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Mr Abbott

Mr Dygdale, Mr Bloomfield, Mr House

Eg Dr Poner

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MUFAX ROOM

cc PS/PUS (IAB) - M
PS/Bir Evart Bell - M
Hr Marshall
Hr Melloch - M
Hr Wyatt - M
Hr Burns
Hr Gilliland - M
Hr Buxton - M
Hr Angel
Hr Rlatherwick - M
Hiss Christopherson
Hr Harrington
Hr Wolstencroft
Hr Shepherd

DRAFT SPEECH FOR THE SECOND READING DERATE

- 1. I attach a first draft of a speech for the Secretary of State to use in Monday's Second Reading Debate. It reflects both your own comments, and the points which Mr Patten injected at our meeting this morning. The latter emphasised the political need to:
 - Recapitulate the central themes of the Government's approach;
 - b. Avoid leaning too far, at this stage at least, in the direction of the SDLP. Since to do so would be particularly ill received on the Conservative benches; and
 - c. Emphasise, and link, the scale of the British commitment to the people of Northern Ireland (rather than to the Union) with the expectation that the people of Northern Ireland would for their part display a degree of political realism, and the willingness to collaborate. The Bill itself should be presented as an example of EMG's commitment.
- 2. In general, the speech follows the normal pattern for such occasions. In particular, it contains:
 - a. An <u>introduction</u> which picks up the White Paper Debate, summarises the Government's general philosophy; and explains how the Bill fits into, and modifies, the existing constitutional framework;

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- b. An account of the Clauses of the Bill together with the Schedules, the latter being dealt with in less detail; and
- c. A peroration.
- Gopy recipients will note that:
 - a. The passage on Anglo-Irish relations was drafted before Mr Haughey's intervention in the Falkland Islands crisis. This section may accordingly need to be substantially modified in the light of developments between now and next Monday;
 - b. We propose that the Secretary of State should use his remarks on Clause 3 (the role of the Assembly before devolution) to announce his intention to empower the Assembly by means of a Government amendment at Committee Stage to discuss law and order matters. There seems advantage in exploiting this announcement to show the Government's responsiveness to points made both in the debate on the White Paper, and in Morthern Ireland itself;
 - c. As little as possible is said about the thorny questions dealt with in the Schedules, especially Schedule 2.
- 4. It would be helpful if copy recipients could let either myself (on 01-233 7943) or Mr Abbott have any suggested improvements as soon as possible, in order to enable us to let the Secretary of State have a revised version not later than close of play tomorrow.

SAM ASIL P H HELL P 5 Hay 1982

DRAFT SPEECH FOR THE SECOND READING DEBATE

- 1. I beg to move, that the Bill be now read a second time.
- 2. I have it in command from Her Majesty The Queen to acquaint the House that Her Majesty, having been informed of the purport of the Bill, has consented to place her interests and prerogative, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.
- 3. At the end of last month, this House debated the Government's White Paper, Morthern Ireland: A Francwork for Devolution. That debate was a searching one. The difficulties we face are daunting; the Government is under no illusion that it has discovered the magic formula for solving the problems of Morthern Ireland that have eluded all our predecessors. But I remain firstly of the view that we must find ways of giving to the people of Morthern Ireland greater control over their own affairs; and that we must embark on that process now. Translating proposals into action is for the people of Morthern Ireland. The most that we can do is to provide a framework which provides the opportunity for the restoration of devolved government.
- 4. But if the debate on the White Paper was probing, it was also, I believe, constructive. I welcome the support and understanding that was expressed from various quarters in the House for the Government's proposals and also for the philosophy on which the Government's strategy is based. There appears now to be a general, if qualified acceptance that although Direct Eule has won respect for its impartiality it nevertheless cannot provide a long term solution to the political problems of Morthern Ireland. Most Honourable Hembers would also agree that the longer direct rule continues, the harder and more painful will be the task of political and economic reconstruction.

Finally, I believe that there was wide recognition in the House that the only way forward is by means of a return to some form of devolved government constructed on a basis which is acceptable right across the community. For this is the heart of the matter: unless the political leaders of Northern Ireland can fashion just, democratic and therefore durable arrangements which can command the respect and allegiance of the Northern Ireland people as a whole, there can be no end to political and social disintegration; no return of foreign confidence that Northern Ireland is a good place in which to invest; no lasting revival of the prosperity which is the Province's birthright; no final end to the depredations of terrorism.

