

E.R.

IN CONFIDENCE

A COUNCIL OF IRELAND

NOTE BY NORTHERN IRELAND OFFICE

The attached note sets out a number of matters in connection with a Council of Ireland on which any preliminary comments would be welcome.

These questions should be considered in the context of the statement made by Her Majesty's Government in paragraph 110 of the White Paper on Northern Ireland Constitutional Proposals that "it favours and is prepared to facilitate the formation of" a Council of Ireland. Section 12 of the Northern Ireland Constitution Act 1973, permits the new Northern Ireland institutions to consult with the Republic of Ireland on any matter connected with a Council of Ireland and to enter into agreements or arrangements in respect of any transferred matter. It would be within the competence of the Northern Ireland Assembly, subject to consent being given, to pass Measures giving effect to any agreements, if legislation is required.

The White Paper also states Her Majesty's Government's view that there are undoubtedly many matters of substantial mutual interest in common between Northern Ireland and the Republic of Ireland, such as tourism, regional development, electricity and transport, which might be undertaken by a Council of Ireland. In addition, in the statement issued following the talks with the parties on 19 October on law and order and policing, Her Majesty's Government announced that it is undertaking a study of the concept of a common law enforcement area and the question of extradition processes.

The questions set out in the attached paper should be looked at against this background. They are not intended to be anything other than a constructive aid to discussion and to illustrate the points which will have to be resolved when the main principles have been settled.

Northern Ireland Office



## COUNCIL OF IRELAND

This paper sets out some of the basic questions about a Council of Ireland. Some of the questions are inter-related.

The form of a Council of Ireland

1. Should the Council be bipartite <sup>✓</sup> (i.e. purely a North/South body), or is any other form preferable?
2. If the Council is bipartite, should there be equal representation of <sup>✓</sup> North and South in all the institutions of the Council? Or should representation be calculated on some other basis?  
Should the same basis of representation apply to each of the <sup>✓</sup> Council's institutions?
3. Should there be a ministerial level body? <sup>✓</sup>  
If so, how many members should it comprise? ~~7~~ 14  
Would each country's representatives be drawn from the membership of a Council of Ireland Assembly (assuming there was one), or from the ministerial ranks of each country's government? <sup>✓</sup>  
If the latter, would each country nominate permanent representatives to sit on this body or would each country send appropriate Ministers or members of the Executive to each meeting of the body? Or should there be some combination of both? <sup>✓</sup>
4. Should there be a parliamentary level body? <sup>✓?</sup>  
If so, how many members? 40  
How should its members be selected -- should they be directly elected, or elected from among the membership of the Dail and the Northern Ireland Assembly? <sup>✓</sup> If the latter, what should be the basis of election -- should provision be made to elect members from the Opposition as well as the Government parties? <sup>✓</sup> T R.
5. Should provision be made for sub-committees of either the ministerial level or the parliamentary level bodies <sup>✓</sup> if so with what provisions as to membership? Or should the development of sub-committees etc. be left to ad hoc decision? <sup>✓</sup>
6. What form of voting should be adopted in the ministerial level body -- and in the parliamentary level body -- and in any sub-committees? Should unanimity be required on all votes? <sup>✓</sup> Or on some votes of special importance? *majority in parliament*  
Or should simple majority voting be the norm?



2.

Or should there be minimum majority voting (requiring, for example, a 75% or a 90% majority) - on all issues, or only some of special importance?

Should these voting requirements apply to members of the body who are present and voting, or to the total membership of the body?

7. Should there be a permanent secretariat? ✓

If so, from where should its staff be drawn in the first instance? ✓

*advisive*

Functions of a Council of Ireland

8. To what extent should a Council of Ireland as a whole be given any or all of the following rules:

(a) consultative - acting as a forum for consultation between the member governments: ✓

(b) advisory - acting as the provider of advice to member governments: ✓

(c) harmonising - seeking to co-ordinate the activities of member governments in a particular field; ✓

(d) executive - taking over responsibility for the administration of some area of government. ✓

9. If a Council of Ireland is to provide a forum for consultation, how should this role be shared between the various organs of the Council (the ministerial level and the parliamentary level bodies, any sub-committees, and the Secretariat).

Should the Council of Ireland be able to take the initiative and suggest subjects for consultation? Or would it be for member governments to suggest such subjects?

