



NORTHERN IRELAND CONSTITUTIONAL PROPOSALS

*Presented to Parliament by
the Secretary of State for Northern Ireland
by Command of Her Majesty
March 1973*

LONDON
HER MAJESTY'S STATIONERY OFFICE

24p net

Cmnd. 5259

CONTENTS

1083

	<i>Paragraphs</i>	<i>Page</i>
PART 1—THE SEARCH FOR CONSENSUS		
The Paper for Discussion	1	1
Developments since publication of the Paper for Discussion	3	2
PART 2—CONDITIONS FOR A SETTLEMENT		
Essential conditions	11	5
The problem of violence	17	6
Education	20	7
Economic problems	22	8
Social problems	26	8
PART 3—THE CONSTITUTIONAL PROPOSALS		
Renewal of Temporary Provisions	30	9
Northern Ireland Bill	31	9
United Kingdom status of Northern Ireland	32	9
Devolution of powers to Northern Ireland institutions	34	9
A Northern Ireland Assembly	35	10
Committees of the Assembly	44	11
Northern Ireland Commission	47	12
Secretary of State for Northern Ireland ..	48	12
Conditions for devolution of powers ..	51	13
Formation of the Executive	52	13
Legislative powers	54	14
Legislation to deal with violence and sub- version	58	15
Restraints upon devolved legislative powers	63	16
Executive powers	65	16
Law and order	69	18
Transferred executive powers	71	18
Appointment of Heads of Departments ..	72	19
The Civil Service of Northern Ireland ..	76	19
Restraints upon devolved executive powers	77	20
Replacement of existing institutions and constitutional provisions	78	20
Links with the Crown	81	20
Northern Ireland Privy Council	82	20
Financial arrangements	83	21
PART 4—A CHARTER OF HUMAN RIGHTS		
The requirement	91	24
Protection of human rights	95	25
The acceptance of obligations	105	27
PART 5—RELATIONS WITH THE REPUBLIC OF IRELAND ..		
	106	29
PART 6—SUMMARY AND CONCLUSION		
Summary of proposals	116	31
Conclusion	117	34

THE SEARCH FOR CONSENSUS

The Paper for Discussion

1. In October 1972 the Government published "The Future of Northern Ireland: A Paper for Discussion". This Paper reviewed the background, set out the proposals made up to that time by the Northern Ireland parties and other interests, together with the wide range of theoretical options, established the basic facts—political, economic and security—which would have to be taken into account in moving towards a settlement, and stated the criteria which firm proposals for the future must meet.

2. These fundamental criteria were set out in paragraph 79 of the Paper as follows:

- “(a) In accordance with the specific pledges given by successive United Kingdom Governments, Northern Ireland must and will remain part of the United Kingdom for as long as that is the wish of a majority of the people; but that status does not preclude the necessary taking into account of what has been described in this Paper as the ‘Irish Dimension’.
- (b) As long as Northern Ireland remains part of the United Kingdom the sovereignty of the United Kingdom Parliament must be acknowledged, and due provision made for the United Kingdom Government to have an effective and continuing voice in Northern Ireland’s affairs, commensurate with the commitment of financial, economic and military resources in the Province.
- (c) Any division of powers and responsibilities between the national and the regional authorities must be logical, open and clearly understood. Ambiguity in the relationship is a prescription for confusion and misunderstanding. Any necessary checks, balances or controls must be apparent on the face of a new constitutional scheme.
- (d) The two primary purposes of any new institutions must be first to seek a much wider consensus than has hitherto existed; and second to be such as will work efficiently and will be capable of providing the concrete results of good government: peace and order, physical development, social and economic progress. This is fundamental because Northern Ireland’s problems flow not just from a clash of national aspirations or from friction between the communities, but also from social and economic conditions such as inadequate housing and unemployment.
- (e) Any new institutions must be of a simple and businesslike character, appropriate to the powers and functions of a regional authority.
- (f) A Northern Ireland assembly or authority must be capable of involving all its members constructively in ways which satisfy them and those they represent that the whole community has a part to play in the government of the Province. As a minimum this would involve assuring minority groups of an effective voice and a real influence; but there are strong arguments that the objective of real participation should be achieved by

giving minority interests a share in the exercise of executive power if this can be achieved by means which are not unduly complex or artificial, and which do not represent an obstacle to effective government.

