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FROM: D A L COOKE
TALKS PLANNING UNIT
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ASST
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CENT

1. Mr. Hanley (9.1)
2. Talks.

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19.6

cc: PS/Mr Hanley (L&B) - B
PS/PUS (L&B) - B
PS/Mr Feil - B
Mr Thomas - B
Mr Alston - B
Mr Bell - B
Mr D A Hill - B
Mr D J R Hill - B
Mr Dodds - B
Mr Maccabe - B
Mr Stephens - B
Ms Lodge - B
Mr Archer, RID - B
Mr Hallett - B
HMA Dublin - B
Mr Sibson, Cab Off (BY HAND) - B
Mr Caine - B

PS/SECRETARY OF STATE (L&B) - B

GOVERNMENT OF IRELAND ACT 1920

As Ministers know, a potential source of conflict in the early stages of Strand 2 (and conceivably also in the pre-Strand 2 and pre-Strand 3 meetings and in Strand 3 proper) is the different positions of the participants on the Government of Ireland Act 1920 (GOIA). This note brings together previous briefing on this subject in case it is needed.

Background

2. The GOIA provided for the establishment of separate Parliaments for Northern and Southern Ireland and a Council of Ireland, "with a view to the eventual establishment of a Parliament for the whole of Ireland, and to bringing about harmonious action between the Parliaments and Governments of Southern Ireland and Northern Ireland". The Act also provided for the establishment of such a Parliament for the whole of Ireland (a development described as

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Irish union') with the consent of an absolute majority of the members of the House of Commons in each part of Ireland.

3. It was Mr Reynolds who first revived the notion, shortly after taking office, that the GOIA should be on the table at the Talks. John Hume had already indicated sketchily in the course of last year's talks that elements of the GOIA were objectionable to nationalists. Mr Reynolds argued that Articles 2 & 3 of the Constitution could not be taken in isolation. While Unionists took exception to those Articles, nationalists for their part took exception to elements in the GOIA.

4. The Unionists reacted strongly against this. The DUP referred to it in their manifesto: "We shall not for one moment countenance balancing the sound, legitimate and reasonable provisions in the Government of Ireland Act 1920 with the fraudulent, unlawful and absurd assertions contrived in Articles 2 & 3 of the Constitution of the Republic of Ireland".

Irish Government's position

5. Uncertainty remains as to the Irish Government's real motives in raising the GOIA. Contacts with Irish officials suggest that they have gone through several phases of post hoc rationalisation. There are various possibilities:

- (i) First, and most likely, they wish to give a signal that the Unionists will not have sole occupation of the moral high ground when it comes to discussing the constitutional position. The argument that nationalists take similar exception to some of the provisions of the GOIA - 'the one that partitioned this country in the first instance' according to Mr Reynolds - probably originated with Mr Hume and is in line with some of his more heated comments in Strand I on British occupation. If this is intended to

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serve as a reminder that the partition of Ireland is still not accepted as legitimate it does not augur well for the removal of the territorial claim in Articles 2 and 3 or any willingness to remove ambiguity in any new agreement on the status of Northern Ireland as part of the UK. It seems more likely, if the Irish are to refer to the GOIA in this way, that they will argue that they have accepted the reality rather than the legitimacy of the 'British presence' in Northern Ireland and have only signed up to majority consent on this basis. All this, of course, has to be set alongside the Irish Government's repeated confirmation that Articles 2 and 3 will be on the agenda, and Mr Nally's recent comment to Sir Robin Butler that there could be movement on Articles 2 and 3 if what is on offer on North/South arrangements goes sufficiently wide and deep. So this particular Irish line on GOIA may be primarily retaliatory and tactical.

(ii) A reason which the Irish have subsequently given for raising the GOIA is their interest in the Council of Ireland element. This is somewhat paradoxical in that they were originally taking exception to the Act rather than seeking to use it as a model. It may be that this second line of argument has been tacked on to take the heat out of the reactions provoked by the first one. It is nevertheless not particularly helpful, since the worst way of constructively engaging the Unionists on North/South arrangements is to broach the issue through a term, "the Council of Ireland", with 1920 and 1973-74 resonances which are the opposite of music to their ears.

