



# An Chartlann Náisiúnta National Archives

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After the 1920 Act: establishment of the 1973 Constitution  
and the Sunningdale Executive

In March 1972, the Stormont Parliament set up under the 1920 Act was prorogued, and its powers vested in the Secretary of State for Northern Ireland. In 1973 a new Constitution for Northern Ireland was introduced, providing for an Assembly in Northern Ireland with more limited powers than the old Stormont.

The main documents for the period are:-

- (A) The Northern Ireland (temporary provisions) Act 1972.
  - (B) Northern Ireland: Financial Arrangements and legislation July 1972
  - (C) The future of Northern Ireland - discussion paper October 1972.
  - (D) The Northern Ireland (Border Poll) Act 1972. (This was the subject of a white paper presented in 1975 - 'The Northern Ireland Border Poll 1973' also noted below).
  - (E) Northern Ireland Constitutional Proposals March 1973.
  - (F) Northern Ireland Assembly Act May 1973.
  - (G) Northern Ireland Constitution Act July 1973.
  - (H) Sunningdale Communique December 1973.
  - (I) Northern Ireland (Amendment) Act December 1973.
- (A) The Northern Ireland (temporary provisions) Act
- vested powers <sup>of Stormont</sup> in the Secretary of State and provided that Northern Ireland legislation could be enacted by Order in Council.



- Bill of Rights and safeguards - normal basic rights (and legal Aid for applicants) Ministry of Community Relations to have supervisory role in relation to minor appointments to review general balance of appointments.
- (i) Tripartite declaration as in 1925
  - (ii) Intergovernmental discussions on combatting terrorism and extradition on common law enforcement area: to be followed by
  - (iii) Joint Intergovernmental Council - equal N/S membership to discuss mutual interests particularly economic and social.

- Alliance
- Unicameral Northern Ireland Assembly elected by PR-STV.
  - Committee system of Government, Chairmen to be chosen by P.R.
  - Security to remain in the Westminster, but ordinary crime to be covered by Stormont.
  - Bill of Rights. *Art 75 of 1920 Act to remain.*
  - Tripartite N/S/London Council.

- S.D.L.P.
- UK declaration that united Ireland on terms acceptable to all the people of Ireland is in the best interests of both islands. UK to encourage development.
  - Pending reunification, Joint Sovereignty, under 2 Commissioners, (Irish/British) reserving to themselves, foreign affairs, defence, security, police and finance.
  - Constitutional Court to deal with disputes *except those relating to Treaty which are to be referred to the League.*
  - Assembly of 84 elected by PR-STV with all non reserved powers including taxation.
  - 15 member Executive elected by PR from Assembly: to be removed only by 75% adverse vote.

- No representation at Westminster or Dublin, but new Irish Senate composed of N/S representatives to plan integration of N/S.
- Treaty between Ireland and Britain setting up of system to contain guarantees of civil rights.

N.I.L.P.

- Unicameral 100 member Assembly - PR.
- Departmental Committees instead of Ministers to be elected from Assembly on PR.
- Westminster to be in charge of security, "special powers" (except management of police) + *from electoral laws (NI Assembly to deal only with non-controversial issues)*
- Bill of Rights.
- Consultative Council of Ireland + *no change i. constitutional status without majority N.E. consent.*
- *Royal Assent to be require prior consent of NI Council of State (10 from NI Assembly + 5 from Westminster).*
- Preference for 1920 Act: otherwise integration.

*Inter-Parl Committee (with Westminster)*

D.U.P.

N.U.M.

- Unicameral 72-84 Assembly elected by PR-STV.
- Committee Government. *e weighted majorities for controversial areas*
- Police controlled by Northern Ireland but reformed and civilianised.
- Bill of Rights with ultimate appeal to Mixed Court.
- Recognition of Northern Ireland Status by Republic, machinery for N/S co-operation *to include review of diverse N/S legislation. Joint N/S Parliamentary Committees.*

Options on Status of Northern Ireland

- ~~(i)~~ - *or* ~~Repartition~~ not possible: ~~no one wants it.~~
- ~~(ii)~~ - ~~Irish unity~~ not possible: breaking of pledge and not wanted in Northern Ireland.
- (iii) Affirmation of guarantees as it stands.
- (iv) Provide for possibility of change - 'It is for Northern Ireland to make up its mind what it wishes to do, but the UK Government would not stand in the way in the event of a wish for change'.

- (v) As (IV) for but sketch out way towards Irish unity.  
(vi) Legislate for future change gradual or rapid.  
(vii) Set up joint Council either deliberative or executive with Republic.

