

SECRET & PERSONAL

(27 February 1998)

THE OVERALL SETTLEMENT - A BRIEF COMMENTARY

The paper follows closely the "Propositions on Heads of Agreement". It reflects the language used there and is organised in chapters each of which develops in more detail the various paragraphs of "Propositions". A similar sparse drafting style to "Propositions" has been adopted to avoid excesses of rhetoric.

Constitutional issues

Annex A develops further an Irish version of a replacement for Article 1 of the 1985 Agreement, itself a response to an earlier British version.

The current draft reflects agreement on substance between the Irish and British sides. It includes:

- clear recognition by the Irish Government of the legitimacy of whatever choice the people of Northern Ireland make as regards its constitutional status;
- acceptance by the Irish Government that the present wish of a majority is to maintain the Union;
- recognition by the Irish Government of Northern Ireland's constitutional status as part of the United Kingdom;
- undertaking by the British Government to give effect to a united Ireland if that is the wish of a majority of people in Northern Ireland.

The text of Annex A is currently with Ministers for clearance before handing to the Irish side.

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Democratic institutions in Northern Ireland

This represents perhaps the most substantial area of agreement among the participants.

Of the main issues where disagreement remains:

- the paper assumes legislative, as well as executive, devolution: this is supported by all parties except the UUP and appears not to be a show stopper for them, particularly now with the precedent of the Scottish Parliament;
- safeguards extend beyond proportional allocation of committee seats and application of the ECHR to include a requirement for "cross-community consensus" on key issues and an Equality Commission to monitor a statutory obligation to promote equality of opportunity and parity of esteem. Although the UUP remain formally opposed to other than simple majority voting, some safeguards against pure majority rule are essential if nationalists are to be accept the Assembly. The Equality Commission is part of the Government's proposed response to the Employment Equality Review, on which the Secretary of State has already consulted the Prime Minister with a view to planned publication in the week beginning 9 March;
- a Budget Committee provides for some executive co-ordination: despite the UUP's dislike of any sense of collective responsibility, some collective consideration of executive decisions and priorities is inevitable;
- an Executive Panel, of the most senior Assembly chairs (therefore quite unlike the Frameworks panel) represents the Assembly in dealings with other institutions: some body has to be available to represent the Assembly at Summit level since a single individual would not be acceptable.

Intergovernmental Council

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This closely follows "Propositions" and is designed to give the UUP as much of the political context they desire as possible. In particular, the Council's remit includes the facilitation of bilateral and other contacts which is designed to give enough ambiguity to allow unionists to claim the North/South Ministerial Council is facilitated by the Intergovernmental Council while allowing nationalists to claim the North/South Council is not subordinate to the Intergovernmental Council.

North/South Ministerial Council

It is clear that each side participates within the mandate of, and accountable to, its relevant democratic institutions. All decisions are by agreement.

Within the Council, each side can consult, co-operate and take decisions, the language used in "Propositions" which broadly corresponds to the categories of consultation, harmonisation and executive action in "Frameworks".

It is, in our judgement, essential for nationalists to be able to point to areas designated for co-operation and decision taking on common or joint action from the outset. The suggested list at Annex D uses areas already given to the parties in the current negotiations as examples of potential co-operation.

The question of whether unionists will accept such an initial list - and, even more importantly, at least some implementation bodies established from the outset - is perhaps the single most critical issue in the negotiations. In our judgement, it is a genuine nationalist bottom line to have some all-Ireland implementation body - however modest initially - established at the outset.

Intergovernmental Machinery

This is the successor to the current IGC. But, unlike the current IGC, its remit is not restricted to issues concerning Northern Ireland and covers instead potentially all

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● bilateral issues. That will be welcome to unionists but is likely to be resisted by the Irish Government.

The Conference is given the remit of keeping under review the workings of the new British-Irish Agreement and institutions established under it - this gives nationalists the sense that the two Governments are in some sense the guarantors of the overall settlement but does not give the Conference any right to intervene in decisions of the Assembly, the North/South Ministerial Council etc.

Rights and Safeguards

This builds on existing protections, including the incorporation of the ECHR into UK law. It also, as in "Propositions", offers a Bill of Rights for Northern Ireland supplementing the ECHR focused upon equity of treatment, equality of opportunity, freedom from discrimination and collective rights. A new Human Rights Commission in Northern Ireland would have a statutory locus to initiate or support actions in Court.

A statutory obligation on public bodies in Northern Ireland to promote equality of opportunity in specified areas, backed up by a statutory Equality Commission, is the key proposal of the Government's response to the Employment Equality Review, due for publication in the week beginning 9 March. It enables us to point to a strong response to the "equality agenda".

Building a Peaceful Society

The paper proposes a commitment by all participants to decommissioning during the course of implementation of the overall settlement and within the next year - though, as with decommissioning during the negotiations, we have no sanction to enforce this.

A strategy and indicative timescale for security de-escalation is promised (and may need to be offered as part of the negotiations leading up to the final settlement) but its

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implementation is made subject to professional advice on the level of threat, paramilitary activity and illegal arms holdings.

Policing as an issue must be seen to be addressed in a radical fashion but the parties are far apart and it touches on some very sensitive issues. Both nationalists and unionists seem prepared to accept a review by an Independent Commission guided by an agreed set of principles. Any question of devolution of powers in this area would therefore wait until after the Commission's report.

Prisoners

Essentially a summary of the scheme already put to Ministers with an indication that the Sentence Review Commission could start work, subject to the necessary bill being passed, in June.

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