



Northern
Ireland
Office

Devolving Policing and Justice in Northern Ireland: A Discussion Paper

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Foreword

The legislation I have introduced today will pave the way for future devolution of policing and justice in Northern Ireland. I have introduced this enabling legislation now because I want to send out a clear message: I believe that responsibility for policing and justice in Northern Ireland should properly lie with a Northern Ireland Assembly, directly accountable to the people of Northern Ireland.

Devolution of policing and justice will not happen overnight. It cannot happen until the Assembly is restored. It cannot happen until the Assembly wants and asks for devolution of these powers. And it cannot happen unless Parliament is convinced that the proposed arrangements for devolution are robust, workable and broadly supported by the parties.

But although this may be some way off, it is important that we start discussing now, with all the parties, how devolution of policing and justice can work most effectively for the people of Northern Ireland. This paper is intended to initiate and facilitate those discussions.

It sets out what the Government believes is a sensible and pragmatic framework for policing and justice in Northern Ireland under an Assembly. It sets out which specific powers we think should be devolved and how these could operate. It also identifies particular areas where further thinking is needed.

This paper is not a blueprint but a discussion document. It is an opportunity for all the political parties in Northern Ireland to engage with the Government and, together, work out how devolution of policing and justice should work.

A handwritten signature in black ink, appearing to read 'Peter Hain', is positioned above the typed name and title.

The Rt Hon Peter Hain MP
Secretary of State for Northern Ireland

Chapter 1

Introduction

1.1 Under the law as it currently stands, a restored Northern Ireland Assembly and Executive would not have responsibility for policing and justice matters, which remain the responsibility of the UK Government and Parliament at Westminster. The Government believes that it is in the best interests of the people of Northern Ireland that, in the context of stable devolved government and with broad support from the parties, decisions on these matters should be made by local politicians. The Government set out its willingness in principle to devolve these matters in the Belfast (Good Friday) Agreement and reiterated it in the Joint Declaration of 2003.

1.2 In advance of this transfer of responsibility happening, some detailed consideration needs to be given to exactly what would devolve, what would not, and the implications such a transfer would have for the structure of the Departments within the Executive. This consideration needs to be informed by a clear understanding both of what is meant by “policing and justice matters” and of what the Government’s position is in relation to future devolution. This information should enable the parties to consider how best to approach discussions – both within and between the parties – about the what, how and when of devolution.

1.3 This paper sets out in broad terms what we mean by justice and policing in Northern Ireland, what is intended to be devolved and also identifies some areas where devolution is not so straightforward and where further thought needs to be given to how it should be achieved.

1.4 It is not a detailed implementation plan. That can only be put in place when it is clear what is to be devolved and to what structures, which is something the Assembly will need to consider. There will be a significant amount of detailed planning to be done to ensure a smooth and successful transfer when devolution is eventually agreed.

1.5 In parallel with this document, the Government has today introduced a Bill to Parliament that includes enabling clauses to pave the way for this future devolution when the time is right. The Bill does not make any assumptions about what the Assembly will ask for in the way of policing and justice powers or when it will do so. It simply gives the Secretary of State the power to give effect to the Assembly’s request by Order, rather than requiring another Bill in due course.

1.6 The Government plans to invite the parties to discuss the proposals in this discussion paper in the coming weeks.

Chapter 2

Background

2.1 Prior to the introduction of Direct Rule in 1972, the old Stormont Parliament had responsibility for policing and justice in Northern Ireland. Although all subsequent attempts at devolution have reserved responsibility for these matters to Westminster, the Government has a longstanding commitment to devolve policing and justice when circumstances are right to do so.

2.2 It had been hoped that it would be possible to reach agreement on how this would be done in the 1996-8 negotiations leading up to the Belfast (Good Friday) Agreement. That did not prove possible. Instead the Agreement recommended independent reviews of both policing and criminal justice as a means of taking this work forward. But the Agreement made clear that the British Government 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.”* That remains the Government’s position today.

The Independent Commission on Policing (“Patten”)

2.3 The Independent Commission on Policing in Northern Ireland was established as part of the Agreement. The Commission reported on 9 September 1999 and the report – known as the “Patten Report” – made 175 recommendations. Whilst much of the Patten Report drew directly on previous reviews of the Royal Ulster Constabulary (RUC) it also dealt with wider policing reform issues linked to the Belfast Agreement.

2.4 To oversee the implementation of these recommendations, the Patten Report recommended the setting up of an Independent Police Oversight Commissioner to monitor and report on progress three times a year. In his June 2005 report the current Oversight Commissioner stated that two thirds of the Patten recommendations had been implemented and that he was confident that the remaining recommendations would be achieved on time.

The Criminal Justice Review

2.5 The terms of reference for the Review of the Criminal Justice System in Northern Ireland were set out in the Belfast Agreement. The Agreement envisaged a wide-ranging review of criminal justice (other than policing and those elements of the system relating to the emergency legislation) – the most important and far-reaching survey of criminal justice in Northern Ireland in the last 30 years. The Review, which was set up in 1998 and reported in March 2000, aimed to deliver a fair and impartial system of justice to the community; be responsive to the community’s concerns, and encourage community involvement where appropriate; have the confidence of all parts of the community, and deliver justice effectively and efficiently.

2.6 So far nearly three quarters of the 294 recommendations of the Review have been implemented. Most of the remaining recommendations depend on devolution of responsibility for criminal justice matters.

Chapter 3

Scope of Devolution

3.1 When considering the potential for devolving policing and justice matters to the Northern Ireland Assembly, it is important to do so within the framework of the Northern Ireland Act 1998, which gives effect to the structures and procedures set out in the Belfast Agreement. That Act divides subjects into three categories: transferred matters, reserved matters and excepted matters. Generally speaking, transferred matters are those that the Assembly can legislate on of its own accord. Excepted matters are those that are the responsibility of the UK Government and only Parliament at Westminster can legislate on. Reserved matters are also the responsibility of the UK Government and would normally be legislated on at Westminster. However, the Assembly can legislate on reserved matters with the consent of the Secretary of State and such matters could, under certain circumstances, be transferred to the Assembly's responsibilities in the future.

3.2 The overwhelming majority of policing and justice matters fall within the "reserved" category and, along with other reserved matters, are set out in Schedule 3 to the 1998 Act. It is these that are the focus of this discussion document. The Joint Declaration published by the British and Irish Governments in 2003 included at Annex 2 an indicative list of policing and justice matters covered by Schedule 3, making clear that, in principle, all or any of these might be devolved. Updated to take account of the Justice (NI) Act 2002 and the Constitutional Reform Act 2005, this list reads as follows:

- the criminal law¹;
- the creation of offences and penalties¹;
- the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings¹;
- prosecutions;
- the treatment of offenders (including children and young persons, and mental health patients, involved in crime);
- the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- compensation out of public funds for victims of crime;
- local community safety partnerships;
- the Chief Inspector of Criminal Justice in Northern Ireland;
- the maintenance of public order, the Parades Commission for Northern Ireland;
- 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;
- firearms and explosives;
- rights of appeal to the Supreme Court and associated legal aid arrangements;
- the Courts;
- the Northern Ireland Law Commission;
- the Social Security and Child Support Commissioners.

¹ Except in relation to national security, treason and counter-terrorism, which are excepted matters.

3.3 This list sets out, in broad terms, the areas that the Government would envisage devolving, should the Assembly wish it. Decisions about which areas should devolve (and the timing of the transfer) have not yet been taken, and it is theoretically open to the Assembly to request the transfer of all of them or only a few. The Government, however, considers that there are fundamental linkages between the various elements of the policing and justice system and devolving it piecemeal would be likely to undermine its capacity to operate as a coherent system. So while there is some flexibility in certain discrete areas, the Government's view is that policing and justice, if they are to devolve, should devolve all together and at the same time.

3.4 The rest of this document explains in more detail what is covered by each of the headings in the above list and identifies those few areas where, if the Assembly wishes it, there might be scope to separate responsibilities between Westminster and Stormont. The chapters are ordered to mirror the sequence in which these issues appear in the list in Schedule 3 to the Northern Ireland Act 1998. Each chapter also highlights the key issues which will need to be resolved as part of the process by which the parties in the Assembly come to a decision about devolution.

Chapter 4

Departmental Models

4.1 The first – and in some ways the most significant – issue that will need to be resolved concerns the Departmental structures that will need to be put in place following devolution. Before devolution of justice and policing takes place, the Assembly will need to consider how the devolved administration would reorganise itself to receive and manage these new responsibilities. This is primarily for the Northern Ireland parties themselves to address but, given the sensitivity of these functions, the Government would need to be satisfied that the arrangements were likely to “prove robust and workable, and broadly supported by the parties” (Joint Declaration 2003 p.14).

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

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

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

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

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

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

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

NOTE: The text in the rest of this document refers variously to a Northern Ireland Minister for policing and a Northern Ireland Minister for justice. This does not indicate a recommendation that there should be two separate such posts. It is merely an indication of where, in the event that the Assembly decided to create two separate such posts, the responsibility would most logically lie.

4.5 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 and to reflect on the implications for the operation of d'Hondt. The relationship between the Department or Departments with responsibility for policing and justice and the Executive as a whole will need to be addressed, as will the relationship of the new arrangements to the Assembly, including the implications for the structure of Assembly Committees. The role of any Assembly Committee overseeing policing will need to be considered in light of the important role set out in the Patten recommendations for the Policing Board, on which a number of MLAs are represented. Providing clear lines of accountability will be important to ensuring the system works well.

