

Mr. G. Moray - it was agreed that no would class this with Whitehall Dept. I do not expect DTI to have much interest.

JD/03106/92

9/16

NORTHERN IRELAND OFFICE

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File



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Mr. Long says I mentioned this to Richard Wells. He has put in a comment to do with the fact that they are expressions of the importance of the EC & the possibility of tension with Whitehall.

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DTI
10-18 Victoria Street
London
SW1H 0ET

RECEIVED
1524
11 MAY 1992
MUFAX ROOM
STORMONT HOUSE ANNEX

11 May 1992

NORTHERN IRELAND - CONSTITUTIONAL TALKS

As you may know, the Northern Ireland Office is currently carrying on talks with the Northern Ireland Constitutional Parties about a possible future local administration in the Province. In connection with those talks, we have drafted two papers which we have agreed with both the FCO and Cabinet Office. The first is a position paper, which sets down how HMG sees the relationship between a devolved and the European Community developing. The second is a discussion paper which might be handed over to the parties as an expression of how HMG will be prepared to see that relationship between the European Community and the local administration develop. Inevitably the papers are in rather different terms.

I would welcome any views that other departments might have. I am afraid I must ask to have these by close of play on 13 May since we have to be in a position to table the discussion paper on 18 May, and it has yet to be cleared with our Secretary of State. I would of course be prepared to meet to discuss the paper if anyone thought that necessary.

I am copying this letter to Graham Archer and Michael Arthur (FCO), David Richardson (DTI), Ivor Llewellyn (MAFF), Chris Wood (Environment), Eric Fergusson (Scottish Office) and Helen Thomas (Welsh Office) with a similar request for comments, and to Stewart Eldon.

C Newton

PP D A HILL

CN/ESL/11410

*Mrs Craig 14/5.
P.A. - we must consider carefully how papers such as this should be filed so as to be retrieved effectively. 9/14/5.*

Hidden copies

- Mr Bell - B
- Mr Alston - B
- Mr Watkins - B
- Mr Dowdall - M DFP
- Mr Archer, RID, FCO - B
- Mr Cooke - B
- Mr D J R Hill - B
- Ms Ransford

ADMINISTRATION AND THE EUROPEAN COMMUNITY
 - DISCUSSION PAPER

This paper assumes a basic knowledge of Community law and procedures. The UK Government would be happy to brief separately on these if it were felt to be useful).

1. Northern Ireland, as part of the United Kingdom, is a part of the European Community. Developments in the Community can have a powerful effect on the economic climate in Northern Ireland. EC policy and law-making also have an impact on matters which may be a local administration's responsibility: in the case of agriculture much policy is already decided in Brussels; Community directives on industrial assistance levels in principle constrain the activities of the industrial development agencies; and directives on (eg) drinking water and water disposal have had substantial public expenditure implications. This process was accelerated by the Treaty changes across the Single European Act and was further developed by the amendments agreed at Maastricht. While it will not be easy for a region to influence such policies, a local administration will wish to be linked into policy developments in Brussels, and to help maximise Northern Ireland's share of EC money.

2. This paper sets out in detail how a local administration might relate to the EC.

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A LOCAL ADMINISTRATION AND THE EUROPEAN COMMUNITY

- DISCUSSION PAPER

Importance of the European Community

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2. This paper sets out in detail how a local administration might relate to the EC.

