

SUB-COMMITTEE REPORT (16 June 1992)

1 In the light of the Secretary of State's proposal to plenary on 12 June that the Strand I sub-Committee should be invited to continue its work, concentrating in particular on the points listed in paragraph 8 of the sub-Committee's report of 10 June, the sub-Committee met on 15 and 16 June.

2 The sub-Committee considered finance, human rights, a Bill of Rights and cultural expression and diversity. As a result of this consideration two papers were agreed, which should be read in conjunction with the sub-Committee report of 10 June.

16 JUNE 1992

FINANCIAL ARRANGEMENTS FOR NEW INSTITUTIONS

1 The sub-Committee considered possible financial arrangements for the new political institutions. (References to "institutions" in Northern Ireland should be interpreted by reference to the other work of the sub-Committee). The following considerations emerged.

Levels of Public Expenditure

2 The sub-Committee noted that the existing financial arrangements were designed to ensure that, against a background of parity of taxation, the people of Northern Ireland received levels of public services broadly comparable with those in Great Britain. Levels of local expenditure are determined as part of the UK public expenditure annual survey and are not constrained by the revenue generating capacity of the region. The difference between expenditure and revenue is then made up by a subvention from the UK Exchequer (currently about £2.5 billion, or more than £1 in every £3 of public expenditure in Northern Ireland).

3 In the view of the sub-Committee, it is important that this expenditure based (rather than a revenue based) arrangement for the determination of the quantum of spending should be preserved. Moreover, new NI political institutions should seek to preserve as far as possible the present comparability mechanism which has provided useful stability in effecting annual adjustments to the NI PE Block ("the Block") total while leaving maximum local flexibility in determining how resources should be allocated. Maintaining the integrity of the Block in this way should also mean that NI could expect to benefit from future savings in operational programmes whether through achieving greater economy or, for example, as a result of a reduction in security-related expenditure.

4 In view of the sub-Committee the sources of funding should remain on broadly the same basis as at present ie: attributed taxation, grant-in-aid, rates, charges and EC receipts. The local administration would be free to vary the level of the regional rate. However, it would be essential that the exercise of this power should genuinely increase regional resources rather than simply offsetting other sources of funding such as the grant-in-aid. A local administration with legislative powers would be able to change the rating system and could consider raising revenue [for local authority type services] in other ways. It would be able to determine the level of charges for a wide range of public services (eg: parking, vehicle testing, planning applications). The local administration would also intend to give higher priority to the earning of EC receipts. In each of these cases, the intention would be that the resources should be used to fund additional local expenditure.

Role of Secretary of State

5 Under the new arrangements, the Secretary of State would retain responsibility for expenditure on particular functions and the local political institutions will assume responsibility for a range of services which might represent a large proportion of the NI Block. It was recognised that local institutions will operate within the UK public expenditure framework and the annual Public Expenditure Survey will be the main determinant of the overall level of resources.

6 In view of the UK dimension to expenditure decisions, it would be the Secretary of State's responsibility to secure resources in the Survey for the Block as a whole out of which

those services within his own responsibility and those administered by local institutions would be funded through an allocation mechanism yet to be agreed.

7 It would be particularly important to ensure that a strong bid was made, as an integral element of a political settlement, to provide the new administration with extra resources to tackle the major problems which NI continues to face.

8 Under the new arrangements there would be a supporting role for the local administration, which would give the Secretary of State a detailed annual assessment of its financial requirements to inform his handling of the Survey. (This was considered at Annexes A and B to the Report of 10 June). The local administration would wish to be represented at negotiations between the Secretary of State and the Chief Secretary on the level of resources. This would be particularly important where the pressures on the Block were such that bids were being pressed over and above the normal workings of the comparability mechanism.

The Discretion of the Local Administration

9 Within its own area of responsibility the local administration would have a very wide measure of discretion (equivalent to that currently exercised by the Secretary of State) to allocate its resources in line with its view of Northern Ireland's needs. It would, however, be necessary to take account of the following:

(a) the local administration would be constrained by UK commitments to the European Community;

(b) the Treasury would, as a condition of financial support, wish to continue to be assured that the local administration used its resources with due regard for value for money. This, of course, is an interest which any local administration would share, provided that efficiency savings are retained within the Block;

(c) transfers of resources could not be made from an agreed parity such as Social Security to other areas; but additional funding for Social Security would not be a call on the Block.