4.6 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 continue to be desirable after devolution of policing and justice.

Human Rights and Equality safeguards

4.7 The Human Rights Act 1998 and sections 6 and 24 of the Northern Ireland Act 1998 provide important human rights safeguards that will continue to apply following the devolution of policing and justice. Under those provisions, the Northern Ireland Minister(s) and Department(s) responsible for policing and justice post-devolution will be obliged to act in a way that is compatible with the European Convention on Human Rights. Similarly, the Assembly will be unable to pass any legislation which is incompatible with the Convention.

4.8 Most of the organisations which would devolve as part of the devolution of policing and justice are covered by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998². They would continue to be covered by that duty following the devolution of policing and justice, irrespective of whether responsibility for them transferred or remained reserved or excepted. Any new Department of Justice and/or Policing would automatically be covered by the duty by virtue of section 75(3)(c) of the 1998 Act.

Resources

4.9 Currently funding for policing and justice does not form part of the Northern Ireland block grant, but instead is voted on separately by Parliament. Parliament makes two such votes: one for the Northern Ireland Office budget and the other for the budget of the Northern Ireland Court Service, a separate Department headed by the Lord Chancellor rather than the Secretary of State. On devolution, funding would transfer to the Northern Ireland block grant.

4.10 In England, Scotland and Wales a proportion of the funding for policing is provided from Council Tax by means of a policing precept. This allows for policing to be enhanced by local authorities in GB to reflect local priorities. The Government is currently considering how best to provide for this power to be available to Northern Ireland Ministers after devolution. It would of course be for Northern Ireland Ministers and the Assembly to decide how to allocate resources across all of their responsibilities.

4.11 The chapters which follow look in more detail at what devolution would mean for each of the headings in the list at 3.2.

² The following organisations are covered:

- the Police Service of Northern Ireland;
- the Police Ombudsman;
- the Policing Board;
- District Policing Partnerships and, following commencement of the as-yet uncommenced amendments introduced by the Police (NI) Act 2003, the Belfast DPP sub-groups;
- the Northern Ireland Court Service;
- the Director of Public Prosecutions (though not in respect of a decision on whether or not to prosecute);
- the Chief Inspector of Criminal Justice;
- the Northern Ireland Law Commission;
- Probation Board for Northern Ireland;
- the Northern Ireland Office (encompassing the Forensic Science Agency, the Youth Justice Agency, the Prison Service and the Compensation Agency); and
- HM Revenue and Customs.

Chapter 5

Criminal Law and Creation of offences & penalties

Paragraph 9(a) & (b) of Schedule 3 to the Northern Ireland Act 1998

5.1 This chapter considers the overall statutory framework governing what constitutes a crime and what the appropriate penalties are. The Secretary of State is currently advised on this by the Criminal Justice Directorate of the Northern Ireland Office. As the heading suggests, a key part of the work is creating and maintaining the criminal law in Northern Ireland through legislating for the creation of offences and related court procedures (current topics include bail, proceeds of crime, hate crime, mental health review, road traffic offences and sexual crime, including sex offender management). The work also includes development of criminal justice policy in related areas, such as court sentencing and restorative justice, as well as services for victims of crime.

5.2 Following devolution, these functions would become the responsibility of Northern Ireland Ministers, and be carried out within a Northern Ireland Department of Justice. Subsequent arrangements for cross-jurisdictional services – for example the Criminal Cases Review Commission – would be a matter for the devolved administration to consider.

5.3 Responsibility for advising the Crown on exercise of the Royal Prerogative of Mercy traditionally has been exercised in exceptional circumstances primarily to grant remission of penalties imposed by the courts. Following devolution, as is the case in Scotland, it would be for Northern Ireland Ministers to advise the Crown on cases which fell into what would then be the devolved area, while the Secretary of State would continue to be responsible for advising in relation to any matters which were reserved or excepted, such as treason or offences prosecuted under terrorism legislation.

Chapter 6

Prevention & Detection of Crime

Paragraph 9(c) of Schedule 3 to the Northern Ireland Act 1998

6.1 This chapter deals with the statutory framework within which the police – and other law enforcement agencies – operate within Northern Ireland. The Police Service of Northern Ireland is the organisation established to maintain law and order in Northern Ireland. It is therefore the main organisation involved in the prevention and detection of crime. The organisation and accountability of the police service is dealt with in chapter 13.

Police powers

6.2 The police have a series of statutory powers, including some in common law, that enable them to take forward their crime prevention and detection duties, many of which require judicial authority. For example, they may obtain search warrants or effect a forced entry to premises under certain circumstances. For Northern Ireland, these powers are largely set out in the Police and Criminal Evidence (NI) Order 1989 (known as PACE).

Police and Criminal Evidence (NI) Order 1989 (PACE)

6.3 Broadly speaking, PACE legislation in Northern Ireland mirrors PACE legislation in England and Wales, so police officers in both jurisdictions have very similar powers.

6.4 At present, PACE legislation is a matter for Westminster, being brought forward by the Secretary of State, usually in response to similar changes being made for England and Wales. Following devolution, responsibility will transfer to the Assembly and the Northern Ireland Minister for policing. If there are separate Ministers for policing and justice post-devolution, there may be a need for the transfer legislation to require the policing Minister to consult the justice Minister before amending PACE, given the importance of these rules for the wider justice system.

The Regulation of Investigatory Powers Act 2000 (RIPA)

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 exempted. Given the interface between national security and serious crime some aspects of RIPA which are currently reserved may need to remain so.

Criminal records checks and disclosures

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. Work to implement Part V of the 1997 Act in Northern Ireland is well advanced and is likely to result in the establishment of an executive agency of the Northern Ireland Office to deliver disclosure services.

6.7 In Northern Ireland there will also be a need to co-operate with An Garda Siochana and other criminal justice agencies within Ireland to minimise gaps between systems in Northern Ireland and the Republic of Ireland. There will continue to be a cross-UK and an international dimension to the work following the devolution of policing and justice.

6.8 The powers currently vested in the Secretary of State could transfer to a Northern Ireland Minister following devolution of policing and justice. In the event that there were to be separate Ministers for policing and for justice, some thought would need to be given to which would be most appropriate to fulfil these functions. 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 closely with colleagues in England and Wales to ensure the system is joined up.

Forensic Science Northern Ireland

6.9 Forensic Science Northern Ireland (FSNI) is responsible for the provision of scientific advice and support to enhance the delivery of justice. It became the third Executive Agency of the Northern Ireland Office in September 1995, its functions having previously been carried out by the Northern Ireland Forensic Science Laboratory, a Division of the NIO. Its name was changed from the Forensic Science Agency of Northern Ireland to Forensic Science Northern Ireland in April 2000.

6.10 FSNI is headed by a Chief Executive who is accountable to the Secretary of State for Northern Ireland. He is required to make an annual report to the Secretary of State which is laid before Parliament. Policy oversight and scrutiny of the FSNI is carried out within the Criminal Justice Directorate in the NIO.

6.11 All the functions of Forensic Science Northern Ireland would be devolved, so that FSNI would become an executive agency of a Department of Justice. It would be accountable to Northern Ireland Ministers, and responsibility for scrutiny and oversight of the FSNI would transfer to a Department of Justice.

State Pathologist's Department

6.12 The State Pathologist's Department (SPD) is a department of the NIO, operating at arms length in providing an independent forensic pathology service for Northern Ireland, as well as providing advice and guidance in other areas of forensic medicine. The core function of the SPD is to conduct autopsies as directed by HM Coroners in Northern Ireland. The statutory duties of the State Pathologist and his department are contained in the Coroners Act (Northern Ireland) 1959 and Coroners Rules 1963.

6.13 The SPD's primary role is to carry out autopsies to determine the cause of death when it occurs suddenly, suspiciously or unnaturally; preparing autopsy reports and giving evidence at coroners' inquests. The SPD supports the Police Service of Northern Ireland and the Public Prosecution Service by attending scenes of death or crime, by providing expert forensic pathology opinion and advice to them and by giving evidence in court.

6.14 These functions would be devolved and the SPD would become a department of the Department of Justice, operating at arms length from but accountable to Northern Ireland Ministers.

Key Persons Protection Scheme

6.15 Since the early 1970s successive Secretaries of State have operated and financed a limited discretionary scheme to protect the homes (and occasionally the workplaces) of certain individuals considered to be under a substantial or greater terrorist threat. In making decisions for admission to the scheme Ministers consider the individual's job or occupation, any wider role that he/she might be fulfilling and a threat assessment supplied by the Chief Constable. Applications that fall outside the strict eligibility criteria are also considered.

6.16 After devolution, and assuming that the scheme or something like it was still necessary, its operation would become the responsibility of Northern Ireland Ministers. Arrangements would need to be developed to ensure that they had access to appropriate information when considering an application, given that some of it might originate from sources within the excepted field.

Other UK bodies involved in tackling criminality in NI

6.17 HM Revenue & Customs (HMRC) is another law enforcement body that operates in Northern Ireland. Revenue and customs remain excepted matters and, as such, will not be devolved. The legislative framework underpinning revenue and customs officers will continue to be the responsibility of Parliament at Westminster. However, HMRC will continue to work closely with the police, and other partner agencies of the Organised Crime Task Force, following the devolution of policing and justice, to tackle organised crime in Northern Ireland.

