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cc PS/Minister of State (L&B) - B
PS/PUS (L&B) - B
① PS/Sir K Bloomfield 18/7 - B
Mr Burns - B
Mr Stephens - B
Mr A P Wilson - B
Mr Spence - B
Mr Dowdall, DFP - M
Mr F G McConnell - B
Miss Mills - B
Mr Daniell - B
Mr Bell - B
Mr Blackwell o/r

PS/SECRETARY OF STATE (L&B) - B

FRONTIER CONTROLS AFTER 1992

In addition to the discussions which have taken place in PCC culminating in the production of a paper updating Ministers on the social and economic impact of the Single European Market in Northern Ireland (submitted to the Secretary of State in May by Sir Kenneth Bloomfield), officials have also been working on the narrower field of the effect that the EC's proposals for the abolition of frontier controls might have on the border between Northern Ireland and the Republic. Attached is a draft paper presenting a comprehensive picture of the Northern Ireland/Republic question, which is submitted to Ministers for approval with the objective of passing it to the UK co-ordinator (appointed following the Rhodes summit) as the NIO view.

Northern Ireland Concerns

2. As we move closer to the 1992 deadline, it is essential that Government policy as a whole and the presentation of our case to the EC takes full account of the Northern Ireland dimension. The presentation of the general UK position is of course slightly vulnerable from the fact that many of the measures which we argue for in Europe are not implemented at the one frontier that is most troubled by terrorism.

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3. Although the sensitivities associated with the border, especially the Irish constitutional position, are already recognised in UK thinking, it is prudent to register this point formally. In addition, we needed to consider fully the overall effect on Anglo-Irish relations together with implications for the movement of people and 'undesirable objects'.

Border Security

4. The NIO aim must be to preserve at least the existing security arrangements along the border. In theory our position is perfectly defensible. We can argue that, leading aside customs, we have no frontier controls as such on the border; what we do have is a series of internal security checkpoints throughout the Province, a number of which happen to be close to the border. The legal powers used and security operations mounted on the border are no different in kind from security force activity elsewhere in Northern Ireland. Arguably however we need to register this point in Whitehall (and possibly with the Irish) at an early stage against the probability that our practices will be challenged, by the Irish Government, by the Commission itself, or by another party. A particular area of difficulty which we shall need to preserve is the practice of border road closures; it will be extremely important here to be able to point out that the legal powers which take place extend to, and are used in, the rest of Northern Ireland.

House of Lords Select Committee

5. The House of Lords Select Committee on the European Communities has for some weeks now been taking evidence on the 1992 question. I am to be a member of a Home Office-led team of officials who will give oral evidence on "Border Control of People" on Tuesday 18 July. In essence, the main thrust of the questioning is likely to be geared towards immigration matters, which of course is entirely Home Office territory. Nevertheless there are a number of Northern Ireland related issues which will be raised, namely

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control of firearms, security co-operation under the Anglo-Irish Agreement, and areas where there are different practices on the border with the Republic compared with other UK frontiers.

6. The Committee may address the apparent paradox of that while the UK is insisting on the maintenance of frontier controls, it manages in Northern Ireland without the routine oversight available at Dover. I will point to the existence of (and reasons for) the Common Travel Area, explain the practical implications of the long land border and explain the presence of a series of internal security checks throughout the Province, some of which are placed close to the border, which are an essential response to the major terrorist campaign faced by the security forces (and the whole community) in Northern Ireland. In addition, the Anglo Irish Agreement provides a framework for discussion between the two Governments on security co-operation. Progress has been made in many areas and further work is in hand to develop and increase the effectiveness of co-operation between the two police forces.

Conclusion

7. It is hoped that the attached paper will serve as an initial comprehensive background paper for a Whitehall audience which will ensure that the Northern Ireland dimension is not omitted from Government thinking on 1992 and the presentation of our case. (There are however no signs that the Northern Ireland dimension is well understood by the UK Co-ordinator). In due time we will no doubt have to address particular issues in more depth, and open discussions with the Irish (as we are committed to do). In the meantime, I should be grateful for the Secretary of State's approval of the draft paper before it is forwarded to the UK Co-ordinator.

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FRONTIER CONTROLS ON THE UK LAND BOUNDARY: SECURITY AND POLITICAL
IMPLICATIONS: PAPER BY NIO

Introduction

This note discusses some of the implications for the border between Northern Ireland and the Republic of proposals for the reduction or abolition of frontier controls in a "1992" context. It is not concerned with the social and economic implications for Northern Ireland of 1992 which are being handled separately.

