

FROM: D J R HILL
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cc see distribution below

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HOLAB

JUNIOR MINISTERS

Thank you for your draft instructions.

2. The upshot of the meetings with the UUP (Saturday) and SDLP (this morning) is that they both now appear to want the Bill to make provision for the appointment of Junior Ministers. Both appear to be considering the possibility of appointing Junior Ministers to a "Department of the Centre" under the joint direction of the First Minister and Deputy First Minister, but the SDLP at least seemed to want to keep open the possibility of appointing Junior Ministers to assist other Departmental Ministers; and also reiterated their idea that Junior Ministers could be appointed to "assist in the implementation of the programme of government" by carrying forward cross-cutting issues without any particular statutory responsibilities.

3. Mr Murphy concluded that the Bill should therefore make provision for the appointment of Junior Ministers, with the provisions cast broadly so as to give the FM/DFM and indeed future Assemblies as much flexibility as possible.

4. Against that background:

- (a) the second paragraph of your draft might refer to an emerging consensus in favour of enabling the appointment of Junior

Ministers, but with no clarity on how they should be appointed, what their role and functions should be etc;

- (b) in the third sentence of the third paragraph you might insert "or by the First Minister and Deputy First Minister", after "D'Hondt formula" to give an impression of the range of possibilities;
- (c) in the fourth paragraph it might help Counsel to know that a leading possibility at the moment is that Junior Ministers should be appointed to assist the FM/DFM in the discharge of statutory functions assigned to a "Department of the Centre" which would operate under their joint direction (and about which separate instructions will be needed). After "interdepartmental issues", would it be helpful to add "which might be tied to the implementation of a programme of government"?
- (d) in paragraph 5 the reference should be to the "Departments (NI) Order";
- (e) I appreciate that we will need to trawl through the Bill to decide which other provisions should apply to Junior Ministers. Of the candidates you have identified:
 - (i) I would have thought that it was not strictly necessary to include Junior Ministers in Clause 20 as the primary responsibility for securing the discharge of all statutory functions will continue to rest with the Northern Ireland Ministers, whether or not they are assisted by Junior Ministers. But if a formal delegation of functions to a Junior Minister would render a Minister unable to secure compliance with a direction under Clause 20 it may indeed be necessary to provide that

the necessary direction could be given to the relevant Junior Minister. (I should be grateful for Mr Gray's advice on that point);

- (ii) Clause 22(6) should be extended to cover Junior Ministers - but 22(7) and indeed the other references to Ministers in Clause 22 need not be;
- (iii) "Ministerial office" for the purposes of Clause 38(3)(a)(i) should include Junior Ministers;
- (iv) the arguments in (i) above apply to the possible extension of Clause 60(3) to cover Junior Ministers. I would have thought this was unnecessary as Junior Ministers will, as I understand it, only exercise delegated statutory powers. In any event sub-section (3)(e) provides a safety net;
- (v) as to the references in Clause 65(2) and 66(3) they will be overtaken by the series of New Clauses to be inserted after Clause 43. However, it should be clear that the FM/DFM can nominate Junior Ministers to attend the NSMC, BIC or BIIGC.

There may be several other places where a reference to a "Minister" should be deemed to include a "Junior Minister" appointed to assist a Minister and possibly exercising functions delegated by a Departmental Minister. Possibilities include Clauses 8(1), 18(3), 19(2), 52(1) and 69(1), where I think that in all cases Junior Ministers should be caught by these provisions. (However, I should be grateful for any urgent

comments from copy recipients). Other references to "Northern Ireland Ministers" should be restricted to the First Minister/Deputy First Minister and Departmental Ministers. This may all further complicate the draftsmen's attempt to simplify the definition of "a Northern Ireland Minister" in the Bill, about which George Gray has expressed reservations.

5. I hope this gives you what you need to finalise these instructions.

(Signed)

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