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M: D BROOKER  
CONSTITUTIONAL AND POLITICAL DIVISION  
12 OCTOBER 1993

ASST SEC 12 OCT 1993  
CENT SEC  
*mm 313/10*

DESK IMMEDIATE

- cc: PS/Michael Ancram (L&B) -B
- PS/PUS (L&B) -B
- PS/Mr Fell -B
- Mr Thomas -B
- Mr Erskine -B
- Mr Williams -B
- Mr Bell -B
- Mr Watkins -B
- Mrs Collins -B
- Mr Maccabe -B
- Mr Dodds -B
- Mr Cooke -B
- Mr Caine -B

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

**NORTHERN IRELAND LEGISLATION**

I attach a redraft of the letter to No 10, following yesterday afternoon's discussion with the Secretary of State.

Although your letter was about that one issue Sir Patrick thought signed DB

D BROOKER  
OAB Ext 6591

- 1. Letter to No. 10 issued last night in a slightly different form to attached*
- 2. I did not see recent draft 14/10.*

- Mrs Murphy*
- 1. Can you check that SOS issued letter to PM on 13/10 as expected*
  - 2. Can you pass me most recent draft of handling sub to Fell / SOS I think we should put it forward in next week or so*

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*D*  
*13/10*

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LEFT LETTER

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October 1993

FOR SIGNATURE BY JONATHAN STEPHENS

NORTHERN IRELAND: THE UUP

Thank you for your letter of 17 September about legislative procedures.

Addressing the Unionist Agenda

Although your letter was about that one issue Sir Patrick thought that it would be helpful to the Prime Minister if he were to review the Government's policies from a broader perspective, to see what scope there is for greater flexibility with regard to the UUP, given the pressing need to reassure Unionist opinion (which has been greatly inflamed by the Hume/Adams talks) and to provide evidence that the Government was responding to Unionist concerns. The perception is that movement is all in the Nationalist direction. If Union opinion was to be steadied, and moderate leaders not forced to adopt the harder line taken by Dr Paisley and others, the Government would need to make some positive moves to address the Unionist agenda.

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Agenda

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Irish Government and SDLP should not, in principle, be unsympathetic towards this. It is the Nationalist population which is most at risk if Unionist opinion decides that their politicians are ignored and so increases support for the loyalist violence. Nevertheless, in making some positive to Unionist concerns, it remains desirable to do nothing which could adversely affect the Talks process. It is against this background that my Secretary of State has assessed the merits of Mr Molyneaux's proposals.

Mr Molyneaux's agenda

As you will know, the essence of Mr Molyneaux's position is that he favours closer institutional links between Westminster and governmental institutions in Northern Ireland, a revision of the legislative procedures during direct rule, and a return to regional government. In practical terms, this means that he would like the establishment of a Select Committee on Northern Ireland Affairs, greater use of Westminster Bills in preference for Orders in Council, and the creation of a County Council-type structure as a regional tier of government. It might be helpful to analyse these issues in sequence.

Select Committee

The benefit of a Northern Ireland Select Committee from Mr Molyneaux's point of view is that it would bind Northern Ireland more closely into the Westminster system. As such, he would perceive it as strengthening the Union. For that very reason,

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cause they would perceive it as "integrationist", it risks being opposed by the Irish Government and the SDLP, unless they could be reassured on the lines suggested above. The Opposition would also be sceptical because Mr McNamara would probably regard it as "replicating Stormont" - ie Unionist domination - at Westminster.

When, following the Maastricht debate in July, there was talk of a 'deal' between the Government and the UUP, the Irish Government opined that a move now to establish a Select Committee would be a clear signal that a deal had, indeed been struck, a Select Committee would undermine the Anglo-Irish Agreement (since it would lessen their impact on Northern Ireland Affairs by creating another focus of external scrutiny), and would be tantamount to the British Government surrendering its position of neutrality in the political talks.

The notion of a Select Committee places the SDLP, however, in something of a dilemma. They are suspicious that the Government might move in this direction as a result of a new understanding with the UUP, and Mr Mallon is on record as saying that whilst his party has no objection in principle to Select Committees - he is himself a member of the Agriculture Committee - they would resist anything which smacked of 'integration'. They would reserve judgement until they saw detail of the Government's proposals.

