should be transferred.

1490. **The Chairman (Mr Wells):** Therefore one party is neutral, and one party is opposed to its remaining an excepted matter. Do the other parties have preferences?

1491. **Mr McFarland:** The legislation is quite clear. The agreement, to which most of us signed up, sets out the excepted matters and those matters that could be transferred, and we have acknowledged those matters that could be transferred. The excepted matters tend to relate to national security. I can understand why Sinn Féin would want them devolved, but the Ulster Unionist Party wants them to remain as excepted matters. That is what they should be, as part of the national effort.

1492. **Mrs Long:** The Alliance Party is content that responsibility for offences related to terrorism and treason remains an excepted matter. However, this morning's discussion on where terrorism ends and criminality begins needs to be explored further.

1493. **Mr Weir:** The DUP believes that it should remain an excepted matter.

1494. **The Chairman (Mr Wells):** It is quite clear that we do not have consensus.

1495. **Mr Raymond McCartney:** The concept of British national security needs to be defined. That is the sticking point for all these issues. Some parties are comfortable with the concept of British national security, but Sinn Féin is not, which is why it has reservations.

1496. **Mr McFarland:** We are back to the agreement and whether Sinn Féin accepts the consent principle, which states that the people of Northern Ireland will remain citizens of the

United Kingdom until they vote otherwise. My understanding was that Sinn Féin accepted the agreement. Of course, people are free to try to change everyone's minds, but, for the time being, Northern Ireland will remain part of the United Kingdom.

1497. British national security will take precedence until such times as Northern Ireland becomes part of the Irish Republic, when, presumably, the Irish Republic's national security interests would take precedence. The agreement set out that process, and I understood that Sinn Féin had signed up to the agreement.

1498. **The Chairman (Mr Wells):** Of course, those terms are repeated in the Northern Ireland Act 1998, which lists the excepted matters.

1499. **Mr McFarland:** Absolutely.

1500. **The Chairman (Mr Wells):** Therefore, issues in two documents would have to be overcome.

1501. There is a clear divergence of opinion. All we can do is accept that and minute it. We do not have consensus on the matter.

1502. **Mr Maskey:** That is true. As Mr McCartney said, it is all very well to talk about —

[Inaudible due to mobile phone interference.]

— in some cases, transferred matters are being extracted and placed in the excepted matters category. That is not acceptable to Sinn Féin. Where will it end? As Raymond said, who defines what constitutes national security? We have been discussing criminal law. What does that have to do with national security?

1503. **Mr McFarland:** The British Government, in the same way as the Irish or German Governments, determine matters of national security. That is what Governments do.

1504. **Mr Raymond McCartney:** Only within their territories, though.

1505. **Mr McFarland:** Members need to keep reminding themselves that the Northern Ireland Assembly is a devolved institution, not a sovereign Government.

1506. **Mr Maskey:** The agreement, the Patten Report and so on identified issues that should

be transferred to Northern Ireland. Sinn Féin believes that “national security” is being used as a cover-all to prevent the transfer of certain issues. What does the right to investigate crime have to do with national security?

1507. Naomi discussed the difference between the approaches being taking towards “republicanism” and “loyalism”. It is a mishmash. Under the guise of the national security banner, there is a clear attempt to remove some reserved matters. In effect, that would remove powers from locally accountable Ministers and Departments and the Executive. It is not right and should not be allowed.

1508. National security needs to be defined. Who defines it? Where is the line drawn? It is not good enough to simply say that a matter comes under the heading of national security and, therefore, because of the agreement and the principle of consent, it must be accepted. The agreement is a given. Sinn Féin very much accepts the agreement, but it is not prepared to allow it to be used as a spurious banner to remove those powers that rightfully reside with locally accountable Ministers.

1509. **Mr McFarland:** I am not saying that we should not examine those matters. Paragraph 13(a) of the NIO discussion paper relates to the ability to pass legislation and to decide what offences relate to terrorism and treason. The Government have decided that those are excepted matters. I am not saying that we cannot examine other issues that have been taken away that rightly belong here, but terrorism and treason are excepted matters, and they have been excepted matters from the beginning. If that is incorrect, perhaps some legal eagles could describe whether those powers were going to be transferred but have suddenly been removed. However, I understood that they were excepted matters.

1510. **The Chairman (Mr Wells):** Mr Maskey, you are not saying that there are no issues that are excepted matters. There are issues of state security that would remain at Westminster. You are questioning what is defined as those excepted matters.

1.30 pm

1511. **Mr Maskey:** I do not want anything in respect of this country to be dealt with at Westminster. We are dealing with matters that are currently reserved and that should be transferred as soon as possible to locally elected accountable Ministers. We are also dealing with issues that are supposed to be excepted matters. Sinn Féin believes that there is a clear attempt by the NIO and the British Government to take reserved matters back as excepted matters, under the banner of national security. That is not right; it is spurious and unacceptable.

1512. **The Chairman (Mr Wells):** We will not reach a common view on this matter.

1513. **Mr McFarland:** There are reserved matters, and it was recognised at the time of the agreement that those matters could be devolved. There is a list of those matters, relating to the courts and so forth, because it was recognised that policing and justice would be devolved eventually. There are also excepted matters that will never be devolved. It would be useful if Mr Maskey could point out areas that were in the reserved category but that have now been put in the excepted category.

1514. Terrorism and treason have always been excepted matters. There was never an expectation that terrorism, treason and national security would be devolved. It would be useful to know which reserved matters are now excepted. These matters were excepted, and they remain excepted. We are merely acknowledging the fact that they continue to be excepted matters of national security. Does that make sense?

1515. **The Chairman (Mr Wells):** Mr Maskey, you are not expecting matters such as the positions of Russian nuclear submarines to be devolved to a Northern Ireland Executive — or are you?

1516. **Mr Maskey:** Criminal law is a reserved matter, and there is now an argument that some matters that appear under the heading of “national security” would be excepted. There is a blurring and a vagueness. Under the banner of national security, some aspects of investigations into serious crime and so forth remain excepted

matters. Mrs Long discussed that at length this morning, and there are further examples. I am seeking clarification rather than simply saying that we agree that certain issues should remain excepted matters.

1517. **Mr McFarland:** National security issues are a matter for Westminster.

1518. The investigation of organised crime remains the responsibility of the PSNI. My understanding — and I know that some people will disagree — is that only responsibility for issues relating to republican terrorism and the handling of republican agents will remain with the national organisation, MI5, until the threat of bombs in Great Britain has gone away.

1519. Northern Ireland has seen its first court case and sentencing of an individual operating on behalf of al-Qaeda, and more cases are in the pipeline. As a result of the massively increased threat from al-Qaeda it has been decided, rightly or wrongly, that the examination of worldwide terrorism should remain with MI5. No responsibility for actual crime investigation rests anywhere other than with the PSNI.

1520. **Mr Weir:** I do not wish to deny anyone the right to argue the case that a previously excepted matter should become a transferred matter, or even that reserved matters should become transferred matters. However, the DUP is extremely unlikely to be persuaded that a previously excepted matter should become a transferred matter.

1521. I am not altogether clear whether any matters listed in the Northern Ireland Act 1998 as reserved matters have since changed to excepted matters — Alan McFarland may have been driving at something similar, and in the light of the lack of clarity, some matters may bear closer examination.

1522. Arguably, although every issue must be examined, those matters that have shifted from being reserved to excepted, or vice versa, are more of a grey area and therefore merit particular attention. However, I am not aware of anything that has changed from being a reserved matter to an excepted matter during that eight-year period. A list of any such changes in status may help.

1523. **The Chairman (Mr Wells):** That is a good suggestion, because we are getting bogged down, and some of those matters will come up time and time again.

1524. Mr Maskey, if you will provide the Committee with a list of any matters that you feel should be devolved but that remain excepted, that would help point the Committee in the direction of what you feel needs to be changed. Until those matters are identified, we will not get very far.

1525. **Mrs D Kelly:** Part of the problem is that the definition of terrorism is confusing. There has been a mass exodus of loyalist paramilitaries to England; perhaps they will pose a national security threat and the entire definition will change.

1526. In ‘Devolving Policing and Justice in Northern Ireland: A Discussion Paper’, chapter 5 on ‘Criminal Law and Creation of Offences and Penalties’ states:

“The Secretary of State is currently advised on this by the Criminal Justice Directorate of the Northern Ireland Office.”

1527. Is terrorism defined as financial gain from the proceeds of crime — and is that based on the fact that paramilitaries are engaged in criminality, which goes back to Naomi’s point — or is terrorism defined as blowing places up? Why should the Criminal Justice Directorate not report to the Assembly Minister, as opposed to the Secretary of State, on the legislative requirements for the creation of offences and court procedures?

1528. **The Chairman (Mr Wells):** We need more information. We are not going to square the circle, and there are similar issues on the list.

1529. **Mrs Foster:** May I suggest that we compare the list of transferable, reserved and excepted matters, as it was in 1998 — that is not something that I am often heard to say — and compare it to the list on the discussion paper to see if anything has changed? Some matters, such as judicial appointments, were not up for debate in 1998. That is a key issue for the SDLP and something new that we could discuss.

1530. If a matter is excepted, the likelihood of Government transferring it in the future is nil. The Committee should get into the realms of reality and deal with reserved matters and those that Government have perhaps moved to except. There is a case for that. If something has been excepted for eighty years —

1531. **Mr Weir:** Eight years.

1532. **The Chairman (Mr Wells):** Would such a table be helpful? Members could tick off the matters that they feel are in the wrong columns. In the absence of that, the Committee will get heavily bogged down.

1533. **Mr Maskey:** Members belong to political parties, and our job is to win a mandate and achieve our party objectives, whatever those may be. If members simply say that the Government will not change their minds then — *[Interruption.]*

1534. **The Chairman (Mr Wells):** The beauty of such a list is that members can say that x, y and z should move from one column to the next.

1535. **Mr Maskey:** A fundamental question should be addressed. How do members feel that they can define national security? One need only look at the intention to give MI5 an increased role in policing. That muddies the whole issue, never mind the morality or the correctness of the situation. A British security system would interfere in matters that are rightfully the preserve of locally elected and democratically accountable Ministers.

1536. Consider, for example, the relationship between an Attorney General who would be appointed here and the Crown Prosecution Service. That relationship would be fundamentally different here to what it would be elsewhere. Who, then, will define national security? Members seem to be saying that nothing can be done about national security matters, or that they want to do nothing about them. Sinn Féin is asking when the term national security will be defined.

1537. **The Chairman (Mr Wells):** I have asked the Secretary of State to come along to the Committee, and it may be appropriate for members to ask him to define what he means by

national security. The record of that request is in Hansard, and, no doubt, his staff are working on that as we speak.

1538. **Mrs Long:** The national Parliament will define national security, and therefore none of the devolved Administrations may define the term. The Government of the nation will define it. Members may be able to influence Government decisions on that.

1539. As you have said, Mr Chairman, the Alliance Party has highlighted the potential for anomalies in the treatment of paramilitaries. If, for example, republican paramilitarism were viewed as a threat to national security but loyalist paramilitarism as a criminal issue, my party would be concerned about parity. National security is not an issue that I foresee being reviewed on the basis of what members think. That is not to say that we accept the status quo, but, in the context of this discussion, I imagine that to be the situation.

1540. **The Chairman (Mr Wells):** I must step in here or the Committee will get bogged down. May we have a view on Mrs Foster's proposal that we have a list of reserved and accepted matters for guidance? Can we agree that, if the Secretary of State appears before the Committee, one issue that will be flagged up is his definition of national security and how he sees its relevance to this discussion?

1541. **Mr McFarland:** The Secretary of State is likely to appear at a later stage in the process. It would be useful if, alongside that list, we could obtain the NIO's definition of national security and who decided it. If this discussion continues, the factual position will be quite useful.

1542. **The Chairman (Mr Wells):** I like to get at least 10 consensuses in these meetings, so can we have the first?

1543. **Mr Weir:** It would be helpful if we could have a table with three columns that we could read across. We could then compare lists of transferred and reserved powers, for example, the position in 1998 and the historical position in 1921. I suspect that Sinn Féin's position will be that almost everything should be transferred; but the rest of us will need to be persuaded that

something on the list of excepted powers eight years ago should now suddenly be transferred.

1544. It would be particularly difficult to persuade us that a matter that had never been transferred to Northern Ireland should now be transferred. We need a three-column table that would enable comparisons and contrasts between reserved and excepted matters at different stages, with a separate list for items such as the Northern Ireland Judicial Appointments Commission, which is an example of a power transferred since 1998.

1.45 pm

1545. **Mr Raymond McCartney:** No one here wants to offer their definition of British national interest. However, this matter has practical implications because people have been vetted and refused employment or contracts because they were deemed to be contrary to British national interests. Therefore, if a Minister is running a Department, who decides for him or her what the national interest is?

1546. **The Chairman (Mr Wells):** I will let Alban speak, and then I will move to the vote because we have been bashing this issue around for some time now.

1547. **Mr A Maginness:** I want to make a general comment. The list of matters that are being retained at Westminster contains some significant items, while others are purely procedural and quite insignificant. However, reservations can be voiced and arguments raised in objection to their retention.

1548. Members should study the list very carefully, because the powers that be at Westminster could well have an agenda that involves keeping things back for specific reasons that are not consonant with good government in Northern Ireland and that do not help the devolved institutions. I encourage members to take a more sceptical view of matters that are being reserved.

1549. Chairman, you suggested getting advice on matters that are reserved and excepted and so forth, and that would help to inform the debate.

1550. The powers of the Northern Ireland Judicial Appointments Commission should be included in the matters that are being transferred. From more careful consideration of the NIO discussion paper, I notice that it mentions the Lord Chancellor's responsibility for the appointment of listed judicial offices and that the First Minister and Deputy First Minister, acting jointly, will be responsible for judicial appointments through the Judicial Appointments Commission. According to this text, therefore, that would be a devolved matter.

1551. **Mr Maskey:** Chairman, I apologise, I know that you want to move to the vote, but, in a way, my comments will colour the entire afternoon session, so please indulge me a little — it is not treasonable yet.

1552. **Mr Weir:** That is for us to decide.

1553. **Mr Maskey:** Peter Weir made a proposal that I would like to hear again. He proposed carrying out an exercise to find out what matters were reserved a number of years ago and what matters would now be excepted, and so on. It is important that we can compare what was in the Good Friday Agreement, the Patten Report, the 2006 Act, and the NIO discussion paper.

1554. Sinn Féin is arguing that those in the British seurocrat system are trying to emasculate the powers that should be transferred, which Alban just mentioned. Sinn Féin believes that a number of attempts have been made in the 2006 Act, and in the NIO discussion document, to make reserved matters excepted or to split them in some vague way. I would like a list of any regulations or protocols that relate to British national security, and a list of the powers devolved to the Scottish Parliament. That would be a useful comparison.

1555. **The Chairman (Mr Wells):** That is a fair point. Let us take the proposals in order. The first proposal, from Peter Weir, is to get a list of excepted and reserved matters in read-across form so that we can see exactly where we stand; that the Northern Ireland Office be asked to produce a written definition of national security; and that we should raise that with the Secretary of State. That is purely for information. No

emphasis is being placed on these points — we merely want to clarify the position.

1556. **Mr Weir:** The other matter is Alban Maginness’s point that we should request an additional column to detail the functions that were not mentioned in 1998. An obvious one is the Northern Ireland Judicial Appointments Commission, but there may be other matters that are dated post-1998.

1557. **The Chairman (Mr Wells):** Do we have consensus on that proposal?

Members indicated assent.

1558. **The Chairman (Mr Wells):** Mr Maskey has asked for an explanatory text that details the protocols, any relevant documents and, of course, the powers of the Scottish Parliament in relation to national security. I do not believe that the Scottish Parliament has any role in that area. However, it is important that we get that information.

1559. **Mr Weir:** I presume that one could describe those as Home Office matters.

1560. **Mr A Maginness:** My understanding was that Mr Maskey was not referring to matters of national security per se, but to justice matters. I understand that traditionally, Scotland has had a great deal of judicial independence over and above any other part of the UK. I could not foresee the Scottish Parliament not having additional powers.

1561. **The Chairman (Mr Wells):** That information would be useful.

1562. **Mrs Foster:** Scotland’s legal system is entirely separate from those in England, Wales and Northern Ireland, and the Lord Chancellor does not have as much power in Scotland as he has in those jurisdictions. If we want to be absolutely thorough, we should also find out the position of the National Assembly for Wales.

1563. **Mr McFarland:** Chapter 18 of the NIO discussion paper details which functions are excepted and why.

1564. **The Chairman (Mr Wells):** The idea of a read-across table —

1565. **Mr McFarland:** That idea is fine, but if members want to read up on specific issues before we get that table, they are set out in that chapter.

1566. **The Chairman (Mr Wells):** Are we agreed that we should get the additional information that Mr Maskey requested?

1567. **Mrs Foster:** As long as we get information from the Scottish Parliament and the National Assembly for Wales.

1568. **The Chairman (Mr Wells):** Do members have any problems with that? Is that agreed?

Members indicated assent.

1569. **The Chairman (Mr Wells):** The research team will no doubt use that, plus Hansard, to track down that material.

1570. We move to paragraph 13(b) of the NIO discussion paper — “Criminal records, checks and disclosures”. Those are devolved matters in Scotland.

1571. **Mr Weir:** I do not want to cut across this discussion, but I thought that the purpose of getting the paper was so that we could deal with all of those issues. It strikes me that when you have a paper that also details the situations in Scotland and Wales, you are in a better position to put all those issues into context. To be honest, if we work through this list of 15 or 20 separate issues before we get that paper, we will merely be using our insufficient knowledge to rehearse arguments.

1572. **The Chairman (Mr Wells):** You must be a mind reader, Mr Weir, because the staff are saying exactly the same thing.

1573. **Mr Weir:** Great minds think alike.

1574. **Mr Kennedy:** And fools seldom differ.

1575. **The Chairman (Mr Wells):** When we get the additional information we will be able to have a more educated discussion.

1576. **Mr Maskey:** Could we get additional information on international human rights obligations?

1577. **The Chairman (Mr Wells):** How does that relate to matters that are excluded from the

remit of a possible Minister with responsibility for justice in the Executive?

1578. **Mr Maskey:** If we want to be elected and accountable, we will need our own human rights obligations. If some of those matters are excepted, how do we, as elected representatives who are accountable to people here, defend those obligations? Where do they lie?

1579. **The Chairman (Mr Wells):** It is an interesting point, but I do not see how it lies in paragraph 13.

1580. **Mrs Foster:** I would not consent to that. We are straying into the realms of trying to find out how many things we can get from this paper. We must be realistic. Rights, safeguards and human rights issues are dealt with by the Preparation for Government Committee that meets on Fridays. If Mr Maskey would like to attend, I am sure that Dermot Nesbitt will give him an exposition on human rights, and we will be all the wiser for it.

1581. **Mr Maskey:** I have heard Dermot's exposition; I was not terribly enamoured with it.

1582. **The Chairman (Mr Wells):** We do not have consensus for Mr Maskey's additional proposal. If the research team produces all that we have asked for, we will have enough material to be going on with.

1583. We are whizzing very quickly through the agenda. We have reached paragraph 13q, so we will have to park this issue for the week and hope to continue that discussion next time.

1584. We do not know whether all that material will be available within a week, but we have plenty to be going on with while that research is being done for us.

1585. The Preparation for Government Committee's work programme is continually revised and updated, and we like to let members know when we shall be meeting, who will be chairing the sitting, and so forth. The economic challenges subgroup is doing the same. Do members have any practical difficulties with the work programme? Mr Molloy and I will be present throughout, so no problems will arise with the chairmanship of any sittings.

1586. **Mr Kennedy:** The scrupulous attention of one of the doorkeepers prevented one of our observers from attending this morning. It has now been established that our observer should have been given access. The doorkeeper has apologised to the individual concerned, but, nevertheless, it is important that observers are eligible to attend meetings and that doorkeepers be informed of who will be attending sittings. Procedures should be consistent, and consistently applied.

1587. **The Chairman (Mr Wells):** Normally the parties would inform the staff of who will be attending. The observers in attendance have been here quite often, so we have got to know their faces. The gentleman to whom you refer was a new face to the staff, and they did not know in advance that he was to attend. If he wants to attend our future meetings, the problem has been resolved.

1588. **Mr McFarland:** Chairman, logic dictates that somebody stick his or her head around a door to check whether anyone else plans to attend. We were told that we could have an observer in attendance. In fact, I raised the issue of observers attending our meetings. Had I realised what had happened this morning, I would have done something. To be turned away in such a fashion is silly.

1589. **Mr Maskey:** It comes under the heading of "National Security".

1590. **The Chairman (Mr Wells):** We shall speak to the doorkeepers about that, but had they known in advance, the issue would not have arisen.

1591. **Mr Weir:** On a related point, it may be useful if each party were given an additional set of papers in advance of each meeting. That could be made available to the party or to an adviser.

1592. **The Chairman (Mr Wells):** We discussed that, but the view was taken that, as we are already distributing 30 sets of papers, it was the responsibility of the parties, who receive papers well in advance of meetings, to give them to researchers.

1593. **Mr Weir:** If that was to be increased from 30 to 35, it should not —

1594. **The Chairman (Mr Wells):** We would still not have known that this gentleman was coming, so we would have had no —

1595. **Mr Weir:** I propose that an additional set of papers per party be made available. It would be up to the party to decide whether that went to its staff or to whomever. I do not know whether anybody has a particular problem with that.

1596. **The Chairman (Mr Wells):** To whom would that pack go?

1597. **Mr Weir:** It would go to the general office of each party. All parties have general offices in Parliament Buildings. From a practical point of view, that should not prove all that difficult.

1598. **The Chairman (Mr Wells):** What do members feel about Mr Weir's proposal that one extra pack, with which parties can do what they feel fit, be provided to the parties' general office?

1599. **Mr Kennedy:** It may also be helpful, Chairman, if you could be provided with a register of additional party staff. You would then be able to identify party researchers or observers. Perhaps it would be helpful if the parties could produce a list of names so that party staff could be easily, or more easily, identifiable.

2.00 pm

1600. **The Chairman (Mr Wells):** The DUP seems to be happy enough, so can we agree that? That will overcome some of the difficulties we have experienced this morning. There is no deliberate attempt to exclude people, I assure you.

1601. There is a letter from the Secretary of State — members will be aware that we wrote to him on 3 August — in which he says that he is minded to move the first plenary sitting after recess to 11 September, a date that we will all recall. That will give the Preparation for Government Committee and the economic subgroup a bit more time to finish their work. I mentioned this to the Speaker today, and she is content with the arrangement. The Business Committee meeting will also move back a week. Is everyone content with the contents of

the Secretary of State's letter? It was, after all, this Committee that, by consensus, asked for the plenary sitting to be put back.

1602. **Mr Kennedy:** Chairman, it was reported in the press yesterday, so it is already a done deal.

1603. **The Chairman (Mr Wells):** I have to put it formally to the Committee.

Members indicated assent.

1604. **The Chairman (Mr Wells):** Item 6 on the agenda is a letter that the Committee received from Prof Sir Desmond Rea, the chairman of the Policing Board. We have members of the Policing Board here, so he will need no introduction. It is a very helpful and positive letter. The Policing Board is offering to give us any help or provide any evidence that we require. I suggest that we keep this on file, and if any issues arise on which we feel that we need input from the Policing Board, we can ask for an answer or for written evidence, and perhaps reserve the right to call it to give evidence. That is entirely at our discretion.

1605. The last issue today is one that was raised by Mr McNarry at yesterday's meeting of the economic subgroup, which some of you will have attended — Mr Maginness chaired the meeting so he is aware of it.

1606. The first thing Mr McNarry has asked us to decide upon is:

“whether it is appropriate for a substitute to attend specifically in place of the nominated Pfg member representative”.

1607. My view — and I am sure that it is the view of many others — is that it has been extraordinarily difficult to keep this Committee going during the summer period. In fact, the turnout has been quite remarkable. The full Preparation for Government Committee has never been in a position where it has become inquorate. Even today the attendance is in double figures. The economic subgroup has found it more difficult. There have been times when it has been hard to achieve the seven members that are required. Indeed, on one occasion we did become inquorate, and that evidence was lost.

1608. We have had a fairly flexible attitude to this —members have come and gone, but it has not disrupted the flow of the Preparation for Government Committee or the economic subgroup. As someone who has had to chair these meetings, I feel that that flexibility has helped enormously in enabling us to keep going. We get our daily lambasting from the press —usually when we turn to the front page of the ‘Belfast Telegraph’ — but a lot of hard work has been going on during the past six weeks, and that is because members have been able to get capable substitutes to cover for them. However, other members of the Committee may feel that we need a more rigid approach.

1609. **Mr Weir:** Chairman, I was at the economic subgroup meeting yesterday. From a practical point of view, it would not have been able to function, to be brutally honest, if you had said that we must have seven out of the same 10 people there at all times.

1610. There is a slight degree of irony. I do not want to be disparaging towards the member who raised the issue, but I think that the economic subgroup and the Preparation for Government Committee have become inquorate on only one occasion. As it happens, it was when Mr McNarry left the room.

1611. From a practical point of view, a bit of common sense must be adopted. It would be a different matter if the Preparation for Government Committee and the economic subgroup were meeting in the middle of October, when we could reasonably expect most MLAs to be available. In most places, seven out of 10 members would be considered a pretty high quorum. From a practical point of view, I doubt that more than one or two meetings could have functioned if a quorum of 10 named members had been stuck to rigidly.

1612. **The Chairman (Mr Wells):** Alban, you chaired the meeting, so it is important that we hear from you.

1613. **Mr A Maginness:** I did, and Mr McNarry raised the point. I asked the Committee Clerk for advice on the matter, and the position is explained in the aide-memoire.

1614. It is my view that flexibility is the most important aspect of the Preparation for Government Committee and the economic subgroup’s functioning well. If a situation arises that restricts membership, the Committee and the subgroup will run into all sorts of difficulties, not least becoming inquorate. I hope that I am right in this, but, by and large, there is consensus that the rules governing the membership of the Committee and the subgroup should not be too strict. They should allow the Committee and the subgroup to work, and let the parties get on with the job of presenting their views. That is my opinion.

1615. It seems to me that there should be no problems with members chairing the Committee or the subgroup. Those members will act independently and will have no voting rights.

1616. **Mr Neeson:** For an Assembly that is supposed to be in recess, it is incredible that such a good attendance record has been maintained at the Committee and the economic subgroup. Yesterday, I made the point about the role of the Assembly’s Deputy Speakers. When they are not in the Chair, the Deputy Speakers can participate normally in Assembly debates. I see some similarities between that and the role that Naomi is performing. Also, I think that it is incredible that she has been able to attend so many meetings during recess.

1617. **Mr McFarland:** This is specific to the economic subgroup because it alone remains under the Secretary of State’s rules. The Secretary of State ruled that the subgroups should comprise one member of the Preparation for Government Committee from each party and AN Other expert from each party. The UUP nominated two members plus a substitute. It is the middle of the summer and members are away all over the place; they can attend one week but not the next. Essentially, the UUP took a sensible approach to the Committee. Members have subbed as best they could and, on a week-by-week basis, have identified the member whom they were to replace.

1618. The logic is to take that approach to the economic subgroup. I can understand why the larger parties might be slightly confused as to

why more members of their teams were not permitted to attend the Committee and the subgroup. However, the Alliance Party may well have problems over the summer. Am I correct to say that, with the Speaker out of the equation, the Alliance Party has five available members?

1619. **Mrs Long:** Yes.

1620. **Mr McFarland:** Therefore, perhaps it would not be unreasonable to take a relatively easy approach to Committee and subgroup membership.

1621. **The Chairman (Mr Wells):** The rules are silent on the issue. Therefore, it is up to us to decide whether we wish to continue in this way. Another issue is that the way that the Committee and the subgroup have worked has allowed each party to field a specialist team for the Preparation for Government Committees dealing with institutional changes and policing and justice. That is why a plethora of MLAs who sit on the Policing Board is here today: they are the experts on that issue. Such arrangements would not have been possible if we had stuck rigidly to Mr McNarry's suggestion.

1622. Given the fact that it is the middle of August, I cannot see any other way round the issue. However, Mr McNarry insisted that it be raised, and, therefore, we were obliged to deal with it. It would be useful to have consensus one way or the other on whether Mr McNarry's suggestion should be taken forward.

1623. **Mrs Long:** I do not wish to discuss the detail of my participation and the consternation that it caused yesterday — *[Laughter.]*

1624. At least three of the parties around the table today have fielded teams at the main Programme for Government Committee that have not included one of their formal members of that Committee. Therefore, to suggest that parties should not be allowed to field substitutes to be their Programme for Government Committee representative on the subgroup seems ludicrous.

1625. **The Chairman (Mr Wells):** There seems to be consensus. Are members agreed that we should retain the flexible approach that we have had up to now and allow parties to field substitutes as and when necessary?

Members indicated assent.

1626. **The Chairman (Mr Wells):** A separate issue, to which Naomi referred, is the fact that she has been made a Chair of the economic subgroup, but is attending meetings of the PFG Committee also.

1627. **Mrs Long:** I have attended one meeting.

1628. **The Chairman (Mr Wells):** Sean's point is that Deputy Speakers can attend the Assembly with no problem. I suspect that it would cause great difficulties for the Alliance Party if that were not the situation for the Committee and the subgroup. The party's numbers would be reduced even further.

1629. **Mr Cobain:** I see that Alex has arrived. It is OK, Alex; we are finished. Hurry up, Chairman.

1630. **The Chairman (Mr Wells):** If you would just sit down, Alex, I will mark your attendance.

1631. **Mr Attwood:** I have important matters that I want to raise.

1632. **Mr Cobain:** Some chance.

1633. **The Chairman (Mr Wells):** Is the Committee content that Naomi — and it also applies to Alban — can continue to adopt both roles, unless there is an obvious conflict of interest, which I doubt?

Members indicated assent.

1634. **The Chairman (Mr Wells):** That is good. Thank you, Mr Attwood. I will just put your name on the record. *[Laughter.]*

1635. The date of the next meeting will be 11 August, at 10.00 am in room 144. Mr Attwood, have you any comments? We will be discussing rights, safeguards, equality issues and related matters. I alert members that the meeting could last a full day.

1636. **Mr McFarland:** It will last a full day. Last week, the Committee voted for an all-day meeting.

1637. **The Chairman (Mr Wells):** The meeting on Wednesday 16 August could also be for a full day. Would that cause difficulties for anyone?

1638. **Mr McFarland:** I understood that we had decided that, until the back of the business is

broken, we would be meeting for full days. We will have three more meetings, with the last meeting to finalise what will go into our report. We will have a couple of Wednesday meetings before we start hitting the buffers.

1639. **The Chairman (Mr Wells):** That meeting will deal with policing, intelligence services and the Police Ombudsman. We will not roll this format into that one. It will be a separate meeting. We will return to the matters raised today after the research team has prepared the paper.

1640. **Mr McFarland:** Can a paper not be prepared in a week? If that is the case, we are in deep trouble. The idea was that we would have an agenda and an order. Some issues have been parked until the end because they are difficult and need further discussion. Does this issue also need to be parked or are we waiting for information? My understanding was that we were seeking information. If we cannot get information within a week, we are in deep doo-doo.

1641. **The Chairman (Mr Wells):** We cannot guarantee that, Alan. Remember that one of our researchers has been redeployed to the economic subgroup, which has an awful lot of work to do.

1642. **Mr Maskey:** There is no reason why today's discussion cannot be put off for two weeks.

1643. **Mr McFarland:** There is no problem with that.

1644. **Mr Maskey:** The Committee needs the relevant documents that it has asked for today, and a little time to absorb them.

1645. **Mrs Long:** Surely if next week's meeting is on issues such as the security services, the issues that we have raised today about where the power over national security is vested will be pertinent to that discussion? We could run up against the same brick wall.

1646. **The Chairman (Mr Wells):** I have spoken to the Committee staff, and it is a needs-must situation. We will have to get the information. It will be difficult, but we will do it.

1647. **Mr McFarland:** It occurs to me this is recurring issue. We had this at the beginning

with Hansard. We have sat in abeyance for a number of years. We are now functioning for the first time within the last few months and are back in action. You would have thought that the team would be very keen to get fired up to produce the information.

1648. At one stage, we were told that Hansard could not produce the Official Report for a week.

1649. This is the only show in town. The parties are all here around the table, and staff difficulties should not be an issue. I could rustle a report out in a couple of days with the documentation that is available in the Assembly.

1650. **Mr Weir:** Do we subcontract the work?

1651. **The Chairman (Mr Wells):** Alan, your eloquence has convinced us. We will provide the material to you; with difficulty, but we will do that. Then we will be able to continue the discussion.

Adjourned at 2.15 pm.

Wednesday 16 August 2006

Member:

The Chairman, Mr Jim Wells
Mr Alex Attwood
Mr Fred Cobain
Mrs Arlene Foster
Mrs Dolores Kelly
Mr Gerry Kelly
Mr Danny Kennedy
Mrs Naomi Long
Mr Fra McCann
Mr Alan McFarland
Mr Sean Neeson
Mr Peter Weir
Mr Sammy Wilson

The Committee met at 10.04 am.

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

1652. **The Chairman (Mr Wells):** When I was sitting in on Monday's meeting, I heard the odd sound that indicated that some people had their mobile phones switched on. Everyone must switch off his or her mobile phone. The Editor of Debates has informed us that some of the recording has been lost because of mobile phone interference, so somebody was illicitly listening to something. Therefore, please turn off your mobile telephones.

1653. **Mr Kennedy:** Chairman, have you ever considered that that might be in the public interest?

1654. **The Chairman (Mr Wells):** Something may have been said of such importance that it would be a pity to lose it.

1655. Can members indicate whom they are representing today?

1656. **Mrs Foster:** I am here for Lord Morrow; Sammy Wilson will be here in place of Ian Paisley Jnr, and Mr Weir is here for Rev William McCrea.

1657. **Mr McFarland:** Mr Cobain is here for Mr McNarry.

1658. **The Chairman (Mr Wells):** I thought that you said Mr Beggs.

1659. **Mr Cobain:** I wish that Mr Beggs were here.

1660. **Mr Weir:** So do we. *[Laughter.]*

1661. **Mr Neeson:** I am here for Mr Ford.

1662. **The Chairman (Mr Wells):** Alex, who is on your team?

1663. **Mr Attwood:** Am I here as myself? I will take your guidance on it, Chair.

1664. **The Committee Clerk:** Mark Durkan, Alasdair McDonnell and Seán Farren are the three nominated SDLP representatives. We shall work it out.

1665. **Mr G Kelly:** I am here for Mr McGuinness, and Fra McCann is here for Conor Murphy.

1666. **The Chairman (Mr Wells):** Will there be a third member from your party?

1667. **Mr G Kelly:** A third member will not be present today.

1668. **The Chairman (Mr Wells):** At least one new member is present this morning, so are there any declarations of interest to be made?

1669. **Mr Kennedy:** I arrived late at the previous meeting, but I said at the time that I was a member of the Northern Ireland Policing Board. That does not appear to be recorded in the draft minutes.

1670. **The Chairman (Mr Wells):** It is very important that that be recorded.

1671. **Mrs Foster:** Chairman, must we declare interests at every meeting?

1672. **The Chairman (Mr Wells):** Only if it is a member's first appearance at a meeting, and he or she is a member of the Policing Board, a district policing partnership (DPP), MI5 or the security forces.

1673. **Mr Cobain:** Do not say that or everyone will put their hand up.

1674. **Mr G Kelly:** Welcome to MI5.

1675. **Mr Kennedy:** You said that you would not say that.

1676. **The Chairman (Mr Wells):** If you are being paid by the intelligence services, you must declare it.

1677. **Mr Weir:** It is purely voluntary work.

1678. **The Chairman (Mr Wells):** Members should have had a chance to look at the draft minutes of 9 August. Are there any amendments or additions? I have noted that Mr Kennedy's declaration of membership of the Policing Board was not recorded. I take it that the draft minutes are acceptable.

Members indicated assent.

1679. **The Chairman (Mr Wells):** That is our first consensus of the morning.

1680. I now move to matters arising. I chaired the meeting at which these matters were raised, and I recall it vividly. Several members requested that research documents be prepared. Mr Alban Maginness asked for a paper on the functions of the Lord Chancellor, particularly his role in the Judicial Appointments Commission. That was an especially difficult task, but it has been done. A paper was also requested on excepted and reserved matters. From memory, I think that Mr Maskey asked for a definition of national security. Those papers arrived this morning. That was quite a tall order, given that this is the holiday period. I am conscious that it may not be reasonable to ask members to discuss those documents now.

1681. We have two options: we can adjourn for an hour, and rooms are available to which members can adjourn to examine the papers, or we can defer consideration of the material until next week's meeting and deal with the other issues that are listed for discussion. Of course, we can also discuss the papers straight away.

1682. We are trying to arrange for Minister Maria Eagle, whom I have not yet met, to attend next Wednesday's meeting. It may dovetail nicely if we discussed those issues during our

meeting with her next Wednesday. That is only for information — I am not trying to steer the Committee in any direction.

1683. **Mr McFarland:** The UUP is happy to defer those issues, as we have been awaiting research papers from London, which have not yet arrived. However, if we have those discussions today, that is fine.

1684. **Mr G Kelly:** My inclination is to take the advantage of suspending the Committee for an hour. Mr McFarland is probably right that we will not refer to the detail of those papers. Some of this material is relevant to the discussion paper, which we started to discuss on 9 August. We will probably return to that material at a later date, but the next item on the agenda is the discussion paper.

1685. **The Chairman (Mr Wells):** Do other parties have a view on that?

1686. **Mr Attwood:** We could begin discussions on those papers today, but some of the matters may soon become irrelevant. Consequently, I suggest that we suspend for an hour, because the papers will crowd in on the conversation sooner or later during the course of the meeting.

1687. **Mrs Long:** Last week, the Committee adjourned because we recognised that the requested paper would impinge on later discussions. Therefore the Alliance Party has no objection if the Committee wishes to defer detailed discussion on those matters until next week. However, I am concerned about what we could usefully discuss today if those discussions were deferred. Our preference is to suspend for an hour.

1688. **The Chairman (Mr Wells):** That is a good point. We could have a general discussion on policing issues, and then we could get discuss the Police Ombudsman and community restorative justice. We could fill today with substantive material, so we will not lose time — it is simply about how we manage that time.

1689. **Mrs Foster:** The DUP is minded to suspend for an hour to read through the papers. We may not go into detail on those today, but we feel that we should read them.

1690. **The Chairman (Mr Wells):** That is an either/or option. Gerry Kelly has accepted that the Committee could resume after the hour and still defer the issue.

1691. **Mr Weir:** I appreciate that a great deal of work has gone into the research paper, and it does contain some comparative material. However, I am disappointed that it seems to only include references to the Northern Ireland Act 1998, the Scotland Act 1998 and the Northern Ireland Constitution Act 1973. We also received a separate list last week. Part of the reason for requesting a compare-and-contrast paper was to consider whether any issues had shifted between 1998 and now. Has there been any change in the devolution of policing and justice powers since 1998?

1692. **The Chairman (Mr Wells):** Mr Tim Moore, Senior Research Officer, prepared the paper, so I will ask him to clarify that.

1693. **Mr Tim Moore (Senior Research Officer, Northern Ireland Assembly):** In my research paper, appendices 1 and 2 set out schedules 2 and 3 to the Northern Ireland Act 1998, which deal with excepted and reserved matters. The appendices detail any changes that have been made to schedules 2 and 3. Having examined those schedules to consider where changes had been made, I would be loath to say that there have been significant or insignificant changes. That is for members to decide.

1694. **Mr Weir:** The DUP is happy to suspend for at least an hour. I doubt whether everyone could absorb all the information in that time, but we are open-minded in that regard.

1695. **The Chairman (Mr Wells):** No one is dying in the ditch on this issue, but it seems that there is consensus to suspend for an hour and let members decide whether that is sufficient time for them to discuss the material this morning. If not, we shall return to it at a later date.

1696. Four Committee rooms are available if Committee members, or party members, wish to avail themselves of them.

1697. **Mr G Kelly:** Party rooms can also be used.

1698. **The Chairman (Mr Wells):** It is almost 10.15 am now, and we will resume at 11.15 am. Please do not disappear, because we will not resume if one party is missing. Do not take the day off.

The Committee was suspended at 10.14 am.

On resuming —

11.20 am

1699. **The Chairman (Mr Wells):** We have had an hour to look at the material. I am interested in views on whether we proceed with it or leave it for a week.

1700. **Mrs Long:** The Alliance Party has no strong preference. It might be better to defer in order to allow a more detailed look at the material. However, we are content to deal with the issues today. Some matters could be resolved today, and we could specifically consider more contentious issues in greater detail. There are some issues on which we may find agreement. Others may have strong feelings, but we are flexible.

1701. **Mr Attwood:** Some of today's agenda items will refer to these papers anyway. Next week, when a Minister comes — I believe that it will not be Maria Eagle — some of the remaining matters from today's papers could be raised. There is no easy way to handle this, because it all gets joined up, but that might be the most logical way to proceed.

1702. **The Chairman (Mr Wells):** We have made initial contact with NIO, and it could be either Mr Goggins or Maria Eagle. It looks likely that one of them will be available.

1703. **Mr G Kelly:** Sinn Féin is happy to go through the set agenda. The papers are very helpful, but there are a lot of them. There are issues concerning the NIO and national security detailed at paragraph 13 of the Clerk's briefing to the NIO discussion paper that we could go through, but if the Minister is coming it is probably better to deal with everything at once. My only difficulty is that I will not be here for that.

1704. **Mr McFarland:** We are happy enough. Most of the material is non-contentious, and

there are issues that clearly need substantial discussion. We keep reminding ourselves that time is not on our side, so we should have whatever discussion we can have today.

1705. I presume that we will discuss the matters contained in the Secretary of State's letter of 9 August. My impression of the general tone of the letter was that, if we wanted the Minister to answer questions of fact, we should provide questions beforehand so that the Minister could answer them.

1706. What is it that we do not have here? The Secretary of State is clearly saying that he will not allow a Minister to be cross-questioned on attitudes and views. If we are dealing with questions of fact, what factual questions do we want answered? There is quite an agenda to get through between now and the week after next, and unless we are going to get something dramatic from a Minister, why are inviting one to attend at this stage?

1707. **The Chairman (Mr Wells):** Mrs Foster raised that issue after the Secretary of State's Glenties speech, in which he outlined what the DUP considered to be new material on devolution, policing and justice, and the DUP wanted to question him on that.

1708. **Mrs Foster:** Indeed.

1709. **Mr McFarland:** I understood that we had agreed that that would be left until our last meeting, so that we could pile in all our unanswered questions. There are several substantive issues that we have not gone into, and we may have questions about those.

1710. Next week, we may have questions to ask about community restorative justice. I understood that we were to leave questions for the Secretary of State or the Minister until the final meeting. We would do a wrap-up at that meeting when we would know exactly what we wanted them to talk about. Indeed, I share Mrs —

1711. **Mrs Foster:** Arlene.

1712. **Mr McFarland:** Pardon?

1713. **Mrs Foster:** Arlene.

1714. **Mr McFarland:** Mrs Foster.

1715. **The Chairman (Mr Wells):** Your colleague got into trouble for that last week.

1716. **Mr McFarland:** I have the same trouble.

1717. **Mrs Foster:** I am going to wear a name tag.

1718. **Mr McFarland:** I am suddenly reminded of Dermot Nesbitt doing the same thing last week. I hope that I am not in for a similar week of battling.

1719. **Mr Kennedy:** You need to watch yourself; the meeting is being recorded.

1720. **Mr McFarland:** Yes, it is.

1721. I understood that we were going to wrap up the meetings with a visit from a Minister. However, next week is quite soon for a ministerial visit.

1722. **Mrs Foster:** Chairman, you are correct. Alex Attwood and I had raised the issue of a visit from the Secretary of State in light of his speech at Glenties. In view of that speech, I find his letter somewhat puzzling. It suggests that he does not know why he was invited to the Committee. Had he read Hansard, he would have known why.

1723. I agree with Alan McFarland — there is no point inviting Maria Eagle, Paul Goggins or another Minister to next week's meeting. If there is any need to speak to a Minister at the end of our deliberations, so be it. The Secretary of State was, however, specifically invited to discuss the comments that he made about the constitutional and practical aspects of policing — as he called them — in his speech at Glenties. His letter now says that he does not want to come here to be “quizzed”.

1724. **The Chairman (Mr Wells):** I believe that he is not coming because he is on holiday.

1725. **Mrs Foster:** It would have been more helpful if he had said that.

1726. **Mr Weir:** Correct me if I am wrong, Mr Chairman, but my understanding is that we did not specify a date for the Secretary of State's visit; the invitation was open-ended. Can he not, because of his busy schedule, find the time to visit the Committee at any stage before it

completes its work? I take it fairly thick that the Secretary of State constantly lectures us about getting things sorted out. There is a degree of urgency to our task, yet when he is asked to give evidence to the Committee, he deigns not to because he might get “quizzed”. That is fundamentally wrong.

1727. With regard to your initial question on the research material, although some of it has been useful, I am a little concerned that some of what we were given was not precise enough. However, that may be our fault for not explaining clearly what we wanted. The research paper contains tables, and the appendices reproduce schedules 2 and 3 of the Northern Ireland Act 1998. However, it is noted that schedule 2 of the 1998 Act, as reproduced in the paper, has not been updated to include amendments that result from the Northern Ireland (Miscellaneous Provisions) Act 2006. It would have been helpful if any changes that that Act had brought about had been included. Perhaps there was none, but I want to be able to see that information.

1728. **Mr T Moore:** The changes are listed in paragraphs 17 and 21 of my research paper.

1729. **Mr Weir:** That is all very well. However, the complication is that we may have too much material. One section contains lists, and paragraphs 17 and 21 cite references. However, the paper does not seem comprehensive.

1730. I was specifically trying to establish whether there had been a shift on the reserved, excepted and devolved nature of each of the issues. Those who were involved in the talks will remember that the Ulster Unionist Party, DUP, SDLP positions and so on were clearly laid out in columns on our documentation. I am sure that they found that helpful when we debated matters such as Standing Orders.

1731. Ideally, I would have liked to see details on whether each matter was reserved, excepted or devolved in 1921, 1973, 1998 and 2006. That could help to narrow the scope of the discussion. In light of last week’s discussion, more examination is necessary; for example, if a matter was in one category in 1998 and was shifted for some reason in 2006.

1732. Frankly, it strikes me as futile to try to bag issues that will never be devolved, have not been devolved since the beginning of the state, and in 1973, 1998 and 2006 were treated consistently as —

1733. **Mr Cobain:** This is not a state.

11.30 am

1734. **Mr Weir:** I do not want to get involved in semantics, so I will change that remark to “since the creation of Northern Ireland”.

1735. My point is that it would take an extremely strong argument to convert a matter that had been reserved consistently — one that was reserved in 1998 and remains reserved in 2006 — to a devolved matter. I thought that a historical perspective would help to achieve clarity on that.

1736. I know that there are references to the Northern Ireland Constitution Act 1973 and the Northern Ireland Act 1998 in Mr Moore’s paper, but I want to see what the position is —

1737. **Mr S Wilson:** Are we to take it that paragraphs 17 and 21 contain only the changes under the Northern Ireland (Miscellaneous Provisions) Act 2006?

1738. **Mr T Moore:** I will try to explain appendices 1 and 2, which set out schedules 2 and 3 to the Northern Ireland Act 1998. Schedule 2 deals with excepted matters, and schedule 3 with reserved matters. Perhaps the way that it has been presented was not explained properly, but, in schedule 2, appendix 1, anything in square brackets indicates an amendment to the original Northern Ireland Act 1998. All the amendments are listed after the schedules.

1739. **Mr Weir:** Yes, but the point is that at the top of the opening page of appendices 1 and 2, that paper states that:

“The schedule provided below is not updated to include amendments resulting from the Northern Ireland (Miscellaneous Provisions) Act 2006.”

1740. Perhaps I misunderstood, but my interpretation was that the square brackets contained changes that happened between 1998

and 2006, but did not include changes made in the Northern Ireland (Miscellaneous Provisions) Act 2006.

1741. **Mr T Moore:** That is because there is no available version of the revised 1998 Act. As the Northern Ireland (Miscellaneous Provisions) Act 2006 is so recent, as far as I can find, no amended version of the 1998 Act has been produced. Members will notice that the NIO's paper has made the amendments and provides updated legislation.

1742. Paragraphs 17 and 21 of my paper highlight and detail the two changes to schedule 2 and the three changes to schedule 3 that will occur due to the 2006 Act. Outside of that, appendices 1 and 2 contain the schedules as amended.

1743. **The Chairman (Mr Wells):** Mr Moore will be with us throughout the discussions. It may help to call upon him to clarify any difficulties that arise as we discuss the papers.

1744. **Mr Attwood:** I want to return to the issue of the Minister coming to the Committee next week. Frankly, I have some sympathy with Alan McFarland's view that if the Minister is coming merely to exchange factual information, it may help a bit, but not as much as members thought. I would much rather the Secretary of State came, because his letter of 9 August 2006 is intellectually and politically dubious.

1745. **Mrs Foster:** Hear hear.

1746. **Mr Attwood:** The point is not that he does not feel that the PFG should be, as he states in his letter:

“quizzing ministers on views they may have expressed.”

1747. The key line is:

“I hope instead that the PFG will focus on issues that the parties agree need to be resolved between themselves in preparation for government.”

1748. We know that the policing issue must be resolved, either through the PFG Committee, once devolution is restored, or whenever. Policing issues appear on every agenda, but the Secretary of State will not come here to discuss

what he may, or may not, do to resolve the policing and preparation for Government issues between the parties and himself. That is an intellectually and politically dubious approach. Given that we are trying to resolve the policing issue as part of the preparation for Government, the Secretary of State should share what he is doing to resolve that issue with us. The Committee should reply to the Secretary of State and make that point.

1749. **The Chairman (Mr Wells):** As far as short-term availability is concerned, either Paul Goggins or David Hanson could come on Wednesday 23 August 2006. However, if members want to invite the Secretary of State at a later stage, I doubt that that will happen in August.

1750. **Mr Cobain:** I am becoming slightly concerned about where we are going with this. The Committee on the Preparation for Government (PFG) was set up to consider the devolution of policing and justice and to produce a report. That is its role, yet we are wandering all over the place. If the Secretary of State discusses policing and justice with individual parties, there is no way that he will tell the Committee what he is talking about or reveal his relationships with other parties on the matter.

1751. **Mr Weir:** The Committee's remit is wider than the devolution of policing and justice. That is just one item on the Committee's agenda, which is why we are looking at, for example, the Police Ombudsman and community restorative justice. The PFG Committee has been tasked with overcoming obstacles to the devolution of policing and justice. Devolution of policing and justice forms a significant part of our deliberations but not the whole.

1752. **The Chairman (Mr Wells):** We need to decide today whether we wish to have a junior Minister in attendance next Wednesday. It would be either Mr Goggins or Mr Hanson, whose responsibilities overlap. If we want the Secretary of State instead, we must alert him that we want him to attend at a future date.

1753. **Mrs Long:** I am fairly indifferent, because it matters very little who attends. We will not obtain any more information, regardless. If we

continue to discuss whom we should invite, it may descend into a battle over something that will not really add to our work. Therefore, I am flexible.

1754. Alan suggested that we try to complete as much of the work as we can, in order to identify those issues that we want to raise. We should forward those to the Secretary of State and request that if he does not come himself, he sends a Minister in his place. If we simply set ourselves up to do battle with the Secretary of State, because he has refused to attend the Committee — despite it being the preference of most members that he should — I cannot see where that would get us. We could spend the next hour discussing this, and we could be no closer to getting him into the room.

1755. **Mr McFarland:** Why would we have a Minister here next week? What would that add to our deliberations? We have a substantial agenda and lots of paperwork to get through. Questions may be raised that only Ministers can answer, but I recall that, at one of our first meetings, we decided that we would only get the Secretary of State to attend once. Therefore, in the meantime, it would be worthwhile to store up questions and do as much work as possible. After that, we could have a proper, serious discussion on issues about which we need to speak with the Secretary of State. It is right that he, rather than a Minister, should discuss those issues with the Committee. The Secretary of State has gone on and on about this Committee, and, in the end, for him not to appear before the Committee would be slightly strange, given the importance that he has attached to it.

1756. **Mr S Wilson:** My understanding is that we want the Secretary of State to attend because he has declared publicly his parameters for policing. Those parameters will impact on our decisions. It is important, therefore, that he comes along to justify and clarify his position.

1757. Last week, and presumably the week before when I was not here, we scoped the issues that we believe need to be addressed. As Alan said, we do not want to discuss any secret talks that he may be having with individual

parties, rather his publicly stated position on what he believes parties must do to show acceptance of policing. His position seems at variance with that of many of the parties around this table.

1758. We should have a discussion with him. We have scoped certain issues, and the Secretary of State has said publicly that he disagrees with how far some of us believe parties should go on policing. Therefore, he should be here to talk to us about policing. Otherwise, we are wasting our time. If he sets a completely different threshold from that set by the majority of parties, we will not get anywhere.

1759. **Mrs Foster:** The DUP sees no need to invite a junior Minister; it would be a waste of time.

1760. **The Chairman (Mr Wells):** We must get a view on this from the Committee. Clearly, the DUP wants the Secretary of State to attend.

1761. **Mr McFarland:** I propose that we do not invite the junior Minister next week, but that we invite — and, perhaps, expect — the Secretary of State to appear, probably in two or three weeks' time, when we will have a substantial list of issues to raise with him.

1762. **The Chairman (Mr Wells):** Are there any other proposals? Does anyone have problems with that suggestion? Everyone seems happy not to invite the junior Minister next week, but to invite the Secretary of State to attend in a fortnight's time.

1763. **Mr McFarland:** Perhaps “encourage” him to attend?

1764. **Mr S Wilson:** Or cajole?

1765. **The Chairman (Mr Wells):** Is the Committee happy to invite the Secretary of State to attend and to see how he reacts to the invitation?

Members indicated assent.

1766. **The Chairman (Mr Wells):** We will now discuss the issues in the papers and research documents.

1767. Table 1 in the NIO paper, which deals with reserved matters and their implications,

helpfully sets out the relevant provisions of the Northern Ireland Act 1998; the issues that will, and will not, be devolved; and any outstanding issues. It is a useful basis for discussion, as, last week, there was cloudiness about matters that will, and will not, be devolved, and what matters should be devolved. Alban Maginness raised several important issues. It is unfortunate that he is not present, as his input would have been useful.

1768. Is everyone happy to use the NIO paper as a basis for discussion?

1769. **Mr G Kelly:** I have no difficulty with it, as it is a replication of schedule 3 of the Northern Ireland Act 1998.

1770. **The Chairman (Mr Wells):** The NIO paper presents it in a different format.

1771. **Mr G Kelly:** In some ways, it is a clearer format. The NIO paper does not define national security, which gives it carte blanche on that issue. That makes the Sinn Féin position very difficult as regards input from MI5 and whoever defines national security. It impinges massively on the policing issue.

1772. Moreover, no protocols are mentioned in the paper. Sinn Féin wants neither MI5 nor MI6 anywhere in Ireland. The fact that there are no protocols deepens the worry that nationalists have — and, I argue, everyone should have — about MI5 interference. The issue, and the role of MI5, should be depoliticised, not extended.

1773. I am happy to go through the list, but I wanted to state Sinn Féin's approach to it.

1774. **Mrs Long:** Last week, the Alliance Party raised a concern about how differing views on what constitutes a threat to national security can impact on how loyalist and republican paramilitarism are dealt with and any potential inequality. The paragraph in the NIO paper that contains the legal definition of national security states:

“actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.”

1775. That seems to cover all paramilitary activity, regardless of from which section of the

community it comes. That explanation should be further explored, as the Alliance Party would be unhappy if acts of republican terrorism were treated as matters issue of national security and acts of loyalist terrorism were treated simply as criminal offences. That would not be proper and fair. A clear definition of what constitutes a threat to national security might allow a more detailed examination. We wish to reiterate that concern.

11.45 am

1776. **Mr McFarland:** Following Gerry Kelly's statement, does Sinn Féin accept that, under the Belfast Agreement, Northern Ireland remains part of the United Kingdom until the people of Northern Ireland vote otherwise? If so, the Parliament of the United Kingdom is sovereign and will, therefore, decide — until Northern Ireland is part of the Irish Republic — what constitutes national security.

1777. The NIO letter explains that the Security Service Act 1989 defines the protection of national security as:

“protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.”

1778. It seems fairly clear that that means threats to the state. We know from Sinn Féin's statement that the Provisional IRA is no longer a threat to the state — it remains for the Independent Monitoring Commission (IMC) to confirm whether that is the case. We are dealing presumably with a residual grouping of dissident republicans; it does not affect Sinn Féin and the main republican movement since they tell us that they have stopped all that. Does Sinn Féin accept that someone must have responsibility for national security and that every country's security services run agents in organisations that pose a threat to it? The Irish Government are no different, and I have no doubt that if Sinn Féin were in Government in the Republic of Ireland, its Ministers would be happy with that. If we accept that that is the norm throughout the world, why should it not

be the norm here? I am confused by the suggestion that no one should investigate threats to the country or place agents inside organisations that are opposed to the Government.

1779. **Mr G Kelly:** Alan should not be confused. It is about accountability. We want anything that involves the island of Ireland to be subject to proper accountability mechanisms. We had a long-drawn-out debate and agreement on what those mechanisms should be, followed by a statement. There is no legal definition of national security. We asked for one, but we got this long, rambling paragraph instead.

1780. If we look at the political policing that has occurred in recent years — we do not have to go back 20, 15 or even five years — we can see that there has been political interference. We want to subordinate all that to the accountability mechanisms. MI5 is outside those mechanisms. It is said also that MI5 will consider serious and organised crime. From the list to which you referred, Chairman, it is obvious that that will happen. Where is the demarcation line? Even if I were to take the unionist point of view, which I do not, I would want to know where the line is between what is a policing and justice matter and what is “national security”.

1781. Alan asked what Sinn Féin would do if it were in Government in the South and had responsibility for justice. We would be glad to have that power, and we would also like to have it in the North, so that there could be an all-Ireland approach. I do not know what Mr McFarland is confused about; what confuses me is that absolutely no definition of national security is provided. Unionism, in fairness, has always accepted the British state and almost anything that it does. We have an opposite point of view, and we want accountability. MI5’s interference will not help. We do not want MI5 here.

1782. **Mr Attwood:** There is no definition of national security to enable MI5 to define it in whatever terms it wants. Therein lies the problem. Whether here or in Britain, MI5, now or later, can define any matter as being one of national security. It will take the lead on that and have exclusive responsibility for it,

whatever any policing organisation might think. That is the problem.

1783. We should try to look at it more positively. It is right that questions should be asked of Sinn Féin, but questions should be asked of the unionist parties also. If there were devolution and an Executive, including a ministry of justice, functioning as we hope that it might, what would be the consequences of a MI5 operation in the North, which either led to the arrests or deaths of innocent civilians, or to a community’s feeling that its rights had not been properly protected? Considering the continuing national and international security threats, such an operation is possible. People would be entitled to ask the Executive for an explanation, and the Ministers would be unable to give one; they would have to say that those issues were beyond their remits. That shows a conflict between having the institutions working stably in the future and people’s sense of who is in control and who has responsibility for certain key matters in the management of life in the North.

1784. All parties — not only Sinn Féin — have to face up to what might happen over the two, four, six, or eight years of MI5 primacy in the North. For that reason, if there were a preferred outcome from these discussions, it would be to go for one of the Patten options. He offered two options for national security: first, MI5 primacy; and, secondly, the retention of the current accountability of national security through the Chief Constable. We should bear in mind what Mrs Long said about the possibility of MI5’s differentiating between republican and loyalist threats. If, as Sinn Féin claim, Patten is the threshold, and if we are living within the constraints of Patten, would there not be some point in getting members around this table to move to an understanding that the best way to manage this, given the potential fallout for all of us, would be to go with the second Patten option? That is not the perfect model — far from it — and it is not what I would argue for if we had a clean piece of paper. However, that is the argument that Patten makes, and Patten, according to some members, is the threshold for

policing in the future. Maybe we should have a conversation around that.

1785. The Committee should discuss also the protocols and accountability measures that need to be in place between MI5 and organisations, such as the PSNI, with which it will interface. PSNI officers will be working at MI5 desks, and we must know whether the Police Ombudsman will have the same authority over them as that office has over every other police officer in the PSNI.

1786. **The Chairman (Mr Wells):** We seem to have moved into a full-blooded discussion on the intelligence services. I am happy to do that, so long as members realise where we are on the agenda.

1787. **Mr McFarland:** This format allows us to explore things; we may have to revisit them, but we have a flow going on this.

1788. **The Chairman (Mr Wells):** I am happy to let the discussions continue, but I want to alert members to where we are on the agenda. There seems to be the start of a proposal coming from Alex on how to deal with this issue — we must get some structure.

1789. **Mr McFarland:** Part of the reason that this has arisen is that the SDLP complained bitterly about Special Branch. The Government always listen to the SDLP, so they transferred the responsibility for Special Branch to MI5 at its behest. Now the SDLP is being hoisted by its own petard, and it is trying to backtrack.

1790. MI5 is an intelligence-gathering organisation. It does not rush around carrying out armed operations and shooting people. Alex's vision of what happens in Northern Ireland is not correct. As I understand it, in the rest of the United Kingdom, MI5 gathers intelligence, and, traditionally, its executive or operational wing is its special branch. In Scotland or England, the special branches arrest people on behalf of MI5. Logically, the same system would operate here; therefore, MI5 would not carry out ambush operations. Of course, that scenario would arise only if the DUP and Sinn Féin bury their hatchets, smoke pipes of peace, and make the world lovely.

1791. **The Chairman (Mr Wells):** You keep reminding us of that.

1792. **Mrs Foster:** I do not smoke.

1793. **Mr McFarland:** That scene must be set before any arrangements will be established. We are not discussing a scenario from 10 years ago, when the SAS rushed around on operations and others carried out anti-terrorist activity. This year, the focus is on al-Qaeda and residual republicans in Northern Ireland who feel that they cannot give up and who are busy trying to place bombs in London, Belfast and Newry or at Eddie Haughey's house or wherever. Therefore, that scenario is for down the line, and it will not be the lurid picture that Alex painted.

1794. As Alex mentioned, accountability is a major issue. It would be a disaster if, in order to not destabilise the political situation, the Government influenced MI5 to withhold from the Chief Constable information that showed that a senior member of the Provisional IRA was still active in paramilitarism while Sinn Féin was in the Executive. Therefore, the protocols between the PSNI and MI5 must be extremely robust. I argue that that is the responsibility of Parliament — it is a reserved matter that should be discussed at Westminster. I have had discussions with MPs from a number of parties, and I know that that they are very interested in how the arrangements with MI5 will work out here. The House of Commons Intelligence and Security Committee is particularly interested, as I suspect we all are, in how we can ensure no interference with the normal rule of law.

1795. A number of issues are important. Westminster will be interested, so logically, its Intelligence and Security Committee should beef itself up. To ensure that the accountability mechanisms are robust, the protocols should be as foolproof as possible.

1796. **Mr S Wilson:** Alan's first point is correct. The folks from Sinn are jumping up and down about the security issue, discussions on which were provoked — at least partly — by their incessant demands for Special Branch and “a force within a force” to be closed down. They

now have a force outside a force, and they do not like that either. There is not really a great deal that they can do now — it is a bit late for them to start crying about it.

1797. The issue of whether this matter should be devolved was raised a long time ago: even in the Patten Report, which nationalists frequently cite. The Patten Report said — and this is mentioned at paragraph 7 of the research paper — that all functions, except for matters of national security, should be devolved. That was highlighted a long time ago and is now being embedded. Alex would know from his involvement with the Policing Board that it is now so embedded that the police have made great advances in setting protocols to allow any intelligence that is gathered to be transferred, when relevant, to police criminal investigations into individuals who might be involved in organisations that present a threat to national security.

1798. The police have made it clear that the transfer of national security to MI5 will not be an impediment to the PSNI doing its job. The Chief Constable is on record as saying that if the protocols are not right, he will be the first to complain. Therefore, there are safeguards.

12.00 noon

1799. Parliament is accountable, as Mr McFarland said. Therefore, if a matter is reserved to Westminster, that is where accountability for that matter should rest. Are we going to have the same argument about the Serious Organised Crime Agency (SOCA), which is a national body that deals with serious organised crime? Are we saying that SOCA's role in policing should also be devolved? Are we saying that SOCA and MI5 should be subject to the same accountability mechanism, which can happen only through the devolution of the oversight of their powers?

1800. We have not heard a word about that matter, yet SOCA has made it clear that it will be just as involved in dealing with organised crime in Northern Ireland — at national and international level — as MI5 is in intelligence gathering. Where we are going with this issue?

1801. Given the parameters that were set down in the past, mostly by nationalists, the Government have taken the view that one way to avoid charges being made against the PSNI is to take functions out of its hands. That makes sense, because we are talking about a national threat. That is in keeping with other parts of the United Kingdom, because no other police service or devolved institution would be handed control of the body that gathers national intelligence. Therefore, this is a sterile argument, and we could spend the rest of the day talking about it.

1802. **Mr G Kelly:** This is not a sterile argument. It is condescending of the British Government to refuse to devolve or transfer that power. As members of other parties have said, this is an issue of accountability. We must not be naïve. It has been said that Special Branch is an arresting arm of MI5, and that is quite true. However, MI5 and the SAS were involved in killings. MI5 is not accountable. Members have talked about national security, and, from a unionist point of view, that is fine. However, no one has stated what is meant by national security, except that MI5 will take that decision. Therefore, MI5 is self-accountable.

1803. We have not seen any protocols. We are asked to put faith, which I do not have, in MI5's saying that it will introduce robust protocols, or in members saying that there must be robust protocols.

1804. We can be cynical about the effectiveness of MI6 and the intelligence agencies if we consider the solutions that they came up with to deal with the situation in Iraq, and the damage that that caused. That elective accountability ended up in a massive war over false information, which involved intelligence agencies, not only in Britain, but in America. Those are the fundamentals of this matter. That is how intelligence organisations operate. If there are no accountability mechanisms, any party will abuse that power, no matter who they are. The island of Ireland, including the North, should have accountability mechanisms, regardless of what happens elsewhere.

1805. Sammy Wilson referred to SOCA and the Assets Recovery Agency (ARA). He said that those bodies had not been mentioned. However, I will mention them, as we continue our discussions. Responsibility for those bodies should be devolved, and there should be accountability mechanisms. To this day, MI5 informers are being allowed to carry out crime.

1806. They work for MI5 and other intelligence agencies. Informers are allowed to commit crimes that have, in the past, resulted in deaths.

1807. If I may make this criticism: Sinn Féin — and probably the SDLP — took up the cases of people from the unionist community who suffered at the hands of informers and were ignored by the other political parties. The other parties took the blind view that everything in the garden was OK, thinking that MI5 would not use informers against unionists, as they were used to gather information only on republicans. In fact, members of the unionist community were killed, and unionists who went to the unionist parties for help had to approach the nationalist parties because only they would give them the necessary help.

1808. Robust protocols are one thing, but in order for what happened in the past, and for what continues to happen, to stop, the maximum number of those powers must be transferred.

1809. **Mrs Long:** Although we were not given a legal definition, because none exists, the NIO paper does provide a generally accepted working definition of national security. Last week, my party highlighted — and I reiterate — that we accept that, because each can be used to support the other, it is difficult to separate terrorism from organised crime. Their links are such that it is difficult to find a clear dividing line. We accept that it is a grey area: one impacts on the other.

1810. As we expressed last week, there is some concern about the lack of accountability in the UK-wide structures and the way in which they relate to the situation in Northern Ireland. Part of the solution to that lies with a more generalised reform of the UK structures and accountability for matters such as terrorism,

defending national security and dealing with organised crime. However, although we believe that reform is necessary, it is not within our remit to address that. It may be that the Committee will want to draw that to the Secretary of State's attention, because it is a matter that he can examine.

1811. I am not trying to stifle the discussion, but I want to highlight that the Secretary of State makes clear his opinion of the Committee's role clear in his letter of 9 August 2006. He said that:

1812. "I do not see the role of the PFG as scrutinising Government policy on reserved or excepted matters".

1813. The Committee is discussing at length those matters that parties think should be reserved or excepted, but the Secretary of State makes clear in his letter that although the Committee may get consensus about changes to those matters — though I doubt it — he does not accept that as part of its role. I have flagged that up because, although we are discussing what should be reserved or excepted, there is no guarantee that the Secretary of State will have any interest in addressing those issues.

1814. **Mrs Foster:** Naomi has made a good point.

1815. Sinn Féin raised a concern about an accountability mechanism for national security. It is not the role of a regional devolved institution to scrutinise issues of national security. That goes to the core of the consent principle, which Alan mentioned earlier. Does Sinn Féin accept that Northern Ireland is part of the United Kingdom? That is the issue. If it does accept that, its members must accept that Northern Ireland will have a regional Assembly, and, as such, national security will remain an excepted matter. That is, and will remain, the position of the DUP.

1816. The protocols for accountability, which are outlined in the Assembly research paper, are not yet in place, but that work is ongoing. In Enniskillen recently, Assistant Chief Constable Sheridan gave a good presentation on the primacy of MI5 and its relationship with the

PSNI. I understand that his presentation was made during a public session; I am sure that the Committee could get copies of his slides, which could prove to be useful and instructive.

1817. **The Chairman (Mr Wells):** We will return to that suggestion.

1818. **Mr Cobain:** Everyone accepts that terrorism is an international phenomenon and that much of it is linked to criminality. Naomi is right in that respect. Police officers find it difficult to divide terrorism from criminality because that is how it works. The two are interlinked, and it would therefore be impossible to divide the remit, whereby MI5 would tackle terrorism and ordinary police officers criminality. During an MI5 operation, its officers may gather information on criminality that should be passed on to the police. Hopefully, the protocols that will be agreed between the Chief Constable and MI5 will allow for such arrangements.

1819. We have been discussing this for almost an hour. There is no possibility of national security being devolved to the Administration — none. The best that we can do is to ensure that the agreed protocols are as robust as possible, so that information will be shared between the police and MI5, and that that information will solely concern criminality, not national security. I am disappointed that we must continue to make that point.

1820. We can continue to discuss this matter, but there is no possibility that national security will be devolved. I understand that members have political positions on security. However, the only way in which MI5 will be accountable is through the protocols. Whether Sinn Féin or Alex has a problem with MI5 makes no difference. We should deal with matters over which we are entitled to have some influence, of which the protocols are one.

1821. **The Chairman (Mr Wells):** We are not making a great deal of progress.

1822. **Mr Cobain:** We are not making any progress.

1823. **The Chairman (Mr Wells):** The only proposal seems to be Alex's suggestion to adopt

the Patten model. I am not sure whether it is a proposal.

1824. **Mr Cobain:** Alex and Gerry Kelly spoke about MI5. Are their parties saying that the devolved Administration should be in charge of national security?

1825. **Mr Attwood:** I am prepared to answer that question. If we had a blank piece of paper, there are ways that that could be the outcome. However, we do not have a blank piece of paper. We have the Patten Report.

1826. **Mr Cobain:** Would we be in charge of running agents?

1827. **Mr Attwood:** If you would listen, Fred —

1828. **Mr Cobain:** I am listening; sorry.

1829. **Mr Attwood:** I know that you do not like the Patten Report.

1830. **Mr Cobain:** At times, you do not like it either.

1831. **Mr Attwood:** The Patten Report recommended either that MI5 had primacy over national security or that the current approach be retained, where the Chief Constable is responsible for, and accountable to the British Government in respect of national security.

