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Reference.....

UNDER/ 17/5  
SEC  
- 1 MAY 1991  
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Mr Archer  
RID

ANGLO-IRISH DISCUSSIONS ON A COUNCIL OF IRELAND 1973-74

1. I attach the long-promised note on the 1973/74 discussions on establishing a Council of Ireland. I am conscious that this has take longer than intended to produce but (a) there have been a number of intervening distractions, and (b) the material available on FCO files was considerably more extensive than I had imagined. You and NIO recipients will no doubt let me know if you require any further work on this topic, or if you need additional information on any particular aspects of the negotiations.

ASST. / 16/5/91  
SEC  
- 8 MAY 1991  
CENT SEC

*E.C. Hallett*

*MR Wilson 2/5*

*To see &*

*return pl.*

*Introducing*

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30 April 1991

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ANGLO-IRISH DISCUSSIONS IN 1973-74 ON A COUNCIL OF IRELAND

1. Discussions between the British and Irish governments about the establishment of a "Council of Ireland", providing an institutionalised relationship between the two parts of Ireland, began well before the Sunningdale Conference on 6-8 December 1973 and continued for some time after it.

Meeting between Mr Heath and Mr Lynch, 24 November 1972

2. Consideration began at a meeting between the Irish and British Prime Ministers on 24 November 1972 following publication of the British government discussion paper "The Future of Northern Ireland". That paper was based on the premise that any settlement should take account of Northern Ireland's position within Ireland as a whole and that it was desirable that any internal Northern Ireland arrangements should be acceptable to the government of the Republic. In welcoming the paper at the meeting, Mr Lynch hoped that the subsequent detailed proposals would include a Council of Ireland. This might operate at ministerial, official and parliamentary levels. It might initially be confined to economic and social cooperation, but should not be precluded from later going on to deal with "more serious matters". Mr Heath made clear that the British government's ideas on a Council of Ireland were not far advanced. At the suggestion of Mr Lynch, officials of the two sides met subsequently to discuss the concept.

3. These official level talks took place in London on 1 and 22 January 1973. The Irish pressed for the early establishment of a Council, which they saw as a test of the UK commitment to an Irish dimension. They envisaged a full scale body, with a Council of Ministers, Parliamentary Assembly and Secretariat, with specific functions to be discharged independently of Dublin and Belfast. The British side made clear that the structure and functions of the Council could not be determined until an internal Northern Ireland settlement had been agreed and elected Northern Ireland representatives could be consulted, since there was no point in having a body which would be boycotted by representatives of the



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Northern majority.

4. In March 1973 the British government published proposals for the future government of Northern Ireland in the White Paper "Northern Ireland Constitutional Proposals" (CMND 5259). This proposed a conference at which the British and Irish governments and leaders of the elected representatives of Northern Ireland opinion would discuss, among other things, future arrangements for consultation and cooperation between the two parts of Ireland. Part 5 of the White Paper, "Relations with the Republic of Ireland" said that it was noteworthy that virtually all the Northern Ireland political parties envisaged some sort of institutional arrangements between North and South, which many described as a "Council of Ireland", though there were different views on the form such a Council might take. The paper said that the United Kingdom "favours and is prepared to facilitate the formation of such a body" and that "the widespread interest which exists in the idea of a Council is a firm basis for moving to a specific discussion of the matter" at the conference referred to above.

Meeting between Mr Heath and Mr Cosgrave, 2 July 1973

5. Discussions continued, following the change of government in the Irish Republic, at a meeting in London between the new Fine Gael Taoiseach Mr Cosgrave and Mr Heath on 2 July 1973. Mr Heath said that the British government would be ready to have a tripartite conference as soon as the Northern Ireland Executive had been set up, but before the then two governments might give preliminary consideration to the composition and terms of reference of a Council of Ireland. Mr Cosgrave said that the Council should have an EC-type structure, with a Council of Ministers and an assembly, but he was concerned that such preparatory discussion might lead the Northern Ireland parties to think that the two governments were taking decisions for them. It was agreed that preparatory work should be done by officials without publicity. In the course of these discussions, the two sides exchanged papers on the possible structure and functions of the Council of Ireland. The British paper outlined a number of options regarding the

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structure of the Council but said nothing specific about functions. The Irish paper envisaged a wide range of functions in the economic and social sphere and possibly in policing.

6. Mr Cosgrave's view, expressed in a personal message to Mr Heath of 20 August 1973, was that an Executive could not be set up and begin to function effectively in advance of agreement of a Council of Ireland, and he saw difficulty with any settlement which did not have "the character of an overall package designed to satisfy all reasonable aspirations and grievances." He reiterated the "very great importance" which the Irish government attached to the setting up of the Council and that it should have "clearly defined and substantial functions."

Meeting Between Mr Heath and Mr Cosgrave, 17 September, 1973

7. At a further meeting between the two Prime Ministers on 17 September 1973, Mr Heath noted that it had been suggested that policing was one of the matters which might come within the responsibility of a Council of Ireland. He thought this was unrealistic. He doubted whether either the British or Irish governments would want to give up their own responsibility for security and the police.

