

## THE MAYHEW TALKS STRAND I

(10 June 1992)

### SUB-COMMITTEE REPORT

1 The sub-Committee met on 5 June and adjourned as a mark of respect to the victims of the accident near Carrickfergus the evening before.

2 It met again on 8, 9 and 10 June.

3 The sub-Committee continued, as mandated by plenary on foot of the 1 June report of the sub-Committee established on 26 May, to work towards the greatest possible degree of common ground on new political institutions for Northern Ireland. What plenary did on that occasion was to:

- "authorise the sub-Committee, building on the Common Themes and Common Principles documents and the provisional report of the Structures sub-Committee (dated 13 May), to work towards the greatest possible degree of common ground on new political institutions for Northern Ireland, by addressing issues including those listed in paragraph 5 of that report, recognising that each party may wish to reserve its position on particular points;

- acknowledge that in order to secure a generally acceptable outcome from the Talks process it will be necessary to ensure that the outcome, taken as a whole, gives expression to the identities of both main parts of the Northern Ireland community and would attract the widest possible degree of allegiance and support; and

- further acknowledge that the course of discussions during Strands II and III may make it appropriate in the view of one party or another to propose that relevant matters in Strand I should be reviewed."

4 It may be convenient to recall at this point that the sub-Committee which reported on 13 May had noted certain areas where, although there was broad agreement in principle (some reflected in the Common Themes paper), further detailed consideration would be necessary once the broad shape of the key institutional arrangements was clear. These include:

(a) "an acknowledgement, consistent with paragraph 2 of the Common Themes paper, that the United Kingdom Government and Parliament would continue to have sovereign responsibility for all matters for which responsibility was not transferred to any new political institutions in Northern Ireland;

(b) an acknowledgement that the Secretary of State would continue to be wholly accountable to Parliament at Westminster for the exercise of any powers and responsibilities which he would retain, coupled with a general concern (expressed in particular by the UUP and DUP) to ensure appropriate parliamentary scrutiny of and accountability for the exercise by the Secretary of State of those powers and responsibilities;

- (c) the need to make arrangements to secure a local political input to the exercise of those powers and responsibilities, especially in respect of security matters (if they continued to be the responsibility of HMG);
- (d) the need to define a clear relationship between any new political institutions in Northern Ireland and EC institutions;
- (e) what should be the precise nature and role of the Assembly and any Committees thereof, including in respect of legislation;
- (f) a requirement for arrangements for determining expenditure levels in Northern Ireland, allocating resources and ensuring a strong role for the Assembly in the scrutiny of budgetary proposals, together with a consideration of the extent, if any, to which any new political institutions might have revenue-raising powers; and
- (g) machinery to deal with the correct grievances and to entrench individual and community rights, including the possibility of a Bill of Rights."

5 The sub-Committee sought to confirm and expand the areas of common ground identified in the Possible Outline Framework for new political institutions in Northern Ireland produced at 0045 on 3 June. It was able to expand in a number of minor respects the area of common ground it represented. A revised version is attached as Annex A. The UDUP, UUP and Alliance Party agreed that executive and legislative responsibilities in respect of transferred matters should be exercised through an elected Assembly, though they were prepared to contemplate a role for a separately-elected Panel in certain circumstances. The SDLP reserved its position on the source of the authority of Heads of Departments and their relationship with Departmental Committees; and on the arrangements for legislation in the transferred field.

6 The sub-Committee also agreed a paper (Annex B), subject to certain reservations, describing the elements of a Code of Practice setting out roles and responsibilities for Departments, Assembly Committees and the Assembly as a whole. In doing so it took account of two papers from the Government on the machinery of government in Northern Ireland and public appointments procedures. It also noted a paper from the Government Team (Annex C) on possible measures for ensuring an appropriate, fair and significant role for all main political traditions in Northern Ireland. Related papers on one aspect of this topic tabled by each of the four parties are at Annexes C1-C4.

7 The sub-Committee achieved a considerable measure of agreement in respect of the relationship between any new political institutions in Northern Ireland and the Westminster Parliament, and the UK Government system more generally; and the relationship with EC institutions. Reports on these subjects are at Annexes D and E.

8 The Parties represented on the sub-Committee also received, but did not collectively consider, discussion papers on finance, human rights, a Bill of Rights and cultural expression and diversity.

9 In submitting their report to plenary the members of the sub-Committee wish to express their thanks to Mr Hanley, Mr Chilcot and Mr Fell for their chairmanship of the sub-Committee's deliberations, to the officials and other staff who supported the sub-Committee and to the delegates and the party delegations more widely for the hard work they put in.

