

Committee on Procedures

**Inquiry into the extent to which Standing Orders
should permit the Attorney General for Northern Ireland
to participate in proceedings of the Assembly**

**Part 1 – Impartiality of the Office of AGNI, Registration of Interests
and participation of the AGNI in Assembly proceedings in respect
of areas other than Statutory Rules**

**Together with the Minutes of Proceedings, written submissions
and the Minutes of Evidence relating to the Report**

Ordered by the Committee on Procedures to be printed 24 February 2015

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**REPORT EMBARGOED UNTIL
COMMENCEMENT OF THE DEBATE IN PLENARY**

Membership and Powers

Powers

The Committee on Procedures is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order 54.

The Committee has the power to:

- Consider and review, on an ongoing basis, the Standing Orders and procedures of the Assembly;
- Initiate inquiries and publish reports;
- Republish Standing Orders annually; and
- Call for persons and papers.

Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee is as follows:

- Mr Gerry Kelly (Chairperson)
- Mr Trevor Clarke (Deputy Chairperson)
- Mr Jim Allister
- Mr Sammy Douglas ^{1 2}
- Mr Samuel Gardiner
- Mr Kieran McCarthy ³
- Mr Barry McElduff
- Mr Oliver McMullan
- Mr Alban Maginness
- Lord Morrow
- Mr George Robinson

1 With effect from 8 December 2014 Mr Sammy Douglas replaced Ms Paula Bradley

2 With effect from 16 September 2013 Ms Paula Bradley replaced Mr Mervyn Storey

3 With effect from 1 October 2013 Mr Kieran McCarthy replaced Mr Chris Lyttle

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List of Abbreviations

the Committee	Committee on Procedures
AG	Attorney General
AGNI	Attorney General for Northern Ireland
CJ	Committee for Justice
CS&P	Committee on Standards and Privileges
DOJ	Department of Justice
DPP	Director of Public Prosecutions
HOC	House of Commons
HOL	House of Lords
NAW	National Assembly for Wales
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
SO	Standing Order
SOs	Standing Orders
SP	Scottish Parliament
SR	Statutory Rule
SRs	Statutory Rules

Executive Summary

The role of the Attorney General for Northern Ireland (AGNI) was established as a consequence of the devolution of policing and justice functions to the Northern Ireland Assembly (the Assembly) on 12 April 2010.

In common with other legislatures, the role and functions of the Office of AGNI are underpinned by legislation. However, unlike law officers in other jurisdictions, the AGNI is expressly barred from being a member of the legislature itself and the post is statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland departments. Instead the Justice (Northern Ireland) Act 2002 states *“The Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but he may not vote in the Assembly”*. The purpose of this inquiry was to establish what exactly this should be in practice.

To manage the broad scope of the inquiry, the Committee conducted it in four phases. This report outlines the findings of the first three of these phases which are:

- **Phase 1** – Evidence gathering;
- **Phase 2** – Impartiality of the Office of AGNI and Registration of Interests; and
- **Phase 3** – Consideration and reporting on participation of the AGNI in Assembly proceedings in respect of areas other than Statutory Rules.

The scope of its inquiry did not include matters relating to governance and accountability of the Public Prosecution Service or to any practical matters outside of the Standing Orders.

As part of Phase 1, evidence was gathered from the AGNI, UK legislatures, the Houses of the Oireachtas, the Law Society of Northern Ireland, the Committee on Standards and Privileges, parties represented in the Assembly and from the Executive Committee. The Committee also commissioned and considered a number of Assembly research papers in order to inform Members’ discussions and views on the issues arising from this inquiry.

Having considered views and evidence provided in respect of Phase 2, the Committee considered it appropriate that a discreet Standing Order be drafted to set out the same duties for the AGNI as Members in respect of the requirement to register and declare interests and to be prohibited from advocating on any matter on behalf of anyone else for a payment or benefit. The Committee considered it appropriate that any alleged breaches by the AGNI be investigated and the outcome of the investigation reported to the Assembly by the Assembly’s Commissioner for Standards. Following such a report it agreed that the Committee on Standards and Privileges should be able to decide whether or not to uphold the complaint and, where it did, that it could recommend the imposition of a sanction.

The Committee did not consider it appropriate to apply the requirements of the Assembly’s Code of Conduct to the AGNI.

Although the Committee examined the models used in respect of Law Officers in other legislatures, it recognised that the unique requirements of the role of the AGNI precluded any of these being adopted in their entirety. It therefore considered it appropriate to design a bespoke model to reflect the unique circumstances found in this jurisdiction.

The design of the elements of this bespoke model was the purpose of both Phase 3 and Phase 4 of this inquiry which considered four areas of the AGNI’s work with the potential to be included in the participation model and to be codified into Standing Orders (SOs). The first three of these were titled Answering Assembly Questions; Referral of Bills after Final Stage; and the Annual Report of the AGNI and formed the basis of Phase 3 of the inquiry. The fourth was the basis of Phase 4, relating to Statutory Rules Laid by the AGNI and covered in Part 2 of the inquiry report.

Having considered stakeholder opinion and evidence provided, the Committee identified a number of possible models to facilitate the participation of the AGNI in proceedings of the Assembly for each work area identified. After detailed consideration the Committee concluded that:

- a. No change to existing arrangements in SOs is required in respect of the AGNI answering Assembly Questions. Executive Ministers or Members nominated on behalf of the Assembly Commission should remain the only people to answer Assembly Questions – either written or oral. The Committee noted that even where no formal arrangement exists for the AGNI to answer Assembly Questions, nothing exists to stop him/her providing answers to any questions sent directly to him/her;
- b. No change to existing arrangements in SOs is required in respect of seeking explanation from the AGNI should s/he decide to refer a Bill after its Final Stage. Existing arrangements, which permit the AGNI to be called to a relevant committee to make a statement and/or answer questions as to why s/he has referred a question to the Supreme Court remain appropriate and no provision need be made to this effect in SOs.
- c. That the AGNI should not be required to give views on the content or competence of Bills prior to Final Stage.
- d. That SOs are amended so that when the Annual Report is laid, the AGNI attends a nominated committee, at that committee's request, to make a statement and/or answer questions on the content of the Report.

Summary of Recommendations

Recommendation 1

The Committee recommended that a distinct Standing Order be drafted to provide for the AGNI in respect of Section 25(4) of the Justice (Northern Ireland) Act 2002, to include the following:

- i. That the AGNI have the same duties as Members in respect of the requirement to register and declare interests;
- ii. That the AGNI be prohibited in the same way as Members from advocating on any matter on behalf of anyone else for a payment or benefit;
- iii. That the Assembly's Commissioner for Standards be able to investigate an alleged breach by the AGNI of any duty in respect of Members' interests which would be set out in Standing Orders;
- iv. That the Assembly's Commissioner for Standards is able to report the outcome of any such investigation to the Assembly in the same manner as for an investigation of complaint against a Member;
- v. That the Committee on Standards and Privileges is able to decide whether or not to uphold a complaint and, where it did, that it could recommend the imposition of a sanction. (However, unlike the position in respect of Members, the rights and privileges that could be withdrawn as a result of any sanction imposed would not include the right to salary and allowances.)

Recommendation 2

The Committee recommended that it would not be appropriate to seek to apply the requirements of the Assembly's Code of Conduct to the AGNI.

Recommendation 3

The Committee recommended that no change is made to existing arrangements in Standing Orders in respect of the AGNI answering Assembly Questions.

Recommendation 4

In relation to the referral of Bills after Final Stage, the Committee recommended that no change be made to existing arrangements in Standing Orders. Rather, if the AGNI decides to exercise the power under Section 11 of the Northern Ireland Act 1998, a relevant committee can call for him/her to make a statement and/or answer questions as to why s/he has referred a question to the Supreme Court, but that no provision need be made to this effect in Standing Orders.

Recommendation 5

The Committee recommended that the AGNI should not be required to give views on the content or competence of Bills prior to Final Stage.

Recommendation 6

The Committee recommended that Standing Orders be amended so that when the Annual Report is laid, the AGNI attends a nominated committee, at that committee's request, to make a statement and/or answer questions on the content of the Report.

Introduction and Background

1. One consequence of the devolution of policing and justice functions to the Northern Ireland Assembly (the Assembly) on 12 April 2010 was the establishment of the role of Attorney General for Northern Ireland (AGNI).
2. In common with the other devolved UK administrations, the role and functions of the office are underpinned by legislation but the function for which the AGNI is perhaps best known is that of chief legal adviser to the Executive Committee (the Executive) for both civil and criminal matters that fall within the devolved powers of the Northern Ireland Assembly.
3. The AGNI himself identifies his main responsibilities as being¹:
 - a. To protect the public interest in matters of law;
 - b. To act as the Executive’s most senior representative in the courts;
 - c. To oversee the legal work of the in-house legal advisers to the Northern Ireland Executive and its departments;
 - d. To participate in the proceedings of the Assembly to the extent permitted by its standing orders but not to vote in the Assembly; and
 - e. Appointment of the Director and Deputy Director of the Public Prosecutions Service for Northern Ireland.
4. However, on the website, the AGNI emphasises one unique feature of his role: *“My responsibilities and role are exercised independently of any other persons. As Attorney General I am statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments.”*
5. Another feature unique to the post of AGNI is that the post holder is expressly barred from being a member of the Assembly². Thus, although in other legislatures the Attorney General may attend and participate in proceedings by virtue of being a member, this is not an automatic right of the AGNI and section 25 of the Justice (Northern Ireland) Act 2002, provides that:

“The Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but he may not vote in the Assembly”.
6. Thus the extent to which the AGNI participates in the proceedings of the Northern Ireland Assembly is a matter to be determined by the Assembly itself through its Standing Orders and the purpose of this Committee inquiry is to inform the provision of such Standing Orders.
7. An inquiry into this matter was initiated by the Committee on Procedures during the 2007 to 2011 mandate. However, no conclusion was reached and the matter was noted as outstanding business in the Committee’s legacy report.
8. The current Committee on Procedures had already acknowledged its predecessor’s reference to this matter in the legacy report when it considered correspondence from the Committee for Justice (CJ) at its meeting of 22 January 2013. This correspondence highlighted three specific issues arising from CJ interactions with the AGNI.

1 AGNI website

2 Section 23 of the Justice (Northern Ireland) Act 2002

9. First, the AGNI had suggested an inquiry topic to the Justice Committee, offering his assistance if the CJ was minded to undertake the inquiry. The Justice Committee had agreed a way forward, as the inquiry was in line with its agreed work programme and would invite the AGNI to give evidence. However, it also agreed to highlight to the Committee on Procedures the absence of directional clarity in Standing Orders (SOs) regarding the AGNI's participation under such circumstances.
10. Second, CJ highlighted issues relating to guidance that is issued by the AGNI, in the form of Statutory Rules (SRs), to certain criminal justice organisations. Such SRs are subject to the negative resolution procedure and in the event that a member or committee wished to pray against the Statutory Rule, no direction is given in Standing Orders as to how the AGNI may respond.
11. The third issue was highlighted during the CJ's consideration of a proposal by the AGNI to add a name to the list of organisations to whom the guidance (detailed in paragraph 10 above) is issued. The list is set out in statute³ and any amendments made must be done through the laying of a Statutory Rule (SR)⁴ by the AGNI. However, the legislation⁵ requires that such SRs are subject to the draft affirmative procedure. The CJ highlighted that here too, no direction is given in Standing Orders.

3 Section 8(4) of the Justice (Northern Ireland) Act 2004

4 Section 8(5) of the Justice (Northern Ireland) Act 2004

5 Section 21 of the Justice (Northern Ireland) Act 2004

The Committee’s Approach to the Inquiry

12. Having considered both its predecessor’s legacy report and the correspondence outlined above, the Committee agreed on 26 February 2013 to initiate an inquiry into the extent to which Standing Orders should permit the AGNI to participate in proceedings of the Assembly. The following terms of reference were agreed:
- i. To consider the legislation and relevant publications on the role and powers of the Attorney General for Northern Ireland (AGNI) i.e. section 25(1) of the Justice (Northern Ireland) Act 2002; section 25(2) of the Justice (Northern Ireland) Act 2002; “Establishing the Office of the AGNI (DP628); “The Governance and Accountability of the Public Prosecution Service;
 - ii. To examine the extent to which Attorneys General or other Law Officers in other legislatures contribute to plenary and committee meetings;
 - iii. To consider stakeholder views on whether, and if so how, they would wish to see the AGNI being accountable to the Assembly both in plenary and to committees for the exercise of his functions, the operation of his office and his relationship with the Public Prosecution Service (PPS);
 - iv. To make recommendations on whether, how and the extent to which the AGNI will otherwise participate in proceedings of the Assembly, both in plenary and in committees;
 - v. To report specifically on whether, how and the extent to which the AGNI may, if required, participate in plenary or committee on guidance issued by the AGNI under section 8 of the Justice (Northern Ireland) Act 2004, to a range of criminal justice organisations on the exercise of their functions;
 - vi. To consider whether, how and the extent to which the AGNI might be asked to give views on the content or competence of Bills prior to Final Stage; and
 - vii. To consider section 25(4) of the Justice (Northern Ireland) Act 2002 and its application of section 43 of the Northern Ireland Act 1998 (interests of members of the Assembly) to the AGNI and the role of the Northern Ireland Assembly Commissioner for Standards in respect of the AGNI and to report as to appropriate amendments to Standing Orders in this regard.
13. The Committee agreed that the inquiry would be conducted in four phases:
- Phase 1 – Evidence Gathering**
14. The Committee agreed to take evidence to inform its terms of reference from the following sources:
- a. Research on legislation applicable to the inquiry in Northern Ireland⁶ and methods used to facilitate contribution from Attorneys General operating in other jurisdictions; and
 - b. Evidence from internal and external stakeholders, both through written and oral submissions and completion and return of a questionnaire designed to focus responses on the terms of reference of the inquiry.

6 RalSe Paper NIAR 154-13 – Speaking Rights of Attorneys General / Law Officers in legislatures and RalSe Paper NIAR 70-13 – Key issues relating to the Attorney General for Northern Ireland

15. External stakeholders included the AGNI, who provided both written and oral evidence, the House of Commons, the Oireachtas, Scottish Parliament, National Assembly for Wales and the Law Society of Northern Ireland. Internal stakeholders included political parties, the Executive Committee, the Speaker and the Committee for Standards and Privileges, who had previously carried out a review into the impartiality of the office of AGNI and registration of interests.

Phase 2 – Impartiality of the Office of AGNI and Registration of Interests

16. The Committee agreed to consider all the evidence received in relation to section 25(4) of the Justice (Northern Ireland) Act 2002 and its application of section 43 of the Northern Ireland Act 1998 (interests of members of the Assembly) to the AGNI and the role of the Northern Ireland Assembly Commissioner for Standards in respect of the AGNI and to report and make recommendations to the Assembly on the matter before the summer of 2015.

Phase 3 – Consider and Report on Participation of the AGNI in Assembly Proceedings in respect of areas other than Statutory Rules

17. The Committee agreed to consider all evidence received in relation to the extent to which the AGNI should be permitted to participate in the proceedings of the Assembly in respect of answering Assembly Questions, referral of Bills after Final Stage and the Annual Report of the AGNI and to report and make recommendations on these matters before the summer of 2015.
18. The Committee agreed that, given the similarity of reporting dates for Phase 2 and Phase 3, the inquiry report would be published in two parts. The first, to include findings and recommendations in respect of Phases 1 to 3 and the second, covering findings and recommendations in respect of Phase 4.

Phase 4 – Consider and Report on Participation of the AGNI in Assembly Proceedings in respect of Statutory Rules

19. The Committee agreed to consider all the evidence received in relation to two types of Statutory Rule laid by the AGNI and to report recommendations on these matters by May 2016.

Items Excluded from the Inquiry

20. The Committee was clear that the scope of its inquiry would not include matters relating to the governance and accountability of the Public Prosecution Service (PPS), which was the subject of an ongoing review by the Department of Justice (DOJ).
21. The Committee agreed that any practical out workings of the inquiry, outside of the Standing Orders (e.g. facilitating the AGNI's presence in the Chamber) were a matter for the Speaker and therefore were outside the scope of the inquiry.

Evidence Gathering

22. The closing date for initial submissions was set as 9 May 2013 and the Committee considered evidence at a number of subsequent meetings. It took further oral evidence from the AGNI on 28 May 2013 and continued its analysis after the summer recess.
23. On 24 September 2013 the Committee agreed four areas where SOs might be required to facilitate participation by the AGNI. These were Assembly Questions, referral of Bills after Final Stage, the Annual Report of the AGNI, and in respect of SRs produced by the AGNI.
24. At the same meeting, the Committee also noted that submissions had not been received from all political parties within the Assembly and agreed to extend the deadline for receipt of submissions to accommodate these.

25. On 26 November 2013 the Committee continued its consideration of evidence and recognised that, given the significant number of options available, a strategic approach to evaluation of these would be helpful. It therefore devised a list of underpinning principles, which it agreed would be used to evaluate options where more than one solution presented itself.
26. The Committee agreed the following key principles be used in determining the extent to which Standing Orders should permit the participation of the AGNI in Assembly proceedings:
- i. That as the AGNI is not a duly elected Member of the Assembly s/he should not automatically be afforded the privileges of this office;
 - ii. That because only duly elected Members of the Assembly have automatic attendance and speaking rights in the Chamber, the AGNI should only attend plenary if s/he is to speak;
 - iii. The AGNI will only take part in plenary or committee proceedings on foot of a motion or specific request by the Assembly or the relevant committee;
 - iv. That amendment of the role of the AGNI as currently set out in legislation is outside the scope of this inquiry and any option requiring such change would be discounted;
 - v. That within devolved arrangements, a clear separation of powers exists, and is desirable, between the Executive and the Assembly;
 - vi. That the AGNI is not a member of the Executive and that it is important to separate the functions of ministerial oversight and prosecutorial independence;
 - vii. That the Assembly and its committees have their own legal advisers;
 - viii. That the member of the Executive responsible for any matter is the person who should be held to account in the Chamber, rather than having someone else respond on their behalf.
27. The Committee considered the final party responses to the consultation at the meeting of 28 January 2014 and subsequently considered a first draft report on 25 February 2014. The Committee had been advised that the AGNI intended bringing a draft affirmative SR to the CJ later that year and the Committee agreed to initiate a pilot to test the feasibility of the proposed process to manage such SRs.

