

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

OD (79) 38

COPY NO 42

2 November 1979

CABINET
DEFENCE AND OVERSEA POLICY COMMITTEE

RHODESIA

Memorandum by the Secretary of State for
Foreign and Commonwealth Affairs

1. Both sides at the constitutional conference have accepted the Independence Constitution, subject to satisfactory arrangements for the pre-independence period.
2. We have tabled proposals for an interim period of two months between a cease-fire and the holding of elections. During this period Rhodesia would be administered by a British Governor. The Governor would work through the existing civil service. The police and defence forces would be under his authority. Bishop Muzorewa and his Ministers would not exercise their ministerial functions, but would devote themselves to the election campaign. A British Election Commissioner and staff would supervise the conduct of elections.
3. There are risks in direct British involvement, but no other solution is likely to convince international opinion that the arrangements for elections would give a fair chance to both sides. The appointment of a Governor and the consequent return to legality by Rhodesia will be crucial to our legal position on the lifting of sanctions. I have however made clear that our present proposals relate to a situation in which there is prior agreement on a cease-fire. If the Patriotic Front refuse to take part in the elections and the war continues, we should still need to effect a return to legality in order to sustain our legal case on sanctions and obtain some international support for a settlement with the internal parties alone. But the task of the Governor in

/that

that event might be limited to the organisation of elections and the conduct of external affairs. Elections would be held in December. Our involvement would be limited to five or six weeks.

4. Bishop Muzorewa's delegation have accepted our proposals. Negotiations continue with the Patriotic Front. We have kept the front-line Presidents fully informed, but they will be reluctant to break with the Patriotic Front. Introduction of the Enabling Bill into the House of Commons next week will bring it home to the Patriotic Front that progress towards independence, with or without them, has begun. The odds are that Mugabe will not accept the interim arrangements, though Nkomo is hedging his bets. My intention is to confront the Patriotic Front with the need for a decision in the week beginning 5 November.

/possible

5. If the Patriotic Front accept our proposals, there will be negotiations on a cease-fire. These will be very difficult. No cease-fire arrangement will be/without some limited provision for monitoring it. The Rhodesians will accept this provided that it is under British auspices. We may therefore need to provide a limited number of UK military observers together with elements from Commonwealth countries acceptable to the Salisbury administration (Australia, New Zealand, Kenya and Fiji).

6. Bishop Muzorewa has agreed to remain in London until 9 or 10 November. If by that point negotiations with the Patriotic Front have foundered, my intention is to make the Order in Council appointing the Governor in the week beginning 12 November, arrange for elections to be held on 17-19 December and bring Rhodesia to independence before the end of the year. If on the other hand, negotiations on a cease-fire are taking place we shall have to think in terms of elections in January.

7. We have always recognised that a settlement with the Salisbury parties alone will not get much international support. But provided the Patriotic Front are seen to have been offered a fair chance and that we are prepared to go through with the appointment of a Governor, there are reasonable prospects of being able to carry the French, the Americans (though with many hesitations) and some others with us. There will be damage to our interests, in particular in Zambia and Nigeria and possibly elsewhere. But the consequences will be no less serious if we do not take this opportunity finally to discharge our responsibility to bring Rhodesia to independence.

8. Talks with the Salisbury delegation on the position regarding pre-UDI debts and liabilities are progressing satisfactorily.

9. Attached at Annex A is a note on Sanctions and Legislation. Questions and Answers on Legislation are at Annex B.

10. Bishop Muzorewa has accepted our proposal for a Governor. We shall be trying to bring matters to a head with the Patriotic Front over the next week. We must reach with the Patriotic Front that agreement will not finish in time to allow us to get a Governor in place by 15 November.

11. It is recommended that Section 2 of the Enabling Bill should be allowed to lapse. Bishop Muzorewa has agreed to all that we have asked of him. It would not be understood in the party and the country generally if we were to extend the sanctions provisions under Section 2. Bishop Muzorewa has agreed to dissolve the Salisbury Parliament, thereby enabling us to make the Order in Council appointing the Governor before 12 November and to inform the Emergency Council that legislation will be required with the Governor's arrival. Other regulations, which covered by Section 2, including the prohibitions on direct trade with Rhodesia, if made would remain in force until the Governor's arrival.

Foreign and Commonwealth Office
2 November 1979

12. We shall need legislative cover to enable us to enact the Interim Defence Contribution and introduce parts of it before independence and to allow elections to be held in Rhodesia. I therefore propose to introduce the Enabling Bill into Parliament on 6 November to provide these powers. This will also enable us to appoint a Governor under powers which otherwise would lapse with the dissolution of Parliament.

13. We shall need legislative cover to enable us to enact the Interim Defence Contribution and introduce parts of it before independence and to allow elections to be held in Rhodesia. I therefore propose to introduce the Enabling Bill into Parliament on 6 November to provide these powers. This will also enable us to appoint a Governor under powers which otherwise would lapse with the dissolution of Parliament.

RHODESIA: SANCTIONS AND LEGISLATION

1. Our aim at the Constitutional Conference is early agreement on a return to legality which will justify the lifting of sanctions. Legality would be restored with the arrival in Salisbury of a British Governor and the acceptance of his authority.

2. Bishop Muzorewa has accepted our proposal for a Governor. We shall be trying to bring matters to a head with the Patriotic Front over the next week. We must reckon with the possibility that negotiations will not finish in time to allow us to get a Governor to Rhodesia by 15 November.

3. My recommendation nonetheless is that Section 2 of the Southern Rhodesia Act should be allowed to lapse. Bishop Muzorewa has agreed to all that we have asked of him. It would not be understood in the party and the country generally if we were to extend the sanctions provisions under Section 2. Bishop Muzorewa has agreed to dissolve the Salisbury Parliament, thereby enabling us to make the Order in Council appointing the Governor before 15 November and to inform the Security Council that legality will be restored with the Governor's arrival. Other sanctions, not covered by Section 2, including the prohibitions on direct trade and the transfer of funds would remain in force until the Governor's arrival. If we are proceeding without the Patriotic Front, we shall come under strong pressure at the United Nations. Our aim will be to achieve as many abstentions as possible on resolutions directed against us. But it is likely that we shall have to veto resolutions seeking to reaffirm sanctions.

4. We shall need legislative cover to enable us to enact the Independence Constitution and introduce parts of it before independence and to allow elections to be held in Rhodesia. I therefore propose to introduce an Enabling Bill into Parliament on 6 November to provide these powers. This will also enable us to appoint a Governor under powers which otherwise would lapse with the non-renewal of Section 2 (a copy of the Bill is attached). Introduction of the Bill will be taken as a signal that we do not intend to renew Section 2 and this could give rise to attempts at pre-emptive action at the UN. This will, however, depend on whether the Patriotic Front are still at the negotiating table, in which case the reactions will be muted.

5. The Enabling Bill will need to have the Royal Assent by 14 November if we are to avoid the lapse of the general powers conferred by Section 2. The Chief Whip has agreed to find the Parliamentary time.

6. A number of further Orders will be required to deal with the consequences of lifting sanctions. These are in preparation. I propose to introduce an Independence Bill in the second half of November, which would confer on the Government power to grant independence to Rhodesia by Order in Council after elections and the formation of a new Government.

QUESTIONS AND ANSWERS ON RHODESIA LEGISLATION

1. What is Section 2?

Section 2 of the Southern Rhodesia Act 1965 gave the Government powers to make Orders in Council in relation to Rhodesia including Orders of a constitutional nature and Orders applying sanctions.

2. What happens when Section 2 expires?

Section 2 expires automatically on 15 November unless renewed by Parliament. It can be renewed only for a year at a time. If it lapses, the Government loses the general power to make Orders in relation to Southern Rhodesia (but the sanctions Orders could be replaced under the United Nations Act, 1946). Some, but not all, sanctions would also lapse.

3. Why not all sanctions?

Because many sanctions are applied under other legislation, for instance the Import, Export and Customs (Powers) Defence Act, the Exchange Control Act and (with regard to dependencies) the United Nations Act. These sanctions can be revoked by the Government at any time by Order or administrative action. Sanctions on financial flows are not covered by Section 2 and those on direct trade are double banked, i.e. are made both by Section 2 and Export/Import control.

4. Why does the Government need new powers in relation to Rhodesia?

The powers under the Southern Rhodesia Act are not sufficient to allow the Government to make a new constitution for Rhodesia or to arrange elections for a republican constitution there. We shall need to do both very shortly if there is agreement at the Constitutional Conference. We therefore need an Enabling Bill.