10 JUNE 1992

## ANNEX A

### NEW POLITICAL INSTITUTIONS IN NORTHERN IRELAND

#### Possible Outline Framework (to assist discussion)

- 1 There would be a single, unicameral Assembly of 85 members elected by proportional representation and a separate election from a single Northern Ireland constituency to a panel of three people with significant consultative, monitoring, referral and representational functions.
- 2 The institutions would have executive and legislative responsibilities over at least as wide a range of subjects as in 1973 with scope for further transfers if the arrangements proved stable and durable and there was agreement on how to exercise such powers. Executive responsibilities would be discharged through Northern Ireland Government Departments, the Heads of which would be drawn from the Assembly.
- 3 The Secretary of State would remain accountable to Westminster for matters which were not transferred.

#### The Assembly

- 4 The Assembly would be presided over by a Speaker; election would be by a weighted majority, of say 70%, of the Assembly. The Assembly would exercise its powers through a system of Departmental Committees, with Chairmanships, Deputy Chairmanships and memberships allocated broadly in proportion to party strengths in the Assembly. The Chairmen of the Departmental Committees could be Heads of Departments. Non-departmental Committees would include a Business Committee and a General Purposes Committee with co-ordinating functions.
- 5 A "code of practice" would specify the respective roles, responsibilities and decision taking powers of Departments, Assembly Committees and the Assembly at large.
- 6 Legislative procedures would be prescribed by constitutional legislation. All legislation could require the support of (at least) a majority of both the relevant Committee and the full Assembly. Certain important legislation (eg a financial measure, one with constitutional implications, or significant implications for community relations), could require weighted majority approval (of say 70%). Other measures might be dealt with on the basis of majority decision unless, for example, the Business Committee determined they were contentious or a petition to that effect secured a certain threshold of say 30% support in the Assembly.
- 7 The 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.
- 8 The allocation of chairmanships between Committees would be made in accordance with party strengths, perhaps in accordance with the D'Hondt Rule. Any acceptable option for allocation must however ensure that the system of government provides an appropriate, fair and significant role for representatives of all main traditions in Northern Ireland.

9 Committee Chairmanships would normally last for the whole term of the Assembly. Chairmen of the Departmental Committees might be included as members of the General Purposes Committee. Further consideration will be given to means to prevent Chairmen becoming captives of their Committees. Chairmen, whose appointment would be formally ratified by the Assembly, would be accountable to the Assembly, including through answering questions.

10 Departmental Estimates, policies and actions would be subject to scrutiny by the relevant Committee, which would have the power to compel attendance, call for papers etc. The Assembly would debate reports from, and the minutes of, each Committee.

11 Further consideration will be given to whether a mechanism is necessary to exclude from any share of executive power, or more generally, any individuals or representatives of parties who condone the use of violence for political ends.

### The Panel

12 The panel might have a general duty, acting by consensus to consult, formally and informally, with the Assembly and with the Secretary of State and to give advice.

13 The panel's rights/powers and responsibilities (including statutory duties) and procedures would need to be carefully defined. For example, it could have powers in respect of proposed legislation, to determine (ie to accept, reject, give an opinion on or propose amendments to) any proposed legislation referred to it under procedures to be agreed. It might, by consensus, refer any proposed legislation for some form of judicial consideration.

14 It could have a supportive role in the public expenditure cycle, liaising with the Secretary of State over the setting of total Northern Ireland public expenditure. It could also be an arbiter in settling public expenditure allocation disputes between Departments, having regard to the views of Heads of Departments and the Finance Committee.

15 The panel might have power, by consensus, to approve designated public appointments made in respect of transferred matters. It could also advise the Secretary of State in respect of any appointments within his responsibility.

16 It could also have powers in relation to administrative actions or proposed actions, perhaps on the basis of a referral by a threshold vote within the Assembly.

17 The panel could have a duty to prepare for the Assembly and for the Secretary of State regular (annual) reports on their own activities and their view of the operation of the new political institutions.

18 The panel could also have an important representational and promotional role. It could have a special commitment to the economic development of Northern Ireland, through participation in joint promotional activities in collaboration with the appropriate agencies.

19 The panel might secure its share of resources from the Secretary of State independently from the rest of the "transferred" block in order to ensure both its financial independence, and that its resources were sufficient to carry out the full range of its statutory functions.