6.18 The Assets Recovery Agency, Serious Organised Crime Agency and the UK Immigration Service are also involved in tackling criminality in Northern Ireland. The Assets Recovery Agency's aim is to disrupt organised criminal enterprises by seizing their criminal assets, using both civil recovery and taxation powers. The Serious Organised Crime Agency's main purpose is to prevent and detect serious organised crime and to reduce the harm it causes to the UK. All three organisations report to the Home Secretary and form part of the Home Office. Following the devolution of policing and justice it is envisaged that they will consult with Northern Ireland Ministers, where appropriate, instead of the Secretary of State.

Chapter 7

Prosecutions

Paragraph 9(d) of Schedule 3 to the Northern Ireland Act 1998

The Public Prosecution Service

7.1 The single most significant element of reform proposed by the Criminal Justice Review 2000 was the transformation of the existing Department of Public Prosecutions (DPPNI) into a new Public Prosecution Service for Northern Ireland (PPSNI). The PPSNI was formally established on 13 June 2005 using provisions set out in the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004.

7.2 The PPSNI when fully rolled out will be responsible for all prosecutions previously conducted by the DPPNI and those previously brought by the police. It will operate regionally, establishing local offices in Belfast, Londonderry, Ballymena, Omagh, Newry and Lisburn. In order to be able to take on this role fully, the new Service is being greatly increased in size. Full roll-out of the new PPSNI is planned for 2007.

7.3 The head of the PPSNI is the Director of Public Prosecutions for Northern Ireland. The PPSNI is an independent prosecuting authority subject, currently, to the superintendence and direction of the Attorney General, and is accountable to the Attorney for the performance of his functions. The Attorney is in turn answerable to Parliament for the PPSNI. The Attorney is not engaged in the day to day running of the Service but may be consulted in respect of certain prosecutorial decisions. Even when consulted, the prosecutorial decision rests with the Director unless it requires the consent of the Attorney or the Attorney exercises his power to direct. The power of direction has not been used since the early 1970s.

7.4 As well as looking at existing arrangements, the Criminal Justice Review was tasked specifically to look at how prosecutions, and the Attorney General's other functions in relation to Northern Ireland, should operate once they were devolved. Flowing from the Review recommendations, the Justice (Northern Ireland) Act 2002 sets out the arrangements for a post-devolution environment.

7.5 The current position is that one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Under devolution a new Attorney General for Northern Ireland (Attorney General NI) will be created. The Attorney General for Northern Ireland will be appointed by the First Minister and deputy First Minister, after consulting the Advocate General for Northern Ireland (see below).

7.6 Following devolution and the end of Ministerial responsibility for the prosecution service, the Director's relationship with the Attorney General for Northern Ireland will be one of consultation. The Attorney General NI will have no power of direction or superintendence over the PPSNI, whether in individual cases or on matters of policy. This underpins the independence which was a key recommendation of the Criminal Justice Review.

7.7 The Attorney General NI will be responsible for appointing the Director and Deputy Director of Public Prosecutions. He will also require the Director to prepare an annual report on how he has exercised his functions, and will arrange for that report to be published and to be laid before the Assembly. The Director will not be required to answer to the Assembly except in relation to finance and administration and will consult the Attorney General NI where appropriate.

7.8 The independence and impartiality of the prosecution system are fundamental principles of the UK justice system. The Government will put forward a Concordat setting out the core principles of the independence and impartiality of the Public Prosecution Service in Northern Ireland, which would be agreed with the Northern Ireland Executive before devolution.

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 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.

Chapter 8

Treatment of Offenders

Paragraph 9(e) of Schedule 3 to the Northern Ireland Act 1998

Prisons

8.1 The Northern Ireland Prison Service is an executive agency of the Northern Ireland Office. It operates under the direction and control of the Secretary of State within a statutory framework based on the Prison Act (Northern Ireland) 1953 and the Prison and Young Offenders' Centre Rules (Northern Ireland) 1995. It is responsible for keeping in secure, safe and humane custody those committed by the courts. It works with prisoners and other organisations in seeking to reduce the risk of re-offending and in so doing aims to protect the public and contribute to peace and stability in Northern Ireland.

8.2 The prisons function would be devolved and the Northern Ireland Prison Service would become an agency of a Department of Justice accountable to the Northern Ireland Minister for justice.

Prisoner Ombudsman

8.3 The Prisoner Ombudsman is responsible for the investigation of complaints made by prisoners that cannot be resolved through the Prison Service's complaints procedure and for the independent investigation of any deaths in prison custody. The Ombudsman is currently appointed by the Secretary of State. On devolution the power of appointment would pass to Northern Ireland Ministers.

Probation Board for Northern Ireland

8.4 The Probation Board for Northern Ireland (PBNI) is a Non-Departmental Public Body established under the Probation Board (NI) Order 1982. The Board is appointed by the Secretary of State on a 3-year term and consists of a Chairman, Deputy Chairman and between 10 and 18 members. The aim of the Board is to help reduce crime (and the harm it does) by the provision of an adequate and efficient probation service.

8.5 The PBNI works with offenders who are subject to probation orders, community service orders and combination orders. They are also responsible for supervising those children serving the second half of a Juvenile Justice Centre Order and for the provision of grants for community development purposes.

8.6 Probation would be devolved and responsibility for the PBNI would be transferred to the Department of Justice. The Board and its members would be appointed by and accountable to the Northern Ireland Minister for justice. Following from Recommendation 222 of the Criminal Justice Review, the Assembly could legislate to change the status of the PBNI if it decided that Agency status would be a more appropriate means of delivering Probation services.

Youth Justice Agency

8.7 The youth justice system deals with children aged between 10 and 17. The main functions exercised within that system are delivered by the Youth Justice Agency, an executive agency of the NIO. It carries out its functions under the provisions of the Criminal Justice (Children) (NI) Order 1998 and the Justice (NI) Act 2002. Policy oversight and scrutiny of the Agency is carried out within the Criminal Justice Directorate of the Northern Ireland Office.

8.8 The Youth Justice Agency is responsible for a range of functions. In terms of custodial facilities, it operates the single Juvenile Justice Centre at Rathgael, near Bangor, which accommodates boys and girls who are committed to custody by courts or who are in need of a place of safety under Police and Criminal Evidence procedures.

8.9 The Agency's community services provide a Northern Ireland-wide network of projects which deliver a range of community orders, as well as working in partnership with other organisations to divert children away from crime and the criminal justice system. In addition, the Agency is responsible for the provision of a Youth Conferencing Service, currently being rolled out across Northern Ireland, to provide for diversionary and court-ordered youth conferences – a recent development in sentencing options for the Youth Courts, which give victims a stake in the outcome.

8.10 Youth Justice would be devolved as part of the devolution of policing and justice functions, and the Youth Justice Agency would become an agency of a Department for Justice, accountable to the Northern Ireland Minister for justice.

Mentally disordered offenders

8.11 The arrangement of secure hospital facilities is already a transferred matter and, when the Assembly is operational, is the responsibility of the devolved administration in Northern Ireland. However, the Secretary of State retains some statutory functions in relation to mentally disordered offenders (on the release and transfer of restricted patients).

8.12 Where a mentally disordered offender is made the subject of a hospital order or is given a prison sentence and subsequently transferred to a hospital for treatment, he or she may also be made subject to special restrictions where this is necessary for the protection of the public. Unless directed or ordered by the Mental Health Review Tribunal, a restricted patient may not be discharged, transferred or granted leave of absence without the consent of the Secretary of State. The Secretary of State has powers to direct that a patient no longer be subject to a restriction order and may discharge patients from hospital. He may also recall patients who he has discharged or who have been discharged by the Tribunal.

8.13 Following devolution of policing and justice, these functions would transfer to the Northern Ireland Minister for justice.

Life Sentence Review Commissioners

8.14 The Life Sentence Review Commissioners (LSRC) are appointed by the Secretary of State in accordance with Article 3(1) of the Life Sentences (Northern Ireland) Order 2001.

8.15 Commissioners are appointed for a renewable 5 year period, subject to the statutory age limit of 70 years of age, and may not be removed from office or prevented from taking a second term of office, without consultation with the Lord Chief Justice (NI). (The current commissioners were appointed on 9 September 2002.)

8.16 The Order requires, where practicable, that the Commissioners include individuals with specific professional qualifications or experience in the legal, medical, criminological and rehabilitative fields. Appointments are also made from those with a lay background so as to include an independent community based dimension.

8.17 At present there are 25 Commissioners in post, one of whom has additionally been appointed as Chairman. The Commissioners are supported by a full time Secretariat.

8.18 In accordance with the 2001 Order and associated Rules, the Commissioners are primarily responsible for assessing life sentence prisoners and considering them for release once the minimum period set by the court has expired. When they are satisfied that it is no longer necessary for the protection of the public that a life sentence prisoner be confined, the Commissioners will direct the Secretary of State to release him. Commissioners are also involved in examining the cases of prisoners recalled to custody and in making recommendations on issues of prisoner management and rehabilitation.

8.19 Responsibility for oversight of the LSRC and the operation of their functions lies within the Criminal Justice Directorate of the Northern Ireland Office. The functions carried out by the LSRC would be devolved and the Northern Ireland Minister for justice would be responsible for appointments to the Commission and oversight of its operation.

