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NORTHERN IRELAND

THE GOVERNMENT'S WHITE PAPER: A FRAMEWORK FOR DEVOLUTION

CONTENTS

1. INTRODUCTION

- (a) The Shortcomings of Direct Rule
- (b) Political Instability, Security and the Economy

2. DEVOLVED GOVERNMENT

- (a) Support for devolved government
- (b) The Position of the Ulster Unionists
- (c) The Main Features of the Government's Scheme

3. THE TWO COMMUNITIES

- (a) Division and Co-operation in Northern Ireland
- (b) Anglo-Irish Relations

4. THE CONSTITUTIONAL PROPOSALS IN DETAIL

- Includes:
- (a) Importance of new committee system
 - (b) Full and partial Devolution
 - (c) Conclusions: A Resilient Scheme

NORTHERN IRELAND

THE GOVERNMENT'S WHITE PAPER 'NORTHERN IRELAND: A FRAMEWORK FOR DEVOLUTION' (Cmnd. 8541)

1. INTRODUCTION

(a) Direct Rule

It is now exactly ten years since the final prorogation of the Parliament of Northern Ireland, known universally as the Stormont Parliament, through which the province was governed on the basis of majority rule for fifty-one years (1921-72). Since then, with the exception of five months in 1974 when the power-sharing executive held office, Northern Ireland has been run by politicians drawn exclusively from Great Britain and responsible to the Parliament at Westminster. Because the local parties in the province have their own separate organisations quite distinct from the main British parties, it is not possible for Northern Ireland politicians to hold office, like their counterparts in Scotland and Wales. The white paper draws attention to this major defect in the arrangements for direct rule which, as it states, 'provide no opportunity for Northern Ireland politicians to play a major part in the decisions affecting the province. It is notable that none of the Secretaries of State and Ministers of the Northern Ireland Office in successive Governments has been an Ulsterman' (para 6).

The only administrative functions which locally elected representatives are able to discharge fully are a very minor order. They are exercised through the 26 district councils in the province which, in a much-quoted phrase, can do little except 'sweep the streets and bury the dead'. Under a scheme of reform agreed by the Stormont Parliament before its prorogation, all the main local government powers were transferred to the devolved institutions, which thereby became in effect the top tier of local government.

The position for almost all the last decade, therefore, is that Northern Ireland has had an extensive system of devolved administration - much more extensive than Scotland or Wales - which was created and expanded to serve a devolved parliament that, in addition, also took charge of all the principal local government powers. That devolved administration is, under direct rule, responsible to the Parliament at Westminster: but Parliament cannot provide the kind of detailed democratic control and scrutiny that is required. In addition, native Ulstermen can play no more than a very limited part in the decisions taken under the devolved administration.

Direct rule does therefore have grave administrative and democratic shortcomings. In some ways, however it has worked well. It has provided fair, impartial and generally efficient administration. It gives serious offence to very few in the province: on both sides of the community it won acceptance. But it has not won enthusiastic

approval. Everywhere it is seen as a second best. Such a system, which has failed to inspire positive support, can hardly serve as the basis for a long-term settlement. Much legislation for Northern Ireland is dealt with cursorily. No British Government over the last ten years has regarded it as anything more than an interim or temporary answer to Ulster's political problems. If it is to be capable of providing lasting stability, a pattern of government must in our democracy be able to evoke more positive approval than direct rule enjoys.

The white paper puts the point forcibly in its second paragraph: 'Direct rule from Westminster has been accepted as a temporary arrangement. But it is not a long-term answer. As a result, there is a continuing uncertainty in the Province, which undermines its political stability'.

(b) Political instability, security and the economy

Furthermore, the political problem in Northern Ireland cannot be isolated, or set apart, from the other chief aspects of the crisis: security and economic decline. They all interact with one another, though that inter-action cannot be measured or quantified in details or with real precision. Some examples can, however, be given to indicate the connection between developments in one area and another. For instance, the riots and demonstrations which accompanied last year's hunger strike added around £12m to the total cost of police operations in the province. Damage done as a result of those same riots means that the Government has had to set aside £½m of the total public expenditure in the province in this financial year to meet the cost of repairs. All of that money could have been put to other, constructive uses. In addition, the Government has estimated that millions of pounds of fresh inward investment which might have come to the province was lost because of the spectacle of severe political instability and disorder presented by the province. Without sustained improvements on the security and political fronts, it will be difficult to make continuous progress towards alleviating the economic problems, whose best-known symptom is a rate of unemployment currently close to 20% (and there is 40% male unemployment in some areas) which means that over 100,000 in the working population are without jobs.

