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Reference Code: 2021/100/14

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Tasineach
As I mentioned this morning, things are moving broadly satisfactorily on this Bill -

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31.7.98

Meeting with British Officials on the Northern Ireland Bill

London, 28 July 1998

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1. Following on earlier exchanges in the Anglo-Irish Secretariat, this meeting enabled us to highlight outstanding points of concern with the Bill, while expressing our appreciation of the fact that, in response to our views and those of the parties, the British Government had (including on the previous day, as the Committee Stage concluded) made certain improvements to it, or had signalled a willingness to reconsider some Clauses before the Bill goes to the House of Lords (in early October).
2. Present on the Irish side were Dermot Gallagher, Ted Barrington, David Donoghue, David Cooney, Ray Bassett and Rory Montgomery. On the British side were Bill Jeffrey, Jonathan Stephens, Péter Bell, Tony Beeton, David Brooker, William Keown (NIO), Sally Evans, Nick O'Meara (Home Office lawyers, involved in drafting the Bill) and David Brett (FCO).

254
74
64

General

3. Stephens said that the purpose of the Bill was to implement the Belfast Agreement in full. It had been put together speedily, and further thinking would be required over the summer before it went to the Lords. Debate in the Commons had focussed on the constitutional Clauses (1 & 2); on that relating to the exclusion of an individual or party from office (Clause 23); and on the human rights, equality and North/South sections. His overall impression, however, was that the proceedings had been fairly low-key and predictable, without any "great excess of passion."
4. He informed us of a number of further amendments the British Government would be tabling at the Report Stage, including firming up the reference to an Equality Committee of the Assembly (Clause 11); the inclusion of the Ministerial Code of Conduct in Schedule 5; dropping the reference to exclusion "for any other reason" in Clause 23, and otherwise bringing its provisions on parties into line with those on individuals, allowing for the exclusion of a party on the basis of its likely failure to adhere to the Ministerial Pledge of Office. The British were also, in response to Trimble, bringing a financial

Good

Clause (45) into line with Scottish practice: while having no effect on the overall resources allocated to Northern Ireland this would abolish the concept of an imputed Northern Ireland share of overall UK taxation, and thus make it harder to identify an overt Westminster subsidy.

5. In addition to a range of technical matters, among those issues the British Government would be looking at further over the summer were the North/South Clauses, including the issues of accountability to the Assembly (raised by the unionists), participation and funding (raised by the SDLP) and the question of whether the existing language conferred all the necessary powers on the Executive and the Assembly. They would also be considering the possibility of interim arrangements should either the First or deputy First Minister not continue to serve. The powers of the Human Rights Commission would also be examined further. ✓
6. **Gallagher** expressed our appreciation for the extraordinary speed with which the Bill had been drafted, and praised those involved. We also acknowledged the fact that several points raised by us had been taken on board. He noted that the Bill, while a legal and technical instrument, was also highly political in its implications. There would be substantial nationalist anxiety if certain elements of the Agreement were not to appear in legislation, or seemed to have been watered down. Our general view was that, when any doubt arose, the language of the Agreement itself should be used. ✓
7. **Evans** later returned to this point, stressing, from a lawyer's perspective, the need for the Bill, as future law, to be as clear as possible - there were points where the Agreement itself was not fully transparent. ✓

North/South

8. **Gallagher** argued that the Clause on the North/South Ministerial Council (66) should incorporate the language of the Agreement in regard to both the "essential responsibility" of Ministers to participate - the duty of service - and to the obligation on both sides to fund the Council. There should be a similar funding obligation in respect of the

Implementation Bodies. The Bill did impose an obligation on the Assembly to fund the Civic Forum. He noted that on the previous evening Minister Murphy had undertaken to look again at these matters, and had said he had "some sympathy" with the amendments put forward by the SDLP.

9. **Stephens** agreed that Clause 66 wasn't "quite there yet", and agreed that Minister Murphy had indicated broad sympathy for our position. He thought that, if there were to be a reference to the duty of service, it might be necessary also to include the capacity of the First Minister and deputy First Minister to make alternative arrangements if a Minister did not attend: in reply, we suggested that this element should be seen as meeting a potential practical problem, but not as conferring on Ministers *carte blanche* not to attend meetings of the Council.
10. **Stephens** also said that the British might wish to make an amendment, along the lines of one proposed by Trimble, to require Ministers not to exceed their general authority at meetings of the Council. **Cooney** pointed out that Trimble appeared to envisage that Ministers would be given a mandate in advance of each meeting - which was not in the Agreement. **Jeffrey** said that there would probably be some amendment, if not quite that proposed by Trimble.
11. There was an inconclusive discussion on whether, as we had proposed, definitions of the North-South Ministerial Council and British-Irish Council might be included in Clause 79, as a means of more firmly linking the legislation to the Agreement. The British side argued that such definitions were legally unnecessary, unlike others which had been included. We strongly underlined the political desirability of some movement on this point.
12. **Gallagher** also indicated our support for a general clause, equivalent to that in the 1973 Act and in the 6 July print of the Bill, making fully clear the capacity of Ministers to act in the North-South Council, and the capacity of the Assembly to legislate for agreements reached. **Stephens** and **Jeffrey** replied that they did not see any particular need for such

a Clause, but again said that they were checking to make sure that, legally, all the necessary powers were in fact covered by Clause 66. **Stephens** wondered whether some of our political/presentational worries could be met by moving Clause 66 to a more prominent position in the Bill.

