

# JOINT DECLARATION

BY THE BRITISH AND IRISH GOVERNMENTS

APRIL 2003

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## **Requirements of Peace and Stability**

1. The two Governments have, over recent months, engaged in extensive dialogue, including discussions with the pro-Agreement parties, about ways of bringing the search for long-term peace and stability in Northern Ireland, through its concluding phase, to fruition, and of securing the full implementation of the Agreement.
2. The overwhelming majority of people in Northern Ireland want to live in a society which is normal, peaceful and secure; is inclusive of all its members, irrespective of their religious, political or cultural affiliations; demonstrates equality of opportunity and full respect; allows their voices to be heard and their concerns to be fairly and reasonably addressed through a democratic process that is fair, inclusive and durable; has a justice and policing system that enjoys widespread confidence and support and has the capacity to address criminality in all its forms, with resort to military intervention only in exceptional circumstances; and provides an overall sense of safety and confidence which contributes to an environment in which the opportunities for economic and social well-being are maximised.
3. A key impediment to completing the evolution to such a society in Northern Ireland is that both major traditions have lacked confidence and trust in each other. A major factor contributing to the erosion of the confidence and trust of law-abiding people throughout the community has been the continuing active manifestations of paramilitarism, sectarian violence and disorder. While it would not be possible to complete the transition to longer-term peace and stability by dwelling forever on the undoubted wrongs and associated hatred of the past, neither is it possible to create a new beginning without taking account of, and addressing, its legacies.
4. The obligation to create the circumstances in which peace and stability become a reality, and in which politically motivated violence becomes forever a thing of the past, rests on everyone. Some parties are, of course, better placed than others directly to persuade those engaged in violence to desist. And some have, over recent years, clearly demonstrated their willingness and success in doing so. However, all have an important role to play in demonstrating their commitment to the operation of political institutions that are characterised by durability, effectiveness and inclusiveness. The best way of ensuring that peace remains permanent is by demonstrating that politics work.

## **Acts of Completion**

5. The two Governments have previously stated their commitment to the full implementation of the Agreement which, we affirmed, had already brought great gains and tangible benefits to the people of Northern Ireland. The achievements of the Agreement have already vindicated the vision and courage of those who seized that opportunity. The Agreement remains the template for political progress, has been endorsed by the people of Ireland, North and South, and is the only sustainable basis for a fair and honourable accommodation between all traditions.
6. Achieving a fully peaceful and healthy society, which we believe is now attainable, is dependent on the full realisation of the values and principles that are at the heart of the Agreement. Building on those principles and values, we are committed to undertaking and securing the acts of completion necessary to bring about a peaceful and normalised society.
7. The two Governments wish to see the devolved institutions restored as soon as possible. But devolved government in Northern Ireland can only flourish on the basis of trust between the parties. In order to re-establish that trust, it must be clear that the transition from violence to exclusively peaceful and democratic means is being brought to an unambiguous and definitive conclusion. It is also essential that each party has confidence in the commitment of the representatives of the others to the full operation and implementation of the Agreement in all its aspects and accords respect to each others' democratic mandate.
8. Taking account of all the discussions since October, we set out today the following proposals necessary to promote trust, implement the Agreement fully, restore the devolved institutions and attain a fully normal society in Northern Ireland. All concerned must, in the process of carrying out their obligations, have the required confidence that all other acts of completion will be implemented in the shortest possible time-frame. For their part, the two Governments commit themselves to proceed in this way and ask other parties to do likewise.

## **Political Institutions**

9. The political institutions, across all three strands, are the democratic core of the Agreement. The two Governments, with the parties, have been working towards, and wish to see, the restoration of the Northern Ireland institutions as swiftly as possible. In the context of definitive acts of completion, the British Government would be prepared to repeal the power in the Northern Ireland Act 2000 to suspend these institutions by order. They recognise that the review of the operation of the Agreement this autumn (see paragraph 34 below) will need to consider other aspects of the functioning of the institutions which might contribute to greater stability.
10. The Agreement envisaged that all of its institutional and constitutional arrangements would be interlocking and interdependent. The two Governments believe that the institutions should be protected against arbitrary

interruption and interference. Both Governments and the parties have responsibilities to ensure the full and stable operation of all the institutions of the Agreement, including the North/South Ministerial Council and the British - Irish Council (BIC). The two Governments expect, in accordance with the Ministerial pledge of office, all parties to play their full part in these institutions and to enable other parties to play their rightful parts.