8.20 New administrative arrangements will need to be developed to ensure that, when making their decisions, Commissioners have access not only to relevant information from the devolved administration (provided from the Prison Service and the Police Service for Northern Ireland via Northern Ireland Ministers) but also to appropriate information which falls within the excepted field (and thus would need to come via the Secretary of State).

The Sentence Review Commissioners

8.21 The Sentence Review Commissioners are appointed by the Secretary of State in accordance with Section 1 of the Northern Ireland (Sentences) Act 1998. Their principal function is to implement the arrangements under that Act for the accelerated release of prisoners convicted for 5 years or more of scheduled offences in Northern Ireland or of similar offences committed elsewhere.

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.

Northern Ireland (Remission of Sentences) Act 1995

8.23 The 1995 Act increased from one third to one half the period of remission available to certain individuals convicted of scheduled offences. It provides that where such a person is released at the 50% point of his sentence he is on licence until he reaches the two thirds point of that sentence. The Act confers on the Secretary of State power to revoke a person's licence and recall him to prison in prescribed circumstances. The Secretary of State is also empowered to suspend the early release provisions of the Act. The Secretary of State's role 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.

Chapter 9

Compensation

Paragraph 9(g) of Schedule 3 to the Northern Ireland Act 1998

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).

9.2 The Agency is headed by a Chief Executive and is accountable to the Secretary of State. Policy oversight and scrutiny of the Agency is carried out within the Criminal Justice Directorate of the Northern Ireland Office.

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.)

Criminal Injuries Compensation Appeals Panel

9.5 The Criminal Injuries Compensation Appeals Panel Northern Ireland deals with appeals against decisions about compensation, made under the Northern Ireland Criminal Injuries Scheme (Tariff) 2002, by the Compensation Agency. The panel is a Non-Departmental Public Body funded by the Northern Ireland Office, but independent of it, although members of the appeals panel are appointed by the Secretary of State.

9.6 The panel's functions would be devolved so that it would be funded by the Department of Justice and the Northern Ireland Minister for justice would be responsible for appointments to the panel.

Chapter 10

Community Safety Partnerships

Paragraph 9(h) of Schedule 3 to the NIA, inserted by section 83 of the Justice (NI) Act 2002

10.1 There are, at present, twenty six Community Safety Partnerships (CSPs) across Northern Ireland, one in each district council area, which operate on a *voluntary* basis. The CSPs listed in Schedule 3 to the Northern Ireland Act 1998 are *statutory* partnerships, provided for in the Justice (Northern Ireland) Act 2002. The Secretary of State has not exercised the powers under section 72 of that Act to place these partnerships on a statutory basis.

10.2 The Review of Public Administration (RPA) has recommended a reduction in the number of Councils which will have a direct impact on reducing the number of CSPs. Consideration is being given to enacting Section 72 in line with the changes flowing from the RPA.

10.3 Following devolution, the responsibility for exercising what are currently the Secretary of State's functions in respect of CSPs would fall to the Northern Ireland Minister for justice.

Chapter 11

Chief Inspector of Criminal Justice

Paragraph 9A of Schedule 3 to the Northern Ireland Act 1998, inserted by the Justice (NI) Act 2002

11.1 The Criminal Justice Review recommended the establishment of an independent Criminal Justice Inspectorate for Northern Ireland (CJINI) to be responsible for ensuring the inspection of all aspects of the criminal justice system, excluding the courts. Section 45 of the Justice (NI) Act 2002 provides for the creation of an office of Chief Inspector of Criminal Justice in Northern Ireland, to be appointed by the Secretary of State. Schedule 8 to the 2002 Act makes provision dealing with the practical aspects of the office such as tenure, staff, delegation of powers, etc.

11.2 The current Chief Inspector was appointed and the Inspectorate established in October 2004. Currently the CJINI inspects 20 organisations and has published a number of reports to date.

11.3 Following devolution the CJINI would retain its independence and fulfil the same functions. The functions currently conferred on the Secretary of State would be devolved to the Northern Ireland Minister for justice.

Chapter 12

Public Order

Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998

12.1 The maintenance of public order is an operational responsibility for the police. Public order offences include disorderly behaviour, riotous behaviour, unlawful assembly, affray and breach of the peace. Incidents of public disorder range significantly in scale and scope: a fracas outside a public house counts as public disorder as do the most serious incidents of widespread rioting and serious violence.

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.

Legislative framework for policing public order

12.3 As well as drawing on general constabulary powers, the police rely on the Public Order (Northern Ireland) Order 1987 to deal with serious public disorder. They also currently use the Terrorism Act 2000, in particular part VII powers in respect of requisitioning and road closures, although the provisions are intended to be repealed as part of the current normalisation process, so are unlikely to be in use by the time public order is devolved.

The Parades Commission

12.4 The Parades Commission was established by the Public Processions (Northern Ireland) Act 1998 and consists of a Chairman and six members appointed by the Secretary of State. It is treated as an Executive Non-Departmental Public Body for management purposes and is funded entirely by the NIO. Its principal functions are to facilitate mediation between parties to disputes concerning public processions, and issue determinations where agreement between the parties cannot be reached.

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.

12.6 While retaining responsibility for parades legislation – or even just for appointments to the Parades Commission – within the reserved category is markedly less desirable than devolving them, these are options that could be considered by the Assembly in taking a decision about which aspects of the currently “reserved” list it wants to see transferred.

Chapter 13

The Police and the Policing Accountability Framework

Paragraph 11 of Schedule 3 to the Northern Ireland Act 1998

13.1 The Police Service of Northern Ireland is the organisation established in law to maintain law and order in Northern Ireland and it comes under the direction and control of the Chief Constable. The Patten Commission recommended that the Chief Constable should be operationally responsible for the direction and control of the police (as is the case in Great Britain) and accountable to a cross-community Policing Board, except on matters of national security.

13.2 There are a range of other organisations within the policing family in Northern Ireland. This section of the discussion document describes their various functions, the current role of the Secretary of State in their work and/or regulation, and the implications that the devolution of policing and justice would have for them. It should be read in conjunction with the relevant chapters on the prevention and detection of crime (chapter 6) and on excepted matters (chapter 18).

The Northern Ireland Policing Board

13.3 Part II of the Police (NI) Act 2000 (as amended by the Police (NI) Act 2003) established the Northern Ireland Policing Board and set out its statutory duties, powers and responsibilities. The Policing Board is one of the key elements of the police accountability architecture as set out by the Patten Report and has all the powers Patten recommended.

13.4 The Board's principal function is to secure the maintenance, efficiency and effectiveness of the police in Northern Ireland. In discharging this function, the Board must hold the Chief Constable and the PSNI to account for the performance of their duties. The Board must also:–

- monitor the effectiveness of the PSNI in counteracting crime, and encourage the public's co-operation with the police in the prevention of crime;
- monitor the performance of the police in carrying out its general duties, in complying with the Human Rights Act 1998, and implementing the Annual Policing Plan;
- keep itself informed about the workings of Part VII of the Police (Northern Ireland) Act 1998 (police complaints and disciplinary proceedings);
- monitor the trends and patterns in complaints against the police, and recruitment to the police and police support staff;
- oversee the manner in which public complaints against traffic wardens are dealt with by the Chief Constable;
- assess the effectiveness of measures taken to ensure that its membership and support staff is representative of the community, and to assess the level of public satisfaction with the performance of the police and District Policing Partnerships (DPPs); and
- assess the effectiveness of the DPPs and the measures taken by them to obtain the views of the public about policing matters.

Appointment of members

13.5 When the Assembly is in operation, the Board's membership is made up of 10 MLAs, appointed in proportion to the parties' strength in the Assembly, using the d'Hondt formula, plus nine independent members appointed by the Secretary of State. Responsibility for the appointment of independent board members would transfer to the Northern Ireland Minister for policing, following devolution.

Funding

13.6 The Policing Board's funding currently comes from the Northern Ireland Office, from funds allocated by Parliament, and the NIO therefore has responsibility for ensuring high standards of financial propriety and value for money within the Board's operation. Following devolution, it will be for the Assembly and the Northern Ireland Minister for policing to allocate funding from within the Northern Ireland block grant. As well as financing the police service itself, and in accordance with the Police (NI) Act 2000, the Board is provided with funding to cover 75% of the expenses incurred by District Policing Partnerships.

Devolution of Board functions

13.7 Patten also recommended that the powers of the Policing Board should in no way be diminished when responsibility for policing is devolved. The Government has accepted this recommendation, and will transfer responsibility for the Board's statutory framework, except where this relates to excepted matters. The detail of the relationship between the Board, the Northern Ireland Minister for policing and an Assembly policing committee will need to be determined before policing and justice are devolved.

District Policing Partnerships (DPPs)

13.8 The Patten Commission recommended that each district council in Northern Ireland should be required to establish a District Policing Partnership. Patten also recommended that they should be co-terminous with District Command Units. There are therefore currently 26 DPPs and 4 sub-groups in Belfast. The Review of Public Administration will, however, have an impact on the number of both District Command Units and DPPs. The Police (NI) Act 2000 (as amended by the Police (NI) Act 2003 and the DPP (NI) Order 2005) sets out the general functions of DPPs and places a requirement on the Policing Board to produce a Code of Practice containing guidance as to the exercise by DPPs of their functions.