1832. I wish that the Patten Report had outlined a third option that would have kept accountability within the North for the activities of any and all intelligence services. You might think that that is poppycock; it is not. That approach was adopted in Canada. Following a crisis in its national security functions about 20 years ago, Canada developed a range of levels of accountability within and outside of Parliament for the intelligence services.

1833. However, that is not where we are. We are where Patten put us, and Patten said that the Chief Constable could retain responsibility for national security. I believe that that option is in the best interest of everybody around the table. Perhaps some will not agree and will prefer the other Patten option of MI5 primacy. If so, we should take up a few of the suggestions put forward.

1834. First, we should ask the British Government to clarify the protocols that will be in place at the interface between MI5 and other agencies. MI5 deals with revenue and customs matters, SOCA, the Organised Crime Task Force, the Police Ombudsman, the PSNI and so on. We must gather further information on the protocols.

1835. Secondly, irrespective of what I think, we need to know what the accountability measures will be with regard to MI5 primacy in the North. We may get an insufficient or neutral answer or, more likely, be told that it is a work in progress. Nevertheless, it will give us a better understanding.

1836. I want to correct a point made by my unionist colleagues — it was probably more mischievous than genuine. Patten recommended that there be a Special Branch. The reason that so much time was spent getting Special Branch right was that, if it complies with best international practice on the recruitment of agents and the gathering and distribution of intelligence, the police service will have the ability to access intelligence in the community in a manner consistent with all proper standards. As we know from the Bishopsgate incident, intelligence-led policing is crucial to being able to, on one hand, deal with the terror threat, and, on the other, maintain public confidence.

12.15 pm

1837. Ensuring that Special Branch reached the point at which it began to comply with best international practice, which the Oversight Commissioner has said it does, enabled it to access more and better intelligence, meaning it can inform the police about all levels of threat in the North, including that from international terror. That is why all that work was done, as well as to create greater confidence in policing — a confidence that was lacking for generations. That is why the PSNI is now best placed and fit for purpose to be the primary agency responsible for gathering intelligence in the North. The new standards and procedures mean that it can gain much more intelligence.

1838. To conclude, if someone from the police intelligence community were here now, I guess

that they might suggest that the police were getting backed-up with intelligence. As confidence in policing grows, the flow of information increases, and with that comes the ability of the police to counter any threat, from wherever it comes in this part of Ireland.

1839. **Mr G Kelly:** I do not think that we will come to a conclusion on this. The argument appears to be at cross-purposes. Unionist members arrived wanting to talk about national security, which has not been defined.

1840. Our purpose is to find an accountability mechanism. The lack of a division between crime and terrorism has been mentioned. Who decides where the demarcation line lies? How can that demarcation line be drawn, and where is the accountability mechanism?

1841. As an example, I will take a different point of view. A member of the PSNI is under the control of various accountability mechanisms, which include the Chief Constable and, depending on the issue, the Police Ombudsman and others. If MI5 decides to use that member of the PSNI in an operation, he is no longer accountable, and any arguments about accountability go straight out the window.

1842. The worst part of that scenario is that MI5 decides on which matters it will act. For instance, MI5 might decide that the recent incident in Derry is its responsibility, dispense with all the normal mechanisms, and go completely over the top in trying to deal with it. There is significant evidence that it has done so previously.

1843. Sinn Féin wants accountability mechanisms. The maximum amount of accountability should remain in the North through a new justice Ministry. That is the best way forward until the interlocking institutions, as mentioned in the Good Friday Agreement, are established. Thereafter, there would be an all-island approach to any actions, policing or otherwise, taken on the island of Ireland.

1844. **The Chairman (Mr Wells):** There is a series of proposals. We will start with the easy one and work our way up. Mrs Foster suggests that it may be useful to request DCI Sheridan's

briefing material on the linkages between MI5 and the police.

1845. **Mr McFarland:** It is ACC Sheridan; he would be most annoyed to be described as a deputy chief inspector.

1846. **The Chairman (Mr Wells):** I do not know the gentleman.

1847. **Mr McFarland:** He is an Assistant Chief Constable.

1848. **Mrs Foster:** He is a Fermanagh man; he will be all right about it.

1849. **The Chairman (Mr Wells):** Now that I have given him his proper title, would it be useful to request that information from the PSNI?

1850. **Mrs Foster:** It would come from the Policing Board.

1851. **Mr G Kelly:** Does that mean that we will receive documentation?

1852. **The Chairman (Mr Wells):** There is no commitment; the documentation will be requested out of interest to see if it will help with our deliberations. Are members content to ask for that information?

Members indicated assent.

1853. **The Chairman (Mr Wells):** The next issue for consideration is Alex's proposal that we support the Patten model, which states that the Chief Constable should continue to have ultimate responsibility for matters here that involve national security. You may want to put what I have said into your own words, Alex, because your proposal has changed slightly. To be honest, I am not even sure whether you made a proposal.

1854. **Mr Attwood:** I will leave my proposal on the table, because if we adopt my other proposal and ask at what stage the protocols are and what the accountability mechanisms will be, the answers will be that we have neither the robust safeguards nor the accountability that we require, and, as a consequence, the Chief Constable of the PSNI must retain responsibility for matters that involve national security. My proposal would be better tabled when people

hear what I suspect will be inadequate answers to those two questions.

1855. **Mr McFarland:** Alex knows that I have not been a member of the Policing Board since 1 April. He is still on the Policing Board, so he knows fine well that it is updated regularly on the protocols. It was my understanding, as at April 2006, that the protocols were to be produced in November 2006 and are still under development. Therefore, people will not be able to tell us anything other than that until November, no matter whom we call or how much we grill them. Those protocols will go the Policing Board for discussion, but that will not happen before this Committee is due to report.

1856. We should not get excited at not being able to see or amend protocols. Sammy or one of the other MPs may be able to find this out, but I believe that MPs at Westminster, particularly those who are on the Intelligence and Security Committee, are also considering whether protocols between MI5 and the police are necessary in Great Britain as a result of the al-Qaeda threat. As I have said, those issues are under development, so we will not get an answer, no matter whom we call.

1857. **The Chairman (Mr Wells):** Alex's proposal is that we ask for them. Are you saying that we should not?

1858. **Mr McFarland:** He is a member of the Policing Board, so he knows the answer. Indeed, colleagues on the Policing Board who attended last week's briefing will be able to tell us that answer without the staff having to go off, ask the police and come back to us. The answer would be the same as the one that ACC Sheridan no doubt gave to the Policing Board last week. I was not there, but someone will be able to tell me.

1859. **The Chairman (Mr Wells):** Alex, in view of that, do you wish to continue with your first proposal?

1860. **Mr Attwood:** I do. We receive quite useful information in those papers, because some issues are developed within them. The papers refer to protocols. It may be that we are told that the protocols are a work in progress;

however, given the live nature of the issue, it is incumbent upon us to ask. Let us see whether we get something more substantial back. For example, somebody will report to the Policing Board with something more in September, not in November. Therefore, it may be timely to ask.

1861. **The Chairman (Mr Wells):** Lunch is imminent, so this may be an appropriate time at which to break.

1862. Alex has insisted that he wants to make this a proposal, so we are duty bound to table it. Do we have consensus that we request that information from the Policing Board? Is everyone happy that we ask for it, even though Alan believes that we will not get it?

1863. **Mr McFarland:** Our colleagues who are on the Policing Board will tell us that they had a briefing last week. From their most recent meeting, do they think that we will learn anything new?

1864. **The Chairman (Mr Wells):** It may make an exception for as important a body as ours. Are members content?

Members indicated assent.

1865. **The Chairman (Mr Wells):** We shall reconvene at 12.45 pm.

The Committee was suspended at 12.24 pm.

On resuming —

12.48 pm

1866. **The Chairman (Mr Wells):** Could we return to table 1 on the NIO paper, which deals with reserved matters and their implications for devolution? As Mr Kelly said, the table repeats what has already appeared in earlier papers, but it is in a format that is much easier to follow.

1867. Given the complexity of the matters at hand, perhaps the best way to proceed is simply to go through the table. I am sure that Mr Moore will be delighted to help us with any technical questions. I am also conscious that we have a plethora of experts in the form of Northern Ireland Policing Board members and those who are involved in district policing partnerships (DPPs). I shall just let the conversation flow.

1868. We agreed to start the discussion with schedule 3 to the Northern Ireland Act 1998. We are trying to tease out whether parties are content with what has been suggested for devolution, or whether they wish to add to the list of powers and functions to be devolved to Ministers for policing and justice.

1869. **Mr Weir:** I am not suggesting that it will be the case, but we may not be happy with what we get.

1870. **The Chairman (Mr Wells):** Several parties have stated that there should be maximum devolution, and I detect that most of the discussion will be at that end of the scale.

1871. Since parties have not had a chance to prepare submissions, I suggest that we go down the list, one by one, and that parties give their views accordingly. If there are no views, we shall accept that parties are happy with the level at which a power has been pitched.

1872. Paragraphs 9(a) and 9(b) of schedule 3 deal with criminal law and the creation of offences and penalties. According to the table, it appears that everything will be devolved, with no issues remaining. If the table states that there is nothing more to devolve, we must accept that we have considered 100% of those matters.

Does anyone have any comments on paragraphs 9(a) and (b)?

1873. **Mr G Kelly:** The paper does not cover the law governing treason or terrorist offences. Our earlier conversation referred to those matters. What is listed for devolution is OK up to a point. The paper mentions only a “devolved category”, and Sinn Féin supports the maximum transfer of powers. What are “terrorist offences”? I note that the discussion on Diplock courts will be over shortly. I accept that part of the paper up to a point.

1874. **The Chairman (Mr Wells):** Are you happy that treason remains a central Government responsibility?

1875. **Mr G Kelly:** I do not know. Can one define treason? We have not formed a view on that.

1876. **The Chairman (Mr Wells):** Mr Kelly has proposed that terrorist offences should be

the responsibility of a devolved Assembly. Is there any view on that matter?

1877. **Mr S Wilson:** As many terrorist offences will be matters of national security, I would not expect responsibility to be devolved.

1878. **Mrs D Kelly:** The difficulty lies in national security and the lack of a definition. Even in its broadest context — such as in the earlier paper, which mentioned industrial acts — it could be concluded that industrial strike action, for example, was a terrorist act and a threat to national security, given the very woolly definition and the understanding that was articulated earlier. It is very difficult to agree to this without a clear definition of terrorist offences.

1879. **Mr McFarland:** Fred Cobain said earlier that matters are as they are, and that this Committee will not be able to persuade the Government to change their mind — unless particular parties wish to make matters a deal-breaker in negotiations. In that case, I do not doubt that those issues may resurface. We have no remit to demand the devolution of matters that the Government have deemed excepted. We must agree to disagree.

1880. **The Chairman (Mr Wells):** It is important in all of our discussions that parties indicate whether they simply have a problem with certain issues or whether they perceive them as major impediments to devolution. We must test the strength of opposition.

1881. **Mr G Kelly:** If Alan is anticipating that, as we go through table 1 unionism will take one view and nationalism another. I do not know whether we can test the strength of opposition, to be honest.

1882. **Mr McFarland:** In December 2004, the comprehensive agreement allowed a time frame of two months for all this to be completed. It set out what policing and justice powers would and would not to be devolved at that stage. Presumably, the DUP and Sinn Féin accepted that.

1883. This information has been available for a chunk of the year in the NIO discussion paper. We have known since 1998 that certain matters would be excepted and that other matters would

be reserved but devolved in due course, so none of this should come as a surprise to any of the parties. We can discuss whether some reserved matters should be transferred; for practical reasons, it might be better if some of those were dealt with at Westminster. Excepted matters such as national security are not going anywhere, no matter how long any party howls and shouts. We shall not solve that issue in Committee.

1884. **The Chairman (Mr Wells):** I think that Mr Kelly would disagree.

1885. **Mr G Kelly:** Sinn Féin has a very strong view on who has responsibility for the Assets Recovery Agency (ARA) and the Serious Organised Crime Agency (SOCA), but I am willing to go through all the matters in table 1. The British Secretary of State and the British Prime Minister have said many times that certain matters are not up for negotiation, only to change their mind. If we do not get consensus here — and I sense that we will not — we will take it up with the British Government, because we hold strong views on the issue of MI5, and its powers and role in protecting national security here. Not all its powers are to do with national security; that is someone else's interpretation.

1886. **Mr Cobain:** May I make a relevant point? These are all nationwide issues. The ARA is a nationwide issue —

1887. **Mr G Kelly:** Do you mean that is an all-Ireland issue?

1888. **Mr Cobain:** In this context, it is not all-Ireland. The Irish Republic has its own version of the Assets Recovery Agency. We are talking specifically about matters to be devolved to an Executive. We need to be clear that some of the issues lend themselves to nationwide agencies and cannot be dealt with only in Northern Ireland. We cannot separate serious crime here from serious crime in England, Scotland and Wales.

1889. Everything is becoming more centralised in order to improve the exchange of information. Therefore, it makes no sense to devolve responsibility for those agencies. If that happened, we would be out of the loop. We need to consider it in the context of policing. It is much easier for police services throughout the United Kingdom

to work together centrally. Some people are trying to lift Northern Ireland out of the UK when it comes to crime prevention and detection. However, some powers do not lend themselves to being devolved, such as the devolution of responsibility for those two agencies.

1890. **Mr McFarland:** It would make much more sense for the Republic of Ireland to rejoin the United Kingdom on those issues and have an island-wide —

1891. **Mr G Kelly:** You should try for consensus on that one.

1892. **The Chairman (Mr Wells):** I do not think that we will get consensus on that. It was a good try.

1893. **Mr Attwood:** We have long argued that there should be an all-Ireland agency.

1894. **Mr McFarland:** A United Kingdom and Republic of Ireland-wide agency?

1.00 pm

1895. **Mr Attwood:** There should be appropriate relationships with the agency in Britain. Some matters can be dealt with on an all-Ireland and an inter-Ireland basis.

1896. That is consistent with the Good Friday Agreement, and it is in the interests of all the people of these islands.

1897. Secondly, it may be useful to enquire about certain aspects of the Regulation of Investigatory Powers Act 2000 (RIPA). On one hand, we are being told about everything that will be reserved, excepted or transferred; on the other hand, we are being told to reach decisions about what aspects of RIPA must remain reserved. I want to know precisely what is being asked of us. I presume that that distinction is due to the cross-cutting national security issue, but I would like confirmation that that is what is meant.

1898. Thirdly, regardless of the previous understandings that were reached as part of the comprehensive agreement, SOCA is a new development, and it is one of the most anonymous new public bodies that has been created in recent times. It is very difficult to arrange a meeting with that body, which is still trying to work out what accommodation and

full role it will have in the North. We know that an agency exists, but no one knows much beyond that. Regardless of whatever may have been agreed already, we must get a detailed briefing on SOCA because it is new and is in the process of being defined.

1899. **The Chairman (Mr Wells):** Alex, are you proposing that we seek information about the role of SOCA?

1900. **Mr Attwood:** I am seeking A, B, C stuff, not just about SOCA per se, but particularly about SOCA in the North.

1901. **The Chairman (Mr Wells):** About its role in Northern Ireland?

1902. **Mr Attwood:** Yes.

1903. **The Chairman (Mr Wells):** That seems to be a reasonable proposal.

1904. **Mr McFarland:** Colleagues on the Policing Board have had a detailed briefing on this matter. In some respects, SOCA is the British equivalent of the FBI. It is a UK-wide, multi-agency body, and naturally enough, it exists in Northern Ireland because it is part of the United Kingdom. What is strange about that?

1905. **Mr Attwood:** There is nothing strange about that logic. The question is: what is that agency actually going to do? That has not yet been confirmed. The Policing Board has been seeking a meeting with SOCA, which has not yet been granted because that agency is still getting up and running in the North.

1906. **Mr Cobain:** Could we try to resolve the two issues at hand before we —

1907. **The Chairman (Mr Wells):** We have drifted from the first issue to the second.

1908. **Mr Cobain:** We can talk about SOCA, but can we try to get through the first issue so that we can get to the next page before 4.00 pm?

1909. **The Chairman (Mr Wells):** Before I call Mr Kelly, are there any proposals on schedule 3(9)(a) and (9)(b) or should we just accept it as it is, and move on?

1910. **Mr G Kelly:** I do not accept it as it is.

1911. **The Chairman (Mr Wells):** You do not accept it, but do you have a proposal?

1912. **Mr G Kelly:** As we have already discussed, the document lacks definition. I do not wish to rehearse this morning's conversation, but the document has an impact on this matter. The table in the NIO paper pushes the point that matters are excepted, and, therefore, they will not be devolved. I do not accept that. We must look at those matters one at a time. I was going to talk about the second aspect of the matter, but I have said all that I need to on the first aspect of it.

1913. **Mr S Wilson:** I am seeking clarification, so that we do not waste time. I get the feeling that we are moving to a situation where — regardless of which area we discuss — if matters are reserved or excepted, Sinn Féin will not be happy. Let us just cut to the chase and agree that as long as there is something on that list that will not be devolved to a Northern Ireland Administration, Sinn Féin will have reservations. That means that we need not go through the farce of discussing each matter in turn and seeking consensus. That might save us about four hours.

1914. **The Chairman (Mr Wells):** There will be matters that members may agree should eventually be devolved.

1915. **Mr S Wilson:** I get the impression from what has been said — and perhaps this can be clarified — that there is nothing that Sinn Féin will accept should remain with, or be reserved to, Westminster.

1916. **The Chairman (Mr Wells):** Is that your view, Mr Kelly?

1917. **Mr G Kelly:** I thank Sammy for interpreting my view. Could I ask whether that means that the DUP's view is that everything set down by the NIO is acceptable?

1918. **Mrs Foster:** There are a couple of matters that are intended to be reserved that we believe should be devolved. However, I agree with Sammy that there is no point in going through each of those points if we are not going to reach consensus on anything. The ultimate

conclusion will be that this is a matter for negotiation in October and November.

1919. **The Chairman (Mr Wells):** It strikes me that there will be issues on which everyone is happy with the status quo. There will be matters that the DUP believe should be transferred, and there might be agreement on that. This matter is not quite as black and white or as stark as it may seem.

1920. **Mr McFarland:** Sinn Féin is not comfortable with fundamental issues around national security, and that impinges on our discussion of such issues. Clearly, we will not change Sinn Féin's view. Notwithstanding that, I suggest that the Committee considers the remaining issues, because we shall not solve the question of whether we should have responsibility for national security. We should look at "Issues remaining" — those on which a decision on whether they are to be devolved has yet to be taken. It might be worth hearing some thoughts on them. That may be the best that we can achieve today, given the stances that have been taken.

1921. **The Chairman (Mr Wells):** Are folk willing to work down the column of issues remaining and see whether we can agree some of them?

1922. **Mr G Kelly:** In case there is some confusion here, Sinn Féin is in favour of all these powers being devolved. I left the meeting last week at lunchtime, but it says in the minutes:

"It was agreed that the powers listed at paragraph 3.2 of the NIO discussion paper should be devolved within policing and justice."

1923. That means that there was consensus. What we are dealing with now appears to be a list of NIO exceptions. Therefore, we seem to be being told that, although everyone agreed that the maximum number of powers should be devolved, here are a number of issues that refer back to everything in paragraph 3.2, which we have already agreed should be devolved. There is probably no other way to do this other than to go through them.

1924. Sinn Féin has strong views on ARA and SOCA. It is not contradictory to have a flow of information between North and South, between

the two islands, and, indeed, between the two islands and the EU. However, that does not preclude our having an accountability mechanism — and that is what devolution would involve — that deals with the all-Ireland aspect of the powers contained in paragraph 9(c) of schedule 3 to the 1998 Act. We would still take an all-Ireland approach, but we want the maximum amount of power to be devolved. As we work down the column of issues remaining, Sinn Féin will argue that. Arlene Foster said that the DUP wants to see several powers devolved. Let us hear what those are, and then we can go back over the list.

1925. **Mr McFarland:** There is no point in Gerry having that view. We have a Government plan in front of us. Parties will take up with the Government the matter of whether they agree with that plan. There are issues that have not yet been resolved. Notwithstanding any party's objection to the plan, it would seem to be profitable to discuss the issues that the Government have not yet finalised, as they may listen to the parties' views on them.

1926. To continue an argument about whether the Government plan should be followed, or about who agrees with the plan, will not solve anything in Committee.

1927. **The Chairman (Mr Wells):** There certainly will be issues about which members will not feel particularly strongly; we might reach agreement on those.

1928. **Mr Weir:** To pick up Alan's point, it would be helpful to concentrate our efforts on the "Issues remaining" column. If parties wish to state their case as to what should move from the "What won't devolve" to the "What will devolve" column, I do not mind. Ninety-nine times out of 100, we will not reach consensus on the issues, so, in those cases, there is no point in a great deal of debate.

1929. "Issues remaining" seems to fall into the category of issues in which there is a grey area. In some cases, the power was going to be devolved, but it was unclear as to which Department it would go. It strikes me that that is where the margin of opportunity for a degree of discussion lies. We may reach consensus on

some of the issues; on a lot of them, we probably will not. That is where the discussion should be concentrated. However, that does not preclude, for example, Sinn Féin calling for responsibility for ARA to be devolved.

1930. I have no problem with Sinn Féin's saying that; however, there will be no consensus on that issue because we will oppose it. The Committee should not waste an enormous amount of time discussing issues that will run into the sand very quickly.

1931. **The Chairman (Mr Wells):** Mr Kelly, is that a way forward?

1932. **Mr G Kelly:** It is helpful. It is set out quite well in the column, so we have agreed what will be devolved. However, I am looking through the document now, and we have general difficulties with what will not be devolved. The column that lists what will not be devolved simply takes parts of the previous column, which lists what will be devolved, and infers that these aspects of those matters will not be devolved. Therefore, the assessment is right, and if you want to hone the conversation, I have no difficulty with that.

1933. **Mr McFarland:** Topics for a major discussion on the relationship between the police, the Policing Board and the Assembly are listed in the NIO discussion document. This will probably be the most vital discussion that we will have on policing, so it would be useful if we could move the conversation towards that.

1934. **The Chairman (Mr Wells):** Parties can use a single-transferable objection to keep the discussion moving forward if they do or do not want a matter to be devolved.

1935. It is quite clear that we will not reach agreement on ARA or SOCA.

1936. **Mr McFarland:** The third column shows what will not be devolved. Obviously, parties will want to lodge their fiver's worth, which is fine, but Alex asked what we are talking about in relation to the Regulation of Investigatory Powers Act 2000 (RIPA). It is necessary to discuss vetting, criminal records and disclosures and so forth and how they are handled. Those are sensitive issues.

1937. **Mr Weir:** I agree with Alex's suggestion. Some aspects of RIPA are referred to, but it would be helpful if we had clarification on precisely what is meant by that section.

1938. **Mr McFarland:** With regard to criminal records and checks and disclosures, as members probably know, the new paedophile laws mean that we are moving to a centralised system for checking people. It is correct to say that there have been recent developments between the Republic of Ireland and the UK to put a better system in place so that people who have molested children cannot flee one or other of those jurisdictions.

1939. The increased threat from al-Qaeda and international terrorism may mean that such records will go to a much more centralised database. Again, it is probably not at all sensible to divide that into little bits, depending on where you are in the country. Therefore, my sense is that this will go to some sort of central agency into which the police services, either in the UK or the Republic, can tap to find out whether person A, B or C is fleeing justice or has a record of abusing children or whatever. That is how that process seems to be going, and to suggest that it should all chalk down here, and that we should have a little computer in Belfast that stands alone, is not the way that this is going.

1940. **Mr G Kelly:** The last column asks whether some:

“aspects of RIPA that are currently reserved will need to remain so.”

1941. Let us find out what those are.

1942. **The Chairman (Mr Wells):** Is there consensus on that?

Members indicated assent.

1943. **The Chairman (Mr Wells):** Are we agreed on Alex's proposal to seek clarification from the Northern Ireland Office on the role of RIPA and SOCA in Northern Ireland —

1944. **Mr Attwood:** I was referring just to SOCA.

1945. **The Chairman (Mr Wells):** Just to SOCA. Are members agreed?

Members indicated assent.

1946. **The Chairman (Mr Wells):** Good. We can get that sorted out.

1947. Is there anything else that members feel that we can usefully discuss?

1948. **Mr Attwood:** Although this is not a matter for discussion, members might have some comments to make. I invite the unionist parties to consider accepting the principle of making arrangements, which would be regulated on a Northern Ireland, UK-wide or island basis, to deal with criminal records. The Attracta Harron case is an example. She had gone to church in the Irish Republic and, obviously, was abducted thereafter.

1949. The risk from offenders does not respect borders. Therefore, our thinking should be broadened from a Northern Ireland-wide basis to a UK-and-Ireland-wide basis.

1.15 pm

1950. **Mr G Kelly:** It has recently become clear that the South does not have great child protection controls in place, and they do not hold comprehensive sex offender lists, etc. Therefore, our discussions here, and what we decide, will have an impact in the South also.

1951. **Mr Weir:** The DUP believes that the list, should it be produced, should be on a British Isles or European-wide basis. The Attracta Harron case was mentioned; the media covered a case in my constituency also. The person committed offences in Northern Ireland, and then in the Republic of Ireland. The person was jailed initially in the Republic of Ireland, but was moved to a prison in Northern Ireland where he was entitled to benefit from the remission rates. When the person left prison, he immediately went to England where he committed more offences, for which he has been convicted.

1952. Far be it from me to promote Europe, but this subject should be looked at on a more international basis. Many people have second homes abroad or are retiring to places such as France or Spain. We must ensure that people are not able to slip between jurisdictions to avoid

being tried for offences: child protection is the most obvious reason, but the need applies to other matters as well. People should not be able to move about without the local police being at least aware of the threat that they pose. This problem is not confined to geography.

1953. **The Chairman (Mr Wells):** It seems that we agree that there should be clear co-operation between all states on this important issue.

1954. We will proceed to paragraph 9(d) of Schedule 3 of the Northern Ireland Act 1998, which deals with prosecutions, where there is already a wide degree of devolution. This subject — including the role of the Advocate General for Northern Ireland — is one that is close to Alban's heart, but he is not here.

1955. **Mrs D Kelly:** Given that we will be discussing justice next week, could it not be deferred until then in order that Alban could participate?

1956. **The Chairman (Mr Wells):** We will do that.

1957. Paragraph 9(e) of Schedule 3 of the Northern Ireland Act 1998 deals with the treatment of offenders, including children and young persons. Does anybody have any views on that?

1958. **Mr G Kelly:** There is no reason why that provision should not be devolved. The theme running through this paper is one that suggests a lack of trust in the Assembly and other interdependent institutions. Why should responsibility for sentence review commissioners and the remission of sentences not be devolved?

1959. **Mr Attwood:** In the negotiations up to and since the Good Friday Agreement, the SDLP has expressed its belief that many areas retained by the British, should be devolved. I will not go through it all; it is recorded elsewhere. I presume that the British Government feel that the release of prisoners is an emotive subject. For instance, the release of prisoners could end up being a divisive area that is difficult to manage, and a situation might arise where there would be some perversity with respect to what the Sentence Review

Commissioners might or might not do. I am sure that informs the British Government's thinking on this.

1960. The principle should be accepted that hard issues, such as the Sentence Review Commissioners, the renewal of fifty-fifty recruitment, the Parades Commission, including the Chief Constable's right to appeal to the Secretary of State in respect of any determination, should be devolved, subject to agreement on all appropriate community safeguards, which would legislate against any group in the Assembly or any party from any background imposing its views in ways that would be against the public interests.

1961. Similarly, we believe that that matter should be devolved, but it requires some safeguards that might govern many other matters outlined later in the schedule.

1962. **Mr G Kelly:** I do not disagree with any of that. One of the biggest arguments about policing involves the protocols and demarcation lines that must exist between a justice Minister, the Policing Board, a scrutiny Committee, the Sentence Review Commissioners and so on. That argument is part of the wider discussion on the devolution and transfer of those issues, but we are dealing, in principle, with their devolution.

1963. **Mr McFarland:** The powers within the Northern Ireland (Sentences) Act 1998 and the Northern Ireland (Remission of Sentences) Act 1995 will not be devolved. It is correct that matters connected with terrorism or residual matters remain excepted. Presumably, they have been held back because the Government wish to have a broad UK-wide policy on sentencing, remission, and so on. It may be possible to re-examine those issues further down the road, but it makes sense to let them sit for the moment.

1964. **The Chairman (Mr Wells):** Is there consensus on paragraph 9(e)?

Members indicated dissent.

1965. **The Chairman (Mr Wells):** The pattern will be to do a quick poll round the table, and, if there is no consensus, we will have to move on.

1966. Paragraph 9(f) is repealed, so we move on to paragraph 9(g) of Schedule 3.

1967. **Mr Neeson:** What did paragraph 9(f) concern?

1968. **The Chairman (Mr Wells):** I will just check in case something significant has been missed.

1969. **Mr T Moore:** Paragraph 9(f) deals with the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland.

1970. **The Chairman (Mr Wells):** Paragraph 9(g) deals with compensation. The compensation scheme provided for in the Terrorism Act 2000, which is due to end in 2007, will not be devolved.

1971. Do members have any views on that?

1972. **Mr G Kelly:** This is an equality issue. That part of the Act has been abused. Sinn Féin believes that the compensation scheme should be transferred.

1973. **Mrs Foster:** The compensation scheme should remain an excepted matter.

1974. **The Chairman (Mr Wells):** Do we have consensus?

Members indicated dissent.

1975. **The Chairman (Mr Wells):** The next matter is community safety partnerships (CSPs). This matter will be devolved in its entirety, with no issues remaining. Many of us are involved with CSPs at council level and have experience of them. What is the view on the present situation?

1976. **Mr McFarland:** There are issues around CSPs, of which colleagues in the Policing Board will be aware. There has been a long-standing row about CSPs since their inception, as the Criminal Justice Review recommended that CSPs and DPPs should become a type of conglomerate that would give a much better service. For reasons that no one can figure out, the NIO has resolutely held its face against this. Originally, we thought that that was because of some deal between the NIO and Sinn Féin. However, if control of CSPs is devolved, the Assembly can perhaps take a more sensible view.

1977. **Mrs Foster:** In relation to the Review of Public Administration, the Policing Board is considering how CSPs and DPPs can have a more effective relationship with local communities.

1978. **The Chairman (Mr Wells):** We will just leave that as it is, noting the suggestions, unless somebody wants to make a proposal.

1979. Paragraph 9A of schedule 3 provides for a chief inspector of criminal justice for Northern Ireland. All related powers are to be devolved. Are members happy with the status quo?

Members indicated assent.

1980. **The Chairman (Mr Wells):** Public order is a more complicated matter. Remaining issues include certain aspects of parades.

1981. **Mr Attwood:** At least three issues remain. First, we do not accept the note in the schedule that states where responsibility lies for determining which weapons may be used in public order situations. There is a legal argument that responsibility resides with the Policing Board, in spite of the assertion to the contrary therein.

1982. Secondly, we need clarification from the Secretary of State or the MOD about how future powers will develop to enable the Army to operate in support of the police. One interpretation is that there will be garrison strength, and that that will be it. The note asserts that there will be garrison strength with Army powers, in support of civil power. I would like to know more about that. I can imagine what that would mean for public order issues and for providing a technical capacity to policing. There may be other issues, but a note needs to be added to detail the broad ground rules, and that is without prejudice to the SDLP's view that the Army should have no role whatsoever.

1983. Thirdly, I mentioned the principles that should govern sensitive powers being devolved to the Assembly, including the power of the Chief Constable on determinations of the Parades Commission. He has not used that power to date, but he may wish to do so in the future. Nonetheless, if that matter is devolved, there must be community safeguards, because a Minister for justice cannot be given a unilateral

power to decide on appeals from the Chief Constable. That is not an acceptable outcome. Appropriate safeguards must be built in to ensure that, if a situation were to arise, a decision would be made that would reflect not just one party or one community interest.

1984. **Mr Neeson:** The operational independence of the Chief Constable is important. During my days on the board of the Police Authority, decisions were taken by the then Chief Constable that I did not agree with. However, by the same token, when we deal with such sensitive issues as parades, the operational independence of the Chief Constable is vital.

1985. **Mr Weir:** The DUP believes that the power to appoint members to the Parades Commission should be devolved. The detail is vague, because certain aspects of appointments to the Parades Commission and its operation could remain reserved, if that were the wish of the Assembly. The default position is that all aspects of the Parades Commission would be devolved, unless the Assembly decided to the contrary. Is that the case? Is that in legislation?

1986. **Mr T Moore:** As far as I know, that is not in legislation, but again, clarification is probably required.

1987. **Mr Weir:** Did that statement come from the NIO?

1988. **Mr T Moore:** That comes from the NIO discussion document.

1989. **Mr Weir:** Our view is that appointments should be devolved in that regard, but we would like clarification on that matter. The example of appointments to the Parades Commission comes back to the earlier point about “certain aspects of parades”. We should seek clarification on what that means.

1990. **Mr McFarland:** The PFG Committee dealing with rights, safeguards, equality issues and victims has been discussing parading, and the DUP submitted a detailed document on the make-up of the Parades Commission.

1991. It would make some sense if the detail of that were allowed to run as a major issue with

the PFG Committee dealing with equality, rights and safeguards, which meets on Friday — as has been happening — and we can agree or disagree with it here.

1992. My understanding is that that entire issue will be devolved, unless we think that it is of such concern that it should remain an excepted matter. However, the Friday team can discuss that.

1.30 pm

1993. On the military side, we will end up with a garrison here, where families live while the soldiers are in Afghanistan or Iraq. The soldiers will return only occasionally and then return to their posts. At any one time, a battalion’s-worth of soldiers would be here, and that is exactly what happens in other parts of the UK. It would be useful to get the protocols that govern that.

1994. It would also be useful to examine the protocols: first, in respect of Military Aid to the Civil Power (MACP), which deals with riot situations and assists Ministries with events such as the BSE crisis; and secondly, in respect of Military Aid to the Civil Community (MACC), which is used, for example, when a helicopter has to help a farmer lift a cow out of a bog.

1995. Defence is, of course, an excepted matter. Three of the excepted functions that will remain at Westminster are defence, foreign affairs and Treasury matters. If defence became devolved, the Government here would have to ask the Ministry of Defence for military aid, for which it would be expected to pay as part of the Budget. It would be useful to get all that clarified, but the well tried and trusted protocols that exist in the rest of the UK can assist in that.

1996. **The Chairman (Mr Wells):** Are we agreed that we will pursue Alex’s request for information? Without prejudice, we can look at that information and decide whether it is useful.

Members indicated assent.

1997. **The Chairman (Mr Wells):** There is a proposal that we defer to the PFG Committee dealing with equality, rights and safeguards in respect of the reference to the Parades Commission contained in the NIO paper on

national security. That Committee has had quite a long discussion on parades but has failed to reach a consensus. However, we agreed to consider further the DUP's proposals for changes to the Parades Commission, and those proposals might fit neatly into that discussion. There is a fair degree of overlap between the two groups, so I am not trying to hide anything from anyone. Are members happy that we do that?

Members indicated assent.

1998. **The Chairman (Mr Wells):** OK. We are making some progress.

1999. **Mr G Kelly:** We are giving work to somebody else.

2000. **The Chairman (Mr Wells):** We have parked less today than we parked on Monday. I do not know whether that is a victory.

2001. **Mr G Kelly:** With regard to the Parades Commission, the community safeguards are clearly important, but we are passing the issue to the PFG Committee dealing with equality, rights and safeguards, so I will leave it at that. We believe that it should be transferred.

2002. You will not be surprised to hear that we are against the British Army backing up the police. We went through a long period in which that was a common occurrence, and we do not want to go back to that. Hopefully, we are entering the final stages of demilitarisation. We are opposed to British Army involvement, and we believe that that remaining issue should be transferred.

2003. **The Chairman (Mr Wells):** If that was a proposal, I do not think that we will get consensus on it. *[Laughter.]*

2004. We will note that and move on to the policing accountability framework. There is quite a bit to this matter. As it is so important, I will ask each party to have its say. I suspect that there will be a divergence of opinion.

2005. **Mr Neeson:** As you say, Mr Chairman, this issue is very important, particularly where fifty-fifty recruitment is concerned. My party has always believed that that would not solve the problem and has always felt that through time, and when there was confidence in the

institutions, a police force comprising all races and religions would develop naturally.

However, my party strongly believes that, although this remains a reserved matter, it should be devolved.

2006. **Mr McFarland:** We are on record as saying that fifty-fifty recruitment should be removed pronto, so we will not get into a discussion on it.

2007. However, I want to talk briefly about the point that is under the issues remaining column that concerns paragraph 11 of schedule 3 to the 1998 Act. It discusses:

“The detail of the relationship between the Policing Board, the Northern Ireland Minister for policing and an Assembly policing committee.”

2008. If this Committee does nothing else, it should determine how that relationship will come about.

2009. The Policing Board was set up as a result of the Patten Report. Alex Attwood has described how inviolate that report is — except, of course, if the Secretary of State decided, with the click of a finger, to abolish the provision to have 10 elected members. It seems that one can move away from Patten if one so wishes.

2010. Patten set up the Policing Board to deal with a particular set of circumstances. However, if we end up with a Minister and an Assembly Committee for policing and justice, we will be in difficulty. Ten Assembly Members who were elected by d'Hondt would sit on the Policing Board, and the Assembly Committee would have 11 members who were also elected by d'Hondt. That means that 21 MLAs would be committed to policing. Colleagues will be aware from previous discussions that it can be difficult to fill Committees. A few weeks ago, we had an energetic discussion with Naomi Long about the difficulty of securing Committee quorums when the Assembly was up and running. It is obviously silly to tie up 21 elected representatives with policing.

2011. How do we deal with that? The Policing Board has many roles. For example, it secures money for policing from the NIO. Presumably,

that money would come first to the Minister, who would then pass it to the Policing Board to dole out. The board is also responsible for the police's manpower and equipment. Therefore, it has operational, hands-on concerns. It is also charged with holding the Chief Constable to account.

2012. There is confusion in that the board does not simply have a watchdog role; that would be the role of the Assembly Committee. The board has a combined role. Therefore, how would the Policing Board, with its many functions, operate, yet have a useful, supervisory relationship with the Committee?

2013. One option is to use d'Hondt to replace elected representatives on the board with party nominees. Those who are chosen to serve on the board would, therefore, be non-elected representatives, and the essential political input that the Patten Report requires would be retained. The Assembly Committee could then operate properly.

2014. It is uncertain whether the Assembly Committee would, under normal circumstances, call the chief executive of the Policing Board to appear before it. The Policing Board would hold the Chief Constable to account, and the Assembly Committee would hold the Policing Board to account through its chief executive. I am sure, however, that the Committee would want to reserve the right to call the Chief Constable if circumstances dictated, given that it has the power to summon people and papers.

2015. The Committee would oversee the Minister's work. Matters that concern justice and prisons would be much more straightforward if the Committee had direct access to the relevant agencies.

2016. The issues are complicated and impinge on all kinds of areas and sensitivities. However, if we achieve nothing else, I hope that we at least have clarity of thought about how to proceed.

2017. **Mr Attwood:** I agree with Alan that the Committee's work on the Policing Board could be some of the most useful that it addresses. However, the basis on which we progress must

be that, although it is accepted that the Assembly and Minister would like to have as big a role as possible — since that is the nature of Parliaments and Ministers — all of the institutions established by Patten need to be ring-fenced and their independence protected to the highest possible degree. If we work from that principle, I believe that our efforts will be successful.

2018. Parliamentarians and Ministers may not end up with the authority and role that they want, but given the nature of the policing issue, it is the best way to proceed.

2019. Therefore, save as is outlined in Patten, the role of an Assembly and any Minister or Ministers should not extend beyond what I have outlined. Ministers would have responsibility for setting long-term objectives, deemed to be three to five years. Working from that basis, the principle of maximum dependence of the policing structures can be established.

2020. I am concerned about some members' views on this. Perhaps some still yearn for a return of the days when there was a Minister of Home Affairs with far-reaching powers.

2021. **Mr Kennedy:** Hear, hear.

2022. **Mrs Foster:** Bring back John Taylor. *[Laughter.]*

2023. **Mr Attwood:** On the other hand, other parties feel that it has taken so long for us to get our hands on policing that now we are close we must grab it all. Perhaps I am over-characterising one or two parties round the table, but we must be mindful of such tendencies.

2024. In principle, the Policing Board, the PSNI, the District Policing Partnerships (DPPs) and the Police Ombudsman should be ring-fenced; as far as possible they should not be encroached upon.

2025. As a consequence, an Assembly Committee or Minister will feel that their function in relation to policing matters is not what they would like it to be, but that is definitely the best approach. Views on some elements of that may converge over the next two or three weeks.

2026. The SDLP supports the devolution of fifty-fifty recruitment, but it must be subject to safeguards. Given the likelihood, or otherwise, of the Assembly being restored by November 2006 or May 2007, the subject of its being devolved may become academic, as the British Government are about to go out to consultation on the renewal of fifty-fifty recruitment because its three-year provision runs out next April.

2027. I remind members that Patten said that there should be fifty-fifty recruitment for at least 10 years. The SDLP is working from the basis that the recommendation of 10 years is a minimum and argues that it should extend beyond that.

2028. **Mr Cobain:** Do you think that there will be a Prod in the police force if fifty-fifty recruitment runs for 10 years?

2029. **Mr Attwood:** By the time fifty-fifty recruitment has run for 14 years, the police force will probably be about 55% Protestant — or non-Catholic, to give the proper legal definition.

2030. Finally, I put down a marker about the appointment of a new Police Ombudsman in September or October of next year, when Nuala O'Loan's seven-year tenure ends.

2031. **Mr S Wilson:** Are any more of your councillors' wives looking for a job?

2032. **Mr Attwood:** I understand why Ian Paisley Jnr comes out with that kind of comment, but Sammy should know better.

2033. **Mr Cobain:** You are right.

2034. **Mr Kennedy:** There is no point appealing to his better nature.

2035. **Mr Weir:** What better nature?

2036. **Mr Kennedy:** Exactly.

2037. **Mr Attwood:** Sammy should be mindful of the company that he keeps.

2038. **Mrs Foster:** Sammy, I would leave now if I were you.

2039. **Mr Attwood:** The SDLP also wants the appointment of a new Police Ombudsman to be devolved. However, I am worried that, given the time frame, offering advice to the Prime

Minister on the appointment of a new Police Ombudsman is a heavy power to give to OFMDFM.

2040. **Mr G Kelly:** If the SDLP had had that job in OFMDFM, I wonder whether it would have had the same opinion.

2041. Sinn Féin supports the transfer of fifty-fifty recruitment, but with community safeguards. There is almost paranoia about what will happen to the Policing Board in those circumstances, so let us try to balance it out. The Policing Board has powers that should be protected. However, we are not talking about a Minister or Ministers with no powers at all. Some of the ambience of the conversation suggests that there will be a lame duck Minister; that would assist no one.

2042. The Policing Board does not legislate — the Minister may. A Department for policing and justice must have a scrutiny Committee. Other Departments will have a scrutiny Committee with powers or limitations, so why would a policing and justice Committee not operate on the same basis? That Committee might not have the power to legislate, but it would certainly have the power to offer assistance in creating helpful legislation.

1.45 pm

2043. Bearing in mind that even this Committee has almost accepted that policing and justice matters would not be covered by two separate Departments, it is crucial to remember that discussion of a single Department for policing and justice involves more than policing and the Policing Board.

2044. We are talking about the entire policing and justice issue, which is much more wide ranging; that should be reflected in the power that a Minister or Ministers would have. Some of the powers are already ring-fenced, and I have heard no one argue that the Policing Board's powers should diminish. That said, a scrutiny Committee is essential.

2045. I have not yet given any thought to what Alan has said about political parties replacing their elected representatives on the Policing Board with party appointees, but I suppose that

it is worth looking at, given that the board might have problems getting a quorum.

2046. There is also an all-Ireland dimension to policing and justice, and I would like that dimension to be very robust, whether that be achieved through one or more implementation bodies or areas of co-operation. That would help to strengthen some policing and justice issues on which we have already had some sort of agreement. That is all that I have to say on that matter at present. I think that we can go some distance with it.

2047. Table 1 on reserved matters and their implications for devolution states in relation to paragraph 11 of schedule 3 to the Northern Ireland Act 1998:

“The Secretary of State would retain power to issue statutory guidance to the Ombudsman (the Minister for policing would also have this power).”

2048. I am not sure what that means exactly. Would the Secretary of State and the Minister both have power or would it transfer from the Secretary of State to the Minister?

2049. **The Chairman (Mr Wells):** Mr Moore will seek clarification on that. After Sammy has spoken, our round-robin contributions will be complete. I shall then seek proposals.

2050. **Mr S Wilson:** Like the Ulster Unionist Party, the DUP believes that fifty-fifty recruitment has been discriminatory and has damaged the police’s credibility in the unionist community. It has also been damaging to individual police officers, because they are considered to have been selected on the basis of their religion, not on the basis of their ability to do the job. Therefore, fifty-fifty recruitment should be ended as quickly as possible. I hope that that happens before policing and justice powers are devolved.

2051. I suspect that those who want fifty-fifty recruitment to be devolved to Northern Ireland want it so that they can use their veto powers to ensure that discrimination exists for a considerable number of years. That worries me. Alex has talked about fifty-fifty recruitment lasting for 14 years or more. That in itself is a

warning sign for people from the unionist community. They would simply see the devolution of policing and justice as a means of institutionalising discrimination, because nationalists could use their veto to prevent any change to the fifty-fifty provisions.

2052. The relationship between the Policing Board and the Assembly is not such a big issue. Any MLA who has been involved in the Policing Board will know that a policing and justice Committee that would have other policing and justice responsibilities could not possibly do the job of the Policing Board, or, indeed, supersede it. The Policing Board’s job is more to do with the minutiae of policing.

2053. It is best to see the Committee’s role as an overarching one, perhaps in relation to legislation and long-term strategic issues, with the Policing Board micro-scrutinising policing. If much of the Policing Board’s scrutiny role were passed to an Assembly Committee, there would be meetings two days’ a week on that one issue. That would not work.

2054. I am not sure about Alan McFarland’s suggestion that political parties’ representatives on the Policing Board would cease to be elected members and instead be party appointees. That would probably lead to a reduction in the number of Policing Board members. The board might well end up with 22 members. Politicians will be involved in scrutinising policing at some level, whether at a micro level for the Board, or at a macro level for the Assembly Committee. This is not a big issue — in fact, the more people involved, the greater understanding there might be among public representatives of the issues and complexities of policing.

2055. I am not sure that we are in a position to start divvying up roles between the Policing Board and an Assembly Committee; however, it might be a natural division for one to have a strategic role — with all of the potential policing, justice and legislative scrutiny responsibilities — while the other takes responsibility for micro scrutiny.

2056. One matter concerns me. If the Assembly wanted to be involved in the minutiae of policing, it could be seen as taking some

political control of that matter. That would be a retrograde step.

2057. As for the appointment of the Police Ombudsman, the DUP would be happy to see greater responsibility for at least advising as to who should be appointed. That is an important position, which requires a great deal of confidence from the police and from the community. The more that the person appointed is seen as having emerged from political consensus in Northern Ireland, the better.

2058. We should learn from the present Police Ombudsman's standing that, if the person in the post is perceived to have been elected in a partisan manner, and there is no consensus for that name, that is detrimental to the office itself. The position is important, and the police regard it as important to have independent scrutiny of complaints. Nevertheless, the office-holder must be seen to be independent and without a political agenda, hence the need for consensus and an input from the Assembly.

2059. **Mr McFarland:** One of the most exciting things about the Assembly is that it has no equivalent of the House of Lords — its only balance is the Committee system, which is very powerful. In fact, Westminster's scrutiny Committees are now similarly powerful.

2060. A policing Department and its scrutiny Committee would allocate the money, establish the legislation and would be ultimately responsible for holding the Minister to account. I cannot see a Committee fettering itself by agreeing to take a watching brief at a macro level.

2061. Secondly, Sammy cannot have forgotten, because we spent four years on it, that the Policing Board takes up an enormous amount of time, although it is supposed to be only two days a month. From a practical point of view, I cannot see how Assembly Members, who are taking part in plenary sittings on Mondays and Tuesdays, attending Committees on Wednesdays and Thursdays and working in their constituencies on Fridays, would be able to put in the time that the Policing Board, with its subcommittees and so on, requires, if they are to do their jobs properly. There is a major issue here about the Committee's power and

about the time required for Policing Board and Assembly work. The logical option would be to opt for a Policing Board equivalent to those in the rest of the UK with a number of independent members — that is the way that the old authorities worked. What I suggest is something of a halfway house.

2062. The key to the Policing Board's success has been the political input; it brought a bite and a drive that it would not have had with independent members. This is vital work, but it means that 10 MLAs are tied up for great chunks of time. I have attempted to find a solution whereby the political input is retained, which has been important during the first four years, while taking the burden off the shoulders of the MLAs. If this place were functioning properly — and it never really got up to speed the last time — Members would need to be here full time. This suggestion is an effort to keep the political input on the Policing Board, which is healthy, while at the same time freeing up MLAs to do what they are paid to do.

2063. **The Chairman (Mr Wells):** Let us start at the bottom. Do we have agreement that the Assembly should have the responsibility to advise — note that the word is “advise”, not “appoint” — the Crown on the appointment of the Police Ombudsman? Are we happy to take on that power? Is there any dissension on that?

2064. **Mr G Kelly:** Is that the First Minister and the Deputy First Minister?

2065. **The Chairman (Mr Wells):** Yes; the Assembly, through its Ministers.

2066. I presume that a cross-community vote could come into this, or a petition of concern could be used, if members were unhappy. There would be some safeguards — the word “safeguards” was mentioned a couple of times. What do members think of this suggestion? Of course, the Assembly's advice could be ignored.

2067. **Mr Neeson:** What do you mean by “could be”?

2068. **Mr McFarland:** It depends on the mechanism. Will the First Minister and the Deputy First Minister decide over a cup of coffee in the morning that Mr Jones or Mrs

Smith would be suitable for appointment? Will it go before the Assembly for a cross-community vote? How will this operate?

2069. **Mr S Wilson:** This would be one way of ensuring that there is some confidence in the person who takes on the role.

2070. **Mr McFarland:** So it would come through the Assembly on a cross-community vote?

2071. **Mr S Wilson:** It would go through the Assembly.

2072. **Mr McFarland:** That is not perhaps as it is envisaged here, with the First Minister and the Deputy First Minister having a cup of coffee. It would be quite healthy if the appointment were agreed in the Assembly.

2073. **Mr Attwood:** Sammy's outline is a dangerous precedent, if the appointment of a person to head a senior public body, had to go through the Assembly and be subject to a cross-community vote.

2074. **The Chairman (Mr Wells):** I hope that that is not what Sammy is saying. I think that he means that if there were dissension by a significant group of MLAs —

2075. **Mr Attwood:** If there were dissension, would the appointment be subject to a cross-community vote? That is not where we are heading with this or other significant appointments. That is a power of veto that people from one, other or both communities would exercise.

2076. **The Chairman (Mr Wells):** At the last PFG Committee we considered the issue of making public appointments more accountable to the Assembly, so there is consistency in having what is one of the most important —

2077. **Mr S Wilson:** The post of Police Ombudsman is uniquely different from any other public post. I believe that there is a requirement for cross-community confidence in the person who takes that role. It may well be that, if the name suggested causes no concern, there will be no need for a vote. However, if there were, Members could lay a petition of concern that would require Assembly assent. Of

course, that happens in other parts of the world; for example, for appointments of Supreme Court Justices in America.

2.00 pm

2078. **The Chairman (Mr Wells):** This is a finely balanced argument, and we are hearing both points of view. Could we accept the principle that there should be some mechanism so that the Assembly could have an advisory input? Rather than deciding that there must be an affirmative vote in the Assembly or a Committee, we could agree on the principle that the Assembly take some role.

2079. **Mr Cobain:** It would be a bit silly if we had devolved policing and justice powers, but did not take a view, as an Assembly, on who would be appointed Police Ombudsman. Alex Attwood has given the impression that perhaps the Assembly is not mature enough to do that or that the Assembly is so discriminatory that it could not be trusted. Assembly Members have put themselves forward for election, and they represent the people. It is absurd for the Assembly to take no view on the matters on the list that Alex read out.

2080. **Mr G Kelly:** A simple proposition has been made complicated. The Assembly can decide to voice an opinion on any matter. However, it is not up to this Committee to stipulate that the Assembly must take a view. That is the difference. If we stipulate that the Assembly must have a say in the appointment of the Police Ombudsman, we will be in a situation in which everything will be run entirely by the Assembly; that leads to institutional arguments about corporate Executives and so on. The simple solution is to shift the responsibility for the decision from a single person — the Secretary of State — and to give it to OFMDFM. I am not saying that the decision should be made over a cup of tea.

2081. That is a simple proposition, and we should keep it so, instead of trying to prescribe whether that decision is made over a cup of tea, whether the Assembly has its say, or whatever. We should be careful. If we stipulate that the Assembly must give an opinion, the Assembly will have to give an opinion on every single

thing. Who are we to tell the Assembly what to do? No one will stop the Assembly from voicing an opinion. If a Member rises in the House and says, “I disagree with this appointment. I want a debate in the Chamber”, we may or may not have a debate. That is the way it goes. Let us not start stipulating that that must happen.

2082. **Mr Attwood:** Earlier, we were told that the dangers of an Assembly Committee exercising political interference on policing matters would not arise because, logistically, that burden already falls to the Policing Board. However, 10 minutes later, there is an attempt to politically interfere with the independence of the policing structures in the North, namely the Police Ombudsman’s office. The very fear that I outlined earlier has been confirmed half an hour later. The proposal would represent political interference in public appointments in an area of great sensitivity where public confidence is essential. If we start with the Police Ombudsman, there is no doubt that we would have to do exactly the same for the Victims’ Commissioner, the Chief Commissioner of the Human Rights Commission —

2083. **Mr McFarland:** The Chief Constable, perhaps?

2084. **Mr Attwood:** Even the Chief Constable — thank you. Once that gate is opened, people will charge through it. Members know the nature of this place; from the past six or eight months, or the past year, we know how members from all parties had heightened sensitivities about who was appointed to an interim post or a full-time post in another public body. We cannot open that gate.

2085. We are fundamentally opposed to that. Of course, we can raise things in the Assembly; that is the nature of politics. However, to give the Assembly any power on this matter would be a recipe for a return to the past.

2086. **Mr Cobain:** The Chief Constable is appointed by the Policing Board, which is run by politicians.

2087. **Mrs D Kelly:** And independent members.

2088. **Mr Cobain:** Alex, in his capacity as a politician, sat on the interview panel for the post of Chief Constable.

2089. **Mr Attwood:** Was there a cross-community vote?

2090. **Mr Cobain:** No. There was no cross-community vote.

2091. **Mr Attwood:** Sammy is proposing that the Police Ombudsman be subject to a cross-community vote in the Assembly.

2092. **Mr Cobain:** Alex sat on —

2093. **Mr Attwood:** I did not; Joe Byrne did.

2094. **Mr Cobain:** A member of the SDLP, along with members of other political parties, sat on a panel and interviewed the candidates for the position of Chief Constable.

2095. **Mr Attwood:** There were independent people as well.

2096. **Mr Cobain:** Members of political parties sat on the interviewing panel and then voted —

2097. **Mr S Wilson:** The majority were politicians.

2098. **Mr Cobain:** Yes, the majority were politicians. They voted on the appointment of the Chief Constable. What is the difference in politicians sitting on the Policing Board? Do they leave their police hats outside that day and come in as independents?

2099. **Mr Attwood:** You cannot see the difference between a mixed panel appointing the Chief Constable and an exclusive body of politicians taking part in a cross-community vote?

2100. **Mr Cobain:** Alex, it is the same with Patten. When it suits you, you need Patten; when it does not suit you, you do not need Patten. It is the same with us.

2101. We are appointed by the people; we put our names forward and are democratically elected. This is nonsense. It is like saying that Parliament should not have any say in this or in that.

2102. **Mrs D Kelly:** It is one of the confidence measures that the nationalist community requires.

2103. **Mr S Wilson:** The current Police Ombudsman was a political appointment —

2104. **Mrs D Kelly:** Nonsense.

2105. **Mr S Wilson:** The Secretary of State appointed her, at the behest of the SDLP, and she is from an SDLP background. Do not be getting precious now about political appointments to the Police Ombudsman's Office.

2106. **The Chairman (Mr Wells):** Mr Kelly will speak next, and that is it.

2107. **Mr Cobain:** Sinn Féin always has the last word.

2108. **The Chairman (Mr Wells):** Sorry, Mr Kennedy will speak next, then Mr Kelly, and then that is it.

2109. **Mr Cobain:** You Sinn Féin Chairmen are desperate.

2110. **Mr Kennedy:** I fail to understand what virtues so-called independent members have. All of us are from Northern Ireland, with a Northern Ireland background. Clearly, all of us are capable of holding particular views. I do not understand the logic of relying on and making a virtue out of having independent members, as opposed to people who have sought the vote of the electorate.

2111. I do not see how the decisions taken by those who are supposedly independent can be defended; if the surfaces of all members were scraped, certain views would be found. Those who are democratically elected have put themselves forward and received the mandate to do it. It is astonishing.

2112. **Mr G Kelly:** The DUP should not get too precious when we are talking about the Parades Commission and the Victims' Commissioner, whom they appointed. We could argue about this all day.

2113. I was hoping for a short adjournment, as I have a couple of important phone calls to make.

2114. **The Chairman (Mr Wells):** There will be a coffee break at 3.00 pm.

2115. **Mr McFarland:** Perhaps we could have a comfort break, Chairman?

2116. **The Chairman (Mr Wells):** Yes, the policy is that each party should be represented at meetings at all times. May I presume that we have consensus on the 10-minute coffee break?

Members indicated assent.

2117. **The Chairman (Mr Wells):** That is another one chalked up. *[Laughter.]*

2118. Does the Committee accept that OFMDFM has the power to advise the Crown on the appointment of the Police Ombudsman?

2119. **Mr McFarland:** Without being prescriptive as to how it is exercised?

2120. **The Chairman (Mr Wells):** Yes. It refers to general powers. What is the view on that?

2121. **Mrs D Kelly:** There is no definition of "advise".

2122. **The Chairman (Mr Wells):** I am getting the clear impression from Alex that there is no consensus on this. Let us not flog it; it is not going to happen — at least not through the work of this Committee.

2123. Let us break for 10 minutes, and I mean 10 minutes, folks. Coffee will arrive at 3.00 pm, but we will have to continue working; we cannot have three breaks in two hours.

The Committee was suspended at 2.09 pm.

On resuming —

2.20 pm

2124. **The Chairman (Mr Wells):** We have a quorum again, so we are back on air. As we did not reach consensus on advising the Crown on the appointment of the Police Ombudsman, we will move to the next suggestion, which is that the Assembly considers whether to seek devolution on fifty-fifty temporary recruitment provisions. There seems to be some support for that, so I shall throw it out for discussion. We do not want to get into a debate about the merits, or otherwise, of that provision because we could spend several days on it. I will formally put the suggestion: do we have consensus on the Assembly having a role in the temporary fifty-fifty recruitment provision?

Members indicated dissent.

2125. **Mr Weir:** We are opposed to that, as we are concerned that it would be used as a device to enshrine fifty-fifty recruitment.

2126. **Mr Attwood:** We are in favour of it, subject to appropriate community safeguards.

2127. **Mr McFarland:** The problem is that, at the moment, the Government have the power to change the provision. If that suggestion were approved, community agreement would be necessary to change it, so it would never be changed. An entire political issue would ensue around those who moved away from the suggestion or tried to change it.

2128. **The Chairman (Mr Wells):** For the sake of completeness, Sean, what is your position?

2129. **Mr Neeson:** We are in favour for it.

2130. **The Chairman (Mr Wells):** As we do not have consensus, the matter will be dropped. We will move on to new paragraph 11A of schedule 3 to the 1998 Act, which deals with co-operation between the PSNI and the guards.

2131. **Mr Weir:** I am sorry, Chairman; was any level of consensus reached on the Policing Board? If I understood it correctly, there probably was consensus that a policing board should remain and that an Assembly scrutiny Committee should scrutinise the work of a

policing Department. I know that that may be straightforward and obvious, but —

2132. **Mr McFarland:** We need to discuss further the interaction between those bodies. At some stage, the parties will have to discuss how those arrangements will actually work, the make-up of the scrutiny Committee and whether the make-up of the board should change. Those arrangements are such a fundamental part of the devolution of policing that they should be agreed before we can implement it.

2133. **The Chairman (Mr Wells):** Is there any chance of a low-level consensus on that issue?

2134. **Mrs D Kelly:** Three of the political parties are represented on the Policing Board. Last week, Prof Sir Desmond Rea wrote to the Committee on behalf of all board members, suggesting that the status quo in the relationship with the Policing Board be maintained and that the Policing Board and its functions be protected.

2135. **Mr Kennedy:** He would say that, would he not?

2136. **Mrs D Kelly:** You are a member of the Policing Board, and he wrote on behalf of that board.

2137. **Mr Kennedy:** I know that, but the politicians must sort out the prevailing arguments. We need not run to the Secretary of State, the security Minister, or Prof Sir Desmond Rea. There are issues to be resolved, and this is the place in which to do that, rather than hiding under other people's skirts.

2138. **Mr Weir:** I hope that you are not accusing anyone of cross-dressing.

2139. **Mrs D Kelly:** No one has any intention of hiding behind anyone's skirts, regardless of who chairs the Policing Board. It is a matter of record that Prof Sir Desmond Rea has written to the Committee in his capacity as chairman of the board, and one can only assume that he has done that with the blessing of that board, of which Mr Kennedy is a member.

2140. **Mr G Kelly:** There are three aspects to the issue. Everyone agrees that the Policing Board should maintain its powers under Patten

and should remain extant. Whether one or two Ministers are responsible for a Department for policing, they should have the same powers as any other Minister under the Good Friday Agreement. There would be a scrutiny Committee, but it would only have powers to scrutinise the Department, like any other scrutiny Committee. In that way, it is quite straightforward.

2141. **Mr Attwood:** Except for the second point. A Minister for policing would not have the same powers as any other Minister under the Good Friday Agreement, because those powers were defined and constrained by the Patten Report. The Patten Report said that the Secretary of State's powers, for example, were limited and primarily included the setting of long-term objectives. That is somewhat less than the routine powers of any other Minister. So, subject to that —

2142. **Mr Weir:** Three propositions were effectively put forward. I shall leave aside the second proposition, as there will clearly not be consensus on it, from what Alex has said. I have no problems with the first two points: the retention of the Policing Board's current powers and the setting-up of an Assembly scrutiny Committee; I am happy to agree to those.

2143. **Mr McFarland:** Assembly Committees have legal powers to call people and papers. When people appear before a Committee, they can stay quiet or tell lies, but Committees have the ability to call them. One does not want to interfere with the successful working of the Policing Board because, by and large, it is the one organisation that has worked over the past while. My point was that there are serious practical difficulties with 21 Assembly Members being involved in the Policing Board.

2144. The PFG Committee dealing with institutional matters has been discussing whether the membership of the Assembly should be reduced to 90 Members or 72 Members. If, for example, Assembly membership dropped to 72, 21 Members will be pootling around in policing, if we stick with Patten and 10 politicians serve on the Policing Board.

2145. There are real practical problems with giving full service to the Policing Board. Alex knows perfectly well how much time that takes; we have spent weeks, in some cases, at meetings of the Policing Board. Colleagues who served in the first mandate know well that, when the Assembly is fully operational, we can spend nearly all week here, including some Fridays, when we should be in our constituencies.

2146. Therefore, we need to review the elected membership of the Policing Board to see whether there is another way to maintain the same political input and balance that would allow the Policing Board to do its business and allow a scrutiny Committee to operate in the proper way. It is a circle that cannot be easily squared.

2147. **Mr Weir:** Two issues should be separated: the membership of the Policing Board, and the powers of the Board. For the moment, the Policing Board should retain its role and powers. We might achieve consensus on that.

2148. As regards the elected membership, I am not quite convinced that the practical difficulties are insurmountable. However, if the Policing Board were reconstituted under some sort of devolved justice system, which is what we are talking about, with the Assembly up and running, it should retain the current 10 elected Assembly Members and nine independent members.

2149. If, a year or two down the line, that arrangement were found not to be working because of time constraints, I would certainly be open to some degree of review. My general preference is to retain politicians on the Policing Board, who should be elected Assembly Members. I am not comfortable with moving away from that. If it were shown from a practical point of view that it simply could not be done, I would consider changes at that stage.

2.30 pm

2150. **Mr McFarland:** Are we saying that an Assembly scrutiny Committee on policing and justice would examine the Minister? Nobody

else is looking at the Prison Service, so no doubt we will have the head of the Prison Service in every so often to find out what he is doing. The Committee could call the head of the judiciary to find out what is going on with regard to sentencing, bail and everything that relates to the courts.

2151. Are we saying that the 11 members of that Committee would not be allowed to interfere with their 10 colleagues, from the same parties, who oversee the Policing Board? I cannot imagine the 11 good and true members of the Committee saying that the Policing Board is sacrosanct; that they have full confidence in their colleagues who sit on it; and that they will not examine policing, because that is the job of the Policing Board.

2152. **Mr Attwood:** That may be the political imperative, as you see it.

2153. **Mr McFarland:** That is the reality of it.

2154. **Mr Attwood:** If the Assembly is restored, it will be subject to two police Acts, which will define the roles and responsibilities of the Policing Board and the PSNI. They will define them internally and externally, and, whatever role a scrutiny Committee or Minister may have will be subject to every section of those two pieces of legislation. A Minister, or an Assembly scrutiny Committee, may want to ride roughshod over that, but they would not have the legal authority to do so.

2155. **Mr McFarland:** The Committee would. If an Assembly Committee produces money for policing and justice, which it would, it would have the ability to supervise the Minister and any agencies or organisations within its remit, and that would include policing and justice. Although it could not interfere with the operational activities of the Chief Constable, because that is sacrosanct, if there was a bog-up over baton rounds, I am sure that the Committee would wish to hear evidence from the chairman of the Policing Board or the Chief Constable about what went wrong. I cannot imagine any Assembly Committee forfeiting that right.

2156. **Mr Attwood:** I did not say that they would not try to go in various directions — they will.

2157. **Mr McFarland:** Would they have a legal right to do so?

2158. **Mr Attwood:** As tends to happen, hopefully, equilibrium would be reached, whereby the Committee and the Policing Board would recognise their limits. That is how it would work in practice. With regard to the technical position, the law will govern who has real authority when it comes to any one issue.

2159. In respect of any part of Government policy in the North, the paymaster can try to jump in on the conduct of any public body, agency or Department.

2160. **Mr McFarland:** In my view, there is a conflict that is not resolvable by having two sets of politicians in the same mix, from the same party, scrutinising the same thing.

2161. **Mr Attwood:** I will give you an example. Representatives from all the Northern Ireland parties at Westminster sit on the Northern Ireland Select Committee, and it reviews the Policing Board.

2162. **Mr McFarland:** That is only because it is still a reserved matter.

2163. **Mr Attwood:** Taking a hard parliamentary model, that Committee in Westminster reviews aspects of a Government body or Government policy.

2164. **Mr McFarland:** No, it does not.

2165. **Mr Attwood:** Yes, it does.

2166. **Mr McFarland:** When the Assembly is sitting, the Northern Ireland Select Committee can only consider defence, foreign affairs or Treasury impacts on Northern Ireland issues. However, when policing and justice are devolved here, the Northern Ireland Select Committee will no longer be able to posture on policing and justice, except with regard to the Budget.

2167. **The Chairman (Mr Wells):** This is an interesting academic argument between two experienced Policing Board members, but we are dancing on a pinhead, because the two proposals are: the Policing Board retains its current powers — and I think that everyone is agreed on that — and, the Assembly should have a scrutiny Committee on policing. The

issue of who serves on it, and do we need to change —

2168. **Mr Weir:** Sorry to interrupt, but it would be a scrutiny Committee on policing and justice — it would go wider than policing.

2169. **The Chairman (Mr Wells):** If we agree that, at a later date — and it will be at a much later date at the rate that we are going — we can discuss whether it is better to have MPs, councillors, etc. on the Policing Board.

2170. **Mr McFarland:** This Committee's remit is to prepare for Government. One area that requires preparation is policing, and I appreciate that it is academic until we solve the other outstanding issues that have been well rehearsed here. We can stop discussing the issue now, but we will have to sit down and discuss it again before a deal is made in the autumn. We can discuss it as part of the talks, or the five parties who have to decide how it will work could discuss it. It must be agreed before we get devolution of policing and justice.

2171. **The Chairman (Mr Wells):** The only issue that we are falling out about, Alan, is the actual bodies that are on each Committee; that is all.

2172. **Mr McFarland:** No. We are talking about the modalities of who has the authority to do what, and to call whom, when the devolution of policing and justice occurs. This is the most fundamental issue. The Policing Board — of which I am a former member — has discussed it endlessly, and Sammy will know that the interface between who has the authority has become the most major problem in policing. Following the restoration of devolution, justice and the Prison Service will be fairly easy to deal with, but policing will not, because policing is run by a load of politicians already.

2173. We must make a key detailed decision before a deal is made in November — if that is where we are heading. Imagine if the deal is struck, the Executive fires up, and there are shortened timescales. Imagine if the DUP and Sinn Féin iron out their differences, and then the question is asked about having to wait for two years before policing and justice are

devolved — as it was asked here last Wednesday. If the differences have been ironed out, why should the issue be raised again? We could reach a stage where there is a shortened timescale.

2174. The moment that the Assembly fires up again, the Policing Board membership will change. However, when that happens, will Sinn Féin be represented on the Policing Board? Soon, we will have to discuss, in detail, the interface between the Policing Board, the Assembly Committee, and the Chief Constable and how policing is going to be implemented — that is the whole idea behind the Committee. We can park it for now; that is not a problem.

2175. **The Chairman (Mr Wells):** We could agree by consensus that the issue requires further consideration.

2176. **Mr McFarland:** The issue cannot be left for discussion by a review Committee or by the Assembly, as many others can; this is a fundamental issue.

2177. **The Chairman (Mr Wells):** No party is flagging up the issue as being a major impediment to them going into an Executive, as far as I can see. It is a difficult issue, but it is not an impediment.

2178. **Mr McFarland:** When policing is resolved, this matter will become a major impediment. It should be dealt with to coincide with that point — unless we are going to delay it further down the line for discussion within the Committee. It must be dealt with, and it is fundamental to the core of policing. If we are putting it off, there is no problem.

2179. **The Chairman (Mr Wells):** I cannot see how we will solve it by 4.00 pm.

2180. **Mr McFarland:** I am not saying that. You suggested that we agree two issues and park this. That is OK.

2181. **The Chairman (Mr Wells):** Good.

2182. **Mr McFarland:** However, colleagues will have to think about the matter and come back to it. Devolution of policing will not go anywhere until this issue is dealt with.

2183. **The Chairman (Mr Wells):** Would parties consider the interface between the Policing Board and an Assembly Committee on policing and justice and the powers involved? Would parties come back to the Committee at a later stage? It is not something, I am sure, to which some parties have given a lot of thought.

2184. **Mr McFarland:** The Policing Board will have had some discussion on it, but it is a fundamental issue that must be resolved.

2185. **Mr Weir:** I do not agree with Alan that this obstacle is on the same scale as some of the others, but I am happy to come back to it at some point.

2186. **The Chairman (Mr Wells):** Are we happy to agree that?

Members indicated assent.

2187. **The Chairman (Mr Wells):** We move on to something less controversial: co-operation between the PSNI and the Garda Síochána.

