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**A NEW SYSTEM OF GOVERNMENT
FOR
NORTHERN IRELAND**

An Alliance Paper

27 October 1997

A NEW SYSTEM OF GOVERNMENT FOR NORTHERN IRELAND

These negotiations have been established in three strands, dealing with resolving the problems of relationships, amongst the people who live in Northern Ireland, between those who live in Northern Ireland and in the Republic of Ireland, and between the people represented by the British and Irish Governments. We all recognise that these three sets of relationships are part of a complex system, that they cannot be hermetically sealed from each other, and that institutional proposals in one strand will have implications and requirements for other strands.

This paper outlines the Alliance proposals for the return of greater democracy and the restoration of legislative and executive responsibility to the elected representatives of the people of Northern Ireland. It is based on our principles and our analysis of the problem.

We are strongly of the view that a single provincial Assembly and Government (or Executive) is necessary to provide a common focus of identification and an opportunity for our people and their elected representatives to share, and to be seen to share, in self government.

The starting point is the institutional framework.

THE LEGISLATURE

In order to be consistent with the principles of democracy and democratic accountability, to avoid entrenchment of our divisions, and to give all democratic parties a role, whilst being as straightforward, transparent and effective as possible, we favour the election of a single chamber Assembly, as the central element in any new arrangements. Northern Ireland has a relatively small territory and population, and in our view it is better to limit the size and number of institutions to what is essential. (We do not entirely rule out a second chamber for balancing purposes.)

The Assembly we envisage would consist of 5 or 6 members for each of the 18 Northern Ireland Westminster constituencies, elected by the single transferable vote system of proportional representation for a fixed term of 4 years. The use of the STV (1,2,3) system is important. It is familiar to Northern Ireland electors and provides a reflection of the range of opinion within an area, while ensuring that electors have a choice of locally elected representatives with whom they can relate. It also encourages people to look across the familiar divides in our community, rather than be trapped within them.

POWERS

In what follows, when we talk about powers, we mean full executive (to decide on and execute policy) and legislative (to make laws) responsibility for the subject concerned.

The powers of the Assembly may be defined by reference to a three tier categorisation.

The first tier are the "excepted matters" in relation to which power would permanently stay at Westminster. Matters in this category would mainly be those of national rather than regional concern, for example defence, but in addition we would envisage that certain sensitive subjects, for reasons of constitutional propriety, would also be retained, for example electoral law and the appointment of Supreme Court judges.

The second tier are the "reserved matters" in relation to which legal power would for the time being stay at Westminster. We would hope that this category would be very limited.

The third tier of powers are the "transferred matters", in relation to which the Assembly would have legal power devolved to it by Westminster. The transferred matters would be all those remaining after "excepted" and "reserved" matters are subtracted. In our view the transferred matters should be as wide a possible and certainly no less than those transferred in 1973. The most obvious matters to be transferred would be agriculture, health and social services, education, the environment, economic development, and finance. In addition we see a strong case for transferring responsibility over a substantial part of the administration of justice system, such as prisons, probation services, victim support and law reform, and indeed some or all of policing. The Assembly should also have some powers in respect of taxation (see under Finance below).

Finally, in dealing with the Assembly's powers, we think that the Assembly should have an advisory role in relation to matters affecting Northern Ireland but which are not transferred. Thus the Assembly, where appropriate, could discuss reserved and excepted matters and offer opinions, even though the legal power rests elsewhere.

SCRUTINY ROLE

It is clear to us that policy formulation and the execution of the day to day business of administration will need to be undertaken by a smaller body, in effect an Executive, answerable to the Assembly. Our proposals on the method by which the executive authority is formed will be described later but what is relevant to say now is that the role we envisage for the Assembly in relation to the Executive is a scrutinising and deliberative one. Accordingly we have given our attention to the means which ought to be provided to enable the Assembly to fulfil this role.

Of course in this context the Assembly through establishing its Standing Orders will have its own contribution to make, but for our part we see advantage in the provision of back-bench Assembly committees for each of the main areas of regional government, performing both what at Westminster would be select and standing

committee functions. This would mean that for example the Environment Scrutiny Committee would have power to launch inquisitorial investigations (including the taking of evidence) into the policies and activities of the Department of the Environment and report to the Assembly (the Westminster select committee role). It would also have the power, where the Assembly refers primary legislation relating to the Environment to it, to conduct a "committee stage" type debate on that legislation and report to the Assembly (the Westminster standing committee role). In fact we foresee that the committees, when dealing with legislation, would be likely to use both the tools of evidence taking and debating of amendments within the committee in order to produce a single report on the proposed measure for the Assembly.

The composition of back-bench scrutiny committees should reflect, so far as practicable the balance of the parties in the Assembly, as should the chairmen (and any deputy chairmen) of the committees taken as a whole.