- 5. The Government's proposals, as set out in the provisions of the Bill, are designed to offer a new opportunity to achieve these goals. They are the product of careful thought, and we are convinced both that they can work, and that with goodwill, they should work. We are also convinced that it is imperative to start making progress now. I hope that the House will share our view that it is essential to keep up the political momentum. The House is accordingly invited today to consider this Bill embodying, as it does, the proposals in the White Paper of last month.
- 6. Esturally, Her Majesty's Government will propose that the Committee stage of the Bill, since it deals with constitutional matters, should be on the Floor of the House.
- 7. I do not intend to rehearse further the general philosophy of our approach. That was set out in the White Paper and debated less than a fortnight ago. But the translation of the language of the White Paper into the language of a Bill highlights matters which are of special Parliamentary concern, particularly in a Second Reading debate. Thus, before I turn to the detailed proposals in the Bill, the House may find it helpful if I sketch, first, the

changes this Bill seeks to bring about, and how its provisions are esigned to fit into the existing constitutional framework in Morthern Ireland.

- 8. The essential point is that the Bill seeks to do no more than give legislative effect to the proposals of our White Paper. However, although its provisions reflect a radically different approach to the devolution of legislative and executive powers and to the formation of a Morthern Ireland administration, the Bill nevertheless seeks to achieve its objectives, so far as possible, within the constitutions framework established by the Morthern Ireland Constitution Act "973, and the Morthern Ireland Act 1974.
- 9. In essence, this Bill contains provisions under which a new Morthern Ireland Assembly, and a Northern Ireland administration answerable to it can resume the legislative and executive functions suspended by Schedule 1 of the Morthern Ireland Act 1974. The affect of the present Bill is therefore to set in motion once again much of the 1973 machinery since the system of government envisaged is based on the Constitution Act. Though far reaching changes will be made to it, that Act established certain key constitutional features which will remain unaffected by the Bill. Three of these are of particular importance.
- 10. The first and most important, is that Northern Ireland's position as a constituent part of the United Kingdom will remain as in Section 1 of the Constitution Act. There will be no change, let me say it once again, there can be no change in that status without the consent of a majority of the people of Northern Ireland voting in a border poll. I do not know what more any government could say, or do to reassure those who see in this Bill mose hidden menace to the unity of the Kingdom unless, of course, they were to undertake to retain the union irrespective of the wishes of those who live

- there. A commitment which would be both absurd, undemocratic and a denial of the legitimate aspirations of those who seek by peaceful persuasion to change that constitutional position.
- 11. Second, Part III of the 1973 Act makes extensive provision for the prevention of religious and political discrimination in the Province. This too will remain unchanged by the Bill. I believe that fundamental human rights are well protected in Northern Ireland. Nevertheless, I understand the position of those wishing to see further statutory safeguards against the abuse of power specified from the outset in any devolution arrangements. I would say to them that these are precisely the sorts of issues which an elected MI Assembly should debate, and the Government would take careful account of any recommendations which the Assembly might make.
- 12. The House will also recall that the Constitution Act places legislative responsibilities into 3 categories. Since they will remain unchanged, and are presupposed throughout the present Bill it may be worth recalling what they are. They comprise "excepted" matters which will remain permanently the responsibility of this Parliament matters such as the Grown, Poreign Affairs, and Defence.
- 13. Then there are "reserved" matters. The responsibility for these would remain initially with Westminster, but it could be transferred to local control at some future date once a durable and stable system of government was established again in Northern Ireland. These chiefly concern various matters in the law and order field which, for the time being, I will continue to administer.
- 14. And last come the "transferred" matters which comprise everything else. It is these, which are now the administrative responsibility of the 7 Morthern Ireland Departments, for which the Government

envisages responsibility passing either in whole or in part to a devolved administration.

15. But if much of the existing constitutional structure will continue in being, the House should not thereby either underestimate the significance, or the novelty, of the changes to the 1973 machinery proposed by the Bill. I should like, therefore, very briefly to summarize the changes which the House, particularly in this Second Reading debate, may want to examine later in more detail.