2.45 pm

2188. **Mr G Kelly:** As the NIO document states, the Inter-Governmental Agreement on Policing Co-operation is an international treaty. However, it is stated in the column on issues remaining that:

“The Assembly will wish to consider whether, with the UK Government’s agreement, they wish in the future to negotiate replacement arrangements with the Irish government.”

2189. Sinn Féin is all for strengthening the all-Ireland structures and for the Assembly to deal with the Irish Government in doing so. That is fine by us.

2190. **The Chairman (Mr Wells):** Do you have any thoughts on that point, Alex?

2191. **Mr Attwood:** The Inter-Governmental Agreement on Policing Co-operation is a moderate agreement that needs to be enhanced for many good reasons. We want a very early conversation to take place about how that could be done in such a way that threatens nobody and assists everybody on a North/South and east-west basis. To confirm: the Assembly

should enter into ever-deeper arrangements with the rest of the people on this island.

2192. **Mr S Wilson:** Considerable co-operation occurs between the police and the gardaí, and, through our positions on the Policing Board, some of us have become aware of how much co-operation there is.

2193. There is no resistance to co-operation at that level where it is seen that it occurs for good operational reasons and produces practical results. However, unionists get nervous when the political structure is then imposed on that arrangement. As police officers will tirelessly tell you, that political structure is by and large unnecessary. The same police officers will also endlessly tell you that good relations exist in liaisons between senior police and gardaí officers and even at lower levels.

2194. We would not be happy if the arrangements with the Irish Government were enhanced or replaced. We believe that what currently exists does so probably more for political reasons rather than good, practical policing reasons. When unnecessary political structures are added to those arrangements, people only become suspicious of what should be natural co-operation between police forces on the island.

2195. **Mr G Kelly:** I am not sure what Sammy is saying. Surely he wants enhancement; he said that he is worried about enhancing the arrangements, but his whole discussion was about how those arrangements were very good and that they should improve. Therefore, he is as much for enhancement as he is opposed to it.

2196. **Mr S Wilson:** I was discussing practical arrangements and how practising police officers see where co-operation and liaison are necessary. There is no need to put a political structure on to that. Policemen know what co-operation is required, how that can occur, and that, by and large, it works.

2197. **Mrs D Kelly:** I would have thought that, as in any public authority, structures and frameworks that state what individual employees of such bodies can do must be agreed at a strategic level. Surely Sammy is not

advocating that a garda in one area and a PSNI officer in the other make up the rules as they go along. Operational directions and arrangements must surely be in place.

2198. **Mr S Wilson:** I thought that the idea was that politicians did not involve themselves in operational police matters. It is dangerous to advocate that, because it will start interference on how the police forces operate with each other.

2199. **Mrs D Kelly:** That is what those intergovernmental arrangements are for.

2200. **Mr G Kelly:** There will be North/South Ministerial Council input into any of the Departments or structures that will be set up. A justice and policing Department should not be any different to any other Department. I return to the fact that all of the DUP's arguments are, actually, in favour of enhancement. A formal North/South footing allows for — as the column on devolution states — lateral entry, secondments and exchanges, training of officers, etc. Implementation bodies and/or areas of co-operation would clearly enhance that.

2201. **Mr McFarland:** That proposal falls firmly into the category of “North/Southerly”, and the rules on that are quite clear. Everyone is more than happy with co-operation that helps in operational matters. That is correct, and Sammy has covered that matter in some detail.

2202. However, there have been attempts to build an empire around this issue before it even reaches the Assembly. There are teams of civil servants who are all dreaming up new ideas. If measures are practical and sensible, there is no problem. However, for example, there were suggestions that all police training on the island should be carried out at a single police college where the gardaí and the PSNI would train together.

2203. There are two different jurisdictions with different legal systems and rules, and some people are trying to make proposals for political reasons. I have no doubt that my party and the DUP will block those proposals, as we have on other matters. No one has a problem with ideas that are introduced for good practical reasons, but if a measure is solely political and an

attempt to bring in all-Ireland harmonisation etc, I am afraid that we will not agree to that.

2204. **The Chairman (Mr Wells):** There seem to be slight diversions on this matter. I assume that we shall not reach consensus on this issue. The remaining matter is a bit weaker than what is being proposed, however, and concerns replacement arrangements with the Irish Government.

2205. **Mr McFarland:** It would make more sense if that matter were moved to North/South discussions. The Assembly and the parties have negotiated changes before and it is fair enough that we negotiate. If improvements are to be made in policing — structural or otherwise — those should be decided through normal Assembly inter-party and cross-community agreement. There is no problem if an issue is non-threatening. If one side or the other tries to steal a march on this matter, no doubt the other side will object.

2206. **Mr G Kelly:** Consensus with caveats?

2207. **The Chairman (Mr Wells):** Consensus on what is listed as —

2208. **Mr Weir:** Generally, even when there are negotiations, other matters will fall outside the terms of a relationship with the gardaí at a governmental level and will fall outside Northern Ireland's jurisdiction. Some matters will be decided on a UK-wide basis and that also needs to be taken into account.

2209. **The Chairman (Mr Wells):** Right; we are happy enough. We now move on to firearms.

2210. **Mr Kennedy:** What have we actually agreed on that last matter? [*Laughter.*]

2211. **The Chairman (Mr Wells):** We have agreed that we are happy to try to make progress on the remaining issue, which is that there should be future renegotiations to replace the present arrangements. With the safeguards that Mr McFarland has outlined, that would be done by agreement.

2212. **Mr S Wilson:** I am not so sure that I would be happy with that. The SDLP and Sinn Féin have already indicated how they interpret

any replacement of the present arrangements, and I suspect that the same goes for the Government. However, my understanding is that measures are intended to strengthen and deepen the political structures that have been put in place under the current inter-governmental agreement. I have made it quite clear on our part that that is not how we see the way forward for co-operation between police forces on the island, so I would not be happy to let that one through.

2213. **Mr McFarland:** There are two different issues. One is on the operational side, where the police deal with the gardaí, which is ongoing anyway.

2214. **Mr S Wilson:** That is fine.

2215. **Mr McFarland:** To date, the two Governments have been cooking up proposals in the background with teams of civil servants, totally outside the control of any political advice.

2216. **Mr G Kelly:** Set up the Assembly and we will be fine.

2217. **Mr McFarland:** That is the point that I was making. As Peter has said, there are national issues that will be dealt with by the two Governments. There are other proposals that the Governments are currently cooking up on cross-border co-operation that would be better dealt with by the Assembly insofar as they deal with increased co-operation on transport or whatever else. I am talking about the operational side. I am asking whether setting up structures, increasing trade, etc, would be better dealt with in a place where unionists, in particular, had some say in what was going on.

2218. Aside from the operational area — which will go on between the police services anyway — and the national issue, where, clearly, London will have to negotiate with Dublin over matters such as international treaties and the exchange of prisoners, other areas that might be up for increased cross-border co-operation really should be under some Assembly control, as are all the other elements of North/South co-operation. Does that make sense?

2219. **Mrs D Kelly:** That is what that says.

2220. **Mr McFarland:** I am trying to persuade Sammy that it might be worth considering an objection to this, here and now, provided that it is clear what we are talking about. We are neither talking about the inter-governmental stuff nor about the operational stuff between the Garda Síochána and the PSNI; we are talking about other areas that would benefit from coming before the Assembly and being dealt with by the Assembly, in keeping with normal North/South practices. Sammy, as I understood it, was about to object to all of that. I was trying to persuade him that some of it might make sense.

2221. **Mr Neeson:** There could be well be an issue with regard to the Irish Constitution, as to whether a Government body in Northern Ireland could directly interfere with such an important issue as security and the gardaí. Although we all welcome the maximum co-operation with the gardaí, given the nature of modern crime, it is a sensitive constitutional issue.

2222. **Mr S Wilson:** Despite Alan's attempts to reassure me about this, when I look at the remaining issues, my interpretation is that we look for a deepening and a strengthening of the current arrangements between the Irish and Westminster Governments, involving the Assembly. That is not the way for future co-operation. That, to me, is really done at police level, not at Assembly level; not through political structures, but through normal co-operation among policemen on the ground. There it can be seen to have real practical benefits and not to have some kind of political agenda. I am still not happy.

2223. **The Chairman (Mr Wells):** It is clear that there is still no consensus. We are going to have to leave that and move on to the topic of firearms and explosives.

2224. Should legislation governing automatic and semi-automatic weapons remain reserved, as in Scotland?

2225. **Mr S Wilson:** When we talk about automatic and semi-automatic weapons are we talking about shotguns, for example? Those are quite common, especially among the farming community. What exactly is the definition? Are we talking about weapons such as machine guns?

2226. **Mr McFarland:** It is rifles and machine guns.

2227. **The Chairman (Mr Wells):** Any experts in this field?

2228. **Mr G Kelly:** That depends how many rabbits you have on your farm.

2229. **Mr Kennedy:** Has this anything to do with the aftermath of Dunblane? It might be useful to get an explanation of the Scottish legislation in respect of this.

2230. **Mr Weir:** The Dunblane situation might also explain why there might be particular sensitivities in Scotland and why it may be a reserved matter there. I just do not know.

2231. I appreciate what others have said in relation to that and I think it may be helpful to get some clarification.

2232. **Mr Attwood:** That is right, Chairman. It depends on how the drafting is interpreted, but it might be implicit — or hinted — that it can be transferred, even though Scotland has chosen not to have it devolved. In any case, it is one of those matters about which people over here might have heightened sensitivities. We would favour devolution nonetheless.

2233. **Mr G Kelly:** Whatever is the interpretation of what weapons are involved, it is named in the devolved column, but we are told to see the “Issues Remaining” column. That suggests that we might want to reserve it, but there is no reason for that. If it comes down to whether we are capable of dealing with it as a transferred matter, I think we are capable, so it should be transferred.

2234. **The Chairman (Mr Wells):** It is proposed that legislation governing automatic and semi-automatic weapons be transferred.

2235. **Mr Weir:** Given what I have heard so far, my inclination is that that legislation should be transferred. However, before we take a final decision, I want to be absolutely clear as to which weapons we are talking about. If we could get clarity on precisely what it would be involved, it might provide us with a degree of reassurance.

2236. **The Chairman (Mr Wells):** So, we shall wait to see the note from the research team.

2237. The next issue is the transfer of responsibility for explosives. Does anybody know anything about this?

2238. **Mrs D Kelly:** I suspect it refers to fireworks regulations.

2239. **Mr McFarland:** It applies to fireworks and explosives used in quarries. Of course, when explosives are mentioned, everybody has visions of the past 30 years. Presumably, this legislation refers to normal explosives that are used for quarrying, road building and fireworks.

2240. The situation in Northern Ireland is strange, and, certainly, it caused some confusion on the Health Committee. In Northern Ireland, the Department of Health, Social Services and Public Safety (DHSSPS) issues directions to the Northern Ireland Fire and Rescue Service (NIFRS), and the issue is whether the Health Minister should regulate for fireworks and explosives or should that responsibility be placed elsewhere. The debate is whether NIFRS should be grouped with the PSNI and the Northern Ireland Ambulance Service or should it remain as an agency of DHSSPS, which would keep health and safety issues within Government.

2241. **Mr Weir:** I do not want to complicate this matter further, and correct me if I am wrong, but is it not intended that as part of the Review of Public Administration (RPA), NIFRS would come under local government control?

2242. **Mrs D Kelly:** That is so that our rates can pay for it.

2243. **Mr Weir:** Yes, it is to ensure that local government picks up the tab. If I am correct, does that add another degree of confusion? However, it would apply more to fireworks than to explosives.

2244. **The Chairman (Mr Wells):** A helpful note has been handed to me. In ‘Devolving Policing and Justice in Northern Ireland: A Discussion Document’ it states that:

“14.6 The Secretary of State is also responsible for policy and legislation on

explosives, including the substances which are controlled as if they were explosives, such as ammonium nitrate. His statutory functions include the licensing of controlled substances, factories, magazines and stores, shot firers, fireworks and the registration of premises. These functions are carried out on his behalf within the Policing and Security Directorate of the Northern Ireland Office.”

“14.7 The Secretary of State’s responsibilities for explosives will be devolved to Northern Ireland Ministers. Thought will need to be given as to whether these responsibilities would best sit with the Minister for policing or the Minister for public safety.”

2245. That is the context in which the proposal has been flagged up. Compared to responsibility for illegal explosives — which is, of course, a security matter — it is a relatively non-controversial proposal. Does that help members? It is a tactical issue to which the Committee might need to give a wee bit more thought. It is not an issue that we would have expected to discuss today.

3.00 pm

2246. **Mr McFarland:** The discussion is straying into the territory of the PFG Committee dealing with institutional issues, which meets on Mondays. That Committee discusses such matters as the realignment of Departments; the headings under which topics lie; the reduction of Departments from 10 to seven; and the removal of issues from Departments as recommended in the RPA. There is still a question of whether public safety should stay within the remit of the Health Minister or if it should go elsewhere. In a future without today’s security connotations, the question is whether it should go to the Department of Health or be left with the police.

2247. **The Chairman (Mr Wells):** I cannot see how this is an impediment to devolution.

2248. **Mr McFarland:** It is not, but the PFG Committee dealing with institutional issues could discuss it.

2249. **Mr Weir:** I am happy for that PFG Committee to discuss it. I might be wrong, but I

suspect that there are probably not strong views around the table as to which one of the two Departments should have responsibility for explosives regulations. However, we should not use guesswork to decide which Department should take responsibility for it. The PFG Committee dealing with institutional issues will perhaps know if there are experts in the field and find out their opinion as to the appropriate Department. I am reluctant for us to impose a solution without having any knowledge. However, most of the parties do not have a particularly strong view on it.

2250. **The Chairman (Mr Wells):** Can we take the view that there is no strong view on this matter; which Department control of firearms and explosives is neither here nor there. They all come from Carrickfergus anyhow; it is all centralised and strictly controlled. Therefore, there is no need to get worked up about it.

2251. **Mr Kennedy:** It should be referred to the PFG Committee dealing with institutional issues.

2252. **The Chairman (Mr Wells):** I do not think that they will be remotely interested.

2253. **Mr Kennedy:** I do not think they will be, but they will be more fascinated than we are. [Laughter.]

2254. **Mr McFarland:** The PFG Committee dealing with institutional issues should consider whether public safety should remain with the Department of Health. However, we need to flag up the explosives issue for future consideration.

2255. **The Chairman (Mr Wells):** Do we have consensus on that?

Members indicated assent.

2256. **The Chairman (Mr Wells):** We move to paragraph 15 of schedule 3 to the Act, which deals with the courts. This is another difficult issue, and there are several items, such as judicial salaries, functions of the Lord Chancellor and the appointment and rule of the Lord Chief Justice, which will not be devolved as things stand. Do Members feel that it is important that the power to remove the Lord

Chief Justice or to decide on the salaries of the judiciary be devolved?

2257. **Mr G Kelly:** I have often wished for that power.

2258. **Mr Kennedy:** Several attempts were made, but they were all illegal.

2259. **Mr Attwood:** The matters under “What won’t devolve” were negotiated to exhaustion in Hillsborough, and the British would not concede any further ground on the appointment and removal of the Lord Chief Justice and the Lords Justice of Appeal. I wish that it were different, and I would like discussions on that to be re-opened, but it does not look likely. However, we could argue for it, and if there was devolution we would argue for it again when things were up and running.

2260. The concordat may well be in the consultation document, but I have not picked up on it. Can our advisor advise us on what that was meant to cover?

2261. **Mr McFarland:** Under “What will devolve” it says:

“governing the independence of the judiciary”.

2262. **The Chairman (Mr Wells):** It is worth saying that this should be read in conjunction with paper on the role of the Lord Chancellor. Some of the material in that is relevant to this debate. Alban flagged up this matter because he could see that it might cause a problem.

2263. **Mr Attwood:** Is the concordat a post-restoration agreement?

2264. **Mr McFarland:** The concordat is with the Assembly, but presumably before the devolution of policing and justice.

2265. **The Committee Clerk:** The concordat is between the UK Government and the Northern Ireland Administration governing the independence of the judiciary, because it is part of the guarantee of the independence of the judiciary.

2266. **Mr McFarland:** Presumably that concordat is drawn up when the Assembly is up and running — because the Assembly cannot

agree it before then — but before the devolution of policing and justice. It is difficult to imagine policing and justice being devolved without a guarantee or concordat on the independence of the judiciary.

2267. **The Chairman (Mr Wells):** Is it not the case that one group will advocate that most, if not all, these matters, should be devolved; a second group will say that there is no chance of that happening; and a third group will say that some matters should be devolved?

2268. **Mr McFarland:** The Committee agreed that to acknowledge the fact that parties wished to register issues, but that remaining issues were being considered. Unless we can change the plan, we will have problems in agreeing the concordat. We talked about registering our objections to the plan.

2269. **The Chairman (Mr Wells):** I take it the standard response on this —

2270. **Mr G Kelly:** As Alex Attwood pointed out, we have been through lengthy negotiations. Sinn Féin is in favour of the transfer of all these matters. The paper entitled ‘The Role of the Lord Chancellor’ states:

“The Lord Chancellor’s role in making judicial appointments has been devolved to an independent Judicial Appointments Commission”.

2271. However, that will not happen until the institutions are up and running and policing and justice have been transferred. Judicial appointments will automatically revert to that commission. That is straightforward; they will become the responsibility of the First Minister and the Deputy First Minister. Sinn Féin’s position is that those matters should be transferred.

2272. **The Chairman (Mr Wells):** Alex Attwood said that it was flogged to death at Hillsborough and that it will not be transferred.

2273. **Mr Attwood:** The Lord Chief Justice will not agree to it, and people here have responsibility for his —

2274. **The Chairman (Mr Wells):** May I have the views of the parties on my right about these

proposals? Do you agree that the Lord Chancellor's functions and judicial salaries should be transferred also?

2275. **Mr Kennedy:** No, the UUP is content that the Lord Chancellor is an appointment of the sovereign Government and they, therefore, have arrangements for salaries, and so on.

2276. **The Chairman (Mr Wells):** That is what we would have expected. Do members agree that it is not worth taking that any further?

Members indicated assent.

2277. **The Chairman (Mr Wells):** The next item is the Northern Ireland Law Commission. Everything in respect of that will be devolved. According to the list, no issues remain. Is everyone happy with that?

2278. **Mr Attwood:** The commission should have been set up pre-restoration.

2279. **The Chairman (Mr Wells):** Are you content with the powers that it will have?

2280. **Mr Attwood:** No, the SDLP is not content with them, but that goes back to pre-Hillsborough.

2281. **The Chairman (Mr Wells):** We do not want to stir up a hornets' nest.

2282. We will move on to excepted matters. Alan McFarland summed them up to some extent: international relations; extradition; treason — we keep coming back to that; the defence of the realm; remuneration of judges; national security; and the Official Secrets Act. All the issues that would be expected to appear in that table are there.

2283. **Mr Weir:** The Committee is covering all these issues to some extent.

2284. **The Chairman (Mr Wells):** I am merely tabulating them for ease of reference.

2285. **The Committee Clerk:** The Chairman is specifying that those matters appear in the excepted list.

2286. **Mr Weir:** Presumably, the views of the parties on these issues are the same, regardless of whether they are excepted or reserved.

2287. **The Chairman (Mr Wells):** Sinn Féin wants all these matters transferred, the SDLP says that will not happen, and the Unionists are against any transfer of powers.

2288. **Mr Weir:** The Alliance Party seems to get ignored.

2289. **Mr Attwood:** The SDLP is making the case that these matters should be transferred; every day we make that case.

2290. **The Chairman (Mr Wells):** Alex, you made the point that excepted matters had come up time and again, but were met each time with a blanket no.

2291. **Mr Attwood:** Yes, on some matters. However, national security issues are separate from, say, the pre-Hillsborough issues, on which the British would not give any ground. The MI5 stuff is still a live issue.

2292. **The Chairman (Mr Wells):** Sean, does the Alliance Party believe that any excepted matters should become reserved or be devolved?

2293. **Mr Neeson:** We are still considering that, but, like others, we believe that the maximum amount of power should be devolved.

2294. **Mr Kennedy:** What part of the word "no" do you not understand? [*Laughter.*]

2295. **The Chairman (Mr Wells):** There are excepted matters such as international relations.

2296. **Mr Attwood:** Chair, may I ask a question? Arlene mentioned two issues.

2297. **The Chairman (Mr Wells):** I have not yet discovered what they are.

2298. **Mr Weir:** There may be a slight degree of misunderstanding. The issues that Arlene raised probably concern the Police Ombudsman and the Parades Commission.

2299. **The Chairman (Mr Wells):** Does the DUP, therefore, have no issues to raise about table 2, which concerns excepted matters?

2300. **Mr Weir:** Anything that we have wanted to raise, we have dealt with, but those issues are not extraneous to table 2.

2301. **The Chairman (Mr Wells):** Sinn Féin proposes that we have power over acts of treason, the defence of the realm and the remuneration of judges.

2302. **Mr G Kelly:** I did not think that there was any such offence as treason. *[Laughter.]*

2303. **Mrs D Kelly:** Well, now.

2304. **Mr Weir:** You would not win with that defence in court. *[Laughter.]*

2305. **Mr G Kelly:** It did not work the last time.

2306. **The Chairman (Mr Wells):** Are you saying that excepted matters to do with policing and justice should be transferred to a devolved Assembly?

2307. **Mr G Kelly:** Our position is that the maximum number of powers should be transferred. As somebody has pointed out, we are going through the same list as we have gone through before. I think that Sinn Féin has made its position clear. There is no definition of national security. Come to that, there is no definition of treason. Therefore, our position on table 2 remains the same as that on table 1. That is the only way I can answer your question, Chairman.

2308. **Mr McFarland:** There is a definition of national security; it is just that there is no legal definition of national security. I read out the definition this morning. It is contained in section 1(2) of the Security Service Act 1989, as the letter from the NIO's devolution and legislation division states. However, that letter confirms also that there is no legal definition of national security.

2309. **Mrs D Kelly:** According to that definition, Chairman, the Ulster Workers' Council (UWC) strike in 1974 would have been a threat to national security, would it not?

2310. **Mr Kennedy:** How far do you want to go back?

2311. **Mrs D Kelly:** It was industrial action.

2312. **Mr Kennedy:** What about the attempt that was made at the General Post Office (GPO) in 1916? *[Laughter.]*

2313. **Mrs D Kelly:** I was merely asking whether the UWC strike would have come under that definition.

2314. **Mr G Kelly:** What was your point? *[Laughter.]*

2315. **Mr Kennedy:** What about the actions of King James's army in 1689? *[Laughter.]*

2316. **Mr Weir:** I would point out that the reference to:

"by political, industrial or violent means"

2317. relates to:

"actions intended to overthrow or undermine parliamentary democracy",

2318. which obviously — *[Interruption.]*

2319. **Some Members:** Refers to the 1974 workers' strike. *[Laughter.]*

2320. **Mr Weir:** That was trying democracy, rather than trying to overthrow it.

2321. **The Chairman (Mr Wells):** I think that we are straying.

2322. We have covered policing and intelligence services issues. We have discussed the Police Ombudsman on several occasions. Are we content that we have looked at policing issues sufficiently, or do we want to continue to discuss table 2, and leave the issue of the Police Ombudsman? We have covered the whole issue of devolution of policing and justice.

2323. **Mr McFarland:** Chairman, we have covered devolution of policing and justice insofar as we have covered the NIO discussion paper. In the process, we have managed to cover intelligence services.

2324. What policing issues were raised initially? We specifically included policing issues when we drew up a list a few weeks ago, and I think that a number of sub-headings were added. Can we be reminded of the issues that went under the heading of "Policing issues", as my addled brain cannot remember what they were?

2325. **The Committee Clerk:** It probably would have been at the very start. The DUP and Sinn Féin asked for the heading to go in. We do

not have the issues at our fingertips, but they would have been those identified in the original papers submitted by parties at the very beginning.

3.15 pm

2326. **Mr S Wilson:** Attitudes towards policing.

2327. **Mr Weir:** I do not know whether it came under that category or not but support for the rule of law and support for —

2328. **Mr McFarland:** That came under category 4 — rule of law — which is our last item — and criminality — but there were other issues that went into that, and I just cannot remember them.

2329. **The Committee Clerk:** At the outset, the parties presented five-minute position papers on what they saw as the big issues. We included policing because a couple of the parties mentioned it. Underneath that, different parties raised different matters.

2330. **Mr McFarland:** Can we take a rain check? Parties may want to come back to this later, in case something was slotted in here that we just cannot remember now.

2331. **The Chairman (Mr Wells):** Yes, we can return to this. Alan has a point, because we have concentrated entirely on the devolution of policing and justice, rather than overall policing issues. Of course, there have been numerous opportunities to raise general policing issues.

2332. If we parked that, would we have time to consider the issue of the Police Ombudsman's Office? It has come up in discussion several times. Policing comes under three headings: intelligence services, policing issues, and the Police Ombudsman. It would have been nice to try to get to the bottom of that list.

2333. **Mr McFarland:** That would catch us up and put us well ahead for next week.

2334. **The Chairman (Mr Wells):** It would, provided that the debate on the Police Ombudsman was not too long, and we did not have to carry it forward.

2335. I detect that there is no objection to the principle of a Police Ombudsman and the powers that the Office has. There has, however,

been some discussion about the holder of the post and some of the actions taken.

2336. **Mrs D Kelly:** Surely that is about the appointment, as opposed to the holder of the post. I have not heard any discussion about the holder of the post or how she has performed.

2337. **Mr McFarland:** Hansard will show that there were several discussions about that matter in the first two months of the Committee.

2338. **Mr S Wilson:** I hope that I have made it clear today that one of the reservations about the way in which the post holder was selected was due to her performance, and the lack of trust that there now is in the Police Ombudsman's Office as a result of that.

2339. The recent disgraceful actions of the Police Ombudsman have raised the whole issue of its accountability. She trailed the news media around people's homes while high-profile arrests of former policemen were being made.

2340. **The Chairman (Mr Wells):** So, issues of concern do exist. It is hardly fair, but we would normally begin with each party giving a five-minute résumé of its position. However, we did not do that for the previous heading. Is any party in a position to give its initial comments on the Police Ombudsman's Office?

2341. **Mr Attwood:** Sure.

2342. **The Chairman (Mr Wells):** If Alex is ready to go, that will give other folk time to make notes.

2343. **Mr Attwood:** There are several matters to consider. First, though I have no doubt that Sammy and his party have a certain view in respect of confidence in the Police Ombudsman, it is not reflected in survey after survey of public attitudes. It is now confirmed that confidence among the Catholic and Protestant communities, as they are defined in the attitude survey, expressed as a percentage, is now in the high 70s and low 80s, and if they go to the Police Ombudsman's Office with a complaint, people believe that they will be treated impartially. That is a very high level of public satisfaction. It is based on empirical fact and not

on what any party might state in a partial manner. We need to remember that.

2344. Secondly, we are fundamentally opposed to what Sammy is hinting at in respect of the accountability of the Police Ombudsman's Office. The Police Ombudsman reports annually to Parliament, and is subject to legal challenge through the courts. Its decisions, whatever they might be, are referred elsewhere for action. For example, prosecutions are determined independently by the Public Prosecution Service (PPS). Disciplinary action taken against any officer is referred to the Chief Constable for police disciplinary procedures.

2345. The Police Ombudsman's Office is subject to much public and political scrutiny, and is subject to legal challenge. When it makes judgements in respect of individual cases, a determination is made elsewhere on whether any action should be taken. All of that, in my view, represents significant levels of accountability. Any argument for further accountability would be in conflict with any other ombudsman's office, where it is accepted best practice that the levels of accountability that I have outlined are appropriate. In fact, if a further level of accountability were introduced for the Police Ombudsman's Office, by which its judgements were appealed to some other body, the first principles of an independent complaints system would be contradicted.

2346. Thirdly, analysis of what the Police Ombudsman's Office says and determines, shows that police officers who have nothing to fear will be exonerated. That happens on a consistent basis. However, those officers who stray beyond the requirements of public service will be held to account. Although that is painful and difficult, it is pivotal to growing confidence in the general administration of policing.

2347. The Police Ombudsman's Office needs more help. In the initiative taken by the Policing Board and the Chief Constable to review all past murders, it has responsibility only for those instances that involved the police; however, it needs further assistance. It has been given some level of funding — I think it is £275,000 — to get that work done, but that project is important

enough for overtime and additional funds to be made available both to the Police Ombudsman's Office and the Historical Enquiries Team (HET).

2348. We must support the Police Ombudsman's Office's recent recommendations on informal resolution of disputes between citizens and police officers. As a community, we are indebted to it for the very brave investigations that it has launched into the past because, while there should be accountability for all those who have been involved in serious conflict in the past — just as individual officers may be held to account for past actions — those who perpetrated violence in our country should be personally held to account for what they did, whether they were in illegal organisations or in state agencies.

2349. The Police Ombudsman's Office's work on the Raymond McCord case, the Samuel Devenney case, the Sean Brown case — or on any other past cases — is a very important contribution to what John Hume would refer to as the "healing process". That work will certainly help all of us to deal more wholesomely with all that happened during the past three or four decades.

2350. **Mr Neeson:** I well remember how the former police oversight complaints body operated. It was noticeable that a very small number of complaints were made at that time, despite its being a time of some of the worst violence in Northern Ireland. When one contrasts that with the Police Ombudsman's Office today, the number of complaints from right across the community shows clearly that the public at large have confidence in its role. It is important that we focus on the Police Ombudsman's Office and not on the individual in post, and that we do not focus on individual cases.

2351. The Police Service of Northern Ireland is probably the most accountable policing body in the world at present. I regret that the police service in the Republic of Ireland does not have the same facility and that it is not subject to the same level of oversight as the PSNI is from the Police Ombudsman's Office and the Policing Board.

2352. The Police Ombudsman's Office has made a major contribution since it was

established. Not only has it dealt with recent cases, but, as Alex pointed out, it has dealt with cases that happened some time ago. Although I said I would not mention individual cases, I particularly welcome the Police Ombudsman's Office's involvement in the Raymond McCord murder case. It is important that the Police Ombudsman's Office is allowed to be independent. That is vital to further progress.

2353. **Mr S Wilson:** The discussion is fairly predictable. The SDLP supports one of its councillor's spouses. Nationalists, generally, support a body that is still perceived as partisan and that is not, I believe, particularly effective.

2354. The SDLP's claim that there must be public confidence in the Police Ombudsman's Office because 60% to 70% of people support it does not rest easily with its denigration of the RUC, which consistently recorded a higher level of public support in surveys. The SDLP's view is inconsistent. If the RUC could be regarded as a partisan and discredited force, even when it had the support of 70%-plus of people, how can the Police Ombudsman's Office be considered a model organisation if it has the support of only 60% to 70% of people?

2355. The real measure of support for the Police Ombudsman's Office is how the people who come under scrutiny view it. Do they feel that they get a fair deal? Significantly, I tried for a year and a half to get the Police Ombudsman's Office to publish the results of a survey of the attitudes of serving police officers towards it. It refused point-blank to publish those results. As it turned out, about 40% of police officers believed that they would get a fair deal from the Police Ombudsman's Office. I believe that that is a better measure of the standing in which it is held.

2356. There are fundamental problems with the perception of the Police Ombudsman's Office, which is why it is important that any appointment to that body should be done through the Assembly. If a large number of MLAs have concerns about the appointment, it would be subject to a vote in the Assembly. The Police Ombudsman's Office is starting off from a low base; there is significant distrust. If a new chief executive were to be appointed, there would

have to be an indication of widespread support for that appointment.

2357. Accountability is, of course, another issue that must be addressed.

2358. This morning's long debate on MI5, the security services and the need for accountability was significant. During that debate, it was stressed that accountability must be to Northern Ireland bodies, and that the Assembly must have powers of scrutiny. However, I quote Alex Attwood, who said that, of course, the Police Ombudsman is accountable because:

"The Police Ombudsman reports annually to Parliament."

2359. If the accountability of the Police Ombudsman's Office can be measured in terms of its reporting to Parliament, it seems a bit odd that an entirely different standard is applied to the security services. Both Alan McFarland and I pointed out that, of course, MI5 is subject to parliamentary scrutiny — and to much greater parliamentary scrutiny than any report that the Police Ombudsman will ever send to Westminster. However, that was not regarded as a sufficient level of accountability.

3.30 pm

2360. Many police officers do not have confidence in the Police Ombudsman's Office and do not feel that they get a fair deal. It has been said that many, who are now ex-police officers, can achieve remedy through the courts, but, in practice, that often means that there is no remedy at all. Going to court requires them to bring expensive cases off their own bats. Having left the police service, they are unlikely to have the support of their federation. Therefore, that aspect of accountability is not open to all those who have a grievance against the way in which the Police Ombudsman's Office has handled cases.

2361. No one can deny that when the Police Ombudsman's Office decides to take on a high-profile case, it ensures that the case is drawn to public attention, right down to notifying journalists that six or seven carloads of officers are going to arrest a former Special Branch officer. Cameras are in tow and the newspapers

are notified well in advance so that media deadlines can be met. The most recent example, and I could cite many others, was last week's case involving Mr McIrath. The Police Ombudsman's Office should be held accountable for publicising such cases. Therefore, the way in which we appoint a new Police Ombudsman is important.

2362. I have heard the special plea for more resources. The coffers of HET have already been raided to the tune of over £250,000 to finance the Police Ombudsman's Office. That will severely curtail HET's ability to carry out its work. The Police Ombudsman's Office already employs 140 people. I cannot remember the last figure that I got from Parliament, but it costs more than £9 million. When compared to any other equivalent police service complaints procedure in the United Kingdom, that figure represents mega money and mega resources. The DUP is totally opposed to any further use of police resources to finance the burgeoning empire that has grown up around the Police Ombudsman's Office.

2363. I have three suggestions to improve the image of the Police Ombudsman's Office. The first is to carry out authorised attitude surveys of serving police officers. The Police Ombudsman's Office should not be afraid to publish those results. At least that would provide a degree of transparency on how police officers view it.

2364. Secondly, there must be a layer of accountability, whereby there is redress for officers who feel that they have not been fairly treated during the Police Ombudsman's investigations.

2365. Do not forget that if the Police Ombudsman finds a police officer guilty, the case will not be returned to the police for decision on the sanction. It is often decided that the trauma and the horror that that police officer has been through is sanction enough, and no action is taken at the end of it all and there is no access to redress for the officer, who is left feeling unfairly treated by the investigation.

2366. Thirdly, we accept the need for independent scrutiny of complaints against the

police. However, to ensure that the Police Ombudsman's Office has public confidence, the appointment should be more open to debate in the Assembly.

2367. **Mr G Kelly:** The Police Ombudsman's Office was created to take complaints and to make sure that there is no abuse of power, and it has a scrutiny role. Its establishment was crucial. When talking about this, we cannot ignore the history of the police force here or, indeed, the whole conflict.

2368. Sammy Wilson said that some scrutiny is necessary, but I am not sure whether he is opposed to the current Police Ombudsman in particular or to the Police Ombudsman's Office in general. However, we fought very hard to get the Police Ombudsman's Office.

2369. Sammy mentioned resources also. The Police Ombudsman's Office is massively under-, not over-, resourced. I do not care whether those resources do not come out of the police budget; HET receives £30 million, yet Sammy is complaining about the Police Ombudsman's getting £250,000 at a time when the number of past murder cases that it is examining increases daily. In fact, the PSNI hands such cases over to the Police Ombudsman.

2370. The argument about scrutiny is circular: somebody scrutinises something, somebody then scrutinises the scrutiniser, and somebody else then scrutinises them. There was a fierce argument about the Police Ombudsman's Office, as I remember it, after its first major case, which was the Omagh investigation. It made six recommendations, but the only one that was implemented was that the Police Ombudsman should come under the ambit of the Criminal Justice Inspectorate. Since then, the Criminal Justice Inspectorate has carried out work on the Police Ombudsman's Office several times.

2371. The Police Ombudsman's Office is crucial, and, as Sean pointed out, it has far more power than its equivalent in the South, which, as anyone would tell you, is a toothless tiger. Therefore, the Police Ombudsman, whether Nuala O'Loan or someone else, should have

that scrutiny power, and needs resources to carry it out.

2372. Earlier, we got into an almost institutional argument about whether the Assembly has a veto over the Police Ombudsman's Office. Sinn Féin wanted that particular power to be devolved so that its credibility would increase. Why is anybody surprised that the police do not like the Police Ombudsman's Office? It is there to take complaints against the PSNI. As cops are very insular, it would be impossible to find one who supports the Police Ombudsman's Office, and no cop will praise an organisation that exists to keep them right. Therefore, we are a bit naïve to think that we would find such a person.

2373. We need an independent complaints system. Given that there is a great distrust of nearly anything that the NIO pays for, the Police Ombudsman began working from a very low base. I lodged a complaint or two, and on many occasions, the Police Ombudsman found against me. However, we must move on. We either need an office to do this job or we do not.

2374. If the unionists are arguing against the Police Ombudsman's Office, let them do so. However, we should not make this a personal argument about Nuala O'Loan or anybody else. Let us continue to have somebody in the post who is independent, and let us, above all, keep the Police Ombudsman's Office independent. It was established to scrutinise the police. It has a very clear purpose, because there was an abuse of powers in the past. With all due respect, without that scrutiny function, any organisation would abuse power. Therefore, the Police Ombudsman's Office is very necessary.

2375. **Mr McFarland:** We support the concept of a Police Ombudsman; it is an extremely healthy one. On a personal level, Mrs O'Loan is a very nice lady, and I like her. But can you imagine the chaos that there would have been if Eileen Paisley, wife of the Rev Dr Ian Paisley, had been nominated as Police Ombudsman?
[*Interruption.*]

2376. **The Chairman (Mr Wells):** Baroness Paisley.

2377. **Mr McFarland:** I look to Sinn Féin and the SDLP to tell me of the wailing and gnashing of teeth that would have occurred at the injustice of the Rev Dr Ian Paisley's wife being made Police Ombudsman. You can just imagine it — I can hear it now. So can nationalists and republicans not understand that this was not perceived by unionists as playing the game?

2378. I will leave it at that. It is not a personal issue; it is one of perception. Had it been the other way round, there would have been chaos. People would have been throwing themselves off cliffs because of it.

2379. I remind Members — and Patten was quite clear about this — that the deal was that the Police Ombudsman would look at issues post-1998. The Office was to be allowed to go back before April 1998. If a police officer came into her sights, she was permitted to examine whether that officer had been guilty of previous activities similar to those for which they now stood accused. That was the deal.

2380. No sooner was the SDLP in than it got at the Ombudsman's Office as some sort of deal-breaker and, suddenly, it was a one-sided truth commission. It went straight back to 1972, to the Devenney case in Derry. That was not the deal, and it is grossly unfair. That is not what the Police Ombudsman's Office was supposed to be about. It was political, and it was used for political reasons, and that was not right.

2381. The issue is one of fairness. Sammy spoke about that. Despite what people say, there is no oversight of policies, or of what the Ombudsman's Office is doing and why. There is oversight on the money side, and reports are produced; but, with regard to pre-1998 matters, the Ombudsman's Office is not questioned on what it is up to and why.

2382. I have no problem with chasing police officers who are up to no good, but why are we going back through the past 30 years without bringing any terrorists to book, while the Ombudsman's Office is after police officers who may or may not have done something in the past?

2383. If we want to visit the past or have some sort of truth commission, then let us have one. Let us put our colleagues around this table into the dock to question them about what they did in the past. Let us have all those politicians out. I have no problem with that. If we spend 50 years raking over old wounds, we will never heal this community; but the idea that a Police Ombudsman can thrash around in the past, trashing members of the security forces, is grossly unfair. No one can say: “Why are you doing this?” or “What are you at?”

2384. **The Chairman (Mr Wells):** I am having difficulty spotting the consensus here.
[Laughter.]

2385. **Mr Attwood:** I do not want to lengthen the debate, but there are a few things it might be useful to mention.

2386. **Mr Kennedy:** Are we going to go round the block again? We can do that, but what we are not going to do is allow people to have the final say.

2387. **The Chairman (Mr Wells):** Each group normally gets its five minutes on the issue, and then there is an opportunity for Members to question presentations. We can then move towards some proposal where we can reach consensus. I am having difficulty in seeing that, but Alex, this is your question on one of the presentations.

2388. **Mr Attwood:** I have a few questions and comments, although it is odd that at 3.45 pm someone has begun to question how the meeting is being conducted when a fair bit of latitude has been given by each party to every other party.

2389. **Mr Kennedy:** Get on with it and we will see what you think.

2390. **The Chairman (Mr Wells):** And you will get that latitude.

3.45 pm

2391. **Mr Attwood:** I do not often comment about the current Police Ombudsman. However, I advise people to look at what the SDLP said when Mrs O’Loan was appointed, rather than rush to embrace the portrayal of her as being in

one particular camp. We laid down very clear requirements in respect of her conduct, as we would in respect of the conduct of any Police Ombudsman. We were informed that the current Police Ombudsman had previously sat on the Police Authority for Northern Ireland at a time when it was our view that Police Authority was not a forum in which people should participate. Sean will know that better than anybody else.

2392. This portrayal of the current Police Ombudsman as somehow being in somebody’s camp is mischievous, dangerous and personally disrespectful to her. I suggest that you look at both her personal history and at the SDLP response to her appointment. We laid down very strong criteria, saying that we would judge Mrs O’Loan by what she did. You can come back on that.

2393. Secondly, if you want to look for something positive, I find it very encouraging that Sammy Wilson is now so protective of the HET, even to the point that he says that a small sum of money was taken from its budget to give to the Police Ombudsman. That is actually not true. The NIO found a separate budget line to fund Nuala O’Loan’s part of the HET inquiries. However, his endorsement of the HET and his concern that it might lose some money is reassuring and very welcome.

2394. When it comes to parliamentary accountability, I hope that Sammy is now suggesting that MI5 should be subject to a level of accountability at least equal to that of the Police Ombudsman. If he is suggesting that, we are making some progress on a very hard issue that we tackled earlier. It would mean that there would be public hearings in respect of MI5, as there have been for the Police Ombudsman; reports would be published and laid before Parliament, as happens in respect of the Police Ombudsman; a parliamentary Committee could compel witnesses and call documents in respect of MI5 matters, as is the practice in respect of the Police Ombudsman. If that is the model that Sammy is promoting in respect of MI5 because it is equal to that of the Police Ombudsman, as a starting point, I strongly welcome it.

2395. I do not want to talk about the current investigation in respect of Raymond McCord,

save to say that any citizen — whether an ex-police officer or not — who fails to co-operate with a proper and serious inquiry into serious wrongdoing should be compelled to participate in the inquiry rather than keep silent or walk away.

2396. Finally, police officers are concerned about what the Police Ombudsman does; that is probably inevitable. I prefer to draw conclusions from the public approval rates of 70% to 80%, not from the 60% to 70% that Sammy mentioned. Furthermore, the police leadership says that the Police Ombudsman is part of the essential architecture of the new beginning to policing. When the police leadership is allied with the wider public sentiment, the conclusion can be drawn that, on this issue, police officers' concerns are often self-serving.

2397. **The Chairman (Mr Wells):** Thank you, Alex. I am a wee bit uneasy about people actually naming cases. It has happened from both the DUP side and your party. I will stop that from now on because both cases are under investigation and are a legal matter.

2398. **Mr Kennedy:** I think that Alex misses the point to a certain extent. Most of us have tried not to personalise the Police Ombudsman in terms of the present occupant, but, whether we like it or not, there is a perception — certainly in the unionist community — that she is in some way aligned to, associated with, or sponsored by the SDLP.

2399. Certainly when it comes to defending her, Alex has been in that vanguard. We want more objectivity in the performance and, particularly, the role of the Police Ombudsman. We must also ensure that the empire building that has undoubtedly been a feature of the current term is at least controlled and curtailed into a meaningful and useful role, rather than a role that is designed to cause major problems that, in themselves, are not easily solved.

2400. **The Chairman (Mr Wells):** We have heard varying views on the Police Ombudsman and her role. *[Laughter.]*

2401. Interestingly, the discussion has homed in on the person and her policies rather, than the

actual legislation on, and function and powers of, the Ombudsman's Office as an institution. There seems to be consensus that a group, body or individual must scrutinise the police.

2402. I am at a loss as to how we can proceed. Apart from the fact that we have agreed to discuss the issue in the Preparation for Government Committee on devolution of policing and justice, which meets on Wednesdays, I cannot envisage there being any consensus on it. There will be a Police Ombudsman regardless of whether there is devolution. It will not, therefore, be an impediment to ongoing discussions on devolution.

2403. As there is no proposal, how do members wish to proceed?

2404. **Mr McFarland:** Chairman, you may be aware that for several years, those issues have been aired in the Policing Board, and they have been aired here today. Like you, I cannot envisage a solution. This issue may park and resolve itself eventually.

2405. **Mr Kennedy:** It is all happening in the car park.

2406. **The Chairman (Mr Wells):** Yes, it is about seven storeys high at this stage.

2407. Are members content to move on?

Members indicated assent.

2408. **The Chairman (Mr Wells):** There are some practical issues that I hope will short and sharp to deal with.

2409. First, I am conscious that the Committee has been meeting for the past two months; members have given up their holidays, and some individuals, whom I will not name — there are certainly half a dozen — have been extremely faithful and have been here at practically every meeting. Despite that, there does not seem to be any perception of that in the media. I am talking not about our discussions or disagreements, but the fact that the meetings have taken place. The Subgroup on the Economic Challenges facing Northern Ireland has issued press releases to keep the media

updated, and I am conscious that the Committee has not done that.

2410. I have had a brief discussion with the Committee Clerks, and we have scribbled out a draft press release for your approval. You will be glad to hear that it is not too controversial. To be honest, I have been disappointed that there has been so little media coverage on the effort that members have made.

2411. **Mr McFarland:** Chairman, one of my colleagues raised the issue with a senior journalist. He enquired why that was the case, given that Hansard is available on the web and that anyone who is interested in politics could find some of the issues that the Committee has discussed during the past two months very fascinating.

2412. **Mr Kennedy:** Steady on.

2413. **Mr McFarland:** The word was that they were not getting press releases and could not be bothered to read Hansard. I thought to myself, wow — that says a great deal about the level of journalism that exists in Northern Ireland.

2414. **Mr Weir:** I do not know who that journalist was. However, I suggest that he was being slightly economical with the truth. I have been to several meetings of the economic subgroup. A press release that roughly outlines the evidence that was presented has been issued after almost every one of those meetings. That information is in digestible form and tends to be a page or so in length. However, those press releases have been completely ignored.

2415. According to one newspaper, Committee meetings supposedly occur only when the trustees of the Assembly Members' Pension Scheme (Northern Ireland) 2000 meet, despite the fact that either the Preparation for Government Committee or its subgroup meets every day.

2416. Sometimes, the media will run the stories that it wants to, irrespective of the information that it has been given. It is essential that the Committee issues press releases in the interests of openness and transparency and keeps the public informed of the facts.

2417. **The Chairman (Mr Wells):** Admittedly, the draft press release is somewhat bland. It states that the Preparation for Government Committee has continued to meet over the summer recess and will continue to make efforts to scope the issues that are to be resolved prior to devolution. It goes on to say that, in addition to the meetings of the economic challenges subgroup, which will report to the Committee on 25 August, the Committee has been meeting three days per week. Members have been discussing institutional issues, law and order issues, and equality and shared future issues. Today, the Committee discussed devolution of policing and justice, and policing issues generally.

2418. There is not much to the press release: it is simply to show that we are working away and doing something.

2419. **Mr McFarland:** Is it worth sending a copy of Hansard to each of the major media outlets? I wonder whether a political editor would be more inclined to have a quick glance through Hansard if there was a copy on his or her desk. It is more difficult to go on the Internet, scroll through it, print it all out etc. Do members see any merit in that? A copy costs about £8.

2420. **The Committee Clerk:** It costs £5.

2421. **Mr McFarland:** Perhaps the budget would not stretch to that.

2422. **The Chairman (Mr Wells):** It is a big undertaking. We need to speak to the Assembly press office about that and also ask that at least a press release is sent to advise editors where to find the Hansard on the Assembly website. I spoke to the editor of one of our biggest newspapers yesterday who was totally unaware that it was available.

2423. **Mr McFarland:** The Hansard reports would need to be sent to the 'Belfast Telegraph', the 'News Letter', 'The Irish News' and 'Daily Ireland'. They could also be sent to the BBC and UTV, and perhaps to the 'Daily Mirror' or whatever else is in circulation.

2424. **The Chairman (Mr Wells):** Can we agree to send a copy of the most up-to-date Hansard to alert the media? Are members happy with the standard press release?

2425. **Mr McFarland:** Alerting the media on how to find Hansard may help to some extent, but journalists are just idle.

2426. **Mr Kennedy:** Normally, when a press release is issued to attract wider attention, it includes a point of contact for further comment. Have you given any thought to that or does modesty forbid you?

2427. **The Chairman (Mr Wells):** Mr Molloy and I can handle any procedural queries on what the Committee is doing. Beyond that, questions must be referred to the lead spokesman from each party.

2428. **Mr Kennedy:** Will you and Mr Molloy be in the same radio car this time?

2429. **The Chairman (Mr Wells):** That is unlikely.

2430. **Mr Weir:** I have a small point on the accuracy of press releases. When referring to a discussion on policing and justice issues and, strictly speaking, our remit is identifying obstacles to devolution on those issues, what would be the title of the press release?

2431. **The Chairman (Mr Wells):** We could amend that accordingly.

2432. **Mr Weir:** The real remit is looking at the impediments.

2433. **The Chairman (Mr Wells):** I assume that we have consensus on issuing 10 copies of Hansard to the media and on releasing the press release. Are members content?

Members indicated assent.

2434. **The Chairman (Mr Wells):** The Clerk has asked whether members want to autograph the issues before they are sent out.

2435. A communication from the economic challenges subgroup, in Alan Patterson's name, has been handed to each member. As you can see, members of the subgroup are keen to hear the views of Maria Eagle, but she is on leave until the end of August. Apparently, MPs do not work at all during August.

2436. **Mr Kennedy:** How do you solve a problem like Maria?

2437. **Mr Weir:** By not making jokes about it.

2438. **The Chairman (Mr Wells):** The subgroup wants to schedule a meeting with the Minister and the Northern Ireland Youth Forum on 5 September 2006. Technically, that would mean taking evidence after the event. However, because of the importance of getting the Minister's involvement, it is worth consideration. Are members content to allow the economic subgroup to do that?

Members indicated assent.

2439. **The Chairman (Mr Wells):** The other issue, which we have touched upon several times, relates to the letter from the Secretary of State dated 9 August 2006. Several members have indicated that they are not particularly happy with his response.

2440. **Mr S Wilson:** Have we not already dealt with that?

2441. **The Chairman (Mr Wells):** I was going to ask whether members want to raise any other issues in relation to the letter.

2442. **Mr McFarland:** I thought that we had agreed to write to Secretary of State to invite him to our final meeting, perhaps saying that we expect him to be available, given the importance that he has attached to this Committee.

2443. **The Chairman (Mr Wells):** The issue was whether we were prepared to give him advance notice of our questions.

2444. **Mr McFarland:** It seems to make sense to give him notice of the questions that we will be putting to him, provided that he will come. Members may wish to raise other issues with him on the day, and we must allow for that.

2445. **Mr S Wilson:** Some questions are technical, so we want him to have advance notice so that we get full answers. If it entices him to come along, there is no reason not to give the Secretary of State the questions in advance. There will be supplementary questions anyway.

2446. **Mr Kennedy:** Chairman, wherever the Secretary of State is with his bucket and spade, he has access to the Hansard reports of this Committee.

2447. **Mr S Wilson:** I am sure that he is not reading them.

2448. **The Chairman (Mr Wells):** I am sure that his officials, at least, are reading them on his behalf.

2449. **The Committee Clerk:** They will have only read the Hansard reports that have been agreed. The Secretary of State does not receive draft copies, so he will be a bit behind.

2450. **Mr S Wilson:** He is probably awaiting the next episode with baited breath.

2451. **The Chairman (Mr Wells):** The next meeting, to discuss rights, safeguards and equality issues etc. will be on 18 August 2006 at 10.00 am in room 144. The format is the same: an all-day meeting day starting at 10.00 am and ending at 4.00 pm, with lunch at 12.20 pm.

2452. **Mr McFarland:** Sadly, Chairman, I will miss the next three meetings of the Committee, as I propose to take a week off.

2453. **The Chairman (Mr Wells):** You have been a faithful attendee, Mr McFarland. I think that you have been at every meeting so far. You deserve your week off.

2454. **The Committee Clerk:** Have you got a contact number? *[Laughter.]*

2455. **The Chairman (Mr Wells):** Is there any other business?

2456. **Mr Kennedy:** We could sing the national anthem.

Adjourned at 4.00 pm.

Wednesday 23 August 2006

Members

The Chairman, Mr Francie Molloy
Mr Alex Attwood
Mr Fred Cobain
Mr Danny Kennedy
Mr Fra McCann
Mr Raymond McCartney
Mr Alban Maginness
Mr Sean Neeson
Mr Peter Weir
Mr Sammy Wilson

Witness

Mr Tim Moore (Senior Research Officer,
Northern Ireland Assembly)

The Committee met at 10.05 am.

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

2457. **The Chairman (Mr Molloy):** I remind members to switch off their mobile phones, as their signal interferes with the Hansard recording system and means that sections of the meeting can be lost.

2458. Will members state any apologies and, if necessary, name those members for whom they are deputising?

2459. **Mr Raymond McCartney:** I am standing in for Martin McGuinness.

2460. **Mr McCann:** I am standing in for Conor Murphy.

2461. **Mr A Maginness:** I am not sure for whom I am deputising: it is probably Mark Durkan.

2462. **Mr Attwood:** I am standing in for Seán Farren.

2463. **Mr Neeson:** I am standing in for David Ford.

2464. **The Chairman (Mr Molloy):** Are there any deputies from the Ulster Unionist Party?

2465. **Mr Kennedy:** The poor are with you always.

2466. **The Chairman (Mr Molloy):** You are a permanent fixture.

2467. **Mr Weir:** Ian Paisley Jnr is due later.

2468. **The Chairman (Mr Molloy):** Does any member, who has not attended the Committee before, have any interests to declare?

2469. I shall take that as a no.

2470. Are members content with the minutes of the meeting held on 16 August 2006?

Members indicated assent.

2471. **The Chairman (Mr Molloy):** The next matter is our letter to the Secretary of State and his reply. They are fairly lengthy. Members may want, therefore, to take a few minutes to read them.

2472. Do members have any comments?

2473. **Mr Neeson:** The most important thing in respect of the Secretary of State's willingness to appear before the Committee is that, if he cannot fit in with the dates that we have provided, we should avail ourselves of whatever dates suit him. Hopefully, those dates will be sooner rather than later.

2474. **The Chairman (Mr Molloy):** The proposed new date is 3 October 2006.

2475. **Mr Kennedy:** It is nice of him to give us an early opportunity.

2476. **Mr Neeson:** We should avail ourselves of that. I formally propose that we accept that date.

2477. **The Chairman (Mr Molloy):** Are members agreed?

2478. **Mr Kennedy:** We have been expected to work through the summer at the behest of the Secretary of State, which, in large part, we have done. There has been a wee bit of toing and froing, but there has been a consistent level of attendance from all parties, and we have tried to take our work seriously. We are now heading into September, which was supposed to be the

big date in the Secretary of State's mind, when the report of the Preparation for Government Committee would be ready and Members of the Assembly would potentially have the opportunity to debate it in the Chamber.

2479. We have important issues to discuss with the Secretary of State, but he is saying that he is too busy and that it will be October before he can appear before the Committee.

10.15 am

2480. Perhaps I am being overly critical and cynical, but, if this work is as important as the Secretary of State outlined to us at the outset, why is he not prepared to attach equal importance to it and appear before the Committee? A meeting would not be an interrogation of the Secretary of State; he is entitled not to expect that. However, we are entitled to some consideration of the work with which we have been tasked. An important aspect of that is for the Secretary of State to clarify his position, and that of the Government, on a range of issues. If we do not meet the Secretary of State sooner than early October, it could cause problems in preparing a full and final report for consideration by the Assembly.

2481. **Mr Weir:** I agree with Mr Kennedy. If push came to shove, we would probably have to be ready to report before then anyway. However, it is very poor form that we are being told that 3 October is the earliest date. The importance of this work has been stressed to us, and many of us have given up a fair amount of time. If we were talking about a session with the Secretary of State that would last three or four hours, that would be a different kettle of fish. I assume that we are looking at a slot of about an hour to quiz the Secretary of State.

2482. It also strikes me that, for the Secretary of State, Stormont should not prove to be too inconvenient a venue. We should write back to him, indicating that, in order for us to prepare a full report, we should ideally have a meeting as soon as possible. Faced with the choice of either meeting the Secretary of State at a very late stage or not meeting him at all, I would prefer to have the opportunity to quiz him, even if it were included as an addendum to our report. We

should be pressing him. Delaying a meeting until 3 October is treating this Committee with contempt; if he is serious, it should be earlier.

2483. The Committee's letter referred to, in particular, the political impact of his Glenties speech, which it was important to do. It is worthwhile to record that, if the Secretary of State is not available before our report must be produced, the report should indicate that we would have benefited from the chance to speak to him. However, we should not give up at this stage. The Secretary of State should realise that, if he does not make himself available, whatever report we produce will not be as advanced as we would have liked.

2484. The Secretary of State is a great man for telling us that particular deadlines must be met. However, he is not facilitating anybody to meet deadlines, as he seems to be putting us very much on the long finger. I have a degree of incredulity that he cannot spare one hour between now and 3 October. We must tell him that, if he is not prepared to shift his position, while a report will be produced, the process will not be as advanced as we had hoped.

2485. **The Chairman (Mr Molloy):** The proposal was that we would agree the report by 13 September.

2486. **Mr Attwood:** I echo some earlier comments. I do not know whether it was pointed out to the Minister's private office that, thus far, and by agreement, the Secretary of State has been the only person whom the Committee has wanted to see.

2487. The Secretary of State might be mindful that, in order to make the workings of the Committee tight and focused on outcomes, and, rather than have a long list of witnesses, members chose to invite only him. That reflects the serious intent around the table and the serious role that he has to play in assisting the Committee.

2488. The Secretary of State must be mindful and respectful of the constraints that he placed on the Committee and on its ability to report back to the Assembly. He set those limits and constraints, and it would seem necessary,

therefore, that he comply with his constraints on the time frame within which the Committee has to report. Given those two matters, and the fact that there will be a gaping hole in the report if we do not get a greater sense from the Secretary of State about where he sees the policing issue being played out over the next four months, we should go back to the Secretary of State. Certainly, we should accommodate his diary, but we must ask him to accommodate the time frame that he set by agreeing to see the Committee before the middle of September.

2489. **The Chairman (Mr Molloy):** We will do that and see whether there is another date, which means that members have accepted Sean's proposal that we meet with the Secretary of State.

2490. **Mr Neeson:** Yesterday, you chaired the subgroup on the economic challenges facing Northern Ireland, and you know that its report will be finalised tomorrow for presentation to this Committee. The subgroup agreed that, as it will meet the Minister, Maria Eagle, on 5 September, it would provide an addendum to its report. As Peter Weir suggested, that may well be the way forward for this Committee also.

2491. **The Chairman (Mr Molloy):** The proposal is that we ask the Secretary of State to make himself available during early or mid-September at the latest. Failing that, the Committee will take up the offer of 3 October.

2492. **Mr Kennedy:** If we are going to play poker with him, we might as well not show our hand at this stage. Let us reserve our position on the October date until we see whether he can better that offer.

2493. **The Chairman (Mr Molloy):** Are we agreed?

Members indicated assent.

2494. **The Chairman (Mr Molloy):** The Committee Clerk will write to the Secretary of State to try to negotiate a different date.

2495. As regards the rest of the Secretary of State's letter, in relation to Assistant Chief Constable Sheridan, there has been no direct

response to our request, but it seems that the information is not available.

2496. **Mr Attwood:** What was that, Mr Chairman?

2497. **The Chairman (Mr Molloy):** I am talking about the request for information from Assistant Chief Constable Sheridan and the response in the Secretary of State's letter. The letter does not provide any details: it says that the matter is outside the role of the Assembly.

2498. **Mr Attwood:** There are two matters that the Committee should pursue. First, in relation to national security accountability, the Secretary of State's letter states:

"Developmental work is in hand in this area."

2499. How are national security issues being handled in general terms, and what type of information could the Policing Board, the Minister and the Assembly expect to receive? The Committee should ask Clare Salters to advise when the NIO anticipates that the developmental work could be shared with the parties.

2500. Secondly, under public order and the role of the army, the letter states:

"Consideration is currently being given to what powers the army may need post-normalisation."

2501. Two areas are then named: "public order" and "explosive ordinance disposal". We should enquire whether those are the limit of the powers that the Army may need post-normalisation. Public order and explosive ordinance disposal powers are broadly consistent with the Patten Report.

2502. However, we should enquire whether the Government believe that the Army may require other powers post-normalisation that go beyond those outlined by Patten. We should ask Clare Salters to provide an indicative list of all powers that the British Government anticipate that the Army will require post-normalisation in order to operate effectively. We may not get those answers between now and the end of the Committee's duration. However, we should ask for that information to be provided as soon as possible.

2503. **Mr Kennedy:** I suspect that “public order” and “explosive ordinance disposal” do not comprise an exhaustive list of the Army’s post-normalisation role. In the past, the Army has managed situations involving the emergency services such as during the strike by the Fire and Rescue Service, where the Army deployed “Green Goddesses”.

2504. **Mr Neeson:** I would like a definition of “normalisation”; that has never been made clear. By the same token, there has never been a clear definition of “ceasefires”. What do “ceasefires”, whether they be loyalist or republican, mean? In order to make progress, it is important that we have clear definitions of those terms.

2505. **Mr Cobain:** To reiterate what we said last week, we should not be bound by what the Patten Report does, or does not, say. That issue is gone. The SDLP can float in and out of the Patten Report whenever it suits. I hope that the Committee will not be held to the criteria that the Patten Report set for the future role of the Army, or for any other issue. As far as the UUP is concerned, the issue of the Patten Report is finished. It cannot be used in discussions as the criteria for the devolution of policing and justice.

2506. **Mr S Wilson:** The SDLP continually harks back to the Patten Report, despite having already accepted that the Policing Board has torn up parts of that report. Recruitment of constables from outside Northern Ireland is not done on a fifty-fifty basis, which is contrary to the Patten Report. The SDLP was happy to sign up to that on the Policing Board. In fact, I do not believe that the SDLP made any complaints because it realised that the report disastrously denuded the police force of skilled detectives and that, therefore, those constables were needed.

2507. Likewise, the SDLP accepted that the recruitment of part-time reserve officers was not on a fifty-fifty basis. The board is discussing the recruitment of police community support officers, which was not recommended by Patten — again, the SDLP has no difficulty with that. The SDLP has been quite happy to dispense with chunks of the Patten Report when it has suited them.

2508. The Northern Ireland Office is considering a post-Patten Report period. The Police Service has applied for money under the Patten Report, but has been told that things have moved on and that it must fund various projects from its own budget. The latest example of that is the police college.

2509. That is right — if we keep ourselves tied to arrangements that are now nearly 10 years old. Things have moved on, and we must move on from Patten.

10.30 am

2510. At every meeting, we return to the issue of national security. To me, it is a dead issue. National security is controlled by central Government in other parts of the UK; it will not, therefore, be devolved. As the Northern Ireland Office pointed out in its letter, arrangements to establish the protocols will be made between the police and the security services. National security will not be included in the remit for this Committee or the Assembly. Alex Attwood has some sort of infatuation with national security, and, therefore, every week, we come back to it. At some stage, we really must stop indulging him and move on.

2511. **The Chairman (Mr Molloy):** I know that there are issues around policing to be discussed, but can we concentrate on the Secretary of State’s letter?

2512. **Mr Kennedy:** From the SDLP’s remarks, it could be interpreted that it expected Northern Ireland, at some point, to be an army-free zone. That is not a sensible assertion, neither is it very desirable. It bears no relation to reality: not least because of the significant military tradition in Northern Ireland, and the fact that a garrison will remain and, therefore, would be available in the event of any emergency, whether it concerns international terrorism or issues of national security.

2513. **Mr A Maginness:** I take issue with the rather personalised criticism that was made, and it should be put on record that the SDLP’s concerns about national security and the security services are important issues, which this party will continue to pursue vigorously on

the Policing Board and elsewhere. To characterise them as the personal obsession of a member of the Policing Board — or a member of the SDLP, namely Alex Attwood — is absolutely wrong. It is reflective of —

[*Interruption.*]

2514. **Mr S Wilson:** I could be much more offensive than that if you wanted.

2515. **Mr Kennedy:** He is only warming up.

2516. **Mr S Wilson:** Ask Fra McCann.

2517. **Mr A Maginness:** I know well that Sammy Wilson can be extremely offensive. However, I am making a serious point: to characterise this as the personal obsession or hobby horse of an individual member of the SDLP is absolutely wrong. The SDLP is committed to pursuing those issues and will pursue them vigorously.

2518. **Mr Kennedy:** Apologise, Mr Wilson.

2519. **Mr Raymond McCartney:** The NIO's letter refers to the British Army's role in supporting policing and public order. The British Army's record in public order situations is not very good. Sinn Féin will oppose that strenuously and ensure that it is not one of the roads taken.

2520. **Mr Attwood:** There could be consensus on this. I suggest that, in due course, the British Government might be asked to advise the parties, this Committee and the Assembly, of the developmental work on national security matters. My reason for suggesting that — contrary to what Sammy suggested — is that the letter from the British Government says:

“... those with responsibility for overseeing policing, including the Assembly in due course, will need to understand how national security issues are handled in general terms and what type of information they can expect to receive in relation to policing matters that bear on national security. Developmental work is in hand in this area.”

2521. It is the British Government's intention that the parties around this table and the Assembly should receive and understand certain

information and, at the moment, they are working to provide that information.

2522. Perhaps Sammy should re-read the letter. The British Government are saying that the matter is not off-limits, the Assembly will have a role, and that they are developing an understanding of what that role might be. I suggest that there should be consensus, and that the developmental work that is in hand should, in due course, be communicated to the Committee and the Assembly.

2523. I accept what the Patten Report said about the Army, whether I like it or not. I am surprised that Sinn Féin does not now accept that Patten provides the threshold in respect of the role of the Army in the North, having said previously that it did. However, that is for Sinn Féin to explain.

2524. The SDLP accepts what Patten said and, therefore, accepts that the Army has a role. It is important to know every element of that role. Of course, the Army will have a role during strikes and similar emergencies. However, is that the height of the Army's power or, as I suspect, is there more?

2525. **The Chairman (Mr Molloy):** Perhaps we can short-circuit the discussion by getting consensus on Alex's proposal to ask the Secretary of State to share with this Committee information on the developmental work on national security matters. I am sure that all members want to know that. Is there agreement?

Members indicated assent.

2526. **The Chairman (Mr Molloy):** Alex's second proposal is that the Secretary of State's office be requested to provide an indicative list of all powers that the Army may require post-normalisation. Are members agreed?

Members indicated assent.

2527. **The Chairman (Mr Molloy):** The other issue was the definition of normalisation and ceasefire. Whom do we ask for a definition of ceasefire?

2528. **Mr Cobain:** Various Secretaries of State have reiterated their definition of ceasefire.

They have said that they take ceasefires “in the round” — whatever that means.

2529. **Mr Weir:** Basically, it means whatever suits them.

2530. **Mr S Wilson:** It varies from one week to another.

2531. **Mr Neeson:** Given ongoing paramilitary activities, it is important that we are clear in our own minds not only on our definition of a ceasefire but on the Government’s definition. That also applies to normalisation. What is normalisation? For example, if the UDA and UVF declare a ceasefire, is that normalisation? Clear definitions are important to enable us to move forward.

2532. **The Chairman (Mr Molloy):** We could discuss that with the Secretary of State, if he comes to the Committee.

2533. **Mr Neeson:** I would like something before that.

2534. **The Chairman (Mr Molloy):** Do members agree that we write to the Secretary of State about that?

Members indicated assent.

2535. **Mr Kennedy:** It will be November before he comes back to us on that. *[Laughter.]*

2536. **The Chairman (Mr Molloy):** As there are no further issues arising from the Secretary of State’s letter, we will discuss firearms and explosives. Mr Tim Moore will give us more detail on that.

2537. **Mr Tim Moore (Senior Researcher):** There is a research paper in members’ packs entitled ‘Firearms Devolution Scotland’. The NIO discussion document suggested that Northern Ireland might wish to follow the Scottish model of devolution in relation to firearms. The NIO characterised that model as one in which routine firearms regulation is a devolved matter but that the:

“business of regulating the use of prohibited weapons, such as automatic weapons ... remains reserved to Westminster.”

2538. The Committee asked for further information on that.

2539. The NIO characterisation is somewhat misleading and oversimplified. To explain my understanding of that, I draw members’ attention to paragraph 4 of my paper, which states that, under the Scotland Act 1998, firearms are a reserved matter. In effect, that means that it is the equivalent of an excepted matter in Northern Ireland.

2540. However, paragraph 8 of my paper states that provisions in the Scotland Act 1998 have made it possible to devolve powers to Scottish Ministers in areas that are, in effect, reserved. An example of that applies to the Firearms Act 1968, which states that the Secretary of State can authorise:

“persons to possess prohibited weapons.”

2541. It is important to add that the ability to change the list of prohibited weapons has not been devolved to Scottish Ministers. The Secretary of State’s power is to grant a certificate or to grant the authority to hold a prohibited weapon. That includes what may be termed “automatic weapons”, in that, with constant pressure on the trigger, they will release two or more bullets.

2542. In Scotland, firearms matters are reserved, although certain functions have been devolved to Scottish Ministers. Today’s members’ pack includes a table that sets out the Secretary of State’s functions under Northern Ireland legislation. Presumably, if members were to choose to follow the Scottish model, those functions, rather than overarching control of the legislation, would be devolved.

2543. By way of example, last year, a young child was killed by an air rifle in Scotland. Public concern was such that the Scottish Parliament debated the incident and considered whether they could legislate for future occurrences. They discovered that they could not. The designation of which types of weaponry are generally prohibited remains with Westminster. The ability to authorise someone to hold those weapons is devolved to Scottish Ministers. That is how the devolution settlement works for firearms in Scotland.

2544. **Mr Kennedy:** I am reading the email from the Scottish Executive, and it is interesting to note that Ian Fleming now works there.

2545. **The Chairman (Mr Molloy):** Is the Committee content to recommend that Northern Ireland goes down the same route as Scotland, or do members wish to opt for a different procedure?

2546. **Mr Raymond McCartney:** Sinn Féin will argue for the maximum transfer.

2547. **Mr Attwood:** Members have only just received the paper. Given that it covers such a significant area and must be read alongside the Firearms Order 2004, the SDLP will have to reserve judgement. We need to see the differences between what Northern Ireland and Scotland have at the moment, and what further differences there might be between what Northern Ireland should have and Scotland might have. We might indicate agreement at the next meeting but we need to analyse the matter more thoroughly.

2548. **The Chairman (Mr Molloy):** Are there any other views?

2549. **Mr Kennedy:** The Ulster Unionist Party would be content to adopt the Scottish model.

2550. **The Chairman (Mr Molloy):** Given that more information is required, we do not have consensus. We will put that issue in the car park with the others.

2551. **Mr S Wilson:** What storey have we reached? [*Laughter.*]

2552. **Mr Weir:** We are queued outside, waiting for an issue to come out before we can put another one in.

