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21 JUN 1991
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FROM: D J R HILL
Talks Secretariat
21 June 1991

- cc PS/Paymaster General (L&B) - B
- PS/Minister of State (L&B) - B
- PS/PUS (L&B) - B
- Mr Pilling - B
- Mr Ledlie - B
- Mr Thomas - B
- Mr Alston - B
- Mr Wilson - B
- Mr Hamilton - B
- Mr Dowdall, DFP - B
- Mr Wood (L&B) - B
- Mr McNeill - B
- Mr Cooke - B
- Mr D A Hill - B
- Mr Bell - B
- Mr Dodds - B
- Mr Petch - B
- Mr Archer, RID - B
- HMA Dublin - B
- Mr Gowan (Cabinet Office)
- Mr Brooker
- Mr Pope - B

MR Maxwell

You might want to
see those -

MA
24/6

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

TALKS: GOVERNMENT PAPERS

1. As I believe the Secretary of State knows, we have been preparing a range of papers on specific issues for the Government Team to table with the general objective of assisting and focusing debate by providing information and indicating possible options.
2. The first five papers are now attached. They comprise:
 - a. A Local Administration and Finance;
 - b. A Local Administration and Human Rights;
 - c. A Local Administration and the European Community;
 - d. Security Policy and Policing Mechanisms;
 - e. Security: Possible Roles for a Northern Ireland Administration.

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3. Each is consistent with the UK negotiating position set out in the relevant brief in the Blue Main Briefing Folder but has been drafted for presentation to the parties. We may not yet be at the point where it would be sensible to table them but Ministers may find it helpful to know that they exist and to have this opportunity to review them.

4. Other papers in course of preparation include one setting out the present constitutional legislation including what powers are available for devolution and in what circumstances; and another describing various constitutional options and devices.

5. We had originally intended to work up some oral presentations to party delegations on areas of government business, to introduce them to the issues and to the machinery of government in particular areas; but we have not pursued this for the moment given the need to maintain a fairly rapid pace. Some of the papers, eg the one on Finance might benefit from being handed over in the course of a presentation, rather than being handed over cold, and the Secretary of State might wish to consider how each of the papers should be handled.

Signed:

D J R HILL
Talks Secretariat
21 June 1991

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CPLHILL/5506/MD

A LOCAL ADMINISTRATION AND FINANCE

Introduction

1. Whatever form a local administration may take one of its central functions will be to decide how best to allocate its available resources to meet its objectives in those areas for which it is responsible. It will also probably have to decide how much to raise locally through rates or their equivalent; to negotiate the size of its grant from Whitehall; and to ensure that resources are spent in a way which achieves value for money.

2. This paper describes how the existing system works. Some features of the present system are set down in legislation (eg the Grant-in-Aid); others are internal arrangements within Government on how business should be conducted (eg the Northern Ireland Block). But for the purposes of this paper we shall discuss the present arrangements as a complete system.

Funding

3. Government expenditure in Northern Ireland is at present financed from five sources:

- the proceeds of central taxation eg VAT, Income Tax (called "attributed taxation") raised in Northern Ireland (S.15 NI Constitution Act).
- a grant-in-aid paid by the Secretary of State for Northern Ireland to the Northern Ireland Consolidated Fund (S16 NI Constitution Act);
- issues from the NI National Insurance Fund (including some resources transferred from the GB Fund);

- the regional rate, excluding that portion raised for district councils;
- miscellaneous receipts eg sales of assets (but not privatisation), water charges.

Total public expenditure in NI in 1990/91 was approximately £5910m, which may be regarded as being funded broadly as follows:

	£m
- attributed taxation	3620
- grant-in-aid	1060
- national insurance fund and other non-voted expenditure eg external financing of public corporations	880
- regional rate	230
- miscellaneous receipts	120

	5910

Of this, some £700m is NIO expenditure which relates to those services which under the NI Constitution Act 1973 are "reserved" or "excepted" matters and is therefore paid for out of Estimates Voted by Parliament out of the UK Consolidated Fund, as is also the grant-in-aid. The remainder (£5210m) is for "transferred" services, which are financed from the NI Consolidated Fund, which receives attributed taxation, the grant-in-aid, and the product of

the regional rate. Money is voted from the NI Consolidated Fund by separate Northern Ireland Government Estimates which are currently, in the absence of a NI Assembly, voted at Westminster. In all cases "miscellaneous receipts" are taken into account in individual Votes. For example the Vote for Water Services, which covers current and capital elements, is reduced by the amount of expected receipts for water charges.

The Quantum of Expenditure

4. The level of Government expenditure, including that for NI, is set through the annual Public Expenditure Survey (PES). The level of expenditure for (eg) 1992/93 and the two subsequent years is decided this year (1991), and the level of expenditure for each area of Government is announced in the Autumn Statement. The total level of expenditure for Northern Ireland - covering both transferred and reserved/excepted matters - is currently set within that system. The grant-in-aid is set in the light of that planning total as a balancing item to the other sources of funding.

5. The overall level of expenditure provision for Northern Ireland is in principle set on the basis of a "comparability formula". This ensures that Northern Ireland's existing public expenditure levels are adjusted by 2.75% of any increases (or decreases) in public expenditure in those programmes in the rest of the United Kingdom which are comparable to the responsibilities of the Secretary of State for Northern Ireland (eg 2.75% of any increase in health or roads expenditure, but not of defence expenditure). 2.75% broadly reflects Northern Ireland's share of the total UK population. This is different from the mechanism for Departments like (eg) the Home Office, who must justify increases in expenditure to the Treasury on a detailed basis.

6. This system is not immutable; it is open to the Treasury to abrogate the operation of the formula by seeking to reduce NI expenditure; it is also open to the Secretary of State to bid for

additional resources beyond those available under the comparability formula, and he has chosen to do so on several occasions in recent years. Any such bid is taken to suspend the operation of the comparability formula, and leave all NI expenditure open to detailed Treasury scrutiny. The comparability formula has, in technical terms, served Northern Ireland well, by providing a (relatively) stable basis for the annual adjustment of public expenditure plans in Northern Ireland.

