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CPL DIVISION
6 MARCH 1990



cc PS/Minister of State (L&B) - B
PS/Dr Mawhinney (L&B) - B
PS/PUS (L&B) - B 7/3
PS/Sir K Bloomfield - B
Mr Burns - B
Mr Thomas - B
Mr Miles - B
Mr Blackwell - B
Mr J McConnell - B
Dr Donnelly CPL

1. MR KIRK (DCK 7.3.90)
2. PS/SECRETARY OF STATE (L&B) - B

UNIONIST PROPOSALS OF 26 JANUARY 1988 FOR DEVOLVED GOVERNMENT

1. Mr Kirk undertook on 1 March to circulate an aide memoire about the proposal for a new form of government for Northern Ireland which was put forward by the Unionist leaders in discussion with Mr King in January and May 1988, and which was reflected in part in the paper they tabled on 26 January 1988 (now published in the Irish Times of 27 February 1990).

2. I attach such an aide memoire which contains a summary of the proposal and a commentary on it.

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6 March 1990

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UNIONIST PROPOSALS FOR A FORM OF DEVOLVED GOVERNMENT: JANUARY 1988

Introduction

1. The Unionist Leaders told Mr King on 26 January 1988 that the two Unionist parties were working on two substantial papers about:

- i) a replacement for the Anglo-Irish Agreement; and
- ii) a form of devolved government.

The former was virtually ready but the latter was not complete. The "Draft Proposal for a British Irish Agreement" which they handed over (now published in the Irish Times of 27 February 1990) was a summary of their overall position in both areas, but has far more detail on the former than on the latter.

2. In discussion with Mr King on 26 January and 11 May 1988 they gave some further details of their proposals for a new form of government for Northern Ireland. These proposals are summarised below.

Summary

- a) Unionists intended the new Assembly to have legislative as well as administrative responsibilities. Responsibility would extend to all "transferred" matters.
- b) The essence of their proposal was that the new Assembly should avoid the problem of "power-sharing" at Executive level by dispensing with an Executive. Instead, the Assembly would appoint Committees which would be responsible for running Departments. They would be decision taking bodies, subject to supervision from the Assembly as a whole on broad policy issues.
- c) Committee seats and chairmanships would be distributed proportionately to all the parties represented in the

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Assembly. Day to day executive decisions would normally fall to the Chairman, but authority would formally rest in the Committee: the Committee would determine issues of policy and the Chairman would act on the basis of delegated authority.

- d) Some kind of co-ordinating machinery would probably be needed for dealing with issues which crossed Departmental boundaries. The Unionist leaders acknowledged that a Finance and/or Budget Committee would be necessary (and that it should include the Chairmen of the other committees, though there would also be other members) but said that it should deal only with finance and budgetary issues and would not provide general co-ordination or supervision of the individual Departmental Committees. (Dr Paisley suggested that the machinery of the European Assembly might provide a model).
- e) The two leaders said that Unionists were still developing their ideas on safeguards for the minority. Mr Molyneaux said that an appeal to the Secretary of State might be important. Dr Paisley said he would not be opposed to weighted voting.
- f) On non-devolved matters, representatives of the Assembly would join the UK team in the discussions with Irish Ministers. The "parties in the Assembly" would also have their own contacts with the Secretary of State. (It was not clear whether this would be on an individual party basis or as part of an Assembly team).

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COMMENTARY

Antecedents

3. The proposal combines features of the UUP's ideas on 'administrative devolution' with the long-standing DUP demand for devolution of full executive and legislative powers. Of previous proposals, it most closely resembles the Alliance Party's ideas on 'committee government' put to the 1975 Constitutional Convention.

Major Gaps/Defects

4. These include (for the present - since the Unionists may have it in mind to remedy some of these gaps/defects):

- i) Minority Protection. No provision, instead minority representation on Committees and a share of the Committee Chairmanships. In practice, nationalist minority Chairmen might be prisoners of the unionist majorities on their committees. Even if they were to escape from this, the unionist majority in the full Assembly would be a further restraining influence;
- ii) Bill of Rights. A surprising omission, given past unionist emphasis on it as a means of protecting the minority;
- iii) Committee Members/Chairman Relationship. The proposal is unclear about the relationship between the powers of Committee members and those of Committee Chairmen. The idea that powers could be vested in the Committee collectively by delegation from the full Assembly would require a Bill to amend the 1973 Constitution Act. Decisions would presumably be taken by vote, which could - depending on the extent to which responsibility was further delegated to the Chairman - lead to delay or paralysis. The extent of the Chairman's independence