Consideration of Key Issues

Phase 2 - Impartiality of the Office of AGNI and Registration of Interests

28. At its meeting of 22 January 2013 the Committee considered the work done by the Committee on Standards and Privileges (CS&P) in respect of Section 25(4) of the Justice (Northern Ireland) Act 2002 during the 2007 to 2011 mandate. The Committee noted that recommendations arising from the CS&P deliberations had been referred to its predecessor⁷, but outcomes in respect of this aspect of its predecessor's inquiry had also been deferred and noted in its legacy report.
29. The Committee agreed, that given the time elapsed, it would be appropriate to write to the CS&P for their current view on the matter. In reply, the CS&P confirmed its predecessor's recommendations remained valid⁸ and this evidence was therefore considered, together with current stakeholder submissions, on 23 April 2013.
30. During consideration of the evidence, the Committee noted that the Law Society agreed with the CS&P recommendations, suggesting these matters needed to be codified in Standing Orders as an important safeguard, both to protect the impartiality of the office of AGNI and to provide another mechanism for insulating the role from the perception of conflicts of interest. There was no other stakeholder evidence submitted on the matter.
31. Following its deliberations the **Committee agreed to recommend that a distinct Standing Order be drafted to provide for the AGNI in respect of Section 25(4) of the Justice (Northern Ireland) Act 2002, to include the following:**
- i. That the AGNI have the same duties as Members in respect of the requirement to register and declare interests;
 - ii. That the AGNI be prohibited in the same way as Members from advocating on any matter on behalf of anyone else for a payment or benefit;
 - iii. That the Assembly's Commissioner for Standards be able to investigate an alleged breach by the AGNI of any duty in respect of Members' interests which would be set out in Standing Orders;
 - iv. That the Assembly's Commissioner for Standards is able to report the outcome of any such investigation to the Assembly in the same manner as for an investigation of complaint against a Member;
 - v. That the Committee on Standards and Privileges is able to decide whether or not to uphold a complaint and, where it did, that it could recommend the imposition of a sanction. (However, unlike the position in respect of Members, the rights and privileges that could be withdrawn as a result of any sanction imposed would not include the right to salary and allowances.)
32. The Committee agreed with the CS&P view on the Assembly Code of Conduct⁹ and therefore **recommends that it would not be appropriate to seek to apply the requirements of the Assembly's Code of Conduct to the AGNI.**

7 Correspondence dated 9 December 2010 included at Appendix 5

8 Correspondence dated 15 March 2013 included at Appendix 5

9 Code of Conduct for Members of the Northern Ireland Assembly

Attorneys General and Law Officers in Other Legislatures

Scottish Parliament

33. The Committee was informed by the Scottish Parliament (SP)¹⁰ that in this jurisdiction the Attorney General (AG) equivalent (Lord Advocate/Law Officer) MAY be a Member of the Scottish Parliament. Legislation underpinning the role is very similar to the Northern Ireland Act 1998 and states that: “If the Lord Advocate or Solicitor General for Scotland is NOT a member of the Parliament – (a) he may participate in proceedings of the Parliament to the extent permitted in Standing Orders, but may not vote, and (b) Standing Orders may in other respects provide that they are to apply to him as if he were such a member.”
34. Scottish legislation has been translated into the SP Standing Orders at Rule 4.5 - “Participation of the Scottish Law Officers in proceedings”.
35. Rule 4.5(2) states “The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing the Scottish Law Officer from voting) participate in any of the proceedings of the Parliament as fully as any member but the Scottish Law Officer may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.”
36. Thus, the Law Officer for Scotland is permitted to attend plenary to answer oral questions, urgent oral questions (if they are selected by the Presiding Officer) and provide written answers to written questions. When attending plenary to answer questions s/he appears on an ad-hoc basis, rather than a regular question slot and can answer questions concerning criminal prosecution and the investigation of deaths.
37. Further, s/he may participate in plenary proceedings to make statements and taking part in debates.
38. The response makes no comment in respect of committee proceedings, although the terminology used to permit the Law Officers to participate “as fully as any Member of the Parliament”, clearly extends to committees with the proviso, as required by legislation, that they may not vote.

UK Parliament

39. The UK Parliament¹¹ response notes that the Attorney General MUST be a legally qualified Member of Parliament, drawn from the governing party. S/he is usually a Member of the House of Commons (HOC) but can be a Member of the House of Lords (HOL). However his/her right to participate in plenary sessions differs significantly between the two Houses depending on which House s/he is a member of.
40. If the AG is a Member of the HOC s/he can take part in all proceedings of the HOC, but is not permitted to vote, make any motion or move an amendment other than a motion in the Grand Committee. If however, the AG is a Member of the HOL, s/he takes no part in the proceedings of the HOC. In these circumstances another Law Officer, who is a Member of the HOC, responds on their behalf as required.
41. In the HOC the AG attends question time once every five weeks for 20 minutes, where s/he answers specific AG questions. As a Member of the HOC the AG is held accountable in the same way as other Ministers, that is, through answering oral, written and urgent questions, responding to debates and taking part in committee proceedings.
42. The first reference to the AG participation in committee proceedings in HOC was HOC SO 87 which states: “The AG, the Advocate General and the Solicitor General, or any of them, being Members of the House, though not members of a general committee, may take part in the deliberations of a committee, but shall not vote or make any motion or move any amendment

10 Written submission included at Appendix 3

11 Written submission included at Appendix 3

other than a motion in the Scottish Grand Committee....., the Welsh Grand Committee..... or the Northern Ireland Grand Committee....., or a motion or an amendment in a European Committee..... or be counted in the quorum.”

43. HOC SO 148A (Committee of Privileges) and paragraph (13) of Standing Order 149 (Committee on Standards) provide that: “The AG, the Advocate General and the Solicitor General, being Members of the House, may attend the committee or any sub-committee, may take part in deliberations, may receive committee or sub-committee papers and may give such other assistance to the committee or sub-committee as may be appropriate, but shall not vote or make any motions or move any amendment or be counted in the quorum.”
44. The HOC response notes that SO 87 is seldom invoked and, in practice, it is extremely uncommon for the AG to take part in general committee proceedings unless s/he has been nominated to the committee as part of the Ministerial team supporting a particular item of Government legislation.
45. The situation in the HOL was described as being even more specific, with the AG only appearing in the HOL when, like judges, s/he receives a Writ of Attendance requiring them to come to Parliament to give their advice. At other times the HOL SOs are clear¹² that no person other than a Lord is allowed on the floor of the House.

National Assembly for Wales (NAW)

46. In Wales¹³ the AG equivalent (Counsel General) is appointed under the Government of Wales Act 2006 and “MAY be an Assembly Member, but may not simultaneously hold a Ministerial position in the Welsh Government”.
47. This has been translated into SO 9.3 and SO 9.4. Standing Order 9.3 states that: “Subject to the provisions of the Act¹⁴, the Counsel General may do anything under these Standing Orders which may be done by a Welsh Minister”. Standing Order 9.4 states that “If the Counsel General is not a Member, the Standing Orders apply to the Counsel General as they apply to Members and the Counsel General may participate in Assembly proceedings but may not vote.”
48. This means that the Counsel General can make oral and written statements, participate in debates, answer oral and written questions and appear before NAW committees in the same way as Welsh Ministers.
49. The response notes that since 2011, despite these enabling SOs, the Counsel General has only ever attended plenary meetings when he is answering oral questions or making a statement or responding to a debate on behalf of the Government, and that he does not attend or participate more generally¹⁵.
50. In terms of participation in NAW committees the response states that the Counsel General may appear before committees in the same way as any other Welsh Minister. However, to date, this has only happened once, when the Counsel General gave evidence to the Constitutional and Legislative Affairs Committee in its inquiry into a separate legal jurisdiction. The response also notes that no committee is specifically tasked with scrutinising the Counsel General on the exercise of his/her functions.

12 House of Lords Standing Order 12 states that – “no person other than a Lord shall be allowed on the floor of the House except....”

13 Written submission included at Appendix 3

14 Government of Wales Act 2006

15 Written submission included at Appendix 3

Houses of the Oireachtas

51. In this jurisdiction, the Attorney General is the adviser to the Executive Committee in matters of law and legal opinion and is responsible for superintendence of the prosecuting authorities of the criminal justice system and is guardian of the public interest¹⁶.
52. Although the Attorney General MAY be a Member of the Irish Parliament, there is an expectation that s/he will act independently and s/he is not permitted to be a member of the Government¹⁷. His/her right to attend and participate in plenary sessions differs significantly between the two houses, just as it does in the UK Parliament.
53. In the Dáil, the Attorney General has the right to attend and be heard only if s/he is a duly elected member of the Dáil, while in the Seanad the Attorney General, whether or not a member of the Dáil, has the same right of attendance as a Minister of State.
54. In committees (except committees which comprise only Senators) the Attorney General's right to participate is governed by the same protocols as for his/her plenary attendance in the Dáil i.e. s/he can only participate if s/he is a duly elected Member of the Dáil.
55. The response also indicated that exceptions to the general rights of compellability afforded to committees exist when it comes to the AG, for example, only the Public Accounts Committee may question the AG, and then only in terms of “general administration” in order to protect judicial processes and prosecution of offences.

Committee Consideration

56. The Committee noted that in models operating in other legislatures, while some aspects were defined in legislation, others were derived from constitutional convention, custom and practice and had been adapted to suit the devolution settlements and unique arrangements of the legal systems in each of the responding jurisdictions.
57. However, more importantly, the Committee also recognised key differences between the local setting and those of respondent jurisdictions and identified that this was largely due to the non-political nature of the office in Northern Ireland¹⁸. For this reason the Committee agreed that none of the models could be applied in their entirety to the Assembly, but rather, that a specialist model, reflecting the unique circumstances of the Assembly and the AGNI, was needed.

Accountability

58. The Committee then turned its attention to whether, and if so how, participation of the AGNI in the proceedings of the Assembly in respect of both plenary and committees could be achieved to enhance accountability.
59. The Committee was clear that any participation by the AGNI should be confined to matters for which the AGNI was solely and directly accountable. Examination of stakeholder responses indicated that the Speaker was clearly of the same opinion¹⁹.
60. The Committee identified four areas in which AGNI participation in Assembly proceedings could potentially enhance accountability. These were: answering Assembly Questions, referral

16 Written submission included at Appendix 3

17 Research Paper 66/09 – The Attorney General for Northern Ireland, Director of Public Prosecutions and Accountability to the Assembly

18 AGNI written submission dated 10 May 2013 included at Appendix 3

19 Written submission included at Appendix 3

of Bills after Final Stage²⁰, examining the Annual Report of the AGNI²¹ and in respect of Statutory Rules (SRs) laid by the AGNI²².

61. Both the Law Society for Northern Ireland (the Law Society) and the AGNI himself, highlight these same areas of responsibility, indicating broad agreement with the Committee's view²³.
62. However, the Law Society differs slightly from the view expressed by the AGNI when he speaks of the potential for a "huge role for informal interface with Members and Committees"²⁴. The Law Society considers codification of such areas as a necessary means of ensuring such engagement is focussed, and characterised by a clear separation between the Assembly and the office holder.
63. Once these four areas were identified and agreed, the Committee moved on to examine each in more detail. Having taken into account suggestions offered in stakeholder submissions it derived a matrix of options for consideration under each heading (from "no change to current arrangements" to "full participation"), which has been included in the Appendices of this report.²⁵

Area 1 – Answering Assembly Questions

64. In considering if and, if so how, the AGNI might participate in answering Assembly Questions the Committee agreed that key principle number viii above²⁶ was relevant.
65. Submissions from other legislatures and stakeholders noted the precedent in other legislatures for the AGNI (or equivalent) to appear in plenary, on either a scheduled, or ad-hoc basis, to answer questions on matters for which they are responsible.
66. The Committee accepted this but also noted that in all other legislatures referred to, AG equivalents MUST or MAY be elected Members and their appearance in plenary was accorded automatically by virtue of this fact. It noted this is not the case in this jurisdiction where the AGNI is expressly forbidden in statute from being an elected Member. The Committee agreed that this was significant.
67. The Law Society²⁷ and SP both highlight that SOs of the SP provide for the Attorney General equivalent to answer oral questions on matters within his/her remit, which may "exceptionally" be answered by another Member of the Scottish Executive, but are principally his/her responsibility to answer. The Law Society suggests this mechanism could be used by the Assembly "in order to tighten up accountability arrangements and could be provided for in Standing Orders under Section 25(1) of the Justice (Northern Ireland) Act 2002".
68. Both these stakeholders highlight that such appearances occur, in practice, on an ad-hoc basis. The AGNI himself also suggests²⁸ if he were required to attend the Chamber to answer questions, an ad-hoc basis would be more appropriate.
69. Initially, the Committee identified four options:
- **Option 1 – No change to existing arrangements in SOs** (i.e. an Executive Minister or Members nominated on behalf of the Assembly Commission are the only people to answer Assembly Questions – either written or oral). The Committee noted that even where no

20 Section 11 of the Northern Ireland Act 1998

21 Section 26 of the Justice (Northern Ireland) Act 2002

22 Section 8 of the Justice (Northern Ireland) Act 2004

23 Written submissions included at Appendix 3

24 Hansard – Justice Committee proceedings 28 September 2010

25 Options Matrix for participation of the AGNI included at Appendix 4

26 Key Principle viii – That the member of the Executive responsible for the matter is who should be held to account in the Chamber, rather than having someone else respond on their behalf.

27 Written submission included at Appendix 3

28 Correspondence dated 7 June 2013 included at Appendix 3

formal arrangement exists for the AGNI to answer Assembly Questions, nothing exists to stop him/her providing answers to any questions sent directly to him/her;

- Option 2 – **SOs are amended to permit the AGNI to answer appropriate written questions as they are received**²⁹;
- Option 3 – **SOs are amended to permit the AGNI to answer appropriate written questions as they are received and appropriate oral questions in the Chamber on an ad-hoc basis**;
- Option 4 – **SOs are amended to permit the AGNI to answer appropriate written questions as they are received and to attend a regular Question Time slot in the Chamber to answer appropriate oral questions.**

70. After consideration of the options and information available however, the Committee agreed that as the AGNI was expressly barred from being an elected Member that no automatic right of appearance in the Chamber could be afforded. Further, that even permitting such appearance by virtue of SOs posed risks to both the AGNI and the Assembly.
71. The Committee recognised risks could arise through inappropriate questions being asked (e.g. when matters were sub judice). In such instances, should the AGNI choose not to respond, or be unable to, the Assembly could appear powerless in holding him to account and/or the AGNI could appear unhelpful or lacking transparency. Mitigating such risks was considered difficult and it was therefore agreed that Options 3 and 4 would be set aside.
72. In respect of the remaining two options, the Committee considered the benefits which could arise by formalising the process for obtaining responses to written questions to the AGNI.
73. Here too it recognised risk, as without a concordat or memorandum of understanding between the Assembly and the AGNI ensuring response times for written questions were consistently met could prove difficult. In addition, the Assembly had little influence/sanction which it could bring to bear should such response times be exceeded.
74. For these reasons the **Committee recommended that Option 1 be adopted. That is “no change be made to existing arrangements in Standing Orders in respect of the AGNI answering Assembly Questions.”**
75. This means that only Executive Ministers and Members nominated by the Assembly Commission should be required to answer Assembly Questions, either written or oral, and that while no formal arrangement existed, there remains nothing to prevent the AGNI providing answers to any questions sent directly to him/her.
76. The Committee recognised that on the occasions the Assembly wished to question the actions of the AGNI, this could be effectively achieved by requesting his/her attendance at committee, noting that precedent exists for this approach and no change to SOs was required to facilitate it.

Area 2 - Referral of Bills after Final Stage

77. The Committee recognised the responsibility afforded to the AGNI by Section 11 of the Northern Ireland Act 1998. This sets out that any Bill, after achieving its Final Stage, is considered by the AGNI who decides whether to refer it to the Supreme Court for a decision on its legislative competence.
78. The Committee examined two aspects of this process. First, whether it would be appropriate, or desirable, for the AGNI to appear in the Assembly to explain any such decisions to refer a Bill after its Final Stage. Second, whether it might be appropriate, or desirable, to facilitate

29 The word “appropriate” will require formal definition if it is to be included in Standing Orders e.g. official/statutory responsibilities

participation by the AGNI in Assembly proceedings prior to a Bill's Final Stage, a point also raised by the Speaker³⁰ in his submission.

79. The Committee noted that submissions from responding legislatures are silent on this matter and only the AGNI offered any comment from among other stakeholders, suggesting³¹ that explaining decisions taken under this duty could be useful.
80. Initially the Committee identified four options:
- **Option 1 – No change to existing arrangements in SOs.** If the AGNI decides to exercise the power under Section 11 of the Northern Ireland Act 1998 s/he can be called to a committee to make a statement and/or answer questions as to why s/he has referred a question to the Supreme Court;
 - **Option 2 – SOs are amended so that if the AGNI decides to exercise the power invested in him/her under Section 11 of the Northern Ireland Act 1998 s/he comes to a nominated committee, at that committee's request, to make a statement and/or answer questions as to why s/he has referred a question to the Supreme Court;**
 - **Option 3 – SOs are amended to permit the AGNI to attend plenary, only if specifically requested by the Assembly (through the laying of a motion) to make a statement and/or answer questions, or to confirm his/her opinion on why s/he has referred a question to the Supreme Court;**
 - **Option 4 – SOs are amended to permit the AGNI an automatic right of attendance in the Assembly to make a statement and/or answer questions on why s/he has referred a question to the Supreme Court.**
81. Recognising the absence of stakeholder comment in respect of this matter, the Committee agreed to consider the options in light of its own agreed key principles.
82. The Committee identified that Option 4 was contrary to key principle number iii above³², since it afforded the AGNI an automatic right of attendance in plenary, which was considered only appropriate for elected Members. For this reason Option 4 was set aside.
83. The next most significant change to existing arrangements was found in Option 3 and the Committee agreed that while it was in keeping with agreed key principles, the benefit of introducing such a change needed to be evaluated. It noted that, to date, the duty placed on the AGNI by this section of the Northern Ireland Act 1998 has only been actioned once³³ and that no benefit in calling the AGNI to the Chamber could be identified in this instance.
84. In fact the Committee identified instead that a risk existed should inappropriate questions be asked. In such cases Members could be perceived as challenging the responsibility of the AGNI to exercise his rights under Section 11 of the Northern Ireland Act 1998. The Committee agreed that mitigating such a risk would be difficult even with the introduction of a clear set of guidelines. Given the infrequency of the occurrence and the lack of obvious benefit, Option 3 was therefore precluded.
85. In examining the remaining options, Option 1 and 2, the Committee recognised that Option 2 merely formalised a process that could already be actioned. Given the infrequency with which this requirement may be used, it agreed that little justification existed for codifying the practice in SOs.