7. Those funds which are made available for Northern Ireland through the PE system, and subsequently through Estimates/grant-in-aid are referred to collectively as the "Northern Ireland Block". Within this Block the Secretary of State has substantial discretion to allocate funds to meet his assessment of public expenditure needs and priorities. (There are some exceptions; social security is funded on a basis which maintains parity with GB and unspent resources cannot be allocated to other programmes.)

The Allocative Process Within Northern Ireland

8. Within the Northern Ireland Block DFP operates its own annual Public Expenditure Survey. NI Departments and the NIO submit expenditure proposals for the next three years, including bids for any additional resources which they consider necessary. In the Autumn, when the overall level of resources available for NI programmes becomes known, DFP makes recommendations to the Secretary of State on which bids should be met.

9. The present NI Block includes both "transferred" matters which are the responsibility of the NI Departments, and "reserved/excepted" matters, which are the NIO's responsibility. In making allocations the Secretary of State has to decide the relative merits of priorities. In practice security has had to be the highest priority. Strengthening the economy has been the

second priority and targeting social need third. But of course, a successful overall strategy must address the whole range of Northern Ireland's needs and problems, which interact on each other.

10. The allocations decided by the Secretary of State are announced to Parliament in a statement in late Autumn after the Chancellor's Autumn Statement. The expenditure plans for the year ahead are then incorporated into Northern Ireland Main Estimates which are presented to Parliament at the beginning of the Financial Year. During the Financial Year it remains open to the Secretary of State to reallocate resources to meet evolving priorities, proposing Supplementary Estimates as necessary. In practice most additional demands have been balanced by shortfalls, but it could be necessary to reduce expenditure in discretionary areas and, in exceptional circumstances, a bid on the Reserve may be submitted to the Treasury.

The Rates

11. The Regional Rate is struck each year at a level agreed with the Treasury. The principle is that rates should make a broadly equivalent contribution to local services as community charge and business rates do in GB, taking account of a notional amount of Rate Support Grant.

Department of Finance and Personnel

12. In all dealings with the Treasury, and on all questions of the allocation of resources between Departments, the Secretary of State is advised by the Department of Finance and Personnel. The Minister of State is in day-to-day charge of the Department. Under the present arrangements the Department approves Northern Ireland Estimates, presents these to Parliament and accounts to Parliament for local public expenditure issues. As part of this function the Department is responsible for approving major projects and programmes, seeking any necessary Treasury approvals, and co-ordinating applications for EC resources.

13. Within the Northern Ireland administration it is also the role of Department of Finance and Personnel (and the Minister of State in day to day control) to pursue value for money in Government spending. This includes encouraging the use of the best possible financial techniques, the promotion of the Government's various efficiency initiatives including, for example, privatisation and "Next Steps" agencies, and, of course, the rigorous scrutiny of the need for any spending proposals.

Relations with Bodies Outside Northern Ireland

14. Although the Secretary of State has a high degree of discretion in spending Northern Ireland resources, decisions on resource allocation must also take account of the requirements of outside bodies. In some areas (eg industrial development) spending levels are constrained by European Community agreements. But the Treasury has the most important role, and makes a number of requirements. First the Treasury requires that DFP should effectively control the level of public expenditure in Northern Ireland and ensure value for money within the Block. It has to be assured for example that systems are in place to appraise projects using the most up-to-date techniques. It also seeks to ensure that policies such as market testing, and privatisation, which should lower the cost of public services are implemented. To this end it regularly seeks information from DFP about Northern Ireland public expenditure. Second the Treasury requires to be consulted about any proposals in Northern Ireland that would increase pressures from public expenditure in other parts of the UK, while in some other areas level of provision/benefits are determined on a parity basis. Nevertheless, there has been scope for the adoption of a range of distinctive and innovative policies (eg Making Belfast Work) to meet local needs.

Comptroller and Auditor-General

15. The Comptroller and Auditor-General for Northern Ireland authorises the issue of public funds and certifies the accounts of all Northern Ireland Departments and a wide range of other public sector bodies. He is also responsible for examining the economy, efficiency and effectiveness with which policy is carried out, and probing the basis of expenditure decisions. He currently submits reports to the Public Accounts Committee at Westminster, which will examine officials on those reports where it considers appropriate to do so. This independent ex-post facto examination of Government spending is an important discipline on the system.

Receipts from the European Community

16. Northern Ireland earns receipts from a number of EC budgetary sources. The largest such is the Guarantee Section of the EAGGF, where money is simply passed from Brussels to the farmer, mainly via the Intervention Board for Agricultural Produce. This transaction is not subject to the Government's additionality policy which governs the public expenditure treatment of most other EC receipts whereby EC funding is anticipated in setting the PE total. In cash terms, of course, all the EC money is paid to its due recipient. Where this is a Northern Ireland department, the receipts are passed to the Northern Ireland Consolidated Fund.

Future Local Administration

17. It is not the purpose of this paper to describe or debate the possible options for a future local administration in Northern Ireland. But we cannot entirely disregard the issue since the form of financial arrangements will need to take account of the structure of the local administration. For example a local administration having full legislative powers would have greater

financial discretion than a body on a local authority model, which would have specific and limited statutory duties. Nevertheless it can be assumed that whatever the precise form that an administration takes it will entail a duty to allocate finance. Annexes A and B set out how the present system might be adapted if it were to be based on the financial regime applicable to a local administration having a range of responsibilities on the lines of the 1973 Constitution Act, or of a local authority type body.

Northern Ireland Office

FINANCIAL ARRANGEMENTS FOR A DEVOLVED-TYPE ADMINISTRATION

Introduction

1. By "devolved" administration, we mean a body (whether or not legislative) enjoying authority over wide areas eg "industry", "agriculture", rather than a local authority-type body, which would have specific statutory powers. We also assume that the existing financial system would be adapted to minimum extent possible to create a coherent system.