5. But why all the hurry to get it through by 15 November?

Sufficient progress has been made at the Constitutional Conference to bring a return to legality in Rhodesia very close. It would thus be hard for the Government to justify renewal of Section 2 on 15 November. But if Section 2 lapses, it is not just the sanctions orders which go, so too do certain constitutional orders and the power to make constitutional arrangements for the interim period until independence. Moreover,

certain of the orders under Section 2 are of direct interest to individuals, e.g. those concerning marriage and divorce. The Enabling Bill will carry these Orders forward.

6. What is the time-table envisaged?

The Bill would have its first reading on 6 November, pass all its stages in the Commons on 7 and 8 November. If it does not go to the Lords on 8 November, it should be taken there on 12 November. It must receive the Royal Assent not later than 14 November.

7. Why was not the Bill introduced earlier?

A decision on introducing the Bill had to depend on progress at the Constitutional Conference. We are only now reaching the point at which it is appropriate to introduce legislation.

8. Will not introduction of the Bill expose the Government's intention not to renew sanctions?

This would in any case be apparent this week from the Government's failure to introduce a resolution to extend Section 2. The Bill may be controversial, though we shall argue that its basic purpose is to provide the powers to implement a settlement speedily and that other sanctions will remain in force until the arrival of the Governor in Rhodesia.

9. What other legislation will be needed?

The main legislation will be an Independence Bill to bring Rhodesia to legal independence. The intention is to introduce this in the second half of November and make it law by mid-December. We propose that the Bill would give power to set the date of independence by Order in Council once elections had been held.

10. Is that all?

A number of Orders in Council will be laid this month. These will be needed to appoint a Governor, make the Independence Constitution, and deal with the consequences of the lapse of sanctions. Some of them will require affirmative resolutions.

/11.

11. When will other sanctions be lifted?

Sanctions not covered by Section 2 will be lifted as soon as legality is restored in Rhodesia. This will be on the arrival of a British Governor and acceptance of his authority.

DRAFT
OF A
BILL

Provide for the grant of a constitution for Zimbabwe to come into effect on the attainment by Southern Rhodesia, under any Act hereafter passed for that purpose, of fully responsible status as a Republic under the name of Zimbabwe and to make other provisions with respect to Southern Rhodesia.

Enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

- 1. (1) Her Majesty may by Order in Council provide for the constitution for Zimbabwe to come into effect on the day (in this Act referred to as "the appointed day") on which, in accordance with such provision as that behalf may after the passing of this Act be made by Act of Parliament, Southern Rhodesia becomes independent as a Republic under the name of Zimbabwe.
- (2) Her Majesty may by Order in Council revoke the Constitution of Southern Rhodesia 1964, and may make such transitional provision as appears to Her Majesty to be necessary or expedient in connection with the coming into effect of the new Constitution or the revocation of the said Constitution of 1964.
- (3) Any Order in Council under this section shall be laid before Parliament after being made.

DRAFT
OF A
B I L L
T O

Provide for the grant of a constitution for Zimbabwe to come into effect on the attainment by Southern Rhodesia, under any Act hereafter passed for that purpose, of fully responsible status as a Republic under the name of Zimbabwe and to make other provision with respect to Southern Rhodesia. A.D. 1979

B E I T ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 1.—(1) Her Majesty may by Order in Council provide a Power to constitution for Zimbabwe to come into effect on the day (in provide this Act referred to as "the appointed day") on which, in accordance with such provision in that behalf as may after the passing of this Act be made by Act of Parliament, Southern Rhodesia becomes independent as a Republic under the name of Zimbabwe. constitution for Zimbabwe.

10 (2) Her Majesty may by Order in Council revoke the Constitution of Southern Rhodesia 1961, and may make such transitional provision as appears to Her Majesty to be necessary or expedient in connection with the coming into effect of the new Constitution or the revocation of the said Constitution of 1961.

(3) Any Order in Council under this section shall be laid before Parliament after being made.

(4) Subsection (1) is without prejudice to any power conferred on Her Majesty by section 2; and in this section and section 2 "the new constitution" means the constitution provided by Order in Council under that subsection.

Power to bring particular provisions of new constitution into force before appointed day. 2.—(1) For the purpose of enabling the new constitution to function as from the appointed day and, in particular, of enabling elections for the purposes thereof to be held before that day, Her Majesty may by Order in Council make such provision as appears to Her to be necessary or expedient, including provision for bringing particular provisions of that constitution into force, with or without modifications, before that day. 5 10

(2) Different provisions of the new constitution may be brought into force under this section at different times before the appointed day; but any modifications to which any provisions of that constitution are by virtue of this section subject immediately before the appointed day shall cease to have effect on that day. 15

(3) An Order in Council under this section shall be laid before Parliament after being made and shall expire at the end of the period of twenty-eight days beginning with the day on which it was made unless during that period it is approved by resolution of each House of Parliament.

The expiration of an Order in pursuance of this subsection shall not affect the operation of the Order as respects things previously done or omitted to be done or the power to make a new Order; and in calculating the period aforesaid no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Other powers with respect to Southern Rhodesia.

3.—(1) Her Majesty may by Order in Council—

(a) make provision for and in connection with the government of Southern Rhodesia in the period up to the appointed day; 30

(b) make such provision in relation to Southern Rhodesia, or persons or things in any way belonging to or connected with Southern Rhodesia, as appears to Her to be necessary or expedient— 35

(i) in consequence of any unconstitutional action taken therein; or

(ii) in connection with the repeal, revocation, expiration or lapse of any statutory provision relating to sanctions. 40

(2) In subsection (1) "statutory provision relating to sanctions" means—

- (a) any Order in Council made under section 2 of the Southern Rhodesia Act 1965; and
- 5 (b) any statutory provision (wherever in force) implementing any resolution of the Security Council of the United Nations providing for the imposition of economic or other sanctions or other measures directed against Southern Rhodesia or against any persons at any time
- 10 purporting to exercise authority therein.
- (3) Without prejudice to the generality of subsection (1), an Order in Council thereunder may make provision—
- 15 (a) for conferring power to make laws for the peace, order and good government of Southern Rhodesia, including laws having extra-territorial operation;
- (b) for suspending or modifying the provisions of the Constitution of Southern Rhodesia 1961; or
- 20 (c) for suspending or modifying the operation of any enactment or instrument in relation to Southern Rhodesia or persons or things in any way belonging to or connected with Southern Rhodesia;

and any provision made by or under such an Order may apply to things done or omitted outside as well as within the United Kingdom or other country or territory to which the Order extends.

25 (4) Subject to subsection (5), the following Orders in Council, namely—

- (a) the Southern Rhodesia Constitution Order 1965 and any S.I. 1965/1952 Order in Council made thereunder;
- 30 (b) the Southern Rhodesia (British Nationality Act 1948) S.I. 1965/1957 Order 1965;
- (c) the Southern Rhodesia (Matrimonial Jurisdiction) Order S.I. 1970/1540 1970; and
- (d) the Southern Rhodesia (Immunity for Persons attending S.I. 1979/820 Meetings and Consultations) Order 1979.

35 shall continue in force notwithstanding the expiration of section 2 of the Southern Rhodesia Act 1965, but shall have effect after the expiration of that section with such modifications, if any, as Her Majesty may from time to time by Order in Council prescribe.

(5) Her Majesty may by Order in Council revoke any Order

40 saved by subsection (4).

(6) Section 2(3) shall apply to any Order in Council made under this section.

Citation etc. 4.—(1) This Act may be cited as the Southern Rhodesia Act 1979.

(2) In this Act—

“the appointed day” has the meaning given by section 1(1);
“modifications” includes additions, omissions and alterations, and related expressions shall be construed accordingly;

“statutory provision” means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978.

1978 c. 30.

(3) An Order in Council under any provision of this Act may make or authorise the making of such incidental, supplementary and consequential provisions as appear to Her Majesty to be expedient for the purposes of the Order.

(4) There shall be paid out of money provided by Parliament— 15

(a) any expenses incurred by the Secretary of State in consequence of the provisions of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act;
and there shall be paid out of the Consolidated Fund any increase 20 attributable to this Act in the sums payable out of that Fund under any other Act.