## ANNEX B

### "CODE OF PRACTICE"

#### Introduction

1 The Possible Outline Framework for new political institutions in Northern Ireland (Annex A) says that a "Code of Practice" would specify the respective roles, responsibilities and decision-taking powers of Departments, Assembly Committees and the Assembly at large. This paper draws on existing practice and precedent to suggest a possible specification.

2 It was proposed by the UDUP and agreed by the UUP and the Alliance Party that the paper should also suggest a possible basis for distinguishing the relative roles and responsibilities of Committee Chairmen and Committees in circumstances where executive responsibilities rested with Departmental Committees of the Assembly and/or their Chairmen. The SDLP reserved its position on the source of the authority of Heads of Departments and their relationship with the Departmental Committees; and on the arrangements for legislation in the transferred field.

#### Departments

3 Under any new political arrangements, each Department would have the following roles and responsibilities:

- (a) to administer programmes fairly and efficiently;
- (b) to administer programmes in a way conducive to promoting good community relations and equality of treatment;
- (c) to implement agreed policy and to support the Head of the Department and/or the relevant Departmental Committee in seeking to develop and secure support for proposed policies;
- (d) to advise the Head of the Department and/or the relevant Departmental Committee on proposed policy changes, on new initiatives or on the handling of particular issues with a degree of political significance;
- (e) to liaise with other Departments on matters where there are overlapping interests so that co-ordinated or at least complementary advice can be put to the respective Heads of Departments and/or the relevant Departmental Committees;
- (f) to maintain official-level contact with relevant organisations and interest groups within Northern Ireland and with relevant bodies elsewhere with a view to promoting the policy objectives set for the Department and ensuring that it is in a position to advise the Head of Department and/or the relevant Departmental Committee on developments, and to respond to those developments;
- (g) to participate in the public expenditure survey cycle, led by DFP, and to advise the Head of Department and/or the relevant Departmental Committee ensuring the process of determining the Department's budget and in determining allocations between programmes;

- (h) to have due regard to the requirements of public accountability;
- (i) to keep its internal structures, management systems and resources under review to ensure they are adequate to meet requirements;
- (j) to make certain public appointments and, in consultation with the Central Secretariat, to advise the Head of Department and/or the relevant Departmental Committee on other public appointments within the Department's sphere of responsibility;
- (k) to assist the Head of the Department and/or the relevant Departmental Committee to respond to representations, whether from elected representatives or other interest groups;
- (l) to advise the Head of Department and/or the relevant Departmental Committee on measures to promote awareness of and to attract public support for current or proposed policies.

### Assembly Committees

- 4 A Business Committee would be established to co-ordinate Assembly business.
- 5 A General Purposes Committee, the members of which could include the Chairmen of Departmental Committees, would be established to assist in co-ordinating the interests of the relevant Committees in respect of issues which cross Departmental boundaries.
- 6 Other non-Departmental Committees might be established to act as a focus for the Assembly interest in particular areas, such as non-transferred matters, cultural expression and diversity and relationships with bodies or institutions outside Northern Ireland.
- 7 Annex B1 suggests a basis for distinguishing the relative roles and responsibilities of Departmental Committee Chairmen and Committees. As noted in paragraph 2 above, the SDLP reserved its position on this point.
- 8 Departmental Committees might have the following roles and responsibilities:
  - (a) to participate in the arrangements for determining the Department's budgetary allocations, possible on the lines set out in Annex B2;
  - (b) to scrutinise the work of the relevant Department and non-Departmental public bodies;
  - (c) to hold hearings, whether public or private, for which purpose it would have powers to compel the attendance of relevant persons and call for papers;
  - (d) to prepare reports, with recommendations including proposals for legislation, on major policy issues. These might involve liaison with other Departmental Committees, including the Finance Committee
  - (e) to consider legislation in the transferred field, including considering proposals for new legislation and taking at least the Committee stage of relevant primary legislation unless the

Assembly, on the recommendation of the Business Committee or the General Purpose Committee, decides otherwise. Committees might also debate secondary legislation;

(f) to act as a forum for the expression of local political views on the area of responsibility of the relevant Department.

9 In drawing up reports, making recommendations and debating legislation Departmental Committees would operate on the basis of majority decision-making in respect of routine non-contentious matters. There could, however, be provision for weighted voting in certain circumstances especially in respect of contentious matters; or for dissenting reports; or for a significant minority on any Committee to have power to defer the consideration of proposed legislation or administrative actions or to refer such issues for consideration by the Assembly at large.