13.9 The role of the DPPs is a consultative, explanatory and monitoring one. In summary their functions are:

- to articulate community views on the policing of their district;
- to contribute to the formulation on policing plans and priorities;
- to monitor police performance at district level;
- to report on these matters to the Board and Council; and
- to obtain the co-operation of the public with the police with a view to preventing crime.

13.10 Like the Policing Board, and as recommended by Patten, DPP membership is a mix of elected and independent members. The independent members are appointed by the Board in accordance with the requirements set out in the legislation and a Code of Practice issued by the Secretary of State.

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.

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.

13.14 The Patten Report recognised that the Chief Constable must have sole operational responsibility and neither the Government nor the Policing Board should have the right to direct him or her as to how to conduct an operation. However, the Report also recognised that it was important to be clear that a Chief Constable, like any other public official, must be both free to exercise his or her responsibilities and also capable of being held to account afterwards for the manner in which these responsibilities are exercised.

13.15 Ministers also have a general duty under section 69 of the Police (NI) Act 2000 to promote the efficiency and effectiveness of the police and have regard to the principle that policing in Northern Ireland is to be conducted in an impartial matter.

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.

Funding and audit arrangements

13.17 The roles of the Secretary of State, Policing Board and PSNI in respect of responsibility for police funding are set out in Section 9 of the Police (NI) Act 2000. Linked to that, arrangements for setting policing objectives and oversight of police

performance and accountability are contained within sections 24-7 of that Act. Funding for policing is provided by the Secretary of State to the Policing Board, and it is then for the Policing Board to set the budget for the Police Service of Northern Ireland. Following devolution of policing, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing. Some limited funding, in the form of grants will, as at present, continue to be provided from the Home Office. This includes, for example, Northern Ireland's share of assets seized.

13.18 The Police (NI) Act 1998 gives the Secretary of State the power to appoint, from among Her Majesty's Inspectorate of Constabulary (HMIC), an inspector to carry out an annual inspection into the efficiency and effectiveness of the PSNI. The inspector reports his findings to the Chief Constable. Following devolution of policing, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing. Unless the Assembly legislated otherwise, the Minister would, however, continue to be obliged to select the inspector from the HMIC, whose members are appointed by the UK Government.

13.19 There are further arrangements set out in the Police (NI) Act 2000 for auditing the PSNI's value for money. The National Audit Office (NAO) carries out regular "best value" assessments of the PSNI and reports to the Secretary of State. The Secretary of State has the power to direct the Policing Board to take action should he receive an unfavourable report from the NAO. Following devolution of policing, the Secretary of State's role would transfer to the Northern Ireland Minister for policing. The role of the National Audit Office would transfer to the Northern Ireland Audit Office.

Pay and pensions

13.20 Sections 25 and 26 of the Police (NI) Act 1998 give the Secretary of State power to make regulations for a wide range of pay and conditions of service issues for police officers serving in Northern Ireland, both regular officers and reservists. Section 62 of the Police Act 1996 requires him to take into account decisions reached at the UK Police Negotiating Board when setting pay and terms & conditions of service.

13.21 Following devolution of policing to the Assembly, it would be the responsibility of the Northern Ireland Minister for policing to set police pay and conditions of service. In carrying out this function, the Minister would, unless the Assembly legislated otherwise, continue to be obliged to take into account decisions reached at the UK Police Negotiating Board.

13.22 Section 25 of the Police (NI) Act 1998 allows the Secretary of State to make regulations providing for pensions and gratuities in respect of service as a member of the PSNI. As with pay, this would become the responsibility of the Northern Ireland Minister for policing following devolution.

13.23 The Secretary of State is responsible for appointing independent persons to decide on any medical appeals under the Pensions regulations. Following devolution, this will become the responsibility of the Northern Ireland Minister for policing.

Recruitment and appointments

13.24 Recruitment to the PSNI is a matter for the Chief Constable and the Policing Board, in accordance with the statutory framework set out in the Police (NI) Act 2000. That would continue to be the case following devolution of policing.

13.25 This section sets out the Secretary of State's current responsibilities in this area (executive and legislative), and the implications of devolution. Arrangements for dealing with personnel exchanges between the PSNI and An Garda Siochana are discussed in more detail in Chapter 17.

Senior appointments

13.26 The Secretary of State currently has a role in approving the Policing Board's appointment of the Chief Constable or any senior officer, and of any call by the Board on the Chief Constable or any senior officer to retire in the interests of efficiency or effectiveness. This role would transfer to the Northern Ireland Minister for policing on devolution.

Vetting appeals

13.27 As recommended by the Patten Commission and in line with arrangements in the rest of the UK, the Chief Constable is required to set up a vetting panel to decide on the suitability of individual candidates. The criminal convictions that would be likely to debar candidates are set out in regulations. In addition, the panel may take into account terrorist connections or other factors. A candidate has a right of appeal against the panel's decision. Appeals are heard by an Independent Assessor, appointed by the Secretary of State following consultation with the Policing Board. Responsibility for appointing the Independent Assessor, following devolution, would fall to the Northern Ireland Minister for policing.

Temporary 50:50 provisions

13.28 The Police (NI) Act 2000 currently makes temporary provisions allowing the Chief Constable to exercise limited positive discrimination in appointments to the PSNI (both in terms of regular officers and for some competitions for support staff) so that where a pool of qualified applicants for a post exists, he can appoint equal numbers of Catholics and non-Catholics. The operation of these powers is known as the "50:50 provisions". The temporary provisions also allow the Chief Constable and the Policing Board to make appointments at other ranks from suitably qualified external candidates.

13.29 The temporary provisions include a UK derogation from the EU Directive 2000/78/EC and the arrangements set out in:

- article 40A of the Race Relations (NI) Order 1997;
- article 71A of the Fair Employment & Treatment (NI) Order 1998; and
- sections 44(5)-(7), 45 & 46 of the Police (NI) Act 2000.

13.30 The Secretary of State has the power, in certain circumstances, to amend the 50:50 quotas by Order if there are insufficient numbers from one or other section of the community to meet recruitment requirements.

13.31 The purpose of these provisions was to address the historic under-representation of Catholics in the police service in Northern Ireland but, as temporary provisions, they expire if not renewed by Parliament every three years. The provisions were last renewed in 2004, to run until 30 March 2007.

13.32 In deciding whether to bring forward an order to renew the provisions, the Secretary of State must consult the Policing Board and take into account any recommendations it makes before making an Order, which is subject to Parliamentary approval. Current patterns project a steady progression towards the target of 30% Catholic composition by 2010/11. The Government remains committed to the use of the temporary provisions until this has been achieved.

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.

13.34 Responsibility for seeking a derogation from Directive 2000/78/EC will continue to be a matter for the UK Government.

Severance

13.35 There are currently two severance schemes in operation in PSNI: a voluntary severance scheme, effective from January 2001, to provide enhanced benefits to officers leaving the service under the terms of the scheme and a separate scheme for members of the Full Time Reserve (FTR) as a direct result of the Chief Constable's decision, in line with Patten, to phase out 807 FTR posts between April 2005 and September 2006.

13.36 The numbers to be accepted each year for the voluntary scheme (which is open to both regular and FTR officers) are controlled by criteria set by the Chief Constable. The rules governing the scheme are set out in regulations made by the Secretary of State and the NIO has a responsibility for ensuring that the scheme continues to meet its objectives and provides value for money. The scheme will run until 2010 or such other date as specified by the Secretary of State. The Secretary of State and the NIO will have similar responsibilities in respect of the FTR severance scheme.

13.37 On devolution the Secretary of State's responsibilities in this area will transfer to the Northern Ireland Minister for policing, provided devolution occurs before either or both schemes expire.

Alternatives to Plastic Baton Rounds

13.38 The search for an effective and acceptable alternative to the Plastic Baton Round continues. The NIO led UK wide Steering Group was set up to take forward Recommendations 69 and 70 of the Patten Report.

13.39 The Group, made up of experienced policing practitioners, scientific and other expert advisers, initiated two separate research programmes that have led to the development of two new projectiles: the Attenuating Energy Projectile (AEP); and the Discriminating Irritant Projectile (DIP).

13.40 The AEP, which is a safer alternative to the baton round, was introduced operationally to police forces throughout England, Wales and Northern Ireland (and the army in NI) on 21 June 2005. The DIP is designed temporarily to incapacitate the individual through the delivery of a small cloud of irritant to the upper body and is being developed to a longer time scale.

13.41 The Oversight Commissioner has reported that Recommendation 69 has been achieved (June 2005). The Steering Group has also made significant progress with Recommendation 70 through the increased availability of Water Cannon, CS and PAVA sprays and Taser. Despite these developments Government remains committed to a longer term search for even more potentially less lethal alternatives.

13.42 In a devolved context the authorisation for use of Less Lethal Weaponry will remain an operational decision for the Chief Constable. It is envisaged that the Minister with responsibility for policing will continue to take an active interest in maintaining close co-operation with the Home Office, Ministry of Defence and ACPO in terms of the research programme. Northern Ireland interests will continue to be represented at the Steering Group, or its successor body, though the Home Office will assume the Chair in summer 2006. This group will take forward UK interests within the international context.

Flags & emblems

13.43 Section 54 of the Police (NI) Act 2000 provides the Secretary of State with the power to regulate the design of the PSNI badge and the flag, and to regulate the flying of all flags from police buildings. Before making such regulations, the Secretary of State must consult the Policing Board, the Chief Constable and the Police Association.