Authority to Spend and Accountability

10 At present Northern Ireland operates a structure through which Parliament authorises expenditure out of the Northern Ireland Consolidated Fund. The local political institutions would provide this authority under the new arrangements for expenditure on devolved services. The mechanism for this would be through the approval of a detailed annual budget which would give Departments both the authority to spend and would set the framework within which they would have to account for the expenditure. (This was considered in Annexes A and B to the Report of 10 June).

11 The Northern Ireland Audit Office, which is independent of the Executive, would continue to examine the propriety and regularity of expenditure, and the economy, efficiency and effectiveness with which policy is carried out. It should report to a special committee (a local equivalent of the Public Account Committee) set up by the new local institutions with power to summon Accounting Officers to give evidence, and to make reports.

A LOCAL ADMINISTRATION AND FINANCE

Introduction

1 Whatever for a local administration may take one of its central functions will be to decide how best to allocate its available resources to meet its objectives in those areas for which it is responsible. It will also probably have to decide how much to raise locally through rates or their equivalent; to negotiate the size of its grant from Whitehall; and to ensure that resources are spent in a way which achieves value for money.

2 This paper describes how the existing financial system for the Northern Ireland (NI) Departments and the Northern Ireland Office (NIO) works. Some features of the present system are set down in legislation (eg the Grant-in-Aid); others are internal arrangements within Government for the conduct of business (eg the Northern Ireland Block). But for the purposes of this paper we shall discuss the present arrangements as a complete system. Under the NI Constitution Act the NI Departments are responsible for "transferred" matters (eg agriculture, industry, health) and the NIO for some "reserved" and "excepted" matters (eg security, police, elections, prisons). Other "reserved" and "excepted" matters are dealt with by other UK Departments (eg tax, immigration). NI Departments and NIO expenditure is referred to collectively as the "NI Block". This reflects the fact that for some purposes they are managed together. The "Block" is the main subject of this paper.

2 Total Block expenditure of approximately £6.4 billion in 1991/92 can be broken down broadly as follows:

	£M
Agriculture	213
Industry, Energy, Trade and Employment	389
Transport	163
Housing	258
Other Environmental Services	170
Protective Services (Fire)	35
Education	1,122
Health and Personal Social Services	1,162
Social Security	2,107
Other Public Services	66
Law and Order (NIO)	<u>776</u>
Total	6,449

Note: This includes expenditure by Government Departments, public corporations, statutory bodies and grants to local authorities.

3 NIO and NI Departments expenditure does not represent the totality of Government expenditure in or for Northern Ireland. The Ministry of Defence and the NI Court Service also spent considerable sums in 1991/92. IN addition, the revenue - raising departments (Customs and Excise and Inland Revenue) spend resources on their activities in Northern Ireland; and the Home Office runs immigration facilities and the Passport Office. Other departments also spend small amounts of resources either in or on behalf of Northern Ireland.

Funding

- 4 NI Block expenditure is at present financed from six sources:
- the proceeds of central taxation eg VAT, Income Tax (Called "attributed taxation") raised in Northern Ireland (S.15 NI Constitution Act);
 - a grant-in-aid paid by the Secretary of State for Northern Ireland to the Northern Ireland Consolidated Fund (S.16 NI Constitution Act);
 - issues from the NI National Insurance Fund (including some resources transferred from the GB Fund);
 - the regional rate, excluding that portion raised by district councils;
 - miscellaneous receipts eg water charges, sales of land and buildings (but not proceeds from privatisation).
 - NIO expenditure voted from the UK Consolidated Fund.
- 5 The relative importance of these different sources can be shown by looking at 1991/92 Block expenditure, which was funded as follows:

	£M
(a) -attributed taxation	2,950
(b) -grant-in-aid	1,500
(c) -national insurance fund and other non-voted expenditure eg external financing or public corporations	950
(d) -regional rate	200
(e) -miscellaneous receipts	100
(f) -NIO expenditure	<u>750</u>
Total	6,450

