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CABINET

THE GOVERNMENT OF NORTHERN IRELAND: PROPOSALS
FOR FURTHER DISCUSSION

Memorandum by the Secretary of State for Northern Ireland

1. The Conference on the Government of Northern Ireland, which was held in Stormont from 7 January to 24 March, adjourned so that Her Majesty's Government could prepare proposals for further discussion with the political parties in Northern Ireland regarding the future government of Northern Ireland: I now attach for approval by the Cabinet a draft document for publication setting out the Government proposals.
2. Publication of this document constitutes the next stage of development of our policy described in The Queen's Speech as:

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

The policy embodied in the draft document is to seek an "acceptable way" between the opposed objectives of the two communities in Northern Ireland through mechanisms of government that effectively assure both communities a share in the exercise of power and decision taking. Part III of the draft document sets out two alternative approaches (summarised in paragraph 3.42) to that central issue, each with the object of sharing power between representatives of the two communities. The first approach would give any party represented in the elected Assembly, and winning a certain proportion of the popular vote, a seat or seats on the Executive. The second approach, while not guaranteeing seats on the Executive to the minority, would balance the power of the Executive against that of a Council of the Assembly on which minority representatives, though constituting the Opposition, would have a prominent place.

3. Following preliminary examination by a group of Ministers under the chairmanship of the Home Secretary (MI3C 24) an earlier version of the draft was considered by the Defence and Overseas Policy Committee (OD) on

10 June. The Committee, while recognising the numerous difficulties in the way of attaining our objective, took the view on balance that the proposals represented the best basis on which to conduct the further discussions.

4. The Committee expressed concern on two aspects of the drafting of the document. The first was that its tone was negative in relation to the continuing position of Northern Ireland as part of the United Kingdom. Detailed amendment of paragraphs 2.10 to 15 of the draft has I believe removed any ground for misapprehension on that score, while retaining the reassurances which the minority community will need regarding the legitimacy of their long-term aspirations and the need for close Anglo-Irish relationships.

5. Second, the OD Committee stressed the need to consider the text of the paper carefully in relation to possible implications for Scotland. With this aspect in mind I have revised various passages in Parts II and III, in consultation with the Secretary of State for Scotland, and I believe there is no continuing cause for concern on this score. Almost any proposals for devolution of power in Northern Ireland can be seen by those who look for them as offering precedents for Scotland; but I believe that it is sufficiently well understood that Northern Ireland is in a different category from the rest of the United Kingdom.

6. The point was also made in discussion at OD that if the proposals in the draft document were accepted it would be necessary to reconsider the level of Northern Irish representation at Westminster. Accordingly the revised draft includes (paragraph 3.39) a passage drawing attention to this point. However, I believe it would be a serious mistake to include any such passage in the published document. It would to my mind seriously jeopardise the reception of the proposals. The reaction of the Labour Opposition would be strongly hostile and it could put at risk bipartisan policy towards Northern Ireland. Some leading Official Unionists would use it as an argument for opposing the proposals on the ground that their preference was for the higher level of representation at Westminster. Other Unionists, including those in Dr Paisley's Democratic Unionist Party, would see it as undermining proposals which the Government had been urging them to take seriously; and their anxieties on this score would be compounded if, as is likely, a hint of reduced Northern Ireland representation at Westminster was welcomed by representatives of the minority community, and by opinion in the Republic of Ireland, as an indication of the loosening rather than the strengthening of ties between Northern Ireland and Great Britain. For all these reasons my recommendation to the Cabinet is that, at this stage in the development of our policy, the question of Northern Ireland representation at Westminster should not be publicly reopened.

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7. As regards timing, I recommend publication as soon as possible - probably on Tuesday 1 July. Early publication will satisfy the expectation that now exists and end speculation regarding the Government's proposals. It will make possible an early Parliamentary debate linked with the Motion to approve the extension of direct rule in Northern Ireland, which must be passed before 16 July. This arrangement is not in all respects ideal. We are now approaching the Northern Ireland "marching season" during which there is an increased risk of extreme partisan reaction from Northern Ireland politicians. We should need to do all that we can, at and after the time of the publication, to counteract that risk. If, however, we delay publication until that period, and the Northern Ireland and Great Britain holiday seasons, are over, we risk a loss of political momentum as well as losing valuable weeks that we need for finalising our proposals and preparing the necessary legislation.

