

# Northern Ireland

## Current political developments

Research Paper 96/52

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This paper looks at the legal constitutional, and electoral framework of Northern Ireland, and provides a chronology of events in the political and constitutional arena since 1972. It also gives statistics on casualties connected with civil disturbances, strength of the security services, and votes cast at Northern Ireland elections since 1972. Finally it gives a brief description of the Northern Ireland (Entry to Negotiations etc) Bill [Bill 105 of 1995-96] which is due to have its Second Reading on 18 April 1996, together with the Command Paper published with the Bill: Northern Ireland: Ground Rules for Substantive All-Party Negotiations (Cm 3232). The statistical section of the paper also contains a look at how the electoral system set out in the Bill might work in practice.

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## **Part I Northern Ireland - the legal and constitutional framework**

### **The Genesis of Northern Ireland in UK Law**

*1800 Union with Ireland Act.* Article 1 enacted that the kingdoms of Ireland and Great Britain would, from January 1st 1801 and 'forever after, be united into one kingdom, by the name of the United Kingdom of Great Britain and Ireland'. The Irish Parliament was dissolved, and 100 seats were provided for Members representing Ireland at Westminster.

*1914 Government of Ireland Act.* This was passed on 18 September providing for the establishment of a bicameral Irish Parliament, but subject to Westminster's sovereignty. No special provision had been made for Northern Ireland. A simultaneous Suspensory Act was passed suspending the operation of the Act for the duration of the First World War. The Act never came into operation and was repealed by the 1920 Act (see below).

*1920 Government of Ireland Act.* This Act provided for a Parliament and government for the six-county unit of Northern Ireland and a separate Parliament for the remaining twenty six counties. Both Parliaments were to possess the power to legislate for the peace, order and good government of the area under their jurisdiction subject to certain exceptions. Both Parliaments were to be subject to the sovereignty of the Parliament at Westminster. The Act also provided for reduced representation of the Irish electorate at Westminster. There was to be a common High Court of Appeal with final appeal to the House of Lords and a Council of Ireland to consist of twenty representatives each from the Northern and Southern Ireland Parliaments. The Act envisaged an expansion of role for this Council to become one Parliament for the whole of Ireland. However, attempts to put the Act into operation in Southern Ireland failed, and the Act instead formed the basis of Northern Ireland's constitution until 1972. The Council of Ireland was never put into operation and the common High Court of Appeal was wound up after only a few months.

*1921 Articles of Agreement for a Treaty (The Treaty)* signed between the British Government and representatives of Sinn Fein was given force in the Irish Free State (Agreement) Act 1922. The schedule set out the Articles of the Agreement for a Treaty. Article 1 gave 'Ireland' the name of the Irish Free State but Article 12 provided for an Address to be presented to the King within one month of the passing of the Act 'The 'Ulster Month', by both Houses of the Parliament of Northern Ireland, requesting that the powers of the Irish Dominion Parliament and Government be not extended to Northern Ireland. Were the Address to be presented the Government of Ireland Act would continue in full force and effect for Northern Ireland. The Address was presented on 7 December 1922 to King George V.

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*1922 Irish Free State (Consequential Provisions) Act* provided that the Government of Ireland Act 1920 ceased to apply to any part of Ireland apart from Northern Ireland. Thus S.75 of the 1920 Act was amended to state that the "supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in [Northern Ireland]".

*1925 Ireland (Confirmation of Agreement) Act* transferred those powers intended for the Council of Ireland in the 1920 Act to the Parliament and Government of Northern Ireland. This Act also wound up the Boundary Commission devised in the 1921 Treaty to settle the border question and Northern Ireland's boundaries remained as fixed in the Government of Ireland Act 1920.

### **The Boundaries of Northern Ireland**

The Government of Ireland Act 1920 provided for a Parliament and Government for a six county unit of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone S.I.(2) reads as follows:

(2) For the purposes of this Act, Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of much of Ireland as is not comprised within the said parliamentary counties and boroughs.

Attempts to put the Government of Ireland Act into operation in Southern Ireland failed (see above). The Articles of Agreement for a treaty (known as the Treaty) reached between the Government of Lloyd George and Sinn Fein and given the force of law in the United Kingdom by the *Irish Free State (Agreement) Act 1922*, provided under Article 12 for an Address to be presented to the King within one month of passing of the Act requesting that the powers of the Irish Dominion Parliament and Government be not extended to Northern Ireland. Article 12 also stated that if this Address were made a Boundary Commission would be set up to 'determine in accordance with the wishes of the inhabitants, so far as may be compatible with the economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland'. After a refusal from the Northern Ireland Government to participate in the Commission, the Commission finally began its work in December 1924. The Irish Free State had hopes of a very favourable re-definition of the boundaries, but when some draft proposals were leaked to the *Morning Post* on 7th November 1925, showing only minimal gains, and some losses of territory for the Irish Free State, there was a furore in the Free State, and the Chairman of the Commission resigned. Subsequently, the British Northern Ireland and Free State Prime Ministers agreed to withdraw the report and not to publish it. Instead the three governments agreed that the extent of Northern Ireland be as laid down in SI(2) of the 1920 Act, and this was enacted in the *Ireland (Confirmation of Agreement) Act 1925* which amended the Articles of Agreement and the *Irish Free State (Agreement) Act*

1922 by revoking the powers conferred by Article 12 on the Boundary Commission. The Irish Free State confirmed its acceptance of the 1920 Act boundaries by its *Treaty (Confirmation of Amending Agreement) Act 1925*. However, the question of the extent of the territorial waters of the south remained unsettled until the 1970s.<sup>1</sup> The 1920 definition of the extent of Northern Ireland continues to be cited, for example, s.43 of the *Northern Ireland Constitution Act 1973* stated that 'Northern Ireland' has the same meaning as for the purposes of the Government of Ireland Act'.

### **Northern Ireland - Representation at Westminster**

*The 1920 Government of Ireland Act* reduced Ireland's representation at Westminster from 105 MPs to 46 (13 from the six counties). It made provision for the continued representation of both parts of Ireland at Westminster. The arrangements for the south were, however, superseded by the Treaty of 1921 and *The Irish Free State (Agreement) Act 1922* provided for the 13 Northern Ireland MPs only to sit at Westminster. This number was reduced to 12 after the abolition of university seats in the *Representation of the People Act 1948*. The rationale behind the choice of 13 remains obscure. In the Act of 1914, Ireland was given 42, whereas on a population basis the number would have been more like 64. The then Chief Secretary to Ireland, Mr Macpherson said during proceedings on the 1920 Act 'the number 42 was selected [in the 1914 Act] not on any logical principle, but as a sort of adjustment to meet circumstances that might arise in future including devolution'.<sup>2</sup> The 1920 Bill originally proposed 42 seats but the numbers were increased following the addition of university members to 46. The question of numbers was not discussed in depth during the proceedings on the 1920 Act, the argument mainly being about whether there should be any at all, or whether those who sat for Ireland should be allowed full speaking or voting rights.

*The 1944 Redistribution of Seats Act* set a statutory limit on the number of Northern Ireland seats at Westminster confirmed by the 1948 Act at 12. Following the introduction of Direct Rule of Northern Ireland, the question of the under-representation of Northern Ireland at Westminster arose. The Royal Commission on the Constitution<sup>3</sup> recommended an increase to 17 seats, and pressure increased with the announcement of the start of the Third General Review of parliamentary constituencies in 1976 and the slim Government majority in Parliament. In July 1977, The Speaker announced that he had agreed to preside over a Conference in Electoral Law.<sup>4</sup>

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<sup>1</sup> D.P.P. v McNeill 1975 NI.177

<sup>2</sup> HC Deb 29/3/1920 c94

<sup>3</sup> Kilbrandon Report Cmnd 5460

<sup>4</sup> HC Deb 19/7/77 c13 79

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The Speakers Conference reported in February 1978<sup>5</sup> recommending that the number of constituencies be increased to 17, and the Boundary Commission should be given a degree of flexibility to overcome practical difficulties, and the Commission be given powers to vary the number of constituencies from a minimum of 16 to a maximum of 18. These proposals were given statutory effect in the *House of Commons (Redistribution of Seats Act 1979)*, subsequently consolidated in the Parliamentary Constituencies Act 1986. The current number of seat is 17, but the Parliamentary Boundary Commission for Northern Ireland have recommended that this should increase to 18 at the next General Election following the fourth periodical review of Parliamentary Constituencies.<sup>6</sup>

*The Act of Union 1800* had provided for the election of twenty eight representative peers to sit in the House of Lords for life. *The 1922 Free State Act* had abolished the Lord Chancellorship of Ireland, the post responsible for administering the election of peers and no elections were held after 1922, but the remaining representative peers continued to sit. The last representative peer died in 1961. In 1966 the Committee of Privileges of the House of Lords ruled that the provisions of the Act of Union had ceased to be effective on the passing of the 1922 Act.<sup>7</sup> The relevant Articles of the Act of Union were repealed in 1971 in the *Statute Law (Repeals) Act*. The House of Lords Committee for Privileges examined the issue again in its report on the Barony of Farnham,<sup>8</sup> but declined the petition for a writ of summons.

### Northern Ireland's constitutional guarantees

The constitutional position of Northern Ireland as an integral part of the UK is derived from the *Act of Union 1800*. In addition, the *1949 Ireland Act* passed after Eire left the Commonwealth and became a Republic declared in S1(2):

(2) It is hereby declared that Northern Ireland remains part of His Majesty's dominions and of the United Kingdom and it is hereby affirmed that in no event will Northern Ireland or any part thereof cease to be part of His Majesty's dominions and of the United Kingdom without the consent of the Parliament of Northern Ireland.

The *1973 Northern Ireland Constitution Act* abolished the Parliament of Northern Ireland and consequentially a new form of guarantee about Northern Ireland's constitutional status was required as set out in S.1:

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<sup>5</sup> Cmnd 7110

<sup>6</sup> Cmnd 2949

<sup>7</sup> Petition of the Earl of Antrim [1967] IAC961 [1966] 3WLR 1141 HL

<sup>8</sup> HL 85 Session 1994/95

*Status of Northern Ireland*

Status of Northern Ireland as part of United Kingdom

1. It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom, and as it is hereby affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty's dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1 to this Act.

Schedule 1 made provision for polls to be held at intervals of not less than 10 years. A poll was held in March 1973 under the *Northern Ireland (Border Poll) Act 1972* (see p.14), but none have been held since.

It is worth noting that while Section 1 states that Northern Ireland will not cease to be part of the United Kingdom without the consent of the majority of the people of Northern Ireland it does not follow that the status of Northern Ireland would change if the majority expressed that wish in the appropriate statutory form. During the passage of the Northern Ireland (Border Poll) Bill in 1972 Ministers appeared to suggest that if a majority voted for unity with the Irish Republic that wish would be accepted by the UK Government.<sup>9</sup>

The Anglo Irish agreement of November 1985 deals with the status of Northern Ireland in Article 1:

STATUS OF NORTHERN IRELAND

ARTICLE I

The two Governments

- (a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland;
- (b) recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;
- (c) declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

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<sup>9</sup> see Mr Whitelaw, HC Deb 21/11/72 c1091

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The Downing Street Declaration of December 1993 set out the position of the respective governments as follows:

4. The Prime Minister, on behalf of the British Government, reaffirms that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis, he reiterates, on behalf of the British Government, that they have no selfish strategic or economic interest in Northern Ireland. Their primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and they will work together with the Irish Government to achieve such an agreement, which will embrace the totality of relationships. The role of the British Government will be to encourage, facilitate and enable the achievement of such agreement over a period through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland. They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a united Ireland achieved by peaceful means on the following basis. The British Government agree that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish. They reaffirm as a binding obligation that they will, for their part, introduce the necessary legislation to give effect to this, or equally to any measure of agreement on future relationships in Ireland which the people living in Ireland may themselves freely so determine without external impediment. They believe that the people of Britain would wish, in friendship to all sides, to enable the people of Ireland to reach agreement on how they may live together in harmony and in partnership, with respect for their diverse traditions, and with full recognition of the special links and the unique relationship which exist between the peoples of Britain and Ireland.

5. The Taoiseach, on behalf of the Irish Government, considers that the lessons of Irish history, and especially of Northern Ireland, show that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it. For this reason, it would be wrong to attempt to impose a united Ireland, in the absence of the freely given consent of a majority of the people of Northern Ireland. He accepts, on behalf of the Irish Government, that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland and must, consistent with justice and equity, respect the democratic dignity and the civil rights and religious liberties of both communities, including:

- the right of free political thought;
- the right to freedom and expression of religion;
- the right to pursue democratically national and political aspirations;
- the right to seek constitutional change by peaceful and legitimate means;
- the right to live wherever one chooses without hindrance;
- the right to equal opportunity in all social and economic activity, regardless of class, creed, sex or colour.

These would be reflected in any future political and constitutional arrangements emerging from a new and more broadly based agreement.

The British position was set out again in *Frameworks for the Future*<sup>10</sup> which promised change to the *1920 Government of Ireland Act*:

20. The British Government reaffirm that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis, they reiterate that they have no selfish strategic or economic interest in Northern Ireland. For as long as the democratic wish of the people of Northern Ireland is for no change in its present status, the British Government pledge that their jurisdiction there will be exercised with rigorous impartiality on behalf of all the people of Northern Ireland in their diversity. It will be founded on the principles outlined in the Previous Paragraph with emphasis on full respect for, and equality of, civil, political, social and cultural rights and freedom from discrimination for all citizens, on parity of esteem, and on just and equal treatment for the identity, ethos and aspirations of both communities. The British Government will discharge their responsibilities in a way which does not prejudice the freedom of the people of Northern Ireland to determine, by peaceful and democratic means, its future constitutional status, whether in remaining a part of the United Kingdom or in forming part of a united Ireland. They will be equally cognizant of either option and open to its democratic realisation, and will not impede the latter option, their Primary interest being to see peace, stability and reconciliation established by agreement among the people who inhabit the island. This new approach for Northern Ireland, based on the continuing willingness to accept the will of a majority of the people there, will be enshrined in British constitutional legislation embodying the principles and commitments in the Joint Declaration and this Framework Document, either by amendment of the Government of Ireland Act 1920 or by its replacement by appropriate new legislation, and appropriate new provisions entrenched by Agreement.

Sinn Fein commented on the *1920 Government of Ireland Act* in its questions to the British Government on the Downing Street initiative in May 1994.<sup>11</sup> Section 75, which is set out on p.1 above appears to be the centre of their attention. This section declares the supreme authority of the Westminster Parliament over Northern Ireland. It is not however, considered by constitutional experts to be of the same level of importance as the Act of Union or the 1973 Act in cementing the Union.

## The Irish constitution

Articles 2 and 3 of the Irish constitution read as follows<sup>12</sup>:

### Article 2.

The national territory consists of the whole island of Ireland, its islands and the territorial seas.

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<sup>10</sup> February 1995

<sup>11</sup> Dep 10849

<sup>12</sup> Saorstát Éireann = Irish Free State

### Article 3.

Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.

The Preamble to the Constitution identifies the enacting authority as the 'people of Eire'. It is worth noting that this constitution dates from 1937 when the constitution created for the Irish Free State in December 1922 was replaced by a new version drawn up by Eamon de Valera's Government. De Valera had opposed the Treaty with Britain and this opposition led to a brief civil war in the Free State. The 1922 constitution contained an oath of allegiance to the British crown, provided for a Governor-General and contained other references to the Dominion Status of the Free State. Much of the bitterness between pro and anti Treaty forces revolved around the oath of allegiance insisted upon by the British in the Treaty negotiations with the Irish, led by Michael Collins.

After De Valera came to power in 1932 he abolished the oath of allegiance, appeal to the Privy Council, the governor general and all references to the King in the 1922 constitution. The Irish 1936 External Relations Act retained the King as a symbol for external relations. De Valera introduced the new constitution *Bunreacht na hEireann* to the Dail in March 1937. It proposed a Republican form of Government (without declaring a republic) an elected president of limited powers, and a bicameral government. The chief differences between old and new constitutions were in the incorporation of contemporary Catholic social values (eg. Article 41 prohibiting divorce), special recognition for the Roman Catholic Church (Article 44 deleted after a referendum in 1972) and a strong statement of Irish unity set out in Articles 2 and 3. The new constitution was the subject of a referendum on 1 July 1937. It had been opposed in the Dail by Fine Gael, who saw no need for a new constitution and Labour which wanted an outright declaration of a republic. However, the constitution was approved by 56.5% on a 68.3% turnout.<sup>13</sup> It has been subject to some further amendments through referendums, but the basic principles remain the same as in 1937. Although the British did not favour the constitutional changes, there was some relief that the South was to remain with the Commonwealth. British attention was concentrated more on the refusal by De Valera to meet the financial obligations of the Treaty. In 1948 the Dail passed the *Republic of Ireland Act* replacing the *External Relations Act* and establishing Ireland as a Republic from Easter Monday 1949. Ireland left the Commonwealth; the British legal reaction was the *Ireland Act 1949* affirming the guarantee to Northern Ireland and retaining the legal position that citizens of the Republic were not to be regarded as aliens.

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<sup>13</sup> *Referendums around the world* 1994) ed David Butler and Austin Ranney p. 269

Clause 5 of the agreed communique issued as the Sunningdale Agreement in 1973 read as follows:

5. The Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

The British Government solemnly declared that it was and would remain, their policy to support the wishes of the majority of the people of Northern Ireland. The present status of Northern Ireland is that it is part of the United Kingdom. If in future the majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland, the British Government would support that wish.

The terms were challenged in the courts as being contrary to the Irish constitution. The action failed in the Supreme Court in *Boland v An Taoiseach*.<sup>14</sup> The defendants, Irish Government Ministers, denied that Clause 5 of the communique set out the terms of any agreement between the two governments and claimed that it 'recites and records separate declarations' made by the governments at the Sunningdale Conference. Fitzgerald C J said<sup>15</sup>:

That brings me to the question whether the communiqué, in particular clauses 5, 6 and 20 thereof, amount to an action by the Government which is beyond its powers and duties. In my opinion, clause 5 of the communique is not capable of being construed as an agreement. It is not so expressed. It is, consequently, clearly distinguishable from clauses 6, 7, 10, 11 and 20 of the communiqué, in each of which "agreement" is stated to have been reached. Clauses 2, 3 and 4 of the communiqué make it perfectly clear that the three parties to the conference were stating their respective distinctive positions in relation to the question of the unity of Ireland. Clause 5 contains declarations by the Irish and British Governments which are clearly distinct and are in no sense an agreement on fact or principle. The only words common to both declarations are "the status of Northern Ireland." If any inference is to be drawn from the method of printing the declarations side by side instead of consecutively, it must be to emphasise the distinction between them. The "status of Northern Ireland" and the acceptance of it is, to my mind, a reference to the *de facto* position of Northern Ireland and to nothing else, and the respective declarations are no more than assertions of the policies of the respective Governments and matters clearly within their respective executive functions.

O Keefe P noted that<sup>16</sup>:

An acknowledgment by the Government that the State does not claim to be entitled *as of right* to jurisdiction over Northern Ireland would in my opinion be clearly not within the competence of the Government having regard to the terms of the Constitution. I cannot presume that the

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<sup>14</sup> (1974) I R 338

<sup>15</sup> p.362

<sup>16</sup> pp.363-4

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Government would consciously make an acknowledgment of that kind and, accordingly, I accept the view of the Chief Justice that clause 5 represents no more than a reference to the *de facto* position of Northern Ireland coupled with a statement of policy in regard thereto.