(5) This Act extends to Southern Rhodesia, the Channel Islands, the Isle of Man and any colony, and (to the extent of Her Majesty's jurisdiction therein) to any foreign country or 25 territory in which for the time being Her Majesty has jurisdiction.

CONFIDENTIAL

Southern Rhodesia

DRAFT

OF A

BILL

To provide for the grant of a constitution for Zimbabwe to come into effect on the attainment by Southern Rhodesia, under any of the Acts hereafter passed for that purpose, of fully responsible status as a Republic under the name of Zimbabwe and to make other provision with respect to Southern Rhodesia.

CXXVIII—A (1)

26th October, 1979

137—1

694579

48/1

CONFIDENTIAL

E.R.

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

OD(79)39

COPY NO

43

2 November 1979

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

NORTHERN IRELAND: POLITICAL DEVELOPMENT

Memorandum by the Secretary of State for the Home Department

At the meeting of the Defence and Oversea Policy Committee on 17 October I was invited to take the Chair of a Ministerial Group consisting of the Secretary of State for Defence, Lord Privy Seal and the Secretary of State for Northern Ireland, to supervise the preparation of a consultative document to be tabled at a Conference with Northern Irish political leaders. The proposed document, on which the Lord Chancellor has also been consulted, is attached for the approval of the Committee.

W.W.

Home Office
2 November 1979

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIALProposals for the Government of Northern IrelandA Working Paper for a ConferenceINTRODUCTION

O.1. The system of direct rule from Westminster which has prevailed since 1974 has left the people of Northern Ireland with a much lower degree of democratic responsibility for their own affairs than any other part of the United Kingdom. "Direct Rule" operating with no significant responsibilities discharged by elected bodies, is not acceptable as a continuing basis for the Government of Northern Ireland. While it may be accepted by many as "second best", it prevents local people from direct involvement in their local affairs. A transfer of responsibility serving the best interests of Northern Ireland cannot and must not be frustrated by terrorism: indeed, a community defending its own political institutions can be expected to be more resolute and united in its resistance and more sure of its ultimate success.

O.2. On 25 October the Secretary of State for Northern Ireland announced that the Government intended to put proposals to Parliament for transferring to locally elected representatives some at least of the powers of government in Northern Ireland at present exercised from Westminster; and that a Conference of the main political parties would be convened so that the Government might proceed with the highest possible level of agreement.

E.R.

~~CONFIDENTIAL~~
CONFIDENTIAL

PART I: THE SCOPE OF THE CONFERENCE

1.1. This Working Paper is put forward to provide an agenda and a basis for the Conference. It sets out, in the form of various options for consideration, ways in which transferred powers might be exercised; the range of powers and responsibilities which might be transferred from Westminster to local control; and possible arrangements designed to take account of the interests of all sections of the community.

1.2. The Conference will be concerned essentially with a transfer of powers within the UK. Its task will be to find the highest level of agreement on the way of doing this which will best meet the immediate needs of the people of Northern Ireland. Because it is at present the clear wish of a substantial majority of the people in Northern Ireland to remain part of the United Kingdom, the Conference will not be concerned with the constitutional status of the Province and will not be asked to discuss issues such as Irish unity, or confederation, or independence. Nor, since there is no serious prospect of agreement on them, will the Conference be invited to consider either a return to the arrangements which prevailed before 1972, or a revival of those which obtained in the first five months of 1974. New patterns must be sought to take full account of the needs and anxieties of all sides of the community.

1.3. While the Government will be ready to recommend to Parliament any workable constitutional arrangement acceptable to the people of Northern Ireland as a whole, there are in their view certain principles which must be observed. These are:

- (i) Subject to what is said below, HMG will wish to see the transfer of as great a range of powers as can be agreed, extending, if acceptable arrangements can be made, to all the powers transferred under

CONFIDENTIAL

E.R.

CONFIDENTIAL

the 1973 Constitution Act. These powers should be transferred to the elected representatives of the people of Northern Ireland. The overriding authority of the UK Parliament will (as elsewhere in the UK) be preserved.

- (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 HM 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 all sections 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) Because Northern Ireland is a part of the United Kingdom, responsibility for defence and foreign affairs (including relations with the European Community) will remain with the UK Government and Parliament at Westminster, as will responsibility for the courts and electoral matters.

CONFIDENTIAL

E.R.

CONFIDENTIAL

- (v) In the foreseeable future, given the scale of the Army support required by the civil power 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 UK Exchequer.

1.4. The transfer of powers, which, the Government hopes, can be agreed at the Conference on the basis of these principles, need not be completed in one operation. It may be appropriate and desirable to consider arrangements for a progressive transfer over a period of time.

1.5. At the end of the Conference the Government will need to satisfy itself that any arrangements which have been agreed are likely to be broadly acceptable to the people of Northern Ireland as a whole.

1.6. The next part of this Working Paper sets out what the Government sees as the key issues to which the Conference will need to address itself.

CONFIDENTIAL

E.R.

CONFIDENTIAL

PART II: THE TASK OF THE CONFERENCE

- 2.1. This Part sets out three key issues to which the Conference will need to address itself. These are:
- A. Institutions: eg what kind of elected body or bodies, how chosen, and with what form of executive body;
 - B. Powers: the subjects in respect of which powers are to be transferred to the institutions: the extent of the power in each case, and whether and to what extent it should be legislative, executive, or advisory.
 - C. The Minority: the way in which powers are to be exercised by the chosen institutions so as to safeguard the minority interests.
- 2.2. Later paragraphs consider these three key issues in turn; and Appendix A of the Working Paper sets out models which illustrate various ways in which the key issues might be tackled.
- 2.3
- A. INSTITUTIONS
- There are two main types of institution each of which the Conference will need to consider under this heading: the elected body or bodies which will represent the Province; and the smaller body or bodies likely to be needed for executive purposes. The relationship between the two must also be considered.

CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL

Method of Election

2.4 It will be for consideration by what means an elected body should be chosen. As regards the voting system, since 1973 all elections in NI (except to Parliament at Westminster, to which special considerations of uniformity throughout the UK apply) have been on a basis of proportional representation with a single transferable vote. If that system were used again the parliamentary constituencies could serve as multi-member constituencies under PR.

The Elected Body

2.5 The first form that devolution took in NI in 1920 adopted the institutional model of Westminster - a Parliament, consisting of an upper and a lower chamber, acting with Her Majesty as the legislature, with the upper chamber possessing certain delaying powers. Such a system is familiar to the UK and has many strengths. It could be reproduced again for NI. However, there was no upper chamber in the 1973 constitutional arrangements; and the general view in the 1975 Constitutional Convention was that a unicameral system was quite sufficient for devolved government in a territory of 1½ million people. It is also the pattern in local government in the UK.

The Executive

2.6 It is usual for an Executive to be responsible for its actions to an elected body. Executive power can be exercised by a "cabinet" system as at Westminster or by committees as in local government. Both are used in the UK and both can be adapted to a

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL

system of government in NI, whether it is one in which only executive powers are exercised or one with both executive and legislative powers.

Committees

2.7 Besides the executive committee the other main type of committee of an elected body is the advisory or investigative committee, which is not empowered to exercise executive powers but gives advice to the Executive, or scrutinises its policies and proposals, or generally investigates matters at its own discretion. The 1973 NI constitutional arrangements provided one example of such committees. The 1975 report of the Constitutional Convention offered another example. And the new select committees being established at Westminster provide a third. The committees' terms of reference (whether they play a part in considering proposed legislation, for example, in addition to examining the actions of the Executive) may be subject to many variations, again according to how much power it is desired to vest in them.

CONFIDENTIAL

E.R.

B: POWERS TO BE TRANSFERRED

2.8 Part I of this Working Paper set out the functions which HMG believes should remain with the UK Government, either because they are essentially the functions of sovereign states (eg external defence and foreign policy) or for reasons specific to the present circumstances of NI (eg responsibility for law and order). These set the outer limits of the powers that could be transferred to a NI elected body.

2.9 Within those limits there is a wide range of important subjects capable of being transferred. They can be considered along two dimensions:

- (a) the range of subjects - eg agriculture, education - for which a new body would be responsible:
- (b) within a given subject, the extent to which powers are to be transferred. There are three broad possibilities:
 - (i) transferring all executive and legislative powers;
 - (ii) transferring all executive powers;
 - (iii) transferring only those executive powers normally exercised by local authorities in GB.

