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CABINET

DEFENCE AND OVERSEAS POLICY COMMITTEE

THE GOVERNMENT OF NORTHERN IRELAND: PROPOSALS FOR FURTHER DISCUSSION

Memorandum by the Secretary of State for the Home Department

I attach for consideration by the Committee a draft document for publication setting out the Government's proposals for further discussion regarding the future government of Northern Ireland.

2. Following the commitment in our Election Manifesto we undertook, in the words of the Queen's Speech:

"to seek an acceptable way of restoring to the people of Northern Ireland more control over their own affairs".

The problem is to find an "acceptable way" between the opposed objectives of the two communities in Northern Ireland. The deliberations of the MISC 24 Group have convinced us that a way can only be through mechanisms that effectively assure both communities a share in the exercise of power and decision-taking. Without that element, no new institutions stand any chance of lasting success. And political advance is important in securing freedom from terrorist violence and progress towards prosperity.

3. Part ~~IV~~^{III} of the paper sets out the Government's proposals. On the central issue, two alternative approaches are proposed, each having as its object the sharing of power between representatives of the two communities. The first approach is the proportionately representative executive; the second, while not guaranteeing places in the Executive to the minority, balances the power of the Executive against that of a Council of the Assembly on which the minority, qua Opposition, have a prominent place.

4. MISC 24 was content with the paper's general tone, length and substance. The following particular points arose during our discussion:-

a. Transfer of powers. The paper records the widespread support at the Conference and in Northern Ireland generally for a transfer of powers and functions on a scale comparable with the 1920 and 1973 transfers. A transfer of powers at local government level would encounter much opposition; it would not avoid the problem of how to distribute power, and its prospects would be prejudiced by the biased conduct of too many of the present unionist-dominated district councils.

b. Power to legislate. Our earlier Working Paper envisaged that the powers transferred should include power to legislate, in accordance with the Province's long tradition and all the parties at the Conference wanted

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it. Moreover, it is chiefly by having the power to question the Executive's legislative proposals that the minority will be able to exercise influence over the Executive's day-to-day decisions.

- c. In proposing a transfer of legislative powers MISC 24 recognises the potential problems elsewhere, notably in Scotland. But almost any special arrangement for Northern Ireland might be held to offer precedents for Scotland; a devolution of executive power alone, which would offer Northern Ireland least, might indeed prove the most tempting option to Scottish Nationalists. MISC 24 considered that it has become sufficiently well established that Northern Ireland is different from the rest of the United Kingdom.
- d. The reception given to our proposals may be such that in due course we shall need a fall-back position. MISC 24 considered whether the paper should foreshadow the Government's action in this situation and concluded that no more should be said than the hint contained in the paper.
- e. The publication date presents a problem. The effective choice lies between publication about 23 June or delaying it until the latter part of July after the debate on the renewal of direct rule powers. If we publish this month our proposals will probably form the main subject of discussion in the renewal debate. But there will have been insufficient time for either digestion of their real import or further negotiation with the parties. Northern Ireland M.P.s may therefore take up misguided entrenched attitudes which will make it more difficult to achieve a settlement later. But if we publish later, we lose political momentum and perhaps suggest that we lack a clear policy. Moreover publication in the latter part of July would coincide with the "marching season" which is a particularly bad time for rational political discussion in Northern Ireland.

5. I invite my colleagues:-

- a. to approve the draft paper for publication, subject to final reference to the Cabinet;
- b. to decide on the timing of publication.

W. W.

Home Office
Queen Anne's Gate

5 June 1980

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THE GOVERNMENT OF NORTHERN IRELAND: PROPOSALS FOR FURTHER DISCUSSION1. INTRODUCTION

1.1. In this Document HMG sets out proposals for the future government of Northern Ireland, framed in the light of the discussions that have gone on over the past months, in particular at the Conference of Northern Ireland political parties earlier this year to which detailed reference is made below. The Government would hope, following further discussion and consultation with all the parties, to put forward specific proposals for legislation in the next session of Parliament.

1.2. As a first step towards the development of new arrangements for a provincial administration in Northern Ireland, the Government announced in October 1979 its intention to convene a Conference of representatives of the four main political parties in Northern Ireland - the Alliance Party, Social Democratic and Labour Party, Ulster Democratic Unionist Party, and Ulster Unionist Party (who did not accept the invitation but instead submitted a paper to HMG setting out their considered views). To prepare the ground for this Conference the Government published in November 1979 a Working Paper (Cmnd 7763) which set out the principles within which, in HMG's view, new arrangements should be sought, and put forward for discussion a number of possible approaches to, and illustrative models of, new governmental arrangements.

1.3. The principles set out in the Working Paper were:

- "(i) The powers should be transferred to elected representatives of the people of Northern Ireland; and the overriding authority of Parliament will (as elsewhere in the United Kingdom) be preserved;

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(ii) In the words of the Statement of 25 October*, there will have to be "reasonable and appropriate arrangements to take account of the interests of the minority". Those arrangements will have to be acceptable to both sides of the community and also to Her Majesty's Government. The political divisions of the people of Northern Ireland are such that the alternation of the parties in government which is so important a feature of the Westminster system is unlikely to take place. In the Government's view it is essential for a transfer of powers to be made in a way which will take account of the interests of both parts of the community.

(iii) Under any new arrangements, existing safeguards and remedies against discrimination on religious or political grounds should be at least maintained, and, if possible, improved.

