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FROM: D J R HILL  
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4 December 1998



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PS/Secretary of State (L& B)

M  
17/12

**TRIGGERING D'HONDT - TIMING OF STANDING ORDERS**

Issue: How should the Secretary of State's power to determine the necessary Standing Orders be used to maximum political effect.

Timing: Not urgent, but it could play into current political exchanges.

Recommendations: We should encourage Mr Trimble to proceed to the formal determination of Departmental structures as soon as possible by assuring him that we will not immediately determine Standing Orders to trigger the operation of D'Hondt to appoint shadow Ministers.

However we should make clear, including publicly, that the necessary Standing Orders will be determined

- if requested by the Assembly, or
- in any event, no less than 3 weeks before the day appointed for devolution.

The issue arose in passing during the Secretary of State's discussion with Jane Morrice Thursday; and she may find it helpful to have a note on the background to the current situation and the options available to us. A number of previous submissions on this subject went forward during September while the Secretary of State was pre-occupied with the Eleven City Tour.

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Background

2. During the shadow phase Assembly Standing Orders are determined by the Secretary of State. Currently those Standing Orders make provision for any determination on the number and functions of Ministerial offices to be subject to cross-community support in the Assembly (to ensure consistency with the provisions of the Northern Ireland Act); but make no provision regarding the operation of the D'Hondt procedure to secure the appointment of shadow Ministers.

3. As this is a novel and complex procedure, we consulted the parties in mid-August (PS/Mr Murphy's letter of 17 August) on a set of draft Additional Standing Orders covering

- the appointment of shadow Ministers;
- the appointment of Chairs and Deputy Chairs of shadow statutory committees (also by D'Hondt) and the selection of committee members;
- the exclusion or removal of individuals or parties from shadow office.

4. The intention was to demonstrate the Government's desire to see things moving forward and to ensure that there was no procedural obstacle to the appointment of a shadow Executive at the Assembly's first meeting after the summer recess. Those draft Standing Orders envisaged that shadow Ministers would be appointed at the Assembly meeting immediately following any determination on Ministerial offices.

5. We received a number of constructive comments from the Assembly Standing Orders Committee, and from the Presiding Officer, most of which we were able to accept. However:

- the Standing Orders Committee comments were subject to formal approval by the Assembly on 14 September and it seemed tactful to allow that to happen before making any further move. (Mr Murphy wrote to the Committee to that effect on 10 September);
- separately, Mr Trimble wrote to the Secretary of State on 10 September arguing that the Standing Orders, as drafted, would precipitate an immediate crisis whenever the FM/DFM's proposals on Ministerial offices were put to the Assembly (because agreement would trigger the establishment of the shadow Executive) and suggested that the activation of the D'Hondt procedure should require a separate cross community vote in the Assembly (effectively giving Unionists an opportunity to determine



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whether "appropriate political circumstances" prevailed before the process of establishing a shadow Executive could be initiated). He made similar representations to No 10 and seems to have received assurances that D'Hondt would not be triggered until the political circumstances were opportune. At the Secretary of State's request, a Private Secretary letter went to No 10 setting out the case for retaining freedom of manoeuvre on this issue;

- meanwhile it became clear, in any event, that there was not going to be any agreement on the number of Ministerial offices at the Assembly's meeting on 14 September, thus rendering the whole issue somewhat academic.

6. Formally that is where matters rest. We have continued to update the draft Standing Orders to take account of changes made to the equivalent provisions of the Northern Ireland Bill: they remain ready to be determined at a moment's notice. It would be desirable to have a clear view on the circumstances in which they should be determined and whether anything should be incorporated to meet Mr Trimble's concern that the appointment of shadow Ministers should not be effectively automatic.

The political context

7. The immediate need is to secure political agreement between the UUP, SDLP and Irish Government on North/South bodies (and areas for co-operation) and the number and functions of Northern Ireland Ministerial offices so that practical legislative and other preparatory steps necessary to achieve devolution early next year can proceed. Strictly, that requires no formal steps to be taken by the Assembly. However it would be desirable if any such agreement were given expression in a report by the First Minister and Deputy First Minister to the Northern Ireland Assembly and a formal determination by the Assembly in relation to the Ministerial offices. That would achieve a necessary formal step on the path to devolution and thus represent a significant political gain. It would also reinforce the role of the Assembly as the primary focus for political activity and restore its credibility to some extent, and give the smaller parties an opportunity to contribute.

8. It is clear from what Reg Empey and David Campbell told me and Tony McCusker on Friday that the UUP are nervous of proceeding to a formal determination in the near future, in case the Secretary of State then makes the Standing Orders which would precipitate d'Hondt. They could get round this by inviting the Assembly to make a decision in principle, rather than formal determination: an alternative would be for the Secretary of State to give an assurance that she would not immediately make the Standing Orders which would precipitate the appointment of

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shadow Ministers. That would be no more than an acknowledgement of political reality. It might be criticised (e.g. by Sinn Fein) as letting Unionists off the hook but the Unionists have other potential ways of avoiding the hook (e.g. by promoting a decision in principle) and giving such an assurance would be worthwhile if it secured a formal Assembly determination on Ministerial offices.

9. Thereafter, however, it would be clear to everyone that the timing of the formation of the Shadow Executive was in the hands of the Secretary of State. Delay would be perceived as giving cover to Mr Trimble: an early move (especially in advance of any decommissioning) would be perceived as helping Sinn Fein. Mr Trimble might continue to seek a veto over the circumstances in which the power could be exercised and Sinn Fein at least, and perhaps over time the Irish Government and SDLP, would probably urge the Secretary of State to make the necessary Standing Orders immediately. This could all get rather uncomfortable.

10. One (pro Unionist) option would be to give Mr Trimble an assurance that the necessary Standing Orders would not be made until after some IRA decommissioning had occurred, but that would pander to Mr Trimble's nervousness and insecurity, impale HMG cleanly on the decommissioning hook and give IRA hard-liners a veto over political development.

11. The alternative of setting a firm early date for the formation of the Shadow Executive, would trigger an immediate political crisis within Unionism and between HMG and UUP but would be welcomed by Sinn Fein. It would tend to lift the pressure on the IRA to commence decommissioning.

12. Another alternative, which I recommend, would be to signal the Government's readiness to make the necessary Standing Orders

- if requested to do so by the Assembly, or
- in any event, not less than three weeks before devolution.

13. That would

- give some degree of control and responsibility to the Assembly: if agreement could be reached there the Government would be committed to respond; and
- signal a readiness to make the necessary Standing Orders without any explicit requirement for prior IRA decommissioning and on a reasonably clear timescale; but it would also
- help to maintain political pressure on the IRA to commence decommissioning in order to maximise the prospects for the successful launch of the new institutions. By avoiding the creation of a 'precondition' HMG could reasonably expect the continued support of the Irish Government, the US Administration

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and nationalist public and editorial opinion in pressing for an early start to IRA decommissioning.

14. The Government would, in 'Unionist' terms have abandoned a source of possible direct leverage in respect of decommissioning; but it would be in a much stronger position to maintain (and generate widespread support for) the argument that some prior IRA decommissioning is a necessary price for the successful establishment of inclusive political institutions in Northern Ireland.

15. Essentially, all this would boil down to giving a public assurance (this week?) that the Standing Orders necessary for the operation of the D'Hondt procedure to appoint Shadow Ministers

- would not be made immediately following any early determination on the number and functions of Ministerial offices, but
- would be made whenever the Assembly so requested or (and in any event) not less than three weeks before devolution.

16. I should be happy to discuss.

*signed*

*David Hill*

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