NIO expenditure (£750m) relates to those services administered by the NIO which under the NI Constitution Act 1973 are "reserved" or "excepted" matters and is therefore paid for out of Estimates Voted by Parliament from the UK Consolidated Fund (the grant-in-aid is voted in the same way). The remainder (£5700m) is for "transferred" services, which are financed from the NI Consolidated Fund, which receives attributed taxation, the grant-in-aid, and the product of the regional rate. Money is voted from the NI Consolidated Fund by separate Northern Ireland Government Estimates which are currently, in the absence of a NI Assembly, voted at Westminster. In all cases "miscellaneous receipts" are taken into account in individual Votes. For example, the Vote for Water Services, which covers current and capital elements, is reduced by the amount of expected receipts for water charges.

The Level of Expenditure

6 The level of Government expenditure, including that for Northern Ireland, is set through the annual Public Expenditure Survey (PES). The level of expenditure for (eg) 1993/94 and the two subsequent years is decided this calendar year (1992), and the level of expenditure for each area of Government is announced in the Autumn Statement. The level of expenditure for Northern Ireland covering both Northern Ireland Departments and the Northern Ireland Office is currently determined within that system.

7 The overall level of Block expenditure provision for Northern Ireland is set primarily by means of a "comparability formula". This ensures that public expenditure levels in NI are adjusted in line with developments in the rest of the UK in so far as they are comparable to those activities which are the responsibility of the Secretary of State for Northern Ireland. This arrangement relies on a calculation on a proportional basis to ensure that we receive 2.75% of the changes in programmes in the rest of the UK since this reflects our proportion of the UK population. This is different from the mechanism for Departments like (eg) the Home Office, who must justify increases in expenditure to the Treasury on a detailed basis. (Scotland and Wales, however, enjoy Block systems similar to those in Northern Ireland).

8 This system is not immutable; it is open to the Treasury to abrogate the operation of the formula by seeking to reduce NO expenditure; it is also open to the Secretary of State to bid for additional resources beyond those available under the comparability formula if he feels that NI needs will be seriously under funded, and he has chosen to do so on several occasions in recent years. Any such bid is taken to suspend the operation of the comparability formula, and leave all NI expenditure open to detailed Treasury scrutiny. The comparability formula has, in technical terms, served Northern Ireland well, by providing a reactively stable basis for the annual adjustment of public expenditure plans in Northern Ireland.

9 Those funds which are made available for Northern Ireland through the PES system, and subsequently through Estimates/grant-in-aid are referred to collectively as the "Northern Ireland Block". Within this Block the Secretary of State has substantial discretion to allocate funds to meet his assessment of public expenditure needs and priorities. (There are some exceptions; social security is funded on a basis which maintains parity with GB and unspent resources cannot be allocated to other programmes).

The Allocative Process Within Northern Ireland

10 Within the Northern Ireland Block DFP operates its own annual Public Expenditure Survey. NI Departments and the NIO submit expenditure proposals for the next three years, including bids for any additional resources which they consider necessary. In the Autumn, when the overall level of resources available for NI programmes becomes known, DFP makes recommendations to the Secretary of State on which bids should be met.

11 The present NI Block includes both "transferred" matters which are the responsibility of the NI Departments, and those "reserved/excepted" matters which are the NIO's responsibility. In making allocations, the Secretary of State has to decide the relative merits of priorities. In practice, security has had to be the highest priority. Strengthening the economy has been the second priority and "targeting social need" third. But not every bid within these categories can be met and other priorities (eg health, social services, environment) must also be met. A successful public expenditure strategy must address the whole range of the Province's needs.

