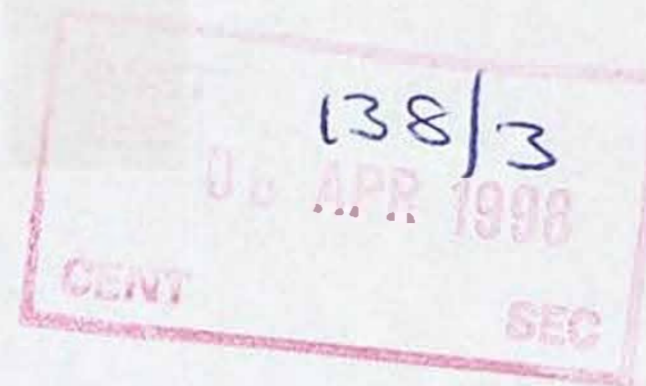


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From: Quentin Thomas
Political Director
6 April 1998



cc PS/Mr Murphy (B&L)
PS/Mr Ingram (B&L)
PS/PUS (B&L)
Mr Steele
Mr Jeffrey (B&L)
Mr Ferguson, Cent Sec
Mr Fergusson, RID, C/B
Mr Hill
Mr Brooker
Mr Whysall
Ms Bharucha
Mr Howard (B&L)
Mr May
Mr Johnston
Mr Bell
Mr Holmes, No 10

PS/Secretary of State (B&L)

NORTH/SOUTH MINISTERIAL COUNCIL AND STRAND ONE INSTITUTIONS

As you know we gave Senator Mitchell yesterday evening the attached text, agreed with the Irish side, on the North/South Ministerial Council. We also ensured, separately, that he is fully aware of the sensitivity of paragraph 7 and of the resistance of the UUP and the Loyalist parties to the establishment of implementation bodies without the apparent need for the approval of the Assembly. Senator Mitchell has begun to probe both Governments about this, noting that in practice the implementation bodies can only function when appointments are made to them by the Northern Ireland administration and once the North/South Ministerial Council has developed "policies agreed in the Council" for them to implement. He is also aware of the possible significance of the shadow period, between the Assembly election on 25 June

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and such later date as the Assembly is assigned its formal powers, when the shadow Assembly may agree to take the necessary preparatory steps to ensure the early establishment of implementation bodies. (See paragraph 29 of the Strand One paper.)

2. We also gave, at Senator Mitchell's direct request, a revised version of the chapter "Democratic Institutions in Northern Ireland", as attached. Senator Mitchell had sought our help so that he could table a slightly revised paper in response to the SDLP's oral and written comments. It had also been made a condition precedent to settling paragraph 7 of the North/South paper that HMG did some of this work in response to SDLP concerns.

3. Senator Mitchell wishes to see the two Governments again this morning so that they can seek to persuade him of how it is possible to ensure the establishment of implementation bodies at the outset before the Assembly and the North/South Council has been in position to take the steps necessary to their establishment. We will point to the shadow period as helping to solve this riddle. He may then decide (with our help) to adjust paragraph 7 of the North/South chapter to reflect the reality, and meet UP concerns.

4. Another important building block to be completed is reaching agreement with the Irish side on the designated functions for the North/South Council, and the first batch of implementation bodies.

Signed

QUENTIN THOMAS

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DEMOCRATIC INSTITUTIONS IN NORTHERN IRELAND

1. The following is intended to provide for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.

The Assembly

2. An Assembly to be elected by PR(STV) with five members per Westminster constituency.
3. The Assembly to exercise full legislative and executive authority in respect of those matters currently within the responsibility of the six Northern Ireland Government Departments, with the possibility of taking on responsibility for other matters as detailed elsewhere in this agreement.
4. The Assembly - operating where appropriate on a cross-community basis - to be the prime source of authority in respect of all devolved responsibilities.

Safeguards

5. Safeguards to ensure all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including:
 - (a) allocations of Committee Chairs, Assembly Secretaries and Committee membership in proportion to party strengths;

- (b) the ECHR and any Bill of Rights for Northern Ireland supplementing it which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;
- (c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland;
- (d) arrangements to ensure key decisions are taken on a cross-community basis. this might require that any key decision would only pass if it is supported by;

either a majority of those members present and voting which includes majorities of those who identify themselves (at the outset) as nationalist and Unionist respectively

or a weighted majority (two thirds) of those members present and voting.

- (e) key decisions require cross-community support to be designated in advance (eg election of presiding office, standing orders, budget allocations, employment equality, cultural issues) and/or be triggered by a right of petition exercised by a significant minority of Assembly members, (20%);
- (f) an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and investigate individual complaints against public bodies.

Operation of the Assembly

- 6. Chair and Deputy Chair of the Assembly, to be elected on a cross-community basis, as set out in para 5(d).