10. If the Council of Ireland is to include among its roles the giving of advice to governments, how should it arrive at that advice? Should it undertake, or commission, independent research and consultation? Or should it co-ordinate research and other projects of the member governments? Or what else?

What organs of the Council would have responsibility for formulating and transmitting the advice? Should different organs have a different role to play?

Should the Council decide for itself the subjects on which it is to proffer advice? Or should it only offer advice when asked by a member government?

11. Similar questions arise if the Council of Ireland is to have a harmonising role; where does the initiative come from? Who does what within the Council? And how?



12. If the Council is to have executive powers, would its responsibilities be exclusive in each of the subjects for which it is responsible? ✓  
Or would they be concurrent with the responsibilities of the member governments?

Would the Council's decisions be binding on member governments? ✓

And would governments be required to implement the decisions? ✓ Or would decisions be directly binding on individual citizens? Would these decisions be enforceable in the courts of both countries?

What role should be played by each of the organs within the Council?

At what level would an executive decision be made?

Would the Council's executive powers extend to the making of new laws on these subjects? If so, by which organ within the Council - the ministerial level or the parliamentary level body?

Would any such new laws be immediately binding throughout the member countries? Or would they first need to be ratified by the Dail and the Northern Ireland Assembly?

13. What should be the relationship between a ministerial level and a parliamentary level body? Should the Assembly have any power of censure (whether of individual members, or of the ministerial level body as a whole)? *advising*

Should it have any formal or informal powers of control over the ministerial level body? *No*

14. Should the Council have a capacity to evolve - either as regards the form of its functions (e.g. developing from an advisory to an executive role); or as regards subject matter? ✓

If so, would it be for the Council itself, or for the member governments, to suggest an increase in the Council's role?

Would the Council, or the member governments, as the case may be, have power to decide the matter without reference to the other? Or would any evolution require both the consent of the member governments and of the Council itself? ✓

Which organs within the Council would be responsible for determining the Council's attitude? Would it be for the ministerial level body, or the parliamentary level body? Or both?

15. What should be the general relationship between the Council of Ireland and governments? Should governments have the power to veto decisions and control the Council's evolution? ✓ Or should the Council be independent in these matters? X

Or should there be some mixture of both?



16. If the Council is bipartite, how would it stand in relation to the United Kingdom Government:
- (a) generally?
  - (b) in relation to reserved and excepted matters?
  - (c) in relation to the United Kingdom Government's economic and financial responsibility for Northern Ireland?
  - (d) in relation to the United Kingdom Government's international responsibilities?

If the Council of Ireland is bipartite, should there be some institutionalised form of consultation with the United Kingdom Government in appropriate situations?

17. What should be the role of the Permanent Secretariat? How would it stand in relation to the other organs of a Council of Ireland? And in relation to the member governments?

Subject matter of a Council of Ireland

18. Would the Council necessarily have the same type of responsibility for each of the subjects within its remit? Should, for instance, the Council have executive or harmonising powers in relation to some matters, and advisory powers in relation to others? *Yes*
19. What subjects should be allocated to a Council of Ireland? *✓*  
And what role should the Council have in relation to each of them?
20. Should some subjects (e.g. those on which substantial co-operation already exists) be identified as suitable for immediate allocation to a Council of Ireland, and others for allocation at a later date?
21. Should the Council have any role in relation to law and order (a reserved matter) and if so, what role?  
*Plus*  
Should the Council be a forum for advances in the combatting of terrorism? *✓*  
Should it contribute to the discussions on, or the creation of, a common law enforcement area? *✓*
22. Should the Council have any specific role in relation to EEC matters? *✓*
23. Should the Council have a degree of responsibility in connection with human rights?  
*No*  
If so, what responsibility?  
Should there be a court of human rights? If so, with jurisdiction over individuals or over members countries?  
What human rights would it protect? How would these be defined?  
Would it have civil or criminal jurisdiction - or both?



How would it enforce its judgments - in civil matters - in criminal matters?

Miscellaneous

24. How should the Council be financed?  
Should it raise its own taxation?  
What financial control should the various governments providing the money have?
25. If the parliamentary level body is not directly elected, should there be some means of directly consulting the electorate on important matters?   
Should there, for instance, be provision for a referendum in cases where the Council is taking important decisions, or in suggesting some expansion of its role?
26. Should the Council have a permanent headquarters, or more than one?  
If so where?  
Should the location of meetings (e.g. of the ministerial level body) alternate? ✓