Options within UK

- (i) Integration : Could involve splitting up Northern Ireland Departments which would be messy.  
: Could involve large local Councils which could give minority role.  
: however - majority of Northern Ireland parties opposed  
- reversal of 50 years  
- substantial extra burden in Westminster  
- unacceptable to Republic  
- would make cooperation with Dublin more difficult.
- (ii) Northern Ireland Council - <sup>(elected authority presidency)</sup> Executive for Northern Ireland, but legislation in Westminster.
- (iii) Northern Ireland Convention - Possibly Executive functions, but mainly providing Committee stage for legislation for Northern Ireland starting and ending in Westminster.
- (iv) Northern Ireland Parliament/Assembly - 1920 type institution.

If powers are given, the general principles controlling them must be considered as well as the means of Supervising Powers

- Parliamentary supervision in terms of Westminster Sovereignty.

- Government supervision - require assent of Privy Council/Secretary of State/Government.
  - Joint UK/Ni Parliamentary Commission.
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- NI Council of State.
  - (Belgium) 75% of either language group can refer back draft legislation to Council of Ministers.
  - Committees - but do not assure minority exercise of power.

### N.I. Institutions

Executive - Westminster system does not work in NI.

Options - Entrenched Government - certain minorities must be included.

- PR Government - all included but no opposition.
- Bloc Government - all but extreme wings.
- Weighted Majority Government - 75% support for votes of confidence.

None will work if major political element refuses to make it work.

Report noted broad consensus for - devolution

- unicameral legislature
- committees
- Bill of Rights

and a fair amount of support for PR.

Any settlement should take account of

- (a) Dependence - economic and financial of N.I. on Britain.
- (b) Role of Army.
- (c) UK interest - which wants peace, stability, prosperity and protection from outside threat. NI cannot alone determine how it shall be governed within the UK.

- (d) Irish Dimension: geography, minority perception as Irish: political terrorism: NI must determine relationship to UK/Republic.

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  - (e) Division of powers must be logical and sensible and contribute to settlement.
  - (f) the minority must be at a minimum an effective voice and real influence.
  - (g) Fairness and equality for all.
  - (h) Westminster control of security.
- (D) Border Poll - this was held in January 1973 under the 1972 Border Poll Act. It was boycotted by the major nationalist parties, and the vote was 592,000 in favour of remaining in the UK (58% of the electorate) and 6,500 against (0.6% of electorate). A white paper of 1975 - The NI Border Poll 1973 - made clear how little use the exercise was in terms of settling the issue.
- (E) The White Paper 1973 set out the structure for the subsequent 1973 Act: it left two important areas for further discussion viz the formation of an Executive which would have to have cross-community support and the formation of a Council of Ireland which would be discussed with members of the newly elected Assembly and the Government of the Republic. It also discussed the need for Rights legislation covering the civil rights and employment and made specific proposals.
- (F) Northern Ireland Assembly Act 1973 set up the machinery for a 78 seat election Assembly on PR-STV giving wide powers to the Secretary of State to determine electoral procedures.

(G) Northern Ireland Constitution Act July 1973

Covers: Status of N.I.

The wording was somewhat changed as compared with the 1949 Act:-

"It is hereby declared that N.I. remains part of Her Majesty's dominions and of the UK, and it is hereby affirmed that in no event will N.I. or any part of it cease to be part of Her Majesty's dominions and of the UK without the consent of the majority of the people of NI voting in a poll held for the purposes of this section...".

Powers of Secretary of State to provide powers to Assembly & Executive

Where it is likely to be widely accepted throughout the community: effectively 'rolling devolution' could have taken place since the Secretary of State had the power to include such of the transferable powers as he considered appropriate.

Range of Powers

These were split into excepted, reserved and transferred powers:

Excepted Powers - the Crown and UK Parliament, Foreign Affairs, Defence, effectively all taxes, appointment and removal of judges and the DPP and his deputy, elections in respect of NI and local authorities, coinage and special powers for dealing with terrorism. All of these were reserved to Westminster (although not all required primary legislation).

Reserved Powers - matters initially reserved to Westminster, but which might be transferred at some future date including most Court matters other than appointments, maintenance of public order, criminal law and N/S extradition, oaths, certain trade, navigation, aviation, broadcasting matters and the E.P.A.

Transferred Powers - everything else.