8. I invite my colleagues

- i. to approve the draft document, subject to any further minor drafting amendments;
- ii. to agree to its early publication, probably on Tuesday 1 July.

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Northern Ireland Office

20 June 1980

THE GOVERNMENT OF NORTHERN IRELAND:
PROPOSALS FOR FURTHER DISCUSSION

1. INTRODUCTION

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

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

1.3 The principles set out in the Working Paper were:

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

- (ii) In the words of the Statement of 25 October*, there will have to be "reasonable and appropriate arrangements to take account of the interests of the minority". Those arrangements will have to be acceptable to both sides of the community and also to Her Majesty's Government. The political divisions of the people of Northern Ireland are such that the alternation of the parties in government which is so important a feature of the Westminster system is unlikely to take place. In the Government's view it is essential for a transfer of powers to be made in a way which will take account of the interests of both parts of the community.
- (iii) Under any new arrangements, existing safeguards and remedies against discrimination on religious or political grounds should be at least maintained, and, if possible, improved.
- (iv) Responsibility for defence and foreign affairs (including relations with the European Community) will remain with the United Kingdom Government and Parliament, as will responsibility for the courts and electoral matters.
- (v) In the foreseeable future, given the Government's overriding commitment to combat terrorism, responsibility for law and order will also remain with Westminster.
- (vi) The general power to raise revenue by taxation will remain with Westminster; but this would not rule out the possibility of a local power to levy a rate.
- (vii) Public expenditure in Northern Ireland will continue as at present to be assessed on the basis of need, and to be financed with support as necessary from the United Kingdom Exchequer."

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

* Statement by the Secretary of State for Northern Ireland in the House of Commons on 25 October 1979 announcing the Government's intention to convene a conference of the principal political parties in Northern Ireland (Official Report, Cols 625-6).

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of the Working Paper.

1.5 The Secretary of State has also had separate but parallel discussions with some of the Northern Ireland political parties on matters outside, but relevant to, the subject matter of the Conference. These talks enabled the parties who took part in them to inform the Secretary of State, and through him the Government, of their views on security and economic (including EEC) issues.

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

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

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II NEW ARRANGEMENTS: THE WIDER CONTEXT

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

peace, in particular from terrorist violence; and reconciliation;

stability, in the sense of a settled framework of government, to provide a base for economic reconstruction.

2.2 These needs interlock. One shortcoming can reinforce another; and conversely progress in one direction enhances the prospects for overall advance. Any new arrangements must recognise that the need to counter terrorism and the need for reconstruction in Northern Ireland are matters of overriding concern to the people of Northern Ireland, and that each interacts with the need for political advance.

The Security Background

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

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

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

The Financial and Economic Background

2.5 The social and economic difficulties of Northern Ireland are already recognised by the Government. Public expenditure per head is 35 per cent above that in Great Britain, placing a considerable and rising cost on the taxpayer. In 1979/80 public spending in Northern Ireland was some £2,600 m., of which only about 56 per cent was financed from local sources.

2.6 There are implications here for the form of new arrangements for government in Northern Ireland. There is as yet no prospect of a Northern Ireland administration self-sufficient in financial resources. A new administration in Northern Ireland will have to be involved in deciding how best the public funds available to Northern Ireland shall be spent. At the same time the Secretary of State will continue to play a prominent part in determining Northern

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Ireland's share of UK resources. The precise relationship with the Secretary of State will be determined by such factors as whether or not spending on transferred matters is to be funded by a block grant from Westminster; whether such a grant should cover those services administered on the basis of strict parity with Great Britain; and by the kind of guidelines or controls that would be required over the administration's spending or resource allocation.

Reconciliation and Stability

2.7 To underpin peace, reconciliation and reconstruction, Northern Ireland needs workable and stable political institutions. For over a decade now the province has suffered uncertainty about the future. For much of that time it has been administered by a temporary system of "direct rule" from Westminster, which has made the Secretary of State directly responsible for virtually all the functions commonly exercised by both central and local government. Though "direct rule" has performed a vital task over the past 8 years and has achieved general acceptance in the province, it leaves no incentive for people in Northern Ireland to seek responsibility through politics and generally stifles local political initiative. Moreover for a part of the UK which has had a recent tradition of its own legislature and separate administration linked to it, it is only second best and not a permanent answer.