(iv) Responsibility for defence and foreign affairs (including relations with the European Community) will remain with the United Kingdom Government and Parliament, as will responsibility for the courts and electoral matters.

(v) In the foreseeable future, given the Government's overriding commitment to combat terrorism, responsibility for law and order will also remain with Westminster.

(vi) The general power to raise revenue by taxation will remain with Westminster; but this would not rule out the possibility of a local power to levy a rate.

(vii) Public expenditure in Northern Ireland will continue as at present to be assessed on the basis of need, and to be financed with support as necessary from the United Kingdom Exchequer."

1.4. The Conference met in Parliament Buildings at Stormont under the chairmanship of the Secretary of State for 34 half-day sessions between 7 January and 24 March; it then agreed to adjourn in order to allow the Government to prepare proposals for further discussion in the light of the Conference. The Conference began with submissions in which the three party leaders in turn set out their views on the question of the future government of Northern Ireland. Those submissions were published by the parties. Thereafter the Conference worked through an agenda based on the questions listed on page 11 of the Working Paper.

*Statement by the Secretary of State for Northern Ireland in the House of Commons.

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1.5. There have also been a number of "parallel talks" with the Secretary of State on matters outside, but relevant to, the subject matter of the Conference. These talks enabled the parties who took part in them to inform the Secretary of State, and through him the Government, of their views on security and economic (including EEC) issues, including their cross-border aspects.

1.6. The Conference brought together, for the first time for some years, leading members of all but one of the main Northern Ireland political parties for detailed and sustained discussion of the problems in establishing a new administration in Northern Ireland. These exchanges were of value to HMG and, we believe, to the parties. They did not lead to a negotiated agreement for a future pattern of government. That was never expected: the Conference was aimed at establishing the highest level of agreement between the parties rather than identifying a single detailed scheme of government to which all would subscribe. But the parties made clearer to one another, and to HMG, where they stand on the various issues that arise, what would be acceptable to them, and what would not.

1.7. Part II of this Document outlines certain important considerations which in HMG's view should influence the form of any new governmental arrangements. Part III sets out, in the light of the conclusions which HMG has drawn from the Conference, its proposals for further discussion.

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II NEW ARRANGEMENTS: THE WIDER CONTEXT

2.1 The needs of the people of Northern Ireland, which go deeper than any particular set of political institutions, are:

- peace, in particular from terrorist violence;
- reconciliation of the divided community;
- stability, in the sense of a settled framework of government, to provide a base for
- economic reconstruction.

2.2 These needs interlock. One shortcoming can reinforce another; and conversely progress in one direction enhances the prospects for overall advance. This is not the place to consider at length what is required to counterterrorism or to regenerate the Northern Ireland economy. But any new administrative arrangements must recognise that both are matters of overriding concern to the people of Northern Ireland, and that each interacts with the needs for political advance.

The Security Background

2.3 It is HMG's policy to combat terrorism within the framework of the law, with the lead taken by the police, and with the army in a vital but supporting role. In recent years the security forces have achieved considerable success against terrorism, but it is apparent that much remains to be done.

2.4 The security situation has a direct bearing on one aspect of any new arrangements for the government of Northern Ireland. The involvement of the UK Government in the fight against terrorism - in terms of manpower, equipment and installations, and their operational use - are such

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that it is not realistic to envisage conferring on a Northern Ireland administration full responsibility for the criminal law, and the police and prison services. Equally, that administration cannot be expected to conduct its business wholly isolated or excluded from the concern for security which is pervasive. The locally elected representatives responsible for important provincial services therefore need to have a sense of identification with the forces of law and order and to be able to discuss security matters with the Secretary of State, who will retain responsibility for them. Arrangements will thus be needed to give those representatives a voice in security matters while the responsibility remains, as it must for the present, with HMG.

The Financial and Economic Background

2.5 The special social and economic difficulties of Northern Ireland also influence the approach to be adopted to the financial aspects of a new administration. Declining industries, high transport and energy costs, a high level of unemployment, below-average incomes, a legacy of deprivation in such areas as housing - all these are formidable problems which will not easily be overcome, especially while the economy of the UK faces difficulty. The Government recognises the special problems of Northern Ireland. Public expenditure per head is 35 per cent above that in Great Britain, placing a considerable and rising cost on the taxpayer. In 1979/80 public spending in Northern Ireland was some £2,600m., of which only about 56 per cent was financed from local sources.

2.6 There are implications here for the form of new arrangements for government in Northern Ireland. There is/no prospect of a Northern Ireland administration self-sufficient in financial resources, or operating at arm's length from the UK government. But a provincial administration will be directly engaged in deciding how

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the public money available to Northern Ireland shall be spent: Northern Ireland's pattern of needs is not in all respects the same as Great Britain's and it is right that locally elected representatives should, so far as is practicable, bear the responsibility - as they do not now - for determining and meeting those needs. However at the same time it is obvious that the Secretary of State will continue to play a prominent part in determining Northern Ireland's share of UK resources. The precise relationship with the Secretary of State will be determined by whether or not spending on transferred matters is to be funded by a block grant from Westminster; whether such a grant should cover those services administered on the basis of strict parity with Great Britain; and by the kind of guidelines or controls that would be required over the administration's spending or resource allocation.