11. The two Governments recall that the Agreement envisages that the Northern Ireland Assembly and the Oireachtas should consider developing a joint parliamentary forum. In the light of the decision already taken by the North/South Ministerial Council, the two Governments look forward to the early convening of the consultative forum involving civic society. The two Governments commend the work of the North/South Ministerial Council and of the BIC. As part of the ongoing review of its support arrangements, the two Governments will consult all participants in the BIC to establish whether a dedicated secretariat would give greater impetus to the Council's work and maximise its contribution, and will facilitate its establishment if all participants agree.

### **Paramilitarism**

12. Five years after the Agreement, the transition to exclusively democratic means must now be completed. Ongoing paramilitary activity, sectarian violence, and criminality masquerading as a political cause, are all corrosive of the trust and confidence that are necessary to sustain a durable political process.
13. Paramilitarism and sectarian violence, therefore, must be brought to an end, from whichever part of the community they come. We need to see an immediate, full and permanent cessation of all paramilitary activity, including military attacks, training, targeting, intelligence gathering, acquisition or development of arms or weapons, other preparations for terrorist campaigns, punishment beatings and attacks and involvement in riots. Moreover, the practice of exiling must come to an end and the exiled must feel free to return in safety. Similarly, sectarian attacks and intimidation directed at vulnerable communities must cease.
14. All paramilitary groups should actively engage with the Independent International Commission on Decommissioning with a view to putting arms beyond use in a manner that is conducive to creating public confidence and all parties should, in accordance with the Agreement, use their influence to encourage and support the completion of that process. In accordance with its mandate, the Independent International Commission on Decommissioning will continue its existing functions. The two Governments continue to believe that putting all arms beyond use remains an indispensable part of implementing the Agreement.
15. Paramilitary groups need to make it clear that they have made such an historic act of completion, and that it is reflected in reality on the ground. The Governments are aware of the strides made by some groups and acknowledge that the paramilitary ceasefires, independent arms inspections and three acts of decommissioning have been important in enabling and sustaining the political process over recent years.

16. The Governments believe it is essential that those paramilitary groups that have not, to date, shown a willingness to follow the route towards peace should do so now. Should these groups fail to respond positively and decide instead to pursue criminal activities, such a course will not be tolerated. The Governments will not allow a criminal minority, of whatever persuasion, to dash the hopes and ambitions of the great majority of people who wish to see long-term peace, normality and prosperity.
17. To guard against and thwart the efforts of those who still see violence and terror as the way forward, the Governments will intensify their existing security co-operation and will respond immediately and vigorously to any form of criminal activity by armed groups. This will include decisive steps to deal with any continuing dissident republican or loyalist terrorist threats, having recourse to the full range of measures afforded by existing and planned legislation, including, in particular, measures directed to the resources and organisational capability of such groups. They will be dealt with through the application of the full rigour of the law.

### **Normalisation**

18. The Agreement recognised that the development of a peaceful environment could and should mean a normalisation of security arrangements and practices. In the context of the definitive transition to exclusively peaceful and democratic means, and recognising the changed environment brought about by the new policing arrangements and structures, security normalisation would be implemented in its entirety over a defined time-frame.
19. As outlined in Annex 1, the outcome would be that the profile of the police and army in Northern Ireland would, over the period between now and April 2005, change to that required in any peaceful society, it being accepted that normalised security arrangements have to include the capacity to respond quickly, effectively and proportionately to criminal threats that may be directed towards its individual members or towards society as a whole. The change in that profile would involve the vacation and demolition of security installations, the closure of designated military bases, a substantial decrease in military deployments in support of the police, the phased reduction in troops to peacetime levels, and a substantial decrease in military helicopter activity and usage.

### **Policing and Justice**

20. The British Government has accepted, under the Agreement, the desirability of devolving policing and justice on a basis that is robust and workable and broadly supported by the parties. In accordance with the paper contained in Annex 2, the British Government would take an early initiative to facilitate a dialogue between the parties to address and agree the practicalities of such further devolution, including the necessary institutional arrangements, with a view to the introduction of the necessary legislation in the Westminster Parliament at the earliest opportunity and with a view to ensuring that it is achieved within the lifetime of the next Assembly.