C O N F I D E N T I A L

Representation of NI Interests

Decisions in the EC are taken by the Council of Ministers, on proposals from the Commission, in consultation with the European Parliament. NI representation in the Parliament will be unaffected by any changes in local administrative arrangements. But Northern Ireland's interests must continue to be represented in the Council of Ministers and with the Commission in the same way as any other region. Only Member states are present at the Council of Ministers and the Northern Ireland interest is reflected in an overall UK line in that forum by Ministers. The UK Permanent Representation (UKREP) also acts on behalf of NI interests (as well as those of the rest of the UK) where appropriate. There is, however, no reason why representatives of the NI administration should not on occasions attend meetings of the Council of Ministers, as part of the UK team with the agreement of UK Ministers, when it was appropriate for them to do so. The local administration may also wish to lobby directly in Brussels on some issues, say, specific applications for EC aid. In doing so it would have to take account of the UK line decided in Whitehall and involve UKREP, because the UK would be the formal sponsor of any application for aid. In addition, a local administration might wish to set up its own Northern Ireland office in Brussels. Such an office would operate in a similar manner to the present offices in Brussels run by GB local authorities. It might be a successor to or work alongside the existing Northern Ireland Centre in Europe, which is a private sector initiative. Such an office could not be a substitute for UKREP and would have to operate on the basis of agreed guidelines; but it could supplement UKREP activities on behalf of Northern Ireland. Finally, on a separate issue, the NICS has made a particular effort (as have Whitehall departments) to increase the number of seconded officials to the Commission in recent years. A local administration might well wish to continue this policy and to negotiate the number and position of any secondees, again in co-ordination with UKREP.

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C O N F I D E N T I A L

C O N F I D E N T I A L

The mechanisms for deciding the UK line on European Community issues will also be of importance to Northern Ireland. At present Northern Ireland Office Ministers and officials, and Northern Ireland Departmental officials participate fully in the Whitehall machinery for determining UK policy on EC issues. They see all relevant papers and, in agriculture, a Northern Ireland official is part of the UK team which supports the Minister of Agriculture at Council meetings. If there were a local administration, the NIO - at both Ministerial and official level - would continue formally to represent the NI interest in Whitehall; but no doubt it would take the advice of the local administration on issues affecting Northern Ireland and particularly on those for which the local administration was responsible. Indeed, the NIO would endeavour to give the local administration as much information as possible on issues; and officials of the local administration could attend meetings in Whitehall by agreement where appropriate. But while the local administration would have to work with the NIO to influence Cabinet level decisions, it would also be open to members of the local administration (as well as officials) to put the case for Northern Ireland interests to other departments in Whitehall, although since the Secretary of State would remain the formal channel for devolved administration views to be reflected to Whitehall, he would need to be informed of discussion on EC matters between the local administration and UK departments (particularly if they gave rise to dispute).

5. The Maastricht agreement sets up a new Committee of the Regions, which will advise the Commission on the impact of policies on the regions. The UK has 24 members. No decision has yet been taken on the number of NI representatives. Membership of the existing Economic and Social Committee (ESC) is not on the basis of regional representations. Nevertheless it would be open to the local administration to advise the Secretary of State on nominations for ESC.

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C O N F I D E N T I A L

Meeting EC obligations

6. Member states are obliged to comply with EC regulations, directives and other measures having the force of law. These obligations can necessitate legislation and/or administrative action, much of it in those areas which might be the responsibilities of local administration. One option is that the local administration would be responsible for implementing EC requirements in those areas for which it is responsible. In some cases this could be done by administrative action; in others legislation would be needed. The European Communities Act 1972 permits the conferment of powers on Northern Ireland authorities, as it does on UK authorities, to legislate for the fulfilment of EC obligations. On the other hand if the local administration had no legislative powers it would fall to the Secretary of State to implement any legislation, seeking the approval of Parliament. But it would still fall to a local administration to comply with Community decisions and regulations. The UK Government would continue to have the overall duty to ensure that EC obligations are fulfilled in Northern Ireland and could be taken to the EC Court of Justice for non-compliance. There would have to be the ability to require the local administration to comply with EC obligations. We expect that such powers would be in the nature of reserve powers, rarely if ever used, and that the relationship between Whitehall and the NI administration on most EC matters would be co-operative.

The Irish Republic

7. The question of co-operation with the Republic of Ireland on EC matters falls to be dealt with in Strand II.

C O N F I D E N T I A L

1. Northern Ireland under a devolved administration would under Community law have to maintain the same relationship to the Institutions of the Community as it does at present. In particular, EC Funds will still formally be represented in the Council of Ministers by the UK Government, and at official level by the UK Government.