Reconciliation and Stability

2.7 To underpin reconciliation, peace and reconstruction, Northern Ireland needs workable and stable political institutions. For over a decade now the province has suffered uncertainty about the future. For much of that time it has been administered by "direct rule" from Westminster. Direct rule has performed a vital task over the past 8 years and is generally accepted in Northern Ireland in the absence of government by locally elected representatives. But it offers no incentive to people to seek responsibility through politics and it generally stifles local political initiative. Moreover for a part of the UK which is physically separate, which has had a distinctive political life apart from the rest of the UK, and which has a tradition of separate institutions of government and administration it is only second best and not a permanent answer.

2.8 The key to stability in Northern Ireland is the healing of the divisions between the two communities. New institutions of

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E.R. government which the minority community cannot accept as its institutions will not bring stability and so will not be worth having. It must therefore be in the interests of the majority community, desiring as it does stability and the fruits that this can bring, to accept institutions that offer opportunities of participation to the minority. Equally it must be in the interests of the minority community, given institutions which afford its members opportunities of participation and safeguards against discrimination to join wholeheartedly in making those institutions work.

2.9 The capabilities of HMG here are limited. It can create, with the help of representatives of the two communities, fair and workable institutions - and the efforts of successive Governments are evidence of continuing goodwill and determination in this regard. But governments cannot create the will to make the institutions work: that will to work together can come only from the people of Northern Ireland themselves. In asking themselves whether they are prepared to make that effort, they should weigh carefully all that is at stake.

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Northern Ireland, Great Britain and the Republic of Ireland

2.10 One source of political instability in Northern Ireland in the past has been the difference in view among many members of the two communities regarding the long term future of Northern Ireland: whether the link with the United Kingdom should be preserved or the Province be united with the Republic of Ireland. Attitudes on this matter will be of vital importance for the future. The position of successive UK governments, now enshrined in S.1 of the Northern Ireland Constitution Act 1973, is that Northern Ireland will not cease to be part of the UK without the consent of the majority of the people in Northern Ireland. In the Government's view it must follow that should a majority of the people of Northern Ireland at any future time express the wish to cease to be part of the UK, then that wish should be respected.

2.11 Statutory provision exists for the wishes of the Northern Ireland electorate to be tested at intervals by a "border poll". It is apparent that at present a substantial majority of the people of Northern Ireland wish it to remain part of the UK.

2.12 It is important that those in Northern Ireland and beyond should understand the Government's attitude to the constitutional position. Northern Ireland as a separate political entity within the United Kingdom came into existence sixty years ago as a result of efforts in the late 19th and early 20th century to solve the problem of Britain and Ireland as it was then perceived, in the face of differing and sharply held national aspirations which no government wedded to peaceful solutions could ignore. The view is held by some that Northern Ireland is as a consequence an "artificial" political entity - a criticism against which few if any modern states are wholly proof. Be that as it may, Northern Ireland is, and has been for sixty years, a political fact. In

E.R. dealing with its political and other problems HMG, as the sovereign government, must start from that political fact. The problems of the 1980s and beyond cannot be sensibly addressed by a journey back to the situation early in this century. Section 1 of the 1973 Constitution Act is a statutory recognition of the existence of Northern Ireland as a political fact and a guarantee that consent is a pre-requisite for constitutional change. The principle of consent is the only possible framework within which both those who wish to maintain Northern Ireland's present status, and those who wish to see it altered, can work peacefully.

2.13 It follows that the continued position of Northern Ireland within the United Kingdom is not something which the Government could use as a bargaining counter in order to secure the consent of the majority to a particular form of political institution. The consent of both communities must be sought on a wider basis of their shared interest in developing a stable, peaceful and prosperous country. At the same time, the UK Government has both the power and the duty to withhold approval from any arrangement for the future government of Northern Ireland that is seen as oppressive by the minority community.

2.14 Thus, it is important that the majority community should be confident that Northern Ireland cannot be separated from the rest of the United Kingdom without the consent of a majority of its people; that the minority community should accept and respect that fact; and that in response the majority should ensure a positive role for the minority community in the government of Northern Ireland and should recognise that it is legitimate for members of the minority to aspire to and work peacefully for the eventual union of Ireland. And it is in the interests of both communities to recognise and develop the special relationship with the Republic of Ireland.

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2.15. The United Kingdom and the Republic of Ireland, and the North and South of Ireland, share bonds of history, culture and language; there is a mutual economic and trading interest, enhanced by our common membership of the European Community; and there is a close geographical inter-relationship, recognised in the existence of a common travel area and illustrated by the migration that has traditionally occurred across the Irish Sea. The ties between us are close. And with those ties comes a mutuality of interest. Each territory is inescapably affected by events in the other. This applies to economic matters; it applies to security, where our common interest in combating criminal acts of terrorism is expressed in valuable co-operation along the border; and it must therefore apply also to the political situation, with each country liable to be affected by developments in the other.

2.16. The form of new political institutions in Northern Ireland will affect not only the relationship between the two communities there, but the relationship between Northern Ireland and the Republic and indeed between Great Britain and Ireland as a whole. As long as there is division and dissent in Northern Ireland, the whole fabric of Anglo-Irish relations is under strain. Any new governmental arrangements in Northern Ireland that allowed the ascendancy of one community over the other rather than secured their association in government would only increase that strain. While the main aim in establishing a provincial government must be to serve the needs and engage the loyalties of the people who live in Northern Ireland the introduction of a widely acceptable system in which both communities can participate could be expected to contribute to the positive development of North/South relations and thereby to Anglo-Irish relations generally. Only then will the people of Northern Ireland be able to contribute freely and from a secure base to the growth of the closer relationships among the people of the British Isles which it is HMG's policy to develop.