2553. **The Chairman (Mr Molloy):** This Preparation for Government Committee, which is dealing with law and order, passed the parades issue to the Preparation for Government Committee dealing with equality, rights and safeguards. Although that Committee discussed parades, it left the subject for further consideration and did not define it in detail.

2554. **Mr S Wilson:** How unusual! [*Laughter.*]

2555. **The Chairman (Mr Molloy):** Yes. Other than acknowledge the work of this Committee, it has not discussed the parades issue further. Do members wish to make any comments on those matters? Are you happy to leave parades with the Preparation for Government Committee dealing with equality, rights and safeguards?

Members indicated assent.

2556. **Mr Kennedy:** Did this Preparation for Government Committee not resolve something similar?

2557. **Mr Attwood:** That was about membership of the Parades Commission and appeals against Parades Commission determinations. There are two residual matters.

2558. **The Chairman (Mr Molloy):** The appointment of members to the Parades Commission was passed to the Preparation for Government Committee dealing with equality, rights and safeguards for its consideration.

2559. **Mr Attwood:** That is right, but we must still make a decision on appeals. The Secretary of State's letter indicates that the British Government think that appeals against Parades Commission determinations will be devolved to the Assembly and to the relevant Minister. That is noteworthy.

10.45 am

2560. **The Chairman (Mr Molloy):** Does the Committee wish to deal with that today?

2561. **Mr Kennedy:** That is another issue that we would like to examine more closely with the Secretary of State. That is clearly the Government's initial view on the matter.

2562. **The Chairman (Mr Molloy):** The Clerks will gather some more information on that. The problem with parking issues is that it will take a few long meetings to clear them up later. The more we can deal with today, the better.

2563. We will move on to discuss the explosives issue.

2564. **The Committee Clerk:** There was a question whether explosives should fall within the responsibility of the Department of Health, Social Services and Public Safety or the

proposed Minister for policing and justice. This format of the Preparation for Government Committee, dealing with law and order, referred the matter to the Preparation for Government Committee dealing with institutional issues, which decided to refer it back to this Preparation for Committee. As well as a car park, we need bats. *[Laughter.]*

2565. **Mr Weir:** It is like a hand grenade with the pin taken out.

2566. **The Chairman (Mr Molloy):** It is a good job that it is not cricket.

2567. The First Minister and Deputy First Minister may have to decide on the matter when they determine which Departments should deal with which issues. Do members have any further comments?

2568. **Mr S Wilson:** To refresh our memories, is the issue about which Department should deal with the legislation or monitoring or which Department should deal with transportation, storage, and so on?

2569. **The Chairman (Mr Molloy):** It is about which Department should deal with the legislation.

2570. **Mr S Wilson:** If the departmental responsibility would involve the transportation and storage of explosives, the Health and Safety Executive for Northern Ireland would probably be better placed to deal with it. If it is a wee minor issue like that, can we not make some decision on it, rather than kick the issue back and forth?

2571. **The Chairman (Mr Molloy):** Transportation may currently be a particular problem, but, in a normal situation, a company, under the supervision of the Health and Safety Executive, would undertake that. The issue concerns the management of explosives, dealing with legislation regarding permits, and so forth.

2572. **Mr Kennedy:** It seems to be a public-safety issue more so than one of law and order.

2573. **Mr Neeson:** As members know, explosives are manufactured in Carrick —

2574. **Mr Kennedy:** Legally or illegally?

2575. **Mr S Wilson:** Both, actually. *[Laughter.]*

2576. **Mr Neeson:** The police always accompany the vehicles carrying explosives, so it could be a policing issue, although I also see the health-and-safety aspect.

2577. **The Chairman (Mr Molloy):** What do we do?

2578. **Mr Cobain:** This is a health-and-safety issue, not a policing issue. It may be a policing issue because of the particular circumstances in Northern Ireland, but throughout the rest of the UK it is a health-and-safety issue. A home must be found for it somewhere, and it would sit more comfortably with the Health and Safety Executive than with the police.

2579. **Mr Weir:** I agree with Fred's point; it would not be a unique situation for an agency outside the criminal justice field to deal with a matter that has policing implications and that involves liaising with the police. This is probably a health-and-safety issue. I suspect that it is not the most controversial issue in the world.

2580. **Mr S Wilson:** Let us be bold and make a decision.

2581. **Mr Weir:** We could perhaps bank the issue.

2582. **The Chairman (Mr Molloy):** We consider explosives to be a health-and-safety issue and recommend that it be dealt with by the Health and Safety Executive. Is that agreed?

Members indicated assent.

2583. **Mr Weir:** Should we contact the 'Belfast Telegraph' and tell them to hold the front page? *[Laughter.]*

2584. **The Chairman (Mr Molloy):** I am sure that they will have it.

2585. We will move on to policing matters; some issues were dealt with, and there was the opportunity to come back to deal with some others. We did not resolve them all.

2586. **Mr Attwood:** Policing or justice issues?

2587. **The Committee Clerk:** Last week we had a list of three issues under the general heading of "Policing". Those were "Intelligence

Services”, “Policing issues” and “Police Ombudsman”.

2588. **Mr Cobain:** Score “Intelligence Services” off.

2589. **The Committee Clerk:** “Intelligence Services” was completed. The “Police Ombudsman” discussion was completed, but the Committee agreed last week that it might want to return to general policing issues to raise any further points.

2590. **The Chairman (Mr Molloy):** I think that we may have had that debate this morning.

2591. **Mr Raymond McCartney:** Although we have had good, broad discussions on the issue, it would be a good sign of the real progress that we are making on this Committee if we could firm up the timescale for transfer.

2592. **The Chairman (Mr Molloy):** There was a proposal passed at one stage. Was it left that policing and justice would be transferred “as soon as possible”? Can someone remind me?

2593. **Mr Kennedy:** The Alliance Party proposed that powers be devolved as soon as possible, but Sinn Féin objected to that.

2594. **The Chairman (Mr Molloy):** Is there any further agreement regarding the earliest possible date, or any particular date?

2595. **Mr Kennedy:** It is hard to improve on “as soon as possible”, I would have thought.

2596. **Mr Cobain:** Mr Attwood is working on that now; he is trying to think that one out.

2597. **Mr Attwood:** The SDLP’s view is quite simple. We believe that if the institutions of Government are restored, that will be on the basis that all parties have signed up to all the requirements for restoration and for the stability of the institutions thereafter. If that is the basis on which people are going into government — that there is a basis for sustainability and stability — devolution of justice and policing should happen without delay. If there is a basis for government, in our view, there is a basis for the transfer of policing and justice powers.

2598. The British Government, as I understand it, will argue that there are requirements in

respect of enabling secondary — not primary — legislation around some issues, and that it will take time to set that in motion before we get to the point of actual transfer. I want to have that conversation with the British Government to see whether that is just a delaying tactic or a genuine reason.

2599. Subject to that proviso, the SDLP thinks that the devolution of policing and justice should happen without any further delay. We believe that if there is any delay, a shadow Ministry should be considered in the interim period, whether that be a month, two months or six months. In that short time frame prior to the devolution of policing and justice powers, there should be a shadow Ministry so that when power is formally devolved everybody, including the Minister or Ministers, hits the ground running. Furthermore, if in that short time there are any teething tensions between the British Government and the NIO about what should be devolved, it will give an opportunity for such issues to be worked through.

2600. We are arguing that if there is restoration, there should be devolution of policing and justice. If the British Government present some technical reason to delay that, the time frame should be as short as possible, during which time we should have a shadow Ministry so that people know what the business is about, especially as some of it will be controversial.

2601. I would like to think that there would be some consensus, because if we can go into government because we are confident that people will live up to their responsibilities in government, given the fact that we all want to govern and that in order to govern there must be the power to govern, why not have policing and justice devolved immediately or in the shortest possible time frame? Or is it that some parties will have restoration only on their terms rather than on fair and equal terms?

2602. **Mr Weir:** I do not want to rehash this argument, because we have gone into detail already. I do not know if Mr Attwood is being slightly mischievous in the way that he has made his proposal. The DUP has been clear. The devolution of policing and justice has

always been dealt with separately from the devolution of other Departments. It has been put at a different level, which is why it was not devolved in 1998. The Executive, during its existence between 1999 and 2002, did not have policing and justice powers devolved to it. Greater community confidence is required for the devolution of policing and justice than for the creation of an Executive.

2603. That fact has been acknowledged by the Government. It would be useful, and we would all be keen, to tease out the Government's position on this issue. The Government have made their position clear in Westminster about the various locks that would have to be opened before policing and justice could be devolved. If there is a strong desire, or an acceptance, that policing and justice should be devolved at a particular time, the Government are not going to stand in the way. It is not simply a matter of the Executive being set up and clearing aside the technical issues; it is a question of trying to gain that public community confidence that does not exist at present.

2604. We want Northern Ireland to be stable and peaceful enough for confidence to be built up to the extent that people are keen to see the devolution of policing and justice. That is our aim, which is why we signed up to the formula of "as soon as possible".

2605. Completely wrong signals are being sent out if we start to chat about shadow Ministries. Leaving aside the extent to which people would be employed without having roles and responsibilities, it is not simply a question of getting the Assembly back and automatically starting a short countdown to the devolution of policing and justice. That will come with community confidence.

2606. The DUP is prepared to back the formula of devolving policing and justice "as soon as possible". We should not be tied into specific time frames or a process that automatically triggers devolution of those powers at some stage. A long open-ended process or shadow Ministries would be meaningless. Therefore, with respect to Mr Attwood, the DUP does not favour his suggestion.

2607. Our position and, I suspect, the positions of the other parties, has not changed. We had a lengthy debate on this issue. Members can give their views, but it is not productive to revisit the issue.

2608. **Mr Neeson:** This is a sensitive issue, and we have not even agreed on how the Minister would be elected or chosen. It is important that the institutions are working collectively and in good faith. A timetable of two years has been suggested. I agree with Mr Weir about policing and justice being devolved "as soon as possible". The institutions must work and the public must have confidence in those institutions.

2609. **Mr Raymond McCartney:** The issue of public confidence was discussed at an earlier meeting. The DUP argues that there must be public confidence before the institutions and the justice Ministry are set up. If an Assembly is up and running, there will already be primary legislation in Westminster that states that policing and justice will be devolved "as soon as is practicable" — which seems to be what the unionists are suggesting — but also within a time frame of 12 months. It would send out a positive signal to everybody if, when the institutions are restored, there is an indicative time frame for a justice Ministry to be set up.

11.00 am

2610. **Mr A Maginness:** As time goes on, I am becoming more confused by the DUP position. The DUP seems to be saying that if people fulfil, and live up to, their responsibilities, all obstacles to the full devolution of policing and justice powers would disappear. The phrase "as soon as possible" seems to be an immediate consequence of that. If that is so, the DUP should have no reservations about a transfer of powers as quickly as possible.

2611. The British Government have passed enabling legislation so that matters can be dealt with reasonably quickly. Some secondary legislation may be required; we can ask the Secretary of State about that issue and get a guarantee that it would be dealt with quickly. Custom-made secondary legislation would be needed to deal with all outstanding matters.

2612. If the DUP wants the transfer of policing and justice to be delayed, that adds further conditions and is contrary to the spirit of what the DUP originally said, which was that if people fulfil their responsibilities, matters can be dealt with as soon as possible. I am really confused about the DUP position; it must be clarified.

2613. In a shadow Ministry, a Department would be set up with a Minister, or Ministers, in place by whatever mechanism might be used to establish that; powers that can be transferred immediately are devolved to that Department so that the Minister, or Ministers, in charge can exercise them. There may be some delay in additional powers being transferred, but at that point the Minister, or Ministers, would be in place. In that sense, there is a shadow Department, but I would not get hung up on the word “shadow”.

2614. **Mr S Wilson:** I am not sure where the confusion lies. Perhaps it lies within the SDLP, rather than between the SDLP and the DUP. All SDLP MPs voted for the Northern Ireland (Miscellaneous Provisions) Act 2006. An important part of that legislation states that the devolution of policing would not automatically follow the devolution of other powers to Northern Ireland, but would be dealt with separately. The First Minister and the Deputy First Minister would first have to table a motion in the Assembly that would have to be carried by a cross-community vote, at which point Westminster would hand over the powers.

2615. That was all subsequent to devolution. If there is confusion, it must be within the SDLP, or perhaps Alban is out of line with his three parliamentary colleagues.

2616. Those are the facts. The reason that this issue is different from other matters to be devolved is quite clear, and was well articulated during the debate on the Bill: it is different because of the importance of public confidence. Policing and justice can be devolved only when people are satisfied that there is a willingness to work within the rule of law.

2617. The entire tenor of that debate was that devolution of policing and justice could take

some time. We have made no secret that it could take some considerable time for confidence to be built and that it would depend on how parties behaved in the Assembly and on what was happening outside it. That was all well articulated and clearly explained, yet the SDLP voted for it. This is not some new condition, but something that has been argued out. That is why the legislation was framed in that way.

2618. **Mr Attwood:** The consequence of the Northern Ireland (Miscellaneous Provisions) Act 2006 means that, on day one of the Assembly, the First Minister and Deputy First Minister can table a motion and that there can be a cross-community vote.

2619. There is no confusion or inconsistency in the SDLP’s position. Policing and justice can be devolved on day one or in week one or in month one. If sufficient confidence exists for a party to enter Government, sit in the Executive and participate in an Office of the First Minister and the Deputy First Minister — whether it is a joint office, as prescribed by the SDLP, but from which the DUP and Sinn Féin have now backed away — the power and ability to devolve policing and justice exist on day one.

2620. We argue that the required level of confidence can exist from day one because, by going into Government, a party accepts that it has a level of confidence. The only remaining issue thereafter would probably be some residual secondary legislation that might take a little more time to deal with.

2621. The DUP is prescribing a veto, which was outlined in the comprehensive agreement, on when devolution of policing and justice happens. Had we negotiated that agreement, we would not have conceded that veto; nonetheless, the DUP has that veto. On a whim, elements in the DUP may want to use it.

2622. For that reason, rather than let the Assembly be subject to that weapon, people should get their heads around the idea that, if the power exists on day one, it should be used on day one. Doing so will bind people much more closely to the institutions and to accepting their responsibilities. It will also prevent parties playing fast and loose with democracy and the

institutions, which was one of the problems with the first Assembly.

2623. **Mr Kennedy:** Let me helpfully add to everyone's confusion about a couple of the party positions. The leader of the DUP informed us at one stage that all the issues had been effectively resolved. The comprehensive agreement says, in annex A:

“Agreement reached on modalities for devolution of Criminal Justice and Policing”.

2624. In paragraph 8 of the Governments' own preamble to the agreement, it says that:

“the British Government will initiate discussions with the parties on the modalities of devolution as soon as the IICD has confirmed the completion of IRA decommissioning, with the aim of agreement by the time the Executive is established. On that basis the British Government will commit to introducing into Parliament by the summer of 2005 the legislation necessary to permit devolution to take place. Such legislation will come into force as soon as possible, once sufficient confidence exists across the community”.

2625. Annex F, the Sinn Féin statement on policing, says that:

“As a result of our discussions we now have a commitment from the British Government and the DUP to the transfer of powers on policing and justice to the Assembly as soon as possible”.

2626. Why Sinn Féin would now object to the phrase “as soon as possible” is beyond me.

2627. I thought that would helpfully continue to confuse everyone. *[Laughter.]*

2628. **Mr Raymond McCartney:** On the broader question, it is down to whether this Committee, when it makes its report, wants to put on record an indicative time frame. We should propose whatever we feel is the consensus view of the indicative time frame. Let us define “as soon as possible”.

2629. **Mr S Wilson:** A couple of meetings ago, I actually proposed what Mr Kennedy has read out from the comprehensive agreement. We want to see the devolution of policing and

justice, but there is no point if the community has no confidence that those in charge will support the rule of law.

2630. **Mr A Maginness:** May I make an intervention after Mr Wilson has finished?

2631. **Mr S Wilson:** Yes, after I have finished.

2632. We now have two or three pieces of evidence. First, we have the comprehensive agreement, in which the phrase “as soon as possible” provides the only indicative timetable. There is the legislation, referred to in that agreement, which again sees devolution of policing and justice as a separate step from the devolution of other functions to the Assembly. Furthermore, the Secretary of State, in the preamble to that agreement, as Mr Kennedy pointed out, accepted that the requirement for community confidence is a further step beyond what is required for devolution before we can have the devolution of policing and justice.

2633. The Secretary of State is saying it. The legislation — supported by the SDLP MPs in Westminster — is saying it. Indeed, Sinn Féin almost appears to be accepting it. I used the phrase “as soon as possible” because one of the Sinn Féin representatives used it, echoing what was in the comprehensive agreement, so I felt that we would get consensus around that.

2634. We are not going to set a date, because then that date becomes all-important and the conditions necessary to create community confidence fade into the background. Everybody works towards a date — two years, or six months, or whatever it happens to be — and we just sit back and wait for it to arrive, rather than work towards building that community confidence. That is why it is important not to set a deadline, but to simply say that we want it to happen and that there are certain things that have to take place before it can happen, and then to work towards ensuring that those things take place. That is the way of getting devolution as soon as possible — not by simply setting a time.

11.15 am

2635. **Mr A Maginness:** The DUP's argument is that there must be sufficient confidence

within the community to form an Executive and bring back the Assembly in its fullest form, and that there must be further confidence in the community in order to devolve policing and justice powers.

2636. That is a contradictory position. If there is sufficient confidence within the community to form an Executive, which is exercising very substantial budgetary powers — £8 billion or more — then it is incredible to say that in relation to policing and justice, in which there are many safeguards, there needs to be further confidence.

2637. Either you have community confidence or you have not. That confidence must cover all the functions of Government and cannot exclude one specific function of Government in Northern Ireland. If you use the phrase “as soon as possible” in its common parlance, it means that you do something immediately, provided —

2638. **Mr S Wilson:** Provided that the conditions are met.

2639. **Mr A Maginness:** No, provided that it is practical to do so in the sense that the legislation is in place, and it is simply a matter of practicalities. If not, the phrase “as soon as possible” is a bogus term being used by the DUP simply to put a good political gloss on its untenable political position.

2640. **Mr S Wilson:** It is a phrase backed by the Secretary of State, legislation and Sinn Féin.

2641. **Mr A Maginness:** Policing and justice powers should be devolved immediately on the formation of an Executive, or no more than six months later. That is the sort of approach we should be taking, rather than using a phrase that seems good but, when you parse and analyse the DUP’s position, becomes meaningless.

2642. **Mr Raymond McCartney:** “Public confidence” is like “British national security”, which we discussed earlier — it cannot be legally defined. Who determines public confidence? We will end up with one party determining public confidence. If an indicative time frame is given — such as once the institutions are set up, as Mr Maginness suggested — then, even accepting that gauging

public confidence is allowed to be in the gift of one party, at least we will have moved things on. If not, we will end up looking for a definition for “ball tampering”, which nobody seems to be able to give this week either.

2643. **Mr Weir:** I will not go too much into cricket analogies. To an extent, we are flogging a dead horse, because we have had this discussion already. The sensitivities around policing and justice are greater than around any other potential Government Department. That is why we are having a special Committee to deal with these matters. We are not having a special Committee to deal with the impediments to devolution because of regional development problems or social development problems.

2644. Since devolution occurred in 1999, it has been accepted that policing and justice should be treated as a separate issue. That is why it is not simply the case that a few technical issues need to be sorted out. If that were so, policing and justice would have been devolved within a couple of months of devolution, or indeed at any stage during the lifetime of the Assembly. In any post-conflict situation around the world, policing and justice have proven to be more contentious than any other issues.

2645. The DUP’s position has been consistent. It is not a question of one party’s having a veto. In many ways, the locks are in place: the devolution of policing and justice must have the approval of the Assembly and the First Minister and the Deputy First Minister. The requirements go far beyond the will of the DUP. They are enshrined in legislation.

2646. Danny’s quote showed that the DUP’s position has not changed. We want to reach a situation — hopefully, sooner rather than later — in which there is community confidence. We can play games with this issue as much as we like. However, it is unrealistic to think that community confidence would be there from day one. The DUP would like policing and justice to be devolved as soon as possible, but we must ensure that the necessary community confidence is there. Almost all the parties, including the SDLP, have accepted the Westminster

legislation. Indeed, the SDLP has created a formula based on that legislation.

2647. Ahead of devolution, members can suggest particular time frames or models to devolve policing and justice. However, beyond the acceptance that, when the conditions are right, the devolution of policing and justice must be achieved as soon as possible, it is a matter of community confidence. I doubt whether a proposal could be made that the DUP would support. I suspect that, without stealing their thunder, the Ulster Unionist Party would probably be in a similar position, as might be the Alliance Party. It is crucial that there is community confidence, and, therefore, it is a matter of “as soon as possible” rather a strict time frame.

2648. **The Chairman (Mr Molloy):** We are going around the houses. Perhaps we need a couple of proposals to tie up the issue.

2649. **Mr Neeson:** Everybody is talking about community confidence. The bedrock on which community confidence could be based would be the Executive’s showing clearly that they are acting with collective responsibility. During devolution, despite the role of the DUP, nobody could say that Sinn Féin, the SDLP and the Ulster Unionists showed collective responsibility. It did not exist. The basis on which collective responsibility could be shown would be, for example, on whether the Executive could take a coherent view of public disorder and could they accept the operational independence of the Chief Constable?

2650. The Alliance Party has said that, in line with legislation, devolution should be in place for two years before policing and justice are devolved. That is a two-year target: it does not mean that policing and justice could not be devolved sooner.

2651. Once again, I stress that unless collective responsibility is shown to exist, it will be difficult to address the sensitive issue of the devolution of policing and justice.

2652. **Mr Kennedy:** The comprehensive agreement suggests that, in shadow form, the Assembly would consider modalities for the

devolution of criminal justice and policing, and that, if agreement were reached, the British Government would lift suspension and, presumably, provide the opportunity for more discussion on when the devolution of those matters would occur. The comprehensive agreement is silent on when that would happen, other than using the phrase “as soon as possible”. It is silent on the timescale.

2653. **Mr A Maginness:** I have suggested a proposal.

2654. **The Chairman (Mr Molloy):** Do you want to put that proposal now and see whether we have consensus? I suspect that we will not, though.

2655. **Mr Weir:** I would not race down to Eastwood’s bookmakers. [*Laughter.*]

2656. **Mr A Maginness:** It is important that the proposal be made. Policing and justice should be devolved immediately following the formation of an Executive, and, if not, it should be devolved no later than six months from that formation.

2657. **The Chairman (Mr Molloy):** Do we have consensus?

2658. **Mr Kennedy:** There was a wide-ranging discussion on the same issue, either at the last meeting or the one before. Time goes so quickly in the Committee that one loses track. I believe that there was a proposal in the name of the leader of the Alliance Party, David Ford. My memory of it was that it did not gain consensus. It was vetoed because of Sinn Féin’s objections, although it was supported by the SDLP.

2659. **The Chairman (Mr Molloy):** There were two proposals.

2660. **Mr Kennedy:** It would be helpful to revisit that issue. Are we going to deal with different proposals on the same matter every week?

2661. **The Chairman (Mr Molloy):** We are dealing with this issue because members requested that all matters with regard to policing be finalised. Policing and justice are the two main issues that are dealt with by the Committee. It is correct that the Committee

returns to those issues when further developments have been made.

2662. **Mr Kennedy:** There comes a time when it is appropriate to ask what part of “no” some people do not understand.

2663. **The Chairman (Mr Molloy):** OK. We will consider the two proposals that were made.

2664. **The Committee Clerk:** On 9 August 2006, Mrs Long proposed that a target date for devolution of policing and justice should be set at two years after restoration of the Assembly. There was no consensus on that. Mr Wilson proposed that policing and justice should be devolved as soon as possible. There was also no consensus on that.

2665. **Mr Kennedy:** Do the minutes indicate who objected?

2666. **The Chairman (Mr Molloy):** The minutes record that no consensus was reached.

2667. **Mr S Wilson:** Danny is correct, although the record does not show that. All parties, except Sinn Féin, supported the proposal.

2668. **Mr Attwood:** That is not the case.

2669. **Mr S Wilson:** It was the case.

2670. **Mr Attwood:** It was not the case.

2671. **Mr S Wilson:** You were not here; I was.

2672. **Mr Attwood:** I know that that was not the case.

2673. **Mr Kennedy:** My daddy is bigger than your daddy.

2674. **The Chairman (Mr Molloy):** Consensus may not have been reached due to the objections of more than one party. For the duration of this Committee, the minutes have not recorded which parties did not assent to a particular proposal.

2675. Is there consensus on the current proposal?

Members indicated dissent.

2676. **Mr S Wilson:** I propose that all parties support the transfer of police and justice powers as soon as confidence exists in the community.

2677. **The Chairman (Mr Molloy):** Is there consensus on that proposal?

Members indicated dissent.

2678. **The Chairman (Mr Molloy):** Alex made a proposal earlier. Has that been superseded by Alban’s proposal?

2679. **Mr A Maginness:** Yes.

2680. **The Chairman (Mr Molloy):** We cannot proceed any further on that proposal at present.

2681. Item 3 on the agenda is “Discussion on Prosecutions”. Alban, the SDLP requested that this discussion be held back until you were present.

2682. **Mr A Maginness:** Why? *[Laughter.]*

2683. **Mr S Wilson:** Because none of the rest of them knew anything about the issue. They said that you knew marginally more. *[Laughter.]*

2684. **Mr Cobain:** Alban raised several points on that issue when he was last present at the Committee.

2685. **The Chairman (Mr Molloy):** Discussion will focus on the NIO letter, dated 15 August 2006, which is at tab 4 of members’ papers.

2686. **Mr A Maginness:** I had sought information on judicial appointments. The information in the NIO letter is self-explanatory. The functions of the independent Northern Ireland Judicial Appointments Commission have been transferred to the Lord Chancellor’s Office. Once devolution takes place, those functions will fall within the remit of the Office of the First Minister and the Deputy First Minister.

2687. However, at the last meeting, the table was presented in such a way that it was unclear whether those functions would be properly devolved. It is now certain that they will.

“It is intended that, when responsibility for justice matters is devolved, these responsibilities would transfer back from the Lord Chancellor to the First and Deputy First Ministers. This would require a transfer Order under section 86 of the Northern Ireland Act 1998.”

2688. That clarifies the situation.

11.30 am

2689. **The Chairman (Mr Molloy):** We move on to community restorative justice (CRJ) and

the residual justice issues that Alex wanted to be discussed. Traditionally, each party, in alphabetical order, gives a short presentation.

2690. **Mr Neeson:** The Alliance Party recognises the contribution that CRJ can make as a complement to existing policing and criminal justice systems. Restorative justice has been used successfully in many jurisdictions, particularly the United States, Canada and New Zealand. It carries benefits for victim and offender alike. However, I must stress that it is suitable only for low-level, non-violent offences. Support for any restorative justice scheme must take into account the continued paramilitary grip on some communities, and the desire of some of those communities to bypass the PSNI and to maintain what are, in effect, local police forces.

2691. The Alliance Party believes that the original draft guidelines were a move in the right direction, but that they must be substantially tightened in the following areas: all groups must work directly with the police and cannot be allowed to bypass them by working through intermediaries; training schemes must be approved upfront, rather than merely inspected after the fact; guidelines must extend to cover CRJ projects that deal with non-criminal and antisocial behaviour; a mechanism is needed to vet individuals who work on the schemes to ensure that they are not currently involved in criminal activity or associated with paramilitary organisations; finally, any CRJ scheme that does not adhere to any formal guidelines should be rigorously investigated.

2692. The Northern Ireland Office does not seem to have any intention of regulating the involvement of CRJ schemes in addressing non-criminal antisocial behaviour. That remains a major problem, and the boundaries between such behaviour and criminal activity are blurred. There may be a danger that groups may label some actions as non-criminal behaviour, in which case NIO guidelines would not apply. How organisations address non-criminal issues will impact on their overall credibility.

2693. Co-operation with the police is absolutely essential; that problem seems to have been

significantly tightened in the new draft proposals. However, it must be clearly spelt out that any CRJ scheme can be used only where it has the green light from the police or the Public Prosecution Service (PPS). If either body fails to give direction, no scheme should be allowed to proceed by default.

2694. Once again, I stress the importance of staff who work in CRJ schemes receiving accredited training that has been approved in advance.

2695. In relation to the independent complaints procedures, there should be scope for a third party to make an appeal, rather than limiting the right of appeal to either the victim or the offender.

2696. Vetting is likely to be the most difficult issue with respect to paramilitaries. We do not believe that because someone has a paramilitary past they cannot have a future. Under the draft revised guidelines, only those convicted of an offence after 10 April 1998 will be specifically excluded. We want to ensure that intelligence can be utilised so that those who may not have been formally convicted of any offence since 1998, but who are suspected of being actively involved in paramilitarism, can be excluded.

2697. **Mr S Wilson:** The value of CRJ schemes in Northern Ireland has yet to be proven. The DUP does not take quite the same view as the Alliance Party that such schemes automatically benefit the community. We have reservations about CRJ as a tool within the criminal justice system.

2698. The current schemes, whether on the loyalist side or the republican side, have associations with people who were involved in paramilitary activity and who are still associated with groups that would be regarded as paramilitary. The DUP sees the schemes as providing a way to impose a different form of policing on the communities in which they operate; hence the resistance to direct involvement with the police — especially on the republican side and perhaps not so much on the loyalist side.

2699. I have reservations about how much of a contribution CRJ schemes can make to crime reduction. However, if schemes are to be authorised and eventually funded, the DUP wants to see the introduction of guidelines similar to those suggested by the Alliance Party. About 80% of the schemes' current workloads involve low-level, non-criminal, antisocial behaviour, which is totally outside the scope of the guidelines laid down by the Northern Ireland Office. That is a concern because it means that, by and large, those schemes will not have to abide by the guidelines.

2700. However, the DUP wants four issues to be taken into account. First, the schemes should deal only with people who have been referred to them by the police or the PPS; they should not take on referrals or cases themselves. That, of course, involves direct interface with the police. Schemes must liaise directly with the police, not simply contact a third party or proxy, such as the Probation Board for Northern Ireland, as had been originally suggested. It is important that there is direct police involvement, otherwise schemes will be seen as an alternative to the current policing arrangements, which is why direct involvement was resisted.

2701. Secondly, people who apply to work in the schemes should be subject to the same vetting procedures as those who apply to join, for example, the police or the police reserve. That would deal with Mr Neeson's concern that there should be access to police intelligence on individuals who may be currently involved in paramilitary activity, even though they may not have not been convicted of an offence since 1998. That is an important safeguard that would allow the public to have confidence that the schemes are not simply a front for paramilitary groups administering their own form of justice.

2702. Thirdly, accredited training and accountability are important. Under the new proposals, a complaint can be dealt with initially by the scheme itself, which is not independent accountability at all. The DUP believes that, since most organisations and agencies in the criminal justice system are subject to independent scrutiny, the same should apply to

community restorative justice schemes, given the issues that such groups would deal with. The only exception is the Police Ombudsman, and the DUP wants that situation to be remedied. The SDLP, if it wants to be consistent, will want that too.

2703. Fourthly, it must first be proven that CRJ schemes have a role to play. If they have a role, it must be an integral part of the entire justice regime. CRJ schemes cannot set themselves up as an alternative to existing arrangements, and they must be subject to the same strictures, restraints and accountability as other elements of the criminal justice system.

2704. **Mr Raymond McCartney:** Sinn Féin supports the concept of community restorative justice. Since its inception in 1999, it has played a meaningful and useful role in improving the quality of life in the communities in which the schemes are based.

2705. CRJ is not an alternative to policing; indeed, community restorative justice, by its own definition, does not see itself as such. Sinn Féin agrees that groups must display the highest possible standards. There should be strict guidelines on accountability and on how groups deal with people. Participants should have accredited training.

2706. In the context of this Committee and the work of any future Ministry, Sinn Féin believes that community restorative justice will play a crucial role in ensuring, and improving, the quality of life in our communities. Most of the schemes' work goes unannounced, and funding has only recently become an issue for them. Many of the people involved work on a voluntary basis; a cross-section of the community represents the community. People must be careful that CRJ is not used as a tool to make political points.

2707. **Mr Attwood:** The SDLP supports the concept of restorative justice and community restorative justice. Restorative justice is being mainstreamed into the formal justice system, especially where juveniles are concerned.

2708. Raymond said that the "highest possible standards" are required in restorative justice. In

that case, and given what the other parties have said, we may be able to reach consensus. We should be able to reach agreement on what “highest possible standards” means when it comes to community restorative justice.

2709. There should be an independent complaints system, which is not what the British Government have proposed. An independent complaints system must be established by statute, and the procedure must include the ability to compel witnesses to attend, to seize documents and to investigate fully any allegations. That is not what the British Government have proposed in their model, which gives the role of administering complaints to another public body.

2710. If the threshold is highest possible standards, the SDLP agrees with the DUP that those standards must apply to all the work of community restorative justice schemes. Given that 80% to 95% of the work undertaken by schemes is non-criminal — and we must discuss what that means — all that work, as well as any criminal matters referred to the schemes by the state, must be governed by regulation.

11.45 am

2711. Having the highest possible standards will require, as the Alliance Party said, a body dedicated to managing the schemes to ensure that they comply with all necessary financial management and human rights standards. A different body will be required to inspect the schemes to ensure that they continue to meet the highest possible standards. I hope that we can agree on that issue. There are other examples of how the highest possible standards might be fulfilled, but I do not have the time to elaborate. Perhaps some work could be done in order for us to reach consensus.

2712. The relationship with the police is central. The British Government’s protocol does not address the matter properly. Although they now accept, under the protocol, that there will be no third-party reporting of crime to the police, they have introduced the vague term “direct communication with the police”. “Direct communication” could mean many things. If it does not mean a full relationship with the police

whereby they are informed and assisted in the investigation of crime, it is a reworking of the failed approach that was adopted in the McCartney case; a third party was used to bring evidence to the police, and no evidence of any use was brought through that third party. Unless “direct communication” means full co-operation with an inquiry into a crime, we could end up with a sham that would legislate against the proper conduct of restorative schemes.

2713. Unless there is an end to exiling, we could end up with restorative schemes where some people in the community are not signing up to proper practice in relation to how people are treated, including vulnerable young people.

2714. Policing arrangements must be accepted in order for community-based restorative justice schemes to prosper properly. Unless all parties advise people to join, and assist, the police, North and South, restorative schemes may operate in a way that does not accept the rule of law, lawful authority and proper policing. Until a proper environment is created, there are real risks that some restorative justice schemes may create more problems than they solve.

2715. **Mr Kennedy:** Members of the Policing Board have worked hard on this important subject. They have given a useful response to the Government’s draft guidelines that is worthy of sensible consideration. The UUP strongly believes that the police, as the civil power, must retain prime responsibility for law and order. There is no doubt about that.

2716. The UUP sees some value in the schemes’ work. All schemes must work in conjunction with, and with the direct involvement of, the PSNI. There must be proper vetting. We want to reserve our position regarding the date that has been suggested for the involvement of people with pre-1998 paramilitary/criminal backgrounds. We have serious reservations about that.

2717. We agree with the SDLP about the end of exiling. The police, as the civil power, must not be undermined or circumvented by the work of any community justice schemes.

2718. **Mr Neeson:** I am interested in Mr Attwood’s suggestion of an independent

complaints system. Who would set that up, and what would its responsibilities be?

2719. **Mr Attwood:** An independent complaints system would be set up by the British Government at Westminster, because it would have to be legislation-based. A complaints system based on statute would create certainty and avoid doubt.

2720. The body would be dedicated to complaints and would have no other responsibilities. It would have the powers to compel witnesses, to search property and to seize documents. Unless the body had such powers, a complainant could allege that an alternative justice scheme did something in error, and the scheme could refuse to co-operate with the complaints body by saying that the body did not have the power to make it co-operate. The scheme could refuse to provide documents, saying that the complaints body did not have the power to seize those documents. The complaints system would fall into disrepute very quickly.

2721. The British Government have suggested that people who have been convicted of serious criminal acts might be involved in restorative justice schemes. There is a community imperative that if people who are involved have had a criminal past but have moved on from that past, there must be a statute-based complaints system, with all necessary powers, to protect vulnerable people, especially young people. The probation model does not move us very far.

2722. **Mr Cobain:** Mr Attwood is correct. We could reach consensus on the issue if all parties hold to what they have articulated this morning.

2723. Restorative justice, as a concept, could be of tremendous assistance to the police in large working-class areas where antisocial behaviour restricts quality of life compared to middle-class areas. There is no doubt about that. In such areas, traditional policing simply does not work.

2724. Mr Wilson said that CRJ has yet to be proven. I work with Greater Shankill Alternatives, which is a professional, open organisation that can verify that its scheme works; its records are open for anyone to examine. Members of the

management committee come from a wide cross-section of the community. It is not a paramilitary-run organisation. I can speak only from the loyalist perspective; I cannot speak from the republican perspective. It is run by individuals who believe that restorative justice can deal with antisocial behaviour and low-level crime in working-class areas.

2725. **Mr S Wilson:** How can the success of community restorative justice schemes be measured?

2726. **Mr Cobain:** It can be measured in several ways. The schemes work independently on one-to-one programmes and processes with young people who have been involved in antisocial behaviour. Some of those young people become trainers for other kids. That is documented. I take Alex Attwood's point, and there are safeguards all the way through the procedures. The Northern Ireland Alternatives organisations keep records: outputs are checked independently and, if needed, can be verified.

2727. We need to work on restorative justice. It has potential for people in working-class areas who engage in antisocial behaviour. Alex referred to an independent complaints procedure, which is essential, because these are vulnerable youths who have entered schemes voluntarily. That is an important point: people are not forced onto these schemes. Those who want to attend Alternatives can do so freely. An independent complaints procedure is a good idea, and all the strict guidelines that Alex articulated must be in place because these schemes deal with vulnerable youths.

2728. Community restorative justice schemes are an essential extension to the criminal justice system. They alone cannot deal with antisocial behaviour; it does not work like that. Every participant in a restorative justice scheme must be referred by the PPS or the police. Individuals who have committed low-level offences, but do not have those referrals, should not get places on the schemes.

2729. Accredited training should be mandatory for individuals on community restorative justice schemes. If individuals want to participate in the schemes, they would agree to follow a set

training procedure, so that they are trained to do a particular type of work.

2730. Up to now, the concept of community restorative justice has been a bit of a hotchpotch. It has not been organised and funded properly, because political tensions take away from what could be an important contribution to society.

2731. **Mr McCann:** For many years, the area that I live in has had serious problems with antisocial activity. There is an active CRJ group in the area. It is recognised widely, and we have debated the issue at Belfast City Council, that the community, possibly more than any other measure, has the answer to dealing with antisocial activity. The members of the CRJ group come from the local communities and, as a non-violent organisation, it is trying to deal with antisocial behaviour. Believe it or not, I have been told that, on occasion, the PSNI has been encouraged privately to go to the CRJ group, as it is seen as the most effective way to deal with a complaint.

2732. Many SDLP supporters in my constituency use CRJ regularly and are happy with the way in which their complaints are handled, which usually involves mediation between the person offended against and the offenders. Some areas have used CRJ to try to clear up antisocial activity, and their record is better than that of the PSNI.

12.00 noon

2733. The majority of people in my constituency see the PSNI as being part of the problem. Many of those involved in antisocial activity are working as low-key agents for the PSNI and are therefore allowed a free hand.

2734. There is a raft of issues to consider. A former SDLP councillor has had contact with CRJ, as have other groups that deal with, for example, neighbourhood watches. Although there may not be cross-party support, other parties have made use of CRJ.

2735. Antisocial activity is a blight that has to be dealt with, and it can only be dealt with by the community itself. We should consider how we can support the community and its CRJ

schemes, because they play an active role in trying to overcome the blight of antisocial activity.

2736. **Mr Weir:** I want to pick up on Fred's point. Most of us are aware of CRJ groups, but no one has dealt with all 18 of them. However, we can draw a number of conclusions. Although we are not accusing any CRJ group of being run by paramilitaries, our experience is that it is difficult to find a scheme in which at least one person has not, at some stage, been involved with paramilitaries. That is why people are concerned about CRJ.

2737. Some people involved with the schemes must have mixed motivations. Some may well be genuinely concerned about their community and tackling antisocial behaviour and crime in order to benefit their community, but others may want to help paramilitary groups to retain control in their areas. Everyone is not involved for the same reasons.

2738. Although the jury is out as to why people are involved in CRJ schemes, an overall view must be taken. If we do not get this right, some groups may make a valuable contribution but many might make the situation worse by undermining the rule of law and by setting up CRJ as an alternative to the law.

2739. The opportunity for restorative justice to make a valuable contribution hinges on the safeguards and protocols that are put in place. Alex made a reasonable suggestion that the way in which to progress is to take seven or eight different proposals — the Hansard report will detail them — on specific aspects, principally concerning the protocols, to see if there is consensus.

2740. We could probably reach consensus on two or three proposals — for example, training. Although parties will have different views on the remaining proposals, it would still be useful to test them.

2741. Alex's proposals tended to focus on areas where it was felt that there were deficiencies, for want of a better word, in the Secretary of State's or the Government's position. Therefore, it would be productive to bank something by way of consensus that would direct the

Government. If there is disagreement on issues such as vetting or on the primacy of the police, the parties will have the opportunity to say where they stand. There may not be agreement, but at least there will be an opportunity for people to publicly express their opinions.

2742. **Mr A Maginness:** Everybody accepts the value of restorative justice; it has been proved throughout the world. However, the real contentious issues concern community restorative justice.

2743. There is a restorative justice system in the criminal justice system, through the very successful youth conference service, for which the Youth Justice Agency of Northern Ireland is responsible. That arose from the Criminal Justice Review and has been proved to work well. The system is not yet available throughout Northern Ireland, but that is work in progress, and the entire community will, at some stage, be able to access it.

2744. It should be noted that the service has been independently evaluated. The high rate of victim participation is indicative of the fact that it is working well. There is a high rate of satisfaction among victims that the service has produced positive results for them. Equally, offenders have derived considerable satisfaction from the service because it has acted as a brake on further criminal and antisocial activity in the community.

2745. The service has been very positive in trying to divert young people from criminal activity. The Probation Board for Northern Ireland (PBNI) also does good work on diversionary activities for young people. We must bear in mind that such work is also part of restorative justice. We are dealing with the discrete area of community restorative justice, which is contentious, but we should emphasise our support for restorative justice in the criminal justice system as it now evolves.

2746. Going back to the main point, I endorse what Raymond has said. If we are to use community restorative justice, we should aspire to the highest possible standards. There should be a truly independent complaints system and proper, worthwhile and effective training for

those involved in the schemes. There should be a proper vetting system for those running the schemes. It is crucial that the engagement between the schemes and the police is clearly seen to be good and positive.

2747. **Mr Attwood:** I will fast-forward things and take up Peter's point. As there seems to be potential agreement on one aspect of the issue but not on the other, I have drafted two proposals.

2748. **The Chairman (Mr Molloy):** Could I bring Raymond in on that point?

2749. **Mr Raymond McCartney:** People generally feel that community restorative justice schemes are a good concept, although I accept that party political perspectives can influence opinions, as Peter mentioned. However, CRJ must be given space to allow it to work.

2750. Fred mentioned referrals to CRJ schemes by the PPS. If someone wants a neighbourhood dispute to be resolved, the last thing that they want is to go to the PPS, which may take six months to act. We have all witnessed the work of the PPS in the Magistrates' Court and other places, and no one wants to wait six months for a resolution.

2751. We must be careful, because in one breath we say that CRJ schemes are a good idea that should be supported, but in the next mention guidelines and procedures that will, by design, strangle them.

2752. Recently, an 11-year-old girl in Derry who wrote on a wall ended up being fingerprinted and having a sample of her DNA taken. That situation would have been dealt with in a better way through community restorative justice.

2753. We must be careful when using words and phrases such as "vetting" and "use of intelligence" to decide who can work in CRJ schemes, as they are designed to make it impossible for people to work unhindered. The same applies when talking about independent complaints procedures controlled by the British Government, as if, in the past, all independent complaints procedures were above and beyond reproach.

2754. We must bear in mind that CRJ schemes have been running for over seven years in some areas. Despite all the nit-picking and scrutiny, it must be recognised that people have not come up with too many examples of where the schemes have got it wrong. I declare an interest, as my brother Noel, as Alex knows, heads one of the schemes in Derry. People may produce some examples of where schemes have gone wrong, but, in the main, they work well where I live.

2755. Any degree of failure or breakdown would be constantly reported and magnified in the papers, and that is not happening. There must be recognition that the schemes work. We must give them space to work. There should be guidelines and training, and the highest possible standards should be set. However, standards should not prevent people involved in CRJ schemes doing their work.

2756. **Mr McCann:** Following on from what Raymond said, Sinn Féin has no difficulty with the proper registration and oversight of CRJ schemes. However, one thing that is probably missing from this discussion is any input from the groups themselves. Perhaps representatives from Community Restorative Justice Ireland and other CRJ schemes could appear before the Committee to discuss the issue and submit themselves to our questioning and scrutiny. That may enlighten members on the excellent and, as Raymond said, hard and committed work of people who are involved in community restorative justice.

2757. **Mr Weir:** Without wanting to pre-empt anything that Alex may propose, we have identified seven issues that could perhaps be considered as proposals. Two or three proposals may achieve some degree of consensus; I suspect that the others will not.

2758. The first proposal is that all community restorative justice schemes should be accountable and subject to an independent complaints commission. The second is that training should be accredited and provided outside the scheme itself; there should not be self-training. The third proposal is that the vetting of anyone who wants to be involved with CRJ schemes should be of the same

standard as applies to those applying to join the police force.

2759. Fourthly, all protocols are to be equally applicable to all aspects of work, including antisocial behaviour, to remove the dichotomy between criminal and antisocial behaviour. The same standards should apply to both.

2760. Fifthly, there should be direct contact with the police on all issues being referred to them.

2761. Sixthly, the police should have the prime role within any of the schemes.

2762. Seventhly, referrals should come from the Courts or the legal system — which gives a wee bit of flexibility as to whether referrals come from the police, if they feel that they are not criminal matters, or from the PPS.

12.15 pm

2763. **Mr Kennedy:** It might be helpful if we could get a note of all of the proposals and then, after lunch, we could go through them and see if we could resolve any of the issues. It would give us a period for reflection over lunch to see if progress could be made.

2764. **The Chairman (Mr Molloy):** Alex, do you want to say anything at this stage?

2765. **Mr Attwood:** Yes. Just to simplify things. There are three areas — and I think we could reach consensus on one of them. We might reach consensus on the other two.

2766. We could get consensus on a proposal — taking what Peter has said — that agrees that there should be the highest standards governing CRJ schemes. That would include an independent complaints system, training and outside accreditation of the work, referrals from the Courts and the inspection mechanism. We could get agreement on those because they are at the more functioning end of restorative justice schemes.

2767. The second proposal, again, borrowing somewhat from Peter, would say that confidence in CRJ schemes requires acceptance of the rule of law and full co-operation with police and justice agencies. It would be a shortened form of what Peter said. I do not think we will get agreement, but the proposal needs to be tested.

2768. The third proposal is on vetting — again, I do not think we will get agreement — nonetheless, a proposal might be framed.

2769. However, by way of comment on what Peter has said on vetting, the SDLP has concerns about current vetting procedures. For example, we believe that the police occasionally rely on what they call intelligence traces and that those have become a mechanism whereby people do not get employment.

2770. I know from hard evidence that so-called intelligence traces are spurious, inaccurate or mischievous. On one occasion, they amounted to somebody being seen in the company of somebody else in a bar. That is not an intelligence trace: that is tittle-tattle, and there is no basis for relying on it.

2771. The above example shows that intelligence traces can impede somebody who is innocent in getting gainful employment in certain sensitive jobs.

2772. I do not think we will agree on vetting. As Peter and Sammy know, the Policing Board kept its options open on the subject because there was not going to be consensus on it. The same will happen here — over and above the much more fundamental issue of who should, or should not, be involved in the schemes. In any case, legislation due to come onto the books next year will mean that people with certain backgrounds before or after 1998, whether in Northern Ireland or in Britain, will not be able to work in a relationship involving children, because the law is being toughened up significantly. Anybody in any part of the North, or in Britain, who may want to work with children and who has a criminal record will not be allowed under the law here or there to work with vulnerable people.

2773. **The Chairman (Mr Molloy):** Do you have a particular proposal on vetting so that members can think about it over lunch?

2774. **Mr Attwood:** I will come back to you with the wording, Mr Chairman. I have the wording for the other two proposals but not for this proposal yet. I need to work on that.

2775. **Mr Raymond McCartney:** I also suggested the possibility that consideration be given to inviting CRJ groups along.

2776. **The Chairman (Mr Molloy):** Does anyone have any other proposals?

2777. **Mr Kennedy:** The UUP will consider all of the proposals, but it wants to add a further proposal that this Committee should condemn the practice of exiling and demand that it be stopped forthwith.

2778. **The Chairman (Mr Molloy):** We now have four proposals.

2779. **Mr Raymond McCartney:** On a point of information, Chairman. What is the link between community restorative justice and exiling? If exiling could be discussed in the context of residual justice issues, then I would agree to it. However, we must be careful that, on reading Hansard, it does not appear that members implied that some sort of relationship exists between community restorative justice and exiling.

2780. **Mr Kennedy:** If members wish to consider the matter separately as a residual justice issue, I am content with that.

2781. **The Chairman (Mr Molloy):** We shall separate the two issues.

2782. We will adjourn for lunch and return at 12.45 pm.

The Committee was suspended at 12.21 pm

On resuming —

12.46 pm

2783. **The Chairman (Mr Molloy):** We have four proposals. Sammy, do you want to open the discussion?

2784. **Mr S Wilson:** A couple of composite proposals were to be put forward. Peter had about seven proposals, some of which can be encompassed in one proposal. We would be happy to support that.

2785. **Mr Attwood:** I have drafted a proposal: “The Committee agrees that the full range of highest safeguards and standards should apply to community restorative justice schemes including: an independent statute-based

complaints system; accreditation from, and training governed by, an independent dedicated agency; an independent oversight mechanism with all appropriate powers; referrals to the schemes by the justice system; and that a protocol should govern all the work of schemes.”

2786. **Mr McCann:** I made a proposal regarding CRJ groups appearing before the Committee. Sinn Féin believes that they would provide valuable evidence that would otherwise be missing when the Committee makes decisions. We suggest that groups are asked to make written submissions. Sinn Féin feels that the Committee could not make decisions until there was evidence in the form of submissions from restorative justice groups.

2787. **The Chairman (Mr Molloy):** Are you saying that the Committee could not reach a conclusion on the proposal today?

2788. **Mr McCann:** Yes.

2789. **Mr Kennedy:** Minister of State David Hanson has completed the consultation on the draft protocol for community-based restorative justice schemes. There was considerable input into the consultation exercise, and all that information is already available. I do not see how this Committee, with time being against us, would have the wherewithal to pursue that proposal.

2790. **Mr S Wilson:** I am at a bit of a loss to understand the purpose of Fra McCann’s proposal. The phrase that Alex Attwood used about the “highest possible standards” was actually Sinn Féin’s phrase. The rest of the proposal, as I understand it, is to flesh that out. Indeed, the proposal deliberately avoids some areas, which, I suspect, may have been contentious. I accept that Sinn Féin have difficulty with parts of what the DUP, the UUP, the Alliance Party and, perhaps, even the SDLP have said.

2791. The highest possible standards means that there should be a complaints procedure for people who are unhappy with the service they received from a CRJ scheme. The staff should be trained to the highest possible standard, working to guidelines that covered all the

schemes’ work. I do not know why we need to bring groups here and take evidence from them.

2792. Fra McCann said that he has considerable knowledge of the scheme in his constituency. I imagine that that would enable him to make a judgement on the contents of Alex Attwood’s composite proposal, which includes several of Peter Weir’s points. He should have no difficulty making a judgement without having to invite witnesses to give evidence.

2793. **Mr McCann:** Having considerable knowledge of CRJ schemes and speaking on their behalf are two very different things. I have said that I am willing to drop my request that CRJ groups appear before the Committee, if submissions could be sent in instead. Sinn Féin cannot make up its mind, or take any decision, without that valuable input.

2794. Danny Kennedy mentioned the draft protocol launched by David Hanson. Many CRJ groups are part of CRJ Ireland, and they have difficulties with the protocol, as does Sinn Féin. Therefore, the party will not be bounced into accepting any protocol without first hearing the voice of, or receiving written submissions from, CRJ Ireland or other CRJ groups.

2795. **Mr Attwood:** I invite Fra to withdraw his proposal for the following reason. Unlike the Subgroup on the Economic Challenges Facing Northern Ireland, this Committee chose not to invite many witnesses and request submissions so that members’ minds could be kept focused on the task at hand — dealing with barriers to the restoration of government. I had to swallow that decision, despite the fact that I was anxious to have MI5 representatives in the North and the Chief Constable appear before the Committee when it dealt with national security issues. I had to pull back because I recognised that in order to bore down into those issues and reach conclusions, the Committee had to work quickly and tightly.

2796. If the Committee allowed a submission on CRJ issues, it would also have to be open to receiving submissions on other agenda items. Thus, the Committee’s work would have to be reformulated in a way that would work against it.

2797. Furthermore, community restorative justice has been one of the most high-profile issues of the past eight months and longer. My proposal is not suggesting that we sign up to the Hanson protocol; nobody is suggesting that. Everybody knows where the balls lies on this matter, and there is enough competence around the table — and certainly enough capacity in each party — to allow us to assess the situation and reach agreement.

2798. **Mr McCann:** I am prepared to withdraw my proposal that the Committee should invite CRJ groups to give evidence in person, but I still believe that written submissions are necessary. The subgroup heard from witnesses and received submissions, and that helped members to form opinions on different matters. The problem with this issue is that we are making a decision based on other people's opinions, not on the opinions of the groups involved.

2799. **The Chairman (Mr Molloy):** One of the Committee's initial concerns was that if one party wanted to invite a witness to appear, another party might request the appearance of another witness to balance that presentation. That would involve many different groups being called as witnesses, and, given that some agencies would be slow to respond, the entire process would be delayed. For that reason, the Preparation for Government Committee adopted a different approach to the subgroup. How do we get round that? We wrote to the Secretary of State, and we received a response; we must now decide whether we want to write to some of the CRJ schemes.

2800. **Mr Kennedy:** All political parties around the table are aware of the pluses and minuses of CRJ groups. We all have some knowledge and appreciation of how they are viewed and are aware of their strengths and failings. Political lines are being drawn on the issue.

2801. It is a pity that Sinn Féin is using a basic holding tactic to stymie proper discussions. There is an opportunity to make progress on what ought to be a non-contentious issue.

2802. Alex Attwood has produced a composite proposal that, in a true sense, makes an honest

attempt to find common ground. Some aspects are missing that I, as an Ulster Unionist, would have liked to have seen included, but I am prepared to give it a fair wind to see if some level of agreement can be reached. By the use of a basic tactic, the issue is going to be kicked into touch and no progress will be possible.

2803. **Mr Neeson:** Community restorative justice is not a new issue. Alex's proposal tries to include experience from other parts of the world where CRJ has proved to be valuable. I have difficulty in understanding why we cannot reach consensus. Although I raised issues during my presentation that were not included, Alex is trying to put forward the bare principles in order for CRJ to have the highest standards. The best thing to do is to find out whether there is consensus. If there is not, I will have great difficulty in understanding why.

2804. **The Chairman (Mr Molloy):** Alex, will you read out the proposal? The Clerks were unable to write down the full details.

2805. **Mr Attwood:** "The Committee agrees that the full range of highest safeguards and standards should apply to community restorative justice schemes including: an independent statute-based complaints system; accreditation from, and training governed by, an independent dedicated agency; an independent oversight mechanism with all appropriate powers; referrals to the schemes by the justice system; and that s protocol should govern all the work of schemes."

2806. **The Chairman (Mr Molloy):** Are there any issues that members would like to waive or withdraw from the proposal?

1.00 pm

2807. **Mr Raymond McCartney:** Many issues will need to be clarified, and the projects themselves could clarify them. Is Alex suggesting that no person has the right to go to community restorative justice to seek mediation without first going to the justice system?

2808. **Mr Attwood:** No, that is not what I am saying.

2809. **Mr Raymond McCartney:** Your last point was: “referrals to the schemes by the justice system”.

2810. **Mr Attwood:** I assume, from your experience in Derry, that you know how restorative justice schemes work, unless something is happening in Derry that I am unaware of. This is how it will work: somebody in Derry, for example, goes to the restorative justice scheme. If the matter is criminal, it should be referred to the police, or the restorative justice scheme should say that it cannot go near that matter because it is none of its business. I assume that that is what is happening in Derry because we are told that that is happening.

2811. **Mr Raymond McCartney:** You said “referrals”. That is a broad term. Did you mean all referrals?

2812. **Mr Attwood:** No. The justice system would refer matters that it believes are criminal in nature but that are best dealt with by community restorative justice schemes. It means that schemes themselves do not have the power to deal with a criminal matter. That should not be a threat to anybody —

2813. **Mr Raymond McCartney:** I never said it was a threat; I just wanted it to be clear. I thought you meant that all matters should be referred downwards, and that people should not go directly to community restorative justice.

2814. **Mr Attwood:** No; as I outlined in my statement —

2815. **Mr Raymond McCartney:** Someone said earlier that they wanted that to happen, and I wanted to make sure that you were not agreeing with that.

2816. **Mr Cobain:** We must be careful about this. Individuals cannot say, “I want to participate in the community restorative justice system because I have done x, y or z.” without going through the police or the PPS. That is not where the Unionist Party is coming from.

2817. In our view there has to be a structure: everything has to go through the police or the PPS. No one should be able to go to a community restorative justice scheme without

going through the proper channels. That is why I said that community restorative justice should not be something that hangs somewhere outside the criminal justice system. It should be an integral part of both the restorative justice system and the criminal justice system, and we have to get that into our heads.

2818. **Mr Attwood:** Community restorative justice schemes deal with cases referred to them by the justice system, but referrals can be made in several ways. They can be made through the restorative justice scheme, an individual going directly to the police, or through some other mechanism. The point is that the authority to deal with the matter by the community restorative justice system is via referral of the matter from the justice system. Given that a criminal matter would be involved — however that is defined — that would be the right mechanism.

2819. **Mr Raymond McCartney:** If I understand Fred correctly, were I to ask community restorative justice to intervene or mediate in a neighbourhood dispute tomorrow, his belief is that the matter should be passed on immediately to the justice system. Are you saying the same?

2820. **Mr Attwood:** Any matter that can be defined as criminal under the legislation —

2821. **Mr Raymond McCartney:** That is not the point.

2822. **Mr Attwood:** Sorry, that is the point.

2823. **Mr Raymond McCartney:** It is not the point. The point is that it may not concern a criminal offence.

2824. **Mr Attwood:** The point is that, for example, if you have been assaulted in a dispute over a fence, and it is left up to you to define whether it is a criminal matter, we will end up with abuse of the system. For that reason any matter — any matter — that can be deemed to be criminal in nature has to be referred to the justice system before authority is given to a community restorative justice scheme to deal with it.

2825. **Mr McCann:** Who defines what is criminal?

2826. **Mr Attwood:** It is not going to be defined by community restorative justice schemes.

2827. **Mr McCann:** You have answered the question.

2828. **The Chairman (Mr Molloy):** We have probably reached a conclusion. Do we have consensus on the motion that Alex has moved?

Members indicated dissent.

2829. **Mr Attwood:** The second proposal is that the Committee believes that acceptance of the rule of law and full co-operation with police and justice agencies are essential to the proper working of community restorative justice schemes and public confidence.

2830. **The Chairman (Mr Molloy):** Do we have consensus?

2831. **Mr McCann:** Could we have copies of these proposals? Alex is reading something out.

2832. **The Chairman (Mr Molloy):** That is the way it has always been. Members give their statements verbally. We do not have the opportunity to circulate them at this stage.

2833. **Mr McCann:** I appreciate that, but we are being asked to agree to something that Alex has just written down and has verbally given to this Committee. That makes it very difficult.

2834. **The Chairman (Mr Molloy):** Would you repeat that, Alex?

2835. **Mr Attwood:** I will — the Committee believes that the acceptance of the rule of law and full co-operation with police and justice agencies are essential to the proper working of community restorative justice schemes and public confidence.

2836. **The Chairman (Mr Molloy):** Do we have consensus?

Members indicated dissent.

2837. **Mr S Wilson:** The DUP would like to make a further proposal — vetting for anyone who works in community restorative justice schemes should be carried out by the police.

2838. **Mr McCann:** Sammy is a specialist at these wee late ones.

2839. **The Chairman (Mr Molloy):** Did everybody hear that clearly?

2840. **Mr Cobain:** The area of employability and human rights is a minefield, and we have to be absolutely clear about it. I accept what Sammy is saying, but for people to agree to the proposal they would have to be sure that it could be carried out.

2841. **Mr S Wilson:** If people apply to join the police —

2842. **Mr Cobain:** Vetting for employment in the security services is taken as read, but if everybody going for a job had to be vetted it would be a different story.

2843. **Mr S Wilson:** There are certain jobs in the Civil Service that the same vetting would apply to. This is simply a way of getting around the issue that Danny raised — that if somebody had been guilty of a criminal offence before 1998 and was still involved in criminal and paramilitary activity for which they had not been convicted, and there was intelligence that they were still involved, then we obviously do not want them to be part of the community restorative justice scheme. The only way to assess them would be to use police intelligence when vetting takes place.

2844. **The Chairman (Mr Molloy):** We have a proposal. Do we have consensus?

2845. **Mr Attwood:** No, because we do not believe the police want to have that job in the first place.

Members indicated dissent.

2846. **The Chairman (Mr Molloy):** Fra's proposal was that the Committee should request written evidence from community restorative justice groups.

Members indicated dissent.

2847. **Mr Kennedy:** We do not have the time. It would create a precedent for the Committee. All parties are aware of their own views and the workings of those particular groups and I am not sure that anything new could be provided.

2848. **Mr McCann:** Earlier, Danny mentioned the recent Hanson document. It is possible that if the groups read their submissions to the Committee that might change minds and

influence the likes of David Hanson to deal with the matter in a different way.

2849. **The Chairman (Mr Molloy):** That would seem to be a debate for Belfast City Council. This Committee has a different role. There is no consensus on the issues. If there are no further proposals, we can move on.

2850. **Mr Kennedy:** Chairman, I had one proposal at the end of the discussion.

2851. **The Chairman (Mr Molloy):** Will that come under the next subject of residual justice issues?

2852. **Mr Kennedy:** Yes.

2853. **Mr A Maginness:** The SDLP is in favour of Danny's proposal on the practice of exiling.

2854. **Mr Kennedy:** It was a straightforward proposal that the Committee condemns the practice of exiling and calls for it to be ceased forthwith.

2855. **The Chairman (Mr Molloy):** Are there any other comments? Have we consensus?

Members indicated assent.

2856. **The Chairman (Mr Molloy):** Do members want to raise any other justice issues at this stage?

2857. **Mr Attwood:** I want to make two points on residual justice. Alban has a couple of points to raise too. I do not know if the Committee will agree on either, but consensus may be easier to achieve on one than on the other. It would be useful to tell the British Government whether there is an agreed view.

2858. My first point is that there is confusion and, arguably, duplication of effort in the work of the district policing partnerships (DPPs) and community safety partnerships (CSPs).

Members are aware that there can be tension between the two authorities and, at times, some confusion of roles. As the British Government are intent on re-organising local government in the North, this is the right moment to examine the tension between the two partnerships and consider ways of rationalising and streamlining them. It should be done in a way that makes more sense of their roles and, in particular,

given the high profile of the policing issue, protects and enhances the authority of the DPPs.

2859. My second point may be more controversial. In previous negotiations with the British Government, the SDLP, Sinn Féin, the Irish Government and others were concerned about the Public Prosecution Service (PPS) not giving enough reasons for the collapse of trials and for prosecutions not being brought or not being pursued. I raise the issue now for this reason: in light of recent cases, when limited information was given to the people in the North on prosecutions that collapsed, might the Committee suggest to the British Government that issues surrounding the provision of information be re-examined.

2860. Sometimes the SDLP and others were voices in the wilderness when arguing with the British Government about providing information. However, I sense that because of the collapse of one recent trial, and the potential collapse of other trials involving the police, others may now share our concern. For example, Ian Paisley Snr met the Attorney General to express concern about what was happening in relation to one recent case and to discuss what further information should be placed in the public domain.

2861. Perhaps the Committee would agree to a generic motion asking the British Government to review the issues around providing reasons for failures to prosecute or for collapses in prosecutions, in order to better inform the public. The SDLP has always thought that not correcting the failure to provide sufficient information would hamstring the justice system. Recent, and I suspect upcoming, events will demonstrate that this is a potential Achilles heel for confidence in the administration of justice.

1.15 pm

2862. **Mr Cobain:** We are back to the issue of intelligence. Some of the cases that were not pursued had an intelligence background and we are back to what Sammy said — there are some issues that the Government, or our police service, are not going to divulge. We are just wasting our time. I am all for having as much transparency as possible, but it is just not possible

where people are working for the security services, because people's lives are put at risk.

2863. **Mr S Wilson:** I had not intended raising the second point, but the first point that Alex raised is an issue that the DUP also would be concerned about, regarding the efficiency of administration and the conflicts that can sometimes arise between DPPs and Community Safety Partnerships.

2864. Policing is now regarded as more holistic; it is not just about looking at the policing aspect of a problem but also at what other agencies might do. For example, closing down a rat-run might have been a policing issue in the past, but now, another agency could deal with it.

2865. The artificial distinction made between DPPs and Community Safety Partnerships — and I suspect the reason was political — really does not work. If money is available for safety issues, which can improve policing, make policing easier or help the police achieve targets or objectives set locally by DPPs, then we really have to get to a situation where we amalgamate the two bodies. The DUP would be very supportive of any proposal to reconsider the DPPs and Community Safety Partnerships with a view to merging them.

2866. I would like more time to think about the PPS and reasons that cases collapse. I do not know if we are going to get anywhere on the matter because even the Northern Ireland Affairs Committee in the House of Commons could not get an answer — the Attorney General simply refused point blank to give reasons. The Assembly is unlikely to get reasons either.

2867. I share Alex's concerns on the point. It does lead to a loss of confidence in the whole justice system when a case collapses, or is not proceeded with, and no indication is given as to the reason. If it is due to national security then you are never going to hear anything other than that it is a "security issue", and that would be the end of it. I cannot see any reason that there could not be transparency in cases that do not impinge on national security. National security is only one of the reasons that cases collapse. If a case collapses because of police incompetence then people should know about it. If we are

going to come back to this, I would prefer to have a chat with some of my party colleagues before voting on a particular proposal, because it might well be that we can reach consensus.

2868. **Mr Raymond McCartney:** Sinn Féin has no trouble supporting the second proposal. However, the Committee wants to return to it. My party wants to explore the first proposal further. Perhaps Alex would explain why he believes that the two proposals should be amalgamated.

2869. **Mr Neeson:** I want to give the first proposal further consideration. However, there are issues with regard to the rule of law that I want to explore.

2870. **Mr Attwood:** I shall leave the proposals on the table pending the parties' consideration of them.

2871. **The Chairman (Mr Molloy):** Shall we proceed to discussion on justice issues?

2872. **Mr A Maginness:** I referred to the work that has been done on conferencing by the Youth Justice Agency. It would be worthwhile if the Committee were to note the work and progress that it has made in that regard. The Committee must support and commend that work because it is an important development. Indeed, so is the work that the PBNI has done with offenders and ex-offenders.

2873. **The Chairman (Mr Molloy):** Do you want to make a proposal?

2874. **Mr A Maginness:** I just want the Committee to note the work that has been done and the progress that has been made.

2875. **The Chairman (Mr Molloy):** Is the Committee agreed?

Members indicated assent.

2876. **The Chairman (Mr Molloy):** The Committee will return to the proposals on community safety and district policing partnerships.

2877. Sean, did you want to raise an issue?

2878. **Mr Neeson:** There is ambiguity about what is required from Ministers in the Pledge of Office as regards the rule of law. The pledge requires commitment to the rule of law. My

party believes that the wording should be stronger; instead of asking Ministers simply to commit to the rule of law, the Pledge of Office should be amended to contain a commitment to “uphold” the rule of law. There is a big difference.

2879. The Alliance Party is also concerned about what the Government mean when they talk about signing up to policing. My party believes that in order to sign up to policing, people must accept the Police Service of Northern Ireland as a regular, consistent organisation. Support for it should be based locally and centrally.

2880. It is important that parties recognise the Police Service of Northern Ireland as the sole and exclusive legitimate policing agency in Northern Ireland. It is important that, when Ministers take office, they sign up to our proposal that they must uphold the rule of law in Northern Ireland. Parties who take their seats in Government should also be prepared to become members, not only of the Policing Board, but also of district policing partnerships, and take up their quotas therein.

2881. The Alliance Party considers those to be important benchmarks that are necessary for a return to Government.

2882. **The Chairman (Mr Molloy):** That item was under “Any other business”.

2883. **Mr S Wilson:** Would Sean go beyond that definition? Upholding the rule of law, as he has described it, seems to mean simply supporting the institutions, district policing partnerships, the Policing Board, and so on. I believe that it must go much further than that. Public representatives must encourage people to join, give evidence to, and report crimes to, the police. They should be obliged to do more than just support institutions. They should, on a day-to-day basis, show that they recognise the police as a legitimate authority.

2884. **Mr Neeson:** I do not disagree. Implicit in what I said is that if people are prepared to become members of the Policing Board and district policing partnerships, they are, by example, encouraging people to support the institutions.

2885. **The Chairman (Mr Molloy):** The issue was discussed at the meeting on 14 August 2006. However, it did not gain consensus. Can a proposal be made today with regard to the issue?

2886. **Mr Neeson:** The Alliance Party believes that those are the benchmarks for parties taking part in the Government.

2887. **Mr S Wilson:** Rather than leave it hanging, could we have a formal proposal that the Committee believes that for parties to be included in Government it is essential that they support the institutions of the police and give public encouragement to citizens to support the police and accept their authority.

2888. **Mr Neeson:** The essential thing is that the word “commitment” is very loose. That is why we use the phrase “commitment to upholding the rule of law.”

2889. **The Chairman (Mr Molloy):** I have a funny feeling that the wording is not going to be the issue. I doubt if we are going to get consensus on this. We should just put it to the floor at an early stage rather than going round the houses.

2890. Do we have consensus on that particular proposal?

Members indicated dissent.

2891. **Mr Kennedy:** What a remarkable prophet you have become, Chairman. [*Laughter.*]

2892. **Mr Wilson:** There was a momentary silence there. I thought, “We’ve got them.” [*Laughter.*]

2893. **The Chairman (Mr Molloy):** I did not think it had moved that quickly.

2894. OK. That brings us to the end of that particular issue. Do members want to continue with what is next week’s business with regard to criminality, decommissioning and paramilitarism?

2895. **Mr Kennedy:** Can we do that next week? We can save ourselves for that.

2896. **The Chairman (Mr Molloy):** Do members have any other business? No? Next week’s issues for discussion are criminality, decommissioning and paramilitarism.

Adjourned at 1.27 pm.

Wednesday 30 August 2006

Members:

The Chairman, Mr Francie Molloy
Mr Alex Attwood
Mr Fred Cobain
Mr David Ford
Mrs Dolores Kelly
Mr Danny Kennedy
Mr Raymond McCartney
Mr Alan McFarland
Mr Alban Maginness
Mr Alex Maskey
Mr Ian Paisley Jnr
Mr Peter Weir
Mr Sammy Wilson

Witness:

Mr Tim Moore (Senior Research Officer,
Northern Ireland Assembly)

The Committee met at 10.07 am.