30 Written submission included at Appendix 3

31 Written submission included at Appendix 3

32 Key Principle iii – The AGNI will only take part in plenary or committee proceedings on foot of a motion or specific request by the Assembly or the relevant committee

33 In the Justice Bill [NIA Bill 01/10] during March 2011 (now the Justice Act (Northern Ireland) 2011)

86. For these reasons, the **Committee recommended that no change be made to existing arrangements in SOs. Rather, if the AGNI decides to exercise the power under Section 11 of the Northern Ireland Act 1998, a relevant committee can call for him/her to make a statement and/or answer questions as to why s/he has referred a question to the Supreme Court, but that no provision need be made to this effect in Standing Orders.**
87. The Committee then moved on to consider whether any benefit could be achieved by considering the extent to which the AGNI might be asked to give views on the content or competence of Bills prior to Final stage.
88. The Speaker raised this matter and noted in his submission that the AGNI has a clear role in advising the Executive on legislative competence, both prior to submission of Bills for introduction and after a Bill has passed Final Stage. The Speaker suggested that given these clear requirements, it would be inappropriate for the AGNI to have any formal role prior to Final Stage.
89. In examining the AGNI's contribution, the Committee noted that he did not disagree with this view, but rather commented that **informal** advice and assistance from the AGNI at an early stage in the process may have some benefit.
90. After reflection the Committee agreed the validity of the Speaker's view and **recommended that the AGNI should not be required to give views on the content or competence of Bills prior to Final Stage.**

Area 3 - The Annual Report of the AGNI

91. Under Section 26(1) of the Justice (Northern Ireland) Act 2002, the AGNI is required to produce an Annual Report, and submit it to the First and deputy First Ministers who are then required to lay it in the Assembly. Laying the Report requires, at present, that a copy is lodged in the Assembly's Business Office, where it is available to all Members. No further action is taken. The Report is placed in the public domain when the AGNI publishes it on the internet.
92. When examining the views of stakeholders, the Committee noted that only the AGNI and the Law Society³⁴ offered a view on potential participation of the AGNI in respect of the Annual Report. The Law Society noted it was an area for consideration, but also refers to the annual report of the Director of Public Prosecutions (DPP).
93. The Committee recognised the limits of responsibility of the office of the AGNI and, therefore, agreed that participation by the AGNI in terms of the annual report of the DPP falls outside the remit of this inquiry.
94. The AGNI³⁵ suggests this area of work could offer opportunities for participation in proceedings of the Assembly and he suggests a statement following the publication of the Annual Report may be helpful. He offers no further suggestion of how this could be achieved.
95. Initially the Committee identified four options:
- Option 1 – **No change to existing arrangements in SOs** i.e. that the Annual Report is laid in the Assembly by the First and deputy First Ministers and that no further action is taken;
 - Option 2 – **SOs be amended so that when the Annual Report is laid, the AGNI attends a nominated committee, at that committee's request, to make a statement and/or answer questions on the content of the Report;**
 - Option 3 – **SOs are amended to permit the AGNI to attend plenary after the laying of his/her Annual Report, only if specifically requested by the Assembly (through the laying of a motion) to address an issue or speak to the Report;**

34 Written submissions included at Appendix 3

35 Written submission included at Appendix 3

- Option 4 – **SOs are amended to permit the AGNI, after the laying of his/her Annual Report, an automatic right of attendance in the Assembly to make a statement and/or answer questions pertaining to the Report.**

96. In the absence of any further stakeholder views, the Committee considered the identified options against its agreed key principles.
97. The Committee noted that Option 4 was contrary to key principle number iii above³⁶, since it afforded the AGNI an automatic right of attendance in plenary, which it had agreed was only appropriate for elected Members. For this reason Option 4 was set aside.
98. The Committee then examined Option 3 in greater detail, noting that although no convention for such an approach existed, it could be facilitated in a similar way to the annual “take note” debate brought to the House by the Public Accounts Committee. Despite this however, the Committee agreed that as this is not convention or common practice for other annual reports, it was the least preferred of the remaining options.
99. In respect of Option 2, the Committee agreed that the “nominated committee” referred to could, as in previous instances, be either the CJ or another relevant departmental committee, and agreed this was a matter which could be clarified when drafting SOs.
100. The Committee recognised that the only way this option really differed from Option 1 was that it codified a process in SOs, which could equally be achieved by making no change at all. Unlike previous areas however, the Committee could identify no significant risk and as the Report was produced annually, agreed that in this case a benefit could be found in formalising the process.
101. After consideration the **Committee therefore recommended that Option 2 be adopted. That is “SOs be amended so that when the Annual Report is laid, the AGNI attends a nominated committee, at that committee’s request, to make a statement and/or answer questions on the content of the Report”.**

36 Key Principle iii – The AGNI will only take part in plenary or committee proceedings on foot of a motion or specific request by the Assembly or the relevant committee



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Tuesday 22 January 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA
Mr Mervyn Storey MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:00pm The meeting opened in public session.

1. Apologies

None.

The Chairperson welcomed Mr McElduff to the Committee. Mr McElduff confirmed that he had no financial or other interests, relevant to the work of the Committee, to declare.

5. Attorney General participation in the proceedings of the Assembly

The Committee considered correspondence from the Chairperson of the Committee for Justice, outlining some issues his Committee had encountered in recent dealings with the Attorney General for Northern Ireland, in relation to his interaction with Assembly committees and participation in the proceedings of the Assembly.

1:06pm Mr Lyttle joined the meeting.

The Committee also considered a briefing paper which advised Members that the previous Committee on Procedures had initiated an inquiry into how the Attorney General will participate in proceedings of the Assembly, however, this was subsequently put on hold pending the outcome of a consultation initiated by the Department of Justice into, inter alia, the powers of the Attorney General. The Chairperson advised Members that the Committee for Justice expected to receive a briefing on the results of the consultation by the end of March 2013.

Agreed: In light of the pressing nature of the issues highlighted in the correspondence from the Chairperson of the Committee for Justice, it was agreed to include these items in and proceed with the inquiry into the participation of the Attorney General for Northern Ireland in the proceedings of the Assembly.

Agreed: The Committee was content with the suggested way forward for the inquiry, as outlined in the briefing paper, and the Clerk was asked to prepare an inquiry plan (including draft Terms of Reference), and to take forward the other actions in the paper, for consideration at the meeting scheduled for 26 February 2013.

2:06pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 26 February 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:00pm The meeting opened in closed session.

1. Apologies

None.

6. Attorney General participation in the proceedings of the Assembly

The Committee considered a briefing paper on its inquiry into the extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in proceedings of the Assembly.

1:17pm Mr Lyttle joined the meeting.

Agreed: The Committee agreed the Terms of Reference for the inquiry.

Agreed: The Committee agreed the programme of work, and that a notice publicising the inquiry would appear on the Assembly website only.

1:31pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 19 March 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:02pm The meeting opened in closed session.

1. Apologies

None.

5. Inquiry into the Attorney General participation in proceedings of the Assembly

Agreed: The Committee agreed:

- a) The list of stakeholders who should be invited to submit written evidence.
- b) The draft letter to stakeholders.
- c) The draft "Call for Evidence" pro-forma that respondents should use. The Chairperson advised Members that the pro-forma would be sent to Legal Services for clearance before issue. Should any changes to the pro-forma be required, Members agreed that the Chairperson could approve it, rather than waiting to the next meeting, and the revised pro-forma would be sent to Members.
- d) The deadline for submissions should be 9 May 2013.

1:40pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 23 April 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:00pm The meeting opened in closed session.

1. Apologies

Mr Alban Maginness MLA
Lord Morrow MLA

5. Inquiry into the Attorney General participation in proceedings of the Assembly

The Committee noted some written submissions and correspondence that had been received for the inquiry.

The Committee considered the response from the Chairperson of the Committee on Standards and Privileges in relation to the Attorney General for Northern Ireland (AGNI) and requirements in respect of Members' interests.

Agreed: It was agreed that the letter had addressed item (g) in the inquiry Terms of Reference regarding Members' interests and how these should apply to the AGNI.

1:19pm Mr Lyttle joined the meeting.

Agreed: It was agreed that the Attorney General for Northern Ireland should be invited to give oral evidence at the meeting scheduled for 28 May 2013.

1:28pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 28 May 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA
Mr Mervyn Storey MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:01pm The meeting opened in public session.

1. Apologies

Mr Chris Lyttle MLA

3. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

1:02pm Mr John Larkin QC, Attorney General for Northern Ireland, joined the meeting and briefed Members on his written submission to the Committee's inquiry. This was followed by a question and answer session.

1:16pm Mr Storey joined the meeting.

1:23pm Mr Maginness left the meeting.

1:30pm Mr Allister left the meeting.

1:40pm The Chairperson thanked Mr Larkin for his oral evidence, who then left the meeting.

1:40pm Mr McElduff left the meeting.

The Committee considered the written submissions that had been received for the inquiry, along with a summary of the responses.

Agreed: It was agreed to write to Assembly Legal Services to obtain their views on some issues relating to the inquiry Terms of Reference.

Agreed: It was agreed that it should not be necessary to take any other oral evidence.

Agreed: It was agreed that the Clerk should start work on drafting a report for consideration at the meeting in September 2013.

The Committee considered correspondence from the Chairperson of the Committee for Justice, requesting that the Committee on Procedures considers clarifying the jurisdiction and powers of Assembly Committees, particularly with regard to private organisations, where the matter under consideration relates to a transferred matter.

Agreed: It was agreed that as this issue was beyond the Terms of Reference for the current inquiry, the correspondence would be reconsidered on conclusion of the inquiry.

1:54pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 25 June 2013

Room 21, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)

1:01pm The meeting opened in closed session.

1. Apologies

None.

4. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered a letter from Mr John Larkin QC, Attorney General for Northern Ireland, which provided comments on the points raised in the Speaker's submission.

The Committee also considered a briefing paper with some options on the way forward.

Agreed : It was agreed that Members should obtain the views of their parties on each of the issues, so that decisions can be taken at the meeting scheduled for 24 September 2013.

1:56pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 24 September 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Chris Lyttle MLA
Mr Barry McElduff MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jonathan Watson (Clerical Supervisor)
Jennifer Breslin (Clerical Officer)

1:00pm The meeting opened in public session.

1. Apologies

Mr Oliver McMullan MLA

The Chairperson welcomed Ms Bradley to the Committee. Ms Bradley confirmed that she had no financial or other interests, relevant to the work of the Committee, to declare. The Chairperson reminded Members of the on-going need to declare any interests which are relevant to the work of the Committee.

4. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

Agreed: It was agreed to defer consideration of this item to the next meeting, so that Members can obtain the views of their parties on each of the issues.

1:55pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 22 October 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Oliver McMullan MLA
Mr Kieran McCarthy MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.10pm The meeting opened in public session.

1. Apologies

Mr Jim Allister MLA
Mr Trevor Clarke MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

The Chairperson welcomed Mr McCarthy to the Committee. Mr McCarthy confirmed that he had no financial or other interests, relevant to the work of the Committee, to declare. The Chairperson reminded Members of the on-going need to declare any interests which are relevant to the work of the Committee.

3. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

Agreed: As only five Members were present, it was agreed to defer consideration of this item to the next meeting.

1:34pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 26 November 2013

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Kieran McCarthy MLA
Mr Alban Maginness MLA
Lord Morrow MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.04pm The meeting opened in public session.

1. Apologies

Mr George Robinson MLA

3. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

1.06pm Lord Morrow joined the meeting.

The Committee considered a briefing paper and discussed a number of issues relating to the Terms of Reference for the inquiry.

There was general agreement on the approach that the inquiry should take and the key principles regarding participation by the Attorney General for Northern Ireland in proceedings of the Assembly.

Agreed: It was agreed that Members should obtain the views of their parties on each of the issues, for consideration at the meeting scheduled for 28 January 2014.

Agreed: It was agreed that the Clerk should prepare a first draft report reflecting the key principles, plus an accompanying briefing paper, for consideration at the meeting in January 2014.

1.56pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 28 January 2014

Room 144, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Kieran McCarthy MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.02pm The meeting opened in closed session.

1. Apologies

None.

3. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered a first draft report on its inquiry.

Agreed: The Committee was content with the broad outline of the draft report and with the areas identified for consideration.

1.08pm Ms Bradley joined the meeting.

1.10pm Mr Allister joined the meeting.

The Committee considered each section of the draft report and discussed a number of issues relating to the Terms of Reference for the inquiry.

Agreed: It was agreed to consider the outstanding issues at the meeting scheduled for 25 February 2014, along with a revised draft report.

1.32pm The meeting moved into public session.

1.52pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 25 February 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Oliver McMullan MLA
Mr Kieran McCarthy MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.00pm The meeting opened in closed session.

1. Apologies

None.

3. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered a revised draft report on its inquiry.

Agreed: In relation to the section of the draft report on Guidance issued by the AGNI, it was agreed that the Clerk could consult with the Office of the First Minister and Deputy First Minister and bring options to the next meeting, plus a redrafted section of the draft report.

1.28pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 25 March 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Nuala Dunwoody (Clerk Assistant)
Nick Mitford (Senior Assistant Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.01pm The meeting began in closed session.

1. Apologies

Ms Paula Bradley MLA

2. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered a briefing paper plus a revised draft report on its inquiry.

The Chairperson informed Members that the Clerk Assistant was in discussion with the Office of the First Minister and Deputy First Minister regarding the handling of a Statutory Rule, subject to the draft affirmative resolution procedure, which may come to the Assembly before the summer recess.

The Committee noted that the arrangements for this particular Statutory Rule would be dealt with independently of the inquiry, and should not be binding on any future conclusions of the Committee.

Agreed: It was agreed to write to the Office of the First Minister and Deputy First Minister, the Attorney General for Northern Ireland and the Committee for Justice, to seek their views on mechanisms for managing guidance (Statutory Rules) laid by the Attorney General which is subject to the negative resolution or draft affirmative resolution procedures.

1.40pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 29 April 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Nick Mitford (Senior Assistant Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.01pm The meeting began in closed session.

1. Apologies

Mr Kieran McCarthy MLA
Mr Barry McElduff MLA

5. Matters arising

- (a) Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Chairperson advised Members that, as agreed, he had written to the Office of the First Minister and deputy First Minister, the Attorney General for Northern Ireland and the Committee for Justice, to seek their views on mechanisms for managing guidance (Statutory Rules) laid by the Attorney General which is subject to the negative resolution or draft affirmative resolution procedures.

As no responses had been received, the Committee was content to consider this item at the next meeting.

1.33pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 27 May 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Mr George Robinson MLA

In attendance: Ciara McKay (Clerk)
Neil Currie (Assistant Clerk)
Jennifer Breslin (Clerical Officer)

1.01pm The meeting began in closed session.

2. Apologies

Lord Morrow MLA

5. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered the views expressed in the responses from the Attorney General for Northern Ireland, the Office of the First Minister and deputy First Minister, and the Committee for Justice, in relation to the mechanisms for managing guidance (Statutory Rules) laid by the Attorney General which is subject to the negative resolution or draft affirmative resolution procedures.

The Committee also considered a briefing paper including some options for handling these Statutory Rules.

Agreed: It was agreed to write to the Speaker and the Business Committee to seek their views on mechanisms for managing these Statutory Rules. It was also agreed that Members should discuss the matter with their parties and notify the Clerk of party views.

The Deputy Chairperson advised Members that, in view of the Statutory Rule (subject to the draft affirmative resolution procedure) which may come to the Assembly before the summer recess, it may be necessary for the Committee to meet before the next scheduled meeting on 24th June 2014.

1.26pm The Deputy Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 24 June 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Mr Kieran McCarthy MLA
Mr Oliver McMullan MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Ciara McKay (Clerk)
Nick Mitford (Senior Assistant Clerk)
Neil Currie (Assistant Clerk)

1.01pm The meeting opened in public session.

1. Apologies

Mr Samuel Gardiner MLA
Mr Barry McElduff MLA

4. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

1.05pm Mr Robinson joined the meeting.

The Committee considered the responses from the Business Committee and the Speaker, in relation to how a Statutory Rule laid by the Attorney General, which is subject to the draft affirmative resolution procedure, might be tabled and debated.

1.08pm Mr Allister joined the meeting.

1.08pm Mr Clarke joined the meeting.

Agreed: It was agreed to explore this issue with the junior Ministers at the Committee meeting scheduled for 23rd September 2014. It was also agreed that the Clerk should prepare an options paper for consideration at the next meeting.

1.16pm Mr McCarthy left the meeting.

1.49pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 23 September 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Barry McElduff MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Nick Mitford (Senior Assistant Clerk)
Neil Currie (Assistant Clerk)

1.01pm The meeting opened in public session.

1. Apologies

Mr Trevor Clarke MLA

5. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

Agreed: It was agreed to defer this item until the next meeting.

1.55pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 21 October 2014

Room 29, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Dee Papacosta (Clerical Officer)

1.06pm The meeting began in closed session.

1. Apologies

Mr Trevor Clarke MLA
Mr Alban Maginness MLA

1.10pm The meeting moved into public session.

4. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee considered an options paper for managing the draft affirmative Statutory Rule to be laid by the Attorney General for Northern Ireland (AGNI), which seeks to add the PSNI to the list of organisations to which guidance is issued by the AGNI.

1.18pm Mr Robinson joined the meeting.

Agreed: The Committee agreed that Option 1 should be used, which would require the establishment of an ad hoc committee to deal with the item of business. It was agreed that the process for this particular Statutory Rule will be treated as a pilot, to test the viability of the procedure for consideration in the wider inquiry.

Agreed: It was agreed to write to the AGNI, the Deputy Speakers, the Business Committee and the Committee for Justice to inform them of the Committee's decision.

1.26pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 25 November 2014

Room 21, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Trevor Clarke MLA (Deputy Chairperson)
Mr Jim Allister MLA
Ms Paula Bradley MLA
Mr Kieran McCarthy MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Dee Papacosta (Clerical Officer)

1.01pm The meeting began in closed session.

2. Apologies

Mr Samuel Gardiner MLA
Mr Barry McElduff MLA
Mr Oliver McMullan MLA

5. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee noted letters from the Attorney General for Northern Ireland (AGNI) and the Principal Deputy Speaker, in relation to the procedure for consideration of the draft affirmative Statutory Rule to be laid by the AGNI.