Article 1 of the Anglo-Irish Agreement of 1985 seems to have been drafted with Irish constitutional requirements and the *Boland* Case in mind. The constitutionality of the Article, which affirmed that a change in the status of Northern Ireland would only come about with the consent of the majority of the people in Northern Ireland was challenged by two Northern Ireland Unionists. In *McGimpsey v Ireland and An Taoiseach*<sup>17</sup> the Irish Supreme Court ruled that Articles 2 and 3 reflected a claim as a matter of legal right to the entire national territory, and that Article 1 of the Agreement could only be construed as constituting a recognition of the *de facto* situation in Northern Ireland which did not involve abandoning the claim to re-integration of the whole territory.

Finlay CJ, speaking for the Supreme Court said:-

With Articles 2 and 3 of the Constitution should be read the Preamble, and I satisfied that the true interpretation of these constitutional provisions is as follows.

1. The reintegration of the national territory is a constitutional imperative (cf. Hederman J. in Russell v. Fanning).
2. Article 2 of the Constitution consists of a declaration of the extent of the national territory as a claim of legal right.
3. Article 3 of the Constitution prohibits, pending the reintegration of the national territory, the enactment of laws with any greater area or extent of application or extra-territorial effect than the laws of Saorstát Éireann and this prohibits the enactment of laws applicable in the countries of Northern Ireland.
4. The restriction imposed by Article 3 pending the reintegration of the national territory in no way derogates from the claim as a legal right to the entire national territory.

He went on to say "There can be no doubt that the only reasonable interpretation of Article 1, taken in conjunction with the denial of derogation of sovereignty contained in Article 2(b) of the Anglo-Irish Agreement is that it constitutes a recognition of the *de facto* situation in Northern Ireland but does so expressly without abandoning the claim to the reintegration of the national territory". The case led to renewed calls for the repeal of Articles 2 and 3 from Unionists.

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<sup>17</sup> [1990] ILRM 441

## Amendments to the Irish Constitution

Article 46 provides for the Constitution to be amended. A Bill is introduced into the Dail, and having been passed or deemed to have been passed by both Houses, is submitted to a referendum. A majority of votes cast is required for the referendum to succeed and the amendment to become law.<sup>18</sup> A number of referendums have resulted in amendments to the constitution; there have been affirmative referendums on the question of EC membership and the Maastricht treaty (in 1972, 1987 and 1993), to lower the voting age to 18 (1972), to remove the special constitutional position of the Roman Catholic church (1972), to place a constitutional ban on abortion (1983) (since modified by further amendments following 3 referendums in 1993) amongst other topics.<sup>19</sup>

Proposals to amend Articles 2 and 3 have been made before in the Republic; the most detailed proposals have set out in the 1967 report of the All-Party Committee on the Constitution (December 1967). In the Downing Street Declaration of 15th December 1993,<sup>20</sup> the then Taoiseach, Albert Reynolds, gave the following commitment on amendments to the constitution:-

7. Both Governments accept that Irish unity would be achieved only by those who favour this outcome persuading those who do not, peacefully and without coercion or violence, and that, if in the future a majority of the people of Northern Ireland are so persuaded, both Governments will support and give legislative effect to their wish. But, notwithstanding the solemn affirmation by both Governments in the Anglo-Irish Agreement that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland, the Taoiseach also recognises the continuing uncertainties and misgivings which dominate so much of Northern Unionist attitudes towards the rest of Ireland. He believes that we stand at a stage of our history when the genuine feelings of all traditions in the North must be recognised and acknowledged. He appeals to both traditions at this time to grasp the opportunity for a fresh start and a new beginning, which could hold such promise for all our lives and the generations to come. He asks the people of Northern Ireland to look on the people of the Republic as friends, who share their grief and shame over all the suffering of the last quarter of a century, and who want to develop the best possible relationship with them, a relationship in which trust and new understanding can flourish and grow. The Taoiseach also acknowledges the presence in the Constitution of the Republic of elements which are deeply resented by Northern Unionists, but which at the same time reflect hopes and ideals which lie deep in the hearts of many Irish men and women North and South. But as we move towards a new era of understanding in which new relationships of trust may grow and bring peace to the island of Ireland, the Taoiseach believes that the time has come to consider together how best the hopes and identities of all can be expressed in more balanced ways, which no longer engender division and the lack of trust to which he has referred. He confirms that, in the event of an overall settlement, the Irish Government will, as part of a balanced constitutional accommodation, put forward and support proposals for change in the Irish Constitution which would fully reflect the principle of consent in Northern Ireland.

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<sup>18</sup> Article 47(1)

<sup>19</sup> For further details see **Referendums around the World** (1994) ed. David Butler and Austin Ranney

<sup>20</sup> Cm 2442

This commitment was repeated in *Frameworks for the Future*:

21. As part of an agreement confirming the foregoing understanding between the two Governments on constitutional issues, the Irish Government will introduce and support proposals for change in the Irish Constitution to implement the commitments in the Joint Declaration. These changes in the Irish Constitution will fully reflect the Principle of consent in Northern Ireland and demonstrably be such that no territorial claim of right to jurisdiction over Northern Ireland contrary to the will of a majority of its people is asserted, while maintaining the existing birthright of everyone born in either jurisdiction in Ireland to be part, as of right, of the Irish nation. They will enable a new Agreement to be ratified which will include, as part of a new and equitable dispensation for Northern Ireland embodying the principles and commitments in the Joint Declaration and this Framework Document, recognition by both Governments of the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its constitutional status, whether they prefer to continue to support the Union or a sovereign united Ireland.

### **Direct Rule - the legal framework**

#### **Legislation**

The Parliament of Northern Ireland established by the *Government of Ireland Act 1920* was prorogued by the *1972 Northern Ireland (Temporary Provisions) Act* and abolished on 18th July 1973 by the *1973 Northern Ireland Constitution Act*.

The current framework of direct rule has been in operation since July 1974, under the provisions of the *Northern Ireland Act 1974* in conjunction with the *Northern Ireland Constitution Act 1973*. The 1973 Act created three categories of legislative powers, excepted, reserved and transferred powers along with a power-sharing Executive which possessed devolved powers for the first five months of 1974. Excepted matters (listed in Schedule 2 to the 1973 Act) remain the responsibility of the United Kingdom Parliament and include foreign affairs, armed forces, anti-terrorism, elections, nationality and coinage. Minimum reserved matters are listed in Schedule 3 and include law and order powers. These could have been devolved but were not in fact transferred to the Assembly. Finally, all matters other than exceptional or reserved are categorised as transferred. After the dissolution of the Assembly and the restoration of direct rule in July 1974, the 1974 Act provided that Orders in Council could be made for Northern Ireland over the whole area covered by both reserved and transferred powers. Excepted matters may only be enacted by Act of Parliament. Orders in Council have been used for virtually all reserved and transferred matters since 1974, with the exception of fair employment legislation.

The provisions of the *Northern Ireland Act 1974* are renewed annually. Section 1(3) of that Act provide that during the interim period (defined in S.I. (4-6)), the provisions of Schedule 1 have effect with respect to the exercise of executive, legislative and other functions. The interim period began on 17th July 1974 and has been continued each year by orders under

the affirmative resolution procedure.

### Assembly

The Northern Ireland Act 1982 made provision for a new Assembly to monitor the activities of the Northern Ireland departments and to make proposals for the resumption by the Assembly of the former functions. The Assembly was dissolved on 23rd June 1986 by the *Northern Ireland Assembly (Dissolution) Order 1986*<sup>21</sup>, before any devolution of functions had taken place. However, the 1973 Acts and the 1982 Acts remain in force leaving open the possibility of a new Assembly being elected under those Acts. The *1973 Northern Ireland Assembly Act* now provides for a 90 member assembly to be elected by single transferable vote. S.1 of the 1982 Act enables the Assembly to make proposals to the Secretary of State for the resumption of either all the functions devolved by the 1973 Act or for the resumption of some only (to include proposals on the composition of the executive authorities responsible to the Assembly.)

### The Devolution Framework

Originally, the *Government of Ireland Act 1920* transferred to the Northern Ireland Parliament the exclusive power to make laws for the peace, order and good government of the Province. A series of 'excepted' matters remained with Westminster and included foreign affairs, Crown, army, honours and titles. A second series of 'reserved' matters had originally been intended to fall within the jurisdiction of the Council of Ireland, had it come into existence. Since this did not occur the reserved matters remained at Westminster, including postal services, savings banks and the Supreme Court. These were transferred to Stormont in the 1925 Act. All other powers were 'transferred' powers of Stormont. This method of devolution contrasts with the *1978 Scotland Act* where the powers to be **transferred** were specified in great detail. Section 5 of the 1920 Act prohibited the making of laws interfering with religious, equality and the taking of property without compensation. Section 75 spelt out the continuing supremacy of the Westminster Parliament.

As for the devolution of executive powers, S.8(1) of the 1920 Act provided that the executive power would rest with the King who would discharge the prerogative or any other executive powers through a Governor. Section 8(3) provided that the powers delegated to the Governor would be exercised through the Northern Ireland departments headed by Northern Ireland Ministers drawn from Stormont, and who were also members of the Northern Ireland Privy Council. Stormont therefore enjoyed the type of powers possessed by overseas territories such as New Zealand, Canada, Australia and South Africa before their full independence.<sup>22</sup> The legislative powers were supplemented by constitutional conventions, such as that Westminster would legislate over transferred matters only with the consent of the Northern

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<sup>21</sup> S.I. no. 1036

<sup>22</sup> The 1920 powers are discussed in detail in *The Constitution of Northern Ireland [1989]* by Brigid Hadfield

Ireland Parliament, and that no questions could be asked at Westminster on matters transferred to Northern Ireland since there was no Minister responsible for them at Westminster.<sup>23</sup> In addition, there was no particular desire at Westminster to exercise a close scrutiny of the affairs of the province - evident when the Northern Ireland Parliament abolished proportional representation for Stormont elections in 1929 and did not abolish the business franchise for Stormont, or the ratepayer only franchise for local government until 1968/69. The *1972 Northern Ireland (Temporary Provisions) Act 1972* brought the 1920 powers to an end.

### 1973 Northern Ireland Constitution Act

This Act also created three categories for legislative powers with identical names to those in the 1920 Act; excepted, reserved and transferred. Schedule 2 of the 1973 Act lists excepted matters including the Crown, foreign affairs, army etc. but also the franchise, prosecutions, appointment of magistrates and non Supreme Court judges, and special anti-terrorist powers. Law and order powers were 'reserved' powers which were excluded for the present from the normal legislative competence of the Assembly but in respect of which the Assembly could legislate with the agreement of the United Kingdom Parliament. All other powers were transferred<sup>24</sup>, but S.2 of the 1973 Act made the formation of a broadly-based Executive a pre-condition for the devolution of legislative power to the new Assembly. The 1973 Act established a Northern Ireland Executive consisting mainly of the political heads of the Northern Ireland parties, and presided over by a 'Chief executive member' who was also leader of the Assembly. The members of the Executive were to be appointed by the Secretary of State for Northern Ireland largely from among the existing members of the Assembly, and the Executive to be chosen was required to be widely accepted through the community having regard to the support it commanded in the Assembly (s.2.1(6)). The Secretary of State, having formed the Executive remained responsible for excluded and reserved powers. The Assembly was required under S.25 to establish consultative committees to advise and assist each Department head in the formulation of policy, and the committees were to reflect the balance of parties in the Assembly.

Clearly, the 1973 executive and legislative powers, although in form extensive, are no equivalent to the 1920 powers. The 1973 Act also contained provisions against discrimination, and restated Westminster legislative supremacy in Section 4(4). It also established a Standing Advisory Commission on Human Rights, and in S.12 provided in broad terms for consultations or agreements 'on any matter' with the Republic of Ireland or transferring functions to a body constituted under S.12. However, article 7 of the Sunningdale Agreement on a proposed Council of Ireland (comprising a Council of Ministers and Consultative Assembly) did not take effect.

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<sup>23</sup> This followed a Speakers Ruling in 1923

<sup>24</sup> The first devolution order listed the powers transferred - health and social services, housing, education, environment and agriculture

Much of the 1973 Act remains on the statute book; under S.1 and 2 of the *1982 Northern Ireland Act* the Assembly could submit to the Secretary of State proposals to resume some or all of legislative and executive devolution under the 1973 Act, provided that the proposals had the support of 70 per cent of the Assembly or the Secretary of State was satisfied of widespread support across the community. In the event the SDLP and Nationalist parties took no part in the Assembly so the majority was never likely to be achieved. However, the Assembly was given deliberative powers by the 1982 Act via committees which scrutinised all departmental functions, both legislative and executive. These committees did not have a formal power to summon Ministers or officials or have access as of right to departmental papers.

## **Elections in Northern Ireland**

### **Stormont**

Originally, both elections to Stormont and local elections in Northern Ireland were based on proportional representation. PR for local elections was, however, abolished by the Northern Ireland Parliament in the *1922 Local Government Act (NI)* and for elections to the Northern Ireland Parliament by the *House of Commons (Method of Voting and Redistribution of Seats Act (NI) 1929)*. Electoral matters had been transferred to Stormont under the 1920 Government of Ireland Act. Elections to Stormont had been by means of the single transferable vote, based on 10 constituencies, including Queens University, which continued to use STV until 1968 when the constituency was abolished. There were 52 seats in total. Following the 1929 Act single constituencies were created, but there was no provision for altering constituency boundaries until the Electoral Law Act (NI) 1968. However, the abolition of PR had little effect on the pattern or representation between Unionist and Nationalists.<sup>25</sup>

### **Northern Ireland Assembly 1973**

This Assembly of 78 members was elected by single transferable vote and voting took place according to the twelve Parliamentary constituencies. Both the 1975 Constitutional Convention and the 1982 Northern Ireland Assembly were elected by the same method with the same number of seats. The 1973 Act has recently been amended to increase the number of seats in an Assembly elected under its provisions to 90, following a recommendation from the Northern Ireland Boundary Commission in its fourth periodic review.<sup>26</sup>

The proposal for a new 90 member Assembly set out in *Frameworks for the Future*<sup>27</sup> did not

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<sup>25</sup> See *The Constitution of Northern Ireland* by Brigid Hadfield p.54 for further detail

<sup>26</sup> Cmnd 2949 October 1995

<sup>27</sup> February 1995

specify the form of elections, beyond indicating that it would be a form of PR.

Elections to the European Parliament are also carried out using the STV; The whole province is taken as a single constituency since there are only 3 seats in Northern Ireland.

Ireland has used the STV in multi-member constituencies since 1922. At present there are 166 seats in the Dail, representing 41 constituencies.

The Single Transferable Vote system calls for electors to vote for a single candidate, irrespective of the number of seats to be filled in the constituency, but to indicate preferences for the other candidates. A candidate is elected as soon as he reaches the electoral quotient computed according to a particular quotient, known as the Droop Quotient<sup>28</sup>. The additional votes he obtains are then redistributed to the other candidates on the basis of the second choices expressed by electors. The same operation is carried out in the case of the candidates who are placed last and who are eliminated. If there are still seats to be filled after the second count, the process continues. STV is a mixed system in that it does not produce results which are fully proportional. It is widely used in present and former Commonwealth countries such as Malta and Australia and it was almost adopted in the UK after the First World War, following the recommendations of a Speaker's Conference in 1917. It was used for multi-member university seats from 1918-45.<sup>29</sup>

STV has been used since 1972 for the new district councils created under the *Local Government (Northern Ireland) Act 1972*, one of the last Acts of the Northern Ireland Parliament. Each District Electoral Area must consist of either five, six or seven local government wards and each area returns as many council members as there are wards in the area.<sup>30</sup>

An independent Chief Electoral Officer maintains the accuracy of the electoral register and is responsible for the running of elections. His office was established in 1972<sup>31</sup> and he makes annual reports on electoral matters,<sup>32</sup> including registration and election results.

*The 1989 Elected Authorities (Northern Ireland) Act* requires candidates at district council or Assembly elections to sign a declaration stating that the candidate, if elected, would not

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<sup>28</sup>  $\left\lfloor \frac{\text{votes}}{\text{seats}+1} + 1 \right\rfloor$

<sup>29</sup> For further detail see Library Background Paper no. 299 Voting Systems

<sup>30</sup> District Electoral Areas Commissioner (Northern Ireland) Order 1984

<sup>31</sup> Electoral Law (Northern Ireland) Order 1972 SI no. 1264

<sup>32</sup> The most recent report was for 1994/95 HC 12 Session 1995/96

express support for proscribed organisations<sup>33</sup> or acts of terrorism. Signing the declaration is a condition of nomination as a candidate. Declarations are enforced by means of a civil action brought in the High Court by the district council, councillor(s) or elector(s) of the district council area concerned. Sinn Fein candidates signed the declaration at the 1989 elections.

## Nationality

### United Kingdom

*The British Nationality Act 1948* (s.32(1)) established that Irish citizens were no longer to be British subjects (i.e. Commonwealth citizens) but were nevertheless to be treated for all purposes as if they were while in the UK. When Ireland formally declared itself a Republic and left the Commonwealth in 1949 the British government decided that this should not affect the position of Irish citizens within the UK. *The Ireland Act 1949* (s.2) provided that "it is hereby declared that, notwithstanding that the Republic of Ireland is not part of His Majesty's dominions, the Republic of Ireland is not a foreign country for the purposes of law in any part of the United Kingdom". The rationale behind this was given by the Prime Minister.<sup>34</sup>  
[The Prime Minister]

As everybody knows, there are in Britain large number of people of Irish descent, some born in Eire and some born in this country, and there is a continual passage to and fro of people who come over to work or to study or for pleasure. It would be an extremely difficult thing to decide in every case from day to day as to what the exact status was of a person with an Irish name, and if we had had to attempt to make all citizens of Eire aliens, it would have involved a great expenditure of men and money and a great extension of the control of aliens. We had in particular also to remember the difficulties caused because of the fact of the land frontier between Northern Ireland, which is part of the United Kingdom and the Commonwealth, and Eire.

We therefore came to the conclusion that we should reciprocally decide that the people of Eire and the people of Britain should not be foreign to one another. Indeed, I go further. The same action may be taken by other Commonwealth countries. I do not pretend that the solution at which we arrived is completely logical - very few things in the relationship between these islands have been completely logical - but I believe they are practical and I believe that they are to our mutual benefit. I am aware, of course, that hitherto there has been this division in international law - it has come down from the past - in which one has recognised people as either belonging or foreign, but international law is made for men, not men for international law. We are moving into a time when various other relationships are being created. Therefore we thought this was the most practical solution.

Irish citizens may therefore vote and stand in Parliamentary local and European elections provided that the statutory residence requirements are met. In Northern Ireland there is a requirement of three months continuous residence in the constituency immediately previous

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<sup>33</sup> as defined in Schedule 2 to the *Northern Ireland (Emergency Provisions) Act 1978*

<sup>34</sup> Clement Atlee at Second Reading (HC Deb 11/3/49 c1855)

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to the annual date of 15 September<sup>35</sup>

The UK and Ireland, together with the Isle of Man and the Channel Islands form a Common Travel Area. There are no immigration controls between the two countries. Irish citizens entering the UK automatically become settled on arrival, as do British entering Ireland. Until the *1971 Immigration Act*, the Common Travel Area was a purely administrative arrangement, but it now has statutory recognition. The *Prevention of Terrorism (Temporary Provisions) Act 1989* is used to control the movement of certain British citizens between Britain and Northern Ireland, and is beyond the scope of this paper.

