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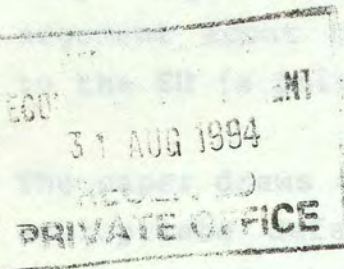
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FROM: D J WATKINS

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DATE: 30 AUGUST 1994

CC: PS/Michael Ancram (DENI,B&L) - B
PS/Sir John Wheeler (DFP,B&L) - B
PS/Mr Smith (DED,DOE&L) - B
PS/Baroness Denton (DANI,DHSS&L) -B
PS/PUS (B&L) - B
PS/Mr Fell - B
NI Permanent Secretaries
Mr Thomas - B
Mr Bell - B
Mr Williams - B
Mr Brooker - B
Mrs Brown - B
Mr Daniell - B
Mr Dodds - B
Mr Maccabe - B
HMA, Dublin - B
Mr Archer, RID - B
Mr Caine - B



PS/Secretary of State (B&L) - B

NORTH/SOUTH STRUCTURES : ASSESSMENT OF POSSIBILITIES

1. One of the areas covered in the Joint Framework Document being prepared with the Irish is the establishment of structures for future co-operation between North and South. It is clear that this will be a crucial area in Talks: for nationalists, in order to give tangible and worthwhile expression to the all-Ireland dimension; for unionists, as a necessary and reluctant counterpart to an Assembly and Irish constitutional change. Apart from achieving a balanced outcome, HMG is also concerned with workability, both for good government itself and for durability of the whole package.
2. My submission of 14 May 1993 sought to identify key principles and identify some functions suitable for North/South working. It also provided a basis for negotiation in the Liaison Group. The attached paper seeks to provide an assessment of the scope

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for North/South working under Strand II: its Annex also sets out functions which we have identified for possible North/South working at a variety of levels. It has been prepared on the basis of recent discussions with officials in Northern Ireland Departments (without departmental Ministerial endorsement), and in the light of more recent discussion in the Liaison Group.

3. Ministers will note that our paper does not seek to explore the form of North/South structures (eg, single body versus holding body with subsidiary functional bodies); nor to advance the argument about the role of North/South structures in relation to the EU (a point to which the Irish attach high importance).
4. The paper draws attention in paragraph 15 to the need to define appropriate default mechanisms in the event of a failure to reach agreement in the North/South body at executive level. This is an important point, both for political reasons and, possibly, for the effective and durable working of the body, which will need to be further explored.
5. It is not intended that the Joint Framework Document should contain the amount of detail included in the Annex; a more broad-brush approach may be taken. It is, however, important to have an accepted list of specific functions which can in due course be discussed in detail with the Irish.
6. As the paper points out, the list must be regarded as provisional at this stage; we believe that detailed work will be needed, involving Departments, North and South, before the true scope for North/South working in any particular area can be definitively stated. (The Irish, for a variety of reasons, do not seem convinced of this.) The current list can, however, be taken as a good indicator of our view of the best candidates for North/South co-operation.
7. At the last meeting of the Liaison Group on 16 August, the Irish side gave an oral presentation of some of the functions

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which they saw as being suitable for North/South working at executive level, though we have doubts about the rigour of their classification. As we had expected, there were differences between the Irish list and the list which we have compiled. A separate submission is being put to Ministers on this matter in parallel with this submission.

8. Ministers are asked:

- to note the list of functions deemed by officials in NI Departments to be suitable for some form of North/South working;

- to agree that the items listed can be disclosed as necessary in discussion with the Irish side in the course of future Liaison Group meetings;

- to agree that we should aim to persuade the Irish side to consent to discussions between the experts in NI Departments and Irish Departments to discuss the functions in greater detail, either outside or in parallel with the Liaison Group.

