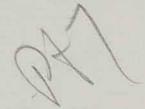From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE

GREAT GEORGE STREET,

LONDON SW1P 3AJ

25 June 1980

Michael Alexander Esq
10 Downing Street
LONDON SW1

Dear Michael

You spoke to Roy Harrington after OD about
the need for a paper setting out fall-back
positions should our present plans founder.
I attach a first draft of such a paper in
case you need to know, in the next day or two,
the sort of options we have been considering.
But I should point out that, because of
Mr Atkins's unavailability at present
(through the visit of the Duke and Duchess
of Kent), he has not cleared this draft
himself.

Yours sincerely

Mike Hopkins

M W Hopkins

NI POLITICAL INITIATIVE: FALL-BACK OPTIONS

<u>Introduction</u>

1.   This paper considers the situation should it become clear
(either shortly after publication of the forthcoming proposals
document, or after an extended period of consultation) that the
present proposals do not provide a basis for agreement on a form
of devolved government in Northern Ireland. It reviews the options
and sets out the main arguments for and against each. It does not
seek to reach any conclusion - for one thing, the choice of 'fall-
back' would be much influenced by what was said or done by the
parties in rejecting the present proposals.

2.   The options fall under four headings:

> A   Continuing with Direct Rule
>
> B   Integration
>
> C   Consultative Assembly, with gradually developing
>   functions
>
> D   Development of Local Government

3.   Before they are considered in turn, it is worth noting
that in the event of rejection of the proposals by the NI political
parties one recourse available to HMG, though it is not a "fall-
back option" as such,/to "appeal direct to the people" by way of
would be
a <u>referendum</u>. This would involve putting forward a particular
scheme and inviting a YES or NO vote, or possibly presenting a
series of options and asking voters to list them in order of
preference.

4.   This sort of approach constitutes something of a last card:
a negative vote could place HMG in a very difficult position.

Moreover, there would be considerable scope for argument over whether a "YES" vote demonstrated acceptance on the part of both parts of the community. It would be necessary for as many as 83% of the electorate to vote in favour, if it were to be mathematically certain that a scheme had the support of a majority of both parts of the community. Although in practice a lower threshold of acceptability than that could be set, there would be a very strong likelihood of an inconclusive result open to totally different interpretations by different interest groups. Equally, an apparently conclusive result could be awkward. For example, if there were a low turnout on the part of the minority community, while the majority turned out in force to vote overwhelmingly in favour of a particular proposal, there would be very strong pressure to implement the proposition, even though the minority were against. In short, if the political parties cannot agree on a settlement, it is most unlikely that a referendum will produce an acceptable one. And it could increase the pressure on HMG to impose an unacceptable one.

A.   Continuing with Direct Rule

5.   One option is simply to give up the attempt to transfer powers to locally elected representatives, at least for the time being. Direct rule, in its present form, works well from an administrative point of view, is stable and does not arouse violent opposition from any part of the community. However, HMG has made it clear in numerous contexts, not the least being the present Document, that it regards direct rule as an unsatisfactory basis for governing Northern Ireland. Under present arrangements there is no tier of administration between district councils, which have few powers, and Westminster; the result is that responsibility for many essentially local services lies with central government;

decisions are taken by Ministers with no local political base, and there are insufficient opportunities for local politicians. The Order in Council procedure for legislating on Northern Ireland matters is unsatisfactory in that it does not allow for the degree of scrutiny that could be afforded by a devolved legislature and, of course, it takes up valuable Parliamentary time. To maintain direct rule, with no prospect of change, may well be represented as weakness and an admission of failure. Another cogent point is the Government's Manifesto pledge. If the search for full devolution is abandoned, it would be difficult to resist pressure from the UUP, and probably also from some of the Government's backbenchers, for changes in local government (see below).

B.   Integration

6.   A variation on continuing with direct rule would be full-scale integration. In its most extreme form this would involve doing away with the separate Northern Ireland statute book, extending English legislation to cover the Province, integrating the Northern Ireland Civil Service with the United Kingdom Civil Service and combining the NI departments with their GB counterparts. In effect, Northern Ireland's position vis à vis Westminster would be exactly comparable to that of an English region. Alternative an arrangement similar to that which exists at present for either Scotland or Wales would be theoretically possible.

