

E.R.

RE 252/5

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HCS/5/64

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Mr Parkes
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Dr Jack
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cc PS/PUS (B & L)
Mr Stephens
Mr Brennan
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Miss Elliott

DEVOLUTION PROCESS

1. As you know, Mr Patten has been engaged in talks with the local political parties to see if there is any common ground upon which proposals for devolution, compatible with the criterion of 'widespread acceptance throughout the community' and the general scheme of the Northern Ireland Act 1982, can be constructed. It is now clear that these talks have, for the time being at least, been pursued as far as they usefully can be, and that they have produced a re-definition of well-understood positions rather than a willingness to make any significant movement.
2. It is now virtually certain that Ministers will not wish to allow the search for devolution to peter out without themselves taking a direct hand in the process. This will involve deciding in the first instance upon alternative 'models' which, if they were to prove workable and acceptable, would be regarded by HMG as meeting its own criteria. These 'models' would then be put into play, possibly as a basis for the sounding of parties to begin with, but ultimately in a published form so that non political interests in Northern Ireland and concerned people further afield could know what the Government was willing to contemplate.
3. Attention is therefore now being focussed upon three issues:-
 - (a) What sort of scheme for executive and legislative devolution, compatible with the terms of the 1982 Act, would be acceptable to Government?
 - (b) Would it be desirable to offer a departure from the 1982 Act approach, if this proved necessary to establish a workable and acceptable system, and devolve only executive powers while retaining the ultimate goal of full legislative and executive devolution?

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- (c) Is there any half-way house as between devolution as hitherto understood and direct rule with no functions controlled by local politicians above the District Council level?

Devolution Under 1982 Act

4. The issues to be resolved here are:-

- (a) Is devolution to be introduced, in the first instance at least, by a general or only a partial suspension of direct rule?

The 1982 Act permits the devolution of legislative and executive powers to all or some Departments. There are, therefore, various options theoretically open. Existing departmental powers could be reallocated and/or existing departments divided to facilitate the process. Assuming partial devolution is simply a step along the road towards full devolution, it could be cautious and experimental (say one or two departments initially), or as complete as partial devolution can be short of the complete suspension of direct rule (and section 2(4) of the 1982 Act prohibits the devolution of DFP matters in a setting of partial suspension).

- (b) What basis for the exercise of the devolved powers would be likely to command widespread acceptance?

Almost certainly, Government will want to make it clear - without using emotive phrases such as 'majority rule' or 'power-sharing' - that it cannot see any prospect of widespread acceptance for institutions which do not permit the political minority to participate in the exercise of devolved power, as distinct from occupying some essentially subordinate role or being given a form of 'braking mechanism'. The search for a basis of participation which is not similar to the power-sharing Executive of 1974 points in the direction of avoiding formal collective responsibility or designating a person to "preside over the Executive as chief executive member" (which is not provided for by the 1982 Act in the event of partial rather than general suspension of direct rule.

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Devolution of executive powers only for the time being

5. Under the 1982 Act, if a 'matter' is devolved, this involves both the relevant executive powers of the particular department and the matching legislative powers. Ministers have indicated, however, that they might be prepared to contemplate new legislation to permit the devolution of executive powers only, at any rate as a first stage, if this were likely to prove more acceptable politically. The logic of such a modification would presumably be to find a balance between satisfying the SDLP (participation in executive powers) and satisfying the more integration-minded unionists (reservation of legislative powers).

A Half-Way House?

6. If neither devolution of full powers, nor devolution of executive powers only (whether for some or all departments) is possible, is the sole alternative to continue direct rule plus existing District Councils plus existing boards and statutory bodies? There would certainly, in such a situation, be intense continuing pressure to establish some 'top tier of local government'. An elected regional Council, filling the 'Macrory gap', would be likely to run into the same impasse as an elected Assembly. There is little reason to believe that the problems of 'widespread acceptability' and 'participation' could be overcome simply by lowering the target level from 'executive' to 'administrative' devolution. It was, after all, in the local government area that there was most room for genuine concern prior to direct rule; nor does the posture of District Councils fill one with confidence about the willingness of elected majorities to be sensitive, in spite of all the 'safeguarding' provisions these days in the Constitution Act, Fair Employment Act and elsewhere.
7. It is, however, possible to envisage a model under which
- (a) the present Assembly would, after further elections, be converted into a Northern Ireland Council;
 - (b) the Council would continue the Assembly's current role of scrutinising the activities of Northern Ireland Departments and associated public bodies;

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- (c) it would be open to members of that Council to pursue the question of genuine devolution if they wished to do so at some later stage;
- (d) the Council would not in itself run 'regional services' (broadly the services 'pulled in' post-Macrory to DOE, NIHE and the Area Boards), but (acting in effect as a form of "electoral college") would provide an elected element (proportionate to the strength of the parties) for new Boards to manage such services. Such Boards would also require a non-elected element, both to represent the various 'interests' already associated with particular services and to 'dilute' what would otherwise be the potential domination of a Board by a majority political element. It might be possible to envisage a political element of more than 50% overall while still achieving this 'dilution' effect.
- (e) the consequences of such a new Board structure would include the hiving-off from DOE of the 'local government' element of such services as planning, roads, water and sewerage, and the consolidation of the various Health and Education Boards into a single Health Board and a single Education Board.
- (f) as is at present the case in the DOE services and NIHE, there could be sub-regional managers, controllers or chief officers within a pattern of Province-wide control.

Implications

8. I invite your views on the practical implications for the machinery of government of any or all of the models within the range of options outlined above. In particular, it would be helpful to have your answers to the following specific questions:-
- (a) What would be the consequences of 'partial devolution' under a model keeping either DFP alone or DFP plus at least one other Northern Ireland Department for the time being under the direction and control of the Secretary of State?
 - (b) What would be the consequences of 'executive devolution', involving the devolution of the executive powers of some or all of the Northern Ireland Departments, without the matching powers to make laws? Would there be difficulties in allocating responsibility for policy determination?

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- (c) What would be the consequences of 'hiving-off' from DOE to some form of Board Structure, the old 'local government' aspects of town and country planning, roads, and water and sewerage? How would the staff, in practice, be divided as between those who would serve a Board or Boards and those who would have to be retained to deal with the departmental functions in those services? Precisely what responsibilities in such circumstances would DOE itself need to retain?
- (d) What would be the consequences of establishing a single Northern Ireland Board of Education and a single Northern Ireland Board of Health in replacement of the multi-board system (but preserving as far as possible existing systems of management at the sub-regional level)?
- (e) What would be the consequences of a possible move from a non-elected majority (as on the existing Education and Health Boards) to an elected majority, while attempting to secure adequate continued representation of the various 'interests', both as an end desirable in itself and to 'dilute' the political input?
9. I must emphasise that this minute is to be regarded as strictly personal to yourself, and I would ask you to let me have your views as soon as possible. Thereafter, we may well proceed by way of a discussion with appropriate NIO colleagues.



K P BLOOMFIELD

17 May 1985

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