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AN RIÚCHT ANGLA-ÉIREANNACH
BÉAL FEIRSTE

ANGLO-IRISH SECRETARIAT
BELFAST

Confidential

30 January 1997

COPY TO:
PST
PSS
MR. P. TEAHON
MR. S. DONLON
MR. T. DALTON

Mr Sean O hUiginn
Second Secretary
Anglo-Irish Division
Department of Foreign Affairs

Dear Second Secretary

North Report: further points

To supplement the Joint Secretary's report on the briefing by video link which we received this morning from Messrs Chilcot, Steele and Perry, the following are a number of additional points of interest which arose.

We pressed for the immediate establishment of the Commission. In response, Chilcot underlined the British Government's commitment to appointing the Commission as soon as possible. However, as the report itself recognised, it would not be easy to find people of the requisite qualities willing to serve on the Commission. A need for appropriate geographical spread, cross-community representation and gender bands could mean that getting the right sort of people to serve on the Commission could take some time. The Nolan guidelines for public appointments were a further complication.

When we enquired as to whether they had any potential candidates in mind, Chilcot referred to the "many sleepless nights" he had already spent pondering the issue. It was clear that they had done some initial thinking but were unwilling to divulge possible candidates at this stage. He indicated that suggestions from the Irish Government would be welcome.

He also indicated that possible staff members for the Commission had been identified (no details provided). We enquired as to the size of the Commission's staff and where they might be recruited, particularly those who would be involved in the education, conciliation

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and mediation roles. The British side responded to the effect that numbers had not finally been determined. However, speaking as accounting officer, Chilcot said that he would find this costly and painful.

Steele said that he did not, in his reading of the report, take any implication to the effect that the mediation role envisaged in the report would be carried out necessarily by the Commission's own staff. Perhaps others could be involved. (Comment: This would seem to be a reference to involving the Northern Ireland Mediation Network in this role. If they are to continue their role of advising the RUC on other matters, their acceptability in the nationalist community may suffer).

We asked for their understanding of North's recommendation to the effect that the Chief Constable could appeal a determination by the Commission to the Secretary of State. We pointed out that this could fuel deep anxieties in the nationalist community about the potential for a recurrence of last year's Drumcree crisis. The British responded to the effect that it was envisaged that the Chief Constable would exercise the appeal procedure only in very rare and exceptional circumstances. He would do so citing the new criteria on parades which would appear in revised legislation. They saw a distinction between the Commission's particular concerns in the parades area and the RUC's ultimately overriding concerns related t to the maintenance of public order.

On the continuing powers of the RUC to intervene on public order grounds while a parade was assembling or proceeding, we asked how this would be compatible with the introduction of a new offence which would involve criminal prosecutions where the determination made by the Commission was contravened. How could this happen if the RUC itself was intervening in a manner which contradicted the determination? The British indicated that they had not yet considered this point and that it was one of the many complexities which would have to be studied. They suggested that there could be circumstances in which the RUC might find it necessary, for public order reasons, to police what would be, in fact, an illegal march. We countered to the effect that this would raise the spectre of the RUC forcing illegal marches through nationalist areas.

We enquired about the proposed Code of Conduct. The British indicated that this could be introduced relatively soon. They are not, however, necessarily thinking in terms of a statutory Code. They intend to draft a "pre-statutory" Code which could be in place before the summer.

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Many minor amendments which North has proposed in relation to the existing public order legislation could be introduced by Order. The British indicated, however, that the proposed extension of the criteria for the imposition of conditions - to allow for the impact which a parade would have on relations within the community - would be among the issues to be considered during the consultation on the power of "determination" and that action on this, accordingly, could not be taken in advance of next summer.

In conclusion, Chilcot was anxious to point out, by way of further defence of the British Government's position on the power of "determination", that a lot of the recommendations made by the North Review team were conditional and were based on a promise that a degree of consultation would be necessary before they could be introduced.

Yours sincerely,

Steve Magner.

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SECURE FAX NO. 97

30 January 1997

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TO: HQ
FOR: Second Secretary O hUiginn

FROM: Belfast
FROM: Joint Secretary

COPY TO:
DST
PSB
MR D TEARNOR
MR A DONLON
MR [illegible]

Subj: **Briefing on North Review**

1. To confirm, we have had this morning a discussion of the North Review's report and the British Government's planned response to it with Sir John Chilcot, John Steele and other NIO officials (via a video link-up with the NIO in London).

2. We have sent down by courier a copy of the report itself, which we received at 9.30am today.

3. The Secretary of State will deliver his statement at 3.30pm in the Commons. Copies of it will be given to the Opposition at 2.30pm. It is agreed with Labour that any questions about the Review which arise during today's NI Questions will be held over until after the statement has been delivered.

4. Chilcot was unable to indicate how the Prime Minister would handle questions which might arise during the intervening Prime Minister's Questions. (He dismissed, incidentally, speculation about possible Prime Ministerial statements today on the talks).