7.   There are serious disadvantages in pursuing any form of integration. Given that Northern Ireland for so long had its own administrative set-up and responsibility for its own laws, which reflect the mores of the people there, integration and uniformity with the rest of the UK would be unpopular on both sides of the

community. All the main parties in Northern Ireland favour
some form of devolution; and only the Official Unionists would
look upon integration with any favour if an acceptable method
of transferring responsibilities into local hands could not be found.
Because it appears to close the door finally on closer links with
the South and the hope of eventual Irish unity it would be hotly
opposed by representatives of the minority community and those who
sympathise with them – in particular in the Republic and the US.

8.   Any move towards integration would have to be accompanied
by some increase in the powers of local government both to bring
Northern Ireland into line with Britain in local democracy terms
and to avoid Whitehall departments directly administering local
services in the Province. This also would be unacceptable to
the minority community for reasons that will be discussed later.

C.   A Consultative Assembly, with gradually developing functions
9.   An assembly could be elected with, initially at least, only
a consultative role rather than legislative or executive powers.
It would work against the backcloth of continuing direct rule,
but members of the assembly would be free to concern themselves
with the full range of what were in 1973 "transferred" matters.
They would have the opportunity to scrutinise legislative proposals
and executive action, as well as make proposals of their own.
Indeed, instead of the present practice of publishing legislative
proposals well in advance of enactment as a means of consulting
local interests, it would be possible to place the proposals before
the Assembly; members of the assembly would then be in a position
to comment on the merits of the proposed legislation and suggest
amendments, before Parliament was asked to approve it. There
could be a system of committees, for detailed work on different

functional areas, service on which might bring members to see the advantage of working together in the common interest.

10.   If the arrangements were seen to be working, it would be possible to increase the assembly's responsibilities, for instance by giving it a role in the making of subordinate legislation. All the time we would be continuing discussions on how it might be possible to transfer a fuller range of devolved powers to the Assembly. One idea that was floated earlier in the year by Dr. B. Mawhinney MP was that power might be devolved "function by function", beginning with the less controversial issues, as and when it was established - by some suitable means - that sufficient consensus existed among the parties as to how a particular function should be administered. This approach would involve much administrative complication.

11.   One variant of this step-by-step approach that has been suggested is that some of the functions of political supervision of NI government departments, at present carried out by NIO Junior Ministers under the direction of the Secretary of State, might instead be entrusted to "commissioners" appointed by the Secretary of State from suitable people in NI, probably but not necessarily those active in NI political life. This would give NI administration a local political thrust which is at present lacking, and would give some NI personalities an opportunity of exercising some political authority. It would however be for further consideration who in NI would accept hybrid appointments of this kind; and what would be the basis of their accountability both to the consultative assembly and, through the Secretary of State, to Parliament at Westminster

12.   A consultative assembly would give Northern Ireland an

elected body to fill the gap between district councils and Westminster and enable the elected representatives to become used to working together, before they took on executive and legislative responsibilities. Thus a consultative assembly could be presented as a logical step along the road towards devolved government. There are however dangers. The assembly might well indulge in irresponsible criticism and make life for HMG (which would continue to be responsible for direct rule) much more difficult. A majority of assembly members might use it as a forum for making a case for full-scale devolution on a basis that would be unacceptable to the minority; we might be faced with a repeat of the majority Convention Report. All the main parties have indicated their dislike for a non-executive body and a boycott on the part of one party or another is always a possibility: quite recently Mr. Molyneaux said that the Irish Republic and the SDLP wanted a devolved assembly as a step on the way to Irish unity - "A consultative assembly would do the work for them even better still". There is no doubt that it would be an uphill task to promote the idea of a consultative assembly; it would have to be represented as a positive step forward towards transferring real responsibilities into local hands. At the same time it would have to be recognised that a consultative assembly would not in itself solve the problem of securing agreement on a form of devolution; it could merely provide the forum for frustrating and acrimonious stalemate, with the assembly issuing a flow of irresponsible and unconstructive advice and criticism of HMG.

D. Local Government

13. Another approach would be to build up elected local government in NI by creating bodies with powers analogous to those of English county councils or Scottish regional councils.

In NI this approach is favoured by the Molyneaux/Powell wing of the UUP. It also enjoys a measure of support in GB as a 'commonsense' solution and was presumably envisaged in the reference in the 1979 Conservative Election Manifesto to "one or more elected regional councils".

14.   At present the 26 district councils in Northern Ireland have very few responsibilities: refuse collection, the provision of recreation facilities and burials, but little else. In the continued absence of devolved government it is argued that more functions should be given to local government both to attract better quality councillors and to fill the gap that exists between district councils and central government. This might be done by increasing the powers of district councils, creating an upper tier of local government, or a combination of both.

