

E.R. 64/11

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FAL 1136/BN

PS/Secretary of State (L&B)

Mr. Spence
I confirmed with Mr. Innes
PS/Secretary that all positive
on public bodies is set out
below still stands. You
may wish to look at these
papers.
7.P.
13/1/86

cc: PS/Ministers (L&B)
PS/PUS (L&B)
PS/Mr Bloomfield
Mr Brennan
Mr Stephens
NI Permanent Secretaries
Mr Chesterton
Mr Gilliland
Mr Merifield
Mr Innes
Mr Spence
Mr Bell
Miss Elliott
Mr Blackwell
Mr Radcliffe
Mr G Hewitt

ANGLO-IRISH AGREEMENT: UNIONIST PROTEST ACTION

I attach a note, prepared by PAB in consultation with other NI Departments concerned, which explores in some detail the likely impact of unionist opposition short of violence to an Anglo-Irish agreement.

2. Our broad conclusions are that the opposition could take the form of legal challenge to the Agreement; resignations prompting parliamentary by-elections at various levels; boycotts of local government bodies; and physical manifestations such as marches, demonstrations and strikes. Of these, we analyse in detail only the option of boycott action, which appears to us both the most complex and the most likely (from the unionist point of view) to yield results.

3. Boycott action could be taken in respect of:

- a) District Councils. We judge that resignation or non-participation by unionist councillors would have little impact; only seven of the 26 councils would be unable to form a quorum. More effective would be suspension of meetings of the 18 councils which the unionists control; there would be some decisions which the Chief Executive could not take, and the Government could only intervene if there is failure to discharge a statutory function. The most radical step would be disruption of the provision of local services; this could happen and would cause significant embarrassment until emergency powers could be taken.

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b) Public Bodies. The Police Authority, Health and Education/Library Boards, Housing Executive and Fire Authority could all operate even if the unionist councillors on these bodies resigned or withdrew. Withdrawal by all protestant members is highly unlikely, and in this event there are provisions enabling the Government to fill the vacancies.

4. We did not examine the likelihood of industrial action by council employees. Any such action would cause major difficulties.

M Elliott

M ELLIOTT
Political Affairs Division

6 November 1985

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ANGLO-IRISH AGREEMENT: UNIONIST PROTEST ACTION

Introduction

1. The purpose of this note is to assess the likely impact in Northern Ireland of non-violent, extra-parliamentary opposition to an Anglo-Irish agreement.

Background

2. On 2 August, the two main unionist parties established a joint committee to consider what protest action might be taken in the event of an Anglo-Irish agreement. The committee, consisting of William Ross, Frank Millar and Peter Smyth for the UUP and Peter Robinson, Ivan Foster and Sammy Wilson for the DUP, have held a series of secret meetings. So far, few details of the committee's deliberations have emerged but it is clear that unionist politicians are considering action on three fronts: first, a legal challenge to the Agreement which will seek to demonstrate that any new arrangements contravene Section 1 of the Constitution Act; second, an attempt to secure unionist support for protest action through a series of by-elections; and third, a boycott of Councils, Area Boards and other institutions in the Province. There may also be support for marches, demonstrations, and one-day strikes.

Legal Challenge

3. Speaking in the Assembly on 8 October, Mr Robinson claimed that any Anglo-Irish agreement which provided a consultative role for Irish Ministers would be a clear breach of sovereignty and would represent a change in Northern Ireland's constitutional status. He went on to call for a referendum in Northern Ireland to test loyalist opinion and hinted that unionist politicians might try to challenge the legality of any agreement in the Courts. Unionist lawyers, including the former Vanguard supporter David Trimble, are known to be examining the possibility of a legal challenge. Mr Robinson has written to the Secretary of State seeking Government views on the question of sovereignty. On the face of it, this does not seem a particularly promising line of attack for the unionists to follow but it is one on which we should keep a careful eye.

By-elections

4. At a press conference in Belfast on 1 October, Mr Paisley announced that unionist politicians were prepared to force a series of by-elections in Northern Ireland in order to demonstrate the loyalist community's opposition to Anglo-Irish arrangements. Mr Robinson described the resignation of parliamentary seats as the minimum sacrifice any unionist could make in order to defend the Province's constitutional position. It is known that Mr Molyneux is not keen on the use of this tactic, but a number of DUP members have spoken of the use which might be made of by-elections at Assembly, Westminster and/or European Parliament level as part of an overall unionist campaign, and have been enquiring about the procedures for resigning their Parliamentary seats. If the by-election ploy is not chosen as a first line of attack, the Unionists may seek to carry out their own referendum and then press the Government to refute its conclusions.

Boycott

5. A boycott by unionist politicians could take several forms including a complete or partial withdrawal from district councils; the resignation of seats on public bodies such as the Police Authority or the Northern Ireland Housing Executive; or the refusal to occupy places on the Area Health and Education Boards.

District Councils

6. Unionist politicians may seek to disrupt council business as part of their protest action. They currently hold 332 of the 566 local authority seats in Northern Ireland and have overall control of 18 of the Province's 26 councils. Several forms of protest are possible.

- a) Unionists could resign some or all of their seats in order to force a series of by-elections. Whilst this would certainly enable them to draw attention to their cause, it would have only a temporary impact on the conduct of council business and must be regarded as an unlikely tactic.