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

2897. **The Chairman (Mr Molloy):** Please switch off your mobile phones. Do any new members of the Committee have interests to declare on law-and-order issues? Are any members of the Policing Board present?

2898. **Mrs D Kelly:** Alex Attwood is a member of the Policing Board.

2899. **Mr Kennedy:** I am still on the Policing Board.

2900. **Mr McFarland:** Mr Cobain is also a Policing Board member. He will be here shortly to replace Mr McNarry.

2901. **Mr Ford:** I am still on Antrim District Policing Partnership (DPP) — or, at least, I was last night.

2902. **The Chairman (Mr Molloy):** Are any members deputising for others?

2903. **Mr Raymond McCartney:** I am standing in for Martin McGuinness.

2904. **Mrs D Kelly:** Alban Maginness will join us shortly — he is replacing Mark Durkan. Alex Attwood is replacing Alasdair McDonnell.

2905. **Mr Ford:** Naomi Long is not feeling well this morning, but she may join us later.

2906. **The Committee Clerk:** Ian Paisley Jnr is himself. Sammy Wilson is replacing William McCrea, and Peter Weir is replacing Maurice Morrow.

2907. **Mr Weir:** Shall we swap at half-time?

2908. **Mr S Wilson:** You sing better.

2909. **The Chairman (Mr Molloy):** The first item on the agenda is the minutes of the meeting of 23 August 2006. Are members agreed that those accurately reflect the events of that meeting?

Members indicated assent.

2910. **The Chairman (Mr Molloy):** The next item on the agenda is matters arising. Members may wish to take a minute or two to read a letter written on behalf of the Committee to the Secretary of State. The NIO reply to that letter has been circulated, and members may also wish to read it.

2911. **Mr Paisley Jnr:** Is the reply the letter that I am holding up?

2912. **The Chairman (Mr Molloy):** Yes. Are there any comments at this stage?

2913. **Mr Paisley Jnr:** Is that only half the reply? He has answered only half the letter.

2914. **Mr Kennedy:** He did not exactly go overboard, did he?

2915. **Mr Paisley Jnr:** When is he coming?

2916. **The Chairman (Mr Molloy):** He is on holiday.

2917. There is not an awful lot that we can say about it.

2918. **Mr Paisley Jnr:** Should we reply, asking him to refer to the questions that he has not actually answered in the letter?

2919. **Mr Ford:** May I ask Ian Paisley Jnr to explain which questions have not been answered? It seems to me that pretty well nothing that was asked has been answered.

2920. **Mr Paisley Jnr:** You can be pedantic about it if you want.

2921. **Mr Attwood:** There are two matters to consider. The NIO confirms, in the second paragraph of that letter, that it is not in a position to share the developmental work:

“on accountability for policing matters that bear on national security.”

2922. The paragraph concludes by saying that when that work is completed:

“it will of course be shared with the policing oversight bodies.”

2923. I trust that the British Government are not changing the rules; in a previous letter, Clare Salters indicated that there was consideration of what should or should not be shared with the Assembly and Assembly Committees or a Minister. By changing the language and referring to the policing oversight bodies, I trust that they are not saying that they will not share information with the Assembly or the relevant Committee or Minister. It is ambiguous, but I am putting down a marker in case the British Government, in this letter, are pulling back from the position that they held in that letter from Clare Salters.

2924. Secondly, they have reiterated their position on the post-normalisation powers that are necessary for the armed forces. They say that they cannot give an indicative list but that those powers will include matters such as public order and explosives ordnance. We should pursue that; are they saying that they are concerned only with matters of public order and explosives ordnance, or will other areas be included? Surely they can tell us what those other areas might be.

2925. I propose that we ask them to share with us the additional matters that they are

considering. If those include matters other than public order and explosives ordnance, they should at least be in a position to share that with us, even if they cannot produce an exhaustive indicative list.

2926. I say all that in the context of repeating for those who did not have ears to listen to what I said at last week’s meeting: the SDLP believes there should be no role for the British Army in the North. That is in the Hansard record for last week’s meeting, and I am repeating it now because one or two people around this table did not hear it.

2927. **Mr Paisley Jnr:** We are not putting that in the letter, are we?

2928. **Mr Attwood:** No.

2929. **Mr Paisley Jnr:** Is that your personal view, or your party’s view?

2930. **Mr Attwood:** It is my party’s view.

2931. **The Chairman (Mr Molloy):** OK. The proposal is that we write back looking for clarification on those points.

10.15 am

2932. **Mr S Wilson:** I am at a loss to understand why Mr Attwood is still perturbed. The letter makes it clear. The powers are not all outlined, but they will relate to only two things: the role of the armed forces in public order and explosive ordnance disposal situations. The exact detail of that public order role may yet have to be specified and will be detailed at a later date. I do not read from that letter that there will be additional roles.

2933. I do not know why Mr Attwood is getting so exercised. I do not mind that the Army, which is the Army of the country, has been given the job of backing up the civil authorities in Northern Ireland. I have no hang-up about that. If Mr Attwood has a problem with it, he or his party should address it. My concern is that a letter such as that which he asks for implies that the whole Committee is concerned about that. My party is not concerned.

2934. **Mr A Maginness:** The letter states that:

“powers will relate specifically to the ongoing armed forces role such as in public order and explosive ordinance disposal situations.”

2935. That is not an exhaustive list. The letter implies that other powers might be considered, and we are concerned about those. It would be much more definitive if the letter said that the powers would relate only to the two things mentioned. However, because it is not definitive, there may be other things. We want to query that.

2936. **Mr McFarland:** I bored the Committee to death two weeks ago about the UK system of military aid. Military Aid to the Civil Power (MACP) and Military Aid to the Civil Community (MACC) are the provisions for such aid, and their application throughout the United Kingdom is available for researchers to study. Those provisions are the normal standard. However, the context in which they are applied is a peaceful society in which the Army is used to back up the police in certain instances. We have an ongoing public order problem here. The chances are that the troops who are normally in garrisons here are now in Afghanistan and Iraq, and there is no point in turning their families out to deal with a riot. We are considering what would apply in a normalised society here, the rules for which are laid out in England, Scotland and Wales. A bit of research should dig them up. I presume that we are talking about being the same as the rest of the UK.

2937. **The Committee Clerk:** There is a proposal to write to the Secretary of State, saying that even if he has not compiled an exhaustive list of powers, he could give us a list of what is being considered at present.

2938. **Mr Paisley Jnr:** It was proposed earlier that we write to the Secretary of State to ask him to answer those questions that he did not answer. The first, and obviously the most important question, was raised in the letter of 23 August and asked him to be definitive about when he is coming and whether he would meet our September timetable. That was the issue that most exercised the Committee. Members can put to the Secretary of State — if he comes

— the other issues that have been identified. From what I can see those include four matters: national security; his speech at Glenties on 16 July; the powers of the Army; and the Regulation of Investigatory Powers Act 2000 (RIPA).

2939. **The Chairman (Mr Molloy):** We have two proposals, both seeking information. Alex Attwood asked for clarification on the sharing of information with the policing oversight bodies and whether that information would also be available to the Assembly.

2940. Do members agree with those proposals?

Members indicated assent.

2941. **The Chairman (Mr Molloy):** The next item on the agenda is the consideration of firearms and explosives. The Scottish experience with this matter has been considered, and a letter is being circulated to members. Tim Moore will take the Committee through the paper and the options that are available.

2942. **Mr Tim Moore (Senior Research Officer, Northern Ireland Assembly):** The original NIO discussion document on policing and justice suggested that the Assembly might want to follow the Scottish model for the devolution of firearms. That was characterised in the discussion document as one in which there was no devolution of prohibited weapons. The general control of other weapons would be a devolved matter. The NIO letter now confirms that that is not so.

2943. In Scotland, firearms policy and legislation is a reserved matter, just as it is an excepted matter here. However, certain functions of the Secretary of State have been devolved, and one of those includes the ability to grant a certificate to hold a prohibited weapon. That is the position in Scotland, which has now been clarified by the NIO paper.

2944. The Scottish model is set out at 14.4 of Annex A of the NIO letter. Policy and legislation on firearms remain reserved; however, some of the Secretary of State’s Executive functions could be devolved.

2945. Paragraph 14.5 comes up with an alternative model. The control of what might be

called routine firearms could be devolved to the local Assembly. However, Westminster would retain control of prohibited weapons. A Minister for Justice in Northern Ireland would not be in a position to grant the authority to hold a prohibited weapon.

2946. A third option would be to accept part of the Scottish model, which would say that a Minister for Justice would be able to grant authority to hold prohibited weapons and there would be devolution of policy and legislation for what might be called routine firearms.

2947. Those are the three broad options that emerge from the paper. I am happy to try to answer any questions that members may have.

2948. **Mr Paisley Jnr:** I see that the licensing of firearms rests with the Chief Constable and authorisation rests with Ministers. Have there been instances of a divergence of opinion between authorisation and licensing, and if so, who has the final say?

2949. **Mr T Moore:** I am researcher and not a legal adviser, but my understanding is that once the Secretary of State grants his authority to hold a prohibited weapon, the Chief Constable cannot go against that.

2950. **Mr Attwood:** You said that there are three options, and you hinted that there could be four or more. A fourth option would be what Clare Salters suggests, or hints at, in the second last paragraph of her letter. Everything could be devolved, but for the time being the Secretary of State's role in respect of prohibited weapons would continue.

2951. The fifth option would be that everything is devolved and the Secretary of State retains no power whatsoever in relation to any weapon.

2952. Those are the fourth and fifth options, and the SDLP favours the fifth. However, if the consensus of the Committee were to take Clare Salters's hint that everything would be devolved, but that, for the time being, the Secretary of State would have a residual role in respect of prohibited weapons, that would be the SDLP's favoured outcome.

2953. **Mr McFarland:** Is Mr Attwood talking about option two, which would hold back prohibited weapons back for the moment?

2954. **Mr Attwood:** The SDLP agrees in principle that everything would be devolved, except that, for the time being, the Secretary of State's current role in relation to prohibited weapons would continue.

2955. **Mr McFarland:** Does that refer to option two, with the last element of the function being devolved eventually?

2956. **Mr Attwood:** Is that option two? That alternative goes further than option two.

2957. **Mr T Moore:** The fifth option would be that everything is devolved; nothing is reserved to Westminster. The fourth option, which I think we are talking about at the moment, is that everything would be devolved but that there would be a time lapse before that would happen.

2958. **Mr McFarland:** As I understand it, Alex Attwood is proposing option two, which is that the Secretary of State would hold on to prohibited weapons authorisation, except that it would be modified and the Secretary of State would hold on to prohibited weapons only for the moment. Is it option two, with the last sentence reading "for the moment"?

2959. **Mr T Moore:** The slight difference is that there is a list of prohibited weapons and the Secretary of State can authorise or not whether people can own those weapons. The option that the member suggests is that taking things in and out of that list would also be devolved; that would be the full devolution of firearms. It could be looked at in another way: the list could be determined by Westminster, but the local Minister would determine who could hold the item on the list. That is the distinction between options three and four.

2960. **Mr McFarland:** One of my worries is that hysteria over particular events in England and Scotland has led to the development of a set of illogical firearms regulations. It would be unfortunate if somebody in England ran amok with a shotgun and killed children, and Westminster decided that shotguns were such

dangerous weapons that no one should have one. Farmers from both communities here use a substantial number of shotguns. It would be sensible to have some degree of control over what was on a prohibited list.

2961. **Mr Raymond McCartney:** We will argue that everything should be transferred and dealt with locally.

2962. **The Chairman (Mr Molloy):** Is that option five, which Mr Attwood was talking about?

2963. **Mr Raymond McCartney:** I think it was option four.

2964. **Mr Attwood:** That was option five. However, for the sake of consent and in light of what Mr McFarland said, we can take that as option four. The old Northern Ireland Parliament had powers over everything, so, if you like, we are going back to the future. If we were to get back to that point, I think that the unionist parties would warmly embrace it.

2965. **Mr Paisley Jnr:** Alex, that nearly sounds convincing. You nearly had us there.

2966. **The Chairman (Mr Molloy):** As was pointed out, option 3 with the words “with the exception of prohibited weapons” removed would cover the same issue. Mr Attwood’s point was that it would give power away.

2967. **Mr Attwood:** That was a very helpful intervention.

2968. **Mr Paisley Jnr:** May I make a suggestion? All five options have implications. Could we take them away and come back to the next meeting with a considered view on which option we prefer?

2969. **Mr Weir:** It might also be helpful if the proposals for options four and five were circulated. Rather than trying to explain them, it is always useful to have them in black and white.

2970. **Mr Chairman (Mr Molloy):** OK. Mr Attwood might like to put that together. Are there any other proposals?

2971. The next agenda item deals with the residual justice issues. Several proposals were discussed last week but were not actually put.

2972. **Mr Attwood:** We should just leave them lying on the table. My actual proposal is somewhat different, so I propose to give a more accurate wording to the Committee Clerk so that she can circulate it.

2973. **The Chairman (Mr Molloy):** We are just trying to clear the car park for the benefit of producing the report.

2974. The main issue is the rule of law. How does the Committee want to consider those issues? Should we take them all together or overlapping each other, or should we treat them as three separate matters?

2975. **Mr S Wilson:** There is a degree of overlap anyway. One will impinge on the other, so it might be best to take them all in the round.

2976. **The Chairman (Mr Molloy):** Are members content?

Members indicated assent.

2977. **Mr Ford:** I may be taking these items in a different order from how they are listed on the agenda, but if they are overlapping they can overlap.

2978. The Alliance Party is largely satisfied that IRA decommissioning was completed under the supervision of the Independent International Commission on Decommissioning (IICD). We remain extremely concerned about the lack of significant and meaningful progress on UVF or UDA decommissioning. We are particularly concerned about the UVF’s recent statement that it will retain its weapons until the outcome of the November deadline is known. That is a very sinister threat.

2979. We have a number of concerns about paramilitarism in general. Initially, the ceasefires, as allowed by the two Governments, were defined in extremely limited terms. Effectively, they applied only to attacks on the state, economic targets and the so-called “other side”. It appeared that certain paramilitary groups were able to continue their activities as long as they directed them only against those perceived to be from their own section of the community. Consequently, a large number of drug-dealers, suspected drug-dealers and

informers were assaulted and murdered, as well as those who were assaulted as part of internal feuds.

2980. The concept of an imperfect peace moving forward was perhaps a bit of constructive ambiguity at the time of the Good Friday Agreement and was accepted as such by a number of people. However, that clearly cannot continue to be the case. Since that time, the IRA has been involved in weapon smuggling in Florida, with the Revolutionary Armed Forces of Colombia (FARC), in the Stormontgate spy ring, with the Northern Bank robbery and in the cover-up of the murder of Robert McCartney. Meanwhile, loyalists have been involved in a great deal of ongoing activity.

2981. The failure of the authorities to address adequately that continued paramilitary activity and involvement in organised crime has contributed to a perception in the community that there is a moral vacuum at the heart of the implementation of the agreement. The activities in which organisations have been engaged have been downplayed for reasons of political expediency. There is a clear need to address that for once and for all if devolution is to be restored on a stable basis.

2982. However, the Governments have made some positive responses to that ongoing problem. Paragraph 13 of the 'Joint Declaration by the British and Irish Governments' of April 2003 contained a rather broader and clearer definition of paramilitary activity, including not just military attack and sectarian incidents, but targeting, intelligence-gathering, so-called punishment attacks, riots and the threat of exiling.

2983. The establishment of the IMC has been a significant step forward in monitoring paramilitary activity and has given considerable confidence to the community in a way that has allowed for the possibility of political progress being made now.

2984. We recognise that the statement that the IRA issued last year, in response to significant pressure and calls for a commitment to democracy and non-violence, was a step

forward from its initial statement, which used fairly ambiguous and conditional language and which, in a sense, reserved its right to determine what was a threat to the peace process.

2985. However, it is not acceptable for the IRA to argue that it is not a threat to the state or to the other side while continuing to engage in a range of activities — which it perceives to be community policing — against those engaged in low-level crime within its community. Of course, such activity is not acceptable from loyalists either.

2986. I wish to extend the discussion on some of the points that Sean Neeson raised last week. Some issues must be considered in the overall package.

2987. I have already highlighted that the Governments have failed to define fully what is meant by a ceasefire. Most recently, the UVF has issued threats in the wake of the murders that it committed recently, and there are clearly major doubts about its ceasefire. The NIO has not given us a definition of a ceasefire — certainly not in its most recent letter. If the NIO cannot give us an answer, we may need to ask our own staff for information on legislation and policy areas in which the definition of a ceasefire has a practical effect on delivering the potential for devolution.

2988. The Committee has addressed, to some extent, the issue of exiles. We have certainly reached the point at which all five parties have agreed that the practice of exiling should stop, but we must get to the point at which the practice of exiling is seen to have been stopped so effectively that those who have felt the need to leave Northern Ireland, or a part of it, feel free to return home in safety. That does not yet seem to be the case.

2989. The general issue of criminality seems to require engagement by all parties at two levels: one is the issue of the practical recognition of the institutions of the state and their legitimacy to enforce the rule of law; the other is participation in those institutions. Any organisation that demonstrates that it has moved away from criminality must show its support for, and be involved in, the advancement of the

work not just of the Police Service but of the Assets Recovery Agency, the Organised Crime Task Force (OCTF) and the Serious Organised Crime Agency (SOCA).

2990. It is simply not sufficient for the leadership of paramilitary organisations, whatever its alleged motivation, to wash its hands of a problem. There is a need to build a lawful society. That will require some organisations to recognise that, in conjunction with lawful authorities, they must deal with so-called individual acts of criminality that their members have committed.

2991. Such organisations must sign up to policing in its fullest sense, support the institutions of the state and support practically the legitimate operations of the rule of law in its wider context in a way in which, at times, members of paramilitary groups have been prepared to do to some extent, albeit not consistently and meaningfully.

2992. **Mr Paisley Jnr:** I want to introduce several proposals, respond to some issues that have already been raised and comment on some that have not.

2993. Decommissioning was supposed to mean not only that weapons of war were put away and destroyed, but that that was done in such a way that it built the confidence of the community that had suffered at the hands of those who had used those weapons, namely the unionist community. Decommissioning has failed miserably to build unionist confidence. Much more must be done to convince unionists that the weapons have been put away, destroyed and, indeed, will not be put to further use.

2994. The DUP has consistently held the view that a detailed inventory of all the materiel that has been decommissioned should be published in order to enhance public confidence in the process. The eyewitnesses who allegedly saw acts of decommissioning have been struck dumb and are unable to tell us what they witnessed. It is, therefore, essential for the unionist community to see something that convinces it that those weapons have been destroyed and that builds its confidence. The only logical way in which to do that is to

publish a detailed inventory. We propose that a detailed inventory of all materiel that has been decommissioned be published urgently to enhance public confidence in the process.

2995. Unionist confidence in decommissioning has not been helped by the Independent Monitoring Commission's (IMC) confusing statements, which have, at times, indicated that some weapons have been destroyed, only for the IMC to claim all of a sudden that more weapons have emerged. The picture is now clouded because there is no definitive position on what has and has not been destroyed. The only way in which a definitive position can be reached is through our proposal that an inventory be published urgently that details what weapons have been decommissioned.

2996. I shall now talk about criminality and policing. It is clear that there is a direct association between certain political organisations and paramilitary groups, namely Sinn Féin and the IRA. As long as that association remains and as far as Unionists are concerned, members of Sinn Féin are not fit to be in the Government of Northern Ireland. My party wants to be convinced that Sinn Féin is not only moving away from that association, but that it has moved away from it.

10.45 am

2997. We are not yet convinced that Sinn Féin has crossed even the mental Rubicon, the point of no return; that it wants to remove itself and disassociate from criminal gain. We know that criminal gain in Northern Ireland for the Provisional IRA represents a £180 million criminal empire. Its members want to keep their hands on that sort of resource; they do not want to give it up. Unionists have to be convinced that nationalism and republicanism have decided to move away from criminality. The only way in which they can do that is by giving up that criminal empire.

2998. How can they demonstrate that it has been given up? My party has said that there are various measures. With respect to policing, they will lead their community and tell them that they must support the police. They will demonstrate support for the police not only

verbally and by joining policing organisations, but practically by handing criminals over and calling on the community to do so in areas where they have elected representatives. They will hand them over not to intermediate organisations but to the police. They will call on the police to come into those areas and investigate cases. They will demonstrate their support for the police in practical ways, as seen by every other section of the community.

2999. In that regard, I have a second proposal: that association with or support for those involved in criminal activity is incompatible with the holding of ministerial office. This Committee should make its views on that known.

3000. We also believe that those criminal organisations should be named and shamed. Political correctness has crept into the matter of criminality. Because it is politically embarrassing for certain organisations to be identified with crime, they are not named and shamed. We should have a deliberate policy of naming and shaming. When a case of cigarettes is stolen by the Provisionals, or when a businessman faces extortion from loyalist paramilitaries, or when a crime that can clearly be identified as having been directed by a paramilitary organisation associated with a political organisation, whether it is Sinn Féin or the UVF or the UDA, those organisations must be named and shamed.

3001. Annually the Northern Ireland Organised Crime Taskforce Report is published. In this year's report there was a very small reference to paramilitary organisations. One of the duties of the Organised Crime Taskforce, as well as to fight crime, is to

3002. highlight those activities, so naming and shaming those organisations, especially those involved in drug dealing, should take place. Our third proposal is, therefore, that those involved in drug dealing and organised crime should be named and shamed. I refer specifically to organisations that derive benefit from that. It is unbelievable that political organisations in this part of the United Kingdom can, with such a

brass neck, gain from criminal activity and little is said about it.

3003. One of the ways that people suggest we fight crime is by having a community policing service. Police officers should, of course, serve the entire community. But the best way to achieve policing is by delivering results for the entire community. One of the best ways to do that is to be seen as the bulwark against crime, as fighting crime and as reducing crime. The way to build confidence in the entire community is to allow the police to fight crime without fear or favour.

3004. The biggest contribution that we can make to community policing is to ensure that the police have political stability from all quarters in their battle against crime: that is the largest, single contribution we can make to community policing in a practical way.

3005. We have had some comments on community restorative justice, and that can be a diversion from the real issue. The IMC report shows that community restorative justice organisations are directly linked to paramilitary groups, and it states that they act as muscle in certain communities for paramilitary organisations. We should be looking at the restorative justice models we have in front of us and at the proposals that the Government have introduced. We do not want to find ourselves substituting real policing for fake policing, which is really a substitute for paramilitary organisations.

3006. The Committee should deal with those issues, and it should endorse the Police Service as the only legitimate police organisation in Northern Ireland. If the Committee cannot say that it is endorsing the Police Service as the only legitimate police service in Northern Ireland, it is failing the entire community.

3007. My final proposal is that the Committee should take the issue of support for the Police Service forward. Members say that they are here to prepare for Government, and if they are serious about that, they should demonstrate support for the police by introducing the ministerial Pledge of Office for all matters. We must support the rule of law in Northern Ireland

and urge everyone to do the same. A Minister of the Crown here must support the rule of law and urge others to do so. Arrangements should be devised to provide that a breach of the Pledge of Office be directly actionable in the courts and punishable by disqualification from office. In the light of the history of Northern Ireland, there should be a burden on Ministers to demonstrate their support for the rule of law by actively supporting the legitimate Police Service of the state and ensuring that criminals are actively sought out by their own community and punished. That is a way in which the Committee could demonstrate that it is building real and genuine confidence.

3008. I am sure that there are other issues that the Committee will come to later in the debate, and my colleagues will say something about them.

3009. **Mr Raymond McCartney:** I will take the three issues together and deal with them as one. In Sinn Féin's view, one of the main planks of the peace process over the past few years has been to take the gun out of Irish politics. This was duly recognised during the negotiations that led up to the Good Friday Agreement. Sinn Féin believed that it was achievable then and argues that it remains achievable. All parties were urged to use their influence to bring that about, and to a degree some parties have, and some parties have not. However, Sinn Féin believes that it has played a major role in achieving that. When set within its historical context, everybody must acknowledge the initiatives taken by the IRA, which culminated last year in its July 2005 statement that formally ended its armed campaign. Then in October 2005 the decommissioning of arms was carried out in a complete and verifiable way under terms agreed with the IRA and the IICD. If all other armed groups were in as advanced a position as the IRA, we would be in a much better position.

3010. Sinn Féin believes that bringing in the armed groups remains an achievable end. It goes without saying that the IRA has pointed the way forward with its July statement, how it dealt with the arms issue and how it has conducted itself since. All of the other armed

groups — indeed, all the other parties — should focus on some of the groups that are out there and do not seem to come under the same scrutiny. Many of the things that they do are almost ignored by certain parties with their fixation on IRA weapons that have now been dealt with in a complete and verifiable way.

3011. Sinn Féin is opposed to all forms of criminality. By its very definition, it attacks the quality of life of the people we represent. We will continue our efforts to ensure that criminality is tackled in a meaningful and efficient way.

3012. We must have policing and judicial institutions that are open, transparent and democratically accountable. Until that is achieved, the lack of trust and confidence in the current policing and judicial arrangements among many people in the nationalist and republican community will continue.

3013. **Mr Attwood:** I will primarily deal with criminality and touch on other matters. We have several motions to table, and it may be that with a little reworking, two motions mentioned by Ian Paisley Jnr could earn the support of the SDLP. However, there are two motions that conflict with what Ian Paisley Jnr has said, and I will return to them at the end.

3014. Dealing with criminality has also to do with policing. When the Good Friday Agreement was being designed, it was widely acknowledged that policing was going to be one of the most — if not the most — difficult matters to resolve. Its importance was highlighted by Frank Wright, a Queen's University lecturer, who said that national conflicts, once they are fully developed, revolve around law, order and justice. Therefore, to resolve the national conflict in Ireland those matters had to be dealt with. That is why five sectors of the Good Friday Agreement are concerned with law, order and justice — the release of prisoners, the criminal justice review, the Patten Commission and the setting up of the Equality Commission and the Human Rights Commission. The agreement was an effort to deal with law, order and justice, but of all those, policing was going to be the most difficult.

3015. Any objective reading of what has happened around policing in the past five years confirms that it has been the area of single greatest advance arising from the Good Friday Agreement. The record demonstrates that, even if some still choose not to acknowledge it. In five years, according to the Oversight Commissioner, over 84% of Patten has now been substantially or fully implemented. Catholic membership of the PSNI stands at over 20%; five years ago it was 8%. Intelligence standards now comply with best international practice — not the words of the SDLP, but of the Oversight Commissioner himself. The political parties and independent people have demonstrated that they can share responsibility for an acute area of public policy in the North.

3016. I could go on, but that is not the point. No one, including the SDLP, is in any doubt that challenges remain. The issue is no longer whether Patten is or is not being implemented, because it clearly and overwhelmingly is being implemented. The question is not whether parties should by now have signed up to Patten and the policing arrangements; they should have. The choice now should not be between being up for all of the agreement and its institutions or just part of them — an *à la carte* approach that has characterised more than one party at this table over the past five years.

3017. The responsibility now is for all parties to sign up to Patten and policing fully. That has several levels. It is in conflict with the Secretary of State's Glenties speech. Those levels include recommending all to join police services North and South. It means advising all to assist police services North and South in the pursuit of crime, including organised crime. It means accepting the lawful authority of the police and other agencies of the state, both North and South. It means abiding by the rule of law, and it means supporting people who participate in the policing structures, whatever those might be.

3018. We have certainly reached the point at which all five parties have agreed that the practice of exiling should stop, but we must get to the point at which the practice of exiling is

seen to have been stopped so effectively that those who have felt the need to leave Northern Ireland, or a part of it, feel free to return home in safety. That does not yet seem to be the case.

3019. The general issue of criminality seems to require engagement by all parties at two levels: one is the practical recognition of the institutions of the state and their legitimacy to enforce the rule of law; the other is participation in those institutions. Any organisation that demonstrates that it has moved away from criminality must show its support for, and be involved in, the advancement of the work not just of the Police Service but of the Assets Recovery Agency, the Organised Crime Task Force (OCTF) and the Serious Organised Crime Agency (SOCA) as well.

3020. It is simply not sufficient for the leadership of paramilitary organisations, whatever its alleged motivation, to wash its hands of a problem. There is a need to build a lawful society. That will require some organisations to recognise that, in conjunction with lawful authorities, they must deal with so-called individual acts of criminality that their members have committed.

3021. Such organisations must sign up to policing in its fullest sense, support the institutions of the state and support practically the legitimate operations of the rule of law in its wider context in a way in which, at times, members of paramilitary groups have been prepared to do to some extent, albeit not consistently and meaningfully.

11.00 am

3022. These are the important questions that should be answered positively. To do so would assist the stability of a restored Assembly and Executive, but, more critically, to do so is a requirement of national democracy. There is a risk that the approach of the British Government, articulated by the Secretary of State, of accepting less than full answers and full commitments on these issues results in outcomes short of what is necessary and justified. The SDLP wants to make it absolutely clear that any outcome short of positive answers to those questions is not the right outcome, and

in the party's view will be destabilising both politically and in policing terms.

3023. The SDLP looks forward to discussion on all of this to ensure that the danger of legitimising a political position without full participation in the policing structures and full acceptance of lawful authority and the rule of law does not arise. This approach is the one that binds people and parties into the rule of law and the end of criminality.

3024. Any other approach creates ambiguity about the rule of law and the end of criminality and doubt among some that people or parties are less than fully committed to the rule of law. Any other approach could create the sense that there is implied cover for those individuals, gangs or organisations who are still involved in crime, including organised crime, on the island of Ireland. That is why those questions are the right questions that should be asked of every party and every person in the North; of everyone around this table; and by the Secretary of State, despite what he uttered in Glenties.

3025. I want to deal with the other matters on the agenda. The first is that of the IMC. I think that most people acknowledge, despite some naysaying, that what the IRA did in terms of its weaponry and its commitments to live up to the standards of Irish democracy last summer was significant. Yes, questions can be asked about one or other detail, and as we have heard here this morning, they are being asked. However, that should not take away from the significance of what the IRA did last summer. The SDLP believes that it was a confidence-building measure.

3026. What is required of the Committee is not to re-examine the entrails of what happened last summer; rather it is to require all the other illegal groups to live up to the standards of the IMC whereby arms are put beyond use in a verifiable way. That should be the message that comes out from the Committee. The SDLP will therefore make a proposal to endorse the work of the IMC and call upon all other paramilitary groups to co-operate fully and put their arms beyond use in a verifiable way as soon and as quickly as possible.

3027. In relation to the second proposal from Ian Paisley Jnr to the effect that association with criminal gangs is incompatible with membership of an Executive, the SDLP will propose that the ministerial code should be amended to require endorsement of policing arrangements by all Ministers. I will give the wording of that shortly.

3028. As for drug-dealing and organised crime, which was also raised by the DUP, the SDLP is supportive of that proposal subject to some adjustment. We want the Committee to agree that people and organisations who are involved in drug-dealing and organised crime, subject to the due process of the law — because we cannot anticipate the decision of the courts — should be identified publicly. We do not agree with naming and shaming, but we do agree with an approach whereby the appropriate authorities, the police, the IMC, the Organised Crime Task Force, or the assets recovery agencies North and South, should identify individuals convicted of organised crime or organisations or gangs still involved in organised crime. That should be a matter of public record in the interest of public confidence.

3029. The SDLP would also be supportive of a proposal, suitably re-worded, to call upon all people to assist the police in their enquiries; to encourage people to join the police services North and South; and to encourage people to participate in the policing structures.

3030. **Mr McFarland:** The Committee has already had two substantial meetings on criminality, decommissioning and paramilitarism, and the details of those are in Hansard. I want, however, to revisit a few areas.

3031. First, the IMC's most recent report stated that the IRA is involved in ongoing criminal activity and organised crime. An interesting series of events followed its publication. Encouragingly, Gerry Adams and Martin McGuinness both appeared on national television to say that the authorities should deal with criminality. Police on both sides of the border, together with the Assets Recovery Agency (ARA) and the Criminal Assets Bureau

(CAB), carried out a substantial raid in south Armagh that resulted in people going on the run and the discovery of computers, money and various bits and pieces. Interestingly, the OCTF reported that, afterwards, there had been a drop in republican organised crime. Perhaps there is a correlation between those two events.

3032. The Secretary of State and the Minister for Justice, Equality and Law Reform in the Republic, Michael McDowell, then seemed to get carried away. They said that the republican leadership was fully committed to ending criminality and that, by and large, all organised crime had ceased. The IMC's eleventh report, which, I believe, is due for publication next week, is on normalisation. I understand that it will also contain a threat assessment. We shall see whether the views of the Secretary of State and the Minister for Justice, Equality and Law Reform are reflected in the report.

3033. It has been reported that loyalist organised crime is continuing. Loyalists maintain that they exist simply in reaction to the IRA. However, if the IRA is in the process of standing down and going away, and if it has decommissioned its weapons, why do loyalist groups exist? Many have seemingly morphed into organised-crime gangs. The leadership of the UDA and the UVF must call on their members to abandon organised crime. Those who refuse to do so must be dealt with by the ARA and the courts.

3034. The DUP and Sinn Féin will potentially set up a Government, while loyalism will remain unreconstructed, as it has been for the past 30 years. That problem must be solved.

3035. The IICD stated that the Provisional IRA had decommissioned its weapons. Significantly, William McCrea and Ian Paisley Jnr accepted that in this Committee. That is on record in Hansard. However, the 'Eighth Report of the Independent Monitoring Commission' in February 2006 stated that some weapons had been retained. One might understand that hides could have been forgotten about: people may have died and weapons could remain buried somewhere. One might also understand that some people may have held on to weapons as

trophies. The IMC report, however, referred to weapons that had been retained. That has caused confusion because the republican leadership assured people that no weapons had been retained.

3036. An article in 'The Sunday Tribune' on 23 July stated that the south Derry brigade of the Provisional IRA had broken away from the IRA leadership and had taken its weapons with it. That suggests that people had disobeyed direct orders from the Provisional IRA leadership and had held weapons back. It will be interesting to see whether the IMC reports that those weapons are no longer in the hands of the Provisional IRA, that instead the south Derry brigade possesses them, and, as the article implied, that they are intended for use in dissident activity.

3037. If loyalists are to catch the tide and to re-engage fully with the IICD, they must move their weapons off the stage and decommission them. If they exist to combat the IRA, and the IRA is gone, there is no reason for loyalists to hold weapons either.

3038. I raised the question of paramilitarism before, and I did not get a proper answer from Sinn Féin. We need to know where the IRA is going. Logically, if it has handed in its weapons and decommissioned, it is no longer an army. Armies need weapons to fight. If it does not intend to offer us violence, or does not intend to fight any longer, what possible reason does it have for existing in its military form? When the wars in which armies have fought are over, most of those armies go home to their farms or wherever, form old comrades' associations and tell war stories in a pub every last Tuesday in the month. That is the way, traditionally, in which armies have dealt with such issues. Logically, we should see the IRA forming into an old comrades' association. This is what happened in republican history in the South. Those who fought in the civil war formed old comrades' associations. If the IRA is genuine and is moving away from paramilitarism and no longer offering violence, we would expect to see it form into that sort of organisation.

3039. However we have confusions. Colleagues have mentioned confusion over the exiles,

policing and community restorative justice. We know that senior members of the republican movement have morphed themselves into a quasi-police service and are encouraging others to do the same. Mr McGrady has told the Northern Ireland Policing Board that in Downpatrick such groups wander around the estates wearing little armbands as though they were policemen. We have substantial evidence from west Belfast that they are interfering in the community restorative justice system, threatening people and so on. That is no way to operate. We ought to be moving away from the past 30 years, in which case one would expect people to stop that sort of activity and to support the police.

3040. As to the paramilitarism of loyalism, if it exists to challenge the IRA, and the IRA is no longer there, we would expect to see loyalist groups move rapidly off the stage and form old comrades' organisations.

3041. **The Chairman (Mr Molloy):** We have had a round-up of the parties' views. Is there any other comment?

3042. **Mrs D Kelly:** I seek clarity from the Alliance Party. Mr Ford's opening remarks today differed from those made by Mrs Long at earlier meetings. When we first agreed to put the rule of law on the agenda, we wanted a more than visible respect for the rule of law; it was to be attitudinal. It was not to be the *à la carte* approach that we have seen in the past from unionist parties, particularly on the policing of parades. The Alliance Party was also keen to emphasise that. Is that still its intent?

3043. **Mr Ford:** If I have not re-emphasised everything that my colleagues have emphasised over the preceding weeks, I apologise. If you wish for a three-hour opening statement from the Alliance Party every time, I am sure that we could re-emphasise everything. I disagree with nothing that Mrs Kelly has said. If I have not said it with quite the same strength as Mrs Long, it may be because my voice is not lasting too well this morning.

3044. **Mr Maskey:** We could certainly get consensus on the need not to have a three-hour opening statement.

3045. **Mr Ford:** That is constructive.

3046. **The Chairman (Mr Molloy):** We have a number of proposals.

3047. **Mr Paisley Jnr:** Let us consider them one at a time. My first proposal was that a detailed inventory of all decommissioned weapons be published. Alex Attwood indicated that he has a proposal on that. If he wants to run it in conjunction with mine, that is fine; they are not incompatible. I am looking for an inventory; he is looking for decommissioning to be completed by all organisations in fulfilment of their engagements.

3048. **The Chairman (Mr Molloy):** Unfortunately, Mr Attwood is out of the room at the moment.

3049. **Mrs D Kelly:** It is partly a matter of the definition of "verifiable". We have accepted the word of the independent observers in the past. However, Alex will return shortly.

3050. **Mr A Maginness:** We can work on wordings, anyway.

11.15 am

3051. **The Chairman (Mr Molloy):** The Clerk did not catch your fourth proposal, Ian.

3052. **The Committee Clerk:** Did you have a proposal about the rule of law, Ian? I noted your proposal that those organisations that are involved in drug dealing and organised crime should be named and shamed.

3053. **Mr Paisley Jnr:** It was more or less a statement that arrangements should be devised to prevent a breach of the ministerial code and that any breach be directly actionable in the courts and followed by disqualification from office. I also said that having associations with, and showing support for, those who are involved in criminal activity is incompatible with holding office.

3054. **The Committee Clerk:** That is two more proposals, then.

3055. **Mr Paisley Jnr:** Also, I proposed that those who are involved in drug dealing and organised crime should be named and shamed in a list that is published after their conviction.

3056. **Mr S Wilson:** We have heard this morning from all the members who are sitting around this table. Everyone is happy enough for the gun to be removed from politics and to get rid of criminality, but the real issue, which is how we achieve that, is being ignored.

3057. Sinn Féin members seem to be masters in that respect. Last week, for example, it was agreed that community restorative justice schemes were to be operated to the highest possible standards. Yet when a proposal was put that there should be accountability, training, monitoring and that those who are involved in the schemes should have clean records and so forth, it was rejected.

3058. Today, we heard that criminality “attacks the quality of life” of communities and therefore should be completely done away with. How can you claim that your aim is to do away with criminality if you will not support anyone who is dealing with that criminality? Sinn Féin will not ask people to join the police or to give assistance or information. When the police raid the houses of those who are engaged in criminality, Sinn Féin defends them and says that they are supporters of the peace process and innocent farmers trying to make a living from their day’s work but that the big, bad police are attacking them.

3059. How on earth can you deal with criminality and say that it is an attack on people’s quality of life if you are not prepared to support anybody to whom the state has assigned the authority to deal with criminals? I could mention the court system, as well as the police, in that context. How can there be an improvement in quality of life in the neighbourhoods in which criminal gangs operate if the police are not being supported? What is the answer?

3060. **Mr Raymond McCartney:** Sinn Féin’s position is that there is a lack of trust and confidence in the current policing arrangements. Until new arrangements come into place, we will not support the police.

3061. The Committee has already condemned the policy of exiling, and everyone can use this opportunity to grandstand — but what is the

definition of an exile? Is an exile someone who is told to leave their house and not return to it? In Belfast a couple of weeks ago there was a spectacle when a number of UDA members were told to leave their houses and go to England. The PSNI lined the streets to make that happen. The police actually stopped the people who were being exiled, searched them and told them to go on their merry way. In a proper society, they would have been told to go back into their homes and the police would not have allowed anybody to exile them.

3062. **Mr Paisley Jnr:** Sammy Wilson posed a number of questions that have not been answered. If the gun is out of politics, there is no shame in the great Óglaigh na hÉireann handing over an inventory of what was destroyed and having it published. I can understand why people are ashamed of their actions, but if the publication of an inventory allows for confidence to be built within the unionist community, why is there not an urgent requirement for Sinn Féin to do it?

3063. We were told today that decommissioning was spectacular. If it was so spectacular, an inventory should be published that will silence the critics and show people what was destroyed. I do not believe that it was that spectacular. There have been gaps, and those gaps are more likely to be chasms. The best way to prove that that is not the case is by supporting the proposal that there should be an urgent publication of a detailed inventory of the weapons that were supposed to have been destroyed.

3064. We hear the rhetoric that republicans cannot support the police because they are not open and transparent. This is not a matter for us: the onus is on republicans to demonstrate where the police and the justice system are not open and transparent. The fact is that the Police Service and the justice process here are the most transparent services in western Europe. Ombudsmen and all sorts of international organisations are examining them through microscopes.

3065. Sinn Féin should say how the Police Service is not open and transparent. It is open and transparent, and just saying that it is not is

not an argument for non-support. The issue here is that, once again, Sinn Féin has proved that it has not crossed the mental line, the Rubicon, the point of no return, because it does not have any desire to support law and order. It is up to Sinn Féin to demonstrate how it will support the only legitimate law and order mechanisms that presently exist.

3066. **Mr McFarland:** I understand that Sinn Féin and the republican movement have been conducting a detailed analysis of policing and where they will go with it. There was talk of their holding an Ard-Fheis shortly to have a detailed discussion on the subject. In November 2004 the DUP and Sinn Féin had a detailed plan as to who was going to do what and when, although I know that people have since said that they did not sign up to anything. By the following February they were going to have discussions of modalities, which we have heard round this table, and the policing issue was going to progress.

3067. For that to have potentially happened — and I know that it did not happen and was torpedoed for whatever reason — there would have been some thought within republicanism as to how it was going to deal with policing, otherwise it would not have got to the stage of a comprehensive agreement. If Sinn Féin has re-launched a discussion on policing, it would be useful to know what stage that has reached.

3068. The DUP has said that it will not go into Government with Sinn Féin until the policing issue is decided and signed up to. That is clearly a blockage to Government. This Committee is designed to identify and, perhaps, deal with blockages. Until we get to the stage where Sinn Féin accepts policing and encourages young republicans to join, we will not get anywhere, no matter how long we spend in this room or how many talks there are in the autumn.

3069. I wonder whether Sinn Féin can give us some indication of how far it has gone down the road of consultation. We have the most examined police service in the world. Hugh Orde spends all his time complaining to the Policing Board about the multitude of agencies that he has to answer to. It is not as though this

Police Service is not monitored or examined every day of the week. What is it going to take now? Sinn Féin is not going to get what it keeps demanding, which is that every member of the PSNI who was in the RUC should be drummed out. Given the amount of safeguards that exist, what now prevents Sinn Féin from signing up to policing?

3070. **Mr Maskey:** I will respond, but I will take a slightly different focus. I remind members that this meeting is not about Sinn Féin; it is about the rule of law. Several issues, many of which have been covered, can be discussed under that heading, and I do not intend to repeat what Raymond McCartney said this morning, or what I and other colleagues have said in recent weeks or years.

3071. Let us widen the debate. There have been reports that the UVF has been threatening people in the past week. The deputy leader of Mr McFarland's party is here, and his and Mr McFarland's party has absorbed a member of the PUP into its party grouping, for, as he says, reasons of political advantage. Sometimes the party says that that was done to influence paramilitary decommissioning. Perhaps, in his lofty commentary on and questioning of my party, Mr McFarland will address how far he has got with tackling UVF paramilitarism, which has hit our streets again in the past weeks and days.

3072. When we hear Ian Paisley Jnr talking about drug dealers, the rule of law and support for the police, we have only to look at Ballymena, which for many years has been the Paisley bailiwick. It seems a contradiction that the most rabid pro-policing and pro-law-and-order commentary, which goes back for decades, comes from the drugs capital of the North of Ireland. The amount of hard drugs that has long been available on its streets means that it can compete with other parts of the country as a whole in that respect.

3073. Those are questions — paramilitarism, criminality, the use of arms and the failure and refusal to decommission — over which the unionist parties can have at least some influence. All of the focus is on my party's

activities. However, we can argue that our influence has been positive and will continue to be so. Why not apply some of your lofty sentiments towards some of your own spheres of influence? You have not done that in any credible fashion here. Let us widen the discussion to see what the unionist parties are doing, as opposed to simply questioning my party.

3074. **Mr McFarland:** I was simply looking for factual guidance for the community — I was simply saying, “Where have we got to with this?” I am happy enough to get into a discussion about loyalism. We do not have an armed wing. We have decided, rightly or wrongly, to make some effort to encourage loyalism to go down the road of decommissioning and move off the stage. That is a laudable thing to try to do. Sinn Féin is a different organisation.

3075. **Mr Maskey:** Will you give us an indication of how far you are getting with that? Last week your party had to call on the UVF to withdraw —

3076. **Mr McFarland:** We will see fairly shortly how far we have got.

3077. The point that I am making is that Sinn Féin is unlike any other political party here. I know that it has gone on for years about how it is unconnected to the IRA.

3078. However, it is a fact that Sinn Féin and the IRA are directly connected and, for many years, the leaders of each were the same people. The influence that the Sinn Féin leadership has on the republican movement is substantial.

11.30 am

3079. My question did not concern that; it was about how far the debate has gone in the republican movement with regard to supporting the police. The DUP has said that without that firm commitment it will not play at all; therefore, if that commitment is close, we have some reason for going on with this. If we are far from that point, the Committee needs to know that it is wasting its time. If, on the other hand, we are close — and there has been plenty of discussion — the DUP might be encouraged to make more effort in the Committee to get things working.

3080. The direction in which loyalism is going is key and must be dealt with. However, we do not have an armed wing; we simply encourage people to follow a road that seems to make sense, if we are to have Government here and get away from all this.

3081. I am worried that, instead of trying to answer the question or, in good faith, making a few pleasant noises about it, the person who asked the question is immediately attacked. All I asked was, “Where have you got to with this?”

3082. **Mr Paisley Jnr:** I shall come back on a couple of things. It is easy to make slurs against a place by saying that it is a drugs capital. However, it is only a slur: there is no evidence. A recent Queen’s University report into drug abuse shows that the use of heroin is greatest in two areas of Northern Ireland, neither of which is Ballymena. I will not name the places, but one member who spoke should know it quite well. Ballymena does not have the highest incidence of the use of heroin by injection. That is a finding of the most up-to-date report.

3083. However, that is not the issue. The issue is that drugs are a plague on this society, yet we hear no condemnation from the republican community of those who peddle drugs, because it is their people who peddle them. That is a fact.

3084. Recently, the police arrested five drug dealers in Ballymena.

3085. **Mr Raymond McCartney:** That was this year.

3086. **Mr Paisley Jnr:** The ordinary unionist community, who put up the evidence and allowed cameras to be installed in places where those people could be filmed and subsequently captured, supported those arrests.

3087. What we hear from Sinn Féin is not a considered help in the fight against drugs, but words designed to hinder that fight. One must ask why, and the answer is glaringly obvious: Sinn Féin benefits from drug money. Yet its members come here, piously wanting to be in the Government of Northern Ireland. That is hypocrisy gone mad.

3088. Again, questions were asked of Sinn Féin. It has been alleged that the Police Service of Northern Ireland and the justice system are neither open nor transparent. When asked to explain how policing and justice could be more open and transparent, there were no answers, only slurs against some towns in Northern Ireland, mainly Ballymena.

3089. Is Sinn Féin's problem that there are too many Protestants in the police? Is it a problem that it is a UK police service? Is the problem that it hates law and order and wants to control certain parts of Northern Ireland, because, as I said earlier, it makes £180 million from crime here? The Northern Ireland Affairs Committee recently received evidence of payments that builders were making to IRA/Sinn Féin. One of them has had to pay a six-figure sum this year, and that has gone into the coffers of IRA and, ultimately, to Sinn Féin. Does Sinn Féin need that money to run its supply centres, develop its criminal empire and build its political empire?

3090. Sinn Féin does not want to answer these charges, because Sinn Féin is as guilty as hell. It is scared to answer them and turn the situation around, because it benefits from all that crime. Until it moves away from criminality, until it crosses the point of no return, there is not a pup's chance of its ever getting within breathing distance of Government in Northern Ireland. The sooner it faces that reality and makes the necessary hard choices, the better.

3091. **Mr Raymond McCartney:** That is rhetoric and more rhetoric. People are here for a sensible discussion, but what we heard in the past few minutes was far from that. People know Sinn Féin's position; we have been discussing it for many years. This Committee has talked about it recently, and, if I may say so, very constructively: transfer, timescale and agreement models. It has been a frank and open discussion, free from the kind of rhetoric that we have heard this morning.

3092. We could make allegations about this or that, but where is the evidence? Where are the facts? They are not there. People hide behind IMC reports, intelligence, 'The Sunday Tribune' and so forth. We can all produce newspapers;

we can all talk about Ulster resistance, Billy Wright and the Rev William McCrea. We can go round the houses all day long, but we will get no closer to resolving the big issues.

3093. Mr McFarland asked about the stage that republicans have got to with policing. There was an open and frank discussion about that in the republican community. Sinn Féin laid its terms before the people, and those are endorsed, with increasing strength, at every election. If people want to deal with policing it is there for discussion: it concerns transfer, timescale and agreement models.

3094. As Alex Maskey said, we can all grandstand, play to Hansard and run out of here to give sound bites, but we are getting no closer to a solution. It is disingenuous of Mr McFarland to come here this morning and pretend that we have not addressed some of those issues in the past few weeks. Perhaps he is trying to outdo Mr Paisley Jnr. That is fair enough.

3095. **Mr Attwood:** I will revisit one or two issues before I comment on the more recent exchanges.

3096. The SDLP will not support the DUP's proposal for the publication of an inventory on what the IRA did or did not decommission last year. Whether we like it or not, there is an accepted basis for working with the IMC. The IRA and the IMC reached understandings. Whatever doubts may linger, that is the situation.

3097. However, the DUP is proposing a moveable feast. If it gets an inventory, it will be dissected; if it gets the photographs, they will not be enough; if there were 10 witnesses — some of its choosing — that might still not be enough. The danger of the DUP's proposal is that, for political reasons, it tries to change the parameters within which the IMC works. That damages the IMC's integrity in the overall political process. The SDLP will certainly not go down that road. The DUP should support a proposal that calls on all groupings that continue to hold weapons, republican and loyalist, to put those weapons verifiably beyond use and to work with the IMC to build confidence in that process.

3098. **Mr Paisley Jnr:** Mr Attwood, I have no problem with that part of the proposal. However, the IICD has a mechanism for publication, and the early and urgent publication of an interim report would be of mighty assistance in helping to build confidence. That would assist not only unionists but everyone who is concerned about this. Clearly, we are all concerned about it.

3099. We have been told that the decommissioning was spectacular. Therefore, a published inventory of such a spectacular act would silence critics. Surely we can come to some sort of agreement so that the proposal can incorporate Mr Attwood's remarks and also ask for the urgent publication of an inventory that can inspire confidence? Does the member not see merit in that?

3100. **Mr Attwood:** I was not asked to give way, Mr Chairman. Had I been, I would have given way. If you are to chair the Committee appropriately, I believe that it is your duty to ask a member whether he wants to give way.

3101. **The Chairman (Mr Molloy):** I try to create dialogue and discussion.

3102. **Mr Weir:** Will the member give way?

3103. **Mr Attwood:** Mr Paisley Jnr's point brings me to my last comment. The DUP does not trust the IRA on what it may or may not have decommissioned last year. It needs more reassurance. Sinn Féin must recognise that that is paralleled by unionist doubts about republican intentions: when a way forward is established, Sinn Féin and the republican movement keep changing the rules in a way that fuels mistrust. Just as the IRA, the republican movement, Sinn Féin and even the SDLP and the wider nationalist community mistrust the DUP because it keeps moving the goalposts on decommissioning, similarly, unionists and elements of nationalism mistrust the republican movement because it keeps moving the goalposts on policing. Sinn Féin and the DUP should see that that parallel fuels the mistrust of the other community.

3104. That is what happened with regard to policing. If Sinn Féin had kept to its previous,

publicly stated position on policing, people might believe its assertions that it will sign up to policing. Several years ago, the then chairperson of Sinn Féin stated publicly that if the British Government passed a second Act on police reforms, his party would not be found wanting when it came to policing. That is on public record. Yet when the second Act was passed and given Royal Assent at Easter 2003, Sinn Féin was found wanting when it came to policing. That creates doubts, especially in the unionist community, about Sinn Féin's true intentions on policing.

3105. When the time came to sign up to policing — which is what Sinn Féin said it would do — it did not do so, and the game moved on. There is, therefore, a parallel. On the one hand, Sinn Féin says that it will commit itself, then it changes the rules. That fuels mistrust. On the other hand, the DUP changes the rules with regard to the work of the IMC. That also creates mistrust.

3106. Raymond McCartney made a rather odd comment earlier. He said that until there is trust, Sinn Féin would not endorse the policing arrangements. That was odd because Sinn Féin — indeed, Martin McGuinness — has said that if we wait for the day when there is trust, we will have to wait a long time before there is restoration of the political institutions.

3107. **Mr S Wilson:** Will the member give way?

3108. **Mr Attwood:** Yes.

3109. **Mr S Wilson:** Will the member accept the fact that it is impossible to build that trust when every Sinn Féin spokesperson tells people not to trust the police? It has become cyclic: on the one hand, Sinn Féin says that it cannot endorse the police until there is trust; on the other hand, Sinn Féin does its best to ensure that there is no trust.

3110. **Mr Attwood:** Sinn Féin's template for participation in the political structures is that trust is not required because trust is intangible and difficult to define and achieve. The basis for participation in the political structures is that parties have lived up to the various

requirements of the Good Friday Agreement and the undertakings of democracy.

3111. That should also be the basis for participation in the policing structures. It is not a matter of whether one trusts the police. There is a template of accountability, and Patten-compliant policing has been achieved. That was the tipping point for people to support the policing structures, and it was reached long ago.

3112. The real reason that Sinn Féin has not signed up to policing has nothing to do with the implementation of the Patten Report recommendations on police accountability; it is to do with that party having a negotiated advantage and political leverage and being able to keep the Governments guessing about its intentions. It is time for Sinn Féin to get off that roundabout and to take heed of Gerry Adams's comments in a recent 'Irish Times' article that, whether or not there is devolution of justice and policing, the policing issue has to be dealt with.

3113. At a previous Committee meeting, Sinn Féin said that it could wait for 12 months for the devolution of policing and justice. The SDLP does not endorse that. However, if justice and policing powers are not to be devolved soon, and if we must wait for them for 12 months — or longer — after restoration, Sinn Féin must deal with the policing issue now, as Gerry Adams asserted might happen in that 'Irish Times' article. It is better to do that than give the DUP the opportunity to score points and damage the agreement and the prospect of restoration.

11.45 am

3114. **Mr McFarland:** As I said at the beginning, trust is a product of engagement. Trust does not exist at the outset of discussions; it is the end product of people dealing with one another.

3115. I want to return to one of Raymond McCartney's points. As I understand it, he said that Sinn Féin has three requirements in relation to the devolution of policing and justice: a timescale; the models to be agreed; and an agreement to transfer. Should those requirements be met, that would do the business.

3116. **Mr Raymond McCartney:** No, that is not the complete list of requirements. I am not going to give the party's complete negotiation position right now, but those requirements are only part of it. Those are the issues that we discussed at this Committee. That is what I said.

3117. **Mr McFarland:** I was trying to tease out the issues because this discussion is about barriers to getting the Government up and running. We have discussed the fact that the DUP, as I understand it, requires Sinn Féin to sign up to policing —

3118. **Mr Maskey:** Are you speaking for the DUP now?

3119. **Mr McFarland:** No. I said: "As I understand it".

3120. **Mr Maskey:** You keep referring to what the DUP is asking for rather than what you are asking for.

3121. **Mr McFarland:** If the DUP and Sinn Féin do not agree to anything, in the end, there will be nothing. As we discovered from the comprehensive agreement, until the two largest parties of each block, the DUP and Sinn Féin, say "Yes", government here cannot work. If we reach the stage of coalitions or whatever, that is an entirely different matter. However, that it is not what the Belfast Agreement allows for. It allows for a forcible coalition between the DUP and Sinn Féin, and either party has a veto.

3122. My understanding is that the DUP has said publicly that it requires Sinn Féin to sign up to policing. I was trying to tease out from Sinn Féin's remarks if there is a basis on which it would sign up to policing and how far it has gone in its discussions. This Committee is designed to tease out those barriers.

3123. Mr McCartney, you said that there are three barriers to Sinn Féin signing up to policing, and you are on record as saying that they are: timescale; modalities; and agreement to transfer. I get the impression that there are now other barriers, which you are unwilling to share with the Committee. Is that right?

3124. **Mr Raymond McCartney:** Gerry Kelly has already raised those issues at this Committee.

3125. **Mr McFarland:** Absolutely, yes.

3126. **Mr Raymond McCartney:** Mr McFarland, you were being a bit disingenuous in your presentation and, at times, a bit patronising. In one of your earlier submissions, you said that the IRA no longer existed because an army that has no guns is no longer an army. I am paraphrasing your remarks.

3127. **Mr McFarland:** As an army.

3128. **Mr Raymond McCartney:** Yes. However, in your next presentation you said that Sinn Féin has an armed wing. One remark contradicts the other. Thus, you were being disingenuous and patronising. In your terms, an armed wing cannot exist if an army does not exist. I want to stress that that is in your terms, because, as far as I am concerned, Sinn Féin does not have an armed wing. As you will be well aware, “Policing issues” was item 2 on the agenda of a previous meeting.

3129. Gerry Kelly raised those issues and brought them to the Committee. I was pointing out some of the barriers in the broadest terms possible. I think that you are aware of that, and to pretend that you are not is being disingenuous.

3130. **Mr McFarland:** I am trying to have dialogue to identify whether Sinn Féin is close to taking the decision to support policing. It told an earlier meeting of the Committee that it was not yet able to take that decision. Why is Sinn Féin still unable to decide?

3131. Mr McCartney has told the Committee that he has still difficulties with the timescale, and he wants to know when it will be devolved and what the model will be. We discussed all that earlier on. He also wants a commitment that the DUP, or whoever, will agree to that transfer. Logically, if we could agree to those issues — modalities and timescales — we would have solved the problem, and Sinn Féin would then be able to sign up to policing.

3132. However, Mr McCartney has just said that there are other negotiating points. The Committee has been set up specifically to identify blockages. We do not want to interfere with Sinn Féin’s negotiating position, but if

other negotiating issues are blocking agreement to policing, it would be helpful if Mr McCartney were to share them with the Committee. Then the Committee might be able to add them to the existing list and, perhaps, solve them.

3133. **Mr S Wilson:** I gather from Sinn Féin this morning that first among the issues is a lack of trust. As I pointed out to Alex Attwood, that is rather circular. The lack of trust is partly due to the discouragement that Sinn Féin gives to people within the nationalist community to co-operate with the police, to join the police or to involve themselves in policing structures. It would not even encourage people to go to the police with information about one of the most appalling rapes that ever happened in Northern Ireland.

3134. Secondly, there is the issue of transparency. What further transparency is required? The Oversight Commissioner examines how the police have met the changes outlined by the Government, and his report is published every six months and is available to the public, including Sinn Féin. The Criminal Justice Inspectorate’s reports, the Ombudsman’s reports and Her Majesty’s Inspectorate of Constabularies’ reports are all available to the public. I do not know what other transparency or information is required, other than for the police to divulge information that no police service would ever divulge to anybody. We are told that transparency is a block, but we have not been told what issues are not available to Sinn Féin or others.

3135. Thirdly, there is the transfer of policing. Sinn Féin wishes to see that happen on the basis that the party would have some ministerial responsibility for the Police Service. It envisages that the transfer will occur at a time when the Minister, and the party to which he belongs, will tell people not to trust, join or assist the police and will condemn the police for taking on criminals, raiding their homes and searching them. It is all pie in the sky. No one will agree to the transfer of policing in that context. No one could agree to its transfer. It would totally undermine those in the Police

Service if policing powers were transferred in those conditions.

3136. Sinn Féin is good at pointing the finger at everyone else. It says it is the Government's fault that it has not moved on this because they have not done certain things, and that it is the other parties' fault because they will not agree to the transfer of policing.

3137. Transfer of policing cannot take place while Sinn Féin adheres to its current attitude to police, policing and law and order and, as other members have pointed out, while it maintains some of its associations. The party shows no sign of change. This morning Sinn Féin used rhetoric to the effect that criminality affects quality of life and that it wants the best quality of life for people in its areas. But there has been no indication of how that is going to be achieved in the absence of supporting the police, unless Sinn Féin has some other plan involving separate policing arrangements that it alone can sign up to. No one here is going to accept that.

3138. **Mr Kennedy:** My party shares enthusiasm for an inventory of decommissioned weapons to be published as soon as possible. That has been our consistent line. Does the DUP consider the publication of an inventory sufficient to deal with the issue of decommissioning, or does the party have other matters of concern?

3139. **Mr Paisley Jnr:** The inventory is about trying to build unionist confidence. A considerable amount of intelligence material about what the IRA possesses has been published and is available. It would be a logical step to compare any published inventory with information in Jane's International Defence Review and other sources, and align it with claims that decommissioning is complete. We would measure it on that basis.

3140. If we are told that it was spectacular, it will silence us. What greater incentive is there to our opponents than to silence the DUP on this? We want people to prove that it is concluded. If the inventory were to show significant gaps, that plastic explosives or certain types of weapons were not accounted for, anyone, whether in the DUP or in any other

party, would be right to examine that and hold people to account.

3141. We would be happy to have the rug pulled from under our feet on this. We want to see these weapons done away with. It is in the interests of the people in our community who have had the guns pointed at them and have seen loved ones buried and some of Ulster's finest men and women murdered and butchered by those weapons. It is in our interests to be silenced on this issue, because decommissioning will be complete.

3142. How long is a piece of string? We stand to be convinced. We will only be convinced when we have material that proves that the act of decommissioning was complete and genuine. I hope that publication of an inventory will be of assistance.

3143. **Mr Kennedy:** Once an inventory is published and compared, that will be enough for the DUP to make a judgement on decommissioning. Is that what the DUP is saying? Or would the DUP prefer another, more public, demonstration of decommissioning if it were possible?

3144. **Mr Paisley Jnr:** That is to introduce a hypothetical situation. If publication of an inventory revealed that only one third or half of IRA weapons were destroyed, everyone would say that there is more to do. That might open up prospects for an act of decommissioning that satisfied people. I am reluctant to discuss that hypothetical situation.

12.00 noon

3145. **Mr Weir:** It would allow us to make a judgement. Whether that judgement was positive or negative would depend on what was in the inventory.

3146. **The Chairman (Mr Molloy):** We have a number of proposals; the first one was from Mr Paisley.

3147. **Mr Paisley Jnr:** The first proposal was that a detailed inventory of decommissioned materiel be published urgently in order to enhance public confidence.

3148. **The Chairman (Mr Molloy):** Do we have consensus on that?

Members indicated dissent.

3149. **The Chairman (Mr Molloy):** That proposal falls. Mr Attwood had a proposal.

3150. **Mr Attwood:** I propose that the Committee endorses the work of the IMC and calls on paramilitary organisations to co-operate fully and without delay in putting illegal weapons verifiably beyond use.

3151. **Several Members:** IICD.

3152. **Mr Attwood:** Yes, sorry. My proposal is subject to that useful amendment. I propose that the Committee endorses the work of the IICD and calls on paramilitary organisations to co-operate fully and without delay in putting illegal weapons verifiably beyond use.

3153. **The Chairman (Mr Molloy):** Do we have consensus?

3154. **Mr Maskey:** Does that include all the armed organisations that are out there, some of which may not be defined as paramilitary, or even illegal, like Ulster Resistance, for example?

3155. **Mr Weir:** Or the UN. *[Laughter.]*

3156. **Mr McFarland:** It refers to illegal weapons.

3157. **Mr Attwood:** “Paramilitary organisations” is an inclusive term.

3158. **Mr S Wilson:** Will Mr Attwood accept an addition to his proposal, stating that the details of what has happened should be published at the end of the process?

3159. **Mr Attwood:** No. At this stage in the process, that is the height of people’s obligations.

3160. **Mr McFarland:** The IICD has publicly stated that, at the end of this process, it will produce an inventory of all the weapons. The reason it is not publishing it now is that it still has the loyalist weapons to take in.

3161. **Mr Ford:** That is my understanding.

3162. **The Chairman (Mr Molloy):** We have the proposal from Mr Attwood.

3163. **Mr Weir:** I would like to know whether Mr Attwood is going to accept Mr Wilson’s amendment.

3164. **Mr Attwood:** I must be honest: I was not aware that the IICD had said that. I will amend my proposal to add a clause calling for the IICD to conclude its work as it has indicated that it will. I do not want to sign up Mr Wilson’s words.

3165. **The Chairman (Mr Molloy):** Do we have consensus?

3166. **Mr Raymond McCartney:** What is the proposal again?

3167. **Mr Attwood:** That the Committee endorses the work of the IICD and calls on paramilitary organisations to co-operate fully and without delay in putting illegal weapons verifiably beyond use and calls on the IICD to conclude its work as it has indicated.

3168. **Mr Raymond McCartney:** Without the preamble, I suggest that the proposal read: the Committee calls on the IICD to continue with its work and to conclude it promptly.

3169. **Mr Weir:** An important part of the proposal is the call for all paramilitary organisations to get rid of their weaponry. We would consent to that.

3170. **Mr Raymond McCartney:** That is what the IICD was set up to do: to take arms out of the equation.

3171. **The Chairman (Mr Molloy):** We have a proposal. Do we have consensus?

Members indicated dissent.

3172. **Mr Weir:** There is a surprise.

3173. **Mr Raymond McCartney:** We have another hour and a half to kill here.

[Interruption.]

3174. **The Chairman (Mr Molloy):** I ask members to keep in order, and I ask the same of party researchers, who are not part of the meeting.

3175. **Mr Paisley Jnr:** We are going to make a proposal.

3176. **Mr McFarland:** Will you repeat that, Mr Chairman?

3177. **The Chairman (Mr Molloy):** Party researchers are not part of the meeting, so communication between the table and the researchers should be through the Clerks.

3178. **Mr Paisley Jnr:** We propose that association with, or support for, those involved in criminal activity is incompatible with the holding of ministerial office.

3179. **Mr Ford:** I ask the DUP to explore that further. It is a negative proposal. Surely the issue should be whether those in ministerial office are fully committed to upholding the rule of law, which is a somewhat stronger statement than the negative of not supporting —

3180. **Mr Paisley Jnr:** We have a proposal on the ministerial code as well. That is our third.

3181. **The Chairman (Mr Molloy):** Do we have consensus on that proposal?

3182. **Mr Attwood:** My party suggests that that proposal lies on the table. It refers to issues that the PFG Committee dealing with institutional matters deals with, and we need to talk with Dr Farren about it. We have already tried twice to contact him. Can that proposal remain on the table, and we will return to it and the other proposals?

3183. **The Chairman (Mr Molloy):** There is also the ministerial code and all the different issues that are associated with that.

3184. **Mr McFarland:** That is an issue for the Monday team to deal with.

3185. **The Chairman (Mr Molloy):** What is the next proposal?

3186. **Mr Paisley Jnr:** Mr Attwood said that we might be able to get consensus on the proposal that those who are involved in drug dealing and organised crime should be published upon conviction.

3187. **Mr Attwood:** The proposal I have is that that the Committee recommends that appropriate agencies, including policing, assets and crime organisations should, subject to due

process, publish details of individuals, gangs or organisations involved in crime.

3188. **The Chairman (Mr Molloy):** Is that not done in a court case?

3189. **Mr McFarland:** If you go to court, such details are all public anyway. The Assets Recovery Agency publicises the names of people whom it prosecutes. When the agency goes to the High Court to take out an injunction against those people, it is obliged to identify them publicly. Anyone who is involved with the Assets Recovery Agency or with the courts is publicly identified. What is the logic behind those proposals?

3190. **Mr Paisley Jnr:** As I have said already, pages 28 to 29 of the latest Organised Crime Task Force report deals with those who are involved in those criminal activities, specifically the paramilitary groups. The discussion amounts to a couple of paragraphs, yet throughout the report we have details of over £300 million worth of crime. It is inadequate to reduce the details of who is responsible for that to a couple of paragraphs of a report. It is for that purpose that the DUP puts this up front.

3191. **Mr McFarland:** In its threat assessment of organised crime, the IMC identifies the paramilitary organisations that are involved, but how do you legally identify people as a result of intelligence? That is entirely different from identifying people who have appeared before a court. We are into the stage of —

3192. **Mr Paisley Jnr:** That is why we are identifying organisations.

3193. **Mr McFarland:** They are identified anyway. The IMC identifies which organisations are involved in organised crime in some detail. Its report of March last year included a detailed examination of the paramilitary organisations that were involved in organised crime and what they were doing. Perhaps the report that is due out next week will have the same threat assessment. What is it that we are not doing that could be done legally? You cannot identify individuals who have not been before a court.

3194. **Mr Maskey:** My party is unsure what it is being asked to endorse, but there have been far too many examples of political policing — to put it mildly — in the past while. Therefore the IMC can say whatever the hell it likes tomorrow or next week. We do not accept its legitimacy or validity. Therefore the question is: is it within the law? Yes, it is, because it was legislated for. We do not accept that.

3195. That does not mean to say that we do not want people to be named and shamed. At the end of the day the bottom line is that if people are convicted of crime, invariably they are named and shamed. I do not know what this proposal is getting at. From what we have heard so far we would not support it. It wants to endorse political policing retrospectively.

3196. **The Chairman (Mr Molloy):** Mr Attwood, do you have a proposal?

3197. **Mr Attwood:** Alan McFarland may be right. This proposal is nothing new; what we would want to happen is already happening.

3198. **Mr Paisley Jnr:** What is new is that this Committee is putting its imprimatur on the fact that these matters must be published — that it is in the public interest — and that greater effort should be made to make the public aware of organisations and individuals who are involved in drug dealing and organised crime. Some of the publications that take responsibility for this do not publish accurate material or details of the material. However, if the Ulster Unionists and Sinn Féin have a problem with that —

3199. **Mr McFarland:** We are trying to be sensible, and that is a silly comment.

3200. **The Chairman (Mr Molloy):** Maybe it is one that the Committee needs to tackle later.

3201. **Mr McFarland:** If Ian Paisley wants, the Committee could endorse the fullest available information being made available. I do not have a problem with that. It is happening already, by and large, and if there is anything else that is not happening that the Committee can do, I have absolutely no problem with that.

3202. **The Chairman (Mr Molloy):** Mr Attwood, will you put the proposal and see if there is consensus?

3203. **Mr Attwood:** The proposal is that the Committee recommends that the appropriate agencies should, subject to due process, publish as fully as possible details of individual gangs and organisations involved in crime.

3204. **The Chairman (Mr Molloy):** Do members agree?

Members indicated dissent.

3205. **Mr McFarland:** Who said “no”?

3206. **Mr Kennedy:** Sinn Féin said “no”; we said “yes”.

3207. **The Chairman (Mr Molloy):** There is no record of who says “yes” or “no”.

3208. I am sure the papers will have it covered.

3209. What is the next proposal?

3210. **Mr Paisley Jnr:** The next proposal deals with the Pledge of Office to support the rule of law in Northern Ireland and urge others to do so.

