

FROM: PS/Secretary of State (L)
8 March 1990



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cc. PS/SofS (L&B) - B
PS/MofS (L&B) - B
PS/Ministers (L&B) - B
PS/PUS (L&B) - B
1. PS/Sir K Bloomfield - B
Mr Burns - B
Mr Miles - B
Mr Thomas - B
Mr Kirk - B
Mr J McConnell - B
Mr Blackwell - B
Mr D J R Hill - B
Mr Daniell - B
Mr Dodds - B
Mr George, RID FCO - B

NOTE FOR THE RECORD

MEETING WITH MR MAGINNIS AND THE MCGIMPSEY BROTHERS - 6 MARCH

The Secretary of State, accompanied by Dr Mawhinney and Mr Burns met Ken Maginnis MP at the latter's request at Stormont Castle on the morning of 6 March. Mr Maginnis was accompanied by the McGimpsey brothers.

Opening discussion, Mr Maginnis commented that he was grateful to the Secretary of State for having given him and the McGimpsey brothers an opportunity to set out Unionist concerns about the recent judgement in the Irish Supreme Court. In so far as the judgement confirmed that Articles 2 and 3 of the Irish Constitution were valid political and legal claims rather than general aspirations, it marked an important watershed in British-Irish relations and had great, but unfortunate, significance, especially for those Unionists who wished to see the political development process continue to the extent that a devolved government could be re-established in Northern Ireland. The judgement effectively demolished claims that had been made by HMG since the signing of the Anglo-Irish Agreement to the effect that Article 1 of that Agreement confirmed the de facto position

of Northern Ireland within the UK and Irish acceptance of that position. Mr Maginnis said that, in bringing the case, the McGimpsey brothers had sought to establish that Articles 2 and 3 of the Irish Constitution were indeed political and legal claims to the territory of Northern Ireland, anticipating that if their interpretation were correct it would prove their contention that the Irish Constitution precluded the Irish Government from signing the Anglo-Irish Agreement. The Irish Government would have had then to suspend the operation of the Agreement pending a referendum, thus creating a gap which those Unionists who wished to engage in talks about the future government of Northern Ireland could exploit. Comments by Judge Barrington during the hearings had suggested that the Supreme Court would rule against the McGimpsey brothers claim that the Agreement was unconstitutional but would reinforce the view that Articles 2 and 3 represented aspirations. However, the Supreme Court ruling that Articles 2 and 3 were indeed constitutional imperatives and, further more, that the signing of the Anglo-Irish Agreement had not abrogated Articles 2 and 3 had come as both a shock and a disappointment given its implications for future relationships with the Irish Government and for the conduct of discussions on political progress.

Mr Maginnis commented that, with the judgement in mind, he had advised Mr Molyneaux that he could see no way in which any relationship between the Unionists and the Irish could be developed as long as the Irish Government maintained a constitutional claim to the territory of Northern Ireland. While not wishing to see an end to the present discussions on political development he felt strongly that the content of those discussions should now focus on the effects of Articles 2 and 3 to take account of the Irish interpretation of Article 1 of the Agreement which, he suggested, the Irish would not now see (if they ever had) as binding them in any way to recognition of the de facto position of the Province. Many observers in the

Republic of Ireland shared the Unionist view that the judgement posed a stumbling block to political progress in Northern Ireland. Mr Maginnis urged strongly that HMG should also take this view and should press the Irish Government to take action to amend or delete the "offending" Articles. At the same time HMG should make clear its intention of taking action in the international Courts against the Irish since their territorial claim was, he felt, wholly inconsistent with membership of international bodies which based their activities on co-operation and mutual respect between sovereign Governments. Mr Maginnis said that while Unionists would be meeting with Mr Haughey and with other party leaders in the Republic of Ireland to discuss the issue and to urge the Irish Government to review the situation, such pressure would be ineffective in isolation and should be supported overtly by HMG in its own discussions with the Irish Government. Concluding, Mr Maginnis said that it was widely believed that the judgement had significantly altered the basis of the Anglo-Irish Agreement and that that Agreement could not (nor should it be) be interpreted in future as it had up to now. HMG should press the Irish Government for discussions aimed at creating a sound basis for progress towards devolution - anything less would ensure the failure of the political process and the discrediting of the Agreement.