- b) They could remain as councillors but simply refuse to participate in council business. Again such action seems unlikely. As we have seen in Derry, a unionist boycott of a nationalist council makes very little difference; more importantly, if unionists withdraw their participation from many of the councils they currently control they will simply hand over power to the nationalist parties. Others would cease to operate because they would lack a quorum.
- c) Following on from the tactics which they have used since May 1985 to protest at Sinn Fein representation, unionists could vote to suspend further meetings of each of the 18 Councils under their control and arrange for council functions to be discharged by the chief Executive (or indeed any other officer). Councils are only required to meet formally twice a year to strike a District Rate (by 15 February) and to elect chairmen and other office holders (normally in May/June). Provided they do this, and ensure that all the council's statutory functions are adequately discharged, the Government has no powers of intervention and council services will continue to operate although many important decisions are likely to go by default. This seems to be the likely course of action. The administration of services might continue, but there will be a price to be paid in terms of the loss of local responsibility and of confidence between the two communities.
- d) They might try to disrupt the provision of local services in the areas they control. Although the Department of the Environment has clear powers enabling it to take responsibility for these services, in practice such powers are unlikely to be effective in sufficient time to ensure the continued and uninterrupted delivery of such services as burying the dead and refuse collection especially if disruption occurs in a large number of Council areas. In such circumstances, statutory provision for the exercise of these powers would need to be obtained by Emergency Procedure.

Public Bodies

7. Unionists have also threatened withdrawal from various public bodies in Northern Ireland. The potential for disruption is considered below.

a) Police Authority

The Police Authority currently has a Chairman, a Vice-Chairman and 16 members. Six of the members are District Council nominees of whom 5 are unionists. A withdrawal by the 5 unionist councillors would not affect the Police Authority's ability to discharge its statutory functions. There would still be sufficient members to provide a quorum (a possible 13 against a requirement of 8). The resignation of the 5 unionists would be equally ineffective since the Police Authority are empowered to act notwithstanding a vacancy in their numbers, and in any case the Secretary of State could use his powers to fill the vacancies. It is considered unlikely that all the Protestant members of the police Authority would resign even as part and parcel of a general Protestant withdrawal from public bodies in Northern Ireland. If vacancies did arise the Secretary of State could exercise his powers to make fresh appointments although it might not be easy to find willing replacements.

b) Area Health Boards

The resignation of unionist district councillors would have no effect on the ability of the four Area Health and Social Services Boards to carry out their functions. The Eastern Board, likely to be the worst affected, would lose only 9 of its 33 members: the quorum is 9. It is considered highly unlikely that other Protestant members of the Boards would resign in sympathy with the action taken by unionist politicians given their background and their clear commitment to the maintenance of services. In the unlikely event that Boards were unable to discharge their functions because insufficient members were prepared to participate, the government could direct that board functions be undertaken by another body or person.

c) Area Library Boards

A mass resignation of unionist councillors from the five Area Education and Library Boards would similarly have no effect on the ability of the Boards to operate. A minor interruption

could be caused to normal business if the boycotting councillor were a Chairman of the Board or one of its Committees. But the law provides that the Vice-Chairman shall act in the absence of the Chairman, and where both the Chairman and Vice-Chairman are absent the Board or Committee is empowered to appoint an acting Chairman. In the event of the 'majority' withdrawing or boycotting board business, the remaining 'minority' members might have difficulty in sustaining a quorum: but this event is highly unlikely. Indeed unionist councillors might have some difficulty in deciding to withdraw from Board business if the consequence of such action were to leave education in the hands of nationalist councillors and remaining Ministerial appointees.

d) Northern Ireland Housing Executive

Of the 10 members of the NIHE Board, three are unionist councillors and one, the Chairman, is a former member of the UUP. The Board could continue without the three unionist councillors and it is thought likely that the Chairman will remain in post.

e) Fire Authority

There are eight unionist councillors out of a total membership of 17 on the Northern Ireland Fire Authority. The Authority could continue to operate with just its non-political members and there is provision for the Department to appoint new members if existing ones fail to carry out their duties.

Summary

8. Leading unionist politicians have claimed that, in the first instance, opposition to any Anglo-Irish agreement will take the form of peaceful, constitutional protest. There may well be a legal challenge to the validity of the agreement and an attempt to force by-elections both to test unionist opinion and provide the justification for further protest. A unionist boycott of public bodies such as the Area Boards and the Police Authority is a possibility but would not seriously affect the ability of these bodies to discharge their responsibilities. Disruption of council business extending to disruption of local services

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would pose the greatest problems as far as Government is concerned. It should not, however, be forgotten that attitudes amongst unionist councillors vary from area to area and between the two main parties. The ability of party leaders to deliver all their Councils and councillors on the ground must be seriously questioned, especially in areas West of the Bann. If local services were interrupted the Department of the Environment would have to take over responsibility to ensure that refuse was collected and the dead were buried. Major difficulties would, of course, arise if council employees were not prepared to operate the services under DOE authority, but industrial action of this kind is outside the scope of this paper. If boycotts and dislocation of services persisted, there would be a considerable setback in community relations, and the fragile confidence of political parties at local level would be broken from some time to come.

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