### Republic of Ireland

The *Irish Nationality and Citizenship Act of 1956* gives every person born in Ireland 'Irish citizenship from birth' under s.6(1). However, s.7 (as amended by the *1986 Irish Nationality and Citizenship Act 1986*) disapplies s.6(1) to a person born in Northern Ireland unless that person (or his parent or guardian) decides to register as an Irish citizen. Irish nationality will also be conferred if a father or mother is an Irish citizen. Therefore people born in Northern Ireland can register as Irish with very little difficulty. It is possible to hold both British and Irish citizenship. British citizens who fulfil the statutory residence requirements of the Republic have had the right to vote in Irish Parliamentary and local elections since 1985.

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<sup>35</sup> For further details see Library Research Paper 94/93 "Votes and Seats for European Parliament elections"

## Part II      **Chronology of constitutional and political events**

This chronology attempts to summarise developments in Northern Ireland since 1972. Although some major terrorist outrages are noted briefly, the chronology concentrates on the political process, and does not survey security issues in this period:-

### **Abolition of Stormont**

In March 1972, after a sharp deterioration in the security situation in Northern Ireland, the United Kingdom Government informed the Northern Ireland Government that it proposed to take over direct responsibility for law and order. This proved unacceptable to the Northern Ireland Government, which resigned. The *Northern Ireland (Temporary Provisions) Act 1972*, proroguing the Northern Ireland Parliament and giving the UK Parliament power to legislate for Northern Ireland by Order in Council, was passed on 30th March. Under the Act a Secretary of State was appointed for the first time since partition with overall responsibility for the exercise of executive functions.

### **Border Poll**

In March 1973, a 'border' poll was held in accordance with an under-taking given at the time of the introduction of direct rule. The *Northern Ireland (Border Poll) Act 1972* was the statutory underpinning. Every citizen of Northern Ireland aged 18 or over was asked to state whether he or she wished Northern Ireland to remain part of the United Kingdom or to be joined with the Irish Republic outside the UK. More than 600,000 voters out of a total electorate of just over 1 million went to the poll, and of these 591,820 voted to remain part of the UK. The poll was largely boycotted by the SDLP and other nationalists.

### **March 1973 - November 1974**

A White Paper on *Northern Ireland Constitutional Proposals* [Cmnd 5259] was published in March 1973. Its proposals included the setting up of an Assembly of about 80 members elected by proportional representation. The Assembly would have committees whose Chairmen would form the Executive. The Secretary of State would remain in office and control of security matters would remain with Westminster. It provided for the setting up of institutional arrangements to facilitate consultation and co-operation between Northern Ireland and the Republic of Ireland. The White Paper reaffirmed the declaration that Northern Ireland would remain part of the United Kingdom for as long as that was the wish of the majority of the people.

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The *Northern Ireland Assembly Act 1973*, which provided for the election of a single-chamber Assembly of 78 Members by the single transferable vote system, was passed on 3rd May 1973. Elections to the Assembly took place on 28th June.

On 18th July 1973 the *Northern Ireland Constitution Act* was passed, affirming that Northern Ireland or any part of it would not cease to be part of the United Kingdom without the consent of a majority of the people of Northern Ireland voting in a plebiscite. This marked a change from the *1949 Ireland Act* where the guarantee was given to the Parliament of Northern Ireland (see above). The Act abolished the Office of Government of Northern Ireland and the Parliament of Northern Ireland, defined the scope of legislative and executive authority and the manner in which it should be exercised, nullified any Northern Ireland legislation which discriminated on grounds of religious belief or political opinion, and laid down rules about the conduct of business of the Assembly, its dissolution, prorogation and election, and matters such as the privileges and remuneration of its members. The Assembly met for the first time in July.

In October, the Secretary of State for Northern Ireland, William Whitelaw, chaired talks at Stormont between Official Unionists, the SDLP and the Alliance Party on the possibility of forming a power-sharing executive. After further talks in November, it was announced that agreement had been reached to form an "Executive Designate". It had also been agreed that further steps should be taken towards developing relations between Northern Ireland and the Irish Republic.

### **Sunningdale Conference**

In December 1973, tripartite talks were held between leaders of the Northern Ireland parties in the Executive Designate and Ministers of the governments of the UK and the Irish Republic. After three days agreement was reached and a communique issued.

The main points of the agreement were:

- a) that a Council of Ireland should be set up to consist of 7 Ministers from the Irish Republic and 7 Members of the Northern Ireland Executive, a consultative assembly and a secretariat and;
- b) that the Governments of the United Kingdom and of the Irish Republic should register solemn declarations with the United Nations that the status of Northern Ireland could not be changed without the consent of a majority in the Province.

The agreed communique also covered law enforcement, policing and the release of detainees.

"Loyalist" opposition to power-sharing, and subsequent to the Council of Ireland proposals, had been growing, and on 4th January 1974 the Ulster Unionist Council rejected the agreement. Brian Faulkner, who had participated in the Conference, resigned as leader of the Unionists, although he remained at the head of the Executive.

In the Republic of Ireland, the agreement relating to the status of Northern Ireland was successfully challenged in the Supreme Court as being inconsistent with the Irish constitution.<sup>36</sup>

Legislative and executive powers had been devolved to the Assembly and the Executive sworn in on 1st January. In the February 1974 UK General Election Unionists opposed to the Executive won 11 of the 12 Northern Ireland seats. The incoming Labour Government maintained the Sunningdale Agreement, but on 15th May 1974, the Ulster Workers Council called a general strike in protest at the Sunningdale Agreement. A State of Emergency was declared on 19th May and Mr Faulkner and his colleagues resigned from the Executive on 28th May. The Assembly was prorogued the next day by an Order in Council. The Assembly was suspended (for one year initially) by the *Northern Ireland Act* passed on 17th July, which transferred the responsibilities of the Executive, temporarily, to the Secretary of State for Northern Ireland and Northern Ireland departments. Procedures for making laws for Northern Ireland by Order in Council on matters within the legislative competence of the Assembly were re-introduced.

### **The Constitutional Convention 1975-76**

A White Paper published on 4th July 1974 entitled *The Northern Ireland Constitution* [Cmnd 5675] had proposed the setting up of a Constitutional Convention of 78 members to be elected on a multi-member basis from the 12 parliamentary constituencies by single transferable vote "to consider what provision for the government of Northern Ireland is likely to command the most widespread acceptance among the community there". Elections were held to the Constitutional Convention on 1st May 1975. The United Ulster Unionist Coalition (comprising the Official Unionists, the Vanguard Unionist Party, the Democratic Unionist Party and other Loyalists) won 47 of the 78 seats. The Convention sat for the first time on 8th May. Fundamental differences emerged between the Unionists parties and the nationalist SDLP. Unionist proposals were endorsed by a majority as the Convention's final report. These proposals were for a restored Northern Ireland parliament of between 78 and 100 Members with a wide range of powers and responsibilities including responsibility for internal

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<sup>36</sup> *Boland v An Taoiseach* (1974) I.R. 338

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security. The Government would be on the British Cabinet model with a system of committees on which minorities would be represented. The SDLP did not favour a system based on conventional party lines but preferred a "power-sharing" or coalition system of government. After considering the Convention's report, the Government decided that the report's proposals would not attract sufficiently wide support to provide stable and effective government. After being briefly reconstituted, the Constitutional Convention was finally dissolved in March 1976. On 3rd May 1977, the United Ulster Action Council called for a strike in support of their demand for the implementation of the Convention's report and an end to direct rule. However, the strike was called off at midnight on 13th May, having failed to win significant support.

### **The Constitutional Conference**

In November 1979, the Secretary of State for Northern Ireland, Humphrey Atkins, proposed a conference of the four main political parties to consider ways in which an elected Assembly in Ulster could be given some measure of responsibility for governing the Province [cf "*The Government of Northern Ireland : A Working Paper for a Conference*" [Cmnd 7763]. Three parties accepted, the Democratic Unionist Party, Alliance Party and the SDLP. In the light of their discussions, the Government published a White paper on 2nd July 1980 "*The Government of Northern Ireland : proposals for future discussion*" [Cmnd 7950]. The paper set out options for safeguarding the interests of the minority in the exercise of authority in Northern Ireland. It was acknowledged that the Conference discussions had not led to a negotiated agreement for the future pattern of government. The White Paper outlined the considerations that the Government felt should be taken into account in any new arrangements, and proposed areas for future consultations. No agreement was reached in the ensuing discussions.

### **The Northern Ireland Assembly 1982**

In April 1982, the Government published its White Paper "*Northern Ireland : a framework for devolution*" [Cmnd 8541] which proposed a new 78-Member Assembly elected by single transferable vote. The Assembly would establish committees to monitor the policies and activities of each Northern Ireland department. It would report to the Secretary of State proposals for devolution of powers which were agreed by 70% of their Members. Provided Parliament approved such a report, the powers would be devolved. These powers could encompass full or only partial devolution. If the devolved powers lost their 70% support they could be "rolled back" to Westminster until fresh proposals were agreed. On achieving full devolution, the Secretary of State would appoint an Executive, and provided the Executive retained its support within the Assembly, elections would be held every four years.

*The Northern Ireland Act 1982*, provided for the restoration of devolved government in Northern Ireland as outlined in the White Paper. The Act received the Royal Assent on 23rd July 1982. Elections to the Assembly were held in October. The distribution of seats between the parties was as follows:

Ulster ("Official") Unionist	26	(increased to 27 on a subsequent by-election)
Democratic Unionist	21	
SDLP	14	(decreased to 13 on a subsequent by-election)
Alliance	10	
Sinn Fein	5	
Independent Unionists	2	

The SDLP Members declined to take their seats, on the grounds that the 1982 Act envisaged an interim Northern Ireland solution, with no 'Irish dimension' enshrined in a concrete fashion. The Sinn Fein Members said they would not participate in Assembly proceedings. (In June 1983, Sinn Fein Member Gerry Adams was elected as MP for West Belfast. He did not take his seat at Westminster). The Ulster Unionists withdrew from the Assembly in November 1983 following a terrorist attack on Pentecostal church in County Armagh in which three people were killed. They returned to the Assembly in May 1984.

As a result of the boycotts the Assembly was not able to assume all the powers envisaged in the 1982 Act, although it carried on its consultative functions. On 16th May the Assembly set up a Devolution Report Committee to look into proposals for various forms of devolution. The Government said that these proposals would have to be likely to command widespread acceptance throughout the community in Northern Ireland. The committee recognised this in its interim reports of October 1984 and February 1985.

## **Anglo-Irish Agreement - November 1985**

### **Background**

In the early months of 1980, Humphrey Atkins, the Secretary of State, had held several meetings with the Ulster political parties with inconclusive results. A summit meeting between Mrs Thatcher and the Taoiseach Mr Haughey in May 1980 concluded with a decision to hold "Regular meetings on a continuing basis".

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At the Dublin 'Summit' Meeting on 8th December 1980, Mrs Thatcher and Mr Haughey commissioned joint studies on citizenship rights, security matters, economic co-operation, possible new institutional structures and measures to encourage mutual understanding. Mrs Thatcher and the Taoiseach Mr Fitzgerald received the studies at the Summit meeting in London on 6th November 1981 and it was agreed to publish all except the study on security.<sup>37</sup>

The report recommended the possible establishment of four types of institutional co-operation:-

- 1) An Anglo Irish Intergovernmental Council "to provide the framework for intergovernmental consultation at Head of Government, Ministerial, and official levels, on all matters of common interest and concern".
- 2) A parliamentary tier, as "the natural and desirable complement" to the Intergovernmental Council.
- 3) An Advisory Committee, "on economic, social and cultural co-operation, with a wide membership reflecting vocational interests".
- 4) An Anglo-Irish Encounter organisation, "with the major function of organising high-level conferences on the Koenigswinter model [the Koenigswinter conferences are annual Anglo-German conferences of politicians and academics to discuss matters of mutual interest]. They were to be organised by an Executive Board consisting of "independent public figures of repute and ability and government representatives". This body was envisaged as a purely temporary measure, a first step towards the establishment of a permanent Advisory Committee.

The report was greeted with cautious enthusiasm in Britain. The Anglo-Irish Intergovernmental Council was set up almost immediately after the publication of the report, and the Anglo-Irish Encounter Group came into being in 1983.

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<sup>37</sup> "Anglo-Irish Joint Studies - Joint Report and Studies" Cmnd 8414

### **Anglo-Irish Intergovernmental Council**

The report Anglo-Irish Joint Studies<sup>38</sup> made the following recommendation:-

- (i) the establishment of an Anglo-Irish Intergovernmental Council to provide the overall framework for intergovernmental consultation, at Head of Government, Ministerial and official levels, on all matters of common interest and concern, with particular reference to the achievement of peace, reconciliation and stability and the improvement of relations between the two countries and their peoples; and what might be the component elements of the structure, its functions and certain aspects of its operation.

In November 1983, the Government published a report on progress: *Anglo-Irish Intergovernmental Council : communique of the Anglo-Irish summit on 7.11.83 and related documents* [Cmnd 9094]. It contained a review of AIIC activity since November 1981, with details of joint meetings. A similar communique was issued as a press release on 19th November 1984, after the second AIIC meeting at Heads of Government level. This summit was not thought to have been a success, and Mrs Thatcher's remarks about the New Ireland Forum report were thought to have led to a cooling in relations between the two governments.

### **The New Ireland Forum**

The New Ireland Forum was launched on 30th May 1983 in Dublin with the object of exploring options for political development in the north and south of Ireland. In the aftermath of the IRA hunger strikes of 1982, the emergence of Provisional Sinn Fein as an electoral force was treated with great concern by the SDLP in particular.

Participation was open to "all democratic parties which reject violence and which have members elected or appointed to either House of the Oireachtas or the Northern Ireland Assembly" [Report 2.5.84] but only four parties took part, all of which represented the nationalist point of view: Fianna Fail, Fine Gael, the Labour Party and the SDLP. The Ulster Unionists refused to participate in the Forum's work, although one Official Unionist, Dr Christopher McGimpsey broke ranks to give evidence to it.

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<sup>38</sup> Cmnd 8414

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Discussion on possible constitutional options had developed into serious consideration of three proposals:-

1. Joint sovereignty between Britain and the Republic over Northern Ireland;
2. Federation, with subsidiary regional Parliaments in Belfast and Dublin;
3. A unitary state, with a revised and liberalised constitution.

The report leaned heavily towards the last option, recommending the establishment by consent of a new united Ireland embodying constitutional safeguards for Northern Ireland Unionists.

Reactions to the report were muted. James Prior, as Secretary of State, expressed disappointment in an immediate press statement [N.I. Office PN 2.5.84]. The Alliance party felt the report had committed itself to an unrealistic option. The Prime Minister rejected the three options when she met the Taoiseach Mr Fitzgerald at the summit at Chequers in November 1984. The Unionist parties rejected the report's recommendations, and subsequently published their own proposals in a paper called *The Way Forward*. These concentrated on the party's suggestions for administrative devolution, but also envisaged Northern Ireland having its' own Bill of Rights. It was further stated that while unionists were resolutely opposed to an "Irish Dimension" in the form of a constitutional institution, they would not object to an "Irish Dimension" in the form of state recognition of the legitimacy of the fostering of distinctly Irish cultural activities in Northern Ireland nor to state funding of such activities in proportion to the degree of public participation or interest in them.

### Signing of the Agreement

In the years immediately before the signing of the Anglo-Irish agreement there was little sign that the British and Irish Governments were contemplating such an agreement. The Irish government had expressed disapproval of the British initiative for rolling devolution contained in the Assembly proposals of 1982 because there had been no prior consultation with the Republic, and the British Government had expressed irritation with the New Ireland Forum's emphasis on joint sovereignty in Northern Ireland. However, confidential British-Irish negotiations continued until the signing of the Anglo-Irish agreement on 15th November 1985 at Hillsborough Castle, the former residence of the Governor General of Northern Ireland. The extent of the negotiations were revealed by Garrett Fitzgerald in a speech to the Dail:<sup>39</sup>

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<sup>39</sup> [Dail Debates 19/11/85 c2573-4] (quoted by Brigid Hadfield in *The Constitution of Northern Ireland* (1989))

The Agreement is ... the outcome of ... negotiations which took place over a period of 18 months involving two summits between the British Prime Minister and myself; four informal meetings between us in the margin of the European Council meetings; three joint meetings between the Tánaiste [Deputy Prime Minister] and the Minister for Foreign Affairs on behalf of the Irish Government and the Secretaries of State for Foreign Affairs and Northern Ireland on behalf of the British Government; ten meetings between the Irish Minister for Foreign Affairs with the Foreign Secretary and/or the Secretary of State for Northern Ireland; and about 35 meetings of the negotiating group led by the secretaries of the two cabinets, convening often as frequently as every week, as well as many other meetings of officials in the margin of these structured encounters.

The Agreement was welcomed by all major parties on the British mainland, by Fine Gael and by the Labour party in the Republic and by the SDLP, and Alliance parties in Northern Ireland, but condemned by the UUP and DUP and Sinn Féin. Nationalists in Fianna Fáil, including its leader Charles Haughey were concerned that the Agreement reinforced partition. The Agreement is summarised in an extract from *Sweet and Maxwell's Anglo-Irish Agreement*.<sup>40</sup>

#### General structure

The general structure of the Agreement and many of the particular provisions may be traced directly to the lengthy series of intergovernmental discussions and studies which have been summarised above, as well as to the Report of the New Ireland Forum (for a detailed account see B. Hadfield, "The Anglo-Irish Agreement 1985-Blue Print or Green Print?" (1986) *Northern Ireland Legal Quarterly*). This is clear from the following summary of the content of the Agreement:

##### *The Preamble*

This refers to the joint concern of the United Kingdom and Ireland as members of the European Community to achieve lasting peace and stability in Northern Ireland and to the need to recognise the existence of the two traditions and communities in Northern Ireland, and to accommodate both their respective aspirations and their rights to live in peace, to be free from any discrimination and to participate fully in the processes of government.

##### *Section A: Status of Northern Ireland*

Article 1 sets out the position of the two Governments as to the current situation and the need for majority consent within Northern Ireland for any change in status in similar terms to those adopted in the communiqués of successive summits.

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<sup>40</sup> pp 9-10 (1989)

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### *Section B: The Intergovernmental Conference*

Articles 2 to 4 establish a new intergovernmental ministerial conference and secretariat through which the Government of Ireland may put forward views and proposals on a wide range of matters of government and administration in Northern Ireland without prejudice either to British sovereignty or to the objective of establishing a devolved government in Northern Ireland acceptable to both communities.

### *Section C: Political Matters*

Articles 5 and 6 impose on the Conference a duty to promote measures to accommodate the rights and identities of both communities and recognises the right of the Irish Government pending devolution to represent the interests of the minority nationalist community within Northern Ireland.

### *Section D: Security and Related Matters*

Article 7 sets out the role of the Conference on security, policing and prisons policy within Northern Ireland.

### *Section E: Legal Matters Including the Administration of Justice*

Article 8 sets out the role of the Conference in respect of law enforcement and extradition in both parts of Ireland.

### *Section F: Cross-Border Co-operation on Security, Economic, Social and Cultural Matters*

Articles 9 and 10 set out the role of the Conference on cross-border security co-operation, and on cross-border co-operation on other matters pending agreement on devolution; it also provides for intergovernmental co-operation and for the possibility of international support for economic and social development in areas most affected by the troubles.

### *Section G: Arrangements for Review*

Article 11 provides for the review of the working of the Conference at the end of three years or earlier if either party requests.

### *Section H: Interparliamentary Relations*

Article 12 provides for intergovernmental support for an Anglo-Irish Parliamentary body of the kind suggested in the Anglo-Irish Studies Report in 1981 if the two Parliaments so decide.

