Devolution of Policing & Criminal Justice to Northern Ireland

An Aid for Dialogue
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Community Dialogue
Steps into Dialogue Project
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Introduction

Community Dialogue has received funding under the Special European Union Peace III Programme to deliver a project entitled ‘Steps into Dialogue’.

The overall goal of this project is to use dialogue as a mechanism that allows people affected by the conflict to deal with and address their past and to begin to understand the views and past of others. Through this process, Community Dialogue hopes to ensure people can begin to move forward to a peaceful society together.

There are two steps to the project:

Dialogue on the Ground

This will provide opportunities for individuals to engage in dialogue and discuss contentious issues of the past so that people can deal with these and move forward together. The project will include issue based dialogue sessions, a series of workshops to unpack topics at a deeper level, and residential to allow more time for reflection on opinions, ideas and concepts.

Unravelling the Jargon

This aims to take governmental policy and strategy and simplify these documents into “lay terms”. This involves the production of pamphlets by engaging outside expertise, as well as organising follow up workshops to help the community at large understand the basic components and assist them in making informed choices about their future.

Community Dialogue hopes that this document will enable a more informed discussion around the issues relating to the devolution of policing and criminal justice to Northern Ireland.
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Introduction

Power to make law in the United Kingdom is in the hands of the Westminster Parliament. It has chosen to hand over some of that power to regional Assemblies (in Northern Ireland, Wales and Scotland). This process of handing over power is known as “devolution”.

Policy and law matters which have been devolved are looked after by the relevant Minister in Wales, or in Scotland or in Northern Ireland. However, Westminster has held on to the power to make law on certain matters. These cover areas such as national security, immigration, defence and the conduct of elections. Policy in these matters is the responsibility of the relevant UK government minister.

The areas in which the Northern Ireland Assembly has the power to make law were agreed in the Belfast/Good Friday Agreement. At the time, policing and criminal justice powers were retained by Westminster. This meant that matters relating to policing and criminal justice are looked after by the Secretary of State for Northern Ireland, who is a UK government minister. There was always an intention that at some point these powers would be transferred to the Northern Ireland Assembly.

It has taken considerable time for there to be sufficient agreement amongst the Northern Ireland political parties for the devolution of policing and criminal justice powers to take place. The turning point came in November 2008 when the DUP and Sinn Fein agreed a way forward on a number of matters, amongst them devolution of these powers. The First and the Deputy First Ministers issued a statement indicating the steps which needed to be taken and the broad issues which required attention. They also indicated that the manner in which the new Minister for Justice was to be chosen would be different from the way in which Ministers are normally appointed and this has caused some controversy.

The necessary legislation is due to be considered by the Assembly in the near future. It is not yet clear how quickly after that the powers would be devolved, but it is thought that it could be months rather than years. There is no full agreement on how quickly powers should be transferred, with some arguing that it should be delayed.
Q1: What would it mean if policing and criminal justice were devolved to Northern Ireland?

A: It would mean that most decisions relating to policing and the running of the legal and criminal justice systems would be taken in Northern Ireland by the Northern Ireland Assembly and the Executive. A new ministerial post would be created for the Minister for Justice who would sit on the Executive with other Northern Ireland ministers. The Executive would also have to decide on an annual budget for policing, prisons etc. Law Officers would be appointed for Northern Ireland, including an Attorney General.

Q2: How Are the Powers Devolved?

A: The process of devolving policing and criminal justice powers requires a number of steps. Legislation has to be drafted or amended and there are technical requirements which have to be met. In summary, these steps are:

- Westminster must pass an Act of Parliament to allow the necessary powers to be handed over. This has already happened: the Northern Ireland Act 2009 was passed in March 2009.

- Then the Northern Ireland Assembly must pass legislation setting up a Department of Justice. On 31st July 2009, the Northern Ireland Executive agreed a draft of the necessary Act which will go to the Assembly to be debated in the autumn of 2009.

- Finally the Northern Ireland Assembly must pass a motion requesting the transfer of powers.

- Then the Minister for Justice can be elected and the Northern Ireland 'Law Officers' (e.g. the Attorney General) can be appointed.

Q3: How Would the New Minister for Justice Be Elected?

A: The First and Deputy First Ministers have proposed that the Minister would be elected by a single cross community vote in the Assembly. This means that the new Minister could not be elected without the support of a majority of MLAs designated as Nationalists and a majority of MLAs designated as Unionists. A number of political parties and organisations have criticised this proposal as departing from the Belfast/Good Friday Agreement. Normally ministers are elected by the ‘d’Hondt’ voting procedure, which is a complicated method of ensuring power-sharing.
Q4: What Would A Department for Justice Do?

A: The new Department for Justice would look after policing and criminal justice matters in the same way that the existing Ministers look after the various departments. This would mean reporting regularly to the Assembly, answering questions in the Assembly and attending and speaking at Assembly oversight committees.