Funding

2. Funding would be on the same basis as at present (ie attributed taxation, grant-in-aid, rates etc).

Block Arrangements

3. It would remain the Secretary of State's duty to secure resources for Northern Ireland from Central Government, both for his continuing responsibilities and those of the new administration. The comparability formula would continue. The Secretary of State would decide on the allocation of resources between the two sets of responsibilities. If either the Secretary of State or the local administration's responsibilities required additional resources during the year, transfers between the two areas might be made. Alternatively there might be a bid in the Reserve. There would need to be a close collaborative relationship between the Secretary of State and the local administration in this area.

Discretion

4. Within its own area of responsibility the local administration would have a very wide measure of discretion to allocate its

resources in line with its view of Northern Ireland's needs. The principal exceptions to this are that

- a) the local administration would be constrained by UK commitments to the European Community
- b) the Treasury would wish to continue to be assured that the local administration used its resources with due regard for value for money. (This, of course, is likely to be an interest which any local administration would share).
- c) transfers of resources could not be made in certain areas (eg from Social Security to other areas).

Rates

5. The local administration would be free to vary the regional rate; but Central Government finance would assume a given level of rate income. If the local administration enjoyed legislative powers it would be able to change the rating system.

Auditors

6. The Comptroller and Auditor General for Northern Ireland would continue to examine the propriety and regularity of expenditure, and the efficiency and effectiveness of the local administration. He might report to a committee set up under the local administration.

FINANCIAL ARRANGEMENTS FOR A LOCAL AUTHORITY-TYPE ADMINISTRATION

Introduction

1. By "local authority-type administration" we mean a body which lacks legislative powers and which operates on the basis of specific statutory duties. We assume that the existing financial system would be adapted to the minimum extent possible to create a coherent system.

Funding

2. A local authority-type administration would be funded by a combination of locally raised taxation and grant-in-aid.

Block Arrangements

3. It would remain the Secretary of State's duty to secure resources for Northern Ireland from Central Government. Out of the resources he secures, it would be for him to decide the size of the grant to the local administration. To do so he would need to create a mechanism like the Standard Spending Assessment applied to local authorities in Great Britain.

Discretion

4. The local administration would be obliged by statute to carry out a range of functions. Its discretion would be only to decide at what level each function was to be financed. It could not create new duties and would always have to ensure that the level of finance allocated to each area would meet the minimum statutory requirements.

Local Taxation

5. It would be appropriate for the administration to have local taxation powers which might be based on the existing rates system or reflect the proposed system for local authorities in Great Britain. If GB practice were followed, the Secretary of State would have power to cap the level of local taxes.

Auditors

6. A body like the Audit Commission for Local Authorities in England and Wales would be required to be set up to audit the authority's accounts and to help ensure its services provided good value for money.

LOCAL ADMINISTRATION AND HUMAN RIGHTS

OC

Introduction

1. The Government holds to the principle that the human rights (*) of people in Northern Ireland should be protected. This is essential to the success of the Government's wider policies; and the assurance that such protection is in place and is effective is important in making Government more widely acceptable. It will therefore be important to the success of any arrangements to which the parties might agree that these rights should continue to be protected. Existing provisions, and perhaps new provisions, may help build confidence between the two communities, by providing a guarantee to minorities that their rights cannot not be overridden.

Existing Human and Civil Rights

2. Over the years a number of steps have been taken to protect human rights in Northern Ireland. Measures are listed in Annexes A (domestic provisions) and B (international provisions). While the Government believes that this record has merit, it certainly does not regard the existing corpus of law and other provisions as incapable of further improvement. It will take further steps where it believes they are necessary (eg the Fair Employment Act 1989). If there is agreement amongst the parties that further provision to protect human rights is necessary the Government is prepared to give their proposals serious consideration.

*Footnote

Human rights is used here to cover both "traditional" concerns about life and liberty and the recognition of identity and communal rights.

Provisions in a Constitution Act and "Excepted" matters

OC

3. All four parties have, with various qualifications, advocated a Bill of Rights for Northern Ireland. The Government would be prepared in principle to introduce additional legal rights or protections for the people of Northern Ireland which were not capable of amendment by a local administration ("entrenched" provisions). The existing Northern Ireland Constitution Act 1973 already contains such "entrenched" provisions*, and in principle this category of provision might well be increased. Another way of "entrenching" provisions is to make them "excepted" matters, which are again incapable of amendment by a local assembly. For example it would be possible to make the fair employment or the "ombudsman" legislation "excepted" matters on which only Westminster could legislate and which were not the responsibility of Northern Ireland Departments.

Proposals from the Parties

4. The Government would welcome particular proposals for rights which might be incorporated in the way set out above. There have in the past been suggestions of an amendment to the Northern Ireland Constitution Act whereby a 30% vote in the assembly would require the Secretary of State to refer proposals

*Footnote

Section 17 provides, for example, that local legislation is void "to the extent that it discriminates against any person or class of person on the grounds of religious belief or political opinion."; and Section 19 makes it unlawful for public authorities "to discriminate or aid, induce or incite another to discriminate in the discharge of functions relating to Northern Ireland against any person or class of persons on the ground of religious belief or political opinion"

to the Privy Council for a decision as to whether a provision is void. The Secretary of State already enjoys the right to do so of his own volition under Section 18 of the Northern Ireland Constitution Act. The parties may wish to consider the usefulness of this suggestion.

The European Convention on Human Rights

5. The possible incorporation into domestic law of the European Convention on Human Rights (ECHR) has been raised on many occasions, either for Northern Ireland alone or for the United Kingdom as a whole. In either case, the step would have fundamental constitutional effects and implications. There is no broad political consensus in the United Kingdom as a whole that incorporation of the Convention is required, and it would be wrong to introduce the requisite legislation for the UK as a whole in the absence of such a consensus. On the other hand, incorporation of the Convention into the domestic law of Northern Ireland alone would not be sustainable, particularly when many laws and practices are common throughout the United Kingdom. Furthermore, such a limited provision might not cover legislation in some of the most sensitive areas such as security, which may remain the responsibility of the Westminster Parliament, although it might cover some actions taken under such legislation. It is arguable whether such partial coverage would be acceptable to proponents of the ECHR.

