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MR BRENNAN

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cc PS/SofS (L&B) - M
PS/Ministers (L&B) - M
PS/PUS (L&B) - M
PS/Mr Bloomfield - M
Mr Brennan
Mr A W Stephens - M
Mr Chesterton
Mr Gilliland - M
Mr Merifield - M
Mr Spence - M
Mr Bell
Mr Cowling
Mr Elliott PAB - M
Mr G Hewitt - M
Mr S Hewitt PAB - M
Mr Ehrman
(Mr Brennan - M
(c/o Mr A W Stephens

THE FUTURE OF THE ASSEMBLY

1. As PUS requested in his minute of 6 December to PS/Secretary of State (not to all), you took stock of recent developments in the Assembly with Mr Chesterton and me this morning. The attached note describes the course which we recommend that the Secretary of State might follow this week; it will need to be reviewed in the light of what happens during the next few days.
2. We took account of the views of Belfast colleagues with whom we had an opportunity to have an informal talk this morning, but in the time available we have not been able to consult formally or as widely as we would have wished. The Secretary of State may therefore wish to have a discussion with officials. It would be helpful if this could be fitted in tomorrow, since the recommendations affect Oral Questions on Thursday, 12 December.
3. If you are content with the note, you may wish to send it to the Private Secretary.

Frances Elliott

MISS D F E ELLIOTT
CPL

Carole V. 9.11.2

9 December 1985

CONFIDENTIAL

THE NORTHERN IRELAND ASSEMBLY

Present position

1. On 5 December, the Assembly set up a Grand Committee "to examine the implications of the Anglo-Irish Agreement for the government and future of Northern Ireland and the operation of the NI Constitution Act 1973 and the Northern Ireland Act 1982". Alliance members refused to take part in it, partly because the Assembly also suspended the work of Departmental scrutiny committees, except the DFP Committee's examination of the effects of the Agreement on the NI Civil Service, whilst the Grand Committee meets. Mr Cushnahan urged the Secretary of State to consider prorogation if the unionist parties refused to give an assurance that they will carry out the consultative role provided for in the 1982 Act.

2. The Committee, comprising UUP and DUP members alone, met on the evening of 5 December and work resumed today, 9 December; the apparent intention is to complete the main part of their task before Christmas. Press notices have requested written submissions by 13 December. Invitations have been issued to individuals and organisations to give oral evidence. So far, we know that the Presbyterian Church and the Church of Ireland have declined to do so.

Options for the Government

3. The only two courses open to the Government to prevent the unionist parties from misusing the Assembly in this way, as a focus for opposition to the Agreement, are prorogation or dissolution.

4. To dissolve the Assembly would take away any branch which the unionist parties might eventually need to grasp in order to resume normal relations with the Government. The removal by the Government of the very body which it has been recommending as a channel for unionist views to balance the Intergovernmental Conference would deepen unionist anger at the Agreement. It would be used during the by-election campaigns to stir up more bad feeling.

5. Dissolution requires Parliamentary approval - an Order in Council subject to affirmative resolution. There is no urgent procedure whereby Parliamentary approval could be sought after the Assembly had been dissolved. A Parliamentary debate on the state of the Assembly and its long-term future at this juncture would unhelpfully raise the political temperature.

6. Prorogation would give the Government greater room for manoeuvre, but its practical political effects on the unionist parties would be the same as dissolution; they would have to eat humble pie to persuade the Government to recall the Assembly, as unappealing a prospect (to them) as the requirement to persuade Ministers of the value of holding fresh elections after dissolution. It would have the other political disadvantages described in paragraph 4 above.

7. That having been said, the Assembly can be prorogued for four months or less by Order in Council without any Parliamentary procedure. Such an Order can be revoked so that the Assembly is recalled. It would also be possible further to prorogue it. If an Order was made dissolving the Assembly, this would simply supersede the prorogation Order. One has to set beside this flexibility the drawback that Assembly members would still be members and thus entitled to pay, allowances and to use the Parliament Buildings.

Present balance of advantage

seems a more

8. From the Government's point of view, ~~prorogation~~ attractive option than dissolution; ^{But in} to dissolve the Assembly would unnecessarily tie our hands. / present circumstances, with signs that the Grand Committee may attract little public interest, or if it does, its rhetoric might weary rather than refuel unionist feelings, it would seem to be to the Government's advantage to allow the unionist protest to be vented in the comparatively safe setting of the Assembly; to prorogue it now would risk letting it loose on the streets in the run-up to the by-elections. But the unionist parties' activities will have to be kept under very close review. It may become a matter of public interest to prorogue if they seek further to misuse the Assembly ^{SO AS} or/to stop a flood of inflammatory propaganda which seems to be heightening emotions.

A Government warning?

9. Mr Cushnahan and others have suggested that the Government should demand an assurance from the Assembly, perhaps through a letter from the Secretary of State, that their scrutinising functions under section 3 of the Northern Ireland Act 1962 would soon be resumed; and should explain that without such an undertaking, prorogation would have to be considered. An approach of this sort would have the advantage of showing that the Government was concerned about the way in which the unionist parties were behaving in the Assembly and would not be patient indefinitely.

10. A letter on these lines seems undesirable for three reasons. It could provoke a response which would inevitably be unhelpful: this reply could be yet another statement which the unionist parties would have to swallow publicly if, as we hope, they eventually end their protest: and by obliging us to wait - and perhaps act on - the reply, it would tie our own freedom of manoeuvre.

11. We favoured instead using the question from Mr Malcolm Bruce for answer on 12 December about the future of the Assembly to make plain the Government's view that its neglect of its scrutinising functions has serious implications for the Assembly's future, about which the Secretary of State will have to take decisions early in the New Year. This question will not be reached, but the Information Services can no doubt take steps widely to publicise the Written Answer.

12. In addition, we considered whether there would be an advantage in not proceeding with the NI Assembly (Allowances) (Variations) Order 1985 which will implement the Secretary of State's decision to increase Assembly members' car and motor cycle mileage allowances so as to bring them into line with recently revised civil service rates payable from 1 April 1985. It was intended that the Order, which is not subject to any Parliamentary procedure, should be made at a meeting of the Privy Council on 18 December. We concluded that, since we have no option but to continue in present circumstances to pay members these travel allowances, it would be difficult to justify not proceeding

with these very small increases as promised. But there is no need to rush to have the Order ready for next week's Privy Council. (The submission requesting the Secretary of State's approval will be sent to Private Office tomorrow).

13. There is also the question of NICS staff seconded to the Assembly, some of whom (ie those assigned to Departmental committees, other than the DFP Committee) will be idle after this week, and all of whom are at risk of involvement in the Assembly's political manoeuvres. We doubt if precipitate action about this should be taken this side of Christmas, but Mr Bloomfield, who has been considering this with the Clerk of the Assembly, will have views to contribute. We would envisage that, in any event, the Parliamentary Answer proposed in paragraph 11 above (a draft of which will be submitted as soon as possible) should contain a warning that the allocation of staff will have to be reviewed if the Assembly's scrutiny work is not resumed.