8. Mr Heath said that the British government had committed itself to the concept of a Council of Ireland in the section of the White Paper on the Irish Dimension. He would like to see early progress. The British and Irish governments had exchanged papers. The British government's paper analysed all the options; the Irish government's paper favoured one particular line. It was first necessary to convene a tripartite conference to discuss structure and functions. It was not possible to get decisions about a Council of Ireland until the Northern Ireland Executive had been formed. The right order of events was for the Executive to be formed, for the British government to devolve powers to it, and then for a conference to be organised to discuss a Council of Ireland. In the meantime, the British and Irish governments could continue informal consideration of the details of the Council of



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Ireland.

9. Mr Cosgrave agreed that it was unrealistic for the foreseeable future to think in terms of joint responsibility for policing, through a Council of Ireland. With regard to timing, Mr Cosgrave said the Irish government would like to see a conference on the Council of Ireland called before the Executive was formed, even if it did not complete its work until afterwards.

10. Mr Heath said that the British and Irish governments should say that they were both committed to a Council of Ireland but that it was for the parties in the North to decide what they wanted to do with it. The British government was prepared to agree that there should be a conference and that it should be called within one month of the formation of the Executive. This would be a binding commitment on the British government and, if the Irish government agreed, on them.

11. Mr Cosgrave reverted to the suggestion that the two Leaders should fix a date for a conference to discuss both the Council of Ireland and the formation of the Executive. Mr Heath made it clear that the British government could not accept that a tripartite conference should discuss the formation of the Executive. To have a conference discuss matters which were within the sovereignty of the United Kingdom was not possible. The parties in Northern Ireland should therefore get on with the formation of the Executive, and then the British government should call a conference on the Council of Ireland, as proposed in the White Paper.

12. After lengthy further discussion, which failed to resolve the question of the timing of the formation of the Executive and the Council of Ireland, agreement was reached on an anodine communique which simply re-affirmed the two governments' support for the concept of a Council of Ireland and their willingness to assist in its formation "in a conference at which they would discuss with Northern Ireland representatives the form and function of such a Council."

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Message from Mr Heath to Mr Cosgrave, 16 November 1973

13. Mr Heath sent a message to the Taoiseach on 16 November 1973 recording the imminent announcement by the Northern Ireland Secretary of the formation of a Northern Ireland Executive. On the Council of Ireland Mr Heath said:

"We think the Council of Ireland should figure prominently in Mr Whitelaw's statement. There is obviously a limit to the decisions that can be taken in advance of consultations. But we can, for example, re-affirm publicly that a bilateral north/south Council would be acceptable to HMG as regards devolved subjects, though arrangements will be necessary to safeguard our interests in the area of finance. We can also announce our agreement to the proposition (which we understand is favoured by the SDLP and also by your own government) that there should be two tiers, with a separate and advisory level involving members of the Dail and the Assembly in addition to the government executive level. This puts pressure on Mr Faulkner to move towards his SDLP colleagues. Similarly we would agree to the proposition that the Council should have some executive functions: and, finally, we would again publicly state that we envisage that the Council could play a useful role in relation to certain subjects reserved for the time being to the United Kingdom government, and on which HMG would need to be represented. How this might be done would need agreement between the two governments and the Northern Ireland Executive."

14. Mr Whitelaw's statement on 19 November 1973 to the House of Commons announced the establishment of the Northern Ireland Executive. With regard to the Council of Ireland it said the following:

"In the White Paper on constitutional proposals, HMG stated that it favoured and would facilitate the formation of a Council of Ireland. In the current series of discussions there has been a considerable measure of agreement. HMG has

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reconsidered its position in the light of these discussions and, as part of a settlement, is prepared to agree to the following proposition which will have to be discussed with the government of the Republic as envisaged in paragraph 112 of the White Paper:

- a) There is a general wish that a Council of Ireland should be confined to the north and south of Ireland. This is acceptable to HMG, as regards devolved subjects, though arrangements will be necessary to safeguard HMG's interests in the area of finance and other reserved subjects;
- b) As to structure the Council would consist not only of representatives of the government of the Republic and of the Northern Ireland Executive but also on a separate and advisory level of representatives from the parties in the Dail and the Northern Ireland Assembly. The Council should have its own Secretariat;
- c) The Council should have some executive functions as well as a consultative role;
- d) The Council at government level should operate on the basis of unanimity;
- e) The Council should be able to play a useful role in relation to certain subjects reserved for the time being to the United Kingdom government and on which HMG would need to be represented. How this might be done needs to be agreed between the 3 governments concerned. Among the matters to be discussed by means of a joint study should be the concept of a common law enforcement area and the question of extradition processes.

15. The arrangements announced with regard to the timing of the establishment of the Executive and the conference to discuss the Council of Ireland were a compromise. The announcement of the

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composition of the Executive would be followed by a tripartite conference (ie Sunningdale) to discuss the establishment of the Council of Ireland. Once agreement had been reached, the British government would take the necessary steps formally to establish and devolve powers to the Executive. After this had been done, there would be a further conference between the 2 governments and the executive to clear the way for the formal establishment of the Council of Ireland. (In the event, of course, this further conference never took place).