2.8 The key to stability in Northern Ireland is the healing of the divisions between the two communities. New institutions of government which the minority community cannot accept as its institutions will not bring stability and so will not be worth having. It must therefore be in the interests of the majority community, desiring as it does stability and the fruits that this

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can bring, to accept institutions that offer opportunities of participation to the minority. Equally it must be in the interests of the minority community, given institutions which afford its members opportunities of participation and safeguards against discrimination, to join wholeheartedly in making those institutions work.

2.9 What Her Majesty's Government can do in this is limited. It can create, with the help of representatives of the two communities, fair and workable institutions. But governments cannot create the will to make the institutions work: that will to work together must come from the people of Northern Ireland themselves. In asking themselves whether they are prepared to make that effort, they should weigh carefully all that is at stake.

2.10 Political stability in Northern Ireland has in the past been impaired by the difference in view among many members of the two communities regarding the long-term future of Northern Ireland: whether the link with the United Kingdom should be preserved or the Province be united with the Republic of Ireland.

2.11 In accordance with section 1 of the Northern Ireland Constitution Act 1973, Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom and in no event will Northern Ireland or any part of it cease to be part of the United Kingdom without the consent of the majority of the people of Northern Ireland. The principle of consent is the only possible framework within which both those who wish to maintain Northern Ireland's present status within the United Kingdom and those who aspire to Irish unity can pursue their own objectives by legitimate and peaceful means.

Statutory provision exists for the wishes of the Northern Ireland electorate to be tested at intervals by a "border poll", and successive Governments have made it clear that those wishes, whether to remain part of the UK or to cease so to be, will be respected. A substantial majority of the people of Northern Ireland at present wish it to remain part of the UK.

2.12 It follows that the continued position of Northern Ireland within the United Kingdom is not something which the Government could use as a bargaining counter in order to secure agreement to a particular form of political institution. New arrangements for transferring some responsibility to the people of Northern Ireland for the conduct of their own affairs must be sought on the basis of the shared interest of both communities in developing a stable, peaceful and prosperous country.

2.13 Thus the development of new political arrangements in Northern Ireland must rest on these foundations: the majority community should be confident that Northern Ireland cannot be separated from the rest of the United Kingdom without the consent of a majority of its people: the minority community should accept and respect that fact; and in response the majority should ensure a positive role for the minority community in arrangements for the government of Northern Ireland. And it is in the interests of both communities to recognise and develop the links that exist between Northern Ireland and the Republic of Ireland.

2.14 In the words of the communique issued after the meeting on 21 May between the Prime Minister and the Taoiseach, there is a

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unique relationship between the peoples of the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland, and a need to further this relationship in the interests of peace and reconciliation. We share bonds of history, culture and language; there is a mutual economic and trading interest, enhanced by our common membership of the European Community; and there is a close geographical inter-relationship, recognised in the existence of a common travel area and illustrated by many centuries of the movement of people and of trade across the Irish Sea. The ties between us are close. And with those ties comes a mutuality of interest. Each territory is inescapably affected by events and developments in the other.

2.15 Division and dissent in Northern Ireland put all these relationships between the United Kingdom and the Republic of Ireland under strain. New arrangements for the government of Northern Ireland which secured the support of both communities for a system in which both communities fully participated would benefit us all and encourage the growth of a new and deeper relationship between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland.

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III PROPOSALS FOR FURTHER DISCUSSION

3.1 In this part of the Document the Government sets out in detail proposals for transferring to locally elected representatives some of the powers of government now exercised from Westminster under the arrangements for direct rule. The proposals are summarised in paragraphs 3.40-42.

3.2 In a number of respects it is possible, in the light of the Conference and other discussions since the Working Paper was published, to see a form of locally elected administration which would meet the exceptional circumstances of Northern Ireland. But as regards one crucial issue - how provision should be made for the participation in government of representatives of the minority community - the way ahead is not clear: and on this aspect rests the acceptability of any scheme as a whole. The features which would be appropriate whatever the arrangements made for the participation of the minority community - the outer framework - are described in paragraphs 3.3 to 3.13. The options which might meet the requirement as regards the participation of the minority community are described in paragraphs 3.14 et seq.