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III PROPOSALS FOR FURTHER DISCUSSION

3.1 In this part of the Paper the Government sets out in detail proposals for further discussion. In a number of respects it is now in the Government's view clear what form of locally elected administration would be likely to command widespread acceptance. But this is not true as regards one crucial issue - how provision should be made for the participation in government of representatives of the minority community; and on this aspect rests the acceptability of any scheme as a whole.

3.2 The various elements in the Government's proposals (summarised in paras 3.44-46) may be subdivided into two categories:

an outer framework: features likely to form part of new arrangements irrespective of arrangements for the participation of the minority community;

options which might meet the requirement as regards the involvement of the minority community.

The Outer Framework

3.3 First, there should be a transfer of powers of government in Northern Ireland to an administration based on a single province-wide elected Assembly. The desire for a transfer of powers comparable in scope (though not necessarily identical in detailed arrangement) with the 1920 and 1973 constitutions is widely

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E.F. expressed. There was no support at the Conference for the transfer of powers and functions on the lines of local government in Great Britain, and it seems likely that any such proposal would encounter much opposition. The creation of more than one sub-provincial assembly would entail expense, disruption and confusion. Northern Ireland can and should be regarded for governmental purposes above the level of the district councils as a single entity. The restructuring of local government consequent upon the Report of the Review Body on Local Government in Northern Ireland 1970 (the Macrory Report) took place in 1973. It was an inherent part of the post-Macrory structure that a Northern Ireland Assembly would constitute a single top tier authority of democratic scrutiny and control of services to be managed henceforth on a province-wide basis. Local differences and needs can be catered for where appropriate by special arrangements in the administration of particular services. As regards the size of a provincial Assembly, past experience in NI and the needs of adequate representation suggest that it could appropriately contain about 80 members.

3.4 Second, the method of election to the Assembly should be a form of proportional representation. Among the various methods of proportional representation, the single transferable vote method is familiar and well-established in Northern Ireland, having been used since 1973 for all elections except those to Westminster. It provides an accurate reflection of the electorate's wishes. There is no sufficient reason to depart from it now.

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3.5 Third, a new Assembly should be unicameral. Although the Stormont Parliament had an Upper House, and that system still has its supporters, HMG sees no need for a second chamber in an elected body having responsibility for NI affairs as shown below.

3.6 Fourth, a new Assembly should have responsibility over a range of subjects broadly similar to that transferred in 1973 (i.e. principally agriculture, commerce, education, employment, environmental matters including housing, health and social services) although there might be a need for some changes to take account of subsequent developments. There is a general wish in Northern Ireland for a substantial transfer of powers, so that a new administration can make a concerted effort to tackle the range of inter-related problems afflicting the province. The distinctive characteristics of Northern Ireland and its geographical separation from the rest of the United Kingdom justify such a transfer. A transfer on this scale would enable the existing administrative machinery of the Northern Ireland Departments now under the control of the Secretary of State to come wholly under the control of a new body.

3.7 Fifth, the Secretary of State for Northern Ireland would to be continue/accountable to Parliament at Westminster for the full range of his remaining responsibilities and functions. These would be those reserved and excepted matters, notably law and order, for which he would be directly responsible; and the preparation of the total Northern Ireland public expenditure

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requirement in the context of United Kingdom expenditure programmes. The Secretary of State would need means to ensure that actions of the administration in the transferred field did not jeopardise the exercise of the Government's responsibilities in the reserved or excepted fields (e.g. to ensure that the UK's international obligations were observed).

3.8 Sixth, there should accordingly be a Council of Northern Ireland to bring together, for purposes of consultation, representative leading members of the Assembly, under the Chairmanship of the Secretary of State, to advise him on the exercise of all his responsibilities in Northern Ireland.

3.9. Seventh, the Assembly should have power to legislate on transferred matters subject to Parliament's overall supremacy. There is a general desire in Northern Ireland for legislative powers to be exercised again locally rather than at Westminster. Indeed few NI politicians would be attracted by executive devolution only. Past tradition and practice and present needs point in the direction of transferring legislative power. There is a virtually separate corpus of statute law for NI. Even during the period of the Union up to 1921, separate Irish legislation was frequently enacted at Westminster to deal with land, local government, public health, law and order and other matters. From 1921 to 1972 (and again during the short life of the NI Executive in 1974) there was a separate legislature at Stormont. For the past eight years the practice of separate NI

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legislation has been maintained through an Order in Council procedure under the 1974 Act precisely to enable a local legislature to resume the function as soon as devolved government was restored.

3.10 If there is to be full local responsibility for the execution of a wide range of powers in recognition of the distinctive conditions and traditions in NI then there is a strong argument for continuing the long standing practice of giving the Northern Ireland administration the complementary legislative powers. If this were not done, Parliament at Westminster would need to devise special procedures to meet the needs and to reflect the wishes of the people of Northern Ireland. It would not be easy to meet these requirements satisfactorily, given the other pressures on parliamentary time and resources. Moreover the existing administrative institutions in NI are designed to service a local system of government with corresponding legislative powers. For all these reasons the Government concludes that it would be appropriate to confer legislative as well as executive powers on a NI Assembly.

3.11 Eighth, the executive direction of the Northern Ireland Departments would be the responsibility of individual members of the Assembly, acting as Heads of the Northern Ireland Departments. (The form of the Executive, comprising the individual Heads of Departments and the Leader of the Assembly, is considered in paras. 3.15 et seq.).