In addition to the committee structure set out above we consider that the Assembly would be at liberty to establish such other committees as it so chooses but we think that the composition of such committees should, by law, be governed by the proportional formulation stated in the last paragraph.

Apart from scrutiny through the committee structure we would expect the Assembly to establish procedures to enable all members to ask questions of those exercising executive power. Furthermore we would expect a Business Committee or usual channels system to regulate Assembly business.

FINANCE

The financial arrangements under which the Assembly will operate are plainly of considerable importance. Perhaps the central question which has to be addressed in this sphere is whether the method of financing provided ought to be revenue or expenditure based. Under a revenue based system the subordinate government is given certain predetermined sources of revenue and has to finance the devolved services out of the proceeds. Under an expenditure based system, expenditure requirements are measured first and the subordinate government is then furnished with the income necessary to meet them. The Government of Ireland Act 1920 used the former system. The Northern Ireland Constitution Act 1973 used the latter system. It is not in doubt that the 1920 Act system was a failure in this area and we are sceptical about the proposition that it would be possible in a devolved system for Northern Ireland institutions to finance themselves while at the same time maintaining comparable standards of services to those provided in Great Britain. Accordingly we favour an expenditure based system because it would best assure the population of a high standard of services.

But should the devolved administration be able to increase local revenues to finance expenditure over and above what would be sufficient to ensure that general parity of services or potential parity is maintained?

We consider that provided the benefit of additional tax effort exerted within Northern Ireland results in actual additional expenditure capacity for the devolved government (and this does not necessarily follow), then attention should be given to the possibilities of giving power to the devolved government to raise supplementary or alternative taxes. As an absolute minimum this must include those tax raising powers currently used to raise the Regional Rate, and which refer to expenditure in areas formerly in the remit of Local Government, but now directly under Departmental operation. An alternative method of revenue raising could then be considered by the provincial government, though we would not of course propose the 'community charge'. A Local Income Tax would be a credible alternative.

We do not say that these powers have to be used but while preserving the maximum area of financial discretion and autonomy for the devolved administration within an overall expenditure based system, we think the facility to deviate, in the manner described, from national norms, ought to exist, and that the Assembly should have the discretion to decide on alternatives.

We also take the view that there ought to be an opportunity for the regional administration to make direct links with the European Community, especially in financial matters. This would help to deal with the long-standing concern over additionality.

COMPOSING THE EXECUTIVE

Composing an Executive within a devolved system has been the most intractable of political problems in Northern Ireland in the last 20 years. Simple application of Westminster principles in this area, by turning the clock back to the Stormont system, would be unacceptable and undesirable. It would in practice mean that the representatives of minorities would be excluded from participation in the decision making process. It must be recalled that the political parties which represent the interests of the minorities cannot realistically so broaden their appeal as to expect to win office outright by way of any future election, at least in the short to medium term. Likewise it would not be sensible to court failure by reviving proposals in this area which have failed or which can no longer be regarded as satisfactory in view of changed political conditions. But in this area of debate above all it is an illusion to think that the proverbial rabbit can be plucked out of the hat, while maintaining the principles of democracy. What we have tried to do therefore is to build a proposal based on the central reality that provision must be made to enable the representatives of this divided community to participate together in executive decision making, and to encourage the working out of arrangements and shared policies amongst those taking part.

We have indicated earlier that we envisage an Executive which would be drawn from, and be answerable to, the Assembly. That Executive would make decisions on the basis of collective responsibility and would be founded on the agreement of participating parties representing between them a significant cross-section of the Assembly and the wider community. In practice this would require the support of a weighted majority of at least 67% in the Assembly. The mechanism by which the

Executive takes office should be by appointment by the Secretary of State. S/he would be required by law to act strictly in accordance with a set of criteria. These criteria would be designed to ensure certainty regarding the central principles underlying the appointments to be made, and, on the other hand, flexibility in their application so that, as far as possible, the machinery established can respond to events and does not immediately collapse upon encountering difficulty.

The formulation we suggest is that, following inter-party talks to determine the preparedness of parties to participate in a future Executive, the Secretary of State would have the power to make appointments and transfer power to an Executive if s/he is satisfied, after conducting all necessary consultations, that an Executive can be formed which:

- (a) is widely representative of the community as a whole; and
- (b) reflects, so far as practicable and subject to (c) below, the balance of the parties in the Assembly; and
- (c) includes no person who supports the use of violence for political ends.

If the Secretary of State is satisfied about these matters s/he may go ahead and appoint and give power to the Executive. That would complete his/her involvement in the matter and the Executive's existence would then depend on its acceptability to the Assembly.

