

FUTURE POLICY GROUP

A DEVOLUTIONARY SOLUTION

INTRODUCTION

1. Because it is clear that many of the interests within Northern Ireland either positively prefer a devolutionary solution, or at any rate dislike it less than possible alternatives, we have decided to submit first our views on a solution of this type. We are, however, preparing and will submit when ready a further Paper on integration.

CRITERIA GOVERNING OUR APPROACH

2. In considering the broad outlines of a devolutionary settlement, we have used the following criteria -

- (a) A new system should be equitable, in that it assures and is seen to assure fair and equal treatment of all citizens.
- (b) It should be broadly-based, to permit not just an equitable exercise of power by one section, in the interests of all, but a sharing of power itself.
- (c) It should, as far as possible, be functionally efficient, because any reformed machinery of government must, if it is to succeed, satisfy the real economic and social needs of the community.
- (d) It should be simple and business-like in its forms, titles and procedures, so that it may be clearly seen for what it is - not the Constitution of a sovereign state, but a scheme for the fair and efficient management of various regional services.

FORM OF LEGISLATIVE ASSEMBLY

3. We suggest -

- (a) The establishment of a Northern Ireland Assembly (the word Parliament should be avoided), with an Elected Chamber of 84 members, elected by universal adult suffrage from multi-member constituencies by the STV system of PR (7 members per Westminster constituency). The increase over the present House of Commons total of 52 would -

- (i) permit the setting up of multi-member constituencies which would not be unduly large;
  - (ii) encourage the development of a Committee system of scrutiny (see 3(c) below);
  - (iii) take account of the post-Macrony centralisation of services; and
  - (iv) create the possibility of some modest measure of real opposition even within the context of broadly-based government (see 5 below).
- (b) Measures to associate with the work of the Assembly representatives of substantial non-political "interests" in the Northern Ireland community, either by forming a Second Chamber, or by including a minority of such representatives in a unicameral Assembly (with limited voting rights), or by their co-option to appropriate Functional Committees of the Assembly.
- (c) Since we recommend elsewhere (see 5 below) that the Executive should be formed on the basis of broad support in the Elected Chamber, we consider it important to place a new emphasis on scrutiny rather than political criticism. We therefore envisage a highly-developed system of Functional Committees, in which members of a Second Chamber or representatives of "interests" would also have a part to play.
- (d) Second Chamber (if any) to have powers of delay, but not of ultimate veto.
- (e) Procedure no longer to be based on elaborate Westminster precedents, but to be simple and business-like, related to the nature of the Assembly and its business.

These points are more fully developed in Appendix I.

#### FORM OF EXECUTIVE GOVERNMENT

4. We worked from the basic premise that Northern Ireland cannot again, for the foreseeable future, be governed by an Executive based on the majority Party alone.

We therefore considered, but rejected, several variants of the existing Cabinet system:-

- (a) "Committee Government" as practised by local authorities, whereby the permanent officers of Departments would be answerable, not to a single political Head but to a Committee. We rejected this as unduly cumbersome. Departmental activities must in any event be co-ordinated, and one would probably end up with a kind of "Cabinet" of Committee Chairmen.
- (b) "Entrenched Government", whereby certain minority elements must be in a Government. We rejected this because of difficulties of definition (Catholics, Nationalists, non-Unionists?) and because we consider it totally wrong in principle to discourage in any way the development of broadly-based Parties.
- (c) "PR Government", whereby all substantial elements in the Elected Chamber would be guaranteed Executive representation. We rejected this because it would virtually exclude any possibility of genuine opposition in the Chamber, and because it would require inclusion in government of even the most disruptive and extreme elements on the political fringes.
- (d) "Bloc Government", whereby the Party or Parties commanding a majority in the Elected Chamber would be obliged to coalesce with the Party or Parties commanding a majority of the minority. This we considered unnecessarily complex.

We came to the conclusion that the requirement to have a broadly-based Executive, chosen wholly or mainly from the Assembly, could best be met by providing that -

- (a) An Executive cannot take office until given a Vote of Confidence by the Elected Chamber.
- (b) Any Vote of Confidence whether on the formation of a new Executive or during the life of an Executive to be carried not by a simple majority, but by a proportion of votes (75 per cent?) sufficient to guarantee that the Executive will necessarily command both majority and minority support.

- (c) On the replacement of any member of the Executive by another a 75 per cent vote required to ratify his appointment. Other votes in the Assembly (eg on legislative measures) to carry by a simple majority.
- (d) The Assembly to have a fixed life, since the power of a Prime Minister to recommend a dissolution at any time is incompatible with the concept of broadly-based government. There would, however, have to be a "safety-valve" provision for an Election in crisis circumstances.
- (e) The terms "Prime Minister" and "Cabinet" not to be used. The body could be known as the "Executive [Committee] of Northern Ireland" (which is indeed the formal title of the Cabinet under the 1920 Act), and its members as "Member of the Executive [Committee] for [Education]". The person invited to take the lead in forming the Executive (normally the leader of the majority Party) would take the chair at its meeting.

There are, of course, great difficulties in the way of making such a system work. With a Protestant population of around 65 per cent, a polarised situation, and the introduction of PR, one would clearly have to establish a Vote of Confidence threshold at quite a high level, which could hardly be lower than 75 per cent. This not only reduces the genuine Opposition uncommitted to the government to a rather low level, but holds out a very real possibility of total deadlock through obstinacy. As in other countries with a "coalition" tradition, the bargaining leading up to the formation of an Executive (over issues of policy, balance of representation, allocation of portfolios etc) could at times be prolonged. This, however, would be true of any system of statutorily broadly-based government, and the merit of the course we recommend over possible alternatives is that it would force the Parties to face up to the issues before the Executive is formed. Some kind of "caretaker" arrangement would be necessary in any prolonged hiatus.

