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RBS/329/89

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FROM: R B SPENCE
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DATE: 19 SEPTEMBER 1989

cc. PS/Sir Kenneth Bloomfield - B
Mr Wilson - B

MR McCANN
MR KIRK - B
MR J McCONNELL - B
MISS OWENS

APPOINTMENTS TO PUBLIC BODIES

Following discussion at the last meeting of PDG I attach a first draft of a possible submission from Sir Kenneth to the Secretary of State.

I would welcome comments by 27 September.

RBS

R B SPENCE
CENTRAL SECRETARIAT
EXT SH 269 SC 248

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DRAFT/RBS/329/89 - 19 SEPTEMBER 1989

HCS/

FROM: K P BLOOMFIELD
DATE: SEPTEMBER 1989

cc. PS/Ministers (B&L) - B
PS/PUS (B&L)
NI Perm Secs
Mr Burns - B
Mr Stephens - B
Mr Spence - B
Mr Miles - B
Mr Thomas - B
Mr J McConnell - B
Mr Kirk - B

PS/SECRETARY OF STATE (B&L) - B

APPOINTMENTS TO PUBLIC BODIES

Introduction

1. This submission discusses the problem of ensuring that public bodies in Northern Ireland are so constituted as to enjoy the widest possible respect and acceptance throughout the community. It explores in particular what means may be available to remedy imbalances arising from the use by others (especially District Councils) of their existing nominating powers without due regard to fairness or balance.

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2. The wording of the first paragraph follows closely para 12 of the Review of the Working of the Anglo-Irish Intergovernmental Conference. This is, indeed, a subject in which the Irish are deeply interested but it is also one which we have ourselves been seeking to address for several years.

Balancing public appointments

3. In making appointments to public bodies, the prime consideration of Government must be an individual's ability to make a positive contribution to the work of the particular body concerned.
4. Government is also concerned with creating public bodies which have a fair and equitable balance as regards religion, sex, age and geographical spread. But in doing so it has to abide by S19 of the Northern Ireland Constitution Act 1973 which makes it unlawful to treat any person or class of persons less favourably on account of their religious beliefs or political opinion than any other person or class of persons.
5. Achieving balance in NI's public bodies is made more difficult for Government where an organisation has the right to nominate members or where Government is required to consult an organisation in making appointments. In

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practice, Ministers in making their appointments seek wherever possible to redress any imbalances arising from nominations by others. Also, nominating organisations are quietly encouraged to put forward nominations which are representative of both sides of the community. as for several years.

The position of District Councils

6. The reorganisation of local government in NI in 1973, following from the Report of the Macrory Review Body, gave the 26 District Councils three main roles:-

6.1 Executive ie carrying out specific but modest services in each district;

6.2 Consultative ie providing views and advice about the needs of their districts to the Departments and public bodies providing services on a regional or area basis;

6.3 Representational ie representing District Councils on behalf of a number of public bodies.

7. The existing arrangements under which District Councillors are nominated to 23 public bodies in Northern Ireland can be summarised under 5 broad categories:-

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7.1 Nominations by ALANI

The Association of Local Authorities in Northern Ireland has the right to nominate members for appointment by DOE to the Fire Authority for Northern Ireland and for appointment to the Arts Council.

7.2 Direct Appointments

Belfast City Council and "a body representative of District Councils" (in practice ALANI) appoints directly Trustees of the Ulster Museum and the Ulster Folk and Transport Museum.

7.3 The representative body of District Councils

This body can nominate someone for appointment by DANI to the Fisheries Conservancy Board.

7.4 Appointment after consultation with District Councils' Representative Body

Appointments are made by the appropriate Department after consultation with organisations representing District Councils to the Health and Safety Agency, Sports Council, Local Government Staff Commission, Local Government Officers' Superannuation Committee, Drainage Council and the Police Authority.