### Security/Financial Powers

Thus the powers available to the NI Assembly in the matter of security were severely limited as compared with the old Stormont. Financial powers were also restricted, with the removal of power to determine minor tax rates, the abolition of the NI Exchequer (although a separate NI fund was retained) and the determination of the NI attributable share of revenue not by a Joint-Exchequer board but by the Treasury. Given that the old Parliament had ~~made~~<sup>made</sup> full ~~use~~<sup>use</sup> and even exceeded its security powers, the limitations in this area seemed much more severe than in the financial area, where the new arrangements probably reflected to a considerable extent the reality of the situation for some time past.

### Limitations on Power

S75 of the 1920 Act was maintained, giving Westminster the power to act in relation to all matters concerning NI. However S4(6) of the new Act enabled the NI Parliament within its area of competence to amend or repeal provisions made by the UK Parliament in so far as they related to NI. Detailed arrangements were included on excepted and reserved matters to prevent a recurrence of the 1972 problem over the role of

the British Army. Any discriminatory measure of the NI Assembly would be void, and provisions were included to enable the Secretary of State to have the validity of a measure in this regard tested by the Judicial Committee of the Privy Council. Oaths could not be imposed by the Assembly as a condition of employment/office except as specified in the Act, or <sup>as</sup> permitted after the transfer of *powers relating to* oaths which were a reserved matter for the time being.

Relations with the Republic were covered by S.12 - it give the NI Assembly the power, if it so wished, to consult with the Republic in any matter, or enter into agreement with ~~it~~ on any transferred matter.

Prevention of Religions and Political  
Discrimination

A series of sectors covering legislation, discrimination by Public Authorities, the establishment of the SACHR and extending the powers of the Ombudsman were introduced.

Secretary of States Powers - effectively to ~~run~~ NI, mainly by Order in Council.

- (H) Sunningdale Communique following Conference between Irish, British Governments and parties involved in the Northern Ireland Executive (designate) 6-9 December 1973. (The N.I. Executive had been agreed on by the N.I. parties following 7 weeks of discussions ending on 22/11/73).

Contains: 1) Declarations on status of Northern Ireland by each Government viz:-

'The Irish Government fully accepted and solemnly declared that there could be no change in the status of NI until a majority of the people of NI desired a change in that status.'

'The British Government solemnly declared that, it was and would remain, their policy to support the violence of the majority of the people of NI. The present status of NI is that it is part of the UK. If in the future the majority of the people of NI should indicate a wish to become part of a united Ireland, the British Government would support that wish.'

2) Formal agreement to be signed and registered in the U.N.

3) Council of Ireland to be established with

- Representatives of 2 parts of Ireland
- Council of Ministers (7 each N/S and Chairmanship to rotate) with Executive and harmonizing functions
- 60 member Consultative Assembly - 30 each Dáil and Assembly with advisory/review functions
- small sectariat to serve Ministers and carry out studies
- Revenue from two Governments, but with protection for British Government interests

- Commission to consider law enforcement
- Council of Ireland to consider ways of implementing ECHR in N/S
- Consideration to be given by British to devolving police powers when institutions established. Police Authorities for both parts of Ireland and an independent police complaints procedure authority
- Detention to be brought to an end as soon as possible
- Devolution to take place.

(H) The Northern Ireland Constitution (Amendment) Act in December provided for a larger Executive 11 members plus up to 4 Ministers outside the Executive, as was required by the informal agreement on power-sharing Executive agreed between the OUP, SDLP and Alliance on 22/11/1973. Devolution took place on 1 January 1974 but the Executive collapsed in the face of the UWC strike in May 1974.

The Executive was composed of:-

Chief Executive - B. Faulkner (U.P.)  
Deputy Chief Executive - G. Fitt (SDLP)  
Legal Minister and Office of Law Reform - O Napier (ALL)  
Minister of Information - J. Baxter (U.P.)  
Minister of Environment - R. Bradford (U.P.)  
Minister of Housing, Local Government & Planning - A. Currie (SDLP)  
Minister of Health and Social Services - P. Devlin (SDLP)  
Minister of Commerce - J. Hume (SDLP)

Minister of Finance - H. Kirk (U.P.)  
Minister of Education - B. McIvor (U.P.)  
Minister of Agriculture - L. Morrell (U.P.)

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Ministers outside Executive:

Community Relations - I Cooper (SDLP)  
Manpower Services - R. Cooper (ALL)  
Planning and Co-ordination - E. McGrady (SDLP)  
Chief Whip L. Hall Thompson (U.P.).

It had responsibility for the transferred powers and lasted 5 months.

Etain Doyle.  
October 1986.

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