Mr Chris McGimpsey agreed that any future interpretation of the Anglo-Irish Agreement would be directly affected by what had been said in the judgement about Articles 2 and 3. Unionists believed that the Irish saw the Agreement as part of a process towards unification and that the Irish Government had been dishonest in signing the Agreement in 1985 since they had no intention of being bound by Article 1. The language used by counsel during the case had suggested that Article 1 had not defined the status of Northern Ireland and that this had been planned by the Irish. The judgement altered the whole premise on which the Agreement was based and HMG should take this into account. In addition,

judgement implied that the Irish Government would consider themselves legally precluded from entering into any agreement with Unionists on the future status of Northern Ireland and the government of the Province and could not, indeed, make any offers to Unionists as a group on this issue.

The Secretary of State commented that he was grateful for the opportunity to discuss the issues privately with Mr Maginnis and his colleagues before he was questioned in public on the implications of the judgement. While he understood the reasons that had led to the McGimpsey brothers seeking a judgement, he could not agree that the judgement had any effect on the de facto position of Northern Ireland as part of the UK, nor that HMG need take any cognisance of it, for precisely that reason. The wording of Article 1 of the Anglo-Irish Agreement was clear and was contained within an internationally binding treaty - the endorsement of Northern Ireland's de facto position that it represented remained unamended and could not be varied by the Irish Supreme Court judgement or by the Irish Government unilaterally. It had always been accepted that, were Unionists to be involved in talks with the Irish Government post-devolution, they would wish to take an early opportunity to seek clarification of Articles 2 and 3 and to identify the effect that they might have on the Unionist position.

Mr Maginnis responded by saying that while he could accept that Article 1 of the Agreement set out the de facto position to HMG's satisfaction, the fact remained that the Supreme Court judgement constituted a firm ruling on the legal and political aspects of Articles 2 and 3 of the Irish Constitution, and had the effect of overturning the widespread belief (which had been based on a judgement by Justice O'Keefe in 1977) that these Articles were aspirational in nature. More seriously, the judgement would serve to sustain the IRA in their campaign of violence in Northern Ireland and confirm the belief of that organisation's

supporters that that campaign was morally justified. The judgement would also lead many Irish people to the view that there was no justification for the pursuit of devolution in the Province. Given this, it was essential that the Irish Government be tackled forcefully and that every effort be made at Governmental level to bring home to them the lack of any justification for the pursuit of a territorial claim which was increasingly irrelevant in the modern world.

The Secretary of State said that while he understood the concerns, he rejected any suggestion that the judgement could affect the Irish Government's acceptance (contained in Article 1 of the Agreement) of Northern Ireland's de facto constitutional position or that the Agreement or its workings were placed in jeopardy. Overall, he believed that the significance of the judgement had been overstated. HMG had lived with an Irish constitutional claim for over 50 years and, regardless of the emphasis which any party or group might wish to place on it, it would continue to have no effect on Northern Ireland's status. Mr Burns added that the essential point to bear in mind was that HMG's constitutional claim was the one that mattered and which, indeed, was in effect. It gave Northern Ireland a status which could only be over-ruled by the will of a majority in the Province and Article 1 of the Agreement enshrined Irish recognition that this was the only way by which that status could be amended. He agreed that the fact that Articles 2 and 3 of the Irish Constitution remained in place caused affront to Unionists and contributed to unease. Unionists would clearly wish to discuss this aspect further with the Irish Government but, in doing so, should bear in mind HMG's firm view that Article 1 of the Agreement provided the people of Northern Ireland with a basis on which they could proceed to devolution. The Secretary of State stressed the importance of concentrating on the practical aspects. The Irish Government were committed by international treaty to an agreement that the Province would remain part of the UK until, and only until, the people of Northern Ireland decided otherwise.