The Outer Framework

3.3 First, there should be a transfer of powers of government in Northern Ireland to an administration based on a single province-wide elected Assembly. The desire for a transfer of powers comparable in scope (though not necessarily identical in detailed arrangement) with the 1920 and 1973 constitutions is widely expressed. There was general opposition among the parties who took part in the Conference to a transfer of powers and functions on the lines of local government in Great Britain.

The creation of more than one sub-provincial assembly would entail expense, disruption and confusion. Northern Ireland can and should be regarded for governmental purposes above the level of the district councils as a single entity.

The restructuring of local government consequent upon the Report of the Review Body on Local Government in Northern Ireland 1970 (the Macrory Report) took place in 1973. It was an inherent part of the post-Macrory structure that a Northern Ireland Assembly would constitute a single top tier authority of democratic scrutiny and control of services to be managed henceforth on a province-wide basis. Local differences and needs can be catered for where appropriate by special arrangements in the administration of particular services.

As regards the size of a provincial Assembly, past experience in NI and the needs of adequate representation suggest that it could appropriately contain about 80 members.

3.4 Second, in the light of the special political considerations that apply in Northern Ireland, the method of election to the Assembly should be the single transferable vote form of proportional representation. This method is familiar and well-established in Northern Ireland, having been used since 1973 for all elections except those to Westminster. There is no sufficient reason to depart from it now.

3.5 Third, a new Assembly and the Executive body derived from it should have responsibility over a range of subjects broadly similar to that transferred in 1973 (ie principally agriculture, commerce, education, employment, environmental matters including housing, health and social services) although there might be a

need for some changes to take account of subsequent developments. A transfer on this scale would enable the existing administrative machinery of the Northern Ireland Departments now under the direct control of the Secretary of State to come under the control of the new body, which would thus be able to make a concerted effort to tackle the distinctive problems afflicting the province after years of unrest.

3.6 Fourth, the Secretary of State for Northern Ireland would continue to be wholly accountable to Parliament at Westminster for the responsibilities and functions which he will continue to exercise. These would be those reserved and excepted matters, notably law and order, for which he would be directly responsible and the consideration of the total Northern Ireland public expenditure requirement, in consultation with members of the Northern Ireland Executive and in the context of United Kingdom expenditure programmes. The Secretary of State would need means to ensure that actions of the administration in the transferred field did not jeopardise the exercise of the Government's responsibilities in the reserved or excepted fields (eg to ensure that the UK's international obligations were observed).

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3.7 Fifth, the Secretary of State would convene under his Chairmanship representative leading members of the Assembly as an advisory council for consultation on those matters for which he will remain ministerially responsible and accountable to Parliament.

3.8 Sixth, the Assembly should have power as in 1974 to legislate on transferred matters. The political parties in Northern Ireland have expressed a desire for legislative powers to be exercised again locally rather than at Westminster. Past tradition and practice and present needs point in the direction of transferring legislative power. From 1921 to 1972 (and again during the short life of the 1974 NI Executive) there was a separate legislature at Stormont. For the past eight years the practice of separate NI legislation has been maintained through an Order in Council procedure precisely to enable a local legislature to resume the function as soon as devolved government was restored; and ^{there is over} a wide range of subject-matter there is a separate corpus of statute law for NI.

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3.9 Moreover the existing administrative institutions in NI are designed to service a local system of government with corresponding legislative powers. For all these reasons the Government concludes that it would be appropriate to confer legislative as well as executive powers on a NI Assembly.

3.10 Seventh, the executive direction of the Northern Ireland Departments would be the responsibility of individual members of the Assembly, acting as Heads of the Northern Ireland Departments. (The form of the Executive, comprising the individual Heads of Departments and the Chief Executive, is considered in paras 3.14 et seq).

3.11 Eighth, there should be Departmental Committees of the Assembly. Irrespective of the form which the Executive may take, there will be an important role for Committees formed of elected representatives of all significant parties to scrutinise the actions of the Executive and offer advice to the administration. The powers of the Committees, which could between them cover all the NI Departments, could include: calling for papers and persons; scrutinising Departmental policy including the Departmental estimates; holding hearings on proposed legislation; and taking the committee stage of measures not taken on the floor of the Assembly. They might also have allotted time in the Assembly for debating their

own proposals for legislation. Their Chairmen (and perhaps Deputy Chairmen) might be salaried and, together with the members, could be either proportionately representative of the Assembly as a whole or equally distributed between the parties supporting the Executive and the opposition. The choice would be determined by the method of selecting the Executive (see paras. 3.14 et seq).

