

12. A FRAMEWORK FOR ACCOUNTABLE GOVERNMENT IN NORTHERN IRELAND 1995

INTRODUCTION

- 1 This Part sets out the Government's understanding of potentially acceptable elements for improving local accountability in Northern Ireland, as part of a comprehensive political settlement embracing relationships within Northern Ireland, between Northern Ireland and the Republic of Ireland, and between the two Governments.
- 2 The British and Irish Governments committed themselves in the Joint Declaration to seeking, along with the Northern Ireland constitutional parties through a process of political dialogue, to create institutions and structures which, while respecting the diversity of the people of Ireland, would enable them to work together in all areas of common interest. The two Governments recognised that such structures would include institutional recognition of the special links that exist between the peoples of Britain and Ireland as part of the totality of relationships, while taking account of newly forged links with the rest of Europe.
- 3 It is the Government's aim to see the creation in Northern Ireland of local institutions of government that are directly accountable to the people - all the people - and to which they can give their wholehearted commitment and support. With this in mind, and taking account of Northern Ireland's position as part of the United Kingdom and its relationship with the Republic of Ireland, it is possible to identify certain characteristics which should underlie any new political institutions in Northern Ireland. Such institutions should be:

- based on democratic principles and reflecting the wishes of the electorate;

- widely acceptable, in particular in the sense of providing an appropriate and equitable role for both sides of the community, such that both the main parts of the Northern Ireland community should be able to identify with them and feel that their representatives had a meaningful function to perform;

- stable and durable in the sense of not being dependent on a particular election result or political deal. The system should, as far as possible, be self-sustaining;

- capable of development, in response to changing political realities, with the agreement of all concerned;

- workable, in the sense of being as straightforward to operate as possible;

- such as to avoid any entrenchment of the main community division and to encourage the development of a society in which both main traditions would be respected;

- such as to provide all the constitutional political parties with the opportunity to achieve a role at each level of responsibility, and to have a position proportional to their electoral strength in broad terms;

- able to function effectively, efficiently and decisively within clearly defined areas of responsibility;

- innovative, in the sense of learning from and not merely modelled on any previous arrangements;

- established within a defined relationship with UK institutions;
 - competent to manage any relationship between Northern Ireland and the Republic of Ireland developed in political Talks;
 - capable of securing public endorsement;
 - consistent with the maximum possible delegation of authority;
 - such as to ensure the greatest possible degree of Parliamentary scrutiny of and public accountability for the exercise of powers of government within Northern Ireland.
- 4 The Government believe that there would also be strong support for the propositions that each individual and community in Northern Ireland has the right to define their own identity; that that right and identity should be respected; and that any new political institutions should be such as to give expression to the identity and validity of each main tradition.

POSSIBLE ARRANGEMENTS: OUTLINE

- 5 Based on its discussions with the Northern Ireland parties and bearing in mind the preferred characteristics mentioned above, the Government believe that there would be a broad measure of agreement for an outline framework for new political institutions in Northern Ireland to include:
- Province-wide executive responsibilities;
 - a single unicameral Assembly of about 90 members elected for a fixed 4 or 5 year term;

- elections to the Assembly by a form of proportional representation;
- a separate Panel, probably of 3 people elected within Northern Ireland, to complement the working of the Assembly. The Panel could be elected from a single Northern Ireland constituency by a system of proportional representation;
- a system of Assembly Committees, constituted broadly in proportion to party strengths in the Assembly, to oversee the work of the Northern Ireland Departments and other functions;
- legislative and executive responsibility over as wide a range of subjects as in 1973. If there were agreement it would be open to the Government to consider with the new institutions the scope for further transfers. Certain functions, including matters relating to the Crown, foreign affairs and defence, would remain at Westminster. It would be for consideration whether new institutions were given full legislative responsibility from day one or whether such responsibility would be assumed progressively;
- a system of detailed checks and balances intended to sustain confidence in the institutions. These might include powers for the Panel to nominate Assembly Committee Chairmen and Deputy Chairmen, to scrutinise and if necessary block legislation, and to arbitrate on public expenditure disputes; and a Code of Practice to specify the relationships between the Assembly, its Committees, Committee Chairmen and Departments;
- mechanisms to ensure adequate compliance with the UK's EU and other international obligations.

