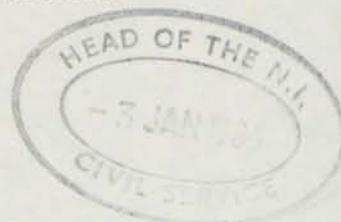


CONFIDENTIAL

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PS/PUS (L&B)

c.c.PS/Mr. Bloomfield ✓
Mr. Brennan
Mr. A.W. Stephens
Mr. Elliott
Mr. Spence
Miss Elliott



IC: GUIDANCE TO NIO AND NI DEPARTMENTS

... I attach two revised sets of guidance on the IC - one to NI
Departments prepared by Central Secretariat and one to the NIO.
Both take account of your meeting of 5 December. They are, I
hope, consistent and at the more sensitive points we have adopted
... wording which is as far as possible the same. I also attach a
short note for you to send to PS/Secretary of State, seeking the
Secretary of State's approval.

DZ

D. CHESTERTON
31 December 1985

DRAFT MINUTE FOR PUS TO SEND TO PS/S of S (L&B)

c.c.PS/Mr. Scott (L&B)
PS/Mr. Bloomfield
Mr. Brennan
Mr. A.W.Stephens
Mr. Chesterton
Mr. Elliott
Mr. Spence
Mr. Bell
Miss Elliott
Miss Pease
Mr. Cowling

INTERGOVERNMENTAL CONFERENCE: DRAFT GUIDANCE TO NI DEPARTMENTS
AND NIO

... I attach two sets of guidance, one for the Northern Ireland Departments and one for the Northern Ireland Office, on the Intergovernmental Conference. We have prepared two separate sets of instructions because the NI Departments and NIO will have different responsibilities under the Agreement and because their administrative practices are different. Nevertheless the two sets of instructions are consistent in their own approach and at some points the wording is very similar.

In drafting both sets of instructions we have been conscious of the possibility that they may well leak. For that reason we have prepared general instructions without giving too much detail as to how particular issues might be handled. It will in any case be difficult to predict precisely how working practices will evolve.

The Secretary of State will also note that I am setting up a Steering Group which will monitor our approach to the Intergovernmental Conference and try to achieve consistency and anticipate possible difficulties as the work of the Conference and Secretariat develops.

I would be grateful to know whether the Secretary of State is content that the instructions are issued.

F
To All NIO Assistant Secretaries

cc: PS/SofS (L&B)
PS/Ministers (L&B)
PS/PUS (B)
PS/Mr Bloomfield
Mr Brennan
Mr A W Stephens
Mr Chesterton
Mr Elliott
Mr Innes
Mr Merifield
Mr Palmer
Miss Pease
Mr Spence

THE ANGLO-IRISH AGREEMENT - IMPLEMENTATION

Introduction

1. The Anglo-Irish Agreement (a full text is attached at Annex A) is now in force. This minute is intended to give guidance to members of the NIO on the Agreement (complementary instructions are being issued to Northern Ireland Departments).
2. Article 1 of the Agreement gives formal affirmation by the Irish Government in a legally binding form that any change in the status of Northern Ireland will only come about with the consent of a majority of the people of Northern Ireland and their recognition that the present wish of a majority is for no change. It also declares that if a majority formally consent to the establishment of a united Ireland both the Irish and UK Governments would introduce and support legislation to that end.

Intergovernmental Conference

3. Articles 2 and 3 of the Agreement establish the Intergovernmental Conference which will meet regularly and will be jointly chaired by the Secretary of State and the Irish Minister for Foreign Affairs. It will also meet at official level and sub-groups may be set up, chaired by officials. The Attorneys-General may attend when legal matters are under discussion, and the Chief Constable of the RUC and the Commissioner of the Garda Síochána may attend to discuss security policy or security co-operation. Officials and professional advisers can also attend meetings of the full Conference. A Secretariat on a continuing basis has been set up to service the IC in the discharge of its functions.

4. The matters with which the IC will deal are set out in the Agreement: these include political and security related matters, which are wholly the NIO's responsibility; legal matters, including the administration of justice, for which the NIO has substantial responsibilities (eg the Emergency Provisions Act and the criminal law in general); and cross-border co-operation of all kinds, including in particular security. These are outlined more fully in Articles 5, 6, 7, 8, 9 and 10. Annex B covers the specific matters listed by the Agreement. These should be regarded as indicative of the sort of matters IC will deal with; but they are not intended to be exhaustive.

Responsibility for Decisions

5. The IC will provide a framework through which the Irish Government can give views on security, political and legal matters. The Government is committed to make determined efforts to resolve any differences but, as Article 2 makes clear, final responsibility for decision making rests with the UK Government. Officials' primary duty will therefore remain to Ministers and to the goals they set. The IC will also provide a means of promoting co-operation with the Irish in a number of areas, covered by Articles 8 (harmonisation of the criminal law, extradition and extra-territorial legislation), 9 (cross-border security

co-operation), and 10 (economic, social and cultural co-operation). (Article 10 will be of primary concern to the NI Departments).