21. The new beginning in policing envisaged by the Agreement, requires, amongst other things, all community leaders, including political party leaders and local councillors, to take steps to remove all discouragements to members of the community from supporting and applying to join the police, and making it a priority to encourage them to apply. Part of this process would involve Sinn Féin deciding to join the Policing Board and the District Policing Partnerships. In recognition of the importance of policing with the support of the community, the PSNI will renew and continue its efforts to encourage applications from all parts of the community, including those in which the service has traditionally been under-represented. Efforts should be made to encourage recruitment from women and ethnic minorities.
22. The Police (Northern Ireland) Act 2003 received Royal Assent on 8 April. It provides the legislative basis where necessary for delivery of each of the commitments contained in the updated Implementation Plan, including where relevant in the context of acts of completion. The Act directly strengthens the powers of the Policing Board to hold the Chief Constable to account, gives it greater freedom in determining the strategic objectives for policing in Northern Ireland, and will ensure that there is full consultation on the Secretary of State's policing objectives and codes of practice.
23. Further progress towards normal policing will also include the prompt enactment of the necessary legislation by both Governments to allow for lateral entry and secondments. The stated commitments in relation to the Full Time Reserve and the Special Branch of PSNI would also be implemented. The latter issue takes due account of the reports of the Oversight Commissioner and HM Inspectorate of Constabulary. An emphasis would be placed on building up the Part Time Reserve in areas where there are currently very few Reservists.
24. The British Government has announced its intention to appoint an independent Oversight Commissioner to provide independent scrutiny of the implementation of the Government's decisions on the Criminal Justice Review. This constitutes a major programme of transformational change and will give particular weight to modernisation, accountability, protection of human rights, ensuring a representative workforce and the effective performance of the criminal justice system. Further significant change will be introduced in the context of a second Criminal Justice Bill which will bring forward the creation of a Judicial Appointments Commission and make further provision to promote a human rights culture in the criminal justice system in Northern Ireland. The two Governments intend to move forward quickly with the development of co-operation on criminal justice matters between the two jurisdictions, where there is mutual benefit. This will focus on issues like sharing information and research, arrangements for monitoring offenders, liaison on misuse of drugs and co-ordinating registers of dangerous offenders.

### **Rights, Equality, Identity and Community**

25. The two Governments fully support the human rights affirmed in the Agreement, including the right to equal opportunity in all social and economic activity. In partnership with the parties, they rededicate themselves to the achievement of these objectives. Recognising the importance of the principles and mechanisms contained in the Agreement for the advancement of the human

rights and equality agendas, the two Governments commit themselves to the steps outlined in Annex 3.

26. The two Governments fully accept that acknowledging and addressing the suffering of the victims of violence is a necessary element of reconciliation. In the past, victims' needs have been neglected. Much has been achieved since the signing of the Agreement, but the time has now come to develop the next stage of policies for victims, taking account of the need for a long-term approach. The British Government reaffirms the principle that there is no hierarchy of victims. The two Governments will work with the parties, victims and survivors to seek to establish what further practical steps can be taken to recognise and address the suffering of all victims, taking into account the state of readiness of the community as a whole to engage. To facilitate that work, consideration will be given to the establishment of a victims' and survivors' forum. Remembering and recognition are an essential part of the healing process.
27. The two Governments recognise that Northern Ireland remains a deeply divided society, with ingrained patterns of division that carry substantial human and financial costs. They recognise the importance of building trust and improving community relations, tackling sectarianism and addressing segregation, including initiatives to facilitate and encourage integrated education and mixed housing. Accordingly, the British Government will encourage the devolved administration, when restored, to prioritise and take forward a review of policy on good community relations, taking account of the consultation which is currently under way, with a view to bringing forward a strategic and integrated approach.
28. The substantial reduction in the security threat and the enabling political climate over recent years have contributed to the improved economic situation that is evident across many parts of Northern Ireland. However, both Governments recognise that many disadvantaged areas, including areas which are predominantly loyalist or nationalist, which have suffered the worst impact of the violence and alienation of the past, have not experienced a proportionate peace dividend. They recognise that unless the economic and social profile of these communities is positively transformed, the reality of a fully peaceful and healthy society will not be complete.
29. Accordingly, in consultation with the Irish Government, the International Fund for Ireland, the Special EU Programmes Body and representatives of civic society in Northern Ireland, the British Government will work with the devolved administration, when restored, to bring forward a strategic and integrated approach aimed at the progressive regeneration of those areas of greatest disadvantage. This approach would be fully consistent with new Targeting Social Need, and would be targeted mainly at areas of greatest social need and areas where there has been significant community division. It would also build on a range of initiatives taken by the devolved institutions before suspension, and during suspension by the Community Action Group, and would also cover the new Local Community Fund announced at Hillsborough on 12 February. Its objective would be to build on current efforts to provide an opportunity for those communities, both loyalist and nationalist, who have been the victims of past failure to become committed stakeholders in a peaceful and prosperous society. In the context of the work of the Community Action Group,



Northern Ireland Departments are identifying as a matter of urgency pilot programmes which will cover Belfast, Portadown and other areas where there is community division, with a view to establishing which forms of intervention are likely to be most effective in achieving the necessary transformation of those communities.

