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PS/Secretary of State (L&B)

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WHAT NEXT?

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Now there is agreement on North/South bodies and NI departments, we need to look beyond that to our strategy for the early months of 1999.

Summary

2. Our objective is to transfer powers and bring all the other institutions into being as soon as possible and on a basis which commands the widest possible consensus. The need to secure consensus suggests:

- Plan A: first we should seek an agreed approach to decommissioning and the Executive, embracing both Sinn Féin and the UUP and those in between;
- Plan B: as a fall-back if that fails, we should seek an approach which the UUP, SDLP and the Irish Government support even if Sinn Féin does not;
- Plan C: in the last resort if collapse of the agreement seems imminent, we should consider whether an attempt to force the formation of the Executive should be tried even if the chances of success seem poor - if only to demonstrate we have done all that we can to implement the Agreement.

3. The rest of this paper concentrates on the detail of these plans.

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Timescale

4. This is the timescale (see also Alan Whysall's note of today) we shall have to work within:

- before powers can be transferred, the necessary legislation to restructure NI departments and give functions to North/South bodies must be drafted and passed by Parliament, together with some other necessary subordinate legislation;
- today's agreements provide the outline, but by no means all the detail required, so we will need to allow time for further consultations with the parties, on the model of the Bill consultations;
- that suggests it is realistic to allow some three months (and the legislation for North/South bodies is particularly tricky and subject to unforeseen delays);
- so devolution could occur in March, but there is a good administrative case then to plan for 1 April (the start of the NI financial year).

5. So formation of the real Executive will not arise as a "live" issue until March/April. A lot else will be going on before then - consultations with the parties on the important detail of much of the legislation necessary for devolution, plus continued implementation of other parts of the Agreement - eg the Human Rights and Equality Commissions.

6. But, we can also expect attention to focus on the shadow Executive. Here the position is:

- shadow Ministers must be appointed before the transfer of powers, even if it is only a matter of days before. (Otherwise there will be no one to transfer powers to.)

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- in the shadow phase, it is up to the Secretary of State to determine the necessary Standing Orders for the running of d'Hondt;
- in theory, she can therefore require d'Hondt to be run at any time, or in any particular circumstance, once a determination on Ministerial offices is in place;
- so far we have not said in what circumstances we will determine the necessary Standing Orders.

7. So the shadow Executive remains technically necessary, albeit only for a short period of time. But, more important, there remain strong practical arguments for giving shadow Ministers as long a lead in time as possible.

Plan A: Agreement between the UUP and Sinn Féin

8. Our first approach should be to find an agreed way through the impasse - one that embraces both Sinn Féin and the UUP as the two extremes of the impasse (if not in formal agreement, at least in acquiescence).

9. The issue is all about the timing and sequencing of moves by both sides. Sinn Féin and the UUP currently adopt mutually exclusive positions. One or the other, or both, would have to move.

10. Broadly, there are three sequencing options round which agreement might be found:

- Option 1:
 - Decommissioning
 - Shadow Executive (if only briefly)
 - Real Executive

Requirements: guarantee that real Executive will follow on an act of decommissioning without opportunity for Assembly to delay it

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Comment: UUP precondition met; Sinn Féin shift most.

- Option 2: Shadow Executive (if only briefly)
Executive
Decommissioning

Requirements: guarantees that decommissioning will follow within a short period of the Executive being formed

Comment: Sinn Féin have to accept a timescale; UUP have to accept the Executive initially without decommissioning (which, even with guarantees, looks politically very difficult).

- Option 3: Shadow Executive (more than briefly)
Decommissioning
Real Executive

Requirements: (i) guarantees that decommissioning will follow within a short period of the shadow Executive being formed

(ii) guarantees that the real Executive will follow directly after decommissioning

Comment: UUP have to accept shadow Executive without decommissioning, but not the real Executive. Sinn Féin get on the shadow Executive with no decommissioning but no further.

(In all of these 'decommissioning' could mean a range of actual steps, as in No 10's enthusiasm for redefining decommissioning. But something physical- not just words - is a prerequisite for the UUP.)

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11. If any of these broad options could be agreed, it would be acceptable to HMG. We have no point of principle at issue. So our concern should be to promote agreement, not a particular option.

12. There are plenty of variants round each of the broad options. As of now, Option 3 looks as if it offers the best chance of agreement, requiring fairly equal movement from both sides. Annex A sets out in more detail what might be involved.

Plan B: agreement without Sinn Féin

13. It may be impossible to get any understanding from Sinn Féin on when decommissioning will occur. If so, it is not in our interest, nor the UUP's or SDLP's, to allow the lack of movement by IRA hard-liners to thwart implementation of the Belfast Agreement.

14. But if the two Governments, the UUP and the SDLP agreed a way forward, then Sinn Féin would need either to fall in with it, or accept isolation. While second best, it is better than no Agreement.

15. Again, HMG's prime concern would be to promote any agreement between the SDLP and UUP. Mallon is already committed to exclude Sinn Féin if they dishonour their commitments on decommissioning. That's not enough for the UUP, but might be built on.