This message is spelt out clearly in the white paper which states in paragraph 3: 'political stability, economic recovery and the defeat of terrorism go hand in hand ... Political instability discourages the domestic investment so vitally needed ... There is a direct link between the creation of a durable and fair system of government and the ending of the violence'.

The lack of the fresh investment, which the province needs so badly, places an extra strain on public expenditure as well as damaging the standard of living. GDP per head of population is 77% of the UK average. Public expenditure in 1982-3 will be 40% higher per capita than in Great Britain (having risen by 7% since 1981-2). Total public expenditure has been fixed under current plans at £3.5 billion for 1982-3 (of which around 40% will come from Great Britain).

2. DEVOLVED GOVERNMENT

The second part of the white paper argues the case for a new form of devolved government, which will not be handicapped (as the Stormont Parliament was) by a failure to attract the full-hearted support of some sections of the non-unionist minority. To overcome this problem (which unsolved will render any new system highly unstable), the white paper emphasises the crucial importance of providing a clear, practical role for responsible action by the leaders of the minority. In this, the white paper takes exactly the same position as all previous official documents and policy statements produced by successive governments since 1972 which have emphasised the need of any new system to secure widespread acceptance in both communities. As the white paper states, adherence to that principle 'is no more than a recognition of the reality that in the special circumstances of Northern Ireland nothing else can provide stable government on a lasting basis' (para 13).

A new system of devolved government is the clear desire of the four main parties in Northern Ireland (Ulster Unionist, Democratic Unionist, SDLP and Alliance) which together command the support of eighty to eighty-five per cent of the electorate in the province. All four called for a return to devolved government in their manifestos at the 1979 electorate: and have frequently reiterated their manifesto commitments since then.

At the Stormont conference held in the early months of 1980 under the Chairmanship of the previous Secretary of State, all the parties once again backed devolution and rejected the alternatives to it. As the discussion paper, Proposals for Further Discussion (Cmd. 7950) published in July 1980 states (para 25):

'The desire for a transfer of powers comparable in scope (though not 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 Ulster Unionist party is sometimes described as at best lukewarm about devolution, and as seriously interested in the closer integration of Northern Ireland with Great Britain (to be secured partly by a new system of local government). It is certainly true that some elements in the party do favour integration, but they do not speak for the party as a whole which is firmly committed to devolution. In the second paragraph of its 1979 election manifesto, the position was set out unambiguously: 'For Northern Ireland our objective which we shall pursue unremittingly, remains the restoration of such a system of devolved government as will neither endanger the Union, nor confer contrived privileges on any section of the community'. In a detailed statement of policy submitted to Mr Atkins' Stormont conference in January 1980, the Ulster Unionists included 'a model for a devolved legislature and administration' which went into some detail about the

powers that should be devolved and the role of minorities (though it also contained a detailed plan for a new system of local government). At the party's annual conference last October, a protracted wrangle took place between the advocates of devolution and the proponents of integration. To paper over the cracks, a motion was eventually passed calling for enlarged powers for the existing district councils 'in a manner consistent with the return of a devolved parliament'. In response to this white paper, Mr Molyneaux has firmly commended the principle of devolution - as embodied in the report of the NI Constitutional Convention of 1975-6.

Any policy brought forward by the Government, which did not have devolution as its ultimate objective, could be open to grave objection since it would set aside the clearly expressed wishes of all the main parties (including the Ulster Unionists) whose support for devolved government has survived the last ten years practically undiminished. A different policy that made no provision whatsoever for devolution would have to be imposed on the local parties, whose own desires would be seen plainly to have been set aside. The Government's support for devolution in Northern Ireland, however, goes hand in hand with a firm commitment to the province's present constitutional position, as the white paper is at pains to point out. Recognition of electoral realities in the province 'in no way implies lack of support for the union between Great Britain and Northern Ireland; rather is it that Northern Ireland's experience makes the case for devolved government of a quite different order from that which might apply to any other part of the United Kingdom' (para 6). That different experience, and the survival of overwhelming popular attachment to devolution during the decade of direct rule, means that a very firm distinction can be made between Northern Ireland on the one hand, and Scotland and Wales on the other. As the referendums of 1979 made clear, the level of public support for devolution in Scotland and Wales is dramatically lower than in Northern Ireland.