Approval by Parliament

12 The allocations decided by the Secretary of State are announced to Parliament in a statement in late Autumn after the Chancellor's Autumn Statement. These expenditure plans for the year ahead are then incorporated into Northern Ireland Main Estimates which are presented to Parliament at the beginning of the Financial Year, although minor changes may be introduced between the announcement of public expenditure plans and the drawing up of Estimates to take account of changing circumstances. Each NI Department is responsible for drawing up its own Estimates, but these must be approved by DFP. In the case of the NIO, Estimates must be approved by HM Treasury in consultation with DFP. There are usually two or three Parliamentary opportunities to discuss NI public expenditure in the transferred field:

- (a) Main Estimates (usually May/June)
- (b) Autumn Supplementary (December) - taken only if necessary
- (c) Spring Supplementary (February/March)

(Of course, the Main Estimates are too late to provide resources for the beginning of the financial year on 1 April. Therefore, at Spring Supplementaries money is also voted "on account" for the next Financial year, to enable Government expenditure to continue until the Main Estimates. There are rules restricting the scope of votes on account so as not to pre-empt Parliament's eventual decision at Main Estimates). Estimates are formally adopted by orders known as "Appropriation Orders". The debates are an opportunity for Members to raise any matter of public concern in the transferred field, and they avail themselves of this opportunity.

13 During the Financial Year it remains open to the Secretary of State to reallocate resources within the Block to meet evolving priorities, proposing Supplementary Estimates as necessary to Parliament. In practice, additional demands are usually balanced by reduced requirements. If this is not the case, it could be necessary to take action to reduce expenditure in discretionary areas and, in exceptional circumstances, a bid on the Reserve may be submitted to the Treasury.

Department of Finance and Personnel

14 In dealings with the Treasury on the level of the Block, and on all questions of the allocation of resources between Departments, the Secretary of State is advised by the Department of Finance and Personnel. The Department approves Northern Ireland Estimates, and presents them to Parliament. The Department is also responsible for approving major projects and programmes in the NI Departments, seeking any necessary Treasury approvals, and co-ordinating applications for EC resources.

15 Within the Northern Ireland administration, it is also the role of the Department of Finance and Personnel and the Minister in day-to-day control to pursue value for money in Government spending. This includes encouraging the use of the best possible financial techniques, the promotion of the government's various efficiency initiatives including, for example, privatisation and "Next Steps" agencies, and, of course, the rigorous scrutiny of the need for any spending proposals.

16 Since NIO expenditure is borne on the UK Consolidated Funds, its expenditure is scrutinised by Treasury, but the Department of Finance and Personnel also take a close interest because it is a major component of the NI Block.

Relations with Bodies Outside Northern Ireland

17 Although the Secretary of State has a high degree of discretion in spending Northern Ireland resources, decisions on resource allocation must also take account of the requirements of outside bodies. In some areas, (eg industrial development) spending levels are in principle constrained by European Community agreements. But the Treasury has the most important role, and makes a number of requirements. First, the Treasury requires that DFP should effectively control the level of public expenditure from the Northern Ireland Block, and ensure value for money in NI Departments. It has to be assured, for example, that systems are in place to appraise projects using the most up-to-date techniques. It also seeks to ensure that policies such as market testing and privatisation, which should lower the cost of public services, are implemented. To this end, it regularly seeks information from DFP about Northern Ireland public expenditure. Second, the Treasury requires to be consulted about any proposals in Northern Ireland which could have a repercussive effect on public expenditure in other parts of the UK, while in some other areas the level of provision/benefits is determined on a parity basis. Nevertheless, there has been scope for the adoption of a range of distinctive and innovative policies (eg Making Belfast Work) to meet local needs.

The Rates

18 The Regional Rate is struck each year at a level agreed with the Treasury. The principle is that rates should make a broadly equivalent contribution to local services as community charge and business rates do in GB, taking account of a notional amount of Rate Support Grant.

Receipts from the European Community (EC)

19 Northern Ireland earns receipts from a number of EC budgetary sources. The largest is the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, where money is passed from Brussels to the farmer, mainly via the Intervention Board for Agricultural Produce. These payments are additional to the NI Block, although they have to be taken into account by MAFF with other Intervention Board expenditure for public expenditure planning purposes. Most other EC funding is anticipated when the public expenditure total is set, and the public expenditure total is greater than it would have been had the EC receipts not been available. In cash terms, of course, all 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.

Comptroller and Auditor-General

20 The Comptroller and Auditor-General for Northern Ireland authorises the issue of public funds and certifies the accounts of all Northern Ireland Departments and a wide range of other public sector bodies. He is also responsible for examining the economy, efficiency and effectiveness with which policy is carried out, and probing the basis of expenditure decisions. He currently submits reports to the Public Accounts Committee at Westminster, which will examine officials on those reports where it considers appropriate to do so. This independent ex-post facto examination of Government spending is an important discipline on the system.

