

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 (CP,6,8). We all recognise that these three sets of relationships are part of a complex system and that they cannot be heretically revised from each other, and so we have all accepted that since institutional proposals in one strand will have implications for the other two strands.

ALLIANCE PROPOSALS FOR A NEW SYSTEM OF GOVERNMENT

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, and is consistent with the Common Theme and Common Principles papers which have already found agreement amongst the four parties. Reference will therefore be made in the paper to these previous documents (Common Theme with para number - CP,1, Common Principles with para number CP,2a).

The paper does not address issues on institutional proposals which refer to the other strands, but we do look forward to that point in the negotiations where these matters can appropriately be addressed.

8 May 1992

The starting point is the institutional framework.

THE LEGISLATURE

It is to be consistent with the principles of democracy (CP,2a), to avoid entrenchment of our divisions (CP,7f) and to give all constitutional parties a role (CP,3g), whilst being as straightforward and efficient as possible, we favour the election of a single chamber Assembly. 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 - see heading "Options" below (CP,2b, CP,5).

The Assembly we envisage would consist of 25 members, 5 for each of the 11 Northern Ireland Westminster constituencies, elected by the single transferrable vote system of proportional representation for a fixed term of 6 years. This proposal is a single, consistent, and we believe generally acceptable arrangement.

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In order to be congruent with the principles of democracy (CP,2a), to avoid entrenchment of our divisions (CP,2f) and to give all constitutional parties a role (CP,2g), whilst being as straightforward and efficient as possible, we favour the election of a single chamber Assembly. 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 -see heading "Options" below (CP,2b, CT,5).

The Assembly we envisage would consist of 85 members, 5 for each of the 17 Northern Ireland Westminster constituencies, elected by the single transferrable vote system of proportional representation for a fixed term of 4 years. This proposal is a simple, consistent, and we believe generally acceptable arrangement.

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 (CT,4).

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

The first tier would be 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 (CT,2,7, CP,2j).

The second tier would be "reserved matters" in relation to which legal power would for the time being stay at Westminster. Into this category we would place powers over security, including the police and aspects of the criminal law.

We would hope that as the new system progressed and took root, and as public confidence in the institutions grew, it would be possible to transfer security powers, but we think that to transfer these powers at the outset may place an almost intolerable strain on the new institutions. In any event as regards power over the police, we find it difficult to imagine circumstances, while the army was directed by Westminster operating in aid of the civil power, in which it would be practicable to diffuse political control over the security function by having one agency controlled by one set of masters (Army - Westminster) and the other by another set (Police - Assembly) (CT,10,11, CP,2d).

The third tier of powers would be "transferred matters", in relation to which the Assembly would have legal power devolved to it by Westminster. In our view the transferred matters should be all those remaining after "excepted" and "reserved" matters are subtracted. In positive terms the main transferred matters would be agriculture, health and social services, economic development, the environment, education and finance. Effectively therefore the Assembly would, at the outset, have powers in respect of all the main domestic matters save security which might be transferred at a later date.

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 indeed excepted matters and offer opinions, even though the legal power rests elsewhere (CP,2o,2p).

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, (CP,2h) 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 adversarial debating of amendments within the committee in order to produce a single report on the proposed measure for the Assembly (CP,2g,2p).

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 (CP 2a,2b,2c,2e,2f,2g,).

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 by law should 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 (CP,2p).

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?

Our answer to this question is a tentative one because the waters into which the question takes us are largely uncharted, but it is also an affirmative one. 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.

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.

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 (CT,6 CP,21). 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 all 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 (CT,5). 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. 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 (CP,2i). 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 (CT,3,5, CP,2b,2g,).

We have indicated earlier that we envisage a small Executive which would be drawn from and be answerable to the Assembly. Our view is that the mechanism by which that Executive takes office should be by appointment by the Secretary of State. But the Secretary of State would not have a free hand. He would be required by law to act strictly in accordance with a set of criteria. These criteria would be designed to ensure on the one hand 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 seize up upon encountering difficulty (CP,2c).

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 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 (CT,5, CP,2b); and
- (b) reflects, so far as practicable and subject to (c) below, the balance of the parties in the Assembly (CT,5, CP,2g); and
- (c) includes no person who supports the use of violence for political ends (CT,9, CP,2g).

mechanism for periodically testing that consensus, would be of value. What we would seek to test is the level of acceptability (not support) for the Executive. Initially 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 this way a continuing check on acceptability can be made (CT,3,5, CP,2b).

In our view in order for the acceptability motion to be carried it must be supported by at least 70 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 70 per cent as it was the figure chosen in a similar context and legislated for in the Northern Ireland Act 1982. It is a figure which in effect 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 (CP, 2n). 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 (CP, 2d). But the need is there now and hence we have catered for it.

OPTIONS

While we think that testing acceptability is best carried out as we have described, we are conscious that in this area there are other options which might be worthy of consideration.

One option would involve a specially composed second chamber (or other institution) to which the Executive would have to be acceptable. The second chamber might be composed so as to represent vocational and community rather than political interests; or it might be designed to over-represent minority points of view in order to give the minority equality of voting power with the majority. However composed, the

Executive would have to carry a majority both in the Assembly and in the balancing institution.

A further option might be to require that the constitutional scheme for devolution as a single package be presented for approval to the electorate in the province in a referendum (CT,13, CP,2n). There are many difficulties to be borne in mind.

Firstly, how suitable is such a mechanism, where a complex proposal is involved? The details would need to be made clear, as these are important, to enable people to see how their interests are affected. Secondly, would a simple majority either way suffice? Thirdly, it is often said that referenda test support but are not adequate to test acceptability. Finally if the referendum proposition is carried, the effect would be to entrench the scheme concerned, so that any future changes would also require a referendum (CP,2d).

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 (CT,12).

Similarly we think that the idea proposed by the Party's representatives at the Atkins Conference in 1980 of having 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 national Government, within a specified time (CT,12 CP,2f).

We have also given thought to the possibility of requiring a weighted majority in the Assembly for actions by the devolved authorities including legislation in areas where "fundamental issues" are at stake. However we have found it difficult to discover a satisfactory way of defining what issues are to be regarded as "fundamental" for this purpose.

SUMMARY OF MAIN ALLIANCE PROPOSALS

A New Northern Ireland Assembly

The transfer of power over Economy, Finance, Health & Social Services, Education, Agriculture and Environment etc to a new Assembly, which would have a consultative role on security and other 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, but excluding those who support violence,

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 scrutinizing 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 to Westminster for aggrieved minorities, which would require 30% support within the Assembly,

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