



# An Chartlann Náisiúnta National Archives

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**Meeting , in Government Buildings, on 1 May, 1998**  
**about the steps to be taken involving the Irish Government in the**  
**event of a "Yes" vote in the Referendum on the 19th Amendment**  
**of the Constitution Bill**

*Attendance*

**Department of the Taoiseach**

Simon Hare  
Paul McGarry

**Department of Foreign Affairs**

David Cooney  
Colm O Floinn  
Paul Murray  
Tim O'Connor

**Attorney General's Office**

Caitlín Ní Fhlaitheartaigh

**Department of Justice**

Paul Hickey  
Brendan Callaghan

In opening the meeting, Mr. Hare referred to the summary paper (copy attached) which he had circulated prior to the meeting which identified in outline the steps to be taken. He suggested that we should seek at this meeting to identify more precisely what needed to be done, who would do it and the timescales for action, with a view to drawing up a draft work programme for consideration at more senior official level and ultimately, at political level. He emphasised the need for rapid progress in this regard, bearing in mind the need for early and tangible implementation of the Agreement in the event of a 'Yes' vote in the upcoming referendums.

The Department of Foreign Affairs representatives responded that their Department had only just restructured their Anglo-Irish Division. They could not, pending a further internal review, engage formally on specifics, although they were prepared to discuss matters informally and in a preliminary way.

There was general agreement that the summary paper provided a useful starting point for purposes of considering implementation. Mr. Hare suggested that we go through the document paragraph by paragraph and tease out the issues further.

In the discussion that followed a number of areas of immediate concern were identified.

## **New Institutions in the transitional forms**

The issues that arose here included :

- (a) Should the joint secretariats to the British Irish Council and the North South Council be established in the transitional period, or when the Institutions had been formally established.
- (b) The identification of implementing bodies would depend on the politics of the situation and what was doable. We would have to begin work quickly on identifying areas for North-South co-operation and implementation, on the basis of the areas listed in the relevant Annex under Strand 2 in the Agreement, and the other preferred areas for implementation and consideration.

It was suggested that we might not want to identify the six preferred areas too early, as this could create internal resistance. We could identify twelve and also add others which could be considered. There would also be a need to consult with the SDLP and Sinn Fein and a need to decide what we wanted optimally - while at the same time, identifying the legal mechanisms necessary.

- (c) How would the bodies be established - by legislation or by an international agreement?

Unionists had been pushing the international agreement model on the basis that it would be an agreement between two sovereign Governments. It was agreed that a decision would need to be taken as to whether to proceed by this route or by way of legislation. The view of the Attorney General's Office was that the international agreement model might be the best way of establishing the bodies from a technical point of view. An international agreement would require legislation to give it effect and to wind up the relevant bodies whose functions would be devolved to the new implementing bodies. The agreement itself would be annexed to the Act. The relevant Departments would have to identify the legislation affected and how the implementing body would work.

Other issues that needed to be settled included matters such as, the size of the Boards and the implications of amalgamating certain organisations, for example, the Northern Ireland Tourist Board and Bord Fáilte and what, if any, residual organisations would remain in place. It might also be possible to develop a generic model for the establishment of implementing bodies which could be adjusted according to the bodies selected. There were also issues that needed to be teased out regarding the various relationships, including reporting relationships, that the bodies would have and that would be common to all. This would include any EU dimension. The forum that would identify these issues needed to be considered further.

Generally, institutions exercising executive powers would require legislation and institutions, such as the British-Irish InterGovernmental Conference, which would not have executive powers, would not. There could, for example, be a possibility of the establishment of implementing bodies under the British-Irish Council.



Regarding the issue of increasing the number of implementing bodies later on, this could be done whether the North-South Council was put in place under an international agreement or by legislation. We were not bound by precedent on this and following the international agreement, if it was decided to establish another implementing body, the parallel legislation route could be taken, or it could be specified in the international agreement that further bodies could be established. If, in the future, it was agreed between the Northern Ireland Assembly and the Oireachtas to establish further implementing bodies, Westminster would have to devolve authority for those matters.

It was noted that the Attorney General's Office had been engaged in some preliminary work on the legal modalities of establishing the new institutions, including implementing bodies and the representative of the Attorney General's Office undertook to review this with a view in particular to addressing the pros and cons of the international agreement and legislative options.