### The Assembly at Large

10 The Assembly at large might be expected to have at least the following main roles and responsibilities:

(a) to elect a Speaker (by a weighted majority vote of say 70%);

(b) to appoint the Chairmen, Deputy Chairmen and members of Departmental and other Committees. The Chairmanships and Deputy Chairmanships (at least) of the Departmental Committees might be allocated by a formula, perhaps the D'Hondt procedure calculated on the basis of political party strengths in the Assembly following the elections. Other arrangements might be made to determine the allocation of individual members of Committees though each party should have a share of the total Committee places broadly proportional to its strength in the Assembly;

(c) to hold Heads of Departments and/or the relevant Departmental Committee accountable for the work of their Department through

- Questions
- adjournment debates
- debates on Statements
- emergency debates
- consideration of reports from Departments
- consideration of minutes and reports from Departmental Committees
- consideration of reports from

- \* Comptroller and Auditor General
- \* Examiner of Statutory Rules?
- \* Ombudsman
- \* FEC



- \* EOC
- \* other statutory bodies

(possibly on the basis of further reports from the relevant Committee);

(d) (subject to the SDLP's reservation on arrangements for legislation in the transferred field) to legislate in the transferred field (and in the excepted or reserved field where ancillary to Westminster legislation or with the consent of the Secretary of State). The precise distribution of the legislative process as between Committees and the full Assembly may require further consideration. Different arrangements might apply in respect of primary and secondary legislation (whether subject to affirmative resolution or negative resolution).

Legislation would require the support of at least a majority of the full Assembly. Certain important legislation (eg a financial measure, one with constitutional implications or significant implications for community relations) could require weighted majority approval, of say 70%. Other legislation could require weighted majority approval if it was deemed to be contentious by the Business Committee or a petition to that effect secured a certain threshold of say 30% support in the Assembly;

(e) where requested, to make recommendations to the Secretary of State on certain legislation in the reserved field to be made at Westminster;

(f) to consider minutes and reports from the Business Committee and any other non-Departmental Committees which might be established;

(g) to refer certain issues (on the basis of a threshold level of say 30% support in the Assembly) for consideration by the Panel. Those issues might include proposed legislation and administrative actions;

(h) to act as a forum for the expression of political views within Northern Ireland.

## ANNEX B I

### THE RELATIVE ROLES AND RESPONSIBILITIES OF COMMITTEE CHAIRMEN AND COMMITTEES

1 In circumstances where executive responsibilities rested with Departmental Committees of the Assembly the efficient conduct of business and the need to ensure an appropriate, fair and significant role for all main traditions in Northern Ireland would require clear guidance to be drawn up on the respective roles of Committee Chairmen and the Committees as a whole.

2 Administratively, it would be appropriate for Chairmen alone (and perhaps Deputy Chairmen in certain circumstances) to have full access to Departmental officials and papers in the same way as Ministers do at present. It could also be appropriate for the Committee as a whole to be serviced by Assembly staff, rather than Departmental staff. The Committee's power to call for persons and papers would enable it to have access to Departmental officials and papers but conventions would need to be established to preserve the distinct role of the Chairmen and protect certain information which requires to be kept confidential (eg relating to inward investment decisions).

3 The Committee would have a significant role in determining policy directions, eg through being required to authorise the Departmental Estimates going before the Assembly, to approve the Department's bid to the Business Committee for a legislative programme for the year and to approve capital expenditure decisions above a certain level. It could also establish broad lines of policy in particular areas on foot of reports it might make following detailed consideration of a particular issue.

4 The Chairman, supported by the Department, could be expected to have a major influence on all such decisions but would then be expected to act in conformity with them.

5 At the level of day-to-day administration, decisions could be categorised in a number of ways. One possibility would be to distinguish:

(a) those which Departments would make on their own initiative;

(b) those which in the judgement of the Committee Chairman would not require prior Committee approval and which the Committee Chairman would make on his or her own initiative, within the general policy framework established by the Committee (see paragraph 3). All or some of these would be notified to the Committee as a whole, giving the Committee an opportunity to indicate its satisfaction or otherwise and to determine whether similar decisions should in future be handled in a different way or brought to the Committee for consideration;

(c) those which in the judgement of the Committee Chairman would require the prior approval of the Committee as a whole. Some guidance would be drawn up in advance to illustrate which types of decision would be likely to fall into this category. The circumstances of the individual Northern Ireland Departments vary and it is unlikely that a standard formula could apply equally to all; but the types of decision which would be politically sensitive or crucial to the Department in policy terms, are likely to be reasonably clear in each case.

