



associated with the Christmas turkey. He could not say precisely how many men would be released but the number was unlikely to be above 100 at this stage.

(b) On the Council of Ireland Mr Faulkner asked what was meant by "harmonisation" in paragraph 1(c) and Mr Bradford and Mr Baxter wondered whether the term should be interpreted in the EEC sense:- ie preparing the way for the unification of North and South.

The Secretary of State explained that, in his opinion, the Council of Ireland should examine the harmonisation of the law in the North and South in relation to trade and to professional bodies. For instance, there was one society of Chartered Accountants in the whole of Ireland but the laws governing this body were different in the North and South. Similarly the law in relation to industrial training might also be brought into line.

3. Mr Hume pointed out that the second sentence of paragraph 1 quoted part of paragraph 112 of the White Paper - "the question of the acceptance of the status of Northern Ireland" - but did not go on to quote the reference to the possibility of subsequent change. The Secretary of State explained that he had to be careful what he put in the statement without reference to Dublin, and he agreed that the words after "White Paper" should be omitted to avoid any possible bias.

4. Mr Faulkner asked what was meant by "advances in the whole law and order field" on paragraph 3, apart from the discussion of a common law enforcement area. The Secretary of State replied that the introduction of the common law enforcement area would have considerable ramifications. North and South might, for instance, go on to discuss the possibility of common courts and joint police operations in border areas. There could possibly be an agreement under which the police could pursue criminals over the border. Mr Bradford said that there was confusion about what precisely was meant by a common law enforcement area. Did it simply mean that a person could be tried wherever he was arrested for an offence committed in any part of the country? Obviously common law enforcement overlapped with extradition arrangements. The Secretary of State said that this was a complicated subject and that a conference of lawyers would be needed in order to clarify what changes could be introduced.

5. Mr Faulkner asked for an assurance that the Council of Ireland would have no responsibility whatever for internal policing in the North and South. The Secretary of State said that HMG's position on policing was clear, but it was inevitable that police matters would be discussed in the context of a possible common law enforcement area. Mr Faulkner explained that the Unionists would be happy for

machinery to be set up to enable the RUC and Garda to work in close co-operation in border areas but that they could not tolerate any suggestion that the police force should be in any way the responsibility of the Council of Ireland. The Secretary of State re-affirmed that there was no question of this. The role of the Council would be to establish improved means of co-operation.

6. Mr Hume asked whether it was necessary for Mr Paisley and Mr Craig and their followers to be invited to the preliminary Conference about the Council of Ireland. The Secretary of State explained that, in view of paragraph 112 of the White Paper, it would be very difficult not to invite the parties which were not prepared to co-operate in the formation of an Executive. Quite apart from this, there would probably be less violence by Protestant extremists if Dr Paisley and Mr Craig were invited to the talks. In the following discussion, the meeting accepted that there would be violence in any case, and that Dr Paisley would try to wreck the talks whether or not he came.

7. Mr Hume said that paragraph 112 of the White Paper referred to leaders of Northern Ireland opinion, not to party leaders, and there was no legal obligation under the Constitution Act for the Secretary of State to invite to the Tripartite Conference the leaders of the parties who were against power-sharing. Dr Paisley and Mr Craig had in fact excluded themselves from talks, and representatives of the three parties who were to make up the Executive were the only Assembly members who had any authority to speak for Northern Ireland in Tripartite talks. The Secretary of State said that there was nothing in the Constitution Act which dictated how he should conduct the Tripartite Conference, and that the decision whether or not to invite Paisley and Craig was a matter of political judgment. Whatever was agreed about the Conference would have to be made known to the South.

8. Mr Bradford said that an invitation to Dr Paisley and Mr Craig would enable them to compromise their attitude to power-sharing. If they attended the Conference, they would implicitly acknowledge the existence of the "Irish Dimension".