Future Local Administration

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Future Local Administration

21 Annex A sets out how the present finance system might be adapted to a local administration having a range of responsibilities on the lines of the 1973 Constitution Act. These arrangements would of course have to be varied if the administration had substantially different powers or was closer in form to a GB local authority.

ANNEX A

POSSIBLE FINANCIAL ARRANGEMENTS FOR LOCAL ADMINISTRATION

Introduction

1 We assume a body (whether or not legislative) enjoying authority over wide areas eg "industry", "agriculture", rather than a local authority-type body, which would have specific statutory powers. We also assume that the existing financial system would be adapted to minimum extent possible to create a coherent system.

Funding

2 Funding would be on the same basis as at present (ie attributed taxation, grant-in-aid, rates etc).

Block Arrangements

3 It would remain the Secretary of State's duty to secure resources for Northern Ireland from Central Government, both for his continuing responsibilities and those of the new administration. The comparability formula would continue. The Secretary of State would decide on the allocation of resources between the two sets of responsibilities. If either the Secretary of State or the local administration's responsibilities required additional resources during the year, transfers between the two areas might be made. Alternatively there might be a bid in the Reserve. There would need to be a close collaborative relationship between the Secretary of State and the local administration in this area.

Discretion

4 Within its own area of responsibility the local administration would have a very wide measure of discretion to allocate its resources in line with its view of Northern Ireland's needs. The principal exceptions to this are that:

- (a) the local administration would be constrained by UK commitments to the European Community;
- (b) the Treasury would, as a condition of financial support, wish to continue to be assured that the local administration used its resources with due regard for value for money. (This, of course, is likely to be an interest which any local administration would share);
- (c) transfers of resources could not be made in certain areas (eg from Social Security to other areas); but additional funding for social security would not be a call on the Block.

Rates

5 The local administration would be free to vary the regional rate; but Central Government finance would assume a given level of rate income. If the local administration enjoyed legislative powers it would be able to change the rating system.

Auditors

6 The Comptroller and Auditor General for Northern Ireland would continue to examine the propriety and regularity of expenditure, and the efficiency and effectiveness of the local administration. He might report to a committee set up under the local administration.

(16 JUNE 1992)

HUMAN RIGHTS, A BILL OF RIGHTS AND CULTURAL EXPRESSION AND DIVERSITY: REPORT BY THE SUB-COMMITTEE

1 The sub-Committee met to continue its work on remaining matters and considered and developed further the statement, in Annex A to its report of 10 June, that "constitutional legislation for establishing new institutions would provide for machinery to deal with and correct grievances and would provide for the further entrenchment of individual and community rights, including through a Bill of Rights, which the Assembly could not amend". (References to "institutions" in Northern Ireland should be interpreted by reference to the other work of the sub-Committee).

2 The sub-Committee noted that there was already a considerable corpus of legislation and other measures in addition to the Northern Ireland Constitution Act 1973, which sought to protect human rights. The Government paper describing this is at Annex A. It was agreed that the further protection and enhancement of human rights would be an important element in any new political institutions in Northern Ireland; the parties also agreed that, in order to have the greatest degree of credibility and effectiveness, any fundamental provisions should be "entrenched" against amendment by local institutions. New institutions in Northern Ireland could nevertheless have the right to request the Secretary of State (or Parliament) that action be taken to enhance the rights protected by those provisions.

3 The European Convention on Human Rights and its additional protocols (ECHR) were discussed. All the parties agreed that the ECHR covered many areas where human rights protection was desirable. The parties agreed that the ECHR would be a valuable, but not definitive, basis on which to build a system of fundamental provisions protecting human rights, and that provisions in other international agreements should be drawn on. (A summary of the provisions of the ECHR and its additional protocols was tabled and is attached at Annex B). The parties also agreed that other rights might be protected and that access to remedies against any breach of human rights provisions should be speedy, uncomplicated, and readily available.

4 The SDLP saw merit in additional provisions guaranteeing fair elections on the basis of a proportional system of voting. While not disagreeing with this proposal, the other parties did not feel it appropriate to list specific rights at this stage.