POSSIBLE ARRANGEMENTS: DETAIL

TRANSFERRED MATTERS: EXECUTIVE RESPONSIBILITIES

- 6 Executive responsibilities in the transferred field would be discharged through Northern Ireland Departments, subject to the powers and roles of the Assembly and Panel. The Chairman of the relevant Assembly Departmental Committee would be the Head of Department. These Committees would be established from among the members of the Assembly on a basis providing an appropriate, fair and significant role for representatives of all main traditions in Northern Ireland. Departmental estimates, policies and actions would be subject to scrutiny by the relevant Committee, which would have the power to compel attendance and call for papers. The Assembly would debate reports from, and call for the minutes of, each Committee.

ASSEMBLY COMMITTEES: APPOINTMENT

- 7 The Chairmanships and Deputy Chairmanships of Assembly Committees would be allocated from among the members of the Assembly by the Assembly, acting by weighted majority, on the nomination of the Panel, acting by consensus. This procedure might operate as follows:

- the Panel, acting unanimously and after consultation with the Assembly party leaders, would draw up a list of nominations broadly reflecting proportional party strengths in the Assembly, and having regard to the likely ability of nominees to command the confidence of the Assembly;

- the Assembly would vote on the list of nominations as a whole, approval requiring a weighted majority of Assembly members;

- if the nominations were not approved, the Panel would draw up a revised list of nominations. The fact that a particular nomination had been rejected as part of a list would not prevent it being proposed again on a revised list;

- if a vacancy occurred during the life of the Assembly, this procedure would be repeated, with the Panel (after consultation with the Assembly party leaders) making a nomination for Assembly approval, by weighted majority, for each such vacancy;

- appointments would be held for the whole term of the Assembly, subject only to dismissal on the proposal of the Panel, acting unanimously, and with the approval, by weighted majority, of both the relevant Committee and the Assembly as a whole.

TRANSFERRED MATTERS: LEGISLATION

- 8 The Northern Ireland Assembly would be the legislature in respect of transferred matters in Northern Ireland, subject to the powers and role of the Panel. All legislation would require the support of at least a majority of both the relevant Committee and the full Assembly. Legislation would be dealt with by majority decision unless a Business Committee (see paragraph 16) decided that the proposal was contentious, thus requiring weighted majority approval (at a level to be determined), or unless a petition to that effect secured a certain threshold support (at a level to be determined). Examples of measures which might be deemed contentious might include some financial measures or those with constitutional implications or significant implications for community relations.

FINANCIAL ARRANGEMENTS

- 9 During future talks the participants would need to consider how the quantum of public expenditure would continue to be determined in the event of devolution, sources of funding, the role of the Secretary of State in any new arrangements, and the degree of discretion available to a local administration to allocate resources according to its own priorities. The Government would be ready to table ideas for consideration.

NON-TRANSFERRED MATTERS

- 10 The Secretary of State would remain accountable to the Westminster Parliament for matters not transferred. These might include matters relating to law and order, including firearms and explosives, (but see paragraphs 13 and 14), as well as the criminal law. The Secretary of State would also have a continuing responsibility for securing public expenditure for Northern Ireland and would be Co-Chairman of the Intergovernmental Conference established under a new Agreement. The Talks participants would need to give further consideration to the relationship in the longer term between new political institutions and the Westminster Parliament, and the role of the Secretary of State. The Government would be prepared to table ideas to assist discussions.
- 11 Under its terms of reference the Northern Ireland Affairs Select Committee at Westminster would no longer be entitled to scrutinise any matters for which new political institutions became accountable.

RIGHTS

- 12 Protection for specified civil, political, social and cultural rights would be reinforced in respect of a range of matters including those for which the new political institutions would have responsibility, on a basis arrived at in consultation with the parties. The means of such protection would accord with the constitutional arrangements of the United Kingdom, and could build on existing safeguards. The aim will be to ensure that under any political settlement legislation and executive action will operate fairly and impartially so as to ensure the protection of these agreed rights and to inspire the confidence of everyone in Northern Ireland.

LAW AND ORDER

- 13 The Government wish to see the maintenance and development of a police service in Northern Ireland that is effective, operationally independent and accountable to the community which it serves. It must be capable of maintaining law and order, and of responding to any renewed terrorist threat should that prove necessary. Subject to these requirements, the Government are open to the consideration of proposals designed to enhance the extent to which the community at large in Northern Ireland can identify with and give full support to the police service.
- 14 The role of the new local institutions in policing and security matters will depend on a large extent on the level of the terrorist threat. So long as the threat is such that the active support of the armed services is necessary and emergency legislation is required, the Government's direct responsibility

for these matters will continue, although there could be a consultative role for the local institutions. As that threat diminishes, so the likelihood increases that responsibility for policing matters, principally funding and the setting and monitoring of police objectives, could be transferred to the appropriate Assembly Committee.

