

# Alliance Party Proposals for the government of Northern Ireland

## Introduction

1. In March, 1988 the Alliance Party (AP) established a small study group "to review the party's policy in a broad area covering the arrangements by which Northern Ireland should be governed". The conclusions of the study group were published in a 21 page document titled "Governing with Consent" on 3 October, 1988.
2. "Governing with Consent" is divided into five separate chapters. Chapter I (Need for Review) refers to the party's previous proposals submitted to the "Atkins Conference" in 1980 which were developed further during the "Prior Assembly" (1982-86). It justifies the need for the review on the basis that "some time has elapsed since the last detailed analysis" and "there have been significant changes since that time" - the fall of the Assembly in 1986, the signing of the Anglo-Irish Agreement and "the more overt participation in politics by representatives who support and condone terrorism".
3. The core of the review is contained in Chapters 2, 3 and 4 which respectively:
  - examine the various constitutional options;
  - outline proposals for the restoration of legislative and executive devolution in Northern Ireland; and
  - provide some very sketchy ideas for the "Anglo-Irish Context".

(A) The Constitutional Options

4. The chapter surveys the various constitutional options and tests them against the requirement that they be acceptable to both communities in Northern Ireland. (Comment: In assessing the degree of acceptance of the various constitutional options to the two communities, the document would seem to accord greater weight to the constitutional views of unionists than to those of the nationalists. Thus while the test of acceptability for unionists is considered to be the particular option's effect on the maintenance of the link with Britain, the yardstick of whether a specified governmental structure would be acceptable to nationalists is confined to an assessment of its ability to "guarantee the opportunity for full participation by the minority in the political life of Northern Ireland". In this respect, there is little or no acknowledgement of the need for an adequate expression of the minority's wider aspiration to a united or agreed Ireland).
5. The following are the various options surveyed:

United Ireland - It is stated that a clear majority of the population reject this proposal and that this is unlikely to change in the foreseeable future. The document also states that "Any democratic solution must take full account of the fundamental reality that most people in Northern Ireland want to maintain the British connection".

Independence - The document concludes that such an option is totally unacceptable to nationalists and would also be rejected by many unionists because "it is a contradiction of their basic philosophy".

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Repartition - This option is rejected on the grounds that it is impractical, because it does not recognise the reality of a mixed community and because it would require large scale forced movements of population.

Integration - This is the one constitutional option where the document explicitly acknowledges the nationalists' constitutional aspiration as part of the test of acceptability; it states that what is at issue in Northern Ireland "is the reconciliation of apparently conflicting constitutional aspirations, and it is in this context that integration must be considered". Against this criteria it says that integration is a purely unionist solution which offers little to nationalists.

Its second objection to integration is that it does not address the problem of how to administer - in a manner acceptable within a divided society - certain higher functions of local government which are not currently within the competence of District Councils (i.e. housing, education, health and social services). It maintains that there is no guarantee that local Councils on the current model would administer these higher functions "in an acceptable manner and with total fairness towards minorities".

Federation - The document identifies three types of possible federal arrangements. The first is a unitary Irish federation; although this would involve considerable autonomy for the constituent states or regions, it would still be a "United Ireland solution" and thus unacceptable to unionists.

A second possible federal arrangement would, according to the AP, be a United Kingdom federation, "with one state being Northern Ireland and one or more representing the rest of the UK". The document dismisses the viability of such an arrangement on the grounds that it would require a "Constitutional revolution" in the UK as a whole and that it would still leave the difficulty of how power was fairly exercised (and by whom) within Northern Ireland.

The final possible federal arrangement is "a federation of the whole British Isles". The document states that the main difficulty with this proposal "is the likely rejection by the Republic of Ireland of any loss of sovereignty". (The AP then make the rather curious assertion that "if one were devising governmental arrangements for the British Isles, afresh and unhampered by history, this type of arrangement would have considerable attractions").

Joint Sovereignty or Authority - While the document notes that some proposals for joint sovereignty envisage major powers for a locally-elected Assembly, it then lists a number of countervailing arguments which, it believes, would make this option unacceptable. It claims that joint sovereignty "inevitably involves complex arrangements and there are many who hold the view that sovereignty is not divisible". It also states that unionists would regard this option as a loss of sovereignty and "as a vehicle leading ultimately to a United Ireland".

Devolution within the United Kingdom - The chapter concludes that all of the above Constitutional options will not gain "substantial acceptability across the community and therefore will not succeed". A United Ireland, Federated Ireland and Joint Sovereignty all involve a loss of British sovereignty in Northern Ireland and so would be unacceptable to the Unionists. Independence, a federated UK and full Integration would, on the other hand, not "provide adequate safeguards for the right of minorities nor will they guarantee the opportunity for full participation by the minority in the political life of Northern Ireland".