Agreed: The Committee agreed a draft motion to be tabled by the Business Committee for the establishment of an ad hoc committee to consider the Statutory Rule. The agreed draft motion detailed the following:

- the remit of the ad hoc committee;
- its composition;
- the number of Members by party;
- the quorum;
- the date for submitting a report to the Assembly; and
- that the procedures of the Committee shall be such as the Committee shall determine.

The Committee noted that, in line with the agreed procedure, when the Statutory Rule is laid in the Assembly, the Chairperson will write to the Business Committee (including the agreed draft motion) requesting that an ad hoc committee be established.

The Committee read paragraphs 1 – 101 (paragraph by paragraph) of the draft report on ‘The extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in proceedings of the Assembly’.

Paragraphs 1 – 101, agreed

Agreed: It was agreed to give further consideration to the remainder of the draft report (relating to Statutory Rules laid by the AGNI) when an evaluation of the ad hoc committee procedure had been carried out.

1.29pm The meeting moved into public session.

1.36pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 27 January 2015

Room 21, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Mr Sammy Douglas MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Barry McElduff MLA
Mr Alban Maginness MLA
Lord Morrow MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Dee Papacosta (Clerical Officer)

1.01pm The meeting began in closed session.

1. Apologies

Mr Trevor Clarke MLA

6. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

The Committee noted the current status of the pilot ad hoc committee to be established to consider a Statutory Rule laid by the Attorney General.

The Chairperson raised the possibility of publishing the inquiry report in two parts.

Agreed: It was agreed that a draft of a “two part” report would be considered at the next meeting when a final decision on the way forward would be made.

1.41pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 24 February 2015

Room 21, Parliament Buildings

Present: Mr Gerry Kelly MLA (Chairperson)
Mr Jim Allister MLA
Mr Samuel Gardiner MLA
Mr Kieran McCarthy MLA
Mr Oliver McMullan MLA
Mr George Robinson MLA

In attendance: Alison Ross (Clerk)
Neil Currie (Assistant Clerk)
Dee Papacosta (Clerical Officer)

1.35pm The meeting began in closed session.

1. Apologies

Mr Trevor Clarke MLA
Mr Sammy Douglas MLA
Mr Barry McElduff MLA
Lord Morrow MLA

5. Inquiry into the extent to which Standing Orders should permit the Attorney General to participate in proceedings of the Assembly

Agreed: It was agreed to publish the report in two parts, and that Part 1 of the report would include phases 1, 2 and 3.

The Committee read the draft report (Part 1) paragraph by paragraph.

Report:

Paragraphs 1 – 101, agreed
Summary of Recommendations – agreed
Executive Summary – read and agreed

Agreed: The inclusion of the following appendices was agreed:
Appendix 1 – Minutes of Proceedings relating to the report
Appendix 2 – Minutes of Evidence
Appendix 3 – Written Submissions
Appendix 4 – Options Matrix for participation of the AGNI
Appendix 5 – Correspondence

Agreed: Members ordered the report to be printed.

Agreed: It was agreed that the Chairperson could approve the minutes for the part of today's meeting dealing with consideration of the draft report, in order for an extract to be included in the report.

Agreed: It was agreed that the report should be embargoed until commencement of the debate of the report in plenary.

Agreed: The motion to accompany the report's introduction to Assembly was agreed.

1.50pm The Chairperson adjourned the meeting.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

28 May 2013

Members present for all or part of the proceedings:

Mr Gerry Kelly (Chairperson)
 Mr Jim Allister
 Mr Samuel Gardiner
 Mr Alban Maginness
 Mr Barry McElduff
 Mr Oliver McMullan
 Lord Morrow
 Mr George Robinson
 Mr Mervyn Storey

Witnesses:

Mr John Larkin *Attorney General for Northern Ireland*

1. **The Chairperson:** The Attorney General (AG) has agreed to make an oral submission. You are very welcome. Would you like to make some opening remarks, and we will ask questions later?
2. **Mr John Larkin (Attorney General for Northern Ireland):** Chairman, rather than me simply repeating what I have written, I thought that it would be more useful if I make myself available for questions to maximise the Committee's opportunity to bring out some of the implications of what I am saying.
3. I am hugely grateful for this opportunity. I will make one observation. It struck me that, when I last appeared before the Committee in September 2010, if memory serves me right, the Committee took the decision afterwards to park the issue of participation pending resolution of the larger questions on the governance and accountability of the Public Prosecution Service (PPS). It is a big question, obviously, but, in the meantime, particularly through the section 8 guidance, it has become clear that, even if that issue is not looked at by the Committee for some time, there are, perhaps, more pressing immediate concerns, and it strikes me that the Committee might wish to look at the issue before coming to a view

on the nature of the governance and accountability arrangements that ought to pertain in respect of the PPS.

4. **The Chairperson:** Thank you. That, I am informed, has not been decided yet. You sent in quite a comprehensive written presentation, and I thank you for that. I will open the meeting up to the Committee for any questions that members wish to ask.
5. **Mr A Maginness:** I do not know whether the Attorney General has seen the letter from the Speaker to the Chairperson of the Committee, Mr Kelly. In substance, the Speaker, in my opinion, is saying that there should not be a formal speaking role or a role to that effect for the Attorney General on the Floor of the Assembly, save really through the Committees. Do you have a view to express on that? I do not know whether you have seen the letter.
6. **Mr Larkin:** No, I have not seen that.
7. **Mr A Maginness:** I hope that I am not misrepresenting the Speaker, but, in substance, I think that I am correct.
8. **The Chairperson:** We will try to get you a copy.
9. **Mr Larkin:** Rather than make any considered response to a document that I have not read, which, usually, is an unwise thing to do, I will content myself with some general observations. First, it is good that there be engagement with the Committees, and it would probably be for each Committee to have devolved to it the power to agree with the Attorney General from time to time what engagement might be appropriate.
10. Secondly, it is reasonably clear that the thrust of the 2002 Act is for some form of plenary participation. The office in this jurisdiction, as I indicated and as is obviously well known to the Committee, cannot readily be equated with any model that exists elsewhere. There are

- important differences from the position in Scotland, England and Wales, and Dublin. However, if one takes Scotland as a fairly ready example to hand, one can see that the Lord Advocate is not a Member of the Scottish Parliament, but she, as was previously, and he, as he now is, will sit, will answer questions and may make statements from time to time. No one confuses the Lord Advocate with a Member of the Scottish Parliament. No one imagines for a moment — it is prohibited, of course, in the 2002 Act — that the Lord Advocate would try to vote on a Division. However, it strikes me that the resource, which a law officer is, is properly being made available to the relevant legislature, which, in that case, is the Scottish Parliament and here it is the Assembly.
11. I will give one example that brought the issue into focus for me well in advance of any decision on the ultimate question about the governance of the PPS. It is the question of the section 8 guidance. I worked extensively, as Mr Maginness knows, with the Justice Committee on the guidance that has been produced thus far, and I am happy to say that the Justice Committee appeared very happy with the guidance. Therefore, if the Committee is happy with the guidance, I do not anticipate a difficulty with the Assembly in plenary session. However, if, for example, my guidance were to be prayed against, how would the case for that guidance be made unless the Attorney General of the day was able actually to say something about the guidance and, perhaps, answer questions about it in the course of a debate?
12. **Mr Allister:** Given the fact that your primary role is chief legal adviser to the Executive, do you see any difficulties in taking on a speaking role in the Assembly when the Assembly is really getting down and getting its hands dirtied about what should and should not be in legislation, for example? Do you see any threat to your independence and your perceived independence with any role being accorded to you there?
13. **Mr Larkin:** Westminster, in enacting the 2002 Act, must have contemplated that the statutory independence that it, for the first time, enshrined, is, nonetheless, compatible with a role as set out in Standing Orders and which, I think, necessarily encompasses some role in the plenary sittings of the Assembly.
14. One of the things, of course, that we do not yet have but that I hope we will acquire here is a strong culture that supports what we do. A mistake that lawyers sometimes make but sometimes very quickly realise is the fact that the law and rules cannot do everything. In Westminster, for example, you have an Attorney General who is not statutorily independent, who sits as a Conservative MP who is a member of the Government and who sits from time to time when invited in Cabinet, but who, nonetheless, in a number of discrete areas, is capable of and expected to exercise independence. He will make technical points, for example, and he did so recently on the same sex marriage Bill that is going through the House of Commons. If memory serves me right — I, of course, speak subject to correction — my recollection is that he abstained on the Second Reading. So, he is able to make technical points on —
15. **Mr Allister:** Just to pick up on that point: we had the recent attempted amendment to the justice Bill about the Marie Stopes clinic. It is public knowledge that a view was given by the Attorney General's office on that. Would you expect that, in that debate, for example, there would be an expectation to hear from the Attorney General? How would that leave the independence of your office?
16. **Mr Larkin:** That is a very strong supplementary question. I think that there is a distinction on matters of policy. Let me give another example that will be familiar to Committee members. I engaged with the Committee for Finance and Personnel and wrote to you on your private Member's Bill. I made it very clear that I have a view on the law of that Bill, following amendments made

- to it, but I would not, for example, ever expect to be drawn into a debate on the merits of the Bill in policy terms or on whether it is a good thing or a bad thing. However, it would not strike me as at all improper to be asked to explain a legal view on one aspect or another of it.
17. **Mr Allister:** The nature of debate with interventions and Members giving way, etc, is that issues are teased out. Keeping the line that circumscribes what is legal and what might overlap with something else is not easy. If that line is at all blurred, is there a threat to the office?
18. **Mr Larkin:** I think that you are absolutely right to say that the line is not always easy to draw, but no one has ever said that this is an easy job to do. In one sense, I speak partly against interest, because if the Committee and the Assembly ultimately decide not to make Standing Orders on these matters, I shall be spared the kind of difficult work to which you refer. It strikes me that merely because something is difficult and presents challenges, it does not mean an insuperable obstacle to its being attempted. Obviously, it could be done well or badly. Committee members and Members of the Assembly more generally will be the judges of that.
19. **Mr Allister:** Do you not see any danger in getting into the cut and thrust of debate?
20. **Mr Larkin:** I think that is a question of judgement for the individual Attorney General of the day. I hope that he or she will be mindful that although the lines between policy and law, and competence in particular, are not always easy to draw, there should be good faith and a competent effort to make that distinction.
21. **Mr Allister:** What about the point that you are the Attorney General to a conglomerate Executive who are not necessarily, self-evidently, of one view on particular issues? Does that not simply create more difficulties for this role?
22. **Mr Larkin:** Without adopting descriptions of the Executive that may or may not be regarded as favourable to them, it emphasises that where one has a mandatory coalition, a statutorily independent law officer is a safeguard to minority parties in the Executive and a resource to the Assembly as a whole. Of course, one could have the statutory enshrinement of independence and an Attorney General who does not live up to what that requires.
23. No one pretends that the right answers are easy or that they will always come instantly or readily to hand, but a clear objective is set out in the legislation. Merely because its operation and practice will be difficult — it will clearly be very difficult on occasions — does not strike me as a reason why the task of doing what the 2002 Act intended regarding a certain form of participation in the Assembly should not be attempted.
24. **Mr Allister:** Could I ask —
25. **The Chairperson:** Excuse me, Jim. I have always tried to avoid jumping in between two barristers. As Chair, let me —
26. **Mr Allister:** I have one final question.
27. **The Chairperson:** I will let you come in in a moment if that is OK. I am not a lawyer but I want to expand on something that you said so that it is a bit clearer in my head.
28. You are the chief legal adviser to the Executive and, I think that Jim Allister pointed out, to all the Departments, or at least to all the Ministers. From a layperson's point of view, there seems to be a conflict of interest. If the job of the Committees — they are known as scrutiny Committees — is to hold the Departments to account and the job of the Assembly as a whole — certainly when it sits in plenary session — is to hold Ministers and the Executive to account, I put it to the AG that, to a layperson, there is a conflict of interest. I will use a slightly different example. I sit on the Policing Board, which holds the police to account. If the police and the Policing Board were to use the same legal advice, would that not be a conflict of interest as well?

29. **Mr Larkin:** Of course, the lawyer that you would be using would not be statutorily independent, as the Attorney General is. That is why I go back to the statutory protection of the Attorney General, who is independent in the discharge of his or her functions. I think that that makes a profound difference.
30. Again, it is worthwhile looking at the imperfect comparators, because there is no direct analogy. It has always been the case that the Attorney General of England and Wales has been available to advise Parliament corporately on important matters. The role is capable of a number of positions that, in one sense, sometimes appear not to always sit easily together. Conventions protect that in Westminster. Here, the protection is the statutory independence.
31. I emphasise again that the Attorney General in England and Wales is a party political MP. Even with that background, it is nonetheless felt that some of the functions that absolutely require independence are capable of being performed by someone who, for at least part of his political life, has been an entirely party political animal.
32. **The Chairperson:** Jim, sorry about that. Do you want to come in again?
33. **Mr Allister:** I just want to ask one final question. Apart from not being able to vote in the Assembly by virtue of not being a Member of the Assembly, where else do you see your vision of the role of the Attorney General being restricted?
34. **Mr Larkin:** It is a matter that is really left to the creativity of the Assembly. It can —
35. **Mr Allister:** Yes, but I was asking about your vision.
36. **Mr Larkin:** I am not sure that I have an overly prescriptive vision. The Scottish model strikes me as a potentially useful template. Obviously, when one starts to condescend to that level of detail, I think that one can start to make drafting suggestions. Scotland is a pretty useful model.
37. **Mr Allister:** Chairman, I think that, at some point, we should invite the Attorney General back after he has read the Speaker's letter to give us a response to that.
38. **The Chairperson:** OK, that is fair enough.
39. **Mr Larkin:** I would be very happy to do that.
40. **Mr Gardiner:** How do you do? In your opening remarks, you said that you are answerable to the First Minister and the deputy First Minister on advice and guidance and things like that.
41. **Mr Larkin:** No, I am not sure that I did. I am completely statutorily independent. There is —
42. **Mr Gardiner:** You are answerable to those two?
43. **Mr Larkin:** No, I am statutorily independent. I am accountable regarding misbehaviour. If, for example, the First Minister and the deputy First Minister discovered me doing something hugely improper, they themselves cannot get rid of me. They would appoint a tribunal that would investigate the matter, and it would make a decision on that.
44. The relationship between the First Minister, the deputy First Minister and the Attorney General is, first and foremost, that they appoint the Attorney General for the time being —
45. **Mr Gardiner:** They cannot sack you.
46. **Mr Larkin:** That is right.
47. **Mr Gardiner:** How do you stand on co-operation with and advice to the Speaker?
48. **Mr Larkin:** Of course, the Assembly has its own sources of legal advice in this Building. The Speaker writes to me at the conclusion of the passage of each Bill and asks me whether I am going to refer the Bill to the Supreme Court. I return to him as quickly as I can, indicating what my intentions are. So, formal requests for legal advice from the Speaker have not come. There is

- no reason why that should not come. Obviously, I would consider it important, if I could, to advise the Speaker, albeit that he has had his own sources of advice thus far. The structures of how participation, for example, might take place, would be worked out, subject to Standing Orders, by the Speaker. No doubt, he would consult beyond those issues.
49. **Lord Morrow:** Attorney General, your role is, to the layman, slightly confusing. That is maybe more to do with the layman than —
50. **Mr Larkin:** I can assure you, Lord Morrow, that it is not. It is the nature of the position.
51. **Lord Morrow:** When you would come to the Assembly, who would you be coming to advise?
52. **Mr Larkin:** The Assembly in toto.
53. **Lord Morrow:** Yet, that is not your role here as Attorney General. You are to —
54. **Mr Larkin:** The role of chief legal adviser to the Executive is an important role, but none of these positions is set out in statute. There is an extent to which, even after just over three years in post, there is still a process of finding our way collectively.
55. **Lord Morrow:** Attorney General, think twice before you answer this one. If I were to knock on your door tomorrow with an issue, would you receive me?
56. **Mr Larkin:** I would. When I appeared before the Committee for Finance and Personnel, that question was cast in almost identical terms. It was then cast up to me how I had not dealt with a particular issue. There were reasons for that, which I could not go into, and I hope that those have subsequently come to the attention of the particular Member. Absolutely, I am keen to engage, obviously, formally with the Committees and with groups of MLAs or individual MLAs. Obviously, Lord Morrow, if you were to approach me about, for example, an issue involving a constituent, you would not expect to receive legal advice about that. If for example, you were considering bringing in a private Member's Bill and wanted to discuss in broad-brush terms issues of competence that might arise, I would be entirely happy to have such a conversation.
57. **Lord Morrow:** I fully accept that it would not be acceptable for Members to come and knock your door about a constituent who has an issue rather than about some legal aspect. However, if you were to give a sign of approval to a Bill and it went forward on the basis that the Attorney General said that it was competent, in order and fit for purpose, would it not be reasonable to expect that every Member of the Assembly should accept that? You would have said that it was fit for purpose, so they should get on with it.
58. **Mr Larkin:** It is a hugely flattering invitation to have some form of infallibility conferred on me. *[Laughter.]* I fear that I must resist it, however attractively it is couched. It has been said more than once that Ministers, Departments, Committees and MLAs or groups of MLAs will get an opinion. It will be a scrupulously and conscientiously thought-out opinion, but I cannot always pretend that it will be infallible or that its infallibility will be universally recognised.
59. **The Chairperson:** We are going into some ecclesiastical areas.
60. **Mr Storey:** You are very welcome, Attorney General. Some of us have benefited over the past number of months and years from having access to legal advice from Legal Services here at the Assembly. Legal advice from the Departmental Solicitor's Office is privy to the Committee that originally asked for it. If an individual expressed to you a concern about the response, would there then be a conversation between you and Legal Services or the Departmental Solicitor's Office? Legal advice is an opinion. It all depends on the individual giving that advice and their interpretation of the legislation or whatever. Do you ever see a situation in which you could give a contrary opinion

- on legal advice that was given to an individual or Committee?
61. **Mr Larkin:** Let us concretise it to a certain extent by taking the example of advice received from the Assembly's legal advisers by a Committee. That would be privileged to the Committee. The Committee, as the client, could collectively waive its privilege and seek advice from the Attorney General. I could look at that, and if I considered that the advice was correct in every particular or some variation westwards from that, I could advise the Committee accordingly.
62. One of the interesting issues, of course, is that there is in place a fairly well-known convention governing the Attorney General's advice to Ministers and Departments. The convention is that it is not disclosed normally that the advice has been sought, and a fortiori the content of the advice is not disclosed. It is not always universally adhered to. Often, one can understand that. It need not always be that way. In some of the North American jurisdictions, where there is quite an intense culture of transparency, the advice of the attorney is always published. If, for example, you go to the website of the Attorney General for South Carolina, there is a section devoted to his legal advice. You will see a range of public bodies that have written to him or his senior staff about often quite technical issues, such as pensions law or issues of larger importance, and the advice is published. Let me be very clear: I am not urging that revolutionary approach, but —
63. **The Chairperson:** It is a nice idea.
64. **Mr Larkin:** It is always useful to see comparisons because they indicate that the way that we do things is not the only way. It is one way of ensuring that the public bodies to which citizens give their allegiance are not holding back the legal advice as to the way in which they conduct their affairs. Superficially, there is something very refreshing and attractive about it, even though I am going to be typically conservative and cautious and say that we should not go there just yet.
65. **Lord Morrow:** We started off with five or six lawyers in the room. We now have only two or three. *[Laughter.]*
66. **The Chairperson:** You have broken two lawyers so far. You are doing very well.
67. **Mr Storey:** At least we are not being charged by them.
68. **The Chairperson:** That is why we are worried about it.
69. **Mr McMullan:** My question centres on the same issues as those of Mervyn and Lord Morrow. Is there a need for legal advice at the Assembly? Is there a need for legal advice from you? According to the Speaker, there is no role for you in any procedures, Standing Orders or roles of the Assembly. Lord Morrow said that if he came to you with a problem with putting a Bill down, you would give him advice. Is that the legal advice that we could expect the Assembly to follow, or do you see a case in which the Members could argue your views?
70. **Mr Larkin:** They might well do that. I suppose the value of a private Member who is anxious to introduce a piece of legislation getting a view, in broad terms, from the Attorney General is that if the Bill is introduced in the same shape or form, and continues its passage likewise, there is a pretty good chance that that Bill will not be referred because it is the Attorney General who has given the indication that it seems reasonable. Obviously, the Attorney General of the day will consider any point that is made during the Bill's passage and any point that is made when it concludes its passage, but if the Attorney General has researched the point before the Bill is introduced, and the Bill, as introduced, faithfully reproduces the terms in which it was described by its sponsor, one can see that that would be a powerful reassurance to the private Member or Members who introduced it.
71. **Mr McMullan:** Do you foresee any stage at which you would have to intervene with legal advice given at the Assembly?