Sunningdale Conference, 6-9 December 1973

16. In his opening speech at the conference, Mr Heath, said that the British government had already made it clear that it would be prepared to accept a Council confined to representatives of Northern Ireland and the Republic, with proper safeguards for the British government's financial and other interests; that the Council should also have a separate advisory and consultative tier composed of representatives of the Dail and the Northern Ireland Assembly and that the Council should have its own Secretariat. Decisions taken by the Council at governmental level should be by unanimity. The government had no doubt that a Council of Ireland could play a useful role in achieving the ending of violence and it was prepared to consider further the concept of a common law enforcement area.

17. Mr Faulkner indicated that his attitude to the functions and structure of the Council of Ireland would depend to a large extent on the position of the Republic of Ireland regarding the status of Northern Ireland. He said that it would be difficult for the majority in Northern Ireland to accept a Council of Ireland because it was seen as a halfway-house to Northern Ireland being outside the United Kingdom. If, however, the Republic recognised "the right of the people of Northern Ireland to order their own affairs, a lot more could be asked of the majority in Northern Ireland on the subject of a Council of Ireland than many people would think." It might be possible to improve cooperation between the RUC and the Garda through the Council of Ireland, but the Council should not

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have control over policing.

18. Agreement was reached on the afternoon of the first day on the principle that there should be a Council of Ireland, confined to representatives from North and South; and that it should have a governing Council of Ministers and an advisory assembly. The members of the assembly would be chosen by the Northern Ireland Assembly and the Dail by single transferable vote. There would be a Secretariat with a Secretary-General, independent of the Civil Services of North and South. It was agreed that the Council of Ireland should be given executive and harmonisation functions; and that unanimity would be required for decisions to be taken by governing bodies. These provisions were set out in paragraphs 7-9 of the Sunningdale Communique (attached).

19. On law and order, the Irish government proposed that a court should be established under the auspices of the Council of Ireland, with jurisdiction over the whole of Ireland. The court, which would be composed of 3 or 5 judges appointed by the Council of Ireland, without a jury, would have the power to sit in North or South and try an accused person in the country in which he was arrested for committing a scheduled offence in any part of the island. The British side indicated willingness to study the possibility of a common law enforcement area but said that the Irish proposal raised considerable difficulties. In the end it did not prove possible to do more than agree that the question should be given further study by a Commission to be set up after the Conference, as recorded in para 10 of the Communique, which made no reference to a role for the Council of Ireland.

20. The Irish government also proposed that the police authority for Northern Ireland should be appointed by the Council of Ireland, and that the Irish government would reciprocate by creating a police authority for the Republic whose members would also be appointed by the Council. The British side pointed out that policing and the organisation of the police were reserved matters, financed entirely by Westminster. The British government would need, therefore, to be centrally involved in making appointments to

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the Northern Ireland authority. It was finally agreed that the Northern Ireland Executive would be consulted about appointments to the police authority, and that it, in turn would consult the Council of Ministers of the Council of Ireland (para 15 of the Communique).

21. At the end of the third day, separate groups were set up to examine a number of subjects in greater detail, including the executive functions of the Council of Ireland. (Note: no record of these discussions is on FCO files).

22. On financing, an initial Irish proposal for the Council of Ireland to be financed by direct charges on central funds in Dublin and on the consolidated fund of Northern Ireland, was dropped and agreement was quickly reached on the principle that the Council's work would be financed during the initial stages by grants, with the expenditure on administration being shared equally between North and South and expenditure on other services being provided in proportion to the benefits received.

23. With regard to the executive functions of the Council, the Irish initially came determined to seek agreement on a list of specific functions to be given to the Council under which it would have "clear executive responsibility" and not merely a right to make recommendations to the governments in the North and South.

24. On policing, the Unionists made clear that they would accept, reluctantly, cooperation between the RUC and Garda taking place under the Council of Ireland, but that operational control of the police by the Council of Ireland was unacceptable. The SDLP, on the other hand, argued that operational control of the police forces should be given to the Council of Ireland. The Irish government were prepared to see some authority over the Garda transferred to the Council of Ireland but it was never clear how much. The Northern Ireland Secretary made clear that there could be no question of devolving responsibility for the RUC to the new Northern Ireland institutions until the security situation had improved.

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responsibility. These areas should then be studied by officials.

25. In the end it was concluded that there was no prospect of final agreement at the Conference and that the specific functions to be given to the Council of Ireland, should therefore be the subject of detailed studies by officials after the conference, within the framework of the broad headings listed in paragraph 8 of the Sunningdale Communique.

25. The following procedures were agreed for identifying areas of

SUBSEQUENT DISCUSSIONS BETWEEN THE NORTHERN IRELAND EXECUTIVE AND THE IRISH GOVERNMENT

a) A steering committee of officials would be established.

26. Further progress towards establishing the Council of Ireland was affected by the political situation in Northern Ireland. On 4 January 1974 the Ulster Unionist Council passed a motion rejecting the Sunningdale Agreement. Three days later, Mr Faulkner resigned as leader of the Unionist Party, though he continued as leader of the party in the Assembly. In these circumstances, he felt constrained in moving towards the early establishment of the Council. The terms of reference of the working groups would be,

within the terms of paragraph 8 of the Sunningdale Communique.