5. We are pressing for an advance copy of the Secretary of State's statement. In the meantime, the following are the key elements which Chilcot read out to us from the draft as it stood at 10am:

- An introductory section covers the events of last summer, the range of powers available to the RUC and the Secretary of State and the general background to the Review;

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- The Government accepts without qualification the seven fundamental principles identified by North;

- It notes approvingly the attention paid to the predominant importance of local agreement on parades;

- The report's main recommendations are described and the Government's endorsement of them is indicated;

- The five-person Parades Commission will be established as soon as possible so that it will be in place for the coming marching season;

- However, on the issue of whether the Parades Commission should be given a power of "determination", the Government notes that the report itself acknowledges the wide range of views which exist on this subject. It therefore favours a short period of consultation - eight weeks - on this recommendation, which at this stage it is neither accepting nor rejecting;

- If it is decided that there should be a power of "determination", the Government envisages this being done by Bill rather than by Order in Council.

6. We expressed considerable disappointment at the decision of the British Government not to accept the recommendation in relation to a power of "determination" but to submit this to a consultation exercise which would ensure that it could not be implemented during the present Parliament and, therefore, in time for the approaching marching season. This decision would be widely perceived by nationalists as a politically motivated manoeuvre to deny the Commission any real impact or relevance. The urgency of having new arrangements in place which would inspire public confidence in the run-up to this year's marching season had been emphasised on all sides and, we thought, accepted by the British Government.

7. We recalled that the deadline of 30 January for receipt of the report had been set by the Secretary of State precisely to ensure that there would be adequate time for whatever legislative follow-up was required. Against this background, a decision to go for a consultation period effectively precluding implementation of this central

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recommendation before this year's marching season would call into question the British Government's good faith and seriousness of approach, cause widespread disquiet in the nationalist community and seriously reduce the credibility of the entire North exercise. At the very least, a considerably shorter period of consultation should be set, a decision in favour of the recommendation announced immediately thereafter and the necessary legislative steps put in hand.

8. In response, Chilcot said that, in view of the complexity of the issue, a consultation period of less than eight weeks would be regarded as derisory. A period of, say, three or four weeks would give absolutely no time for consideration. North himself, he noted, had made clear in his report (Chapter 12) that he had arrived at this recommendation only after a long process of reflection and consultation.

9. Observing that the standard initial response on receipt of such reports was for the British Government to promise to study them and to avoid all commitments on their substance, Chilcot suggested that credit should be given to the Government for its willingness to accept immediately all the recommendations other than that in relation to a power of "determination" and, in the case of the latter, to set a relatively short deadline for consultation.

10. We commented that, against a background of what one could presume to have been detailed Government consideration of (and informal consultation on) this key role for a Commission over the period of the Review, it was difficult to accept that an eight-week consultation period was required in practice, however complex the issues involved. Many would see this as betokening a marked lack of urgency on the British Government's part as a marching season approaches with all the potential for a disastrous repetition of last summer's events.

11. Chilcot said that this afternoon's statement would signal that the British Government would take its decision on the recommendation as soon as the eight-week period concluded. However, if Parliament was not sitting then, it would obviously be very difficult to take the matter further at that point.

12. He indicated that Labour were likely to offer the British Government strong support this afternoon. They accepted that implementation of this proposal would require primary legislation (a Bill) and, therefore, an appropriate consultation/preparation period. At most, he speculated, they would regret that measures of the kind

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recommended by North had not been considered by the Government before now.

12. Mr Magner is reporting separately on a number of additional points which arose at the briefing. We are also seeking clarification of other aspects of the report through the Secretariat.

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~~To Helen Black~~
~~HEP~~ Pers DFA
~~Embassy~~ Dublin

From PTC

Preliminary Ulster Unionist reaction to the Independent Review of Parades and Marches (the North Report), 30 January 1997, 12 noon.

Time will be needed for consideration of the North Report (256 large format pages plus appendix and summary). Careful consideration is necessary especially because the Report makes some very radical proposals and the issue is extremely sensitive in Northern Ireland. Any implementation must be by proper legislation to allow for the necessary scrutiny.

This sensitivity is shown by the telephone poll conducted by the Belfast Telegraph this week, when 73,878 people took part. This is the equivalent to three million in a national poll, ie 50% higher than the recent TV inspired telephone poll on the monarchy! The poll was on the specific issue of the Garvaghy Road near Portadown and 52,393 said that the Orangemen should be allowed down the road, 11,296 were against and 10,189 were in favour of a compromise.

Ulster Unionists consider that the central proposal in the North Report is wrong. Namely that a Commission should take over from the police the function of deciding whether a parade should be banned or made subject to conditions.

This proposal forgets that the primary responsibility for the maintenance of the Queen's peace rests with the police and the government. This responsibility cannot be shifted to another body, and certainly not to a body whose composition would, by virtue of the Anglo-Irish Agreement, be determined in consultation with a foreign government hostile to the traditions and allegiance of the greater number of the people of Northern Ireland.

In any event the proposed role of the Parades Commission contains contradictions. It is suggested that the Commission should mediate in cases of disagreement, but if mediation fails the Commission should make a determination. These two roles, conciliation and adjudication, are inconsistent. They cannot be exercised by the same body without the latter role interfering with and undermining the former. They should be separated and the latter should remain with the police and the Secretary of State.

Even a mediation role could be problematic in Northern Ireland. As the Report acknowledges only a small minority of parades cause problems. Set up a complex machinery charged with a duty to go out and gather information about likely issues before they occur and there will certainly be more problems.

The North report will be yet another factory of grievances.

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