Arrangements on these lines could result in a committee Chairman being held accountable (see paragraph 10(c) of Annex B) in the Assembly for policies which he or she did not personally support. In those circumstances arrangements analogous to those which apply when an Accounting Officer is overruled by his or her political Head might come into play and enable the Chairman to discharge the accountability requirement by pointing to a formal record of his or her views being overridden by the Committee.

## **ANNEX B2**

### **DEPARTMENTAL BUDGETARY ALLOCATION PROCESS**

1 This note sets out arrangements for determining Departments' budgetary allocations in the circumstances where executive responsibilities rested with Departmental Committees of the Assembly. The SDLP reserved its position on these arrangements.

2 Each Department would build up its bid for resources through participation in the normal Public Expenditure Survey mechanisms. The relevant Departmental Committee would be invited to endorse the Department's bid before it was finalised. The Finance Committee would then consider all the bids and seek to produce an agreed allocation between Departments of the available resources. If it failed the matter might be referred to the Panel for arbitration.

3 Once each Department's allocation was settled the Chairman would propose Departmental Estimates for the coming year to the Committee and seek its approval, line by line, to the detailed distribution of that allocation to individual Departmental programmes.

4 The approved Departmental Estimates would then be put formally to the full Assembly whose role would be to authorise expenditure on the basis of those Estimates.

#### Footnote

This is very much a broad outline of how the arrangements might work. The Public Expenditure Survey procedures are complex and iterative and many detailed adjustments would need to be made to bring them fully into line with the principles set out above.

## ANNEX C

### ENSURING AN APPROPRIATE, FAIR AND SIGNIFICANT ROLE FOR REPRESENTATIVES OF ALL MAIN TRADITIONS

(A paper by the Government Team)

1 The possible outline framework for new political institutions (Annex A) notes that any acceptable option for allocating Chairmanships between Committees of the Assembly " must ensure that the system of Government provides an appropriate, fair and significant role for representatives of all main traditions in Northern Ireland". It also confirms that "further consideration will be given to means to prevent Chairmen becoming captives of their Committees.

2 The Possible Outline Framework also indicates several circumstances in which it might be appropriate for decisions of the Assembly or of Committees to be taken by weighted majority vote (of say 70%); or in which matters might be treated in a different way from normal if a proposal to that effect secured a certain threshold (of say 30%) support in the Assembly.

3 The purpose of this paper is to suggest possible ways in which new political institutions could be structured to ensure an appropriate, fair and significant role for representatives of all main traditions in Northern Ireland.

#### Assembly Committees

4 As regards the powers of Committee Chairmen vis a vis their Committees, if the Chairmen of the Departmental Committees were Heads of Departments they would necessarily have significant powers and resources which would put them in a relatively strong position. If the Chairmanships were allocated in accordance with Party strengths, perhaps in accordance with the D'Hondt Rule, that would tend to give each main Party an appropriate, fair and significant role. A possible development of this line of argument would be to require that decisions of Departmental Chairmen could only be overturned by a weighted majority vote within the relevant Committee, or in the Assembly.

If executive responsibilities rested with the Committee more generally it would be necessary to define the types of decision which could be made by the Chairman alone, acting effectively as a Head of Department, and those which would require either the endorsement or the prior approval of the committee as a whole. Annex B1 suggests a basis for distinguishing the roles of Departmental Committee Chairmen and Committees.

5 Further devices might be proposed to ensure that minorities on Committees (possibly including the Chairmen) could not be "steamrollered" by a majority. Paragraph 9 of Annex B suggests that there could be provision for:

- (a) weighted majority voting in certain circumstances;
- (b) dissenting reports (to ensure that the full range of views within any Committee is exposed to the full Assembly);

(c) the consideration of proposed legislation or administrative actions to be deferred on a motion from a significant minority on any Committee, or referred for consideration by the Assembly as a whole.

6 Paragraph 10(b) of Annex B also hints at the possibility of allocating majorities on a particular Committee or Committees to particular Parties, subject to proportionality across the Committees as a whole.

### The Assembly

7 The possible outline framework (Annex A) indicates a number of areas in which the interests of minorities might be protected either by a requirement to apply a weighted majority vote or by enabling a significant minority to require a matter to be settled by weighted majority vote or possible refer it for consideration by the Panel. The Alliance Party and Ulster Unionist Party have suggested that such a significant minority could require matters to be referred to the Secretary of State or the Westminster Parliament.

8 It is envisaged, for example, that a weighted majority;

(a) would be required for the election of the Speaker. It may be that the ratification of the appointment of the panel of Chairmen would also require weighted majority support in the Assembly;

(b) could be required in respect of certain important legislation (eg a financial measure, one with constitutional implications or significant implications for community relations);

(c) might be applied in respect of measures which the Business Committee determined were contentious or where a petition to this effect secured a certain threshold of support in the Assembly.