27. On 1 February 1974 members of the Irish Cabinet and the Northern Ireland Executive met to discuss how to take forward various aspects of the Sunningdale Communique. With regard to the functions of the Council of Ireland, Mr Faulkner said that it was necessary for the politicians to give officials a steer in carrying forward the identification of executive functions. It should be recognised that it was very difficult to sell the concept of the Council to the people of Northern Ireland, so that it would be a mistake to give the Council too many executive functions from the beginning. The Northern Ireland Executive accepted that two kinds of executive function should be envisaged: "executive action", under which functions would be performed by the Council's own staff through all-Ireland institutions; and "executive decision" under which policy would be formulated by the Council but the administration would be undertaken by the separate institutions of the north and south. At this stage, the Executive was not prepared or able to do more than agree the identification of areas or government activity over which the Council might have executive

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responsibility. These areas should then be studied by officials to see whether they were suitable for transfer to the executive responsibility of the Council. Discussion focussed on a list of subjects prepared by the Executive. The final list of topics agreed for further study is at Annex A. The original, more extensive, Irish list is at Annex B.

28. The following procedures were agreed for identifying areas of executive responsibility for the Council of Ireland:

- a) A steering committee of officials would be established, including a representative of the NIO;
- b) joint working parties would be established consisting of officials from each of the Departments concerned with each suggested area, with the NIO or the appropriate Whitehall Department represented where there was major UK-wide interest;
- c) the terms of reference of the working groups would be, within the terms of paragraph 8 of the Sunningdale Communique, to consider the feasibility of the Council of Ireland adopting executive responsibility for the subject in question, to consider whether it should be for executive action or decision and to consider the timing of any transfer of responsibilities;
- d) the process of identifying executive functions would not preclude meetings of the relevant ministers if this seemed appropriate;
- e) all studies to be completed within 21 days.

29. 24 working parties were duly established for each of the subject areas which had been identified with instructions to report by 19 February. In the ensuing discussions, it was clear that the Republic of Ireland officials were under instructions to try to maximise the Council's executive functions. The Northern Ireland officials, on the other hand, emphasised the practical and

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political difficulties of an early and wide-ranging transfer of functions to the Council. The outcome of the discussions was a joint report to the Irish government and the Northern Ireland Executive, summarising the conclusions, with separate annexes on each subject area. On the basis of this, Northern Ireland Executive officials prepared a table indicating areas of agreement and disagreement. (Attached). (Annex C)

30. The steadily deteriorating political situation ensured that little further progress was made. On 31 March 1974, Mr Faulkner told the British Prime Minister that any attempt to implement immediately the Sunningdale proposals for a Council of Ireland would cause so many defections from his party in the Assembly that he would be defeated and ~~that~~ the Executive would fall. He said there was a choice between two courses of action. One was to accept that the full Council of Ireland package as envisaged at Sunningdale would never be acceptable to the majority in Northern Ireland; those elements of the scheme which were most feared and suspected, in particular executive powers and the Parliamentary tier, should be dropped. The other course was for the governments to decide that progress towards the structures envisaged at Sunningdale could only be made by stages, phased in such a way as gradually to win public confidence. Mr Faulkner favoured the latter.

31. He wrote to Mr Cosgrave on 3 April proposing, in effect, a watered-down version of the Sunningdale Agreement on the Council of Ireland, under which there would be a ministerial tier, composed of equal numbers from North and South, but initially no second tier, no headquarters and no Secretariat. Progress towards the full Sunningdale mandate on the Council of Ireland would be made when confidence had been built up. Until then executive action would be undertaken only by direct contact between the Northern Ireland Executive and the Government of the Republic of Ireland outside the framework of the Council of Ireland.

32. Thereafter, protracted discussions took place within the Executive itself as to the pace of implementation of the

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Sunningdale decisions. On 22 May 1974, the Executive announced agreement on the phased implementation of the Sunningdale decisions. An intervention by the Minister of State at the NIO was necessary in order to persuade the SDLP members not to break over the watering down of the Council of Ireland. It was agreed that the Northern Ireland Executive and the Government of the Republic should each nominate 7 members to a Council of Ministers which, acting only on the basis of unanimity, would provide a forum for consultation and cooperation in relation to a limited range of listed functions (see annex<sup>D</sup>). Not until a second phase, would there be a consultative assembly, a Secretariat and a headquarters; and that phase would not come until the opinion of the Northern Ireland electorate had been tested in the next elections to the Northern Ireland Assembly which were due in 1977 or 78.

33. In a statement the same day, the Irish government reluctantly accepted this, while making clear that they would have preferred implementation of all aspects of the Sunningdale Agreement on the Council of Ireland. The statement said that they welcomed the opportunity to participate in the Council of Ministers of the Council of Ireland "on the basis proposed by the Executive".

34. The British Prime Minister wrote to the Taoiseach on 25 May saying that he fully understood Mr Cosgrave's disappointment that the Council of Ireland had to be introduced in stages, but that the price of moving too fast and too far would have been to postpone the setting up of a Council for many years.