Why is  
unacceptability  
to Unionists

As a result of this process of elimination, the document concludes that "a devolved system is most likely to have widespread acceptability across the Community and in the United Kingdom and the Republic of Ireland". It also claims that devolution would facilitate the "representation of the minority at every level of government in Northern Ireland, within a framework which provides suitable constitutional protections and safeguards".

(B) Proposals for Devolution

- Chapter 3 of the document (which is over 8 pages of text) proceeds to spell out in some detail the party's proposals for devolution. In regard to the general form of administration, the document opts for the devolution of both executive and legislative responsibilities. It proposes, moreover, that the powers of such an administration be determined by the three-tier categorisation adopted in previous schemes of devolution - i. e. excepted, reserved and transferred functions.

7. In regard to the excepted functions, it is proposed that as well as the more obvious areas (e.g. defence and foreign affairs), powers over certain "sensitive subjects" should also be retained - for instance, electoral law and the appointment of Supreme Court judges. The document proposes that powers in the security area should be a reserved function (i.e. one of those areas where legislative power would for the time being remain with Westminster). The hope is expressed that as the devolved system "took roots and as public confidence in the institutions grew, it would be possible to devolve security power". (The document also expresses scepticism about the practicality of diffusing political control over the security function by having the Army controlled by Westminster and the police by the Assembly).
8. The Assembly would deal with all transferred functions (i.e. all those remaining after excepted and reserved powers have been subtracted). In addition, the document proposes that the Assembly should have an advisory role in relation to both reserved and excepted matters.

### Legislature

9. The document proposes a single chamber Assembly comprising 85 members, 5 for each of the 17 Northern Ireland Westminster constituencies. The members would be elected by PR (STV) for a fixed term of four years.
10. The document envisages that the Assembly will discharge a "scrutinising and deliberative" role vis-a-vis the Executive. This will be facilitated by "backbench Assembly Committees for each of the main areas of regional government". The functions of these Committees would be both to act as standing and select committees on the Westminster model (thus enjoying inquisitorial and

investigative powers) and to conduct "committee stage" type debate on draft legislation and report back to the Assembly.

11. The document states the following in regard to the composition of the Assembly Committees:

"We consider that the composition of backbench scrutiny committees should be such as to secure that the balance of the parties in the Assembly is reflected so far as practicable in the membership of each committee exclusive of the chairmen and in the chairmen of the committees taken as a whole. The appointments, reflecting their parliamentary nature, would be made by the Speaker".

#### The Executive

12. The document acknowledges that composing "an Executive within a devolved system has been the most intractable of all political problems in Northern Ireland in the last 20 years". It states that turning the clock back to the Stormont system would be unacceptable and undesirable. What the AP have attempted to do, therefore, is "build a proposal based on the central reality that provision must be made to enable the representatives of the majority and minority alike to participate in executive decision making".
13. The document proposes that a small Executive would be drawn from and answerable to the Assembly; the mechanism by which the Executive takes office would be by appointment by the Secretary of State. In this regard, however, the Secretary of State "would be required by law to act strictly in accordance with a set of criteria".

The document then elaborates (in a rather confused fashion) on these criteria:

"These criteria would be designed to ensure on the one hand certainty regarding the central principles underlying the appointments to be made and, on the other hand, flexibility in their application so that, as far as possible, the machinery established can respond to events and does not immediately seize up upon encountering difficulty".

(Comment: One can only assume that the "central principles" referred to above are a cautious reference to the need to construct the executive on a cross-community basis. The subsequent reference to "flexibility in their application" might reflect a concern within the AP that the establishment of the principle of power-sharing will be so contentious that it could be the cause of the early demise of the entire devolutionary exercise.)

14. The paper then sets out the envisaged procedures for the appointment of the Executive. The AP suggest that following inter-party talks "to determine the preparedness of parties to participate in a future Executive" the Secretary of State would have the power to appoint and transfer power to an Executive if he is satisfied that an administration can be formed which:
  - (a) is widely representative of the community as a whole;
  - (b) reflects, so far as practicable and subject to (c) below, the balance of parties in the Assembly; and
  - (c) includes no person who supports the use of violence for political ends.

15. Once the Executive was appointed by the Secretary of State, his involvement in the process would cease; the Executive's future existence would depend on its acceptability to the Assembly (which would be measured by criteria which are outlined in paragraphs 17-20 below). Where the Executive failed to command acceptability in the Assembly, provision would have to be made for:

(a) the Executive to act on a caretaker basis to enable political discussions to proceed without direct rule being reintroduced; or

(b) the reintroduction of direct rule where the system has irretrievably broken down.