16. The most important of these concern the formation of an administration. The major differences we therefore envisage from the Constitution Act are three. <u>First</u>, the Bill lays responsibility for making proposals for a devolved administration squarely on the Assembly itself. <u>Second</u>, new provision is to be made in order to enable legislative and executive power to be devolved on the Assembly in one of two ways: either by a complete return of all the matters in the transferred category which were devolved on the Assembly in 1973, or by devolving responsibilities in more than one stage. And third, the Assembly is to have vitally important scrutinising and monitoring functions pending devolution. The Bill accordingly sets out the Assembly's functions before it assumes power.

17. I should like to conclude my general comments on the Bill, Mr Speaker, by reminding the House that it contains nothing which is inimical to the development of good relations with the Republic of Ireland in the context of the Anglo-Irish Intergovernmental Council or in any other way. Or which anyone could misconstrue as a denial of the legitimate aspirations of those who seek, by peaceful and democratic means, a reunited Ireland. Indeed the Government considers that it would be a natural and desirable development if the establishment of the Anglo-Irish Intergovernmental Council could be complemented by the setting up, at some appropriate moment, of an Anglo-Irish

Inter-Parliamentary body. This is, however, a matter for our two national Parliaments to decide. And the House will observe that there is nothing in the Present Bill that would prevent a Borthern Ireland administration from reaching bilateral agreements with the Government of the Republic of Ireland in the field of transferred functions, if they so wished, and thus developing further the long tradition of practical co-operation between both parts of Ireland to their mutual benefit.

18. I now turn to the detailed provisions of the Bill.

- of the White Paper, goes to the heart of the whole Bill. It enables the Northern Ireland Assembly to submit proposals to the Secretary of State for the resumption of devolved government in Northern Ireland; it allows for progressive devolution; and it prescribes tests for the submission of devolution proposals I shall, Mr Speaker, deal with each of these points in turn.
- Under Section 2 of the Constitution Act, devolution of 20. legislative and executive functions could take place if it appeared to the Secretary of State that an Executive could be formed which was likely to be widely accepted throughout the community. The object was to secure full devolution in one move, after agreement among the parties on the composition of a power-sharing" Executive. But there are enough obstacles to be surmounted in returning to a devolved administration without adding to them either a requirement to achieve, as it were, a "hole in one", or declaring in advance that only some Procrustean formula for government would be acceptable. The provisions of this clause are accordingly more flexible. As the Government explained in paragraphs 41 and 42 of the White Paper, our aim is to give the people of Northern Ireland themselves, through their elected representatives, the fullest opportunity to make proposals for an acceptable form of government. It is for that reason, Mr Speaker, that there is no requirement in this Bill for a Northern Ireland administration to be composed in a particular way although Sub-section 2 places an obligation on the Assembly, when submitting proposals for full devolution to include proposals for the composition of an executive, and other office holders, while in putting forward proposals for partial

devolution, it must include proposals as to the appointment of a Head of Department for each of the Departments whose functions it seeks to devolve. Any proposals that did not deal with such appointments would be wholly lacking in realism. Let me emphasise once again that the Government is not committed to, does not favour any particular arrangements. These will be for the elected representatives of Northern Ireland to hammer out for themselves.

- Il. Some may say that we are asking more of these elected representatives even than in 1973. That unless we impose a particular form of government, nothing will be accomplished by the Assembly except talk, and yet more talk. But I cannot agree that trying to impose a particular system of government will increase the chances of proceeding to devolution. This House accepts, I believe, that unless the Northern Ireland political parties can agree amongst themselves, then no set of institutions of whatever provenance can possibly work. If that is so, Mr Speaker, the best way of devising arrangements that will work, is to give the responsibility for devising them out to the very people that will have to operate them.
- It is also because we wish to leave the greatest possible scope for local initiative, that the Bill makes provision for devolution in stages. The Government is only too well aware that the differences among the local parties are such that agreement on a basis for full devolution will not be found easily. But there are many issues, particularly in the economic sphere, on which they already make common cause both in the European Parliament and elsewhere. Accordingly, there might be agreement on a scheme of partial devolution. To accommodate this possibility, provision is made in this clause for the Assembly to make

proposals for the partial devolution of matters classified as "transferred" in the Constitution Act.