30. The British Government will continue to discharge all its commitments under the Agreement in respect of the Irish language. Specifically, in relation to broadcasting, the British Government will take all the necessary steps to secure the establishment as soon as possible, following receipt of the final business case in April, of a fund for financial support for Irish language film and television production. It will also take steps to encourage support to be made available for an Ulster-Scots academy. The two Governments will continue to work with the relevant regulators and broadcasting authorities to address the technical and other barriers with a view to increasing substantially the reception of TG4 in Northern Ireland.
31. In the Agreement, the participants recognised that the use of symbols and emblems for public purposes was a sensitive issue and that there was a need, in particular in creating new institutions, to ensure that they were used in a manner that promoted mutual respect rather than division. They also agreed that arrangements would be made to monitor the issue and to consider what action might be required. The British Government will discuss with the parties how to find an agreed way forward on this sensitive issue.
32. The British Government appointed Sir George Quigley to review the operation of the Parades Commission and the legislation under which it was established. He produced a very extensive report last autumn which recommended splitting into two the Commission's functions of facilitation and determination. Consultation on Sir George's recommendations will conclude at the end of April and the British Government will consider, in the light of the views expressed, the need for any future legislation in this area.
33. The two Governments, together with the parties, will collectively and proactively address other outstanding issues under these headings of the Agreement. The British Government is committed to taking the necessary steps itself to ensure that the rights and equality of all are protected, and to working closely with the devolved administration, when restored, to do so.

## **Review**

34. The two Governments are committed to a review this autumn of the operation of the Agreement (under paragraph 8 of the Validation, Implementation and Review section). This provides a vehicle for further consideration of a number of other important issues that the parties have brought to the table. These will include the question of designation and voting arrangements in the Northern Ireland Assembly; the effectiveness of the Pledge of Office with regard to the responsibilities of Ministers to participate in the work of the Executive and the other institutions of the Agreement; and the nomination procedures for attendance at meetings of the North/South Ministerial Council and the British-Irish Council. The Governments will, in consultation with the parties, put forward proposals for the agenda and conduct of the review. Different formats may be appropriate for the discussion of different issues.

35. The Governments will continue to discuss appropriate issues with the parties, including through the Implementation Group, prior to the commencement of the paragraph 8 review.

## **Conclusion**

36. The two Governments believe these proposals provide a comprehensive basis for the acts of completion sufficient to re-establish trust and confidence, restore the devolved institutions in Northern Ireland and complete the implementation of the Agreement. Accordingly, we commend them to the parties. We are determined, in continued dialogue and partnership with the parties, and, where agreed and appropriate, through the mechanism of the Implementation Group, to ensure that the Agreement succeeds for the benefit of all of the people and delivers on the promise of a new and peaceful society in Northern Ireland. We believe that the uninterrupted operation of the institutions will allow for enhanced co-operation between the parties, and provide renewed momentum in taking forward the work of the Northern Ireland Assembly and Executive.

## ANNEX 1

### SECURITY NORMALISATION

1. It is the aim of the British Government that Northern Ireland should be policed as a normal, peaceful society, building on the commitment in the Agreement to “as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat...”. The army has exceptionally been deployed in Northern Ireland in support of the civil power for over 30 years. Once the exceptional situation which required their deployment is removed, we believe it will be possible to return to normal security arrangements. Progress towards normalisation has already been made, especially since the establishment of the Policing Board in November 2001 and the subsequent creation of the District Policing Partnerships.
2. The British Government has no desire to maintain more troops in Northern Ireland than are maintained in equivalent parts of the United Kingdom to meet its defence commitments. In the context of acts of completion and with positive community support for the police at all levels, the outcome will be that the profile of the police and army in Northern Ireland would reflect the requirements of any peaceful society consistent with the need to meet the continuing threat to security and public order from whatever quarter.
3. Against this background we envisage a community-based police service for Northern Ireland, in which the character and strength of community support for policing would be reflected in the quality of the engagement between the police and the community. Police assessments in relation to the level of support required from the army depend, in part, on the level of community support the PSNI enjoys. Our aim is a Northern Ireland in which the police have the support of all sections of the community and in which all parties on the Executive are represented on the Policing Board. Full-hearted support for the PSNI in our view provides the best way of reducing the continuing threat to security and public order from whatever quarter.
4. In those circumstances, the profile of policing in Northern Ireland would change further, leading to a substantial reduction in the current numbers, type and style of police stations, for example, being replaced with community police posts and reporting stations. Fortifications would be removed from police stations. Police would patrol in normal police vehicles, on foot, on bicycles and as single officer beat patrols, without army support. Building on the progress of recent years, additional steps would be taken, as the environment allows normalisation to progress further, and as decisions are made with the support of the community and of District Policing Partnerships, of the Policing Board and of the Northern Ireland Executive once responsibility for the police has been devolved.
5. On the basis of the historic leap forward by the IRA we would undertake a normalisation programme over the period between now and April 2005, as the abnormality in Northern Ireland society recedes and as community confidence increases, which would in the context of full community support for the police at all levels, lead to the peacetime situation described in the following paragraph.