32. The collapse of the Executive on 28 May 1974 ruled out any further progress towards the establishment of the Council of Ireland.

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SUNNINGDALE COMMUNIQUE  
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APPENDIX

37

Ireland

10 DECEMBER 1973 (Tripartite Conference)

38

The House knows that I condemn all those who use violence or try to wreck the democratic process. We have under way a new democratic process in Northern Ireland and a democratic arrangement between North and South. I hope that the Dail will give as wholehearted support to the agreement as we in this House are giving it.

*Following is the communiqué:*

1. The Conference between the British and Irish Governments and the parties involved in the Northern Ireland Executive (designated) met at Sunningdale on 6, 7, 8 and 9 December 1973.

2. During the Conference, each delegation stated their position on the status of Northern Ireland.

3. The Taoiseach said that the basic principle of the Conference was that the participants had tried to see what measure of agreement of benefit to all the people concerned could be secured. In doing so, all had reached accommodation with one another on practical arrangements. But none had compromised, and none had asked others to compromise, in relation to basic aspirations. The people of the Republic, together with a minority in Northern Ireland as represented by the SDLP delegation, continued to uphold the aspiration towards a united Ireland. The only unity they wanted to see was a unity established by consent.

4. Mr. Brian Faulkner said that delegates from Northern Ireland came to the Conference as representatives of apparently incompatible sets of political aspirations who had found it possible to reach agreement to join together in government because each accepted that in doing so they were not sacrificing principles or aspirations. The desire of the majority of the people of Northern Ireland to remain part of the United Kingdom, as represented by the Unionist and Alliance delegations, remained firm.

5. The Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

The British Government solemnly declared that it was, and would remain, their policy to support the wishes of the majority of the people of Northern Ireland. The present status of Northern Ireland is that it is part of the United Kingdom. If in the future the majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland, the British Government would support that wish.

6. The Conference agreed that a formal agreement incorporating the declarations of

the British and Irish Governments would be signed at the formal stage of the Conference and registered at the United Nations.

7. The Conference agreed that a Council of Ireland would be set up. It would be confined to representatives of the two parts of Ireland, with appropriate safeguards for the British Government's financial and other interests. It would comprise a Council of Ministers with executive and harmonising functions and a consultative role, and a Consultative Assembly with advisory and review functions. The Council of Ministers would act by unanimity, and would comprise a core of seven members of the Irish Government and an equal number of members of the Northern Ireland Executive with provision for the participation of other non-voting members of the Irish Government and the Northern Ireland Executive or Administration when matters within their departmental competence were discussed. The Council of Ministers would control the functions of the Council. The Chairmanship would rotate on an agreed basis between representatives of the Irish Government and of the Northern Ireland Executive. Arrangements would be made for the location of the first meeting, and the location of subsequent meetings would be determined by the Council of Ministers. The Consultative Assembly would consist of 60 members, 30 members from Dail Eireann chosen by the Dail on the basis of proportional representation by the single transferable vote, and 30 members from the Northern Ireland Assembly chosen by that Assembly and also on that basis. The members of the Consultative Assembly would be paid allowances. There would be a Secretariat to the Council, which would be kept as small as might be commensurate with efficiency in the operation of the Council. The Secretariat would service the institutions of the Council and would, under the Council of Ministers, supervise the carrying out of the executive and harmonising functions and the consultative role of the Council. The Secretariat would be headed by a Secretary-General. Following the appointment of a Northern Ireland Executive, the Irish Government and the Northern Ireland Executive would nominate their representatives to a Council of Ministers. The Council of Ministers would then appoint a Secretary-General and decide upon the location of its permanent headquarters. The Secretary-General would be directed to proceed with the drawing up of plans for such headquarters. The Council of Ministers would also make arrangements for the recruitment of the staff of the Secretariat in a manner and on conditions which would, as far as is practicable, be consistent with those applying to public servants in the two administrations.

8. In the context of its harmonising functions and consultative role, the Council of Ireland would undertake important work relating, for instance, to the impact of EEC membership. As for executive functions, the first step would be to define and agree these in detail. The Conference therefore decided that, in view of the administrative complexities involved, studies would at once be set in hand to identify and, prior to the formal stage of the conference, report on areas of common



interest in relation to which a Council of Ireland would take executive decisions, and, in appropriate cases, be responsible for carrying those decisions into effect. In carrying out these studies, and also in determining what should be done by the Council in terms of harmonisation, the objectives to be borne in mind would include the following:

(1) to achieve the best utilisation of scarce skills, expertise and resources;

(2) to avoid, in the interests of economy and efficiency, unnecessary duplication of effort; and

(3) to ensure complementary rather than competitive effort where this is to the advantage of agriculture, commerce and industry.

In particular, these studies would be directed to identifying, for the purposes of executive action by the Council of Ireland, suitable aspects of activities in the following broad fields:

(a) exploitation, conservation and development of natural resources and the environment;

(b) agricultural matters (including agricultural research, animal health and operational aspects of the Common Agricultural Policy), forestry and fisheries;

(c) co-operative ventures in the fields of trade and industry;

(d) electricity generation;

(e) tourism;

(f) roads and transport;

(g) advisory services in the field of public health;

(h) sport, culture and the arts.