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

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

How should the Executive be formed?

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

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

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

3.17 In their proposals sent to the Prime Minister in December 1979, the UUP advocated a form of devolved government with a Cabinet system of administration formed by the leader of the largest group of members returned to the Assembly.

3.18 Thus the 4 parties are far from agreeing on the crucial question how arrangements are to be made in a new system of administration for the involvement of representatives of the minority community. They will need significantly to narrow the difference between them if the Government is to be able to introduce in the next session of Parliament legislation which would transfer substantial powers back to elected representatives of the people of Northern Ireland. The Government is resolved to pursue its efforts to find a basis on which a generally acceptable system could be established, and in this paper offers suggestions for the involvement of the representatives of the minority community for further discussion and negotiation.

Provision for Minority Participation

3.19 The announcement (25 October 1979) of the Government's intention to prepare proposals for transferring powers of government in Northern Ireland to locally elected representatives spoke of the need for "reasonable and appropriate arrangements to take account of the interest of the minority".

Enlarging on this theme para 5(ii) of the Working Paper said:

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

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

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

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that this system meets the political needs of GB well, and it is common to many political systems elsewhere in the world.

3.22 The special features of political life in Northern Ireland mean that application there of the majority rule system would be almost certain to put control of the administration in the hands of representatives of the majority community permanently. This is not inevitable; in certain circumstances representatives of the minority community could gain places in the administration - a party or parties representing elements in the majority community might choose to form a coalition administration with minority representatives. But given the present basis of political party allegiance in Northern Ireland, that is an unlikely outcome of any election. It is far more probable that the representatives of the minority community would be, as they were between 1921 and 1972, in the minority in any elected Assembly with representatives of the majority community unwilling to form a coalition with them. The majority rule system would therefore in practice exclude them from the Executive.

3.23 This consequence of applying the Westminster system in the NI context makes it vital, in HMG's view, that any scheme for the government of Northern Ireland should, while retaining the support of the majority community, depart substantially from the Westminster model. Two alternative approaches to the involvement of the minority in government are set out below. Each is intended to

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

3.24 Either of these methods of securing minority participation in government will seem strange judged by conventional Westminster criteria. But the political situation in Northern Ireland is itself unconventional in some crucial respects. First, there is the absence already referred to of the normal prospect of alternation of parties in power; the likelihood is that the parties representing the minority community will constitute a permanent political minority in permanent opposition. Next, what chiefly distinguishes the Northern Ireland political parties from one another is their attitudes to the question of the constitutional status of Northern Ireland - a matter which will be outside the competence of a devolved administration. The range of responsibilities likely to be transferred at the outset to a Northern Ireland administration, though of substantial extent (see para 3.5 above), has not in the past given rise to great ideological differences on socio-economic

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

Responsibility Shared within the Executive

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

3.26 There are various ways of providing for an Executive along these lines to be formed. One way would be by direct popular election, thus preserving the primacy of the ballot box. Simultaneously with the election of the Assembly the electorate would be asked to vote separately (and by a system of proportional representation on a province-wide basis) for candidates for the Executive. Direct election in this way would ensure that each member of the Executive owed his place to support in the province as a whole.

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

3.28 These are means of achieving an Executive in which all significant viewpoints are reflected and which, therefore, should be capable of undertaking its tasks with the support of both communities. The key consideration is this. If, as HMG is disposed to believe, adoption of a system which ensured that the minority community had places on the Executive would crucially affect the attitude of the minority towards acceptance of the political institutions of Northern Ireland, then that constitutes a powerful reason why the majority community should put aside its misgivings - understandable though these are - and accept a system of a proportionately constituted Executive. The prize to be gained, in terms of the cohesion of Northern Ireland and the prospects for reconciliation and reconstruction, could be a rich one. All sections of opinion in Northern Ireland should therefore consider carefully and with an open mind whether a proportional system of government would not be the best way to unite both sides of the community in support of new political institutions.

3.29 That said, HMG must also acknowledge and indeed stress that no system of this kind could work without the clear support of the two communities in Northern Ireland, agreeing to its establishment and voting in elections for candidates ready to observe the spirit of reconciliation in a common task. It could not be imposed if a majority of the members of the new Assembly were opposed to the very essence of the system.