3211. **Mr McFarland:** Mr Chairman, logically, that would revert to Monday’s Committee meeting.

3212. **The Chairman (Mr Molloy):** I was thinking that.

3213. **Mr Paisley Jnr:** It is important that this Committee expresses its view on it. I sit on the other Committee, and it is obsessed with what this Committee thinks.

3214. **Mr S Wilson:** I appreciate that that probably lies within the remit of the other Committee. However, this Committee was specifically set up to look at issues of policing, the rule of law et cetera, and it is not therefore inappropriate for it to make some suggestions as to how it believes the support for policing and the rule of law begin, and if they are underpinned by the Pledge of Office, this Committee should convey that to the other Committee. It may conclude that it is part of the package that it puts forward. However, since this Committee is dealing with policing, law and order et cetera, it is a useful motion for giving some guidance to the other Committee.

3215. **Mr Ford:** I think Sammy Wilson has a point. The difficulty is that the specific formalities of the Pledge of Office are part of the other Committee's work. However, the principle of incorporating a pledge to uphold the rule of law, which was Alliance's term and not quite the same one that Ian Paisley used, within the pledge seems entirely within the remit of this Committee. Could the Committee agree today in principle, and leave the mechanics to Monday's Committee meeting?

3216. **Mr S Wilson:** Could it then read along the lines that we believe that when constructing a Pledge of Office consideration could be given to —

3217. **The Chairman (Mr Molloy):** Each party in Monday's Committee meeting will have variations of the Pledge of Office or how it is dealt with. Do we have consensus?

12.15 pm

3218. **Mr Raymond McCartney:** To have it referred back?

3219. **Mr Attwood:** The SDLP needs to have a conversation before it can allow it to go back in that form.

3220. **Mr Paisley Jnr:** The Committee will leave it on the agenda.

3221. **Mr Attwood:** Yes, leave it on the table.

3222. **Mr S Wilson:** Mr Attwood, if the proposal were changed now to read: "We believe that there ought to be consideration in the Pledge of Office to a commitment to the rule of law", the Committee is not saying what the Pledge of Office should say.

3223. **Mr Attwood:** I know where I stand, but I need to check with others. We are not saying no, we are just leaving it lying for a week.

3224. **The Chairman (Mr Molloy):** What is the next proposal?

3225. **Mr Paisley Jnr:** It follows on from the previous proposal, and I assume that the answer will be the same. The proposal is that arrangements be devised to provide that breach of the Pledge of Office be directly actionable in the courts and punishable by disqualification

from office. That would fall into how people react to the first part of that.

3226. **Mr Ford:** That really is an issue for the Monday Committee.

3227. **Mr Paisley Jnr:** The issue is how we act if there is a breach of the Pledge.

3228. **Mr Ford:** I accept that, but it is straying on to Monday territory rather than sticking with today's.

3229. **Mr Paisley Jnr:** It would be useful if parties could let us have some views on this.

3230. **The Chairman (Mr Molloy):** Any other proposals?

3231. **Mr Attwood:** I have one that I know will be immediately embraced.

3232. **The Chairman (Mr Molloy):** It is nearly lunchtime.

3233. **Mr Attwood:** I know. I propose that the Committee calls on all parties to recommend that people join the police, assist the police with enquiries, including those into organised crime, encourage people to participate in the policing structures and co-operate with other agencies that address crime and organised crime.

3234. **The Chairman (Mr Molloy):** Do we have consensus? I do not think that there is any need for debate.

Members indicated dissent.

3235. **Mr Ford:** I made this point earlier, but I did not formally propose it. Given that Rachel Miller's letter makes no response to our request for definitions of "normalisation" and "ceasefire", I formally propose that we request our research staff to provide information on the areas of legislation and policy on which the definition of a ceasefire may have practical effects or deliver entitlements.

3236. **The Chairman (Mr Molloy):** Do we have consensus?

Members indicated assent.

3237. **Mr Ford:** I hope that we can agree that, if the NIO will not provide that information, we can ask our staff, who clearly have nothing

much else to do this week. Hansard will record that I was smiling as I said that.

3238. **The Chairman (Mr Molloy):** Are there any other issues on that?

3239. We will adjourn for a few minutes and come back to deal with the matters that have been left unresolved, of which there is a full page.

3240. **Mr McFarland:** What are they, as a matter of interest?

3241. **The Chairman (Mr Molloy):** The page is being circulated now so that members can look at it while having their lunch.

3242. **The Committee Clerk:** We are trying to empty the car park.

3243. **The Chairman (Mr Molloy):** The car park is overloaded and the clampers are in.

3244. **Mr Maskey:** What will we be referring to next week — the two residual matters?

3245. **The Chairman (Mr Molloy):** We talked about leaving them on the table because they were not completed.

3246. We will break for 15 or 20 minutes. When members come back we will move through these issues swiftly.

3247. **Mr Paisley Jnr:** Is lunch on?

3248. **The Committee Clerk:** Lunch probably has not arrived.

3249. **Mr Paisley Jnr:** Why not spend 15 minutes dealing with some of this and then take lunch?

3250. **The Chairman (Mr Molloy):** Lunch has not arrived, so we can continue until lunch is here.

3251. OK, lunch is here. We will adjourn until 12.45 pm. If members come back swiftly we can have this all sorted out by 1.00 pm.

The Committee was suspended at 12.19 pm.

On resuming —

12.46 pm

3252. **The Chairman (Mr Molloy):** We must try to clear up the matters that have been left unresolved, because the Committee Clerks are trying to compile a report. If we can resolve all the issues, so much the better, but let us try to make decisions on some of them, one way or the other.

3253. We shall begin with “Ministerial arrangements for a single policing and justice department”. We had talked along the lines of having a single Department, but the ministerial arrangements had not been finalised. I do not know whether we can go any further now.

3254. **Mr S Wilson:** We do not want to go any further on the question of a single Department, but what the PFG Committee dealing with institutional matters does may influence us.

3255. **Mr Kennedy:** Ministerial arrangements are likely to form part of the political negotiations in the autumn.

3256. **The Chairman (Mr Molloy):** Can we agree, at least, that this Committee has taken the matter as far as it can?

3257. **Mr Maskey:** Further discussion is needed, wherever that takes place, but it must continue, because we have made a little bit of progress. There will be no proposal on the matter today, however.

3258. **Mr S Wilson:** We do not want to go any further, because the PFG Committee dealing with institutional issues’ discussion about the ministerial code will influence our view on the matter. We want to know what the arrangements would be for the Minister or Ministers of such a Department. For that reason, we would rather leave further discussion until we see what comes out of that discussion.

3259. **Mr McFarland:** The devolution of policing and justice would also impinge on the number of Departments. If, for example, policing and justice were not devolved until after the next Assembly election, we would have, upon restoration, the same number of Departments as we currently have. If we were

to reduce the number of Departments that we have at present and create a policing and justice Department in order to have 10 or fewer Departments, that would raise a host of departmental issues.

3260. The issue probably lends itself to being part of the full negotiations, as it affects the number of ministerial posts and the parties' views of where all this is going. It may form part of an overall deal rather than be resolved in Committee.

3261. **Mr Attwood:** We agree. Useful progress has been made, and if all parties were to sit down, in whatever format, to decide on a final model, more useful progress could be made.

3262. **The Chairman (Mr Molloy):** Does anyone want to record a proposal to take this to the next stage? The Committee can sign off on it if it has taken the issue as far as it can or recommend that it goes to further negotiations.

3263. **Mr S Wilson:** I agree with Mr Attwood. We made some progress on it, but I am not so sure that further progress could be made here. Perhaps we should simply say that the Committee welcomes the progress made in discussions and that it is now moving it on to the other PFG group for further discussions between the parties.

3264. **Mr McFarland:** It would be unfortunate if this were to come to horse-trading between the two largest parties. It would be very useful to provide that, when it is discussed, it will be in all-party format.

3265. **Mr S Wilson:** That format is probably one of the reasons for the progress we have made. I agree that that might be a better way to do it rather than let it lie dead for a while. It should move to the other group. That would facilitate all-party discussion on it, rather than allow it to become an issue for two parties.

3266. **The Chairman (Mr Molloy):** The PFG Committee dealing with institutional matters is exploring the ministerial code of conduct on Monday. Perhaps we should come back to this one.

3267. **Mr McFarland:** One difficulty is that this group, in whatever format it works, has not been able to deal with some substantial issues, namely those relating to whether we should have fewer MLAs or whether to amalgamate Departments for efficiency and to free up a potential Department of policing and justice. We also need an assessment of the effect of a reduced number of Departments, and potentially of MLAs, on various parties and their numbers in here. The model that parties choose to support will have an impact on their party strengths. Those issues must be dealt with in the highest possible forum. I suspect that it will end up with party leaders.

3268. It would be useful if the party leaders were in a five-party forum, rather than making 11.00 pm deals in the corridors. These issues are so important to how the Assembly functions in the future, and to the effectiveness and efficiency of Government functions, that they must be treated as substantial. Even if they were brought back to this group, I doubt that the PFG forum could sign off final decisions on them.

3269. **Mr Attwood:** Given that we do not know where this would best be dealt with, and noting all-party progress on this, I propose that the Committee looks forward to all-party consideration to resolve the matter. If we put it in generic terms, whether it goes to the main Committee or to some other forum — *[Interruption.]*

3270. **Mr Kennedy:** An acceptable form of words might be: “The Committee welcomes the progress made to date and accepts that the issue requires renewed consideration involving all of the political parties.”

3271. **The Chairman (Mr Molloy):** Do we have consensus?

3272. **Mr Attwood:** The word “together” should be added to Mr Kennedy’s proposal to put over the notion that it should be done collectively.

3273. **Mr Kennedy:** OK.

3274. **The Chairman (Mr Molloy):** Do we have consensus on that? Mr Kennedy, please read the amended proposal.

3275. **Mr Kennedy:** “The Committee welcomes the progress made to date and accepts that it requires renewed consideration involving all of the political parties collectively.”

3276. **The Chairman (Mr Molloy):** Are members content?

Members indicated assent.

3277. **The Chairman (Mr Molloy):** We shall proceed to the timing of the devolution of policing and justice.

3278. **Mr McFarland:** It strikes me that that matter falls into the same category because the timing issue is one of Sinn Féin’s key considerations, and the issues of the devolution of policing and justice and the acceptance of the police are key considerations for the DUP. It strikes me that that will be part of detailed discussion at a later stage.

3279. **Mr S Wilson:** There should, at least, be a positive note from the Committee on the issue. The DUP has said that it wants policing and justice to be devolved. Those matters can, however, be devolved effectively only when the community has confidence that they can be managed properly by the Assembly. The term “confidence” is used in the comprehensive agreement and was used by a Sinn Féin member in an earlier discussion. Rather than leave the issue without a resolution, will the Committee agree that policing and justice should be devolved as soon as possible given that there will be public confidence? That would at least show that the Committee takes a positive view and that progress is being made towards the devolution of policing and justice.

3280. **The Chairman (Mr Molloy):** Do we have consensus?

3281. **Mr Raymond McCartney:** During a previous discussion, we did not have consensus on the devolution of policing and justice when there is public confidence. We articulated the reason for that.

3282. **The Chairman (Mr Molloy):** Do we, therefore, not have consensus?

3283. **Mr Attwood:** Last week, we proposed that devolution of policing and justice could

happen a day, a week or a month after the restoration of the Assembly because a sufficient level of confidence would exist at that time, given that restoration had occurred.

3284. I share the view that the Committee must have a positive outlook. The proposal should state that the parties agree that devolution of policing and justice should happen as soon as possible, but that the Committee is unable to define that at present. That is fair to all views. It does not tie parties to any position. It simply means that, as a Committee, we want policing and justice to be devolved as soon as possible, but that we are not in a position to define that yet.

3285. **The Chairman (Mr Molloy):** Do we have consensus?

3286. **Mr Raymond McCartney:** Sinn Féin wants to return to that matter.

3287. **The Chairman (Mr Molloy):** The proposal will remain on the table. Rather than rule it out, the Committee can return to it with possible variations.

3288. **Mr Kennedy:** Keep it in the car park.

3289. **The Chairman (Mr Molloy):** Alex Attwood made a proposal on the responsibility for national security, which has not been finalised.

3290. **Mr Attwood:** I believe that we were waiting for information to be made available.

3291. **The Chairman (Mr Molloy):** It has not been made available.

3292. **Mr Attwood:** It is not yet available.

3293. **The Chairman (Mr Molloy):** Shall the matter remain on the table?

3294. **Mr Cobain:** Mr Chairman, we have discussed that issue four or five times. There is no possibility of the Chief Constable being responsible for national security. Further discussion is an absolute waste of time.

3295. **The Chairman (Mr Molloy):** We have no consensus on the issue. Shall we, therefore, not take it any further?

Members indicated assent.

3296. **The Chairman (Mr Molloy):** The Army's powers with regard to public order matters to be devolved, and the NIO letter dated 15 August 2006, have been circulated.

3297. **The Committee Clerk:** We have received various responses from the Chief Constable during the past couple of weeks.

3298. **The Chairman (Mr Molloy):** There is the issue of parades, the Parades Commission, appointments to it and so on.

3299. **Mr Attwood:** Some of these issues do not sit comfortably together. Army support for the police is a different issue from whether the power of the Chief Constable to challenge a Parades Commission determination should be devolved.

1.00pm

3300. **The Committee Clerk:** Table 1 attached to the letter of 15 August from the Secretary of State's office is the template through which we have been working. Of the issues under the heading "Public Order" in that table, these are the outstanding matters that have not yet been finalised by the Committee.

3301. **The Chairman (Mr Molloy):** Have we any proposals?

3302. **Mr S Wilson:** The position was fairly clear. On the unionist side there were some reservations, but what was proposed for devolution was more or less acceptable. On the nationalist side there was a blanket consideration that everything should be devolved. If that is still the case, we could work through these individually but still come to the same collective position: one side wants the minimum to be devolved, or what was devolved in the past, while the other wants everything devolved, including some of the matters listed here. We could have the same discussion again. The position was fairly clear, and it should be left as it was.

3303. **The Chairman (Mr Molloy):** If we cannot take it any further, there is no point in parking it; it will just go back to the same position. Will we leave it unresolved?

Members indicated assent.

3304. **The Chairman (Mr Molloy):** On police accountability, Mr McFarland raised the question of a possible conflict of interests between MLAs and members of the Northern Ireland Policing Board.

3305. **Mr McFarland:** Where is the sense in having 10 Assembly Members on the Policing Board, 11 Assembly Members on a Committee here and a Minister? There are 108 MLAs. It was difficult enough in the first Assembly to ensure that Committees were quorate. If you reduce the number of MLAs to 90 or 72, or whatever, and some are off at the Policing Board, you end up with serious problems of staffing Assembly Committees.

3306. The other issue is whether, if there is a Minister in charge of policing and an Assembly Committee looking at policing and justice, it is necessary for MLAs to sit on the Policing Board. Political guidance for the Policing Board is needed. That was the great success of it all; it received political input. Parties could provide the political input to the board, instead of MLAs, on the same d'Hondt basis. There would be political input, but not using up valuable MLAs, who could spend Mondays and Tuesdays in Plenary, Wednesdays and Thursdays in Committee and Fridays in their constituencies. Which days of the week are they going to be able to spend on the Policing Board? As colleagues know, originally it was intended to be three days a month, but those who are on the Policing Board will tell you that in some months it can be nearly a full-time job, attending to subcommittees and everything else that goes on.

3307. **Mr S Wilson:** I was a member of the Policing Board when the Assembly was functioning — as was Alan, at one stage. Therefore, I can understand Alan's reservations about the time commitment. However, parties must work around that. One option is to ensure that MLAs who sit on the Policing Board are not overburdened with commitments to Assembly Committees.

3308. It would be a retrograde step to say that public representation on the Policing Board should be at a level below that of MLA.

3309. **Mr Kennedy:** Councillors will love reading that. [*Laughter.*]

3310. **Mr S Wilson:** Of course, some members of the Policing Board are also councillors.

3311. I do not anticipate the degree of overlap that Alan described between the work of an Assembly Committee and the work of the Policing Board. A single ministry would deal with justice and policing matters, so a substantial part of the work in which members would be involved would not overlap with the Policing Board's work.

3312. Furthermore, no Assembly Committee would have the same role as that of the Policing Board. Were the roles the same, members would simply not be able to serve on both because the Committee would be meeting so regularly. The Committee should be concerned with the Minister's role with regard to policing; the Policing Board should focus on the Chief Constable's role and hold him accountable for effective and efficient policing. There would be no overlap as those are two completely different roles.

3313. Alan is right to highlight the time difficulty. However, parties should manage that problem rather than our making changes to the members appointed.

3314. **Mr Attwood:** I very much welcome the DUP's clear-headed approach to this. Not to adopt the model recommended by Patten of MLAs sitting on the Policing Board would create tension, if not conflict, among the Assembly structures, the Policing Board and other accountability structures. People would try to broaden their area of operation into areas that, by law — and in accordance with the Patten Report — fall to the Policing Board. The practical way to ensure that that tension does not arise is to ensure that MLAs sit on the Policing Board. That may be logistically demanding given MLAs' other duties, but, as Sammy said, the situation can be managed.

3315. The importance of policing issues has been elevated over many years, therefore it is very important that the highest level of political representation sits on the Policing Board, and

that that representation is practical and inclusive. That allows for hands-on responsibility and a shared approach, which is the best approach to adopt if policing is to be sustainable and mature. Policing is best dealt with as a shared undertaking. As Alan said, that approach has worked very well over the last four or five years.

3316. The SDLP is firmly of the view that political representation on the Policing Board should be at MLA level. I hope that Alan might reflect on that so that we can reach a consensus.

3317. **The Chairman (Mr Molloy):** We could consider separating the two so that members of the Assembly scrutiny Committee could not also be members of the Policing Board.

3318. **Mr Attwood:** Of course they could not be.

3319. **Mr Ford:** I agree with the last couple of points. There would be a difference between the scrutiny Committee's function and that of the Policing Board. It is a matter of logistics and numbers, but no more than that. If there is to be political representation on the Policing Board, that representation must come from MLAs, because local councillors' role is to sit on district policing partnerships (DPPs), whatever structures those assume in future.

3320. I am not sure whether Alan was suggesting that party nominating officers could nominate unelected party representatives to the Policing Board. Enough party hacks have already been appointed to the Policing Board and DPPs as non-political representatives. Political representatives on the Policing Board should have a political mandate. It should simply be a matter of their managing the difference between their scrutiny role and their membership of the Policing Board.

3321. **Mr Maskey:** I wish somebody would remove the Alliance Party from 100 quangos.

3322. **Mr Ford:** That is history, Alex, not current fact.

3323. **Mr Kennedy:** Alex has said what I was thinking.

3324. **Mr Ford:** If the Ulster Unionists cannot recognise whom the additional nominees to the new Policing Board were, it is probably too late for me to point them out to them.

3325. **Mr McFarland:** I was simply trying to be helpful by identifying potential problems in order that we might deal with them before they hit us. We are happy enough to go with the flow.

3326. **The Chairman (Mr Molloy):** Is there not a specific proposal then?

3327. **Mrs D Kelly:** There is.

3328. **Mr Attwood:** The SDLP proposes that political representation on the Policing Board continues to come from MLAs in order to create certainty.

3329. **The Chairman (Mr Molloy):** Have we agreement?

3330. **Mr S Wilson:** I wish to make an additional point.

3331. **Mr Kennedy:** Do I see a coat being tugged?

3332. **Mr S Wilson:** There must be a discussion to determine the exact demarcation line between the Policing Board and the scrutiny Committee.

3333. **Mr A Maginness:** Chairman, that would be a matter for Standing Orders.

3334. **Mr S Wilson:** That may be the case, but we should still highlight it in order to avoid any potential conflict of interest.

3335. **Mr A Maginness:** I think that everybody agrees that MLAs who serve on the Policing Board could not be members of the scrutiny Committee, because they would be scrutinising a body of which they were members.

3336. **The Chairman (Mr Molloy):** Perhaps this Committee needs to recommend that.

3337. **Mr McFarland:** It is a key issue that must be examined before policing is devolved. How is that interface to take place? If we get it wrong, it could be disastrous.

3338. **Mr A Maginness:** There is a danger that we might over-complicate the issue. I propose that Standing Orders, or the Assembly itself, should address the matter of membership of the

scrutiny Committee, and so forth. It can be dealt with at a later date. Let us leave it at that.

3339. **Mr S Wilson:** The scrutiny Committee's relationship with the Policing Board should also be addressed.

3340. **Mr A Maginness:** Yes.

3341. **The Chairman (Mr Molloy):** Do we have consensus?

Members indicated assent.

3342. **The Chairman (Mr Molloy):** "Matters to be Devolved — Firearms and Explosives" was dealt with this morning, so we shall move on.

3343. **Mr McFarland:** Chairman, I have one query. In the first edition Hansard of 23 August, I notice that you said that responsibility for firearms — explosives were being discussed, but in Hansard it says "firearms" — will be devolved to the Health and Safety Executive for Northern Ireland (HSENI). I assume that that is an error, because the discussion was about explosives being devolved to HSENI. Was that a typo or a mistake by the member who said it? My understanding was that responsibility for firearms would not be devolved to HSENI.

3344. **Mrs D Kelly:** The confusion may have arisen from the fact that we covered fireworks during our discussion on explosives. That might explain it.

3345. **Mr McFarland:** It may, but it definitely says "firearms" in Hansard.

3346. **The Chairman (Mr Molloy):** We will correct that for the final edition Hansard. We were talking about explosives.

3347. We shall now move on to "Policing (The Police Ombudsman)".

3348. **Mr Paisley Jnr:** Could we bring back to the Committee some definition of where the right to appoint rests? If the Ombudsman is an officer of Parliament, will that matter remain with Parliament, or will the appointment of the Police Ombudsman be devolved to the Assembly?

1.15 pm

3349. **The Committee Clerk:** That is item 11 in table 1 of the letter of 15 August from the

Secretary of State, under “The Police and policing accountability framework”.

3350. **The Chairman (Mr Molloy):** Have we any opinions?

3351. **Mr Paisley Jnr:** If appointment remains with Westminster, there is no role for the Assembly, and the Police (Northern Ireland) Act 2000 would be implemented. A retired judge, or someone of that standing, should be appointed to that office. If that is what Westminster is going to do, then that is the way it is going to do it. If it is going to be devolved to Northern Ireland, as Mr S Wilson proposed, appointment would be by way of cross-community vote, to ensure that the person was accepted across the community. It makes it a very different proposal, depending whether we want to devolve appointment to that office.

3352. **Mr Attwood:** The SDLP has previously outlined that it is opposed to a vote in the Assembly to determine this appointment or various other public appointments. The consequence of such a vote would be a de facto veto. For especially sensitive appointments, that is a power too far. There is a high likelihood of that power being abused and, consequently, damage being done to the integrity of policing, if not that of other public appointments.

3353. The power of appointment should be devolved; it should not be a reserved matter, but rather it should be transferred subject to community safeguards. There are various models of community safeguards around this matter and others, such as the renewal of fifty-fifty temporary recruitment provisions or appeals by the Chief Constable to determinations made by the Parades Commission. My party believes that sensitive matters, such as public appointments, should be devolved but with appropriate community safeguards. The SDLP therefore proposes devolution, subject to appropriate community safeguards.

3354. **Mr Paisley Jnr:** We need to know what “appropriate community safeguards” actually means. For example, it could mean that you change the office to have three Ombudspersons — the Planning Service has three heads. We

could end up complicating the matter more than it is worth. If Parliament does its job and appoints under the terms of the established legislation, then we thole it and get on with it.

3355. **Mr Attwood:** This is the problem. Under the Nolan principles, there are new standards and processes that must be followed when making public appointments, and that would govern the appointment of the Police Ombudsman, the chairperson of the Human Rights Commission, or whatever the position. Very often, more than one individual is recommended or is eligible for appointment. If the power of appointment were given to the Assembly, that would turn the whole Nolan procedure on its head. It would be a lottery and a veto. The result would be that people would not apply for those posts because they would end up getting battered about on the Floor of the Assembly and be subject to the veto of one or other party or community.

3356. The only rational and workable approach is devolution subject to community safeguards. I do not want to get into the whole argument about what the community safeguards are, because there are a range of models. Some people say that it should be left to the Office of the First Minister and the Deputy First Minister, and, given that we envisaged that as being a shared institution, then there might be a shared approach to the appointment of high-profile public appointees.

3357. Other people say that a different model is needed, for example, when it comes to an appeal against a Parades Commission determination, which could happen in the heart of the summer when people might not be around and quick decisions have to be made. Consequently, there would need to be an accelerated process with community safeguards for dealing with the issue of an appeal against a Parades Commission determination.

3358. Different models will probably be required when it comes to fulfilling the standard of community safeguards and the various differing sensitive powers. That is why I was proposing a generic motion of devolution subject to community safeguards. At a

subsequent date we will have to work out what model of community safeguard will be required for each of those sensitive decisions. It will not be a case of one size fits all.

3359. **Mr Raymond McCartney:** Sinn Féin agrees with the devolution, and also with the broader discussion on community safeguards.

3360. **Mr Paisley Jnr:** The Committee could leave itself a hostage to fortune on this by agreeing to devolve it, but not agreeing the detail of the community safeguards. The DUP will stick with the position whereby it stays with Westminster as a reserved matter.

3361. **The Chairman (Mr Molloy):** The Committee does not have consensus.

3362. Those are the outstanding issues as far as the Committee is concerned. However, some issues will come back for consideration. The first draft of the Committee's report should be available next week. Some of the issues that were sidestepped today can be raised at that meeting and be part of the report.

3363. **Mr McFarland:** How is this to be set out? We have taken decisions on some issues, and agreed some issues that will be implemented some time in the future because they are unknown — for example, support for policing or whatever — and there are issues that are difficult to decide and have been parked for the talks process. How will the issues be set out?

3364. **The Chairman (Mr Molloy):** The Clerk can answer that, as he will be the one drawing up the report.

3365. **The Committee Clerk:** We will look at the four main headings set out in the programme of work, make a list of all of the issues that were discussed and come to a conclusion as to what matters were agreed or not agreed. Decisions will not be taken at an official level as to whether a matter was or was not an impediment to devolution. That is the general thrust of it.

3366. **Mr McFarland:** Several issues cut across the Monday, Wednesday and Friday teams. For example, the Wednesday and Friday teams have

discussed the issue of parades; the Monday and Wednesday teams have discussed institutional issues. We tend to work in silos, so there might be some merit in examining those overlapping issues before any reports are written. Different teams may take different decisions on the same subject. How do we ensure that the Preparation for Government Committee does not drop any catches?

3367. **The Chairman (Mr Molloy):** That should not happen because members on the Monday, Wednesday and Friday teams —

3368. **Mr McFarland:** “Should not” are two lovely words, Chairman.

3369. **The Chairman (Mr Molloy):** We will try to iron out any problems. Once we have the draft reports, we can identify any overlapping issues.

3370. **Mr McFarland:** Is there a proviso that the Committee can revisit certain subjects? The Wednesday team may take a decision that is fundamentally at odds with a decision taken by the Monday team, so certain issues may have to be revisited.

3371. **The Chairman (Mr Molloy):** Once we have the draft reports, we can isolate any issues that require further discussion. Some issues may remain unresolved, and the reports will reflect that.

3372. **Mr S Wilson:** Will that be the sole business next week, Chairman?

3373. **The Chairman (Mr Molloy):** Some issues are still in the car park, and those will also require further examination.

Adjourned at 1.27 pm.

Wednesday 6 September 2006

Members:

The Chairman, Mr Francie Molloy
Mr Dominic Bradley
Mr Fred Cobain
Mrs Diane Dodds
Dr Seán Farren
Mr David Ford
Mr Gerry Kelly
Mr Raymond McCartney
Mr Alan McFarland
Lord Morrow
Mr Sean Neeson
Mr Sammy Wilson
Observing: Mr Jim Wells
Mr Tim Moore (Senior Research Officer,
Northern Ireland Assembly)

The Committee met at 10.03 am.

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

3374. **The Chairman (Mr Molloy):** I remind members to switch off their mobile phones. Are there any new members of the Committee who wish to declare an interest?

Members indicated dissent.

3375. **The Chairman (Mr Molloy):** OK. We shall now move on to the draft minutes of the meeting of 30 August.

3376. **Mr McFarland:** Are we recording attendance first?

3377. **The Chairman (Mr Molloy):** Yes; I am sorry.

3378. **Lord Morrow:** Will we receive a copy of the minutes, or are they for the chosen few only? Is there a code word, and can you tell me what it is?

3379. **The Chairman (Mr Molloy):** Who is deputising today?

3380. **Mr G Kelly:** I am deputising for Martin McGuinness.

3381. **Mr Raymond McCartney:** I am deputising for Conor Murphy.

3382. **Mr D Bradley:** I am deputising for Alex Attwood, and I will be joined later by Seán Farren.

3383. **Mr Ford:** I am myself, and Sean Neeson is deputising for Naomi Long.

3384. **Mr McFarland:** Danny Kennedy sends his apologies and will not have a deputy today. Fred Cobain will be along shortly; he is standing in for Mr McNarry.

3385. **Lord Morrow:** I expect that Sammy Wilson and Diane Dodds will be here.

3386. **The Chairman (Mr Molloy):** Are members content with the minutes of the PFG Committee meeting held on 30 August 2006?

Members indicated assent.

3387. **The Chairman (Mr Molloy):** The next matter on the agenda is the Committee's letter to the Secretary of State and his reply. The Secretary of State will attend the PFG Committee meeting on 18 September at 10.00 am. That is set as a plenary date, but the plenary is not likely to happen before 12.00 noon, and the Committee meeting will be finished by then.

3388. The Secretary of State's reply addresses the issue of national security and the type of information that the policing oversight bodies can expect to receive. The Committee should have been informed last week of who could be expected to receive that information. The letter sets out with whom the information will be shared and states how the Government will engage with the political parties on the matter. Does anyone wish to comment on that?

3389. **Mr D Bradley:** As there is a range of issues up for discussion, it would be appropriate for the Secretary of State to attend the Committee for two hours. I propose that the Committee requests that he does so.

3390. **The Chairman (Mr Molloy):** How long is the meeting likely to last?

3391. **The Committee Clerk:** The Committee meeting is set for 10.00 am, and the plenary starts at 12.00 noon. It will be tight.

3392. **The Chairman (Mr Molloy):** The four main issues up for discussion at that meeting — at this stage — will be national security, the role of the Army, the Glenties speech, and the Regulation of Investigatory Powers Act 2000. If any other issues arise from today's meeting, they will be considered. It is our intention to forward the Committee's questions to the Secretary of State so that he comes prepared.

3393. The Committee asked whether Army powers would be restricted to public order and explosive ordnance disposal. The Secretary of State's letter states that they will not, but does not say what its other powers might be. That question can be put to the Secretary of State at the meeting.

3394. Does anyone wish to comment on the Secretary of State's letter?

Members indicated dissent.

3395. Should the PFG Committee's meeting with the Secretary of State be in open or closed session? Minister Eagle attended the economic challenges subgroup yesterday, and it was conducted in open session. One member of the public attended.

3396. **Mr Ford:** Normal practice is to take evidence in open session, and I see no reason not to continue that.

3397. **Mr McFarland:** How open is that? Are we announcing in the press that that will take place? Are we holding that session in the Senate Chamber? Fifty people may attend if we advertise it.

3398. We all love being in touch with the electorate. The difficulty with this is that the aim of the Committee is to get straight and honest answers from the Secretary of State about what is going on, because the Committee needs that information to make sense of it.

3399. While under most other circumstances, a public session would be laudable, the danger is that I could nearly write the Secretary of State's replies to almost all of these questions, if he

knows that he will be sitting there with 50 people present, including the press. The meeting should be reported in Hansard. The whole idea is to try to persuade the Secretary of State to tell us things that he does not want to tell us. That is the essence of having him here. We may try to extricate from him some sense on, for example, his Glenties speech. However, if he knows that he will be sitting in front of the press, we will simply get the same old stuff that he has given us already.

3400. I think the Committee would get more out of it if the session were in private.

3401. **The Chairman (Mr Molloy):** Shall we lock the door and not let him out until he answers?

3402. **Mr McFarland:** There may be merit in that.

3403. **Mr Ford:** I am sure that Mr McFarland has a point, but I do not think it necessarily any more likely that we will get full and open answers from the Secretary of State before five parties, their researchers and the Assembly staff than we would if there were a television camera in the room. I suspect that the Secretary of State will be in public mode once there is more than one person in the room.

3404. **Mr G Kelly:** I agree with Mr Ford. The Secretary of State will behave as though it were a public meeting anyway.

3405. **The Chairman (Mr Molloy):** As to the Senate Chamber, the Committee Clerk is checking its availability.

3406. **Mr McFarland:** If we publicise this meeting, we could get quite a lot of interest. It is the first time that the Secretary of State will have been grilled on policing and justice by an Assembly Committee with all five parties present.

3407. That is not what I mean. We are not grilling the Secretary of State. If we were, he would not come, as he has said previously.

3408. **The Chairman (Mr Molloy):** With regard to the meeting with the Secretary of State, members should give advance notice of

questions they wish to ask him or issues they wish to raise with him.

3409. We will move on to the issue of firearms and explosives. We need to make a decision on this matter. Mr Moore has researched the subject.

3410. **Mr T Moore:** The Committee has considered the devolution of powers over firearms at a number of meetings. At the last meeting, the Committee decided that it would be useful to have in place all possible options. At tab 3 of members' packs, a table sets out six possible options. I will explain the table to members. At the top, a distinction is drawn between "prohibited weapons" and "other firearms". "Prohibited weapons" are those for which the Secretary of State's permission is required for possession, manufacture or sale. "Other firearms" do not require such permission. That is the key distinction.

3411. For both groups, the Committee has a range of options. The first, entitled "full devolution", involves transfer of full responsibility for legislation, policy and general oversight. That includes the power, held at present by the Secretary of State, to grant authority to hold, manufacture and sell weapons. It also includes "full responsibility for legislation, policy and general oversight" for all other weapons. In that option, all powers relating to firearms are devolved.

3412. The second option is where full responsibility for legislation, policy and general oversight is not devolved, but the Secretary of State's power to grant authority to hold, etc, is devolved. That also involves devolution of powers over "other firearms".

3413. The third option — the one considered in the NIO discussion document on policing and justice — is the Scottish model. It is an unusual combination. The Secretary of State has the power to grant authority for the possession of prohibited weapons, but there would be only limited responsibility for other firearms. For example, the Minister for Justice in Scotland can grant a museum the authority to hold weapons without a firearm certificate. That is the nature of the limited powers.

10.15 am

3414. Options, 4, 5, and 6 do not allow for any devolution of prohibited weapons; devolution is restricted to other types of firearms. The fourth option covers fully devolved responsibilities such as legislation, policy and oversight. The fifth option allows for only some aspects of full devolution; for example, granting certificates and authorities to museums, changing fees, or the duration of a certificate. Those functions could be devolved to the Minister. Under option 6, which deals with current arrangements, control of firearms is a reserved matter.

3415. Those are the six options. Mr Attwood said that he noticed that the NIO's letter of 29 August stated that, in relation to the Secretary of State's authority, it might be desirable to have devolution, but not at this time. The first three options could all be prefaced by some reference to the words "but not at this time".

3416. **The Chairman (Mr Molloy):** Do members have any questions? Mr Moore has given details of prohibited weapons.

3417. **Mr T Moore:** A list of the prohibited weapons is set out in article 45 of the Firearms (Northern Ireland) Order 2004.

3418. **The Chairman (Mr Molloy):** Do members have any questions?

3419. **Lord Morrow:** Is the Committee being asked to now decide the option with which it can sit comfortably?

3420. **The Chairman (Mr Molloy):** Yes. A couple of meetings have been put back, and a decision must be made so that it can be included in the report. We must decide to have either full devolution or one of the other options.

3421. **Mr G Kelly:** This matter has come up a number of times, and the information on it is helpful. However, I propose that the Committee goes for option 1.

3422. **The Chairman (Mr Molloy):** Option 1 is full devolution.

3423. **Lord Morrow:** I propose that we go for option 5.

3424. **Mr McFarland:** The Committee decided during its previous discussion on this matter that it would make sense if legislation and prohibited weapons were reserved, but that control of other firearms — mainly shotguns, etc — should be devolved. Whether that is done immediately depends on the direction in which discussions on policing go.

3425. **Mr D Bradley:** The SDLP supports option 1.

3426. **Mr Ford:** Alan McFarland's logic implies that he favours an arrangement that is somewhere between options 2 and 3.

3427. **Mr McFarland:** The Ulster Unionists would be happy if responsibility for other firearms were devolved. I cannot see a situation in which anyone would want to have rocket launchers or anything else that is mentioned on the list of prohibited weapons. Therefore, decisions on prohibited weapons would be better left at a national level. It would be sensible if legislative responsibility for such weapons remained centralised for the United Kingdom as a whole.

3428. **Mr Ford:** The Alliance Party sees the sense in leaving legislative responsibility for both categories at UK level. That logically leads us toward the Scottish model at option 3, in which there are powers to grant authority and also some limited local responsibility. However, legislation would remain elsewhere — at least initially.

3429. **The Chairman (Mr Molloy):** The Committee does not have consensus on any option. Does any member want to put forward a proposal?

3430. **Mr G Kelly:** I propose that the Committee adopts option 1.

3431. **The Chairman (Mr Molloy):** Do members agree?

Members indicated dissent.

3432. **The Chairman (Mr Molloy):** Do members have any other proposals?

3433. **Mr D Bradley:** In the light of the fact that the first proposal has not achieved consensus, I suggest that we adopt option 4,

which proposes that powers over all firearms, except prohibited weapons, be devolved.

3434. **Mr Ford:** Would Mr Bradley like that to happen immediately, or is it an aspiration?

3435. **Mr D Bradley:** On devolution.

3436. **Mr Ford:** The Alliance Party would have difficulty with it if it were proposed to happen immediately after restoration of devolution.

3437. **Mr D Bradley:** I will accept then that it should happen as soon as possible after restoration of devolution.

3438. **The Chairman (Mr Molloy):** The proposal is to adopt option 4 as soon as possible after restoration of devolution. Do we have consensus?

Members indicated dissent.

3439. **Mr S Wilson:** The DUP would have preferred the current arrangements, but option 4 is a reasonable compromise.

3440. **The Chairman (Mr Molloy):** We do not have consensus on that proposal.

3441. The next item on the agenda is "Residual Justice Issues". Mr Attwood made a proposal on that matter last week, and Mr Bradley will follow up on that.

3442. **Mr D Bradley:** The SDLP believes that the Public Prosecution Service (PPS) should provide reasons and sufficient details, in general cases, in the interest of victims. The PPS should also provide reasons and sufficient details where public interest is heightened and public confidence threatened, in sensitive cases. The British Government were most unhelpful in earlier negotiations on this key issue. In the light of experience over the past three years, the situation needs to be reviewed and the PPS policy of not providing reasons must be reconsidered.

3443. **Mr G Kelly:** I agree with Mr Bradley. This has been an ongoing debate, and it deals with controversial cases. I am reminded of one particular case, in the Markets area of Belfast, where there has been no prosecution even though all the evidence is there. It is a pernicious attempt to obstruct justice. However, I am

unsure whether Mr Attwood's proposal for the Government and the PPS to review their policies is the correct course of action. The proposal should be amended to state that this Committee calls on Criminal Justice Inspection (CJINI) to review the policy of the PPS on the publication of reasons where there has been a failure to prosecute and the collapse of prosecutions.

3444. **Mr D Bradley:** I accept that amendment.

3445. **Mr S Wilson:** Could you read the amendment again?

3446. **Mr G Kelly:** This Committee calls on CJINI to review the policy of the PPS on the publication of reasons where there has been a failure to prosecute and the collapse of prosecutions.

3447. **Mr S Wilson:** That is not an amendment. That is the original motion.

3448. **The Chairman (Mr Molloy):** The difference is the involvement of CJINI.

3449. **Mr G Kelly:** Instead of the Government and the PPS reviewing their own policies, it would be CJINI. We believe that it would be better situated there.

3450. **The Chairman (Mr Molloy):** Does anyone wish to comment on that? Do we have consensus on Mr Attwood's proposal, as amended?

3451. **Mr McFarland:** CJINI has a specific role, which is that of watchdog for the criminal justice system. It is not there to review policies. I am content to go with the business of reviewing policy — the outcome of that review would be a different matter — but it is not the role of CJINI. Its role is to ensure that things work properly and are not out of order. As I understand it, CJINI does not have a role in reviewing matters in that way.

3452. **Mr G Kelly:** Mr McFarland is right, to a certain extent. I would have had this done under criminal justice oversight, but that mechanism has run its course, and any work remaining under its jurisdiction has now gone to Criminal Justice Inspection. That is why I chose Criminal Justice Inspection, which sits outside the

system. Asking any public prosecution service to review its policy would not be effective. That is a matter of human nature. We want an outside body to do that work. It will have the experience; its job is inspection of policy and practice.

3453. **Mr S Wilson:** I take Mr McFarland's point. I am not too clear on the role of Criminal Justice Inspection Northern Ireland, but my understanding was that its job was simply to look at policies to see whether or not they were being properly applied and whether the criminal justice agencies were doing their jobs properly. However, I am not sure that to direct a change in policy or to make new policy is part of its role. It may well be that all it can do is make the same requests as this motion — that is to say: "We do not like what you are doing. Review your policy."

3454. Is it not far better to say that we want the policy reviewed, rather than take this other circuitous route? I could be wrong, but I believe that that is all that can be done anyway. If it was concluded that a review was in the public interest or that there was sufficient impact on the public when decisions not to prosecute are made and no reasons are given, the Government should go back and look at that policy. Surely all we are doing is cutting out the middleman and saying that that is what we believe should be done.

3455. **Mr G Kelly:** That will be the result. The effect may be that legislation is necessary to change the current policy, which will mean involving the Government. However, the recommendations of an outside body would carry more weight. This is not just about the PPS. There would be no faith in any group investigating itself if it is already happy with its current policy. That is the difficulty. We need an outside view, but one that does not itself have the power to change things.

3456. **Mr S Wilson:** If there is a lot more power for —

3457. **Mr McFarland:** The Government decide policy. We are calling on the NIO to review the policy of the PPS. That is an independent organisation, but its policy is set by the Government. That is the normal, logical way to deal with a

problem. If the stage is reached at which there is still unhappiness with policy, one might well call on Criminal Justice Inspection Northern Ireland, which is the watchdog, to revisit the matter. However, it is normal in the first instance to call on the Government to review the policy of holding back information.

3458. **Mr G Kelly:** Is it possible then, instead of stipulating Criminal Justice Inspection, to call for an independent review? Then we will end up hearing from every appropriate grouping. The difficulty with any review of policy is that, regardless of who carries it out, there is very little confidence that it will overturn practice. As Mr Bradley has pointed out, that has been a matter of debate for some years now.

3459. **Mr McFarland:** We do not know. It may be that there is a recognition, as there was in some court cases, that, eventually, a degree of transparency about what was going on was achieved. It may not have been as much as some people might have wanted, but there was a recognition that people could not simply say that they were not commenting.

3460. The political parties debated the issue in the media. As a result of that, the Committee is asking the Government to review the issue. That is not unusual; the Government decide policy.

3461. There are concerns about the Government's impartiality on such matters. However, their reaction to this proposal might indicate whether they are being genuine and fair about the issue. If we call on them to review the policy and they make adjustments, everybody will be happy. However, if no adjustments are made, the Committee can ask Criminal Justice Inspection Northern Ireland to consider the matter.

3462. However, in the first instance, we should not run straight to Criminal Justice Inspection without giving the Government an opportunity to reassess what they are doing. We are merely encouraging the Government to act.

10.30 am

3463. **Mr G Kelly:** Will Alan or Sammy write a proposal so that we know what we are considering?

3464. **Mr S Wilson:** As it stands, the proposal already addresses the issue of a policy review. We are expressing collective concerns about a lack of transparency where there has been a failure to prosecute. We are therefore asking the Government and the PPS to review the policy — they are the only two bodies that can do that.

3465. Calling for such a review is a stronger option than going to middlemen and asking them to examine the policy and decide whether it is being implemented properly. A middleman will do exactly what the proposal asks. I am not sure why there is reticence about the proposal; going directly to the relevant agencies is a stronger option than asking a middleman to carry out a review. That is why we support the proposal.

3466. **Mr G Kelly:** To explain, it is not a reticence; it is an attempt to strengthen the proposal. It is broadly felt that if an organisation investigates or reviews itself, it is already in danger. I will support the proposal, but I will argue that the reference to the Public Prosecution Service be removed. That means that the review will go straight to the Government.

3467. **Mr McFarland:** I would be happy with that, because the Government make the policy. That is a double-hatting issue; you could argue that the PPS is merely being alerted. We are asking the Government to examine the policy, and they will subsequently ask the PPS to undertake that examination.

3468. **Mr G Kelly:** I will support that.

3469. **The Chairman (Mr Molloy):** Mr Bradley, are happy to remove the reference to the PPS from the proposal?

3470. **Mr D Bradley:** Yes.

3471. **The Chairman (Mr Molloy):** Do we have consensus that we should remove the reference to the PPS from the proposal and that the remainder of the proposal stands?

Members indicated assent.

3472. **Mr S Wilson:** You will get a productivity bonus for securing agreement, Chairman.

3473. **Mr D Bradley:** The second proposal deals with district policing partnerships (DPPs) and community safety partnerships (CSPs). It is widely agreed that there is confusion about, and duplication in, the work of those bodies. So far, the Northern Ireland Office has been unhelpful about resolving those problems. The Review of Public Administration (RPA) creates the space in which to reconsider this matter. However, it is critical that we maintain the authority of the district policing partnerships and the policing arrangements.

3474. **Mr S Wilson:** Do you accept that this matter is not simply about the retention of the authority of one or other of the bodies? Do you also accept that, given the level of overlap in the work of the two bodies, and given that they sometimes make contradictory decisions, it is important that the two bodies are merged? Many community safety issues are not solely policing issues; other statutory agencies that are involved in community safety partnerships, but that work in isolation from the DPP, may deal with those issues. This is not about the dominance of one body over the other, or about which body should have priority, but about making decisions on how community safety partnerships work. The police are one of the statutory agencies, some others being local councils, education and library boards or the Roads Service.

3475. Surely all those organisations could be represented on one body that would examine problems such as youngsters annoying people by running through an entry that the Roads Service says it will not block off despite the police saying that it would be helpful if it were. Co-operation on such issues is a much more important reason for there being one body, rather than whether DPPs should have dominance over community safety partnerships, or vice versa.

3476. **Mr McFarland:** That has been an ongoing issue. Sammy and I sat on the first Policing Board. Throughout its existence, the Policing Board called on the NIO to deal with that issue. Interestingly, the Criminal Justice Review, published in March 2000,

recommended that the organisations be merged because councillors were represented on each of them, which resulted in duplication. Essentially, the organisations do broadly the same job, except that the DPPs are statutory agencies.

3477. The CSPs were originally set up by the Government as a cunning wheeze to allow Sinn Féin to exert more influence in its areas; funds were made available for security, and all sorts of weird and wonderful things. The situation has moved on. Everyone who is involved wants the organisations to amalgamate. They cannot understand why the NIO is reluctant to do that. It would be much more effective and efficient for councils and for public safety.

3478. **Mr Ford:** That is not a recent suggestion. I was present at a meeting of the Committee for the Environment, in this room, when the issue of CSPs was first raised. At that stage, it was believed that there was merit in ensuring that there were joint structures. Others have agreed with that position. There is sufficient overlap of both the personnel and the remits of the two organisations that it is ludicrous to maintain separate structures.

3479. **Mr G Kelly:** It is my understanding that CSPs were introduced in Britain first; they pre-date the DPPs. They were not introduced into the North until later. Discussions leading up to the Good Friday Agreement centred on whether those organisations would contradict each other. That discussion continues.

3480. We should be cautious when considering the removal of DPPs. DPPs were introduced to provide communities with a mechanism by which the police could be brought to account at a local level. There are no PSNI members on DPPs, even though they attend meetings, and so on. CSPs have a different make-up. If the two organisations were to be amalgamated, the accountability mechanism that is provided by DPPs could be compromised. I am wary of that possibility.

3481. I do not object to a review in principle. Overlapping and double-jobbing does occur. However, the review should not be conducted with the intention of amalgamating the organisations in the way that Alan and Sammy

have described. If the last part of the proposal — “and to maintain the authority of the policing arrangements” — is removed, Sinn Féin will consider it.

3482. **Mr Ford:** Gerry Kelly has a point about the ability of the DPPs to hold the local police commander to account. However, surely it is not beyond the wit of man to devise a system in which councillors, community representatives and other statutory bodies can sit down together and co-operate in order to deal with local problems. Representatives of, for example, the Roads Service or the Housing Executive would not be present for meetings between the DPP and the local police commander. The suggestion that accountability will be lost through amalgamation can be modified by the methods by which it is organised.

3483. DPPs and CSPs discuss issues that are common to both bodies. It is, therefore, pointless to maintain them separately. I accept that there is a need to ensure that there is accountability. However, that would not be impossible to arrange.

3484. **Mr McFarland:** Gerry is correct to say that the system of accountability must be maintained. However, the same organisation could meet in different formats, such as subcommittees or subgroups. There are two entirely different structures, with different managers, council representatives and members. In some cases, empire building has taken place. Indeed, groups have been scrapping about which of them has the authority to deal with certain issues. That is nonsense.

3485. Provided that we retain the integrity of the existing systems for holding the police to account, which are important, it should not be beyond our competence to have one organisation that meets in two formats.

3486. **Mr S Wilson:** Changing Mr Bradley’s proposal to ensure best practice and effectiveness and to ensure that arrangements stay in place to maintain the authority of the policing arrangements would address the point that was raised.

3487. **Mr D Bradley:** Our proposal calls for a review and for the operation of the two bodies to be examined. Based on the results of such a review, changes could be made. I know that Committee members have experience of the two groups that work in their areas, and they probably have suggestions and proposals to make. However, we should not pre-empt a review. If a review is proposed, we should allow it to take its course and for modifications to be made on its findings.

3488. **Mr Neeson:** We cannot disagree with the principle that Mr Bradley puts forward, as we cannot pre-empt the findings of a review. However, some issues need to be determined, and that is the main emphasis of the proposal. We should move forward as quickly as possible.

3489. **Mr McFarland:** We could change the wording slightly so that after “effectiveness” we would have: “while maintaining the authority of the policing arrangements”.

3490. **Mr S Wilson:** Or: “by ensuring that structures are in place to maintain the authority of the policing arrangements.”

3491. **Mr G Kelly:** If we want a wide-ranging debate — and to tell you the truth, I am getting nervous about where the debate is going — all that we need to do is put a full stop after “effectiveness”. That would allow us a very wide-ranging debate. I am not at all convinced that amalgamating the two groups is the proper thing to do. There is overlap of practice in both groups that needs to be sorted out; however, that is different from: “to maintain the authority of the policing arrangements”. If you want an open review, put the full stop after “effectiveness”.

3492. **Mr S Wilson:** That seems to contradict Sinn Féin’s previous point, which was that if the two bodies were joined, the body or format in which the police are held to account would be lost. By stopping at “effectiveness”, is Sinn Féin saying that it is no longer concerned about structures being in place to hold the police to account at local level, or does it still want a separate structure for that purpose? If the latter is the case, we are left with what we have at present. We would be reviewing the work of the two groups, but we would still have two groups.

3493. I took Mr Bradley's proposal to mean that the work of two bodies overlapped and was sometimes contradictory and that community policing, because of how it works now, requires an holistic approach from a wide range of authorities. Therefore, it would be far better to amalgamate the two groups, while ensuring that the role of holding the police to account was not diluted or did not disappear in any such amalgamation and that there was a structure in one, new, amalgamated body that would perform that role.

3494. If we wish to have that — and I wish to have that, as, it seems, does Sinn Féin — we have to keep the last part of the proposal, but amend it so that structures are put in place to ensure that the authority of the policing arrangements is maintained.

10.45 am

3495. **Mr D Bradley:** As I said earlier, the proposal calls for a review, not for the amalgamation of the two bodies. It proposes that the work of the two bodies be reviewed and that action be taken on the basis of the evidence gathered during that review.

3496. **Mr G Kelly:** Sammy, not for the first time, has convinced me in his interpretation of our position — which is actually the DUP position — not to support this proposal. It is clear that, from the unionist and Alliance points of view, it is about amalgamation, and I am not prepared to support it.

3497. **The Chairman (Mr Molloy):** We have three proposals; we have the main proposal and amendments to it.

3498. **Mr McFarland:** Why will Mr Kelly not support the proposal? Most people who have anything to do with criminal justice and policing agree that, at some level, arrangements are daft in their current form. It is not sensible to have two bodies fighting with each other at ground level and trying to work out who should deal with what. Whether we end up with an amalgamation or with the bodies remaining separate but with modified roles, — for example, the same councillors could sit on both

— one could argue, as Dominic said, that that is up to the review.

3499. Most people agree that the roles of the bodies need to be looked at, and that is all that the proposal says. I do not understand why we cannot get agreement. I thought that Sinn Féin agreed in its earlier statements that a review is necessary. The proposal does not say what will come out at the far end, and we have no power as unionists to insist that the bodies be amalgamated. However, that does not stop the matter from being looked at. We seemed to have agreement that the system was not working very well, but now we do not. I do not mind what wording we have on this matter, but to consign the whole thing to the scrap heap again without examining it would be daft.

3500. **Mr G Kelly:** It just shows you that I am listening to unionism. You said that it is clearly about amalgamation, as did the Alliance Party.

3501. I offered earlier to put a full stop after the word “effectiveness”, which would mean the widest review. You moved away from that, which is why I am disagreeing with it on the basis of the arguments given.

3502. **Mr Neeson:** We cannot ignore the implications of the Review of Public Administration and the principle of community monitoring. Therefore I have no problem at all in accepting the proposal. We cannot bury our heads in the sand — there are going to be major changes.

3503. **The Chairman (Mr Molloy):** We do not have consensus on this matter. There is a proposal from Gerry Kelly.

3504. **Lord Morrow:** Is there consensus that change is necessary?

3505. **The Chairman (Mr Molloy):** I think that there is.

3506. **Mr Ford:** My interpretation of —

3507. **Mr G Kelly:** There is consensus that there is double-jobbing.

3508. **Lord Morrow:** I think that there is consensus that change is necessary. However, do you bring about change by saying that we should never look at this or by saying that we should?

3509. **The Chairman (Mr Molloy):** We have a proposal, which seems to have consensus, that there should be a full stop after the word “effectiveness”.

3510. **Mr McFarland:** That would at least get us a review, I suppose. If the minimum that we can achieve is that somebody looks at it —

3511. **Mr S Wilson:** Gerry Kelly actually raised this point initially, and I was glad that he did. I simply reinforced it. In this review, it is paramount that we do not finish up with a structure that dilutes the scrutiny of the police at local level. We can change the wording of the last phrase; we are happy enough with that. It is paramount, however — and I thought that we were at one with Sinn Féin on this — that we ensure that the body we finish up with is able to hold the police to account at local level.

3512. **Mr McFarland:** Chairman, could Gerry suggest some words, because Sammy is right —

3513. **Mr G Kelly:** Change “authority” to “accountability”.

3514. **The Chairman (Mr Molloy):** Dominic, are you happy enough with that?

3515. **Mr D Bradley:** I was going to suggest that we remove the phrase “and to maintain the authority” so that the proposal would read “best practice and effectiveness of the policing arrangements”.

3516. **Mr S Wilson:** We will live with the phrase “accountability of policing arrangements”.

3517. **Mr McFarland:** Gerry has suggested that the word “accountability” should replace the word “authority”, which would seem to get round everybody’s concerns. We needed to examine this proposal, and we have agreed on the word “accountability”. We are nearly there.

3518. **The Chairman (Mr Molloy):** Does everyone agree that the word “authority” should be replaced by “accountability”?

Members indicated assent.

3519. **Mr S Wilson:** Chairman, you will be getting an OBE out of this.

3520. **The Chairman (Mr Molloy):** I might need something. *[Laughter.]*

3521. We will move on to the research on definitions of ceasefires.

3522. **Mr T Moore:** The Committee asked for some research on the definition of ceasefires in legislation.

3523. **Mr McFarland:** Chairman, could you remind us why we asked for this? I cannot recall.

3524. **The Chairman (Mr Molloy):** David Ford asked for it.

3525. **Mr Ford:** Sean Neeson requested it first, and I followed up on that request last week.

3526. **The Chairman (Mr Molloy):** He is to blame.

3527. **Mr McFarland:** Chairman, can you refresh our memory as to why it was requested?

3528. **Mr Neeson:** The main reason for our request was that when the initial ceasefires were announced in 1994, the Government turned a blind eye to criminality, and so forth. However, if we are to move forward it is very important that we have a clear definition of a ceasefire. Thus, should the question arise of the Secretary of State’s excluding a party or parties from the Assembly, we will be clear about the matter.

3529. **Mr T Moore:** Members have been given a copy of the research findings. A definition of ceasefire was found in the Northern Ireland (Sentences) Act 1998, and the same wording can be found in the Northern Ireland Act 1998, as amended by the Northern Ireland (Monitoring Commission etc.) Act 2003. The definitions are there for members to read, so I will not make any further comment.

3530. Additional research was carried out on international definitions, which may or may not be of interest to the Committee.

3531. **The Chairman (Mr Molloy):** Section 30 of the Act, which deals with the exclusion of Ministers from office, is part and parcel of this issue.

3532. **Mr T Moore:** It is included because some of the wording in section 3(9) of the Northern

Ireland (Sentences) Act 1998 is repeated in section 30(7) of the Northern Ireland Act 1998. There is no reference to the ceasefire, but it is the same wording, so we included it for the sake of completeness.

3533. **Mr Ford:** I thank Tim for ascertaining that there are very few references to ceasefires in domestic legislation. Some of the international comparisons are interesting, but they are not directly relevant to our current situation. The definition of a ceasefire is somewhat less than it should be. It certainly ties in with the need for a commitment to solely peaceful and democratic means and to the Pledge of Office, which is mentioned later on the agenda.

3534. The practical reality is that the Governments have interpreted ceasefires as being an end to operations directed against the state, economic targets and “the other side”, but they have not taken into account the full range of criminality. Section 30 of the Northern Ireland Act 1998, as amended, has made some useful additions to an effective definition of a ceasefire. We must ensure that that definition is widened in the Pledge of Office.

3535. We have now reached a situation whereby the UVF can murder Craig McCausland, but that is not considered to be a breach of ceasefire, yet when the UVF fires shots at police officers — but, thankfully, do not kill any of them — it is considered to be a breach of ceasefire. That poses a fundamental moral question, which the Government have failed to answer thus far.

3536. **The Chairman (Mr Molloy):** If there are no other comments, we will move on to rule of law issues and further consideration of the proposals tabled by Ian Paisley Jnr.

3537. **Mr S Wilson:** The first proposal is self-explanatory. We had some discussion on that at the last meeting. Our view is that there must be confidence in any devolved Administration and in those who hold office in it. If there is any hint that those who hold office are associated with criminality, or are associated with and support people who are involved in criminality, it undermines the credibility of an Administration.

That is an important building block if devolution is to work. One of the most important issues for us is that there should not be ambivalence about whether a Minister who will introduce legislation actually supports the rule of law.

3538. **The Chairman (Mr Molloy):** Do we have consensus on that?

3539. **Mr G Kelly:** No. The Pledge of Office and the exclusion of Ministers from office are done and dusted. This issue has come up several times in the past few days. Ian Paisley Jnr has been less than vociferous in his support for the actions of the PSNI. There are contradictions all around this issue. We have negotiated a Pledge of Office, and I do not intend to support either of Ian Paisley Jnr’s proposals.

3540. **Mr D Bradley:** The proposals would be more appropriately dealt with by the PFG Committee dealing with institutional matters. We are not against considering this issue, but it should be looked at in the context of other Pledge of Office issues, including attendance at meetings of the Executive and the North/South Ministerial Council. Support for the rule of law, or lawful society, is sensible.

3541. **The Chairman (Mr Molloy):** The main reason that it has come to the PFG Committee in this format is for an opinion. If there is no consensus, it will be referred to the PFG Committee dealing with institutional matters.

3542. **Dr Farren:** What is the intended import of the proposal? I have no difficulty with the idea that if a Minister is guilty of a crime, he or she will cease to be a Minister. What is the effect? Is it to leave it to me, or to someone like me, to say: “Fred is involved in crime, and therefore he cannot be a Minister”? I say “Fred” only because I am looking at Mr Cobain. I have not participated in this debate before, and I fail to see the import of the proposal.

3543. **Mr S Wilson:** Read the first proposal. It states: “association with, or support for”. You are quite right: a Minister will lose his job if he is involved in crime.

3544. **Dr Farren:** I am reading “association” and “involved” as being similar.

3545. **Mr S Wilson:** I am not sure that that is the case. Being involved means that the person is directly involved in criminal activity. Equally important in building confidence in those who hold office is that they should not be seen to be associated with, or supporting, those who are involved in criminal activity. There is a difference. If the phrase were simply “involved in criminal activity”, there would be no need for the proposal because once a Minister had been caught, charged and found guilty, they would be out of office anyway.

3546. This proposal goes beyond that. There is a confidence issue if Ministers are ambivalent towards people who are involved in fuel laundering, money laundering, drug dealing or whatever, while not being involved in, or being found guilty of, those things themselves.

3547. **Dr Farren:** Anyone who watched ‘Spotlight’ last night would be very concerned about the use of the word “association” in this context, given what has transpired in relation to the issues that were highlighted in that programme. The word “association” has led to a terrible tragedy for one individual.

3548. If the Committee believes what that individual said last night, it would exercise caution when including the word “association” in the proposal. Mr Bradley has said where the SDLP considers such issues would be best raised, rather than in the Committee.

11.00 am

3549. **Mrs D Dodds:** Surely Dr Farren is talking about the need for strong accountability mechanisms to hold the police to account. There must be a strong accountability mechanism to deal with wrong actions, and there is confusion about that. It is a law-and-order issue, and it is of paramount importance that those who hold the highest office in the land support the police and be separate from any association — or perception of association — with criminality.

3550. **The Chairman (Mr Molloy):** Is there consensus on the proposal?

Members indicated dissent.

3551. **The Chairman (Mr Molloy):** We will move on to the next proposal.

3552. **Mr S Wilson:** The previous proposal may be better discussed in another format of the PFG Committee, as it relates to the Pledge of Office. The DUP is happy for it to be referred to the PFG Committee dealing with institutional issues.

3553. **The Chairman (Mr Molloy):** The Committee now has a proposal in the name of Alex Attwood in relation to policing and justice.

3554. **Mr D Bradley:** The SDLP proposes devolution of justice on day one of restoration. We believe that if there is sufficient confidence to go into Government, there should be sufficient confidence for those powers to be devolved.

3555. **Mr G Kelly:** This is the third or fourth time that this issue has been raised — and that is not the wording of the proposal. The proposal states that it “is not at this time able to define when.” When the Committee discussed this issue previously, it was put to the DUP that, if the institutions are restored, it would surely accept that all the parties involved are fit for Government. The DUP would not give even an indicative time frame of when policing and justice could be transferred.

3556. The terms “as soon as possible” or “we cannot define it yet” are meaningless. In December 2004, the emphasis was on a two-year period or halfway through an Assembly term. The Committee has debated this over and over again. I do not know why the issue is being raised again, because there will not be consensus.

3557. **Mr S Wilson:** First, this discussion is not meaningless. I borrowed the term “as soon as possible” from a Sinn Féin representative who talked about “as soon as possible”.

3558. **Mr G Kelly:** I am glad that you are reading our stuff.

3559. **Mr S Wilson:** The Sinn Féin representative is not here today so I will not name him or he might get into trouble.

3560. Secondly, the term “as soon as possible” is borrowed from the comprehensive agreement. Other parties have used it on a number of occasions. There was a long discussion about whether conditions would be met for devolving power to other Departments, and whether or not policing and justice could be devolved at the same time. That has always been accepted, even up until the passing of the Northern Ireland (Miscellaneous Provisions) Act 2006 in the House of Commons — which, incidentally the three SDLP MPs supported. It has always been accepted that there would be separate arrangements and separate timing for the devolution of policing and justice, subsequent to the devolution of powers to other Departments.

3561. Policing and justice was seen as a particularly sensitive issue that could only be effectively devolved when there was confidence that the institutions were working properly and not being abused.

3562. That has been the position of the SDLP. If that position has changed, perhaps the SDLP can explain why. Until July, when the Northern Ireland (Miscellaneous Provisions) Act 2006 became law, the SDLP was supporting separate arrangements for policing and justice, requiring that devolution be brought forward jointly by the First Minister and the Deputy First Minister, then subject to a vote in the Assembly — the SDLP accepted that the Assembly would have to be in place — and then it would go to Westminster for the necessary legislation, enabling powers being already there. Obviously all the other structures would have had to be in place before that could happen.

3563. This is not a new position. It has been our position, and it has been held, as Mr McFarland pointed out, by those who signed the Belfast Agreement in 1998, when the comprehensive agreement was discussed a couple of years ago and when the Northern Ireland (Miscellaneous Provisions) Bill was going through Parliament this year. No one should be startled that the DUP supports a subsequent arrangement for policing and justice. The reason is that devolution of policing will be the ultimate test

of confidence in the parties’ willingness to work within the structures set up in Northern Ireland and within the rule of law. It will require that we see that Ministers and those in the Assembly have operated properly and worked the structures properly and that, therefore, there is confidence in the community.

3564. “As soon as possible” was the phrase that indicated our intent. The accusation has always been made that the DUP is deliberately dragging its heels. We are not dragging our heels, and that phrase is designed to convey that we want to ensure that when devolution of policing and justice powers occurs, it will work. Mr Attwood has added that the parties have all had different definitions of that. This was a genuine attempt to convey to all the other parties that the DUP aspires to devolution of policing and justice as quickly as possible. However, it is not entirely within our power.

3565. To set timescales would be wrong. If that were done, parties would work towards a date, rather than towards meeting the conditions necessary to build up confidence. By not setting a date, but by laying down the necessary conditions, we hope that people will focus on those, rather than sit on their hands, wait for the date to come, and then claim that there is a crisis because the date has not been met.

3566. **Mr G Kelly:** No one is astounded that this is the DUP position. Sammy is right that it has been consistent to that extent. The problem is that the DUP does not want to give a time frame. It wants to have a veto, and Sammy has described the way he is going to use it.

3567. First, the DUP sets the bar for setting up the institutions as high as it possibly can — it is holding back the restoration of the institutions. Then it wants to have its cake and eat it — it wants to get to the point of restoration and then have another go at policing and justice. The DUP tells us to stall, and that it will decide who is fit to be involved in policing and justice and who is not. That is what this is about. It is an argument against setting any time frame.

3568. Even Sammy’s description of the ultimate test shows that the DUP will be the arbiters of that test. They want to be in charge of

everything. Sinn Féin will not support that. There should be a time frame. There is no logical reason for the DUP to refuse to give even an indicative time frame; it just refuses to give it. This could go on for ten years. The DUP should show its intent by agreeing to a time frame — something, incidentally, that it was on board for in December 2004.

3569. **Dr Farren:** The SDLP believes that devolution should include policing and justice. That is not unlikely, but, assuming that the institutions will be restored, the imperative must be to work to ensure that devolution of policing and justice occurs as soon as possible, recognising the procedures that are broadly as Sammy Wilson has set them out.

3570. The SDLP wants all parties to make a concerted effort, because, when devolution is restored, we will be bound to work together on all issues for which we will have responsibility. If devolution of policing and justice is not possible from day one, we should work together to set down a short and indicative timetable, in which commitments will be made and confidence built up so that we can realistically put a more precise timeframe on the devolution of policing and justice. It would probably be easier to do that now, as our hopes are that devolution will be restored, but we cannot be 100% certain about that.

3571. Therefore, we urge the parties to find a way — it should not be difficult — when devolution is restored, or the prospect of it emerges over the next few weeks, to begin to address the issue. Ultimately, it will be a litmus test of the parties' commitment to the institutions, that we are all fully committed to supporting, as we are to holding to account, the agencies for law and order.

3572. **Mr McFarland:** I can see before me the mists of my crystal ball clearing. I can see the end of October when the terms and conditions laid down by the DUP — criminality, paramilitarism and support for policing — are all within reach: halcyon days. I can see a Government being formed at the beginning of December when Sinn Féin has met the DUP's requirements. Then, early next year, the DUP

will see Sinn Féin giving its full support for policing and encouraging young republicans from Crossmaglen to join the police, and all criminality reported by the Independent Monitoring Commission (IMC) will have ended. At that stage, confidence may have risen enough —

3573. **Lord Morrow:** When does this dream end?

3574. **Mr McFarland:** — for the Assembly to take a cross-community vote on the devolution of policing and justice, because, in the end, it has to come from the Assembly. It will require a cross-community vote, and that will require the parties to agree. The deal from the beginning has been that the Assembly will ask for the devolution of policing and justice when the time is right.

3575. If Sinn Féin played the game, accepted the rule of law and supported the police, the DUP would realise that it was serious and genuine, and there would not be an issue over this. However, at the moment, there is an issue. My strong sense is that we will not reach agreement today. It will probably go into the melting pot for some sort of deal in early October, with pressure from the DUP to accept it and from Sinn Féin to demand some sort of timescale. I do not think that we will reach agreement on this today.

3576. **Mr S Wilson:** Your crystal ball tells you quite a lot.

3577. **The Chairman (Mr Molloy):** Do we have consensus on the proposal?

Members indicated dissent.

3578. **The Chairman (Mr Molloy):** The next item on the agenda is “Devolution of appointments to, and the operation of, the Parades Commission”.

3579. At the meeting of 16 August, members agreed to refer to the PFG Committee dealing with rights; safeguards; equality issues and victims, the matter of whether appointments to the Parades Commission and its operation should be devolved to the Assembly.

3580. **Mr McFarland:** Did we not deal with this last week? I have a sense of déjà vu. I thought that there was no consensus and that the proposal fell.

3581. **The Committee Clerk:** It was discussed at last Friday's PFG Committee meeting dealing with rights; safeguards; equality issues and victims, which is now reporting back to this Committee.

11.15 am

3582. **Mr McFarland:** Did that Committee deal with this matter or has it been referred to this Committee to deal with?

3583. **The Chairman (Mr Molloy):** The Committee on rights; safeguards; equality issues and victims considered the matter last Friday but did not reach consensus on whether the power should be devolved.

3584. **Mr McFarland:** Therefore, the parties did not reach consensus at Friday's PFG Committee meeting. If that is the case, is it not merely a formality raising it again here today?

3585. **The Chairman (Mr Molloy):** The Committee must make a decision on the devolution of appointments to, and the operation of, the Parades Commission. It appeared under the heading of "Public Order" in the table that accompanied the letter from the NIO dated 15 August 2006. Do we have consensus on the proposal?

3586. **Mr McFarland:** I thought that Sinn Féin objected.

3587. **Mr S Wilson:** Do not encourage them.

3588. **Mr McFarland:** Somebody objected; there is no question about that.

3589. **The Chairman (Mr Molloy):** Do we have consensus?

3590. **Mr McFarland:** Let me do a double take.

3591. **The Chairman (Mr Molloy):** The Committee Clerk will read the proposal again. Alan is surprised; that is why he wants it read out again.

3592. **Mr McFarland:** I am surprised because one of the parties around the table was definite that the appointments to, and the operation of,

the Parades Commission would not be devolved to the Northern Ireland Assembly. I got the impression that the proposal did not have a snowball's chance of getting consensus.