- (g) There must be an assurance, built into any new structures, that there will be absolute fairness and equality of opportunity for all. The future administration of Northern Ireland must be seen to be completely even-handed both in law and in fact.
- (h) It is of great importance that future arrangements for security and public order in Northern Ireland must command public confidence, both in Northern Ireland itself, and in the United Kingdom as a whole. If they are to do so they must be seen in practice to be as impartial and effective as possible in restoring and maintaining peace and public order. In any situation such as that which obtains at present, where the Army and the civilian police force are both involved in maintaining law and order and combatting terrorism, it is essential that there should be a single source of direct responsibility. Since Westminster alone can control the Armed Forces of the Crown this unified control must mean Westminster control. For the future any arrangements must ensure that the United Kingdom Government has an effective and a determining voice in relation to any circumstances which involve, or may involve in the future, the commitment of the Armed Forces, the use of emergency powers, or repercussions at international level."

Developments since publication of the Paper for Discussion

3. Exceptional measures were taken to ensure that the Paper for Discussion would be as widely circulated and read as possible, particularly within Northern Ireland itself. In all 12,650 copies had been sold there, through H.M. Stationery Office and other Government offices, by 31 January 1973 and in addition 200,000 leaflets based on the Paper had been distributed, and a tabloid summary circulated with newspapers is estimated to have reached 1,209,000 readers.

4. There were full parliamentary debates, in the House of Commons on 13 November 1972 and in the House of Lords on 5 December 1972. Following these debates the Secretary of State for Northern Ireland has had extensive discussion on the basis of the Paper with political parties, leaders of the Churches, and other bodies and individuals in Northern Ireland. Although a very wide range of views was expressed, there was a considerable measure of agreement, not only within Northern Ireland but in the rest of the United Kingdom, in the Irish Republic and in overseas countries that the Paper for Discussion provided a thorough, fair and objective basis for considering the very complex problems of Northern Ireland.

5. The extensive consultations which both preceded and followed the publication of the Paper for Discussion have not produced any single, agreed set of proposals for a constitutional settlement. Indeed, given the wide range of views and the complexity of the issues, it would have been surprising if they had. Many significant differences of opinion remain. Nevertheless, the consultations have been useful, indeed essential, in throwing up very significant areas of agreement:

- (a) Whatever their views on sovereignty and citizenship, most of those con-

1087

sulted (although not all) have favoured the restoration of some kind of devolved institutions of government in Northern Ireland.

- (b) There has been a wide area of agreement that the central feature of these institutions should be a single-chamber elected legislative assembly of 80-100 members.
- (c) There has also been a broad measure of agreement that a significant role within such an assembly should be allocated to a structure of powerful committees (although the specific proposals for such a structure show considerable variations).
- (d) There has been general agreement that a new settlement should in some way or other make provision for the protection of fundamental human rights and freedoms.
- (e) Almost all the parties are prepared to accept new institutional arrangements for consultation and co-operation on an all-Ireland basis, although some make their agreement conditional or limited.

None of these courses is in any way inconsistent with United Kingdom policies or interests.

6. These consultations have shown that there are important aspects of a new constitutional settlement which can be based directly upon the views and the proposals of Northern Ireland parties and interests.

7. There have been a number of other significant developments since the publication of the Paper for Discussion. First, on 1 January 1973 the United Kingdom and the Republic of Ireland both became member countries of the European Economic Community, a development which is bound to have an ever-increasing impact upon the lives of all who live in these islands.

8. Second, the then Government of the Republic of Ireland introduced, and the Oireachtas carried into law, new legislation designed to cope with terrorist activity, and the authorities of the Republic have subsequently brought before the courts under these new powers some of those persons involved in the organisation and direction of IRA terrorism throughout Ireland.

9. Third, the Government has accepted in principle the report of Lord Diplock's Commission (Cmnd. 5185), recommending various changes in the arrangements for the administration of justice in Northern Ireland so as to make it possible to bring before the courts more of those engaged in terrorist activities in Northern Ireland, while pointing out that in some cases there is no substitute for procedures such as those prescribed by the Detention of Terrorists Order 1972.

10. Finally, on 8 March 1973, a poll was held throughout Northern Ireland, in accordance with the Northern Ireland (Border Poll) Act 1972. The result,

declared on 1 March 1973, was that 591,820 electors voted in favour of the first proposition

“Do you want Northern Ireland to remain part of the United Kingdom?”

while 6,463 electors voted in favour of the second proposition

“Do you want Northern Ireland to be joined with the Republic of Ireland, outside the United Kingdom?”