It would be for the Oireachtas and the Northern Ireland Assembly to legislate from time to time as to the extent of functions to be devolved to the Council of Ireland. Where necessary, the British Government will co-operate in this devolution of functions. Initially, the functions to be vested would be those identified in accordance with the procedures set out above and decided, at the formal stage of the conference, to be transferred.

9. (i) During the initial period following the establishment of the Council, the revenue of the Council would be provided by means of grants from the two administrations in Ireland towards agreed projects and budgets, according to the nature of the service involved.

(ii) It was also agreed that further studies would be put in hand forthwith and completed as soon as possible of methods of financing the Council after the initial period which would be consonant with the responsibilities and functions assigned to it.

(iii) It was agreed that the cost of the Secretariat of the Council of Ireland would be shared equally, and other services would be financed broadly in proportion to where expenditure of benefit accrues.

(iv) The amount of money required to finance the Council's activities will depend upon the functions assigned to it from time to time.

(v) While Britain continues to pay subsidies to Northern Ireland, such payments would not involve Britain participating in the Council, it being accepted nevertheless that it would be legitimate for Britain to safeguard in an appropriate way her financial involvement in Northern Ireland.

10. It was agreed by all parties that persons committing crimes of violence, however motivated, in any part of Ireland should be brought to trial irrespective of the part of Ireland in which they are located. The concern which large sections of the people of Northern Ireland felt about this problem was in particular forcefully expressed by the representatives of the Unionist and Alliance parties. The representatives of the Irish Government stated that they understood and fully shared this concern. Different ways of solving this problem were discussed; among them were the amendment of legislation operating in the two jurisdictions on extradition, the creation of a common law enforcement area in which an all-Ireland court would have jurisdiction, and the extension of the jurisdiction of domestic courts so as to enable them to try offences committed outside the jurisdiction. It was agreed that problems of considerable legal complexity were involved, and that the British and Irish Governments would jointly set up a commission to consider all the proposals put forward at the Conference and to recommend as a matter of extreme urgency the most effective means of dealing with those who commit these crimes. The Irish Government undertook to take immediate and effective legal steps so that persons coming within their jurisdiction and accused of murder, however motivated, committed in Northern Ireland will be brought to trial, and it was agreed that any similar reciprocal action that may be needed in Northern Ireland be taken by the appropriate authorities.

11. It was agreed that the Council would be invited to consider in what way the principles of the European Convention on Human Rights and Fundamental Freedoms would be expressed in domestic legislation in each part of Ireland. It would recommend whether further legislation or the creation of other institutions, administrative or judicial, is required in either part or embracing the whole island to provide additional protection in the field of human rights. Such recommendations could include the functions of an Ombudsman or Commissioner for Complaints, or other arrangements of a similar nature which the Council of Ireland might think appropriate.

12. The Conference also discussed the question of policing and the need to ensure public support for and identification with the police service throughout the whole community. It was agreed that no single set of proposals would achieve these aims overnight, and that time would be necessary. The Conference expressed the hope that the wide range of agreement that had been reached, and the consequent formation of a power-sharing Executive, would make a major contribution to the creation of an atmosphere throughout the community where there would be widespread support for and identification with all the institutions of Northern Ireland.

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13. It was broadly accepted that the two parts of Ireland are to a considerable extent inter-dependent in the whole field of law and order, and that the problems of political violence and identification with the police service cannot be solved without taking account of that fact.

14. Accordingly, the British Government stated that, as soon as the security problems were resolved and the new institutions were seen to be working effectively, they would wish to discuss the devolution of responsibility for normal policing and how this might be achieved with the Northern Ireland Executive and the Police.

15. With a view to improving policing throughout the island and developing community identification with and support for the police services, the governments concerned will co-operate under the auspices of a Council of Ireland through their respective police authorities. To this end, the Irish Government would set up a Police Authority, appointments to which would be made after consultation with the Council of Ministers of the Council of Ireland. In the case of the Northern Ireland Police Authority, appointments would be made after consultation with the Northern Ireland Executive, which would consult with the Council of Ministers of the Council of Ireland. When the two Police Authorities are constituted, they will make their own arrangements to achieve the objectives set out above.

16. An independent complaints procedure for dealing with complaints against the police will be set up.

17. The Secretary of State for Northern Ireland will set up an all-party committee from the Assembly to examine how best to introduce effective policing throughout Northern Ireland with particular reference to the need to achieve community identification with the police.

18. The Conference took note of a re-affirmation by the British Government of their firm commitment to bring detention to an end in Northern Ireland for all sections of the community as soon as the security situation permits, and noted also that the Secretary of State for Northern Ireland hopes to be able to bring into use his statutory powers of selective release in time for a number of detainees to be released before Christmas.

19. The British Government stated that, in the light of the decisions reached at the Conference, they would now seek the authority of Parliament to devolve full powers to the Northern Ireland Executive and Northern Ireland Assembly as soon as possible. The formal appointment of the Northern Ireland Executive would then be made.