Consideration by Liaison Group

[Signed DJW]

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NORTH/SOUTH STRUCTURES

Introduction

1. The Joint Declaration of 15 December 1993 included an undertaking by the British and Irish Governments to "seek ... to create institutions and structures which, while respecting the diversity of the people of Ireland, would enable them to work together in all areas of common interest."
2. A Central Secretariat submission of 14 May 1993 identified a number of key principles and assessed the scope for new North/South arrangements. This paper reports on the latest assessment carried out with officials in NI Departments on the scope for the creation of arrangements for North/South working, and lists the specific functions identified as suitable for some form of north/south co-operation. It does not, however, seek to explore the arguments for a single North/South body or an umbrella body to which functional subsidiary bodies might (in some sense) report. This exercise has been undertaken by Central Secretariat with departmental officials: departmental functions suggested for the competence of a North/South body have not been endorsed by respective Ministers. Nor have other GB departments been consulted.

Consideration by Liaison Group

3. The current work being undertaken by British and Irish officials in drawing up a joint framework document covers the question of North/South structures, on which thinking has developed over time. The first Irish draft put forward in April had included the list of the functions identified at the time of Sunningdale as illustrative of the functions which might now be appropriate for north/south working. In discussion, however, the Irish accepted that it would (or could) be sub-sets of the functions which would be chosen, not necessarily each function in full. The list was:

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- exploitation, conservation and development of natural resources and the environment;
 - agricultural matters (including agricultural research, animal health and operational aspects of CAP), forestry and fisheries;
 - co-operation ventures in the fields of trade and industry;
 - electricity generation;
 - tourism;
 - roads and transport;
 - advisory services in the field of public health;
 - sport, culture and the arts.
4. The Irish have now put to us a "sample list" of functions for executive working. This suggests that they still believe, probably correctly, that they could not contemplate a less extensive list than that of Sunningdale as the eventual outcome to the current negotiations and would be looking for a list which was an advance on it.
5. The approach which developed between the British and the Irish over time has been, first, to agree that, in principle, all matters devolved to new local institutions in Northern Ireland might come within the ambit of the new North/South structures; but that, second, within that outer envelope, we should seek to identify appropriate functions according to a hierarchy of competencies - executive, harmonising, consultative and deliberative - in recognition of the fact that different functions would be best suited to different levels of co-operation.

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Hierarchy of Competencies

6. The current British definition of the hierarchy of competencies is as follows:

consultative: the North/South body would also be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations. Both sides would share a duty to exchange information and to consult about existing and future policy, though there would be no formal expectation that agreement would be reached or that policy would be harmonised or implemented jointly;

harmonising: in respect of these designated responsibilities there would in addition to the duty to exchange information and to consult on the formulation of policy be an obligation on both sides to use their best endeavours to reach agreement on a common policy, even though its implementation would be undertaken by the two administrations separately;

executive: in the case of these designated responsibilities the North/South body would itself be responsible for the establishment of an agreed policy and for its implementation on a joint basis. (It would however be open to the body, where convenient, to agree that the implementation of the agreed policy would be undertaken by existing or specially created mandated bodies, whether jointly or separately North and South.)

7. The North/South body would also be free to discuss any matter of concern to either side but, unlike under the formal consultative arrangements, without being under a duty to do so.

Criteria for Selection

8. The Framework Document, as currently drafted, refers to the

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determination of functions to be discharged or overseen by a North/South body needing to take account of:

- the common interest in a given matter on the part of both parts of the island; or
- the mutual advantage of addressing a matter together; or
- the mutual benefit which may derive from it being administered by the North/South body; or
- the achievement of economies of scale and the avoidance of unnecessary duplication of effort.

