

PRIME MINISTER'S MEETING WITH MR REYNOLDS

GOVERNMENT OF IRELAND ACT 1920

Line to Take

*only with the consent
- not with. no change
will be made by agreement.*

1. The Government of Ireland Act is compatible with Article 1 of the Anglo-Irish Agreement to which we remain committed. Can we take it that the Irish Government similarly remain committed to the Agreement, including that important element of it?
2. By contrast, there does seem some scope for argument about the compatibility of Articles 2 and 3 of the Irish Constitution with Article 1 of the Anglo-Irish Agreement and I welcome your acknowledgement that some clarification or amendment could be considered in the context of fresh talks. This is a powerful reassurance and incentive to Unionists and movement here could make possible the development of much more constructive relations between the two traditions in Ireland.
3. [You ask whether the ending of partition could be on the table:] successive UK Governments, most recently and formally in Article 1(c) of the Agreement, have accepted that if a majority of the people of Northern Ireland were to consent to Irish unity we would respect and seek to implement their wishes. I can foresee no other way in which Irish unity could come about and [given your Government's commitment to Article 1 of the Agreement, which you have just reaffirmed] I presume that is your position also.
4. I accept that any issue can be raised in the talks but any suggestion that the question of partition was being addressed on a basis other than the principle of consent set out in Article 1 of the Anglo-Irish Agreement would completely undermine [the Agreement itself and] the existing basis for talks. We would be happy to explore in strands 2 and 3 of any fresh talks the question of future relations and institutional structures between the two parts of Ireland and between the two Governments.

GOVERNMENT OF IRELAND ACT

Background

Mr Reynolds has signalled that if pressed about Articles 2 and 3 of the Irish Constitution (which he confirms will be on the table for discussion in any fresh talks) he will draw attention to "certain aspects of the 1920 Act", which nationalists find objectionable. Mr Collins (before his departure from the DFA) and Mr Hume have recently made similar remarks.

It is not clear exactly what Mr Reynolds is driving at but he may be making the rather hard line nationalist point that it was the 1920 Act which brought about the partition of Ireland and even now asserts (in Section 75) the supreme authority of the UK Parliament over the whole of Northern Ireland. If so he is asserting a false and dangerous parallel between it and the Irish Constitution's claim to jurisdiction over Northern Ireland.

However the 1920 Act also provided (Section 3) for the establishment of a united Ireland with the consent of an absolute majority of the Members of the House of Commons in each part of Ireland and in the meantime (Section 2), for the establishment of a Council of Ireland "with a view to the eventual establishment of a Parliament for the whole of Ireland, and to bringing about harmonious action between the Parliaments and Governments of Southern Ireland and Northern Ireland". Mr Reynolds has made much of the "pooling of sovereignty" inherent in the emergence of the European Union and its relevance for Northern Ireland; and he may be looking ahead to the development of some kind of joint authority or all-Ireland institutions and implying that the failure to implement Section 3 of the Government of Ireland Act is a source of the present troubles. If so, he would again be on weak ground as it was the Irish political and military reaction to the 1920 Act which prevented it coming fully into effect.

Most of the other provisions of the 1920 Act are transitional or consequential.

CONFIDENTIAL

The statutory position (Section 1, Northern Ireland Constitution Act 1973) is that "Northern Ireland...will not cease to be a part of the United Kingdom...without the consent of the majority of the people who live there voting in a poll..." In Article 1(a) of the Anglo-Irish Agreement we secured from the Irish Government an acknowledgement of the de facto position in the form of a "reaffirmation" that "any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland". Article 1(b) recognised that "the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland". As a corollary, both Governments declared, in Article 1 (c) "that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a United Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish".

HMG's position is that Article 1 provides a fully defensible basis for addressing the constitutional future of Northern Ireland and, in practical terms, should provide the necessary degree of reassurance to the Unionists to enable them to participate in constructive political exchanges with elected representatives of the minority community in Northern Ireland and with the Irish Government. This reassurance has not been secured, mainly because of the apparent incompatibility between it and Articles 2 and 3 of the Irish Constitution. In a celebrated case, two Unionists (the brothers McGimpsey) challenged the constitutionality of the Anglo-Irish Agreement in the Irish Supreme Court: the case was lost on the basis of some highly technical arguments in a judgement which reasserted "the constitutional imperative" on the Irish Government to secure Irish unity. This led to a strong political and public reaction in the Republic in favour of amending Articles 2 and 3. This is now probably supported by a majority in the Dail (and was vigorously supported by Mrs Robinson before she became President) but has been resisted by Fianna Fail.

CONFIDENTIAL

CONFIDENTIAL

The simple response to Mr Reynolds is that the Government of Ireland Act is compatible with Article 1 of the Anglo-Irish Agreement, to which we remain committed, but there remains considerable uncertainty about the implications for Articles 2 and 3 of the Irish Constitution. Any parallel he seeks to draw is therefore misleading. Naturally we hold to the position, set out in Mr Brooke's statement of 26 March that in the talks "it will be open to each of the parties to raise any aspect of these relationships, including constitutional issues, or any other matter which it considers relevant", but it would undermine the existing basis for talks if there were any suggestion that they could address the question of partition on a basis other than the principle of consent set out in Article 1 of the Anglo-Irish Agreement. (It should be noted that the 26th March Statement also included - and it was an important reassurance to the Unionists, though acceptable to the Irish Government and the SDLP - the sentence: "HMG reaffirms their position that Northern Ireland's present status as a part of the United Kingdom will not change without the consent of a majority of its people.") Strands 2 and 3 of any fresh talks will provide opportunities to discuss future relationships and institutional structures between the two parts of Ireland and between the two Governments.

Although it might be wise not to reveal our hand at present, it is quite conceivable that any agreed outcome from the talks could include a tidying up of the constitutional provisions on the UK Statute Book and possibly the incorporation of something equivalent to Article 1(c) of the Agreement in a statutory provision.

Constitutional and Political Division
Northern Ireland Office
26 February 1992

CONFIDENTIAL