20. The Conference agreed that a formal conference would be held early in the New Year at which the British and Irish Governments and the Northern Ireland Executive would meet together to consider reports on the studies which have been commissioned and to sign the agreement reached.

Sunningdale Park.  
9th December 1973.

### HIGH COURT JUDGES

Mr. Speaker: On 22nd November, in response to requests from the hon. Members for Salford, West (Mr. Orme) and Bassetlaw (Mr. Ashton), I undertook to examine any submissions that were made to me about the procedures available to Members who wished to make charges against, or examine the conduct of, judges of the High Court.

I have looked carefully at the precedents which have since been drawn to my attention and have consulted my advisers. I am drawn to a simple conclusion, which is this. Whereas there is very little restriction on the form of motion which can be considered by the House in this context there is no way by which I could give such a motion precedence over the Orders of the Day.

As to the presentation of articles of charge referred to by the hon. Members, such a proceeding has been so long out of use that I am in some doubt as to whether it is still available. But in any case it would have to be part of a proceeding initiated by a motion and is therefore governed by the same consideration that all the time of the House is now appropriated according to the provisions of Standing Order No. 6. Standing Order No. 9 could not apply to these cases since the form of debate under that Standing Order is a motion for the Adjournment.

Mr. Orme: I thank you for your ruling, Mr. Speaker. I wish to thank you on behalf of my colleagues and myself who have made representations to your legal advisers and to the Clerks. We have received nothing but help and consideration in presenting what we consider to be a very serious and important constitutional issue. I do not take issue with you, Mr. Speaker, about your ruling. I accept it fully and recognise that because of the change of procedure in the House it is not possible, unfortunately, for private Members to use the time of the House in a way possible in the past.

As you are aware, Mr. Speaker, the last time that articles of charge were laid was in 1845 in the Lord Abinger case and in 1867 with regard to Sir Fitzroy Kelly. We represented to you, Sir, that

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ANNEX A

MATTERS FOR FURTHER STUDY ON POSSIBLE EXECUTIVE FUNCTIONS

[Agreed at 1 February 1974 meeting between the NI Executive and Irish Government]

Department of Education

Culture and the Arts

Department of Commerce

Electricity Generation and Distribution

Tourism

Carlingford Lough

Lough Foyle

Specific joint industrial projects  
(eg steel mill)

Study of future energy needs and  
resources

Aspects of trade promotion

Geological survey

Department of Agriculture

Drainage in Border areas

Aspects of plant and animal health

Horse-racing and bloodstock

Conservation of marine resources

Department of Housing,  
Local Government and Planning

Physical strategy/regional planning,  
particularly in cross-Border areas

Conservation (nature reserves and  
wildlife)

Inland waterways

Department of Environment

Cross-Border railways

Newry/Dundalk Motorway

Cross-Border roads and bridges

Preservation and restoration of  
historic buildings

Anti-pollution policy

Department of Community  
Relations

Human Rights machinery

Sport (including youth organisations)

Department of Health and  
Social Services

Aspects of health and social welfare  
including advisory and consultative  
services



*Original Draft last for discussion at 1 February 1974 meeting*

FULL EXECUTIVE FUNCTIONS (ie POLICY FORMULATION, FINANCIAL DECISION MAKING, SETTLEMENT AND REVIEW OF PROGRAMMES, AND IMPLEMENTATIONS) WITH AN AMALGAMATED IMPLEMENTATION AGENCY

<u>Function</u>	<u>By whom discharged in the Republic</u>
(a) regional planning	(Dept of Local Government (An Feras Forbartha (Dept of Industry and Commerce (Industrial Development Authority (Dept of Agriculture (Dept of Finance
control of pollution	(Dept of Local Government (Dept of Agriculture (Dept of Industry and Commerce
minerals exploration and exploitation	(Dept of Industry and Commerce
(b) sea fisheries	(Bord Iascaigh Mhara (Dept of Agriculture and Fisheries
animal health	Dept of Agriculture and Fisheries
agricultural (including veterinary) research	(Dept of Agriculture and Fisheries (Agricultural Institute
export promotion and marketing of agricultural products	(Dept of Agriculture and Fisheries (Irish Livestock and Meat Marketing Board (Bord Bainne (Pigs and Bacon Commission etc
forestry and wildlife	Dept. of Lands
(c) export promotion	Irish Export Board
industrial research and design	(Kilkenny Design Workshop (Institute for Industrial Research and Standards
management training	Irish Management Institute
(d) -	-
(e) tourism	(Bord Fáilte (CKRT (Office of Public Works (Inland Fisheries Trust



Function

By whom discharged in the Republic

(f) road research

Foras Forbartha

proposed internal air services Aer Lingus

(g) medical research

(Medical Research Council  
(Medico-Social Research Board

registration and regulation  
of professions

(Medical Registration Council  
(Pharmaceutical Society of Ireland  
{ Dental  
{ Nursing } Boards  
{ Opticians }