(iii) A third, and equally unpromising focus might be the implication in the GOIA that the ground was being prepared for an eventual united Ireland. Mr Reynolds recalled this in his speech to the Fianna Fail Ard Fheis earlier this

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year: "At that time a united Ireland was the ultimate aim of British policy to be brought about by agreement. But in the meantime it always envisaged that the effects of partition would be minimised by close political links and economic co-operation between North & South". But much of this speech was less green in tinge than Mr Haughey's equivalent efforts, and it may be that Mr Reynolds saw this as a relatively mild way of meeting the expectations of the Fianna Fail faithful without making significant waves for the Talks.

- (iv) A fourth argument, which is unlikely to be deployed but of which Ministers should be aware, is that the GOIA on the face of it lays claim to the territory of the Republic in the same way as Articles 2 and 3 make a claim in respect of Northern Ireland. There is some evidence that this was Mr Reynold's original - and subsequently abandoned - point in referring to GOIA. The Act does state that 'the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Ireland and every part thereof.'

But this provision is spent as far as the Republic of Ireland is concerned. It was overtaken by the Irish Free State (Consequential Provisions) Act 1922 which states that the GOIA shall cease to apply to any part of Ireland other than Northern Ireland. (If the Irish wanted to suggest that UK legislation is at odds with the Agreement they might focus instead on the 1801 Act of Union which declares that the kingdoms of Great Britain and Ireland shall be united 'for ever.')

6. There are conflicting signals as to whether Irish Ministers now want to deploy any of these points in the Talks. Some officials imply that Irish Ministers will not do so. But GOIA remains part of the Taoiseach's mental tool kit. We cannot be sure that it will

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resurface in the Talks, especially if the Irish are provoked or under pressure.

Handling

7. Under the terms of the 26 March statement it is "open to each of the participants to raise any aspect of (the three) relationships, including constitutional issues, or any other matter which it considers relevant". The one argument which is not open to us is that reference to the GOIA would be outside the ambit of the Talks.

8. Our own position on discussion of the GOIA is that is

- (a) no longer relevant, and in particular hard to square with the fact that both British and Irish Governments are parties to Article 1 of the Agreement, which embodies the principle of majority consent in Northern Ireland; and
- (b) unhelpful, in that it would be likely to introduce a note of acrimony and charged historical resonance which would inhibit constructive discussion.

Line to take

9. HMG's main objective will be to persuade the other participants to pursue discussions along less emotive and more constructive lines. If the point does come up the British team could draw on the following points (depending on the context).

- The Government of Ireland Act and Articles 2 and 3 are of a very different order. The GOIA is consistent with the legal reality in UK and international law that Northern Ireland is part of the UK. Articles 2 and 3, by contrast, are a territorial claim which does not reflect the

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principle of majority consent in Northern Ireland, which both Governments have accepted in Article 1 of the Agreement.

- GOIA does not lay claim to territory of the Republic. Provisions appearing to do so were in fact overtaken by the Irish Free State (Consequential Provisions) Act 1922 and are spent.
- The GOIA did make provision for Irish unity, but within the UK and only if this were to be voted by a majority in both parts of Ireland. Both Governments have already accepted in Article 1(c) of the Agreement that if a majority of the people of Northern Ireland were to consent to Irish unity we would respect and seek to implement their wishes. HMG can foresee no other way in which Irish unity could come about.
- It is true that the GOIA foreshadows possible North/South institutions such as a Council of Ireland. But it is not helpful to anticipate possible outcomes of Strands 2 and 3 by references to arrangements envisaged over 70 years ago when the situation was quite different. We now have a real opportunity to start afresh and to discuss arrangements which reflect the situation as it is today.

10. It would be preferable, of course, not to have to discuss GOIA at all. We shall continue to seek to convince Irish officials that it is unlikely to be a profitable or constructive way for the Irish side to set out its position in either Strand 2 or Strand 3.