In answer to a question in Parliament, the Secretary of State recently re-affirmed his belief that devolved institutions in Northern Ireland, far from weakening the Union, can serve to strengthen it. He said: 'I believe passionately that that is the case. Otherwise there will be continual erosion of Northern Ireland's position within the United Kingdom' (Hansard, 5 April 1982, Cols 701-2).

The Main Features of the Government's Scheme

While there is widespread support for the principle of devolution, all efforts since 1972 to translate it into practice in a new acceptable form have come to nothing because of the sharp division of opinion on the key issues of how power is to be exercised, and how the interests of both sides of the community are to be secured. Disagreement on those two issues prevented the Constitutional Convention of 1975-6, and the Stormont conference of 1980, from succeeding in their tasks of proposing plans for devolution that met the Government's criteria of fairness and acceptability.

These failures, and the continuation of disagreement among the local parties, have led the Government to construct the framework for devolution discussed in the white paper, and defined in its

Northern Ireland bill, which can evolve in accordance with local wishes, and at a pace set by local representatives. All the powers made available for devolution under the 1973 Constitution Act can be assumed by the new Assembly that is to be established in the autumn: or just a portion of them: or none of them. Yet, under these highly flexible plans, the Assembly through its powerful committee system will still have important work to do, even if it assumes no legislative and administrative powers in the early stages of its life. Furthermore, embodying as it does the concept of rolling devolution, this plan provides for the transfer of power back to the Secretary of State from the Assembly, to which it can be returned again as circumstances warrant.

3. THE TWO COMMUNITIES

The white paper devotes eleven paragraphs (14-24) to the very different characteristics and attitudes - referred to as 'the two identities' - which have tended to divide the two communities over the centuries. While pointing out that these differences 'cannot be ignored or wished away', it also emphasises the common ground that has been discovered in public bodies and voluntary organisations where co-operation has developed. Thus, the Government has to steer a delicate course, making due allowance for deep-seated differences but also promoting the cooperation that exists both with Northern Ireland and between the Irish Republic and the United Kingdom.

The existence of two divided communities means that majority rule, placing power almost entirely in the hands of the larger community, can never provide stable government or destroy the attraction of violence to some members of the community (para 19). The divisions in society ought not to preclude the minority's 'full participation in the public life of the State' (para 20). The Government's proposals therefore place on both communities an obligation to reach 'sufficient mutual respect' and 'accommodations' (rather than total agreement) before power can be transferred to locally elected representatives.

The white paper insists that 'this principle is both right in itself and unavoidable in practice; no system of government which is unacceptable to either side of the community will work effectively' (para 21).

In this section of the document, the significant improvements that have taken place in relations between the United Kingdom and the Irish Republic are also highlighted (paragraphs 23-4). This improvement can now be consolidated and extended through the medium of the Anglo-Irish Intergovernmental Council which was established in November 1981 (and whose first meetings have already been held). 'Close, friendly and practical cooperation' throughout the British Isles has been made a reality. The next stage is up to the two parliaments. It is for them to consider whether an Anglo-Irish parliamentary body should be created to act in conjunction with the Intergovernmental Council. 'The Government would expect the arrangements to enable members of the Northern Ireland Assembly to participate if they so wished' (para 23). At the same time a devolved government in Northern Ireland would be able to make its own arrangements with the Irish Republic on matters of common concern (just as previous NI Governments did).

4. THE CONSTITUTIONAL PROPOSALS IN DETAIL

(a) An Assembly of 78 members (the same number as in the 1974 Assembly and the Constitutional Convention of 1975-6) to be elected in the autumn under proportional representation by the single transferable vote (the method used at all elections in Northern Ireland since 1973 with the exception of Westminster). The elections will be held under existing legislation (section 29 of the 1973 Constitution Act), employing the existing twelve Westminster seats as multi-member constituencies (not the new 17 seats which have not yet been formally established).