5 All the parties believed it desirable that any comprehensive human rights provisions such as a Bill of Rights should be entrenched against anti-terrorist laws applied in Northern Ireland. There were technical difficulties in such "entrenchment", although many experts believed it to be possible. It was noted, however, that support had not until now existed in Parliament for such entrenchment on a UK-wide basis; and that such entrenchment even for Northern Ireland alone might not win acceptance in Parliament for a number of reasons.

6 It was noted that other forms of more limited entrenchment were possible, for example, on the model of Section 17-19 of the Northern Ireland Constitution Act 1973 or by making a matter "excepted". It was suggested that it might be possible to provide entrenched human rights provisions against anti-terrorist legislation by making such legislation subject to provisions which operated on the same legal basis as Sections 17-19 of the 1973 Constitutional Act. The parties noted that this might be a practicable way of achieving entrenchment.

7 The sub-Committee discussed two recommendations in the Second Report on Religious and Political Discrimination and Equality of Opportunity by the Standing Advisory Commission

on Human Rights (SACHR). The parties agreed that, in principle, provisions against indirect discrimination, and provisions for equity of treatment and esteem could be of value; but it would not be possible to take a definitive view without studying the text of possible provisions and looking at their effect on the system of government as a whole. Any system would have to be applied fairly and be capable of gaining confidence throughout the community.

8 The parties agreed that there would be a body to consider and investigate human rights matters and that the Standing Advisory Commission on Human Rights might have an expanded role. The body could have the role of investigating particular cases of alleged breaches of human rights provisions, and could sponsor cases before the courts; it could be charged with the promotion of and education in human rights; and it might have a formal role in making recommendations to new institutions about proposed legislation. Its annual report might also be laid before the Assembly as well as Parliament. Appointments to the body should be of independent persons, who would win confidence throughout the community.

9 the parties agreed that the possibility of a special division of the High Court to consider human rights cases (the "Human Rights court") should be considered further. Another potential way forward would be an expansion of judicial review.

10 It was agreed that new institutions in Northern Ireland would need to be sensitive to and allow the expression of different cultural traditions. There could be a body within the new institutions to promote knowledge of and respect for the various cultural traditions in Northern Ireland. A Bill of Rights could contain a provision requiring institutions in Northern Ireland to take account of cultural traditions in developing policies.

ANNEX A

ADDITIONAL MEASURES TO PROTECT HUMAN RIGHTS

Since 1969, key measures to protect human rights and to prevent discrimination in both the public and private sectors have included:

The Electoral Law Act (Northern Ireland) 1969 introduced universal adult suffrage for local council elections. The franchise had previously been limited to rate payers. The Local Government Act (Northern Ireland) 1972 established an independent Local Government Boundaries Commissioner to make recommendations on the boundaries of district electoral divisions and local government administrative areas and provided independent procedures for their review. The District Electoral Areas Commissioner (Northern Ireland) Order 1984 provided independent procedures for recommending the grouping of wards into electoral areas. The Electoral Law (Northern Ireland) Order 1972 created the independent post of Chief Electoral Officer with responsibility for the orderly conduct of all elections. This Order and subsequent legislation introduced proportional representation for local government elections and regional elections to the European Parliament. The Elected Authorities (Northern Ireland) Act 1989 extended the local authority franchise to bring it into line with that for Parliamentary elections.

The Parliamentary Commissioner Act (Northern Ireland) 1969 established the office of the Northern Ireland Parliamentary Commissioner for Administration with powers to investigate complaints of maladministration (including discrimination on the grounds of religious belief or political opinion) by Government departments. Unlike his Westminster counterpart, the Northern Ireland Parliamentary Commissioner was subsequently charged with responsibility to investigate complaints affecting personnel matters in the Northern Ireland Civil Service. Furthermore, in 1971 all contractors tendering for Government contracts were required to adhere to a contractual term not to practice religious discrimination in the performance of the contract. The Parliamentary Commissioner became responsible on an extra-statutory basis for overseeing the operation of the term. This arrangement was superseded by the Fair Employment Act.