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We have a possible discussion paper in reserve which seeks to refuse the GOIA arguments if they force their way in any guise onto the agenda. This is at Annex A. But it would certainly be far preferable not to get into the position where it might need to be tabled.

(SIGNED)

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TALKS PLANNING UNIT
18 JUNE 1992
OAB EXT 6587

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ANNEX A

GOVERNMENT OF IRELAND ACT 1920: BRIEF BY HMG

Introduction

Under the terms of the 26 March Statement it is open to each of the participants in the Talks to raise any aspects of the relationships to be addressed, including constitutional issues. This paper examines the Government of Ireland Act 1920 and its relevance to the Talks process.

Main Provisions

2. The Government of Ireland Act 1920 provided for

- (i) the establishment of separate Parliaments for Northern and Southern Ireland within the UK
- (ii) the constitution of a Council of Ireland composed of a President nominated by the Lord Lieutenant and 40 other persons, seven from the Senate of each Parliament and 13 from each House of Commons, to be elected by the Chamber of which they were members.

3. The Council was to be established 'with a view to the eventual establishment of a Parliament for the whole of Ireland [within the UK], and to bringing about harmonious action between the parliaments and governments of Southern Ireland and Northern Ireland, and to the promotion of mutual intercourse and uniformity in relation to matters affecting the whole of Ireland, and to providing for the administration of services which the two Parliaments mutually agree should be administered uniformly throughout the whole of Ireland.'

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It was open to the Northern and Southern Parliaments to delegate to the Council of Ireland any of their powers and to determine the manner in which such powers should be exercised by the Council.

5. The Act also provided the power to establish a Parliament for the whole of Ireland if agreed by an absolute majority of the members of the House of Commons in each part of Ireland. This concept was described in the Act as 'Irish union.'

Subsequent legislation

6. The provisions of the Government of Ireland Act have largely been overtaken by subsequent legislation:

(i) The Irish Free State (Consequential Provisions) Act 1922 stated that the Government of Ireland Act should cease to apply to any part of Ireland other than Northern Ireland.

(ii) The Boundary Agreement of 1925 annulled the Council of Ireland provisions of the GOIA and provided instead that the Governments of the Irish Free State and of Northern Ireland should meet together as and when necessary for the purpose of considering matters of common interest.

7. Many of the Act's detailed provisions have since been repealed, but a miscellany of provisions relating chiefly to financial arrangements remain relevant to Northern Ireland.

Relevance to the Talks process

8. There are various aspects of the Act which Talks participants may consider relevant to our current discussions. These may include some of the following:

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- (i) It has been suggested that in providing for the establishment of separate Parliaments within the island of Ireland the Act was responsible for partition, and is thus as objectionable to nationalists as Articles 2 and 3 are to Unionists.
- (ii) It may be considered that provisions in the Act relating to the Council of Ireland might form the basis for discussions on future arrangements to address the relationship between the two parts of Ireland.
- (iii) It could be argued that the Talks should resurrect the idea of an 'Irish union' on the lines of that envisaged in the Government of Ireland Act.

9. It is the view of HMG that there is little to be gained by attempting to impose this kind of historical perspective on the Talks when the Act in question has been overtaken by subsequent events (and when many of its provisions have been repealed). We now have the opportunity, with those involved in the three relationships all seated around the same table, to proceed through discussion and negotiation to reach an outcome which is widely acceptable and appropriate to the circumstances of today.

10. The Government of Ireland Act and Articles 2 and 3 of the Irish Constitution are of a very different order. The GOIA is consistent with the legal reality in UK and international law that Northern Ireland is part of the United Kingdom. The two Governments have accepted in Article 1 of the Agreement that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland. It is on this basis that we should seek to agree a way forward.

11. The Government of Ireland Act does not form a particularly helpful point of comparison with today's situation. The 'Irish

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Union' envisaged in the Act referred to a union of the two
Parliaments within the United Kingdom, and the Council of Ireland
would similarly have operated on this basis. Over seventy years
later the position in both parts of Ireland is quite different. We
should therefore look at the situation as it is now and consider
what arrangements would be appropriate today.

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