

(British draft - 22 January 1998)

## STRAND 2: POSSIBLE NEW NORTH/SOUTH ARRANGEMENTS

### A paper to facilitate discussion, presented by the British [and Irish] Government

#### Introduction

This paper has been drawn up [by the two Governments] at the request of the political parties engaged in the multi party negotiations. It is intended to facilitate open and meaningful negotiation, initially at the Strand 2 meetings in London on 26-28 January, by identifying what seem to be the key issues requiring decision in Strand 2 and offering a range of options or observations intended to encourage and help focus debate. For their part of course the [two Governments] remain committed to the positions set out in the Joint Declaration and in the New Framework for Agreement. (Parties will recall that the latter offers, particularly in paragraphs 24-38, an account of how North/South institutions might operate, in the hope that this would assist discussion and negotiation. Paragraph 13(h) summarises the two Governments' view of the part which North/South institutions might play in contributing to an overall settlement) It is of course accepted that each of the parties may wish to contribute other ideas and options to the discussions.

The Strand 2 participants may wish, at the outset of the Lancaster House meetings, to consider allocating blocks of time over the period 26-28 January to the discussion of each main issue identified in this paper. The two Governments have also announced their

DUBLIN IN

THU 22 JAN 98 17:52

PG.00

intention to convene a Strand 3 liaison meeting during that period, which will allow participants to have an initial discussion of other aspects of the British/Irish Agreement mooted in the *Propositions on Heads of Agreement*, some of which may have a bearing on the parties' attitudes to points covered in this paper.

The paper takes as its point of departure the relevant elements of the *Propositions on Heads of Agreement* tabled by the British and Irish Governments on 12 January. They were themselves intended to provide a basis for debate and discussion but they offer an outline of what might be a generally acceptable outcome to the talks process. The various elements of it each need to be considered in detail, but in doing so the [two Governments] would urge the parties to bear in mind at all times that any ultimate agreement will need to strike a generally acceptable balance across all the points covered in the *Propositions* text.

#### Relevant elements of the *Propositions on Heads of Agreement*

The *Propositions* envisage that the establishment of a North/South Ministerial Council would be agreed as part of an overall political settlement, which itself would be subject to approval by referendums, North and South, and provided for as one element of a British-Irish Agreement. Any necessary legislation could then be enacted in the *Parliaments* and the Westminster Parliament. Such legislation could establish clearly the mandate of the North/South Ministerial Council.

"A new British/Irish Agreement to replace the existing Anglo-Irish Agreement and help establish close co-operation and enhance relationships, embracing ...[inter alia]

- a North/South Ministerial Council to bring together those with executive responsibilities in Northern Ireland and the Irish Government in particular areas.

Each side will consult, co-operate and take decisions on matters of mutual interest within the mandate of, and accountable to, the Northern Ireland Assembly and the

BRIT. EMB. DUBLIN IN

THU 22 JAN 98 17:53

PG.06

Oireachtas respectively. All decisions will be by agreement between the two sides, North and South

suitable implementation bodies and mechanisms for policies agreed by the

North/South council in meaningful areas and at an all-Ireland level"

The [two Governments] believe that agreement on the establishment of North/South

structures will be essential as part of an overall settlement. The purpose of this paper is to

facilitate discussion on what those structures should do and how they should be composed.

Participants might wish to address the following key questions.

**On what basis would the council be established?**

The Propositions envisage that the establishment of a North/South Ministerial Council would be agreed as part of an overall political settlement, which itself would be subject to approval by referendums, North and South, and provided for as one element of a British-Irish Agreement. Any necessary legislation could then be enacted in the Oireachtas and the Westminster Parliament. Such legislation could establish clearly the mandate of the North/South Ministerial Council.

**What matters might fall within the Council's remit?**

The Council's remit potentially encompass

DUBLIN IN

THU 22 JAN 98 17:53

PG. 07

- all matters of mutual interest within the competence of those with devolved executive responsibilities in Northern Ireland (hereafter described, for ease of reference and without prejudice, as Heads of Departments), and equivalent matters within the competence of members of the Irish Government, and

- any matter of concern to Northern Ireland representatives on the Council which was within the competence of the Irish Government.

#### **How might the Council operate?**

The Propositions envisage that the members of the Council might consult, cooperate and take decisions on matters of mutual concern. By bringing together competent authorities, North and South, the Council would enable:

- the exchange of information
- consultation about matters of mutual concern, and

- agreement to cooperate,

across the whole range of areas within its remit.

It would be open to two sides, by agreement, to take complementary or parallel action in their respective jurisdictions in pursuit of a common policy in any of these areas.

Additionally,

- (a) the members of the Council might in specified areas be mandated to use their best endeavours to reach agreement, resulting in common action or the adoption of a common policy, and to make determined efforts to overcome any disagreements between them, and
- (b) the Council might be given responsibility for taking decisions and determining policy in a further range of specified areas and for making or overseeing arrangements for the implementation of those decisions or policies.

The Propositions envisage that in some specific and meaningful areas a decision made by members of the Council to adopt a particular policy could be implemented through a functional agency or body operating on a cross-border or all-island basis. Such bodies, established by agreement, could be :

- accountable to the Council for the discharge of their functions, and through the Council to the respective political institution, North and South; or

formally accountable to the respective political institutions, with the Council playing an important role in ensuring effective joint oversight and direction of the bodies concerned.

The North/South Ministerial Council could, by agreement, itself serve as the implementation mechanism

What matters might be specified in accordance with (a) and (b) above?