6. In the context of a peaceful society:
  - policing would display the profile described in paragraph 4;
  - the abnormal army deployment needed over the past 30 years would cease;
  - army support for the police would be reduced to a residual level, e.g. providing specialised ordnance disposal and support for public order as described in Patten recommendations 59 and 66;
  - there would be a permanent garrison of 5,000, reflecting the Government's global defence commitments;
  - the regular garrison would be based in no more than the following 14 locations: Aldergrove, Antrim, Ballykelly, Ballykinler, Ballykinler Training Camp, Ballymena, Coleraine, Divis Key Point (on Divis Mountain), Duke of Connaught Unit, Holywood, Kinnegar, Lisburn, Magilligan and Omagh (St Lucia);
  - army helicopters would be used essentially only for training for operations elsewhere. (A police helicopter would be used in a normal policing role, as is common in other police services);
  - progress towards the desired objective of an unarmed police service would have been reviewed.
  
7. By the end of 2003, in an enabling environment, we would have achieved:
  - vacation and demolition of 5 towers in 5 sites in South Armagh, starting immediately with two towers in Cloghogue and Tievecrum. These sites would be restored to greenfield status as rapidly as possible;
  - vacation and demolition of Oldpark observation post in Belfast;
  - vacation, closure and disposal of Ebrington Barracks (already announced), the vacation of Musgrave Park (except for the hospital wing) and the closure and demolition of the military base at Aughnacloy;
  - announcement and commencement of implementation of a structured plan for phased reduction in troops to peacetime levels described above;
  - initiation of a full review of the police estate, carried out by the Chief Constable, covering the options for redevelopment of each site as a police-only community police station, de-fortification and closure, and of the nature of policing operations to achieve a rationalisation and normalisation reflecting the policing needs of 1.7 million people. In preparing proposals, the Chief Constable will take account of the views of District Commanders and their respective local communities before submitting his recommendations to the Policing Board. The review would also include the scope to develop the role of custody suites as suggested by Patten. The implementation of this review will, in the normal way, be subject to oversight by the Oversight Commissioner.

8. By the end of 2004, in an enabling environment, we would have achieved:
  - vacation and demolition of the remaining South Armagh towers. These sites would be returned to greenfield status as rapidly as possible;
  - further planned reduction of around 2,000 troops;
  - as alternative accommodation becomes available outside Northern Ireland, the vacation, closure and disposal of those barracks no longer required, including the closure of Clooney;
  - up to 380 soldiers progressively withdrawn from sites where co-located with police in Armagh (Crossmaglen, Forkhill, Newtownhamilton, Middletown) and in Fermanagh and Tyrone;
  - return of private property on vacated sites, as appropriate, including Crossmaglen;
  - implementation of de-fortification of police stations in consultation with the Policing Board. Progressive development and extension of varying patrol patterns, e.g. single beat officers, bicycle patrols, and opening of police shops.
9. By April 2005, in a continuing enabling environment, the British Government aims to have achieved the position in paragraph 6 above. This would entail:
  - further implementation of the review of the police estate, as determined by the Policing Board;
  - additional opportunities identified for the police to patrol without the use of armoured vehicles;
  - a further reduction in army and other service levels to a permanent garrison of some 5,000 involving the disbanding of two operational brigade headquarters;
  - the removal of troops from remaining police stations and joint bases;
  - the vacation, closure and disposal of all but the 14 core sites listed above;
  - the vacation and demolition of observation posts at Rosemount and Masonic in Derry and at Divis in Belfast;
  - repeal of counter terrorist legislation particular to Northern Ireland.
10. Many of the vacated military and police (subject to the agreement of the Policing Board) sites might be made available to the OFM/DFM's Reinvestment and Reform Initiative to ensure that the process of normalisation generates a new public asset base for those communities most directly affected by the security arrangements to date.

## ANNEX 2

### DEVOLUTION OF POLICING AND JUSTICE

1. Paragraph 20 of the Joint Declaration reaffirms that the British Government has accepted, under the Agreement, the desirability of devolving policing and justice within the lifetime of the next Assembly, on a basis that is robust and workable and broadly supported by the parties. Within that context, this Annex sets out issues for consideration without commitment at this stage. It takes account of both the practice and structures of policing and justice in Northern Ireland, and the legal, social and political contexts within which they operate.