Thus, under (ii) would be transferred in, eg, the field of education, not only the powers of a local education authority in England but also those exercised there by the Secretary of State for Education and Science; whereas under (iii) only the local education authority powers would be transferred.

CONFIDENTIAL

E.R.

CONFIDENTIAL

Subjects

The Full Range of Transferable Functions

2.10 The subjects capable of transfer are those that were transferred under the Northern Ireland Constitution Act 1973 and are currently the responsibility of the Northern Ireland Departments. These include agriculture; employment and commerce; housing, roads and internal transportation; water and sewerage; town and country planning and protection of the environment; health, social services and social security; and education. A fuller statement of these functions appears in Appendix B.

A more limited approach

2.11 It would be possible for all of these functions to be transferred once again. At the other end of the scale, the range of subjects (though not necessarily the powers) to be given over to local control could be restricted to those that are the responsibility of local authorities in GB. On this basis responsibility for agriculture, commerce, employment and the administration of the health service and the social security system would rest with central government at Westminster. Locally elected representatives would have no executive or legislative responsibility for those subjects, and electors in NI (as in the rest of the United Kingdom) would exercise influence over the provision of those services through their elected representatives at Westminster.

2.12 There is a significant point to be borne in mind in any consideration of a transfer of substantially less than the range of matters transferred in 1921-72 and again in 1974. There has

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

E.R.

existed in Northern Ireland for almost 60 years a central integrated administrative structure of NI Departments, operating within a NI corpus of law, and developing consistent and inter-relating practices. A decision to split that structure in two, with one part coming under the control of a new locally-based body and the other serving the UK government at Westminster, would have far-reaching effects in terms of inter-service co-ordination, staffing and efficient administration.

Extent of powers

Executive and Legislative Devolution

2.13 The second dimension of devolution is the extent of the powers within each functional field that might become the responsibility of a new local administration. In both 1920 and 1973, if a subject was transferred it was full executive and legislative responsibility within that functional field that was transferred. Thus under both settlements all aspects of housing or employment or education in NI came within the competence of the devolved government. Under new arrangements it might be suitable for the same thing to happen again.

Executive Devolution

2.14 There are however alternative approaches; and these could radically affect the nature of the government being established. First, the range of subjects being transferred might be similar to 1973, but the extent of powers being transferred within each functional field could be restricted to executive powers only.

CONFIDENTIAL

E.R.

CONFIDENTIAL

The new body would have no power to pass legislation, which would remain the preserve of Westminster. To that extent, the new arrangements would fall somewhere in between the devolution known in NI from 1921 to 1972 - and again in 1974 - and local government as it is known in GB. This kind of "non-legislative devolution" could be subject to further variation according to whether the arrangements allowed for some exercise of powers to make subordinate, though not primary, legislation.

2.15 If powers of primary legislation were excluded, the extent of the new body's responsibilities could be further varied according to the precise degree of executive control that was transferred. Since 1921 in NI almost all executive powers in the transferred field have been discharged by the Government departments subject to the direction and control of their political head. During direct rule this has remained the case: the Secretary of State now gives political direction and control. Similar arrangements could be made in future - with political direction and control of the Departments in the discharge of all their executive functions being exercised by locally elected representatives.

A "Local Government" Approach

2.16 Alternatively only a proportion of executive powers in each transferred field could be given to local control, the rest remaining with central government. In other words, the British local government example would be followed: local control would extend a certain distance vertically up each functional ladder;

CONFIDENTIAL

E.R.

CONFIDENTIAL

but beyond that point, control would remain with the central UK government.

2.17 Such an approach would require reorganisation of the existing administrative structure. Because of the local government reorganisation that took place in 1973, a single centralised structure of NI Departments now exists responsible for both policy and administration of many services that in Great Britain are regarded as "local government" services. To adopt the British distinction between "central" and "local" government responsibilities in these fields would mean re-distributing functions, staff and resources, and would require complex legislation at Westminster. This "local government" approach might appear to be a half-way house towards full devolution; but in practice it would mould the shape of NI government for some time to come. The new structure could not be rapidly dismantled nor could it co-exist with a devolved government because there would be an insufficient range of functions for the devolved government to exercise. To have two separate regional tiers of administration, both responsible to the same electorate, would both lead to conflict between them and make Northern Ireland overgoverned.

2.18 If the range of functions and powers transferred were confined to those administered by local authorities in GB - ie if there was no transfer of responsibility for legislation or overall policy - it would not be essential for them to be administered by a single authority for the whole Province. It would be

CONFIDENTIAL

E.R.

CONFIDENTIAL

possible to set up two or more regional bodies with this range of powers, provided that the population base of each was large enough to sustain the services being administered. The effect would be to create in NI an upper tier of local government on the GB pattern.

2.19 However the practical considerations set out in para 2.17 above would apply with added force to the setting-up of two or more bodies with local-authority type powers. The scale of the reorganisation would be even greater if the existing single administrative structure had to be split not simply into separate functional parts (exercising on the one hand "central" and on the other "local" government powers) but also between different geographical locations.

External Checks

2.20 There is one further way of varying the extent of the powers to be transferred - by making the exercise of those powers directly subject to some outside authority. Constitutionally, of course, any devolved or local government is subject ultimately to Parliament at Westminster. But that general supremacy could be supplemented by specific powers for the Secretary of State, with or without Parliament's approval depending on the circumstances in which they were to be used. Thus, as is already the case in local government in GB, the Secretary of State could be furnished with explicit call-in powers to review particular decisions by the locally-based body, or he could have default

CONFIDENTIAL

E.R.

CONFIDENTIAL

possible to set up two or more regional bodies with this range of powers, provided that the population base of each was large enough to sustain the services being administered. The effect would be to create in NI an upper tier of local government on the GB pattern.

2.19 However the practical considerations set out in para 2.17 above would apply with added force to the setting-up of two or more bodies with local-authority type powers. The scale of the reorganisation would be even greater if the existing single administrative structure had to be split not simply into separate functional parts (exercising on the one hand "central" and on the other "local" government powers) but also between different geographical locations.

External Checks

2.20 There is one further way of varying the extent of the powers to be transferred - by making the exercise of those powers directly subject to some outside authority. Constitutionally, of course, any devolved or local government is subject ultimately to Parliament at Westminster. But that general supremacy could be supplemented by specific powers for the Secretary of State, with or without Parliament's approval depending on the circumstances in which they were to be used. Thus, as is already the case in local government in GB, the Secretary of State could be furnished with explicit call-in powers to review particular decisions by the locally-based body, or he could have default

CONFIDENTIAL

E.R.

CONFIDENTIAL

powers to step in where necessary action is not being taken. He might also have general powers of direction; or he could refer executive decisions or proposed legislation to Westminster for judgement. Certainly some power of over-ride would be essential to ensure that local decisions do not run counter to the UK's international obligations. Finally, some form of grant-in-aid will continue to be an important source of finance for any locally-based government in NI. It will be for consideration how far - remembering HMG's overall responsibility for public sector expenditure - the arrangements adopted should give the local administration a greater or less degree of financial freedom.

CONFIDENTIAL

E.R.

CONFIDENTIAL
CONFIDENTIAL

C. The Exercise of Powers, and the Role of the Minority

2.21. It is in the Government's view essential to recognise that the particular circumstances of NI require special arrangements to be made, beyond what would need to feature in many constitutional schemes, to protect the position of the minority and to specify its role in whatever new constitutional arrangements are adopted. In brief, the root of the matter is that, because of the basis on which support for political parties in NI rests, the minority representatives cannot, as elsewhere, by modifying their policies or by broadening their appeal or by effective opposition to the party in power, hope to become the majority and form the government after a future election. Moreover, it is the perception of the minority community that the majority, in the exercise of those powers, have failed to take proper account of minority interests. In this situation it is necessary, if a constitutional arrangement for NI is to gain the public confidence on which durability depends, that it should embrace a formula that gives appropriate recognition to the rights both of the majority and of the minority.

2.22. A wide range of devices is available to help to achieve this. The choice of which to use depends to some extent on the nature of the chosen institutional framework and the extent of powers to be exercised. But most are adaptable in some form or other to any governmental arrangements for the exercise of either executive or legislative powers.

Minority Participation

2.23. First there is the possibility of various kinds (and degrees) of participation by minority representatives in those areas of government involving the taking of decisions. Within an institutional framework incorporating an Executive made up of political heads of departments provision could be made which

E.R.