13.44 Following the Policing Board's agreement on the design for the PSNI badge, the Secretary of State brought forward the Police Emblems and Flags Regulations (NI) 2002. The effect of these is that, in accordance with the recommendations of the Patten Commission, the PSNI flag is the only flag that may be flown in connection with the police and their buildings. The only exception is that, if the Queen visits a police building, the Royal Standard may be flown at that building. The regulations do not prescribe when the PSNI flag will be flown: this is a matter for the Chief Constable to decide.

13.45 It is proposed that the power to regulate as set out in Section 54 of the Police (NI) Act 2000 would transfer to the Northern Ireland Minister for policing.

Medals

13.46 At present, service medals to police officers in Northern Ireland are awarded under Royal Warrants that cover police officers throughout the United Kingdom. At present, regular members of the PSNI are eligible to receive a long service medal after 22 years' service while reservists qualify for a long service medal after 15 years' service. Following devolution of policing, policy for medal eligibility would continue

to be set by the UK Government. The delegated powers provided for under Royal Warrants would, however, transfer from the Secretary of State to the Northern Ireland Minister for policing.

Police complaints and the Police Ombudsman for Northern Ireland

13.47 The Police (NI) Act 1998 provides for a Police Ombudsman to investigate complaints into misconduct by police officers in Northern Ireland. The office was established in November 2000 and the Ombudsman currently has a staff complement of 128, including independent investigators from a variety of disciplines and cultures.

13.48 Like the Chief Constable, the Ombudsman is operationally independent and all complaints about the police must be referred to her. The complaints system is such that the Ombudsman provides the investigative role in handling a complaint and then makes recommendations to the Director of Public Prosecutions (where she believes a prosecution is warranted) or the Chief Constable (for disciplinary action).

13.49 In criminal cases, it is then for the Director to weigh the evidence provided by the Ombudsman and to decide whether to take forward a prosecution and, if a prosecution goes ahead, it is for the courts to decide on guilt and award any punishment if appropriate. In relation to disciplinary offences, it is for the Chief Constable to decide if the evidence warrants disciplinary action, undertake the disciplinary proceedings and award the punishment.

Appointment

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.

13.51 The legislation permits the Secretary of State to call on the Ombudsman to retire only in very limited circumstances. That responsibility would also devolve to Northern Ireland Ministers.

Funding & corporate governance

13.52 Funding for the Police Ombudsman's work is provided by the Secretary of State and he therefore has a responsibility to ensure that the organisation observes high standards of financial propriety and corporate governance. Following devolution, this responsibility would transfer to the Northern Ireland Minister for policing.

The wider policing family

Police Oversight Commissioner

13.53 The establishment of the time-limited Office of the Police Oversight Commissioner was one of the Patten Commission's recommendations. The

Commissioner's role is to oversee and report on the implementation of the 175 Patten recommendations. The Commissioner is appointed by the Secretary of State. In the event of policing being devolved before the Commissioner's post expires in May 2007, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing.

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 fulfil 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.

Police Association

13.55 Sections 32 & 33 of the Police (NI) Act 1998 provide for the existence of the Police Association to represent members of the PSNI in certain professional matters. The legislation also gives the Secretary of State certain statutory functions in relation to the Association, including the power to regulate its constitution and proceedings. Following devolution of policing, these responsibilities would transfer to the Northern Ireland Minister for policing.

Police Retraining and Rehabilitation Trust

13.56 The Secretary of State provides funding to the Police Retraining and Rehabilitation Trust (PRRT) for the provision of rehabilitation and support services to officers leaving the PSNI, and monitors the use of that grant to ensure value for money and high standards of financial propriety. This responsibility would transfer to the Northern Ireland Minister for policing.

Police Fund

13.57 The Police Fund was set up in 2001 to provide assistance, including financial, to police officers injured or disabled as a direct result of terrorism in Northern Ireland and their families, as well as police widows widowed through terrorism and their dependents. The Fund is a non-statutory company limited by guarantee, and made up of ten directors. As such, the Secretary of State has no statutory functions in respect of the Fund. However, it is financed by the Northern Ireland Office (currently receiving around £1.8m a year) and the Department oversees its corporate governance and financial propriety. Following devolution of policing, funding and oversight of the Police Fund would be a matter for the Northern Ireland Executive.

RUC George Cross Foundation

13.58 Section 70 of the Police (NI) Act 2000 gives the Secretary of State the power to establish and fund an RUC George Cross Foundation. The Foundation was established in September 2001 with HRH the Prince of Wales as its patron. The Foundation has a number of statutory functions including the following:

- the disbursement of funds and funding of projects commensurate with the aim of marking the sacrifices and honouring the achievements of the RUC;
- supporting the professional development of police officers and innovations in policing by means of bursaries and scholarships;
- undertaking joint initiatives with the Widows' Association and other groups within the police family; and
- taking responsibility for the Memorial Garden and a new police museum.

13.59 Following devolution of policing, the Secretary of State's functions would transfer to Northern Ireland Ministers.

RUC Widows' Association

13.60 The RUC Widows' Association was established nearly 25 years ago by the then Chief Constable, Sir John Hermon, to foster the social well-being, friendship, health, recreation and leisure of members of the Association and to strengthen and extend facilities for their children. Like the Police Fund, the Association is non-statutory. In addition to donations and members' subscriptions, and in line with a recommendation of the Patten Commission, the Association receives funding (currently in the region of £30-40,000) from the Northern Ireland Office, which also provides oversight of the Association's corporate governance. Following devolution of policing, responsibility for funding and oversight of the Association would fall to the Northern Ireland Executive.

Traffic wardens

13.61 The Department for Regional Development (DRD) has overall responsibility for road safety and the functions discharged by traffic wardens are in the process of being transferred to that Department.

Chapter 14

Firearms & Explosives

Paragraph 12 of Schedule 3 to the Northern Ireland Act 1998

14.1 The Secretary of State is responsible for policy on firearms in Northern Ireland. Policy development, legislation and general oversight is carried out within the Policing and Security Directorate in the Northern Ireland Office.

14.2 Firearms control in Northern Ireland is exercised principally under the Firearms (Northern Ireland) Order 2004. The day to day administration of firearms licensing is the responsibility of the Chief Constable. Fees for licenses are set by the Secretary of State.

14.3 The Secretary of State has a number of statutory functions including deciding appeals from persons aggrieved by decisions of the Chief Constable, deciding applications for the removal of a prohibition on holding firearms (people sentenced to certain periods of imprisonment are normally prohibited from holding firearms for 8 years or for life) and issuing museums firearms licenses. The Secretary of State also has powers, by Order, to prohibit movement of firearms and ammunition within or from Northern Ireland, and to make certain regulations.

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).

14.5 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.

Explosives

14.6 The Secretary of State is also responsible for policy and legislation on explosives, including 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 would 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.

Chapter 15

The Courts

Paragraphs 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998

15.1 The Courts and the Judiciary, together with a number of other related functions in Northern Ireland, are not currently the responsibility of the Secretary of State, but of the Lord Chancellor. The Lord Chancellor has responsibility for:

- matters relating to the courts including procedure, appeals, juries and enforcement of judgments and orders;
- legal aid and the Northern Ireland Legal Services Commission;
- judicial appointments and removals (including the Northern Ireland Judicial Appointments Commission);
- making recommendations to Her Majesty the Queen for appointment as Queen's Counsel; and
- a range of UK wide functions.

15.2 The Criminal Justice Review made a number of recommendations for changes to some of the above arrangements. The recommendations were given legislative effect by the Justice (Northern Ireland) Act 2002. It was originally intended that the provisions of that Act would be commenced upon devolution of justice, but the Justice (Northern Ireland) Act 2004 allowed for the establishment of the Judicial Appointments Commission ahead of devolution.

15.3 The Constitutional Reform Act 2005 (which extends to Northern Ireland) provides for the reform of the office of the Lord Chancellor in order to clarify the roles and responsibilities of the judiciary and the executive. Where post devolution provision has already been made by the Justice (Northern Ireland) Act 2002 in relation to the Lord Chancellor's role and responsibilities in Northern Ireland, the Constitutional Reform Act, which will come into force in April 2006, builds upon it. To avoid confusion in this paper, description of the way the system currently operates is to be taken as that which applies as of April 2006.

The Courts

Lord Chancellor's responsibilities for courts in Northern Ireland (after April 2006)

15.4 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.

15.5 On devolution, the Lord Chancellor's responsibilities in relation to the courts would transfer to the Northern Ireland Minister for justice.

Lord Chief Justice of Northern Ireland's responsibilities for the Courts in Northern Ireland (after April 2006)

15.6 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; assignment of individual judges; appointment of judicial members to court Rules Committees; distribution of business within the same court tier; making of procedural rules for coroners' courts after consultation with the Lord Chancellor; nominations to various posts (for example, Presiding County Court Judge); and handling of complaints against members of the judiciary. It is not intended to disturb these arrangements on devolution of justice.

The Northern Ireland Court Service

15.7 The Northern Ireland Court Service was established in 1979 as a separate Civil Service in Northern Ireland. It is the Lord Chancellor's department in Northern Ireland and it supports the Lord Chancellor in fulfilling his responsibilities here. The main role of the Court Service is to provide the administration for courts across Northern Ireland (including the Enforcement of Judgements Office, the Fixed Penalty Office, the Court Funds Office, the Office of the Chief and other Social Security Commissioners and the Child Support Commissioners). It also currently provides the Lord Chancellor with policy advice and legislative support relating to his ministerial responsibilities in Northern Ireland.