3.12. Ninth, there should be Departmental Committees of the Assembly. Irrespective of the form which the Executive may take, it is widely recognised that there is an increasingly important

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role for Committees formed of elected representatives of all significant parties to examine the performance of the Executive and its officials and offer influential advice to the administration. The Committees, which would between them cover all the NI Departments, could call for papers and persons, scrutinise Departmental policy including the Departmental estimates, hold hearings on proposed legislation and take the committee stage of measures not taken on the floor of the Assembly. They might also have allotted time in the Assembly for debating their own proposals for legislation. Their Chairmen (and perhaps Deputy Chairmen) might be salaried and, together with the members, would be either proportionately representative of the Assembly as a whole or equally distributed between the parties supporting the Executive and the opposition. The choice would be determined by the method of selecting the Executive (see paras. 3.15 et seq).

3.13 Tenth, the existing safeguards and remedies against discrimination on religious or political grounds should be maintained. There may in addition need to be some form of appeal to the Secretary of State, or to Westminster, against discriminatory acts on the part of the Assembly, or Executive. The form that this might best take would depend on the shape of the arrangements adopted for executive government.

3.14 In the ten aspects outlined above the requirements and interests of both communities appear to HMG to coincide, and moreover to be capable of being accommodated in a system of efficient and responsive government. The Government also believes that the policies of the four main parties are broadly compatible with a system containing these ten features (although there would be differences of view on some matters of detail) provided that agreement could be reached on a system of government as a whole, including the question of formation of the Executive. It is on this that the differences between the major parties are most clearly and significantly displayed.

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How should the Executive be formed?

3.15 The Alliance Party draw attention to the fundamental community division which they say is at the root of the political problem; the latter can only be resolved by the creation of political institutions based upon the principle of partnership. The Alliance Party say that an administration drawn from all substantial elected groupings on the principle of proportionality would create political structures which both sections of the community would support. At the Conference they made detailed proposals for an executive committee system of government based on proportionality.

3.16 The SDLP say that the essential requirement is to create a political process which will allow mutual confidence and trust to develop in Northern Ireland, leading to lasting peace and stability; this can only be achieved through a period of partnership between the two communities although partnership should not be regarded as a natural end in itself. At the Conference the SDLP advocated a Cabinet-type partnership administration reflecting proportionately the strength in the Assembly of all parties willing to participate in such an administration.

3.17 The UDUP say that if any system is to be acceptable it must not seek to deny to an elected majority the rights which democracy bestows on the majority; the Executive should be formed by that party or group of parties which has been placed in the majority in the elected forum. The UDUP accordingly proposed at the Conference a Cabinet-style administration formed by a majority grouping in the Assembly.

E. 3.18 In / ^{their} proposals sent to the Prime Minister in December 1979 the UUP advocated a form of devolved government with a Cabinet system of administration formed by the leader of the largest group of members returned to the Assembly.

3.19 Thus, the four parties are far from agreeing on the crucial question how arrangements are to be made in a new system of administration for the involvement of representatives of the minority community. There is consequently a need for further discussion, consideration and negotiation on this subject.

Provision for Minority Participation

3.20 The announcement (25 October 1979) of the Government's intention to prepare proposals for transferring powers of government in Northern Ireland to locally elected representatives spoke of the need for "reasonable and appropriate arrangements to take account of the interests of the minority". Enlarging on this theme para 5 (ii) of the Working Paper said:

"Those arrangements will have to be acceptable to both sides of the community and also to Her Majesty's Government. The political divisions of the people of Northern Ireland are such that the alternation of the parties in Government which is so important a feature of the Westminster system is unlikely to take place. In the Government's view it is essential for a transfer of powers to be made in a way which will take account of the interests of both parts of community."

3.21 Everything said at the Conference, and elsewhere since the Government published the Working Paper, has confirmed the prime

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importance of that principle. Unless the minority community feels able to accept, and identify with, the institutions of government in Northern Ireland, there is little prospect of political stability in the Province and hopes of peace and prosperity must necessarily be impaired. It is therefore in the interest of the majority community as much as of the minority that the form of institutions adopted should meet that criterion. The Government believes that there is a wide measure of agreement among people in both communities regarding that objective, though there are differences of view expressed in the political parties as to how it can be achieved. The issue arises essentially in the question how the Executive in a new system is formed: for either the minority gains its involvement through membership of the Executive; or other, equally effective, means have to be devised.

3.22 The Westminster model of forming the Executive which is favoured by some NI parties is the classic form of democracy - majority rule. It is based on the premise that a majority can enforce its will and that a political system should therefore reflect that reality by institutionalising the predominance of the will of the majority. It is the natural concomitant of the development of a political party system in which the parties reflect and advocate distinct approaches to the matters - e.g. management of the economy, provision of public services - for which the Executive is responsible. It favours the development of the responsible Opposition, challenging the Government and ready to take over from it, for which the Westminster system is renowned. The prevailing view is that this system meets the political needs of GB well, and it is common to many political

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systems elsewhere in the world - though in a number of countries either constitutional mechanisms or political circumstances have the effect of producing an ^{administration} / more broadly representative of the spectrum of political parties than is usual in GB experience.