9. In reply to a question by Mr Hume, the Secretary of State said that there was no question of inviting the "unpledged" Unionists who had consistently demonstrated that they regarded themselves as members of the Unionist Party. Mr R Cooper disputed this and wondered whether the "unpledged Unionists" did not qualify for an invitation as "representatives of public opinion".

10. Mr Faulkner said that, in the view of the Unionist Party, it would be safer not to have a Conference about the Council of Ireland until an Executive was formed; in this way Dr Paisley and Mr Craig could be excluded.

11. Mr Hume said that the SDLP appreciated this argument and were prepared to

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agree to the formation of some sort of "provisional Executive" before the Tripartite Conference. The Secretary of State said that this might be helpful. Nevertheless, there would still be a need for preliminary talks before the main Tripartite Conference. In the following discussion, it became clear that the three parties within the "provisional Executive" would be free to put their own separate views at the preliminary talks, but that the final Conference would not be held until the Executive had been formed and all the members had agreed a common policy.

12. Mr Hume argued that the two stages of the Conference could be run together. During the first part, the three parties would put forward their own arguments, then when agreement had been reached between the three political parties, HMG and the Government of the Republic, Westminster should take the necessary steps to constitute the Executive. Immediately afterwards the formal Tripartite Conference could be held to put the rubber stamp on what had been agreed. The whole process need take no longer than a week. The Secretary of State explained that this would be difficult, if only because the Prime Ministers and Foreign Secretaries of the United Kingdom and the Republic of Ireland would not be able to devote the time needed to reaching final agreement so soon. Furthermore, the Secretary of State had to be careful how he presented the formation of an Executive to Westminster. A full debate would be required before the necessary enabling measures were passed, and this could not be rushed or arranged at a moment's notice.

13. In the course of the discussion, the meeting agreed that the preliminary talks should be private, and that great care should be paid to dealing with the Press. It was accepted that the Government of the Republic would have to agree to recognise Northern Ireland at the preliminary talks.

14. The meeting agreed in general that preliminary talks would be needed before the formal Tripartite Conference would be held, but that, providing the Assembly representatives went as the "provisional Executive" Dr Paisley and Mr Craig should be excluded. The Secretary of State's paper should state that the formal Tripartite Conference would be held as soon as appropriate thereafter. The Secretary of State told the meeting that although he had agreed to hold wide-ranging talks with Dr Paisley about the Council of Ireland and other matters, he had never made any commitment that he should be invited to the Tripartite Conference or preliminary discussions. The Secretary of State therefore agreed to arrange to meet representatives of the parties which opposed the formation of an Executive to discuss the Council of Ireland and to take note of their views before the first preliminary talks. This would meet the requirements of paragraphs 112 and 113 of the White Paper.

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15. Mr Hume then turned to the subject of detention, and asked that the last sentence of paragraph 5, which stated that those released would be required to give a suitable undertaking about their future conduct, should be omitted. The Secretary of State replied that he had in fact changed his own mind on this matter. When he came into office he had stopped the practice of requiring detainees to sign an undertaking before they were released, but that the Police and Army were in favour of this practice and he now thought that it should be reintroduced. In the following discussion, the Unionist delegation said that they were concerned that the Secretary of State should not authorise the release of detainees who might return to violence. This could be very damaging to the Executive. Mr Bradford said that it was rumoured that the IRA had instructed some detainees to give an undertaking in order to secure release so that they could return to terrorist activities. Mr Hume pointed out that a stigma was attached to "signing oneself out" and that many detainees who would not return to violence would be deterred from seeking release if they had to sign an undertaking. Mr Napier pointed out that the Commissioners often required detainees who were to be released to give an oral undertaking to keep the peace and that this requirement was as absolute as the one proposed. Mr Bradford said that many Protestant detainees would be happy to sign an undertaking to secure release. Summing up, the Secretary of State said that it might be very helpful to reintroduce this system of requiring detainees to sign an undertaking; nevertheless, he accepted that this procedure should not be followed automatically.