### *Section I: Final Clauses*

Article 13 provides for the entry into force of the Agreement on exchange of notifications of acceptance.

Despite the complex structure of the Agreement and the very careful drafting of many of the individual provisions the objectives of those who drew it up can be summarised in simpler terms: first, to entrench the status of Northern Ireland as part of the United Kingdom until a majority of its people decide otherwise; secondly, to recognise the equal validity of both traditions in Northern Ireland; thirdly, to provide in the Anglo-Irish Conference a mechanism through which the Irish Government could represent the interests of the nationalist minority in Northern Ireland until such time as an agreement on devolution permitted representatives of that community within Northern Ireland to carry out that role for themselves; fourthly, to provide for cross-border co-operation on security and other matters, initially through the Conference and eventually between a devolved government in Northern Ireland and the Irish Government leaving a much smaller residual role for the Conference; and finally, to ensure that there was no conflict of sovereignty in the sense that ultimate responsibility for decision-making on either side of the border would remain with the United Kingdom and Irish Governments.

Article 1 of the Agreement has attracted considerable attention:

#### ARTICLE 1

The two Governments

- (a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland,
- (b) recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;
- (c) declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

Those favouring the Agreement pointed out that the Republic by this Article was recognising that Northern Ireland belonged to the UK in an international treaty. However, Unionists noted that the Article began by referring to a change in the status of Northern Ireland, and that for the first time the Irish Government was offered in Article 2 a framework for putting forward its views on those areas in Northern Ireland which were directly administered under direct rule by the British Government.<sup>41</sup>

#### ARTICLE 2

- (a) There is hereby established, within the framework of the Anglo-Irish Intergovernmental Council set up after the meeting between the two heads of Government on 6 November 1981, an Intergovernmental

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<sup>41</sup> Article 2(6??)

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Conference (hereinafter referred to as "the Conference"), concerned with Northern Ireland and with relations between the two parts of the island of Ireland, to deal, as set out in this Agreement, on a regular basis with:

- (i) political matters;
  - (ii) security and related matters;
  - (iii) legal matters, including the administration of justice;
  - (iv) the promotion of cross-border co-operation.
- (b) The United Kingdom Government accept that the Irish Government will put forward views and proposals on matters relating to Northern Ireland within the field of activity of the Conference in so far as those matters are not the responsibility of a devolved administration in Northern Ireland. In the interest of promoting peace and stability, determined efforts shall be made through the Conference to resolve any differences. The Conference will be mainly concerned with Northern Ireland; but some of the matters under consideration will involve co-operative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland may also be found to have application by the Irish Government. There is no derogation from the sovereignty of either the United Kingdom Government or the Irish Government, and each retains responsibility for the decisions and administration of government within its own jurisdiction.

Note that the Irish Government was given a role where those matters were not devolved to a Northern Ireland administration, the intention presumably being to encourage Unionists to move towards powersharing in order to diminish the influence of the Republic.

### **The Anglo-Irish agreement - immediate reactions**

In November 1985 the Anglo-Irish agreement was approved in the Commons by 437 votes to 47 against and in the Dail by 88 votes to 75 with Fianna Fail opposing. It was registered with the United Nations as a international treaty governed by the ordinary rules of international law.

The 15 Ulster Unionist MPs resigned their seats in the House of Commons in December 1985 in protest against the Agreement, and increased their majorities in the subsequent by-elections on January 1st 1986. However, the SDLP gained another seat in Newry and South Armagh from the Unionists. Subsequently a 24 hour strike or Day of Action was held against the Anglo-Irish agreement on 3rd March in Ulster. The day was marred by violence and intimidation in some areas, condemned by Unionist leaders. These expressions of opposition to the Agreement did not appear to move the British Government, although in February 1987 a 400,000 signature petition was presented calling for a referendum on the Agreement. In

June 1986, the Northern Ireland Assembly was officially dissolved. In the immediate aftermath of the Agreement, the Assembly had resolved to repudiate it, by 44 votes to 10 (16th November 1985). The Alliance Party had withdrawn, and from December played no further part in the Assembly which had suspended other business to set up a Committee on the Government of Northern Ireland.

The Unionists also used the courts to challenge the Agreement in *ex parte Molyneaux and others*.<sup>42</sup> They applied for leave to seek judicial review on the grounds that it would be unlawful for the government to implement the Agreement without the authority of an Act of Parliament, but leave was rejected. Justice Taylor said that the Agreement was in the field of international relations and that it was not the function of the court to inquire into the exercise of the prerogative in entering into such an agreement. The Unionists had more impact in a case brought in the Republic<sup>43</sup> on whether Article 1 of the Anglo-Irish Agreement violated Articles 2 and 3 of the Irish constitution (see above pp 8-9 for further discussion)

Mrs Thatcher as Prime Minister visited Northern Ireland in December 1986 and reaffirmed her Government's commitment to the Agreement. In May 1987, the Ulster Unionists joint manifesto for the general election was issued, suggesting that unionist MPs might offer 'consent' to a new government in return for the suspension of the Agreement. In the election of 12 June, Official Unionist candidate Enoch Powell, lost his seat to the SDLP Eddie McGrady. He was the only sitting Northern Ireland MP not to be returned. In the Republic, Fianna Fail had been returned to power in February 1987 and the new Taoiseach Charles Haughey subsequently indicated that he would now support the Agreement.

In September 1987, Mr Molyneaux and Mr Paisley ended a 19 month boycott of contacts with government to meet the Secretary of State, Tom King. Belfast Unionist councillors subsequently agreed in October to pay fines and costs imposed by the High Court for their failure to conduct normal business in protest against the Agreement. However, the bomb at Enniskillen at a Remembrance Day Service on 8th November 1987 which killed 11 and injured 63 re-ignited concern over security in Northern Ireland.

Security issues predominated in 1988 with the shooting dead of 3 members of the IRA in Gibraltar in March and the killing of 3 people by a loyalist gunman during the subsequent funeral in Milltown Cemetery. Yet another tragedy occurred in that month when 2 British army corporals were attacked and killed when their car met the funeral cortege of an IRA member in Andersontown, West Belfast. Further outrages occurred in 1988 including IRA attempts to assassinate senior judges and the head of the Northern Ireland civil service. As far as unionists at least were concerned, the Agreement had seemed to bring little alleviation

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<sup>42</sup> [1986] I WLR 331

<sup>43</sup> *McGimpsey v Ireland and An Taoiseach* [1990] ILRM 441

to the troubles.

### 1989-1991

In early 1989, there were press reports of secret meetings at Duisberg in Germany between SDLP, UUP and DUP representatives. Peter Brooke became Secretary of State in July 1989, but in talks in August with the DUP and UUP he was told that devolution could not be discussed while the Anglo-Irish agreement continued.

In February 1990, the first meeting of the British-Irish Inter-Parliamentary Body took place. 25 MPs each from the UK and the Republic met on 26th February, but the session was boycotted by the Ulster Unionists. The body has continued to meet, with Committee work forming a major aspect of its importance.<sup>44</sup> This body had first been proposed by the Anglo-Irish Joint Studies of 1981 (see p.19).

There were reports in February 1990 that the IRA was seeking talks with the British government over a ceasefire. However, more attention focused on bilateral talks in early 1990 held by Mr Brooke, intended to lead to all party talks. The unionist stance against talks until the Anglo-Irish agreement was abandoned appeared to be softening, particularly as Mr Brooke emphasised the possibility of a gap between the meetings of the Anglo-Irish governmental conference.

### Review of the Agreement

Article 11 of the Agreement had provided for a review of the working of the Intergovernmental Conference after three years. A copy of the *Review of the Working of the Conference* was deposited in the Library on 25th May 1989 [Dep 5036] and Tom King also published a paper *Developments since the signing of the Anglo-Irish Agreement*<sup>45</sup>. These documents mention the *Flags and Emblems Act* repeal, the expansion of the electorate in Northern Ireland, the *Public Order (NI) Order 1987* and forthcoming legislation on fair employment as achievements since 1985. They gave a positive picture of progress since the Agreement. Nevertheless, the workings of the Agreement remain opaque, the joint statements issued after each meeting of the Conference being the main source of information. Moreover, the tacit agreement by both the British and the Irish Governments not to emphasise the contribution of the Anglo-Irish Conference to specific decisions has tended to leave the public with the impression that it is ineffective.

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<sup>44</sup> The *Table* 1994 "The British-Irish Inter-Parliamentary Body"

<sup>45</sup> HC Deb 24/5/89 c539-543 [Dep 5035]

### The three strand talks

These were launched on 20th March 1991, by Peter Brooke, in the following statement to the Commons:<sup>46</sup>

Some arrangements will be needed for liaison between the different strands of these complex discussions. All the Northern Ireland parties will participate actively and directly in the north-south discussions. The Unionist parties have made it clear that they wish their participation at those talks to be formally associated with my presence and that they will regard themselves as members of the United Kingdom team. It is accepted by all those involved that, to make full use of the interval between meetings of the conference to achieve an overall agreement satisfactory to all, it will be necessary to have launched all three sets of discussions within weeks of each other.

A first step towards getting related discussions under way in all three strands will be the opening, as soon as possible, of substantive talks between the parties in Northern Ireland under my chairmanship. These will commence with a round of bilateral meetings before moving on, as soon as possible, into plenary sessions. It has been agreed by all the participants that before long, when, after consultation, I judge that an appropriate point has been reached, I will propose formally that the other two strands should be launched. My judgment as to timing will be governed by the fact that all involved, have agreed that the three sets of discussions will be under way within weeks of each other.

It is accepted that discussions must focus on three main relationships: those within Northern Ireland, including the relationship between any new institutions there and the Westminster Parliament; among the people of the island of Ireland; and between the two Governments. It is common ground between all the parties that hope of achieving a new and more broadly based agreement rests on finding a way to give adequate expression to the totality of the relationships I have mentioned.

Talks will accordingly take place in three strands corresponding respectively to the three relationships.

After some initial optimism, and the declaration of a ceasefire by Loyalist paramilitary groups at the end of April to ease the process, the talks broke down in the summer, and in July the ceasefire was called off. Sectarian attacks continued to increase in 1991, and there were calls for Peter Brooke's resignation in January 1992 following his appearance on a Dublin chat show immediately after the killing of seven people by an IRA bomb at Tyrone. John Major, however, refused to accept Brooke's resignation and in February, Mr Major called in the Unionists political parties to discuss another upsurge of violence. Another round of talks on strand one of the three strand process began on 9th March 1992 and they resumed under the chairmanship of the new Secretary of State, Sir Patrick Mayhew on 29th April. At the beginning of July, Sir Patrick proposed that strand two (relationships in the whole of Ireland) and strand three (possible inter-governmental arrangements) be launched. The second strand

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<sup>46</sup> HC Deb 26/3/91 cc765-766

was launched on 6th July under the chairmanship of the Australian, Sir Ninian Stephen, and the third on 28th July. The progress of these talks was summarised in a statement by Sir Patrick on 11th November 1992.<sup>47</sup>

On 28 July in Dublin the two Governments held the opening meeting of the third strand concerning future relationships between them.

Throughout the talks I have received wise and indefatigable support from the Parliamentary Under Secretary of State, my hon. Friend the Member for Richmond and Barnes (Mr. Hanley). In particular, he chaired a most fruitful series of strand committee sessions, and has often deputised for me in the other strands.

The present talks, like those last year, were stipulated to be held during a specified gap between meetings of the Anglo-Irish intergovernmental conference, provided for under the Anglo-Irish Agreement. Before the talks resumed after our own general election, the two Governments announced that the next meeting of the intergovernmental conference would not be before the end of July. Since then the gap has been twice extended. My right hon. Friend the Prime Minister and the Taoiseach announced on 25 September, in a final extension, that the next meeting of the conference would be held on 16 November. More than six months have accordingly been available for these talks.

We have not yet succeeded in the ambitious task of securing an overall settlement, that is to say, "a new beginning for relationships within Northern Ireland, within the island of Ireland, and between the peoples of these islands."

Since the talks were held on the basis that "nothing will be finally agreed in any strand until everything is agreed in the talks as a whole and that confidentiality will be maintained",

the question of a partial settlement did not arise. All the same, the talks have seen substantive and detailed engagement on issues of the first importance.

In strand 1 the Northern Ireland parties, together with the British Government, identified common themes and principles which should underlie any new political institutions in Northern Ireland, and examined possible structures which might reflect these.

In strand 2, in which of course the Irish Government have also been participants, delegations discussed fundamental aspects of relationships within the island or Ireland, and of the realities underlying them, including constitutional issues and questions of identity and allegiance. We examined the scope for enhanced co-operation within the island of Ireland, in the social, economic, and security fields, among others. We considered the nature of the structures which might best serve such co-operation.

In strand 3 the two Governments, as co-signatories of the Anglo-Irish Agreement, address in liaison with the other participants, possible principles for a new and more broadly-based agreement, and possible intergovernmental arrangements.

Much has been done to identify and enlarge the common ground, and to increase understanding and respect for the participants' respective positions. The process has involved hard work and commitment from all the participants. The talks participants have collectively reaffirmed their total abhorrence of, and unqualified opposition to, all forms of terrorism, from whatever source they may come. Nothing has taken place to alter my firm view that it was right to bring together the main constitutional parties in Northern Ireland and the two Governments to address, in a single process, a comprehensive agenda. It remains my judgment that, with good will and application, a comprehensive settlement can yet be secured. Those qualities are not lacking. Yesterday the talks participants agreed and issued a statement, copies of which have been placed in the Library. In it they recognised that "while at this time there is no basis to agree a settlement, they have identified and discussed most, if not all, of the elements which would comprise an eventual settlement; they have developed a clear understanding of each other's positions; and established constructive dialogue on ways in which an accommodation might be reached on some of the key issues which divide them".

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<sup>47</sup> HC Deb c877-878

All recognised the great value of that dialogue. The two Governments expressed their view yesterday that further dialogue was both necessary and desirable. The four Northern Ireland parties agreed with that, and accordingly undertook to "enter into informal consultations with a view to seeking a way forward."

The House, although doubtless disappointed that we have not been able to achieve fuller agreement, will welcome that commitment. The objectives of the talks process remain valid and achievable. That is the expressed opinion of the independent chairman, Sir Ninian Stephen, and it is my opinion. The objectives are realistic. We have a duty therefore to build on what has been begun, however slow that process has been, and not to give up. We have a duty not to lose patience with what is a deeply historic problem; not to give way to exasperation; and not to recriminate.

Her Majesty's Government for their part, therefore, will steadily persevere. We shall maintain our line of approach to these objectives and continue also our commitment to resolute, fair and just government in Northern Ireland. Not only the people of Northern Ireland but the people of the rest of these islands-let us not forget them-deserve that of us.

Attempts to resume the talks in the latter half of 1993 became over-shadowed by the Hume/Adams dialogue and then the Downing Street Declaration.

Following the declaration of an IRA ceasefire, John Major issued a statement in which he committed the government to submit the final outcome of the three stranded talks to the electorate of Northern Ireland for approval in a referendum.<sup>48</sup>

### **The Opsahl Commission**

This was published in June 1993 (A Citizens' Inquiry]. This was the result of the work of the Initiative '92 project which had called for citizens comments into ways forward for Northern Ireland to be given to seven "eminent observers" drawn from the academic and church communities of Britain and Ireland. The report called attention to the malign effect of direct rule which did not encourage local politicians to behave in a constructive manner, and suggested the establishment of a regional government for Northern Ireland based on power sharing. It envisaged that this government would be 'free to discuss and negotiate its relationships, institutional and other, with the government of the Republic of Ireland'. The British Government have no plans for a formal response to the report and Sir Patrick emphasised that the political talks process offered the best opportunity of achieving a widely acceptable political accommodation.<sup>49</sup>

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<sup>48</sup> *Press Notice* 10 Downing Street, 16/9/94 "Statement by the Prime Minister"

<sup>49</sup> HC Deb 24/10/94 c454W

On 20th March 1993, IRA bombs in Warrington killed two children, and aroused tremendous concern. A huge IRA bomb at Bishopsgate in the City of London in April led to major security precautions. It also had the effect of accelerating Government plans to act as reinsurer of last resort for non-domestic property in mainland Great Britain as enacted in *The Reinsurance (Acts of Terrorism) Act 1993*.<sup>50</sup> Violence flared again in October 1993 when an IRA bomb on the Shankill Road killed 10 people, and a subsequent pub shooting by the UFF at Greysteel killed 7 people.

Against this background there was considerable interest in continuing talks between John Hume of the SDLP and Gerry Adams from Sinn Fein. The Hume Adams dialogue has not been published. However, on November 28 1993, the *Observer* revealed that there had been contacts between the UK Government and the IRA through intermediaries. The Secretary of State, Patrick Mayhew, made a Commons statement on 29th November, placing the text of the exchanges in the Library (Dep 9904), and subsequently on 1st December, published a text of corrections to the exchanges.

### Downing Street Declaration

This was published on 15th December 1993<sup>51</sup> It was a joint declaration issued by John Major and the then Taoiseach Albert Reynolds, and was intended to build on a popular desire for peace by devising a framework which offered something to all aspects of opinion in Ireland, North and South. In particular, it gave Sinn Fein a chance to participate in talks with the British Government provided there was a permanent end to violence. John Major summarised the declaration in his statement to the Commons as follows:<sup>52</sup>

In summary, let me make it clear what is in the declaration and what is not. What is in the declaration is a renewed commitment by the British Government to Northern Ireland's constitutional guarantee; an acknowledgement by the Taoiseach that a united Ireland could only be brought about with the consent of a majority of the people in Northern Ireland; a willingness on the Taoiseach's part to make changes in the Irish constitution if an overall settlement can be reached; and a confirmation that if Sinn Fein renounces violence, it will be able to participate in future democratic discussions.

What is not in the declaration is any suggestion that the British Government should join the ranks of persuaders of the "value" or "legitimacy" of a united Ireland; that is not there. Nor is there any suggestion that the future status of Northern Ireland should be decided by a single act of self-determination by the people of Ireland as a whole; that is not there either. Nor is there any timetable for constitutional change, or any arrangement for joint authority over Northern Ireland. In sum, the declaration provides that it is, as it must be, for the people of Northern Ireland to determine their own future.

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<sup>50</sup> See Library Research Paper 93/57

<sup>51</sup> Cm 2442

<sup>52</sup> HC Deb 15/12/93 c1073

All the constitutional parties in Northern Ireland will wish to study the document very carefully. I should like today to extend an offer to meet each of the parties regularly in the future, so that I can hear at first hand their concerns and ambitions, and can set out to them the British Government's position. If we can work together to quell ancient fears and suspicions, we can help to build a better future for Northern Ireland.

I have made it clear that if it renounces violence, the way is open to Sinn Fein to join in legitimate constitutional dialogue. That is a political route which it now has no excuse not to follow. That is the opportunity offered by this joint declaration-and it has been obtained without compromising any of the constitutional principles that this Government have consistently espoused. The onus is now on Sinn Fein to take advantage of that opportunity: I urge it to do so.

There was also focus on the statement by John Major in paragraph 4 that on behalf of the British government that 'they have no selfish strategic or economic interest in Northern Ireland' (para 4) and on the joint commitment by both Governments in paragraph 9 to 'create, institutions and structures, which, while representing the diversity of the people of Ireland, would enable them to work together in all areas of common interest'. The commitment by Albert Reynolds to changes to Article 2 and 3 of the constitution in the context of an overall settlement was also noted (see above p.6)

#### **Downing Street Declaration - reactions**

During early 1994, Gerry Adams sought what Sinn Fein called clarification of the Declaration, and on May 19th, the Northern Ireland office published a 21 page response to Sinn Fein's questions (Dep 10849).

