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Oifig an Taoisigh

Ref: S230/10/15/0003A 8 Márta, 1999

Memorandum for the Government

Text of British-Irish Agreement Bill, 1999

1 **Decision Sought**

The Taoiseach requests the Government:

(a) to approve the text of the British-Irish Agreement Bill, 1999 submitted with this Memorandum, subject to any necessary drafting changes that the Taoiseach and the Minister for Foreign Affairs may consider necessary; and

(b) to authorise him to present the Bill to Dáil Éireann and to circulate it to Deputies.

Background

2 On 13 October, 1998, the Government approved the general approach to the upcoming negotiations on the North/South aspects of the Good Friday Agreement, including the Implementation Bodies, on foot of a

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Memorandum (ref: S230/10/15/0003) dated 6 October, 1998, submitted by the Taoiseach and the Minister for Foreign Affairs. On 21 December, 1998, the Taoiseach brought to the attention of the Government, by way of an Aide-Memoire of that date, the Statement of 18 December issued by the Office of the First Minister (Designate) and Deputy First Minister (Designate) which recorded, among other things, agreement on six Implementation Bodies viz. Inland Waterways, Food Safety, Trade and Business Development, Special EU Programmes, Language (Irish and Ulster Scots) and Aquaculture and Marine Matters. Since then intensive work has been underway between Irish and British officials - in consultation with relevant parties - to advance on foot of paragraph 10 of Strand Two of the Good Friday Agreement, the legislative and other preparations needed to bring these Bodies into being immediately on entry into force of the British-Irish Agreement of 10 April, 1998.

3 It was agreed in the course of the official level discussions that the Implementation Bodies would be established by a supplementary International Agreement between the Irish and British Governments. This has been dealt with in the separate Memorandum submitted by the Minister for Foreign Affairs, by reference to which the Government decision of 7 March 1999 (S230/10/15/0001C), giving authority to sign that Agreement and the other Agreements to establish institutions provided for in the Good Friday Agreement, was taken. The purpose of the British-Irish Agreement Bill, 1999 is to give effect in domestic law to the International Agreement, which is scheduled to the Bill. The Bill is parallel to a British Order under Section 55 of the Northern Ireland Act 1998, on Implementation Bodies, which is being laid before Parliament

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on 8 March, 1999 and is expected to be enacted on 10 March, 1999, in line with the target date set by Secretary of State Mowlam.

The British-Irish Agreement Bill, 1999

4 The key points in the Bill are as follows. Part I provides for the participation of the Taoiseach and Ministers in the North South Ministerial Council (NSMC) and the British Irish Council and for general provisions, including a power for the Taoiseach to make regulations to remove any difficulties in the way of bringing the Act or the Agreement into operation. Parts II to VII (and the associated parts of Annexes 1 and 2 to the International Agreement scheduled to the Bill) provide for the functions, manner of exercise of the functions, structure and powers of each of the Implementation Bodies. These parts give the force of domestic law to the majority of the provisions of the Agreement, including, in particular, Annexes I and 2.

5 Concerning structure, it is noteworthy that four of the six Implementation Bodies (Food Safety; Trade and Business Development; Language; and Aquaculture and Marine) will have Boards. In the case of the Food Safety Promotion Board, it was necessary, in order to secure agreement, to accept that the Board would be of an advisory character. The Special EU Programmes Body and the Waterways Ireland Body will be in the nature of executive agencies headed by Chief Executives reporting to the relevant formations of the North South Ministerial Council. But all of the Bodies will have Chief Executives. In the light of initial resistance in some quarters to the idea of having any Boards, this represents a very satisfactory outcome. A further point of note is that in order to ensure

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that the Bodies get off to a good start, provision has been made for Interim CEOs to be in place from Day One, pending the appointment of the definitive CEOs by open recruitment in most cases. In addition, the necessary funding and staffing for the Bodies has been pre-agreed by the two sovereign Governments for Year One, at very satisfactory levels, with corresponding indicative figures for years two and three, when the Bodies would be expected to be operating at their full initial levels.