In addition to making decisions about policing, the new Department of Justice would have control over law and policy regarding the prisons, courts and other areas of the criminal justice system. These would include:

- the Forensic Science Service;
- Youth Justice;
- the Probation Service;
- Criminal Injuries and Other Compensation Matters;
- the State Pathologist;
- Medical Appeals Tribunal.

Until the legislation is passed, however, no-one can be certain precisely what matters will be the responsibility of the new Department. The Assembly has been discussing this issue and others related to the transfer of powers for many months.

Q5: Are there any aspects of policing and criminal justice over which the NI Executive and Assembly would not have power?

The power to make decisions about matters of national security remains with the UK government. Up until October 2007, the lead agency in matters relating to national security had been the PSNI. However, responsibility has now passed to MI5, who would answer to a Northern Ireland Department for Justice.

Not everyone in Northern Ireland was happy about this move, with a number of local political parties, the Police Ombudsman and the Policing Board expressing concerns. Some argued that the Belfast/Good Friday Agreement had enhanced the role of the Police Ombudsman when considering issues involving the security services such as MI5 and that this would now no longer be the case. However, the UK government takes the view that this move brought Northern Ireland into line with the other devolved institutions in the
rest of the UK, arguing that national security matters must always remain with the UK government.

There are some other matters over which the Justice Department would not have control. The appointment of judges, for example, would be made by the Judicial Appointments Commission. The Northern Ireland Judicial Appointments Commission was set up in 2005 under the Justice (NI) Acts 2002 and 2004. It is an independent non-departmental public body which recruits and recommends people to hold most forms of judicial office in Northern Ireland. A similar body exists in Scotland, in England and in Wales. These bodies took over functions from the Lord Chancellor, who retains the right to appoint judges based on the Commission’s recommendations. The Commission’s chairman is the Lord Chief Justice of Northern Ireland, Sir Declan Morgan.

Q6: What are the financial implications for devolution of these powers?

Instead of policing and criminal justice being paid for directly out of the annual UK public sector budget, the money will have to come from the Northern Ireland Executive. The Executive is currently in negotiations with the UK Exchequer about the budget for devolved policing and criminal justice. By the summer of 2009, there had been only very limited progress. The Prime Minister is expected to present a detailed plan for funding in the autumn of 2009.

Whilst it is likely that additional funds will be diverted directly to the Executive to pay for policing and criminal justice costs, it is not certain how much. In any event, as with all Northern Ireland funding for devolved activities, the Executive will in future have to make decisions about how it spends its total budget. That may sometimes mean making decisions between spending public money on policing and spending public money on other projects.

Q7: How will local communities be affected by the proposed changes?

A: There is likely to be more direct accountability to communities for decisions about policing and criminal justice. Those decisions will be made by Northern Ireland politicians, directly elected by the people here. Those politicians will be more available to answer questions from local people and organisations about the decisions they make.

An Assembly committee is likely to be set up to monitor the work of the
new Department for Justice and it will be possible that organisations will be invited to attend and speak at that committee. However, it is also possible that decisions made in Northern Ireland will be affected by policies and trends in UK policing and criminal justice generally.

It is also a concern of some local communities that policing in particular will become even more politicised because the Minister for Justice will be a member of a political party in Northern Ireland. Others argue that policing has always been a political issue in Northern Ireland and that much oversight is already carried out by the Policing Board which has amongst its members those nominated by political parties.

Q8: What are the issues likely to be of interest to community organisations?

The sorts of issues which community organisations might wish to discuss include:

- What are the pros and cons of devolving policing and criminal justice powers?
- Are there any safeguards which might be necessary?
- What impact will the new arrangements have on policing in the community?
- What will be the nature of the relationships between the Policing Board, the District Policing Partnerships and the new Department for Justice?
- How will the new Department for Justice be accountable to communities in Northern Ireland?
- Will staff from the existing NIO policing and criminal justice divisions be automatically transferred over to the new Department for Justice, or will there be open recruitment to the new department?
- Is it necessary to carry out equality impact assessments of the new arrangements, including funding?
- What priorities do communities have when it comes to criminal justice?
Useful websites & sources of further information

The statement issued by the First and the Deputy first Minister
http://cain.ulst.ac.uk/issues/politics/ofmdfm/ofmdfm181108letter.pdf

The Assembly’s Inquiry into Devolution of Policing & Criminal Justice Powers

NIO Report and Indicative Draft legislation
http://www.nio.gov.uk/devolving_policing_and_justice_in_northern_ireland__illustrative_draft_legislation.pdf

House of Commons Research Paper on the Bill which became the Northern Ireland Act 2009

Northern Ireland Assembly Research Paper on the Attorney General

The following is a web reference to explain d’hondt
http://news.bbc.co.uk/1/hi/northern_ireland/6389409.stm
Our Vision

“Our vision is of a vibrant, just and inclusive society, informed and empowered through dialogue.”

Mission Statement

“To engage people at all levels in open and honest dialogue that encourages understanding.”

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You can find out more about Community Dialogue by logging on to our website at:

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Charity No. NI 039351

Project supported by the European Union’s PEACE III Programme, managed by the Special EU Programmes Body.