6. Under Article 1 of the Convention, the UK has undertaken to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention. The question of incorporation is, therefore, one of means, not ends. Those rights include the right of individual petition to the Strasbourg institutions (a right for the people of Northern Ireland as well as for those in the rest of the United Kingdom). In the light of all these considerations, the Government does not believe it

would be right to propose the incorporation of the Convention into the domestic law of a part, or the whole, of the UK.

Recommendation from Standing Advisory Commission on Human Rights

7. In its Second Report on Religious and Political Discrimination and Equality of Opportunity in Northern Ireland the Standing Advisory Commission on Human Rights recommended a number of specific amendments to the Northern Ireland Constitution Act which would effectively:

a) prevent policies and practices by a local administration which were indirectly discriminatory (direct discrimination is already prohibited);

and

b) require a local administration to grant equality of opportunity and esteem to both main sections of the community.

The proposals made by SACHR are complex and objections may be raised to some of their detail, even if one supports the overall thrust of the recommendations. For example, it can be argued that a blanket prohibition of indirect discrimination covering all Government activity might unduly inhibit the processes of government, and that the appointment of a body to monitor and advise on the effects of policies might be more effective. The parties may wish to consider to what extent provisions on these lines might be appropriate to a new local administration. The Government would be content to discuss these further, and in particular what might be most practicable in administrative terms.

Declaration on Human Rights

8. Another possibility would be a declaration on human rights by those involved in a local administration. This would set down the standards of human rights which they would follow if they participated in government. These would not be enforceable through the courts and would represent a purely political commitment. Such commitments are not without value and again may have some role to play.

Conclusion

9. We would welcome the views of the parties on the ideas set out here. In particular

- a) Are there rights which the parties would particularly wish to be protected in some entrenched provision?
- b) Does the proposal in para 4 attract the parties?
- c) Do the parties see merit in either or both the SACHR proposals?
- d) Do the parties see a role for a Declaration on Human Rights?

Northern Ireland Office

ADDITIONAL MEASURES TO PROTECT HUMAN RIGHTS

Since 1969, key measures to protect human rights and to prevent discrimination in both the public and private sectors have included:-

The Electoral Law Act (Northern Ireland) 1969 introduced universal adult suffrage for local council elections. The franchise had previously been limited to rate payers. The Local Government Act (Northern Ireland) 1972 established an independent Local Government Boundaries Commission to make recommendations on the boundaries of district electoral divisions and local government administrative areas and provided independent procedures for their review. The District Electoral Areas Commissioner (Northern Ireland) Order 1984 provided independent procedures for recommending the grouping of wards into electoral areas. The Electoral Law (Northern Ireland) Order 1972 created the independent post of Chief Electoral Officer with responsibility for the orderly conduct of all elections. This Order and subsequent legislation introduced proportional representation for local government elections and regional elections to the European Parliament. The Elected Authorities (Northern Ireland) Act 1989 extended the local authority franchise to bring it into line with that for Parliamentary elections.

The Parliamentary Commissioner Act (Northern Ireland) 1969 established the office of the Northern Ireland Parliamentary Commissioner for Administration with powers to investigate complaints of maladministration (including discrimination on the grounds of religious belief or political opinion) by Government departments. Unlike his Westminster counterpart, the Northern Ireland Parliamentary Commissioner was subsequently charged with

responsibility to investigate complaints affecting personnel members in the Northern Ireland Civil Service. Furthermore, in 1971 all contractors tendering for Government contracts were required to adhere to a contractual term not to practice religious discrimination in the performance of the contract. The Parliamentary Commissioner became responsible on an extra-statutory basis for overseeing the operation of the term. This arrangement was superseded by the Fair Employment Act.

The Commissioner for Complaints Act (Northern Ireland) 1969 established the Northern Ireland Commissioner for Complaints with powers to investigate grievances against local councils and public bodies. Where the Commissioner for Complaints found injustice in consequence of maladministration, including discrimination on the grounds of religious belief or political opinion, the Commissioner was empowered to certify the facts to the county court for the purposes of an action for damages by the complainant.

The Prevention of Incitement to Hatred Act (Northern Ireland) 1970 made it a criminal offence wilfully to stir up hatred against a section of the community including any section distinguished by race or religion. This legislation was subsequently consolidated into the Public Order (Northern Ireland) Order 1981. This was replaced by the Public Order (Northern Ireland) Order 1987 which inter alia repealed the Flags and Emblems (Display) Act (Northern Ireland) 1954 and amended the legislation to prohibit the use of words or behaviour, or displays of any written material likely or intended to provoke hatred based on religious belief, colour, race or ethnic or national origin against any section of the public.

The Housing Executive Act (Northern Ireland) 1971 provided that all public authority house building and its allocation on the

basis of an objective points system should become the responsibility of a central housing authority, the Northern Ireland Housing Executive. This measure was in part designed to meet allegations that some local authorities had discriminated in the location and allocation of housing.

The Prosecution of Offences (Northern Ireland) Order 1972 set up the office of an independent Director of Public Prosecutions in Northern Ireland. The Director is the sole prosecuting authority in Northern Ireland responsible for the consideration of facts relating to all indictable and certain other offences with a view to initiating or continuing criminal proceedings. The Chief Constable is required to furnish the Director with facts and information relating to all alleged indictable offences and any other alleged offences as the Director may specify.