9 It is also relevant to the question of ensuring an appropriate, fair and significant role for all main traditions in Northern Ireland that the proposed Panel could have powers in respect of proposed legislation, to determine (ie to accept, reject, give an opinion on or propose amendments to) any proposed legislation referred to it under procedures to be agreed and could also have powers in relation to administrative actions or proposed actions, perhaps on the basis of a referral by a threshold vote within the Assembly.

### An Issue for Further Consideration

10 It has not proved possible, as yet, to reach agreement on;

(a) what percentage support from members elected to the Assembly (or appointed to a Committee) would be appropriate in circumstances where a weighted majority vote was called;

(b) what percentage support from members elected to the Assembly (or appointed to a Committee) would be appropriate to achieve the "threshold" in the circumstances identified above.

11 The UUP and the Alliance Party have proposed that the figures should be 70% and 30% respectively; the SDLP has proposed 75% and 25%; and the UDUP has proposed 65% and 35%.

## **ANNEX C I**

### **WEIGHTED MAJORITIES AND THRESHOLDS - AN ALLIANCE VIEW**

We would see the use of weighted majority voting for contentious issues and the use of threshold votes as a trigger mechanism for the activation of appeal procedures as an essential means of ensuring that the Assembly functioned on a give and take basis.

We would envisage a majority of 70% of members of the Assembly being required for the appointment of Speaker, for the ratification of the panel of Chairmen, and for contentious legislation.

That requirement might be invoked by statute by the Business Committee, or by a petition of 30% of the members of the Assembly. When legislation had passed through the Assembly it could be referred by a petition of 30% of the members of the Assembly either to the proposed panel or to the Westminster Parliament. Votes on departmental estimates would also be by weighted majority.

Similar procedures might be applied in respect of decision making within committees, though we are aware that there could be practical difficulties in implementing such procedures. In any event committee decisions reported to the Assembly would be subject to the same weighted majority and threshold mechanisms.

## ANNEX C2

### A POSSIBLE FORM OF WEIGHTED VOTING (A paper from the SDLP)

1 Weighted majority for particular kinds of decisions can provide a degree of safeguard against the possibility of large parties *forcing* their wishes on an Assembly. Such safeguards are generally invoked for major decisions and, or for those decisions which can be regarded as potentially contentious. along with the possible need for a weighted majority consideration should be given to the possible threshold requirement for appeals/petitions being entered on behalf of Assembly members against, or in favour of certain decisions.

2 Agreeing the precise formula for a weighted majority/threshold requirement is difficult. however, it is clear that such procedures must be of a kind that meet the basic test of providing *cross-community* support for decisions on important/ contentious issues, so demonstrating *fairness*, while at the same time being *workable*.

3 A requirement for a weighted majority of 75% of those elected to an Assembly for Northern Ireland is the best figure that we feel would ensure that representatives from both sides of the community would be giving their support to such decisions. In turn, this should ensure significant levels of cross-community support.

4 If this weighted majority was to be based on the number of members present and voting, a very different situation would arise. Important decisions could be made which would not command cross-community support of a significant kind. It is for this reason that we would not favour the adoption of such a mechanism.

5 It follows from the recommendation in 3, that a threshold of xx% would be required for the admission of any appeal, or petition against a decision.



**ANNEX C3  
DUP SUBMISSION  
WEIGHTED MAJORITIES AND THRESHOLDS**

**8th June 1992**

This brief paper considers some of the areas for which the referral mechanism could be triggered and it also looks at the options for setting off override procedures.

In facing this subject we much remember that constitutionally any Assembly or Panel would be ultimately subject to the UK Parliament. This has always been the position as Section 75 of the 1920 Act emphatically maintained the supreme authority of the UK parliament over Northern Ireland notwithstanding the existence of Stormont.

So by virtue of the very nature of devolving powers within the UK Westminster has constitutional override powers which can never be diminished.

Nonetheless, if other mechanisms are employed with the agreement of Westminster then parliament need not intervene.

We feel most strongly that to bestow upon a Panel or the Secretary of State unrestricted powers particularly of review and direction would be a recipe for the one thing which above all else must be avoided in any new structure in Northern Ireland, namely instability. Such would undermine the system and good and efficient government would be severely jeopardised.

In relation to a referral from the Assembly which could be to the Panel we are assuming that this would be a replacement for the principle enshrined in Section 18(2) of the 1973 Act which gives this power to the Secretary of State in respect of proposed legislation.