16. Mr Faulkner explained that he had to leave shortly, and the three parties agreed that they had no further comments on the paper as it stood. The Secretary of State was arranging for the paper to be redrafted to take account of all the points which had been raised. The delegations agreed to reconvene at 2 pm to discuss the allocation of appointments, and the meeting adjourned at 12.15 pm.

17. The meeting reconvened at 2.30 pm.

18. Mr Napier reminded the meeting that all agreements between the three parties were dependent upon the final agreement that an Executive should be formed. Therefore, the Alliance Party could not at this stage either accept or reject the document that had been discussed during the morning.

19. The Secretary of State had provided a revised version of paragraphs 2 and 12 (Annex B). Mr Faulkner said that instead of referring specifically in paragraph 2 to paragraph 112 of the White Paper, the Secretary of State should say that the Conference would discuss ways and means of preparing for a Council of Ireland. This would avoid drawing attention to the part of the White Paper on which Dr Paisley would base his claim that he had a right to be invited to the preliminary talks.

Mr Faulkner also suggested that the second reference to invitations to the Preliminary Conference should be omitted. The Secretary of State agreed with both these proposals. Mr Hume suggested that the Executive in embryo should be referred to as the "Executive Designate". This was agreed. The Secretary of State said that these points would be taken into account when the paper was being redrafted. The final version, which was agreed, is at Annex C.

20. The Secretary of State said that the time had come to discuss the composition of the Executive. He had previously suggested that six Executive posts should be given to the Unionist Party, four to the SDLP and one to the Alliance Party. An additional post - not on the Executive - would be given to the SDLP. This proposal had been unacceptable to the Alliance and SDLP delegations; he had held discussions with all three delegations on the previous day, and he would now like to hear their views.

21. Mr Napier said that he could not accept the 6, 4, 1 proposals contained in paragraphs 3 and 4 of the paper tabled on the previous Monday. The Alliance Party adhered to the principle that the Executive posts should be divided between the parties in relation to the relative strengths of the three parties. The SDLP had 19 Assembly members, and so did the Unionists. The Alliance Party had 8. Against this background, an allocation of seats in ratio 5, 5 and 2 was the only reasonable and fair solution. The Alliance Party in fact deserved slightly more than two seats but they were prepared to accept this solution. Mr Napier reminded the meeting that the Secretary of State had to be satisfied that the conditions of Section 2(1)(b) were fulfilled before he could agree to the formation of an Executive. The Executive had to have the general support of the Assembly and also the general support of the electorate. The support of all members of the three parties would be required in order to satisfy the first condition, and an equal number of seats had to be given to the Unionist Party and the SDLP unless the Secretary of State thought that one party's supporters were more equal than the others. Mr Napier also asked the Secretary of State how the balance of an Executive would be worked out after the next election.

22. Mr Fitt said that, in the view of the SDLP, the number of appointments given to each party must reflect the balance between the parties in the Assembly. He could only agree to the 5, 5, 2 formula.

23. Mr Faulkner said that he had little to add to what he had said on Monday. As the Secretary of State had argued, the Executive must incorporate an overall Unionist majority if it was to be acceptable to the country. He pointed out that while the Alliance Party had 8 Assembly members, and the SDLP 19, the Ulster Unionists had 19 members (or 20 if they won the impending bye-election) and in addition the support of a number of other Assembly members. On the basis of the support in the country

the Unionist Party could only accept the 6, 4, 1 solution. Nevertheless, it was reluctantly prepared to agree to an additional member of the SDLP being given an appointment outside the Executive.

24. The Secretary of State said that after the next election in 4 years' time the balance of the Executive would have to be renegotiated with the Secretary of State of the day. It was a futile exercise to try and predict the circumstances of the next election.

25. Mr Devlin argued that two members of Mr Faulkner's party did not support power-sharing, and consequently his true strength in the Assembly was 17 members. Mr Napier was convinced the balance between the parties in the Assembly was the only basis for allocating appointments within the Executive.