These points are more fully developed in Appendix II

#### POWERS OF THE NEW ASSEMBLY AND EXECUTIVE

5. Here we recommend -

- (a) The opportunity should be taken to transfer to Westminster responsibility for making laws in respect of any matters where absolute parity is likely to be the governing principle. This should certainly include

legislation for the cash social services, and probably "transferred" taxation; beyond this further joint study by Stormont and Whitehall departments would be desirable, taking fully into account the implications of EEC membership.

- (b) However, even where legislative responsibility is transferred to Westminster, some at least of the services concerned might continue to be administered by Northern Ireland departments on an agency basis, where this is clearly to the advantage of the public (eg, Supplementary Benefits relate closely to the Health and Welfare responsibilities of the Ministry of Health and Social Services). Where this is done, consideration might even be given to continuing a local scrutiny process (eg, through the appropriate Functional Committee).
- (c) New arrangements in the field of "law and order" powers should be made, to command as much public confidence as possible, and to avoid submitting broadly-based institutions to intolerable strains. Here we developed our thinking as follows:-
  - (i) Any viable regional Assembly must have as an absolute and irreducible minimum the power to enforce its laws by imposing fines, penalties and imprisonment.
  - (ii) There are arguments for removing to Westminster responsibility for potentially divisive matters, in particular control of the police, "public order" (including processions and parades) and the use of special or emergency powers.
  - (iii) We are, however, convinced that in normal circumstances it is better to seek genuine internal solutions even to the most divisive problems. The "law and order" problems of Northern Ireland are real problems of and in the Northern Ireland community; and it can be argued that any viable solutions must be found by, and be acceptable to the representatives of that community.
  - (iv) We therefore recommend that:-

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- (1) In an emergency situation (that is to say one involving military assistance to the civil power and/or the use of powers involving any derogation from the international obligations of the United Kingdom) the exercise of Police and "Public Order" functions should vest in a Secretary of State. Power to take or to exercise emergency powers involving derogation, and outside the scope of the ordinary criminal law, should be reserved to Westminster and the United Kingdom Government.
  - (2) At all other times a Northern Ireland Assembly would exercise law-making powers but subject to an ultimate Westminster sanction. This might take the form of providing that defined categories of Northern Ireland Bills may be prayed against at Westminster prior to Royal Assent. This safeguard could extend to all "law and order" legislation (including police, courts and prisons), and to electoral law (including the designation of boundaries, voting qualifications etc).
  - (3) Sensitive executive functions should as far as possible be devolved to broadly-representative independent agencies. In particular, the Police Authority's power and influence should be built up; its members appointed by the appropriate Member of the Executive Committee with the approval of a Secretary of State; and the Authority should itself decide whether or not to ban particular parades or processions.
  - (4) County Court Judges should be appointed by the appropriate Executive Member only after consulting the LCJ; and Resident Magistrates on the advice of a Committee; or County Court Judges and Resident Magistrates should be appointed on the advice of a Judicial Appointments Commission.
- (d) Certain provisions forming part of the "reform programme" should be entrenched. In particular any future legislation purporting to reduce the status or functions of such offices as DPP, Commissioner for Complaints and PCA should require the concurrence of a Secretary of State; and similar provisions may be required in relation to Staff

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Commissions, electoral arrangements and other matters. A new constitutional statute could also entrench individual rights by some form of Bill of Rights.

- (e) Envisaging as we do certain reductions of and limitations upon Northern Ireland powers, we would like to see - in terms of ensuring public acceptance for a new system - a reasonable guarantee of freedom of action within these powers. For this reason we considered carefully whether Northern Ireland could or should be given greater financial autonomy. We came to the conclusion, however, that this was unrealistic, since Northern Ireland will inevitably continue to require for its current and capital purposes funds well in excess of its tax revenue, unless the attribution of the latter is placed on an entirely artificial basis. We would favour replacing much of the existing complex inter-Exchequer arrangements with provision for a straightforward annual Vote; but we would associate with this view the thought that means must be found to keep Westminster as a whole much better informed on Northern Ireland affairs. Within this framework, Northern Ireland should be given as much freedom as possible to determine its own policies and priorities.

#### RELATIONSHIP OF NEW INSTITUTIONS WITH UK GOVERNMENT AND PARLIAMENT

6. Here we envisage -

- (a) A Secretary of State should continue to have responsibility for Northern Ireland affairs in the UK Cabinet; the "depth" of devolution may determine whether or not this can be coupled with another office.
- (b) The office of Governor of Northern Ireland can be abolished. Ceremonial functions can be carried out by visiting members of the Royal Family, by HM Lieutenants and by the Lord Chief Justice. The Secretary of State would invite a person to try to form an Executive.
- (c) No further appointments to, or executive use of, the Privy Council of Northern Ireland, although existing titles of "Rt Hon" to be retained.

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- (d) UK Ministers not to answer PQs on matters within the responsibility of the Northern Ireland Executive, except where the consent of a Secretary of State is required.
- (e) General debates on matters within the competence of the Northern Ireland Assembly and Executive to be confined to Prayers against ratification of Northern Ireland Measures, substantive Motions and debate of annual Vote.
- (f) In view of the degree of "oversight" built into the suggested new system, there would be a very strong case for increased Northern Ireland representation in the House of Commons. There is also a strong case for the creation of some additional Northern Ireland Life Peers.

Central Secretariat, Stormont Castle

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