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cc PS/Secretary of State (B&L)
PS/PUS (B&L)
PS/Sir Ewart Bell
Mr Bourn
Mr Brennan
Mr Angel
Mr Carvill
Mr Doyne-Ditmas
Mr Gilliland
Mr Abbott
Mr Lyon
Mr Reeve
Mr Bickham

NOTE FOR THE RECORD

I met today Mr David Trimble of the Official Unionist Party. Mr Trimble was John Taylor's election agent during the Euro election. Mr Trimble said the result had been a shock to the Official Unionists who had felt that their canvassing had been well received. Mr Trimble attributed some of the outcome to the ordinary Unionist voter's dissatisfaction at the way in which the Official Unionists had attacked Dr Paisley (which they regarded to some extent as quarreling within the Unionist family), and to some extent he thought it was due to grass roots dissatisfaction at the shilly-shallying which had gone on over the Assembly. Whilst Party executives had tended to support Mr Molyneaux's line, this had not been properly understood by the ordinary voter who felt that those in the Assembly were doing a good job.

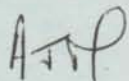
2. Mr Trimble is a devolutionist and he sees the Way Forward as a document which ought to lead on to proper devolution. He said that he believed the Official Unionists should make an attempt to secure control of some further administrative aspects, and in order to avoid any semblance of power sharing this had to be tackled through local government-type arrangements. In discussion I pointed to some of the detailed questions which needed to be considered and Mr Trimble agreed that a good deal of further work needed to be done.

3. Mr Trimble said that the spirit of the Way Forward reflected senior Unionist opinion rather more than it did the spirit of the grass roots voters. Mr Trimble felt that many in the Unionist party were prepared to go a long way down the road of recognising

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Irish culture, and he himself thought the idea of an Irish cultural council which would exercise sponsorship of Irish cultural events would be helpful. I asked whether he saw a role for a similar body which might also monitor the changes taking place over the years in the economic and social position of both communities: for example the perception about the use of public resources did not always measure up with the facts. I wondered whether there might be a body which could examine trends in housing or employment or social provision etc across the Province and to point to areas where one or other community's needs seemed to require attention. Mr Trimble remarked that it was a common Unionist view that the Catholic areas often got the first tranche of any new scheme. He did not dissent from the possibility that each community needed to be reassured about its general position though he did say that the FEA had lost Unionist support because it seemed to be selective in the areas under study, and a more wide-ranging oversight and commentary could prove more helpful.

4. Mr Trimble gave me a copy of a paper he had submitted some months ago to the UUP when the ideas in the Way Forward were being canvassed. I attach a copy of the paper for reference. The paper does give an insight into the background to the proposals which found their expression in the Way Forward document, and the comments about the status of the Boards, finance, and the reasons for a committee style of government are of interest. The final sentence of the paper expresses the philosophy of the UUP approach. That is, that whilst the obstacles of moving to a fully devolved system cannot be avoided forever, progress might be made if the first step is a very small one and sufficient to bring the SDLP into the Assembly where it will become accustomed to its "new" role.



A J MERIFIELD

3 August 1984

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28 March 1982

THE DEVOLUTION OF LIMITED EXECUTIVE FUNCTIONS TO THE N.I. ASSEMBLY

Background

The Ulster Unionist manifesto for the 1982 Assembly elections strongly criticised the Northern Ireland Act 1982, but it did not reject the Assembly out of hand. It said that the Assembly could not succeed within the confines of the 1982 Act and it gave a commitment 66 to transform the Assembly. It is therefore important to identify the objectionable features of the Act which must be modified or avoided and those features that we must build on if we are to transform the structure.

The objectionable features are the 70% and "cross community support" requirements that are set out as pre-requisites for a transfer of power. There are other weaknesses, such as the limited role for the Assembly in security matters, but they might be solved if the major hurdles could be surmounted or dismantled. The positive features are the mere existence of a representative to which powers might be devolved, plus the legislative framework in the 1973 and 1982 Acts for full legislative and executive devolution. Clearly we must seek some changes to that framework to negate the objectionable features, but the fewer the changes the better and we must not seek changes that would make the later transfer of fuller powers more difficult or impossible.

It was in this spirit that Edgar Graham proposed at the Unionist Conference a motion calling for the transfer to the Assembly of those matters which as a result of the Macrory Report had to be transferred from local to central government. This motion was endorsed by the Unionist Devolution Group, but only by a narrow majority. Many members felt that the motion would prejudice full devolution and events since the conference have deepened their anxiety. Therefore it is important to stress that the motion was proposed and expressed to be only a first step to proper devolution. There is another aspect to the resolution which should be borne in mind. It was proposed not because this form of devolution was a good thing in itself, for it quite clearly is not, but simply as a means ^{by which} ^{could be} a start/made. It was a measure of expediency. Indeed it contained a major concession by Unionists. Hitherto we have consistently said that any devolved institution has to operate on democratic terms with a government answerable to the Assembly. This insistence on cabinet government, we are told deprives us of the necessary cross community support. In this proposal for limited executive devolution we are setting this insistence aside, for it is proposed that powers should be exercised by the Assembly itself or a representative grouping thereof, which will ensure that all shades can share in the exercise of these powers. This concession is only acceptable to Unionists because it would only apply in the first instance to powers which were local government powers as such were once exercised by committees. Therefore their exercise on a committee basis in the Assembly would not be a surrender of principle. Obviously as the Assembly develops and has wider executive and legislative powers, more appropriate means of exercising those powers would have to be used, for a committee style of government is only suitable to a local government type of institution. Once a body acquires significant policy making powers and, or legislative powers a return to a proper form of government becomes necessary.