CONDITIONS FOR A SETTLEMENT

Essential conditions

11. Successive United Kingdom Governments have affirmed that Northern Ireland will continue to be part of the United Kingdom unless and until its people decide otherwise, and a majority of the people in Northern Ireland have voted in favour of the present status of Northern Ireland as part of the United Kingdom. It is the responsibility of the United Kingdom Parliament to determine how Northern Ireland shall be governed as a part of the United Kingdom.

12. There is a three-fold pattern of obligations:

- (a) The United Kingdom as a whole has an obligation to those of its citizens who live in Northern Ireland to afford them the fullest protection of the rule of law; to secure their fundamental rights and freedoms; and to work towards the realisation for them of United Kingdom standards of living, employment and social conditions.
- (b) Those who live in Northern Ireland as part of the United Kingdom have an obligation to respect the decisions of the Crown in Parliament and to play their part in creating and in upholding an equitable political settlement.
- (c) Those who wish to see the achievement of Irish unity, which can only be on a basis of consent, have an obligation to accept that such consent does not at present exist, and—without prejudice to their aspirations—to assist in the achievement on a constitutional basis of peace, equality and prosperity.

13. Any significant advance towards a settlement in Northern Ireland at this stage must be consistent with this pattern of obligations. In deciding what the shape of a settlement should be, the United Kingdom Government has refrained from seeking to impose on Northern Ireland a rigidly defined and detailed scheme for its future which could not be done at the present time without assumptions about the wishes of its people. This approach requires that no interest in Northern Ireland should refuse constructive co-operation in working out the details of such a scheme. The United Kingdom Government for its part must have regard to the interests of all the peoples in the United Kingdom including the communities in Northern Ireland. All these interests must be brought as nearly as possible into a state of reconciliation. The true interests of the whole community in Northern Ireland require that the majority should not fail in fairness and generosity towards all their fellow citizens and that the minority should play a truly constructive part which it is the United Kingdom Government's firm determination should be made available to them.

14. The need for movement towards a settlement cannot be divorced from wider considerations. At a time when new opportunities and new challenges are posed by membership of the European Economic Community, no area—let alone an area with special economic and social problems—can afford to be handicapped by continuing strife and instability. The results of failure would not

be confined to Northern Ireland. The heavy burden upon the whole United Kingdom is self-evident; and Northern Ireland and the Republic of Ireland have an obvious common interest in finding a basis for their relationship that will encourage the democratic forces in the whole island. Terrorism is a danger to them both.

15. In determining the broad nature of a settlement, it has to be constantly borne in mind that the situation in Northern Ireland is complex. Constitutional proposals clearly have a significant part to play in the restoration of stability, because the institutions of government touch at one point or another the lives of all the people, and condition wider attitudes towards authority. Moreover, in Northern Ireland the clash of national aspirations heightens interest in, and concern about, the machinery of government. Yet the problems extend in one way or another into countless aspects of the life of the community—into patterns of education, housing and employment; into general social attitudes and responses; into history and culture and tradition. Thus, the solution to “the Northern Ireland problem” is not to be found in any set of political proposals or institutions alone. However skilfully and fairly framed, these can do no more than provide opportunities which the people of Northern Ireland themselves may take or fail to take; and even with the utmost goodwill, the patterns of generations cannot be changed overnight.

16. It would be impossible to devise a prescription for all the problems of Northern Ireland during a twelve-month period of direct rule. Many of the steps which remain to be taken will be for new Northern Ireland institutions, and many more will be outside the field of government altogether. There cannot be a “governmental settlement”, only a “community settlement”; and its full achievement will be a matter of years. What can be done is to make a good start; to set off in the right direction.

The problem of violence

17. There has been, and remains, no more urgent or compelling task than to bring the present state of violence to an end. Much progress has been made in combatting the IRA terrorist campaign, and, at the same time, the activities of Protestant extremists, both by the normal processes of the criminal law and by the provisions of the Detention of Terrorists Order. The Army will remain for so long and in such strength as the situation requires, but it is vitally important to strengthen the police and to improve their numbers, equipment and training. The progress which has already been made is shown by the increasing number of arrests and convictions. In addition, continued and effective action against the terrorists has been, and will be, sought from the Government of the Republic of Ireland.