6 Key points to note in relation to individual bodies are, in the case of **Waterways Ireland,** the very satisfactory resolution which has been found to the issue raised by the wording of the 18 December statement, which was open to the interpretation that while the Body would have immediate responsibility for the Shannon-Erne Waterway, it would take over responsibility for the wider Shannon-Erne system and the island's other waterways only after the possible restoration and development of the Ulster Canal. As reflected in the Bill, it has now been agreed that in addition to immediate transfer of the Shannon-Erne Waterway, all of the island's currently navigable waterways will be transferred to the Body from 1 April, 2000, when a three-region structure - Eastern, Western and Northern - will come into effect. The Body is empowered to engage in promotion, including marketing and development of the tourism and commercial potential of the inland waterways for which it has responsibility. This Body thus has the opportunity and the capacity to make a major contribution to the development of parts of the island that have yet to reap the fullest benefit from tourism. The **Food Safety Body Promotion Board** will have responsibility in an area of key concern to the general public, as indicated by recent debates and controversies. It

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should be noted that while the Body will have an all island remit in relation to the promotion of food safety and will work in association with the existing food safety agencies, North and South, these agencies will continue to be responsible for inspection and enforcement. The Bill amends the Food Safety Authority of Ireland Act, 1998, with a view to a rational and effective division of labour with our Authority in the State and a clear operational remit for the Implementation Body. As provided in the Supplementary Agreement on the Bodies, it is intended that the Body will in an independent manner, through independent scientific advice, promote the safety and hygiene of food produced, distributed or marketed in the island of Ireland. To that end, the NSMC will appoint, in addition to the Advisory Board, an Advisory Committee including scientific experts and representatives of broader food safety interests.

7 The **Trade and Business Development Body** will exercise a significant range of functions including responsibility from the outset for a number of specific operational schemes, such as administering a programme to enable companies to undertake joint product and process development projects of commercial benefit; implementing an S&T awareness programme on a North/South basis; and implementing an innovation award scheme on the same basis. A sustained effort was made in the course of the negotiations to confer on the Body in addition, from the outset, the function of implementing on a North South basis a new Equity Investment Fund in partnership with the private sector and of operating existing equity investment funds. This encountered very strong resistance from British official and Unionist quarters, on the grounds that this was not specifically provided for in the 18 December Agreement. In

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the event, a compromise was reached whereby the Body will be tasked to bring forward to the NSMC within 3 months proposals on the development of a North/South equity investment fund programme for consideration and decision by the Council. The Taoiseach feels that this represents a satisfactory outcome from our point of view.

8 In relation to the **Special EU Programmes Body,** it should be noted that it will have significant functions in relation to post-1999 Structural Funds, including advising the North South Ministerial Council and the Finance Departments on the negotiation of the post-1999 Community Initiatives and the Common Chapter on co-operation between Northern Ireland and Ireland; preparing ,for the approval of the NSMC and in close consultation with the Finance Departments and other relevant Departments, detailed Programme proposals under the new Community Initiatives; and grant-making and other managerial functions in respect of Interreg III and of North South elements of programmes under other Initiatives. The proposals are to include recommendations on:-

- the structure of Measures for inclusion
- the allocations to measures
- the objectives of each measure.

The Body' s importance will, of course, be significantly enhanced if, as now seems likely, the recent visits by Messrs Trimble and Mallon to Brussels and Bonn and the supportive activities of the two Governments bear fruit in terms of major special programmes funding for Northern Ireland and the Border Counties in the post - 1999 period.

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9 The **Foyle, Carlingford and Irish Lights Commission** will be able to tap the significant potential for the development of aquaculture and marine tourism in the areas concerned, with obvious benefit to the economies of Cos. Donegal and Louth, following the extension of the functions of the Foyle Fisheries Commission to include Carlingford Lough and its basin and the extension of functions to cover the development of angling and marine tourism. Complex legislation is required to provide for the agreed function of the development and licensing of aquaculture and it has been agreed that this legislation will be brought forward in both jurisdictions before the end of 1999. Draft legislation on this matter had been already well advanced in this jurisdiction, in the context of the existing Foyle Fisheries Commission, and it should be possible to move this forward expeditiously but the Northern side are less advanced.