9. Our approach to identifying functions for North/South working was that it was desirable to choose those where such arrangements could demonstrate that benefit would result. It would certainly not be acceptable to contemplate a lesser standard of service in the future as a result of north/south arrangements, eg, jettisoning parity with GB in favour of tying into lower RoI standards. That said, there could be situations where North/South working, while not resulting in lower standards, would not lead to any actual improvement over present arrangements; in those cases, the political importance of north/south links in their own right as a symbol to nationalists of their Irish identity is a factor which could come into play, if Talks participants so decided. Thus, while there might be no objective, measurable improvement resulting from the arrangement, there would be no diminution in quality to antagonise unionists, and there could be a benefit gained in terms of meeting nationalist aspirations for a closer North/South relationship.

10. The concern of the Irish has always been to ensure that a substantial number of significant functions should be designated (in Westminster/Dail legislation) for the executive tier, rather than the emphasis being placed on functions at the

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consultative level. Their view is that, while a new Northern Ireland administration and the Dail would have power to add further functions to any initial list drawn up, or to elevate functions from the lower levels to the executive level, in practice a Unionist-dominated administration in Northern Ireland would be unlikely to do so, with the result that the opening disposition of functions would probably remain in place unaltered for many years. It is worth adding that the UUP take an opposing view on the source of any functions designated for any North/South body or bodies, insisting that from the start the relevant decisions on what should be included must be the sole responsibility of any new NI administration and the Dail.

11. Initial work with NI Departments on the identification of functions for North/South working was carried out in 1992/93 and has now been revisited in view of the more recent development of the hierarchy of competencies. The result of the latest Departmental scrutiny is set out in the Annex which differentiates between executive, harmonising and consultative.
12. To some extent, the categorisation at this stage of functions as either executive, harmonising or consultative must be taken as provisional only. The final designations will ultimately depend on a range of factors. The number of functions within each category will reflect the "depth" of the overall solution being contemplated. The list would also be affected by the nature of the future relationship between North and South: for example, a shift from economic competitiveness to one of full co-operation could then draw functions, such as inward investment in its totality, into the executive tier.

Executive Functions

13. So far as executive working is concerned, it is worth reiterating what this does and does not mean, in view of misinterpretation by some politicians and incomprehension by the public. There is no suggestion that a north/south

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executive body would be autonomous; it would derive its authority from a new NI administration and the Oireachtas and would be accountable back to those bodies on the use of that authority. Any North/South decision would also be subject to agreement by both the northern and southern representative, acting within their respective mandates from the new NI administration and the Oireachtas. There would be no question of the South being able to impose a policy line in the face of opposition from the North (or vice versa). To quote from the Secretary of State's opening speech in the debate on the NI Renewal Order on 30 June, a North/South body "would be acceptable, not only in Northern Ireland but in the Republic as well, only if it operated in areas clearly designated to it by the appropriate legislatures in each jurisdiction. For the same reason it would have to be accountable to democratic institutions in Belfast and Dublin, with decisions taken on the basis of agreement between the representatives of both parts of the island."

Presentation of List of Functions

14. One area of difficulty - and of importance - is the question of what would happen in the event of a failure to agree in the North/South body. One option would be to allow each jurisdiction to follow its own line. However, this could prompt Unionists to seek to ensure disagreement so that the functions in question would revert back to the internal NI administration. This would not be acceptable. On the other hand, executive power vested solely in the body casts an enormous weight on the political abilities and commitment of participants. An appropriate default mechanism, or varieties of them, will be required, but may be the stuff of political negotiation.
15. Within the executive area, a sub-set of functions emerged where service delivery could be agreed between North and South. These would be areas where co-operation or action at ground level would be appropriate and beneficial, rather than areas with a policy dimension. These areas might be described as

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"co-operative working", where facilities/services would be shared on a cross-border basis to meet a common need and produce a mutual benefit. This type of practical co-operation fits comfortably with the Unionist view of acceptable North/South working, and there is significant scope for it, in some cases simply formalising ad hoc arrangements which have already been made: there may be at least tactical merit in advancing it. Consider the practical arrangements which would be required to make North/South working a reality.