CONFIDENTIAL

ensured that minority members had a proportion of Executive posts (either by appointment recognising certain criteria, as in 1973, or in proportion to party strengths in the elected body (assembly), or by proportional election by the assembly or by the electorate as a whole). With a different organisational framework (eg one where executive power resided in a committee system) minority participation could take the form of a share of chairmanships and/or seats on committees. This could apply either to executive committees or (as was envisaged in the 1975 Convention Report) to non-executive committees.

"Weighted" Votes

2.24. Alternatively participation could be secured indirectly by giving the minority certain powers that required some degree of acknowledgement of minority interests from the majority. Again, the degree of this "indirect participation" may be subject to very considerable variation.

2.25. For example, it might be provided that initially and at specified intervals thereafter the Executive must submit itself to a vote of confidence on a "weighted" basis, ie it would have to obtain a majority large enough to have support from at least some minority representatives. In this way the Executive would have to satisfy the minority in some way (eg by offering positions of influence, or by presenting general policies that took account of minority interests) to win their support in the vote of confidence. Without the necessary degree of support, the Executive might have to submit itself to a vote of confidence from Westminster, or might even automatically fall, leaving the vacuum to be filled at least temporarily by the UK Government.

CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL
CONFIDENTIAL

2.26. The device of the "weighted votes" could also be used in various other ways. The approval of executive committees, by a weighted majority, could be required for all proposed legislation before it was submitted to the full assembly; or key executive and/or legislative decisions could require weighted approval in the assembly; or the S of S might be empowered to ask for a weighted vote in the assembly either at his discretion or if certain criteria were fulfilled.

Blocking Powers

2.27. A further option is to provide a blocking or delaying power that is operable by the minority in one way or another. If in a bicameral system the upper chamber has the power to block or delay legislation, then either the upper chamber could be so constituted that the minority had half the seats there, or a weighted majority vote could be demanded without which legislative proposals could not proceed (or would at least be delayed). Other delaying powers may be devised, for example, by giving the S of S power to refer back to the assembly decisions or proposals on petition from the minority.

2.28. Indeed a range of safeguards can be envisaged - all of them giving the minority a right to appeal to some external authority against alleged abuse of power by the majority; this could be to the Secretary of State, to Westminster direct, or to the Judicial Committee of the Privy Council. The circumstances in which appeals might be made could be prescribed, and the powers to be given to the appellate body would depend on the degree of intervention in the local government's actions that was considered desirable.

External Safeguards

2.29. Finally, it would be possible to devise a range of statutory safeguards against abuse of power that would be specified from the outset of the transfer of powers. These

-17- CONFIDENTIAL

CONFIDENTIAL

E.R.

E.R.

CONFIDENTIAL
CONFIDENTIAL

CONFIDENTIAL

could be incorporated into a single Bill of Rights, unamendable by the local legislature, and laying down justiciable guide-lines with which local laws could not conflict. This would be in addition to the institutional safeguards already in existence. For example, to back up such safeguards, the present Ombudsmen could continue their job of guarding against maladministration; and general oversight of human rights could continue in the hands of an independent agency.

Illustrative Examples

2.30. Appendix B of this Paper offers as an aid to discussion certain examples of how various constitutional elements might be combined to construct actual models of government. None of the schemes is Her Majesty's Government's preferred solution. The Government would be prepared to introduce legislation to put into effect any of the models, or a variant of any one of them, which was thought by the representatives of both communities to be capable of attracting the broad-based confidence of the people of Northern Ireland, and which would provide good and efficient government.

CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL
CONFIDENTIAL
CONFIDENTIAL

PART III

QUESTIONS FOR DISCUSSION

3.1. The following questions, which arise from the issues considered in Part II of this document and from the model solutions illustrated in Appendix B, are set out as a framework or agenda for the Conference. It will be the Government's aim, in discussion and negotiation with the political parties in Northern Ireland at the Conference, to secure the highest level of agreement possible in providing the answers to these questions, so that the Government can then put before Parliament acceptable proposals for a transfer to the people of Northern Ireland of greater responsibility for the conduct of their affairs.

5. Should the range or number of functions transferred be on the 1973 scale or more limited?
7. What should be the extent of the powers transferred: legislative and executive, or executive only?
8. If legislative, should they extend to primary legislation (subject to over-ride by the Westminster Parliament) or only to subordinate legislation?
9. If executive powers only are transferred, is an local government link, should they be confined to management or include responsibility for policy within a legislative framework?
10. How much financial power should be given to the elected body or bodies, and to the executive, as regards (a) the raising of revenue and (b) deciding how the available resources should be distributed?

CONFIDENTIAL
CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL
CONFIDENTIAL

Institutional Framework

1. Should there be one elected body, or more?
2. What should be the method of election of the elected body or bodies?
3. In the case of one body, should there be one chamber or two; and if two, how should the upper chamber be chosen and what powers should it have?
4. Should the executive be "cabinet-style" or "committee-style"?
5. What part (if any) should committees play in legislative or executive decision-making; could they have an investigative or advisory function?

Powers to be Exercised

6. Should the range or number of functions transferred be on the 1973 scale or more limited?
7. What should be the extent of the powers transferred: legislative and executive, or executive only?
8. If legislative, should they extend to primary legislation (subject to over-ride by the Westminster Parliament) or only to subordinate legislation?
9. If executive powers only are transferred, ie on local government lines, should they be confined to management or include responsibility for policy within a legislative framework?
10. How much financial power should be given to the elected body or bodies, and to the executive, as regards (a) the raising of revenue and (b) deciding how the available resources should be distributed?

CONFIDENTIAL

CONFIDENTIAL

Role of the Minority

11. What are the best arrangements to take account of minority interests in decision-taking, whether legislative or executive: for example, should a proportion of posts be reserved to them, or should certain posts and/or decisions require the approval of the minority by a weighted minority vote?
12. Should there be an established right of appeal from any minority groups in the elected body (or bodies) to a higher authority with "over-ride" or blocking powers?

E.R.

CONFIDENTIAL

APPENDIX A

ILLUSTRATIVE MODELS OF SYSTEMS OF GOVERNMENT

1. The models set out in this Part of the Working Paper are illustrations of the variety of regional bodies that might be created in Northern Ireland. They show some (but certainly not all) of the ways in which the many elements might be combined to produce relationships between legislature and Executive, government and opposition, majority and minority, that might suit the needs of Northern Ireland so long as the political divide remains.
2. Several of the models have features in common. To aid the models, the description of each model has been made self-contained, even though as a result there is a degree of repetition in the descriptions.
3. All the models incorporate, by way of illustration, a number of protective and participatory mechanisms whose aim is to provide the minority with a greater or lesser degree of influence on the way that executive and/or legislative decisions are taken. None of these mechanisms is wedded to any particular institutional framework or to a system exercising any particular powers. Almost without exception they can be slotted out of one system and into another. Some are in the form of safeguards providing the minority, for example, with a blocking power; others offer positive participation in the formulation of decisions on legislation or executive action. Where the exact balance should lie, and

CONFIDENTIAL

CONFIDENTIAL

EP

EP

CONFIDENTIAL

- how the various mechanisms should inter-relate with the political institutions to be established, must be for consideration by the political leaders of Northern Ireland.
4. On a point of terminology, the term "assembly" has been used, in describing some of the models, to denote directly elected bodies exercising legislative powers. In describing other models the term "council" is used to denote a body with only executive powers.

1. The Institutional Framework

- (i) An elected single-chamber Assembly.
- (ii) A "cabinet" system of government (Executive) formed by the leader of the largest party or group of parties.
- (iii) A system of select committees to scrutinize Government Departments' policies and actions. A committee might be set up to cover each of the Departments with terms of reference similar to those of Westminster select committees.

2. The Powers to be exercised

- (i) The range of matters to be devolved (or "transferred") would be similar to that transferred in 1974: in those matters currently the responsibility of the NI Department. (See Appendix B)
- (ii) The Assembly would be able to legislate for Northern Ireland on all transferred matters. All legislation passed by the Assembly would require the approval of Her Majesty in Council before becoming law.

CONFIDENTIAL
2
CONFIDENTIAL

CONFIDENTIAL

E.R.

CONFIDENTIAL

MODEL "A" : A UNICAMERAL SYSTEM OF GOVERNMENT WITH LEGISLATIVE AND EXECUTIVE POWERS

This model illustrates a structure similar to that of Westminster (or the former Stormont Parliament) but without an upper chamber. It shows how a select committee system might have a part to play, and it sets out some of the ways in which special arrangements for the opposition or minority might be built in to the structure to provide them with varying degrees of influence.