The Fair Employment (Northern Ireland) Act 1976 made direct discrimination on religious or political grounds unlawful in employment. A Fair Employment Agency was made responsible for receiving and investigating complaints of discrimination and for conducting investigations into the extent of equality of opportunity. A further initiative was brought into operation in 1982; tenders for Government contracts would not normally be accepted from firms unless they held an equal opportunity employment certificate issued under the 1976 Act. The Fair Employment (Northern Ireland) Act 1989 amended and extended the legislation and established a Fair Employment Tribunal and a Fair Employment Commission, replacing the Agency. It provided for compulsory registration of employers, monitoring by employers of their workforces and applicants for jobs, regular reviews by employers of their recruitment, training and promotion practices, taking into account a new Code of Practice and use of affirmative action including goals and timetables, as directed by the Commission, in the absence of fair participation. The Act provided that indirect discrimination should also be unlawful.

The Act also provided for criminal penalties for failure to register, monitor and conduct reviews; criminal penalties and loss of grants and contracts in instances of bad practice; and compensation of up to £30,000 for individual victims of discrimination.

The Sex Discrimination (Northern Ireland) Order 1976 made it unlawful to discriminate on grounds of sex or marriage in employment or in the provision of goods, facilities and services. The Equal Opportunities Commission set up under the Order keeps under review the operation of the legislation and of the Equal Pay Act (Northern Ireland) 1970. The Commission can investigate unlawful discriminatory practices and issue "non-discrimination notices", enforceable if necessary in the courts, by way of injunction or order. The Sex Discrimination (Northern Ireland) Order 1988 extended the 1976 Order to cover equal retirement conditions and various other provisions.

The Homosexual Offences (Northern Ireland) Order 1982 provides that homosexual acts in private between consenting males over 21 years of age should not be an offence. The Order brought the law in Northern Ireland into line with that already in force in Great Britain.

The Police Act (Northern Ireland) 1970 set up a Police Authority as an independent body to maintain an adequate and efficient police force. One of the Authority's responsibilities under the Act is to keep itself informed as to the matter in which complaints against members of the force are dealt with by the Chief Constable. The Police (Northern Ireland) Order 1977 provided for the establishment of a Police Complaints Board for Northern Ireland. The Board was replaced under the Police (Northern Ireland) Order 1987 by the Independent Commission for Police Complaints (ICPC). The ICPC receives copies of all complaints and, subject to any adjudication by the Director of

Public Prosecutions, the relevant investigation reports. The I.C.C. is charged with ensuring that the investigation of complaints is carried out in a thorough and impartial manner and is required to supervise the investigation of all complaints involving death or serious injury and can supervise the investigation of any other complaints.

The Police and Criminal Evidence (NI) Order 1989 reformed the law relating to the investigation and detection of crime and revised the law on evidence. The new powers introduced were accompanied by a range of safeguards to ensure that they were used fairly and responsibly. Codes of Practice issued under the Order provide detailed rules and guidance to the police on the exercise of their powers. In the law and order field, the emergency measures which are currently necessary take account of human rights and are subject to regular parliamentary scrutiny. They represent a carefully structured balance between the need to provide the security forces with the legal resources to counter terrorism effectively, and the necessity to protect civil liberties and safeguard fundamental human rights. Detention powers introduced in 1972 have been allowed to lapse and many other refinements have been made following regular independent reviews of the legislation, the last of which has only recently been completed by Lord Colville. The Government recently published a Guide to the Emergency Powers, which explains the main emergency powers and sets out the procedures governing the treatment and questioning of terrorist suspects in police custody. Those claiming ill-treatment by the police or Army are free to seek damages in the courts; in those cases where such allegations have proved true, compensation has been paid. The security forces enjoy no immunity from prosecution.

There have also been developments in the field of community relations in Northern Ireland. In 1987 a Central Community Relations Unit was set up within Government to advise the

Secretary of State on all aspects of the relationship between the two sides of the Northern Ireland community and to ensure that at the centre of the decision-making process crucial community relations issues in their widest sense are given the fullest possible consideration. In 1990 an independent Northern Ireland Community Relations Council was established to provide support facilities and recognition for local organisations which are concerned with the development of community relations, awareness of cultural diversity and conflict resolution. Equal opportunity proofing of Government policy making and legislation has also been introduced by the NIO and Northern Ireland Government Departments. Under the proofing system, all policy and legislation proposals are considered against a guidance check list to establish whether they give rise to direct or indirect discrimination on the grounds of religious belief or gender and provide equality of opportunity.

In the Northern Ireland (Emergency Provisions) Bill 1991, the Government proposes to introduce a number of new safeguards on the exercise of emergency powers, such as a record-keeping requirement on police and Army search powers. The Bill also provides that the police and armed forces may only stop and question any person for a reasonable length of time to establish their identity and movements. There are plans to appoint an Independent Commissioner to monitor procedures at terrorist holding centres, and to publish a Code of Practice on the treatment of terrorist suspects in police custody. Consultation on the contents of the Codes is due to begin with interested bodies, including the Standing Advisory Commission on Human Rights. The Government also propose to establish a new office of Independent Assessor of Armed Forces Complaints Procedures in Northern Ireland. The role of the Assessor will be to keep under continuous review the system of complaints against members of the armed forces which fall short of allegations of criminal actions.

ANNEX B

HUMAN RIGHTS GUARANTEES AT INTERNATIONAL LEVEL

The following are the main international instruments affecting Northern Ireland:

a) United Nations

The International Covenant on Civil and Political Rights. This covers, inter alia, non-discrimination, equal rights for men and women, right to life, prohibition of torture, prohibition of slavery, right to liberty and fair trial, freedom of conscience and opinion, and freedom of association.

The Convention against Torture, and other Cruel Inhuman and Degrading Treatment or Punishment. This prohibits torture and establishes a Committee against Torture to police the Convention.

b) Council of Europe

The European Convention on Human Rights. This covers right to life, prohibition of torture and slavery, right to liberty, fair trial, right to privacy and family life, freedom of conscience, freedom of expression, freedom of assembly and non-discrimination on grounds of race, religion, political belief etc.