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would have to be constrained by quite elaborate rules governing matters such as: which decisions would be for the Chairman alone; in what circumstances would he be required to seek the views of the Committee; what would happen if he disagreed with his Committee's majority, or was sacked etc. The whole proposal may well turn out to be unworkable in practice;

- iv) Committee/Assembly Relationship. It is not clear how the full Assembly's supervision of "broad policy" would work. Would certain issues (and if so, which?) be defined as "broad policy"? Would the Assembly be able to "call in" issues from Committees? Or would decisions disputed in committee be referred to the full Assembly?
- v) Finance/Co-ordination. The DFP or "Finance and/or Budget" Committee would presumably arbitrate between competing financial demands from the other "Departmental" Committees. Would the DFP Committee be composed like the others, or would it consist of the Chairmen of the other Committees, perhaps supplemented by other members? If, as the unionists apparently believe, this Committee should be confined to financial matters, who should undertake the wider task of co-ordination across Committee boundaries? And who would negotiate with the Secretary of State the share of the NI block to be devoted to the transferred services?
- vi) Security Input: although the proposed Assembly would not be responsible for security matters, all the parties would wish to put views to the Secretary of State on security and indeed other non-devolved matters. Would there be a special Committee for this purpose? And would it, too, be composed proportionately?
- vii) Legislation would presumably be initiated by Departmental Committees. If the Departmental Committee had approved

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the legislation before introduction, there would be no point in the same body conducting a "Committee Stage" on the draft Measure. Does this point to separate "legislation" committees, without executive powers? Or to dispensing altogether with a "Committee Stage" for draft Measures?

- viii) Sinn Fein. The proposals seem to assume that Sinn Fein would not participate. The assumption is probably justified, but cannot be taken as read.

Is the Proposal Worth Improving?

5. In principle, a "Committee Government" proposal such as this one could be made to command widespread acceptance. One imagines, however, that the SDLP and Alliance would wish to see a higher degree of minority protection than this proposal, at present, affords.

6. Identifying effective means of minority protection is difficult. Not every decision in every institution needs to be subject to "minority protection" measures. Indeed, to provide for this might merely produce paralysis. Minority protection needs to be effective on certain key institutions or decisions. A central characteristic of this proposal, however, is that it attempts to conceal the real seat of power within the Assembly by multiplying committees. It is, therefore, very difficult to see when and where minority protection is really needed.

7. That said, the main possibilities are:

- i) Weighted Majority Voting. To subject all committee decisions to a weighted majority would be likely to make decision-taking difficult. A better approach might be to provide for certain categories of committee decision (eg approving the Department's share of the estimates) to be subject to a weighted majority. Alternatively, there

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might be a mechanism for disputed committee decisions to be "called in" by the full Assembly and subjected to a weighted majority vote. Either presents difficulties; these in turn reflect the problems of attempting to apply a weighted majority approach to a system which lacks "confidence" votes;

The size of the weighted majority would also be for consideration. In the 1982 Assembly the UUP and the DUP commanded 60% of the votes (and a Unionist "grand coalition", including independents, 64%). The 1985 Catherwood Plan proposed two-thirds for votes of confidence; the Northern Ireland Act 1982 set 70% as the majority which could require the Secretary of State to lay constitutional proposals before Parliament;

- ii) A Right of Appeal. Discriminatory legislation could be referred to the Judicial Committee of the Privy Council, as provided for by Section 18 of the Constitution Act. It could be arranged for the Secretary of State to make such a reference on the say-so of (perhaps) 30% of the fully Assembly. A right of appeal against executive decisions present more difficult problems; the appellate authority (the Secretary of State?) would be asked constantly to over-rule decisions of the Assembly or its Committees;
- ii) Rigging the balance of power between Committees and their Chairmen. It might be possible to vest certain powers (eg over appointments) in Committee Chairmen, rather than in their Committees. Since Chairmanships are divided proportionately between the parties the effect would be to give non-unionists some scope for independent decision-making;

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- iv) A Second Chamber or "Council of the Assembly" which might have a more "balanced" membership and be able to delay or block legislation and perhaps other major decisions.

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