- 23. Proposals put forward under subsection 1(a), that is for full devolution, will be designed to lead to the returning to the Assembly and a Northern Ireland administration of legislative and executive responsibility for the "transferred" functions of all the Northern Ireland departments. But we do not propose that any matters which are "reserved" under the Constitution Act should, at this stage, be devolved. However, the Government committ itself, in paragraph 54 of the White Paper, to consider whether any of the matters currently placed in the "reserved" category in the Constitution Act should be removed to the "transferred" category in due course. Any such development would depend on the establishment of a durable and stable system of government in Northern Ireland. [The Government recognises, however, the importance to Northern Ireland representatives of questions of law and order, to which I shall return in my comments on Clause 3.]
- If. I come now to the two tests required, by subsection 4, for the submission by the Assembly of proposals for devolution.

 These have given rise to some misunderstandings and have also,

 I am afraid, been the subject of some misrepresentation. It has,

 for example, been alleged that they amount to a hidden requirement that any form of devolved government must involve some form of power sharing.
- 25. Let me, Mr Speaker, remove any such misapprehensions. The tests provided for by this Bill mean exactly what any reasonable and fair minded individual would take them to mean. The subsection

any proposal it wishes for how powers should once again be devolved. They may for instance propose a system of "power-sharing", or they may not. That is entirely a matter for the Assembly to decide. But whatever the proposals may be, they must have the support of at least 70% of all the members of the Assembly. That figure is simply intended to ensure that any devolution proposals are acceptable to representatives of both sides of the community. For it is a fact of political life in Northern Ireland that no institutions of government there will ultimately be durable unless the community as a whole can acquiesce in them.

- 21. Indeed if Honourable Members seek further evidence why they should not be mesmerised by the figure of 70%, it lies in subsection 4(b). This provides that the Secretary of State may lay proposals for devolution before Parliament even if they do not have, for whatever reason, the support of exactly 70% or more of the Assembly provided that they have the support of 50% of the Assembly and that the Secretary of State is satisfied that they are likely to command widespread acceptance throughout the community. This is in accord with the principles set out in paragraph 42 of the White Paper.
- 27. In either case, it will be for Parliament to make the final judgement on whether proposals for devolution satisfy the criterion of acceptability.
- It is only when proposals for devolution have been made, Mr Speaker, that Clause 2 will operate. A clause which, it would be convenient to consider along with Schedule 1 since both are

concerned with giving effect to what I may term the "core" provisions of Clause 1. Clause 2 in fact provides for full or partial devolution and the corresponding general or partial suspension of direct rule which was introduced by Schedule 1 of the Northern Ireland Act 1974. It gives Her Majesty power to do this at any time after proposals from the new Assembly have been laid before Parliament. The Government's intention, as I have already explained, is that such proposals would be debated in Parliament, and, in the light of that Debate, the Government would decide whether to recommend to Her Majesty the making of a devolution Order. This House could not, in my opinion, Mr Speaker, receive a clearer demonstration that it is not the Government's intention . to diminish the authority of this Parliament than by ensuring that the Government and Parliament will have the last word in deciding that the criterion of acceptability to both sides of the community is met.

- 2f. At this stage, I would only wish to draw the attention of the House to three further aspects of these provisions. The first is that under subsection 1(b), powers would be devolved, under partial devolution, on a departmental and not a functional basis. In other words, a partial devolution order would relate to matters within the responsibility either of a single "specified" Morthern Ireland departments.
- 30. The second point concerns subsection 4, which provides that no partial devolution Order under subsection 1(b) shall specify the Northern Ireland Department of Finance and Personnel or any matters within its responsibilities. This is, I believe,

only common sense. The Department of Finance and Personnel could scarcely be devalved while some Morthern Ireland departments remained under the control and direction of the Secretary of State and it would make no sense to split the Department of Finance and Personnel into two parts corresponding to devolved and non-devolved departments with a possibility of further splitting as more departments became devolved. We intend, however, that devolved departments should nevertheless have wide discretion to establish their own priorities in expenditure. The total resources which would be made available to the devolved departments as a group would of course, have to be settled between the Secretary of State and the Heads of those departments. But given goodwill and co-operation, I believe that these arrangements would work well.