72. **Mr Larkin:** My impression now is that the approach of the Speaker is to acknowledge that there is a range of safeguards in relation to the possibility of a Bill being referred and that the Speaker is not going to stop a Bill being substantively debated at any stage, but I speak subject to correction, and, as I understand it, that might be notwithstanding the fact that the Assembly's Legal Services may have a view expressing concern about aspects of its competence.
73. I am keen to emphasise what, in many ways, Mr Allister's question brought out. In one sense, a lot of this is very difficult, and, for us at least, it is untried. It is not that I am anxious to do more work than I have to in human terms. However, when it comes to the section 8 guidance, principally, and in relation to complex legal issues that might arise from time to time with Bills, it strikes me that there is a service that the Attorney General can move and offer to the Assembly, of which the Assembly might well wish to avail itself from time to time.
74. **Mr McMullan:** Lastly, in layman's terms, do you think the present system is confusing? You have England, Scotland, Wales and Northern Ireland on different systems. Is there any way that people could question the legal advice that is given in the different jurisdictions?
75. **Mr Larkin:** I suppose that the difference of approach between England, Wales, Scotland and Northern Ireland is historically conditioned. Scotland's legal system has, for centuries, been profoundly different from the common law system as it operates in England, Wales and Ireland. No particular issues of difficulty arise from that. As a law student, it caused difficulties because we simply could not use English text books. We had to do the research ourselves and make do with what was available to us. Life as a law student would have been easier if we could have used English text books, but I think the beauty — that is not a word that is used very often in this context — of devolution is that, within the areas of competence of the Assembly, we can make our decisions and plot paths that are suitable for us here.
76. **The Chairperson:** Let me ask a couple of questions. In practical terms, what do you envisage? Will you answer a series of questions at Question Time, in the same way that Ministers do? Or, will there be an ad hoc approach to it, which means that sessions would be set aside for an issue that was raised? I am wondering whether you had a view of where that would go, but maybe you do not. I do not want to confuse the issue, but I am a bit confused about giving evidence and giving legal advice. Can you explain the difference?
77. **Mr Larkin:** I will take the second question first, Chairman, if that is convenient. If I am asked openly in Committee what I think about x, I am both giving evidence to the Committee and giving an opinion if what I think about x involves a conclusion about a matter of law.
78. **The Chairperson:** An opinion being legal advice?
79. **Mr Larkin:** Yes, indeed. Obviously, because that is given publicly or, at least, to the Committee, and if the Committee is not in closed session, that would not be privileged because it is broadcast. If the Committee is in closed session, it is privileged to the Committee. I hope that that is a helpful distinction. That is the broad distinction and typically the terms in which I engage with the Committee.
80. Similarly, if I am asked a specific question and I write to the Committee, that could involve an expression of view as to the law. Again, it depends on what the terms of engagement are with respect to the letter to which I am replying. It could be indicated that it will be confidential to the Committee or, for example, my officials could contact the Committee Clerk and indicate that the Attorney General can reply but the reply will be confidential to the Committee. There are a variety of possible approaches.

81. Then you referred to plenary session and questions. I hope I do not give evidence of undue cynicism by suggesting that it is probably best not to have a simple slot, because if you have a simple slot, it will be filled. It is perhaps better to leave it for issues of such importance that it is considered necessary to have questions addressed to the Attorney General. I would be content with whatever way the Assembly decided to arrange those matters.
82. **The Chairperson:** Finally from me, you mentioned the Scottish example, but this is a power-sharing coalition with two First Ministers — a First Minister and deputy First Minister. How would you deal with the fact that it is a very specific system here, which cannot be compared to the Scottish system in that sense?
83. **Mr Larkin:** In Scotland they have voluntary arrangements. There may, from time to time, be a minority Government or coalition Government on a voluntary basis in Scotland. The fundamental issue is independence. If I am asked for advice and asked what my view is about legal problem z, the people who are listening to me or who receive it in written form will get my view about legal problem z. They will not get my view about how I think it will play, how well it will be received or how popular it will make me. It is my conscientious view as to what the answer is. In the present system of governance that we have, that statutory independence is a vital safeguard and reassurance, not for the individual Attorney General but for those who may be the recipients of his or her advice.
84. **The Chairperson:** OK. Are there any other questions?
85. **Mr Storey:** Just to clarify, the question that I asked was not in any way casting aspersions on the legal advice that we do receive.
86. **Mr Larkin:** No, of course not.
87. **Mr Storey:** It is very much appreciated.
88. **The Chairperson:** He is afraid that you are going to take him to court.
[Laughter.]
89. **Mr Larkin:** It is an occasion of privilege, of course.
90. **The Chairperson:** On behalf of the Committee, I thank you for coming. It was very helpful. We have your submission and your answers to the oral questions. We may send you some other questions, if you are open to that.
91. **Mr Larkin:** I am indeed. If the Committee would consider it helpful, I will give some brief written observations on the Speaker's letter. I am happy to answer any questions in written form or, indeed, if the Committee would find it helpful to hear from me again, I would be delighted to speak to the Committee again.
92. **The Chairperson:** Thank you for that. It would be very helpful if you sent us some written stuff.



Northern Ireland
Assembly

Appendix 3

Written Submissions

Written Submissions

1. The Speaker
2. Attorney General for Northern Ireland (AGNI)
3. AGNI response to the Speaker's submission
4. Dáil Éireann
5. House of Commons
6. National Assembly for Wales
7. Scottish Parliament
8. Law Society of Northern Ireland

Written Submission from the Speaker – 13 May 2013

The Speaker



Northern Ireland
Assembly

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Mr Gerry Kelly
Chairperson,
Committee on Procedures
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13 May 2013

Dear Gerry

Inquiry into “the extent to which Standing Orders should permit the Attorney General for Northern Ireland to Participate in Proceedings of the Assembly”

Thank you for the opportunity to submit evidence to the Committee’s inquiry. This is an important issue to which I have given some considerable thought. I hope that you will not mind if I focus my submission on a few key principles which could perhaps inform the Committee’s deliberations.

Within the devolved arrangements, and like most democratic and parliamentary systems, there is the separation of powers between the legislative and Executive branches. The Attorney General is the chief legal adviser to the Executive. As it is the Assembly’s role to scrutinise the Executive and hold it to account, in my view it is vital that the Assembly receives advice which is independent of the Executive and that there can be no role for the Executive or those providing advice to the Executive in the formal procedural decision making of the Assembly or in providing legal advice to the Assembly. For example, I cannot envisage any circumstances in which it would be appropriate for me to take advice from the Attorney General on my procedural and statutory responsibilities. It is important therefore that nothing in Standing Orders would afford the Attorney General a role in participating in proceedings which relate to the procedures of the Assembly or in providing legal advice to the Assembly.

I appreciate that Committees have good intentions in engaging with the Attorney General and see value in making use of his expertise. Ensuring that this engagement does not involve the Attorney General in procedures of the Assembly, or providing legal advice to Committees, would not of course prevent the Attorney General from giving evidence to Assembly Committees based on his expert opinion.

The Attorney General has an important role in advising the Executive on legislative competence, including prior to the submission of Bills for Introduction and has a statutory role after a Bill has passed its Final Stage. I would therefore suggest that the Attorney

SP099_13

General should have no formal role prior to Final Stage in relation to the content or legislative competence of Bills.

Should the Committee decide to make provision in Standing Orders for the participation of the Attorney General in proceedings, it must underline the distinction that he is not there as an elected Member of the Northern Ireland Assembly. Standing Orders should ensure that the participation of the Attorney General (whether in plenary or committee) should be strictly confined to matters for which he is solely and directly accountable. There are a wide range of other issues on which the Attorney General has an advisory role, but for which others make the final decision and should therefore be held to account. Standing Orders should not facilitate a position whereby the Minister who is responsible for a matter is able to avoid being held directly to account by the Assembly, by having another person, in this instance the Attorney General, respond on their behalf.

If the Attorney General were to be permitted to participate in plenary proceedings, a decision would also be required on how often the Attorney General should attend the House and how his attendance is facilitated eg should there be a scheduled Question Time slot or should it be by request when the business of the House necessitates it. It is not apparent to me that the Attorney General should require a set slot within plenary business at the same frequency as Ministers.

Finally, if the Committee were to agree arrangements for the Attorney General to participate in plenary proceedings there are obviously some practical issues which would have to be resolved. While the position where the Attorney General would sit during proceedings in which he is involved is a more minor issue, it is something I would have to take advice on and give more consideration to if required.

I trust that the Committee will find this response helpful.

Yours sincerely,

WILLIAM HAY MLA

SP099_13

Written Submission from the Attorney General for Northern Ireland (AGNI) – 10 May 2013



Ms Alison Ross
Clerk to the Committee on Procedures
Committee on Procedures
Room 428
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Our Ref: AGNI/13/041

Date: May 10 2013

Dear Ms Ross

I have considered the paper prepared by the Committee in relation to my participation in the business of the Assembly. As I am the subject of this exercise I thought I should respond formally by letter rather than addressing the specific questions posed although of course these have provide a useful template for my observations below.

Under the Justice (Northern Ireland) Act 2002, the office of Attorney General for Northern Ireland has important differences from other law officers in the United Kingdom and Ireland. The principal difference is that by section 22 (5) of the 2002 Act the Attorney General for Northern Ireland is independent across the range of his functions.

Section 25 of the 2002 Act provides for the Attorney's participation in Assembly Proceedings, within the extent permitted by its standing orders – short, of course, of voting, as I am not a member of the Assembly. Although no details are provided within the legislation, I believe that the areas which the Attorney might participate in Assembly proceedings are:

1. Answering questions on my work.
2. An aspect or perhaps an extension of 1. above could include explaining my decisions under section 11 of the Northern Ireland Act 1998 on whether a bill is within the competence of the Assembly or whether to refer it to the Supreme Court for its decision. Normally, of course, what happens is that the Attorney notifies the speaker that no reference will be made.

3. Making statements from time to time to the Assembly, for example, following publication of my annual report;
4. Participation in connection with Guidance under section 8 of the Justice (Northern Ireland) Act 2004, that is, human rights guidance for certain criminal justice organisations, relevant commencement orders or any amending order made under the 2004 Act, and participating in any debate thereon. This will be an important interface with the Assembly as the Guidance and any amending order is subject to the negative resolution procedure. At present if my guidance or any of the above orders are prayed against I cannot be heard on the subject.

In addition, Attorneys General have traditionally been available to advise and assist parliament and I certainly see my Office as being available to the Assembly and its committees for formal advice on occasions as well as to assist in ways that can be agreed between the Assembly and the Attorney.

It may be instructive to look briefly at how other Law Officers engage with the other legislatures in the United Kingdom.

Westminster

In Westminster, the Attorney General is at present a member of the cabinet and sits in Parliament either as an elected member of the House of Commons or a member of the House of Lords. The current Attorney General, Dominic Grieve, is an MP but his most recent predecessors were members of the House of Lords (Baroness Scotland and Lord Goldsmith). The English Attorney is answerable to Parliament as a member of the relevant House and will attend and answer Attorney General's Questions every four weeks. In the event that he is a member of the upper house the questions will be taken by the Solicitor General. The English Attorney will attend parliamentary committees as and when required and will give evidence to them. He does not provide legal advice to committees which rely on their own sources.

Scotland

As respects Scotland, section 27 of the Scotland Act 1998 provides that if the Lord Advocate or Solicitor General for Scotland is not a member of Parliament he or she may participate in the proceedings of the Parliament to the extent permitted by Parliament, but may not vote and Standing Orders may in other respects provide that they are to apply to him or her as if he or she were a member. Several Standing Orders make specific provision for the participation of the Lord Advocate. Rule 4.5 deals directly with the

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participation of Scottish Law Officers in proceedings. Rule 13.5 deals with written questions; rule 13.7 with oral questions in the Chamber and 13.8 with emergency questions. It may be that the Scottish model is suitable for consideration in Northern Ireland.

Wales

The relevant Law Officer in Wales is the Counsel General to the Welsh Assembly who is appointed under the Government of Wales Act 2006. The holder of the office of Counsel General may or may not be a member of the Welsh Assembly – this is a significant difference from both Northern Ireland and Scotland. The Counsel General will answer oral and written questions. He may also make oral and written statements. The Counsel General is treated in the same way as a Minister in the Welsh Assembly proceedings and enjoys normal voting rights if he is a member of the Welsh Assembly.

Northern Ireland

PPS

It will be noted that, at present, the Attorney General for Northern Ireland does not have superintendence of the PPS. In line with section 42 (3) of the 2002 Act, the Attorney is not accountable to the Assembly for the Director or the PPS. The relationship between the Attorney General and the Director is consultative. I do however have other roles with regard to the PPS including the appointment of the Director of Public Prosecutions for Northern Ireland as well as the Deputy Director and laying the PPS's annual report before the Assembly.

In my view the Attorney General for Northern Ireland should have responsibility for the superintendence of the PPS. This would both afford an appropriate degree of protection for the PPS and provide a conduit for accountability to the Assembly.

Last year the Department of Justice concluded a consultation on the future of the superintendence of the PPS. The Committee may wish to explore the responses to this consultation exercise.

Assembly Proceedings

As is apparent the Attorney General does not at present engage directly with the Assembly although I have engaged extensively and fruitfully with Committees.

Within the framework of statutory independence, provision in Assembly Standing Orders for the Attorney General to participate in Assembly proceedings in a manner analogous to the Lord Advocate and Solicitor General for Scotland would afford a form of narrative accountability which is not currently present.

Section 8 Guidance

Although a discrete and important issue, the approach to section 8 Guidance can be handled under the Assembly Standing Orders. The Attorney has already benefited greatly from the input of the Justice Committee to his work on section 8 guidance. The constructive relationship between the Committee and the Attorney is a model for future practice for work with other Assembly committees.

The Attorney General's Annual Report

In relation to my own annual report, I provide this to the First Minister and deputy First Minister who are then responsible for laying it before the Assembly.

General

The observations above represent initial thoughts in response to the Committee's request. I look forward to reflecting on them with the Committee in person and to developing them in the light of our exchanges.

John F Larkin QC
Attorney General for Northern Ireland

AGNI response to the Speaker's submission



Mr Gerry Kelly MLA
Chairperson
Committee on Procedures
Room 428
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Our Ref: AGNI/13/041

Date: June 7 2013

Dear Chair

Attendance on Committee on Procedures Meeting on 28 May 2013

Thank you for your letter of May 31. I would like to thank the Committee for what I thought was a thought-provoking and interesting meeting on May 28.

It is helpful to have this opportunity to respond in writing on the Speaker's submission. The comments prompted by this are as follows:

1. I agree that it is generally appropriate for the Speaker to obtain legal advice from his own resources in relation to his procedural and statutory responsibilities. This general approach of the Speaker in seeking advice from his own resources does not, however, mean that there is no role for the Attorney General in Assembly proceedings.
2. I also agree with the Speaker (as appears clearly from section 25 (1) of the Justice (Northern Ireland) Act 2002 that this issue should be addressed in Standing Orders.
3. There is no reason why the Attorney General should be prevented from providing advice to Committees where Committees wish to have this advice.
4. While it is correct that the Attorney has, at present, no formal role until the Final Stage in relation to the content or competence of Bills, my experience would suggest that it has clearly been useful for Ministers, Departments and the Assembly to have the benefit of

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advice and assistance from the Attorney at an early stage of, and throughout, the legislative process

5. A formal Question Time slot along the lines of the English Attorney may not be necessary with provision of Assembly time for questions to the Attorney being made on a more ad hoc basis.
6. Further consideration will be needed with respect to the nature and form of participation by the Attorney in plenary sessions. As indicated at the meeting of May 28 the Scottish procedure is, probably, a good working model. It may be that the Committee would wish to study this model in some depth.

As I indicated at the meeting of May 28 I would wish to be helpful to the Committee and I repeat my offer to appear again before the Committee as it continues to deliberate on this important issue. If I can be of any further assistance I hope that you will get in touch.

John F Larkin QC
Attorney General for Northern Ireland

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Written Submission from Dáil Éireann – 17 April 2013



Ceann Comhairle

Mr Gerry Kelly MLA,
Chairperson, Committee on Procedures
Northern Ireland Assembly
Room 428, Parliament Buildings
Ballymiscaw,
Stormont
Belfast BT4 3XX

17 April 2013.

Re: Inquiry into “the extent to which Standing Orders should permit the Attorney General for Northern Ireland to Participate in Proceedings of the Assembly”.