16. The document envisages that the allocation of portfolios within the Executive would be a matter for the Executive itself and that "it would be for the Executive and Assembly together to establish a suitable conventional framework to regulate their own relationships". The AP also say that they would "expect that the Secretary of State would consult with the Executive on non-transferred matters including security".

#### Acceptability

17. The document envisages the need for a mechanism to test the level of acceptability of the Executive. This would be done:

- by submitting the Executive to the Assembly when it is first appointed; and
- by the possibility of the submission of a resolution supported by at least 15% of Assembly members not more than once in a parliamentary year.

18. In order for the acceptability motion to be carried, it would require the support of "at least 70% of the members of the Assembly". (This was the figure provided for in the Northern Ireland Act, 1982 to be used as the test of support for determining whether responsibility for a particular Governmental Department should be devolved from Westminster to the "Prior Assembly"). The document maintains that "an Executive composed as we have suggested and accepted by the Assembly as required above would command the confidence of the great bulk of the community".
19. The document acknowledges that there are other tests of acceptability "which might be worthy of consideration". One option is a "specially composed second chamber" to which the Executive would have to be acceptable; this might represent vocational and community rather than political interests or "it might be designed to over-represent minority points of view in order to give the minority equality of voting power with the majority". In either scenario "the Executive would have to carry a majority both in the Assembly and in the balancing institution".
20. The paper states that a further option of acceptability might be that the "scheme for devolution as a single package be presented for approval to the electorate in the province as a referendum". It concludes, however, that such a mechanism would not be a suitable or satisfactory test of acceptability.

#### Constitutional Protections

21. The document recites the traditional AP view that as well as a fair and acceptable scheme of devolved government, there is a need to "give improved constitutional protections for the individual". In this regard, the

document proposes the incorporation of the European Convention on Human Rights into the domestic law of Northern Ireland, which would effectively give "our citizens the protection of a Bill of Rights".

22. Similarly the paper revives the AP proposal lodged at the "Atkins Conference" of 1980 of having a "Political Right of Appeal" available to a sizeable aggrieved minority in the Assembly. Such a minority - which would have to be 30% of Assembly members - would have the right to lodge an appeal against a political decision of the majority; in these circumstances the matter would be considered again "by the national Government" within a specified time-frame.
23. The document finally adverted to the fact that the AP had considered requiring a weighted majority in the Assembly for actions/legislation involving fundamental issues. However, this came to nought since it proved to be difficult to define what issues are to be regarded as "fundamental" for this purpose.

(C) The Anglo-Irish Context

24. Chapter 4 of the document (which is only one and half pages of text) deals with what "used to be called the Irish Dimension. Today we talk about the Anglo-Irish Context". The document states that "an approach to the future government of Northern Ireland which fails to confront the question of the relations between the devolved administration and those in Dublin and London would be seriously deficient".
25. The AP proposals for the institutional expression of these relations distinguish between transferred functions (which are the competence of the devolved administration) and excepted and reserved functions (which remain the

preserve of Westminster). In regard to the former, the document states that :

"the devolved Assembly and Executive should be free to enter into whatever it or they consider to be the most convenient and advantageous relationship with institutions in the Republic of Ireland".

The document refers to the good sense of "practical cooperation" between the respective authorities and mentions, as examples of cooperative endeavour, the economic development of border regions, tourism, energy and agriculture.

26. In regard to reserved and excepted functions, the document proposes that the United Kingdom Government (sic) "should give a right of consultation on those matters to both the administrations in Dublin and Belfast". In this scenario the Anglo-Irish Conference "could be superseded by a new tri-partite institution connecting all three executive authorities".

(D) Conclusion

27. In the final Chapter the document states that the AP proposals recognise "certain political realities" and also provide "the essential ingredients for a political settlement, namely full participation in Government for all the community and adequate protection of rights for minorities".
28. The document also contrasts its contents with previous post - 1980 AP proposals. It points out that the present proposals differ from the previous ones "in several main respects":

- (a) Instead of election of the Executive by the Assembly, the AP now propose that - following post-election inter-party discussions - the Executive be appointed by the Secretary of State "according to certain criteria";
- (b) Whereas in previous AP proposals the members of the Executive chaired Assembly Committees directly involved in the work of a given Department, the party now proposes that these Committees be separated from the Executive and take the form of backbench Committees with a scrutiny role;
- (c) The prescribed test of acceptability of the Executive within the Assembly is a new feature of the AP proposals;
- (d) Another new proposal is the suggested role of the Executive in Anglo-Irish relationships. (Previous AP proposals had supported the participation of members of the Assembly - as opposed to the Executive - along with members of the Westminster Parliament and the Oireachtas in an inter-parliamentary structure).