Taking the Views of the Irish and Others into Account

6. When Ministers take decisions on matters within the scope of Articles 5-10 of the Agreement they will wish to take account of the views of the Irish Government as well as those of the constitutional parties and other relevant interests; and officials should make it their practice to record them in submissions.

7. It is not the intention to accord to the Irish rights which have precedence over those of other persons and bodies - eg MP's, Parliament and interested non-governmental bodies which it is our practice to consult. Consultation on the basis of Green Papers, Consultative Documents, proposals for Draft Orders and other published material should be simultaneous with the availability of such material to MP's, Parliament and other bodies.

8. It is normal practice in the preparation of advice for Ministers to consult informally with interested parties or to ascertain their views in other ways. There will be occasions when divisions will find it useful to ascertain the views of the Irish Government. If a division feels that it would be useful to know Irish views for the preparation of advice they should consult SIL.

Approaches to the Secretariat may need to be cleared by the Steering Group (SIL will advise on what needs to be cleared) (for the Steering Group see para 14 below); papers presented to the IC should always be cleared by the group. Divisions will wish particularly to be aware of Irish views when dealing with matters specifically mentioned in the Agreement (see Annex B). They should consult SIL as early as possible about such matters.

Roles and Composition of Public Bodies

9. Article 6 of the Agreement provides that IC is to be a framework within which the Irish Government may put forward views and proposals on the role and composition of bodies appointed by the Secretary of State for Northern Ireland and by NI departments. It singles out for special mention five bodies, three of which (SACHR, PANI and PCB) are the responsibility of the NIO. CPL and POB should be aware of the need for special consideration to be given to the role and composition of SACHR, PANI and PCB in the context of the Agreement. But divisions should note that, within the terms of the Article, it is open to the Irish to put forward through the IC views and proposals on the role and composition of bodies other than those individually specified. SIL will advise, on request, on whether the Irish should be informed through the IC about any other major appointments.

Co-operation

10. In the areas of security co-operation, extradition and extra-territorial jurisdiction and the harmonisation of the criminal law between Northern Ireland and the Republic it will be important for officials to have a clear idea of the action we would like the Irish to take. Submissions should include an indication of the views of constitutional politicians and other interested bodies.

11. The Irish may seek to raise with us matters falling within Articles 5-10 of the Agreement. Approaches for information will come through the UK members of the Secretariat. On occasions the IC will, as a result, commission a paper. The formal request for such a paper will come through the Secretariat. Any papers prepared as a result would be approved by the Steering Group and by the Secretary of State before being submitted to the Secretariat for presentation to the IC.

Relations with the Secretariat

12. Officials should only communicate with the Secretariat through the UK members. (SIL will brief those who need to know on how this may be done). They should not approach the Irish members directly. If the need for a meeting arises between Irish members of the Secretariat and officials, UK members of the Secretariat should be present.

13. Members of the IC Secretariat will be advised to raise matters affecting public bodies in Northern Ireland (eg the Police Authority) with the sponsoring division (eg POB); and chairmen of bodies supported by NIO will be advised that if a direct approach is made to them, they should notify their sponsoring department who will discuss the advice to be given with SIL.

Steering Group

14. I have set up a Steering Group to monitor and co-ordinate our approach to the IC. Its primary purpose will be to advise Ministers on how to handle meetings of the IC; to approve papers going to the IC; and to resolve points of difficulty raised by the Secretariat. It will also monitor the development of the system and report to Ministers as necessary. Its membership will include PUS, DUS (L), DUS (B), UK Secretariat, SIL and Central Secretariat. If you believe this Group ought to consider any matter within your area of responsibility, contact SIL.

Conclusion

15. These instructions will be updated as greater experience of the operation of the IC is gained. The Steering Group will periodically request reports on divisions' dealings with the IC; divisions should therefore keep full records of such dealings. Once again, if you have any problems or uncertainties about the implications of the Agreement or IC for your own work, consult SIL.

R

16. The Anglo-Irish Agreement is a major opportunity. I am sure that officials will approach it with enthusiasm and commitment.

