



# An Chartlann Náisiúnta National Archives

**Reference Code:** 2021/100/12

**Creator(s):** Department of the Taoiseach

**Accession Conditions:** Open

**Copyright:** National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Confidential

Copy (2)  
by McLaughlin  
Not based on to the Tairseach -  
too detailed and work in progress  
Tairseach  
QSA  
23.6.98

### Conversation with George Fergusson, FCO, 18 June 1998

I rang George Fergusson, Head of the Foreign Office's Republic of Ireland Department, this afternoon, to discuss how we might best deal with two quasi-legal issues which have arisen as regards the implementation of the British-Irish Agreement. These are: (a) the suggestion that supplementary international agreements are required to establish the international or cross-border institutions provided for in the Agreement; and (b) the desirability of eliminating a number of typographical errors from the final text of the Agreement. The Background to these matters is as follows:

#### Supplementary International Agreements

At the most recent meeting of the Liaison Group, the British side indicated that they had received legal advice to the effect that while the British-Irish Agreement provides that a number of institutions of an international or cross-border nature (namely, the North-South Council and its implementation bodies, the British-Irish Council, and the British-Irish Intergovernmental Conference) "shall be established", it does not, of itself, establish these institutions. The British suggested that supplementary international agreements would therefore be required to formally establish these institutions.

Preliminary and informal reaction from the AG's office was that the terms of the British-Irish Agreement may indeed be insufficient to establish the institutions concerned. However, we have as yet no firm opinion as to whether supplementary international agreements are required, or whether it might be possible to insert declarations of equivalent effect into the notifications which, once exchanged between the two Governments, will bring about the entry into force of the British-Irish Agreement (see Article 4 of the Agreement).

A further factor to be taken into account in this jurisdiction is that, in accordance with Article 29.5.(2) of the Constitution, the British-Irish Agreement must receive the approval of the Dáil before the State can agree to be bound by it. It had been anticipated that the Agreement might be put before the Dáil at an early date, perhaps at the same time as the Settlement Bill is going through Westminster. However, if we find ourselves obliged to enter into supplementary international agreements, there would be an obvious case for holding back the British-Irish Agreement until the supplementary agreements are signed and laying them all before the Dáil at the same time. (The situation regarding the agreement(s) on the implementation bodies may be more complex, however, and it might not be appropriate to bundle these up with the British-Irish Agreement).

#### Final text of the British-Irish Agreement

When the British-Irish Agreement was signed on Good Friday, it was not possible in

the time available to print the Multi-Party Agreement on treaty paper for the purpose of annexing it to the British-Irish Agreement. The printing of the text for attachment to the final sealed and ribboned version of the British-Irish Agreement was therefore left over until after Easter. However, on subsequent inspection, the text of the Multi-Party Agreement put before the participants on 10 April was found to contain a number of typographical errors. It was also discovered that paragraph 2 of the Validation, Implementation and Review section of the Agreement contained an erroneous cross-reference to a non-existent paragraph of the Constitutional Issues section. (This cross-reference was removed in the version of the Agreement published by the Irish Government but was included in the version published by the British Government.)

It should also be noted that the version of the Agreement put to the parties did not contain the Irish language version of the proposed changes to the Irish Constitution, although it was clearly indicated in the text put before the parties that this wording would follow. The version of the Agreement subsequently published by the Irish Government included the Irish language paragraphs, the version published by the British Government did not.

The question now arises as to whether the Governments should incorporate these corrections and additions into the formal text of the Agreement and the versions to be published in their respective Treaty Series. The view at official level, here and in London, which I understand is shared by the British Government's legal advisers, is that it would be preferable to avoid errors in the definitive text. However, the Multi-Party Agreement is not the sole property of the Governments and it would appear necessary to obtain the consent of the other parties to the Agreement (i.e. the eight political parties) before incorporating the amendments into the text of the Agreement.

One point to be considered, however, is the possibility that an opponent of the Agreement, or an individual of a legalistic nature, might be tempted to seek a judicial review (assuming that this would be possible) on the grounds that the versions of the Agreement put to the people in the Referendums, North and South, were incorrect. (Of course, as I have noted above, it is already clear that there were slight discrepancies in the versions of the text circulated in the different jurisdictions).

### **Discussion with Fergusson**

I discussed with Fergusson, the suggestion made at the last meeting of the Liaison Group that it might be useful for legal advisors from both Governments to get together with a small number of officials to explore the question of what, if any, supplementary international agreements are required. Fergusson confirmed that their legal services remained of the view that supplementary agreements are necessary and said he thought that such a meeting would be desirable. He suggested a meeting in July, so that preparations might get underway for the conclusion of the agreements after the summer break.

Fergusson drew a distinction between agreements to establish the North-South Council, the



British-Council and the British-Irish Intergovernmental Conference and those needed to set up the implementation bodies. The former, he envisaged as straightforward and perfunctory, whereas he felt that consultation was required as to the amount of detail to be contained in the latter: for instance, would the mandate and remit of the bodies be spelled out in the agreements?

Fergusson also indicated that considerable thought was being given within their system to the question of whether agreements between the Northern Executive and the Irish Government in relation to the North-South Council and the first batch of implementation bodies might be required to supersede those between the two Governments, once the Assembly receives its devolved functions. (It is accepted that any future implementation bodies will be established by agreement between the Northern and Southern administrations.)

Turning to the question of the final text of the British-Irish Agreement, Fergusson repeated the British desire to clean up the text. He thought the parties might be notified by a low key letter, perhaps at Minister of State level. When I asked him if they envisaged that such a letter would be sent only to the political parties present in the talks on 10 April, he suggested that it might be preferable (and avoid the inevitable leak?) to be open and to notify all the parties eligible to participate in the talks. However, when I asked about the possible dangers of a legal challenge arising from the amendment of the text, he suggested that the question of amending the text of the Agreement might be added to the agenda of the proposed meeting of legal advisors.

We undertook to consult our respective legal services and, subject to their agreement, to come back with possible dates for a meeting.

David Cooney  
18 June 1998