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FROM: P N BELL  
BRITISH SECRETARY  
10 FEBRUARY 1998

cc: PS/Secretary of State (B&L)  
PS/Mr Murphy (B&L)  
PS/PUS (B&L)  
~~PS/Mr Semple~~  
Mr McCusker  
Mr Watkins  
Mr Woods (B&L)  
Mr Beeton  
Mr Brooker  
Mr Ferguson  
Mr Hill  
Mr Maccabe  
Mr Whysall  
Mr Clayton, HOLAB  
Mr Sanderson, Cabinet Office  
Mr Clarke, HME Dublin  
Mr Fergusson, RID  
Ms Healy  
Mr Warner

MR STEPHENS

### REFERENDUM PLANNING - THE IRISH DIMENSION

The Secretariat has kick started the Irish side into planning for their Referendum. Our pitch has been that we are engaged together in an exercise of supreme importance, where the devil is well concealed a more than usually opaque thicket of detail. It is essential, therefore, that we begin, together and now, to see how we can resolve a set of problems where solutions in one jurisdiction will impact mightly on the other. With that in mind, I had already been sharing our thinking in some detail with David Donoghue. The immediate fruit of our dialogue so far (apart from activating the system back in Dublin) has been the basic detail on the Irish constitutional position which I described at our meeting yesterday, supplemented by George Fergusson and now expanded on by David last night:

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- the amendment of the Irish constitution requires a Referendum under Article 46. Proposals for such an amendment need to be initiated in the Dail as a Bill. Although these procedures are elastic (in both directions), David Donoghue's best estimate remains that this procedure would take around three weeks;
- his first initial and informal soundings in Dublin suggest that it may not be possible to combine in one question both overall approval of a settlement package; and change to Articles 2 and 3. This is because Article 46.4 provides that a "Bill containing a proposal or proposals for the amendment of this constitution shall not contain any other proposal"; but
- it may well, therefore, be necessary to hold two separate Referendums which would, in David Donoghue's view be held simultaneously. (The Irish side has clearly either not so far thought of it, rejected David Hill's nightmare of a staggered Referendum in which a successful outcome in a first Referendum approving a settlement package would lead to a further amendment proposing amendments to Articles 2 and 3 (with, of course, the risk of an unfavourable, subsequent outcome). I did not suggest this scenario to David, and I believe it would be unwise to do so. For myself, I cannot see how Unionists in particular would agree to any settlement in which there was not a simultaneous, ie synchronized Referendum. We shall see).

2. Pledging continuing openness with Irish colleagues on these shared technical problems (and I had taken him through the relevant section of the Entry to Negotiations Act, and the kind of assumptions etc that had informed our own discussions yesterday afternoon - 1 May at the very earliest date; the need for a three to four week campaign; a synchronized "single Referendum"; the growing problem that the marching season would cause for a late Referendum etc etc), he promised me further advice most obviously on the workings of their own new Referendum Commission which was ensuring equity in the dispersement of public funds in the forthcoming Referendum in the South on the Amsterdam Treaty. This

Referendum will have the further advantage, from both our points of view, of providing a dry run for Referendum arrangements after the McKenna Judgment, arising from the Abortion Referendum in the Republic, and in the light of which the Irish may see their way more clearly to the satisfactory conduct of "our" Referenda. My present understanding is that whatever the Government may be stopped from doing by way of active campaigning, the parties may (though the Irish side is still unclear about the financing). (Any light the Dublin Embassy can provide in the meantime will be most welcome).

3. It is very clear, however, that the Irish have not so far thought their way through the problems as far as we - but they are now beginning to do so. I shall continue to brief and chivy them (in the nicest possible way), and to report progress. In concentrating David Donoghue's mind, it was helpful to have at hand - and take him through the somewhat bleak analysis of public opinion in Northern Ireland set out in Chris Maccabe's assessment of 6 February.

*Signed:*

*P N BELL*

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