

**FROM: TONY McCUSKER
CENT SEC**

Circulation

~~Mr Millen~~
~~Mr Rea~~
Mrs Hetherington

DATE: 22 SEPTEMBER 1999

see copy distribution list below

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

CONSULTATION WITH THE FIRST MINISTER (DESIGNATE)

Summary

Issue: Letter of 14 September from the First Minister (Designate) to the Prime Minister, about the Secretary of State's decision, in light of Mr Mallon's resignation, to change the arrangements for prior consultation with Mr Trimble.

Recommendation: That PS/Secretary of State should respond to PS/Prime Minister explaining why it was necessary to change these arrangements and attaching a draft reply for the Prime Minister to send to Mr Trimble.

Timing: No 10 has asked for advice by Thursday 23 September.

Detail

1. Mr Trimble has written to the Prime Minister complaining about the Secretary of State's decision to change the arrangements for consultation with the First Minister (Designate), in light of the resignation of the Deputy First Minister (Designate). He has at the same time written again to the Secretary of State repeating his view that these changes "will have the effect of undermining my position as First Minister (Designate)". In this letter he indicated that he would be taking the matter up with the Prime Minister.
2. Following her original letter of 17 August advising Mr Trimble of these revised arrangements, the Secretary of State considered representations which Mr Trimble made to her, both at a meeting with him on 26 August and in a follow up letter dated 6 September. However, she confirmed her decision that the revised arrangements should be put in place and advised Mr Trimble accordingly on 10 September. She assured Mr Trimble that it was not her

intention to undermine his status as First Minister (Designate) but that some adjustment to the arrangements needed to be made following the resignation of Mr Mallon.

3. In his letter to the Prime Minister Mr Trimble repeats what he has already said to the Secretary of State and raises no new points. He does not accept the logic of the Secretary of State's position which is that the arrangements for consultation which she originally put in place were designed to elicit a **joint** First Minister/Deputy First Minister contribution to the decision-making process in the run up to devolution. Following Mr Mallon's resignation, such a "joint" contribution is no longer possible, and it is obviously not appropriate to continue with these arrangements. The Secretary of State may wish to recommend to the Prime Minister that he should advise Mr Trimble that the revised arrangements should stand; following the issue of the Secretary of State's letter of 10 September confirming her decision, Departments were advised of the changes and they are, therefore, now operating the revised arrangements.
4. A draft minute on these lines for you to send to John Sawers is attached. This sets out the background to the issue and summarises the consideration which the Secretary of State has already given to the representations made to her by Mr Trimble. Also attached is a draft letter for the Prime Minister to send to Mr Trimble. The draft reply has been cleared by legal advisers.
5. One further point. I spoke to David Lavery yesterday about a range of issues. On this one he said David Trimble was particularly annoyed that his position was undermined even though the PM had urged him not to resign. He found it difficult in undertaking the range of FM engagements as he was not up to date with policy developments. I asked David Lavery whether regular briefing (and not consultation) at Ministerial and senior official level might be a compromise. He thought it might but would reflect further. If the Secretary of State thought it would be helpful to offer a compromise along those lines we might discuss further before the reply goes to No 10.

Tony McCusker

TONY McCUSKER

☎ 28102

copy distribution

- PS/Mr Ingram (DFP,B&L) - O
- PS/Mr McFall (DED,DENI&L) - O
- PS/Mr Howarth (DHSS,B&L) - O
- PS/Lord Dubs (DOE,DANI&L) - O
- PS/Mr Pilling - O
- PS/Mr Semple - O
- Northern Ireland Permanent Secretaries
- Mr Watkins - O
- Mr Jeffrey - O
- Mr Stephens - O
- Mr Maccabe - O
- Mr Smyth - O
- Mr Crawford - O
- Mrs Devlin - O
- Mrs Evans, HOLAB - O
- Mrs McAuley - O
- Mr McGuinness - O

DRAFT MINUTE TO PS/PRIME MINISTER

CONSULTATION WITH FIRST MINISTER (DESIGNATE)

