

From: THE PRIVATE SECRETARY

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NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

John Coles Esq
Private Secretary
10 Downing Street
LONDON

31 May 1984

Prime Minister.

You may like to read
this. A.S.C. 75.

Dear John.

... I attach a copy of the paper on administrative devolution - "The Way Forward" - prepared by a Committee of the Ulster Unionist Party.

I understand Mr Prior referred to this when he saw the Prime Minister this morning, and in particular, to its recognition of an Irish dimension. This is sidelined.

Yours ever,

J M LYON

Encl

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**Devolution
and the Northern Ireland Assembly**

THE WAY FORWARD

a discussion paper

presented by

**the Ulster Unionist Assembly Party's
Report Committee**

THE WAY FORWARD

THE NORTHERN IRELAND CONTEXT:

In considering any proposal for the devolution of any degree of power to an elected Assembly in Northern Ireland, it is necessary to examine the basic factors.

The present system of direct rule is the subject of justifiable criticism in that it is often inaccessible to local opinion, insensitive to local views, and politically unaccountable to the Northern Ireland electorate. The most basic services such as health, education, housing, and the environment, which matter so much to every citizen, are the subject of no real democratic control. The essential services, as well as others, are administered by the civil servants of the relevant departments of the Northern Ireland Office who are answerable only to the Secretary of State for Northern Ireland and his team of junior ministers. Delay in decision making and consequent frustration are the inevitable result when bureaucrats are not accountable to any electorate. The entire Northern Ireland community would benefit from the introduction of local democratic control over the administration of Northern Ireland.

The Ulster Unionist Party has viewed the Government's reluctance to at least restore this degree of democracy as some evidence of its unwillingness to treat its citizens in Northern Ireland on an equal footing with those in the rest of the United Kingdom. There is a universal desire among the majority of people in Northern Ireland for the devolution of power at least in these areas of local administration.

The Government of the United Kingdom has repeatedly asserted two essential principles for the devolution of power in Northern Ireland. The first is that no major constitutional reforms or changes should be carried out without "widespread (i.e. cross community) acceptance" in Northern Ireland. Such acceptance is considered a necessary pre-condition for political stability. The second is that Northern Ireland will remain an integral part of the United Kingdom, as any change of sovereignty would be strenuously opposed by the majority of the citizens of Northern Ireland. It is the conflict of these two principles that effectively bars, at least for the present, any return to devolved government on the Stormont model. The representatives of the minority community have repeatedly refused to give their consent to devolution upon the principle of majority rule while their counterparts have, just as adamantly, refused to countenance compulsory power sharing.

The basis of this conflict lies in the ultimate political aspirations of the two communities and in their sense of national and political identity and the allegiance that goes with it. The aspiration of the minority community is the incorporation of the territory of Northern Ireland into the State of the Republic of Ireland. The majority community is equally determined to maintain the position of Northern Ireland as an integral part of the United Kingdom. If Northern Ireland is to have a devolved government with legislative and executive powers on the Stormont model, with the government being drawn from the party or coalition of parties having a majority, this would almost certainly be 'Unionist' in character. Its overwhelming political objective would be the maintenance of the Union. Such an arrangement would

logically preclude power sharing with those whose aspiration is a United Ireland. Conclusion 2 of the Report of the Northern Ireland Constitutional Convention states "That no country ought to be forced to have in its Cabinet any person whose political philosophy and attitudes have revealed his opposition to the very existence of the State".

This underlines the logic of the anti-power sharers in these circumstances and the argument is difficult to refute.

So long as the two incompatible principles of cross-community consent and the desire of the majority to maintain the Union exist there is no immediate prospect of devolved power on a legislative and executive basis. The majority will not accept the power sharing principle which they believe would be utilised as a platform for unification, while the minority representatives are, in any event, presently not interested in power sharing but solely in the withdrawal of the British guarantee of the constitutional position and the creation of a framework for All Ireland institutions. The present object, therefore, of those parties committed to devolution must be to obtain control of such powers as are not necessarily inconsistent with the two communities continuing to maintain their diverse constitutional policies.

The present scheme for "rolling devolution" under the 1982 Act fails to recognise this conflict and abdicates responsibility for government by stating to the contending communities that such power as there is agreement upon will be devolved, when patently agreement is the one thing that cannot be found. Even those parties who believe, after almost two years of suspended animation, that there is value to be found in the Northern Ireland Assembly's Stage I scrutinising role, are in such profound disagreement over majority rule and power sharing that there is no prospect even among them of obtaining any agreement.