18. But law and order cannot be restored merely by the action of the security forces. In the United Kingdom, the maintenance of the peace is a responsibility which rests not upon Government alone but upon every citizen. The role of the police is traditionally to assist the community; but they can only do so if the community itself accepts responsibility for upholding the law and, at the same time, gives its full co-operation to the police. Where an absence of public co-operation makes police work difficult or impossible, countless evils flourish.

11091

The great majority of the people neither like these developments nor do they say in relation to them, but fear and intimidation cause the communities to consolidate themselves. The ignorance, suspicion, fear and even hatred of the "other side" is, among many in some areas, intense; and those who wish to see mutual tolerance are prevented by intimidation from making their views known. Inroads can only be made into this situation of chronic mistrust and suspicion by a restoration of law and order and this is a central problem which must be, and will be, solved.

19. Under the scheme of devolution proposed in this White Paper, responsibility for the security of Northern Ireland in the existing circumstances will continue to rest with the United Kingdom Government. Because this White Paper is principally concerned with the future arrangements for government in Northern Ireland, this is not the place to develop in detail the means by which the pressing law and order problems will continue to be tackled. But the people of Northern Ireland, and indeed of the United Kingdom as a whole, can rest assured that there is no purpose to which the Government is more firmly committed than the restoration of the rule of law in Northern Ireland, and whatever means are necessary to that end will be made available.

Education

20. The re-creation of inter-communal confidence is bound to be a long and slow affair. There is no single means by which it can be accomplished. But the Government is convinced that, if the tragic events of recent times are not to recur, means must be found to create a greater sense of community in the minds of the rising generation. One of the obvious factors in the situation is the high degree of educational segregation. This is not of itself in any way peculiar to Northern Ireland. The importance which, in the United Kingdom and in many other countries, certain of the Churches place upon their own school systems stems from deep conviction about the need for an underlying religious basis to all teaching. While, in Northern Ireland, it is the Roman Catholic Church which maintains a separate system, it is by no means to be assumed that, in practice, all Protestant parents would be happy to see a completely integrated school system, involving as it would the teaching of Protestant children by Roman Catholic teachers, some of them members of religious orders. To make the educational system itself the scapegoat for all the ills of Northern Ireland would obscure problems whose origins are of a much more complex character.

21. There are, however, some encouraging indications of a new consciousness of the need to promote real and continuing points of contact and mutual interest between all the children of Northern Ireland. It is significant that the five new Education Area Boards include representatives of "maintained" (largely Roman Catholic) schools as well as "transferred" (largely Protestant) schools as full members of these education authorities, together with representatives of other interests including the teaching profession drawn from all sections of the community. It will be a vital task of government in the future to facilitate, to encourage and to promote these points of contact. Unless, in the future, a greater sense of community can be fostered amongst the young people of Northern Ireland, it is difficult to see how this mutual distrust can be broken down.

Economic problems

22. With its comparative remoteness from its principal markets, its lack of raw materials (except in agriculture) and its considerable concentration of employment in industries which have had special difficulties, Northern Ireland has had to make immense efforts to maintain its employment position, let alone to improve it. A skilfully and vigorously conducted programme of industrial development, relying heavily on external investment, has achieved a marked diversification of the industrial base, a steady rise in productivity, and real increases in living standards. By these standards Northern Ireland has some substantial economic achievements to its credit.

23. In comparative terms, however, Northern Ireland has remained the poorest region of the United Kingdom, with the highest levels of unemployment. Moreover, within Northern Ireland itself there have been areas of much higher unemployment, both within Belfast and in provincial towns. This has clearly been a factor in the violence and instability of recent years.

24. Thus, the problem has been both to raise the level of economic activity overall, and to ensure its more even distribution over the community, to the extent that this is compatible with the physical, economic and industrial realities.

25. It is the policy of the United Kingdom Government to work within the European Economic Community for the development of effective regional policies, conducted both by national governments and by Community institutions. These policies will provide the broad economic framework within which the special problems of Northern Ireland will be tackled by the United Kingdom Government and the institutions of Northern Ireland working and planning together.

Social problems

26. In many respects Northern Ireland is most fortunate: its relatively unspoiled countryside and its uncluttered roads should again be an attractive regional and national asset once stability has been restored. But there is much thoroughly inadequate housing which must be replaced, and in Belfast and certain other places there is a serious lack of amenities.