RJA

December 1985

encl

I
AREAS SPECIFICALLY COVERED BY THE AGREEMENT

a) Political Matters

- i) cultural heritage of both traditions
- ii) changes in electoral arrangements
- iii) flags and emblems
- iv) avoidance of economic and social discrimination
- v) advantages and disadvantages of a Bill of Rights
- vi) the role and composition of bodies appointed by Secretary of State, in particular:

SACHR

FEA

EOC

PANI

PCB

b) Security and Related Matters

- i) security policy
- ii) security situation, including serious incidents and forthcoming events
- iii) relations between the security forces and the community
- iv) a programme of special measures to improve security forces/community relations including:

local consultative machinery

training in community relations

crime prevention schemes involving the community

improvements in arranging for handling of complaints

action to increase the proportion of members

of the minority in the RUC

c) Legal Matters, including the administration of justice

- i) harmonisation of the criminal law between North and South

- ii) measures giving substantial expression to the aim of underlining public confidence in the administration of justice including the possibility of mixed courts in both jurisdictions
- iii) policy aspects of extradition and extra-territorial jurisdiction as between North and South
- d) Cross-Border Co-operation on Security
 - i) programme of work to be undertaken by Chief Constable and Garda Commissioner and officials on
 - threat assessments
 - exchange of information
 - liaison structures
 - technical co-operation
 - training of personnel
 - operational resources
- e) (Mainly for NI Departments) Promotion of economic and social development of those areas of both parts of Ireland which have suffered most severely from recent instability
 - i) securing international support
 - ii) co-operation on economic, social and cultural matters within the responsibility of the Secretary of State.

To: Northern Ireland Permanent Secretaries

ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE (IC)
PROCEDURAL IMPLICATIONS FOR NORTHERN IRELAND DEPARTMENTS

Introduction

1. The Agreement entered into by the Government of the United Kingdom and the Republic of Ireland and now approved by the British and Irish Parliaments, establishes an Anglo-Irish Intergovernmental Conference (IC). This memorandum draws attention to those aspects of the Agreement which affect the business and responsibilities of NI Departments, and offers guidance on how to deal with matters which are within the purview of IC. (Complementary instructions are being issued within the NIO).
2. The memorandum should be copied to your Under Secretaries and, on a strict "need to know" basis, to Assistant Secretaries and Private Office staff.

Authority for decisions in Northern Ireland

3. The Agreement contains a commitment on the part of the Irish Government, which is binding in international law, that the existing status of Northern Ireland would only be changed with "the consent of a majority of the people of Northern Ireland" (Article 1(a)). There will be no derogation from the sovereignty of the United Kingdom Government in operating the Agreement. The Government thus retains

responsibility for "the decisions and administration of Government within its own jurisdiction" (Article 2(b)). Unless and until a devolved administration is established, all Northern Ireland Departments remain under the direction and control of the Secretary of State for Northern Ireland, who remains responsible to Parliament. None of the powers and duties or practices of Departments will be affected by the Agreement except where shown below.

Business of IC: Legislation and Policy

4. Article 5(c) of the Agreement provides for the Irish Government to put forward views on matters which:
 - (a) are within the purview of Northern Ireland Departments;
 - (b) have not been devolved and remain the responsibility of the Secretary of State for Northern Ireland (by reason of his direction and control of Northern Ireland Departments);
 - (c) involve major legislation or major policy issues; and
 - (d) significantly or especially affect the interests of the minority community.

Major Legislation and Policy Issues

5. Central Secretariat should be consulted where a Department believes that proposals for "major legislation or major policy issues" may need to be discussed with the Irish Government through the Conference. Memoranda to PCC should in future express a view on whether it may be necessary to consult the Irish about the matter under discussion.
6. As general guidance, it is unlikely to be necessary to

consult the Irish about consolidating or parity legislation, modest amendments to existing law, or most subordinate legislation.

7. In addition to major policy issues which the UK Government may wish to raise with the Irish through the Conference, the Irish may themselves raise other major policy issues which fall within the scope of the Agreement but which are not under active consideration by the UK Government. The UK side of the Secretariat will seek advice through Central Secretariat on what response should be made.

The Minority community

8. Central Secretariat should be consulted where a Department believes that legislation or policy will "significantly or especially affect the interests of the minority community" and needs, therefore, to be discussed with the Irish through the Conference. This point should be addressed by Departments in memoranda to PCC.
9. As general guidance, many items of legislation or policy will affect the minority community no differently from other members of the community. But some legislation and some policies will significantly or especially affect the interests of the minority community, either because they touch on matters of particular concern to that community or because they would affect that community more extensively than the population as a whole.

Timing of approaches to IC

10. It is not the intention to accord to the Irish through the Conference rights which have precedence over those of other person and bodies - eg MPs, Parliament, the NI Assembly and

its Departmental Committees and interested non-governmental organisations which it is our practice to consult. Consultation on the basis of Green Papers, Consultative Documents, proposals for Draft Order as other published material should be simultaneous with the availability of such material to Parliament and the Northern Ireland Assembly.