7. Committees for each of the main executive functions of the Northern Ireland Administration. Chairs and Deputy Chairs of the Assembly Committees to be allocated proportionally, using the D'Hondt system. Membership of the Committees shall be in broad proportion to party strengths in the Assembly to ensure that the opportunity of Committee places is available to all members.

8. Committees to have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and to have a role in initiation of legislation. They should have the power to:

- agree Departmental budgets and Annual Plans
- approve relevant secondary legislation and take the Committee stage of relevant primary legislation
- call for persons and papers
- initiate enquiries and make reports.

9. Standing Committees other than Departmental Committees may be established as may be required from time to time.

Executive Authority

10. Executive authority to be discharged on behalf of the Assembly by up to [ten] Assembly Secretaries, with posts allocated to parties on the basis of a D'Hondt type procedure by reference to the number of seats each party has in the Assembly.

11. A party may decline the opportunity to nominate a person to serve as an Assembly Secretary or may subsequently change its nominee.

12. An individual may be excluded or removed from office by a decision of the Assembly taken on a cross-community basis, when he loses the

confidence of the Assembly voting on a cross-community basis either for failure to meet his responsibilities or because the Assembly believes, on a cross-community basis, that his retention of office is incompatible with democratic expectations and constraints.

13. Assembly Secretaries to be political Heads of the Northern Ireland Departments, and to liaise regularly with their respective Committee.

14. As a condition of appointment, Assembly Secretaries to affirm their readiness to discharge effectively and in good faith all the responsibilities attaching to their posts.

15. Assembly Secretaries to have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Liaison Committee (see below) and endorsed by the Assembly as a whole on a cross-community basis; or in accordance with budgetary policy or legislative proposals approved, on a cross-community basis, after scrutiny by the Departmental Committee and by the Assembly. In the event of any dispute between an Assembly Secretary and the Committee, the Assembly as a whole to have the power of decision exercised on a cross-community basis.

Executive Liaison Committee

16. The Assembly Secretaries to constitute an Executive Liaison Committee.

17. Two Assembly Secretaries to be selected as chair and deputy chair respectively, on a basis which ensures that between them they represent both main parts of the community in Northern Ireland. This could be achieved by requiring the Committee's nominations to be endorsed by the Assembly on a cross-community basis. Chair and deputy Chair to be

given ex-officio titles of First Secretary and Deputy First Secretary. Duties would, inter alia, include dealing with, and co-ordinating, the response of the Northern Ireland Administration to external relationships.

18. Executive Liaison Committee to provide a forum for the discussion of and agreement on issues which cut across the responsibilities of two or more Assembly Secretaries, for prioritising executive and legislative proposals and recommending a common position where necessary, eg in dealing with external relationships.

19. Executive Liaison Committee to seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis.

Code of Practice

20. A Code of Practice to be drawn up by the Assembly on the basis of a cross-community vote. Subsequent amendments to the Code also to be made on a cross-community basis. The Code would codify and build upon the provisions of this agreement.

Legislation

21. Assembly to pass primary legislation for Northern Ireland in devolved area, subject to:

- (a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;
- (b) decisions by simple majority of members voting except when decisions on a cross-community basis required;

- (c) detailed scrutiny and approval in the relevant departmental committee;
- (d) mechanisms, based on arrangements proposed for the Scottish Parliament, to ensure suitable co-ordination, and avoid disputes, between the Assembly and the Westminster Parliament;
- (e) option of Assembly seeking including of Northern Ireland provisions in UK-wide legislation in Westminster Parliament especially on devolved issues where parity normally maintained (eg social security, company law).

22. Assembly able to legislate in reserved area with the approval of the Secretary of State and subject to Parliamentary control.

23. Disputes over legislative competence to be decided by the Courts.

24. Legislation could be initiated by an individual, a Committee or an Assembly Secretary.

Relations with other institutions

25. Arrangements to represent the Assembly as a whole, at Summit level and in dealings with other institutions, to be in accordance with paragraph 17. Otherwise, representation to be by the Assembly Secretary of the relevant departmental committee.

26. Terms to be agreed between appropriate Assembly representatives and UK government to ensure effective co-ordination and input by Assembly Secretaries to national policy-making, including on EU issues.

27. Role of Secretary of State:

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- (a) to remain responsible for NIO matters not devolved to Assembly, subject to regular consultation with Assembly and Assembly Secretaries;
- (b) to approve and lay before the Westminster Parliament any Assembly legislation on reserved matters;
- (c) to represent Northern Ireland interests in the United Kingdom Cabinet;
- (d) to have the right to attend the Assembly at their invitation;

28. Westminster Parliament (whose power to make legislation for Northern Ireland would remain unaffected) to:

- (a) legislate for non-devolved issues, other than where Assembly legislates with approval of Secretary of State and subject to control of Parliament;
- (b) to legislate as necessary to ensure United Kingdom's international obligations are met in respect of Northern Ireland;
- (c) scrutinise, including through the Northern Ireland Grand and Select Committees, the responsibilities of the Secretary of State.