In March 1994, the establishment of a Select Committee for Northern Ireland was approved.<sup>53</sup> In July 1993, there had been press reports denied by John Major, that there had been a deal with the UUP to secure their support in Maastricht social chapter votes. The announcement by Tony Newton of the proposal to create the committee came on 16th December 1993.<sup>54</sup>

Three IRA mortar attacks on Heathrow in March 1994 were followed by a 3 day ceasefire over Easter from 6 April. There was widespread condemnation of the temporary nature of the ceasefire, but the outcome of the Sinn Fein conference in July 1994 was taken as a rejection of the Declaration.

However, on 31 August an IRA statement announced a ceasefire from midnight that day. At first there was concern from loyalists that the ceasefire followed a secret deal between Mr Major and the IRA, and the Rev. Ian Paisley's meeting with the Prime Minister on 6

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<sup>53</sup> HC Deb 9/3/94 c370

<sup>54</sup> see Library Research Paper 94/39 A Select Committee for Northern Ireland Affairs

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September ended in confrontation when Mr Paisley refused to accept assurances that there had been no such deal. The UUP MP, John Taylor, expressed some cautious optimism, and the announcement of a referendum on the outcome of the three strands talks by John Major on 16 September (see above) was apparently intended to allay loyalist fears. On the same day, the broadcasting restrictions on Sinn Fein were lifted with immediate effect.

During September and early October there was some controversy over the 'permanent' nature of the IRA ceasefire, but on October 21, Mr Major announced that the Government planned to open talks with Sinn Fein before the end of the year and that the remaining closure orders on border crossings would be lifted. He also lifted exclusion orders on Gerry Adams and Martin McGuinness of Sinn Fein. The announcement of talks was welcomed by David Trimble of the UUP, but condemned by the DUP who argued that Mr Major had contradicted his statement to the Commons on December 15th that the IRA had to make the clearest possible renunciation of violence.

On October 13, loyalist paramilitary organisations announced a ceasefire from midnight; the spokesman, Gusty Spence, however, made clear that their ceasefire would continue only as long as the IRA ceasefire.

The National Forum for Peace and Reconciliation held its first meeting on October 28 in Dublin. The National Forum formed the subject of paragraph 11 of the Downing Street Declaration:-

11. The Irish Government would make their own arrangements within their jurisdiction to enable democratic parties to consult together and share in dialogue about the political future. The Taoiseach's intention is that these arrangements could include the establishment, in consultation with other parties, of a Forum for Peace and Reconciliation to make recommendations on ways in which agreement and trust between both traditions in Ireland can be promoted and established.

For the first time since the 1920s, Sinn Fein was represented in these talks with other political parties of the Republic. The SDLP and Alliance parties are also represented, but UUP and DUP refused invitations, and the British Ambassador to the Irish Republic did not attend the opening ceremony.

A postal worker was shot dead during a robbery in Newry, on December 10, and the Irish justice minister, Maire Geoghegan-Quinn, suspended planned releases of nine IRA prisoners. The IRA subsequently stated that the ceasefire covered any use of arms, and Martin

McGuinness condemned the murder.

The Irish Government was thrown into turmoil after Mr Reynolds pushed through the appointment of Harry Whelehan as president of the High Court despite Labour objections to his handling of the extradition of a paedophile priest as Attorney General. Mr Reynolds and Mr Whelehan subsequently resigned and negotiations began to form a new government. On 6 December Labour made clear that it could not countenance another coalition with Fianna Fail.

On 5 December Sir Patrick Mayhew announced that savings of £180m could be expected from cuts in security spending in the next 3 years following the ceasefires. Sinn Fein held its first talks with the British government on 9 December. The invitation was extended on 1 December amid continuing concern that an early commitment to the surrender of weapons by paramilitary groups was essential. There was some press speculation that the invitation followed pressure from the US Presidency after Sinn Fein councillors were initially barred from a conference on economic investment which took place on 14 December. The British team was led by Quentin Thomas, the deputy secretary at the N.I.O., and the Sinn Fein delegation by Martin McGuinness. The talks lasted three hours with a further meeting planned for Christmas. Separate talks were held with representatives from the Ulster Democratic party and Progressive Unionist party which have links with loyalist paramilitaries on 15th December. On the same day a new Irish Government was formed by John Bruton from Fine Gael, together with the Labour party and the Democratic Left party.

### **Framework Document**

A leak in the *Times* on 1 February 1995 of an early draft of the Framework Document resulted in a statement by Sir Patrick Mayhew to the House.<sup>55</sup> He emphasised that the document would be offered to the Northern Ireland parties, not imposed on them, and a triple lock of consent would apply: the parties would need to reach agreement which would be put to a referendum of the people of Northern Ireland and then submitted to Parliament. On the evening of 1 February, John Major made a broadcast to the nation again emphasising that nothing would be imposed on Northern Ireland.<sup>56</sup>

On 22 February 1995 the Framework Document (Frameworks for the Future) was published. Part I : [*A Framework for Accountable Government in Northern Ireland*] was produced by the British Government proposing new democratic institutions in Northern Ireland; Part II : [*A New Framework for Agreement*] was a joint paper by the British and Irish Governments offering proposals for relationships within the island of Ireland and between the two Governments.

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<sup>55</sup> HC Deb. 1/2/96 c.1085-1100

<sup>56</sup> 10 Downing St. Press Notice 1/2/95

Part I was summarised as follows:<sup>57</sup>

### **Possible Arrangements: Outline**

5. Based on its discussions with the Northern Ireland parties and bearing in mind the preferred characteristics mentioned above, the Government believe that there would be a broad measure of agreement for an outline framework for new political institutions in Northern Ireland to include:

- Province-wide executive responsibilities;
- a single unicameral Assembly of about 90 members elected for a fixed 4 or 5 year term;
- elections to the Assembly by a form of proportional representation;
- a separate Panel, probably of 3 people elected within Northern Ireland, to complement the working of the Assembly. The Panel could be elected from a single Northern Ireland constituency by a system of proportional representation;
- a system of Assembly Committees, constituted broadly in proportion to party strengths in the Assembly, to oversee the work of the Northern Ireland Departments and other functions;
- legislative and executive responsibility over as wide a range of subjects as in 1973. If there were agreement it would be open to the Government to consider with the new institutions the scope for further transfers. Certain functions, including matters relating to the Crown, foreign affairs and defence, would remain at Westminster. It would be for consideration whether new institutions were given full legislative responsibility from day one or whether such responsibility would be assumed progressively;
- a system of detailed checks and balances intended to sustain confidence in the institutions. These might include powers for the Panel to nominate Assembly Committee Chairmen and Deputy Chairmen, to scrutinise and if necessary block legislation, and to arbitrate on public expenditure disputes; and a Code of Practice to specify the relationships between the Assembly, its Committees, Committee Chairmen and Departments;
- mechanisms to ensure adequate compliance with the UK's EU and other international obligations.

Part I fulfilled the undertaking given by John Major on 21 October 1994 that the Government would publish its own ideas on local accountability at the same time as the British and Irish Governments published their joint Framework Document. Part I suggested a power sharing Executive responsible to a Northern Ireland Assembly. Detailed arrangements were proposed

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<sup>57</sup> pp4-5

for the chairmanship and deputy chairmanships of Assembly Committee, and all legislation would require the support of at least a majority of the relevant Committee and the full Assembly. Legislation would be dealt with by simple majority unless it was found to be contentious (ie financial or constitutionally) thus requiring a form of weighted majority approval, or threshold support. Matters transferred would be as extensive as in 1973. The *Northern Ireland Constitution Act 1973* had created three categories of legislative powers, excepted, reserved and transferred. Excepted matters included foreign affairs, armed forces, anti-terrorism, elections, nationality, coinage, reserve powers (which had the potential for being devolved) included law and order powers.

The Northern Ireland Affairs Select Committee would no longer be entitled to scrutinise matters for which the new political institutions become accountable, and unspecified 'protection' for a range of civil political, social and cultural rights would be reinforced. Members of the Assembly would play a significant role in any new North/South institutions (see below). New institutions responsible for implementing EC legislation and programmes in the transferred field were also envisaged.

Annex A to Part I set out the Government's approach to a political settlement which emphasised that new arrangements for the governance of Northern Ireland had to be acceptable and give appropriate expression to the identity of each of the two main parts of the community, that any political agreement had to address all relevant relationships, including that between Northern Ireland and the Republic, and that the current constitutional status of Northern Ireland would not change save with the consent of a majority of the people of Northern Ireland. Annex B gave the outline of a comprehensive settlement based on new political institutions in Northern Ireland, a new North/South body or bodies, the replacement of the Anglo-Irish agreement by a more broadly based agreement, a referendum in Northern Ireland on the proposals, and linkages between the various elements of an overall accommodation, provided the key distinction between transferred and non transferred matters, and between Northern Ireland and wider matters was preserved.

Part II represented the proposals of both the British and Irish Governments, and developed proposals in Annex B of Part I. It emphasised that the document was "not a rigid blueprint to be imposed" but was offered for consideration. The guiding principles were set out:<sup>58</sup>

10. They take as guiding principles for their co-operation in search of this agreement:
  - (i) the principle of self-determination, as set out in the joint Declaration;
  - (ii) that the consent of the governed is an essential ingredient for stability in any political arrangement;

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<sup>58</sup> para. 10

- (iii) that agreement must be pursued and established by exclusively democratic, peaceful means, without resort to violence or coercion;
- (iv) that any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland and evenhandedly afford both communities in Northern Ireland parity of esteem and treatment, including equality of opportunity and advantage.

The proposals were summarised as follows:<sup>59</sup>

13. The two Governments will work together with the parties to achieve a comprehensive accommodation, the implementation of which would include interlocking and mutually supportive institutions across the three strands, including:
- (a) structures within Northern Ireland (paragraphs 22 and 23) - to enable elected representatives in Northern Ireland to exercise shared administrative and legislative control over all those matters that can be agreed across both communities and which can most effectively and appropriately be dealt with at that level;
  - (b) North/South institutions (paragraphs 24-38) - with clear identity and purpose, to enable representatives of democratic institutions, North and South, to enter into new, co-operative and constructive relationships; to promote agreement among the people of the island of Ireland; to carry out on a democratically accountable basis delegated executive, harmonising and consultative functions over a range of designated matters to be agreed; and to serve to acknowledge and reconcile the rights, identities and aspirations of the two major traditions;
  - (c) East-West structures (paragraphs 39-49) - to enhance the existing basis for co-operation between the two Governments, and to promote, support and underwrite the fair and effective operation of the new arrangements.

The British Government affirmed that there would be constitutional legislation and the *Government of Ireland Act 1920* would be amended or replaced:<sup>60</sup>

20. The British Government reaffirm that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis, they reiterate that they have no selfish strategic or economic interest in Northern Ireland. For as long as the democratic wish of the people of Northern Ireland is for no change in its present status, the British Government pledge that their jurisdiction there will be exercised with rigorous impartiality on behalf of all the people of Northern Ireland in their diversity. It will be founded on the principles outlined in the previous paragraph with emphasis on full respect for, and equality of, civil, political, social and cultural rights and freedom from discrimination for all citizens, on parity of

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<sup>59</sup> para. 13

<sup>60</sup> para. 20

esteem, and on just and equal treatment for the identity, ethos and aspirations of both communities. The British Government will discharge their responsibilities in a way which does not prejudice the freedom of the people of Northern Ireland to determine, by peaceful and democratic means, its future constitutional status, whether in remaining a part of the United Kingdom or in forming part of a united Ireland. They will be equally cognizant of either option and open to its democratic realisation, and will not impede the latter option, their primary interest being to see peace, stability and reconciliation established by agreement among the people who inhabit the island. This new approach for Northern Ireland, based on the continuing willingness to accept the will of a majority of the people there, will be enshrined in British constitutional legislation embodying the principles and commitments in the joint Declaration and this Framework Document, either by amendment of the Government of Ireland Act 1920 or by its replacement by appropriate new legislation, and appropriate new provisions entrenched by Agreement.

The Irish Government promised that the Irish Constitution would be amended:<sup>61</sup>

21. As part of an agreement confirming the foregoing understanding between the two Governments on constitutional issues, the Irish Government will introduce and support proposals for change in the Irish Constitution to implement the commitments in the joint Declaration. These changes in the Irish Constitution will fully reflect the principle of consent in Northern Ireland and demonstrably be such that no territorial claim of right to jurisdiction over Northern Ireland contrary to the will of a majority of its people is asserted, while maintaining the existing birthright of everyone born in either jurisdiction in Ireland to be part, as of right, of the Irish nation. They will enable a new Agreement to be ratified which will include, as part of a new and equitable dispensation for Northern Ireland embodying the principles and commitments in the joint Declaration and this Framework Document, recognition by both Governments of the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its constitutional status, whether they prefer to continue to support the Union or a sovereign united Ireland.

An indication of the North/South institutions was given in para. 25:<sup>62</sup>

25. Both Governments agree that these institutions should include a North/South body involving Heads of Department on both sides and duly established and maintained by legislation in both sovereign Parliaments. This body would bring together these Heads of Department representing the Irish Government and new democratic institutions in Northern Ireland, to discharge or oversee delegated executive, harmonising or consultative functions, as appropriate, over a range of matters which the two Governments designate in the first instance in agreement with the parties or which the two administrations, North and South, subsequently agree to designate. It is envisaged that, in determining functions to be discharged or overseen by the North/South body, whether by executive action, harmonisation or consultation, account will be taken of.

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<sup>61</sup> para. 21

<sup>62</sup> para. 25

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

In relevant posts in each of the two administrations participation in the North/South body would be a duty of service. Both Governments believe that the legislation should provide for a clear institutional identity and purpose for the North/South body. It would also establish the body's terms of reference, legal status and arrangements for political, legal, administrative and financial accountability. The North/South body could operate through, or oversee, a range of functionally-related subsidiary bodies or other entities established to administer designated functions on an all-island or cross-border basis.

Specific arrangements for EU matters would also need to be developed, and legislation was envisaged in the British and Irish Parliaments to designate functions to be discharged or overseen by the North/South Body. It was stated that "Both Governments expect that significant responsibilities, including meaningful functions at executive level, will be a feature of such agreement".<sup>63</sup>

More detail on the designated functions was given:<sup>64</sup>

29. Although both Governments envisage that representatives of North and South in the body could raise for discussion any matter of interest to either side which falls within the competence of either administration, it is envisaged, as already mentioned, that its designated functions would fall into three broad categories:

*consultative:* the North/South body would 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 requirement that agreement would be reached or that policy would be harmonised or implemented jointly, but the development of mutual understanding or common or agreed positions would be the general goal;

*harmonising:* in respect of these designated responsibilities there would be, in addition to the duty to exchange information and to consult on the formulation of policy, an obligation on both sides to use their best endeavours to reach agreement on a common policy and to make

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<sup>63</sup> para. 28

<sup>64</sup> para. 29

determined efforts to overcome any obstacles in the way of that objective, even though its implementation might be undertaken by the two administrations separately;

*executive:* in the case of these designated responsibilities the North/South body would itself be directly 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 appropriate, to agree that the implementation of the agreed policy would be undertaken either by existing bodies, acting in an agency capacity, whether jointly or separately, North and South, or by new bodies specifically created and mandated for this purpose.

Various examples such as EC programmes, cultural and marketing activities were given for the executive level; agriculture, consumer affairs, transport, education, health and economic policy were suggested for the harmonising level.

A Parliamentary Forum with representatives from "agreed political institutions" in Northern Ireland and members of the Oireachtas (Senate) in The Republic was expected.<sup>65</sup> A joint civil service to support the North/South body was envisaged. East/West structures between the British and Irish Government were proposed to replace the Anglo-Irish Agreement, but retaining a standing inter-governmental Conference to form the "principal instrument for an intensification of co-operation and partnership between both Governments".<sup>66</sup> Further East/West co-operation was suggested:<sup>67</sup>

44. Both Governments accept that issues of law and order in Northern Ireland are closely intertwined with the issues of political consensus. For so long as these matters are not devolved, it will be for the Governments to consider ways in which a climate of peace, new institutions and the growth of political agreement may offer new possibilities and opportunities for enhancing community identification with policing in Northern Ireland, while maintaining the most effective possible deployment of the resources of each Government in their common determination to combat crime and prevent any possible recourse to the use or threat of violence for political ends, from any source whatsoever.
45. The Governments envisage that matters for which responsibility is transferred to new political institutions in Northern Ireland will be excluded from consideration in the Conference, except to the extent that the continuing responsibilities of the Secretary of State for Northern Ireland are relevant, or that cross-border aspects of transferred issues are not otherwise provided for, or in the circumstances described in the following paragraph.

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<sup>65</sup> para. 36

<sup>66</sup> para. 42

<sup>67</sup> paras. 44-46

46. The Intergovernmental Conference will be a forum for the two Governments jointly to keep under review the workings of the Agreement and to promote, support and underwrite the fair and effective operation of all its provisions and the new arrangements established under it. Where either Government considers that any institution, established as part of the overall accommodation, is not properly functioning within the Agreement or that a breach of the Agreement has otherwise occurred, the Conference shall consider the matter on the basis of a shared commitment to arrive at a common position or, where that is not possible, to agree a procedure to resolve the difference between them. If the two Governments conclude that a breach has occurred in any of the above circumstances, either Government may make proposals for remedy and adequate measures to redress the situation shall be taken. However, each Government will be responsible for the implementation of such measures of redress within its own jurisdiction. There would be no derogation from the sovereignty of either Government; each will retain responsibility for the decisions and administration of government within its own jurisdiction.

Representatives of agreed political institutions in Northern Ireland might be "formally associated" with the work of the Conference<sup>68</sup> including notice of discussions and opportunities to participate.

Finally, some form of human rights charter underpinned by legislation to protect a specified set of rights was proposed.<sup>69</sup>

50. There is a large body of support, transcending the political divide, for the comprehensive protection and guarantee of fundamental human rights. Acknowledging this, both Governments envisage that the arrangements set out in this Framework Document will be complemented and underpinned by an explicit undertaking in the Agreement on the part of each Government, equally, to ensure in its jurisdiction in the island of Ireland, in accordance with its constitutional arrangements, the systematic and effective protection of common specified civil, political, social and cultural rights. They will discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be so specified and how they might best be further protected, having regard to each Government's overall responsibilities including its international obligations. Each Government will introduce appropriate legislation in its jurisdiction to give effect to any such measure of agreement.
51. In addition, both Governments would encourage democratic representatives from both jurisdictions in Ireland to adopt a Charter or Covenant, which might reflect and endorse agreed measures for the protection of the fundamental rights of everyone living in Ireland. It could also pledge a commitment to mutual respect and to the civil rights and religious liberties of both communities, including:

- the right of free political thought,

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<sup>68</sup> para. 48

<sup>69</sup> paras. 50-53

- the right to freedom and expression of religion,
- the right to pursue democratically national and political aspirations,
- the right to seek constitutional change by peaceful and legitimate means,
- the right to live wherever one chooses without hindrance,
- the right to equal opportunity in all social and economic activity, regardless of class, creed, gender or colour.

52. This Charter or Covenant might also contain a commitment to the principle of consent in the relationships between the two traditions in Ireland. It could incorporate also an enduring commitment on behalf of all the people of the island to guarantee and protect the rights, interests, ethos and dignity of the unionist community in any all-Ireland framework that might be developed with consent in the future, to at least the same extent as provided for the nationalist community in the context of Northern Ireland under the structures and provisions of the new Agreement.