Harmonising Functions

16. In some cases considered, it was clear that, in theory, there would be scope for the functions in question to be designated to the executive tier. Because existing policies were so substantially different between north and south, however, it would be necessary at least to start by designating them to the harmonising tier.

Central Secretariat

Presentation of List of Functions

August 1994

17. Consideration needs to be given to the form in which any list of functions should appear in the Joint Framework Document. It is unlikely that HMG and the Irish Government will be able to reach agreement on a common list. The Irish have given us, orally, part of their own list. A separate submission is being put to Ministers commenting on areas of difference between that list and our own. Second, the Joint Framework Document is not intended as a blueprint or as a final statement of what is to happen, but will be the basis for discussion and negotiation with the Northern Ireland parties. Therefore, the Framework Document need not aim to provide a definitive and detailed account of the scope for North/South working. It would be possible to adopt a rather more broad-brush approach than in the Annex to this paper, but with the underlying knowledge that the Annex exists and could be used to inform debate during future talks with the Northern Ireland parties. Given the

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increasing tactical recognition on the part of the Irish of the benefits of a modest list, the less specific approach may appeal to them.

EXECUTIVE FUNCTIONS

18. It would also be desirable to begin a process of detailed working, involving the responsible Departments North and South, to explore each function listed, moving from the theoretical level to consider the practical arrangements which would be required to make North/South working a reality.

Regulation of inland Fisheries Commission.
Fisheries

DANI - Watercourse
Management/Development in relation to cross-border schemes.

DANI - Rural
Development in relation to cross-border schemes.

Central Secretariat

DED - Tourism
August 1994
marketing Ireland as a tourist destination; discussions are already under way on an Ulster (9 of 12 counties) marketing strategy; product/structural development.

DED - NICO/Dev Co) selling public services abroad.

DNSS - NICARE)

DED - Energy
Efficiency* subject to the need to recognise the need for Northern Ireland to deliver its share of UK CO2 reduction targets.

* electricity generation cannot be included as electricity supply in NI has been privatised; there are no plans to privatise the RoI which is one of the few EU countries which have not embraced the concept of privatisation.

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ANNEX

EXECUTIVE FUNCTIONS

Policy Areas

DANI - Management of)

Inland Fisheries)

) following the current model of the Foyle
Regulation of Inland) Fisheries Commission. to have joint
Fisheries) contracting.

DANI - Watercourse

Management/Development in relation to cross-border schemes.

DANI - Rural

Development in relation to cross-border schemes.

DED - Tourism

marketing Ireland as a tourist
destination; discussions are already
under way on an Ulster (9 or 12
counties) to marketing the strategy;
product/structural development.

DED - NICO/Dev Co)

) selling public services abroad. roads, in
) relation to cross-border routes, and
DHSS - NICARE) those linking major ports/airports.

DED - Energy Survey
Efficiency*

subject to the need to recognise the
need for Northern Ireland to deliver its
share of UK CO2 reduction targets. of
Public Health.

* electricity generation cannot be included as electricity
supply in NI has been fully privatised; there are no plans to
privatise in the RoI which is one of the few EU countries which
have not embraced the concept of privatisation. as would differ,
eg, contraception.

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DED - Research and Development

if RoI agrees to link in with GB as NI currently does.

DED - Mineral and Petroleum Exploration

this would exclude off-shore exploration.

DFP - Public Purchasing

covering those areas where it would be mutually beneficial to have joint contracting.

DOE - Historic Buildings and Archaeological Excavations

possible scope for all-Ireland approach.

DOE - All-Ireland Rail Authority

the scope for this would depend on being able to resolve the difficult financial support mechanisms which would be required to replace the existing arrangements North and South.

DOE - Roads

planning and programming of roads, in relation to cross-border routes and those linking major ports/airports.

DOE - Ordnance Survey

possible scope for all-Ireland body.

DHSS - Public Health

creation of all-Ireland Institute of Public Health.

