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SECRETARY OF STATE (L&B)

cc PS/Dr Boyson (L&B)
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DEVOLUTION : POSSIBLE DISCUSSION PAPER

I have already sent you a submission (not copied to all) on the external dimension of our current political initiative - ie the discussion with the Irish Government of a possible Anglo-Irish Agreement. There is also an internal dimension directed towards re-establishing in Northern Ireland a system of devolved government on a basis acceptable to both communities. (see First Day Briefs III, IV and V).

2. The original intention was to move forward concurrently on these twin tracks, but this has not proved possible. During the past year your predecessor and Mr Patten have had a number of talks on devolution with the leaders of the political parties in Northern Ireland, but little progress has been made. Because of the differing attitudes of the main parties (the Unionists wanting some form of majority rule and the SDLP insisting on power-sharing) it would in any case have been difficult to find common ground; but other circumstances have aggravated the problem. Although we hoped at one time that the Anglo-Irish negotiations would facilitate the involvement of the SDLP in making progress on devolution, the party made it clear that they were not interested in talking about this subject until they saw what emerged from the Anglo-Irish process. The DUP for their part refused to talk about devolution unless they had an assurance that the British Government was not proposing to give the Irish Government any role in the affairs of the North. The UUP, with

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neir strong base in Westminster, have never been very interested in devolution. And the latest joint UUP/DUP approach to the Prime Minister on 30 August suggests that both parties now see devolution only as a means of sabotaging the Anglo-Irish talks. Meanwhile, the District Council elections in May this year and the return of 59 Sinn Fein councillors, has so raised the political temperature that the chances of Unionists and nationalists sitting down to talk about anything are extremely remote. In the immediate aftermath of an Anglo-Irish Agreement the Unionist parties would be too hostile to engage in discussions on devolution; while if there were no Agreement the SDLP would be too demoralised to do so. In either event, it is most unlikely that for some considerable time the parties would reach agreement amongst themselves or even be prepared to acquiesce in some scheme put forward by HMG. The outlook for devolution, therefore, is not promising and it may be that, whatever the outcome of the Anglo-Irish talks, we shall have to continue for some time with Direct Rule.

3. Nevertheless, Direct Rule, while it may provide good government is no substitute for self-government and devolution remains our objective. At the very least, we need to be able to demonstrate that we have made every possible effort to achieve an acceptable system of devolved government before concluding that there is no alternative to the continuation of Direct Rule. How then can we carry matters forward in the present circumstances?

Your predecessor had been contemplating the issue of a Green Paper setting out a number of options as a basis for consultation with the parties. If this did not result in agreement - or if the parties refuse to participate in the process of consultation, HMG would then be in a stronger position to impose its own solution. Accordingly, a draft has been prepared setting out three possible options:

- a. Partial devolution to the Assembly of the legislative and executive powers now exercised by the Northern Ireland departments (or some of them) on the lines envisaged in the Northern Ireland Act 1982;

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- b. Executive devolution under which policy-making and legislation would remain with HMG but executive functions presently performed by the NI departments would be devolved to the Assembly;
- c. A Regional Council based on the present Assembly but providing also an elected element for a number of boards dealing with housing, health, education etc.

A copy of the latest version of the Green Paper is attached, incorporating a number of comments made by your predecessor at the beginning of August. It was his intention to discuss the matter again with Ministers and officials after the Summer holidays.

4. There are a number of difficult issues on both substance and timing to be resolved. As regards substance, earlier discussion revealed differing views among both Ministers and officials about the merits of the three options. The first is essentially the model on which we have been working for the past 3 years and has the best intellectual basis of the three. Officials regard it as the preferred solution, although it has not yet so far gained the wide-spread support from both communities which is the essential condition of acceptability. The second option suffers from the political objection that it is unlikely to be acceptable to the SDLP and could create difficulties at Westminster. There are also ~~ser~~ious doubts about the practicability of separating policy and administration, which would mean breaking up the present NI departments and NICS with an enormous upheaval for no very obvious gain. Although it may be desirable to include the third option for the sake of completeness, it is not really devolution but a modified form of Direct Rule. It can be argued that rather than circulating several options which are open to criticism and unlikely to be accepted, it would be better to focus on our preferred solution and to put it to the parties on a take-it-or-leave-it basis. Your predecessor, however, had come to a preliminary conclusion in favour of putting forward all three options as a basis for consultation.