15.8 Responsibility for the Court Service will be devolved to the Northern Ireland Minister for justice. The Criminal Justice Review envisaged that following devolution the Northern Ireland Court Service would become an executive agency of a Department of Justice, headed by a Chief Executive. This view is supported by the Government.

15.9 The Agency will provide the administrative support for the courts in Northern Ireland, but we will need to consider whether it should continue to deliver policy advice and legislative support, or whether these functions should transfer to the core Department of Justice.

Legal Aid

15.10 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.

Inspection of the Court Service

15.11 At present the Chief Inspector of Criminal Justice for Northern Ireland (see chapter 11) is responsible for ensuring the inspection of all the criminal justice system except the Courts, although the Northern Ireland Court Service currently co-operates fully with all relevant Criminal Justice Inspectorate activity on a non-statutory basis. Consideration will be given to including the administration of the courts within the Inspector's formal remit.

Social Security Commissioners and Child Support Commissioners

15.12 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

15.13 The Constitutional Reform Act 2005 provides for the establishment of a new Supreme Court of the United Kingdom which will replace the appellate jurisdiction of the House of Lords and the devolution jurisdiction of the Privy Council. That Act amends the Northern Ireland Act 1998 so as to provide that the UK Supreme Court is an excepted matter, but that appeals to it and associated legal aid are reserved matters. This preserved the current position in relation to the House of Lords.

15.14 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.

The Judiciary

Judicial independence

15.15 It is a core principle of the criminal justice system that judges, like the prosecution service, should be independent of government. Taken together the Justice (Northern Ireland) Act 2002 and the Constitutional Reform Act 2005 place a duty on Northern Ireland Ministers to uphold the continued independence of the judiciary. They provide that Northern Ireland Ministers must not seek to interfere with any particular judicial decision.

15.16 The Government will put forward a Concordat setting out the core principles of the independence and impartiality of the Judiciary in Northern Ireland, to be agreed with the Northern Ireland Executive before devolution.

Roles and responsibilities of the Lord Chief Justice of Northern Ireland and the Lord Chancellor in relation to the judiciary

15.17 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

Senior Judges (Lord Chief Justice, Lord Justices of Appeal)

15.18 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.

15.19 On devolution of justice functions, 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.

Other Listed Judicial Offices

15.20 Currently appointments to the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (offices up to and including High Court judge) are to be made on the recommendation of the Northern Ireland Judicial Appointments Commission, which is chaired by the Lord Chief Justice. The Lord Chancellor may require the Commission to reconsider its decision, giving reasons for so requiring. Where the Judicial Appointments Commission reconsiders and reaffirms or reselects a candidate, the Lord Chancellor must proceed with the appointment.

15.21 On devolution of justice functions, the Lord Chancellor's responsibilities in relation to the appointment of listed judicial offices and the Northern Ireland Judicial Appointments Commission would transfer to the First Minister and deputy First Minister acting jointly.

Removal of Judicial office holders

Senior Judges (Lord Chief Justice, Lord Justice of Appeal & High Court judge)

15.22 The Lord Chief Justice, a Lord Justice of Appeal or a High Court judge may be removed from office by Her Majesty following an address by Parliament on grounds of misbehaviour. The procedure for such removal follows closely the post devolution arrangements provided in the 2002 Act detailed below.

15.23 On devolution of justice functions, removal of the Lord Chief Justice, a Lord Justice of Appeal or a High Court judge (*appointed before devolution*) will be by Her Majesty following an address by Parliament, on the recommendation of an

independent removals tribunal. Post devolution the Lord Chancellor would continue to be responsible for:

- making a motion to the House of Lords for the presentation of an address to Her Majesty the Queen for removal from office;
- receiving a recommendation from a removals tribunal;
- laying a copy of the report of a removals tribunal before the House of Lords; and
- selecting judicial members of a removal tribunal in consultation with the most senior judicial office holder in each of the specified court tiers.

Other Listed Judicial Offices

15.24 Listed judicial office holders (i.e. offices listed in Schedule 1 to the 2002 Act), other than High Court judges appointed before devolution, may be removed by the Lord Chancellor on grounds of misbehaviour or inability to perform after consulting the Lord Chief Justice, following a recommendation of an independent removals tribunal.

15.25 On devolution of justice functions, 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

15.26 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.

15.27 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.

Judicial salaries, pensions, terms and conditions

15.28 Determination of remuneration, superannuation, and terms and conditions of service for the judiciary (other than removals from office) is an excepted matter, so that policy and legislative responsibility would remain with the Lord Chancellor after devolution. Further work will need to be done to develop appropriate arrangements for funding and administering salaries after devolution.

QC Appointments

15.29 The Lord Chancellor currently makes a recommendation for appointment to Her Majesty the Queen, acting on the advice of a panel convened for the purpose. Responsibility for making recommendations to Her Majesty the Queen will be reviewed when the outcome of a more general consideration about the future of the rank of Queen’s Counsel is known.

Miscellaneous UK-wide Lord Chancellor functions

Court-related functions

15.30 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.

Appointment functions

15.31 The Lord Chancellor also has responsibility for a range of appointments and associated functions for various statutory tribunals which have a UK-wide jurisdiction. In general these fall into three categories, which, in the Government’s view, require slightly different treatment in the context of devolution. The table below sets this out:

| Category | Proposed treatment |
|---|--|
| Tribunals where the Lord Chancellor will exercise his appointment function in consultation with the heads of the judiciary in each of the three UK jurisdictions. | These arrangements should continue to apply post-devolution. |
| Arbitrators, referees and an advisory body where the appointments do not fall within the remit of the Judicial Appointments Commission in either England & Wales or Northern Ireland. | The Lord Chancellor’s appointment functions should devolve to Northern Ireland Ministers. |
| Tribunals where the Lord Chancellor makes some appointments to UK-wide tribunals after consultation with the Secretary of State for Northern Ireland and Scottish Ministers. | The consultation role afforded to the Secretary of State for Northern Ireland should transfer to Northern Ireland Ministers. |

Other UK-wide ministerial functions

15.32 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 requires to be made.

Chapter 16

Northern Ireland Law Commission

Paragraph 15A of the Northern Ireland Act 1998, inserted by section 83 of the Justice (Northern Ireland) Act 2002

16.1 The Criminal Justice Review (see recommendations 244-255) recommended the establishment of an independent Northern Ireland Law Commission to keep under review both criminal and civil law in Northern Ireland. Sections 50 to 52 of, and Schedule 9 to, the Justice (Northern Ireland) Act 2002 makes provision for its establishment.

16.2 Recommendation 255 stated that, in the event of criminal justice responsibilities being devolved, responsibility for the Northern Ireland Law Commission should be brought within a new Department of Justice. The Government's position is that responsibility for the Law Commission should transfer to the Northern Ireland Minister for justice.

Chapter 17

North-South Cooperation

17.1 This chapter sets out current arrangements for formal co-operation between Northern Ireland and the Republic of Ireland in the justice and policing fields. These are in addition to the normal contacts and co-operation which exist between agencies on both sides of the border.

17.2 It will be a matter for the North-South Ministerial Council and subsequently the Assembly and the Irish authorities to decide whether more formal arrangements should be set up post-devolution.

Criminal Justice co-operation

17.3 The Criminal Justice Review (2000) made several recommendations relation to co-operative working between Northern Ireland and Ireland, including the establishment of a group of criminal justice policymakers from the two jurisdictions (recommendation 278). In the Updated Implementation Plan (2003) the two Governments set out their intention to reach an Intergovernmental Agreement on co-operation in criminal justice matters within the framework of the British-Irish Intergovernmental Conference (BIIGC).

17.4 The Intergovernmental Agreement on criminal justice co-operation between Northern Ireland and Ireland was signed on 26 July 2005. The Agreement formally set in place a structure for work on co-operation between the criminal justice agencies in Northern Ireland and Ireland. It established a meeting of relevant Ministers at least once a year, and a meeting of the supporting Working Group of officials twice annually. The Ministerial Meeting operates under the auspices of and is accountable to the British-Irish Intergovernmental Conference (BIIGC) and provides periodic reports on its work to the BIIGC. The Working Group initiates work programmes addressing areas for cooperative working identified in the Criminal Justice Review and looks at further areas of work that could be taken forward.

17.5 The group and its work programme are wholly within the Strand Three arrangements set out in the Belfast Agreement, and the intergovernmental Agreement applies only to such functions as are not devolved. In the event of devolution the responsible Ministers may review the operation of the structures established by the Agreement.

Policing co-operation

17.6 The PSNI and Garda Siochana continue to work together to develop policing co-operation and tackle crime in a number of areas such as organised crime and drugs. This has been facilitated by existing good relationships and the implementation of legislation and arrangements aimed at exchanging officers.

Personnel exchanges between PSNI and An Garda Siochana

17.7 The Patten Commission recommended that “there should be a programme of long-term personnel exchanges, such as fixed-term secondments, between the Northern Ireland police and the Garda Siochana, in specialist fields where

co-operation between the two services is most needed, such as drugs, and in areas such as training.”

17.8 Section 56 of the Police (NI) Act 2000 states that the Policing Board and Chief Constable shall implement any arrangements made 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.

