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25B. 81

ROINN AN TAOISIGH

Uimhir.....

To: Secretary General
Wally Kirwan

Cleared
30.11.99

From: Ann Whelan

Re: Memorandum for the Government on the Declaration Regarding the Amendment of the Constitution

1. I attach a draft Memorandum for approval by the Secretary General and the Taoiseach.

2. The text has been cleared by the Department of Foreign Affairs and the Office of the Attorney General. Amendments having been taken into account.

3. I also enclose a draft copy of the written advice which the Attorney General will give to the Government at the meeting.

4. If approved it is proposed to circulate to the members of the Government on Tuesday 30th p.m. or Wednesday 1st for Thursday's meeting.

30 November, 1999.

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Oifigí an Taoisigh agus an Aire Gnóthaí Eachtracha

Ref: S230/15/10/0021A
S230/15/10/0029A

I Nollaig,
Samhain, 1999

Memorandum for the Government

Declaration Regarding the Amendment of the Constitution

Decision Sought

1. The Taoiseach and the Minister for Foreign Affairs request the Government:

   (a) To note the Attorney General's advice regarding the entry into force of the British-Irish Agreement and the Declaration for the purposes of Article 29.7.3° of the Constitution.

   (b) to make the declaration regarding the amendment of the Constitution the text of which is attached at Annex 1 and which was approved by the Government on 29 March, 1999.

Background

2. Article 4 of the Agreement of 10 April, 1998 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland provides:

   (1) It shall be a requirement for entry into force of this Agreement that:

      (a) British legislation shall have been enacted for the purpose of implementing the provisions of Annex A to the section entitled "Constitutional Issues" of the Multi-Party Agreement;

      (b) the amendments to the Constitution of Ireland set out in Annex B to the section entitled "Constitutional Issues" of the Multi-Party Agreement shall have been approved by Referendum;

      (c) such legislation shall have been enacted as may be required to establish the institutions referred to in Article 2 of this Agreement.

   (2) Each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of this Agreement. This Agreement shall enter into force on the date of the receipt of the later of the two notifications.

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(3) Immediately on entry into force of this Agreement, the Irish Government shall ensure that the amendments to the Constitution of Ireland set out in Annex B to the section entitled "Constitutional Issues" of the Multi-Party Agreement take effect.

The compliance with Article 4 (1) of the Agreement was dealt with in the Memorandum for the Government of 29 March, 1999. The Irish and British Government will have exchanged the notifications referred to in Article 4 (2) prior to the Government meeting. The Attorney General will provide written advice to the Government at the meeting in regard to the entry into force of the Agreement in accordance with Article 4 (2). He will further advise on the making of the Declaration under Article 29.7.3.º of the Constitution to ensure compliance with Article 4 (3) of the Agreement.

Consultation with Departments

The Office of the Attorney General has been consulted and is in agreement with the terms of the Memorandum.

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ANNEX 1

Declaration of the Government under Article 29.7.3° of the Constitution

WHEREAS subsection 3° of section 7 of Article 29 of the Constitution provides that if the Government declare that the State has become obliged, pursuant to the British-Irish Agreement done at Belfast on the 10th day of April 1998, to give effect to the amendment to the Constitution referred to in that Agreement, then, notwithstanding Article 46 of the Constitution, the Constitution shall be amended in the manner specified in the said subsection 3°,

NOW the Government hereby declare for the purpose of the said subsection 3° that the State has become so obliged.

GIVEN under the Official Seal of the Government,
this 2nd day of December, 1999.

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Taoiseach

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DRAFT

MEMORANDUM

To: **Mr. Frank Murray, Secretary to the Government**

From: **Attorney General**

File Ref: **B1927**

Re: **Entry into force of the British-Irish Agreement and Declaration for the purposes of Article 29.7.3° of the Constitution.**

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1 The British Government has enacted the Northern Ireland Act, 1998 for *inter alia* the purpose of implementing the provisions of Annex A to the section entitled "Constitutional Issues" of the Multi-Party Agreement, 1998. See in particular sections 1 and 2 of the Northern Ireland Act, 1998. Accordingly the requirement of Article 4(1)(a) of the British-Irish Agreement, 1998 ("the Agreement") has been completed by the United Kingdom. ✓

2 The amendment to the Constitution of Ireland set out at Annex B to the section entitled "Constitutional Issues" of the Multi-Party Agreement was approved by the people of Ireland in a referendum held on the 22nd May, 1998. Accordingly the Irish Government has completed the requirement of Article 4(1)(b) of the Agreement. Article 29 has, in fact, been amended by the Nineteenth Amendment of the Constitution Act, 1998. ✓

3 Such legislation as is required to establish the institutions referred to in Article 2 of the British-Irish Agreement has been enacted in both jurisdictions. In this jurisdiction the British-Irish Agreement Act, 1999 (No. 1 of 1999) and the British Irish Agreement (Amendment) Act, 1999 (No. 16 of 1999) have been enacted. In the United Kingdom the North South Co-operation (Implementation Bodies) (Northern Ireland) Order, 1999 (SI 859/1999) and the North South Co-operation (Implementation Bodies) (Amendment) (Northern Ireland) Order, 1999 (SI 2062/1999) have been enacted. Accordingly the requirements of Article 4(1) (c) of the Agreement have been complied with by both Governments.

4 I have seen the Government decision of the 29th of March 1999 authorising the Minister for Foreign Affairs to notify the British Government in writing of the completion so far as the Irish Government is concerned of the requirements for the entry into force of the Agreement. ✓

order reversed & change

I have seen the notification signed by the Secretary of State for Northern Ireland addressed to the Minster for Foreign Affairs and dated the 2nd of December 1999 and the replying notification signed by the Minister for Foreign Affairs addressed to the Secretary of State for Northern Ireland of the same date in which each Government informs the other of the completion, so far as it is concerned, of the requirements for the entry into force of the Agreement. These are the requirements set out at Article 4 of the Agreement and referred to at paragraphs 1-3 of this memorandum.

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more detail.

6 Article 4 (2) of the British Irish Agreement provides that each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for the entry into force of the Agreement and that the Agreement shall enter into force on the date of the receipt of the later of the two notifications. As the notifications were exchanged this morning, I am now advising that the Agreement has entered into force.

7 I further advise that the Government is immediately obliged to ensure that the amendments to the Constitution of Ireland set out in Annex B to the section entitled "Constitutional Issues" of the Multi-Party Agreement take effect as required by Article 4(3) of the Agreement.

8 Article 29.7.3° of the Constitution provides for the manner in which the said amendments to the Constitution are to take effect. In order for the text of Articles 2 and 3 of the Constitution set out at Annex B to the section entitled "Constitutional Issues" of the Multi-Party Agreement to be substituted for Articles 2 and 3 of the Constitution, the Government will have to declare that the State has become obliged, pursuant to the Agreement, to give effect to the amendment of the Constitution referred to therein. I have seen the form of the proposed declaration and advise that it should now be made by the Government.

9 The time for the making of the declaration in the Article 27.7.5° of the Constitution has, in accordance with its terms, been extended by the Declaration under Article 29.7 of the Constitution (Extension of Time) Act, 1999 (No. 12 of 1999)

10 As soon as the Government makes the declaration, the new texts of Articles 2 and 3 will be substituted for the existing Articles 2 and 3 of the Constitution.

Michael McDowell S.C.
Attorney General
2nd December 1999

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