We would prefer that if 35% of those who are elected to the Assembly sign a petition seeking a referral of a legislative or executive decision the mechanism would be activated and the Panel could consider the merits underlying the petition. We do enter a concern that we must be careful that we do not open the flood-gates to frivolous referrals and an exploitation of the process for obstructionist purposes.

Likewise when weighted majorities are necessary for purposes which shall be specified ie election of Speaker and highly contentious measures this should be by 65% of those elected to the Assembly.

## ANNEX C4

### POSSIBLE SAFEGUARD MECHANISMS UUP SUBMISSION

6 June 1992

1 In our submissions to the present Talks, we have indicated a desire to consider and negotiate upon any reasonable mechanism consistent with the 'Common Themes' and 'Common Principles' documents, which would protect individuals and groups, within the proposed Assembly.

2 At present the main mechanism put forward has been a weighted majority of say 70% being required under certain circumstances. This could also mean that if 30% of the Assembly indicated dissatisfaction, under certain circumstances, the proposal may be referred outside the Assembly, or delayed.

3 Another suggestion has been made, ie that the SOS could have administrative or legislative decisions referred to him for examination, perhaps with an appropriate trigger mechanism to bring this about.

4 We have already indicated that the proposed 'Panel' may have a role to play in determining the outcome of some matters which are referred to it.

5 On top of these issues is the question of the Legislation already in place, together with any additional provisions which may be included in a new or amended Act.

6 It is already clear, that as well as any of the above, access to the courts will always be a safeguard mechanism. There is a risk that we will have such a wide variety of well intentioned measures that a virtual 'veto' is created which will work against the ideas of workability and durability already agreed.

7 We have to find the right balance between all of the possible means of protection.

## **ANNEX D**

### **WESTMINSTER LINKS**

- 1 The statement of 26 March 1991 envisaged that discussion of relationships within Northern Ireland in Strand I would include the relationship between any new institutions there and the Westminster Parliament. The sub-Committee has therefore considered this issue; the conclusions are set out below. References to "institutions" in Northern Ireland should be interpreted by reference to the other work of the Sub-Committee.
- 2 The ultimate power of the Westminster Parliament to make laws for Northern Ireland would remain unaffected by the establishment of Northern Ireland institutions, but Parliament would not normally legislate on transferred matters. The Secretary of State for Northern Ireland would remain accountable to Parliament for matters which are not transferred to Northern Ireland institutions. He would not have powers to intervene in the day to day workings of Northern Ireland institutions, but would retain overall accountability to Parliament for the fair and efficient functioning of those institutions.
- 3 The appointment of junior ministers would be a matter for the Prime Minister. But the sub-group noted that the Secretary of State might continue to be supported by junior ministers, one of whom would be in the House of Lords.
- 4 The distinction between "expected" and "reserved" categories would remain. Excepted matters would remain the responsibility of the UK Government; reserved matters would initially be the responsibility of the UK Government, but could be moved into the transferred category at some future date.
- 5 Reserved matters could be moved into the transferred category, subject to Parliamentary approval. Northern Ireland institutions could also have the right to request the Secretary of State (or Parliament) that matters move into the transferred category.
- 6 Legislation on excepted matters would be by Bill at Westminster, although Measures passed in new institutions on transferred (or reserved) matters could make "ancillary" provisions on excepted matters subject to the consent of the Secretary of State. An Order-in-Council making power could be retained to allow legislation in designated areas of electoral law.
- 7 Legislation on reserved matters could be by Measure with the Secretary of State's consent and approval (by negative resolution) at Westminster or by Bill at Westminster. The power to make Orders-in-Council at Westminster on reserved matters could be retained for use in exceptional circumstances; but the use of such powers should be kept to the absolute minimum.
- 8 Where legislation on either reserved or excepted matters solely or particularly affecting Northern Ireland was to be made at Westminster, the Secretary of State would normally consult Northern Ireland institutions either by means of a White Paper or some other statement of the Government's intentions, or a proposal for a draft Order-in-Council. The Secretary of State would keep the Northern Ireland institutions informed of the progress of the legislation.
- 9 The Secretary of State and Northern Ireland institutions should maintain close links with each other. The Secretary of State might, for example, accept invitations to attend meetings of the Assembly and its committees. Links on security matters will need further consideration.

10 European Community and financial issues lay outside the remit of this report. However, it was noted that the Secretary of State would have a central role in arguing in the Cabinet the case for Northern Ireland financial resources, and promoting the Northern Ireland interest when the UK line on Community matters was under consideration. The closest possible collaboration between the Secretary of State and Northern Ireland institutions would be required.