3.30 The reasons for this are simple. Any political system based on democratic lines depends on the majority of elected members supporting the existence of the system. For suppose a proportional system were established but a majority of members in the new Assembly were committed to opposing that system. Members of the minority parties would, under the constitution, be entitled to seats on the Executive, and to take charge of Northern Ireland Departments. But they could be rendered powerless. The majority would control the Assembly and would be in a position to vote down all proposals from minority members of the Executive. Indeed in the last resort the majority might even be able to use their power to transfer all significant functions from the Departments under the control of the minority members to those controlled by themselves.

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

Responsibility Shared within the Assembly

3.32 An alternative approach, while not giving the minority community any guarantee of seats in the Executive, would involve them in government by some other equally adequate means. For the minority community, seats in the Executive have come to assume a symbolic importance and they are understandably reluctant to acquiesce in a system which they fear would place their representatives in a position of permanent and powerless opposition in the Assembly. Nevertheless, HMG believes that the holding of Executive seats is not the only way for minority representatives to participate in and influence the process of government in both the legislative and executive forms. Genuine opportunities for such participation are provided in the following very different approach to the decision-taking process in government.

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

3.34 One possibility sometimes mooted would be to require that the Chief Executive, when he had appointed the members of his team should obtain the support not merely of a simple, but of a weighted, majority in the Assembly. This would oblige him to obtain some support from minority representatives. However, if such support could only be obtained at the price of allowing the minority to participate in the Executive, then either stalemate would result (because the majority parties declined to share power in that way) or (if the majority parties did agree) the problem of minority participation in government would have been

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solved - in which case the proportional Executive system set out in paras 3.25 to 3.31 above would probably have been acceptable. Either way this possibility does not appear relevant for the present purpose.

3.35 The problem is to devise a way in which, without the minority parties being represented directly in the Executive, they can, while formally in "opposition", share responsibility for the administration sufficiently to satisfy themselves that the interests of the minority community are adequately reflected in the decision of government. To achieve this it becomes necessary to create a novel institution in which powers may be vested in order to serve as a balance against those to be exercised by the Executive; but to do so in a way which would secure a constructive relationship and avoid deadlock.

3.36 It has already been suggested (in paragraph 3.11 above) that there should be Departmental Committees of the Assembly with a range of powers. These Committees would not themselves be appropriate bodies to fulfil the role of the new institution now needed; but if the chairmanships and deputy chairmanships of those Committees were allocated equally between Assembly members of those parties supporting the Executive and those opposing it (as would be desirable anyway since these Committees would be designed to scrutinise critically the activities of the Executive and the Departments) then those chairmen and deputy chairmen could together form a new body, the Council of the Assembly, with a chairman drawn from its membership but with no additional voting power. Composed in this way it would thus be equally divided between those Assembly members supporting and opposing the Executive, and to be effective any proposition on which it had to decide would have to attract 50% + 1 votes.

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3.37 The precise powers of the Council of the Assembly are for discussion. As a minimum it would have an advisory role, with the Executive required to consult it on certain occasions or topics, but with no requirement that the Executive accept that advice. This, however, would not be enough to bring about that involvement of the minority community in the task of government which is the objective, and if the minority is to possess real influence through their presence on it, it would need to have some or all of the following powers:

- (a) A power whereby the Council could delay legislation (though not Appropriation measures) for a certain period. Though of limited effect, this would focus public attention on anything to which the minority objected.
- (b) A power to refer proposed legislation back to the Assembly, or to refer proposed legislation or executive decisions, if considered to be discriminatory, to an outside appeals body of a judicial or political nature.
- (c) A provision requiring that, before being passed by the Assembly, all legislation and the public expenditure programme would require the Council's approval. This would give the Council a blocking power (since the 50% membership of the parties supporting the Executive would be insufficient to give approval). It is to be hoped that in practice such a power would never be used but that the possibility that it might be used would be sufficient to lead the two sides to an accommodation of any issue between them. However, in order to ensure that deadlock did not bring government to an unacceptable halt, this power would have to be made subject in the last resort to override by Order made by the Secretary of State, which could perhaps be subject to Parliamentary approval at *

3.38 The existence of such a Council would be an incentive to the Executive to frame and implement its policies by consultation and discussion among the principal parties in the Assembly and in the Committees of the Assembly so as to minimize intervention from the Council and avoid confrontation. The members of the Assembly, those holding office in the Executive and those holding office in the Departmental Committees, would have an interest in consulting together so as to achieve a high level of accommodation and co-operation. The salaried status of the Chairmen (and deputy Chairmen) of the Departmental Committees, the representation within their ranks of the minority community, and the formal powers of the Council of the Assembly composing all the Chairmen, and Deputies, should mark the effective involvement of the minority and secure it a powerful voice in the formulation of policy decisions about the government of the Province and in day-to-day administration. The Secretary of State might initially be required to act as arbiter and would have the formal powers to do so; but it would be in all the local parties' interests to develop conventions and procedures to avoid having to involve Westminster in the settlement of disputes.

