

faxed
on 11/15



Copy No 1 of 8

PRIME MINISTER

JOINT DECLARATION INITIATIVE

I have seen a copy of Patrick Mayhew's minute of 8 December and the provisionally negotiated text (JD15).

There is one point which I should place on record, picking up an earlier oral comment. In paragraph 4 of the text both sides accept that "such agreement may, as of right, take the form of agreed structures for the island as a whole, [including a sovereign united Ireland]". The words "as of right" may be taken to imply the existence of an underlying legal right relating to the island as a whole. Certainly the inclusion of the final phrase "including a sovereign united Ireland" would carry a significant risk of implying that a united Ireland was a matter of legal right. As a matter of UK constitutional law no such right exists until Parliament legislates to acknowledge it. The constitutional guarantee in section 1 of the Northern Ireland Constitution Act does not amount to such acknowledgement.

Even without this final phrase, the words "as of right" taken in the overall context of paragraph 4 could be criticised. If necessary the words will have to be explained as a political statement which carries no admission of the existence of legal rights.

Other points on the text are, I think, essentially political but I note in particular that the final sentence of paragraph 7 defers any change to Articles 2 and 3 of the Irish Constitution until there is "a balanced constitutional accommodation" as part



of "an overall settlement". Colleagues will appreciate that this allows the Irish Government to maintain their claim to Northern Ireland, and assert that there should be no change to the Irish Constitution, for an indeterminate period.

I am copying this minute to the Secretary of State for Northern Ireland, the Foreign and Commonwealth Secretary, the Chancellor of the Exchequer, the Home Secretary, the Defence Secretary and to Sir Robin Butler.

N. L.

9 December 1993