2. **Coming into effect of Amendment of the Constitution**

The amendment of the Constitution had implications for the Citizenship and Nationality Acts. The question arose about whether legislation was needed to be in place before the coming into effect to the Agreement. A formal query would be put to the Attorney General's Office in the normal way by the Department of Justice, Equality and Law Reform.

3. **Anglo-Irish Agreement and AIIC**

A practical issue arose here regarding the working group on education and culture under the Anglo-Irish Inter-Governmental Conference. This would be discussed at the next meeting of the Committee. Under the Agreement, East-West issues would fall to be dealt with in the British-Irish Council and the educational and cultural area would seem to be more appropriate for the Council in the future.

4. **British-Irish Bi-lateral or Multi-lateral Arrangements**

It was felt likely that the Unionists would press for an early meeting of the British-Irish Council. It was suggested that this would probably need to await the establishment of the Scottish and Welsh Assemblies.

The British Irish Inter Parliamentary Body would be having a special meeting on 15th May, to discuss the implications of the Agreement for them.

## **Rights, Safeguards and Equality of Opportunity**

The Agreement referred to the underpinning of the constitutional protection of human rights and to taking account of the work of the All Party Committee on the Constitution. This Committee had not considered this issue yet and it was agreed that it would need to be asked formally to do so.

Regarding the Human Rights Commission, we would need to liaise with the British side to establish what their intentions were in this regard.

Reference was made to the need for a decision as to which Department would have responsibility for the Human Rights Commission.

The framework convention on national minorities would be a matter for the Department of Foreign Affairs.

The enhanced Equality and Equal Status Legislation would be a matter for the Department of Justice, Equality and Law Reform.

The joint Committee on Human Rights would be a function of the Human Rights Commissions.

Regarding the equality agenda, the areas here were largely not devolved. However, it was noted that there was the possibility of establishing a Department of Equality in Northern Ireland and this would have some responsibility for devolved issues. The issue of parity of esteem was a Westminster issue.

### **6. Victims**

There were elements here that would be for the Departments of Foreign Affairs and Justice, Equality and Law Reform and the issue would be raised internally in these Departments.

### **7. Decommissioning**

The residual issue here was the timing of bringing the relevant schemes into force. This would happen some time in June. The security issue and the issue of normalisation was being pursued under the existing Agreement.

The question of an input into the British Government's consultation exercise on fire-arms regulation and control was already being followed up by the Department of Foreign Affairs.



## **The Offences Against the State Acts**

The Department of Justice, Equality and Law Reform envisaged submitting a Memo to Government in the next month or so which would lead to the establishment of a review mechanism.

### Policing etc.

On policing and justice issues and the Independent Commission on Policing and the Review of the Criminal Justice System, there would be scope and input by the Irish Government. It was noted, as a point of detail, that the terms of reference for the policing review included a reference to the scope for structured co-operation with the Garda Síochána. The issue of an input into the implementation of recommendations arising from both reviews was a longer term matter.

## **9. Prisoners**

The Agreement provided that legislation would be enacted by the end of June. In Britain it was seen as desirable to enact legislation. The Department of Justice, Equality and Law Reform mentioned that it might not be necessary to go the legislative route in this jurisdiction. On a point of detail, if there were Republican prisoners remaining in England, their cases would be dealt with at the appropriate time. The British review process would possibly take one year and would involve 400 prisoners. The legislation would provide for the establishment of the Sentence Review Board, its membership and the review of sentences.

At the conclusion of the meeting it was agreed that it had been useful in terms of going over the ground and as an exercise in exposing the issues that needed to be addressed. It was decided that representatives of the Departments would report back and establish how to progress matters further, including the prioritisation of the matters to be implemented in the Agreement and also specific operational issues. A work programme would be required across every area. It was agreed that the main issue to be addressed in the immediate future was the North-South arrangements.

# Summary of Steps to be taken involving the Irish Government in event of a "Yes" vote in Referendum on the Nineteenth Amendment of the Constitution Bill

## 1. The British-Irish Agreement, the Amendment of the Constitution, Strand Two and Strand Three

*Referendum proposed is passed by the people.*

### **Signature of Amendment of Constitution Bill**

Following a period to allow for any petition, President to sign the Nineteenth Amendment of the Constitution Bill following notification from Referendum Returning Officer confirming passage of referendum proposal.