2. Article 8A of the EEC Treaty (inserted by the Single European Act) defines the internal market as:

"An area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

3. Under the Treaty, the single internal market is to be achieved progressively in a period expiring on 31 December 1992. However, two declarations have been made by the Member States:

"In order to promote the free movement of persons, the Member States shall ... cooperate in the combatting of terrorism, crime [and] drug traffic ..."

and

"Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary ... to combat terrorism, crime [and] drug traffic ..."

4. In its most recent communication on the subject (COM (88) 640 of 7 December 1988) the Commission stresses the ineffectiveness of present internal frontier controls, emphasising instead the need for mutual cooperation between security forces and for strengthening external borders.

5. The UK response has been, broadly, to respond to Article 8A by practical measures to facilitate free movement of both goods and people, subject to retention of those controls which we regard as essential.

6. Whilst the UK Government very much welcomes closer cooperation between community countries in measures to combat terrorism, drug trafficking, organised crime and illegal immigration, it also believes that the Commission seriously underestimates the contribution which frontier checks - particularly at air and sea-frontiers - make to national defences against crime. It does not believe that the closer coordination so far attained, or likely, would allow our own frontier checks to be abolished without unacceptable loss.

Northern Ireland Political Concerns

7. Northern Ireland is of course possessed of the only UK land frontier (and one giving rise to uniquely complex problems) with another Member State. It is unlike any other frontier in Western Europe, both physically and because of its heavy political charge. The "frontier question" is extremely sensitive in Irish political terms. The Irish position on the border in relation to 1992, so far as they have one, is ambiguous, allowing room either for practical pragmatism or political obstruction as the mood takes them. Irish thinking will inevitably be heavily influenced by Articles 2 and 3 of the 1937 Constitution (which define their national territory as the whole island of Ireland but renounce the power to legislate on Northern Ireland "pending the re-integration of the national territory") and associated nationalist sensitivities. As Irish thinking on 1992 develops, it is possible that the Irish Government might succumb to the arguments of those who seek to use the new European arrangements to criticise the border and its physical manifestations, notably security measures. There is no clear sign of this at present; but they will need watching carefully.

8. Another powerful influence on Irish thinking, however, will be the implications for the economy of the Republic of the erosion of the tax frontier under the tax harmonisation proposals. Here, their financial interests lie in maintaining controls. Their concern about cross-border trade even under the present rules led them to impose unilaterally (and almost certainly illegally) restrictions on travellers' allowances in 1987. There have been recent hints from

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Dublin that the Irish will demand either very substantial financial compensation, or, possibly substantial derogations, under threat of vetoing the whole tax package. There might be significant political consequences in Northern Ireland from developments of this sort. It may be relevant that the first half of 1990 will see the Irish take their turn in the Presidency of the EC Council of Ministers.

9. At this stage, and given the uncertainty about the way in which the Irish position will develop, there is relatively little which we can do other than to note that a potential exists for political difficulty. We are, however, committed to a discussion of the implications of 1992 in the Intergovernmental Conference. Beyond that, we shall have to respond ad hoc to developments. But it is suggested that we need to apply two principles:

- (i) the political questions of the terms of the Irish Constitution, and the future status of Northern Ireland, can and should be kept entirely separate from those of practical improvements to international arrangements for the free movement of people and goods;
- (ii) we should not want to lose any potential benefit of co-operation in the 1992 context to the economies of Northern Ireland and the Republic, and to Anglo-Irish relations, and that this should not be lost as a result of tensions on the political and security front.

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Border security

10. NIO needs to preserve at least the existing security arrangements, whether along the border or inside Northern Ireland. Apart from a few fixed customs posts, we have no frontier "controls" as such on the border; what we do have is a series of internal security checkpoints throughout the Province, a number of which happen to be close to the border. The legal powers used and security operations mounted on the border are no different in kind from security force activity elsewhere in Northern Ireland. This point is already widely understood, notably by the Commission (in their evidence to the House of Lords Select Committee on the European Communities Sub-Committee E, 25 April), where they state that 'in the prevailing special circumstances.... what replaces the frontier control is a network of other arrangements - some of which can be implemented on the frontier'. Nevertheless it remains important to ensure that no misunderstanding develops about the true nature of Northern Ireland "border" controls.

11. A particular area of difficulty is the practice of border road closures; it is extremely important to have it widely understood that the legal powers under which these take place extend to, and are used in, the rest of Northern Ireland.

12. In addition we are anxious that nothing should be done in the context of 1992 which would prejudice the possibility of introducing

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extra internal security checks, at the border or elsewhere, at any time should it seem necessary as a result of a deteriorating security situation in Northern Ireland.