Dear Mr Kelly

I refer to your letter of 26 March 2013, in which you invited me to submit written evidence on relevant issues in the Terms of Reference for your Committee’s Inquiry.

In the Republic of Ireland the office of Attorney General is governed by the Constitution of Ireland (the Constitution) and regulated by law.

1. Constitutional Position

The Constitution is explicit regarding (among other things)—

- (i) the role of the Attorney General as the “adviser of the Government in matters of law and legal opinion” [Article 30.1],
- (ii) the appointment of the Attorney General by the President on the nomination of the Taoiseach [Article 30.2],
- (iii) that the Attorney General shall not be a member of the Government [Article 30.4], and
- (iv) the termination of office by resignation or retirement [Article 30.5].

By virtue of his/her role, the Attorney General attends Cabinet meetings.

2. Right of attendance in Houses of the Oireachtas

In the Houses of the Oireachtas, the right of the Attorney General to attend and participate in plenary sessions differs between the two Houses.

1 |

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The Constitution provides that no more than two members of the Government (excluding the Taoiseach, the Tánaiste and the Minister for Finance) may be Senators [Article 28.7] and also provides that members of the Government “have the right to attend and be heard in each House of the Oireachtas” [Article 28.8]. This constitutional right does not apply to the Attorney General, who is prohibited by the Constitution from being a Minister (member of the Government) [see 1.(iii) above].

(i) Right of attendance – the Seanad

The Constitutional right to attend and be heard in each House does not apply to Ministers of State (otherwise known as Junior Ministers or Parliamentary Secretaries) either, but Parliamentary Secretaries who were not members of the Seanad were granted the right to attend and be heard in Seanad Éireann under Seanad Standing Orders as early as 1938.

In 1975 this right was extended to Attorneys General who were also members of Dáil Éireann by a decision of the Seanad Committee on Procedure and Privileges (CPP) to allow for a specific case.

The Attorney General of the day was Mr Declan Costello, who had been elected as a member of Dáil Éireann, for the 20th Dáil (14 March 1973 – 25 May 1977), and was also appointed as Attorney General for the period 15 March 1973 to 19 May 1977.

During 1975, Mr Costello, not being a Minister or Minister of State, had taken charge of a Bill during its passage through the Dáil, by virtue of his role as Attorney General and the purpose and content of the Bill, which was the Law Reform Commission Bill 1975. The Seanad CPP proposed amending Seanad Standing Order 45 (now numbered 56) to allow “A Parliamentary Secretary or **Attorney General who is a member of the Dáil**” the right to attend and be heard, in order to allow the incumbent Attorney General, who had dealt with the Bill in the Dáil to deal with it in the Seanad also. The decision was that, rather than make an *ad hoc* arrangement for an Attorney General to deal with a particular Bill at particular times, the Standing Order should be amended to permit an Attorney General, who was a Member of the Dáil, the same right of audience as Parliamentary Secretaries.

In 2001 the Seanad Standing Order was again amended, to permit any Attorney General, whether or not a member of the Dáil, the same right of audience as a Minister of State. The purpose of the amendment is not explicitly recorded. However, it is likely that the intention was again to provide for a specific case, in that the Attorney General of the day was due to make a report (the Report on allegations of an attempt to suppress evidence in the Arms Trial) which the members of the Seanad wished to debate, and it is likely that the intention was to invite the Attorney General to attend. In the event, the Minister (for Justice) attended the Seanad debate on the report and the Attorney General did not attend.

No Attorney General has attended a debate in the Seanad since that amendment was made to the Standing Order in 2001.

(ii) Right of attendance – the Dáil

Unlike the Seanad, the Attorney General can attend and participate in the Dáil plenary only if s/he is a member of the Dáil.

In 1957 the question was raised regarding participation in the Dáil by Ministers who were, as provided for in the Constitution, Senators rather than Deputies. The understanding of the Oireachtas Service of “being heard” was to the effect that no Senator Minister could move a motion in the Dáil but could speak to a motion moved by a member of the House.

Legal advice was sought from the Attorney General of the day on the definition of “attending and being heard” and the advice given was that there was no constitutional impediment to a Senator Minister moving a motion, but that the constitution explicitly prohibited him or her voting in the Dáil. The Attorney General recommended a change to Dáil Standing Orders to make explicit provision for a Senator Minister to have the right to move motions etc., rather than just contributing to the debate.

The matter was considered by the Dáil CPP and the CPP decided to make no change on the basis that they could not come to a unanimous agreement. The matter was raised again in 1981 but was not proceeded with. There is no reason given on record for the failure to proceed, but generally the Dáil is more protective of its mandate and allows only duly elected members the entitlement to attend and be heard and participate in proceedings as of right.

While these cases do not apply explicitly to the Attorney General, it may be extrapolated from the position taken in each case that the Attorney General is unlikely to be given, *ex officio*, any right of audience in the Dáil in the foreseeable future.

The position in Committees (except Committees comprising Senators only) is the same as in the Dáil.

I trust this information is of some use for your Inquiry.

Yours sincerely,

Seán Barrett, T.D.
Ceann Comhairle

Written Submission from the House of Commons – 8 April 2013

SECTION 1 – STAKEHOLDER DETAILS

Stakeholder Name	Telephone Number			
Liam Laurence Smyth, Clerk of the Journals, House of Commons	020 7219 3315			
Stakeholder Address	Stakeholder Type (Tick as many as applicable)			
House of Commons	Registered Political Party	<input type="checkbox"/>	Local Government	<input type="checkbox"/>
London	Legislature	<input checked="" type="checkbox"/>	Government	<input type="checkbox"/>
SW1A 0AA	Academic	<input type="checkbox"/>	Non Government	<input type="checkbox"/>
	Other (please specify) e.g. member of public etc.	<input type="checkbox"/>		<input type="checkbox"/>
Please provide some background information on your role as a stakeholder				
The Clerk of the Journals is a senior official of the House of Commons.				
Guidelines for Completion of Submissions				
<p>a) The Committee requests that stakeholders submit responses electronically using this pro-forma.</p> <p>b) Stakeholders should be aware that their written evidence will be discussed by the Committee in public session and included in the Committee's published report.</p> <p>c) Stakeholders should also be aware that if they decide to publish their submissions, the publication would not be covered by Assembly privilege in relation to the law of defamation.</p>				

SECTION 2 – INTRODUCTION

Powers

2.1 The Committee on Procedures is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order 54.

The Committee has the power to:

- Consider and review, on an ongoing basis, the Standing Orders (SOs) and procedures of the Assembly;
- Initiate inquiries and publish reports;
- Republish SOs annually; and
- Call for persons and papers.

Process

2.2 Phase 1 – Inquiry Evidence Gathering

The Committee will take evidence on the Terms of Reference as outlined in Appendix 1

2.3 Phase 2 – Consideration and Report

The Committee will consider all evidence received in relation to the Inquiry, and report and make recommendations to the Assembly on these matters by October 2013.

Matters Outside the Scope of the Inquiry

2.4 This inquiry aims to consider legislation relating to the extent to which SOs should permit the AGNI to participate in proceedings of the Assembly. It does not aim to review the legislation, or to amend it. For example, it will not consider whether the AGNI should be permitted to vote in the Assembly, nor will it examine the AGNI appointment process.

SECTION 3 - BACKGROUND

This section provides some background information on the issues being considered by the Committee as part of this Inquiry.

3.1 The role of the AGNI is referred to in various legislation, however, areas of specific interest to the Committee for the purposes of this Inquiry are:

- a. **Section 25(1) of the Justice (Northern Ireland) Act 2002** (which states that the AGNI may participate in the proceedings of the Assembly to the extent permitted by its SOs, but he may not vote in the Assembly);
- b. **Section 25(2) of the Justice (Northern Ireland) Act 2002** (which states that the Assembly's SOs may in other respects provide that they are to apply to the AGNI as if he were a member of the Assembly);
- c. **Section 25(4) of the Justice (Northern Ireland) Act 2002** (which states that Section 43 of the Northern Ireland Act 1998 (interests of members of the Assembly) applies to the AGNI as if he were a member of the Assembly);
- d. **Section 8(1) of the Justice (Northern Ireland) Act 2004** (which states that the AGNI shall issue, and as he thinks appropriate from time to time revise, guidance to organisations to which this section applies on the exercise of their functions in a manner consistent with international human rights standards relevant to the criminal justice system.
- e. **Section 8(3) of the Justice (Northern Ireland) Act 2004** requires any guidance issued or revised under that section to be published in such manner as the AGNI thinks appropriate and to be laid before the Assembly. Such guidance shall not come into operation until the AGNI so provides by Order. Any such Order is subject to the negative resolution procedure. Pursuant to section 8(1A) of the Justice (Northern Ireland) Act 2004, the AGNI shall consult the Advocate General for Northern Ireland before issuing or revising any guidance under this section.

The organisations to which the guidance will apply are listed at subsection (4).

Section 8(5) of the Justice (Northern Ireland) Act 2004 gives the AGNI, after consulting the Advocate General for Northern Ireland, the power to amend this list by order by adding an organisation having a role in the criminal justice system in Northern Ireland (apart from a court or tribunal), omitting an organisation or altering the description of an organisation.

In evidence to the Committee for Justice on 5 July 2012, the current AGNI, Mr John Larkin QC, further explained the process: “This guidance will have to be laid before the Assembly, and it will be subject to negative resolution. It will then come into effect the day after it is made”.

To date, the AGNI has produced draft guidance for Forensic Science Northern Ireland, the State Pathologist’s Department and draft guidance on Human Rights Standards relevant to the Protection of the Right to Life.

3.2. Pursuant to section 30(1) of the Justice (Northern Ireland) Act 2002, the AGNI must appoint the Director and Deputy Director of Public Prosecutions for Northern Ireland. However, when policing and justice powers were transferred to the Assembly the AGNI ceased to have powers of superintendence or direction over the Director of Public Prosecutions. Post devolution, the relationship between the AGNI and the Director of Public Prosecutions is one of consultation, not superintendence.

SECTION 4 – ISSUES TO CONSIDER AS SET OUT IN THE INQUIRY TERMS OF REFERENCE

TOR UNDER CONSIDERATION

1. To examine the extent to which Attorneys General or Law Officers in other legislatures contribute to plenary and committees.

Are you aware of the extent to which the Attorneys General or Law Officers in other legislatures contribute to plenary and committee meetings, and if so, are there any processes which you think could be applicable / adapted to work in the NIA?

[N.B. This box will expand as you type]

In the United Kingdom House of Commons, Standing Order No. 87 (Attendance of law officers and ministers in general committees) provides that—

(1)The Attorney General, the Advocate General and the Solicitor General, or any of them, being Members of the House, though not members of a general committee, may take part in the deliberations of the committee, but shall not vote or make any motion or move any amendment other than a motion in the Scottish Grand Committee under Standing Order No. 93 (Scottish Grand Committee (composition and business)) or a motion in the Welsh Grand Committee under Standing Order No. 102 (Welsh Grand Committee (composition and business)) or a motion in the Northern Ireland Grand Committee under Standing Order No. 109 (Northern Ireland Grand Committee (composition and business)) or a motion or an amendment in a European Committee under Standing Order No. 119 (European Committees) or be counted in the quorum.

(2)In a general committee which is to consider a bill brought in upon a ways and means resolution any Minister of the Crown, being a Member of the House, though not a member of the general committee, may take part in the deliberations of the committee, but shall not vote or make any motion or move any amendment or be counted in the quorum.

Paragraph (9) of Standing Order No 148A (Committee of Privileges) and paragraph (13) of Standing Order No. 149 (Committee on Standards) make identical provision as follows —

The Attorney General, the Advocate General and the Solicitor General, being Members of the House, may attend the committee or any sub-committee, may take part in deliberations, may receive committee or sub-committee papers and may give such other assistance to the committee or sub-committee as may be appropriate, but shall not vote or make any motion or move any amendment or be counted in the quorum.

I understand that as the law now stands, the Attorney General for England and Wales is *ex officio* Advocate General for Northern Ireland.

Attorneys General have normally, but not invariably, been Members of the House of Commons: but the three most recent predecessors of the current Attorney General were members of the House of Lords: Lord Williams of Mostyn (29 July 1999 – 11 June 2001), Lord Goldsmith (11 June 2001 – 27 June 2007) and Baroness Scotland of Asthal (27 June 2007 – 11 May 2010). As members of the House of Lords, those three Attorneys General took no part in proceedings of the House of Commons, other than giving evidence as witnesses before select (and joint) committees.

Solicitors General are normally Members of the House of Commons, though Lord Falconer of Thoroton held the post from 6 May 1997 to 28 July 1998, during which time Sir John Morris QC MP was Attorney General and a Member of the House of Commons. Thus the normal position in the UK Parliament is that either or both of the Law Officers are legally qualified Members of the House of Commons, drawn from the governing party. The House of Commons is a large Chamber, of 650 Members, and lawyers contribute an appreciable portion of its membership: see House of Commons Library briefing paper <http://www.parliament.uk/briefing-papers/SN01528> which shows that the proportion of former barristers has declined, while the proportion of former solicitors has risen.

The current post of Advocate General for Scotland was created under the Scotland Act 1999. Dr Lynda Clark held that post from its creation until January 2006, first as member for Edinburgh Pentlands (till May 2005) and then as Baroness Clark of Calton. Rt Hon Alistair Darling MP, Member for Edinburgh South West and Secretary of State for Scotland at the time, held the position of Advocate General for Scotland briefly in March 2006. He was succeeded by Lord Davidson of Glen Clova, from 22 March 2006. The current Advocate General for Scotland, Lord Wallace of Tankerness, is also a member of the House of Lords and has held the post since 14 May 2010.

The contributions by the Law Officers made to House of Commons proceedings (debates, statements, questions and committees) are a matter of public record. The www.parliament.uk website allows for a search of spoken and written contributions in Hansard. For the current Session to the end of March 2013, Mr Dominic Grieve QC MP has spoken on the following dates and subjects in the Chamber and Westminster Hall, including giving answers to oral questions—

26 March 2013

[Confiscation Orders](#)

[Conviction Rates](#)

[Rule of Law](#)

[Serious Fraud Office](#)

12 March 2013

[Robert Powell](#) [Westminster Hall]

12 February 2013

[Rape \(Conviction Rates\)](#)

[Scottish Independence \(EU Membership\)](#)

[Serious Fraud Office](#)

29 January 2013

[RSPCA \(Prosecutions\)](#) [Westminster Hall]

8 January 2013

[Law of Contempt](#)

[Serious Fraud Office](#)

[Serious Fraud Office \(Senior Staff\)](#)

20 November 2012

[Hillsborough](#)

[Law on Contempt](#)

[Prisoner Voting Rights](#)

[Serious Fraud Office](#)

22 October 2012

[Hillsborough](#)

16 October 2012

[European Court of Human Rights](#)

[Hillsborough](#)

[Media Prosecutions \(Guidelines\)](#)

10 July 2012

[Counter-terrorism \(Prosecutions\)](#)

[Lenient Sentences](#)

[Rules of Disclosure](#)

[Serious Fraud Office](#)

5 July 2012

[Professional Standards in the Banking Industry](#)

22 May 2012

[Crown Prosecution Service Employees \(York\)](#)

[Human Trafficking \(Prosecutions\)](#)

[Police \(Criminal Allegations\)](#)

The question rota allocating the question period (the first hour on Mondays, Tuesday, Wednesdays and Thursdays) provides for the Attorney General (assisted by the Solicitor General) to answer for twenty minutes on every fifth Tuesday when the House is sitting. The Attorney General also replies to written questions as required and may make Written Ministerial Statements. The Attorney General, like other Ministers, is liable to respond to an Urgent Question, subject to the Speaker's

decision on whether or not the UQ should be granted.

SO No 87 is very seldom invoked. It is practice extremely uncommon for the Attorney General to take part in general committee proceedings unless he has been nominated to the committee as part of the Ministerial team supporting a particular item of Government legislation.

The published records of the Committee on Standards and Privileges (replaced since January 2013 by separate Committees, on Standards and of Privileges respectively) indicate that the Attorney General has attended its meetings very seldom: but it is probable that, as the Standing Order allows him to receive Committee papers, he is in a position to offer advice if the occasion arises.

Examples of the Law Officers (Attorney General except where stated otherwise) appearing as a witness before select committees include:

Joint Committee on Privacy and Injunctions [16 January 2012](#)

Joint Committee on the draft Defamation Bill (Solicitor General) [18 July 2012](#)

House of Commons Justice Committee, on The Work of the Attorney General [24 October 2012](#)

Joint Committee on the draft Bribery Bill [25 June 2009](#)

Joint Committee on the draft Bribery Bill [4 June 2003](#)

Joint Committee on Parliamentary Privilege [27 January 1998](#)

These formal proceedings of the House by no means capture the full extent of the role and influence in Parliament of the Attorney General. The Attorney General is sometimes invited by Committees to assist them in cases where their inquiries might affect ongoing criminal investigations. The Office of Speaker's Counsel will often cooperate with the Attorney General's Office on matters concerning the effect of Parliamentary privilege on legal proceedings and on the appointment of Counsel to make any formal oral intervention in court cases where one or other side might be at risk of breaching Article 9 of the Bill of Rights by impeaching or questioning the

freedom of speech and debates or proceedings in Parliament.

TOR UNDER CONSIDERATION

2. To consider stakeholder views on whether, and if so how, they would wish to see the AGNI being accountable to the Assembly both in plenary and to committees for the exercise of his functions, the operation of his office and his relationship with the Public Prosecution Service (PPS).

In your view should the AGNI be held accountable to the Assembly in **plenary** for the exercise of his functions, the operation of his office and his relationship with the PPS?

If you have answered yes to the question above please explain why and provide your view on how this could be achieved in practice?

[N.B. This box will expand as you type]

This is matter for the Northern Ireland Assembly, on which I, as a House of Commons official, would not venture an opinion.

As outlined above, in the United Kingdom Parliament, either or both of the Law Officers (Attorney General and Solicitor General) are Members of the House and are held accountable in a similar way to other Ministers in answering oral, written and urgent questions, responding to debates and taking part in committee proceedings.

When one of the Law Officers is a member of the House of Lords, the other Law Officer answers and responds in the Commons on his or her behalf: but Law Officers from either House may appear as witnesses before select committees of either House or before joint committees.

In your view should the AGNI be held accountable to the Assembly in **committee** for the exercise of his functions, the operation of his office and his relationship with the

PPS?