Over the past 2 to 3 years, the Government's position has hitherto been to recognise that a Select Committee might, in principle, be desirable, but the advent of political talks and uncertainties as to

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Whether the proposal would attract political support across the community divide in Northern Ireland meant that now was not the time to proceed with the idea. This was accepted by the Procedure Committee which found it anomalous that Northern Ireland continued to lie outside the Select Committee system, hoped that the moment would not be too long delayed before a Northern Ireland Select Committee would be created, but were understandably reluctant to cut across issues that would be discussed in the Political Talks.

The NIO's last contact with the Procedure Committee was, however, in February of this year when Sir Peter Emery wrote to enquire whether our position remained the same. Sir Patrick explained that it did; he said that "among the talks community the Select Committee issue exerts at present a clearly divisive influence, and I am sure that for the present the better option is not to establish one. But, if the Procedure Committee wishes, I would encourage them to explore with those interested whether a proposal can be brought forward which would command such support".

In Sir Patrick's view, the position we have taken with the Procedure Committee could now be easily be developed against the present political climate in Northern Ireland, to show a warmer disposition towards a Select Committee. Although the Opposition, Irish Government and SDLP may still be hostile to the idea, he believes that their reaction should be containable. On its merits, the arguments in favour of a Select Committee are compelling. The Procedure Committee has long been well disposed towards the idea, it would increase Parliamentary scrutiny of direct rule and therefore

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duce the democratic deficit in Northern Ireland caused by the absence of devolved institution and, in terms of its practical effect on the Northern Ireland community, it would be politically neutral; neither side of the community would benefit at the expense of the other. Its introduction would also bring Northern Ireland into line with other parts of the UK, would plug what many have come to regard as an unacceptable loophole in the Select Committee system, and its implementation - a point to be stressed - need have no direct effect on the political talks.

As I have already pointed out that Sir Patrick sees other reasons for displaying greater warmth towards a Select Committee now. Tensions and suspicions are running high in the Protestant community at the moment because of a belief that the Nationalist agenda is in the ascendant. The establishment of a Select Committee, or improvements to our legislative procedures - about which, more below - would provide a much needed-boost to Protestant confidence and might have a positive effect on levels of paramilitary violence. A further point which Sir Patrick would make to the Irish Government is that with the Protestant community in a state of turbulence at present, there is a need for a fresh injection of confidence into the Unionists to carry them into new political talks - which both Governments want. Conversely, there are merits in signalling to the Irish and SDLP that, in the absence of a comprehensive agreement, HMG will continue to seek to provide good, democratically accountable government for Northern Ireland and that they do not have a veto on intrinsically desirable reforms at Westminster.

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final word on the Select Committee. Although it would be fully justified on its merits Sir Patrick has noted that, if one were once created, it could bring the Government's security and political policy under much closer public scrutiny. Unless the Committee were run on a tight rein it could intrude into some highly sensitive areas - covert security operations, intelligence matters, relations with the Irish Government, etc, but in a final analysis, this would not be a reason to block the idea.] this could have a substantial knock-on effect at Westminster.

Legislative procedures

For practical reasons, therefore, we do not believe that it would be Our view here is that any substantial shift towards the greater use of Bills, as mentioned in your letter, could cause unwanted, practical and political complications. You asked whether it would lead to an increase on pressure on Parliamentary times; our belief is that it would. The advice of Legislative Counsel is that it would be a rarity to have a Bill for England and Wales that could be easily be adapted for Northern Ireland; as Northern Ireland has developed its own law and practice in a wide range of areas since the 1920s the scale of adaptations in a GB Bill could be considerable. This approach has been tried in the past; for example the Social Security Act 1973 applied to Northern Ireland but the schedule of adaptations extended to 25 pages. Provisions of that magnitude would clearly have implications for handling of Bills at Westminster. On a more general level it would, also, have implications for Government policy. Under the present procedures, the use of Orders in Council allows us to preserve a separate corpus

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is there any neat solution to the idea of using more free standing Bills on Northern Ireland issues. Logic suggests that once Bills came to be used for matters which had traditionally been dealt with by Orders in Council, all such matters should then be dealt with by Bill. This would undoubtedly clog the Westminster system; since June 1992 we have made 22 Northern Ireland Orders in Council, 14 of them requiring debate. If there were only two or three Northern Ireland Bills per session this could have a substantial knock-on effect at Westminster.