3593. **The Chairman (Mr Molloy):** Things move on.

3594. **Mr S Wilson:** They have changed their mind.

3595. **Mr McFarland:** It is not they who were changing, Sammy; your team was majoring on that.

3596. **The Committee Clerk:** The proposal is that appointments to, and the operation of, the Parades Commission be devolved.

3597. **Dr Farren:** We need clarification on what is meant by "devolved". Appointments to public bodies are either within the authority of a Minister or, centrally, within the Office of the First Minister and the Deputy First Minister. If we are talking about the Office of the First Minister and the Deputy First Minister having the responsibility, I would be more sympathetic to the use of the word "devolved". However, if we are talking about devolving authority to the Assembly — the Assembly, in a massive vote, deciding the membership of the Parades Commission — I would be of a different mind.

3598. **The Chairman (Mr Molloy):** Members might not have a copy of the letter and the table, so the Clerk will remind you of its contents.

3599. **The Committee Clerk:** Members may recall the letter from the Secretary of State's office dated 15 August and the accompanying table listing matters that may or may not be devolved. The Committee worked its way through those matters. The letter can be found towards the back of the draft report.

3600. **Mr McFarland:** The PFG Committee dealing with rights; safeguards; equality issues and victims had several lengthy discussions on the issue. There is a difficulty in firing it in here without the background discussion or without refreshing ourselves about the issues, because those of us who are not on the Friday team, and who have not had the benefit of hearing the arguments, are being asked to take decisions

without having heard the information required to understand the arguments.

3601. I am slightly concerned. The PFG Committee dealing with rights; safeguards; equality issues and victims has made a decision on the issue. We must keep reminding ourselves that, although the PFG Committee meets in different formats, if the Committee makes a decision: that decision stands. There are not three separate Committees.

3602. If you are happy to refresh us on the arguments, Mr Chairman, we can get up to speed and reach a common level of understanding.

3603. **The Chairman (Mr Molloy):** It may be safer to accept the report of the PFG Committee dealing with rights; safeguards; equality issues and victims, in which consensus was not reached.

3604. **Mrs D Dodds:** There was no consensus?

3605. **Mr McFarland:** Let me give an example. Our party believes that the Parades Commission should be scrapped. Therefore, whether responsibility for the Parades Commission is devolved is not an issue for us. The PFG Committee dealing with human rights; safeguards; equality and victims has had a series of discussions on the Parades Commission.

3606. **The Chairman (Mr Molloy):** There is no point in rehearsing those arguments again today.

3607. **Mr McFarland:** Seán had a point about public appointments. A range of issues is involved. It is a thorny and sensitive subject from all points of view. The Committee had a full debate on it, and I understood that it had been agreed that a decision could not be taken, for various reasons. I would be slightly worried that, if a decision were taken in this format of the PFG Committee, we would end up firing shots in the dark.

3608. **The Chairman (Mr Molloy):** We should perhaps rule that when the Committee makes a decision, that is the end of it, and the matter in question should not be revisited. The PFG Committee dealing with rights; safeguards;

equality issues and victims considered the issue on Friday but did not reach consensus. Do we accept that?

3609. **Dr Farren:** I am not sure whether you are in a position to answer my question, Chairman. That format of the PFG Committee made that decision notwithstanding the fact that the Secretary of State's note states that the Government's preference is for responsibility for the Parades Commission to be devolved. It does not define what devolution — in the sense that I referred to a few minutes ago — might mean. Nonetheless, the NIO discussion paper 'Devolving Policing and Justice' states:

"The Government's preference is that responsibility for all aspects of parades, including appointments to the Parades Commission and its operation, should be devolved."

3610. Does Friday's decision mean that the Committee, having considered this issue, accepts in principle that responsibility for the Parades Commission should be a devolved matter, but was not clear as to what devolving it might entail?

3611. **Mr McFarland:** The Committee could not agree because my party and the DUP share the view that the Parades Commission should be scrapped. Therefore, to agree that its functions should be devolved is illogical. Many other issues were involved. For example, would decisions about the commission be taken on the Floor of the Assembly? In that case, everything must be determined by cross-community vote and the issue could become bogged down as a result of the Assembly rowing about it.

3612. Would decisions rest with OFMDFM? There are issues with the First Minister and the Deputy First Minister being in charge of the parades issues. Does responsibility for parades remain in London, where it is out of our hair? Decisions taken there may be viewed as being more impartial. There is a view that the parades issues should stay out of Northern Ireland politics.

3613. All debates on the issue are in Hansard.

3614. **The Chairman (Mr Molloy):** There was no consensus on the issue at Friday's meeting of the PFG Committee.

3615. **Mr McFarland:** No, we simply could not agree. It has been parked for the talks. I do not know whether the issue, and where responsibility for it should rest, will be included in all parties' agendas.

3616. **Dr Farren:** For clarification, do the unionist parties — since they seem to have the same views on the Parades Commission — believe that, at present, responsibility for the Parades Commission should not be devolved?

3617. **Lord Morrow:** Both parties think that the commission should be scrapped, but can you repeat the question?

3618. **Dr Farren:** Whatever form the Parades Commission takes, is the unionist position that the commission's functions should not be devolved, notwithstanding the Government's preference — and ours — is that they be devolved?

3619. **Mr McFarland:** Off the top of my head, I cannot recall. With the PFG Committee meeting three times a week in its different formats, they all morph into each other sometimes.

3620. **Dr Farren:** That is fine. We can defer it until another day.

3621. **Mr McFarland:** I need to refresh my memory. We have had several weeks of lengthy, detailed discussions on the parades issue; we can have another discussion if we want.

3622. **Lord Morrow:** Can we defer this issue? It seems that members need to refresh their memories of their own parties' positions, never mind those of other parties.

3623. **Dr Farren:** I hope that you are speaking for yourself. *[Laughter.]*

3624. **Lord Morrow:** Could we discuss this issue next week?

3625. **The Chairman (Mr Molloy):** We are trying to finalise the report, but we can return to this issue next week.

3626. **Mr McFarland:** The PFG Committee dealing with rights; safeguards; equality issues and victims has discussed culture and parades under the umbrella of human rights, equality and culture. The issue has presumably returned to the PFG Committee dealing with law-and-order issues only because the decisions of the Parades Commission could affect the police, which would come under the area of law and order.

3627. Parading, as such, is not a law-and-order issue. I am slightly confused that the PFG Committee dealing with rights; safeguards; equality issues and victims has not taken a decision on that, as the issue falls within its remit. I am also confused as to why the issue has appeared before this format of the PFG Committee.

3628. **Mr Ford:** Surely the Parades Commission, as an agency, is a justice issue, and responsibility for parades and the commission could potentially be devolved. Therefore, it is absolutely within the remit of the PFG dealing with law-and-order issues.

3629. **The Chairman (Mr Molloy):** The issue overlaps with this format of the PFG Committee, in respect of policing, and the PFG Committee dealing with rights; safeguards; equality issues and victims, in respect of equality. We can defer discussion of the decision of the PFG Committee dealing with rights; safeguards; equality issues and victims until parties have reviewed their positions, and we can revisit the issue. The decision will probably not change.

3630. The next item on the agenda is our initial draft report. We shall go through the report, line by line. The Committee shall continue in private session.

The Committee met in private session from 11.27 am to 12.18 pm.

On resuming —

12.18 pm

3631. **The Chairman (Mr Molloy):** Does the Clerk wish to deal with the Hansard issue?

3632. **The Committee Clerk:** There has been some discussion about the 48-hour turnaround time.

3633. The Editor of Debates has explained that sometimes the draft report of a meeting is cleared only at 7.30 pm or 8.00 pm and that — by the time it has been given to us the next morning and printed — it may be a day before we can get it to Committee members. If members wish to provide an e-mail address, we could get the draft report to them at 7.30 pm or 8.30 pm.

3634. **Mr S Wilson:** Are there people who have sleepless nights because they do not receive the Hansard report?

3635. **The Chairman (Mr Molloy):** Some bedtime reading.

3636. **The Committee Clerk:** The offer has been made by the Editor of Debates so that members can have the report immediately.

3637. **Mr Raymond McCartney:** It was agreed at an earlier meeting that a copy would be sent to the administration offices of each party. Can we ensure that that is done?

3638. **The Committee Clerk:** Do you mean copies of the reports?

3639. **Mr Raymond McCartney:** Yes: copies of the Hansard reports, and the file that we received this morning.

3640. **Mr S Wilson:** I would like clarification about the Committee report that we will receive next week. First, that areas of agreement and areas of lack of consensus will be highlighted. Secondly, that “impediments” will be changed to —

3641. **The Committee Clerk:** “Issues to be resolved by parties”, or something along those lines.

3642. **Mr S Wilson:** Thirdly, that any changes we discussed today will be included as additional material for discussion in a couple of weeks.

3643. **Mr Ford:** Do you have senior moments as well as Gerry?

3644. **Mr S Wilson:** It makes for easier reading.

3645. **The Chairman (Mr Molloy):** It is important, when signing off the Committee report next week, that members have a clear idea of what they want it to contain or of any changes that they want to make to it. That should be done fairly speedily, but members should have a clear idea of what they want.

3646. **The Committee Clerk:** Probably the most important issue that we need to resolve is the parties’ view on what is or is not a potential impediment to devolution. We might need a rewording of “impediments” in the tables in the “Conclusions” section of the Committee report. Parties need to come back to the Committee to state which issues are, or are not, potential impediments to devolution and which, therefore, might need to be referred for resolution later.

3647. **Mr S Wilson:** Will they be referred to the discussions later in the autumn?

3648. **The Committee Clerk:** We will put some words together so that members can look at the issues again next week to finalise them.

3649. **Mr S Wilson:** I ask this because I am not clear on the matter. If we mean issues that have still to be resolved, we could probably tick all the boxes. The word “impediment” attaches some importance — perhaps too much — to those issues. I want to be clear about the matter when I go back to our party group: what exactly are we being asked to tick? Is it that a certain matter is of such importance that it is a deal-breaker; is it that it is important enough to be included in negotiations, or is it that the matter is less important?

3650. **The Committee Clerk:** That is why we had difficulty in writing up the document. As you say, there is a whole range of issues. The remit of the Committee is to scope the issues that need to be addressed in preparation for Government, and the issues that have not been agreed but which need to be addressed in preparation for Government. That is what the report will highlight.

3651. **The Chairman (Mr Molloy):** When we go through the issues, we might find that nothing needs to be highlighted.

3652. **Mr Cobain:** I agree with you, Chairman.

3653. **Dr Farren:** Are you prepared to negotiate?

3654. **Mr Cobain:** Absolutely not.

3655. **The Chairman (Mr Molloy):** The next meeting of the PFG Committee dealing with law-and-order issues will take place on Wednesday 13 September.

3656. **The Committee Clerk:** May I remind members that this Committee will meet as usual next Wednesday at 10.00 am and that, because of possible plenary sittings next Monday and Tuesday, the PFG Committee dealing with institutional issues will meet next Wednesday afternoon?

3657. **The Chairman (Mr Molloy):** A revised work plan is being passed around. It is important that members note the start times for next Wednesday's meetings.

Adjourned at 12.26 pm.

Appendix 3

**Proposals not agreed
by the Committee**

Proposals not agreed by the Committee

Paragraph	Proposal
20	That there should be a single department with shared ministerial responsibilities
25	That a timeframe should be set for devolution in the context of the date of restoration
26	That a target date for the devolution of policing and justice should be set at two years after restoration of the Assembly
27	That devolution of policing and justice should occur as soon as possible
28	That policing and justice be devolved immediately on formation of an Executive and, if not, within six months of that formation
29	That all parties support the devolution of policing and justice powers as soon as community confidence exists
30	That policing and justice should be devolved as soon as possible, given levels of public confidence
31	That this Committee believes that policing and justice should be devolved as soon as possible, but is not at this time able to define when
39	That the First Minister and Deputy First Minister, through the Assembly, should advise the Crown on the appointment of the Police Ombudsman
42	That the Committee should support the Patten recommendation that the Chief Constable should have responsibility for matters in Northern Ireland that involve national security
45	That the Committee agrees to full devolution in respect of prohibited and non-prohibited firearms
46	That the Committee agrees to full devolution in respect of non-prohibited firearms on restoration or as soon as possible
49	That the appointment of the Police Ombudsman should be devolved, subject to appropriate community safeguards
53	That this Committee agrees that there should be a full range of the highest safeguards and standards covering the Community Restorative Justice schemes including an independent statute based complaints system, accreditation from and training governed by an independent and dedicated agency, independent oversight mechanisms and all appropriate powers, referrals to the scheme by the justice system and that the protocol should govern all work of schemes
54	That the Committee believes that acceptance of the rule of law and full co-operation with police and justice agencies is essential to the proper working of Community Restorative Justice schemes and public confidence
55	That vetting for anyone working on Community Restorative Justice schemes should be carried out by the police
56	That the Committee request written evidence from Community Restorative Justice groups
61	That for parties to be included in Government, they have to support the institutions of the police and encourage the public to support the police
66	That a detailed inventory of all material decommissioned be published to enhance public confidence in the process
67	That this Committee calls on all parties to recommend that people join the police, assist the police with enquiries including into organised crime, encourage people to participate in the policing structures and co-operate with other agencies addressing crime and organised crime
68	That this Committee endorses the work of the IICD and calls upon paramilitary organisations to co-operate fully and without delay with the IICD in putting illegal weapons verifiably beyond use, and for the IICD to conclude its work as it has publicly indicated
69	That this Committee believes that the appropriate agencies should, subject to due process, publish as fully as possible, details of individuals, gangs or organisations involved in crime
70	That this Committee believes that association with, or support for, those involved in criminal activity is incompatible with the holding of Ministerial office

Appendix 4

**Papers Prepared by the
Assembly Research Service**



DEVOLUTION OF POLICING AND JUSTICE SCOPE OF POWERS

INTRODUCTION

1. In the 1998 Belfast Agreement (the Agreement) the British Government stated that in principle, and following consultation with the Irish Government, it would be ready to devolve responsibility for policing and justice issues if the Northern Ireland political parties agreed.¹ The Agreement, however, did not specify the scope of the policing and justice functions which would potentially be devolved.
2. Under the Northern Ireland Act 1998 (the 1998 Act) three categories of legislative power exist: reserved, excepted and transferred. Excepted matters are subjects reserved to Westminster which will not be transferred apart from by primary legislation. Schedule 2 of the *Northern Ireland Act 1998* specifies excepted matters. Reserved matters are subjects which may be transferred by Order if there is cross-community consent. Schedule 3 of the *Northern Ireland Act 1998* specifies reserved matters. Contained within Schedule 3 are a number of matters which, whilst not identified as such, relate to policing and justice functions. Matters which are neither excepted nor reserved are transferred.
3. Schedules 2 and 3 of the 1998 Act are included as appendices to this paper. Also included for the purposes of comparison is an appendix which identifies potentially relevant reserved matters² under the Scotland Act 1998
4. The *Report of the Independent Commission on Policing for Northern Ireland* (the Patten Report), which was published in 1999 recommended that '*...responsibility for policing be devolved to the Northern Ireland Executive as soon as possible except for matters of national security*'. This paper identifies other recommendations of the Patten report which are potentially relevant to consideration of the scope of devolved policing powers.
5. The *Joint Declaration by the British and Irish Governments* published in 2003 addressed the scope of devolved policing and justice matters and identified for the purposes of discussion those elements of Schedule 3 which could be considered most relevant. The scope of devolved policing and justice powers was further defined by Northern Ireland (Miscellaneous Provisions) Act 2006 (the 2006 Act). The NIO Discussion Paper (Devolving Policing and Justice)

¹ Chapter 9 Policing and Justice Paragraph 7. The participants also note that the British Government remains ready in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues.

² Reserved matters under the Scotland Act 1998 are not devolved to the Scottish Parliament

which accompanied the introduction of this legislation in Westminster provided more detail and identified a number of points for further discussion. This paper provides information on each of these documents.

THE REPORT OF THE INDEPENDENT COMMISSION ON POLICING FOR NORTHERN IRELAND (THE PATTEN REPORT)

6. The Report of the Independent Commission on Policing for Northern Ireland (the Patten Report) was published in September 1999. Chapter 6 of the report (Accountability II: A New Beginning) made recommendations for future arrangements relating to policing which covered: democratic accountability, transparency; legal accountability; and financial accountability.

7. Under the heading "*Policing Board, Government and the Chief Constable*" the Patten Report addressed the issue of devolution and stated that:

6.15 The powers of the Policing Board must be clearly defined and robust, both in relation to the role of the Secretary of State, or the Northern Ireland Executive after devolution, and that of the Chief Constable. It is fitting here to say something about the issue of devolution. The Agreement says that the British government is in principle prepared to devolve responsibility for policing. This would clearly be in keeping with the principle of enhanced democratic accountability. *We recommend that responsibility for policing be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security*³ (on which, see also paragraphs 6.22 and 6.43 to 6.45). It is, however, vital that the clock is not turned back to the situation before 1969, when the police were seen to be subject to direction by the Minister of Home Affairs. If, in the devolved arrangements of the future, there were too direct a relationship between a minister and the police, there would be a danger that that minister could be seen to be exercising partisan influence over the police. This is a risk that must be avoided. *We therefore strongly recommend that the powers of the Policing Board proposed in this report, in relation to both government (as now represented by the Secretary of State) and the Chief Constable, be in no way diminished when the government role in the tripartite arrangement passes to the Northern Ireland Executive.*⁴

8. Paragraph 6.21 of the Patten Report *recommended that the Chief Constable should be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control.*⁵ The report added that "Neither the Policing Board nor the Secretary of State (or Northern Ireland Executive) should have the power to direct the Chief Constable as to how to exercise those functions. At paragraph 6.22 the report added, however, that

We recommend that the Policing Board should have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the police service. The obligation to report should extend

³ Recommendation 20

⁴ Recommendation 21

⁵ Recommendation 24

to explaining operational decisions.⁶ The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts. *We recommend that, if there is a disagreement between the Board and the Chief Constable over whether it is appropriate for a report to be provided on a particular matter, it should be for the Chief Constable to refer the question to the Secretary of State for a decision as to whether the Board's requirement should stand.*⁷ As in the rest of the United Kingdom (including Scotland under the new devolved arrangements there), the Chief Constable remains fully accountable for the involvement of police in matters involving national security, even though his or her main accountability in such matters is to the Secretary of State rather than to the Policing Board.

9. Paragraphs 6.43-6.45, to which reference was made in section of the Report which directly addressed devolution of policing, is concerned with 'covert policing' and included the following three recommendations:

39 New legislation on covert policing should be fully compliant with the European Convention on Human Rights and should have the same application in Northern Ireland as in the rest of the United Kingdom. [para. 6.43]

40 There should be a commissioner for covert law enforcement in Northern Ireland. [para. 6.44]

41 There should be a complaints tribunal, comprising senior members of the legal profession, with full powers to investigate cases referred to it (either directly or through the Police Ombudsman) involving covert law enforcement operations. [para. 6.45]

10. The Patten Report in a number of recommendations set out the desired relationship between the Policing Board and Secretary of State **or successor**. These recommendations include:

10 The Policing Board should set objectives and priorities for policing over a 3 to 5 year period, taking account of any longer term objectives or principles set by the Secretary of State or successor. It should then be responsible for adopting a 3 to 5 year strategy, prepared by the Chief Constable through a process of discussion with the Board, which should reflect the objectives and priorities set by the Board. [para. 6.5]

12 The Board should be responsible for negotiating the annual policing budget with the Northern Ireland Office, or with the appropriate successor body after devolution of policing. It should then allocate the police service budget to the Chief Constable and monitor police performance against the budget. [para. 6.7]

14 The Board should have the responsibility for appointing all chief officers and civilian equivalents and for determining the length of their contracts. All appointments should be subject to approval by the Secretary of State (and successor after devolution) and the Chief Constable should be consulted in relation to the appointment of subordinate chief officers and civilian equivalents. The Board should have the power to call upon the Chief Constable to retire in the interests of efficiency and effectiveness subject to

⁶ Recommendation 25

⁷ Recommendation 25

the approval of the Secretary of State (and successor) and to the right to make representations as at present. Similarly, the Board should have the same power in relation to other chief officers and civilian equivalents exercisable subject to the approval of the Secretary of State (and successor) and to the same right to make representations and after consultation with the Chief Constable. The Secretary of State should have power to require the Policing Board to call upon the Chief Constable to retire on the same grounds but this power should be exercisable only after consultation with the Board and subject to the same right to make representations already referred to. Additionally, after devolution the relevant Northern Ireland minister should have power to call for the retirement of the Chief Constable on the same grounds but this should be subject to the agreement of the Policing Board and the approval of the Secretary of State with an equivalent right to make representations. The Board should be the disciplinary authority for chief officers and civilian equivalents. [para. 6.9]

2003 JOINT DECLARATION BY THE BRITISH AND IRISH GOVERNMENTS

11. The 2003 Joint Declaration issued by the British and Irish Governments (the declaration) set out, amongst other things, proposals for dealing with policing and justice issues. Annex 2 of the declaration is titled 'Devolution of Policing and Justice' and covers: Scope of Devolution; Institutional Models; All-Ireland Dimension; Safeguards; and Legislative and Procedural Matters. In terms of the scope of devolution the declaration in effect defines these matters as sections 9,10,11,12,15 of Schedule 3 of the 1998 Act. The declaration, however, underlined, that this range of powers was provided for purposes of further consideration.

THE NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006

12. The Northern Ireland (Miscellaneous Provisions) Act 2006 (the 2006 Act) makes provision, amongst other things, for devolution of policing and justice. The 2006 Act does not itself initiate the devolution process but enables the eventual devolution to be carried out by Order, without the need for further primary legislation.
13. Part 4 of the 2006 Act addresses the devolution of '*Policing and Justice ETC*' under the following headings:
 - (16) Conditions for devolving policing and Justice Matters
 - (17) Department with policing and justice functions
 - (18) Power of Assembly to call for witnesses and documents
 - (19) Provision for transfer of functions relating to extradition etc
 - (20) Provision for entrenching enactments
14. In addition, Part 3 of Schedule 4 of the 2006 Act contains 'Minor and consequential amendments' relating to 'Devolution of policing and justice functions etc.'
15. Within the 2006 Act 'devolved policing and justice' matters are defined at Section 16 (5) as:

- a) any of paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3; or
- b) any other provision of that Schedule designated for this purpose by an order made by the Secretary of State."

16. Matters identified under sub-paragraph 6 (a) are set out in the table below (amendments to 1998 Act are identified by square brackets).⁸

9	<p>The following matters—</p> <ul style="list-style-type: none"> (a) the criminal law; (b) the creation of offences and penalties; (c) the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings; (d) prosecutions; (e) the treatment of offenders (including children and young persons, and mental health patients, involved in crime); (f) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland; (g) compensation out of public funds for victims of crime; <u>[(h) local community safety partnerships].</u> <p>Sub-paragraphs (a) to (c) do not include any matter within paragraph 17 of Schedule 2. Sub-paragraph (e) includes, in particular, prisons and other institutions for the treatment or detention of persons mentioned in that sub-paragraph. <u>[This paragraph does not include any matter concerning the Advocate General for Northern Ireland.]</u></p>
9A	<u>[The Chief Inspector of Criminal Justice in Northern Ireland.]</u>
10	The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons (other than the Ministry of Defence Police), but not any matter within paragraph 17 of Schedule 2; the Parades Commission for Northern Ireland.
11	The establishment, organisation and control of the [Police Service of Northern Ireland] and of any other police force (other than the Ministry of Defence Police); the [Northern Ireland Policing Board]; traffic wardens.
12	Firearms and explosives.
14A	<u>[The following matters—</u> <ul style="list-style-type: none"> (a) rights of appeal to the Supreme Court; (b) legal aid for appeals to the Supreme Court.]
15	<p>All matters, other than those specified in paragraph 11 of Schedule 2, relating to the <i>Supreme Court of Judicature</i> [<u>Court of Judicature</u>] of Northern Ireland, county courts, courts of summary jurisdiction (including magistrates' courts and juvenile courts) and coroners, including procedure, evidence, appeals, juries, costs, legal aid and the registration, execution and enforcement of judgments and orders but not—</p> <ul style="list-style-type: none"> (a) bankruptcy, insolvency, the winding up of corporate and unincorporated bodies or the making of arrangements or compositions with creditors; (b) the regulation of the profession of solicitors.
15A	<u>[The Northern Ireland Law Commission.]</u>
17	All matters (including procedure and appeals) relating to— <ul style="list-style-type: none"> (a) the Chief and other Social Security Commissioners for Northern Ireland; or (b) the Chief and other Child Support Commissioners for Northern Ireland,

⁸ This table does not include amendments resulting from 2006 Act itself (See para 16 below)

but not any matter within paragraph 11 of Schedule 2.

17. In relation to this table it should be noted that it does not take into account amendments to the 1998 Act which are contained within the 2006 Act. In relation to Schedule 3 of the 1998 Act, the 2006 Act repeals paragraph 9 (Criminal Justice) sub-paragraph (f) 'the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland'.⁹ The 2006 Act also provides for the insertion in the Schedule 3 of the 1998 Act of a paragraph 11A worded:¹⁰

"11A Co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters— (a) transfers, secondments, exchanges or training of officers;(b) communications (including liaison and information technology);(c) joint investigations;(d) disaster planning."

18. In relation to certain provisions contained within Schedule 3, the scope of a function may be qualified by reference to related matters in Schedule 2 (excepted matters). Paragraph 9 sub-paragraphs (a) to (c), for example, do not include any matter within paragraph 17 of Schedule 2. Likewise Paragraph 10 does not include any matter within paragraph 17 of Schedule 2.

17	National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; the subject-matter of— (a) the Official Secrets Acts 1911 and 1920; (b) [Chapter I of Part I of the Regulation of Investigatory Powers Act 2000], except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and (c) the Official Secrets Act 1989 , except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.
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19. The reserved matters contained with paragraph 17 of Schedule 3 are qualified with reference to paragraph 11 of Schedule 2

11	The <i>appointment and removal</i> [<u>determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office)]</u> of judges of the <i>Supreme Court of Judicature</i> [Court of Judicature] of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (Northern Ireland) Act 1978 , county court judges, recorders, resident magistrates, [<i>lay magistrates,</i>] <i>justices of the peace, members of juvenile court</i>
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⁹ [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(2006 c 33\), s 30\(1\), \(2\), Sch 4, Pt 3](#), para 13(1), (2), Sch 5

¹⁰ [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(2006 c 33\), s 30\(1\), Sch 4, Pt 3](#), para 13(1), (3)

	<i>panels, coroners, the Chief and other Social Security Commissioners for Northern Ireland, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland [and the Chief and other Child Support Commissioners for Northern Ireland].</i>
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20. Whilst no specific reference is made to them in paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3, other potentially relevant excepted matters relating to policing and justice issues include:

3	<p>International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, and international development assistance and co-operation, but not—</p> <p>(a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;</p> <p>(b) the exercise of legislative powers so far as required for giving effect to any agreement or arrangement entered into—</p> <p>(i) by a Minister or junior Minister participating, by reason of a nomination under section 52, in a meeting of the North-South Ministerial Council or the British-Irish Council; or(ii) by, or in relation to the activities of, any body established for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council;</p> <p>(c) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law.</p> <p>In this paragraph “the Human Rights Convention” means the following as they have effect for the time being in relation to the United Kingdom—</p> <p>(a) the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950; and(b) any Protocols to that Convention which have been ratified by the United Kingdom.</p>
4	The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.
7	Treason but not powers of arrest or criminal procedure.
11A	[The Supreme Court.]
21A	[The office and functions of the Advocate General for Northern Ireland.]

21. In relation to the table above it should be noted that it does not take into account amendments to the 1998 Act which are contained within the 2006 Act. In relation to Schedule 2 of the 1998 Act, the 2006 Act inserts ‘and extradition’ after ‘international relations’ in paragraph 3.¹¹ The 2006 Act also provides to omit sub-paragraph (a) the surrender of fugitive offenders

¹¹ [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(2006 c 33\), s 30\(1\), Sch 4, Pt 3, para 12\(a\)](#)

between Northern Ireland and the Republic of Ireland'.¹² The 2006 Act also provides for insertion of a sub-paragraph (aa) in paragraph 3 with the following wording:¹³

“(aa) co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters— (i) transfers, secondments, exchanges or training of officers;(ii) communications (including liaison and information technology);(iii) joint investigations;(iv) disaster planning;”.

NIO DISCUSSION PAPER: DEVOLVING POLICING AND JUSTICE IN NORTHERN IRELAND

22. The NIO discussion paper *Devolving Policing and Justice in Northern Ireland* was published at the time that the Northern Ireland (Miscellaneous Provisions) Bill was introduced in Westminster. The discussion paper indicates, in relation to each function set out in paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3, those matters which the government proposes to devolve. The discussion paper, however, also identifies a number of matters where, in certain cases due to overlap with an excepted matter, the government does not propose a devolution of power. These areas are set out in the table below, in which paragraph references in the heading identify the relevant provision in Schedule 3 of the 1998 Act.

Prevention and Detection of Crime <i>Paragraph 9(c)</i>	
	Regulation of Investigatory Powers Act 6.5 The Regulation of Investigatory Powers Act (RIPA) provides a comprehensive regulatory structure governing the acquisition of intelligence information. As such, its subject matter is generally excepted. Given the interface between national security and serious crime some aspects of RIPA which are currently reserved¹⁴ may need to remain so.
Prosecutions <i>Paragraph 9(d)</i>	
	Advocate General for Northern Ireland 7.9 The current Attorney General has a number of functions relating to Northern Ireland which are excepted, and which will not therefore be devolved. These include matters relating to national security, such as the certification of scheduled offences. Following devolution of policing and justice, a new office of Advocate General for Northern Ireland will be created to take on responsibility for any of the current Attorney General's functions which are excepted and which will not be devolved to the

¹² [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(2006 c 33\), s 30\(1\), Sch 4, Pt 3](#), para 12(b)

¹³ [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(2006 c 33\), s 30\(1\), Sch 4, Pt 3](#), para 12(c)

¹⁴ The Northern Ireland Act 1998 at Schedule 2 17 (b) provides that “Chapter I of Part I of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act)” is an excepted matter. The RIPA received Royal Assent in July 2000 and came into force in October 2000. PART I is titled ‘Communications’ and contains two chapters. Chapter I is titled ‘Interception’ and contains the following headings: Unlawful and authorised interception; Interception warrants; Interception capability and costs; and Restrictions on use of intercepted material etc. Section 81 of RIPA provides definitions of crime, serious crime, detecting crime, and detecting serious crime amongst other things.

	Director of Public Prosecutions in Northern Ireland or to the Attorney General for Northern Ireland. This role will be fulfilled by the same individual who serves as the Attorney General for England and Wales.
Treatment of Offenders Paragraph 9(e)	
	The Sentence Review Commissioners 8.22 The work of the Sentence Review Commissioners is wholly concerned with the treatment of those convicted of offences connected with terrorism, which is an excepted matter (paragraph 17 of Schedule 2 to the Northern Ireland Act 1998). As such it would not be devolved .
Compensation Paragraph 9(g)	
	Compensation Agency 9.1 The Compensation Agency is an executive agency of the Northern Ireland Office responsible for the administration of four statutory compensation schemes on behalf of the Secretary of State: Criminal Injuries Compensation Scheme (for injuries before 1 May 2002), Criminal Damage Compensation Scheme, Terrorism Act Scheme, and Criminal Injuries Compensation Scheme (Tariff) (for injuries after 1 May 2002)...9.3 If the Assembly took on responsibility for legislating on compensation matters, subject to any changes decided in the interim, the Agency's functions would be devolved and it would become an executive agency of the Department of Justice, accountable through Northern Ireland Ministers to the Assembly. 9.4 The only exception would be responsibility for the Terrorism Act Scheme, which is an excepted matter and would not therefore be devolved . (The scheme is due to come to an end in 2007.)
The Police and the Policing Accountability Framework Paragraph 11	
	13.11 Following devolution, all of the Secretary of State's functions in respect of DPPs would be devolved to become the responsibility of the Northern Ireland Minister for policing. Similarly, the statutory framework governing DPPs would, following devolution, be for the Assembly to amend. 13.12 The only exception to this would be the terms of the "declaration against terrorism", which prospective independent DPP members will be required to make, when the amendments introduced by the Police (NI) Act 2003 are commenced. This will mirror the declaration made by candidates seeking election as local councillors. Electoral legislation will remain an excepted matter and the text of the DPP members' declaration will need to keep in line with it, so this aspect of the legislation will remain reserved following the transfer of policing and justice.
	Temporary 50:50 provisions 13.33 If the temporary provisions are still in force at the time that policing is devolved, it is the Government's view that the responsibilities for this policy which are currently exercised by the Secretary of State would not transfer to the Northern Ireland Minister with responsibility for policing unless the Assembly's vote requesting the devolution of policing specifically included a request for these temporary provisions.
	Lay visitors 13.54 Section 73 of the Police (NI) Act 2000 makes provisions for designated places of detention to be visited and reported on by "lay visitors". (Designated places of detention are custody suites in police stations used to detain suspects. Criminal and terrorist suspects are

	detained in separate custody suites.) Lay visitors are appointed by the Policing Board, which can confer on them such powers as it considers necessary to enable them to fulfill their duties. The Board will continue to be responsible for these appointments and conferral of powers following devolution. Any changes to the legislation would be a matter for the Assembly. Responsibility for designating places of detention under the Police and Criminal Evidence (Northern Ireland) Order 1989 would transfer to the Northern Ireland Minister for policing. Designating places of detention under paragraph 1 of Schedule 8 to the Terrorism Act 2000 will remain an excepted matter.
Firearms & Explosives Paragraph 12	
	<p>Firearms</p> <p>14.4 In Scotland the devolution settlement separates out this routine firearms regulating framework (which is a devolved matter) from the business of regulating the use of prohibited weapons, such as automatic weapons (which remains reserved to Westminster). It would be possible to follow a similar model in Northern Ireland. This would mean that generally the Secretary of State's responsibilities for firearms would be devolved to Northern Ireland Ministers, with general policy, oversight and legislation carried out in a Department of Justice and/or Policing. Day to day administration of firearms licensing would continue to be carried out by the Chief Constable. But the regulation of prohibited weapons would continue to be reserved.</p>

23. The NIO discussion paper also identifies a number of matters for which devolution might in the government's view be appropriate but where further consideration is needed. These areas are set out in the table below, in which paragraph references in the heading identify the relevant provision in Schedule 3 of the 1998 Act.

Prevention and Detection of Crime Paragraph 9 (c)	
	<p>Criminal Records Checks and Disclosures</p> <p>(6.6) Part V of the Police Act 1997 creates a UK-wide statutory framework for the disclosure of criminal and police records as part of the recruitment process for certain sensitive posts. The primary aim of the legislation is to protect children and vulnerable adults. The Act gives the Secretary of State the ability to seek the necessary information from the Chief Constable and the power to specify any new databases holding relevant information. As the framework is UK-wide, the Secretary of State's powers allow access to relevant information from any UK police service... (6.8) The powers currently vested in the Secretary of State could transfer to a Northern Ireland Minister following devolution of policing and justice... Alternatively, as Part V is self-contained it would be possible for it to remain the responsibility of the UK Government without affecting the overall devolution of policing and justice. Equally, it would be possible for legislative responsibility (for amending the statutory framework) to remain at Westminster while executive responsibility (for carrying out the functions under the legislation) to transfer to Northern Ireland Ministers. In Scotland Ministers have responsibility for both, but work</p>

	closely with colleagues in England and Wales to ensure the system is joined up.
Public Order Paragraph 10	
	<p>Parades Commission 12.2 Public Order is classified in the Northern Ireland Act 1998 as a reserved matter (with the exception of “subversion and terrorism” which are excepted matters covered by paragraph 17 of Schedule 2). In principle, responsibility for public order would be devolved along with other policing functions. However, this is a contentious issue and the Government recognises that there are concerns, particularly around certain parades, which make devolution of aspects of public order more difficult than others and that these will need to be addressed ahead of devolution.</p> <p>12.5 The Government’s preference is that responsibility for all aspects of parades, including appointments to the Parades Commission and its operation, should be devolved. It would be undesirable to keep this responsibility reserved to Westminster while devolving responsibility for policing (and therefore for policing parades). However, the Government recognises that a subject as contentious as parading has the capacity to reinforce community divisions at a time when the focus of the devolved institutions is on developing a vision of a shared future.</p>
The Police and the Policing Accountability Framework Paragraph 11	
	<p>The Police Service of Northern Ireland 13.13 The Police Service of Northern Ireland is under the day to day direction and control of the Chief Constable. The operational independence from political control of a Chief Constable is a fundamental principle of UK policing and, in the Northern Ireland context, is enshrined in legislation under Section 33 of the Police (NI) Act 2000. Patten also recognised (paragraph 6.21, recommendation 24) this important concept as a key tenet of his report...</p> <p>13.16 There is no reason, in principle, why this legislation should not be devolved but care would need to be taken to ensure that it was in the best interests of securing the confidence and trust of all sections of the community. The options for consideration include keeping section 33(1) of the Police (NI) Act 2000 reserved, or relying on existing cross-community safeguards that currently exist within the Northern Ireland Act 1998.</p>
	<p>Appointment (Police Ombudsman for Northern Ireland) 13.50 The Ombudsman is appointed by Royal Warrant for a fixed term of up to seven years. At present, the Crown is advised by the Prime Minister and Secretary of State on such appointments. Following devolution, it would be possible for that advisory role to devolve to the Northern Ireland Minister for policing or to the First Minister and deputy First Minister acting jointly. This is something which the parties represented at the Assembly will want to consider when requesting the devolution of policing.</p>
North-South Cooperation	
	<p>Personnel Exchanges between PSNI and An Garda Siochana 17.8 Section 56 of the Police (NI) Act 2000 states that the Policing Board and Chief Constable shall implement any arrangements made</p>

<p>in pursuance of an Agreement between Governments dealing with co-operation of policing matters between the PSNI and the Garda Siochana. It was subsequently agreed that Patten's recommendation on co-operation would be addressed through the framework of an Inter-Governmental Agreement on Policing Co-operation, which was signed by both Governments on 29 April 2002. In particular, Articles 2, 3 & 5 provide for both Governments to introduce necessary administrative and legislative measures to enable movement.</p> <p>17.14 ...Government intends to transfer this Intergovernmental Agreement from the excepted to the reserved field, with the intention of devolving by Order as much of the Agreement as is consistent with fulfilling the Patten recommendation regarding closer co-operation between the two police services. Further work is needed to identify which aspects of the Agreement can be devolved and which cannot.</p>

24. The concluding chapter of the NIO Discussion document underlines a range of excepted matters which the government indicates are to remain so. These include: national security, counter terrorism policy and legislation; security of key economic points; national security vetting; extradition, and mutual legal assistance. Highlighting the link between national security and policing the document states:

18.6 Some aspects of policing touch on national security matters but most do not. There is also an interface between national security matters and some organised crime activities. Therefore, even when policing is devolved, those with responsibility for overseeing policing will need to understand how national security issues are handled. This will include not only the Policing Board and Police Ombudsman but devolved Ministers and Assembly committees as well. The Government has consistently recognised the importance of local transparency, as has the Chief Constable, though it will not risk compromising information or techniques that would jeopardise national security.

APPENDIX 1

NOTE: THE SCHEDULE PROVIDED BELOW IS NOT UPDATED TO INCLUDE AMENDMENTS RESULTING FROM NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006

NORTHERN IRELAND ACT 1998

SCHEDULE 2

EXCEPTED MATTERS

Section 4(1)

- 1** The Crown, including the succession to the Crown and a regency, but not—
- (a) functions of the First Minister and deputy First Minister, the Northern Ireland Ministers or the Northern Ireland departments, or functions in relation to Northern Ireland of any Minister of the Crown; (b) property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department (other than property used for the purposes of the armed forces of the Crown or the Ministry of Defence Police); (c) the foreshore or the sea bed or subsoil or their natural resources so far as vested in Her Majesty in right of the Crown.
- 2** The Parliament of the United Kingdom; parliamentary elections, including the franchise; disqualifications for membership of that Parliament.
- 3** International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, and international development assistance and co-operation, but not—
- (a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland; (b) the exercise of legislative powers so far as required for giving effect to any agreement or arrangement entered into—
 - (i) by a Minister or junior Minister participating, by reason of a nomination under section 52, in a meeting of the North-South Ministerial Council or the British-Irish Council; or (ii) by, or in relation to the activities of, any body established for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council;
 - (c) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law.
- In this paragraph "the Human Rights Convention" means the following as they have effect for the time being in relation to the United Kingdom—
- (a) the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950; and (b) any Protocols to that Convention which have been ratified by the United Kingdom.
- 4** The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.
- 5** Control of nuclear, biological and chemical weapons and other weapons of mass destruction.
- 6** Dignities and titles of honour.
- 7** Treason but not powers of arrest or criminal procedure.

8 Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents.

9 The following matters—

- (a) taxes or duties under any law applying to the United Kingdom as a whole;
- (b) stamp duty levied in Northern Ireland before the appointed day;
- and (c) taxes or duties substantially of the same character as those mentioned in sub-paragraph (a) or (b).

[9A Child Trust Funds.]

10 The following matters—

- (a) national insurance contributions;
- (b) the control and management of the Northern Ireland National Insurance Fund and payments into and out of that Fund;
- (c) reductions in and deductions from national insurance contributions;
- (d) national insurance rebates;
- (e) payments out of public money to money purchase pension schemes;
- (f) contributions equivalent premiums;
- (g) rights to return to the state pension scheme.

Sub-paragraph (a) includes the determination, payment, collection and return of national insurance contributions and matters incidental to those matters. Sub-paragraph (b) does not include payments out of the Northern Ireland National Insurance Fund which relate to—

- (i) the benefits mentioned in section 143(1) of the Social Security Administration (Northern Ireland) Act 1992, or benefits substantially of the same character as those benefits; or
- (ii) administrative expenses incurred in connection with matters not falling within sub-paragraphs (a) to (g).

Sub-paragraphs (b) and (e) do not include payments out of or into the Northern Ireland National Insurance Fund under—

- (i) section 172(1)(b), (2)(a) or (7)(c) of the Pension Schemes (Northern Ireland) Act 1993; or
- (ii) Article 202, 227, 234 or 252 of the Employment Rights (Northern Ireland) Order 1996.

In this paragraph “contributions equivalent premium” has the meaning given by section 51(2) of the Pension Schemes (Northern Ireland) Act 1993.

[10A Tax credits under Part 1 of the [Tax Credits Act 2002](#).

10B Child benefit and guardian's allowance.]

11 The *appointment and removal* [determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office)] of judges of the *Supreme Court of Judicature* [Court of Judicature] of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the [Judicature \(Northern Ireland\) Act 1978](#), county court judges, resident magistrates, [lay magistrates,] justices of the peace, members of juvenile court panels, coroners, the Chief and other Social Security Commissioners for Northern Ireland, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland [and the Chief and other Child Support Commissioners for Northern Ireland].

[11A The Supreme Court.]

12 Elections, including the franchise, in respect of the Northern Ireland Assembly, the European Parliament and district councils.

[13 The subject-matter of the [Political Parties, Elections and Referendums Act 2000](#) with the exception of Part IX (political donations etc by companies). This paragraph does not include the funding of political parties for the purpose of assisting members of the Northern Ireland Assembly connected with such parties to perform their Assembly duties.]

14 Coinage, legal tender and bank notes.

15 The National Savings Bank.

16 The subject-matter of the [Protection of Trading Interests Act 1980](#).

17 National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; the subject-matter of—

(a) the Official Secrets Acts 1911 and 1920; (b) [Chapter I of [Part I](#) of the Regulation of Investigatory Powers Act 2000], except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and (c) the [Official Secrets Act 1989](#), except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.

18 Nuclear energy and nuclear installations, including nuclear safety, security and safeguards, and liability for nuclear occurrences, but not the subject-matter of—

(a) section 3(5) to (7) of the [Environmental Protection Act 1990](#) (emission limits); or (b) the [Radioactive Substances Act 1993](#).

19 Regulation of sea fishing outside the Northern Ireland zone (except in relation to Northern Ireland fishing boats). In this paragraph “Northern Ireland fishing boat” means a fishing vessel which is registered in the register maintained under [section 8](#) of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging.

20 Regulation of activities in outer space.

21 Any matter with which a provision of the [Northern Ireland Constitution Act 1973](#) solely or mainly deals.

[21A] The office and functions of the Advocate General for Northern Ireland.]

22 Any matter with which a provision of this Act falling within the following subparagraphs solely or mainly deals—

(a) Parts I and II; (b) Part III except sections 19, 20, 22, 23(2) to (4) and 28; (c) Part IV except sections 40, 43, 44(8) and 50 and Schedule 5; (d) in Part V, sections 52 and 54; (e) Part VI except sections 57(1) and 67; (f) Part VII except sections 73, 74(1) to (4), 75 and 77 and Schedules 8 and 9; (g) in Part VIII, sections 79 to 83 and Schedule 10.

This paragraph does not apply to—

(i) any matter in respect of which it is stated by this Act that provision may be made by Act of the Assembly; (ii) any matter to which a description specified in this Schedule or Schedule 3 is stated not to apply; or (iii) any matter falling within a description specified in Schedule 3.

Amendments

Para 9A: inserted by the [Child Trust Funds Act 2004, s 25](#).

Date in force: this amendment came into force on 13 May 2004 (date of Royal Assent of the [Child Trust Funds Act 2004](#)) in the absence of any specific commencement provision.

Paras 10A, 10B: inserted by the [Tax Credits Act 2002, s 64\(1\), \(2\)](#).

Date in force: this amendment came into force on 8 July 2002 (date of Royal Assent of the [Tax Credits Act 2002](#)) in the absence of any specific commencement provision.

Para 11: words “appointment and removal” in italics repealed and subsequent words in square brackets substituted by the [Justice \(Northern Ireland\) Act 2002, s 82\(a\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 11: words “Supreme Court of Judicature” in italics repealed and subsequent words in square brackets substituted by the [Constitutional Reform Act 2005, s 59\(5\)](#), [Sch 11](#), Pt 4, para 33(1), (2).

Date in force: to be appointed: see the [Constitutional Reform Act 2005, s 148\(1\)](#).

Para 11: words “lay magistrates, justices of the peace, members of juvenile court panels,” in italics repealed by the [Justice \(Northern Ireland\) Act 2002, s 86, Sch 13](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 11: words “lay magistrates,” in square brackets inserted by the [Justice \(Northern Ireland\) Act 2002, s 9\(13\)](#).

Date in force: 1 September 2004: see the [Justice \(Northern Ireland\) Act 2002 \(Commencement No 6\) Order 2004, SR 2004/301, art 2](#).

Para 11: words from “, the Chief and” to “for Northern Ireland” in italics repealed and subsequent words in square brackets substituted by the [Justice \(Northern Ireland\) Act 2002, s 82\(b\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 11A: inserted by the [Constitutional Reform Act 2005, s 58\(1\), \(2\)](#).

Date in force: to be appointed: see the [Constitutional Reform Act 2005, s 148\(1\)](#).

Para 13: substituted by the [Political Parties, Elections and Referendums Act 2000, s 158\(1\), Sch 21, para 14\(1\), \(3\)](#).

Date in force: 16 February 2001: see [SI 2001/222, art 2, Sch 1](#), Pt I.

Para 17: in sub-para (b) words “Chapter I of [Part I](#) of the Regulation of Investigatory Powers Act 2000” in square brackets substituted by the [Regulation of Investigatory Powers Act 2000, s 82\(1\), Sch 4, para 9](#).

Date in force: 2 October 2000: see [SI 2000/2543, art 3](#).

Para 21A: inserted by the [Justice \(Northern Ireland\) Act 2002, s 27\(4\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

APPENDIX 2

NOTE: THE SCHEDULE PROVIDED BELOW IS NOT UPDATED TO INCLUDE AMENDMENTS RESULTING FROM NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006

NORTHERN IRELAND ACT 1998

SCHEDULE 3

RESERVED MATTERS

Section 4(1)

- 1** The conferral of functions in relation to Northern Ireland on any Minister of the Crown [apart from the Advocate General for Northern Ireland].
- 2** Property belonging to Her Majesty in right of the Crown or belonging to a department of the Government of the United Kingdom or held in trust for Her Majesty for the purposes of such a department (other than property used for the purposes of the armed forces of the Crown or the Ministry of Defence Police).
- 3** Navigation, including merchant shipping, but not harbours or inland waters.
- 4** Civil aviation but not aerodromes.
- 5** The foreshore and the sea bed and subsoil and their natural resources (except so far as affecting harbours); submarine pipe-lines; submarine cables, including any land line used solely for the purpose of connecting one submarine cable with another.
- 6** Domicile.
- [7** The subject-matter of the [Postal Services Act 2000](#). This paragraph does not include financial assistance for the provision of services (other than postal services and services relating to postal or money orders) to be provided from public post offices. In this paragraph "postal services" and "public post offices" have the same meanings as in the [Postal Services Act 2000](#).]
- 8** Disqualification for membership of the Assembly; privileges, powers and immunities of the Assembly, its members and committees greater than those conferred by section 50.
- 9** The following matters—
 - (a) the criminal law;
 - (b) the creation of offences and penalties;
 - (c) the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings;
 - (d) prosecutions;
 - (e) the treatment of offenders (including children and young persons, and mental health patients, involved in crime);
 - (f) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
 - (g) compensation out of public funds for victims of crime;
 - (h) [local community safety partnerships](#)].Sub-paragraphs (a) to (c) do not include any matter within paragraph 17 of Schedule 2. Sub-paragraph (e) includes, in particular, prisons and other institutions for the treatment or detention of persons mentioned in that sub-paragraph. [This paragraph does not include any matter concerning the Advocate General for Northern Ireland.]
- [9A** [The Chief Inspector of Criminal Justice in Northern Ireland.](#)]

10 The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons (other than the Ministry of Defence Police), but not any matter within paragraph 17 of Schedule 2; the Parades Commission for Northern Ireland.

11 The establishment, organisation and control of the [Police Service of Northern Ireland] and of any other police force (other than the Ministry of Defence Police); the [Northern Ireland Policing Board]; traffic wardens.

12 Firearms and explosives.

13 Civil defence.

14 The subject-matter of [Part 2 of the [Civil Contingencies Act 2004](#)].

[14A] The following matters—

(a) rights of appeal to the Supreme Court; (b) legal aid for appeals to the Supreme Court.]

15 All matters, other than those specified in paragraph 11 of Schedule 2, relating to the *Supreme Court of Judicature* [Court of Judicature] of Northern Ireland, county courts, courts of summary jurisdiction (including magistrates' courts and juvenile courts) and coroners, including procedure, evidence, appeals, juries, costs, legal aid and the registration, execution and enforcement of judgments and orders but not—

(a) bankruptcy, insolvency, the winding up of corporate and unincorporated bodies or the making of arrangements or compositions with creditors; (b) the regulation of the profession of solicitors.

[15A] The Northern Ireland Law Commission.]

16 The functions and procedures of the Civil Service Commissioners for Northern Ireland.

17 All matters (including procedure and appeals) relating to—

(a) the Chief and other Social Security Commissioners for Northern Ireland; or (b) the Chief and other Child Support Commissioners for Northern Ireland, but not any matter within paragraph 11 of Schedule 2.

18 The subject-matter of sections 149 to 151 of and Schedules 5 and 5A to the Social Security Administration (Northern Ireland) Act 1992 (Social Security Advisory Committee and Industrial Injuries Advisory Council).

19 The subject-matter of the Vaccine Damage Payment Scheme.

20 Import and export controls and trade with any place outside the United Kingdom but not—

(a) the furtherance of the trade of Northern Ireland or the protection of traders in Northern Ireland against fraud; (b) services in connection with, or the regulation of, the quality, insurance, transport, marketing or identification of agricultural or food products, including livestock; (c) the prevention of disease or the control of weeds and pests; (d) aerodromes and harbours; (e) any matter within paragraph 4 of Schedule 2.

21 The subject-matter of the [National Minimum Wage Act 1998](#).

22 The subject-matter of the following provisions of the [Pension Schemes Act 1993](#)—

(a) section 6(1), (2)(a)(i), (iii) and (iv) and (b), (3), (4) and (8) (registration of occupational and personal pension schemes); (b) section 145 (Pensions Ombudsman).

23 The following matters—

(a) financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance; (b) financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.

This paragraph does not include the subject-matter of—

(a) the Industrial and Provident Societies Act (Northern Ireland) 1969; (b) the Credit Unions (Northern Ireland) Order 1985; (c) the Companies (Northern Ireland) Order 1986; (d) the Insolvency (Northern Ireland) Order 1989; (e) the Companies (Northern Ireland) Order 1990; (f) the Companies (No 2) (Northern Ireland) Order 1990; (g) the Open-Ended Investment

- Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997.
- 24** The subject-matter of—
(a) the [Building Societies Act 1986](#); (b) the [Friendly Societies Act 1992](#).
- 25** The subject-matter of the Money Laundering Regulations [2003], but in relation to any type of business.
- 26** Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.
- 27** Intellectual property but not the subject-matter of Parts I and II of the [Plant Varieties Act 1997](#) (plant varieties and the Plant Varieties and Seeds Tribunal).
- 28** Units of measurement and United Kingdom primary standards.
- 29** Telecommunications; wireless telegraphy; the provision of programme services (within the meaning of the [Broadcasting Act 1990](#)); internet services; electronic encryption; the subject matter of [Part II](#) of the Wireless Telegraphy Act 1949 (electromagnetic disturbance).
- 30** The National Lottery (except in so far as any matter within Schedule 2 is concerned).
- 31** Xenotransplantation.
- 32** Surrogacy arrangements, within the meaning of the [Surrogacy Arrangements Act 1985](#), including the subject-matter of that Act.
- 33** The subject-matter of the [Human Fertilisation and Embryology Act 1990](#).
- 34** Human genetics.
- 35** Research Councils within the meaning of the [Science and Technology Act 1965](#).
- [35A]** The Arts and Humanities Research Council (as defined by [section 1](#) of the Higher Education Act 2004).]
- 36** Areas in which industry may qualify for assistance under [Part III](#) of the Industrial Development Act 1982.
- 37** Consumer safety in relation to goods.
- 38** Technical standards and requirements in relation to products in pursuance of an obligation under Community law but not standards and requirements in relation to food, agricultural or horticultural produce, fish or fish products, seeds, animal feeding stuffs, fertilisers or pesticides.
- 39** *The subject-matter of section 3(5) to (7) of the [Environmental Protection Act 1990](#) (emission limits); the environmental protection technology scheme for research and development in the United Kingdom.*
- 40** The subject-matter of—
(a) the [Data Protection Act 1984](#); (b) the [Data Protection Act 1998](#); and (c) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and free movement of such data).
- 41** Oaths and declarations (including all undertakings and affirmations, by whatever name) other than those within section 77(3).
- 42** Any matter with which a provision of this Act falling within the following subparagraphs solely or mainly deals—
(a) in Part III, sections 19, 20 and 28; (b) in Part VII, sections 73, 74(3) and (4), 75 and 77(1), (2) and (4) to (8) and Schedules 8 and 9; (c) in Part VIII, sections 90 to 93 and Schedule 11.
- This paragraph does not apply to—
(i) any matter in respect of which it is stated by this Act that provision may be made by Act of the Assembly; or (ii) any matter to which a description specified in this Schedule or Schedule 2 is stated not to apply.

Amendments

Para 1: words “apart from the Advocate General for Northern Ireland” in square brackets inserted by the [Justice \(Northern Ireland\) Act 2002, s 85\(1\)](#), [Sch 12, paras 62, 65\(1\), \(2\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 7: substituted by the [Postal Services Act 2000, s 127\(4\)](#), [Sch 8, Pt II, para 26](#).

Date in force: 26 March 2001: see [SI 2001/1148, art 2\(2\), Schedule](#).

Para 9: sub-para (h) inserted by the [Justice \(Northern Ireland\) Act 2002, s 83\(a\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 9: words “This paragraph does not include any matter concerning the Advocate General for Northern Ireland.” in square brackets inserted by the [Justice \(Northern Ireland\) Act 2002, s 85\(1\)](#), [Sch 12, paras 62, 65\(1\), \(3\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 9A: inserted by the [Justice \(Northern Ireland\) Act 2002, s 83\(b\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 11: words “Police Service of Northern Ireland” in square brackets substituted by the [Police \(Northern Ireland\) Act 2000, s 78\(1\)](#), [Sch 6, para 24\(1\), \(4\)](#).

Date in force: 4 November 2001: see the [Police \(Northern Ireland\) Act 2000 \(Commencement No 3 and Transitional Provisions\) Order 2001, SR 2001/396, art 2, Schedule](#).

Para 11: words “Northern Ireland Policing Board” in square brackets substituted by the [Police \(Northern Ireland\) Act 2000, s 78\(1\)](#), [Sch 6, para 24\(1\), \(4\)](#).

Date in force: 4 November 2001: see the [Police \(Northern Ireland\) Act 2000 \(Commencement No 3 and Transitional Provisions\) Order 2001, SR 2001/396, art 2, Schedule](#).

Para 14: words “Part 2 of the [Civil Contingencies Act 2004](#)” in square brackets substituted by the [Civil Contingencies Act 2004, s 32\(1\)](#), [Sch 2, Pt 2, para 13](#).

Date in force: 10 December 2004: see [SI 2004/3281, art 2\(1\), \(2\)\(c\)](#).

Para 14A: inserted by the [Constitutional Reform Act 2005, s 58\(1\), \(3\)](#).

Date in force: to be appointed: see the [Constitutional Reform Act 2005, s 148\(1\)](#).

Para 15: words “Supreme Court of Judicature” in italics repealed and subsequent words in square brackets substituted by the [Constitutional Reform Act 2005, s 59\(5\)](#), [Sch 11, Pt 4, para 33\(1\), \(2\)](#).

Date in force: to be appointed: see the [Constitutional Reform Act 2005, s 148\(1\)](#).

Para 15A: inserted by the [Justice \(Northern Ireland\) Act 2002, s 83\(c\)](#).

Date in force: to be appointed: see the [Justice \(Northern Ireland\) Act 2002, s 87\(1\)](#).

Para 25: reference to "2003" in square brackets substituted by [SI 2003/3075, reg 29, Sch 2](#), Pt 1, para 2.

Date in force: 1 March 2004: see [SI 2003/3075, reg 1\(2\)\(d\)](#).

Para 35A: inserted by the [Higher Education Act 2004, s 7](#).

Date in force: 16 December 2004: see [SI 2004/3255, art 2](#).

Para 39: words "The subject-matter of section 3(5) to (7) of the [Environmental Protection Act 1990](#) (emission limits);" in italics repealed by [SI 2002/3153, art 53\(2\), Sch 6](#), Pt 1.

Date in force: to be appointed: see [SI 2002/3153, art 1\(3\)](#).

APPENDIX 3

**SCOTLAND ACT 1998
SELECTED RESERVATIONS RELATING TO POLICING AND JUSTICE**

Under the *Scotland Act 1998*, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive can be granted additional powers under s63 where the Parliament has no legislative competence. The tables below identify a number of reserved subjects which are potentially relevant to the issue of policing and justice:

Schedule 5 – Part 1 General Reservations

7	Foreign affairs etc
	<p>7</p> <p>(1) International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.(2) Sub-paragraph (1) does not reserve—</p> <p style="padding-left: 20px;">(a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law,(b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.</p>
9	Defence
	<p>9</p> <p>(1) The following are reserved matters—</p> <p style="padding-left: 20px;">(a) the defence of the realm,(b) the naval, military or air forces of the Crown, including reserve forces,(c) visiting forces,(d) international headquarters and defence organisations,(e) trading with the enemy and enemy property.</p> <p>(2) Sub-paragraph (1) does not reserve—</p> <p style="padding-left: 20px;">(a) the exercise of civil defence functions by any person otherwise than as a member of any force or organisation referred to in sub-paragraph (1)(b) to (d) or any other force or organisation reserved by virtue of sub-paragraph (1)(a),(b) the conferral of enforcement powers in relation to sea fishing.</p>
	Treason
	<p>10 Treason (including constructive treason), treason felony and misprision of treason are reserved matters.</p>

Schedule 5 Part 2 Specific Reservations

Section	
	Head A—Financial and Economic Matters
	<p>A5 Money laundering The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.</p>
	Head B—Home Affairs
	<p>B1 Misuse of drugs The subject-matter of— (a) the Misuse of Drugs Act 1971, (b) sections 12 to 14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs), and (c) Part V of the Criminal Law (Consolidation) (Scotland) Act 1995 (drug trafficking) and, so far as relating to drug trafficking, the Proceeds of Crime (Scotland) Act 1995.</p>
	<p>B4 Firearms The subject-matter of the Firearms Acts 1968 to 1997.</p>
	<p>B8 National security, interception of communications, official secrets and terrorism National security. The interception of communications; but not [(a) the interception of any communication made to or by a person detained at a place of detention, if the communication— (i) is a written communication and is intercepted there, or (ii) is intercepted in the course of its transmission by means of a private telecommunication system running there,] [(b)] the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc) or surveillance not involving interference with property. The subject-matter of— (a) the Official Secrets Acts 1911 and 1920, and (b) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4. Special powers, and other special provisions, for dealing with terrorism. <i>[Interpretation</i> “Place of detention” means a prison, young offenders institution, remand centre or legalised police cell (as those expressions are defined for the purposes of the Prisons (Scotland) Act 1989) or a hospital (within the meaning [given in section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003]); and “person detained”, in relation to a hospital, means a person detained there [under— (a) section 24, 25 or 70 of the Mental Health (Scotland) Act 1984; (b) Part 6 of the Criminal Procedure (Scotland) Act 1995; (c) the Mental Health (Care and Treatment) (Scotland)</p>

	<p>Act 2003; or(d) regulations under—</p> <p>(i) subsection (3) of section 116B of the Army Act 1955;(ii) subsection (3) of section 116B of the Air Force Act 1955; or(iii) section 63B of the Naval Discipline Act 1957].</p> <p>["Private telecommunication system" has the meaning given in section 2(1) of the Regulation of Investigatory Powers Act 2000]].</p>
	<p>B10 Emergency powers Emergency powers.</p>
	<p>B11 Extradition Extradition.</p>
	<p>Section L1</p>
	<p>L1 Judicial remuneration Determination of the remuneration of—</p> <p>(a) judges of the Court of Session,(b) sheriffs principal and sheriffs,(c) members of the Lands Tribunal for Scotland, and(d) the Chairman of the Scottish Land Court.</p>

The Role of the Lord Chancellor

Introduction: Changes to the Lord Chancellor's role following the Constitutional Reform Act 2005 and the Justice (Northern Ireland) Act 2002

Following the Constitutional Reform Act 2005, which came into force in April 2006, the Lord Chancellor continues to be a government minister responsible for the judiciary, judicial appointments, the courts and tribunals. The Lord Chancellor gained the additional position of Secretary of State for Constitutional Affairs, but his role as Speaker of the House of Lords was devolved to the Lord Speaker. He remains responsible for legal aid and the Legal Services Commission, statute law reform and the Law Commission, public records and the National Archives, the Land Registry, the Northern Ireland Court Service, and the Crown Dependencies. He will continue to make appointments to the senior military, civic and church offices¹. However, he will no longer be a judge or head of the judiciary.

The Lord Chancellor's role in making judicial appointments has been devolved to an independent Judicial Appointments Commission, who will now be responsible for the selection and recruitment of judges for the Courts of England and Wales and members of certain tribunals. The Justice (Northern Ireland) Act 2002 previously made provision for a Northern Ireland Judicial Appointments Commission.

The Lord Chief Justice of England and Wales is now head of the judiciary in England and Wales. The role of head of the judiciary in Northern Ireland was previously transferred to the Lord Chief Justice of Northern Ireland under the Justice (Northern Ireland) Act 2002.

The statutory functions of the Lord Chancellor that relate to the following matters have now been transferred to the Lord Chief Justice²:

- the posting and roles of individual judges within the framework of the court system;
- the responsibility to make rules relating to deployment of magistrates;
- the authorisation and assignment of judges, allocation of work and the distribution of business within the same level of the court system, (e.g. between divisions of the High Court); and
- the nomination of judges to deal with specific areas of business and to fill judicial leadership posts such as the Presiding Judges.

The following statutory functions remain with the Lord Chancellor:

- those concerning the framework for the organisation of the courts system, including setting the geographical and jurisdictional boundaries within England and Wales;

¹ Schedule 4 of the Act, however, includes provisions preliminary to the making of arrangements for ending the Lord Chancellor's ecclesiastical patronage, and for its future exercise by the Prime Minister.

² See Explanatory Notes to the Constitutional Reform Act 2005 for more detail on the functions transferred from the Lord Chancellor to the Lord Chief Justice - <http://www.opsi.gov.uk/ACTS/en2005/2005en04.htm>

- the provision and allocation of financial, material and human resources for the administration of justice;
- those relating to the pay, pensions and terms and conditions of the judiciary and the provision of staff and resources for training of the judiciary; and
- the determination of the overall number of judges and the distribution of business between different levels of courts in England and Wales.

Certain other statutory functions of the Lord Chancellor are now exercised only with the concurrence of, or after consultation with, the Lord Chief Justice.

The Lord Chancellor's Role in Northern Ireland following the Devolution of Justice³

Court Service

The Lord Chancellor is responsible for the administration of the Northern Ireland courts. He has a duty to ensure that there is an effective and efficient system to support the carrying on of the business of the courts. He is responsible for the laying of reports on the exercise of that duty before Parliament. He is responsible after consultation with the Lord Chief Justice of Northern Ireland for functions relating to the organisational framework of the courts (for example, specifying the number of court divisions); destination and allocation of proceedings between court tiers; and provision of resources. He has the power to allow or disallow procedural rules made by the various court Rules Committees; has the power to make certain rules for coroners courts after consultation with the Treasury, to agree to the making of procedural rules for such courts by the Lord Chief Justice of Northern Ireland; has the power to appoint non-judicial members to Rules Committees and has the power to designate either the secretary, or one of the joint secretaries, to such a Committee.

On devolution, the Lord Chancellor's responsibilities in relation to the courts would transfer to the Northern Ireland Minister for justice. The Northern Ireland Court Service would become an executive agency of a Department of Justice.

Legal Aid

The Lord Chancellor currently discharges his responsibility in relation to legal aid policy and funding and the Northern Ireland Legal Services Commission through the Northern Ireland Court Service. After devolution these responsibilities will transfer to the Northern Ireland Minister for justice.

³ This section is extracted from Chapter 15 of the NIO paper ' Devolving Policing and Justice in Northern Ireland: A Discussion Paper' - http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf

Social Security Commissioners and Child Support Commissioners

The Lord Chancellor currently provides administrative support, through the Northern Ireland Court Service, to the Office of the Social Security Commissioners and Child Support Commissioners, who are appointed to hear and determine appeals on points of law from Appeal Tribunals under the Social Security and Child Support Legislation. It is proposed that, on devolution, responsibility for providing administrative support to the Commissioners will transfer to the Northern Ireland Minister for justice.

Appeals to House of Lords/Supreme Court of the United Kingdom

On devolution, it is intended that responsibility for rights of appeal from the Northern Ireland Courts to the House of Lords (and the UK Supreme Court, when established) and legal aid for such appeals would transfer to the Northern Ireland Minister for justice.

Roles and responsibilities of the Lord Chief Justice of Northern Ireland and the Lord Chancellor in relation to the judiciary

The Lord Chief Justice, as head of the judiciary, is responsible for ensuring that the views of the judiciary in Northern Ireland are effectively represented to Parliament, to the Lord Chancellor, to other Ministers of the Crown, to the Northern Ireland Assembly, to the First Minister and deputy First Minister and to Northern Ireland Ministers; that appropriate structures are in place to ensure the welfare, training and guidance of the judiciary; for the deployment of individual members of the judiciary; for the allocation of work within the courts; and for the handling of complaints against members of the judiciary. The Lord Chancellor is responsible for the appointment and removal of specified judges. He also has ministerial responsibility for the Northern Ireland Judicial Appointments Commission, which includes appointment, remuneration and tenure of members, approval of staffing and funding, and laying the Commission's annual report before Parliament.

*Judicial Appointments*⁴

Currently the appointments of senior judges (Lord Chief Justice of Northern Ireland and Lord Justice of Appeal) are made by Her Majesty the Queen on the recommendation of the Prime Minister.

On devolution, senior judges would be appointed by Her Majesty the Queen on the recommendation of the Prime Minister. Before the Prime Minister made this recommendation, he would require the First Minister and deputy First Minister, acting jointly, to make a recommendation to him concerning the appointments in such a form as he may specify. Before making any recommendation to the Prime Minister, the First Minister and deputy First Minister would consult the Lord Chief Justice of Northern Ireland. The Northern Ireland Judicial Appointments Commission would advise the First Minister and deputy First Minister as to the procedure which they should adopt for formulating their recommendation to the Prime Minister. The First Minister and deputy First Minister, with the approval of the Prime Minister, would then determine the procedure.

⁴ The following information on judicial appointments was also provided by Anthony Carleton of the NI Court Service:

At present, the Northern Ireland Assembly cannot legislate about the appointment and removal of specified judicial office holders, which are "excepted" matters under Schedule 2 to the 1998 Act. It is intended that, upon devolution of justice, the appointment and removal of judicial offices will come within the legislative competence of the Northern Ireland Assembly

The 2002 Act made provision for the creation of an independent Judicial Appointments Commission for Northern Ireland ('the NIJAC'). Schedule 3 of that Act already provides for the transfer of the Lord Chancellor's judicial appointment functions to the FM and DFM.

It was intended that the provisions of the 2002 Act would be brought into operation on devolution of justice. However, as a result of the Joint Declaration, the Government undertook to bring forward legislation to allow the NIJAC to be established before devolution. Accordingly, the Justice (Northern Ireland) Act 2004 amends the 2002 Act to provide for the transfer of the functions of the FM and DFM in relation to the NIJAC to the Lord Chancellor. The NIJAC was established on 15th June 2005.

An Order under section 86 of the 1998 Act will be required to provide for the transfer of those functions relating to the NIJAC from the Lord Chancellor back to the FMDFM.

The Lord Chancellor's responsibilities in relation to the appointment of listed judicial offices (offices up to and including High Court Judge, as listed in Schedule 1 of the Justice (Northern Ireland) Act 2002) and the Northern Ireland Judicial Appointments Commission would also transfer to the First Minister and deputy First Minister acting jointly. The Lord Chancellor's responsibilities in relation to the removal from listed judicial offices (including High Court judges appointed after devolution) will be discharged by the First Minister and deputy First Minister acting jointly.

Northern Ireland Judicial Appointments Ombudsman

Currently, the Commissioner for Judicial Appointments in Northern Ireland has responsibility for complaints regarding judicial appointments. This office will be replaced as soon as practicable by that of the Northern Ireland Judicial Appointments Ombudsman (provided for in section 9A of the Justice (Northern Ireland) Act 2002, as substituted by section 124 of the Constitutional Reform Act 2005). The Ombudsman will deal with any complaints made in relation to individual judicial appointments recommended by the Judicial Appointments Commission. The Lord Chancellor is responsible for the Ombudsman, including recommendations for appointment to that office; removal from office; payment of salary and issuing of Codes of Conduct. He has also power to ask the Ombudsman to consider any particular application or scheme which has caused him concern.

On devolution of justice, the Lord Chancellor's functions in relation the Ombudsman would devolve to the First Minister and deputy First Minister acting jointly as these Ministers will be responsible for judicial appointments through the Judicial Appointments Commission.