3.23 In Northern Ireland, application of the majority rule system is almost certain to put control of the administration permanently in the hands of representatives of the majority community. It would not be impossible that in some special circumstances representatives of the minority community should gain seats in it : e.g. a party or parties representing elements in the majority community might choose to enter a coalition with minority representatives, and if they could together win a majority of the Assembly seats they could then between them form a joint ^{administration} / But given the present basis of political party allegiance in Northern Ireland, that is an unlikely outcome of any election. It is far more probable that the representatives of the minority community would be, as they were between 1920 and 1972, in the minority in any elected Assembly with representatives of the majority community unwilling to form a coalition with them. The Westminster system would therefore in practice exclude them from the Executive. If they were to be involved in government, it would have to be by some other means.

3.24 This consequence of applying the Westminster system in the NI context makes it vital, in HMG's view, that any scheme for the government of NI should, while retaining the support of the majority community, depart substantially from the Westminster model. Two alternative approaches to the involvement of the

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minority in government are set out below. Each is intended to secure the responsible participation of the minority community in the Administration of NI. The first would achieve this aim by ensuring that any party represented in the Assembly winning a certain proportion of the popular vote had a seat or seats in the Executive. The second would achieve the same aim by securing that, while minority representatives had no guaranteed place in the Executive, the power of the Executive was balanced against that of another institution within the Assembly in which the minority, being in Opposition, was assured a prominent place.

3.25 Either of these methods of securing minority participation in government will seem strange judged by conventional Westminster criteria. But the political situation in Northern Ireland is itself unconventional in some crucial respects. First, there is the absence already referred to of the normal prospect of alternation of parties in power; the likelihood is that the parties representing the minority community will constitute a permanent political minority in permanent opposition. Next, what chiefly distinguishes the Northern Ireland political parties from one another is their attitudes to the question of the constitutional status of Northern Ireland - a matter which will be outside the competence of a devolved administration. To the extent that the parties have settled views on social and economic questions affecting Northern Ireland, the differences among them are not great. Nor need they be. The range of responsibilities likely to be transferred at the outset to a Northern Ireland administration, though of substantial extent (see para 3.6 above), has not in the past given rise to great ideological differences on socio-economic grounds among the main parties; and this may well prove to be the future pattern

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also, especially when account is taken of the extent of Northern Ireland financial dependence on the UK government and the constraints placed upon the freedom of action of a Northern Ireland administration by the expectations of 'parity' of services. Indeed, there will be a strong managerial element in the primary task of a Northern Ireland executive: the allocation of resources among contending socio-economic priorities within a total sum determined by Westminster. These considerations lead HMG to the conclusion that a system of government markedly different from the Westminster model is justified not only by the political circumstances of NI but also by reference to the nature of the task of government.

Responsibility Shared within the Executive

3.26 The first alternative course to Westminster-style majority rule which HMG puts forward is a system which guarantees any party winning a certain proportion of the popular vote a seat in the Executive. Thus a party with, say, 25% of the popular vote would be assured of a quarter of the Executive seats.

3.27 There are various ways of providing for an Executive along these lines to be formed. One way would be by direct popular election, thus preserving the primacy of the ballot box.

Simultaneously with the election of the Assembly the electorate would be asked to vote separately (and by a system of proportional representation on a province-wide basis) for candidates for the Executive. Direct election in this way would ensure that each member of the Executive owed his place to support in the province as a whole and the Executive would accurately reflect the views of the electorate.

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3.28 Another way would be to have a single election to the Assembly (by PR) and then form the Executive by reference to the strengths of the parties elected to the Assembly. This would not (as did the 1973 Constitution) require any external intervention. Either the Assembly members could elect the Executive from their own midst, using an appropriate mechanism to allocate portfolios to the successful candidates; Or a simple mathematical formula could be used to allocate Executive portfolios to those parties which obtained a qualifying number of members in the Assembly. In either case faith would be kept with the ballot box, since the composition of the Executive would reflect the views of the electorate who had determined the make-up of the Assembly.

3.29 The above are examples of means of achieving an Executive in which all significant viewpoints are reflected. This approach differs substantially from the familiar Westminster system and may prompt doubts as to its practicability. Certainly it is hard to see how it could be appropriate to a political environment in which the parties contest elections on the basis of sharply differing political programmes which, if successful in winning a majority in the election, they will aim to implement. However, in the political circumstances of NI and given the functions to be performed by a local administration, a proportional Executive should be capable of the task it is required to undertake.

3.30 But the key consideration is this. If, as HMG is disposed to believe, adoption of a system which guaranteed the minority community places on the Executive would crucially affect the

attitude of the minority towards acceptance of the political institutions of Northern Ireland, then that constitutes a powerful reason why the majority community should put aside its misgivings - understandable though these are - and accept a proportional Executive system. The prize to be gained, in terms of the cohesion of Northern Ireland and the prospects for reconciliation and reconstruction, could be a rich one. The Government would therefore urge all sections of opinion in Northern Ireland to consider carefully and with an open mind whether a proportional system of government would not be the best way to unite both sides of the community in support of new political institutions.

3.31 That said, HMG must also acknowledge and indeed stress that no system of this kind could work without the clear support of the two communities in Northern Ireland, agreeing to its establishment and voting in elections for candidates ready to observe the spirit of proportional coalition.

It could not be imposed if a majority of the members of the new Assembly were opposed to the very essence of the system.

3.32 The reasons for this are simple. Any political system based on democratic lines depends on the majority of elected members supporting the existence of the system. For suppose a proportional system were established but a majority of members in the new Assembly were committed to opposing that system. Members of the minority parties would, under the constitution, be entitled to seats on the Executive, and to take charge of Northern Ireland Departments. But they could be rendered powerless.