A LOCAL ADMINISTRATION AND THE EUROPEAN COMMUNITY (EC)

Importance of the European Community

1. The European Community (EC) is of central importance to Northern Ireland and therefore to any local administration. Northern Ireland's membership of the EC as part of the United Kingdom, and in particular membership of the Exchange Rate Mechanism and the development of the single market ("1992"), will have a powerful effect on the economic climate in Northern Ireland. There will be increased opportunities for trade throughout the Community, and within the island of Ireland, but also greater competition. A local administration will want to ensure that, so far as it is within its power, the people, institutions and commerce of Northern Ireland are prepared to take advantage of the opportunities created by 1992, and, where necessary to counter sources of competitive disadvantage.
2. EC policy and law-making will also continue to have an impact on matters which may be a local administration's responsibility: in the case of agriculture most policy is already decided in Brussels; recent Community directives on industrial assistance levels will constrain the activities of the industrial development agencies; and directives on (eg) drinking water and sewage disposal have had substantial public expenditure implications. Such examples are likely to increase in areas of Community competence and a devolved administration will wish to seek to influence such policies. A local administration will also wish to help maximise Northern Ireland's share of EC money, both for projects within Northern Ireland and for cross-border projects. Transport and the environment will be major interests. Of course the degree of interest a local administration may have in the EC will be reduced if the administration is not responsible for, say, agriculture, or industrial development. But any form of local administration will have responsibilities for (eg) infrastructure in which there is likely to be a continuing major European Community role.

3. This paper sets out how a local administration might relate to the EC, given that Northern Ireland remains a part of the United Kingdom.

Representation of NI Interests Under a New Administration

4. Decisions on Community law and financial allocations are taken in Brussels. Formally, Northern Ireland's interests must continue to be represented in the Council of Ministers and with the Commission in the same way as any other region. Only Member states are present at the Council of Ministers and the Northern Ireland interest would therefore be reflected in an overall UK line in that forum. The UK Permanent Representation would continue formally to act on behalf of NI interests (as well as those of the rest of the UK). But the local administration may wish to lobby directly in Brussels on a range of issues. A local administration may choose to be particularly active on, say, specific applications for EC aid as well as wider policy issues affecting Northern Ireland. In doing so it would have to take account of the UK line decided in Whitehall and involve UKREP, not least because of the UK would be the sponsor of any application for aid. In addition, a local administration might wish to set up its own Northern Ireland office in Brussels. Such an office would operate in a similar manner to the present offices in Brussels run by GB local authorities. It could not be a substitute for UKREP; but it could supplement UKREP activities.

5. The mechanisms for deciding the UK line on European Community issues will also be of importance to Northern Ireland. At present Northern Ireland Office Ministers and officials, and Northern Ireland Departmental officials participate fully in the Whitehall machinery for determining UK policy on EC issues. They see all relevant papers and, in agriculture, a Northern Ireland official is part of the UK team which supports the Minister of Agriculture at

Council meetings. If there were a local administration, the NIO - at both Ministerial and official level - would continue formally to represent the NI interest in Whitehall; no doubt it would take the advice of the local administration on issues affecting Northern Ireland and particularly for those which the local administration was responsible. Indeed, the NIO would endeavour to give the local administration as much information as possible on issues; and officials of the local administration could attend meetings in Whitehall where appropriate. But while the local administration would have to work with the NIO to influence Cabinet level decisions, it would also be open to members of the local administration (as well as officials) to put the case for Northern Ireland interests in Whitehall, although since the Secretary of State would remain the formal channel for devolved administration views to be reflected to Whitehall, he would need to be informed of discussion on EC matters between the local administration and Whitehall (particularly if they gave rise to dispute).

Meeting EC obligations

6. Member states are obliged to comply with EC directives and other instructions/decisions having the force of law. These obligations can necessitate legislation and/or administrative action, much of it in those areas which might be the responsibilities of local administration. One option is that the local administration would be responsible for implementing EC requirements in those areas for which it is responsible. In some cases this could be done by administrative action, in others legislation would be needed. The European Communities Act 1972 permits the conferment of powers on Northern Ireland authorities, as it does on UK authorities, to legislate for the fulfilment of EC obligations. On the other hand if the local administration had no legislative powers it would fall to the Secretary of State to implement any legislation, seeking the approval of Parliament. But

it would still fall to a local administration to comply with Community decisions and regulations. Whitehall would continue to have the duty to ensure that EC obligations are fulfilled in Northern Ireland. For that reason it would continue to have the power to impose compliance with EC obligations through the European Communities Act.

Inter-Governmental Conference and Subsidiarity

7. The present Inter-Government Conferences on the future of the European Community will consider, amongst other things, the relationship between the central institutions of the Community and the regions. It is too early to say what the conclusion will be or whether developments on subsidiarity would have any effect on a local administration.

Relations with the Irish Republic

8. Community policy is aimed at bringing together Member States economies. The economies of Northern Ireland and the Republic will have opportunities for closer integration, which will supplement the degree of integration that both have with Great Britain and the wider Community. Both Northern Ireland and the Republic will have an interest in improving transport links both between them and with Great Britain and the rest of the European community; there is a tradition of joint financial services, which in the post 1992 Community will present an opportunity to be exploited; and there are other opportunities for increased trade between the Republic and Northern Ireland. Given the peripherality of both regions and the problem that poses, a local administration may wish to encourage and exploit these opportunities, where appropriate by seeking funding for cross-border projects and by other initiatives.

EC Funding

9. Northern Ireland earns receipts from a number of EC budgetary sources. The largest such is the Guarantee Section of the EAGGF, where money is simply passed from Brussels to the farmer, mainly via the Intervention Board for Agricultural Produce. This transaction is not subject to the Government's additionality policy which governs the public expenditure treatment of most other EC receipts. The essence of the policy is that receipts are anticipated by Government when setting the UK public expenditure planning total; having increased resources at the planning stage, the receipts cannot again increase resources when they subsequently arrive. (In cash terms, of course, all the EC money is paid to its due recipient. Where this is a Northern Ireland department, the receipts are passed to the Northern Ireland Consolidated Fund). The Government would expect this system to continue.