27. Northern Ireland is by no means unique in this respect, either in the United Kingdom or elsewhere. In any part of the world an inadequate social environment breeds boredom, aimlessness, alienation from society, vandalism and even violence. In Northern Ireland all these evils may be compounded by high unemployment and deep political resentments. The need is to create a positive community life in such areas; to do everything possible to provide other outlets than violence for the energies of the people; to demonstrate that authority can be a helpful as well as a coercive influence on their lives.

28. These then are the fundamental problems in Northern Ireland. It is against this background that the Government's constitutional proposals must be considered.

THE CONSTITUTIONAL PROPOSALS

29. This Part sets out the proposals which the Government will bring before Parliament at an early date.

Renewal of Temporary Provisions

30. The Government's proposals will involve the presentation to Parliament of a comprehensive new constitutional Bill for the government of Northern Ireland, to replace the arrangements temporarily set aside by direct rule, which were based mainly upon the Government of Ireland Act 1920. The Government is seeking the approval of Parliament for the extension of the provisions of the Northern Ireland (Temporary Provisions) Act 1972 for a further period of one year from its expiry date at the end of March, but the subsequent constitutional Bill will provide that new permanent arrangements may be brought into operation, and the Temporary Provisions superseded, and it is the intention that this should be done as soon as possible.

Northern Ireland Bill

31. Consistent with thorough scrutiny, the Government will seek the assistance of members of both Houses in devising a programme to pass the Bill into law without undue delay so as to allow elections to an Assembly to be held as soon as possible. Paragraphs (32) to (89) below describe the main provisions which it is intended should be contained in the Bill.

United Kingdom status of Northern Ireland

32. Because the Bill will provide for the replacement of the Parliament of Northern Ireland by new institutions, the declaratory provision relating to Northern Ireland's constitutional status incorporated in Section 1(2) of the Ireland Act 1949, to the effect that in no event will Northern Ireland or any part thereof cease to be part of the United Kingdom without the consent of the Parliament of Northern Ireland, will need to be replaced. Successive United Kingdom Governments have assured the people of Northern Ireland that there will be no change in the basic constitutional status of the Province as part of the United Kingdom without their consent, and accordingly other means must be found to give expression to that commitment. The Bill will, therefore, include a statutory declaration that Northern Ireland remains part of the United Kingdom, and will not cease to be part of the United Kingdom without the consent of the people of Northern Ireland.

33. Northern Ireland will maintain its existing representation, that is 12 Members, in the United Kingdom House of Commons.

Devolution of powers to Northern Ireland institutions

34. The process of devolution will involve the following stages:

- (a) election of a new Northern Ireland Assembly;
- (b) development by that Assembly of its own rules and procedures in accordance with broad provisions laid down in the Bill;

- (c) discussion between representatives of the Assembly and the Secretary of State to arrive at an acceptable basis for the formation of an Executive and the devolution of powers; followed by
- (d) devolution of extensive powers to the new Assembly and Executive, and termination of the present direct rule arrangements.

A Northern Ireland Assembly

35. The first necessary step is to create a representative forum of Northern Ireland opinion. The Parliament of Northern Ireland elected in February 1969 and prorogued in March 1972 can no longer be regarded with confidence as such a forum. The significant developments since 1969, both in the general situation and in the structure and organisation of parties, have totally changed the political scene. The need for new elections is widely acknowledged throughout the Northern Ireland community.

36. It has been argued that such elections should be to a purely consultative Assembly, with which the Secretary of State for Northern Ireland should undertake a further round of consultations before any specific constitutional proposals are formulated. But Northern Ireland has been the focus of speculation and uncertainty for a prolonged period already, and there can be little doubt that as long as such uncertainty continues to exist, it will be exploited by those who seek to prey upon the fears of the communities.

37. For this reason the Government has decided not to propose a consultative Assembly. It is nevertheless desirable to associate the elected representatives of the people of Northern Ireland with the detailed working-out of those new structures which they will subsequently operate. The legislative and other procedures to be used in an Assembly, to take but one example, would best be formulated in detail by its own members; and, more generally, there are the strongest arguments for genuine local involvement, within a framework which effectively safeguards vital principles.

38. Most of the Northern Ireland parties have argued for a single-chamber legislature and, taking this into account, together with the new responsibilities falling upon central government under the "Macrory" reorganisation and the desirability of operating a highly developed system of committees, have recommended a membership of about 80-100. The Government agrees with this view as to size, but such an increase in membership over the 52 seats of the Northern Ireland House of Commons involves either drawing a new pattern of constituencies or adopting a multi-member system tied to an existing pattern of electoral boundaries.

