

PERSONAL AND CONFIDENTIAL
From: THE PRIVATE SECRETARY



CENT 4/452/0
SEC 15 OCT 1993
ASST

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Alex Allan Esq
Principal Private Secretary
to the Prime Minister
10 Downing Street
London
SW1A 2AA

Hcc:
PS/SJS (L+B)
B/Michael Antrim (L+B)
PS/PUS (L+B)
PS/Mr Fell
Mr Thomas
Mr Erskine

13th October 1993

*1. cc in en
2. the draft*
*we should now arrange for the two
leg. process submissions to go forward
to the SoFS asap..*
Yes Alex, JSU 15.10

15 OCT 1993

Mr Williams
Mr Bell
Mr Watkins
Mrs Collins
Mr Maccabe
Mr Dodds
Mr Cooke
Mr Brooker
Mr Cairne

NORTHERN IRELAND: THE UUP

Thank you for your letter of 17 September about legislative procedures. 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 prospective, to see what scope there is for greater flexibility with regard to the UUP.

The relevant political background is the pressing need to reassure unionist opinion (which has been greatly inflamed by the Hume/Adams talks) and to provide evidence that the Government is responding to unionist concerns. The unionist perception is that movement has been all in the nationalist direction. If unionist opinion is to be steadied, and moderate leaders not forced to adopt the harder line taken by Dr Paisley and others, the Government needs to make some positive moves to show it is alive to unionist concerns and addressing issues on the unionist agenda.

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

Sir Patrick and Michael Ancram, however, are anxious that, in making a positive response to unionist concerns, we should not take decisions which could be interpreted as pre-empting the outcome of the political talks process. This process, which remains very much alive through the medium of Michael Ancram's round of exploratory discussions, continues to offer the best prospect of an overall settlement and should not be put at risk.

Against this background, the attached paper analyses the three key UUP proposals: a Northern Ireland Select Committee, changes to legislative procedures, and more regional government. Sir Patrick's judgement is that an increase in powers for district councils would be seen as pre-empting the political Talks, as would a wholesale shift to using Bills for Northern Ireland legislation, (which also has significant practical difficulties).

There is, however, significant scope for addressing other UUP proposals. 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, although it would be regarded by many, especially the Irish Government and nationalist community, as conclusive evidence of a "deal". It could, however, be justified on its merits. But, in order to build a cross-party consensus and defuse suspicious of a "deal", he recommends that the Government refer the issue to the Procedure Committee in the first instance.

On legislative procedures, although there would be complications in a wholesale shift to Bills, Ministers

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

Agenda

might offer 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 - and more premium time - to debate Orders in Council on the floor of the House. Sir Patrick would also be content to open up for consideration the possibility of enhancing the procedures for scrutinising Orders in Council, by, for example, a Select Committee if one is established.

In the first instance, Sir Patrick proposes that the way forward on these issues should be for him, after consultation with the Business Managers, 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. We would liaise closely with the House authorities to draw up specific proposals to put to the Procedure Committee.

Yours ever
Jonathan Stephens
/s/ JONATHAN STEPHENS
Private Secretary

PERSONAL AND CONFIDENTIAL

BB/SOFS/15762

PERSONAL AND CONFIDENTIAL

MR MOLYNEAUX'S AGENDA

1. 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

2. 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 reduce the democratic deficit in Northern Ireland caused by the absence of devolved institutions. In terms of its practical effect on the Northern Ireland community, it would be politically neutral since it would be a scrutiny body only; neither side of the community would benefit at the expense of the other. Its introduction would also bring Northern Ireland into line with Scotland and Wales who have their own Select Committees. The only practical drawback is that, 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 other Select Committees deal with areas of similar sensitivity.

3. Existing departmental Select Committees already include Northern Ireland in their remits. Over the past 2 to 3 years, the Government's position has hitherto been to recognise that a specific Select Committee for Northern Ireland Affairs might, in principle, be desirable, but the advent of political talks and uncertainties as to whether the proposal would attract political support across the community divide in Northern Ireland meant that now was not the time

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

to proceed with the idea. This was accepted by the Procedure Committee who found it anomalous that Northern Ireland did not have a Select Committee of its own, 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.

4. The NIO's last contact with the Procedure Committee was 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".

5. So far as we know, the Procedure Committee has not taken the issue further.

6. Politically, the benefit of a Northern Ireland Select Committee from Mr Molyneaux's point of view is that it would fill part of the democratic deficit by improving scrutiny of Northern Ireland matters at Westminster. As such, he would perceive it as strengthening the Union. For that very reason, because they would perceive it as "integrationist", it has in the past been opposed by the Irish Government and the SDLP except as part of a wider settlement which addressed nationalist concerns as well. The Opposition have taken the same line.