26. The Secretary of State said that he had already stated the HMC's position under Section 2(1)(b) of the Constitution Act. An Executive must be "widely accepted" by the community, and he had no doubt that there must be an overall Unionist majority. He was convinced that Mr Faulkner had far wider support than had been exhibited at the previous day's meeting of the Unionist Council. If he was not given a majority, there was no chance of an Executive being formed. The Secretary of State said emphatically that that was his judgment.

27. Mr Napier asked how the Secretary of State judged how an Executive would have general support in the country. The Secretary of State replied that he was in fact making a personal judgment, and that the only alternative was to hold some sort of referendum. He said that the meeting should remember that Mr Faulkner had only narrowly won the vote on the previous day and that he had to carry a large body of dissenters with him. Mr Devlin said that the Secretary of State sympathised with Mr Faulkner's position but he should not forget that Mr Devlin had consistently stated the SDLP position, which was equally strong.

28. The Secretary of State said that power-sharing was completely new in Northern Ireland, and that Unionists were naturally suspicious. It was a new concept, and alien to many people. Participation in Government was a great advance for the minority, and a great achievement for the SDLP. It would be a pity if the leaders of the SDLP were to throw this away in an attempt to obtain a concession which no leader of the Protestant community could grant - equal representation on the Executive.

29. Mr Hume asked how the Secretary of State could possibly assess how much support the Executive would have in the Assembly. The Secretary of State replied that it was essential that the Executive should have the support of all the members of the three parties in the Assembly, otherwise it would be sunk. He added that the three parties would acquire more support as soon as the Executive had been formed.

30. Mr Fitt recognised that Mr Faulkner had problems with the "unpledged" Unionists and that he had survived by a narrow margin the previous day. The SDLP also had problems with the supporters. Their Annual Conference was at the end of the month and there were already two actions on the Agenda:-

- (a) seeking to prevent the SDLP from entering into any power-sharing Executive with Mr Faulkner; and
- (b) seeking to prevent the SDLP from entering any Executive where they did not have equal representation with the Unionist Party.

The meeting should bear in mind that these motions could go against the SDLP Leadership. Mr Faulkner said it was inevitable that party leaders should be by many of the supporters of the other parties. Nevertheless, the minority was in fact for the first time in 50 years being given a strong place in Government. This was remarkable, particularly when 50 of the 78 seats in the Assembly were filled by Unionists of one shade or another. The Secretary of State must observe the predominance of Unionists in Northern Ireland, and a Unionist majority was necessary and inevitable under Section 2(1)(b) of the Constitution Act.

31. Mr R Cooper questioned Mr Faulkner's figures about Unionists in the Assembly. He said that Mr Faulkner had in the past said that Mr Craig and his supporters were not Unionists and indeed their political views were in many ways diametrically opposed to the Unionists' views. It would be nonsensical if Mr Faulkner were given an overall majority merely because he had to deal with a large party anti-faction. The SDLP asked what the Secretary of State's view would have been had they won a small number of seats and the official Republicans had won a large number. In those circumstances would he have insisted that the SDLP should have had an overall majority? The Secretary of State refused to be drawn into hypothetical discussions. He said that he would only consider the situation as it was, and he was quite clear that Mr Faulkner must have an overall majority.

32. In reply to a question from Mr Napier, the Secretary of State said that the Executive's support in the Assembly would be decided by a vote of confidence, but obviously he could not demonstrate in a similar way that the Unionist majority would have the general support of the country, unless the question was put to a referendum, which would be extremely undesirable. Nevertheless he was quite clear that an Executive which did not incorporate an overall majority would not command the support of the country. If he could not prove his point in a positive manner, he was quite clear that it was proved negatively.

33. Mr Currie and Mr Devlin said that the meeting was reaching an impasse, and Mr Devlin suggested that the talks would be postponed until the following Monday. Mr Faulkner reminded the meeting of the danger of leaving the power vacuum for very much longer. The Secretary of State said that the meeting should seek every possible way to find a solution. The three delegations then asked the Secretary of State whether he had any possible way out of the present confrontation.