#### Introduction

2. In the Policing and Justice section of the Agreement (paragraph 7), the British Government said that it remained “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.”
3. The Government has accepted the Patten recommendation that when the Government’s role in the tripartite arrangements passes to the Northern Ireland Executive, the powers of the Policing Board should in no way be diminished.
4. This Annex highlights a number of key aspects of this topic, identifying, in each case, questions for consideration.
5. The Annex is written on the basis that arrangements for devolving policing and justice will need to be agreed between the parties, and subsequently between the British Government and the Executive, and that these arrangements must be robust and workable. The British Government will wish to give careful consideration to the views of the parties on all of the matters below. Definitive acts of completion, independently monitored, would provide the necessary context for addressing and agreeing the practicalities of such further devolution as quickly as possible.

#### Scope of Devolution

6. What exactly would be devolved, and how would the respective responsibilities of Northern Ireland Ministers and of the UK Government be exercised post-devolution?
7. Subject to consultation with the parties, the expectation is that responsibility would be transferred for those policing and justice and associated functions which are designated as reserved matters under the Northern Ireland Act 1998.
8. Reserved matters are listed in Schedule 3 to the 1998 Act. The relevant parts of this provide an indicative, although not definitive, list of policing and justice matters which might be devolved. Relevant paragraphs (some of which have been updated by more recent legislation on policing and justice) read as follows:



“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.

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.

- 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.
- 15. All matters, other than those specified in paragraph 11 of Schedule 2, relating to the Supreme 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.”

9. On this basis, further devolution would include the maintenance of public order; parades; the establishment, organisation and control of the PSNI; the criminal law; the courts; prosecution; the treatment of offenders, including prisons; firearms; and compensation for the victims of crime. Further consideration will need to be given to the detail.
10. The British Government would retain responsibility for such “excepted matters” as the defence of the realm, the armed forces and national security. This raises the question whether any change would be needed in the allocation of responsibilities to the Chief Constable of the PSNI and to the heads of other agencies involved.
11. In line with the recommendations in the Criminal Justice Review, it has been decided that there should be a Judicial Appointments Commission representative of the judiciary, the legal professions and the community.
12. The British Government envisages that the counter-terrorist legislation particular to Northern Ireland would be addressed in the context of security normalisation.

### **Institutional Models**

13. How would the devolved administration reorganise itself to receive and manage these new responsibilities? This is primarily for the Northern Ireland parties themselves to address, but any increase in the number of Northern Ireland Departments beyond ten would require Westminster legislation. Given the sensitivity of these functions, the British Government would need to be satisfied that the arrangements were likely to prove robust and workable. Consistent with the Agreement, whatever new model is agreed should contain adequate safeguards to protect the rights and interests of all sides of the community while ensuring that there is effective decision-taking capability.
14. Without prejudice to the views of the parties it is possible to identify a number of models.
15. The first would be a single Justice Department, headed by one Minister (perhaps supported by a Junior Minister from the other tradition). This was broadly the approach favoured by the Criminal Justice Review. A single Department has the advantage of facilitating a joined-up approach to the criminal justice system. A variant would be to agree a rotation arrangement so that the Department changed hands between parties after a fixed interval. (This would require some modification to the workings of d’Hondt and therefore primary legislation.)
16. A second model would be a single Justice Department headed by two Ministers, with decisions requiring the agreement of both, as, for example, in OFM/DFM. (As a variation on this, the First Minister and Deputy First Minister could themselves take on the roles of the two Ministerial heads of a new Department.) Any double-headed arrangements of this sort would strengthen cross-community accountability but could weaken decision-taking capability. It would therefore be particularly important to consider whether this model would be likely to prove robust and workable.

17. Under a third model, there would be no new Department. Instead, the responsibilities would be added to those of the First and Deputy First Ministers, perhaps supported by additional Junior Ministers. Two key issues here are whether it would be workable for the First Minister and Deputy First Minister to provide Ministerial oversight in these key areas in addition to all their other responsibilities; and whether such an arrangement would fundamentally change the nature of the Office of the First Minister and Deputy First Minister, and the relationship between that Office and the Northern Ireland Departments.
18. A fourth model would be to create two Departments (say Policing and Justice), with the two Ministers each coming from a different tradition from the other. Splitting the portfolios could reduce risks of deadlock but weaken efforts to integrate the system more effectively.
19. A further possibility would be to revisit the functions of the existing ten Departments in order to free up one or two Departments which would then receive the policing and justice functions.
20. In settling this issue, account will need to be taken of both political balance and effective governance.
21. Some further issues relevant to the choice of model should be noted:
  - in order to promote joined-up working across policing and justice, a number of jurisdictions have established cross-cutting groups of Ministers and/or officials. Arrangements of this sort are currently in place for Northern Ireland. It will be necessary to address whether such structures would be desirable after devolution of policing and justice.
  - the question of the relationship between the Department or Departments with responsibility for policing and justice and the Executive as a whole will need to be addressed.
  - the relationship of the new arrangements to the Assembly will need to be considered, including the implications for the structure of Assembly Committees.
  - the parties will wish to consider whether establishing new arrangements for the devolution of policing and justice has any implications for the allocation of functions and responsibilities between existing Northern Ireland Departments.

