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NOTE OF A MEETING TO CONSIDER CROSS-CUTTING ISSUES IN RELATION TO NORTH-SOUTH IMPLEMENTATION BODIES ON 20 OCTOBER 1998 AT 2.00 PM IN CASTLE BUILDINGS

Those Present:

**Mr McCusker
Mrs Flanagan
Mr Sweeney
Mr Gray
Mr McCartney
Mrs Devlin
Miss O'Boyle
Mr Quinn
Mrs Angus**

**Mr Cornick
Mr Warnock
Mr Mackenzie
Mr McClarin
Mr Radcliffe
Mr Daley**

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INTRODUCTION

1. Mr McCusker said that the purpose of the meeting was to consider cross-cutting issues which would affect all North-South bodies - financial, legal, staffing, etc. He set out the latest position in regard to possible North-South implementation bodies. He said that a number of meetings had taken place last week with Irish officials on particular areas, and that further meetings were to take place this week. Central Secretariat had responded to requests from the First and Deputy First Ministers and from their representatives in the UUP and SDLP for detailed assessments of the 12 areas listed in the Agreement, together with a number of other areas. Assessments for two DED areas were outstanding. It is possible, depending on political developments, that a first meeting of the North-South Ministerial Council might take place next week. The broad picture is that the Irish are trying to maximise the political significance of the implementation bodies as against the UUP wish to minimise that significance. The SDLP had a similar approach to the Irish, although somewhat guarded since the effect would be a loss to departmental Ministers of their potential functions. Sinn Fein had also made a request to Mr Murphy for detailed assessments on a number of areas, all except two of which overlapped with those assessments already done. The additional two related to major areas, ie merging IDB and IDA, and merging T&EA and FAS. Consideration was currently being given to how the Sinn Fein request would be handled, but in any case they had been told that it would not be possible to do the latter two

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assessments at this time. Mr McCusker said that on the basis of discussions with UUP and SDLP representatives the best guess at present was that the six implementation bodies would be:- one agriculture area, something in the environmental protection area, strategic transport planning, food safety, and, from the SDLP/Irish perspective, tourism, another economic issue, and/or arts/Irish language promotion.

NORTHERN IRELAND DEPARTMENTS MANDATES FOR DISCUSSIONS WITH IRISH OFFICIALS

2. In response to questions, Mr McCusker emphasised that decisions on North-South implementation bodies will be made as a result of negotiations between the Northern and the Southern administrations. The Secretary of State/British Government has to be consulted. All work being done by Northern Ireland Departments and assessments produced are in response to, and for the use of, the Northern Ireland Ministers (currently only the First and Deputy First Ministers). Clearly it is difficult to produce briefs without having received a political steer, but we should avoid getting into any negotiations with the Irish on what might be included in bodies, and should discuss only factual information, issues to be considered and options with Irish counterparts. Mr McCusker suggested that, rather than aiming to produce joint North-South papers for submission to the Northern and Southern administrations, or to produce separate papers for each side, it might be better to aim to have a paper which had been agreed between officials but which would be put separately by each set of officials to their political masters. The likely next steps in the process would be that a meeting of the North-South Ministerial Council would produce an agreed list of six areas for co-operation and six implementation bodies and commission Departments, North and South, to jointly produce detailed papers covering the issues and the options under each of these headings. Further meetings of the NSMC would then decide which of the options between the maximum and the minimum approaches would go ahead.

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FINANCIAL ISSUES

3. Mr Quinn said that he and his counterparts in the Department of Finance in Dublin had exchanged papers on 16 September about possible financial issues in relation to North-South bodies. A meeting had been held on 22 September, and DFP had issued draft minutes of that meeting to the Irish on 30 September, but had not yet had their comments. These papers had been circulated to PFOs in Departments for information. He said that the broad picture is that the Irish have a "maximising mentality", while his line had been to be neutral and dispassionate, rather than to take the minimalist view, with the intention of arriving at an agreed DFP/DOF paper setting out the issues and the options for addressing them. The broad picture is that the Irish want the bodies to exist outside existing public expenditure systems, whereas DFP's inclination would be to maintain close links. Decisions have not been taken on the status of the new implementation bodies, although DFP would be inclined to NDPB status. Papers received from the Irish last week in relation to particular potential bodies showed that they had not yet given a lot of thought to how bodies would be made up. It is not yet clear whether it would be possible to have a generic set of financial arrangements, although the Northern Ireland Bill provides that implementation bodies will be financed out of the Consolidated Fund. Mr Quinn agreed to produce a paper setting out the issues which had been identified. **(Action: Mr Quinn)**