At the conclusion there was a commitment to submit the outcome of the negotiations to referendums both North and South.<sup>70</sup>

The Framework Document was widely publicised in Northern Ireland, with full page press advertisements, and television advertising. The Part I proposals for an elected assembly bore some resemblances to the proposals from the Ulster Unionists set out in *A Blueprint for stability* [1994] which advocated PR for a 90 seat assembly, and some form of charter of human rights. The Unionists, however, had no plans for a formal North/South body.

The UUP and DUP condemned the document but agreed to participate in bilateral talks held by the Government. The UUP published its own proposals on 21 February 1995<sup>71</sup> which advocated an internal solution and an interim assembly to be called before negotiations. Tony Blair gave his support following Mr Major's statement to the House. Sinn Fein gave a cautious response. The DUP advocated an elected body.<sup>72</sup>

The problem of decommissioning arms received increased attention following the launch of the document. At the initial meeting between Sinn Fein and Government officials on 9 December, Sinn Fein was told that 'disposal' of arms would be necessary for full involvement in inter-party talks. At subsequent meetings with the Ulster Democratic and Progressive Unionist parties (with links to Unionist paramilitaries) on 15 December, British officials

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<sup>70</sup> para. 55

<sup>71</sup> A practical approach to problem-solving in Northern Ireland

<sup>72</sup> Formula for Political Progress 10/1/95

stressed the need for the removal or disposal of arms. On 27 January 1995, The Republic's Mr Bruton and the Deputy Prime Minister, Mr Spring, held their first formal meeting with Sinn Fein. On 7 February 1995 the Dail agreed to lift the state of emergency established in the Republic since 1976. On 26 February, Sir Patrick Mayhew reiterated that there had to be 'substantial progress' on arms decommissioning before the accession of Sinn Fein to substantive talks. Early in 1995 the UUP security spokesman Ken Maginnis, submitted a plea for an internationally-led disarmament commission to Mr Major. In a speech in Washington on 7 March, Sir Patrick Mayhew set out what became known as the Washington Principles for entry into substantive negotiations:

"A willingness in principle to disarm progressively;  
A common practical understanding of the modalities, that is to say, what decommissioning would actually entail;  
In order to test the practical arrangements and to demonstrate good faith, the actual decommissioning of some arms as a tangible confidence building measure and to signal the start of a process".<sup>73</sup>

Following assurances from the Progressive Unionist Parties and the Ulster Democratic Party, Michael Ancram, the Minister of State joined the exploratory talks on 22 March. The Government reacted unfavourably to an announcement by the United States Government that Gerry Adams would be allowed a visa to raise funds in the US and to attend the President's St Patrick's Day Celebrations.

Sir Patrick Mayhew invited the four main constitutional parties<sup>74</sup> to bilateral talks on the Framework Document on 13 April. On 24 April, the British Government announced that sufficient basis existed for the entry of Ministers into exploratory dialogue with Sinn Fein. According to the Northern Ireland Office Press Release<sup>75</sup>, Sinn Fein said that they would discuss in a serious and constructive manner any issue which the Government wished to raise including decommissioning of arms, but had also said that they wished to raise issues concerning demilitarisation.<sup>76</sup> The talks between Sinn Fein and Michael Ancram took place on 10 May 1995, followed by an 'informal' meeting between Sir Patrick and Gerry Adams at an investment conference in Washington on 17 May.

There was increasing evidence of Dublin's concern that the decommissioning issue had created an impasse in the summer of 1995. In June, Sinn Fein withdrew from the exploratory talks at Stormont in protest at the Government's refusal to treat Sinn Fein on the same level as the other four main parties. It reiterated that weapons could only be decommissioned as part of an overall political settlement. The release on licence of Private Lee Clegg on 3 July after serving four years of a life sentence for murder resulted in serious rioting in nationalist

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<sup>73</sup> Press statement by Secretary of State for Northern Ireland 7/3/95

<sup>74</sup> DUP, UUP, Alliance and SDLP

<sup>75</sup> 24/4/95 'Minister to join exploratory dialogue with Sinn Fein

<sup>76</sup> ie. the withdrawal of British troops

areas. On 4 July, Mr Major was re-elected leader of the Conservative party following the leadership contest which began on 26 June. On 10 July there was rioting at Druncree following an Orange Order march. Later in the month it became known that Michael Ancram and Sir Patrick Mayhew had spoken privately to Sinn Fein - twice to urge decommissioning.<sup>77</sup>

In August, the Government denied claims by the former Irish Prime Minister, Albert Reynolds, that the disposal of weapons by the IRA had not been raised as an issue during negotiations on the Downing Street Declaration.<sup>78</sup> Gerry Adams warned in the course of a speech on the dangers facing the peace process that the IRA had not "gone away".<sup>79</sup> Sir Patrick Mayhew announced in a speech on 25 August that there would be a return to 50 per cent remission for paramilitary prisoners in Northern Ireland, but made no change in the Government's decommissioning position.

Following the ceasefire anniversary on 1 September, the IRA issued a statement noting that it would not decommission its weapons "either through the front door or the back door".<sup>80</sup> There were indications however at the end of August that Sinn Fein would consider an international body to oversee decommissioning. On 8 September, David Trimble was elected leader of the UUP following the retirement of James Molyneaux. In September, Kevin McNamara, the former Northern Ireland spokesman, resigned from the front bench in protest at Labour's policy on Northern Ireland.

Attempts to hold an Anglo-Irish summit intensified in the autumn of 1995, but disagreements over decommissioning appeared to delay the summit. David Trimble called for immediate elections to a new Assembly on 22 September. The Northern Ireland (Remission of Sentences) Bill received Royal Assent on 8 November. A planned visit by President Clinton to Northern Ireland at the end of November increased pressure for an Anglo-Irish summit.

An Anglo-Irish communique of 28 November 1995 announced the launching of a new 'twin-track' process to make progress in parallel with the decommissioning issue and on all party negotiations. The political track was to invite parties for intensive preparatory talks for the proposed all party talks, and the decommissioning track was the establishment of an international body to provide an 'independent assessment' of the decommissioning issue.

The Communique stated that the two Governments had the firm aim of launching all party talks by the end of February 1996. In his statement to the Commons on 29 November 1995, John Major said that the Government stood by the three [Washington] criteria for decommissioning. He noted that the British and Irish Governments had an acknowledged

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<sup>77</sup> *Belfast Telegraph* 24/7/95 "Ancram defends talks move"

<sup>78</sup> *Guardian* 11/8/95 "Reynold's memory fails on arms issue"

<sup>79</sup> *Belfast Telegraph* 14/8/95 "Sinn Fein chief vows no change on arms issue"

<sup>80</sup> *Times* 2/9/96 "IRA gives blunt warning on weapons 'surrender'"

difference of opinion on the timing of disarmament, but had decided not to allow that difference to stand in the way of forward movement.<sup>81</sup> The IRA issued a statement on 7 December which reiterated that it would not disarm before all party talks.

Invitations to all Northern Ireland political parties were issued on 1 December 1995 inviting them to participate in preparatory talks to establish all party negotiations in accordance with the Communiqué.<sup>82</sup>

### **The Mitchell Commission**

The International Body was chaired by Senator George J Mitchell, (United States) and the other participants were General John de Chastelain [Canada] and Mr Harri Holker [Finland]: It held a series of meetings and received evidence from all sides. It reported on 22 January 1996.

It noted everyone "everyone with whom we spoke agrees in principle with the need to decommission".<sup>83</sup> It found that each side of the argument reflected a core of reasonable concern which deserved to be understood and addressed by the other side<sup>84</sup>:

30. Those who insist on prior decommissioning need to be reassured that the commitment to peaceful and democratic means by those formerly supportive of politically motivated violence is genuine and irreversible, and that the threat or use of such violence will not be invoked to influence the process of negotiations or to change any agreed settlement.

31. Those who have been persuaded to abandon violence for the peaceful political path need to be reassured that a meaningful and inclusive process of negotiation is genuinely being offered to address the legitimate concerns of their traditions and the need for new political arrangements with which all can identify.

However, it considered it was not realistic for decommissioning to take place before the beginning of all-party talks:

34. The parties should consider an approach under which some decommissioning would take place during the process of all-party negotiations, rather than before or after as the parties now urge. Such an approach represents a compromise. If the peace process is to move forward, the current impasse must be overcome. While both sides have been adamant in their positions, both have repeatedly expressed the desire to move forward. This approach provides

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<sup>81</sup> HC Deb. c1200-1201

<sup>82</sup> Northern Ireland Press Office 1/12/95 "Twin track strategy"

<sup>83</sup> para. 17

<sup>84</sup> para. 29

them that opportunity.

It proposed six principles for participants in the all party talks:

19. To reach an agreed political settlement and to take the gun out of Irish politics, there must be commitment and adherence to fundamental principles of democracy and non-violence. Participants in all-party, negotiations should affirm their commitment to such principles.

20. Accordingly, we recommend that the parties to such negotiations affirm their total and absolute commitment:

- a. To democratic and exclusively peaceful means of resolving political issues;*
- b. To the total disarmament of all paramilitary organisations;*
- c. To agree that such disarmament must be verifiable to the satisfaction of an independent commission.*
- d. To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;*
- e. To agree to abide by the terms of agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree: and*
- f. To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.*

The report considered "as progress is made on political issues, even modest mutual steps on decommissioning could help create the atmosphere needed for further steps in a progressive pattern of mounting trust and confidence".<sup>85</sup>

The Mitchell Commission thought that the details of decommissioning should receive a high priority in all party negotiations, and that decommissioning by paramilitary organisations should be mutual. It noted that there was no equivalence between the weapons of the paramilitaries and those held by security forces, but in the context of building mutual confidence the Commission welcomed the commitment of the Governments, as stated in paragraph nine of the Communique "to continue to take responsive measures, advised by their respective security authorities, as the threat reduces".<sup>86</sup> It noted that the process of decommissioning should not require any party to be seen to surrender.<sup>87</sup> Decommissioning should take place according to the satisfaction of an independent commission appointed by

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<sup>85</sup> para. 35

<sup>86</sup> para. 54

<sup>87</sup> para. 39

the British and Irish Governments "on the basis of consultations with the other parties to the negotiating process".<sup>88</sup> The decommissioning process "should result in the complete destruction of armaments in a manner that contribute to public safety"<sup>89</sup> but should not expose individuals to prosecution.<sup>90</sup> The decommissioning process had to be mutual, offering the "parties another opportunity to use the process of decommissioning to build confidence one step at a time during negotiations".<sup>91</sup>

The Commission raised as a final idea the possibility of an elected body:<sup>92</sup>

56. Several oral and written submissions raised the idea of an elected body. We note the reference in paragraph three of the Communique to whether and how an elected body could play a part." Elections held in accordance with democratic principles express and reflect the popular will. If it were broadly acceptable, with an appropriate mandate, and within the three-strand structure, an elective process could contribute to the building of confidence.

This represented a suggestion by the Commission rather than a firm proposal.

In his statement to the House on 24 January, John Major welcomed the report and the six principles and proposed elections as a route to all party negotiations:<sup>93</sup>

To sum up, we believe that, in the light of the Mitchell report, there are two ways in which all-party negotiations can now be taken forward. Both are fully consistent with the six principles set out in the report. The first is for the paramilitaries to make a start to decommissioning before all-party negotiations. They can-if they will. If not, the second is to secure a democratic mandate for all-party negotiations through elections specially for that purpose.

Those are two routes to all-party negotiations and to decommissioning. The choice between them is ultimately for the parties themselves. I believe that the people of Northern Ireland have every right to expect that one or other of those routes will be taken, and taken soon. For our part, we, together with the Irish Government, will intensify our discussions with the parties. I intend to meet the Taoiseach again in the middle of February to review progress.

Proposals for elections were welcomed by the Unionist parties, but the Irish Government was reportedly upset that it had not been fully consulted before the announcement.<sup>94</sup> The SDLP and Sinn Fein also opposed elections. The Irish Government subsequently proposed 'proximity talks', citing the talks held at Dayton, Ohio designed to resolve the Balkan conflict.

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<sup>88</sup> para. 40

<sup>89</sup> para. 42

<sup>90</sup> para. 47

<sup>91</sup> para. 50

<sup>92</sup> para. 56

<sup>93</sup> HC Deb, c.355

<sup>94</sup> *Times* 29/1/96 "Spring attacks Major over Ulster poll"

On 2 February the Forum of Peace and Reconciliation published its report: *Paths to a Political Settlement: Realities, Principles and Requirements*. The report was not fully agreed to by Sinn Fein which was concerned about the text of the paragraph on self determination and consent.

On 9 February, the IRA ceasefire ended with a bomb in Docklands, killing two people. Further bombs were discovered in London in subsequent weeks. The British and Irish Governments refused to meet Sinn Fein until there was a new ceasefire.

On 28 February Mr Major and John Bruton held talks at 10 Downing Street, and an Anglo/Irish communique was issued, regretting the end of the ceasefire, and agreeing that the resumption of Ministerial talks with Sinn Fein required the restoration of the ceasefire. Both governments agreed to conduct "intensive multilateral consultations" before all party negotiations on 10 June:

10. The Prime Minister and the Taoiseach agreed that the two Governments would conduct intensive multilateral consultations with the relevant Northern Ireland parties in whatever confirmation was acceptable to those concerned, beginning on Monday 4 March and ending on Wednesday 13 March. The purpose of the consultations will be to:

- (a) reach widespread agreement on proposals for a broadly acceptable elective process leading directly and without preconditions to all party negotiations on 10 June 1996.
- (b) reach widespread agreement on the basis, participation, structure, format and agenda of substantive all-party negotiations; and
- (c) consider whether there might be advantage in holding a referendum in Northern Ireland with a parallel referendum held by the Irish Government in its own jurisdiction on the same day as in Northern Ireland. The purpose of such a referendum would be to mandate support for a process to create lasting stability, based on the repudiation of violence for any political purpose.

The Governments would review the outcome of the consultations immediately after 13 March, and the British Government would bring forward legislation on the elective process, and the decisions would be announced on the other issues.

The Communique stated that all participants on the all party negotiations in June would need to "make clear at the beginning of the discussions their total and absolute commitment to the principles of democracy and non-violence set out in the report of the International Body. They would also have to address, at that stage, its proposals on decommissioning".<sup>95</sup> Finally, the two Governments called on Sinn Fein and the IRA "to make Sinn Fein's participation in

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<sup>95</sup> para. 12

the process of such negotiations possible".<sup>96</sup>

In his statement to the Commons following Mr Major's meeting with Mr Bruton,<sup>97</sup> the Prime Minister emphasised that there was a clear route to all party negotiations. He noted that he would have preferred to have reached agreement on details of an elective system, the nature and role of an elected body and the format structure and agenda of the all party negotiations by 28 February, but whether or not agreement on these issues was reached by 13 March, the Government would put forward to the House legislative proposals for elections in Northern Ireland, and would take decisions on the nature and role of the body and the format of all party talks, based on a judgement of what is likely to be broadly acceptable. The Government would make its own views clear after 13 March on the proposal for referendums North and South. In response to a question from Tony Blair, Mr Major made clear that for Sinn Fein to take part in the all party negotiations there would need to be a ceasefire, and that the Mitchell principles would be the lead item for the negotiating teams on 10 June. If violence resumed during all party talks "by that violence, that party would have voluntarily excluded itself from the negotiations".<sup>98</sup> He reminded the House of the triple lock; that any agreement at the end of all party negotiations would be put to a referendum of the people of Northern Ireland before proposals were put to the House. In response to a question from Paddy Ashdown, Mr Major indicated that elections would precede 10 June by a few days.<sup>99</sup>

### Preparation for all-party talks

On 21 March 1996 John Major made a statement on the arrangements for all-party negotiations. He noted that the form of elections had been one of the main areas of disagreement between the political parties in the intensive consultations held between 4-13 March and that the Government had therefore come forward with their own proposals:<sup>100</sup>

Three main systems have been proposed: an election in 18 constituencies, each electing five members by single transferable vote; an election on a party list system across one single Northern Ireland constituency, and a single constituency election across Northern Ireland with votes for parties, but not for named candidates. None of those systems has secured the clear support of major parties representing each of the main communities. Some parties have even threatened not to participate in the process and thus abort the possibility of all-party negotiations should one of

the other systems be chosen.

I made it clear in my statement on 28 February that, if no agreement proved possible, the Government would come forward with proposals based on a judgment of what is most likely to be broadly acceptable to the parties and to the people of Northern Ireland. Whatever the merits of each of the three main systems, it is clear that none, on its own, meets that criterion of broad acceptability.

We have therefore considered how to proceed. We have decided to propose a new system, including the most attractive elements of other

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<sup>96</sup> para. 12

<sup>97</sup> HC Deb 28/2/96 c900-902

<sup>98</sup> HC Deb. c.905

<sup>99</sup> HC Deb. c.908

<sup>100</sup> HC Deb c.497-8

proposals. We will therefore introduce legislation, immediately after the Easter recess, providing for an election on 30 May using a list system rather than individual candidates, organised in 18 constituencies, but not by single transferable vote, and supplemented by Northern Ireland-wide party preference.

Briefly, electors will have to register just one vote which they will cast, in the constituency, for the party of their choice. Five seats in each of the 18 constituencies will be allocated from party constituency lists of candidates, published in advance, in proportion to each party's share of the vote. In addition, the votes in all the constituencies will be aggregated and the 10 most successful parties across the whole of Northern Ireland will secure two elected representatives each, from party lists published in advance.

I believe that this is a fair and balanced system that will produce a representative outcome. The Province-wide element should help to achieve the widely shared objective of making the negotiating process as inclusive as possible through representation of the smaller parties.

The elections will create a pool of 110 elected representatives. The successful parties will be invited by the Secretary of State to select, from among their representatives, negotiating teams for the negotiations to begin on 10 June. The transition from the elections to the negotiations will be automatic and immediate.

He noted that Sinn Fein had currently excluded itself from negotiations by the ending of the IRA ceasefire, but it could make itself eligible to participate "through the unequivocal restoration of the ceasefire".<sup>101</sup> He emphasised that the Mitchell proposals on decommissioning would be addressed at the beginning of the talks:<sup>102</sup>

The negotiations need to take place in an atmosphere of confidence. As I told the House on 28 February, all parties will need to make clear at the beginning of negotiations their total and absolute commitment to the principles of democracy and non-violence set out in the Mitchell report and to address, also at the beginning of

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<sup>101</sup> c.498

<sup>102</sup> c.498

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negotiations, Senator Mitchell's proposals on decommissioning. There can be no backing away from that. Equally, there must be confidence that, as the negotiations proceed, they will be comprehensive and address all legitimate issues.

Mr Major stated that the elected forum would meet in Belfast on a regular basis when negotiations were not in session, in order to "promote dialogue and mutual understanding".<sup>103</sup> It would not participate in the negotiations but could interact with the process at the request of the participants and the legislation would provide for the forum to be able to conduct hearings at which public submissions by relevant bodies or individuals could be made. The forum's life would be time-limited to 12 months, renewable up to a maximum of 12 months, but it would not continue if negotiations are no longer in progress. The forum would be required to proceed by broad consensus.