(b) Powerful Committee system which will operate from the outset along the lines of the new select committee system at Westminster (itself one of the achievements of this Government). Like their counterparts at Westminster, the committees will be related to the departments of the Government of Northern Ireland (now in process of reorganisation, which will reduce their number from eight to six). Each committee will have a salaried chairman, and up to two salaried deputy chairmen. The interests of both sides of the community will be safeguarded: for the balance of parties in the Assembly will be reflected in the composition of the chairmen and deputy chairmen, taking each group as a whole (see Northern Ireland Bill, section 5(2)). The committees will make reports to the Assembly, and in some cases to Westminster via the Secretary of State:

'Ministers and their departments will co-operate closely with the Assembly and its committees, although the Assembly will not have a formal power to summon Ministers responsible to Parliament, or their officials, or have access as of right to departmental papers' (para 36).

Such an elaborate committee system has never previously existed in Northern Ireland. It will therefore break entirely new ground. It follows the important precedent created at Westminster, as a result of the changes in the select committee system introduced by the Government. It therefore represents an elaboration and extension of an important Conservative achievement.

(c) Other Functions of the Assembly. It will be able to debate, vote and report on any matter available for devolution under the 1973 Act, which under direct rule is in the hands of the Secretary of State. It will also be able to express a view about legislation for Northern Ireland, both as regards the underlying principles and the detailed content (see paragraphs 34-5).

(d) Progress towards Devolution. Whether or not there is to be progress will be decided entirely by the Assembly. In this respect, these proposals differ sharply from the procedures which operated in 1973-4 (which left the Secretary of State to decide how power-sharing could be achieved). The Assembly will be able, at any time it so chooses, to propose to the Secretary of State either full-scale devolution or (if it prefers) the devolution of just some of the powers that are available for devolution (see para 39).

'The Government is not committed to, and does not favour, any particular arrangements' (para 42). What it has done is to lay down the essential principles that must be observed, and to devise certain very clear criteria that must be met before devolved powers can be transferred to the Assembly.

(e) Criteria for devolution. These criteria are readily intelligible and free from ambiguity. A full description can be found in paragraph 43. The main points were summarised by the Secretary of State as follows:

'If the Assembly sends to the Secretary of State proposals which have the support of 70% of the total membership of the Assembly, he will be required under statute to lay those proposals before Parliament for its consideration. He would also have discretion to present to Parliament proposals which did not command 70% support but which in his view enjoyed the support of both sides of the community in Northern Ireland' (Hansard, 5 April 1982 Col 692)

(f) Partial Devolution. No previous scheme for devolution in Northern Ireland made provision for the transfer to the Assembly of responsibility for the executive and legislative activities of individual government departments either singly or as a group. Under these proposals, one or more NI Departments (except for the Department of Finance and Personnel) could be devolved (with members of the Assembly taking over as ministers) while the remainder stayed under the control of the Secretary of State. All the affairs of such departments would then come under the Assembly within a dual system in which ministers responsible to Westminster and ministers responsible to the Assembly would both work. If such a system ceased to command the support of the Assembly, the dual arrangements would end and the devolved powers would roll back to the Secretary of State (see paragraphs 45-8).

(g) Full Devolution. This is the ultimate objective of these proposals. If and when cross-community support for a complete devolved government is achieved, a Northern Ireland executive consisting of not more than thirteen members will be appointed. All other matters relating to its composition and modus operandi will be settled by the general inter-party agreement on which the whole scheme depends (see paragraphs 51-2).

Conclusions. The proposals do not have to achieve complete success in their entirety in order to improve the government and administration of Northern Ireland. They may succeed in part or as a whole. If they succeed in part, such limited success will do nothing to hamper further achievements later on: on the contrary, it may well be a necessary stage on the road to the full implementation of this major constitutional reform. On the other hand, partial or full devolution can be tried and (if things go wrong) can fail without jeopardising the scheme as a whole. Further attempts can then be made when the time seems ripe. Therefore just as the scheme can survive less than total success, so it can also, if necessary, come to terms with failure particularly where devolution is concerned without the kind of dramatic upheaval which could destroy the whole operation.

Commenting on the scheme's prospects of survival, the white paper states (para 62): it is 'designed to be resilient so that strains and even reserves can be accommodated within the constitutional arrangements.

The Government hopes that the framework will enable the political parties in Northern Ireland to establish a basis of respect and confidence in each other on which political life there will develop'.

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