Conclusion

10. The European Community will be important in many ways both to the people of Northern Ireland and to a local administration. We cannot prejudge how within the sort of framework we have suggested such an administration might choose to promote Northern Ireland's interests within the Community. This paper is rather designed to demonstrate how Northern Ireland's relations with the Community might work on an institutional level, and to seek the views of the parties.

Northern Ireland Office

June 1991

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CN/ESL/7428

SECURITY POLICY AND POLICING MECHANISMS

1. Security policy in Northern Ireland is conducted within a legislative framework set by Parliament. Formally and constitutionally, the Secretary of State for Northern Ireland has overall responsibility for law and order. In practice, the Secretary of State decides overall security policy in the light of advice from the Chief Constable and the GOC, who are his security advisers. Current security policy was described briefly in a Statement issued by the Secretary of State in November 1990 (attached as Annex B).

2. That policy explicitly recognises the primacy of the police in dealing with all forms of crime, including terrorist crime, their operational independence in so doing, and their accountability (as also that of the soldiers who act in their support) to the law for all their actions. Arrangements are in place to provide for close co-ordination of the activities of the police and the Army which acts in their support. But other elements within the command justice system, notably both the prosecuting authorities and the courts, remain totally independent of both the security forces and the Government.

3. Within the Secretary of State's overall responsibilities for law and order, both statute and convention contribute to a distinction between security policy and security operations.

Thus -

(i) the Secretary of State has certain statutory responsibilities in the security (and policing) fields. At annex A is a list - illustrative rather than exhaustive - of his main powers;

(ii) implementation of security policy as determined by the Secretary of State (ie "security operations") is the responsibility of the Royal Ulster Constabulary. They are supported where necessary by the armed forces. The RUC is under the direction and control of the Chief Constable. Like police officers in the rest of the United Kingdom, RUC officers have a wide range of powers and responsibilities invested in them by statute and common law. In security terms, the most important statutory powers for the RUC are those of stop, search, arrest and (short-term) detention provided under the Northern Ireland (Emergency Provisions) Acts and the Prevention of Terrorism (Temporary Provisions) Act 1989. Under the general criminal law, police powers are, for the most part, now consolidated in the Police and Criminal Evidence (Northern Ireland) Order 1989. In the exercise of their powers under these and other statutes, as in all their actions as individuals, police officers are answerable to the law;

(iii) the armed forces, where their assistance is required, act only in support of the civil power. In so doing, they are subject to a chain of command which stretches back through the GOC at Headquarters, Northern Ireland to the Chief of the General Staff, and, ultimately, to the Secretary of State for Defence. Members of HM Forces have limited powers to stop, question and arrest under the Northern Ireland (Emergency Provisions) Acts. The GOC and his officers remain responsible for the operational deployment of the armed forces in support of the tasks allocated to them by the police; like police officers, the actions of individual members of the armed forces are always subject to the law;

(iv) under the Prosecution of Offences (NI) Order 1972, the Director of Public Prosecutions for Northern Ireland is responsible for initiating, undertaking and carrying on

prosecutions in respect of all serious criminal offences in Northern Ireland. The Director is responsible to, and in certain circumstances may be directed by, the Attorney-General for Northern Ireland. The Director is wholly independent both of the Secretary of State and of the police;

(v) the Secretary of State appoints the Police Authority for Northern Ireland, an independent public body, wholly funded by the NIO. The Authority determines (within the overall constraints imposed by the Secretary of State and the Treasury) the size and structure of the force, appoints senior officers, provides and maintains buildings, equipment, and supplies, and exercises budgetary control over police services. It is required to keep itself informed about the way complaints against the police are handled and it is the complaints and discipline authority for senior officers;

(vi) the NI Prison Service has responsibility for accommodating securely prisoners remanded or convicted by the courts. Its members are civil servants and, as such, they are directly accountable to the Secretary of State and subject to his direction within the framework of prison legislation approved by Parliament.

(vii) the Secretaries of State for Transport and for the Home Department have certain national responsibilities for security at airports and ports.

ANNEX A: SECRETARY OF STATE FOR NORTHERN IRELAND'S PRINCIPAL
DIRECT RESPONSIBILITIES IN THE FIELD OF POLICING/SECURITY

1. Under the Police Act (NI) 1970 the Secretary of State must approve the appointment of a Chief Constable made by the Police Authority and may require his retirement. He transmits the Chief Constable's annual report to Parliament, and may himself call for a report from the Chief Constable on any relevant matter. He may also make regulations as to the government, administration and conditions of service of members of the RUC and its reserve.

2. Under the Northern Ireland (Emergency Provisions) Acts 1978 and 1987 the Secretary of State may proscribe or de-proscribe organisations; direct the closure of highways; pay compensation; set time limits to preliminary proceedings; make directions in relation to custody of young persons; requisition property; and make regulations for promoting the preservation of the peace and maintenance of order.

3. Under the Prevention of Terrorism (Temporary Provisions) Act 1989 the Secretary of State may exclude persons from Northern Ireland or the United Kingdom. He may also, on application by the RUC, authorise the continued detention for questioning of persons reasonably suspected of involvement in acts of terrorism for periods not exceeding a maximum of 7 days in total from the time of first arrest.

4. Under the Public Order (NI) Order 1987, he may exempt certain classes of procession from requirements to give advance notice; or prohibit, in certain circumstances, public processions or open air meetings, in consultation with the relevant committee of the Police Authority wherever practicable.

5. Under the Firearms (Northern Ireland) Order 1981, he considers appeals against the refusal by the Chief Constable to grant, renew or vary a firearms certificate or to issue a

certificate of registration to a firearms dealer. He authorises firearms clubs and issues licences under the Explosives Acts, (1875-1970). He also makes regulations.