ASSEMBLY

- 15 The Assembly would be presided over by a Speaker, elected by weighted majority.
- 16 Non-departmental committees of the Assembly would include a Business Committee to co-ordinate Assembly business; a General Purposes Committee (to include the Chairmen of Departmental Committees) to assist in co-ordinating the interests of the relevant committees on issues crossing departmental boundaries; a Public Accounts Committee; and other committees to act as a focus for the Assembly interest in particular areas such as non-transferred matters, cultural expression and diversity.
- 17 A Code of Practice would be drawn up to specify the respective roles, responsibilities and decision-making powers of Departments, Committee Chairmen, Assembly Committees and the Assembly at large. The Code would be reflected in the Standing Orders of the Assembly, which would be subject to weighted majority approval. The Code and Standing Orders would have a particular regard to means of promoting cross-community consensus and securing an appropriate, fair and significant role for representatives of all main traditions.

PANEL

- 18 The Panel, whose role would complement the work of the Assembly, might undertake important consultative, monitoring, referral and representational functions. Decisions would be taken by consensus. Procedures would be devised for what, if anything, should happen were consensus not to be reached. The Panel could have a general duty to liaise, formally and informally, with the Assembly and the Secretary of State, and to give advice.
- 19 The Panel's role, powers, rights, duties and responsibilities would need to be carefully specified, including in legislation where appropriate, and could include:
- a role in the nomination of Chairmen and Deputy Chairmen of Assembly Committees (see paragraph 7);
 - the consideration of proposed legislation specifically referred to it under Assembly procedures (with power to accept, reject, give an opinion or propose amendments);
 - the ability to refer any proposed legislation for appropriate judicial consideration, e.g. of whether it might be discriminatory or ultra-vires;
 - liaising with the Secretary of State on the overall level of public expenditure allocated to Northern Ireland Departments;
 - arbitrating public expenditure allocation disputes between Departments, where these had not been resolved by the Finance Committee;

- the approval of designated public appointments in respect of transferred matters;
 - advising the Secretary of State on appointments within his responsibility;
 - the consideration of actions or proposals referred to it under Assembly procedures (with the power to give an opinion on or to make recommendations on such actions, and to refer them for any appropriate judicial consideration);
 - preparation for the Assembly and the Secretary of State of regular (annual) reports on the activities of the Panel and their view of the operation of the new political institutions.
- 20 The Panel could have an important representational and promotional role, with a special commitment to the economic development of Northern Ireland through participation in joint promotional activities in collaboration with other interests.
- 21 The Panel would secure its share of resources from the Secretary of State independently from the rest of the transferred block, in order to ensure that it had financial independence and its sources were sufficient to carry out the full range of its statutory functions.
- 22 Arrangements for replacing Panel members who could not continue to discharge their duties would need to be considered.

CHECKS AND BALANCES

23 The preceding paragraphs contain a number of checks and balances intended to give reassurance that new institutions would command the confidence of both main sections of the Northern Ireland community without prejudicing workability. In summary they are:

- elections to an Assembly by a system of proportional representation;
- separate elections to a Panel, also be a system of proportional representation;
- a balance of responsibility between the Assembly, Assembly Committees and the Panel (which could intervene on legislation or executive actions);
- Panel decisions to be unanimous;
- Assembly Committees established to give an appropriate, fair and significant role for all main traditions in Northern Ireland;
- Heads of Department/Chairmen of Committees (and Deputy Chairmen) to be approved by joint action involving the Assembly and Panel and to require weighted majority approval in the Assembly; legislation to require majority support both in the relevant Committee and the Assembly, with provision for contentious legislation to require weighted majority approval.

24 The preceding paragraphs also contain ideas on the use of weighted majority voting in the Assembly as a means of ensuring cross-party support for:

- the appointment (or dismissal) of the Chairmen or Deputy Chairmen of Assembly Committees (paragraph 7);
 - contentious legislation (paragraph 8);

 - the election of the Assembly Speaker (paragraph 15);

 - Assembly Standing Orders on the roles, responsibilities and decision-making powers of Departments, Committee Chairmen, Assembly Committees and the Assembly at large (paragraph 17).
- 25 Weighted majority voting might also be used in the Assembly Committees to ensure that minorities were not continually outvoted. The weighted majority required in these different circumstances would ultimately be for agreement by the parties in the Assembly but could be in the order of 65% to 75%.
- 26 Minimum threshold votes also offer a mechanism for protecting minority rights. Paragraph 8 suggests that if a petition in the Assembly secured a specified threshold of support it could require a particular piece of contentious legislation to be dealt with by weighted majority voting. The procedures in the Assembly might also be devised in such a way as to allow draft legislation or other actions or proposals to be referred to the Panel if they secured a threshold vote (paragraph 19). Again, the precise quota required in each circumstance would be for determination by the parties in the Assembly but might be in the range of 25% to 35%.