1. The Institutional Framework

- (i) An elected single-chamber Assembly.
- (ii) A "cabinet" system of government (Executive) formed by the leader of the largest party or group of parties.
- (iii) A system of select committees to scrutinise Government Departments' policies and actions. A committee might be set up to cover each NI Department with terms of reference similar to those of Westminster select committees.

2. The Powers to be exercised

- (i) The range of matters to be devolved (or "transferred") would be similar to that transferred in 1973: ie those matters currently the responsibility of the NI Departments. (See Appendix B).
- (ii) The Assembly would be able to legislate for Northern Ireland on all transferred matters. All legislation passed by the Assembly would require the approval of Her Majesty in Council before becoming law.

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

POINT 1: A UNIFORM SYSTEM OF GOVERNMENT WITH EXECUTIVE AND LEGISLATIVE POWERS

This model illustrates a structure similar to that of Westminster (or the former Federal Parliament) but without an upper chamber. It shows how a select committee system might have a part to play, and it sets out some of the ways in which special arrangements for the opposition an minority might be built in to the structure to provide them with varying degrees of influence.

The Legislative Framework

(1) An elected single-chamber Assembly.
(2) A cabinet, drawn from government (executive) members by the leader of the largest party or group of parties.

(3) A system of select committees to scrutinise government departments, policies and actions. A committee might be set up to cover each NI department with some of its relevant matters to those of Westminster select committees.

The Powers to be exercised

(1) The range of matters to be devolved (as "transferred") will be similar to that transferred in 1972 - 73.

(2) The Assembly will be able to legislate for Northern Ireland in all transferred matters. All legislation passed by the Assembly will require the approval of the majority in Council before becoming law.

CONFIDENTIAL

CONFIDENTIAL

- (iii) The members of the Executive would act as ministers in charge of the NI Departments which would discharge executive functions throughout the transferred field.
- (iv) The Parliament and Government of the United Kingdom would retain responsibility for all matters not transferred (principally defence, foreign affairs, management of the economy, elections, courts administration, law and order). However, certain matters initially reserved to Westminster might be transferred at a later date.

3. The Role of the Minority

- (i) Various of the elements described in paras 2.21 - 28 of Part II of this Paper could be built into the arrangements to enable the minority to exercise a greater or lesser influence on the decision taking process. Examples are:
 - a) The Executive: the Executive might be obliged to submit itself to an initial or regular vote of confidence in the Assembly by weighted majority thus requiring it to gain a measure of support from minority parties. As a result of that support, a minority party could expect something in return e.g. some influence on the constitution of the Executive (or even some level of participation in it); an agreement over the introduction of particular legislation sought by minority parties; or certain guarantees regarding the formulation of policies.
 - b) The legislature: it might be provided that all, or certain categories of, legislation had to be approved

CONFIDENTIAL

CONFIDENTIAL

by weighted majority. This would ensure that proposals had support from minority members. Alternatively the minority might have the right to petition the Secretary of State to intervene by referring legislation back to the Assembly or by seeking the verdict of Westminster on whether it should be submitted to Her Majesty in Council for final approval.

- c) Select committees: the membership and chairmanships of these committees (which could have influence both policy and legislation) could be allocated in such a way as to give the minority parties a voice equal to that of the majority - 50% of the committee chairmanships and 50% representation on each committee.
- d) Statutory safeguards: in addition to those safeguards against discrimination already in existence, a Bill of Rights for Northern Ireland might be enacted and the necessary arrangements made to ensure that it was enforceable in the courts.

Neither the institutional framework nor the powers to be exercised need follow the precise pattern illustrated in this model. The Secretary of State and Westminster could be given more extensive powers of intervention and over-ride in the legislative and executive process. An upper chamber might be created to act as a check on legislation and executive action. Or the select committees could be given greater powers. Some of these alternatives are shown as elements in later models.

CONFIDENTIAL

CONFIDENTIAL

MODE "B": A BICAMERAL SYSTEM OF GOVERNMENT WITH LEGISLATIVE POWERS

This model illustrates a system of devolved Government where there is an upper chamber through which the minority might exert influence on the decision-taking process.

1. The Institutional Framework

- (i) An elected lower chamber (the "Assembly").
- (ii) A "cabinet" style Government (Executive) formed by the leader of the largest party or group of parties.
- (iii) An upper chamber (the "Senate") which could be:
 - a) wholly elected, either by the Assembly or directly by the electorate;
 - b) partly elected and partly nominated, either by the Secretary of State or by the parties represented in the Assembly;
 - c) nominated in equal parts by on the one hand the parties forming the Executive and on the other those in opposition.
- (iv) A select or advisory committee structure could be provided if desired.

2. The Powers to be exercised

- (i) The range of matters to be transferred would be similar to that transferred in 1973 ie those matters currently the responsibility of the NI Departments.
- (ii) The Assembly would be able to legislate for Northern Ireland on all transferred matters. All legislation

CONFIDENTIAL

CONFIDENTIAL

- passed by the Assembly would require the approval of Her Majesty in Council before becoming law.
- (iii) The members of the Executive would act as ministers in charge of the NI Departments which would discharge executive functions throughout the transferred field.
 - (iv) The Parliament and Government of the United Kingdom would retain responsibility for all matters not transferred (principally defence, foreign affairs, management of the economy, elections, courts administration, law and order). However, certain matters initially reserved to Westminster might be transferred at a later date.

3. The Role of the Minority

The special arrangements for the minority would centre on the Senate which either could be so constituted (see 1(iii)) as to give the opposition 50% representation or would be required to take all decisions by weighted majority. The Senate might be empowered to:

- (i) refer proposed legislation back to the Assembly (in the manner of the House of Lords);
- (ii) block legislation altogether;
- (iii) refer proposed legislation to Westminster for approval;
- (iv) refer executive action to the Secretary of State and request him to exercise a power of over-ride;
- (v) act in any of the above ways only when certain particularly sensitive matters are involved (eg possible discrimination against the minority).

CONFIDENTIAL

CONFIDENTIAL

In a system of this kind the role and influence of the minority is not a direct one. However with a Senate in possession of blocking powers, it is almost certain that a practice of consultation would develop so that the Executive was aware of Senate views and could, if it so waned, take account of them at an early stage. The indirect influence of the Senate could therefore be considerable.

of the minority might be recognized in a variety of ways by giving these representatives on the executive committees.

1. The Institutional Framework

- (i) A system of executive committees appointed by the Assembly whose chairmen would direct and control the MI Departments in the discharge of their executive functions, and would present for approval by the Assembly proposals for legislation.
- (ii) In performing their tasks the chairmen would be subject to general policy guidelines laid down by their committees.

2. The Powers to be Exercised

- (i) The range of matters to be transferred would be similar to that transferred in 1973 in those matters currently the responsibility of the MI Departments.
- (ii) The Assembly would be able to legislate for Northern Ireland on all transferred matters. All legislation passed by the Assembly would require the approval of Her Majesty in Council before becoming law.

CONFIDENTIAL

E.R.

CONFIDENTIAL

MODEL "C": A SYSTEM OF GOVERNMENT WITH LEGISLATIVE AND EXECUTIVE POWERS
OPERATING ON AN EXECUTIVE COMMITTEE BASIS

The system illustrated in this model applies a structure of executive committees, familiar in local government throughout the United Kingdom, to the exercise of full devolved powers. It shows how the interests of the minority might be recognised in a variety of ways by giving them representation on the executive committees.

1. The Institutional Framework

- (i) An elected Assembly.
- (ii) A system of executive committees appointed by the Assembly whose chairmen would direct and control the NI Departments in the discharge of their executive functions, and would present for approval by the Assembly proposals for legislation.
- (iii) In performing their tasks the chairmen would be subject to general policy guidelines laid down by their committees.

2. The Powers to be Exercised

- (i) The range of matters to be transferred would be similar to that transferred in 1973 ie those matters currently the responsibility of the NI Departments.
- (ii) The Assembly would be able to legislate for Northern Ireland on all transferred matters. All legislation passed by the Assembly would require the approval of Her Majesty in Council before becoming law.

CONFIDENTIAL

E.R.