Mr Maginnis demurred - the constitutional situation had changed significantly with the signing of the Agreement in 1985. The Irish had been given a right of consultation in respect of HMG's policies in Northern Ireland. This right was denied to Northern Ireland elected representatives and nothing had been done to improve this position since 1985. The Irish believed that they had a right to influence HMG's policies in this area and recent contributions to the debate on security matters in NI had seemed, to Unionists, to give credence to this view. Counsel had affirmed that the status of Northern Ireland had not been defined by the Agreement, and deliberately so, which suggested that the Irish would never interpret Article 1 in the same way as did HMG. He also believed that comments made during the judgement indicated an Irish belief that Unionists had no locus to discuss future political arrangements for the Province. Mr Burns, he disagreed strongly.

Dr Mawhinney suggested that, whatever interpretation Unionists wished to place on the judgement, they should not be deterred from maintaining the impetus in talks despite their concerns about the alleged intransigence of the SDLP and the unhelpfulness of certain Irish Ministers. The document prepared by Mr Molyneaux and Dr Paisley in 1988 had specified that the future interpretation of Article 2 of the Irish Constitution should form a part of any discussion process, and it would be valuable to continue to make this point while continuing discussions on political development with the Secretary of State.

Mr Maginnis countered that the situation had now changed significantly. The judgement had implied that further discussion towards political progress in the Province must now take second place by law to the Irish territorial claims and, if the political process was to continue, HMG had to put pressure on the Irish Government to adopt a reasonable and responsible international attitude. The judgement was not a bar to the continuation of talks within Northern Ireland but he had no

doubts that, unless the Unionists first concluded an arrangement with the Irish Government on the political future of the Province, further progress would be vetoed by John Hume (but not, necessarily by the SDLP as a party). Agreement was now impossible unless the Irish Government amended Articles 2 and 3 of the Constitution or made clear that they were only aspirations. He believed that HMG had been enticed into the Anglo-Irish Agreement under a false premise, it never having been the intention of the Irish Government to commit themselves wholeheartedly to Article 1.

The Secretary of State rejected this suggestion. He said that he understood the difficulties that would face Unionists in coming to any settlement which did not include a clarification of the meaning and intent of Articles 2 and 3. It should, however, be self evident to Unionists and to anybody else that HMG did not accept the Irish claim as set out in Articles 2 and 3. The claim had existed for 52 years and had made no impact on Northern Ireland status as part of the UK - he was as happy now with the de facto situation as he had always been and fully intended to continue as before with the position as set out in Article 1 of the Anglo-Irish Agreement.

Mr Maginnis then told the Secretary of State that he would be speaking to the press after the meeting and would be emphasising in his comments the significance which the Unionists placed on the Supreme Court judgement and their expectations that HMG would discuss its implications at Governmental level with the Irish. He would make it clear that the Unionists intended to take this course. The Secretary of State thanked Mr Maginnis for letting him know of his plans and commented that, so far as any discussion of the judgement was concerned, it would be wrong to assume that HMG would adopt the line suggested by Mr Maginnis - that said, the question of Articles 2 and 3 would be bound to arise in routine discussion.

N.B. Mr Maginnis indicated towards the end of the meeting that he would be flying to London at lunchtime to seek to make an application under the Standing Order no. 20 for an emergency debate on the subject. I understand that he made application to the Speaker but was dissuaded from taking it further - he may, however, apply for an Adjournment Debate on the issue.

Mr Maginnis subsequently spoke to Dr Mawhinney on the question of placing copies of the judgement in the Library of the House of Commons - this is being taken forward separately by Mr Leach.

Signed:

STEPHEN POPE
Private Secretary (L)
8 March 1990
OAB Extn 6461