### **Approval of British-Irish Agreement**

British-Irish Agreement to be laid before the Dáil and its terms to be approved by the Dáil pursuant to Article 29.5 of the Constitution.

*Assembly elections are held on 25 June, 1998.*

### **New Institutions in their Transitional Forms**

As soon as practically possible after elections to the Northern Ireland Assembly, inaugural meetings to take place of the Assembly, the British/Irish Council and the North/South Ministerial Council in their transitional forms. (MPA - S.2, para. 7)

Standing Joint Secretariat to North/South Ministerial Council to be established (MPA - S.2, para. 16) on transitional basis?

Secretariat for British-Irish Council to be established (MPA - S.3, para. 9) on a transitional basis?

All three institutions to meet regularly and frequently in their transitional forms during the period between the elections to the Assembly, and the transfer of powers to the Assembly, in order to establish their modus operandi. (MPA - S.2, para. 7)

During the transitional period between the elections to the Northern Ireland Assembly and the transfer of power to it, representatives of the Northern Ireland transitional Administration and the Irish Government operating in the North/South Ministerial Council to undertake a work programme, in consultation with the British Government, covering at least 12 subject areas, with a view to identifying and agreeing by 31 October 1998 areas where co-operation and implementation for mutual benefit will take place. Such areas may include matters in the list set out in the Annex to the section on Strand Two in the Multi-Party Agreement. (MPA - S.2, para. 8)

As part of the work programme, North/South Ministerial Council to identify and agree at least 6 matters for co-operation and implementation in each of the following categories:

- (i) matters where existing bodies will be the appropriate mechanisms for co-operation in each separate jurisdiction;



- (ii) matters where the co-operation will take place through agreed implementation bodies on a cross-border or all-island level. (MPA - S.2, para 9)

#### **Legislation establishing New Institutions**

The two Governments to make necessary legislative and other enabling preparations to ensure, as an absolute commitment, that these bodies, which have been agreed as a result of the work programme, function at the time of the inception of the British-Irish Agreement and the transfer of powers, with legislative authority for these bodies transferred to the Assembly as soon as possible thereafter. Other arrangements for the agreed co-operation to also commence contemporaneously with the transfer of powers to the Assembly. (MPA - S.2, para. 10)

Necessary legislation to be enacted to establish a North/South Ministerial Council, implementation bodies as set out in the Multi-Party Agreement, a British/Irish Council and a British/Irish Intergovernmental Conference.

The establishment of the North-South Ministerial Council, implementation bodies, the British-Irish Council and the British-Irish Intergovernmental Conference and the assumption by the Assembly of its legislative and executive powers to take place at the same time on the entry into force of the British-Irish Agreement. (MPA - Validation etc., para. 3)

*British legislation is enacted for purposes of implementing certain constitutional type changes (including repeal of Government of Ireland Act, 1920).*

#### **Exchange of Notifications**

Each Government to notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of the British-Irish Agreement. (BIA - A.4 (2))

Agreement to enter into force on the date of receipt of the later of the two notifications. (BIA - A.4 (2))

#### **Coming into effect of Amendment of Constitution**

Immediately on entry into force of the Agreement, Irish Government to ensure that amendments to the Constitution take effect. (BIA - A.4 (3))

#### **Anglo-Irish Agreement and AIIC**

On entry into force, the British-Irish Agreement replaces the Anglo-Irish Agreement, 1985, and the existing Anglo-Irish Intergovernmental Conference ceases to exist. (BIA - A.3)

Arrangements to be made for British and Irish officials to support British-Irish Intergovernmental Conference, including by a standing Joint Secretariat of officials dealing with non-devolved Northern Ireland matters. (MPA - S.3, BIIC, para. 8)

#### **Joint Parliamentary Forum**

The Northern Ireland Assembly and the Oireachtas to consider developing a joint parliamentary forum, bringing together equal numbers from both institutions for discussion of matters of mutual interest and concern. (MPA - S.2, para. 18)



### **Independent Consultative Forum**

Consideration to be given to the establishment of an independent consultative forum appointed by the two Administrations, representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues. (MPA - S.2, para. 19)