LEGISLATION

4. Mr Gray said that there is a major difference of opinion between the Foreign Office and the Irish on the legislative means of setting up bodies. The Foreign Office had initially proposed an arrangement where agreement would be reached between the Northern and Southern administrations under Section 12 of the Constitution Act about the particular body, and the detailed arrangements for the body would be provided for in mutual legislation North and South. The Irish were not happy with this proposal, since in their view the Northern administration could walk away from it, and they were pressing for full Treaty agreement between the British and Irish Governments. This would require the full range of detailed arrangements for each body to be specified in the Treaty. The Foreign Office had now put a further paper to the Irish suggesting a compromise

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arrangement, whereby Treaties would be made between the British and Irish Governments for the first six implementation bodies only, with subsequent bodies being established under the Section 12-type arrangements. This would provide the protection for the initial six bodies, which the Irish wanted, but would mean that after devolution the British Government was not interposed between the Northern and Southern administrations. The Foreign Office also proposed that the initial six Treaties would not cover the detailed arrangements for the new bodies but would simply establish them, with the details subsequently provided for in domestic legislation North and South. The advantage of this part of the proposal was that the timing issue would be less difficult, and that subsequent changes to the arrangements or policies for implementation bodies would not require further Treaties or protocols between the British and Irish Governments, but would be a matter for Assembly legislation. In discussion it was agreed that the Irish fear about the potential for the Northern administration to walk away from agreed implementation bodies would be considerably limited by the Northern Ireland Bill provision in that changes to Orders-in-Council made prior to devolution would require cross-community support in the Assembly. It was also confirmed that under the "full detailed Treaty" option the domestic law required to give effect to the bodies would be minimal, ie it would only need to say that the Treaty had effect in domestic law. A paper on legislative issues for the First and Deputy First Ministers would be prepared once the outcome of the debate between the FCO and the Irish was clear.

5. In the event that the detailed arrangements for the new implementation bodies have to be made in domestic legislation, Mrs Devlin said that the timescale is very limited, since Orders-in-Council will need to be finalised before the Privy Council meeting on 16 December. Mr Gray and Mr McCartney had produced a template covering the areas which would need to be detailed in any domestic legislation. It is likely that the initial legislation will be able to cover only the basic requirements for the new bodies, with the details being added at a later date. Work has already begun in consultation with the Irish on a range of "horizontal" issues, including dispute resolution, Ombudsman arrangements, Freedom of Information issues, Data Protection, ethics in public office, ethics for staff, etc. An initial Irish draft Memorandum of Understanding has been circulated to Northern Ireland Departments for comment at the end of last week.

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Mr Quinn expressed his concern that the Memorandum did not adequately cover the dispute resolution issue.

STAFFING

6. Mrs Angus said that as yet there had been no contact with the Irish on staffing issues. She spelt out a range of issues which would have to be addressed, and agreed to produce a paper setting out these issues for initial consideration by the First and Deputy First Ministers by the end of next week. **(Action: Mrs Angus)**

PUBLIC APPOINTMENTS

7. There was considerable discussion about how appointments to any new implementation bodies would have to be made. Since the bodies will be established during the shadow period, NIO Ministers will need to be involved in the development of the policy in this area. The initial legislation might simply give Departments, North and South, the power to appoint a board for the body, and the interim policy decision by those Departments could be to appoint existing civil servants to the posts for a fixed period of time, and to move to the "Peach" arrangements at a later date. Another option would be for the legislation to specify who would be on the board. It was agreed that Mrs Devlin would produce a paper setting out these issues. **(Action: Mrs Devlin)**

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