11 The Northern Ireland institutions could maintain contact with other UK Secretaries of State on matters of concern to Northern Ireland. It was expected that there would be a convention that representatives of the Northern Ireland institutions would be received by other UK Secretaries of State.

12 It was noted that the establishment of a Northern Ireland Select Committee, which could look at those matters which would be the responsibility of the Secretary of State, is a matter for the House of Commons.

13 The Secretary of State might meet requests for information from Members of Parliament on the activities of devolved institutions (with the assistance of those institutions); but he would not normally expect to defend or justify particular actions or decisions on the part of those institutions.

14 It would be for decision by the Northern Ireland Assembly and Parliament whether to set up any joint liaison body.

15 It was noted that the existing Northern Ireland Constitution Act provided that both Measures and administrative actions which might be discriminatory could be challenged by individuals through the courts. Measures could be voided in this way. The Secretary of State could also refer a Measure to the Judicial Committee of the Privy Council to establish whether it was void. This sort of mechanism falls to be considered in the context of further entrenchment of individual and community rights.

## ANNEX E

### RELATIONS BETWEEN NEW INSTITUTIONS AND THE EUROPEAN COMMUNITY

1 The sub-Committee considered possible relationships between new political institutions in Northern Ireland and the European Community (EC). The considerations set out below emerged. References to "institutions" in Northern Ireland should be interpreted by reference to the other work of the sub-Committee.

2 The Party Delegations expressed dissatisfaction both with the level of financial support from the European Community for Northern Ireland since the United Kingdom joined the Community; and with the development and application of particular Community policies to Northern Ireland. They also pointed to the fact that within the United Kingdom specific Northern Ireland regional interests may on occasions be overridden by wider interests. Their first objective for new arrangements was that they should enable Northern Ireland interests to be better promoted.

3 It was recognised that Northern Ireland institutions will work within European Community institutions as they exist at any given time. However, the Maastricht treaty would introduce new arrangements for regional representatives (see para 4 vii below); and it would be open for new institutions in Northern Ireland to promote the case for further innovation in the representation of regions in Community institutions and the recognition of regional interests in Community policies. The SDLP believe that the possibility of a more direct relationship between new Northern Ireland institutions and the institutions of the EC is a matter which should be explored. The sub-Committee also recognised that there would be scope for co-operation with the Republic of Ireland where the Republic and Northern Ireland had common interests but that any institutional expression of this relationship would be a matter for Strand II.

4 The sub-Committee noted that:

(i) new Northern Ireland institutions would have direct contacts with the European Commission on matters of importance to Northern Ireland; the UK Government would wish to see agreed guidelines on such contacts;

(ii) new Northern Ireland institutions would seek to ensure that Northern Ireland's interests were taken into account in the Council of Ministers; to this end they would seek representation at Council meetings and at the margins of Council meetings, at both political and official level;

(iii) the Secretary of State would keep the new institutions informed of UK Government thinking on EC issues, and reflect the Northern Ireland interest in Cabinet discussions; it is expected that representatives of the new institutions would be able to make representations directly to other UK Ministers on EC matters;

(iv) new institutions in Northern Ireland might well decide to set up a permanent office in Brussels to represent their interests; it would work with the UK Permanent Representation and could co-operate with other regional interests;

(v) new institutions in Northern Ireland might well wish to seek to continue the policy of seconding Northern Ireland Civil Servants to posts within the European Community and in the UK Permanent Representation; their status would be a matter for discussion with the UK Government;

(vi) the Northern Ireland MEP's would remain an important means of promoting Northern Ireland interests, and would no doubt be briefed by the new institutions;

(vii) Northern Ireland should seek a substantial presence on the Committee of the Regions proposed in the Maastricht treaty; the UK Government, in nominating representatives, should take account of the views of the new institutions and the need to ensure significant representation of the main traditions in Northern Ireland; the UK would have 24 members and 24 alternates;

(viii) it would be the responsibility of the new institutions to implement EC policies in respect of Northern Ireland transferred matters; because the obligation in terms of EC law would nevertheless remain with the UK Government it would be necessary for the UK Government to retain powers to remedy any default. There would need to be a close co-operative relationship in this area.

5 The discussion necessarily took place against a background of uncertainty regarding the next phase of EC development. But it was recognised that there were growing calls in some quarters for the development of the Community, especially its regional dimension, and that this would have particular relevance for Northern Ireland.