If you have answered yes to the question above please explain why and provide your view on how this could be achieved in practice?

[N.B. This box will expand as you type]

This is matter for the Northern Ireland Assembly, on which I, as a House of Commons official, would not venture an opinion.

TOR UNDER CONSIDERATION

3. To report recommendations on whether, how and the extent to which the AGNI may, if required, participate in plenary or committee on guidance issued by the AGNI under section 8 of the Justice (Northern Ireland) Act 2004, to a range of criminal justice organisations on the exercise of their functions.

In your view should the AGNI be required to participate in plenary or committee on the guidance he issues under section 8 of the Justice (Northern Ireland) Act 2004, to a range of criminal justice organisations on the exercise of their functions?

If you have answered yes to the question above please explain why and provide your view on how this could be achieved in practice?

[N.B. This box will expand as you type]

This is matter for the Northern Ireland Assembly, on which I, as a House of Commons official, would not venture an opinion.

SECTION 5 – ADDITIONAL INFORMATION

Do you have any other comments or information that you believe will be of assistance to the Committee on Procedures in respect of the Terms of Reference of this inquiry?

If so, please provide this information below.

[N.B. This box will expand as you type]

I have nothing to add, but i would be happy to supply any further factual information that would be of use to your Committee.

Additional information to the House of Commons Written Submission - provided by Liam Laurence Smyth, Clerk of the Journals, House of Commons, via email on 9 April 2013

I should have mentioned the SO giving terms of reference to our departmentally related committees: the standard form is to consider the expenditure, administration and policy of the Department and its associated public bodies but because the Law Officers cover a sensitive area the justice Cttee [sic] remit is as follows:

Ministry of Justice (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).



Speaker's Office House of Commons London SW1A 0AA

28 March 2013

Dear Mr. Kelly,

Mr Speaker has asked me to thank you for your letter of 26 March inviting him to submit evidence to your Committee in relation to its inquiry into the extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in proceedings in the Northern Ireland Assembly, with particular reference to those areas relevant to him, set out in the Terms of Reference.

The Speaker has asked me to thank you for extending this invitation to him and has asked the Clerk of Journals in the House of Commons to provide your Committee with a factual note on the role that the Law Officers may play in proceedings of the House of Commons (paragraph b of the Terms of Reference).

Mr Speaker has also asked me to say that he does not wish to comment on any other part of the Terms of Reference.

Yours sincerely,

Peter Barratt Esq.
Speaker's Secretary

Mr Gerry Kelly MLA
Chairperson
Committee on Procedures
Room 428
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Written Submission from the National Assembly for Wales – 18 April 2013

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Mr Gerry Kelly
Chair, Committee on Procedures
Northern Ireland Assembly
Room 428, Parliament Buildings
Stormont
BELFAST
BT4 3XX

Your ref:
Our ref: PO444/RB/AJ

18 April 2013

Dea Mr Kelly

Thank you for your letter dated 26 March regarding your Committee on Procedures' Inquiry into the extent to which the Standing Orders should permit the Attorney General of Northern Ireland to participate in the proceedings of the Assembly.

Before commenting specifically on the question of the Counsel General's participation in Assembly proceedings, it may be helpful if I set out some very general comments about the role of the Counsel General and how it contrasts with that of the Attorney General for Northern Ireland.

The role of the Counsel General for Wales is to act as primary legal adviser to the Welsh Ministers and to represent them in legal proceedings which he may bring or defend. He may also intervene in cases, where the Welsh Ministers are not a party, but where the case is of significance to the devolved institutions in Wales. Occasionally, a question may arise in litigation (not directly involving the Counsel General) about whether or not the Assembly or the Welsh Ministers have acted outside of their lawful powers, a so-called 'devolution issue'. The Counsel General may institute these proceedings or

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Caerdydd
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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh



defend them. He may also refer to the Supreme Court the question of whether or not an Assembly Act falls within the legislative competence of the Assembly.

To this extent, the role of the Counsel General for Wales is similar to that of the Attorney General for Northern Ireland.

There are, however, differences in the two roles. For instance, unlike his counterpart in Northern Ireland, the Counsel General for Wales does not have any role as regards the administration of criminal justice in Wales and is not involved in making appointments to prosecuting authorities. He also does not have any statutory role as regards inquests, charities or contempt of court proceedings and to this extent his role is slightly narrower than that of the Attorney General for Northern Ireland.

Under the Government of Wales Act 2006, the Counsel General is appointed by Her Majesty following a recommendation by the First Minister. The recommendation must first be agreed by the Assembly. The Counsel General may, but does not have to, be an Assembly Member but may not simultaneously hold a Ministerial position in the Welsh Government.

Standing Orders 9.3 and 9.4 govern the Counsel General's participation in Assembly proceedings:

9.3 Subject to the provisions of the Act, the Counsel General may do anything under these Standing Orders which may be done by a Welsh Minister.

9.4 If the Counsel General is not a Member, the Standing Orders apply to the Counsel General as they apply to Members and the Counsel General may participate in Assembly proceedings but may not vote.

In practice, this means that the Counsel General can make statements, participate in debates, and appear before Assembly committees in the same way as Welsh Ministers. The Counsel General could also be the Member in Charge of a Government Bill, though we have not yet had an instance of this. Under Standing Order 12.56, the Counsel General must answer oral questions in the Assembly at least once every four weeks that the Assembly is sitting. This is the same provision as for Welsh Ministers, other than the First Minister who answers questions weekly.



With the exception of their being unable to vote (if not a Member) the Counsel General's participation in Assembly proceedings is therefore indistinguishable from that of any other member of the Welsh Government.

Prior to 2011, the person appointed as Counsel General had always been an Assembly Member. In the Fourth Assembly, the role has been fulfilled by Theodore Huckle QC, who is not a Member. Our experience since 2011 is that the Counsel General attends Plenary meetings only when he is answering Oral Questions or making a statement or responding to a debate on behalf of the Government, and that he does not attend or participate more generally.

In 2012, the Assembly agreed to amend its Standing Orders so that a ballot was no longer held to select those Members who may table oral questions to the Counsel General for those weeks when he is answering questions. This was due in part to the small number of questions received for the Counsel General compared to Welsh Ministers: the scope of the questions that may usefully be asked being limited to an extent by the degree to which the Counsel General feels able to reveal the content of confidential legal advice he has given the Welsh Government on any matter. Any Member who wishes to table a question to the Counsel General may now do so, and we generally find that two or three questions are tabled for each four-weekly session.

The Counsel General may appear before Assembly Committees in the same way as any other member of the Government. Thus far he has only done so once to give evidence to the Constitutional and Legislative Affairs Committee in their inquiry into a separate Legal Jurisdiction. None of the Assembly's committees is specifically tasked with scrutinising the Counsel General on the exercise of his functions.

I trust you will find this information useful. Please do not hesitate to get in touch should you require further information.

Best wishes

Rosemary Butler AM, Presiding Officer

Written Submission from the Scottish Parliament – 1 May 2013



The Scottish Parliament
Pàrlamaid na h-Alba

Committee Office
Edinburgh
EH99 1SP

Tel: 0131-348-5202
Calls via Text Relay: 18001-0131-348-5202
Fax: 0131-348-5600
susan.duffy @scottish.parliament.uk

1 May 2013

Mr Gerry Kelly MLA
Chairperson of the Northern Ireland Assembly Committee on Procedures

Dear Mr Kelly,

I refer to your letter of 26 March to the Presiding Officer regarding the inquiry by the Committee on Procedures into “the extent to which standing orders should permit the Attorney General for Northern Ireland to participate in proceedings of the Assembly”. The Presiding Officer has asked me to reply on her behalf.

I have set out below some information on how these matters are dealt with in the Scottish Parliament. The Standing Orders relating to participation in proceedings by the law officers were drawn up when the Parliament was created in 1999 and have not been reviewed since. These Standing Orders were based on provisions in the Scotland Act 1998 and also on the report of the Consultative Steering Group which developed proposals for the rules of procedure and Standing Orders which the Parliament was invited to adopt.¹

Section 27 of the Scotland Act 1998 relates to the participation of the Lord Advocate or the Solicitor General for Scotland in proceedings—

- “(1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—
- (a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and
 - (b) standing orders may in other respects provide that they are to apply to him as if he were such a member.
- (2) Subsection (1) is without prejudice to section 39.
- (3) The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the

1 The report can be found at the following link. Paragraphs 38-40 cover participation by law officers:
http://www.scottish.parliament.uk/PublicInformationdocuments/Report_of_the_Consultative_Steering_Group.pdf

operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—

- (a) might prejudice criminal proceedings in that case, or
- (b) would otherwise be contrary to the public interest.”

The following provision, included in the Standing Orders of the Parliament, is informed by section 27—

“Rule 4.5 Participation of the Scottish Law Officers in proceedings

1. This Rule applies where the Lord Advocate or Solicitor General for Scotland (“the Scottish Law Officer”) is not a member of the Parliament.
2. The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing the Scottish Law Officer from voting) participate in any of the proceedings of the Parliament as fully as any member but the Scottish Law Officer may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.
3. These Rules shall apply to the Scottish Law Officer, when the Scottish Law Officer is participating in any proceedings of the Parliament, as if the Scottish Law Officer were a member of the Parliament.
4. Paragraphs 2 and 3 are without prejudice to section 27(2) (application of rules regarding members’ interests) and section 27(3) (questions and documents relating to operation of system of criminal prosecution).”

These provisions allow the Lord Advocate and Solicitor General for Scotland to participate in proceedings in the Parliament, including answering parliamentary questions, making statements and taking part in debates. The Scottish Parliament Information Centre has provided some statistics on the participation of the Lord Advocate and Solicitor General in proceedings in the Scottish Parliament which I have attached for your information.

I hope that this is helpful and I wish you well with your inquiry.

Yours sincerely,

Susan Duffy

Head of Committees and Outreach

Session 1

Parliamentary Questions Answered

Lord Advocate	PQs
Andrew Hardie	49
Colin Boyd	284
Total	333

Solicitor General	PQs
Colin Boyd	11
Neil Davidson	26
Elish Angiolini	112

Solicitor General	PQs
Total	149

Ministerial Statements

Lord Advocate	Statements
Andrew Hardie	0
Colin Boyd	3
Total	3

Solicitor General	Statements
Colin Boyd	0
Neil Davidson	0
Elish Angiolini	0
Total	0

Session 2

Parliamentary Questions Answered

Lord Advocate	PQs
Elish Angiolini	87
Colin Boyd	308
Total	395

Solicitor General	PQs
John Beckett	4
Elish Angiolini	46
Total	50

Ministerial Statements

Lord Advocate	Statements
Elish Angiolini	0
Colin Boyd	1
Total	1

Solicitor General	Statements
John Beckett	0
Elish Angiolini	1
Total	1

Session 3

Parliamentary Questions Answered

Lord Advocate	PQs
Elish Angiolini	87

Solicitor General	PQs
Frank Mulholland	200

Ministerial Statements

Lord Advocate	Statements
Elish Angiolini	1

Solicitor General	Statements
Frank Mulholland	0

Session 4

Parliamentary Questions Answered

Lord Advocate	PQs
Frank Mulholland	14

Solicitor General	PQs
Lesley Thomson	21

Ministerial Statements

Lord Advocate	Statements
Frank Mulholland	0

Solicitor General	Statements
Lesley Thomson	0

Written Submission from the Law Society of Northern Ireland – 13 May 2013

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Inquiry into Attorney General of NI's Participation in Proceedings in The Assembly

Response of the Law Society of Northern Ireland

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Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,600 solicitors working in some 570 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Law Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

March 2013

The Independence of the Attorney General and Accountability

- 1.1. The Society welcomes this opportunity to comment in respect of the role of the Attorney General (AG) in Assembly proceedings and the accountability structures in relation to the office more generally. The Society has a number of observations to make on this subject.
- 1.2. The Law Officers of the Crown within the United Kingdom, although varied in line with devolution and the particular architecture of each legal system, are creatures of constitutional

convention. Accordingly, the role has evolved over its history in line with custom and practice in England and Wales and has been adapted to suit the devolution settlements in Northern Ireland. In the Irish Republic, Article 30 of the Irish Constitution formalised the conventional role of Attorney General and specifies that the post holder shall not be a member of the Government. The classical functions of the role are to act as Chief Legal Adviser to Government, superintendent of the prosecuting authorities of the criminal justice system and as guardian of the public interest. Under the Irish Constitution, the AG is appointed by the President upon advice from the Taoiseach and may effectively be removed by the Taoiseach in a similar manner and is expected to resign with a change of government.

- 1.3. The role in Northern Ireland differs most obviously from England and Wales in that it is a non-political office, rather than a salaried Minister and member of the Government as in England and Wales. Given the particular circumstances of Northern Ireland, this separation is critical to ensuring public confidence in the impartiality of the AG. The AG is barred from being a member of either a local authority or the Assembly/Westminster and the appointment is made from within the ranks of the legal profession by the co-equal office of OFMDFM. This strong ethos of independence means that the accountability arrangements in terms of the participation of the AG in Assembly proceedings must strike a balance between preserving this distance, yet ensuring that a transparent and deliberative relationship emerges between the AG and the Assembly.
- 1.4. The Society would note that there is an important link between the structures of accountability, the mechanisms of reporting and giving reasons and redressing some of the confusion concerning the remit of the AG. Given this, the Society would preface our remarks by noting that we consider these elements as inextricably linked and best considered together in order to provide the Committee with a more rounded picture of the current accountability arrangements for the AG. This concern with tightening procedures is also of relevance in light of the fact that the AG's role is often worked out through custom and practice, giving the Assembly a potentially useful role in clarifying the rules of engagement between the AG and the Assembly.

Clarifying the Remit of the Attorney General

- 2.1 In terms of the relevant legislation covering the role of the AG in Northern Ireland, there are a number of observations the Society would make. Firstly, if one looks at the Annual Report of the AG in 2011/2012, the report mentions the importance of "sufficient material and institutional autonomy to permit the conscientious discharge of the duties of office". The Society agrees with this overarching goal, yet we note that this standard may not be currently being met in respect of the relationship between the AG and the two branches of the legal profession.
- 2.2 For example, in the same report the AG states that he is "titular head of the Bar", attending meetings of the Bar Council, the Executive Council and the Benchers of the Inn of Court. By contrast, the AG notes that he has "no institutional relationship with the Law Society". Given the overarching goal of autonomy and independence, the Society is concerned that this particular anomaly creates the potential for at least a perception of a conflict of interest between the AG in his overarching role as impartial guardian of the public interest and his status as a member of the Bar, an issue which has not been adequately addressed in the discussions to date.
- 2.3 In particular, it should be noted that the Justice Act (Northern Ireland) 2002 makes no comment or prescription in relation to the relationship between the AG and the Bar or the Law Society and the Society would stress that in terms of introducing some practical protocols of operation, a more structured relationship of scrutiny between the AG and the Assembly may help resolve some of these issues in practice by beginning a discussion.

- 2.4 An example of a problematic result of this uncertainty is that it remains unclear whether and to what extent the AG has a remit to comment on reform of the legal profession, which is primarily a matter for the Department of Justice, the NICTS and the professional bodies. Without some clarification as to the proper competencies and limits of his authority, these uncertainties retain the ability to cause confusion. This lack of certainty is compounded by the fact that the current incarnation of the office is in its infancy and no conventions prescribing the limits of the AG's authority have emerged.
- 2.5 Another area of uncertainty within the accountability arrangements concerns the precise nature of the relationship and responsibility for the PPS. The AG in England and Wales exercises superintendence of the Director of Public Prosecutions and can appear before Parliament to answer questions concerning the broad remit of prosecution policy. In Northern Ireland, the legislation grants the AG a "consultative" role in relation to the DPP, meaning that although the AG may appear before a Plenary Session of the Assembly, there is no provision in the Justice (Northern Ireland) Act 2002 for the DPP to do so. This raises a question in terms of the accountability arrangements, as the parliamentary provisions for questioning the AG are narrower in scope than in some other jurisdictions.
- 2.6 This situation is compounded by the fact that the Explanatory Notes of the 2002 Act seem to purport to make the Attorney General accountable to the Assembly for the operation of the PPS, creating confusion. This confusion was compounded when then NIO Minister Paul Goggins stated during a debate in the House of Commons in 2009 that the DPP had speaking rights in the Assembly to discuss prosecutions policy¹. Despite the fact that the role of the AG has historically developed practical powers beyond the strict powers provided in statute, given the greater need in Northern Ireland for transparency and independence, the Society considers that the Assembly clarifying its own rules may act as a spur to revisit the legislation by highlighting the shortcomings of the status quo.

Models of Accountability

- 3.1 The consultative model operating between the DPP and the AG in NI most closely resembles the provisions pertinent to the Republic of Ireland under the Prosecution of Offences Act 1974. Again, although the DPP in the Republic of Ireland cannot be compelled to report to Oireachtas Committees, save for the Public Accounts Committee in relation to the expenditure of public money, the incumbent of the office and her predecessor have done so voluntarily to discuss matters of legal policy or to provide members of the Oireachtas with insight into the issues pertinent to the office. There are no provisions in primary legislation or standing orders of the Oireachtas for the DPP to account for the broad policy of his/her office.
- 3.2 In the Irish Republic, the degree of independence of the DPP is therefore at the 'full separation' end of the spectrum when compared with arrangements pertaining in England and Wales and Scotland. This partly reflects concerns throughout the history of the state about insulating prosecutorial policy from political interference given the AG's close association with the government of the day. Given the status of the AG in the Republic of Ireland as a political appointee, tied to the government of the day, the strengthening of the DPP's independence was designed to create the clearest distinction between the two possible. The Northern Ireland context may be slightly different, as the Attorney General is appointed via a cross community office and subject to fixed terms until re-appointment, and may not be removed earlier save for a formal tribunal process involving legal professionals. The weight of all of these considerations will fall to be decided once a clearer relationship between the AG and the Assembly emerges.
- 3.3 Although a similar arrangement has emerged in Northern Ireland as in the Irish Republic with the DPP voluntarily appearing before the Justice Committee, the Assembly may wish to decide on whether more formal arrangements in legislation are appropriate. In both Northern

1 Hansard, 4 Mar 2009: Column 953, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0020.htm>

Ireland and the Republic of Ireland, the DPP has taken to giving reasons for decisions as a matter of best practice and in Northern Ireland the Criminal Justice Inspectorate (CJINI) inspects the workings of the Public Prosecution Service (PPS), so it should be stressed that various mechanisms of scrutiny have developed in this respect. The Society are aware that there a number of models on a spectrum of balancing independence and accountability and we suggest that finalising Standing Orders in relation to the AG is an important first step on reviewing our arrangements more broadly.