34. The Secretary of State replied that it would be possible to create posts over a maximum of 12 laid down by the Constitution Act. This would probably require an amendment to the Act, which the Prime Minister had indicated he would be prepared to do as a last resort if this was absolutely essential to the formation of an Executive. Mr Faulkner expressed doubts about amending the Constitution Act since this would open the way to demands for more radical changes in the constitution position. Mr Napier pointed out that there was a clear distinction between changes of administrative detail, and changes of principle. If the maximum number of appointments was increased, the principle of the Act would be in no way altered.

35. The Secretary of State said that if the meeting could agree on an Executive with more than 12 appointments, he was content to ask Parliament for the necessary amendment. He would have to specify the number of appointments to be made.

36. At 4.30 pm the meeting adjourned so that the Secretary of State could hold individual discussions with the three parties.

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CONTINUATION MINUTES OF INTER-PARTY TALKS HELD AT STORMONT CASTLE ON  
21 NOVEMBER 1973

The meeting reconvened at 7.00 pm.

The Secretary of State said that a provisional agreement had been reached on the numbers in an Executive, subject to the allocation of Departments between the three parties. The Executive would consist of 6 Ulster Unionists, 4 SDLP members and 1 Alliance Party member. He would seek Parliamentary approval for another four positions, not being Heads of Departments. This would then give the following distribution amongst the parties: 7 Ulster Unionists, 6 SDLP members and 2 Alliance Party members. In addition there would also be a Deputy Chief Whip outside the administration who would be an Assembly Member of the Alliance Party. The entire arrangement was subject to agreement on issues such as the Council of Ireland.

2. The Secretary of State's understanding of the situation was confirmed by all three parties.
3. The Secretary of State then turned to the allocation of Departments.
4. Mr Fitt said he wished to come to an agreement at once. He did not wish to take a Department himself, but the SDLP would be entitled to demand three major Departments.
5. The Secretary of State said he was grateful for Mr Fitt's generous gesture. He would only seek to nominate Mr Faulkner as Chief Executive with Mr Fitt as Deputy Chief Executive. Mr Napier would also be included in the Executive. He did not wish to put other names to specific posts at this time.
6. Mr Faulkner congratulated the Secretary of State on bringing the talks to such a successful conclusion. He said this was an historic occasion, being the first coalition government in Northern Ireland. This final stage would have to be settled tonight. He agreed with the other parties that they should settle the distribution of the Departments between parties without putting forward specific names.
7. Mr Napier said that he would like the post of Legal Member and Adviser on Law Reform.

8. The Secretary of State suggested that there should be a short adjournment for refreshments. The meeting adjourned for 20 minutes.
9. Resuming the discussion, the Secretary of State said that there might be some difficulty in making "Legal Member and Law Reform" an Executive post. The Northern Ireland Attorney-General would need to be consulted.
10. Referring to the proposed Department of Manpower Services, Mr Napier said that he would prefer this to be an office outside the Executive, held by an Alliance Party member. He suggested Mr Bob Cooper. Sir David Holden thought that Manpower (or Labour) was an important Department of State with many crucial responsibilities. Mr Napier said it would be a separate office for the first time in Northern Ireland: Mr Faulkner disagreed. There had been a Ministry of Labour up to 1966; Trade Unions were disappointed when its functions were transferred to Health and Social Services and would be equally disappointed if Manpower was not a full Department in the new administration. Mr Kirk said that he had been the last Minister of Labour and agreed with Mr Faulkner's view. Mr Napier again said that he would prefer it to be outside the Executive and he wanted the position for Mr Bob Cooper of the Alliance Party. The Secretary of State and other parties agreed to this.
11. The Secretary of State asked what was meant by "Planning and Co-ordination" in the office of the Executive. Sir David Holden said that there would be a considerable amount of inter-Departmental co-ordination of some "ad hoc" tasks to perform such as the relationship with the Economic Council and the new body representing the Construction Industry. Mr Hume asked from which Departments these functions would be taken. Mr Kirk said the former was from Commerce, the latter from Finance. Mr Bloomfield said that the appointment of a "co-ordination" or "Head of Department without Portfolio" was very desirable.
12. The Secretary of State said that the meeting should now consider the allocation of major Departments. Finance should go to one major party, Commerce to the other. Mr Faulkner said that it was difficult to decide which one to have. Mr Fitt said the SDLP would like to have the Department of Commerce. Mr Faulkner suggested that the discussion returned to this later and should now look at the other Departments.
13. The Secretary of State suggested the following allocations, which were agreed by all parties: Agriculture - Unionists; Education - Unionists; Health and Social Services - SDLP; Housing, Local Government and Planning - SDLP; Environment - Unionists.