17.9 There are three types of movement between the forces:

- personnel exchanges – exchange for all ranks, without policing powers, for up to one year;
- secondments – the secondment of ranks sergeant to chief superintendent, with policing powers, for up to three years; and
- lateral entry – the permanent transfer of officers for ranks above inspector and under assistant chief constable.

17.10 The administrative measures for both personnel exchanges and secondments are facilitated by the Joint Protocols signed by the Chief Constable and Garda Commissioner on 21 February 2005. The legislative measures required for the secondment programme are provided in the Police Service of Northern Ireland (Secondment) (Garda Siochana) Regulations 2004.

17.11 Whilst the final provisions necessary to implement secondments and lateral entry between both services are not yet in place, the arrangements for personnel exchanges of officers are. The first mutual personnel exchange programme commenced on 10 October 2005.

17.12 Legislation on this matter is currently the responsibility of Parliament at Westminster and the Secretary of State and, under the terms of paragraph 3 of Schedule 2 to the Northern Ireland 1998, responsibility for signing or amending an international Agreement of this nature with another sovereign State would remain with the UK Government even following the devolution of policing and justice.

17.13 At the same time, it is important to give Northern Ireland Ministers as much flexibility as possible to facilitate closer co-operation between the PSNI and Garda Siochana across all areas of the Inter-Governmental Agreement on Policing Co-operation.

17.14 For that reason the 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.

Chapter 18

Excepted Matters (including national security and extradition)

National security: transfer of primacy

18.1 National Security is an excepted matter under the Northern Ireland Act 1998 (paragraph 17 of Schedule 2) and will not therefore be devolved.

18.2 In February 2005 the Government announced that the lead responsibility for national security intelligence work in Northern Ireland, to counter the threat from terrorism relating to the affairs of Northern Ireland, should transfer from the Police Service to the Security Service. This has been the position in the rest of the UK since 1992.

18.3 The transfer of responsibility will align operational arrangements with political and constitutional responsibilities. It will facilitate the devolution of policing and justice when a robust and workable basis for that is agreed. It is part of the modernisation agenda of the PSNI and was made possible by the significant progress already made in implementing the recommendations of the Patten Commission, particularly in relation to Special Branch and the handling of intelligence. Patten also acknowledged that whatever changes were necessary in policing arrangements for Northern Ireland, it would remain the case that on national security the Chief Constable's main accountability is to the Secretary of State and this would remain a matter for central Government. ("We recommend that responsibility for policing be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security." – Patten paragraph 6.15 and recommendation 20.)

18.4 There are significant benefits in having arrangements for national security in line with the rest of the UK, not least to provide for a consistent and coordinated response to the threat from terrorism. The police will continue to work in partnership with the Security Service and this arrangement will make the best use of the complementary skills and expertise of both organisations.

18.5 The powers and responsibilities of the Policing Board and the Police Ombudsman to oversee policing are not affected by the change in lead responsibility.

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.

18.7 Considerable progress has been made in policing reform since Patten. It is essential that the benefits of the new systems in place within the PSNI are maintained. The long lead-in time is allowing joint teams to be established to test out the new structures and working arrangements in order that there will be no loss of operational effectiveness following the transfer of primacy.

Counter-terrorism policy and legislation

18.8 Counter-terrorism policy and legislation is driven on a UK-wide basis. The Home Office has primary responsibility for this issue in the UK, except in Northern Ireland. By agreement, the Secretary of State for Northern Ireland is responsible for the response to terrorism in Northern Ireland, whether that threat relates to domestic or international terrorism.

18.9 Northern Ireland is covered, in the main, by UK-wide counter-terrorist provisions set out in, for example, the Terrorism Act 2000, the Anti-Terrorism Crime and Security Act 2001 and the Prevention of Terrorism Act 2005. The Terrorism Act 2000 is the main piece of counter-terrorism legislation in the UK. The Act provides a range of measures designed to prevent terrorism and support the investigation of terrorist crime.

18.10 The Terrorism Act 2000 contains some provisions that are specific to Northern Ireland. Part VII supplements the powers in the rest of the Act and is focussed towards the particular needs of Northern Ireland. Many of the powers were carried forward from the Northern Ireland (Emergency Provisions) Act 1996 and other previous temporary legislation. These provisions are due to be repealed by the end of the security normalisation period. After normalisation is complete, the permanent UK-wide counter-terrorism legislation will continue to apply in Northern Ireland. The Government remains committed to the ideal of a return to jury trial, but Ministers have made clear that whatever provisions are necessary will be made available to secure effective trials, where intimidation of jurors by paramilitaries remains a factor. The Government is also considering what powers the army may need post-normalisation in carrying out specialist support to the police, such as public order and work on explosive ordinance disposal.

18.11 Counter-terrorism is an excepted matter under paragraph 17 of schedule 2 to the Northern Ireland Act 1998 and responsibility for it will not be devolved. However, there will continue to be a residual role of representing Northern Ireland's interests in the development of UK-wide policy in this area. This will require contact between the devolved administration (including criminal justice agencies) and Whitehall.

Security of economic key points

18.12 The Secretary of State has a responsibility to ensure the security of designated economic key points (EKPs) and parts of the designated critical national infrastructure. An EKP is an installation, the products or services of which contribute significantly to the normal day to day life in Northern Ireland or play a central role in the efficient and necessary functioning of government or the economy. By their nature, they are primarily associated with major utilities. The security of the EKPs and the critical national infrastructure is a matter of national security and therefore remains an excepted matter that will not be devolved.

National security vetting

18.13 A limited number of posts in government and other critical organisations in Northern Ireland required the holder to undergo national security vetting. This process is an excepted matter and will not therefore be devolved.

Extradition

18.14 In 1998, when the list of excepted and reserved matters was drawn up, it was the intention that extradition generally should be an excepted matter (part of international relations, listed in paragraph 3 of Schedule 2 to the Northern Ireland Act 1998)). However an exception was made for the surrender of fugitives between Northern Ireland and Ireland, which was made a reserved matter. The reason for this difference was that, at the time, a separate arrangement existed for transferring fugitives between the UK and Ireland, known as the Backing of Warrants Scheme. This allowed extradition between Northern Ireland and Ireland to be carried on on a police to police basis, so that the RUC (as they then were) and An Garda Siochana recognised arrest warrants issued in each other's jurisdictions.

18.15 The introduction of a new European Arrest Warrant (EAW), as set out in the EU Council Framework Decision of 13 June 2002 (2002/584/JHA), has put in place a single legal framework for extraditions between those EU countries that have amended their legislation in order to operate the system. There is now, therefore, no difference between the arrangements for extradition between the United Kingdom and Ireland and arrangements for extradition between the UK and other EU countries. (The EAW is designed to make the process of extradition a judicial act, closely following the backing of warrants model.)

18.16 The Extradition Act 2003 brought these new arrangements into force in the UK, and at the same time repealed the old "backing of warrants" legislation. It also updated legislation governing extradition to and from countries outwith the EU. The Government believes that it is appropriate to continue to retain a single legislative framework for extradition arrangements throughout the UK, and does not propose to devolve legislative competence in this area to the Assembly. However, there will be some specific administrative functions relating to extradition which could be exercised by Northern Ireland Ministers (for example, the designation of an appropriate judge to hear cases and issues associated with legal aid). Further work will need to be done to develop a full list of these functions, but it is the Government's intention to transfer all appropriate functions at the time that responsibility for policing and justice devolves. The Bill currently going through Parliament makes explicit provision for this.

Mutual Legal Assistance

18.17 Similar considerations apply in relation to Mutual Legal Assistance, the term which describes international co-operation between criminal justice agencies governed by the Crime (International Co-operation) Act 2003. The Government intends to retain responsibility for ensuring a UK-wide legislative framework for these matters but to devolve administrative and executive functions to Northern Ireland Ministers wherever appropriate and the Bill provides for this. Again, further work is needed to develop a list of appropriate functions for transfer.

Chapter 19

Next Steps & Implementation

19.1 The Government fully accepts, under the Belfast (Good Friday) Agreement, the desirability of devolving policing and justice on a basis that is “robust and workable and broadly supported by the parties”. It confirmed that view in response to the Patten Report. The legislation going through Parliament will enable devolution to be delivered by secondary legislation when the circumstances are right.

19.2 The Bill enhances the arrangements already set out in the Northern Ireland Act 1998 (section 4) for further devolution. Section 4 allows the Secretary of State, by Order, to devolve reserved matters, but only if the Assembly has passed a resolution, with a cross-community vote, requesting it. This therefore requires the parties in the Assembly to have come to an agreement about whether or not the **time** is right to request further devolution, about **what** should be devolved and about the **departmental structures** that should be put in place to receive the new functions. It is only at the point when these decisions have been taken that it will be possible to set in place the detailed implementation plan – and to draw up the secondary legislation – required to effect the transfer.

19.3 The process of transfer will not be an instantaneous one, as there are a number of administrative and contractual changes that would need to be made in order to make the policing and justice machinery operate effectively in a devolved context. Without a definitive decision on the precise scope of devolution and the departmental structures that the Assembly will wish to put in place, it is difficult to give a clear estimate of the lead time. Much depends on how quickly the parties can agree the detail of structures and scope of devolution.

19.4 It is for this reason that the Government wants to encourage the parties represented at the Assembly to start considering these issues in some detail, both internally and in discussion with each other. The Government aims to discuss the possibilities with the parties over the coming weeks with a view to facilitating wider dialogue.

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