- 3.4 In terms of looking at examples of parliamentary procedure, in Scotland the Lord Advocate combines the roles of head of the prosecution service and chief legal adviser to the Scottish Government and is scrutinised about both of these functions in the Scottish Parliament. In terms of a model for Standing Orders, under Section 27 of the Scotland Act 1998, the Scottish Parliament can provide for questions to the LA and he/she can answer questions on the full remit of this/her role. This is despite being in other respects similar to the AG in Northern Ireland, as a non-political figure drawn from the ranks of the legal profession, rather than a Government Minister as in England and Wales. Scotland is another example of a specific balance between accountability and independence being struck to suit each particular jurisdiction.
- 3.5 Standing orders in the Scottish Parliament dictate that only the Lord Advocate can answer questions from MSPs concerning criminal prosecution and the investigation of deaths and in that respect the LA has a quasi-Ministerial function, yet one who appears on an ad hoc basis, rather than regular slots as with elected Government Ministers. There are also provisions in standing orders for the LA to answer oral questions concerning his/her remit, which may “exceptionally” be answered by another member of the Scottish Executive, but are principally his/her responsibility to answer. This latter provision could prove a useful mechanism for the Assembly to scrutinise the AG and engage in a dialogue concerning the remit of his powers for the future.
- 3.6 The Society observe that these formal mechanisms significantly tighten up the accountability arrangements in respect of the Law Officers in Scotland and the adoption of a similar set of Standing Orders in Northern Ireland under Section 25 (1) of the Justice (Northern Ireland) Act 2002 may help bring about a discussion concerning the precise breakdown of responsibilities and limits of authority between the AG, the DPP and the Assembly.
- 3.7 The Society broadly agrees with the four areas of participation between the AG and the Assembly identified by the AG in his evidence before the Justice Committee in September 2010. These included a) explaining decisions under Section 11 of the Northern Ireland Act 1998 concerning legislative competence of the Assembly, b) statements to the Assembly following the publication of the Annual Report, c) participation in respect of human rights guidance for criminal justice organisations issued by the AG under section 8 of the Justice (Northern Ireland) Act 2004 and d) answering questions from Assembly members concerning his remit as and when they arise.
- 3.8 The Society encourages the formalisation of these broad areas of accountability as standing orders regulating the appearances of the AG before the Assembly. Given the earlier discussion concerning the issues regarding the relationship of the AG to the two branches of the legal profession, some thoughts should be given to developing these key themes of the Attorney General’s role as a structure and guide to strengthen parliamentary scrutiny. This would be particularly useful during the session covering the Annual Report from the Attorney General’s office when targets and objectives are reviewed.
- 3.9 Given the consultative role of the AG in respect of the annual report from the DPP, the importance of ensuring that the accountability arrangements between these respective roles are clear and consistent is apparent. A situation must be avoided in which the Attorney General is accountable for something which he is not equipped to answer. The Society notes that there are several models of accountability possible in seeking to balance the discrete roles of AG and DPP.

- 3.10 The Department of Justice consulted stakeholders in February 2012 in relation to the range of options open to the Assembly in changing the nature of the relationship between the DPP and the AG. Striking a balance between independence and accountability was seen as key, and it was noted that full superintendence by the AG over the DPP is not the only option for reform. For example, there may be arrangements whereby the AG speaks in the Assembly concerning prosecutorial issues and the DPP is given a concomitant duty to keep the AG informed of broad prosecutions policy. In this respect, the DPP is not subordinate, but there is a reporting requirement and the possibility for parliamentary questioning on broad prosecutorial policy. This would be subject to important limitations concerning the public interest and the avoidance of comment prejudicial to ongoing proceedings. Consequently, it is clear there is a continuum in terms of such checks and balances and finalising a firm set of standing orders for the AG in Assembly proceedings is an important first step towards a public debate concerning the powers and responsibilities of the office of AG and the parameters of scrutiny open to MLAs.
- 3.11 Although the Attorney General has spoken of the potential for a “huge role for informal interface with Members and Committees”², the Society views codification of the broad areas of scrutiny as a means of ensuring such engagement is clearly focused and characterised by a clear separation between the Assembly and the office holder. Adherence to a clear set of guidelines will also help clarify the exercise of the Speaker’s jurisdiction to allow or disallow questions to the AG from the floor in Plenary Session in terms of appropriateness and competence. In his most recent Annual Report, the AG acknowledged that there are advantages, in terms of perceptions of his independence, to limiting his appearances at the Executive Committee to issues where oral advice is plainly required. The Society would agree and consider the emergence of clear and robust guidelines concerning the precise parameters of the AG’s jurisdiction will improve the perception and reality of independence by clearly structuring the relationships between the AG and the legislature.
- 3.12 The Society observes that the application of section 43 of the Northern Ireland Act 1998 to the AG is an important safeguard to protect the impartiality of his office and provides another mechanism for insulating the role from the perception of conflicts of interest, whilst ensuring that the Assembly has a role in scrutinising the broad conduct of the office holder. This was mentioned earlier in respect of the AG’s role in relation to the distinct branches of the legal profession and on reforms of the legal system more generally. Once the accountability arrangements concerning the AG are streamlined and exercised with clarity, assessing the Attorney’s performance against these duties will be simplified and the role clarified for the office holder.

Concluding Remarks

- 4.1 The Society notes that the present issues concerning the office of the AG stem from ambiguity concerning his precise remit, the limits to his authority and his relationship to other limbs of government and the legal system. We also note that in Northern Ireland the specific model of accountability adopted should be tailored to suit our specific circumstances, not least in striking the correct balance between independence and accountability. In this respect we may seek to blend together different elements from across the UK and Ireland. In the absence of such clarity, discharging the functions of the office is rendered more difficult; the Society feels that the introduction of clearer protocols and guidelines under standing orders is an important step towards rectifying these deficiencies.
- 4.2 This process of working out the relative competencies and authority of specific limbs of the prosecution service, the AG and the Assembly will ensure clarity in the terms of appointment for the AG moving into the future. This is particularly important given the breadth of his remit in relation to providing legal advice and issuing human rights guidelines to appropriate agencies. The Society feels that whilst a broad remit in such matters is justifiable to ensure flexibility, it must be exercised within a set of jurisdictional guidelines defining the precise parameters of his authority in order to ensure the role commands the maximum authority.

2 Hansard, Justice Committee, 28 September 2010.



Northern Ireland
Assembly

Appendix 4

Options Matrix for Participation of the AGNI

Plenary

Item 1 – Assembly Questions

Assembly Questions which refer to matters for which the AGNI is solely and directly responsible		Arguments for or against and notes
Option 1	Executive Minister is the only person to answer Assembly Questions, either oral or written ¹	
Option 2	The AGNI answers only appropriate written questions as they are received	
Option 3	The AGNI answers appropriate Written Questions as they are received and answers appropriate Oral Questions in the Chamber on an ad-hoc basis	It may be difficult for the AGNI to answer questions, e.g. if a matter is sub judice. This will lead to a reputation risk to the AGNI as he may be perceived as being unhelpful or not transparent. Clarity will also be required as to “appropriate questions” for the AGNI to avoid a risk of the Assembly seeming powerless in dealing with the AGNI
Option 4	The AGNI answers appropriate Written Questions as they are received and is afforded a regular Question time slot in the chamber to answer appropriate ² Oral Questions	Questions exist with option 3 and 4 in respect of scheduling and the question of whether a concordat or memorandum of understanding is required to facilitate AGNI meeting current Assembly response times for Questions

1 While no formal arrangement currently exists for the AGNI to answer Assembly questions there is nothing to stop him answering any questions that are sent to him.

2 The word “appropriate” will require definition in due course e.g. official/ statutory responsibilities

Item 2 – Referral of Bills

Referral of the Question of whether a Bill would be within the legislative competence of the Assembly to the Supreme Court for decision under Section 11 of the Northern Ireland Act 1998.		Arguments for or against and notes
Option 1	The AGNI decides whether to exercise the power under Section 11 to refer a question to the Supreme Court within the period of four weeks beginning with the passing of the Bill and does not make a statement to the Assembly regarding this decision	The matter could be raised using the mechanism of questions to the AGNI as per one of the options outlined in Item 1 above
Option 2	The AGNI decides whether to exercise the power under Section 11 and comes to Committee to make a statement and/or answer questions on why he has referred a question to the Supreme Court	This could be the relevant Departmental Committee of the Justice Committee
Option 3	The AGNI attends plenary if specifically requested by the Assembly (laying of a motion) to make a statement and/or answer questions, or to confirm his opinion on why he has referred a question to the Supreme Court	
Option 4	The AGNI is afforded an automatic right of attendance in the Assembly to make a statement and/or answer questions on why he has referred a question to the Supreme Court	Questions exist with option 3 and 4 in respect of scheduling and the question of whether a concordat or memorandum of understanding is required to facilitate AGNI meeting current Assembly response times for Questions

Item 3 – The Annual Report of the AGNI

Under Section 26(1) of the Justice (Northern Ireland) Act 2002³, the AGNI is required to produce an Annual Report which is submitted to the First and deputy First Ministers who then lay it in the Assembly		Arguments for or against and notes
Option 1	The Annual Report is laid in the Assembly by the First and deputy First Ministers and no further action is taken	The matter could be raised using the mechanism of questions to the AGNI as per one of the options outlined in Item 1 above
Option 2	The Annual Report is laid as in Option 1 above and the AGNI attends Committee to make a statement and/or answer questions on the content of the report	
Option 3	The AGNI attends plenary only if a motion is tabled re the Report to address an issue or speak to the Report.	Note: In respect of option 3 and 4 - this is not done for other annual reports and it is not convention that plenary time is used for this
Option 4	The AGNI is afforded an automatic right of attendance in the Assembly to make a statement and/or answer questions pertaining to the report	

3 Section 26(3) of the Justice (Northern Ireland) Act 2002 states that the First Minister and deputy First Minister, acting jointly, must lay before the Assembly a copy of each annual Report received by their office under subsection (2). (Subsection (2) requires that the AGNI send a copy of each Annual Report of his office to the Office of the First Minister and deputy First Minister).

Item 4 – Guidance

Guidance produced by the AGNI under Section 8 of the Justice (Northern Ireland) Act 2004⁴		Arguments for or against and notes
Option 1	If the Assembly resolves that an order commencing guidance issued by the AGNI shall be annulled, an Executive Minister or representative from a Committee speaks against such a resolution if required	This supports the principle that only elected Members have automatic speaking rights in the chamber. However, as the guidance is not drafted by either of these office holders goes against the principle that the person responsible is held accountable
Option 2	An entitlement is created that once the Assembly resolves that an order commencing guidance shall be annulled, the AGNI will attend Committee to speak against such a resolution and that this must take place in advance of the plenary debate	Under option 2, 3 and 4 the debate on the guidance is fully informed of the views of the AGNI
Option 3	The AGNI attends plenary only if a motion is tabled re the resolution to address the issues and/or answer questions	
Option 4	An entitlement is created that once the Assembly resolves that an order commencing guidance shall be annulled, the AGNI has an automatic right of address in plenary	
Option 5	Each time the Assembly resolves that an order commencing guidance shall be annulled, an ad hoc committee is set up to look at the matter and report on this	A similar precedent exists for the setting up of an ad-hoc committee when a petition of concern is laid. However, resourcing and scheduling such a Committee would need to be considered

⁴ Section 8(1) of the justice (Northern Ireland) Act 2004 states that the AGNI shall issue and, as he thinks appropriate from time to time revise, guidance to organisations to which this section applies on the exercise of their functions in a manner consistent with international human rights standards relevant to the criminal justice system.



Northern Ireland
Assembly

Appendix 5

Correspondence

Declan O'Loan letter dated 9 December 2010



Northern Ireland
Assembly

COMMITTEE ON STANDARDS AND PRIVILEGES

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Lord Browne MLA
Chairperson
Committee on Procedures
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9 December 2010

Dear *Wallace*

Further to my memo to you of 13 October 2010, I am writing to you to provide an update on the issue of how the Attorney General Northern Ireland should be accountable to the Assembly in respect of his duties under Section 43 of the Northern Ireland Act.

At its meeting on 8 December 2010, the Committee on Standards and Privileges agreed to recommend to the Committee on Procedures that a discrete Standing Order be drafted to provide for the Attorney General Northern Ireland to have the same duties as Members in respect of the requirement to register interests and declare interests, and to be prohibited in the same way as Members from advocating any matter on behalf of anyone else for a payment or benefit. The Committee also agreed, however, that it would not be appropriate to seek to apply the requirements of the Assembly's Code of Conduct to the Attorney General.

The Committee on Standards and Privileges has, together with the Assembly Commission, recently introduced the Assembly Members (Independent Financial Review and Standards) Bill. Amongst other things, the bill provides for an Assembly Commissioner for Standards who may carry out investigations into allegations that a breach of the Assembly's Code of Conduct has occurred.

The Committee has agreed that the Assembly's Commissioner for Standards should be able to investigate an alleged breach by the Attorney General of any duty in respect of Members' interests which would be set out in Standing Orders. The Commissioner would be able to conduct an investigation and report to the Assembly in the same manner as would apply to an investigation of complaint against a Member. Equally, the Committee on Standards and Privileges would be able to decide whether or not to

uphold a complaint and, where it did uphold a complaint, it could recommend to the Assembly the imposition of a sanction. However, unlike the position in respect of Members, the rights and privileges of the Attorney General that may be withdrawn as a result of any sanction imposed would not include the rights to salary and allowances (as these are not paid to the Attorney General by the Assembly).

In order to enable the bill to provide for this, standing orders would need to be amended. It is likely that, should the Assembly Members (Independent Financial Review and Standards) Bill receive Royal Assent, further technical amendments would also need to be made to Standing Order 57 on the role of the Committee on Standards and Privileges and Standing Orders 69 to 69C which address the issue of Members' interests and the Commissioner for Standards. Although this work would have to be undertaken during the next mandate, our officials may wish to work together now to prepare for this possibility.

I also wish to advise you that the Committee on Standards and Privileges has agreed to consider the issue of privilege of the Assembly. The Committee wants to clarify what is meant by Assembly privilege, at least insofar as it relates to the Committee's remit and to Standing Order 70; to consider whether Standing Order 70 remains appropriate and, if not, whether the Committee should recommend that it be amended; to consider what the Committee's role should be in respect of privilege of the Assembly; and to consider whether there should be any role for the Commissioner for Standards in respect of privilege of the Assembly. The Committee fully recognises the role for the Committee on Procedures on this issue and would welcome any comments or views that you may have on this issue.

Yours sincerely

Declan O'Loan MLA
Chairperson
Committee on Standards and Privileges

Alastair Ross letter dated 15 March 2013



Northern Ireland
Assembly

COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Mr Gerry Kelly MLA
Chairperson
Committee on Procedures
Room 430
Parliament Buildings
Ballymiscaw
Stormont

15 March 2013

Dear Mr Kelly,

Attorney General for Northern Ireland and Members' Interests

I am writing to set out the position of the Committee on Standards and Privileges on the Attorney General for Northern Ireland (AGNI) and requirements in respect of members' interests. The Committee on Procedures had asked for this information in its memo of 23 January 2013.

The Committee has noted that Section 25 (4) of the Justice (NI) Act 2002 provides that "Section 43 of the Northern Ireland Act 1998 (c.47) (interests of the Members of the Assembly) applies to the Attorney General for Northern Ireland as if he were a member of the Assembly". The Committee has also noted the position of the previous Committee on Standards and Privileges, set out in its correspondence of 9 December 2010, which had been agreed after it had consulted the AGNI.

Having considered the matter, the Committee is satisfied that the duties for members set out in Standing Order 69 should now be extended to the AGNI. These are duties to register and declare interests; and a prohibition on advocating or initiating any cause or matter on behalf of any outside body or individual, or urging any other member to do so, in return for any payment or benefit specified in this context in the Code of Conduct. In agreeing this, the Committee has noted and is content that some

of the current categories of registrable interest for members cannot apply to the AGNI.

The Committee has agreed that standing order 69A (5) should be amended to provide that the Northern Ireland Assembly Commissioner for Standards must investigate a referral made by the Committee on Standards and Privileges relating to an alleged breach by the AGNI of his duties in respect of members' interests.

The Committee has agreed that standing orders should be amended so that where it appears to it that the AGNI has failed to comply with any of his duties in respect of members' interests it may make a report to the Assembly. Such a report may include a recommendation that a sanction be imposed upon the AGNI.

On sanctions, standing orders should include provision for excluding the AGNI from proceedings of the Assembly for having failed to comply with any of these duties and for withdrawing his rights and privileges for the period of his exclusion. The Committee notes that, compared to members, there are fewer rights and privileges of the AGNI that may be withdrawn during such an exclusion (as the AGNI does not have the same rights and privileges as members).

A copy of this letter is sent to the AGNI.

Yours sincerely

Alastair Ross MLA
Chairperson
Committee on Standards and Privileges

Junior Minister's letter dated 5 September 2014



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Our Ref: INV/415/2014

5 September 2014

Dear Gerry

**REQUEST FOR JUNIOR MINISTERS TO BRIEF THE COMMITTEE ON
PROCEDURES: 23 SEPTEMBER 2014**

Thank you for your letter of 30 June 2014 in which you invite us to attend a meeting of the Committee on Procedures scheduled for 23 September to provide a briefing on behalf of the Executive to inform the Committee's current review of the system of Topical Questions. We would be happy to accept your invitation and our offices will contact the Committee Clerk in due course about the arrangements for this meeting.

We note that you have requested that discussion at this meeting should also extend to seeking the views of the First Minister and deputy First Minister on matters related to the Committee's current inquiry into the extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in the proceedings of the Assembly.

While the First Minister and deputy First Minister do have a particular role in relation to the appointment of the Attorney General, the Committee will be aware of the requirement to support and respect at all times the independent status of his office. We consider, therefore, and hope the Committee will acknowledge, that the provision of any view by the Executive on the options which the Committee may be considering for his participation in the proceedings of the Assembly might serve to undermine this independence, as would any proposal that the First Minister and deputy First Minister, or we as Junior Ministers, might have a role in relation to the Statutory Rules laid by the Attorney General. We therefore believe that this would not be an appropriate subject for the meeting on 23 September 2014.

JONATHAN BELL MLA
Junior Minister

JENNIFER McCANN MLA
Junior Minister



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