14. Mr Faulkner suggested that since one post (Manpower Services) had now been taken out of the Executive, Community Relations and Information Services should be combined and made an Executive Department. Mr F Cooper thought Community Relations might be strengthened by the addition of a responsibility for recreation, arts etc and thus made into a viable Department. Mr van Straubenzee said that it might be unwise to take recreation out of the Department of Education but museums and Arts could be made part of Community Relations. Mr Bloomfield said Community Relations was of growing importance in itself. The Secretary of State suggested that Information Services be made into a Department with Community Relations outside the Executive. It would be useful to have an information service in close touch with the Administration. This was agreed by all the parties.

15. Mr Fitt said the Executive was a completely new venture with collective responsibility. Each party could undermine the proposals of the other. The Department of Finance might be able to cut off funds for the programmes of Departments controlled by members of the other parties. However, in the spirit of the new endeavour he thought Finance should go to the Unionists and Commerce to the SDLP. They would work in close co-operation. The Secretary of State said both Departments were very important and were at the heart of the whole concern. Neither could work properly without help from each other, the Secretary of State and HM Treasury. The Secretary of State would be of no use if he could not work in close conjunction with the Executive authorities.

16. Mr Faulkner asked what other posts were to be filled first. The Secretary of State said that if the Unionists took Information Services and SDLP Community Relations, this left Chief Whip, Planning and Co-ordination. Mr Devlin thought the Unionists should take the Chief Whip post and asked whether this was in fact Leader of the House. The Secretary of State said this was not the case; the Chief Executive would be leader. Mr Faulkner agreed that the Unionists would take the Chief Whip post and Mr Fitt agreed that the SDLP would take the Planning and Co-ordination office outside the Executive.

17. The discussion returned to the Finance and Commerce posts. The Secretary of State said that he would make the decision if the two parties concerned were content. Mr Currie said the SDLP particularly wanted to have the Commerce post as they had already conceded one Executive post in these discussions. However, the SDLP would abide by the Secretary of State's decision. Mr Faulkner indicated his consent to the Secretary of State's proposal. The Secretary of State said he would give the Department of Commerce to the SDLP. This was agreed.

18. The Secretary of State said he was very grateful for the attitude adopted by the parties in the last phase of the talks. The question now arose of publishing the details of the agreement. He suggested a short statement saying agreement had been reached on an Executive-designate and that details would be announced in the House of Commons the following day. He had told the Prime Minister what had happened. Now there would be talks on the Council of Ireland to which the Executive-designate would be asked and he would invite other parties (VUPP, DUP etc) to give their views to him privately. He would make a general statement on the RUC, detention and the Council; he hoped the consultations would begin in early December and a date would be fixed for devolution of powers as soon as a clear understanding had been reached. He hoped everyone would trust him to make clear that the agreement was conditional on the outcome of talks about the Council. After his announcement in the House of Commons, names of those nominated as Heads of Departments could be produced by the parties.

19. After agreeing the short press statement, the meeting adjourned. Mr Fitt, Mr Faulkner and Mr Napier personally thanked the Secretary of State for his efforts in bringing the talks to a successful conclusion.