11. It is normal practice in the preparation of new policy or legislation for Departments to consult informally with major interested parties (including the Assembly's Departmental Committees) about the issues which are involved before firm proposals are prepared. There will, therefore, be occasions when Departments would find it useful during this preparatory stage to ascertain any views which the Irish Government may have. Central Secretariat should be consulted when a Department believes that informal consultation with the Irish through the Conference might be helpful.
12. Papers prepared specifically for IC (whether at the initiative of the United Kingdom side or in response to views proffered by the Irish) should be cleared through normal departmental channels and with Central Secretariat, before being approved by the Secretary of State.

Roles and Composition of Public Bodies

13. Article 6 of the Agreement provides that IC is to be a framework within which the Irish Government may put forward views and proposals on the role and composition of bodies appointed by the Secretary of State for Northern Ireland and by NI Departments. It singles out for special mention five bodies, two of which (the FEA and EOC) are the responsibility of NI Departments.

E.

14. DED is aware of the need for special consideration to be given to the role and composition of the FEA and EOC in the context of the Agreement. Departments should note that, within the terms of the Article, it is open to the Irish to put forward through the Conference views and proposals on the role and composition of bodies other than those individually specified. Central Secretariat will advise, on request, on whether the Irish should be informed through the Conference about any other major appointments.

Promotion of Co-operation

15. Under Article 10(b), IC is to constitute a framework for "the promotion of co-operation between the two parts of Ireland concerning cross-border aspects of economic, social and cultural matters in relation to which the Secretary of State for Northern Ireland continues to exercise authority" (ie, pending devolution of the relevant matters). Central Secretariat has already held a meeting of Departments to review existing areas of co-operation.

Role of IC Secretariat

16. Under Article 3 of the Agreement the two Governments are to establish a Secretariat on a continuing basis to service IC in the discharge of its functions as set out in the Agreement. This Secretariat will be composed of officials nominated by each Government.
17. Irish members of the Secretariat will not have a right of direct access to Northern Ireland Departments. If, in the course of discharging its responsibilities, the Secretariat needs to contact a Northern Ireland Department, this will be

done through one of the United Kingdom members. In matters of substantial importance, queries or requests to Departments will normally be routed through Central Secretariat, so as to secure uniformity of approach and to allow adequate monitoring of the way in which the new arrangements are being operated. (Central Secretariat will advise on how to contact the UK members of the Secretariat).

18. Each Department should now appoint a liaison officer to deal with IC matters so as to maintain its own consistency of approach.

19. There may be occasions on which it is desirable, in, for example, the interests of clarifying complex issues, that departmental officials should meet Irish members of the Secretariat, who would normally be accompanied by UK members. Initiatives for such contacts may come from different sources:

(a) If Irish members of the Secretariat wish to make such a contact, they will be expected to raise the matter with UK members who will in turn report the request to Central Secretariat. It will then be the responsibility of Central Secretariat to discuss the approach with the Northern Ireland Department or Departments involved. Following such discussion, Central Secretariat will decide whether it is necessary to secure Ministerial approval, whether for a rejection (which may be on the grounds that the matter is not suitable for discussion at official level, or is not a matter with which IC or its Secretariat should be concerned at all) or an authorisation (establishing the parameters within and level at which the subsequent discussion will take place).

(b) United Kingdom members of the Secretariat may themselves

consider from time to time that the business of IC, having regard in particular to the commitment to make determined efforts to resolve differences, would be advanced by some form of direct discussion between Irish members and a Department or Departments. In such a case they will follow the line of contact indicated at (a) above leading (after Ministerial approval if appropriate) to the offer via Central Secretariat of a meeting from our side.

(c) It may at any time become clear to a Department itself that misunderstanding could be avoided, differences resolved, and/or better preparation made for forthcoming meetings of IC itself, if a meeting were to take place with Irish members of the Secretariat. In any such case the Department should, after discussion with Central Secretariat, make the necessary arrangements via Central Secretariat and the UK membership of the IC Secretariat.

20. It should be emphasised that there is no intention that contacts between Departments and Irish members of the IC Secretariat should supersede or replace the existing network of bilateral contacts between Northern Ireland Departments and their counterparts in the Irish Republic. IC itself is being established within the wider framework of the Anglo-Irish Intergovernmental Council (AIIC), which will continue to exist. However, significant contacts with Departments in the Irish Republic outside the scope of IC should invariably be reported to Central Secretariat, so that a comprehensive picture of such contacts may at all times be maintained.

21. Members of the IC Secretariat will be advised to raise matters affecting public bodies in Northern Ireland (through UK members) with the appropriate sponsoring Northern Ireland Department. Chairmen and Chief Officers of such bodies will

be advised that, if a direct approach is made to them, this should be notified to the sponsoring Department, which in turn will discuss with Central Secretariat what advice should be given.

K P BLOOMFIELD

December 1985