The majority would control the Assembly and would be in a position to vote down all proposals from minority Ministers. Indeed in

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the last resort the majority might even be able to use their power to transfer all significant functions from the Departments under the control of the minority members to those controlled by themselves.

3.33 The circumstances described above illustrate the extreme to which matters could descend either immediately, or if and when strains were to develop. But it is self-evident that any political body is shaped by the will of the majority of its members. For a system of the kind described above to work, there would need to be a willingness on the part of the majority to join in working the system, and a general spirit of give-and-take within the Executive. Otherwise the minority members of the Executive could find themselves no more than prisoners of the majority.

Responsibility Shared within the Assembly

3.34 An alternative approach, while not giving the minority community any guarantee of seats in the Executive, would involve them in government by some other equally adequate means. For the minority community, seats in the Executive have come to assume a symbolic importance and they are understandably reluctant to acquiesce in a system which they fear would place their representatives in a position of permanent and powerless opposition in the Assembly. Nevertheless, HMG believes that the holding of Executive seats is not the only way for minority representatives to participate in and influence

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the process of government in both the legislative and executive forms. Genuine opportunities for such participation are provided in the following very different approach to the decision-taking process in government.

3.35 The suggestion in the following paragraphs are designed to deal with the situation in which, for lack of agreement on a proportional system, the Executive is to be formed from the party (or parties) commanding a majority in the Assembly, and in consequence an effective degree of involvement of the minority must be guaranteed at other points in the system.

3.36 One possibility sometimes mooted would be to require that the Chief Executive, when he had appointed the members of his team, should obtain the support not merely of a simple, but of a weighted, majority in the Assembly. This would oblige him to obtain some support from minority representatives. However, if such support could only be obtained at the price of allowing the minority to participate in the Executive, then either stalemate would result (because the majority parties declined to share power in that way) or (if the majority parties did agree) the problem of minority participation in government would have been solved - in which case the proportional Executive system set out in paras 3.26. to 3.33. above would probably have been acceptable. Either way this possibility does not appear relevant for the present purpose.

3.37 The problem is to devise a way in which, without the minority parties being represented directly in the Executive, they can,

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while formally in "opposition", share responsibility for the administration sufficiently to satisfy themselves that the interests of the minority community are adequately reflected in the decisions of government. To achieve this it becomes necessary to create a novel institution in which powers may be vested over against those to be exercised by the Executive; but to do so in a way which would secure a constructive relationship and avoid deadlock.

3.38 It has already been suggested (in paragraph 3.12 above) that there should be Departmental Committees of the Assembly with a range of powers. These Committees would not themselves be appropriate bodies to fulfil the role of the new institution now needed; but if the chairmanships and deputy chairmanships of those Committees were allocated equally between Assembly members of those parties supporting the Executive and those opposing it (as would be desirable anyway since these Committees would be designed to scrutinise critically the activities of the Executive and the Departments) then those chairmen and deputy chairmen could together form a new body, the Council of the Assembly, with a chairman drawn from its membership but with no additional voting power. Composed in this way it would thus be equally divided between those Assembly members supporting and opposing the Executive, and to be effective any proposition on which it had to decide would have to attract 50% + 1 votes.

3.39 The precise powers of the Council of the Assembly are for discussion. As a minimum it would have an advisory role, with the Executive required to consult it on certain occasions or topics, but with no requirement that the Executive accept that

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advice. This, however, would not be enough to bring about that involvement of the minority community in the task of government which is the objective, and if the minority is to possess real influence through their presence on it, it would need to have some or all of the following powers:

- (a) A power whereby the Council could delay legislation (though not Appropriation measures) for a certain period. Though of limited effect, this would focus public attention on anything to which the minority objected.

- (b) A power to refer proposed legislation back to the Assembly, or to refer proposed legislation or executive decisions, if considered to be discriminatory, to an outside appeals body of a judicial or political nature.

- (c) A provision requiring that, before being passed by the Assembly, all legislation and the public expenditure programme would require the Council's approval. This would give the Council a blocking power (since the 50% membership of the parties supporting the Executive would be insufficient to give approval). It is to be hoped that in practice such a power would never be used, but that the possibility that it might be used would be sufficient to lead the two sides to an accommodation on any issue between them. However, in order to ensure

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that deadlock did not bring government to an unacceptable halt, this power would have to be made subject in the last resort to override e.g. by Order made by the Secretary of State, which could be subject to Parliamentary approval at Westminster.

3.40 The very existence of such a Council should conduce to the Executive framing and implementing their policies in such a way as to bring about the smooth functioning of government without formal intervention from the Council. It should encourage a close and continuous dialogue between all the principal parties in the Assembly, and the hope would be that in time this would become normal practice, with both sides wishing to avoid confrontation. It is reasonable to expect therefore that the politicians operating the system would have an interest in consulting together so as to achieve a high level of accommodation and co-operation. The salaried status of the Chairmen (and deputy Chairmen) of the Departmental Committees, the representation within their ranks of the minority community, and the formal powers of the Council of the Assembly composing all the Chairmen, and Deputies, should mark the effective involvement of the minority and secure it a powerful voice in the formulation of policy decisions about the government of the Province and in day-to-day administration. The Secretary of State might initially be required to act as arbiter on occasions of confrontation; but it would be in all the local parties' interests to develop conventions and procedures to avoid having to involve Westminster in the settlement of disputes.