RELATIONSHIPS WITH OTHER INSTITUTIONS

- 27 The New Framework for Agreement envisages that relevant members of the Assembly would play a significant role in

any new North/South institutions and could also have involvement in any new intergovernmental arrangements. Paragraphs 24 to 38 and 39 to 49 of that document refer. Annex B lists possible arrangements for co-ordination between institutions in Northern Ireland, between Northern Ireland and the Republic and between the two Governments.

RELATIONSHIPS WITH THE EUROPEAN UNION EUROPEAN UNION ASPECTS

- 28 New institutions in Northern Ireland would be responsible for implementing EC legislation and programmes in the transferred field. They would also be responsible for developing Northern Ireland's views on EU issues and representing them to the UK Government and in any new North/South Institutions. Further consideration would need to be given, with the British Government, to the arrangements which will be necessary for this purpose. These arrangements must respect the British Government's responsibility for the whole of the UK in the European Union and before the European Court of Justice.

ANNEX A

THE GOVERNMENT'S APPROACH TO A POLITICAL SETTLEMENT

- 1 The Government's primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island of Ireland and it has committed itself, in the Joint Declaration, to working with the Irish Government to achieve such an agreement which will embrace the totality of relationships. The Government has defined its role as being to encourage, facilitate and enable the achievement of agreement over a period through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland.

- 2 The Government believe that if there is to be lasting peace, stability and reconciliation any new arrangements for the governance of Northern Ireland must take account of various political realities. These include:
 - that any new arrangements for the governance of Northern Ireland must be acceptable to the people and give appropriate expression to the identity of each of the two main parts of the community. They should uphold and apply the principles of equality of opportunity, equity of treatment and parity of esteem already established by the Government;

 - that any political agreement must address all the relevant relationships, not only those between the two main parts of the community within Northern Ireland, including the relationship between any new political institutions there and the Westminster Parliament, but also those between Northern Ireland and the Republic and between the United Kingdom and Irish Governments;

- the compelling need for the people of Northern Ireland to be given a greater say over their own affairs and for that to be reflected in greater political power, authority and responsibility being transferred to locally elected representatives within a framework of agreed relationships;

- that there can be no going back to a system of government in Northern Ireland which has the allegiance of, and is operated by, only one part of the community; the present reality, in fact and in international law, of the Union of Great Britain and Northern Ireland, affirmed in the Northern Ireland Constitution Act 1973. It is the clear position, as set out in the 1973 Act and the Anglo-Irish Agreement, that the current constitutional status of Northern Ireland as part of the United Kingdom will not change, save with the consent of a majority of the people of Northern Ireland, clearly expressed. This guarantee is reaffirmed in the Joint Declaration;

- the widespread acknowledgement that Northern Ireland's constitutional status as part of the United Kingdom is unlikely to change for the foreseeable future;

- that a significant minority of the people of Northern Ireland aspire to a sovereign united Ireland achieved by peaceful means and consent;

- that the right of a section of the Northern Ireland community to aspire to a sovereign united Ireland, achieved by peaceful means and through agreement, is no less legitimate than the wish of a present majority to retain Northern Ireland's status within the United Kingdom;

- that any change in Northern Ireland's constitutional status as part of the United Kingdom should come about in accordance with the democratic wishes of the people of Northern Ireland, freely given and without coercion;

- that while any settlement is bound to require some compromise, success in obtaining an agreement should not in the Government's view require any of the participants to abandon their basic political principles or aspirations.