15.   A "local government solution" would attract little support from the majority community in NI, and would be strongly resisted by the minority community. The minority find it objectionable on two grounds. First, while giving a limited role to local politicians it would keep the government of Northern Ireland firmly and - as they would see it - permanently in the hands of Westminster. Second, and at least as important, there is the well-founded conviction of the minority that discrimination against them was in the past most rife at the local government level under "majority rule" councils (exercising major local government functions - e.g. housing - which have since been removed from them). Even today, with the limited powers available to district councils, the minority point to examples such as the reluctance of Lisburn Borough Council to provide recreational facilities and a refuse collection service for the Poleglass estate, a new housing development mainly for

Catholics on the outskirts of Belfast, and the controversy over Cookstown District Council's alleged bias against employing Catholics. If the Unionists cannot be persuaded to accept a satisfactory degree of minority participation in devolved government, there is no reason to think that they will accept it in local government. 17 of the 26 councils have an overall Unionist majority (many of these have substantial catholic populations), while 3 have a clear non-Unionist majority; experience suggests that it is only where the SDLP predominate that genuine attempts at "power-sharing" are made - for example Newry and Londonderry.

16. Thus unless, as can hardly be supposed, the Government in pursuing a local government solution were to abandon its commitment to "take account of the needs and anxieties of both sides of the community" and provide "reasonable and appropriate arrangements to take account of the interests of the minority", this approach would run into precisely the same problems as the attempt to secure agreement on the sharing of power at the provincial level - which ex hypothesi would have failed by the time a local government solution was being explored.

Sectarian local authority areas?

17. If then power-sharing between the communities cannot be achieved at the local government level, the question may be asked whether boundaries can be drawn in a way that will produce local authority areas, and therefore councils, where one or other community predominates to such an extent that the problem of how to share power does not arise. This again seems a first sight a commonsense approach: if discrimination at local authority level is a problem, why not try to separate the opposed factions? But, first, the demographic facts of NI are against it. There are some pockets

where nearly everyone belongs to the same community. For example, Catholics account for over 80% of the population in part of West Belfast, Londonderry west of the Foyle, South Armagh, and a few other small areas. Because the Protestant community is overall twice the size of the Catholic, areas of Protestant concentration are larger; for example, North Down, Ballymena and much of East Belfast. But the more normal situation, in any area of viable local government size, is for members of the two communities to be mixed up, albeit in varying proportions. To attempt to draw boundaries so as to produce sets of viable Catholic (or for that matter Protestant) local authority areas would not be practicable - particularly when it is remembered that what is under consideration is local authorities adequate in geographical size, population and resources to provide major local government service. Belfast itself is an instructive example: the city as a whole can be regarded as a viable local government unit, comparable in size etc. with a London (or Metropolitan) Borough Council; the predominantly Catholic part of West Belfast is far from being so.

18. Moreover the attempt to redraw local government boundaries to this end would be represented as blatant gerrymandering. Nor would such a course assist the large number of Catholics who live in areas where the two communities are evenly divided or where the Protestants form the majority, and it would be bitterly resented by the Protestants in the Catholic-dominated areas. Finally, it would encourage all councils, whatever their complexion, to regard themselves as legitimately sectarian bodies, and so would run counter to the long-term objective of removing barriers between the two communities.

Another way that has been suggested of using local government
organisation as a way out of the dilemma about the distribution
of power would be to create regional councils in which majority
rule would prevail, but with Catholics forming the majority in
at least one of them. Thus one might consider having three
Councils - East of the Bann, West of the Bann, and Belfast -
which could take on functions such as education, social services
and roads. On the basis of 1977 figures, the distribution
between the communities would be:

	West	East	Belfast	Total
Catholic	263,000	160,000	138,000	561,000
Protestant	187,000	502,000	273,000	962,000
TOTAL	450,000	662,000	411,000	1,523,000

Thus while the Catholics would have a narrow majority West of
the Bann, over half the minority community in Northern Ireland
would be living in regional council areas where Protestants had
the majority. Such a system would therefore be unlikely to commend
itself to the minority community and would also run up against the
fears of discrimination mentioned in para. 15. It would thus
bring little political advantage while having all the practical
administrative disadvantages of creating more than one elected body
referred to in the Government's original Working Paper.

Conclusion

20.   This paper sets out various fall-back options that might
be considered in the event of failure to reach agreement on the
basis of the Proposals Document. None is free from considerable
drawbacks and uncertainties. A choice among them would to some
extent depend upon the circumstances in which consultations with

the parties had broken down. Before any option could be
recommended, a good deal more work would be required in order
to work it up into a viable proposition.