### **All-Ireland Dimension**

22. There is already close co-operation between the British and Irish Governments on policing and justice matters. This operates through a number of different institutional arrangements.
23. Once policing and justice are devolved, it will be possible for them to be brought within the scope of the North/South Ministerial Council, in accordance with Strand Two of the Agreement.

24. The questions which then arise are:

- what aspects of justice and policing should be added to the list of topics identified for North-South co-operation?
- should an all-Ireland implementation body be established?

25. A key issue will be what the parties themselves can agree, and what they can agree with the Irish Government.

26. This paper does not consider further any issues relating to the operation of the North/South arrangements as a whole which are not specific to the issue of policing and justice.

### **Safeguards**

27. Strand One of the Agreement sets out safeguards to ensure that all sections of the community can participate and work together successfully in the operation of devolved democratic institutions in Northern Ireland, and that all sections of the community are protected.

28. A key question here is how these safeguards should apply to the policing and justice functions once devolved, given their different nature.

29. The Agreement has also provided extensively for rights, safeguards and equality of opportunity. This provides an essential context within which devolution of policing and justice would operate.

### **Legislative and procedural matters**

30. A number of mechanisms under the 1998 Act would need to be brought into play to bring about a transfer of responsibilities to the devolved administration.

- a. The 1998 Act provides for reserved matters to become transferred (section 4). The procedure involves, first, a resolution passed by the Assembly with cross-community support; then an Order in Council approved in draft by each House of Parliament.
- b. An Order in Council under section 86, again subject to affirmative resolution, would be required to provide for associated transfers of functions from UK authorities (generally the Secretary of State) to Northern Ireland authorities - essentially Departments (subsection 3). It could also (subsection 4) provide for transfers of property etc.
- c. Action by the devolved institutions would also be required. They would, quite possibly, need to set up one or more new Departments to take over the new functions (see below); as can be done by Act of the Assembly under section 21(2) of the 1998 Act. Since, at the time of passage, such an Assembly Bill would presumably be dealing with a reserved matter, it would also be subject to the Secretary of State's and Parliamentary consent.

- d. the First Minister and Deputy First Minister would also need to make a new determination under section 17 of the Act, setting out the functions if the Ministerial offices were to deal with law and order issues under section 17(1). Unless this were to be achieved within the present total of Ministers (ten) by restructuring of existing portfolios, the Secretary of State would need to make an order under section 17(4) to increase the number of Ministerial offices.
  - e. The determination would be subject to cross-community support in the Assembly, and would trigger a fresh run of the d'Hondt procedure for the selection of Ministers.
  - f. A non-statutory concordat between HMG and the devolved administration covering such matters as the principles of judicial and prosecutorial independence would need to be formally endorsed by the Executive.
31. The question here is whether paragraph 30 above covers the key issues.
32. The parties may wish to consider what arrangements are needed to ensure that devolution of policing and justice is implemented in a way which gives due weight to the questions of accountability, risk management and value for money which would arise.

## ANNEX 3

### RIGHTS, EQUALITY, IDENTITY AND COMMUNITY

#### Human Rights

1. In the Agreement, the parties affirmed their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community, and affirmed in particular:
  - the right of free political thought;
  - the right to freedom and expression of religion;
  - the right to pursue democratically national and political aspirations;
  - the right to seek constitutional change by peaceful and legitimate means;
  - the right to freely choose one's place of residence;
  - the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
  - the right to freedom from sectarian harassment; and
  - the right of women to full and equal political participation.
2. There has been substantial progress in implementing the rights elements of the Agreement. The British Government has enacted the Human Rights Act. A Northern Ireland Human Rights Commission has been established and has, among other tasks, undertaken significant work towards a Bill of Rights for Northern Ireland. At the conclusion of that process, and after consultation with the parties, the British Government is committed to bringing forward legislation at Westminster where required to give effect to rights supplementary to the ECHR to reflect the particular circumstances of Northern Ireland. Without pre-empting the processes under way, including in relation to the Bill of Rights and the Single Equality Bill, it is envisaged that many of the above rights will be given legislative effect through these mechanisms, and through legislation to tackle racism and sectarianism. In Ireland, a Human Rights Commission has also been established. An enhanced Employment Equality Act and Equal Status Act have been enacted and the Irish Government has also ratified the Council of Europe Framework Convention on National Minorities.
3. The British Government will work with the parties to facilitate the response to the Northern Ireland Human Rights Commission's proposal for a round table forum on the Bill of Rights, involving the parties and civic society. Subject to the agreement arrived at in the Implementation Group, it is envisaged that the round table forum will have an independent chair and its own secretariat, will be as inclusive as possible of Assembly parties and civic society, will appropriately involve the Human Rights Commission, mindful of its statutory role, and will be adequately supported and resourced. It is envisaged that the



work of the round table forum will be forwarded to the Human Rights Commission before it gives its advice to the Secretary of State.

