

Ulster Unionist Party

1. THE STATUS OF GROUND RULES.

“Ground Rules” is a Command paper. As such it is a formal statement of government policy. A Command paper does not have, in itself, any legal effect. “Ground Rules”, however, is referred to in the Northern Ireland etc. Act 1996. One reference, in section 2(3) makes specific reference to paragraphs 8 & 9. It effectively imports these paragraphs into the statute and so gives these legal effect. The Act does not give similar effect to any other paragraph. Consequently, applying the normal principles of statutory interpretation, no other paragraph can be said, in terms, to have legal effect.

Section 2(1) makes a general reference to the Command paper in order to identify the negotiations. There can be no doubt that these negotiations are the negotiations referred to in the Act and the Command paper. The parties present here are the parties identified in the Act, who have been invited here in pursuance of the Act to engage on negotiations on the issues referred to by the Act and the Command paper.

Does the reference in S2(1) go further and give statutory effect to every reference in “Ground Rules” that appears to describe the negotiations either in substance or form?

The answer is clearly no for various reasons. First, the *expressio unius, exclusio alteris* argument mentioned above. Second, the Parliamentary history of the Act is clearly against this interpretation. A Conservative backbencher tabled a amendment embodying “Ground Rules” as a Schedule to the Act: the Government resisted it on

the basis that they did not want to give statutory effect to the whole paper. The Ulster Unionist Party considered amendments which would have identified more paragraphs than the reference in S.2(3). Again the Government objected on the same grounds. The Minister having carriage of the Bill in Committee (Mr Ancram), repeatedly referred to "Ground Rules" as being the best judgement of the Governments at that point and capable of development and amendment. Third, the language and content of "Ground Rules" indicates that it is not intended to have statutory effect. There are internal inconsistencies - the different definition of the third strand/relationship in paragraphs 1 and 2 are given by way of example, other conflicts exist. The preamble by its reference to the "best judgement" of the 2 governments endorses Mr Ancram's statement of the contingent nature of the paper. This is reinforced by the opening sentence of paragraph 7. Fourthly, the two governments have put forward procedural rules which amend and develop ground rules. They have therefore conceded that ground rules can change. Therefore they do not have legal effect.

In conclusion the only legal effect of "Ground Rules" is to identify the negotiations, to indicate their general purpose, in the sort of terms set out in paragraph 1 and to flesh out the precise reference in Section 2(3).

The Ground Rules remain as a statement of Government policy. As such they will inform the approach of the Government. Other parties may, and have, referred to them as a way of enhancing their arguments. But the government has confirmed that Parties are not required to endorse them.

2. THE EFFECT OF PARAGRAPH 7:

The effect of paragraph 7 is to confirm that the two governments having, through their statements, acts, and policy papers brought the process to this point, the matter is now carried on by the participants collectively. It is also carried on by them exclusively. No other party may be involved. Moreover no other matter can affect the negotiations, other than the actions and agreements of the parties.

There appears to be a difference between the two governments as to the interpretation of the word "conduct" in paragraph 7. Her Majesty's Government read it as referring only to procedures : the Republic of Ireland Government read it more widely. The Irish must be right: Her Majesty's Government's position is absurd. If "conduct" means only procedures then we have the absurd result that the procedures of these negotiations are exclusively a matter for the parties; but that the substance of the negotiations are not exclusively a matter for the parties. Not only is this absurd, it is totally unacceptable; there are no limits on the outcomes we can agree. Indeed, Her Majesty's Government in its amendment 17A expressly acknowledges this.

3. THE OBJECTIONABLE ASPECTS OF GROUND RULES.

The primary and fundamental objection is to the concept, advanced by certain parties, that "Ground Rules" has some form of superior, over-arching role and that it can in some way determine or constrain what we do or what we may agree to.

If "Ground Rules" is seen as statement of the Government's best judgement of what would be acceptable at that time, then it is a different matter. Then we can, as we are doing, change and develop the procedures as we evolve our own.

The Irish Government says there are also some fundamental inter governmental matters. There are some statements of government policy as in paragraphs 4 and 15: but they cannot be fundamental. These are matters only for the governments. They are not binding on us.

The Frameworks document, referred to in paragraph 4, is not acceptable to us and will not be endorsed by us. The Government cannot insist that by virtue of the reference in "Ground Rules" it has some over-riding character. The Governments have specifically conceded this point. We have already referred to the contradictory definition of the third strand. We also object to the procedures suggested by the two governments for the handling of that strand. The issue currently being debated in committee, namely the preparation of the agenda is also a problem for us - see para 14. Also objectionable is the implication in paragraph 15 that the two Governments will drive the process towards some unstated conclusion.

There are also a number of more detailed criticisms we could add. Some of these have been catered for in the changes made while incorporating some ground rules into the Rules of Procedure, others we expect will be dealt with as the discussions proceed.