The SDLP, as part of their strategy for a United Ireland, refused to enter the Assembly and this effectively spelt its death knell in its present form since, without the SDLP, the widespread cross community support necessary for devolution could never be available. The insertion of the widespread consent principle has given the SDLP an absolute veto on the Assembly's progress. This abstentionist policy, while successful in paralysing devolution, has also handed to Provisional Sinn Fein the opportunity to seriously weaken the SDLP's claim to represent the minority community. This increase in strength by Provisional Sinn Fein has made it virtually impossible for the SDLP ever to enter the Northern Ireland Assembly in its present form. "Rolling devolution" has come to a dead stop and is rapidly sinking over the axles.

The Ulster Unionist Party considers that the Forum for a New Ireland will fail to provide any basis for significant change in British constitutional policy towards Northern Ireland. It will then be necessary for minority representatives to consider participation in the democratic institutions in Northern Ireland on the basis that any realisation of their unity aspirations would be so long term that they should be prepared, for the foreseeable future, to serve their electorate within Northern Ireland and to combat Provisional Sinn Fein on the ground. In these circumstances, every effort should be made to provide for a devolved administration in Northern Ireland in which majority and the minority representatives can participate without prejudice to their position on the constitutional question. The Ulster Unionist Party feels that this can best be done on the basis of devolving those administrative and functional powers which are enjoyed at local government level in other parts of the United Kingdom.

The 1982 Assembly Act and the concept of rolling devolution are only the last of a series of political initiatives which have failed because the Government did not recognise that Northern Ireland politicians cannot deliver agreement upon issues unless they have a mandate from their electorate. Successive governments have constructed ambitious schemes for settlement which failed to consider the accountability of Northern Ireland's politicians to their own people. The Ulster Unionist Party, in putting forward this document for discussion, is proposing a policy whereby reconciliation and participation of all sections of the community can be attempted from the bottom up and not imposed from the top down. The object is for all representatives to participate in government in those areas which affect citizens' daily lives and concerning which the resolution of conflict may be more feasible than on those involving the future of Northern Ireland.

THE PRINCIPLE OF CONSENT, THE CONSTITUTIONAL GUARANTEE, and THE FORUM FOR A NEW IRELAND:

The SDLP and those political parties in the Republic of Ireland presently participating in the New Ireland Forum have all publicly declared their support for the principle that there can be no change in the constitutional status of the territory of Northern Ireland as an integral part of the United Kingdom without the consent of the majority of the people of Northern Ireland. Successive British Governments have also been consistent on this issue. The political reality is that British Governments give a formal written guarantee to this principle, not only because it upholds the democratic right of the majority to self determination but also because the real guarantee is the determination in the hearts and minds of one million unionists to maintain that right. If constitutional nationalists accept the principle of consent, it is difficult to see, in logical terms, why some insist that the British Government should withdraw its guarantee of that self same principle.

The answer to this apparent inconsistency lies in the long term political strategy of those who seek a United Ireland. It is not only unrealistic for constitutional nationalists to repudiate the principle of consent; it would be tactically unwise as such refusal would, inevitably, lead to widespread violence and the breakdown of democratic institutions in the Republic as well as in Northern. However, for these nationalists, the principle of consent does not include the logical corollary of a right on the part of unionists to refuse.

Constitutional nationalists appear to behave upon the basis that every form of pressure, short of direct force, is valid in order to obtain unionist consent. Such measures include an appeal to mainland United Kingdom political parties and citizens that Northern Ireland is an economic millstone and a bottomless pit for security expenditure. Efforts by the British Government to combat terrorism and maintain the rule of law are exploited internationally in terms of alleged oppression of the minority and colonialism. Emergency legislation which is required to protect the most basic human rights of all law abiding members of the population is exploited by well directed propaganda as evidence of an undemocratic Police State which the United Kingdom is alleged to be propping up. The paradox of hundreds of thousands of citizens of the Republic and of the minority community of Northern Ireland leaving to go and live and work in freedom and contentment in the United Kingdom, the land of the oppressor, is never the subject of comment.

The strategic objective of nationalists in seeking the withdrawal of the formal guarantee is two-fold. First, it is intended to pressurise the unionists into giving their consent by producing within their ranks a feeling of rejection, isolation and by inculcating anti-British sentiment. The hope is that, in these circumstances, the unionists will break the Union. Once this link is broken, the process of breaking down unionist resistance to Irish unity would be accelerated. The second objective is to place the British Government in the position where it could say that it did not break the Union and was, therefore, not under any continuing obligation to support Northern Ireland economically but that it would be willing to act as an honest broker and banker to the parties in arriving at an accommodation of interests.

The Forum for a New Ireland is an integral part of this strategy. Not only is it a component in the ongoing pressure for consent by producing a charter of republican reasonableness, it is also necessary for it to set up a blueprint for political structures that would, ostensibly, accommodate unionists in a way that the Republic has never been able to do in the past, and which would have been inconsistent with the State's ethos and existing constitution.