4. The British Government will take full account of the parties' views, and those of the Northern Ireland Human Rights Commission, on the powers, resources and effectiveness of the Commission and, consistent with the Agreement and with the UN principles relating to national institutions for human rights (Paris Principles), take the necessary steps to ensure that the Commission can fulfil its mandate. The British Government recently announced increased funding for the Commission over the next three years. It will continue to ensure that the Commission has the flexibility and resources it needs to carry out its functions. Following the restoration of the devolved administration, the British Government will bring the current consultation to a close and within a short period thereafter will bring forward its final response to the review of the Commission's powers. The British Government will also continue to ensure that appointments to the Commission are made in line with the Paris Principles.
5. The two Governments welcome the Joint Committee of representatives of the two Human Rights Commissions and its consideration, among other matters, of a Charter reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.
6. The legislation providing for the incorporation of the ECHR into Irish law is currently before the Oireachtas. The Irish Government will encourage the Oireachtas to pass this legislation by the summer recess.

## **Equality**

7. As provided in the Agreement, both the British Government and, prior to suspension last October, the devolved administration in Northern Ireland, have pursued broad policies for sustained economic growth and stability in Northern Ireland and for promoting social inclusion, including in particular community development and the advancement of women in public life.
8. In accordance with the Agreement, the Equality Commission has been set up; fair employment legislation has been updated; a review of procurement policy, including measures to promote the engagement of the long-term unemployed in the award of public contracts, has been completed; a new more focussed Targeting Social Need (TSN) initiative has been introduced; and the work begun by the devolved administration on combating unemployment, including the work of the Taskforce on Employability and Long-term Unemployment is continuing.
9. The British Government reaffirms the commitment in the Agreement to a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need. It will encourage funding to be made available for research for this purpose. It will also encourage the devolved administration to explore, including in the context of the evaluation of new TSN which is currently under way, how best work on this issue can be accelerated and what further measurement techniques including indicators and targets may be used in order to assess progress.

10. The British Government will encourage the devolved administration to keep under review the adequacy of the Equality Commission's powers and resources. And it will, with the Equality Commission and other interested parties, review the operation of the section 75 equality duty including effective monitoring and enforcement mechanisms (without diminishing its current effectiveness in legislation or in the Equality Commission's guidelines), and consider extending the list of designated public bodies subject to its scope, including consideration of designating Translink, the Secretary of State for Northern Ireland and the BBC (taking account of the issue of freedom to broadcast).
11. The British Government will also review the operation of the national security exemption in the Fair Employment and Treatment Order with a view to considering whether it is still a requirement.

### **Community**

12. The Joint Declaration, in paragraphs 27 to 29, summarises the important initiatives which have been and are being taken to regenerate areas of greatest disadvantage, with a view to enabling those communities, both loyalist and nationalist, to become committed stakeholders in a peaceful and prosperous society.
13. The British Government recognises the importance of building trust and confidence within and between communities and tackling sectarianism. It recognises that a new thrust to significantly improve relationships is necessary and that this will require a long-term commitment with the associated investment of time, resources and effort. Accordingly, the British Government will encourage the devolved administration, when restored, to prioritise and take forward a review of policy on good community relations, taking account of the consultation which is currently under way, with a view to bringing forward a strategic and integrated approach aimed at improving relationships and tackling sectarianism. As part of the Government's commitment to eradicating sectarianism, following recent consultation the Government is committed to bringing forward legislation to ensure the proper punishment of offences motivated by racism and sectarianism.

### **Implementation Group**

14. As part of its recent consideration, the Implementation Group has initiated new work on rights and equality issues and has, in particular, established a sub-group in response to the Northern Ireland Human Rights Commission's proposal in relation to the Bill of Rights. The two Governments welcome this action and the continuing opportunity which it provides to address key issues in the rights, equality and community action fields, among others. The two Governments envisage that the Implementation Group will, notwithstanding the restoration of the devolved institutions, have a continuing and supporting role to play in ensuring that the momentum of delivery in these areas is maintained.