- 31. I come now to Schedule 1. Part I provides for a return to full devolution and thus, in effect, reactivates the machinery established by the Constitution Act, as amended by the other provisions of the Bill. Part II, which makes provision for partial devolution, is rather more complex. The detail is, of course, a matter for the Committee Stage, but the essence of Part II is that under partial devolution, direct rule as provided for by Schedule 1 to the Morthern Ireland Act 1974 will continue in respect of those departments which are not devolved, while legislative and executive responsibility will return to the Assembly and a Borthern Ireland administration in respect of those matters that are devolved.
- 32. I should add a word about Paragraph 8(2) of Schedule 2 since it deals with a point raised during the debate on the White Paper. Those who, like the Rt Hon Member for Crosby, are concerned lest there be inadequate scrutiny of expenditure on the part of the devolved Departments may be reassured by this paragraph. For it revives the requirement in Section 25(8) of the Constitution Act

for the Assembly to establish a committee to examine how monays charged on or appropriated out of the Consolidated Fund of the Northern Ireland have been applied. In other words there will be, in respect, of the 'specified' Departments, a MI Public Accounts Committee.

The House will readily see why Clauses 3 and 4, to which I now 33. turn, constitute innovations of the greatest importance. They provide that even before the Assembly acquires legislative functions following devolution, it will nevertheless have, from its inception, important scrutinising, deliberative and consultative functions. To enable the Assembly to carry out this work, it will be obliged, under Clause 4, to establish a committee corresponding to each Morthern Ireland Department, and provision is also made for the payment of the Chairmen and Deputy Chairmen of these committees. The House will see that there is provision for the Secretary of State to refer to the Assembly Proposals for Orders in Council as well as subordinate instruments, and to consult it about other matters affecting Northern Ireland whether or not they lie within the transferred field. The Government intends to involve the Assembly in the consultation process on proposed legislation so that members can make their views known and have them considered by Government before the legislation is laid before Parliament. The critical importance of this innovation, therefore, is that the new Assembly will provide what up to now has been lacking during direct rule a local forum in which the views of the elected representatives can be expressed, formulated and presented to Government and Parliament. We believe that it is vital for the political health of Morthern Ireland that locally elected representatives should be able to engage once again, and as soon as possible in political dialogue and discussion, and be able to influence policy more directly than at present. I can assure the House that the Government will give

the most careful consideration to the recommendations of the Assembly, both in regard to legislation and other matters. And, while the Government naturally cannot commit itself in advance, I would very much hope that we would find ourselves able to accept such recommendations when they also enjoyed a wide measure of cross-community support, and did not conflict with the Government's wider financial and other policies.

- During the debate on the White Paper, various Honourable Members 34 from Northern Ireland suggested that, even in the pre-devolutionary the Assembly should be able phase, to discuss questions of law and order as well as "transferred" matters. The House will see that the Assembly would not be empowered by Clause 3(1)(a), as it stands, to discuss reserved matters, including questions of law and order - even though this restriction is substantially qualified already by subsections 3(1)(b) and subsection 2 which provides for the Secretary of State to refer matters, including legislation in the reserved area to the Assembly for consideration. The Government has always, however, recognised that questions of law and order are a vital concern to the people of Morthern Ireland and their elected representatives. And, as the House knows from paragraph 54 of the White Paper, we slways envisaged that some informal arrangements could be devised to enable the Secretary of State to consult the Assembly about security matters. Hevertheless, the arguments put forward during the White Paper debate have led us to think again, and convinced us that the Assembly should be able to discuss law and order matters as of right. We shall, therefore, be tabling a suitable amendment for this purpose.
- 35. There are (two) other points in Clause 4 to which I should like briefly to draw the attention of the House. First, the requirement in that Clause to have departmentally related committees only applies to matters which have not been devolved. It will be for the Assembly

to decide what committees it wishes to introduce in respect of devolved matters - under either partial or full devolution. The only exception concerns the statutory requirement for a Public Accounts Committee to examine expenditure by devolved departments.