10 The Commissioners of Irish Lights is not a transferred matter under the scheme for devolution for Northern Ireland. It is a reserved matter for which the Whitehall Department of Environment, Transport and Regions has responsibility: the Secretary of State heading that Department is the Trustee of the General Lighthouse Fund which finances the three separate lighthouse authorities for (1) the island of Ireland (2) Scotland and the Isle of Man and (3) England and Wales. Under British 1973 - 74 Acts relating to Northern Ireland the matter could be made a transferred matter. However, British authorities take the view that the Commissioners of Irish Lights are cross-subsidised to the tune of about Ir.£9 million from the rest of the wider system in these islands. The Whitehall Department sought to exploit the opening to have Ireland,

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North and South, bear the full cost. The Irish side strongly resisted this as raising a separate matter, not covered in the Good Friday or18 December, 1998 agreements and insisted that the British should take the necessary steps to make the matter transferred and to make the new Body the lighthouse authority for Ireland, with no disturbance of the existing financial arrangements made in 1985, whereby the Irish Exchequer pays half the deficit in the cost of running the Commissioners of Irish Lights, insofar as it operates in and around the State.

11 It was not possible to resolve the matter in the time available. However, the Agreement provides that British and Irish legislation will be brought forward to make the Body the General Lighthouse Authority for the island of Ireland. This legislation will be brought forward, if possible, before the entry into force of the Agreement on the bodies but, in any event, as soon as possible thereafter. It is the Taoiseach's intention to maintain the maximum pressure on the British side to bring forward their legislation within the time remaining before devolution and the matter has already been raised with No. 10 Downing Street. The British side have given assurances that if this is ultimately not possible because of an early 'go live day' - after which their 1973 - 74 Acts will be superseded by the Northern Ireland Act 1998 - they will take the obligation to bring forward the legislation as soon as possible thereafter very seriously. The Bill now submitted dissolves the Commissioners of Irish Lights, repeals its founding Act (a 1700s Act) and revokes the 1935 Adaptation Order relating to the Commissioners. These provisions would, however, be subject to a delayed commencement procedure and the Bill provides for the commencement of its provisions on different days for different

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provisions or purposes. It would not make sense to commence these provisions until the British side had taken the requisite action. The intention in including these provisions is to signal the strong intention of the Irish side that the Commissioners' functions be vested in the new Body at the earliest possible date. However, because of the uncertainty on precisely what steps the British will take, the functions and powers of the Minister for the Marine and Natural Resources in relation to the Commissioners are not transferred to the NSMC at this stage. Once the situation clarifies, the opportunity of the envisaged legislation in relation to aquaculture and angling development could be taken to transfer the Minister's powers and functions to the Council, so far as appropriate. It should be noted that the inclusion of the CIL in the new Body accounts for over 300 of the provisional staffing complement of 870 for all six Implementation Bodies.

12 Finally, in relation to the **North South Language Body**, it should be pointed out that this will take the form of a single body with two separate parts, one concerned with the Irish language and the other with Ullans and Ulster Scots cultural issues, thereby safeguarding against any diminution of Irish language promotional effort. In point of fact, with the input of funding and enthusiasm from the Northern side, the Body, which will have more than double the staff of Bord na Gaeilge, should give a significant impetus to Irish language promotion on the island. The Irish side has ensured that the two agencies within the Body will operate almost completely independently of each other, thus ensuring that the Irish language agency will be able to operate in Irish which is stated in the Agreement to be its working language. It was not possible to

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establish two separate legal entities, as the Unionists would have resisted any appearance that more than six Bodies were being established. However, while preserving the legal fiction of a single Body, the agreed provisions ensure the full autonomy of the Irish agency within the Body.

13 Because the part of the Bill dealing with the Language Body will replace the Bord na Gaeilge Act, 1978, it is set out primarily in Irish in the Bill, with an English translation attached to facilitate British and Northern Ireland readers. A courtesy translation into Irish of the relevant part of the Agreement is also to be supplied to Deputies and Senators with the Bill.

