



# An Chartlann Náisiúnta National Archives

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To: HQ  
For: Secretary Gallagher

From: Belfast  
From: Joint Secretary

**Subj: (a) Referendum campaign; (b) British legislation**

1. We have been reviewing with British colleagues here (a) the preparations being made for the referendum campaign in Northern Ireland; and (b) the British Government's legislative intentions.
2. The current thinking is that, following the return of Parliament next Monday, a statement on the agreement (which was formally laid before Parliament several days ago) will be delivered by either the Prime Minister or the Secretary of State. Although he has been indicating that he is content for the Secretary of State to do this, the general view is that the Prime Minister will ultimately present the agreement to Parliament. If so, he is likely to do so next Wednesday. If the Secretary of State does it, it will be next Monday or Tuesday. In either case, there will be a short debate following the statement.
3. The statement will effectively launch the British Government's campaign in support of the agreement. A point with which Ministers are wrestling in this context is the balance to be struck between the neutrality expected in terms of the exposition of the issues to the electorate and the Government's patent political need to maximise the Yes vote. They are highly conscious of the risk of a legal challenge from Paisley and McCartney, who may seek a judicial review alleging improper use of public funds to achieve a particular outcome in the referendum. They are anxious, accordingly, to conduct the campaign in a manner which promotes a positive result but gives them sufficient protection from such charges.

4. I have had informal sight of a minute to the Prime Minister this week from the Cabinet Secretary, Sir Richard Wilson, in which the latter suggests that the rules of propriety in this area do not prevent Ministers from advocating a Yes vote. Wilson notes, for example, that Ministers campaigned actively for a Yes vote in the Scottish and Welsh referendums and that by 22 May they will have done so in a London referendum as well. The people of Northern Ireland, he suggests, would find it very difficult to understand if the British Government were to abstain altogether from the referendum campaign.
5. Wilson recommends to the Prime Minister, accordingly, that Ministers might go on record at the outset of the campaign with a statement explaining that they will be campaigning as Government Ministers and, as such, will continue to draw upon the support of the Government machine, including the Civil Service, in pursuit of their policy objectives. However, while giving a clear lead in support of a Yes vote, they should leave most of the day-to-day running of the campaign to the NI parties.
6. Wilson advocates that the scale and nature of the support given to Ministers be carefully circumscribed (broadly on the lines of the referendums for Scotland, Wales and now London). He rules out, for example, an intensive media campaign paid for from public funds but sees no difficulty with civil servants producing briefing/speaking notes for Ministers (provided such material does not appear "partisan or unreasonable") or with Ministers using official transport for campaign purposes.
7. I understand that a contrary view is being put forward within the NIO by Joe Pilling, who favours a far more circumspect approach. It is, however, being regarded as a matter for the Prime Minister's political judgement ultimately. The general expectation is that an approach of the kind outlined by Wilson will be reflected in whatever statement is made early next week.
8. The British Government intend to table the following pieces of legislation next Monday:
  - (i) a Referendum Order;
  - (ii) an Order winding up the Forum; and
  - (iii) an Elections Bill.

The first of these is a lengthy instrument setting out the technical arrangements for the organisation of the referendum (as well as the question to be posed). The second speaks for itself.

The third, for which a name has not yet been found (but which may be titled the NI Interim Provisions Bill, partly to avoid causing upset in certain quarters if the word "Assembly" is used), will set out plans for the Assembly elections and give an outline of the arrangements envisaged for the Assembly's "shadow" phase.

The intention is to introduce all three instruments on Monday, to give them their first reading on Tuesday and their second reading on Wednesday (with a three-hour debate) and to clear all remaining Commons stages by the end of Wednesday.

9. The Elections Bill will confer three basic powers on the Secretary of State in relation to the Assembly's "shadow" period.

First, she will lay down interim standing orders for the Assembly, including provision for the Executive-in-waiting. Second, she will be able to refer certain matters to the "shadow" Assembly for attention. These will include the points indicated in paras 7-10 of the agreement and an invitation to the "shadow" Assembly to begin work on its own substantive standing orders and work practices. A possible additional point would be preliminary work on a budget for the Assembly's first year of operation. Third, she will be empowered to name a presiding officer for the Assembly, to launch the proceedings on its first day.

A subordinate Order under the Bill covering various technical arrangements for the elections will be processed later on - in time for the elections but not necessarily before the referendum.

10. Assuming that these three pieces of legislation clear the Commons in one day, the next stage will be consideration in the Lords, probably in the following week. One of the reasons for grouping them together and seeking their earliest possible clearance through Parliament is to free up Northern Ireland MPs for the work of selling the agreement on the ground in Northern Ireland.
11. The main Bill to implement the agreement on the British side will be brought forward

as quickly as possible, and ideally before the Parliamentary recess (end of July).

12. A complication relating to this Bill - for which the working title at present is the "Settlement Bill" - is that Parliamentary time is also required between now and the summer for a new Prisons Bill to put into effect the understandings reached in the talks process on revised arrangements for prisoner releases. This will be a contentious and time-consuming matter and the feeling at present is that it may be best to proceed with this ahead of the Settlement Bill.
13. Various scenarios for the handling of the latter, which will be a major piece of legislation (up to 50 clauses), are under consideration.

It could be delayed until the next Parliament (after the Queen's Speech in November), but there are worries that (a) this could jeopardise the February 1999 deadline for the entry of all the new institutions into force; and (b) an Assembly sitting around idly until the end of the year could be a recipe for trouble.

One possibility would be to try to take the Bill entirely within the present Parliament by introducing it just before the summer recess, taking it a certain distance and completing the job in the "overspill" period at the end of the current session (second half of October). Another would be to use a newly introduced carry-over procedure which would allow a Bill to be introduced in one Parliament but to be brought to completion in the next.

Through whatever means chosen, the British Government are determined to get the Bill through by next Christmas.

14. As for the content of the Bill, it will include the following elements:

- The promised British constitutional amendments;
- Full legal/technical provisions for the Assembly (eg, salaries and pensions for Assembly members);
- Legislative powers for the Assembly;

- Allocation of executive powers to Assembly;
  - In relation to the North/South Ministerial Council and the implementation bodies, enabling provisions to permit the Assembly to have negotiations and reach agreements on transferred matters through the Council and to confer functions on the implementation bodies;
  - In relation to human rights, provisions to establish the Human Rights Commission and the Equality Commission; to enable Assembly legislation and subordinate legislation to be struck down if found to be inconsistent with the ECHR; to retain the existing anti-discrimination measures set out in the NI Constitution Act 1973; and to impose a duty on public authorities to promote equality (with a number of other measures in this area being handled through Orders in Council);
  - Lifting of the "Mallon disqualification" (ie, joint membership of the Seanad and the Assembly to be permitted);
  - A number of miscellaneous aspects (such as placing a duty on DENI to promote the use of the Irish language).
15. As regards the Strand Three arrangements, the British are reflecting on what may need to be provided for in the Settlement Bill. As of now, however, they are inclined to the view that this may amount to relatively little - such as a provision to permit Assembly members to attend meetings of the future IGC.
16. We will keep you posted on British plans under these various headings. They will, of course, be among the subjects for discussion at the meeting of the Liaison Group tentatively envisaged for later next week.