13. We also have an interest in Irish frontier control; close cooperation between the security forces in Northern Ireland and the Republic is vitally important in combatting terrorism and other forms of cross-border crime. In that context it is highly desirable to ensure, so far as it is within our power, that the existing system of Irish post and controls at the UK/Republic border is not modified in such a way as to reduce its effectiveness as a result of 1992 changes. There is also a wider UK interest (principally for the Home Office) in maintaining the Republic's existing network of checks at the outer boundary of the Common Travel Area. Insofar as their ports and airports operate as external frontiers of the Community, there is no reason to expect that controls will be operated less rigorously than hitherto, although we will need to keep them sighted on the special needs of the Common Travel Area. If, however, the Republic were to abandon controls on intra-Community traffic, in accordance with the majority EC view, the Common Travel Area would then operate as a serious breach in the UK's frontier defences in relation to third-country nationals arriving via the continent. Although the Republic show every sign so far of standing with the UK on the question of abolishing 'internal' controls, the risk of their eventually going along with the majority cannot altogether be excluded. If this happened, the UK would have to consider imposing immigration controls in relation to traffic with the Republic. This would be an horrendous prospect

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so far as the UK/Republic land border is concerned; in the last resort, some kind of immigration check might have to be operated between Ireland (including Northern Ireland) and Great Britain. It should clearly be a major objective of UK policy to ensure that the Irish maintain their existing checks.

14. Is it possible to exploit 1992 to provide enhanced border security in Northern Ireland? Discussions are taking place between a number of European nations parties to the Schengen Agreement with a view to erecting closer links (including hot pursuit arrangements) between neighbouring police forces, and to establishing such things as central lists of criminals. The practical achievement so far is very limited. We should keep in touch with developments here. We may have something to learn; and it is possible that the Irish will be slightly readier to accept particular measures they could publicly defend as following European parallels, rather than the demands of the British. But there will probably be in fact few Schengen security measures suitable for adoption in the Northern Ireland context and not already in some form implemented under the existing security co-operation arrangements; this is not likely to be the foundation of radical new departures in the field. And we should do nothing to detract from the programme of work already established under the Agreement, which will be for the foreseeable future the main instrument for securing Irish co-operation in these matters.

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Harmonisation issues

15. Another important facet of moves towards the single market is the trend towards harmonisation of Member States' laws in a number of areas. This is primarily an economic and social concern but there are security implications too, and in principle opportunities for lessening the importance of the border to terrorists by bringing conditions Northern and South more into line. One example (there may be others) would be the harmonisation of fiscal regimes and the removal of artificial barriers to trade, discussed above, which would reduce or possibly end cross-border smuggling, and the revenue which it provides for the paramilitaries. These are, of course, particularly difficult areas for the Irish. Progress may not be made readily but it is important from the NIO perspective that no opportunities be missed.

16. Finally, although not specifically for the NIO, there are a number of areas in which the UK as a whole is taking action either to preserve its position in the counter-terrorist/policing sphere or to use 1992 to secure improved arrangements. Examples here are drugs, weapons legislation, visa regimes, and extradition. The NIO has a departmental interest in ensuring closer cooperation in these areas, not just between the UK and the Republic of Ireland, but multilaterally.

Presentational Issues

17. Arguably, the general UK position is slightly vulnerable in so far as many of the measures for which we argue in Europe are not implemented at the one UK frontier that is most troubled by terrorism. But we might find the argument turned back on us: the Northern Ireland unionist parties, who have long thought our border security controls inadequate, may seek to embarrass our Ministers by confronting them with the assertions we make in Europe about our need for frontier controls. The best riposte to both arguments is perhaps that already deployed by the Home Secretary, namely that a nation with water frontiers naturally attaches greater importance to control at the water barrier than does one with land frontiers; and on this test Northern Ireland, with its developed system of "internal" security checks, is an exception to the overall UK pattern of heavy reliance on water-side (or airport-side) controls. We need however to ensure that Ministers are provided with appropriate briefing in the light of developments as the Community moves towards 1992.

Conclusion

18. In sum, the NIO's political interest in 1992 centres around the risk that the Irish may attempt to exploit movement towards reduced frontier checks in order to highlight to their advantage the Northern Ireland/Republic border, or its physical manifestations. That risk is difficult to assess at this stage, and difficult to plan for in advance. There is no sign of it being realised so far.

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But it exists and we need to be alert to it. Our security interest consists in maintaining (and being able to enhance if necessary) existing security checks whether on the border or inside Northern Ireland. In that context we believe that so long as the nature of security checks in Northern Ireland (and at the border) is correctly understood 1992 need pose no threat and may offer some limited opportunities for closer cooperation and harmonisation of law.

19. There is no substantive action necessary at present (save to decide how and when to open contact with the Irish on the political/security issues, an issue which can be addressed separately) and this paper is circulated as background information.

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