(h) sport

COSAC, National Youth Council

culture and the arts

National Gallery, Museum, Library,  
College of Art  
(excluding teacher training)  
Royal Irish Academy, Arts Council,  
Cultural Relations Committee

proposed Irish Law Commission



FULL EXECUTIVE AUTHORITY FOR COUNCIL: IMPLEMENTATION BY  
EXISTING AUTHORITY

<u>Function</u>	<u>By whom discharged in the Republic</u>
(a) cross-border water supply	Dept of Local Government
national parks and monuments	Office of Public Works
(b) Foyle Fisheries	Commission
seed testing	Dept of Agriculture and Fisheries
farmer training	Dept of Agriculture and Fishers
arterial drainage	Office of Public Works
(c) industrial training	ANCO
(d) electricity	Electricity Supply Board Bord na Hóna
(e) -	-
(f) road associated services (safety, controls etc)	Dept of Local Government
(g) -	-
(h) teaching of Anglo-Irish history	Dept of Education
registration and archives	Land Registry Registry of Deeds Public Record Office Dept of Health



# LESS THAN FULL EXECUTIVE AUTHORITY

- (a) -
- (b) farm modernisation schemes and other EEC matters of mutual interest
- (c) -
- (d) -
- (e) -
- (f) roads (all-Ireland planning and cross-border)  
rail passenger transport (policy etc)  
road freight transport (harmonisation)  
meteorological services  
air traffic control  
marine survey

(g) National Health Council

(h) -

## Note:

The letters before each function indicate the classification in paragraph 3 of the Communiqué issued following the Sunningdale Conference within which the function would normally fall.



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(ANNEX B)

AREA OF DISAGREEMENT OVER THE EXECUTIVE FUNCTIONS OF THE COUNCIL OF IRELAND

The following functions/activities have been identified by the Irish members of the Joint Steering Group as those which they felt should, in the context of the Agreed Communiqué from Sunningdale and the subsequent Hillsborough meeting, be transferred for executive action by the Council of Ireland:-

<u>Activity Identified at Hillsborough</u>	<u>Aspect(s) Identified by Steering Group</u>
Culture and the Arts	Institutions of Science and Art.
Electricity Generation and Distribution	All aspects of electricity generation and distribution.
Tourism	All aspects of tourism.
Aspects of plant and animal health	All aspects of animal health.
Conservation (Nature Reserves and Wildlife)	All aspects of conservation (nature reserves and wildlife) which the Steering Group from the Irish Government takes as including forestry.
Preservation and restoration of historic buildings	All aspects of preservation and restoration of historic buildings.
Sport (including Youth Organisations)	Youth activities
Aspects of health and Social Welfare	Appeals machinery for Social Welfare; Establishment of a:- Joint Social Welfare Council; Joint Health Advisory Body; Joint body for Medico-Social Research; Unified Registration Body for the Health Professions (after consultation with relevant professional interest groups) Unified Registration Agency for births, marriages and deaths.

The NI members of the Joint Steering Group were not able to agree with these proposals.

27 February 1974



# ANNEX C

Prepared by NI Executive Officers on 27 February 1974, see Para 29

Activity	Executive Action	Executive Decision	Council Studies and Consultation	Disagreed *	[Annex A]
Culture and the Arts				x	
Electricity generation and distribution		x		x	
Tourism	x	x	x	x	
Carlingford Lough	x				
Lough Foyle	x				
Specific joint industrial projects	x				
Study of future energy needs and resources	x				
Geological survey		x	x		
Aspects of trade promotion		x	x		
Drainage in Border areas	x				
Aspects of plant and animal health		x		x	
Horse-racing and blood-stock	x				
Physical strategy/ regional planning, particularly in cross-Border areas	x				
Conservation (Nature Reserves and Wildlife)		x		x	
Conservation of Marine Resources		x			
Inland Waterways	x	x			
Cross-Border Railways	x				
Newry-Dundalk Motor Route		x			
Cross-Border Roads and Bridges		x	x		



Activity	Classification					Annex A
	Executive Action	Executive Decision	Council Studies and Consultation	Disagreed *		
Preservation and restoration of historic buildings			x			
Pollution Policy		x				
Human Rights Machinery	x					
Sport (including youth organisations)			x	x		
Aspects of health and social welfare (including advisory and consultative services)			x	x		

\* "Disagreed" covers all those activities which Irish officials alone thought were suitable for immediate executive action by the Council.



**LIST OF FUNCTIONS FOR "CONSULTATION, COOPERATION AND COORDINATION OF ACTION" UNDER THE COUNCIL OF IRELAND, ADOPTED BY THE NORTHERN IRELAND EXECUTIVE ON 22 MAY 1974, AND ACCEPTED BY THE IRISH GOVERNMENT :-**

Tourism

Carlingford Lough

Lough Foyle

Studies of possible joint industrial projects

Study of future energy needs and resources

Geological survey

Aspects of trade promotion

Cross-border drainage

Plant and animal health

Horse-racing, blood-stock and greyhounds

Cooperation in cross-border planning

Conservation

Marine resources

Electricity generation and distribution

Inland waterways

Cross-border railways

Cross-border roads and bridges

Historic buildings

Pollution

Sport

Aspects of health and social welfare