



# An Chartlann Náisiúnta National Archives

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*See (by hand) Mr. G. H. ...  
Mr. G. H. ...  
Mr. ...  
Mr. ...  
Mr. ... (Legal)*

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**For:** HQ  
**For:** Secretary Gallagher

**From:** Belfast  
**From:** Joint Secretary

*25A*

**Subj:** Meeting on Northern Ireland Bill

1. Jonathan Stephens and Tony Canavan called to the Secretariat this morning to brief us on the current position in relation to the Northern Ireland Bill. We had the benefit of Mr Bassett's attendance from the Department.
2. The timetable for the Bill is that it will receive its Second Reading in the House of Lords on 5 October. This will be followed by a Committee Stage involving four or five days during the two weeks beginning 19 and 26 October respectively. Following Report Stage and Third Reading, it will return to the House of Commons for consideration of the Lords amendments (which, it is hoped, will be Government amendments only). The Royal Assent should be obtained by mid-November.
3. Incidentally, on the subject of the anticipated Order in Council to implement Departmental changes in Northern Ireland, Stephens said that this would require a one-and-a-half-hour debate and (as we know) would not be amendable. The reason why Trimble believes that the draft would have to be laid by the beginning of December is that the Order is made at a meeting of the Privy Council and the latter will meet in December but traditionally would not meet again until early February (i.e. after the 1 February deadline).
4. Paul Murphy is meeting the parties this week about the Northern Ireland Bill. He will be seeing the UUP, the SDLP and Sinn Féin tomorrow. He will give them sight of some draft amendments which the British Government intends to table.
5. We were given a copy of some of these amendments today on a confidential basis.

We also received a note explaining the suggested amendments in the North/South and East/West sections of the Bill as well as draft speaking notes for Murphy's contacts with the parties and draft Memorandums of Understanding in relation to the NSMC and the BIC. (A copy of the latter was already provided at the informal Strand Three meeting on the margins of the BIA conference last weekend). All of this material is attached.

6. Emphasising that the draft amendments supplied today reflect the British Government's provisional thinking only, and that they are open to further discussion on all of them, Stephens went through each of them in turn - in the order indicated in the speaking notes ("NI Bill: Consultations with Parties").

7. The proposal to provide for a vacancy arising in the posts of First Minister or Deputy First Minister (from illness, death etc) reflects, we are told, a general concern on the part of the parties. The British Government put two options to Trimble and Mallon. Under one model, the individual still functioning (whether First Minister or Deputy First Minister) would exercise all relevant powers for a period up to, say, six weeks. Under another model, each would be enabled to designate another Minister to replace him, i.e., a substitute name would be provided as of now for all contingencies.

In the absence of views from Trimble or Mallon, the British decided to go for the latter model, on the basis that it preserves the cross-community dimension. They envisage that the substitute arrangement would in practice arise only if the individual concerned were outside Northern Ireland or could not easily be contacted by phone.

8. They also want to provide for circumstances in which the D'Hondt procedure would have to be re-run. This would arise following the exclusion of a party from Ministerial office and also at the end of its period of exclusion. (They recognise that a re-run at the latter stage could be contentious if e.g. the intervening reshuffle has installed Ministers who are performing well and do not want to relinquish office; however, they see no alternative - and we agreed - if the principle of inclusiveness is to be respected).

They feel that a provision is also needed for D'Hondt to be re-run in wider, though unspecified, circumstances. The DUP will be demanding that D'Hondt should be re-run in response to any development with the potential to produce a different result



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(such as party amalgamations or changes of affiliation). While this is not on, the British see circumstances in which a re-run could more reasonably be sought and they are suggesting that the matter might be considered for inclusion in Standing Orders (which would, of course, require cross-community support). The amendment as drafted raises the possibility of such a provision featuring in Standing Orders but does not require it.

An amendment relating to individual vacancies being filled by the original nominating officer has been included as the Bill in its current form is not entirely clear at this point.

9. The UUP and the SDLP both criticised the powers relating to dissolution of the Assembly as too broad and too vague. These have, accordingly, been narrowed to two sets of circumstances - where the Assembly fails to elect a First Minister and Deputy First Minister within the required timescale or where two-thirds of the Assembly members vote for dissolution. The latter provision (where the two-thirds requirement relates to all Assembly members rather than merely those present and voting) mirrors a provision in the Scotland Bill.

We suggested that, although a two-thirds threshold would have the same effect in practice, it would be helpful to build in an explicit requirement for cross-community support, bearing in mind that the Agreement makes clear that all "key decisions" must be taken on this basis. The British were not immediately persuaded but agreed to reflect on this.

The "required timescale" for election of the First Minister and Deputy First Minister, incidentally, is a matter which would be left for resolution as part of Standing Orders.

10. The British Government have drawn some flak from parties on both sides for the proposal to include in the Bill reserve powers for the Secretary of State to prorogue the Assembly and suspend devolution in the event of a serious crisis. This element, which the British consider to be required for practical reasons, is being criticised as "planning for failure". The three options on which they are now canvassing views involve no reserve powers at all, tightly-drawn criteria and wide powers. Seeing no likelihood of wide powers attracting sufficient support, they are leaning towards the second option. However, British Ministers might eventually go for the first if they

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come under sustained pressure from the parties.

We suggested that the second option was sensible (if the third could not be achieved). Stephens warned that there could be Unionist pressure to balance a reference to dissolution of the Assembly with a reference to consequential dissolution of the North/South Ministerial Council. We made clear our opposition to this.