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7.5 Appointments on nomination by Councils

District Councils nominated members for appointment by Departments to the 3 Harbour bodies (Belfast, Londonderry and Warrenpoint), the Housing Executive, the 4 Health and Social Services Boards and the 5 Education and Library Boards.

Discussion

8. The present arrangements for making public appointments are under attack from two directions.
9. First, Government has, partly influenced by experience in GB, begun to question the usefulness of District Councillors' presence on some public bodies. It is seeking in some cases to create smaller public bodies which did not represent key interest groups and are thus able to concentrate on their management responsibilities. For example, this has produced proposals to reconstitute from 1991 the Health Boards as smaller executive-style bodies.
10. In Northern Ireland similar changes are proposed for the 4 Health Boards and will mean the disappearance of District Councillors from the Boards from 1991. There is also a desire to give the Fire Authority a smaller executive board rather than its present constitution which involves a board of 17, of whom 8 are nominated District Councillors.

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11. Notwithstanding the arguments in favour of improving the management of public bodies, it has to be recognised that a further reduction in the representational role of District Councillors would damage an important part of the Macrory reorganisation. It would also sit very uneasily alongside Government's policy of seeking to give more power to Northern Ireland's elected representatives.
12. Second, the SDLP and the Irish Government criticise strongly the arrangements for public appointments in Northern Ireland. They argue that there are too few genuine nationalists (as distinct from Catholics) on public bodies, especially in chairmanships. They have also attacked the unionist-controlled Councils and the unionist-controlled ALANI and Housing Council for failing to give the SDLP a fair share of appointments of Councillors to public bodies.
13. There has since the May local government elections been some evidence of a sharing of power in a number of District Councils, but Belfast, Craigavon and Cookstown remain obstinate. In the case of Belfast, unionists were nominated to fill over 60 places on public bodies.
14. ALANI is a unionist-controlled body. At present 19 of the 26 District Councils belong to ALANI; for different reasons,

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the two largest Councils - Belfast and Derry - are not members. ALANI is not, therefore, regarded by Government as representing all Councils or all District Councillors. Departments have been advised that, where legislation gives them freedom to do so, they should consult all Councils when seeking suggestions of Councillors for public appointment and when seeking views or comments on legislative matters or general policy.

15. We have contested the Irish and SDLP criticism about members of the minority who have in the past been appointed to public bodies. It would be quite wrong to introduce some sort of a political test to determine whether an individual, whether Protestant or Catholic, should be appointed. Instead, we have suggested that the solution lies in increasing the pool of people available for public appointments in Northern Ireland.
16. Under Article 6 of the Anglo-Irish Agreement, the Irish side may suggest people who can be considered for appointment to public bodies. To date [50] names have been suggested and currently [23] of these people hold a total of [31] public appointments. These arrangements have not, however, worked very well. The Irish have been frustrated that they have not achieved a higher success rate. For our part, several of the Irish suggestions were not impressive and on

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occasions the Irish approached an individual about a specific appointment and both the Irish and the individual were disappointed when an offer was not made. Irish attention has more recently focussed on District Council appointments to public bodies.

Appointments by District Councils

17. Clearly the existing arrangements for the appointment of District Councillors to public bodies do not always produce bodies which "enjoy the widest possible respect and acceptance throughout the community". The most glaring examples are the monopolisation by unionists of the District Council places on the Belfast Education and Library Board, the Housing Executive, the Fire Authority and the two Museums. Even where only one place is available to a Council on a number of public bodies, and it would not seem unreasonable for the majority party to take that place, the overall pattern of that Council's appointments to public bodies excludes the elected representatives from one side of the community.