Implications for Northern Ireland Representation at Westminster

3.39 There is one further question that is prompted by the proposals set out above. Ever since 1920 Northern Ireland has been represented at Westminster by twelve⁴ Members of Parliament. Over most of this period many aspects of the government of Northern Ireland were the responsibility of locally elected representatives at Stormont. In 1972 Stormont was prorogued and direct rule assumed. In 1978 a Conference under the Chairmanship of the Speaker of the House of Commons

⁴ Additionally, until 1948 there was one University Member.

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recommended that the number of Northern Ireland Parliamentary Constituencies should be increased to seventeen (with some discretion given to the Boundary Commission to vary the number to either 18 or 16). Effect was given to the recommendations of the Speaker's Conference in the House of Commons (Redistribution of Seats) Act 1979, and the Boundary Commission is currently at work revising the Northern Ireland constituencies. If once again an elected assembly were established in Northern Ireland with legislative and other wide-ranging powers, it would be reasonable to reconsider Northern Ireland representation at Westminster.⁷

Summary of Proposals for a Locally Elected Administration

3.40 The proposals for the outer framework (paras 3.3 - 3.12) and the options (paras 3.19 - 3.38) may be summarised as follows.

3.41 The outer framework would consist of:

- (1) a province-wide administration based on a single elected body of about 80 members;
- (2) PR(STV) would be the method of election;
- (3) the range of subjects to be transferred would be broadly similar to that transferred in 1973;
- (4) the Secretary of State for Northern Ireland would retain responsibility for reserved matters, such as law and order, and for the consideration of Northern Ireland's public expenditure programme in the overall UK context;
- (5) an advisory council would provide a forum for general discussion and consultation with the Secretary of State on those matters on which he remained responsible to Parliament;

- (6) the Assembly would be empowered to legislate on transferred matters;
- (7) individual Assembly members would be responsible for the executive direction of the NI Departments;
- (8) there would be representative Departmental Committees with extensive investigatory, scrutinising, advisory and legislative powers;
- (9) existing safeguards against discrimination would be at least maintained.

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

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administration of Northern Ireland. These might include powers to delay, refer back, or block the Executive's legislative and public expenditure proposals, and to refer discriminatory actions to an outside appeals body. To prevent exercise of these powers from bringing the process of government to a halt the Secretary of State would have a referee function with powers to override by Order.

CONCLUSIONS

4.1 It is not desirable to continue indefinitely with the system of "direct rule" as the means of governing Northern Ireland. The Government seeks therefore to bring about a transfer of responsibility for some of the powers at present exercised from Westminster to locally elected representatives, in accordance with the principles set out in its Working Paper for the Conference on the Government of Northern Ireland (reproduced in paragraph 1.3 above). The Government believes that the proposals set out in this document could secure such a transfer in a way calculated to meet the special needs of the people of Northern Ireland.

4.2 The Government now intends to embark on the fullest possible programme of consultation and discussion. If, in the event, it concludes that proposals along these lines would secure the acceptance of the people of Northern Ireland and the participation of their political leaders in their operation, it will bring forward legislative proposals before Parliament. In the absence of such acceptance, the Government would then explore other ways of making the government of Northern Ireland more responsive to the wishes of the people of Northern Ireland. Such alternatives could involve a progressive approach to the transfer of a range of powers to a locally elected Assembly, such as ^{that} mentioned in paragraph 6 of the original Working Paper for the Conference.

4.3 Her Majesty's Government urges all sections of the Northern Ireland community to give serious consideration to the proposals in this document bearing in mind the urgent need of the Province for institutions which will assist in the task of reconciliation and reconstruction. It is the Government's firm hope that thereby can be achieved a system of Government which the people of Northern Ireland will support.