11. An amendment in relation to audit arrangements for the Assembly is fairly straightforward. As regards auditing for the NSMC and the implementation bodies, we are told that the relevant authorities in each jurisdiction are in contact and that there seems to be an acceptance that the joint auditing arrangements required could be handled by way of an informal agreement which would not need to be spelled out in the legislation.
  
12. In the human rights area, the British are seeking views on four options in relation to the question of possible investigative powers for the HRC. The fourth of these reflects an Irish Government suggestion that there would be a statutory requirement on the Commission to review its powers and recommend any changes after, say, three years.  
  
In response to British questioning, we confirmed that this is likely to be the approach taken in our Bill and that we expect passage of the latter sometime during the spring of 1999. Stephens said that the Secretary of State wished to establish the NI Commission as quickly as possible after the Bill receives Royal Assent. He noted that, if she and her Ministers were to go for the second or third of the options listed (which he did not exclude), there would be implications for our side.
  
13. We had a general discussion of amendments which are contemplated in the equality area of the Bill (though no language is available as yet). We emphasised the importance of providing explicitly for public access to information, an element of the Agreement missing from the Bill so far. The British side (Canavan) resisted this idea on various grounds but promised to reflect further on it.
  
14. Stephens introduced the amendments in the Strands Two/Three section of the Bill as follows.



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This section will now be given more prominence - it will come immediately after the Assembly section. Where a Minister is nominated to attend a meeting of either the NSMC or BIC, he will be under a duty to participate.

Discussing the amendment headed "After Clause 43" (Annex B), we recognised that precision and clarity are important in the arrangements required to secure full participation in the NSMC. However, we held that it would be politically wiser to operate on the basis of a general "duty of service", which would not create personal exposure for Trimble and Mallon and assist the DUP's ambition to present themselves as martyrs.

Stephens referred to the provision already made for the First and Deputy First Minister to make "alternative arrangements" on representation. (We suggested that this was designed to cover unavailability on e.g. illness grounds and could not be used to furnish someone with a permanent absentee note). He also saw a need for Ministers to be told which particular meetings of the NSMC they should attend (given that the Council can meet in different formations). In practical terms, therefore, the British cannot see an alternative to a nomination procedure involving the First and Deputy First Minister. They presume that, if Trimble has a difficulty with this, he will make it known during the current consultations.

15. Para 5 of this amendment is intended to ensure that the First Minister, Deputy First Minister, NI Ministers and Permanent Secretaries do not exceed their respective remits while participating in the NSMC. (Stephens recognises that the language is a little obscure and needs improving).
16. Paras 6-8 respond to criticisms that the NSMC is insufficiently accountable to the Assembly and Executive.

We expressed concern at the proposal to provide the latter in advance with the agenda for each meeting of the NSMC. This would undoubtedly be exploited by elements in the Assembly to put Trimble under pressure and to try to sabotage NSMC meetings. Stephens' response was that the Assembly will have no override powers in relation to the NSMC and all it can do is express views about the agenda; the "prior mandates" sought by Trimble are not being conceded; it is important to demonstrate openness and transparency about the NSMC's workings; and there is

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some helpful flexibility in the reference to "as far in advance of each meeting..... as is reasonably practicable".

We repeated nonetheless that a requirement to supply advance agendas would be open to exploitation by hostile elements in the Assembly to undermine the NSMC and that nationalists would not be happy with it.

The British are also proposing oral reports by participants in NSMC meetings back to the Executive and the Assembly.

17. Responding to other concerns expressed last July, the remainder of this amendment ensures that (a) the Assembly has the power to legislate to implement agreements reached in the NSMC; and (b) new implementation bodies cannot be established without the approval of the Assembly.
18. On a number of miscellaneous points, Stepes told us that Lord Alderdice is seeking a provision in the Bill for the Presiding Officer to be automatically re-elected in Assembly elections (as with the Ceann Comhairle in Dáil Eireann). The views of the parties have been sought on the question of junior Ministers but the UUP and the SDLP have yet to respond. The official title for Assembly members will be "Member of the Parliamentary Assembly" (in order to create an abbreviation which distinguishes them from holders of a Masters in Arts degree).
19. Finally, referring back to a meeting of legal officials from both Governments which took place on 7 July, Stephens said that thinking on their side had evolved in the interim on the question of the legal foundation for the implementation bodies. They feel that it would be cumbersome for the Assembly to be required to reproduce the relevant legislation when it assumes its formal powers. They propose instead (see the attached note headed "Belfast Agreement") that
  - each implementation body would be established on the basis of an agreement between the relevant Departments North and South under Section 12 of the NI Constitution Act of 1973;
  - the powers and privileges for each would be conferred by one of two methods
    - either an Order in Council under the Northern Ireland Act of 1974 or an



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Order by the Secretary of State under Section 67 of the Northern Ireland Bill.

20. We expressed some initial misgivings, emphasising the crucial importance of the Assembly having no capacity to interfere with the establishment of the initial set of bodies, which are to be grounded in Westminster legislation.

Stephens pointed out that the bodies must be up and running by the day of devolution and that the Assembly will have no powers in advance of that. Emphasising that the suggested new approach has come from lawyers on his side rather than from any of the parties, he said that they would like to find a means of avoiding a laborious procedure for "handover" to the Assembly (which could, indeed, be exploited in some way by hostile elements).

21. At a Strand Two meeting which we had with Tony McCusker here last week, it was agreed that legal experts on both sides might get together to draw up a joint paper on the options in this area. Today's note comes as a slight surprise, accordingly, and is suggestive of a lack of coordination on the British side (with responsibility for legal matters and for Strand Two effectively being divided between London and Belfast).
22. We said we would refer the proposal to our legal experts for examination. Stephens suggested another meeting of the 7 July kind, if necessary, in order to allay any concerns we may have.