18. We have, therefore, been exploring what changes in the law might be introduced. There are two main possibilities:-

18.1 Proportionality

This would provide for Council appointments to public

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bodies and Council committees to be on the basis of the proportionate strength of the political parties represented on the Council. (This principle was introduced in the ROI in 1985 and will be introduced in GB by legislation currently before Parliament). The major objection is that Sinn Fein would be guaranteed places on a number of public bodies; such a step would deeply anger unionist Councillors who might well regard it as a justification for total withdrawal from local government, particularly if the changes were perceived to flow from the Anglo-Irish Agreement. The SDLP would also be unlikely to favour this approach which would cost it some places and influence and would benefit Sinn Fein.

18.2 Widening Ministerial discretion

This would involve giving Ministers the right to select the District Councillors to serve on public bodies, and removing the powers of District Councils and ALANI to make appointments or nominations which Departments had to accept. Such an approach could commend itself to the SDLP and the Irish Government. But it would involve a further restriction on the already limited freedom of Councils to make their own decisions and, even if accompanied by an increase in

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the number of elected members on some boards, would be strongly criticised by unionists as undemocratic.

19. Another consideration is timing. Legislation would be complex, time-consuming and controversial. Over 13 pieces of existing legislation would have to be examined and possibly amended. It would take up to 2 years to legislate and any changes would probably not become effective until after the next local government elections in 1993. All this would be happening at a time when Government was seeking to explore how more power might be given to Northern Ireland's elected representatives and to encourage constructive dialogue between the political parties. In all the circumstances, it would seem unwise to embark now on significant and controversial legislation about the representational role of District Councillors.

A way forward

19. If major legislative changes are excluded for the present, what steps remain open to Ministers? There seems to be scope for action on 3 fronts:-

- 19.1 Government should encourage a greater sharing of power by agreement at Council level. A promising start has been made and the generosity of spirit which now exists on some Councils should be allowed to develop

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and hopefully expand. It must, however, be accepted that this will prove to be a very slow process in some Councils, particularly Belfast;

19.2 Government should, wherever possible, use its powers of appointment to redress imbalances created by unfair appointments by District Councils, the Housing Council and ALANI; and

19.3 Government should use to the maximum its room for manoeuvre in responding to nominations by District Councils. (As was done recently in the case of the Health Boards where Government is only required to appoint one person nominated by each Council even though in practice 5 Councils have been given more than one place).

20. If this fairly cautious approach is adopted, Government would not, of course, be ruling out more radical steps which might be taken at a later stage in the wider context of giving more powers to NI's elected representatives.

Recommendations

21. To sum up, the Secretary of State is invited to agree that:-

21.1 public bodies in NI must be constituted as to enjoy

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the widest possible respect and acceptance throughout the community;

21.2 whilst the prime consideration in making appointments must be an individual's ability to make a positive contribution, Government must also be concerned to achieve a fair and equitable balance;

21.3 this may on occasions require action to redress imbalances created by unfair or unbalanced nominations by others;

21.4 a further reduction in the representational role of District Councillors would undermine an important part of the present local government structure and sit uneasily alongside Government's policy of seeking to give more power to Northern Ireland's elected representatives;

21.5 we should continue to endeavour to increase the number of members of the minority community available for consideration for public appointments;

21.6 the existing arrangements for the appointment of District Councillors to public bodies do not always

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produce bodies which enjoy the respect and acceptance of the whole community;

21.7 however, requiring political balance in appointments to Council Committees and Council appointments to public bodies would guarantee places for Sinn Fein;

21.8 giving Ministers freedom to select the District Councillors to serve on public bodies would further restrict the freedom of Councils;

21.9 Government should encourage a greater sharing of power by agreement; use its power of appointment to redress imbalances; and maximise its room for manoeuvre in responding to nominations by Councils;

21.10 this cautious approach would not exclude taking more radical steps at a later stage in the wider context of giving more powers to NI's elected representatives.

22. The Secretary of State may wish to discuss these recommendations at a meeting which other members of his Ministerial team would be present.

23. In the light of that discussion, officials will have a meeting with the Irish side through the Secretariat as a

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preliminary to discuss at a subsequent meeting of the Conference.

K P BLOOMFIELD

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