6. Under the Police (Northern Ireland) Order 1987, he may refer to the independent Commission for Police Complaints any matter, not the subject of a complaint, if he considers it is in the public interest that the Commission should supervise the investigation of the matter. He makes regulations on complaints and discipline matters.

SECURITY : POSSIBLE ROLES FOR A NORTHERN IRELAND ADMINISTRATION

1. This paper outlines possible ways of giving a Northern Ireland Assembly or a devolved Administration some input to security matters, and identifies some of the underlying issues raised in each case.

Preliminary issues and constraints

2. There are two important distinctions to be drawn. The first is that between security policy and the implementation of that policy, ie security operations.

3. Security policy is decided by the Secretary of State in the light of advice which he receives from the Chief Constable and the GOC; security operations, by contrast are a matter for the Chief Constable, within the framework determined by the Secretary of State. The armed forces, whilst ultimately answerable to Westminster through the Secretary of State for Defence, act in Northern Ireland in support of the RUC. Many of the major issues of public concern in the security field are, in fact, primarily matters of operational judgement and, therefore, matters for operational commanders to determine. But in relation to other matters, there is properly a role for Government. That may be either because the particular security force activity has implications for some other matter for which Government is directly responsible, or because questions of security policy are at issue. But, at all times, the principle of the operational independence of the police and army has to be preserved - not only to ensure the effectiveness of security force operations but also to preserve the political independence of both the police and the Army.

4. The second distinction is between arrangements designed to offer some input into the formulation of security policy, and those which would give to a devolved Assembly or Administration the power to take decisions. The former could include some scrutinising functions, or they could involve participation in discussions

...ding up to the formulation of security policy or about how best to handle the interface between security and other matters, including policies for which responsibility had been devolved. Under the second scenario, a devolved administration might take direct responsibility for some, or all, of the work of the Northern Ireland Office which is concerned with the discharge of the Secretary of State's functions in the law and order field. Such responsibility might but need not carry with it legislative responsibility for some law and order matters. The Government has previously indicated a willingness to contemplate devolution of such functions, but only after a stable and widely acceptable system of government had been established in Northern Ireland.

An input to security policy

5. The most direct method of enabling a devolved administration to participate in the formulation of security (or a more limited range of law and order) policy would be by way of an advisory committee drawn from the Assembly. This could, if the scheme of devolution involved an Executive (or comparable body) be that Executive. If no Executive or comparable body were formed, it could be a "home affairs" or "general purposes" committee of the Assembly.

6. Questions to be resolved before any such a committee could be established would include:

- i) what would be the composition of the Committee? Would it be elected, selected, or appointed? Would there be any constraint (eg of political balance) on nominations to the Committee? In principle, a small body would be likely to be more effective and cohesive; how would this be reconciled with the need to represent different parties and interests within the Assembly?
- ii) given that the Committee's main function would be the tendering of advice to the Secretary of State, should there be a power for the Committee itself, (or the

Assembly, or both) to determine its own agenda? Might it also be desirable to provide for the Committee to act on references by the Secretary of State?

iii) what would be the modus operandi of the Committee?

Looked at simply from the point of view of accountability to the Northern Ireland public, it might be desirable for the Committee to deliberate and tender advice in public. But, in practice, the Committee would almost certainly find itself dealing with subjects of some security sensitivity, which would need to be handled in strict confidence. Moreover, for the Committee's advice to carry the greatest weight, that advice should ideally be agreed; and this might more easily be achieved in a small body able to protect itself from the glare of publicity. These considerations suggest that it might be desirable to keep both the Committee's advice to Secretary of State, and perhaps also some, or all, of its deliberations confidential. Whether any such Committee should also be expected to exercise collective responsibility for its advice would depend upon the arrangements adopted elsewhere in the devolved administration;

iv) The Committee might wish to have access to expert advice in formulating its recommendations to the Secretary of State. Should it, therefore, be able to appoint an independent adviser or advisers? Or should it have access to advice, in some form, from the security forces and/or the Northern Ireland Office? So long as the Secretary of State remains ultimately responsible for security matters to Parliament, it would appear not to be appropriate to delegate to the new body any power to call for persons and papers analogous to that presently enjoyed by Select Committees of the House of Commons. But alternative arrangements could be devised which would allow for informal contacts between NIO Ministers and the committee and for briefing papers to be provided.

An alternative approach, not involving the creation of a single standing committee capable of providing continuous advice, might be to establish, as necessary, one or more temporary commissions to examine particular subjects or issues in the security or policing field. Such "commissions" might produce reports and then disband. Adoption of this approach would raise similar questions relating to appointment, composition, modus operandi and access to advice as would the advisory committee discussed at paragraphs 5 and 6. But the "commission" option might be capable of providing a sharper focus on particular law and order issues, as well as greater flexibility (in the sense of being able to engage a wider range of Assembly opinion; as well as in being able to take advantage of special expertise on particular issues).

9. Still another possibility, raising more difficult issues, would be to give the Assembly, or a devolved administration, some decision-making powers in relation to law and order matters (not excluding a power to legislate). The Government stated in 1982 that it would consider, once a durable and stable system of government had been established in Northern Ireland, whether any of the "reserved" matters in the Northern Ireland Constitution Act 1973 (ie most law and order matters) could be placed in the "transferred" category and become the responsibility of a devolved administration. The precise legislative structure may not be relevant to future arrangements, and is referred to here only for illustrative purposes; but in that structure, Section 3 of the Constitution Act contains a mechanism whereby the matters specified in schedule 3 to the Act ("minimum reserved matters on the appointed day") could be made "transferred" matters, and become the responsibility of a devolved administration, by subordinate legislation subject to affirmative resolution in Parliament. Devolution of such responsibilities would require the creation of a new "home affairs" department in Northern Ireland; and, more importantly, presupposes agreement about how the new powers would be exercised. The latter issue should be a key element in discussion of this approach.