The Commissioner for Complaints Act (Northern Ireland) 1969 established the Northern Ireland Commissioner for Complaints with powers to investigate grievance against local councils and public bodies. Where the Commissioner for Complaints found injustice in consequence of maladministration, including discrimination on the grounds of religious belief or political opinion, the Commissioner was empowered to certify the facts to the county court for the purposes of an action for damages by the complainant.

The Prevention of Incitement to Hatred Act (Northern Ireland) 1970 made it a criminal offence wilfully to stir up hatred against a section of the community including any section distinguished by race or religion. This legislation was subsequently consolidated into the Public Order (Northern Ireland) Order 1981. This was replaced by the Public Order (Northern Ireland) Order 1987 which *inter alia* repealed the Flags and Emblems (Display) Act (Northern Ireland) 1954 and amended the legislation to prohibit the use of words or behaviour, or display of any written material likely or intended to provoke hatred based on religious belief, colour, race or ethnic or national origin against any section of the public.

The Housing Executive Act (Northern Ireland) 1971 provided that all public authority house building and its allocation on the basis of an objective points system should become the responsibility of a central housing authority, the Northern Ireland Housing Executive. This measure was in part designed to meet allegations that some local authorities had discriminated in the location and allocation of housing.

The Prosecution of Offenses (Northern Ireland) Order 1972 set up the office of an independent Director of Public Prosecutions in Northern Ireland. The Director is the sole prosecuting authority in Northern Ireland responsible for the consideration of facts relating to all indictable and certain other offenses with a view to initiating or continuing criminal proceedings. The Chief Constable is required to furnish the Director with facts and information relating to all alleged indictable offenses and any other alleged offenses as the Director may specify.

The Fair Employment (Northern Ireland) Act 1976 made direct discrimination on religious or political grounds unlawful in employment. A Fair Employment Agency was made responsible for receiving and investigating complaints of discrimination and for conducting investigations into the extent of equality of opportunity. A further initiative was brought into operation in 1982; tenders for Government contracts would not normally be accepted from firms unless they held an equal opportunity employment certificate issued under the 1976 Act. The Fair Employment (Northern Ireland) Act 1989 amended and extended the legislation and established a Fair Employment Tribunal and a Fair Employment Commission, replacing the Agency. It provided for compulsory registration of employers, monitoring by employers of their workforces and applicants for jobs, regular reviews by employers of their recruitment, training and promotion practices, taking into account a new Code of Practice and use of affirmative action including goals and timetables, as directed by the Commission, in the absence of fair participation. The Act provided that indirect discrimination should also be unlawful. The Act also provided for criminal penalties for failure to register, monitor and conduct reviews; criminal penalties and loss of grants and contracts in instances of bad practice; and compensation of up to £30,000 for individual victims of discrimination.

The Sex Discrimination (Northern Ireland) Order 1976 made it unlawful to discriminate on grounds of sex in employment or in the provision of goods, facilities and services. The Equal Opportunities Commission set up under the Order keeps under review the operation of the legislation and the Equal Pay Act (Northern Ireland) 1970. The Commission can investigate unlawful discriminatory practices and issue "non-discrimination notices", enforceable if necessary in the courts, by way of injunction or order. The Sex Discrimination (Northern Ireland) Order 1988 extended the 1976 Order to cover equal retirement conditions and various other provisions.

The Homosexual Offenses (Northern Ireland) Order 1982 provides that homosexual acts in private between consenting males over 21 years of age should not be an offence. The Order brought the law in Northern Ireland into line with that already in force in Great Britain.

The Police Act (Northern Ireland) 1970 set up a Police Authority as an independent body to maintain an adequate and efficient police force. One of the Authority's responsibilities under the Act is to keep itself informed as to the manner in which complaints against members of the force are dealt with by the Chief Constable. The Police (Northern Ireland) Order 1977 provided for the establishment of a Police Complaints Board for Northern Ireland. The Board was replaced under the Police (Northern Ireland) Order 1987 by the Independent Commission for Police Complaints (ICPC). The ICPC receives copies of all complaints and, subject to any adjudication by the Director of Public Prosecutions, the relevant investigation reports. The ICPC is charged with ensuring that the investigation of complaints is carried out in a thorough and impartial manner and is required to supervise the investigation of all complaints involving death or serious injury and can supervise the investigation of any other complaints.