Where the Executive appointed failed to command acceptability in the Assembly or later became unacceptable then provision would have to be made for the Executive to act merely on a caretaker basis to enable political discussions to go on without direct rule being re-invoked, and for direct rule to be invoked at length only if the system has irretrievably broken down. However if the system works as we envisage, the Secretary of State would be likely only to appoint an Executive which would be acceptable to the Assembly. Thus the most likely problems would be either, that there would be no consensus for the first appointment, or that because of changing political circumstances, the Executive became unacceptable. In all events where the system has failed to function the Secretary of State ought to have power to cause a fresh election to the Assembly to be held so as to give the population an opportunity to break whatever log-jam has developed.

Where casual vacancies to the Executive have to be filled, the same criteria as before would apply to any appointment to the Executive by the Secretary of State.

The allocation of portfolios within the Executive would be a matter for the Executive itself. Likewise, within the context of the acceptability requirement, it would be for the Executive and Assembly together to establish a suitable conventional framework to regulate their own relationships.

We would expect that the Secretary of State would consult with the Executive on non-transferred matters.

ACCEPTABILITY

It is of crucial importance that the system by which executive power is exercised is broadly acceptable to the Assembly as a whole. We say this because in the divided society which is Northern Ireland there is a particular sensitivity in this area. There has been a history of abuse of executive power within the province, and many people fear a repeat of this. Moreover since the question of who shall exercise executive power has been the subject of lengthy and unproductive debate over the years, the issue carries a symbolic significance which cannot be ignored.

Hence our aim is to provide a system sustained by the broadest possible consensus and to this end we consider that a mechanism for testing that consensus, would be of value. What we would seek to test is the level of acceptability (not support) for the Executive. We think that the Executive should be required to submit itself to the Assembly so that its acceptability can be tested. Thereafter acceptability can be tested upon a resolution supported by at least 15 per cent of Assembly members not more than once in a parliamentary year.

In our view in order for the acceptability motion to be carried it must be supported by at least 67 per cent of the members of the Assembly. We consider it right that there be a requirement for a weighted majority and we have adopted the figure of 67 per cent as it is a figure which requires a substantial level of acceptability across the community.

We consider that an Executive composed as we have suggested and accepted by the Assembly as required above, would command the confidence of the great bulk of the community. Now there will be those who will say that the acceptability hurdle is too high or too cumbersome. Our answer to these criticisms is that special provisions such as the acceptability requirement are a response to actual difficulties which exist in Northern Ireland and which in the past have prevented devolved government being restored because people could not identify within the system sufficient guarantees of their political security. The system is designed to be scrupulously fair in order to allay fears and encourage participation by all. We think that to do less than we propose would be to leave too much to chance and that the better approach is to state clearly the acceptability target which must be achieved. Of course we would like to think that the need for such a special provisions would diminish as the system of devolution takes root and obtains public confidence. But the need is there now and hence we have catered for it.

CONSTITUTIONAL PROTECTIONS

The Party has in the past offered the view that in addition to proposals designed to provide a fair and acceptable scheme of devolved regional government, there was need to give improved constitutional protections for the individual.

We consider that this approach is as important today as ever it was, and we wish to record our support for the incorporation of the European Convention on Human

Rights into the domestic law of Northern Ireland, justiciable in the ordinary courts, effectively giving our citizens the protection of a Bill of Rights.

Similarly we propose that a Political Right of Appeal available to a sizeable aggrieved minority in the Assembly, could usefully be included in any legislation establishing regional government. In essence the aggrieved minority, which in numerical terms would have to be 30% of the Assembly members, would have the right to lodge an appeal against a political decision of the majority and the effect of doing so would be that the matter would be considered again by the Westminster Government, or other appropriate body within a specified time.

We have already proposed that the executive would require to have the support of a weighted majority in the Assembly. Similar weighted majorities might be required for particular decisions of the Assembly such as the election of a Speaker, the passing of a budget, or the passing of particularly significant legislation. Further consideration would have to be given to determining which decisions of the Assembly would require such weighted majorities, bearing in mind the danger of making the institution unworkable.

SUMMARY OF MAIN ALLIANCE PROPOSALS

A New Northern Ireland Assembly

The transfer of power over Health & Social Services, Education, Agriculture and Environment, Economy, Finance, and Justice, etc. to a new Assembly, which would have a consultative role on non-transferred matters,

because such a regional government provides the right framework for all the citizens to work together.

Partnership Executive

A partnership Executive based on the strength of Assembly Parties which wish to participate,

because we must all work and build together at the highest level of regional government.

Test of Acceptability

A test of acceptability of the Executive with a weighted majority requirement in the new Assembly,

because any new administration must be widely accepted if it is to work.

Committee Structure

A back-bench committee structure with membership and chairmanship based on the proportionate strength of parties in the Assembly,

because there must be effective participation in the scrutinising of the operation of the Executive.

Constitutional Safeguards

Strengthening the already existing protections of individuals and minorities by both a Bill of Rights, and also a Political Right of Appeal for aggrieved minorities, which would require 30% support within the Assembly,

because all citizens must be confident that their essential rights will be protected.