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Secretary Gallagher

Draft Suspension Agreement

I attach a copy of a note by Helen Blake analysing a British draft of the above, which I received from Jonathan Stephens yesterday evening. The arrangements are broadly the same as envisaged in July, with two main differences:

(a) the transitional period during which arrangements would be agreed for the suspension of the implementation bodies, which was four months, is now "the minimum practicable period": during the preparation of an information note on the suspension issue for the UUP during the Review, we agreed on this, but we need to consider whether it is still acceptable

(b) in July we would have had a two day period after suspension to introduce the (very brief) necessary legislation: my interpretation of the present draft is that this legislation would have to be in place before suspension could take effect.

I am copying the papers to D/Taoiseach and the A-G's office. The lead role on the Agreement might fall to us, and on the legislation to D/Taoiseach.

Rory Montgomery
2 February 2000

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International Agreement on Suspension Arrangements

1. We have received from the British a draft exchange of letters which would constitute an Agreement between the two Governments suspending the operation of the British-Irish Council, the NSMC and providing for the wind-down of the operation of the Implementation Bodies.

2. Unlike its July predecessor, prepared after the "Way Forward" talks, the draft does not specify the circumstances under which suspension would take place or under which the operation of the institutions would be restored. It simply states that the suspension agreement will enter into force on the date the British Government receives the Irish Government's reply to their letter, and that suspension "may be terminated by joint decision of the British and Irish Governments having regard to any process of review...".

3. Under the terms of what is proposed:

- suspension arrangements apply "immediately" on the entry into force of the agreement.

- the operation of devolved government in Northern Ireland is suspended in accordance with the Northern Ireland Act, 2000

- the NSMC and the BIC "shall not convene or otherwise operate".

- the BIIGC "shall continue to operate" without the participation of Northern Ireland Ministers.

- "within the minimum practicable period" the two Governments shall agree arrangements for the transfer of the functions of Implementation Bodies to the relevant Departments and agencies, North and South. Pending the making of such arrangements, the Bodies shall continue to operate "only to the extent necessary" to carry out its activities or to comply with legal obligations, but the two Governments cannot confer new functions on the Bodies.

- During the period of suspension, the two Governments exercise the functions of the NSMC in relation to Implementation Bodies but cannot decide on new policies or actions for the Bodies. The functions of Northern Executive in relation to the Bodies, including funding, are exercised by the British Government.

- the suspension arrangements "may be terminated by joint decision of the British and Irish Governments having regard to any process of review.." and in relation to the NSMC, BIC and Implementation Bodies, such termination shall be given effect by a further exchange of letter and would take place on the same date as the

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operation of the Assembly and Executive was restored.

Comment

4. The draft seems acceptable in most respects and, while more straightforward, essentially proposes the same arrangements as were agreed in July.

5. While the July draft proposed that agreement on arrangements for the Implementation Bodies should be reached "no later than four months" after the suspension of the other institutions, this draft proposes agreement "within the minimum practicable period".

6. The July draft allowed us to enact legislation in relation to the Implementation Bodies within 2 days of the exchange of letters. The current draft would seem to require that such legislation to be in place before exchange.

7. The draft proposes that the suspension arrangements "may" be terminated by joint decision the Governments. To avoid ambiguity, this might read "may only".

Helen Blake
2 February 2000

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