The Police and Criminal Evidence (NI) Order 1989 reformed the law relating to the investigation and detection of crime and revised the law on evidence. The new powers introduced were accompanied by a range of safeguards to ensure that they were used fairly and responsibly. Codes of Practice issued

under the Order provide detailed rules and guidance to the police on the exercise of their powers. In the law and order field, the emergency measures which are currently necessary take account of human rights and are subject to regular parliamentary scrutiny. They represent a carefully structured balance between the need to provide the security forces with the legal resources to counter terrorism effectively, and the necessity to protect civil liberties and safeguard fundamental human rights. Detention powers introduced in 1972 have been allowed to lapse and many other refinements have been made following regular independent reviews of the legislation, the last of which has only recently been completed by Lord Colville. The Government recently published a Guide to the Emergency Powers, which explains the main emergency powers and sets out the procedures governing the treatment and questioning of terrorist suspects in police custody. Those claiming ill-treatment by the police or Army are free to seek damages in the courts; in those cases where such allegations have proved true, compensation has been paid. The security forces enjoy no immunity from prosecution.

There have also been developments in the field of community relations in Northern Ireland. In 1987 a Central Community Relations Unit was set up within Government to advise the Secretary of State on all aspects of the relationship between the two sides of the Northern Ireland community and to ensure that at the centre of the decision-making process crucial community relations issues in their widest sense are given the fullest possible consideration. In 1990 an independent Northern Ireland Community Relations Council was established to provide support facilities and recognition for local organisations which are concerned with the development of community relations, awareness of cultural diversity and conflict resolution. There is also under review a system of equal opportunity proofing of Government policy-making and legislation. Under the system, policy and legislation proposals are considered by the NIO and NI Government Departments to establish whether they may discriminate on the grounds of religious belief or gender and provide equality of opportunity.

The Targeting Social Need initiative, which has been adopted as a third public expenditure priority alongside "law and order" and "strengthening the economy" has the objective of tackling areas of social and economic difference by targeting policies and programmes more sharply at those in greatest need. The essential foundation of this initiative is for all Government departments to monitor more closely the impact of their policies and programmes on the two main sections of the community and to bring forward proposals for further action to reduce differences. The Making Belfast Work and Londonderry initiatives, together with the rural development programme are examples of the TSN philosophy at work.

The Northern Ireland (Emergency Provisions) Act 1991 introduced a number of new safeguards on the exercise of emergency powers, such as a record-keeping requirement on police and Army search powers. The Act also provides that the police and armed forces may only stop and question any person for a reasonable length of time to establish their identity and movements. The Government are considering the appointment of an Independent Commissioner to monitor procedures at terrorist holding centres, and to publish a Code of Practice on the treatment of terrorist suspects in police custody. Consultation on the contents of the Codes has begun with interested bodies, including the Standing Advisory Commission on Human Rights. The Government also propose to establish a new Office of Independent Assessor of Armed Forces Complaints Procedures in Northern Ireland. The role of the Assessor will be to keep under continuous review the system of complaints against members of the armed forces which fall short of allegations of criminal actions.

ANNEX B
EUROPEAN CONVENTION ON HUMAN RIGHTS - PROVISIONS

1950

- 1 Right to life.
- 2 Prohibition of Torture, Inhumane or Degrading Treatment or Punishment.
- 3 No slavery or servitude, and no forced or compulsory labour.
- 4 Right to liberty and security of person.
- 5 Right to fair and public hearing with a reasonable time by an independent and impartial tribunal established by law.
- 6 No retrospection in laws.
- 7 Right to privacy in private and family life.
- 8 Right to freedom of thought, conscience and religion.
- 9 Freedom of expression.
- 10 Right of peaceful assembly and freedom of association.
- 11 Right to marry.
- 12 right to an effective remedy to breaches of Convention.
- 13 No discrimination in the application of the Convention.

Additional Protocols

(a) **1952**

- i Peaceful enjoyment of possessions.
- ii Right of education.
- iii Free elections at reasonable intervals by secret ballot.

(b) **1963**

- i Freedom of movement for those lawfully within a state.

(c) **1983**

- i Abolition of death penalty.

(d) **1984**