14 Part VIII of the Bill makes provision in respect of matters common to all Bodies, including the transfer of staff to the Bodies; grants to Bodies; reports and accounts of Bodies; the application of the Ombudsman Act, 1980 and the application of the Data Protection Act, 1988.

15 Section 55 of the Bill remedies a deficiency in the powers of Bord Fáilte Éireann to establish companies whose objectives include promotion of tourism into areas beyond the State. This is, inter alia, to facilitate the establishment of the company responsible for international tourism marketing, agreed on 18 December, 1998. This is not one of the Implementation Bodies but nominally counts as part of the second tier of co-operation under the Good Friday Agreement but it was, of course, part of the bargain relating to Implementation Bodies on 18 December last. It is accepted on all sides that the tourism company must also be ready to operate as soon as possible. Detailed discussions resulted in papers

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agreed between the responsible Departments, North and South but the scheme for the company remains to be agreed with the Ulster Unionists. However, at the Taoiseach's recent meeting with the Northern Ireland First Minister Designate, it was agreed that tripartite discussions should take place at an early date to advance the preparations for the establishment of the company with a view having it ready to go operational following agreement on the Memorandum and Articles of Association at the first meeting of the North South Ministerial Council.

16 In the course of the intensive and difficult negotiations which led to the preparation of this Bill and its British counterpart, the Irish side was concerned to ensure two things above all:

first ,that the substance of the package agreed on 18 December - which was from our perspective very much at the minimalist end of the scale- should be fully maintained and built on to the maximum extent possible, and

second, that the legal mechanisms for establishing the Bodies, together with the financial and organisational arrangements, should be such as to ensure that the Bodies will be in a position to function fully and effectively from the entry into force of the Agreement

17 The Taoiseach and the Minister for Foreign Affairs are satisfied that both of these conditions have been met. Indeed, the outcome represents, in a number of respects, such as in regard to EU Programmes and Trade and Business Development, a worthwhile development and working out of what was agreed on 18 December. The fact that the British side were

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ultimately persuaded to rally to the original Irish view that the provisions regarding the Implementation Bodies should be set out in an International Agreement to be given the force of law in the State and at Westminster ensure that there is the necessary legal assurance and certainty underpinning the operation of the Bodies.

Impact on North South Interaction

18 The Taoiseach and the Minister for Foreign Affairs are also satisfied that, taken together with the separate programme of co-operation through existing bodies and having regard to the possibilities for further development through the work of the North South Ministerial Council, the Implementation Bodies will have the potential to significantly enhance North South interaction on this island.

19 The separate programme of co-operation through existing bodies arises from the requirement in the Good Friday Agreement to identify, in addition to at least six Implementation Bodies, at least six matters where existing bodies would be the appropriate mechanism for co-operation in each separate jurisdiction. The 18 December statement recorded agreement that specified aspects of transport, aquaculture, education, health, environment and tourism would be suitable for initial consideration by the NSMC in this regard; and that it would be open to the NSMC, by agreement between the two sides, to consider other matters. The relevant Departments have been asked to work out the details of this programme with their Northern counterparts and this is ongoing. The position in regard to tourism has been set out in paragraph 15 above.

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Implications for the Citizen

20 The Bill provides for the application of the Ombudsman Act, 1980, to the Implementation Bodies and, in the interest of harmonisation, provides for any necessary liaison and consultation with the Ombudsman for Northern Ireland. Under the Agreement to which the Bill gives effect, the Bodies will be subject to the data protection legislation applicable in each jurisdiction. Again, provision is made - in the Agreement - for liaison and consultation between the relevant authorities, North and South viz. the Data Protection Commissioner and the UK Data Protection Commissioner. In the absence, at present, of a statutory FOI regime in the UK, and given the substantial differences between the two jurisdictions, North and South, in terms of access to information, the Agreement provides that the Ministers responsible for freedom of information will as soon as practicable draw up a code of practice on access to information for approval by the North South Ministerial Council. Similarly, and for much the same reasons, the Agreement provides that each Body will draw up a Code of Conduct for approval by the NSMC, covering its aims and values, its obligations to the public and the accountability and conduct of its members and staff.