CONFIDENTIAL

- (iii) The chairmen of the Executive Committees would act as ministers in charge of the NI Departments which would discharge executive functions throughout the transferred field.
- (iv) The Parliament and Government of the United Kingdom would retain responsibility for all matters not transferred (principally defence, foreign affairs, management of the economy, elections, courts administration, law and order). However, certain matters initially reserved to Westminster might be transferred at a later date.
- (v) If it was desired not to transfer legislative responsibility, the system could initially exercise solely executive functions. All primary legislation would be reserved to Westminster, which might have regard to advice from the Assembly. Responsibility for legislation could be transferred, if so desired, at a later stage.

3. The Role of the Minority

The normal convention in British local authority arrangements is for the majority group to occupy the chairmanships of all the committees and a majority of the seats on each committee, thus giving them complete control. There are a number of ways in which that might be adapted.

- (i) The chairmanships and the seats on the committees are allocated to the parties in proportion to their representation in the Assembly.

9
CONFIDENTIAL

CONFIDENTIAL

E.R.

- (ii) The chairmanships are filled by the majority group but the opposition is given 50% of the seats on each committee.
- (iii) The committees would have to approve all legislation by weighted majority before it was presented to the Assembly.

Any of these methods would provide the opposition with considerable power to influence decisions. Both (i) and (ii), however, give the majority ultimate control since the committee chairmen would have to comply with policy guidelines laid down by the majority on the committee; (iii) gives restricted blocking powers to the minority with reference only to legislative proposals.

- (i) An elected council.
- (ii) Executive committee of council members whose chairman would direct and control the MI Departments in the discharge of their functions.
- (iii) The chairman being subject to guidance from their committees.

2. The Powers to be Exercised

- (1) The council would be responsible for all the executive functions of the E.F. Government (not those functions which are retained in Great Britain and discharged by local government authorities).
- (ii) The council would have the power to pass primary legislation, though it might be able to approve certain kinds of subordinate legislation and could advise the Secretary of State on matters of priority legislation.

CONFIDENTIAL

MODEL "D": A SYSTEM OF GOVERNMENT WITH EXECUTIVE BUT NO LEGISLATIVE POWERS OPERATING ON A COMMITTEE BASIS

This model sets out a system of executive government operating on lines similar to those of local government throughout the United Kingdom. The range and extent of responsibilities to be transferred would however be wider than those given to any British local authority, having regard to the arguments set out in para 2.12 and 2.17 of Part II of this Paper.

1. The Institutional Framework

- (i) An elected council.
- (ii) Executive committees of council members whose chairmen would direct and control the NI Departments in the discharge of their functions.
- (iii) The chairmen being subject to guidance from their committees.

2. The Powers to be Exercised

- (i) The council would be responsible for all the executive functions of the N.I. Government Departments (not just those functions which in Great Britain are discharged by local government authorities).
- (ii) The council would have no power to make primary legislation, though it might be able to approve certain kinds of subordinate legislation and could advise the Secretary of State on matters of primary legislation.

E.R.

- (iii) The Secretary of State (or through him, Westminster) would have certain powers of direction and override and default powers. The precise nature of these powers would be for consideration.

3. The Role of the Minority

The minority could be given a greater or lesser role in the system by the introduction of mechanisms illustrated earlier, for instance:

- (i) The chairmanships and the seats on the committees could be allocated to the parties in proportion to their representation in the full council.
- (ii) The chairmanships could be filled by the majority group but the opposition could be given 50% of the seats on each committee.
- (iii) The council might have to approve its advice on legislation by weighted majority before it was submitted to the Secretary of State.

Any of these methods would provide the opposition with considerable power to influence decisions. Both (i) and (ii), however, would give the majority ultimate control since the committee chairmen would have to comply with policy guidance laid down by the majority on the committee; (iii) would give some restricted blocking powers to the minority with reference only to legislative advice.

F.R.

CONFIDENTIAL

MODEL "E": A SYSTEM OF GOVERNMENT WITH EXECUTIVE BUT NO LEGISLATIVE POWERS BASED ON THE "CABINET" SYSTEM, BUT WITH ADVISORY COMMITTEES

This model illustrates a form of government exercising executive powers only, but which is a development of the arrangements in existence in local authorities in Great Britain.

1. The Institutional Framework

- (i) An elected council.
- (ii) An Executive which could be formed by the leader of the largest party or group of parties (see para 3 below).
- (iii) Each member of the Executive would direct and control an NI Department.
- (iv) Each member of the Executive would chair a functional committee with purely advisory powers.
- (v) Select committees might also be appointed with investigative powers.

2. The Powers to be Exercised

- (i) The N.I. Government Departments, under the direction and control of members of the Executive, would discharge their present executive functions.
- (ii) The council would have no power to make primary legislation, though it might be able to approve certain kinds of subordinate legislation and could advise the Secretary of State on matters of primary legislation.

CONFIDENTIAL

CONFIDENTIAL

(iii) The Secretary of State (or through him, Westminster) would have certain powers of direction and override and default powers. The precise nature of these powers would be for consideration.

3. The Role of the Minority

- (i) The influence of the minority might be expressed in a number of ways:
- a) The Executive might be obliged to submit itself to an initial or regular vote of confidence in the Assembly by weighted majority thus requiring it to gain a measure of support from minority parties. In return for that support, a minority party could expect something in return, eg some influence on the constitution of the Executive (or even some level of participation in it); or an agreement regarding the formulation of certain policies.
 - b) Functional Committees 50% of the seats on these advisory committees might be given to the minority groupings.
 - c) Select Committees: the membership and chairmanships of these committees could be allocated in such a way as to give the minority parties a voice equal to that of the majority - 50% of the committee chairmanships and 50% representation on each committee; they might also be empowered to call on the Secretary of State to use his powers of intervention. (See 2(iii) above).

CONFIDENTIAL

CONFIDENTIAL

(iii) The Executive of State (or through the Westminister) would have certain powers of direction and oversight and control powers. The precise nature of these powers would be for consideration.

The Role of the Minority

- (1) The influence of the minority might be expressed in a number of ways:
 - (a) The Executive might be obliged to attend itself to be invited or regular vote or confidence in the Assembly by weighted majority that majority would have a measure of support that minority would have in return for that support, a minority party would expect something in return, an equal influence on the composition of the Executive (or over some level of participation in it) or an agreement regarding the formulation of certain policies.
 - (b) Regional Councils - 50% of the seats in these advisory committees might be given to the minority groupings.
 - (c) Joint Committees - the membership and representation of these committees could be allocated in such a way as to give the minority a voice equal to that of the majority - 50% of the committee chairmanship and 50% representation on each committee that might also be expected to call on the majority of State to use his power of intervention. (See (iii) above).

CONFIDENTIAL

E.R.

CONFIDENTIAL

(ii) An alternative means of increasing the minority's scope to influence the decision taking process could be for the Assembly to elect a leader of the Executive by weighted majority vote. The returns the minority might get for its support are similar to those outlined in (i)(a) above.

One option might be to have an Eastern Council, a Western Council and a Greater Belfast Council; another to follow the geographical areas of responsibility of the Education or Health Area Boards.

The Institutional Framework

- (i) An elected council or councils.
- (ii) Each council having functional committees which look after day-to-day administration while matters of policy or principle are determined by the full council.
- (iii) The committee chairmen being wholly subject to the decisions of their committees.

The Powers to be Shared

- (1) The council would be responsible for those services currently the responsibility of English local authorities.

* Is principally education, housing, planning, roads, social services. However it would be for consideration whether other services should in fact be separated from the administration of the health services (they are currently administered as a single unit in Northern Ireland); and whether water and sewerage should be a local responsibility (as in Scotland). Agriculture, forestry, transport and industry would not be transferred.

CONFIDENTIAL

CONFIDENTIAL

MODEL "F": A SYSTEM OF GOVERNMENT WITH EXECUTIVE BUT NO
LEGISLATIVE POWERS EXERCISED BY ONE OR MORE LOCAL AUTHORITIES

This model illustrates a system in which one or a number of local councils exercise powers similar to those of local authorities in Great Britain. The precise number of bodies could be anything from one up to the eight county and county borough councils that existed in Northern Ireland up to the 1973 local government reorganisation. One option might be to have an Eastern Council, a Western Council and a Greater Belfast Council; another to follow the geographical areas of responsibility of either the Education or Health Area Boards.