DHSS - Health Promotion

avoiding controversial areas where policies and approaches would differ, eg, contraception.

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DHSS - Hospital
Services*

shared job vacancy systems, particularly cross-border planning of hospital service provision to avoid duplication. Planning and provision of specialist services on an all-Ireland basis.

* the implementation of the plans devised by the Departments and Health bodies concerned would be implemented by specific hospitals as another example of Co-operative Working (see below).

Co-operative Working

DED - Trade Promotion

joint promotion of Ireland and Irish products in overseas markets.

DED - Enterprise and
Small Business
Development

areas covered in NI by LEDU.

DED - Inward
Investment

to cover the situation where investment already located in NI or the RoI, but which has the capacity to be mobile, attempts to play off both parts of Ireland in a grant auction; also, a "non-aggression pact" so that if the RoI was ruled out as a potential site for a particular scheme, it did nothing to jeopardise the chances of the North. Also

DED - Health & Safety

scope for joint working on health and safety activities.

DED - Trading
Standards

scope for joint working on trading standards activities.

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DED - Job Vacancies

shared job vacancy systems, particularly in border areas.

DED - Training

to balance supply and demand in border areas.

DENI - Museums

co-operation between national museums to carry out the strategic management of collections, avoiding duplicated activity or competition for artifacts.

DENI - Irish-medium Education

co-operative working on curriculum and professional support, eg, access by North to in-service training in the South.

DENI - Education for Specialised Needs

sharing of facilities, eg, for conductive education, provision for profoundly deaf, etc.

DENI - Higher Education

sharing of facilities; planning of academic provision on an all-Ireland basis.

DENI - Schools

inter-school contact projects. This could lead into the area of the joint strategies for in-service training of teachers.

DENI - Training

DFP - Civil Service Training Institute

a shared facility for use by North and South, also offering common training on appropriate topics.

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DFP - Civil Service
Assessment Centre

possible creation of a joint jointly owned facility for carrying out the assessment needed to recruit and promote civil servants, but with each Service continuing to use its distinct criteria.

DOE - Water Service

operating on a limited remit, eg. Sport co-operation at local cross-border level.

DOE - Water Quality

dealing with Carlingford Lough, Lough Erne and the Foyle system.

DOE - Fire Service

operational co-operation to allow cross-border assistance.

DHSS - Ambulance
Service

operational co-operation to allow cross-border assistance.

DFP - Law Reform

HARMONISING FUNCTIONS

DANI - Agricultural and
Fisheries Research

a joint North/South Law Reform body or report on areas of legislation where harmonisation could take place, although this could involve difficult areas like divorce, individual rights, etc.

DANI - Animal and Fish Health

DOE - Regulatory Areas

DED - Supervision of
Credit Unions

for example, driver licensing, vehicle harmonisation of legislation required. This could lead into the area of the supervision of companies.

DOE - Miscellaneous

DED - Management
Development

scope for harmonisation in areas such as building regulations, road and bridge construction standards, fire safety, energy conservation.

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DENI - Arts

possible creation of a joint sub-committee drawn from the two Councils north and south.

DENI - Sport

some effort required to disentangle current arrangements. Possibly operating on a limited remit, eg, Sport for All, health education in sport, coaching, etc, and relating to those organisations operating on an all-Ireland basis.

DFP - Valuation

broadly similar legal basis for valuation exist North and South but, in policy terms, there is always a choice between harmonising with GB or with RoI; implementation systems diverge.

DFP - Law Reform

a joint North/South Law Reform body or Law Commission could be established to report on areas of legislation where harmonisation could take place, although this could involve difficult areas like divorce, individual rights, etc.

DOE - Regulatory Areas
of Transport

for example, driver licensing, vehicle testing, driver testing, etc, provided there was no diminution in NI standards.

DOE - Miscellaneous
Standards

scope for harmonisation in areas such as building regulations, road and bridge construction standards, fire safety, energy conservation.

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DANI - Fores

Development

Development

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