The areas concerned could be:

- agreed in advance as part of any settlement; or
- left to be agreed by members of the Council, once established; or
- defined through a combined approach in which some areas were specified in advance and there was flexibility to amend the categories by agreement, in the light of experience and changing circumstances.

What matters might seem particularly well-suited for designation in each category?

Account might be taken of:

- ( i ) the common interest in a given matter 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 Council or a functional body; or
- ( iv ) the achievement of economies of scale and the avoidance of unnecessary duplication of effort.

BRIT. EMB. DUBLIN IN

THU 22 JAN 98 17:54

PG.10

The parties may have other criteria to suggest.

The separate paper setting out the extent of current co-operation and the scope for further co-operation may assist participants in reaching a preliminary view on which areas might be specified under (a) or (b) above. The Propositions envisage that there would be suitable implementation bodies and mechanisms for policies agreed by the North/South Council in meaningful areas and at an all-island level. Possible areas which might be suitable for specification under (b) above might be drawn from the following broad categories:

- sectors involving a natural or physical all-island framework;

- EU programmes and initiatives;

- economic and community development, including marketing and  
promotion activities abroad;

- culture and heritage.

#### **How would the Council be structured?**

One possibility would be the appointment to the Council of all those with executive responsibilities within Northern Ireland and of all members of the Irish Government with equivalent responsibilities. Another option might be that, along the lines of the European Union model, the Council would be, in institutional terms, a single entity, but would bring

together separately individual Ministers/Heads of Departments (eg of agriculture or economic development). The Council could meet in each particular sectoral format on a regular and frequent basis, or as required.

To provide for an overview of the overall operation of the Council, there could also be, again along the lines of the EU model, a "general affairs" Council at which senior Ministers/Heads of Department from both sides might meet to consider institutional or cross-sectoral matters and to review unresolved issues.

Participation in the work of the Council might be a duty of service on relevant posts in each of the two Administrations, or this could be left to develop as a matter of practice in a spirit of co-operation and goodwill. ✓

#### How would decisions be taken?

The Propositions envisage that decisions would be taken by agreement between the two sides.

#### What if agreement were not reached?

Decisions would only be taken by agreement. Without agreement no decision would be taken. One option could be that the matter would remain the subject of disagreement. Another option would be to agree Procedures to overcome disagreement. For example, in the case of disagreement on technical issues (for example, whether a particular section by one side met its agreed commitments), the Council could appoint arbitrators (for instance, judges or other

senior legal figures). Another option would be for continuing disagreement on any important specified issue might be referred to the "general affairs" Council. Another option would be that the British Government might work with both sides to facilitate agreement, whether in the context of the Intergovernmental Council or elsewhere.

### **What arrangements would there be for accountability?**

It would seem essential that members of the Council should be accountable in accordance with the rules for democratic authority and accountability in force in the Oireachtas and in the Northern Ireland Assembly respectively, and also in accordance with whatever procedures or arrangements for collective responsibility applied within the two Administrations. Those taking part in the Council would thus operate on the basis of a clear collective mandate. The actions and decisions of the Council and of any implementation bodies or mechanisms would be subject to regular scrutiny in the Oireachtas and in the Assembly. It could be that an Oireachtas/Assembly joint body might also have a role in this regard.

### **How might arrangements be revised?**

The Council could by agreement, and with the assent of the elected institutions, North and South, develop its functions or activities, in particular by transferring matters from one category to another, or by the creation of additional functional bodies. Its role could develop in line with the development of the relationship between North and South in all its aspects, in the light of experience and changing circumstances. There might be no pre-ordained limit to its evolution other than that imposed by the competences of the two sides.

Should there be a fall-back arrangement in case the institutions failed to operate effectively?

This is an issue for consideration in regard to the functioning of all elements of the Agreement. Participants would need to assess whether it would be prudent to have a specific mechanism in place. If so, one option might be that the [two Governments] would undertake that in the event of a failure of devolved institutions in Northern Ireland, they would make their own arrangements to maintain and promote co-operation at all levels between the people, North and South. }

How would the Council be financed?

The Council might agree its own financial requirements and those of any functional bodies utilising funds allocated by the two Administrations for that purpose. Alternatively, members of the Council from North and South might secure through their respective public expenditure systems whatever funds were required to implement Council decisions, whether through complementary or joint action or through defraying the costs of functional implementation bodies or mechanisms.

Would there be administrative support for the Council?

The Council might have permanent administrative support, which could be staffed by members of the Northern Ireland Civil Service and the Irish Civil Service, or each member of

the Council might initially nominate individual members of their staff to liaise on Council business, with the case for permanent administrative support being reviewed in the light of experience.

### **How would the Council relate to external bodies, in particular the EU?**

The Propositions paper puts forward proposals covering the totality of relationships within these islands, which would foster the development of contacts between the Council and other institutions in the islands. As regards the EU, the Council might have a particular responsibility to develop and articulate a view on the EU dimensions of matters within its remit. The Governments would, if the parties so wished, be prepared to bring forward innovative proposals in this regard.

### **Might there be a Joint Oireachtas/Assembly Body?**

This would be for the two institutions to decide. The Government[s] would see merit in the creation of a such a joint body bringing together members of the Oireachtas and the Northern Ireland Assembly who were not also members of the Council. The body could consider, and make recommendations on, all matters of mutual concern. It might also have a role in scrutinising the work of the Council.