1. The Institutional Framework

- (i) An elected council or councils.
- (ii) Each council having functional committees which look after day-to-day administration while matters of policy or principle are determined by the full council.
- (iii) The committee chairmen being wholly subject to the decisions of their committees.

2. The Powers to be Exercised

- (i) The council(s) would be responsible for those services currently the responsibility of English local authorities.*

* ie principally education, housing, planning, roads, social services. However it would be for consideration whether social services should in fact be separated from the administration of the health services (they are currently administered as a single unit in Northern Ireland); and whether water and sewerage should be a local responsibility (as in Scotland). Agriculture, employment and industry would not be transferred.

CONFIDENTIAL

CONFIDENTIAL

E.R.

- (ii) The extent of the council(s)' responsibility would be limited in the same way as in Great Britain. Thus overall policy would be reserved to central government and the exact functions of the local authority would be spelt out in legislation.
- (iii) The council(s) would have no legislative powers (other than the power to make local byelaws).
- (iv) The Secretary of State would have default and call-in powers and power of direction.

3. The Role of the Minority

The normal convention in British local authority arrangements is for the majority group to occupy the chairmanships of all the committees and a majority of the seats on each committee, thus giving them complete control. This might be adapted:

- a) by allocating the chairmanships and the seats to the parties in proportion to their representation in the full council;
- b) by giving all chairmanships to the majority but by giving the opposition 50% of the seats on each committee;
- c) by providing for weighted voting in certain circumstances either in the committees, in full council, or in both.

Any system involving more than one council would add to the complications that would flow from any decision to break up and relocate the existing centralised administrative structure of the Northern Ireland Departments which presently exercise both "central" and "local government" responsibilities. It would have to be accepted that the movement of staff and resources to

CONFIDENTIAL

CONFIDENTIAL

FR

CONFIDENTIAL

APPENDIX B

new centres would take some time to complete; and that there would be some additional costs in replacing single central Departments by several local ones; and consideration would have to be given to the organisation and validity of the relatively small policy-making remainder of the NI Departments which would continue to serve central government. Any such system is a long-term arrangement: the complexity of its introduction militates against it being replaced in the short term by any alternative arrangements.

Regulations; Selection; Ordnance Survey.
 Registration of births, marriages and deaths; registration of deeds; registration of title of land.
 Law reform; Public Health Officers; Charities; Ulster Savings; Miscellaneous Licences including intoxicating liquor, bookshops.
 Department of the Environment
 General management and control of the Northern Ireland Civil Service in policy and practice; management of personnel, training, promotion, transfer, discipline and personal management; welfare, retirement, industrial relations and security; the work of the Department of Employment and the conditions of service; working the Northern Ireland Civil Service and its Committee; the Northern Ireland Co-ordinating Council for industrial civil service.

CONFIDENTIAL

CONFIDENTIAL

E.R.

APPENDIX B

FUNCTIONS OF NORTHERN IRELAND DEPARTMENTS

Department of Finance

Control of expenditure of NI Departments; liaison with the UK Treasury and NI Office on financial matters; borrowing; loan advances.

Economic and social planning and research; Government statistical services.

Striking of regional rate and collection of regional and district rates.

Provision and maintenance of public buildings; Building Regulations; Valuation; Ordinance Survey.

Registration of births, marriages and deaths; registration of deeds; registration of title of land.

Law reform; Public Record Office; Charities; Ulster Savings.

Miscellaneous licensing including intoxicating liquor, bookmakers.

Department of the Civil Service

General management and control of the Northern Ireland Civil Service ie policy and central arrangements for recruitment, training, promotion, general career development and personnel management, welfare, retirement, industrial relations and security; the levels and deployment of manpower; pay, pensions, condition of service; servicing the Central Whitley Council and its Committees, and the Central Joint Co-ordinating Council for industrial civil servants.

Other functions include a central management consulting service for the NICS Computer Services, a united work study service and a medical advisory service. It also staffs the Civil Service Commission, an independent body responsible for the recruitment of permanent non-industrial staff for the NICS.

E.R.

Department of Agriculture

Development of agriculture, horticultural, forestry and fishing industries. Administration of schemes related to farm, crops, fish and livestock improvement, plant and animal health, marketing and food processing; arterial drainage and inland navigation; agricultural advisory services, education and training; agricultural, horticultural, fisheries and veterinary research. The Department also acts as agent of the MAFF.

Department of Commerce

Industrial Promotion and Development including responsibilities in respect of the Northern Ireland Development Agency and Local Enterprise Development Unit. Energy supply and Conservation, Tourism, Harbours, Mineral Development, Consumer Protection, Registration of Companies and Scientific advice to Industry.

Department of Education

Central policy, co-ordination, legislation and financial control of all aspects of the education service, library service and youth service. Oversees the five area education and library boards which are responsible for the local administration of much of these services.

General responsibility for museums, arts, sport, culture, recreation, community facilities including the payment of grants to District Councils in these areas.

Department of the Environment

Housing (policy, funding of the NI Housing Executive etc); town and country planning and comprehensive development; roads, bridges, car parking, street lighting and traffic management; water and sewerage services; certain supervisory powers and local government (the District Councils); internal public

E.R.

transport (in conjunction with the NI Transport Holding Company and its subsidiary operating companies for railways, buses, airports and road freight); control of pollution and protection and improvement of the urban and rural environment (including historic buildings and monuments); road safety; motor taxation (as the agent of the Department of Transport); funding etc of the NI Fire Authority.

Department of Health and Social Services

Administration of the Social Security System, ie all cash social services such as sickness, unemployment, retirement, and supplementary benefits.

Administration of the Health Services including hospital and specialist services, family practitioner services and community care services. Administration of the personal social services including child care and adoption.

The Department delegates the administration of the health and personal social services to four Health and Social Services Boards. Certain central services required by the four Boards are provided on the Department's behalf by the Central Services Agency and the NI Staffs Council for Health and Social Services.

Department of Manpower Services

Industrial Relations, Employment Protection, The Employment Service, Industrial Training, counter-unemployment measures, employment of the disabled; Health and Safety. Functions in relation to Enterprise Ulster; Fair Employment Agency; Equal Opportunities Commission; Labour Relations Agency.

CONFIDENTIAL

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

OD (79) 40

COPY NO 42

26 November 1979

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

SOUTHERN RHODESIA: ZIMBABWE INDEPENDENCE BILL

Memorandum by the Secretary of State for
Foreign and Commonwealth Affairs

1. The paper which I annex deals with the policy questions raised by the Zimbabwe Independence Bill, which we shall need to bring in shortly after the conclusion of the Constitutional Conference. The Bill itself, which is also attached, has been agreed with officials of departments whose interests are affected by it.
2. If the outcome of the Conference is an agreement between all the parties, independence would probably be granted in February, though I cannot exclude an earlier date if, for example, the cease-fire were to break down and it became necessary to advance the date of elections. If we achieve a settlement with the Salisbury parties alone then independence would follow elections in mid-January. In either event, therefore, we shall want to have the Bill enacted before the Christmas recess.
3. The Bill will be considered by Legislation Committee on 27 November. I invite my colleagues to agree the policy as explained in the annex.

C

Foreign and Commonwealth Office
26 November 1979

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

ANNEX

SOUTHERN RHODESIA: ZIMBABWE INDEPENDENCE BILL

1. The main purpose of the Bill is to establish the new state and withdraw United Kingdom jurisdiction. Most of the Bill and its Schedules are concerned with the amendments to United Kingdom law which will be necessary as a consequence of Rhodesia becoming independent and leaving the Commonwealth. The Government will have the power to set the date of independence by Order-in-Council.

2. The Bill assumes that Rhodesia will come to independence outside the Commonwealth. This is inevitable, since most Commonwealth governments are unlikely to pronounce on any application for membership until after elections have been held and have been certified as fair by Commonwealth observers, and they are satisfied that no attempt will be made to overturn the results by undemocratic means. But transitional provisions are included which allow citizens of Zimbabwe to be treated, in several important respects, as Commonwealth citizens for a period of 12 months after independence. The Bill also gives the power to make necessary adjustments in United Kingdom law by Order-in-Council should Zimbabwe later become a Commonwealth member.

3. There are two main issues which are likely to prove controversial:

i. Citizenship

4. It is usual in an Independence Bill to provide that those who become citizens of the new state on independence lose (with certain exceptions) citizenship of the United Kingdom and Colonies (CUKC).

/5.

CONFIDENTIAL

CONFIDENTIAL