- 3 Bearing these realities in mind the Government is firmly of the view that the basis for a lasting settlement can only be achieved by dialogue between political representatives. It remains of the view, which has been supported by the main constitutional parties and the Irish Government since 1990, that the best chance of securing a comprehensive political accommodation lies through a process of dialogue involving the key political interests, is based on a comprehensive agenda, and addresses all three of the underlying relationships - those between the two main parts of the community in Northern Ireland, between the two parts of Ireland and between the two Sovereign States. The Government also remains of the view, which is accepted by the other participants, that agreement on one part of the process would in practice depend on agreement on the others.
- 4 The Government would therefore like to see further dialogue take place involving themselves, the Irish Government and all the main parties in Northern Ireland with a democratic mandate that have established a commitment to exclusively peaceful means. The fundamental interest of the British Government would be to secure an outcome broadly acceptable to the participants. Because it is essential that any outcome should attract widespread support the Government has undertaken to hold a referendum on any agreement that emerges from the Talks Process.
- 5 The ideas contained in Part I of this paper and the New Framework for Agreement represent an outline package which, in the Government's view, has the potential for

securing general agreement. For its part, the Government would accept an outcome from further Talks along the lines described in these papers. It would also, in principle, accept a range of other outcomes provided that any outcome was broadly acceptable to the other participants.

ANNEX B

AN OUTLINE OF A COMPREHENSIVE SETTLEMENT

- I Drawing on the ideas on local accountability in Part I and on the New Framework for Agreement it is possible to identify the main elements of where a possible settlement might be found. There might be public support for the following:

- new political institutions in Northern Ireland with a wide range of executive and legislative responsibilities. Such institutions would dispense executive responsibilities broadly in proportion to party strengths. There would be two main institutions, an elected Assembly and a separate, complementary body perhaps comprising 3 people - a Panel. There would be checks and balances within and between the Assembly and Panel, and a division of functions between them. There would be greater formal protection for civil rights;

- to cater for the North/South relationship there would be a new North/South body or bodies, an interparliamentary forum, an administrative support unit to service the body (or bodies) and the forum, and day-to-day North/South co-operation and communication between Departments, and between counterparts with relevant executive authority at the political level. The source of their authority would stem from the administrations in Belfast and Dublin. All decisions of the North/South body or bodies would be by agreement between the two sides. There would be appropriate political and financial accountability. The new North/South arrangements would be of sufficient strength and quality to further co-operation, mutual understanding and working together in the interests of both parts of the island;

- the Anglo-Irish Agreement would be replaced by a new and more broadly based agreement between the two Governments reflecting the totality of relationships, and with provision for bilateral liaison, through an Intergovernmental Council, there would be a formal Intergovernmental conference, with suitable rights of attendance and consultation for appropriate representatives of the new Northern Ireland political institutions. There would be a Secretariat to support the Conference and provide a channel of communication. The new agreement would be arrived at through direct discussions between the two Governments and the other Talks participants, and Northern Ireland political representatives would play a greater part in it than at present;

- there would be a shared understanding of the constitutional issues, which achieved a balanced accommodation of the differing positions of the two main traditions;

- the overall outcome would be subject to popular endorsement in the form of a referendum in Northern Ireland and an appropriate test of opinion in the Republic.

RELATIONSHIP BETWEEN THE DIFFERENT ELEMENTS OF AN OVERALL ACCOMMODATION

- 2 If a settlement is achieved which address all the relevant relationships there would need to be co-ordination between the various structures. The Government envisage that any acceptable overall accommodation could include linkages of the following kinds:

- liaison between representatives of new Northern Ireland institutions such as the Assembly and the Panel and the British Government over transferred matters with

implications for non-transferred responsibilities, and vice-versa;

- liaison between North/South institutions and the British Government over transferred matters with implications for the British Government's remaining responsibilities;

- ad hoc attendance by representatives of the British Government at new North/South institutions at their request (eg where the Northern Ireland side have raised matters of concern about non-transferred matters with their Republic of Ireland counterparts, which in turn have implications for the British Government);

- attendance by relevant Northern Ireland Heads of Department, and by Panel members, by invitation, at relevant parts of meetings of the successor to the Intergovernmental Conference;

- liaison outside the successor to the Intergovernmental Conference on non-transferred Northern Ireland matters between representatives of the new Northern Ireland institutions and members of the British and Irish Governments;

- attendance by representatives of the new Northern Ireland political institutions at meetings held under the Anglo-Irish Intergovernmental Council framework, where matters relevant to the new Northern Ireland institutions might arise.

3 This list is not exhaustive. The following possible further linking arrangements could be considered:

- permanent observer status for the British Government at meetings of the new North/South body, provided British

Government representatives were not involved in decision taking;

- an umbrella institution for the new Strand 2 and Strand 3 institutions. These would normally meet separately, but could come together for periodic co-ordination or review sessions.

- 4 The Government, for its part, would be ready to consider linking arrangements of this sort provided the key distinctions between transferred and non-transferred matters, and between Northern Ireland and wider matters, were preserved. Any agreed overall accommodation is unlikely to be able to hold its shape if these distinctions are set aside.