EC Funding

8. Northern Ireland earns receipts from a number of EC budgetary sources. The largest such is the Guarantee Section of the EAGGF, where money is simply passed from Brussels to the farmer, mainly via the Intervention Board for Agricultural Produce. This transaction is not subject to the Government's additionality policy which governs the public expenditure treatment of most other EC receipts. The essence of the policy is that receipts are anticipated by Government when setting the UK public expenditure planning total; having increased resources at the planning stage, the receipts cannot again increase resources when they subsequently arrive. (In cash terms, of course, all the EC money is paid to its due recipient. Where this is a Northern Ireland department, the receipts are passed to the Northern Ireland Consolidated Fund). The Government would expect this system to continue.

Conclusion

9. The European Community will be important in many ways both to the people of Northern Ireland and to a local administration. We cannot prejudge how within the sort of framework we have suggested such an administration might choose to promote Northern Ireland's interests within the Community. This paper is rather designed to demonstrate how Northern Ireland's relations with the Community might work at an institutional level, and to seek the views of the parties.

Northern Ireland Office
April 1992

DEVOLUTION AND THE EUROPEAN COMMUNITY (EC) - POSITION PAPER

Introduction

1. Northern Ireland under a devolved administration would under Community law have to maintain the same relationship to the institutions of the Community as it does at present. In particular, its interests will still formally be represented in the Council of Ministers by the UK Government, and at official level by the UK Representative in Brussels (UKREP). The UK Government will be responsible for enforcing community obligations in Northern Ireland. But given that a devolved administration is likely to have responsibilities in many areas of Community competence, and the political importance of the EC to Northern Ireland, we need to give thought to how the triangular relationship (Whitehall, Brussels, Belfast) will be handled.

Importance of EC to Devolved Administration

2. The EC will be important to the devolved administration for several reasons:

- a) the UK's membership of the EC will have a powerful effect on the economic climate in Northern Ireland;
- b) EC policy and law-making will have an impact on "transferred" matters: in the case of agriculture most policy is already decided in Brussels; the State aids provisions of the Treaty and the various relevant directives will constrain the activities of the industrial development agencies; and directives on (eg) drinking water and sewage disposal have had substantial public expenditure implications. The Maastricht agreement has extended Community competence in a number

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of areas and will increase the impact of EC law-making in the Province. A devolved administration may therefore wish to seek (through the UK Government) EC policies which take account of the special circumstances of Northern Ireland;

c) the EC is popularly perceived in Northern Ireland as a source of money (reflecting to an extent the Republic's experience, where EC money has had a profound influence on its economy); the UK Government is perceived by many in Northern Ireland as not having exploited this source of money sufficiently diligently in respect of Northern Ireland; and a devolved administration will undoubtedly wish to show to its electorate that it can maximise EC benefits for Northern Ireland;

d) the SDLP in particular see the EC as a means of drawing the two parts of Ireland closer, through (eg) EC-financed cross-border schemes, and of demonstrating that the two parts of Ireland have more interest in common than NI and the rest of the UK.

Of course in financial terms the subvention from central government dwarfs EC support. But for all the above reasons EC support remains a sensitive issue in political terms in the Province.

3. As for relations between the devolved administration and Whitehall, on many issues the interests of the devolved administration and the UK Government will be identical. But there are some areas where that may not be the case and where the devolved administration may have separate interests it will wish to pursue. These include:

a) the treatment of EC receipts in public expenditure (and the extent to and mechanisms by which Northern Ireland pursues available grants from EC funds (see para 2(c) above);

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- b) special provisions within EC policies to meet NI's interests;
- c) NI access to EC resources, in particular the Objective I status under the Structural funds;

It is difficult to predict how much tension there will be in practice between a devolved administration and the Government. It will be tempered by the knowledge that the UK Government subvention is more significant than EC aid; and by the Government's helpful attitude over (eg) objective I status. But in the nature of things those areas where UK and NI interests are perceived to diverge (eg over agricultural policies) will achieve more prominence than areas of agreement.

