

E.R.

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11/12/85
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PS/SECRETARY OF STATE (L&B) - M

cc PS/Ministers (L&B) - M
 PS/PUS (L&B) - M
 PS/Mr Bloomfield - M
 Mr Brennan
 Mr A W Stephens - M
 Mr Merifield - M
 Mr Chesterton
 Mr Gilliland - M
 Mr Ferneyhough - M
 Mr Spence - M
 Mr Elliott PAB - M
 Miss Elliott
 Mr Ehrman

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FUTURE OF THE ASSEMBLY

1. This morning the Secretary of State requested urgent advice on the options arising from the probability that the Assembly will decide on Thursday to establish a committee on "The Government of Northern Ireland" and to suspend other business.
2. The attached note takes on board advice from Mr Bloomfield, Mr Merifield and Miss Elliott.

R B SPENCE

4 December 1985

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PROPOSED ASSEMBLY COMMITTEE ON "THE GOVERNMENT OF NORTHERN IRELAND"

Introduction

1. The Assembly will be asked to agree on Thursday the creation of a committee of 23 members "to examine the implications of the Anglo-Irish Agreement for the government and future of Northern Ireland and the operation of the Northern Ireland Constitution Act 1973 and the Northern Ireland Act 1982".
2. The Committee would commence its work on Tuesday, 10 December and its proceedings could be broadcast and televised. All other Assembly business would be suspended with the exception of the Finance & Personnel Committee's examination of the "role of the Northern Ireland Civil Service in relation to the Anglo-Irish Intergovernmental Conference".
3. The DUP and OUP leaders are reported as claiming that HMG will not dare to stop the proposal.
4. The Alliance members are most unhappy and will be seeking an early meeting with the Secretary of State. They are reported as being unable to agree to the suspension of other Assembly business; there are also said to be some unionist reservations on this point. The Speaker was told on Tuesday that there would be a very real question over the Assembly's future if it abandons its scrutiny work.

Legal Advice

5. The resolution setting up the Committee is cunningly worded; it does not itself breach section 3(1)(a) of the NI Act 1982, which prohibits the Assembly of its own volition considering an excepted matter. The Agreement - a matter between two Governments - and subjects governed by the NI Constitution Act 1973 are both excepted. But among the implications of the Agreement are the possibilities of a devolved government assuming responsibility for matters currently within its purview and change in NI Departmental practice, both of which the Assembly is fully entitled to consider.

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6. In practice, the Committee will inevitably go beyond these areas, into the excepted field, in order to denounce the whole concept of the Agreement and to call for its destruction; they would thus be acting ultra vires. Legally, there is nothing which we can do to prevent this short of prorogation or dissolution.

7. Unionist reaction to the argument that the Assembly is acting "ultra vires" is likely to be that the Assembly is simply doing what HMG has been urging people to do - namely, to examine the Anglo-Irish Agreement very carefully. They will also argue that it is perfectly proper for the Assembly to examine how the Agreement will affect the work of the NI Departments and how it might influence the Assembly's proposals for devolution.

8. The Assembly's staff are being placed in an increasingly awkward position. If the Departmental Committees are suspended, there is a strong case for returning the Committee Clerks to the NI Departments, rather than allow the Assembly to use them to service the new Committee. The Clerk, as Accounting Officer, is in a particularly delicate position. He intends to bide his time and to wait until he sees how the Committee proposes to carry out its task. He recognises that he may have to tell the Committee at an early stage that he cannot agree to expenditure which they want.

The Options

OPTION A: Allow the Committee to proceed

9. While the main purpose in establishing the Committee is to provide a new platform from which to attack the Agreement in the period before the by-elections, it is just possible that some moderate and sensible points of view might be heard. The constant criticism of HMG and the neglect of other Assembly business might begin to backfire on the unionists.

10. If it was decided to allow the Committee to proceed, it would be possible for HMG to put the Assembly on notice that HMG expected it to resume its scrutiny work after the Xmas recess (which would probably have been from 12 December until 21 January).

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(Press reports suggest that the new Committee plan to report early in January.) In this way, the onus is put clearly back to the Assembly and HMG can show even more clearly that the Assembly has failed to carry out its duty to scrutinise and advise on behalf of the people of Northern Ireland.

11. The weakness of this approach is that HMG would be allowing the unionists to determine how the Assembly should function even though this departs from the letter and spirit of the legislation. This might merely encourage ^{the unionists} to strengthen and diversify their action against the Agreement.

OPTION B: Dissolve the Assembly

11. Dissolution of the Assembly could be fully justified by the Assembly's failure to carry out its scrutiny role and by its attempt to act "ultra vires". However, the unionists would represent dissolution as further evidence of HMG's assault on the majority community and as an attempt to limit proper examination of the Anglo-Irish Agreement. The path of constitutional protest would be said to have failed again. There would be a risk of the unionists seeking to occupy the Assembly's facilities or to reconvene in another location, and thus perhaps start the process towards establishment of a provisional or alternative government. Dissolution may, in fact, be what some unionist leaders want in order to intensify anti-HMG feelings.

12. In practice, the first step in winding-up the Assembly would have to involve prorogation - which can be done without any Parliamentary procedures - followed by an Order in Council - approved by both Houses - dissolving the Assembly. During the period when the Assembly is prorogued, the Assembly members would continue to have access to the Library, Dining Room, and Committee Rooms.

OPTION C: Dissolve the Assembly and call new Elections

13. Calling of new elections - perhaps in the late Spring - would undermine some of unionist criticism of simple dissolution. It would also provide the occasion for the SDLP to re-enter the Assembly. But it would probably be necessary to call such

elections against a background of a framework for real progress on devolution. It is most unlikely that the parties could - left by themselves - agree such a framework and it would, therefore, fall to the Secretary of State to try to bring the parties together. While this is a possible approach, it needs very careful consideration and preparation. An early election would, however, tend to be fought on a "pro and anti" Agreement basis, rather than on the proposals for devolution.

Conclusions

14. It is very tempting to pull the plug on the Assembly now rather than allow it to become a weapon in the unionist attack on the Agreement. An Alliance withdrawal would make closure of the Assembly unavoidable.

15. If the Assembly has to go now, dissolution with the promise of new elections associated with specific proposals for devolution, might be worth urgent exploration.

16. However, the risks of further aggravating the unionist community (which some unionist leaders may want) point towards allowing the new Committee to proceed, but to make clear that HMG expects the Assembly to resume its scrutiny work after the Xmas recess. If it fails to do so, HMG can act on the basis that the Assembly has brought about its own destruction.

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