13. The British confirmed that they were looking at the provisions for the audit of the Implementation Bodies in Clause 68, following our suggestion that what was envisaged did not reflect the dual nature of the Bodies.

Equality Issues

14. **Gallagher** mentioned that this section of the Bill appeared to be causing great concern both within the parties and among the NGO/expert community. **Jeffrey** agreed that this was so, but said that the views expressed during the process of consultation had not been all one way: NICVA, for example, had favoured a single agency. The Secretary of State was strongly in favour of this. It had been signalled in the Agreement.
15. **Bassett** replied that, so far as we knew, the great bulk of responses during the consultation process had been negative. David Trimble's opposition, we understood, was not purely to do with the timing of the measure (as suggested by Jeffrey), but with a sense that it was a project driven by civil servants. The particular wording in the Agreement ("Subject to the outcome of public consultation...") had been employed precisely because there had not been agreement on a single Commission in the Talks. In addition to the structure of the Commission, the other great fear was that basic responsibility to police and enforce the equality obligations of public authorities was now to rest with this new Quango, rather than with the government itself.
16. **Stephens** contested this latter point, saying that the ultimate power to oblige authorities to take the necessary action would rest with the Secretary of State. What was envisaged combined a high profile external Commission with the continuing power of the Secretary of State to enforce directions. It was for the Assembly to look at a possible Department of Equality.

17. **Bassett**, saying that he understood that SACHR was unhappy with the direction of the British Government's proposals, suggested that any benefits were not commensurate with the opposition being expressed. **Jeffrey** thought that much of the controversy had to do with the rearguard defence of existing arrangements. The Secretary of State saw a Commission as part of a "reassuring new landscape".

18. In regard to the equality schemes, **Gallagher** noted that the British had accepted an amendment making clear that an obligation on public authorities to pay due regard to community relations would be without prejudice to equality commitments. **Bassett** said that one element of an equality scheme should be public access to information, as in the Agreement: this was not covered at the moment. **Stephens** agreed to reflect on this.

Human Rights

19. **Gallagher** said that the main outstanding issue was that of a review of the Human Rights Commission after 2/3 years, to protect it from possible criticism, including from the UN Human Rights Commissioner, that it did not fully meet the highest international standards, as set out in the Paris principles. In response to **Jeffrey**, who recalled that the matter was one of those to be reflected on by the Secretary of State over the summer, **Gallagher** said that our own internal consultations on whether the Human Rights Commissions, North and South, should have the power to call for papers and conduct enquiries were still continuing.

20. **Jeffrey** noted that the Bill (Clause 55) already gave the Human Rights Commission the right to forward proposals to the Secretary of State on the adequacy and effectiveness of human rights protection and queried whether a specific review clause were necessary. **Beeton** thought that the possibility of a review could be addressed in the explanatory memorandum attached to the Bill. **Bassett** underscored our general satisfaction with the treatment of human rights in the Bill.

Other Matters

21. **Stephens** confirmed that the due date for the devolution of powers to the Assembly

would be that of the entry into force of the British-Irish Agreement, and hence of the establishment of the other institutions. Clauses 1 and 2, relating to constitutional issues, would also take effect on that day, as of course would the amendments to Articles 2 and 3.

22. **Jeffrey** felt that in regard to the appointment of Junior Ministers the ball was in the parties' court. Mallon and Trimble would have to reflect on a method of selection, as simple appointment by them would not be satisfactory to others. The d'Hondt system - either applied once again ab initio, or continuing down the list after full Ministers had all been selected - would probably have to be used. There would have to ^{be} some reference to the matter in the Bill if extra salaries were to be payable.
23. **Cooney** asked the British side to reflect on the need to ensure that the Assembly Commission would not, without cross-community support, be able to take decisions on the symbols and emblems to appear on Assembly buildings.
24. **Stephens** said that the decision to describe the Executive as the "Executive Committee of the Assembly" was a presentational nod in Trimble's direction - it had been adopted to see off a worse danger, that of pressure to vest executive power in the Assembly itself, in line with paragraph 2 of the Strand One chapter of the Agreement.
25. **Evans** confirmed that Irish Ministers and officials, having sovereign immunity, could not be compelled, under Clause 36 (3), to appear before Assembly Committees enquiring into Implementation Bodies (though the officers of such Bodies could).

Rory Montgomery

29 July 1998