It now appears at least probable that this entire strategy is about to fail. There is, at present, no apparent prospect of the British Government welching on its guarantee; there is no hope of unionists falling into the trap of a unilateral declaration of independence; there seems little likelihood of the Forum being able to produce a blueprint for pluralism in the teeth of opposition from the Church and partitionist republicanism.

The time is now ripe for both communities in Northern Ireland to realise that, essentially, their problems will have to be solved in Northern Ireland by their political representatives and that any future prospect for them and their children is best provided for within the Northern Ireland context. This will require a mutual recognition of each other's hopes and fears. Only rights can be guaranteed, not aspirations, but it is the responsibility of the majority to persuade the minority that the Province is also theirs.

The Ulster Unionist Party believes that this process can only be begun by attempting to work together in those areas where participation is possible, in the hope that solutions which presently seem impossible may, ultimately, be attempted. It is in this context that they submit, for discussion, their general proposals for administrative devolution.

ADMINISTRATIVE DEVOLUTION:

The Ulster Unionist Party takes the view that some form of devolved government is necessary for Northern Ireland. In only one part of the United Kingdom, namely, Northern Ireland, are major services subject to no real democratic control. In Northern Ireland alone do employees and professional staff who would normally take their instructions directly from elected representatives, take their orders from the civil servants of the Government Departments at Stormont. There are in Northern Ireland, no indigenous representatives who decide and direct policy on major services and who themselves are answerable to their electorates for their stewardship. The Stormont civil servants are answerable to no-one but the Secretary of State for Northern Ireland and his team of ministers all of whom are on short term commissions. The fact that some functions such as Health and Education have been delegated, to a degree, to Area Boards is no substitute for local democracy, for the members of these Boards, worthy though they may be in many cases, are **nominated** and not **elected**.

This complete absence of local democracy came about not by design but by chance. The Review Body on Local Government in Northern Ireland under the chairmanship of Sir Patrick Macrory submitted its report in 1970. The Macrory Report, as it came to be known, provided for the abolition of the County and County Borough Councils and recommended that their functions and powers should be transferred to the appropriate Stormont ministries so that Stormont would have fulfilled the dual function of a Parliament in the ordinary sense and as a Metropolitan or Regional Authority in the Local Government sense. As a result, a large number of functions including Education and Public Libraries; Personal Health, Welfare and Child Care; Planning, Roads and Traffic Management, Water and Sewerage Systems; Electoral Arrangements and Criminal Injury Compensation, were all transferred to Stormont. Housing had already been transferred to the Housing Executive which was, in turn, responsible to the Ministry of Development. The Review Body never envisaged that Stormont would be abolished and was always emphatic in its belief that these major services must be entrusted to a democratically elected body and not to nominated or autonomous Boards. The Macrory Report was welcomed and endorsed by all shades of public opinion in Northern Ireland and the rest of the United Kingdom. Sir Patrick Macrory is emphatic that this Review Body would never have recommended the transfer of these functions and powers had it believed that Stormont would be abolished. The abolition of Stormont by Mr Heath could not have come at a worse time as, by then, the structure of County and County Borough Councils was being dismantled. There was, therefore, no elected body or bodies to run major services that passed by default into the hands of civil servants and the nominated Area Boards. It is the absence of any real control over these powers and functions which affect all the people of Northern Ireland in every aspect of their daily lives, that is the worst and most unacceptable feature of the present system of direct rule. The decision of Mr Heath's government to abolish Stormont also effectively destroyed local democratic institutions at the same time.

The Ulster Unionist Party while consistently opposing the unworkable framework under which the present Assembly was set up, has been equally consistent in its declared objective of transforming that Assembly into a worthwhile institution for serving all the people of Northern Ireland. With this objective in view and bearing in mind the necessity for obtaining the widest possible consensus, the Ulster Unionist Party proposes that those functions and powers transferred from County and County Borough Councils to Stormont should be devolved to the Northern Ireland Assembly as the nucleus of its responsibilities.

