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PUS (B & L) - M.

LEGISLATION FOR NORTHERN IRELAND

... Attached as promised is a note on legislative devolution.

It does not include a reference to the reported view of the Irish Government as being opposed to legislative devolution. I find this difficult to accept. A year or so ago, they made quite the opposite noises in relation to NI Bills at Westminster and it would surely be in the long term interests of the Irish Government to encourage the preservation of the separateness of NI law as a step towards eventual Irish unity or a federal solution.



W E BELL

5 June 1980

cc Mr Hannigan
Mr Marshall (M)
Mr Bloomfield
Mr Dugdale
Mr Erskine
Mr Moriarty (M)
Mr Palmer
Mr Spence ✓
Mr Chesterton (M)

/EMB

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LEGISLATION FOR NORTHERN IRELAND

History

1. In legislative terms, Northern Ireland has for several centuries (first as part of Ireland and since 1921 as a separate entity) been treated differently from the rest of the UK. There is a separate corpus of NI statute law which consists of Acts of the Irish Parliament prior to the Act of Union, Acts passed at Westminster, Acts of the Stormont Parliament, Measures of the NI Assembly and Orders-in-Council enacted under direct rule.
2. Much of the NI law is different from the law in the rest of the UK. Some is related to the different administrative structures in NI, for example, on local government, health, education and housing. Some reflects different political approaches to problems like industrial development and housing and to social issues (like abortion).
3. Over the last 15 years, around 20% of NI Acts and Orders-in-Council have been purely parity measures. About 40% have been distinctive NI legislation. The rest have either largely followed GB measures (but with some, often important and substantial, modifications) or consisted of technical legislation dealing with appropriation and other financial matters.

Extent of Legislative Devolution

4. It is assumed that, if legislative devolution is granted, the UK Parliament would retain its overriding authority and continue to exercise its legislative powers with respect to law and order, national and sovereign matters, securing compliance with the UK's international responsibilities (including EEC), and safeguarding its overall national economic policies.

Practical considerations

5. If legislative devolution is not granted, legislation for NI would have to be dealt with at Westminster, either through substantial variations to GB Bills or by separate NI Bills.
6. This would impose a further sizable burden on the already congested Westminster timetable. (Since 1973, there have been on average 22 NI Orders-in-Council per annum). One of the original arguments for legislative devolution for Ireland in the late 19th and early 20th centuries was that Westminster was being clogged up with Irish affairs.
7. In fact, it has proved difficult in the recent past for Westminster to find adequate time, even for a few important Bills applying to NI (eg the Northern Ireland Act 1962, which took about 5 years from conception to enactment, and the Fair Employment Act 1976 which took 3 years). Westminster would have great difficulty in dealing with a sizable programme of NI measures or in coping with legislation which may be needed quickly to facilitate a devolved administration.
8. Even where it would be practical to do so, the addition of NI provisions to a GB Bill can produce major complications in the drafting of Bills and confusing and unsatisfactory results.
9. The Commission on the Constitution considered that "it would be

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theoretically possible for the United Kingdom Parliament to legislate for Northern Ireland on all matters ...". However, it also took the view that "the volume of such legislation would necessarily be large, even if variations of policy were kept to the minimum". Accordingly, it found that "if other business were not to suffer to a greater extent, Northern Ireland affairs would be bound to receive considerably less attention than they would at a separate legislature". It concluded that the return to Westminster, as a permanent measure, of full legislative responsibility for Northern Ireland would be a retrograde and highly unwelcome step (Cmnd. 5460 para 1263). (The Commission reported in October 1973 and was aware of the developments which led to the Northern Ireland Constitution Act 1973).

10. There would also be problems in dealing with the very large volume of subordinate legislation concerning NI, some of which would require parliamentary time.
11. Any special procedures to involve the NI Assembly in an advisory or promotional role in relation to UK legislation being applied to NI, as an alternative to legislative devolution, could prove to be cumbersome, time-consuming and likely to lead to political disagreements.

Political considerations

12. Northern Ireland is widely accepted as being different from other parts of the UK in important respects; it has a separate corpus of law; many of its administrative structures and its party political structure are unlike those in GB; the political issues as perceived by the electorate are not the same and the community pressures are fundamentally different from those in GB. These circumstances help to justify special treatment in terms of both executive and legislative devolution. On the other hand, devolution does not, in itself, undermine the Union; it encourages NI politicians to resolve NI problems within NI and reduces some of the pressure on Westminster.
13. Without legislative devolution, Westminster would have to pass the legislation which a NI Executive required to implement its policies or to respond quickly to emergencies. Also, Westminster could come under pressure to tailor its own legislation in the light of NI opinion. The UK Parliament might want legislation (eg on divorce) which was unacceptable to the NI Assembly; the NI Assembly might want legislation on a matter (eg secondary school organisation) which would not be in line with majority opinion in the UK Parliament. There could also be constant friction over the amount of parliamentary time devoted to NI.
14. Legislative devolution would, given the establishment of an appropriate political framework, enable both communities in NI to be involved in the formulation and consideration of law for NI. This would be less likely to happen if NI measures were dealt with at Westminster since the 12 (or 17) NI Members might not give NI minority opinion a strong voice. Moreover, the NI Members could only have a limited influence on legislation affecting NI since Committees of the Commons reflect the strength of the parties in the whole House.
15. Legislative devolution would leave the NI Members of Parliament in the same position as they had during the half century of the existence of the NI Parliament. They would continue to have a role in debating national issues and in relation to those aspects of NI affairs which were the responsibility of the UK Government.

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16. The absence of legislative devolution could be criticised as a step towards integration by the Labour Party and by various political interests in NI and the Republic of Ireland.
17. The Working Paper for the Constitutional Conference placed legislative devolution on offer and the parties at the Conference supported legislative as well as executive devolution. The Government could be accused of bad faith if the offer of legislative devolution was withdrawn.

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