1. You asked for advice and a draft reply for the Prime Minister to send in response to David Trimble's letter of 14 September about changes in the arrangements for consulting with him on policy proposals, public appointments etc.
2. It may be helpful to set out the background to this issue. Prior to Mr Trimble's and Mr Mallon's joint election in July 1998 as First Minister and Deputy First Minister (Designate) respectively, all political parties (and their leaders) in Northern Ireland were consulted, usually as part of a public consultation process, on proposed new policies and legislative changes.
3. In July 1998, my Secretary of State decided that, in the interests of good governance in the shadow period and to facilitate the smooth and efficient transfer of power, special arrangements should be made so as to enable the First Minister and Deputy First Minister **together**, and in due course the Executive Committee, to become more involved in the decision-making process and in certain circumstances to have direct access to officials beyond the normal conventions.
4. These special arrangements effectively placed the First Minister and Deputy First Minister in a privileged position in comparison to other party leaders and parties. In terms of special access **offered to them**, they have been consulted about policy decisions, legislative proposals, proposed public appointments in the transferred field, and forthcoming announcements; informed about

consultation exercises in advance and their views sought; and offered briefing from Departmental officials on specific issues.

5. In terms of access **requested by them**, they have been provided with background material and, where appropriate, speaking notes for events, meetings or other activities to which they have been invited or which they have initiated themselves; briefed in writing and orally on policy issues; and given statements on the Government's position on a range of transferred matters for the purposes of dealing with correspondence in their (designated) Ministerial capacities.
6. Following Mr Mallon's resignation, these arrangements were reviewed. In her consideration of this issue my Secretary of State took into account a number of factors. It was clear that the Good Friday Agreement requires the positions of First Minister and Deputy First Minister to be jointly elected and that neither the Agreement nor indeed the 1998 Act provide for one of the Ministers to take any substantive unilateral action - they must always operate jointly or not at all.
7. Additionally, following devolution, the 1998 Act specifically requires that if one resigns, the other must cease to hold office at the same time (although he or she can continue to exercise the powers of that office for up to six weeks, by which time a fresh, joint election must be held). Indeed, the only reason similar arrangements are not in place for the shadow phase is that it was assumed that we would not have to face the eventuality of a resignation during the shadow period. While my Secretary of State recognised that Mr Trimble would continue in the office of First Minister (Designate) she concluded that there needed to be some adjustment to these arrangements in light of Mr Mallon's resignation.

8. In terms of the **access offered** to the First Minister (Designate), my Secretary of State considered that the special arrangements no longer served the purpose for which they had originally been introduced, namely a "joint" (and in due course through the Shadow Executive Committee a collective) contribution to the decision-making process in the run-in to devolution in order to smooth the handover of power. In addition, in practical terms it had become common in oral briefings and consultations for representatives of the two Ministers to turn up instead of Mr Trimble and Mr Mallon. If the arrangements were to continue, it would almost certainly add to criticism that Government was briefing the UUP alone.

9. In terms of **access requested** by the First Minister, my Secretary of State recognised the reality of a situation where Mr Trimble was continuing as First Minister and would, in that capacity, continue to be invited to attend functions, events etc and would therefore require background material and advice to help him decide whether or not to accept. Further, he would continue to receive correspondence addressed to him as First Minister and would, therefore, need briefing and advice on the various issues involved to enable him to respond.

10. My Secretary of State therefore wrote to Mr Trimble on 15 August advising him of her decision that the special arrangements for Departments to initiate consultation with him on policy proposals, public appointments and so on would cease but that the arrangements for the provision by Departments of information on request would continue.

11. Mr Trimble met my Secretary of State on 26 August and the contents of her letter were discussed. Mr Trimble alleged that my Secretary of State's letter represented a calculated decision on her part not to recognise the status of his position as First Minister. He suggested that, in the absence of a Deputy First Minister, the facilities which had been extended to Mr Mallon should simply be made available to the SDLP. My Secretary of State explained carefully to Mr Trimble why she had decided to change the arrangements but undertook to look again at the issue. Mr Trimble then followed up with a further letter on 6 September which rehearsed again many of the points made at the meeting.