21 In addition, in order to avoid any problem that could arise from differences in the law of the two jurisdictions, including as could arise from varying court judgements of the law, as it applies to the Implementation Bodies, arrangements have been agreed for consultations between the Attorneys-General, as set out in the Exchange of Letters in Appendix I to this Memorandum.

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Exchequer Expenditure, Staffing and Costs

22 In ballpark terms, the Implementation Bodies, once they are set up and running, will involve some £56 million in annual expenditure, with a total staff of about 880. A breakdown of the provisional expenditure and staffing implications of the Bodies is set out below, for the years 1999 to 2001, on a North/South basis.

Implementation Bodies

	North	South	Total	
	Cost £m	Cost £m	Cost £m	Staff Numbers
1999	7	14	21	530
2000	13	38	51	800
2001	14	42	56	880

The Tourism Company will add about £22 million and 160 staff to the overall cost and staffing numbers set out above. A breakdown of the provisional expenditure and staffing implications of the six Implementation Bodies and the new Tourism Company is set out below.

Implementation Bodies plus Tourism

	North	South	Total	
	Cost £m	Cost £m	Cost £m	Staff Numbers
1999	10	30	40	700
2000	17	55	72	970
2001	18	60	78	1040

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The additional cost to the Irish Exchequer for the Bodies is still provisional, but is roughly estimated to be in the region of £5 to £10 million for 1999, rising to an extra £20 to £25 million in round terms by 2001.

A detailed breakdown of the provisional cost and staffing implications of each Implementation Body and the Tourism Company is set out at Appendix 2.

Amendment of Constitution - Steps

23 It may be helpful here to relate the Bill now submitted to the process, under the Good Friday Agreement and the Nineteenth Amendment of the Constitution Act 1998, for the amendment of Articles 2 and 3 of the Constitution. The British-Irish Agreement, which was done at Belfast on 10 April, 1998, has yet to be approved by the Dáil - hence the need for a motion to approve this Agreement, in addition to the other International Agreements referred to at paragraph 3 above. Article 4 (1) provides that it shall be a requirement for entry into force of the Agreement that (in summary) (a) the British constitutional legislation envisaged under the Multi-Party Agreement shall have been enacted (b) the amendments to the Constitution set out in the Multi-Party Agreement shall have been approved by referendum and (c) such legislation shall have been enacted as may be required to establish the North/South Ministerial Council; the Implementation Bodies; the British-Irish Council; and the British-Irish Intergovernmental Conference. Article 4 (2) provides that the British Irish Agreement shall enter into force on the date of the receipt of the later of two notifications to be exchanged between the Irish and British

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Governments, to the effect that they have each completed the requirements for entry into force. Article 4 (3) provides that, immediately on entry into force of the British-Irish Agreement, the Irish Government shall ensure that the amendments to the Constitution take effect. The relevant British Constitutional legislation has been enacted (in the Northern Ireland Act, 1998); the relevant amendments to our Constitution were approved by referendum last year; and the British-Irish Agreement Bill, 1999 and corresponding British Order make such legislative provisions as are required to establish the various institutions already referred to. Once it is enacted, therefore, it will pave the way for the amendment of our Constitution. However, the obligation to bring the amendment into force arises only when the British-Irish Agreement of 10 April, 1998 comes into force and this depends on the exchange of notifications, for the timing of which discretion is left to the two Governments. Clearly, it would not make sense to exchange notifications until an Executive had been formed in Northern Ireland - but it is clear that enactment of the Bill now submitted will lead to an increase in pressure, particularly from Sinn Féin, to form the Executive and bring the British-Irish Agreement into effect, thus establishing all the other Good Friday institutions, on the basis that, once Irish and British legislation on Implementation Bodies is enacted, all formal steps necessary have been taken.

Consultation with Departments

24 All the relevant Departments have been closely involved, together with the Office of the Attorney General and the Office of the Parliamentary Draftsman, in the drafting of the Bill and, more particularly, in regard to the closely related supplementary International Agreement on

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Implementation Bodies. The Taoiseach and the Minister for Foreign Affairs wish to take this opportunity to express their appreciation to all concerned for the enormous amount of work involved in progressing and bringing to a successful conclusion this key part of the Good Friday Agreement.

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