4. These inherent tensions may be brought further into relief by the cross-border dimension. One possibility for the future is that there will be growing co-operation on EC matters within the island of Ireland on (eg) agricultural matters and on structural funds matters. For example, the two parts of Ireland might seek to align EC regimes on animal health within the island of Ireland; or they might seek to present similar cases to Brussels for structural funds. These developments would find favour in the Commission, which on occasions sees the island of Ireland as a single unit; but they would only be possible if the UK Government agreed, and such agreement would only be forthcoming if co-operation between the two parts of Ireland did not substantially affect UK interests. Co-operation between the two parts of Ireland could be facilitated by new cross-border institutions outside Community structures; but within Community structures the Governments of the UK and the Republic would remain responsible for negotiating measures affecting their respective territories.

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NI Representation

5. Whitehall

Northern Ireland's interests will continue to be represented in the Council in the same way as any other region. Only member states are present at the Council of Ministers and the Northern Ireland interest would be reflected in the UK negotiating line. At present Northern Ireland Office Ministers and Northern Ireland Departmental officials participate fully in the internal mechanisms for determining national policy. They see all relevant papers and, in agriculture, a Northern Ireland official is part of the UK teams which supports the Minister of Agriculture at Council meetings. With a devolved administration these relations might change in form, but not in essence. The NIO would continue to represent the NI interest in Whitehall, no doubt with the advice of NICS personnel working for the devolved administration. There might however be some restrictions both on the extent to which the devolved administration could have access to Government papers and attend meetings. But the network of official contacts would probably be largely maintained. It would of course be open to members of the devolved administration (as well as officials) to lobby in Whitehall, and no doubt they would choose to do so where NI had a particular interest to promote.

6. The Commission

In Brussels UKREP would continue to act on behalf of the UK including representing NI interests as appropriate. The devolved administration would undoubtedly wish to lobby directly in Brussels on some issues, though we would want this to be done in the context of an overall UK policy and not when special pleading for Northern Ireland would be inconsistent with this policy. UKREP would need to be involved in, and kept fully informed of, such activities. There would undoubtedly be pressure for a Northern Ireland office in Brussels, that is an office directly run by the NI

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administration, a successor to or adjunct to the existing (private sector) Northern Ireland Centre in Europe. While this might create problems, such an office could probably operate in a similar manner to the present offices in Brussels run by GB local authorities ie. by not appearing as a political counterweight to UKREP, and by concentrating on trade and investment promotion and information activities. There would need to be well understood guidelines about the respective roles of UKREP and the new body.

7. The Council

It may be possible to give NI greater prominence in the Council. Ministers (or those holding equivalent positions) in a local NI administration might attend Council meetings with UK Ministers (and officials attend Council working level groups), particularly where there was a particular NI case to be made but also where an issue was particularly relevant to NI (ie CAP price-fixing). Such attendance would have to be in agreement with UK Ministers, and there would need to be prior agreement about the line NI representatives would take.

8. Secretary of State

In all these relationships the Secretary of State would continue to have a role. He would remain the formal channel for devolved administration views to be reflected to Whitehall. Therefore while he would not necessarily be involved in every discussion on EC matters between the devolved administration and Ministers in Whitehall (eg on agricultural matters), he would need to be kept informed on such matters (particularly if they gave rise to dispute) and he would need some capacity for advice on them.

Meeting EC obligations

9. Member states are obliged to comply with EC directives and other instructions/decisions having the force of law. These obligations can necessitate legislation and administrative action,

predominantly in the transferred area. If there is a legislative form of devolution, it would probably follow the present scheme in the Constitution Act, and we therefore assume that responsibility for the execution of EC obligations in respect of transferred matters would fall to the devolved administration. Schedule 2 to the Act provides that a matter does not automatically become 'excepted', and thus outside the capacity of the devolved authorities, as concerning international relations simply because it is something done in pursuance of EC membership and obligations. To do other than this would bring about the gradual narrowing of the transferred field as the range of EC obligations expands and the withdrawal from the devolved authorities of the sometimes considerable amounts of discretion associated with their implementation. The European Communities Act 1972 permits the conferment of powers on Northern Ireland authorities, as it does on UK authorities, to act to fulfil EC obligations. If the devolved administration had no legislative powers it would fall to the Secretary of State to implement any legislation through Parliament.