It is not intended in this discussion document to attempt any detailed analysis of the technical and other arrangements for the transfer of power and the control of its use or abuse. That would be a matter far better left within the purview of the proposed Assembly Report Committee, but in broad terms, the proposal is that the Northern Ireland Assembly would be an administrative body for the whole of Northern Ireland. It would not legislate nor would it exercise its powers through the medium of a cabinet government, but rather make its decisions within the areas of power granted to it by the enabling legislation and by such legislation as related to the services and functions being administered by it. The various areas of devolved power would be divided up among appropriate Committees of the Assembly whose function would be to examine in detail and advise on the ultimate decisions to be taken by the Assembly as a whole. There would, of course, be no Cabinet though, doubtless, a General Purposes Committee could serve the primary function of focusing party opinion and views and testing reaction to any specific subject matter and would, thus, form an important role as an indicator of the likely success or failure of any particular motion to be placed before the entire Assembly. Minority participation would be encouraged by the absence of a Cabinet Government with its concomitant requirement of a dependable constant majority. The absence of any party with an overall majority in the foreseeable future would necessitate those compromises and bargains between participating parties which are the essence of real politics. There is some real hope that, with the constitutional issue not permanently in the forefront of the Assembly's deliberations, there would be no constant minority.

As Edmund Burke said,

"All government, indeed, every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter".

This document is not intended to be in any way definitive. If it is general in its nature then it is the less entrenched and the more open to negotiation. If safeguards are required either by utilising entrenched clauses or weighted majorities then these may be considered if reasonable, though it may be that an accompanying Bill of Rights might provide greater flexibility. Moreover although resolutely opposed to an "Irish Dimension" in the form of a constitutional institution, unionists would not object to an "Irish Dimension" in the form of state recognition of the legitimacy of the fostering of distinctively Irish cultural activities in Northern Ireland nor to state funding of such activities in proportion to the degree of public participation or interest in them.

A BILL OF RIGHTS

In many countries citizens' rights are enshrined in a written constitution and are enforceable through the courts of law. An example of such a country is the United States of America.

This is not the case in the United Kingdom, which has no written constitution and where citizens' rights are expressed and protected in assorted pieces of legislation and in the common law which is a set of traditional legal principles expounded by judges over the centuries.

Although there is no significant pressure in the United Kingdom taken as a whole either for a written constitution enshrining citizens' rights nor for a codification or listing of such rights in one Act of Parliament, this does not mean that a case cannot be made out for the specific entrenchment of citizens' rights (with adequate machinery to protect them) as a component of a package for devolved government for Northern Ireland.

Unlike the United Kingdom taken as a whole there is a significant minority in Northern Ireland which sees itself as differing in a number of material respects from the majority. More importantly, there are those amongst that minority who believe that they as individuals, or the minority community as a whole, have been discriminated against by the state because of their Roman Catholic faith or their aspiration for a united Ireland or their attachment to Irish culture.

This is not the place to disprove allegations of discrimination. But without accepting that there is any foundation in reality for any feeling of minority discrimination or disadvantage, the Ulster Unionist Party nevertheless recognises that such a feeling does exist and that it may be in the interests of the people of Northern Ireland as a whole to have the rights of individuals explicitly set out in the legislation of the British Parliament conferring devolved government on Northern Ireland.

It is argued that such rights would be sufficiently entrenched, and the minority sufficiently protected against any subsequent amendment allegedly watering down the rights conferred, by Westminster's retention of an exclusive power to amend.

The effects of such legislation would be to provide machinery whereby (a) any action on the part of the Northern Ireland devolved institution conflicting with any listed right would be declared void and (b) any act of the Northern Ireland administration conflicting with any such right would be declared unlawful.

The most obvious and, it is argued, the most appropriate source of individual rights deserving protection is the European Convention on Human Rights. However, adaption of the Convention to the particular needs and circumstances prevailing in Northern Ireland would be required, restrictions on the liberty of the individual citizen may be called for in the interests of society as a whole, and also that although rights may often be expressed in absolute terms the interests of other citizens or the interests of society as a whole may necessitate some qualification of apparently absolute rights, even outside periods of crisis.

It is an essential ingredient of an effective Bill of Rights that it be enforceable at the suit of the individual citizen as simply, cheaply and expeditiously as possible through the established courts of law.

It goes without saying that although the desirability of a Bill of Rights for Northern Ireland as part of a scheme for devolved government has been discussed in terms of the advantages to the minority, the rights listed would, of course, be conferred on every citizen in the Province and it would be just as open to a member of the majority community to seek and obtain redress for infringement.

The Ulster Unionist Party recognises that its proposal may be considered by some to be too modest, but it has watched while grander and more ambitious schemes have failed. The Party's objective is to find a level at which consensus may be obtained to effect a beginning in the reconciliation of the divided communities. Roads owe no allegiance to those who travel upon them and, for the traveller, such roads are neither green nor orange but only good or bad. It would be a start if the travellers were given a chance to repair them.

PRESENTED BY:

*W MARTIN SMYTH, JACK ALLEN, ROY BEGGS,
WILLIAM BLEAKES, JEREMY BURCHILL, DOROTHY DUNLOP,
ROBERT McCARTNEY and FRANK MILLAR.*