### **British-Irish Bilateral or Multilateral Arrangements**

In addition to the structures provided for under the Multi-Party Agreement, it will be open to two or more members of the British-Irish Council to develop bilateral or multilateral arrangements between them. Such arrangements could include, subject to the agreement of the members concerned, mechanisms to enable consultation, co-operation and joint decision-making on matters of mutual interest; and mechanisms to implement any joint decisions they may reach. These arrangements will not require the prior approval of the BIC as a whole and will operate independently of it. (MPA - S.3, BIC, para 10)

### **British-Irish Interparliamentary links**

The elected institutions of the members of the British-Irish Council to be encouraged to develop Interparliamentary links, perhaps building on the British-Irish Interparliamentary Body. (MPA - S.3, BIC, para. 11)

## **2. Rights, Safeguards and Equality of Opportunity**

### **Constitutional Protection of Human Rights**

Taking account of the work of the All-Party Oireachtas Committee on the Constitution and the Report of the Constitution Review Group, measures to be brought forward to strengthen and underpin the constitutional protection of human rights. (MPA - Rights etc., para. 9)

### **Human Rights Commission**

A Human Rights Commission to be established with a mandate and remit equivalent to that within Northern Ireland. (As above)

### **Framework Convention on National Minorities**

Arrangements to be proceeded with as quickly as possible to ratify the Council of Europe Framework Convention on National Minorities. (As above)

### **Enhanced Equality and Equal Status Legislation**

Enhanced employment equality legislation to be implemented. (As above)

Equal status legislation to be introduced. (As above)

### **Respect for the Different Traditions**

Further active steps to continue to be taken to demonstrate the Government's respect for the different traditions in the island of Ireland. (As above)

### **Joint Committee on Human Rights**

A joint committee of representatives of the two Human Rights Commissions, North and South, (to be established) as a forum for consideration of human rights issues in the island of Ireland. The joint committee to consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political

parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland. (As above)

#### **Victims**

[Sufficient resources, including statutory funding as necessary, to be allocated to meet the needs of victims and to provide for community based support programmes]. (MPA - Rights etc., para. 12)

#### **Reconciliation**

Continued support to be given to organisations involved in developing reconciliation and mutual understanding and respect between and within communities and traditions, in Northern Ireland and between North and South. (MPA - Rights etc., para 13)

Case for enhanced assistance for the work of reconciliation to be examined [An essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiatives to facilitate and encourage integrated education and mixed housing]. (As above)

### **3. Economic, Social and Cultural Issues**

#### **Economic and Social Issues**

Input on foot of British Government's commitments to (a) pending devolution of powers to Assembly, pursue broad policies for sustained growth and economic stability in Northern Ireland and for promoting social inclusion and (b) make rapid progress with new regional development and economic development strategies for Northern Ireland and with measures on employment equality. (MPA - Ec., Soc. etc., para. 1)

#### **Irish Language**

Action in support of recognition of all participants of importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish Language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland. (MPA - Ec., Soc. etc., para. 3)

Input in relation to British Government's commitments on the Irish language as set out in paragraphs 3 and 4 of section in MPA on Economic, Social and Cultural Issues.

Follow up on foot of commitment by British Government to explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of *Telifís na Gaeilge* in Northern Ireland. (MPA - para. 4 as above)

#### **Symbols and Emblems**

Follow up on foot of acknowledgement by all participants of the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. (MPA - Sc., Soc. etc., para. 5)



Arrangements to be made to monitor this issue and consider what action might be required. (As above)

#### **4. Decommissioning**

All participants to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning to all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement. (MPA - Dec., para. 3)

Both Governments to take all necessary steps to facilitate the decommissioning process to include bringing the relevant schemes into force by the end of June. (MPA - Dec., para. 6)

#### **5. Security**

##### **Normalisation**

Follow up on foot of commitment by Secretary of State to consult regularly on progress towards the objective of as early return as possible to normal security arrangements in Northern Ireland, and the response to any continuing paramilitary activity, with the Irish Government and the political parties, as appropriate. (MPA - Sec., para. 3)

##### **Firearms Regulation and Control**

Follow up in relation to British Government's continued consultation on firearms regulation and control on the basis of the document published on 2 April, 1998. (MPA - Sec., para. 4)

##### **Review of OAS Acts**

The Irish Government to initiate a wide-ranging review of the Offences Against the State Acts 1939-85 with a view to both reform and dispensing with those elements no longer required as circumstances permit. (MPA - Sec., para. 5)