The approach now

The conference resolution unfortunately lacked precision, it merely referred generally to the functions transferred by Macrory to central government. When looking at those functions in search of matters which could be devolved initially to the Assembly, it is important to bear certain matters in mind. In the reorganisation which accompanied Macrory local government was largely stripped of its functions; some were transferred to other authorities such as the Northern Ireland Housing Executive, some to area boards such as the Education and Library Boards or the Health and Personal Social Services Boards, to be administered subject to the direction of central government departments, and some ~~first~~ functions were transferred directly to central government departments. The Area boards have a legal existence separate from the government departments which supervise them. The Boards are created by legislation which assigns certain functions to the boards and certain functions to the Departments. Under the 1982 Act provision is made for the devolution of the functions of the N.I. Departments to the Assembly. This would enable the transfer of a Departments policy making and supervisory roles to the Assembly, but it would not enable the transfer of the Board's functions.

Therefore to seek the transfer of Area Board functions to the Assembly would involve two fundamental mistakes. First, it would involve significant legislation amending not just the 1982 Act but the legislation governing the service in question and it would entail an upheaval in that service. Secondly, it would bring the Assembly in as a body subordinate to the Northern Ireland Departments when the Assembly of course is intended to be a body superior to those Departments. A further problem is that the exercise of Area Board functions might involve a re-structuring of the Assembly to make available to it the expertise and variety of representation in the area boards, and if this happened, it would be very difficult to turn the Assembly back into the proper devolved legislative and executive body we require.

The conclusion must be that we should identify some of the functions of the N.I. Departments which were local government functions before 1972 and which could be transferred to the Assembly without too much administrative disruption and without giving the Assembly functions so extensive that they cannot be administered through a committee system.

A outline scheme

The 1982 Act does not permit the devolution of executive powers distinct from legislative powers. So the Act must be amended and the appendix to this paper sets out the main provisions of a bill to amend the 1982 Act. Then orders will have to be made under the 1982 Act (as amended) transferring powers to the Assembly. But it should be possible to devolve these powers without amending the primary legislation containing those powers. The following functions are suggested,

1. The functions of the Department of the Environment under the Roads (N.I.) Order 1960.
2. The functions of the Department of the Environment under the Planning (N.I.) Order 1972 as amended.
3. The functions of the Department of Health and Social Services under the Health and

Per a) Social Services (N.I.) Order 1972 as amended.

This is not necessarily an exhaustive list and it is not necessary that all three matters be devolved at the same time. They are matters which we think could be devolved with a minimum of disruption, the relevant branches would now simply work to and for the Assembly. The main practical problem would concern finance. The Assembly would be confined to the appropriation made on the proposal of the N.I.O. and in arguing with it for a greater sum would be subject to indirect control by the Secretary of State. There is one other matter, the above functions are not purely administrative, they contain certain rule making powers. It is possible that these could be reserved to the N.I.O. but as they are so closely related to the executive functions concerned it would be better for these powers to be devolved also.

The next step

The above matters each represent part of the functions of an N.I. Department. The next step might be to devolve the remaining functions of the departments concerned, or to consider the functions of the Departments of Education or Agriculture. However it is questionable if the whole of a department can be administered by a committee and it might become necessary to consider whether it would be more appropriate to revert to cabinet government or some equivalent system of government. It may also be difficult to administer a wide range of matters without greater legislative powers.

Progress beyond the departments already mentioned into financial and commercial matters would certainly require a devolution of legislative powers. But as mentioned at the outset devolution of executive matters alone is only appropriate for comparatively minor matters. Nevertheless it is essential to make a start somewhere and this starting point avoids the traps and obstacles that have bedevilled other attempts to make a start. Those obstacles cannot be avoided forever but they might seem smaller if approached gradually.

APPENDIX I

Title, preamble, enacting words,

Clause 1 "(1) In subsection (1) to section 1 of the Northern Ireland Act 1982 the following paragraph shall be added,

(c) proposals for the resumption of the executive functions with certain legislative functions relating to some or all of the transferred matters within the responsibilities of any one or more of the Northern Ireland Departments.

(2) The following words shall be added to subsection (2) to section 1 of the Northern Ireland Act 1982, and proposals under paragraph (c) of that subsection shall include proposals as to the establishment of committees of the Assembly whereby the functions referred to in such proposals shall be discharged."

Note consequential amendments have to be made including a new part to Schedule 1 concerning committees making it clear that section 8 of the 1973 Act shall not apply to an order under Section 1 (c) of the 1982 Act.