

Annex 2

Irish Constitutional proposals

We have not seen a text, but we were given an oral presentation and our initial response was that the rewrite of Article 2 in terms of a nation to which people in the island of Ireland were entitled to be members was on the right lines.

Of course we would like an equivalent statement in our legislation - arguably it is already there in the Ireland Act 1949 and merely needs refinement and application.

There are problematic aspects of the proposed rewrite of Article 3: mainly the statement that an All Ireland state would be an "objective" of the Republic of Ireland. We consider this would not lead to stability. It might lead an Irish court to again hold that realising an All Ireland state was a "constitutional imperative".

It is in any event inconsistent. How can the Irish government sincerely say they wish co-operation with Northern Ireland while proclaiming the objective of eliminating Northern Ireland as an entity distinct from the Republic of Ireland. Most Unionists would conclude that the latter was the genuine intention and the former merely a devious means of pursuing the latter and would consequently reject any arrangements for co-operation, while still accepting that co-operation by itself could be desirable.

It was not clear to us if the assertion in Article 3 of a right to jurisdiction over Northern Ireland will be omitted. It should be.

On the so-called "balanced" changes in British law, the Irish asked for the deletion of section 75 of the Government of Ireland Act 1920 and for the consent principle to be written into law in its positive as well as negative aspects (these terms being from their point of view).

In this connection they referred to the Anglo-Irish Agreement (AIA) and the Downing Street Declaration (DSD). Our initial response was that it might be possible to include the some of the language of Article 1(c) of the AIA, but we discouraged reference to the DSD. We do not want to have the "green" verbiage in the DSD in our law and we certainly want Her Majesty to have a clear unincumbered fee simple in Ulster and certainly not a determinable fee.