- 36. I should also like to clarify the function of the Presiding Officer in relation to appointments to the statutory committees. When the Presiding Officer comes to make appointments to Committees, the House will see that, under Clause 4(2), the Presiding Officer will be strictly bound to secure, so far as practicable, that the balance of parties in the Assembly is reflected so far as practicable in the appointments of the Chairmen, of the Deputy Chairmen and of the members of each committee. That subsection reflects of our general philosophy that whatever arrangements may be made, they must be able to command the maximum degree of cross-community support.
- Clause 5, Mr Speaker, contains a number of necessary provisions -37. although provisions which I hope it will never be necessary to invoke. They cover the possibility of breakdown in the Assembly, either before devolution takes place or during either partial or full devolution. It enables Her Majesty, first, by Order in Council, to dissolve the Assembly. It also enables a partial or full devolution Order to be revoked by Order in Council if it becomes clear that there is no longer widespread acceptance in the community for devolution. In addition to the powers to dissolve the Assembly conferred by this Clause, Section 27(5) of the Constitution Act will enable the Assembly to be dissolved if it became impossible to make appointments to Headships of Department and to the Morthern Ireland Executive, which will command widespread acceptance throughout the community. This power provides an additional option if the devolved administration had lost the confidence of the community as a whole, but the Secretary of State thought that the election of a new Assembly might enable a

fresh administration to be formed which would revive that confidence.

From if there is no immediate prospect of fresh devolution proposals acceptable to both sides of the community the Assembly could continue in being if it were performing a constructive role. The effect of the double test prescribed under subsection 5(1) is that, under such circumstances, the Assembly would continue in being. There is nothing paradoxical in this. It simply reflects the likely future importance of the deliberative and consultative role of the Assembly which I have already described – even in the absence of a devolved administration.

Clause 6 requires the Morthern Ireland Constitution and Assembly 39. Acts 1973 to be smended in accordance with Schedule 2. The Schedule affects a number of matters, including the detailed arrangements for appointments to the Northern Ireland Executive, and to the Headship of Morthern Ireland Departments. The provisions concerning these appointments are flexible. For example, it will be for the parties commending the necessary support in the Assembly to decide whether there should be a Chief Executive and whether to operate a conventions system of Cabinet government. Again, it will be the parties to recommend which heads of departments, if any, should be members of the Executive. The statutory consultative committees required in the Constitution Act are abolished: it will be for the Assembly to decide its committee structure after devolution. Provision is also made for the Assembly's privileges and for the remuneration of its members - and I shall, in due course, be laying a draft Order for approval before this House. The Schedule also modifies the arrangements for the dissolution and prorogation of the Assembly - arrangemen I should explain, which are distinct from, and without prejudice to, the provisions of Clause 5, which allows for the Assembly to be dissolved at any time short of its natural duration. There is also provision for legislation on "reserved" matters by Order in Council after devolution takes place. Given the difficulties of finding sufficient Parliamentary time to legislate on vitally important law and order matters by Bill I believe it essential to have this fallback power. And there are another of other more technical and more consequential provisions which I hope will not engender controversy. The most important single objective of the changes proposed in this Schedule is, once again, to give greater flexibility to the Assembly and thus, I hope, a greater chance of success - in formulating its proposals for devolution than was provided by the 1973 Act.

- in various Acts which are repealed to the extent shown in Column 3 of the Schedule.
- arrangements that will be sensitive to the changing needs and political realities of Borthern Ireland. Even less than the 1973 Constitution Act does it provide for institutions which are set and immovable, unable to respond to changes in circumstances in the Province. This open-endedness in our proposals offers, I believe, the best prospect for their success and the least excuse for failure on the part of those who claim to find them unworkable.
- I hope, therefore, that the provisions of this Bill will offer 41. a chance for the people of Borthern Ireland to take new steps, however small and tentative they may be at the beginning, towards political stability and lasting peace. There is nothing inherently impossible or unworkable about the proposals in any part of this Bill provided only that there is goodvill, and a real desire for reconciliation, peace and justice. That is why the emphasis throughout this Bill has been on trying to create a framework which will allow the greatest possible scope for initiative on the part of the representatives of the people of Morthern Ireland. A framework in which all sections of the community can accept that they have far more to gain by working together than by what I can only call constitutional vandalism. I believe that reaching the necessary agreement is the touchstone of the Community's ability to come to terms with its problems.
 - Morthern Ireland's political leaders for statesmanship, political courage and realism. Let no one doubt our commitment to Morthern Ireland. That is abundantly clear from the deployment of troops

the Morthern Ireland economy. I believe that the people of the rest of the United Kingdom hope very much that elected representatives will take the opportunity for political development which these proposals provide. The peace, stability and prosperity of all sections of Morthern Ireland society depend on their willingness to do so.