For practical reasons, therefore, we do not believe that it would be sensible to contemplate greater use of GB Bills. Nevertheless, it might be possible to give the UUP an undertaking that Ministers will use the Bill procedure wherever practicable. There might be some border-line cases where it would be possible to use Bills, rather than Orders in Council, without creating unmanageable handling complications or causing inconsistencies. The net result may not be dramatic but it would nevertheless be a small step in the right direction as far as the UUP were concerned.

Although your letter focused on the practical implications of the greater use of GB Bills, it is worth bringing out that a change in that direction would also have political ramifications. Again, it would be perceived by the Irish Government and the SDLP as a clear victory for those Unionists who favour closer links with Westminster. On a more general level it would, also, have implications for Government policy. Under the present procedures, the use of Orders in Council allows us to preserve a separate corpus

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Northern Ireland law ready for handing back to new devolved institutions. If we were to make greater use of the Bill procedure, it would become more difficult to disentangle Northern Ireland law from the statute book in England and Wales, thus making the return of legislative functions to devolved institutions harder. This is not an option which we would want to close off; all the parties agreed, in Strand I of the Talks, that new institutions in Northern Ireland might have as their focus an Assembly with legislative powers.

If it is accepted that it would not be prudent to make substantially greater use of GB Bills the majority of primary legislation for Northern Ireland would continue to be made by Order in Council. One of the UUP's criticisms of the Order in Council procedure - which is shared by the UDUP, the Opposition and the SDLP - is that Orders are given only limited time for debate - usually 1½ hours and often after 10.00 pm, outside premium time - and that, once laid in Parliament, they cannot be amended. Sir Patrick has considered what remedial action could be taken to reduce these criticisms.

Subject to the views of the Business Managers, one might offer more debating time on certain Orders and/or greater use of premium time on the floor of the House. One possibility would be to remove Appropriation Orders from the Floor of the House and use the time thus created for other Northern Ireland business.

Sir Patrick would also be happy to open up for consideration the possibility of increasing Parliamentary scrutiny of Orders in

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Council, perhaps by adding a new stage in the Northern Ireland Committee or by giving a new of Northern Ireland Select Committee a special function in this regard. The arrangements would need careful handling, not least because with 22 Orders in the past year the workload could be formidable; but any new measure which increased Parliamentary scrutiny would be a positive development and should attract broad political support.

Regional Government

Sir Patrick does not see any scope for movement towards the UUP's policy on regional government while the Talks process continues. It would cut across the Government's attempts to promote a comprehensive political settlement and any reorganisation of central and local government function would have to be preceded by a lengthy and no doubt controversial review. Sir Patrick has also discounted, for the time being, the notion of returning greater powers to local authorities as currently constituted. This would be highly controversial in the Nationalist Community, and would impinge directly on matters for consideration in the political talks. His preference is therefore to focus on changes at Westminster rather than in areas which would impact directly on the local political scene in Northern Ireland.

To summarise, Sir Patrick would be content to see the Government moving to open the way for the establishment of a Northern Ireland Select Committee. This would be a major prize for the UUP, of lasting value, but would be regarded by many, especially the Irish

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Government and Nationalist community, as conclusive evidence of a deal". It could, however, be justified on its merits. Otherwise, at a lower level, there would be complications in making substantial changes to the Bill procedure but Ministers might offer the UUP an undertaking that more Bills will be used for Northern Ireland legislation wherever practicable. Subject to the agreement of the Business Managers it might also be possible to find more time to debate Orders in Council on the floor of the House and in premium time. Sir Patrick would also be content to open up for consideration the possibility of enhancing the procedures for scrutinising Orders in Council, either in the Northern Ireland Committee or by a Select Committee if one is established.

In the first instance, the way forward on these issues would be for Sir Patrick to approach the House authorities and invite the Procedure Committee to reopen consideration of a Select Committee, including whether such a Committee could be given an enhanced role in the scrutiny of Orders in Council. Our expectation is that it would take the Procedure Committee some weeks, if not months, to take the review forward, but this would be in the Government's interests. The UUP would obtain reassurance from the fact that activity had been put in hand, but the Government would not be tied to a particular course of action or timetable. The NIO would liaise with the House authorities to draw up specific proposals to put to the Procedure Committee.