Other Functions

The Lord Chancellor has a number of UK-wide court-related statutory responsibilities which he exercises in respect of Northern Ireland and which the Government considers it would be appropriate to devolve (for example, acting as Central Authority for child abduction cases and transmitting applications for the reciprocal enforcement of maintenance orders). Responsibility for the policy aspects of these functions, which relate to international relations (an excepted matter), would remain the responsibility of the UK Government.

The Lord Chancellor exercises a range of other ministerial functions in respect of Northern Ireland under UK-wide legislation. In some cases, the Act itself will make provision for appropriate post-devolution arrangement (e.g. the Freedom of Information Act 2000 provides for the Lord Chancellor to continue to exercise his functions in consultation with the First Minister and deputy First Minister). In other cases, the function may relate to an excepted matter and will therefore remain at Westminster (e.g. functions under the Human Rights Act 1998 which relate to international relations and obligations of the UK). Consideration is currently being given as to whether there are any UK-wide functions in respect of which specific post-devolution provision is required.



FIREARMS DEVOLUTION SCOTLAND

INTRODUCTION

1. In relation to firearms devolution, the NIO discussion paper on 'Devolving Policing and Justice in Northern Ireland' suggests that it would be possible to follow a similar model to that which exists in Scotland. The NIO paper characterises the devolution settlement in Scotland as one in which the 'routine firearms regulating framework' is a devolved matter but the 'business of regulating the use of prohibited weapons, such as automatic weapons' remains reserved to Westminster.
2. This research note draws on the content of the explanatory memorandum which accompanied the Scotland Act 1998 to provide greater detail on the Scottish devolution settlement as it relates to firearms.

THE RESERVATION

3. Under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive can be granted additional powers under s63 where the Parliament has no legislative competence. This is the case in relation to Firearms, where a number of areas of executive devolution exist (see paragraph 8 below).
4. Schedule 5 Part 2 Section B4 of the Scotland Act 1998 reserves firearms. The reserved matter covers regulation of the manufacture, possession, handling, purchase or acquisition, sale, distribution and transfer of firearms.

DETAILS OF PROVISIONS

5. The reservation is expressed by reference to the subject-matter of the Firearms Acts 1968 to 1997. These Acts are the Firearms Act 1968, the Firearms Act 1982, the Firearms (Amendment) Act 1988, the Firearms (Amendment) Act 1992 and the Firearms (Amendment) Act 1997. These Acts, amongst other things:
 - make it criminal in certain circumstances and without authority to possess handle, purchase, acquire, sell, distribute or transfer certain firearms and imitation firearms;

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- provide for the need for, and issue of, firearms certificates in relation to certain firearms and ammunition;
 - make provision for the regulation of firearms dealers; and
 - and provide for the licensing and regulation of pistol clubs.
6. The Acts distinguish between different types of firearms in certain respects and make different provision for different types.
7. The reservation also covers subordinate legislation made under the Firearms Acts, in particular the Firearms (Scotland) Rules 1989 (S.I. 1989/889) which prescribe the forms to be used in connection with the grant of certificates under the Firearms Acts and the registration of firearms dealers, and also the form of the register of transactions to be kept by dealers.

EXECUTIVE DEVOLUTION¹

8. The following functions have been included in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

The Firearms Act 1968 (c.27), sections 5 and 12(2).	The function of the Secretary of State to grant an authority to allow persons to possess prohibited weapons and ammunition, impose conditions under that authority and revoke an authority.
The Firearms (Amendment) Act 1988 (c.45), sections 15 and 19 and the Schedule (other than paragraph 3(1)(a)).	The functions of the Secretary of State under section 15 in relation to approving certain rifle and pistol clubs. All the functions conferred on the Secretary of State by the schedule to the Act (granting of Museums Firearms Licences which allow museums to hold firearms and ammunition without a certificate) except the function of determining a lesser amount of the fee for granting or renewing a licence.
The Firearms (Amendment) Act 1997 (c.5), section 7(3).	The function of making designations for the purposes of section 7(3) of the 1997 Act of a place at which a firearm is to be kept and used by virtue of a condition in a firearms certificate requiring it to be kept and used in such a place.

¹ “Executive devolution of functions in reserved areas relates to matters on which the Scottish Parliament is not competent to legislate. It is often a way of giving powers or functions to Scottish Ministers which they could not otherwise have carried out under the Scotland Act. After the executive devolution of functions in reserved areas to the Scottish Ministers the UK Parliament remains the sole body able to legislate in relation to those matters.”

Government Memorandum on the Sewel Convention accessed online August 2006
<http://www.scotlandoffice.gov.uk/our-communications/doc.php?id=51>



FIREARMS – OPTIONS FOR DEVOLUTION

	PROHIBITED WEAPONS AND AMMUNITION		OTHER FIREARMS	
	Responsibility for legislation, policy, and general oversight	Power to grant authority to possess, purchase, acquire, manufacture, sell	Full responsibility (legislation, policy, and general oversight)	Limited responsibility
1) Full devolution	✓	✓	✓	
2) Devolution limited in relation to prohibited weapons		✓	✓	
3) The Scottish Model		✓		✓
4) No devolution in relation to prohibited weapons but full responsibility for other firearms			✓	
5) No devolution in relation to prohibited weapons and limited in relation to other firearms				✓
6) Current arrangements	x	x	x	x

In relation to these options **Options 1 to 3** in particular (as they include some element of devolution in relation to prohibited weapons) further options would be possible which indicate that the desire is to have devolution but not “for the time being”.



What constitutes a "Prohibited weapon" and "Prohibited Ammunition" in Northern Ireland is set out in Article 45 of the Firearms (Northern Ireland) Order 2004

Weapons subject to general prohibition

45. - (1) Subject to Article 46, a person who, without the authority of the Secretary of State, has in his possession, or purchases or acquires, or manufactures, sells or transfers -

- (a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;
- (b) any self-loading or pump-action rifle other than one which is chambered for .22 rimfire cartridges;
- (c) any self-loading or pump-action smoothbore firearm which is not an air gun or chambered for .22 rimfire cartridges and either has a barrel less than 60.96 centimetres in length or is less than 102 centimetres in length overall;
- (d) any smoothbore revolver firearm other than one which is chambered for 9 mm. rimfire cartridges or a muzzle-loading firearm;
- (e) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;
- (f) any weapon of whatever description designed or adapted for the discharge of electricity or any noxious liquid, gas or other thing; and
- (g) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in sub-paragraph (f) and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode on or immediately before impact,

shall be guilty of an offence.



SEPTEMBER 2006

DEFINITIONS OF CEASEFIRE

Introduction

At its meeting held on Wednesday 30th August, the Preparation for Government committee agreed for research on the definition of *ceasefire* to be carried out by the Assembly Research & Library Service.

1. Northern Ireland (Sentences) Act 1998

A reference to ceasefires is found at Section 8 of the Northern Ireland (Sentences) Act 1998. Section 9 outlines the factors that the Secretary of State shall in particular take into account when deciding whether an organisation has not established or is not maintaining a complete and unequivocal ceasefire.

(8) A specified organisation is an organisation specified by order of the Secretary of State; and he shall specify any organisation which he believes—

- a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
- b) has not established or is not maintaining a complete and unequivocal ceasefire.

(9) In applying subsection (8)(b) the Secretary of State shall in particular take into account whether an organisation—

- a) is committed to the use now and in the future of only democratic and peaceful means to achieve its objectives;
- b) has ceased to be involved in any acts of violence or of preparation for violence;
- c) is directing or promoting acts of violence by other organisations;
- d) is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the agreement reached at multi-party talks on Northern Ireland set out in Command Paper 3883.

2. Northern Ireland Act 1998

Albeit without a direct reference to ceasefires, the same criteria as found in Section 9 (a)-(d) of Northern Ireland (Sentences) Act 1998 can be found in Section 30 of the Northern Ireland Act 1998 (As amended by the Northern Ireland (Monitoring Commission etc) Act 2003):

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30 Exclusion of Ministers from office

[(6) If the Secretary of State is of the opinion that the Assembly ought to consider a resolution¹ under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.

(7) In forming an opinion under subsection (6), the Secretary of State shall in particular take into account—

- (a) whether the person or party concerned is committed to the use now and in the future of only democratic and peaceful means to achieve his or its objectives;
- (b) whether he or it has ceased to be involved in any acts of violence or of preparation for violence;
- (c) whether he or it is directing or promoting acts of violence by other persons;
- (d) whether he or it is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the Belfast Agreement; and
- (e) any recommendation about steps the Assembly might consider taking which is contained in a report—
 - (i) made by the Commission mentioned in section 1 of the Northern Ireland (Monitoring Commission etc) Act 2003, or
 - (ii) made under the agreement establishing that Commission by members of that Commission.]

¹ Exclusion of Ministers from Office

ANNEX 1 INTERNATIONAL DEFINITIONS

Source	Definition/Reference
<p>1. Cease-fire Agreement for Bosnia and Herzegovina signed by the Bosnian parties on 5 October 1995ⁱ</p>	<p>Cease-fire Agreement for Bosnia and Herzegovina, 5 October 1995</p> <p>The undersigned agree as follows:</p> <ol style="list-style-type: none"> 1. Commencing on the effective date defined in paragraph 2 below, the parties will implement a cease-fire throughout all territory within the borders of Bosnia and Herzegovina by terminating all hostile military activities and by implementing the other provisions of this agreement. 2. The cease-fire will become effective at 0001 hours on 10 October 1995, provided that at that time full gas and electrical utility service shall have been restored in the city of Sarajevo; otherwise, the cease-fire will become effective at 0001 hours on the day following such restoration. 3. In order to allow for the negotiation and the commencement of the implementation of a Peace Agreement, this cease-fire will last for 60 days or until completion of proximity peace talks and a peace conference, whichever is later. 4. Pursuant to the cease-fire obligation, on the effective date all parties will immediately ensure that all military commanders issue and compel compliance with clear orders precluding (a) all offensive operations; (b) patrol and reconnaissance activities forward of friendly positions; (c) all offensive weapons' firings, including sniper fire; (d) the laying of additional mines; and (e) the creation of additional barriers or obstacles. 5. Upon the effective date all parties will immediately ensure (a) that all civilians and prisoners will be treated humanely, and (b) that all prisoners of war will be exchanged under the supervision of the United Nations Protection Force (UNPROFOR). 6. Commencing on the effective date the parties will cooperate with the cease-fire monitoring activities of UNPROFOR and will immediately report violations to

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		<p>appropriate UNPROFOR authorities.</p> <p>7. Commencing on the effective date all parties will provide free passage and unimpeded road access between Sarajevo and Gorazde along two primary routes (Sarajevo-Rogatica-Gorazde, Belgrade-Gorazde) for all non-military and UNPROFOR traffic.</p> <p>8. During the period of the cease-fire, the undersigned will fully honour the obligations undertaken through the Geneva Agreed Basic Principles of 8 September 1995, the Framework Agreement of 14 September 1995, and the Further Agreed Principles of 26 September 1995, including (without limiting the generality of the foregoing) the obligation to afford all persons freedom of movement and all displaced persons the right to return home and repossess their property.</p>
<p>2.</p>	<p>The Bicesse Accords (May 1991)ⁱⁱ</p>	<p>Ceasefire Agreement</p> <p>I. Definition and General Principles</p> <p>1. The ceasefire consists of the cessation of hostilities between the Government of the People's Republic of Angola and UNITA with a view to attaining peace throughout the national territory.</p> <p>2. The ceasefire must be total and definitive throughout the national territory.</p> <p>3. The ceasefire must guarantee the free circulation of persons and goods throughout the national territory.</p> <p>4. Overall supervision of the ceasefire will be the responsibility of the Government of the People's Republic of Angola and UNITA acting within the framework of the Joint Political-Military Commission (CCPM) created pursuant to the annex to the document entitled "Fundamental Principles for the Establishment of Peace in Angola". The United Nations will be invited to send monitors to support the Angolan parties, at the request of the Government of the People's Republic of Angola.</p> <p>5. The ceasefire includes the cessation of all hostile propaganda between the Government of the People's Republic of Angola and UNITA at both the domestic and international levels.</p> <p>6. After its entry into force, the ceasefire will obligate the Government of the People's Republic of Angola</p>

		<p>and UNITA to refrain from acquiring lethal material. The United States and the Union of Soviet Socialist Republics informed the Government of the People's Republic of Angola that they will support implementation of the ceasefire by ceasing to supply lethal material to any Angolan party and encouraging other countries to act in a similar fashion.</p>
<p>3.</p>	<p>Arusha Peace and Reconciliation Agreement for Burundiⁱⁱⁱ(August 2000)</p>	<p>1. Ceasefire means the cessation of:</p> <ul style="list-style-type: none"> (a) All attacks by air, land and lake, as well as all acts of sabotage; (b) Attempts to occupy new ground positions and movements of troops and resources from one location to another; (c) All acts of violence against the civilian population - summary executions, torture, harassment, detention and persecution of civilians on the basis of ethnic origin, religious, beliefs and political affiliations, incitement of ethnic hatred, arming of civilians, use of child soldiers, sexual violence, training of terrorists, genocide and bombing of the civilian population; (d) Supply of ammunitions and weaponry and other war-related stores to the field; (e) All hostile propaganda between the Parties, both within and outside the country; (f) Any other actions that may impede the normal evolution of the ceasefire process.
<p>4.</p>	<p>UN Security Council Resolution 1701 (August 2006)^{iv}</p>	<p>8. <i>Calls for</i> Israel and Lebanon to support a permanent ceasefire and a longterm solution based on the following principles and elements:</p> <ul style="list-style-type: none"> – full respect for the Blue Line by both parties; – security arrangements to prevent the resumption of hostilities, including the establishment between the Blue Line and the Litani river of an area free of any armed personnel, assets and weapons other than those of the Government of Lebanon and of UNIFIL as authorized in paragraph 11, deployed in this area; – full implementation of the relevant provisions of the Taif Accords, and of resolutions 1559 (2004) and 1680 (2006), that require the disarmament of all armed groups in Lebanon, so that, pursuant to the Lebanese cabinet decision of 27 July 2006, there will be no weapons or authority in Lebanon other than that of the Lebanese State; – no foreign forces in Lebanon without the consent of its Government; – no sales or supply of arms and related materiel to

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	Lebanon except as authorized by its Government; – provision to the United Nations of all remaining maps of landmines in Lebanon in Israel's possession;
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ⁱ Presented as Annex II of a Letter dated 31 October 1995 from the Permanent Representatives of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General

<http://www.un.org/documents/ga/docs/50/plenary/a50-718.htm>

ⁱⁱ <http://www.c-r.org/our-work/accord/angola/bicesse-key-points.php>

ⁱⁱⁱ http://www.usip.org/library/pa/burundi/pa_burundi_08282000_pr3ch3.html#25

^{iv} http://www.un.org/Docs/sc/unsc_resolutions06.htm

Appendix 5

**Correspondence with the
Secretary of State's Office**



**Room 247
Parliament Buildings
Belfast
BT4 3XX**

**The Rt Hon Peter Hain MP
Secretary of State for Northern Ireland
Stormont Castle
Belfast
BT4 3TT**

3 August 2006

Dear Peter

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

At the meeting of the Committee held on 2 August, Members agreed by consensus to invite you to a future meeting to discuss law and order matters including issues related to the rule of law, such as criminality and paramilitarism. These are matters which the Committee is discussing in the context of preparation for government and the restoration of devolution. Members would also like to explore with you the policing issues mentioned in your recent speech in Glenties in Donegal.

As you may be aware, the Committee has created a work programme in which Wednesday of each week is dedicated to law and order issues. Members asked me to point out that the issues they would wish to explore with you are scheduled to be discussed on Wednesday 16 August. However, the Committee appreciates the pressures on your diary and would be content to see you on any succeeding Wednesday.

I am content to leave it to our officials to determine the most suitable date and time and perhaps your office would liaise with Martin Wilson, Principal Clerk, on 028 90521280.

Yours sincerely

Jim Wells

**Jim Wells
Chairperson**



**Mr Alan Whysall
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

10 August 2006

Dear Alan

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

The Committee on the Preparation for Government met yesterday to discuss issues surrounding the departmental and ministerial structures for administering policing and justice and the NIO proposals (as set out in the Discussion Paper: Devolving Policing and Justice in Northern Ireland) on what should or should not be devolved.

It was agreed by consensus that the Northern Ireland Office should be asked for a paper on the following matters:

- To provide the Committee with a definition of 'national security' (in the context of the range of matters that are deemed to fall under the umbrella of national security);
- To provide the Committee with a copy (and explanation of) any protocols that have been agreed between the NIO and the main security agencies in GB in relation to the handling of national security matters.

The Committee also agreed by consensus that issues relating to national security would be among the matters to be raised with the Secretary of State when responding to the recent invitation to attend the Committee to discuss law and order matters.

The Committee has asked that the paper should be available for discussion at its meeting scheduled for 16 August.

Yours sincerely

Martin Wilson

**Mr Martin Wilson
Principal Clerk**

028 90 521280



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Martin Wilson
Principal Clerk, Preparation for Government Committee
The Assembly
Parliament Buildings
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15 August 2006

PREPARATION FOR GOVERNMENT COMMITTEE

Thank you for your letter of 10 August to Alan Whysall seeking information for the Preparation for Government Committee. We have also since spoken and you have added a couple of additional requests. I will try to deal with each in turn.

There is no legal **definition of national security** but it is generally understood to relate to the safety and security of the state and its people. The protection of national security is one of the Security Service's functions and, as set out in section 1(2) of the Security Service Act 1989, this is defined in particular as protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. The Northern Ireland Act 1998, Schedule 2, lists of some of the areas included under the heading 'national security'. The 1998 Act, together with the discussion paper 'Devolving Policing and Justice in Northern Ireland' provides a fuller picture by indicating which matters will be devolved

Container 466-06

and which will not. I know that you were looking to collate a comparison between the 1998 Act, the Scotland Act and the discussion document, and attach a table which may be of help to you.

No **protocols** exist between the Northern Ireland Office and the Security and Intelligence Agencies in GB in relation to the handling of national security matters.

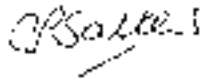
On your separate question about the recent changes in respect of **judicial appointments**, I am grateful to colleagues in the Northern Ireland Court Service, into whose remit this matter falls, for the following explanation:

The Justice (Northern Ireland) Act 2002 made provision for the creation of an independent Judicial Appointments Commission for Northern Ireland ('the NIJAC'). Schedule 3 to that Act already provides for the transfer of the Lord Chancellor's judicial appointment functions to the First Minister and Deputy First Minister.

It was intended that the provisions of the 2002 Act (including the establishment of the NIJAC) would be brought into operation on the devolution of justice functions. However, in the Joint Declaration, the Government undertook to bring forward legislation to allow the NIJAC to be established before devolution. Accordingly, the Justice (Northern Ireland) Act 2004 amends the 2002 Act to provide for the functions of the First Minister and deputy First Minister in relation to the NIJAC to be transferred to the Lord Chancellor, thus enabling the Commission to be established in advance of the devolution of justice functions. The NIJAC was established on 15th June 2005.

It is intended that, when responsibility for justice matters is devolved, these responsibilities would transfer back from the Lord Chancellor to the First and deputy First Ministers. This would require a transfer Order under section 86 of the Northern Ireland Act 1998 Act.

I hope that this provides the clarification you were seeking. Please let me know if there is anything further we can provide.

A handwritten signature in black ink, appearing to read "Clare Salters". The signature is written in a cursive style with a horizontal line underneath.

Clare Salters

TABLE 1: RESERVED MATTERS: IMPLICATIONS FOR DEVOLUTION¹
Summary of Justice and policing issues contained within Schedule 3 to the Northern Ireland Act 1998

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(a) & (b) The criminal law and the creation of offences and penalties ²	<p>The statutory framework governing what constitutes a crime and what appropriate penalties are.</p> <p>It does <u>not</u> cover the law governing treason or terrorist offences because these are excepted (see below).</p>	<p>Everything covered by these paragraphs, including advice to the Crown on exercise of the Royal Prerogative of Mercy for cases falling into what becomes the devolved category.</p>	-	None.
9(c) The prevention & detection of crime and powers of arrest and detention in connection with crime or criminal proceedings ³	<p>The statutory framework in which the police operate, covering the powers available to them over and above those exercisable by ordinary citizens.</p> <p>It does <u>not</u> cover counter-terrorism legislation, immigration or revenue & customs because these are excepted (see below).</p>	<p>Everything covered by this paragraph, including some administrative functions connected with international co-operation on criminal matters, with the exception of the matters listed in the next column</p>	<p>Responsibility for the Assets Recovery Agency or Serious Organised Crime Agency which will remain UK-wide bodies.</p> <p>Those aspects of the Regulation of Investigatory Powers Act 2000 (RIPA) that are excepted together with some aspects that are currently reserved.</p>	<p>Whether some aspects of the Regulation of Investigatory Powers Act 2000 which are currently reserved will need to remain so.</p> <p>Whether the arrangements for dealing with criminal records checks and disclosures are best regulated on an NI or a UK-wide basis.</p> <p>Decisions on which aspects of RIPA that are currently reserved will need to remain so.</p>

¹ Unless otherwise specified, when the table refers to issues devolving it means both that the Assembly will take on legislative competence for this particular area and that any statutory functions or powers currently exercised by the Secretary of State will transfer to NI Ministers.

² This is identical to paragraph 4(a) of Schedule 3 (minimum reserved matters on Appointed Day) to the Northern Ireland Constitution Act 1973

³ This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(d) Prosecutions ⁴	<p>The statutory framework covering the rules applying to the prosecution system, including the roles of the Public Prosecution Service for NI and the Attorney General for NI.</p> <p>It does <u>not</u> cover the role of the Advocate General for NI, which is an excepted matter (see below).</p>	<p>Everything within this paragraph, subject to the agreement of Concordats between the UK Government and the NI Administration on the independence of the prosecution system.</p>	-	Agreeing the Concordat.
9(e) Treatment of offenders (including children and young persons, and mental health patients, involved in crime) ⁵	<p>Everything to do with prisons, youth justice, probation and certain functions to do with mentally disordered offenders (though the majority of these functions, including secure hospital facilities) are <u>already</u> transferred.</p> <p>It does <u>not</u> include the work of the Sentences Review Commissioner.</p>	<p>Everything covered by this paragraph.</p>	<p>The NI (Sentences) Act 1998, which provides for the Sentences Review Commissioners and the early release scheme.</p> <p>The NI (Remission of Sentences) Act 1995.</p>	<p>Arrangements will need to be put in place to allow the Life Sentences Review Commissioners (which will be devolved) to continue to have access not only to relevant information from the devolved administration (from the NIPS and PSNI via NI Ministers) but also to appropriate information which falls within the excepted field.</p>

⁴ This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973

⁵ This is identical to paragraph 4(d) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(f) repealed	-	-	-	-
9(g) Compensation ⁶	The law governing the circumstances in which victims of crime can be compensated out of public funds and the administration of the system to deliver this.	Everything covered by this paragraph, including the Compensation Agency and the Criminal Injuries Compensation Appeals Panel.	The compensation scheme provided for in the Terrorism Act (which is due to end in 2007).	None.
9(h) Community Safety Partnerships	Statutory partnerships provided for in the Justice (NI) Act 2002. These are different from the current voluntary schemes that the local councils operate.	Everything.	-	None.
9A Chief Inspector of Criminal Justice for NI	The Inspectorate & the law governing how it operates.	Everything.	-	None.
10 Public Order <i>The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons (other than the Ministry of Defence Police) but not</i>	The statutory framework governing the maintenance of public order, including responsibility for parades legislation in NI.	Preferably everything (though see also the list of issues remaining) NB: Responsibility for determining which weapons may be used by the police in public order situations will remain an operational decision for the Chief Constable - ie: there is no ministerial function or legislative capacity to	See list of issues remaining	Certain aspects of parades, for example appointments to the Parades Commission and its operation could be kept reserved, if that was the wish of the Assembly. Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved.

⁶ This is identical to paragraph 4(f) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
<p>any matter within paragraph 17 of Schedule 2 (national security, etc.); the Parades Commission.⁷</p> <p>11 The Police and the policing accountability framework</p> <p><i>"The establishment, organisation and control of the PSNI and of any other police force (other than the MoD Police); the Northern Ireland Policing Board; traffic wardens."⁸</i></p>	<p>The statutory framework which provides for the existence of the Police Service of NI and the governance and oversight arrangements which apply to it (the role of the Policing Board, District Policing Partnerships & Police Ombudsman). Also, the funding and corporate governance of a range of statutory and non-statutory bodies within the wider policing field (the Oversight Commissioner, Police Retraining & Rehabilitation Trust, Police Fund, RUC George Cross Foundation and RUC Widows' Association</p> <p>NB. The Oversight Commissioner's term of office comes to an end in May 2007</p> <p>This paragraph does <u>not</u> cover police powers, which are dealt with under paragraph 9(c) above.</p>	<p>devolve.</p> <p>Everything except those matters listed in the next two columns</p>	<p>The SoS would continue to be responsible for the arrangements for sharing information relating to national security with the Policing Board because national security remains an excepted matter.</p> <p>The 50:50 temporary recruitment provisions, unless the Assembly specifically request that these be devolved. And responsibility for seeking a derogation from the EC Directive on equality would remain an excepted matter for the UK Government, even if responsibility for 50:50 were devolved.</p> <p>The Secretary of State would retain power to issue statutory guidance to the Ombudsman (the Minister</p>	<p>The detail of the relationship between the Policing Board, the Northern Ireland Minister for policing and an Assembly policing committee.</p> <p>The Assembly will need to consider whether to seek devolution of the 50:50 temporary recruitment provisions.</p> <p>Whether responsibility for advising the Crown on the Ombudsman appointment should remain reserved or transfer to FM & DFM rather than the Minister(s) for policing.</p>

⁷ This is broadly similar to the wording of paragraph 3 of Schedule 3 to the Northern Ireland Constitution Act 1973.

⁸ This is broadly similar to the wording of paragraph 5 of Schedule 3 to the Northern Ireland Constitution Act 1973, which dealt with the RUC and the Police Authority.

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
11A Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters	This is governed by the Inter-Governmental Agreement on Policing co-operation which is an international treaty and would therefore have been an excepted matter. However the NI (Miscellaneous Provisions) Act 2006 transfers certain aspects of international co-operation into the reserved field, enabling them to be devolved.	Arrangements for co-operation between the PSNI and the Garda Síochána with respect to lateral entry, secondments, exchanges or training of officers; communications (including liaison and information technology); joint investigations; and disaster planning.	for policing would also have this power). The declaration made by independent DPP members will not devolve because it needs to remain the same as the declaration made by candidates standing for local election to local councils, and electoral law will remain excepted.	The Assembly will wish to consider whether, with the UK Government's agreement, they wish in the future to negotiate replacement arrangements with the Irish government.
12 Firearms & explosives	The licensing framework for firearms and explosives.	In principle, everything covered by this paragraph, but see issues remaining	See issues remaining	Should legislation governing automatic & semi-automatic weapons remain reserved (as in Scotland)? Should responsibility for explosives regulation fall to the Minister for public safety or to a Minister for policing or justice?

	What it means	What will devolve	What won't devolve	Issues remaining
<p>Schedule 3</p> <p>15. The Courts</p>	<p>The administration and oversight of the court system in Northern Ireland.</p> <p>NB: The next two columns focus on the <u>Government</u> functions and responsibilities, not those of the Lord Chief Justice of NI, whose professional responsibilities as head of the judiciary in NI will remain unchanged following devolution.</p>	<p>The NI Court Service (including the Lord Chancellor's functions in respect of court admin)</p> <p>Legal aid</p> <p>Judicial appointments arrangements (subject to the agreement of a Concordat between the UK Government and the NI Administration governing the independence of the judiciary), will become the responsibility of the First Minister & deputy First Minister.</p> <p>Appointment of arbitrators, referees and advisory bodies other than those falling within the remit of the NI Judicial Appointments Commission.</p> <p>Making recommendations to the Crown on the appointment of Queen's Counsel.</p>	<p>Appointment and removal of the Lord Chief Justice of NI and the Lords Justice of Appeal – responsibility will remain excepted (see below).</p> <p>Judicial salaries, pension and terms & conditions will continue to be excepted (see below).</p> <p>UK-wide Lord Chancellor functions relating to the judiciary or international relations.</p> <p>Lord Chancellor functions under the Human Rights Act 1998 or the Data Protection Act 1998.</p>	<p>Agreeing the Concordat.</p>

	What it means	What will devolve	What won't devolve	Issues remaining
<p>Schedule 3 15A The Northern Ireland Law Commission</p>	<p>The Criminal Justice Review recommended the establishment of an independent Northern Ireland Law Commission to keep under review both criminal and civil law in Northern Ireland</p>	<p>Everything (once established).</p>	<p>-</p>	<p>None</p>

**TABLE 2: EXCEPTED MATTERS: COMMENTARY ON DEVOLUTION PROPOSALS
Summary of Law and Order provisions contained within Schedule 2 of the Northern Ireland Act 1998 & the
Northern Ireland Act 1973, with reference to similar provisions in the Scotland Act 1998**

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>3.⁹ International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations and extradition, and international development assistance and co-operation, but not –</p> <p>(a) repealed</p> <p>(aa) co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters –</p> <p>(i) transfers, secondments, exchanges or training of officers;</p> <p>(ii) communications (including liaison and information technology);</p> <p>(iii) joint investigations;</p> <p>(iv) disaster planning;</p> <p>(b) & (c) not relevant to law & order.</p>	<p>3. International relations, including treaties, the making of peace or war and neutrality, and matters connected therewith but not –</p> <p>(a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;</p> <p>(b) & (c) not related to law & order.</p>	<p>(1) The Extradition Act 2003 repealed the old backing of warrants scheme which existed between the UK and Ireland and replaced it with the European Arrest Warrant which, in effect, replicated that system across those participating Member States. The discussion document explained that the Government considered it appropriate to retain a single legislative framework for extradition arrangements throughout the UK and therefore would not intend to devolve <u>legislative</u> competence to the Assembly but intended that some specific <u>administrative functions</u> relating to extradition and international mutual legal assistance on criminal matters should, post-devolution, be exercised by Northern Ireland Ministers instead of the Secretary of State. The 1998 Act was amended by the Northern Ireland (Miscellaneous Provisions) Act 2006 to make it possible to transfer those functions by Order despite this remaining an excepted matter.</p> <p>(2) The 1998 Act was further amended by the NI (MP) Act 2006 to transfer certain aspects of co-operation between the PSNI and the Garda Síochána (which, being governed by an international agreement were excepted) to the reserved field so they were capable of being devolved with the rest of policing matters.</p>

⁹ See paragraph 7 of Part I of Schedule 5 to the Scotland Act 1998, plus also item B11 in paragraph 3 of Part II to that Schedule.

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>4.¹⁰ The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.</p> <p>7.¹¹ Treason, but not powers of arrest or criminal procedure.</p>	<p>4. The armed forces of the Crown but not any matter within paragraph 3 of Schedule 3 to this Act.</p> <p>6. Treason and treason felony but not powers of arrest or criminal procedure in respect thereof.</p>	<p>Will not devolve.</p> <p>Will not devolve.</p>
<p>11.¹² The determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office) of judges of the Supreme Court of Judicature of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (NI) Act 1978, county court judges, recorders, resident magistrates, lay magistrates, coroners, the Chief and other Social Security Commissioners for Northern Ireland and the Chief and other Child Support Commissioners for Northern Ireland.</p>	<p>9. The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, county court judges, recorders, resident magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other National Insurance Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.</p>	<p>Legislative competence will not devolve, but it is proposed that, on devolution, responsibility for providing administrative support to the Social Security and Child Support Commissioners for Northern Ireland will transfer to Northern Ireland Ministers.</p>
<p>11A. The Supreme Court.</p>	<p>[No specific reference in the 1973 Act.]</p>	<p>Will not devolve.</p>
<p>[No specific reference in the 1998 Act.]</p>	<p>10. The appointment and office of the Director and deputy Director of Public Prosecutions for Northern Ireland.</p>	<p>The Justice (NI) Act 2002 provided that the appointment of the DPP(NI) would, following devolution of policing and justice, be the responsibility of the Attorney General for Northern Ireland (who will be appointed by the FM/DFM). So this will automatically devolve with criminal justice matters.</p>

¹⁰ See paragraph 9 of Part I of Schedule 5 to the Scotland Act 1998

¹¹ See paragraph 10 of Part I of Schedule 5 to the Scotland Act 1998

¹² See item L1 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>17.¹³ National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; the subject-matter of-</p> <p>(a) the Official Secrets Acts 1911 and 1920;</p> <p>(b) Chapter I of Part I of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and</p> <p>(c) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by s.4(2) (crime) & not by any other provision of ss.1-4.</p> <p>21A The office and functions of the Advocate General for Northern Ireland.</p>	<p>14. Special powers and other provisions for dealing with terrorism or subversion.</p> <p><i>NB: The 1973 Act preceded the Acts which put the intelligence agencies on a statutory footing and publicly acknowledged their existence for the first time.</i></p> <p><i>[No specific reference in the 1973 Act.]</i></p>	<p>Will not devolve.</p> <p>Will not devolve.</p>

¹³ See item B8 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998

**Mr Alan Whysall
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

17 August 2006

Dear Alan

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

The Committee on the Preparation for Government met yesterday to discuss the outstanding issues surrounding the NIO proposals (as set out in the Discussion Paper: Devolving Policing and Justice in Northern Ireland and in the subsequent NIO letter of 15 August) on what should or should not be devolved. The Committee also considered the Secretary of State's response (letter of 9 August to Jim Wells) regarding the request that he be invited to speak with the Committee.

It was agreed by consensus that whilst the pressures on the Secretary of State's diary are acknowledged, the Committee is not content to meet with Ministers but is prepared to wait until the Secretary of State is free to attend in person. The Committee noted that there remain a number of law and order matters programmed for discussion over the next two weeks or so and that a deferment in the proposed date for the Secretary of State's attendance will enable issues arising from these meetings to be flagged up for discussion. This letter is a formal invitation to the Secretary of State to attend the Committee on either of the meetings scheduled for 30 August or 6 September. Members would be content to schedule a day other than these two dates if that would be helpful.

Issues identified to date include the following matters:

- Issues related to the concept of "national security" and in particular, the demarcation between those matters that are deemed appropriate to be handled at devolved administration level and by the PSNI and those matters that are deemed to be appropriate to be handled at National Government level and by national security agencies;
- Issues raised by the Secretary of State in his speech on 16 July at the Magill Summer School, Glenties and in particular, the differentiation suggested in the speech between 'constitutional endorsement of the structures of policing' and 'support for the practical service of policing in the Community'.

[Note: Other matters identified by the Committee will be notified to your office as they arise]

During a discussion on the matter of national security and the future role of MI5 in Northern Ireland, a Member referred to a recent presentation by ACC Sheridan to a Policing Partnership meeting in Fermanagh. It was noted this presentation covered the proposed role of MI5 vis-à-vis the role envisaged for the PSNI on intelligence matters. The Committee agreed by consensus to request, from the Secretary of State, copies of the slides used by ACC Sheridan and any papers presented at the meeting.

The Committee also agreed by consensus to request, from the Secretary of State, the following:

- Up-to-date information on the protocols being developed to deal with the relationship between MI5 and all relevant agencies in Northern Ireland;
- Up-to-date information on the accountability mechanisms and other safeguards that are being prepared in relation to the operation of MI5 in Northern Ireland

The Committee agreed by consensus to request, from the Secretary of State, up-to-date information about the proposed role of the Serious Organised Crime Agency in Northern Ireland.

The Committee agreed by consensus to request, from the Secretary of State, clarification and further information regarding the reference to Army support for the police in the entry in Schedule 3 to the letter of 15 August in relation to '10. Public Order'. Members asked for clarification regarding the broad ground rules, etc. Regarding parades in general the Committee asked for clarification about the powers of the Chief Constable to challenge a determination of the Parades Commission. In particular, the checks, balances and safeguards that are to be established.

The Committee agreed by consensus to request from the Secretary of State, clarification and further information regarding the reference to the power of the Secretary of State to issue statutory guidance to the Police Ombudsman. In particular, the Committee asked for clarification regarding the proposal that, following devolution, the devolved Minister would also have this power. Members were concerned to hear how this shared responsibility would work in practice.

The Committee will next meet on Wednesday 23 August and I would be grateful if a response could be provided so that we can issue to Members on Monday 21 August.

Yours sincerely

Nuala Dunwoody
Clerk Assistant



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Nuala Dunwoody
Clerk to the Preparation for Government Committee
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22 August 2006

Dear Nuala

PREPARATION FOR GOVERNMENT COMMITTEE

Thank you for your letter of 17 August addressed to the Secretary of State's office.

The Secretary of State would be happy to meet with the Committee to hear how its discussions have progressed over the summer. Unfortunately, the dates proposed in your letter clash with pre-existing commitments in his diary. His diary secretary will be in touch with you direct to agree a mutually convenient date. In the meantime, he would be happy for Paul Goggins to attend if the Committee would find that helpful.

Your letter sought clarification on a number of issues, which I will deal with in turn.

Container 466-06

National security accountability

On the matter of national security and the future role of the Security Service in Northern Ireland, the Committee will understand that these matters are excepted and fall outwith the scope of the Assembly. Similarly, protocols concerned with the day to day operational work of the Security Service, including the detail of how the Service will work in partnership with the PSNI, is also outside the remit of the Assembly.

As far as policing is concerned, the Chief Constable's main accountability for the involvement of the police in issues involving national security will remain, as it is now, to the Secretary of State since the matter will remain excepted. That said, in all circumstances, including where the interest is national security-related, it will be the police's role to mount executive policing operations, make arrests and take forward prosecutions under the direction of the Public Prosecution Service. All this operational police activity will remain under the oversight of the Policing Board and the Police Ombudsman, whose existing powers will continue to apply to police officers. In addition, following the devolution of policing and justice, it will be subject to the oversight of the Northern Ireland Minister with responsibility for policing and, ultimately, of the Assembly. Therefore, those with responsibility for overseeing policing, including the Assembly in due course, will need to understand how national security issues are handled in general terms and what type of information they can expect to receive in relation to policing matters that bear on national security. Developmental work is in hand in this area.

In terms of the accountability of the Security Service, the Service is fully accountable, in NI as in the rest of the UK, through the existing statutory arrangements that provide Ministerial, Parliamentary and Judicial oversight. Two Commissioners oversee various elements of the Service's work in NI: the Intelligence Services Commissioner and the Interception of Communications Commissioner. (The Surveillance Commissioner oversees covert policing operations.) Complaints from members of the public relating to the actions of the intelligence agencies, or to conduct on their behalf, are investigated by the Investigatory Powers Tribunal, which comprises senior

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members of the legal profession or judiciary. There is also a Parliamentary Committee whose remit is to examine the expenditure, administration and policy of the security and intelligence agencies and whose reports are placed before Parliament.

Role of the Serious & Organised Crime Agency (SOCA) in Northern Ireland

SOCA has a UK wide remit and will be a partner on the Organised Crime Taskforce (OCTF) in Northern Ireland. No formal operational arrangements have yet been put in place regarding its role, but emerging thinking around how SOCA intends to operate proposes that it will work in partnership with the law enforcement agencies in Northern Ireland by providing the full range of services previously provided by the National Crime Intelligence Service (NCIS); conducting a range of intervention activity, aimed at making life harder for organised criminals throughout the UK, in close co-operation with the relevant authorities where a geographical link is identified; and running enforcement operations, including joint operations with existing agencies and in support of their activity.

Public order – role of the army

The Report of the Independent Commission on Policing in Northern Ireland – “A new beginning: Policing in Northern Ireland” (the Patten report) – published in 1999 recommended that (paragraph 59) *“as long as the prospect remains of substantial public order policing demands on the scale seen at Drumcree in recent years, the army should retain the capacity to provide support for the police in meeting those demands”* and that (paragraph 66) *“the Northern Ireland police should have the capacity within its own establishment to deal with public order emergencies without help from other police services and without more than the present level of support from the army.”*

The temporary legislative provisions under which the army currently operates in Northern Ireland are contained in Part VII of the Terrorism Act 2000. These are due

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to be repealed on 31 July 2007 as part of the Government's normalisation programme. Consideration is currently being given to what powers the army may need post-normalisation to operate effectively in Northern Ireland, and support the police in areas such as public order and explosive ordinance disposal.

Parades determinations

Section 9(1) of the Public Processions (Northern Ireland) Act 1998 states that "*the Secretary of State shall, on an application made by the Chief Constable, review a determination issued by the Commission under section 8.*" On a review of a determination the Secretary of State has the power to revoke, amend or confirm the determination, having regard to the guidelines. Where practicable, the Secretary of State shall consult the Parades Commission before exercising these powers. These provisions apply to determinations made on parades and on public protests.

Under a devolved administration, it is thought that these powers could be exercised by the responsible Minister and, as at present, the Chief Constable could retain the power to apply for review of the determination.

Guidance to the Police Ombudsman

The Police (NI) Act 1998 Part VII establishes and provides powers for a Police Ombudsman to investigate complaints of misconduct by police officers in Northern Ireland. The office was established in November 2000; is operationally independent and all complaints about the police must be referred to the Police Ombudsman. The complaints system is under the control of the Ombudsman whose office provides the investigative role in the handling of complaints from members of the public.

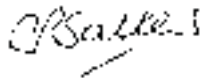
The Ombudsman is appointed by Royal Warrant for a fixed term of up to seven years. At present, the Crown is advised by the Prime Minister and Secretary of State on such appointments. Following devolution, it would be possible for that role to be

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fulfilled by the Northern Ireland Minister for policing or by the First Minister and Deputy First Minister acting jointly or to remain with the Prime Minister and Secretary of State. This is something which the parties represented at the Assembly will wish to consider when discussing devolution of policing. The same would apply to the power to call on the Ombudsman to retire; the legislation currently permits the Secretary of State to do this, albeit in very limited circumstances.

That Act makes provision for the Police Ombudsman, in the discharge of her functions, to have regard to any guidance issued by the Secretary of State. Following devolution of policing and justice, the relevant Northern Ireland Minister would take on the power to issue guidance on matters which were transferred (which would, by this stage, include police complaints). The Secretary of State's power would be restricted to the issue of guidance on matters that remained reserved or excepted.

Yours sincerely,



Clare Salters



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Martin Wilson
Principal Clerk, Preparation for Government Committee
The Assembly
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29 August 2006

Dear Martin

PREPARATION FOR GOVERNMENT COMMITTEE – FIREARMS QUERY

You asked for clarification of the wording of paragraph 14.4 of the document “Devolving Policing and Justice in Northern Ireland: A Discussion Paper” which appeared contradictory to the message you had received from the Scottish Executive about the position of firearms policy responsibility within Scotland.

I’m extremely grateful to you and your research colleagues for identifying an error in the Discussion Paper. The discussion paper, as you know, said that *“in Scotland the devolution settlement separates out this routine firearms regulating framework (which is a devolved matter) from the business of regulating the use of prohibited weapons (which remains reserved to Westminster)”* and went on to suggest that a similar model might be possible in Northern Ireland.

This is unfortunately not completely accurate. The position is, essentially, that the subject matter of the Firearms Acts 1968 to 1997 remains a reserved matter in Scotland, but that most of the functions that, elsewhere, are carried out by the

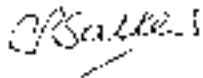
Container 466-06

Secretary of State are, in Scotland, assigned to Scottish Ministers. In effect, this means there is **devolution of executive functions but no devolution of legislative competence**. And, contrary to the implication in the discussion paper, there is no legislative distinction made, in Scotland, between the regulation of prohibited (eg automatic) weapons and other weapons, since the policy and legislative framework in Scotland for all firearms is the responsibility of the UK Government and Parliament at Westminster. Devolved to the Scottish Administration are the executive functions of the licensing of all firearms, handled by Chief Constables, and the authorisation of prohibited weapons, handled by Scottish Ministers.

I apologise for the error – which is also reflected in the table attached to my earlier letter – and hope that this clarification is helpful.

It is also perhaps worth noting that the Scottish position was not what was driving the NIO's thinking in drafting the discussion paper: historically (ie pre-1972), firearms legislation in Northern Ireland has largely been a devolved matter (this is why it features in the list of 'reserved' matters rather than the 'excepted' category) and the Government's view in principle was that it was appropriate to devolve as much responsibility as possible. But, in the case of prohibited weapons, there may be a case for retaining the Secretary of State's role in this area, at least for the time being. This is one of those areas on which the Committee's views would be particularly welcome.

We will, of course, issue a correction to the discussion document as soon as possible. The attached gives a revised version of paragraphs 14.4 and 14.5 for the Committee's information.



CLARE SALTERS

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Annex A: Corrigendum to discussion document

14.4 Unlike Northern Ireland, firearms in Scotland have historically been regulated under Westminster legislation. Under devolution, policy and legislation on firearms remain reserved to Westminster, but the day-to-day operation of that policy and related functions has been devolved. Firearms licensing rests with Chief Constables and the authorisation of prohibited weapons with Scottish Ministers. It would be possible to follow a similar model in Northern Ireland, with the Chief Constable dealing with licensing and a NI justice Minister authorising the holding of prohibited weapons, but policy and legislation for all firearms reserved to Westminster.

14.5 Alternatively, it would be possible to devolve many of the Secretary of State's responsibilities for the regulation of firearms to Northern Ireland Ministers. A NI Department of Justice and/or Policing could then be responsible for legislation, policy and general oversight of firearms licensing, while day-to-day management of this would continue to rest with the Chief Constable. The policy and legislation, including Ministerial authorisation, for prohibited weapons would remain reserved.



**Mr Alan Whysall
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

23 August 2006

Dear Alan

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

The Committee on the Preparation for Government met today to pursue its work on law and order issues. Members discussed, inter alia, the letter of 22 August from Clare Salters and asked for a further letter to be sent to the Secretary of State about the request that he attend a meeting of the Committee. Members had been made aware of the telephone contact with the Secretary of State's Diary Secretary and about the indication given that the earliest date for such a meeting would be 3 October 2006.

Members agreed by consensus

"That the Secretary of State be asked to make himself available to the Committee before mid-September"

It might be helpful to note that, because of the short timescale imposed by the Secretary of State for the Committee to report to Plenary, the Law and Order Report needs to be agreed at the Committee meeting on 8 September 2006. Members have agreed that it would be preferable to meet with the Secretary of State before that date but that if that was impossible, then the meeting should take place before 15 September so that the Official Report of the meeting can be attached to the Committee Report as an addendum. The Committee would seek to accommodate the Secretary of State's diary commitments regarding the precise timing but a slot of around one hour would be appreciated.

A third issue has been added to the list of matters for discussion which now reads as follows:

- Issues related to the concept of "national security" and in particular, the demarcation between those matters that are deemed appropriate to be handled at devolved administration level and by the PSNI and those matters that are deemed to be appropriate to be handled at National Government level and by national security agencies;

- Issues raised by the Secretary of State in his speech on 16 July at the Magill Summer School, Glenties and in particular, the differentiation suggested in the speech between 'constitutional endorsement of the structures of policing' and 'support for the practical service of policing in the Community';
- The Factors and arguments that lie behind the suggestion in the NIO Discussion Paper and letter of 15 August 2006 that consideration needs to be given to 'whether some aspects of the Regulation of Investigatory powers Act 2000 which are currently reserved will need to remain so.

[Note: Other matters identified by the Committee will be notified to your office as they arise]

The letter from Clare Salters dated 22 August stated that, in relation to accountability for policing matters that bear on national security, developmental work is in hand. The Committee agreed by consensus to ask the Secretary of State when he might be in a position to share this with the parties. In relation to public order and the role of the army, the Committee further agreed by consensus to request, from the Secretary of State, an indicative list of all the powers the Army might need post-normalisation.

The Committee agreed by consensus to request from the Secretary of State, definitions of 'normalisation' and 'ceasefire' as they relate to the matter of devolution of policing and justice.

The Committee will next meet to discuss law and order on Wednesday 30 August.

Yours sincerely

Nuala Dunwoody

Nuala Dunwoody
Clerk Assistant



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Martin Wilson
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29 August 2006

Dear Martin,

PREPARATION FOR GOVERNMENT COMMITTEE

Thank you for your letter of 23 August to Alan Whysall seeking information for the Preparation for Government Committee. Colleagues in the Secretary of State's Private Office will be in touch separately regarding the Committee's request that the Secretary of State attend a meeting of the Committee.

You asked for a view on when the Secretary of State would be able to share with the parties developmental work currently in hand on accountability for policing matters that bear on national security. Unfortunately it is not possible to say at this stage when this work will be completed. When it is, it will of course be shared with the policing oversight bodies.

You asked for an indicative list of powers the Army might need post-normalisation. Consideration of what powers may be necessary for the armed forces post-normalisation is ongoing, and it is not possible to provide the committee with an indicative list. However, for your information the powers will relate specifically to the ongoing armed forces role such as in public order and explosives ordinance disposal situations.

Finally you asked for a definition of 'normalisation' and 'ceasefire' in relation to the devolution of policing and justice. I am afraid I am not entirely clear about what is intended by this request. Definitions must be considered within their context and the Government has made no specific reference to "normalisation" and "ceasefires" within the context of the devolution of policing and justice. As Ministers made clear during the recent passage of the Miscellaneous Provision Bill, policing and justice will be devolved only when the First Minister and deputy First Minister, the Assembly, the Secretary of State and Parliament are all agreed that it should happen. (The so-called "double-double lock") It will be a matter for their judgement, at the time, as to whether the circumstances are right.

I hope this is helpful. If there is anything further we can do, or if you would like to discuss any of the above, please do not hesitate to get in touch.

Yours sincerely,
Rachel Miller



**Mr Alan Whysall
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

31 August 2006

Dear Alan

COMMITTEE ON THE PREPARATION FOR GOVERNMENT

The Committee on the Preparation for Government met on 30 August to pursue its work on law and order issues. Members were given a copy of the letter dated 29 August from Rachel Miller, and agreed that a further letter be sent to the Secretary of State on three issues.

The first issue is the request that the Secretary of State attend a meeting of the Committee. Members were keen that a date should be set as soon as possible. I am aware that since the meeting, your office has been in touch with the committee office to suggest Monday 18 September. As I stated in my last letter, the Law and Order Report is timetabled to be agreed at the Committee meeting on 8 September 2006, and Members would prefer to meet with the Secretary of State before that date. If, however, it is impossible for the Secretary of State to meet the Committee before then, it is proposed to append the Hansard report of the meeting to the Committee Report as an addendum so that its content can be included in any Plenary debate on the Report. I would repeat that the Committee is seeking to accommodate the Secretary of State's diary commitments and would not wish to confine the meeting to a Monday slot. Indeed, the 18 September is a Sitting Day for the Assembly and this could cause some problems for Members wishing to take part in any Plenary debate on that day. The list of matters for discussion remains as indicated in my letter of 23 August.

The second issue is to clarify the second paragraph of Rachel Miller's letter, which states that, when the work is completed on accountability for policing matters that bear on national security, it will be shared with the policing oversight bodies. Members sought clarification that it would also be shared with the political parties.

The third issue relates to the paragraph on potential Army powers post – normalisation. Members asked whether these powers will be restricted to

public order and explosives ordnance disposal or whether other powers are under consideration? If the powers are not to be so restricted, Members have asked to be advised as to the generality of the additional areas under consideration.

The Committee will next meet to discuss law and order on Wednesday 6 September.

Yours sincerely

Nuala Dunwoody

Nuala Dunwoody
Clerk Assistant



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Principal Clerk, Preparation for Government Committee
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5 September 2006

Dear Nuala,

PREPARATION FOR GOVERNMENT COMMITTEE

Thank you for your letter of 31 August to Alan Whysall seeking information for the Preparation for Government committee. I know that colleagues in the Secretary of State's Private Office have been in touch separately regarding the committee's meeting with the Secretary of State on 18 September.

On policing matters that bear on national security and the type of information the policing oversight bodies can expect to receive, this will be set out in documents currently in preparation which will in due course be presented to the relevant bodies including the Policing Board and, when in place, the policing/Justice Minister and the appropriate Assembly Committee. Alongside this the Government is of course already engaged with the parties and others in explaining how in the future national security issues will be handled in general terms.

Policy is still being developed on potential army powers post normalisation and as such no final decisions have been taken. However, it is intended to provide a number of powers to the armed forces which will allow them to operate effectively in Northern Ireland should they be called upon post-normalisation. It is not intended to link these

powers specifically to explosive ordnance disposal or public order in the legislation as this would be impractical and restrictive.

I hope this is helpful. Please do not hesitate to get in touch if you would like anything further.

Rachel Miller

Rachel Miller
Devolution and Legislation Division
X88196

Appendix 6

**Directions from the
Secretary of State**



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Secretary of State for Northern Ireland

cc: Mr. Hoir
Mr. Reynolds
Ms. Donnelly
Mr. Groom
Ms. McQueen
Mr. Pearce
Ms. Groom
File

Mrs Eileen Bell, MLA
Speaker of the Assembly
Parliament Buildings
Stormont
Belfast
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26 May 2008

Dear Speaker,

ASSEMBLY STANDING ORDERS AND COMMITTEE

I wish to notify you that I have determined two directions under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006.

The first amends the Standing Orders that were notified to you on 10 May 2008.

The second directs that a Committee of the Assembly be established.

A copy of each direction is enclosed.

Further to this, under section 1(1) of the 2006 Act, I wish to refer the following matters to this Committee. Namely:

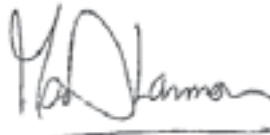
to scope the work which, in the view of the parties, needs to be done in preparation for Government.

26. MAY. 2006 16:48

SDFS PRIVATE OFFICE

NO. 598 P. 3

I am copying this letter to the leaders of all parties represented at the Assembly and to the two independent members.

PP  (PRIVATE SECRETARY)

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND
[Approved and signed in his absence]

NORTHERN IRELAND ACT 2006

DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED TO THE PRESIDING OFFICER UNDER PARAGRAPH 4(1) OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 2006

1. The Standing Orders notified to the Presiding Officer on 10 May 2006¹ shall be amended in accordance with paragraphs 2 and 3.

2. After Standing Order 11B there shall be inserted the following:
" 11C. Committees of the Assembly
 - (a) Where
 - (i) the Assembly decides by cross-community support; or
 - (ii) the Secretary of State directs,
that a Committee be established, the Business Committee shall make arrangements to establish that Committee in accordance with any such decision or direction.
 - (b) Any decision of the Assembly to establish a Committee shall provide for the Committee's terms of reference and membership.
 - (c) The procedures of any Committee so established shall be such as the Committee itself shall determine, unless otherwise provided for by a decision of the Assembly or direction of the Secretary of State.
 - (d) In these Standing Orders, references to "Committee" shall include any working group."

3. Standing Order 12(b) shall be replaced with the following:
"(b) The following, namely:

¹ As amended by direction of the Secretary of State dated 22nd May 2006.


26. MAY. 2006 16:48

SOPS PRIVATE OFFICE

NO. 508 P. 5

- (i) A vote on a matter in respect of which a petition of concern has been presented;
 - (ii) A vote on a decision to establish a Committee of the Assembly; or
 - (iii) A vote on any other matter as directed by the Secretary of State
- shall require cross-community support.”.

Signed

70  (PRIVATE SECRETARY)

SECRETARY OF STATE FOR NORTHERN IRELAND

[Approved and signed in his absence]

DATE: 26 May 2006

26. MAY. 2006 16:48

SOFS PRIVATE OFFICE

NO. 508 P. 6

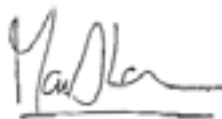
NORTHERN IRELAND ACT 2006

DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED TO THE PRESIDING OFFICER UNDER PARAGRAPH 4(1) OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 2006

1. I hereby direct that a Committee of the Assembly be established on necessary business relating to the preparation for Government. This Committee shall operate in accordance with the following paragraphs.
2. The Committee shall deal with such matters as I may refer and such other matters that the Committee itself agrees.
3. The membership of the Committee shall be up to three representatives from each party with more than 15 seats held in the Assembly and up to two representatives from any other party with two or more seats.
4. It shall be for the Committee to determine its own procedures, including arrangements for chairmanship.
5. Decisions of the Committee shall be by consensus.
6. The Committee may establish sub-committees to look at specific issues.
7. The Committee may refer matters to the Business Committee for debate in the Assembly.
8. The first meeting of the Committee shall take place on Tuesday 6 June.

Signed

PP



(PRIVATE SECRETARY)

SECRETARY OF STATE FOR NORTHERN IRELAND

[Approved and signed in his absence]

DATE: 26 May 2006

2 JUN 2006 15:17

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Speaker of the Assembly
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By fax: 028 9052 1959

ASSEMBLY BUSINESS

Under Paragraph 2 of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the Assembly shall meet at the date and time set out below.

Tuesday 6 June 2006 Assembly to sit at 2.00pm

In addition, further to my direction of 28 May under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the date of the first meeting of the Committee of the Assembly on necessary business relating to the preparation for Government ("the Preparation for Government Committee") be brought forward. The first meeting of this Committee shall now take place on Monday 5 June at 11.00am. The Committee may refer matters to the Business Committee for its consideration or for debate in the Assembly.

I would hope that this Committee will be in a position to refer issues to the Business Committee for scheduling for debate when the Assembly meets on Tuesday. I will therefore defer a decision on what referral I may make for 6 June until I have received any recommendations for future Assembly business that the Business Committee might make following the inaugural meeting of the Preparation for Government Committee on Monday.

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND

5. JUN. 2006 18:09

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NO. 541 P. 2



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Speaker of the Assembly
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By fax: 028 9052 1959

5 June 2006

Dear Speaker

ASSEMBLY BUSINESS: PREPARATION FOR GOVERNMENT COMMITTEE

Further to my earlier direction, under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the second meeting of the Committee of the Assembly on necessary business relating to the preparation for Government ("the Preparation for Government Committee") be held on Tuesday 6 June at a time to be determined by the Clerk Assistant.

Fiona McCoy
Private Secretary

PR

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND

(Approved by the Secretary of State and signed in his absence)

cc Mr Hain
Mr Reynolds
Mr Good
Ms Donwoody
Mrs Pritchard.
file

12/06 2006 13:45 FAX

001



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Secretary of State for Northern Ireland

cc Mr Blair
Mr Reynolds
Mr Good
Ms Dunwoody
~~Ms [redacted]~~
file.

Mrs Eileen Bell MLA
Speaker of the Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Speaker,

PREPARATION FOR GOVERNMENT COMMITTEE

I was grateful for sight of your letter to the Committee on the subject of arrangements for chairing the Committee.

I want to offer my support for your explanation of the importance of protecting the impartiality of your position. I have privately expressed my appreciation for the manner in which you have discharged the responsibilities of that office since your appointment. I can assure you that your discharge of those responsibilities continues to enjoy my support.

However, I am keen that the Committee should make some progress. Whilst I share your views on the impartiality from party politics of the Speaker, as we agreed when we spoke last week, I believe that the trust which Assembly Members have shown in your Office and its incumbents offers a way forward for the Committee and that an arrangement whereby Mr Jim Wells and Mr Francie Molloy, whom I appointed on 11 May to the Office of the Speaker to act as deputy presiding officers, be responsible in rotation for chairing that committee, offers the best prospect for the Committee to make the progress that is required. Mr Wells and Mr Molloy, in chairing the

/TW



DEPARTMENT OF THE ENVIRONMENT
NORTHERN IRELAND



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Preparation for Government Committee, will bring the same impartiality to the committee proceedings as they would when deputising for you in plenary.

Therefore, under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006 ("the 2006 Act"), I direct that the meetings of the Preparation for Government Committee, established under my direction of 26 May 2006, shall be chaired by the deputy presiding officers appointed by me under Paragraph 3(1) of Schedule 1 to the 2006 Act.

I further direct that the Committee shall meet on Monday 12 June at 4pm under the chairmanship of Mr Wells and on Tuesday 13 June under the chairmanship of Mr Molloy at a time to be determined by the Clerk Assistant. From 13 June onward, the Committee shall agree the date and timing of further meetings. If at any meeting the relevant deputy presiding officer is unable to act, or chooses not to, that meeting shall be chaired by the other.

PP 

[Private Secretary]

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland
[Approved by the Secretary of State and signed in his absence]



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Secretary of State for Northern Ireland

Mrs Eileen Bell MLA
Speaker of the Assembly
Parliament Buildings
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BT4 3XX

3 July 2006

Dear Speaker,

Thank you for your letters of 21 June and 27 June 2006 recording the views of the Business Committee on issues for plenary debate by the Assembly, the date of summer recess and arrangements for setting up a working group on economic issues.

I have reflected on these views, on the progress that has been made in the Preparation for Government Committee and on the discussions between the Prime Minister, the Taoiseach and the parties last Thursday. The statement that was issued by the Prime Minister and the Taoiseach following these discussions, and the associated work plan, set out both Governments' objectives for the coming weeks for achieving the goal of a restored Executive by 21 November. The work plan rightly envisages a key role for the Assembly as well as for individual parties. My decisions, set out in this letter, about Assembly business reflect this key role and responsibility and the timeframe in the work plan.

I have determined that:

- There should be a plenary debate of the Assembly at 10:30 on Friday 7 July.
- The Assembly should rise at close of business on Friday 7 July and should return on Monday 4 September.

rtw



DIRECTOR OF PEOPLE



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This should be taken as a direction under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006. I will notify you on Wednesday of the subject for debate on 7 July, after the PFG and Business Committee have met, by a referral under Section 1(1) of that Act.

As envisaged in the work plan published by the two Governments yesterday, I am also directing, under Paragraph 4 (1) of Schedule 1 to the 2006 Act, that the Preparation for Government Committee continues its work during the summer recess at times to be agreed by that Committee. I regard the work of that Committee as of particular importance in addressing the issues highlighted in the work plan. I understand from discussions with the parties that similar issues have also been identified in the context of the PFG debates.

The remit of this Assembly, as set out in the 2006 Act, is to 'take part in the preparations for the restoration of devolved government in Northern Ireland'. It seems right, therefore, that the PFG in taking forward the work both share their thinking with and take the views of Assembly members.

I would, therefore, be grateful if the PFG, with the help of the Chairs in facilitating and leading discussion, could take account of the issues and timeframe set out in the work plan published by the two Governments in developing its work and propose to the Business Committee issues for plenary debate in the Assembly. I am referring these matters to the PFG under section 1(1) of the 2006 Act.

My current intention is that there should be a plenary debate of the Assembly on 4 September and a further debate on Tuesday 5 September. I would be grateful if the Business Committee could advise me by Wednesday 30 August on appropriate



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topics which emerge from the Preparation for Government Committee for those debates and on the sequencing of issues for debate.

I have noted that parties have different views on the best way to give effect to the agreement in the Assembly debate on 15 May to a working group on recommendations to a restored Executive on the economic challenges facing Northern Ireland. Given that the aim of such discussion is to make preparation for the work of a restored Executive, I am referring the matter of discussion of economic issues to the PFG under section 1(1) of the 2006 Act and directing them, under Paragraph 4 (1) of Schedule 1 to that Act, to set up a sub-group and report back to the Assembly in September.

I am also directing, under Paragraph 4(1) of Schedule 1, that the PFG set up sub-groups on two issues identified in the two Governments' published work plan – 'changes to the institutions' and 'devolution of criminal and justice and policing'. These two sub-groups should also report back through the PFG to the Assembly. Should the PFG wish to establish sub groups additional to these two – for example on rural planning - I would welcome this.

I direct that the membership of sub groups should comprise one PFG member from each party plus five other members (one from each of the five parties on PFG) with a particular interest or expertise in the issue being considered. The sub-groups should be chaired alternately by the two independent chairs of the PFG. If the PFG decides that further independent chairs are needed for such sub-groups, I will invite the UUP, SDLP and Alliance parties to nominate suitable candidates to me. These names, along with the two deputy Speakers, can then comprise a list of independent chairs from which the PFG can choose when setting up sub-groups. In selecting suitable candidates it is important that they, like the two deputy speakers, have the skills and





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experience both to secure the confidence of all parties in their ability to act independently and to facilitate and lead discussion. After discussing progress in the PFG with the deputy Speakers I wish to clarify that their role should be not merely to preside but to promote consensus in all meetings of the PFG and its sub groups.

I should perhaps say again on the issue of consensus that whilst I continue to believe that it is right that the parties reach agreement on recommendations that are put to me for Assembly debate, I do not think it is right that any party should use the basis of consensus as an opportunity to exercise a veto unreasonably or as an opportunity to prevent the effective operation of or progress in the Business Committee or the PFG. Rather, I hope that members of these committees will seek to achieve agreement in discussion.

I very much welcome the three plenary debates that have taken place in the Assembly. I look forward to the further work, as set out above, resulting from the first debate on economic issues.

You will be aware that the consultation on PPS14 relating to rural planning has now ended and responses are being analysed. I have asked my officials to ensure that the points raised in the Assembly's debate are included in that analysis. As I have said previously, I will take account of the views of Assembly where there is cross community support and, of course, a restored Assembly will have the power to take forward policy in this area – as in others – as it sees fit.

The debate on industrial rating was a valuable one. Members were obviously well-informed in relation to this issue, reiterating the arguments for changing the policy that those from the manufacturing sector have expressed to me. I remain concerned, however, that any changes to the policy as it stands would require



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significant spending cuts to front line services. We estimate that the loss of rates revenue, should industrial rating be capped at 25%, in the period to 2011 would be £106m. The policy provides a commitment to a review after two years. I very much hope that a restored Assembly will be in place to conduct that review and to take whatever decisions it considers appropriate in light of it.

I should like to take this opportunity to thank you, your colleagues on the Business Committee and the PFG and the Assembly Clerks for their work for the Assembly over the last seven weeks. This has been a challenging period for all concerned and I am grateful for the commitment that there has clearly been to making the current Assembly work as effectively as the circumstance allow. We all shared frustration in the early weeks that time was expended on procedural issues at the expense of substantive debate. I know that there has also been frustration about the difficulties of agreeing business for plenary sessions. But I believe that there has been valuable progress and I hope that the parties will use the summer constructively to ensure that the Assembly can actively prepare for Government when it reconvenes in September, through plenary debates both on issues that are proposed to the Business Committee by the PFG and other motions that individual parties or MLAs may table.

Yours sincerely,
Fiona McGlynn
Private Secretary.

PP

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland
(Approved by the Secretary of State and signed in his absence)





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Deputy Speaker of the Assembly
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11 July 2006

We met this morning to discuss my letter to the Speaker of 3 July in which I directed the setting up of three subgroups of the Preparation for Government Committee (PFG). You had a number of queries that I was happy to clarify at the meeting and also by way of this letter and the attached direction and referral.

The particular points on which you seek clarification on behalf of the PFG were:

- Am I making a direction to set up the subgroups under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006 and a referral as to the issues for discussion in these subgroups under section 1(1) of that Act?

I confirm that I am making a direction and a referral to set up the three specified subgroups.

- Do I intend the subgroups to operate by consensus or by majority vote?

I am content for them to operate by simple majority of those voting

- Am I content for the subgroups to meet if one or more parties do not attend?





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The attached direction directs that the membership of the subgroups should be two representatives from each of the parties represented on the PFG. If, however, for any reason a party is not able to be represented at a subgroup meeting, or chooses not to do so, I am content for the subgroup nevertheless to meet, I am also content for substitutes.

- Do I envisage discussions of the subgroup on devolution of justice and policing to include the issues of criminality and decommissioning raised at the PFG meetings?
- It is for each subgroup to determine what subjects are relevant to their discussions of the issue that I am referring to them. I am content for the subgroup on devolution of justice and policing to consider issues of criminality and decommissioning if they agree to do so. It is of course also open to the PFG, under the direction I issued on 26 May 2006 establishing the PFG, to establish any other sub committees to look at specific issues.

I hope that this letter and the attached direction and referral are helpful and that the PFG will act on this direction and referral when it next meets. I understand a meeting is scheduled for Monday 17 June.

Thank you again for your work for the Assembly and the PFG. Please do not hesitate to get in touch if you require any further clarification or wish to discuss any matter.

I am copying this letter to the Speaker.


THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland





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NORTHERN IRELAND ACT 2006

DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED UNDER PARAGRAPH 4(1) OF SCHEDULE 1 TO THE
NORTHERN IRELAND ACT 2006 AND A REFERRAL UNDER SECTION
1(1) OF THAT ACT

1. Further to my direction of 26 May 2006 establishing the Preparation for Government Committee, I hereby direct that the Preparation for Government Committee shall establish three subgroups. I refer the following matters to each of those subgroups respectively.

- Devolution of justice and policing
- Changes to the institutions
- The economic challenges facing Northern Ireland

The subgroups should operate in accordance with the following paragraphs.

2. Each subgroup shall deal with such matters as each subgroup agrees are relevant to the matter referred above and shall deal with such other matters as I may refer in the future.
3. The membership of each subgroup shall be two representatives from each of the parties represented on the Preparation for Government Committee (PFG). One of each of the two party representatives shall be a member of the PFG.
4. Each subgroup shall be chaired by either of the two independent Chairs of the Preparation for Government Committee. If the Preparation for Government Committee decides that further independent chairs are needed for such subgroups I will invite the UUP, SDLP and the Alliance parties to nominate suitable candidates to me in accordance with my letter to the Speaker dated 3 July 2006.
5. A subgroup may meet whether or not all party representatives are present.



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6. Each party present shall have a single vote. Decisions of a subgroup shall be by simple majority of those voting.
7. It shall be for the Preparation for Government Committee to determine any other necessary procedures.
8. Each subgroup shall report to the Preparation for Government Committee in accordance with the terms of reference set by the Preparation for Government Committee.

A handwritten signature in black ink, appearing to be 'D. M. L.' with a flourish at the end.

SECRETARY OF STATE FOR NORTHERN IRELAND

DATE: 11-7-06

Appendix 7

**Work Plan Published
by the two Governments**

NORTHERN IRELAND POLITICAL PROCESS: WORK PLAN

July/August

During the summer parties continue to address necessary issues in preparation for government and to consult their members and communities.

- Preparation for Government Committee continues its work (i) identifying the issues that need to be addressed and (ii) preparing a programme of work to enable the Assembly to address these (to be agreed and announced by end August).
- MLAs and parties discharge responsibilities towards employees, landlords etc in respect of ending of salaries and allowances from 24 November.

September

During the autumn efforts to elect FMDFM continue. Parties hold discussions with each other and the Governments on changes to the institutions. Discussions with parties continue on support for and devolution of policing.

- W/B 4 September: Assembly returns.
- W/B 11 September: Peter Hain and Dermot Ahern take stock of progress on all outstanding issues with the parties.
- Timetabled subjects in plenary on preparation for Government; Preparation for Government Committee continues its work.

October

*Parties conclude discussions on all outstanding issues.
Taoiseach and Prime Minister continue to monitor progress closely.*

- W/B 2 October: Governments receive and publish IMC report.
- Assembly sessions to prepare for Government continue.
- Final consultations within parties if necessary, and confirmation of readiness to finalise preparations for government.
- Parties conclude discussions and finalise draft Programme for Government and draft Ministerial Code.

Either

November

Parties and Governments make final preparations for restoration of the institutions.

- W/B 20 November: last opportunity to amend Standing Orders and introduce Emergency Bill (on changes to the institutions) at Westminster following all-party agreement to restore devolution.
- 24 November: last opportunity for selecting FM/DFM and Executive and affirming pledge of office. By midnight Secretary of State notifies Presiding Officer of intention to make a Restoration Order [effective on Monday 27 November].
- W/B 27 November: Ministers arrive at Departments. Executive meets.

Or

November

- 24 November: Salaries and allowances for MLAs and financial assistance to parties stop.

December

- BIIGC at Prime Ministerial Summit level to launch new British Irish partnership arrangements.

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