16. For example an agreement between the UUP and SDLP, endorsed by both Governments might comprise:

- a date (1 April?) for the real Executive (preceded briefly by the shadow Executive) - on which Sinn Féin would initially have a seat;
- a date (21 May? anniversary of the referendum) by which decommissioning would need to begin to the satisfaction of the Independent Commission;

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- a public SDLP undertaking that if IRA decommissioning had not begun by then, the SDLP would vote for Sinn Féin's exclusion from Ministerial office;
- possibly supported by undertakings from the British/Irish Governments that they would take action if the SDLP did not.

17. The key requirements for this sort of approach are:

- SDLP (and Irish Government) readiness to set an early date for decommissioning to start, even though none is set in the Agreement (a big step for both, who have so far always refused to break with Sinn Féin over decommissioning);
- UUP readiness to sit in the Executive with Sinn Féin prior to decommissioning (because the SDLP could not accept Sinn Féin's prior exclusion). But the prize for the UUP is the guarantee either of decommissioning or of Sinn Féin's exclusion.

18. The end result need not be Sinn Féin's exclusion. Sinn Féin may acquiesce when faced with this choice, even if they cannot agree it in advance. In that sense Plan B may not be far from Plan A.

Plan C: forcing the issue

19. Time looks likely to run out in May at the very latest, because:

- the advent of the marching season and the May European elections will hamper political deals;
- delay beyond the summer strains credibility on all sides, but particularly for republicans;

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- the Irish constitutional changes must come into effect (which requires the Executive and other institutions to be established) by 21 May 1999 or otherwise they lapse - unless this deadline is extended by fresh Dail legislation.

20. If there is no agreed solution in sight, with the risk the whole Agreement will collapse, we would need to consider HMG's interests in the event of collapse. These might be:

- to show we have made all possible efforts to implement the Agreement, so blame cannot attach to us;
- to maximise the chances of continuing peace and isolate any who return to war;
- to maintain as much wider support as possible - in particular, the Irish and US Governments.

21. A mild version of forcing the issue (hoping for acquiescence from the parties) would be, with the Irish Government:

- to set dates for the real Executive, followed shortly by decommissioning;
- to offer accompanying guarantees on action (if necessary, requiring a new Bill) to exclude Sinn Féin if there was no decommissioning.

22. Tougher versions would be for HMG to do this unilaterally, or to set its own decommissioning precondition.

23. There are clear risks:

- we can't force parties to participate in the Executive, and an Executive without unionists would collapse because it could get nothing through the Assembly;

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- unilateral action to exclude Sinn Féin or set preconditions risks alienating the SDLP and Irish Government as well, leaving HMG potentially blamed for any resumption of violence. The Irish would claim that by going it alone we were breaching the whole basis of the process.

Some practical conclusions

24. What does this suggest we should do?

- Discuss these approaches with the Irish Government. Their support will be crucial. For Plan A, direct negotiations between Sinn Féin and the UUP are unrealistic, so the two Governments will inevitably become proxy negotiators;
- Engage the UUP and Sinn Féin further to probe any room for movement;
- Insist that some physical decommissioning is in practice a prerequisite - but there is room for negotiations on the sequence of events;
- Set March/April in the public consciousness as the target date - both because it is realistic and to avoid self-fulfilling talk of a February crisis;

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- Retain our own freedom of manoeuvre. We may yet want to establish the shadow or the real Executive without formal agreement but hoping for acquiescence - we should not lose those options by tying our hands now.

(Signed JAS)

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POSSIBLE AGREED TIMETABLE

[All the steps would be agreed, or understood, in advance - possibly taking the form of a proposal from both Governments, in which the main parties would acquiesce.]

Phase 1 (February?)

- Formal Assembly determinations on numbers of Ministers and Junior Ministers and their functions
- Selection of shadow Ministers under d'Hondt (but possibly with no meeting of shadow Executive Committee yet)

Phase 2 (March?)

- Act of decommissioning
- Verification by Independent Commission
- Meetings (if not already held) of:
 - shadow Executive Committee
 - shadow North/South Ministerial Council
 - shadow British/Irish Council
- Devolution orders published and laid

Phase 3 (April?)

- Devolution order comes into effect
- British-Irish Agreement comes into force

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Supporting guarantees

- HMG would guarantee to the UUP to transfer powers only if:
 - Assembly requested it, or
 - decommissioning had started and been verified
- HMG would guarantee to Sinn Féin to transfer powers once decommissioning had started and been verified
- (possibly) SDLP would guarantee
 - to the UUP to support Sinn Féin's exclusion from the Executive if decommissioning not delivered
 - to Sinn Féin to ensure powers are transferred after decommissioning or, if not, collapse of the shadow Executive.

Supporting (or parallel) activity

- Human Rights Commission: appointments due to be complete, end-February
- Equality Commission: appointments process underway February/March, due to be complete end-March
- Civic Forum: up to FM/DFM to make proposals
- Normalisation: security strategy now due for publication, January
- Prisoners: continuing
- Policing/Criminal Justice reviews: continuing (Patten due to report summer - May/June?)

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