Mr Major said that the Government's judgment was that at present the case for a referendum on the use of violence for political ends had not yet been conclusively made but "we have not ruled out the option of holding a referendum with an appropriate questions or questions on the same day as the elections".<sup>104</sup>

In response to the statement there was concern from the representatives of the three major Northern Ireland parties about the novel form of the elections. Mr Major indicated in response to a question from James Couchman that the constitutional parties in Northern Ireland would be indicated on the face of the Bill.<sup>105</sup>

A consultative paper was issued on 21 March<sup>106</sup> providing some further details on the elective process and the Bill which would provide a power by statutory instrument to hold a referendum in Northern Ireland on a question connected with the negotiations. This will fulfil the Government's undertaking that the outcome of all-party negotiations would be submitted to the people of Northern Ireland before being submitted to Parliament.

The Bill will also set out the procedural steps from elections to talks:

### Timetable for transition to negotiations

14. The Bill will set out, as appropriate, the procedural steps necessary to lead directly and

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<sup>103</sup> c.498

<sup>104</sup> c.498

<sup>105</sup> c.506

<sup>106</sup> The Framework for a broadly acceptable elective process leading to all-party negotiations

without preconditions from the election to the convening of all-party negotiations:

- immediately after the election, the Secretary of State will be required, subject only to the discretion described below, to invite leaders of those parties which achieve representation in the election to select negotiating teams no later than Monday 3 June;
- each Government will also establish a negotiating team at the same time;
- all-party negotiations with a comprehensive agenda will be convened on Monday 10 June at a plenary meeting involving the negotiating teams of all participants.

15. In the Communique of 28 February, both Governments expressed the hope that all parties with an electoral mandate will be able to participate in all-party negotiations. However, both Governments also agreed that the resumption of Ministerial dialogue with Sinn Fein and their participation in negotiations requires the unequivocal restoration of the ceasefire of August 1994. In the event of the IRA failing to restore its ceasefire of August 1994, Sinn Fein will therefore not be invited to select a negotiating team and will not participate in negotiations. To give effect to this, invitations to the leaders of parties to select teams and attend negotiations will need to be at the discretion of the Secretary of State, whose policy it will be to exercise this discretion solely for the purpose set out here and after consultation, as appropriate, with the Irish Government.

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The papers noted that the elected forum would be "unable to exercise legislative executive or administrative functions and will have no power to determine the conduct, course or outcome of the negotiations".<sup>107</sup> There would be a requirement that the membership and chairmanship of committees be allocated on a proportional basis reflecting party strengths in the forum.<sup>108</sup> There would be provision for the selection of a chairman and adoption of procedural rules.<sup>109</sup>

On 15 March the Northern Ireland office had published a paper of the ground rules for substantive all-party negotiations<sup>110</sup> which had aroused some fears in Unionist circles that the issue of decommissioning would not be the first item on the agenda. In his statement the Prime Minister emphasised that the 15 March paper was a paper for consultation not a blue print with decisions.<sup>111</sup> The paper noted that negotiations on the three interlocking strands would commence on the same day and proceed in parallel.<sup>112</sup> The paper set out the detailed ground rules as follows:

15. Strand One negotiations will involve the British Government and the political parties:
  - negotiations will take place on the basis of an agreed agenda and in appropriate formations as agreed by the participants;
  - they will be chaired by the British Government operating agreed procedural rules;
  - the Irish Government will be kept informed of the progress achieved in Strand One through agreed liaison arrangements.
16. Strand Two negotiations will involve both the British and Irish Governments and the political parties:
  - negotiations will take place on the basis of an agreed agenda and in appropriate formations as agreed by the participants;
  - they will be chaired by an independent Chairperson operating agreed procedural rules.
17. Strand Three negotiations will involve the two Governments and will involve appropriate consultation and liaison arrangements with the political parties.
18. In addition to plenary sessions of the negotiations, some practical arrangements will be needed for liaison between the different strands of these complex negotiations. While the management of each strand is for its participants, a Coordination Committee

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<sup>107</sup> para.18

<sup>108</sup> para. 19

<sup>109</sup> para. 20

<sup>110</sup> Dep Paper 3014 35

<sup>111</sup> HC Deb 21/3/96 c.501

<sup>112</sup> para. 14

composed of representatives of the two Governments and of the political parties, chaired by the independent Chairperson of Strand Two (or, in her/his absence, by a person agreed by the participants) will be established to coordinate the progress and the procedures of the negotiations across the three strands. The Coordination Committee would address unresolved procedural issues and could also determine the modalities for dealing with any issue which does not fall exclusively within any of the three strands.

19. The negotiations will proceed on the shared understanding that nothing will be finally agreed in any strand until everything is agreed in the negotiations as a whole. It would nevertheless be possible, solely on the basis of consensus among the participants, to reach contingent agreement on individual aspects.
20. The negotiations will operate on the basis of consensus. However, if in Strand One or Two it should prove impossible after determined efforts to achieve unanimity, the Chairperson may, without prejudice to the provisions of the previous paragraph, operate on the basis of sufficient consensus among the political parties to allow negotiations to proceed. (The rules for establishing sufficient consensus will be agreed in advance of negotiations by the participants, and such rules will ensure that any departure from the rule of unanimity is within minimal limits and will, in all cases, ensure that any decision taken will be supported by a clear majority in both the unionist and nationalist communities in Northern Ireland.) Additionally, as regards Strands Two and Three, both Governments would have to endorse a particular proposition for it to be deemed to have achieved sufficient consensus. The overall outcome across all three strands would also need to attract a sufficient consensus from the participants.

Over the next few weeks the Northern Ireland office finalised the plans for the elections and the all party negotiations, following some consultation with the Northern Ireland parties. The SDLP and DUP had originally favoured a party list system of elections across the province, while the UUP and the Alliance Party favoured the use of STV in the 18 Parliamentary constituencies. At first there was some concern amongst all the Northern Ireland parties that the electoral system proposed on 21 March would be unworkable. Initially it appeared that only 15 parties would be allowed to stand and the position of independent candidates was unclear. These points have now been addressed in Schedule 1 of the Northern Ireland (Entry to Negotiations, etc) Bill. See Part IV for details.

The SDLP's Seamus Mallon said on 16 April that the party would be looking at the details of the ground rules for negotiations and the relationship between the forum and the negotiators before deciding whether to take part in elections.<sup>113</sup> Sinn Fein is also considering whether to contest the elections.

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<sup>113</sup> *Belfast Telegraph* 16/4/96 "SDLP's close look at election rules"

## Part III

### Northern Ireland (Entry to Negotiations) etc Bill

This section gives a very brief outline of the Bill. Much of the background is given in Parts I and II.

This Bill was published in draft on 16 April 1996; it is a short seven clause bill designed to give effect to the arrangements leading to all party negotiations to start on 10 June.

**Clause 1 and Schedule 1** give a framework of electoral arrangements. Much of the detail will be set out by statutory instrument, but schedule 1 provides for five delegates to be elected from each of the 18 new Northern Ireland Parliamentary constituencies plus an extra 20 delegates for Northern Ireland as a whole; that is two delegates selected from each of the ten parties with the largest aggregate vote. Part II of Schedule 1 sets out 30 parties for which lists of candidates may be submitted. The list includes a number of independent candidates, the Conservative Party, the Green Party, the Natural Law Party as well as the more traditional Northern Ireland parties. The constituency delegates are to be selected using the calculation set out in paras 8-11 of schedule 1:

*Constituency delegates*

8.-1) For each constituency there shall be calculated-

- (a) the total number of votes given;
- (b) the quota for the constituency;

20 (c) the number of votes given for each party.

(2) The quota for a constituency is-

$$\frac{T + 1}{6}$$

where T is the total number of votes given.

9.-1) If the number of votes given for a party in a constituency  
25 equals or exceeds the quota, one of the candidates on the party's constituency list shall be returned from the constituency as a delegate.

(2) But if the number of votes equals or exceeds a multiple of the quota, a correspondingly greater number of candidates shall be returned (up to the number appearing on the list).

30 10. If the application of paragraph 9 produces fewer than five delegates, then-

(a) there shall be calculated for each party (excluding any whose constituency list has been exhausted) the quotient representing-

$$\frac{V}{N+1}$$

where V is the number of votes given for the party and N is the number of the party's candidates returned as delegates by the previous application of paragraph 9 (or paragraph 9 and this paragraph);

(b) a candidate on the list of the party with the highest quotient shall be returned as a delegate.

11. If the application of paragraph 10 produces fewer than five delegates, it shall be applied again until five delegates have been produced (or all the constituency lists have been exhausted).

The formula in paragraph 8 is basically the Droop quota, which is already well known in Northern Ireland elections as it is used in calculations for the Single Transferable Vote. If seats remain unallocated after the application of the Droop quota then under paragraph 11 the d'Hondt Rule is used. D'Hondt is also well known in calculations for proportional representation electoral systems and is explained below on p.66. Table 8 and 9 of Part IV of this Paper gives a worked example of the process of calculation for the elections.

The regional aggregates are calculated as follows<sup>114</sup>:

*Regional delegates*

14.-(1) For each party having a regional list the aggregate number of votes given in all the constituencies shall be calculated. 5

This is a simple first past the post system. The ten parties with the largest numbers of voters across the province are allocated two delegates each.

Each elector has one vote to be cast for a party named on the ballot paper for the constituency; the ballot paper will show the names of each of the parties for which a constituency list has been submitted. Candidates will be disqualified from being on a regional or constituency list if they are someone to whom Section 3 of the Representation of the People 1983 Act applies, that is they are detained in prison, or if they are detained on grounds of mental illness, or not of voting age within the terms of s.1 of the 1983 Act<sup>115</sup>. Normally

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<sup>114</sup> Para 14

<sup>115</sup> Para 18

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candidates must be 21 to qualify. Note that a convicted person must be actually *detained* in prison or unlawfully at large to be disqualified. The 1989 *Elected Authorities (Northern Ireland) Act* provisions requiring candidates to state that they do not support proscribed organisations or acts of terrorism will not apply<sup>116</sup>.

The franchise is limited to those entitled to vote at local elections who are registered at an address within the constituency<sup>117</sup>.

The list system of PR has been proposed only once before in a Government bill; the European Assembly Elections Bill of 1976/77, reintroduced in 1977/78.<sup>118</sup> In May 1976 the Government had arranged for the appointment of a select committee to consider proposals for direct elections to the European Assembly. In its Second Report the Select Committee recommended the retention of the first past the post system of elections.<sup>119</sup> The report was never debated. The Government White Paper<sup>120</sup> discussed the pros and cons of the various electoral systems but drew no conclusions beyond insisting that the special circumstances of Northern Ireland 'make it appropriate for direct elections there to be conducted by a system of proportional representation' (para 20). Following the Lib-Lab pact of March 1977 the Government recommended to the House a regional list system of PR for the UK, but the final decision was to be left to the free vote of the House. The Bill therefore offered an alternative between list PR and first past the post (with STV for Northern Ireland). The House had power under the Bill to remove the PR provisions by resolution. The Bill was introduced at the end of the 1976/77 session for discussion and reintroduced at the beginning of the next session. The PR clauses were removed from the Bill following debate on 13 December 1977 (HC Deb 298) by 319 votes to 222 in a free vote.

The list system proposed by the Government was a modified system in that the ballot paper would have had named candidates, and the elector was free to choose whichever candidate he preferred, but the voter would not have been able to state a second or later preference as the vote was not transferable. The ballot paper would have been arranged by party groupings, and multi-member constituencies would have been used. Allocation of seats would have taken place in two stages. The votes of all the candidates in one political party or group in one region would be totalled and the seats within that region allocated to parties or groups in proportion to their share of the total regional vote using the *d'Hondt* method of largest average.

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<sup>116</sup> see above p 20

<sup>117</sup> para 3

<sup>118</sup> Bill 142 of 1976/77, Bill 7 of 1977/78

<sup>119</sup> HC 515, August 1976, 1975/76

<sup>120</sup> Direct Elections to the European Assembly Cmnd 6768

This system aims to allocate each seat to the party which would at that point have the highest average vote per seat. The total votes of each party are divided by the number of seats it already has plus the next seat to be allocated. Thus the party totals are divided first by 1 [0 seats plus 1] then by 2 [ie 1 seat plus 1] then by 3 [2 seats plus 1] etc. The first seat goes to the party with the largest number on the table, the next seat to the next highest number etc.

In a 4 seat electoral region where Party A has won 430,000 votes, Party B 370,000 and Party C 200,000 the allocation would be as follows (the number of brackets indicate the order of allocation of the four seats):

	<u>Party A</u>	<u>Party B</u>	<u>Party C</u>
No. of votes cast	430,000	370,000	200,000
Divide by 1	430,000 (1)	370,000 (2)	200,000 (4)
Divide by 2	215,000 (3)	185,000	100,000
Divide by 3	143,333	123,333	66,666

Party A had the largest number of votes and gained the first seat. The second seat is awarded again to the party with the largest vote and at this stage the other parties still have their total votes whereas Party A's vote is divided by 2, having already won a seat. Party C wins a seat when Party B's vote is divided having won seats already.

Once the number of seats allocated to each party or grouping is known the seats would have been allocated to individual candidates within the grouping in accordance with the number of candidate (i.e. personal) votes they have received.

The choice of divisor plays a role in assisting or hindering smaller parties. Scandinavian countries favour the *St Lague* method which slightly favours smaller parties while *d'Hondt* tends to work against them.

**Clause 2** gives arrangements for the negotiations due to start on 10 June. The Secretary of State will invite the nominating representative of each party with delegates to select a team, but he "shall refrain from inviting nominations from the nominating representative of a party, or exclude delegates already nominated from entering into the negotiations, if and for as long as he considers that requirements set out in Command Paper 3232 are not met in relation to the party". This presumably relates to the participation of Sinn Fein which is dependent upon the "unequivocal restoration of the ceasefire of August 1994"<sup>121</sup>

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<sup>121</sup> Para 9 Cm 3232 Northern Ireland: Ground Rules for Substantive All-party Negotiations

**Clause 3 and Schedule 2** provides for a deliberative forum made up of the elected delegates. Clause 3(3) makes clear that the forum will not have any "power to determine the conduct, course or outcome of the negotiations" although it may consider their course if the participants of the negotiations so agree in their rules of procedure, which have yet to be drawn up.

The Secretary of State has power to decide the time of the first meeting of the forum and may veto a meeting if in his opinion it would not be appropriate, due to forthcoming and party negotiations. 75% of delegates voting must approve rules of procedure unless the rules are unopposed. Members of the forum will be privileged from action for defamation "unless it is proved to have been made with malice"<sup>122</sup>.

Clause 3 will cease to have effect at the end of May 1997 unless the Secretary of State extends its life to the end of May 1998 by order.

**Clause 4** gives a wide power to the Secretary of State to hold referendums by statutory instrument requiring affirmative resolutions. The referendums are to be "for the purpose of obtaining the views of the people of Northern Ireland on any matter relating to Northern Ireland"<sup>123</sup>. However the power will not extend to the holding of a poll on the status of Northern Ireland under the 1973 Northern Ireland Constitution Act<sup>124</sup>. Courts will not have jurisdiction over the outcome in terms of the ballot papers counted or the answers given in a referendum.

Clause 4 will cease to have effect at the end of May 1999. The wording of the clause would appear to allow the type of referendum advocated by the SDLP, that is, a referendum against terrorist violence, but the Government has no plans at present to hold such a referendum.

The general use of referendums within the UK is covered in Library Research Paper 95/23 Referendum. Following the Northern Ireland Border Poll Act 1972 a border poll was held on 8 March 1973. Every citizen of Northern Ireland aged 18 or over was asked to state whether he or she wished Northern Ireland to remain part of the UK or to be joined with the Irish Republic outside the UK<sup>125</sup>. The legislation required the ballots to be counted "by reference to Northern Ireland as a whole" presumably to avoid the formal identification of areas with a united Ireland majority, possibly leading to demands for re-partition. The poll was largely boycotted by the SDLP and other nationalists. Schedule 1 of the 1973 Act makes provision for polls on the status of Northern Ireland to be held at intervals of not less than

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<sup>122</sup> Schedule 2 para 5

<sup>123</sup> Clause 4 4(1)

<sup>124</sup> see above p 8

<sup>125</sup> see above p

10 years, but no poll has been held since 1973.

On 16 September 1994 the Prime Minister, John Major, committed the Government to submitting the final outcome of the three stranded talks to the electorate of Northern Ireland for approval in a referendum:

"So for the avoidance of any doubt I want to make clear today that the government will submit the final outcome of the three stranded process of talks to the electorate in Northern Ireland for approval in a referendum. That is to say, we will consult the people of the province on the full package of proposals as a whole. The details of such a referendum will rightly be for discussion with the parties."<sup>126</sup>

The commitment to a referendum was repeated by John Major in his statement to the House on 28 February 1996:

Let me reiterate what the right hon. Gentleman said about the status of Northern Ireland. I remind the House of the triple lock to which I have referred in the past, one part of which is that, at the conclusion of the all-party negotiations-on the presumption that there is an agreement at the end of those negotiations-that agreement, emerging from the all-party negotiations with ie constitutional parties, would be put to a referendum of the people of Northern Ireland. Only thereafter would it be brought to the House.

The triple lock exists in the agreement among the parties to the negotiations-constitutional parties above all-in the agreement of the people of Northern Ireland in a referendum, and, on the back of those two agreements, in legislation brought before Parliament for its agreement. That is what we have referred to as the triple lock. It is to guarantee that the consent principle for Northern Ireland, which is widely accepted by almost every party and is self-evidently the will of the House, can be sure to have been met to the satisfaction of the people of Northern Ireland.

**Clause 5** defines the term 'nominating representative'. The Bill uses this concept as a practical way of avoiding the need to register political parties which would normally be necessary via party list electoral system. **Clause 6** provides for pay and allowances for delegates, and **Clause 7** deals with the duration of clauses 3 and 4.

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<sup>126</sup> Press Notice 10 Downing St 16.9.95 Statement by the Prime Minister

## The Command Paper

Northern Ireland: Ground Rules for Substantive All-Party Negotiations<sup>127</sup> was published on the same day as the Bill. It is very similar in wording and form, to the consultative paper published on 15 March<sup>128</sup>. However, the Irish government will now be informed of progress achieved in strand one through liaison arrangements *following consultation with the parties*<sup>129</sup>. There are now no provisions for observer status for parties who fail to secure delegates.

The opening plenary session will "adopt and commit the participants to negotiate a comprehensive agenda which provides reassurances both in terms of addressing the report of the International Body and ensuring that a meaningful and inclusive process of negotiations is genuinely being offered. This agenda will include all the significant items which the various negotiating teams consider relevant and which will, therefore, have to be addressed in the search for agreement"<sup>130</sup>.

Participants will be expected to maintain confidentiality on all aspects of the negotiations and to make every effort to reach agreement<sup>131</sup>. There is no limit on the overall size of the negotiating teams of the political parties and the two governments, although for any one meeting (unless otherwise agreed) participants will be limited to three per team<sup>132</sup>.

A Business Committee will coordinate progress and procedures, composed of representatives of the British and Irish Governments and the political parties. It will be chaired by an independent person, probably the independent chairperson of Strand Two (para. 22).

Finally the Command Paper emphasises the Mitchell principles:

"If during the negotiations, any party demonstrably dishonoured its commitment to the principles of democracy and nonviolence set out in the report of the International Body by, for example, resorting to force or threatening the use of force to influence the course or the outcome of the negotiations, or failing to oppose the efforts of others to do so, it would no longer be entitled to participate in the negotiations."<sup>133</sup>

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<sup>127</sup> Cm 3232

<sup>128</sup> see above p 61

<sup>129</sup> para 19

<sup>130</sup> para 14

<sup>131</sup> para 16

<sup>132</sup> para 10

<sup>133</sup> para 17

The resolution of both the British and Irish Governments not to admit Sinn Fein to the negotiations until the IRA ceasefire of August 1994 is unequivocally restored is noted at para 9.