12. My Secretary of State gave the matter further consideration. However, she remained of the view that the resignation of Seamus Mallon had made a material difference in terms of the arrangements which were designed to elicit a **joint** First Minister/Deputy First Minister contribution to the decision-making process in the run up to devolution. With regard to Mr Trimble's suggestion that the facilities which had been extended to Mr Mallon should simply be made available to the SDLP, her view was that these facilities were extended to Mr Trimble and Mr Mallon specifically in recognition of their **unique, joint**, position as First Minister and Deputy First Minister respectively and that some adjustment was necessary following Mr Mallon's resignation. She believed that special facilities for the SDLP, even for a short period, would attract justified criticism of special privilege from the other parties.

13. Accordingly, my Secretary of State wrote again to Mr Trimble on 10 September confirming her decision that, while the special arrangements for consultation would cease, normal consultation on proposals in the policy and legislative fields and in public appointments would, of course, continue **in his**

capacity as UUP leader. She also repeated that Mr Trimble and his staff would continue to have special access to Departmental officials for information and advice on policy issues, correspondence, invitations and so on. In her letter she was at pains to emphasise that there was no intention on her part to undermine Mr Trimble's status as First Minister (Designate).

14. My Secretary of State has noted the contents of Mr Trimble's letter to the Prime Minister but she does not feel that he has introduced any new issues which would materially change the situation. She remains satisfied, therefore, that her decision is the right one in all the circumstances. She recommends, therefore, that in his response to Mr Trimble the Prime Minister should hold firmly to the line which she has taken. While Mr Trimble will remain unhappy about the changes, she feels that, having had the opportunity to put his views to the Prime Minister, he will, albeit reluctantly, accept the decision. A draft response for the Prime Minister to send to Mr Trimble is attached.
15. Finally, I should add that, following the issue of my Secretary of State's letter of 10 September to Mr Trimble confirming her decision, Northern Ireland Departments were advised of the changes and they are, therefore, now operating the revised arrangements.

NICK PERRY

DRAFT LETTER FROM THE PRIME MINISTER

**The Rt Hon David Trimble MP
First Minister (Designate)
The New Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST
BT4 3SS**

September 1999

Thank you for your letter of 14 September in which you expressed concern about changes in the arrangements for prior consultation with your office as First Minister (Designate), which are being made following Seamus Mallon's resignation as Deputy First Minister (Designate).

As you know, I tried to persuade Seamus not to resign. When he did so, I strongly urged you not to resign also. That would have delivered a double blow to the credibility of the Good Friday Agreement. That remains my view.

But, as we made clear at the time, Seamus's resignation does mean there will need to be a fresh, joint election to the two posts of First and Deputy First Minister. The Good Friday Agreement requires those posts to be jointly elected. It envisages them operating jointly, in partnership. That is reflected in the Northern Ireland Act 1998 under which, after devolution, the resignation of one requires that the other also ceases to hold office at the same time.

The key issue here is, therefore, that the arrangements for prior consultation which Mo Mowlam introduced were designed specifically to enable the First Minister and Deputy First Minister jointly to express a view on policy proposals etc. I understand of course your view that you should not be disadvantaged because of developments which were essentially outside your control. But the fact remains that, in the absence of a Deputy First Minister, the special arrangements for prior consultation no longer serve the purpose for which they were originally designed, namely a joint contribution to the decision-making process in the run-in to devolution in order to smooth the handover of power.

I am, therefore, satisfied that Mo's decision to change the arrangements was the correct one in the circumstances. However, I know that she has been at pains to assure you that her decision is not meant in any way to undermine your status as First Minister (Designate). I welcome this opportunity to reinforce these assurances. As Mo has indicated, your Private Office, including your special advisers support, will remain intact and you and your staff will continue to have special access to Departmental officials for information and advice on policy issues, correspondence, invitations and so on.

In light of what I have said I hope that you will understand why we needed to change these arrangements.

TONY BLAIR MP