Failure to Comply with EC Obligations

10. If a devolved administration refused to introduce legislation, there would be a range of sanctions which could be imposed: the most extreme would be Westminster legislation to remove the matter from the transferred field. If a devolved Administration was dilatory in implementing obligations, other expedients might be appropriate. For example, the existing powers under the European Communities Act to legislate in compliance with obligation could be used to permit a UK Minister to legislate for Northern Ireland. Alternatively the Secretary of State for Northern Ireland might have a specific power to require the local administration to introduce legislation. We believe the latter would be the most effective solution.

11. If the devolved administration failed to take administrative action required under EC law, the Government should again have

specific powers to require compliance. In some cases, financial penalties may flow from the EC itself, particularly in the light of the enhanced enforcement powers in the Maastricht treaty. These would be imposed on the UK but, no doubt, the Government would have little hesitation in passing them on to the devolved administration, through reductions in the grant-in-aid.

12. While sanctions would be available, it seems unlikely that these would be needed often. The devolved administration would want to maintain good relations with Brussels and Whitehall. Nor would it wish to provoke a situation where Whitehall might reduce its powers.

Maastricht and the Committee of the Regions

13. The treaty agreed at Maastricht will not affect the formal relationship of Northern Ireland to the Community. But it may well lead to a closer identification with the Community. This closer identification will in turn create new links between Northern Ireland and the Republic, and both parts of Ireland and Great Britain. The notion of subsidiarity (incorporated in the revised Maastricht Treaty) may also tend to reinforce the wish in Northern Ireland (and elsewhere) for devolved government. But these processes will undoubtedly be gradual.

14. The likely influence of the Committee of the Regions, which was created at Maastricht, is uncertain. But the Commission may try to promote its role as a counterweight to Member States. If a devolved administration comes into being we would expect NI representatives on the Committee to be drawn from the Assembly (although for other parts of the UK they are unlikely to be predominantly elected representatives). It is also important that NI should have a substantial level of representation on the UK slate of 24 members so as to allow a balanced selection of

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Community views, and to reflect its status as a part of the UK with a very strong regional identity. 4 members would be ideal, but representation on this scale will probably be resisted by England.

Additionality

15. The existing arrangements for handling receipts for the European Community would be difficult to sustain if these were a devolved administration. Expected EC receipts are anticipated in yearly planning total and EC receipts by central government in NI are therefore taken into the Consolidated Fund. Although in principle there is additionality, no local administration would have that perception, and the present arrangements will lead to frequent tension with Whitehall. The Commission may well, mischievously, back the local administrations perceptions in order to make changes to the current UK policy on additionality. In our view it would be politically much preferable to allow full additionality to a local administration by not anticipating EC receipts in the planning total. This will be covered in more detail in the paper "Devolved Government and Finance."

Conclusion

16. The conference should be offered, as a starting point for its deliberations the following structure for EC relations

- a) continued representation by the UK of NI interests in Brussels;
- b) access to the Whitehall machinery to lobby for NI interests;
- c) attendance by NI representatives at Council meetings, where appropriate and by agreement with UK Ministers;
- d) formal responsibility to implement EC commitments

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- e) override powers on the part of Secretary of State to implement EC laws/decisions but only to be used in extremis;
- f) no formal status at Brussels; but freedom to lobby in co-ordination with the UK Government and UKREP.
- g) membership of the Council of the Regions for Assembly members and (subject to prior agreement within Whitehall) 4 members for Northern Ireland on that Committee;
- h) no objection on the part of Whitehall to the devolved government setting up some office in Brussels (subject to agreement on guidelines on its operation).

We also believe that some changes in the treatment of EC receipts in public expenditure are likely to be sought by the parties. This is covered in a separate paper on a "Devolved Government and Finance".

ECONOMIC AND SOCIAL DIVISION
Northern Ireland Office
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