The Command Paper reaffirms that both the British and Irish Governments will submit the outcome of the negotiations for public approval by referendums in Ireland - North and South before being submitted for parliamentary ratification<sup>134</sup>.

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<sup>134</sup> para 26

## Part IV

### Statistics relating to Northern Ireland

Table 1 sets out official figures, collated by the RUC, for the number of deaths connected with the civil disturbances in Northern Ireland since 1969. Since 1969 there have been a total of 3,200 deaths recorded in Northern Ireland, of which 2,251 were of civilians.

Table 2 gives similar information for injuries connected with the security situation. Since the start of the troubles more than 38,000 people have been injured: of these, more than 24,000 have been civilians. Civilians, in these statistics, include paramilitaries and others who might not always be considered to be civilians in the usual sense. There are no government figures available which separate these groups<sup>135</sup> but a recent study of deaths in Northern Ireland contains some analyses of death reports which allow such figures to be calculated up to the end of 1993<sup>136</sup>.

Table 3 sets out the number of deaths recorded between 1969 and 1993 as a whole according to the agency responsible for the killing and the status of the person killed. Over this period, 3,285 deaths are covered - rather more than the total given in Table 1 because these figures include deaths relating to the troubles *outside* Northern Ireland, whereas the figures in Tables 1 and 2 only cover those in the province.

Of the 3,285 deaths covered, 3,059 occurred in Northern Ireland, 91 in the Irish Republic, 118 in mainland Britain and 17 elsewhere in Europe. Republican groups were responsible for 1,926 deaths, Loyalist groups for 911, British forces for 357 and the Irish Republic forces for three. In the remaining 88 cases it has not been possible or appropriate to identify the perpetrator.

Table 4 sets out the number of British troops (regular services) stationed in Northern Ireland and the strength of the Ulster Defence Regiment (UDR - now the Royal Irish Regiment) over the period 1969 to 1995.

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<sup>135</sup> HC Deb 21 November 1991 c247-8W

<sup>136</sup> "An Index of Deaths from the Conflict in Northern Ireland 1969-1993" (M Sutton 1994)

Table 5 gives figures for the economic subvention paid to Northern Ireland which makes up the difference between public expenditure there and the province's attributed share of UK taxes, rates and other miscellaneous receipts. The additional costs of military operations in Northern Ireland are not included in the economic subvention. The estimated sums which the Ministry of Defence requires to fulfil those tasks which relate directly to the campaign against terrorism in Northern Ireland are also shown in Table 5. These figures relate to the *additional* cost of the Army's task in Northern Ireland. These are costs over and above those that would have been incurred had the troops been on duty at their home base rather than on an emergency tour of duty in Northern Ireland.

Tables 6 and 7 give details of the numbers of votes cast in elections in Northern Ireland since direct rule was established. The somewhat fluid nature of party politics in the province, particularly in the first half of the 1970s, means that trends are sometimes not easy to detect, but the voting data have been grouped in an attempt to make comparisons over time possible.

Table 8 is a worked example of how the electoral system proposed in the bill operates. The figures given are invented. The table shows twelve parties standing in a constituency. A total of 46,168 votes are cast; this produces a quota for the constituency of 7,696 (46,168 divided by 6 plus one). Party A has more votes than the quota and one of its candidates is returned; Party D has more than double the quota and so two candidates are returned. No other party's votes reach the quota and only three candidates have been returned so the arrangements in paragraph 10 of Schedule 1 of the Bill come into play. A quotient for each party is calculated: this is its total votes divided by one more than the number of its candidates returned so far. Thus, the quotient for those parties which have not had candidates elected is simply the total number of votes cast for each; the quotient for Party A, with one elected delegate, is its vote divided by two, and that for Party D, with two elected delegates, is its vote divided by three. A candidate from the party with the highest quotient - in this case Party G - is then returned. We now have four delegates in all, and the calculation of quotients is repeated. The quotients are, of course, the same for all parties except Party G, whose vote is now divided by two. The final delegate is then from the party with the highest (new) quotient, in this case Party B.

Finally, Table 9 is an attempt to show how the elections proposed in the Bill might work. It is based on the results of the 1993 district council elections<sup>137</sup> which have been aggregated to the eighteen new constituencies. Some district electoral areas used in the 1993 elections are divided between constituencies and, in these cases, they have been allocated to the constituency in which the largest proportion of their electors is registered. The parties contesting the 1993 elections are not the same as those listed in Schedule 1 of the Bill and the calculations underlying Table 9 are based on 16 parties, which include aggregations for

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<sup>137</sup> Published in Gordon Lucy **Northern Ireland Local Government Election Results 1993** (Ulster Society (Publications) Ltd. 1994)

Independent Unionist, Independent and 'other' candidates. The method of election detailed in Schedule 1 of the Bill has been applied to the votes cast for these 16 groupings and the results are given in the table. Finally, the votes have been aggregated and two regional delegates allocated to the ten parties with the highest votes across all constituencies. These include the 'other' group; if they are excluded, the Labour Party followed by the Progressive Unionist Party received the next highest total numbers of votes.

It should be emphasised that Table 9 is not a predication of the results of the forthcoming elections but merely a rough illustration, based on real votes, of how the system works. The parties contesting the two elections differ, candidates were not fielded by all parties in all areas in the 1993 district council elections, and it is likely that some electors would vote for different parties in the two elections.























**COMMONS DEBATES ON NORTHERN IRELAND  
GOVERNMENT & CONSTITUTION**

**1972-1996**

<b>Subject</b>	<b>Date</b>	<b>Reference</b>
Prevention of Terrorism (Additional Powers) Bill All Commons Stages	02.04.96	275 c 152,156-299
Prevention of Terrorism (Temporary Provisions) } (Continuance) Order }		
Prevention of Terrorism (Exclusion Orders) } Regulations }	14.03.96	273 c 1124-71
Statement on Anglo-Irish Summit & Peace Process	28.02.96	272 c 900-912
Northern Ireland (Emergency Provisions) Bill Report & 3R	19.02.96	272 c 41-108
Statement on Bomb Explosion in London (South Quay) and end to IRA ceasefire	12.02.96	271 c 655-673
Statement on report of Mitchell Committee on Decommissioning of Arms	24.01.96	270 c 353-370
Northern Ireland (Emergency Provisions) Bill 2R	9.01.96	269 c 31-115
Statement announcing Twin-Track Initiative and establishment of Mitchell Committee	19.11.95	267 c 1199-1211
Northern Ireland (Remission of Sentences) Bill 2R and Remaining Stages	30.10.95	265 c 21-72
N. Ireland Act (Interim Period Extension) Order	5.07.95	263 c 469-90
N. Ireland (Emergency/Prevention of Terrorism Provisions) (Continuance) Order	12.06.95	261 c 501-47
Prevention of Terrorism (Temporary Provisions) Act 1989 (Continuance) Order	8.03.95	256 c 348-97
Statement on 'Frameworks for the Future' and local democracy framework document	22.02.95	255 c 355-70

N. Ireland (Adjournment)	27.10.94	248 c 1018-105
<b>Subject</b>	<b>Date</b>	<b>Reference</b>
N. Ireland Act (Interim Period Extension) Order	30.06.94	245 c 956-78
N Ireland Emergency/Prevention of Terrorism Provisions (Continuance) Order	24.05.94	244 c 263-307
N.Ireland Select Cttee (Membership)	29.03.94	240 c 853-95
N.Ireland Prevention of Terrorism (Temporary Provisions) (Continuance) Order	09.03.94	239 c 292-339
N.Ireland (Adjournment)	22.10.93	230 c 483-550
N.Ireland Act (Interim Period Extension) Order	24.06.93	227 c 467-501
N.Ireland Emergency/Prevention of Terrorism Provisions) (Continuance) Order	08.06.93	226 c 151-200
N.Ireland Prevention of Terrorism (Temporary Provisions) (Continuance) Order	10.03.93	220 c 955-99
N.Ireland Act (Interim Period Extension) Order	18.06.92	209 c 1054-94
N.Ireland (Emergency/Prevention of Terrorism Provisions) (Continuance) Order	10.06.92	209 c 369-420
N.Ireland (Adjournment)	5.3.92	205 c496-535
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	24.02.92	204 c 689-739
N.Ireland (Emergency Provisions) (Continuance) Order	23.07.91	195 c 1112
N.Ireland Act (Interim Period Extension) Order	20.06.91	193 c 514-75
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	04.03.91	187 c 21-71
N.Ireland (Emergency Provisions) Bill 1990/91 :		
2R + MR	19.11.90	181 c 23-112
W + M, Rep + 3R	06.03.91	187 c 290-430

Subject	Date	Reference
LA	20.06.91	193 c 485-513
N.Ireland Act (Interim Period Extension) Order	05.07.90	175 c 1138-224
N.Ireland (Emergency and Prevention of Terrorism Provisions) (Continuance)	12.03.90	169 c 30-71
Prevention of Terrorism (Temporary Provisions) (continuance)	06.03.90	168 c 819-44
N.Ireland Act (Interim Period Extension) Order	22.06.89	155 c 508-44
N.Ireland (Emergency Provisions) (Continuance) Order	08.03.89	148 c 904-46
Elected Authorities (N. Ireland) Bill Report + 3R	26.01.89	145 c 1206-90
2R	5.12.88	143 c38-120
Prevention of Terrorism (Temporary Provisions) Bill 1988/89		
2R + MR :	06.12.88	143 c 207-82
A.O.T.:	23.01.89	145 c 692-742
Rep + 3R	30.01.89	146 c 29-108
N.Ireland Act (Interim Period Extension) Order	29.06.88	136 c 403-77
N.Ireland (Emergency Provisions) (Continuance) Order		
"	25.02.88	128 c 475-98
"	01.03.88	128 c 883-919
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	16.2.88	127 c 925-949
N.Ireland Act (Interim Period Extension) Order	07.07.87	119 c 198-263
N.Ireland (Emergency Provisions) (Continuance) Order	08.04.87	114 c 310-400
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	10.02.87	110 c 263-86
N.Ireland (Emergency Provisions) (Continuance) Order	16.01.86	89 c 1307-35
	19.02.86	92 c 415-37
	19.06.86	99 c 1268-96

<b>Subject</b>	<b>Date</b>	<b>Reference</b>
N.Ireland Act (Interim Period Extension) Order	19.06.86	99 c 1214-67
N.Ireland (Emergency Provisions) (Continuance no. 2) Order	26.06.85	81 c 1028-49
N.Ireland Act (Interim Period Extension) Order	26.06.85	81 c 970-1027
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	21.02.85	73 c 1299-320
N.Ireland (Emergency Provisions) (Continuance) Order	20.12.84	70 c 575-672
N.Ireland (Emergency Provisions) (Continuance) Order	08.12.83	50 c 517-571
N.Ireland Act 1982 (Amendment) Bill 2R	02.12.83	49 c 1147-64
Prevention of Terrorism (Temporary Provisions) Bill 1993/94		
2R:	24.10.83	47 c 52-116
Rep + 3R:	25.01.84	52 c 932-1026
N.Ireland (Emergency Provisions) (Continuance) Order	12.05.83	42 c 975-993
N.Ireland Act (Interim Period Extension) Order	12.05.83	42 c 934-974
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	07.03.83	38 c 564-642
N.Ireland (Emergency Provisions) (Continuance) Order	09.12.82	33 c 1057-1083
N.Ireland Assembly Order	26.07.82	28 c 878-896
N.Ireland Act (Interim Period Extension) Order	30.06.82	26 c 999-1016
Northern Ireland Bill 1981-82		
2R + CWH	27.05.82	24 c 1071-1155
"	08.06.82	25 c 37-181
"	09.06.82	c 214-374
"	15.06.82	c 747-1058
"	23.06.82	26c 308-406
A.O.T	22.06.82	26 c 166-209
Rep + 3R	29.06.82	26 c 756-865

<b>Subject</b>	<b>Date</b>	<b>Reference</b>
N.Ireland (Emergency Provisions) (Continuance) Order	30.06.82	26 c 941-998
N.Ireland (Devolution) White Paper (Cmnd 8541)	28.04.82	22 c 850-936
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	15.03.82	20 c 151-171
N.Ireland (Emergency Provisions) (No. 2) Order	15.12.81	15 c 259-279
N. Ireland Economy (Opposition Day)	18.03.81	1 c 290-335
Prevention of Terrorism (Opposition Day)	"	1 c 336-374
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	18.03.81	1 c 375-395
N.Ireland (Emergency Provisions) (Continuance) Order	10.12.80	995 c 1026-1046
N.Ireland (Emergency Provisions) (Continuance) Order	22.07.80	989 c 429-61
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	04.03.80	980 c 405-38
N.Ireland (Emergency Powers) (No. 2) Order	11.12.79	975 c 1093-208
N.Ireland Government White Paper (Cmnd 7950)	09.07.80	988 c 552-720
N.Ireland Government Conference Working Paper (Cmnd 7763)	29.11.79	974 c 1498-1618
N.Ireland (Emergency Provisions) (Amendment) Order	25.07.79	971 c 741-70
N.Ireland Act (Interim Period Extension) Order	02.07.79	969 c 925-1066
N.Ireland (Emergency Provisions) (Continuance) Order	"	969 c 1067-70
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	21.03.79	964 c 1624-6
Shackleton Report on Prevention of Terrorism Legislation	21.03.79	964 c 1505-624

<b>Subject</b>	<b>Date</b>	<b>Reference</b>
N.Ireland (Emergency Provisions) (Continuance) Order	06.12.78	959 c 1499-586
N.Ireland Act (Interim Period Extension) Order	30.06.78	952 c 1703-836
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	15.03.78	946 c 543-98
N.Ireland (Emergency Provisions) (Amendment) Order	08.12.77	940 c 1678-764
N.Ireland (Emergency Provisions) (Amendment) Bill 1976-7 2R & Remaining Stages	30.06.77	934 c 712-20
N.Ireland Act (Interim Period Extension) Order	"	934 c 633-86
N.Ireland (Emergency Provisions) (Continuance) Order	30.06.77	934 c 687-712
Prevention of Terrorism(Temporary Provisions) (Continuance) Order	09.03.77	927 c 1472-570
N.Ireland (Various Emergency Provisions) (Continuance) Order	17.12.76	922 c 1933-2048
N.Ireland (Various Emergency Provisions) (Continuance) Order	02.07.76	914 c 879-923
N.Ireland (Interim Period Extension) Order	"	914 c 808-879
Prevention of Terrorism (Temporary Provisions) (Continuance) Order	26.04.76	910 c 113-156
N.Ireland Constitutional Convention	12.01.76	903 c 51-162
N.Ireland (Emergency Provisions) (Continuance) Order	11.12.75	902 c 742-814
Prevention of Terrorism (Temporary Provisions) Bill 1975-76		
2R :	26.11.75	901c 874-1004
Rep + 3R :	28.11.76	904 c 441-560
LA :	22.03.76	908 c 157-67

Subject	Date	Reference
N.Ireland (Emergency Provisions) (Continuance) Order	04.11.75	899 c 233-94 c 2071-2104
N.Ireland Act (Interim Period Extension) Order	26.06.75	894 c 843-74
N.Ireland (Emergency Provisions) (Continuance) Order	26+27.06.75	894 c 143, c886-980
Prevention of Terrorism (Temporary Provisions)	19.05.75	892 c 1082-1162
N. Ireland (Opposition Day)	05.12.74	882 c 1951-2070
Prevention of Terrorism (Temporary Provisions) Bill 1974-75		
2R + CWH	28.11.74	882 c 634-938
3R	"	c 939-44
N. Ireland Bill 1974		
2R + CWH	15.07.74	877 c 45-193
3R		c 193-7
N.Ireland (Emergency Provisions) (Continuance) Order	09.07.74	876 c 1273-318
N.Ireland Constitution White Paper (Cmnd 5675)	"	876 c 1162-1272
N. Ireland (Adjournment)	03.06.74	874 c 878-1183
N. Ireland (Adjournment)	04.04.74	871 c 1463-82
N.Ireland Constitution (Amendment) Bill 1973-74		
2R	13.12.73	866 c 668-809
N.Ireland (Emergency Provisions) Proscribed Organisations (Amendment) Order		
	06.12.73	865 c 1583-99
	22.11.73	864 c 1569-685
N.Ireland Constitution Bill 1972-73		
2R + CWH	24.05.73	857 c 680-802
"	14.06.73	c 1716-858
"	21.6.73	c 695-830

<b>Subject</b>	<b>Date</b>	<b>Reference</b>
Rep + 3R	03.07.73	859 c 261-444
N.Ireland (Emergency Provisions) Bill 1972-73		
2R	17.04.73	855 c 275-392
CWH	14.5.73	856 c 1025-1146
Rep + 3R	05.05.73	859 c 735-880
N.Ireland (Temporary Provisions) Extension Order	28.03.73	853 c 1445-65
N.Ireland Constitution White Paper (Cmnd 5259)	28&29.03.73	853c1318-44,1537-68
N.Ireland Assembly Bill 1972-73		
2R + CWH	16.04.73	855 c 31-223
N.Ireland (Border Poll) Order	23.01.73	849 c 388-417
N.Ireland Detention of Terrorists	11.12.72	848 c 45-104
N.Ireland (Border Poll) Bill 1972-3		
2R + CWH	21.11.72	846 c 1089-224
	23.11.72	c1529-1697
3R	"	c1697-1712
"Future of N. Ireland" Discussion Paper	13.11.72	846 c 43-160 1537-668
N.Ireland Electoral Law	31.07.72	842 c 43-163 1135-58
N.Ireland (Temporary Provisions) Bill 1971-72		
2R + CWH	28.03.72	834 c 238-368
	29.03.72	c 445-764
3R	"	c 767-802
N.Ireland Bill 1971-72		
2R	23.02.72	831 c 1363-426
CWH	"	c 1426-50
N.Ireland (Opposition Day)	24.07.72	841 c 1326-90
"    "    "	29.11.71	827 c 32-183
N.Ireland (Adjournment)	12.06.72	838 c 1071-134

Subject	Date	Reference
Opposition Adjournment (Allowed under S.O.9)	20.3.72 833 c 1076-1145	
N.Ireland (Adjournment)	01.02.72	830 c 264-332
"	25.11.71	826 c 1571-678

### Notes

2R = Second Reading; CWH = Committee of the Whole House

MR = Money Resolution; AOT = Allocation of Time W + M Ways + Means

3R = Third Reading; LA = Lords Amendments.

NI Act (Interim Period Extension) order debates = debates to continue in force the provisions of the *Northern Ireland Act 1974*.

Jean Fessey  
April 1996

## Appendix 2

### Chronological List of Secretaries of State for Northern Ireland

24 April 1974	William Whitelaw
2nd December 1973	Francis Pym
5th March 1974	Merlyn Rees
10th September 1976	Ray Mason
5th May 1979	Humphrey Atkins
14th September 1981	James Prior
11th September 1984	Douglas Hurd
3rd September 1985	Tom King
24th July 1989	Peter Brooke
15th April 1992	Sir Patrick Mayhew

Recent Research Papers include:

96/27	The Individual Responsibility of Ministers: An Outline of the Issues	21.02.96
96/26	Public Interest Disclosure Bill [Bill 20 of 1995/96]	19.02.96
96/25	Public Interest Immunity	22.02.96
96/22	Forms of Investigatory Inquiry & the Scott Inquiry	09.02.96
96/16	The Scott Inquiry: Approaching Publication	25.01.96
96/14	Special Standing Committees in both Houses	23.01.96

**Government & Parliament**