Transitional Arrangements

29. Assembly to meet first as a shadow institution, without legislative or executive powers, to resolve its standing orders and working practices and make preparations for the effective functioning of the Assembly, the British Irish Council and the North/South Ministerial Council and associated implementation bodies.

Review

30. After a specified period there will be a review of these arrangements, including the details of electoral arrangements and of the

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Assembly's procedures, with a view to agreeing any adjustments necessary in the interests of efficiency and fairness.

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NORTH/SOUTH MINISTERIAL COUNCIL

1. Under a new British/Irish Agreement dealing with the totality of relationships, and related legislation at Westminster and in the Oireachtas, a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland - including through implementation on an all-island basis - on matters of mutual interest within the competence of the administrations, North and South.

2. All Council decisions to be by agreement between the two sides. Northern Ireland to be represented by [], the Irish Government by the Taoiseach and relevant Ministers, all operating in accordance with the rules for democratic authority and accountability in force in the Northern Ireland Assembly and the Oireachtas respectively. Participation in the Council to be one of the essential responsibilities attaching to relevant posts in the two Administrations.

3. The Council to meet in different formats:
 - (i) in plenary format twice a year, with Northern Ireland represented by [] and the Irish Government led by the Taoiseach;

 - (ii) in specific sectoral formats on a regular and frequent basis with each side represented by the appropriate Minister/[];

 - (iii) in an appropriate format to consider institutional or cross-sectoral matters (including in relation to the EU) and to resolve disagreement.

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4. Agendas for all meetings to be settled by prior agreement between the two sides, but open to either to propose any matter for consideration or action.

5. The Council:
 - (i) to exchange information, discuss and consult with a view to cooperating on matters of mutual interest within the competence of both administrations;

 - (ii) to use best endeavours to reach agreement on the adoption of common policies in the areas listed in [], making determined efforts to overcome any disagreements;

 - (iii) in specified areas set out in [] to take decisions on action for implementation separately in each jurisdiction;

 - (iv) in other specified meaningful areas set out in [] to take decisions on action at an all-island and cross-border level through implementation bodies to be established as set out in paras. 7 and 8 below.

6. Each side to be in a position to take decisions in the Council within the defined authority of those attending, through the arrangements in place for co-ordination of executive functions within each jurisdiction. Each side to remain accountable to the Assembly and Oireachtas respectively, whose approval, through the arrangements in place on either side, would be required for decisions beyond the defined authority of those attending.

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7. For the areas listed in [], where it is agreed that new implementation bodies are to be established, the two Governments to make all necessary legislative and other preparations to ensure the establishment of these bodies at the inception of the British/Irish Agreement or as soon as feasible thereafter, such that these bodies function effectively as rapidly as possible. The bodies to have a clear operational remit. To implement, on an all-island and cross-border basis, policies agreed in the Council. To report to the Council while remaining subject to normal accountability to the Northern Ireland Assembly and the Oireachtas, through the Council.
8. Any further bodies in addition to those specified in [], and other developments of these arrangements, to be by agreement in the Council and with the specific endorsement of the Northern Ireland Assembly and the Oireachtas, subject to the extent of the competences and responsibility of the two administrations.
9. Disagreements within the Council to be addressed in the format described at paragraph 3 (iii) above or in the plenary format. By agreement between the two sides, experts could be appointed to consider a particular matter and report.
10. The necessary costs of the Council and the funding of implementation bodies to be agreed within the Council, subject to normal procedures in the Oireachtas and the Northern Ireland Assembly. Funds to be provided by the two Administrations on the basis that the Council and the implementation bodies constitute a necessary public function.

11. The Council's expenditure to be audited jointly by the Comptroller and the Auditor-General's Office and by the Northern Ireland Audit Office. Their joint report to be submitted simultaneously to the Oireachtas and to the Assembly.
12. The Council to be supported by a standing joint Secretariat , staffed by members of the Northern Ireland Civil Service and the Irish Civil Service.
13. The Council to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.
14. The Northern Ireland Assembly and the Oireachtas to be encouraged to develop a joint parliamentary forum, bringing together equal numbers from both institutions for discussion of matters of mutual interest and concern.
15. Consideration to be given to the establishment of an independent consultative forum appointed by the two administrations, representative of civil society, comprising the social partners and other members with expertise in social cultural, economic and other issues.