#### **6. Policing and Justice**

Input to be made to work of independent Commission on Policing for Northern Ireland. (MPA - P.&J., paras 1-4)

Input to be made to Review of Criminal Justice System. (MPA - P.&J., para. 5)

Input in particular to be made to issue of implementation of recommendations arising from both reviews, which is to be discussed with the political parties and the Irish Government. (MPA - P.&J., para. 6)

Follow up pursuant to British Government's declared readiness in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues. (MPA - P.&J., para. 7)

#### **7. Prisoners**

Both Governments to put in place mechanisms to provide for an accelerated programme for the release of prisoners. (MPA - Pris., para. 1)

The situation in regard to prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire to be kept under review. (MPA - Pris., para. 2)

Both Governments to complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. (MPA - Pris., para. 3)

The Governments to seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998. (MPA - Pris, para. 4)

The Governments to take measures to facilitate the reintegration of prisoners into the community. (MPA - Pris., para. 5)

## **8. Review**

In the transitional period, aspects of the implementation of the multi-party agreement to be reviewed at meetings of those parties relevant in the particular case (taking into account, once Assembly elections have been held, the results of those elections), under the chairmanship of the British Government or the two Governments as may be appropriate; and representatives of the two Governments and all relevant parties may meet under independent chairmanship to review implementation of the agreement as a whole. (MPA - Valid. etc., para. 4)

The two Governments and the parties in the Assembly to convene a conference 4 years after the agreement comes into effect, to review and report on its operation. (MPA - Valid. etc., para. 8)



**Checklist of Institutions/Bodies/Arrangements to be established under Agreement**

**Strand One**

Assembly

- Executive Committee
- Departmental Committees
- Other Standing Committees (if/as required)
- Special Committee on Equality Requirements (if agreed).

Mechanisms for co-ordination/dispute avoidance as between Assembly and Westminster.

Arrangements to represent Assembly as a whole, at Summit level.

Consultative Civic Forum.

**Strand Two**

North/South Ministerial Council - to meet in transitional form in the first instance.

- meeting in plenary and specific sectoral formats and in an appropriate format to consider institutional or cross-sectoral matters (incl. in re. EU) and to resolve disagreement.

Arrangements for Co-operation by Existing Bodies (in at least 6 areas).

Implementation Bodies (in at least 6 areas).

Other Arrangements for the Agreed Co-operation (check).

Any further development of these arrangements as agreed.

Standing Joint Secretariat to North/South Ministerial Council.

Arrangements for ensuring views of Council are taken into account and represented appropriately at relevant EU meetings.

Joint Parliamentary Forum (subject to agreement).

Independent Consultative Forum (subject to agreement).

**Strand Three**

British-Irish Council

- meeting at summit level, in specific sectoral formats and in an appropriate format to consider cross-sectoral matters.

Suitable Arrangements for Practical British-Irish Co-operation on Agreed Policies.

Secretariat for BIC.

British-Irish Bilateral or Multilateral Arrangements (if agreed).

British-Irish Interparliamentary links (perhaps building on British-Irish Interparliamentary Body).

British-Irish Intergovernmental Conference  
- meeting at Summit or Ministerial level.

Arrangements for support of BIIC by British and Irish officials, including by a standing joint Secretariat of officials dealing with non-devolved Northern Ireland matters.

### **Rights, Safeguards and Equality of Opportunity**

Northern Ireland Human Rights Commission.

Equality Commission (subject to outcome of consultation).

Department of Equality (if Assembly wishes).

Irish Human Rights Commission.

Joint Committee of representatives of Human Rights Commission, North and South.

### **Economic, Social and Cultural Issues**

Arrangements to monitor symbols and emblems issue and to consider what action might be required.

### **Decommissioning**

[Independent Commission on Decommissioning remains in place.]

### **Security**

Arrangements for consultation by the Secretary of State on progress in normalisation and the response to any continuing paramilitary activity, with the Irish Government and the political parties, as appropriate.

Irish Government's wide-ranging Review of OAS Acts 1939-85.

### **Policing and Justice**



● dependent Commission on Policing for Northern Ireland.

Review of the Criminal Justice System.

**Prisoners**

Mechanism for Accelerated Programme for Release of Prisoners.

Associated Review Process.