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As regards timing, the majority view has been against publishing anything before the conclusion of the Anglo-Irish negotiations. The SDLP will certainly not discuss devolution in advance of an Anglo-Irish Agreement and the Unionists will not discuss it while the Anglo-Irish negotiations are in progress. A further complication is that in the event of an Anglo-Irish Agreement we should be obliged to consult the Irish on devolution proposals and it would be difficult, even in advance of an Agreement, to publish a Green Paper on the subject without consulting them. In fact, I believe that we shall have to wait for the dust to settle on an Anglo-Irish Agreement and see what the political situation looks like then before deciding how best to return to the charge on devolution. But we cannot afford to wait too long. We really ought to decide by the end of this year or early in 1986 what we are going to do about the future of the Assembly, which is due to reach the end of its term in October 1986.

6. If, as I suspect, the situation in the wake of an Anglo-Irish Agreement is not propitious for the pursuit of proposals on devolution, I do not see how we are to secure any serious consideration of any options we might publish in time for us to put forward a plan of our own and act upon it before we have to take decisions on the future of the Assembly. The Anglo-Irish process has become much more protracted than was originally expected and I now wonder whether we are right to contemplate proceeding with a consultative stage in the sense of putting a Green Paper, waiting for comments and then trying to open a dialogue with the parties. An alternative might be to short circuit the process by inviting the parties to a meeting, say in December, to discuss schemes which are already on the table, including the 1982 proposal, the various schemes put forward by the parties and the report of the Assembly's Report Committee. If the parties refuse to attend, or if it is clear that there is no prospect of reaching an agreement, we could then proceed immediately to announce that, in the absence of any possibility of reaching agreement on a scheme of devolution acceptable to both communities, we intended to continue with Direct Rule for a further period, that we should be making certain modifications to it, and that the Assembly would either be stood down or given a modified role as a Regional Council.

7. If the Anglo-Irish talks collapse the prospects for devolution will be even less propitious. If in those circumstances we wanted to make an early policy announcement I do not see how it could be anything other than a continuation of Direct Rule, although we would hope in due course to make another attempt at devolution.

8. All this suggests that it may be necessary to put on ice any proposal to publish a consultative document on devolution until the Anglo-Irish talks are concluded and we see how their outcome is received. Meanwhile, however, there are certain other steps which need to be taken. It is a major objective of any Anglo-Irish Agreement that it should lead to the SDLP participating again in the political process of Northern Ireland; but once an Agreement has been signed we shall have lost any leverage in that respect. It is therefore desirable to try to extract in advance some assurance from the SDLP that if an agreement is signed they will take some positive steps, such as agreeing to contest new Assembly elections on a basis of participation. Your predecessor was given a remit by the Prime Minister on 30 August to pursue this with Mr Hume and you will presumably wish to do so at the meeting which you have already proposed. You have also proposed meetings with the other party leaders, and in view of last week's UUP/DUP approach to the Prime Minister, it would seem reasonable to talk to Mr Molyneux and Mr Hume about devolution and explore their thinking. When we have ascertained the current views of the party leaders we shall be in a better position how to take matters forward and to judge whether it still makes sense to think in terms of publishing a consultation paper on possible options in the near future.

9. I suggest that you may want to have an early meeting with Ministers and senior officials to discuss these issues. It would be helpful if this could be done before you meet the party leaders, so that we can consider what you might say to them on devolution.

9 September 1985

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R J ANDREW