7. When, following the Maastricht debate in July, there was talk of a 'deal' between the Government and the UUP, the Irish Government warned that a move now to establish a Select Committee would be seen as a signal that a deal had indeed been struck. They suggested that it might undermine the Anglo-Irish Agreement by lessening the impact of Irish views on Northern Ireland affairs by

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

creating another focus of external scrutiny. They viewed it as tantamount to the British Government surrendering its position of neutrality in the political talks.

8. The notion of a Select Committee places the SDLP 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. They would resist anything which smacked of 'integration'. But Mr Mallon is on record as saying that his party has no objection in principle to Select Committees and he is himself a member of the Agriculture Committee, which includes Northern Ireland in its remit. The SDLP would reserve judgement until they saw the detail of any proposals.

9. The position we have taken until now could be developed, against the present political climate in Northern Ireland, to show a warmer disposition towards a Select Committee. We could move to establish one straightaway. But there are important practical questions to be answered first - such as composition, chairmanship, terms of reference and whether existing Select Committees will agree to surrender Northern Ireland matters from their remits. Politically, there are also arguments against immediate establishment of a Select Committee. It is a significant card to play with the UUP and it may not be desirable to give it away entirely now.

10. This suggests that, in the first instance, the Government might ask the Procedure Committee to re-examine the issue of a Select Committee. They might be asked to concentrate on the practical issues, while the Government could express a warm disposition to the idea in principle. Such an initiative would show the UUP that their agenda was being addressed. It would put the issue into an all-party House of Commons forum - the Procedure Committee - and so might help to defuse it as a political issue between the two sides in Northern Ireland.

11. As far as the Irish and SDLP would be concerned, it would signal that, in the absence of a comprehensive agreement, HMG will continue to seek to provide good, democratically accountable

PERSONAL AND CONFIDENTIAL

Agenda

PERSONAL AND CONFIDENTIAL

government for Northern Ireland and that they do not have a veto on intrinsically desirable reforms at Westminster, while not confirming their suspicions of an immediate pay-off for a supposed 'deal'. It would be harder for them to object to a firm recommendation in a report from the Procedure Committee, than to a Government initiative to establish a Select Committee without further consultation.

Legislative procedures

12. Any substantial shift towards the greater use of Bills, as mentioned in Alex Allan's letter of 17 September, could cause unwanted practical and political complications. Our belief is that it would lead to an increase on pressure on Parliamentary time. The advice of Legislative Counsel is that it would be a rarity to have a Bill for England and Wales that could 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.

13. Nor 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. Either substantially more time would be required for Northern Ireland legislation, or there would need to be a good deal less legislation reflecting Northern Ireland's own circumstances: a result that not all unionists would welcome.

14. As well as practical implications to the greater use of GB Bills, there would also be 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

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

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 of 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.

15. For both practical and other reasons, therefore, we not believe that it would be sensible to contemplate significantly 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 would not be dramatic but it would nevertheless be a small step in the right direction as far as the UUP were concerned.

16. Although this would mean the majority of primary legislation for Northern Ireland would continue to be made by Order in Council, there are improvements to the present procedures which could be considered. 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. Subject to the views of the Business Managers, more debating time might be offered 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.

PERSONAL AND CONFIDENTIAL

Agenda

PERSONAL AND CONFIDENTIAL

17. We could also open up for consideration the possibility of increasing Parliamentary scrutiny of Orders in Council, by canvassing the possibility that a new Northern Ireland Select Committee might produce reports on Proposals for draft Orders, to which the Government would be committed to responding. This is a possibility which the Procedure Committee could be asked to examine as part of their consideration of a Select Committee. 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

18. It is much harder, however, to see what, if any, scope for movement there is towards the UUP's policy on regional government while the Talks process continues.

19. The notion of returning greater powers to local authorities as currently constituted would be highly controversial in the nationalist community. Although a number of councils are now practicing responsibility sharing there are still some poor examples (like Belfast City Council) where it is not the case. Memories are long that it was in local government that the worst examples of discrimination in the Stormont era were seen. It would also impinge directly on matters for consideration in the political talks.

20. Any wholesale reorganisation of central and local government functions would have to be preceded by a lengthy and no doubt controversial review and would cut even more directly across the Government's attempts to promote a comprehensive political settlement. It would be interpreted as a fundamental shift in Government policy away from a comprehensive and towards an 'internal solution', which nationalists would see as addressing unionist concerns only.

Northern Ireland Office
October 1993

PERSONAL AND CONFIDENTIAL

BB/SOFS/15763