3.41 There is one further area where minority parties might be assured of a role in the decision-making process. In any new system it is right that elected representatives from all -

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parties should be able to play a larger role in the administration of key regional services. There is common concern amongst Northern Ireland political parties about the degree of democratic accountability of several executive agencies, especially those concerned with services which were formerly the responsibility of local government. This concern will be diminished but not necessarily entirely removed by the establishment of a new local administration and Assembly.

3.42 The Government does not believe that it is necessary or desirable to embark upon a major re-organisation of regional and local services so soon after the re-organisation based on the Macrory Report. To launch such a re-organisation would disrupt organisations which are still settling down from the radical changes of the 1970s. While minor changes in the powers of district councils may well be required, there would be grave disadvantages in any major structural changes in regional and local services in the foreseeable future.

3.43 However there may be merit in having members of the Assembly in addition to or in place of District Councillors appointed to a select number of executive bodies, of which an example in the transferred field would be the Housing Executive, and in the reserved, the Police Authority. The pattern and scale of such appointments would have to have regard to the existing character of the bodies, and avoid placing intolerable burdens on members of the Assembly who will face heavy demands on their time, first as constituency representatives and second as members of the Assembly and its Committees. This would be a matter on which HMG would wish to consult further before any decision is taken.

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Summary

- 3.44 A summary of the proposals for the outer framework (paras 3.3 - 3.13) and the options (paras 3.20 - 3.43) follows.
- 3.45 The outer framework would consist of:
- (1) a province-wide administration based on a single elected body of about 80 members;
 - (2) PR (STV) would be the method of election;
 - (3) the Assembly would be unicameral;
 - (4) the range of subjects to be transferred would be broadly similar to that transferred in 1973;
 - (5) the Secretary of State for Northern Ireland would retain responsibility for reserved matters, such as law and order, and for the preparation of Northern Ireland's public expenditure programme in the overall UK context;
 - (6) a Council of Northern Ireland should advise the Secretary of State on the exercise of his responsibilities;
 - (7) the Assembly would be empowered to legislate on transferred matters;
 - (8) individual Assembly members would be responsible for the executive direction of the NI Departments;
 - (9) there should be representative Departmental Committees with extensive investigatory, scrutinising, advisory and legislative powers;
 - (10) existing safeguards against discrimination would be at least maintained.

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3.46 The options arise in relation to the crucial question of the formation of the Executive. Conventional approaches will not meet the essential requirement which is a fair and responsible position for both communities in the administration of Northern Ireland's affairs. The first option would meet the requirement by ensuring that any party represented in the Assembly and winning a certain proportion of the popular vote had a seat or seats in the Executive. The Executive could be formed by direct election by the electorate at large, or by election from within the Assembly or by the allocation of seats to all parties in proportion to their strength in the Assembly. However the Executive was formed it would need to command and retain the support of at least 50% + 1 in the Assembly. The second option would achieve the requirement by balancing the power of the Executive, which would have no guaranteed places for minority representatives, against the power of another institution within the Assembly, the Council of the Assembly, on which minority representatives would have a prominent place. The Council of the Assembly would need to have certain formal powers as the source of its influence on the overall administration of Northern Ireland. These might include powers to delay, refer back, or block the Executive's legislative and public expenditure proposals, and to refer discriminatory actions to an outside appeals body.

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IV

THE NEXT STAGE

4.1 The Government now intends to embark on the fullest possible programme of consultation and discussion on the basis of these two approaches. It will be seeking to establish whether a sufficient degree of consent exists on which to base a system incorporating an Executive constituted on proportional lines but in which the majority view would nevertheless be expected to prevail; or failing that whether there is sufficient consent for a different approach which allows for the majority group to control the Executive but for the minority parties to check and balance actions of the Executive through other means. It seems to the Government, in the light of all that has been said in the past months, that if a model for devolved Government in Northern Ireland is to be found, providing as it must do for meaningful participation by the minority community, then it is likely to lie in one of the two approaches delineated above.

4.2 In the view of HMG either of these approaches would be workable, given the will to make it work, and would afford the minority community the opportunities of positive participation that it rightly seeks. But neither approach would work satisfactorily - if at all - if substantial elements in NI's political life determinedly withheld their co-operation. What is needed therefore is readiness on the part of all the principal parties of Northern Ireland to collaborate in breaking the political deadlock of recent years and creating the condition for a wider reconciliation of the two communities. Without that conviction neither approach can be made to operate.

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4.3 In HMG's view direct rule is not satisfactory in the long term as the means of governing Northern Ireland. Nor would HMG see an alternative solution as lying in a development of local government in NI: if it is not possible for the communities to agree on the role of the minority in an Executive and an Assembly it is no more likely that they will be able to agree on it in the field of local government, where the anxieties about permanent rule by the majority community are if anything more acute. [Rather, the Government's approach will be that, if agreement on a move to a fully devolved administration proves elusive, the possibilities of the more progressive approach alluded to in para 6 of the original Working Paper should be explored.]

4.4 Against that background HMG urges all sections of the NI community to concentrate their efforts on a serious and open-minded examination of the proposals in this Consultative Document bearing in mind the urgent need of the Province for political institutions which will assist in the processes of reconciliation and reconstruction. It is not in the Government's power to force any group in Northern Ireland to agree to a particular system of government. Principles and convictions are not susceptible to pressure. However it is the Government's firm hope that this document will lead to a further phase of discussion and negotiation leading to the identification of a system of government which both sides of the community will accept as a fair means of achieving the transfer of powers that is widely desired.

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