39. Any process of establishing a new pattern of single-member constituencies could not properly begin until Parliament had enacted the constitutional Bill. Under the simple majority vote system using single-member constituencies, the drawing of demonstrably fair electoral boundaries is of such crucial importance that it could only be done by an impartial Boundary Commission procedure, with provision for representations, hearings, etc. This would rule out any elections this year. These are technical difficulties. But there are arguments against this

1095

system at present even if it could be introduced in time. If the Assembly is to play a significant part in working out new structures and procedures, it is of particular importance that its membership should reflect the wishes of the community as accurately as possible. It has been decided that there shall be an Assembly of about 80 members, and that the system of election best suited to this occasion is the single transferable vote (STV) method of proportional representation, applied to the 12 Westminster constituencies. Members will be paid a salary of £2,500 p.a. together with a secretarial allowance of £600 p.a.

40. Elections to the Assembly will be held as soon as possible on a date to be prescribed by Order by the Secretary of State for Northern Ireland.

41. The initial term of the Assembly will be for the period from the first day of its meeting up to and including 30 March, 1974; but if an Order-in-Council has been made between those dates for the devolution of legislative powers, it will serve for a period of four years from the date on which the Order takes effect. The four-year rule will also apply to future Assemblies.

42. It will be for the Assembly to elect its presiding officer and to prepare Standing Orders for the regulation of its own business, including the procedures to apply to the conduct of its legislative business when legislative powers are devolved to it.

43. The Government believes it to be right that the Assembly itself should work out its own detailed methods and procedures, subject to the minimum necessary statutory provision, to permit, for example, both general debate with an opportunity to vote on the general principle of legislative proposals, and detailed consideration and scrutiny, with an opportunity to vote on the specific detail of these proposals.

Committees of the Assembly

44. The new scheme for the legislature must be designed to create a strong link between the Assembly and the Executive, to involve majority and minority interests alike in constructive work and to provide for the active participation of all members. It is envisaged that a member of the Assembly will act as the Head of each Department of Northern Ireland and that those Heads collectively will form the Executive (see paragraph 73). The responsibility of such Heads will be to administer their Departments within the framework of existing law and policy. But provision will also be made for the Head of each Department to be chairman of a functional committee, with a membership reflecting, as far as possible, the balance of the parties in the Assembly. He will be required, when proposing new legislation or policy, to bring the members of his committee into the fullest consultation. Provision will be made for a "pre-legislation" stage so that detailed proposals for new law will be considered by a committee before presentation to the Assembly as a whole. The objective of the new committee structure will be to associate members of the Assembly with the development of policy, as well as with the review of departmental activities.

45. There will be no obligation upon the Assembly to follow either the procedures used at Westminster or those hitherto used at Stormont. Indeed, it would be desirable that they should adopt much simpler and less formal procedures and methods which will also need to take account of the fact that the new Assembly will be unicameral.

46. While the Assembly is undertaking these initial tasks, the Secretary of State for Northern Ireland will continue to be responsible for all those matters which, before 30 March 1972, were the concern of the Government of Northern Ireland, and laws previously within the field of competence of the Northern Ireland Parliament which are essential during this period will continue to be made as appropriate by Westminster Act or by Order-in-Council subject to parliamentary approval at Westminster.

Northern Ireland Commission

47. It would be anomalous that, after the people of Northern Ireland have elected an Assembly to represent them, but before powers have been devolved, the Secretary of State should continue to be advised, in relation to Northern Ireland legislation and generally, by a Commission detached from the Assembly. Those who have served on the Northern Ireland Commission since direct rule was introduced have made a signal contribution to the life of the community; but during this interim period, and so as to assist an easy transition, the Secretary of State will ask the present members to make way for representatives from the Assembly.

Secretary of State for Northern Ireland

48. There will continue to be a Secretary of State for Northern Ireland who will be a member of the United Kingdom Cabinet. His role will naturally be different from what it has been under direct rule during which the Secretary of State has had executive responsibility for the full range of public services. He must, however, continue to have charge of a Department, with offices both in London and in Northern Ireland, so organised as to discharge his responsibilities both to Parliament and to Northern Ireland itself.

49. It is of the greatest importance, in a situation where wide powers are to be devolved upon Northern Ireland institutions and others reserved to Parliament and the United Kingdom Government, that the two sets of authorities should not work in separate compartments or to conflicting objectives. The best interests of the people of Northern Ireland will only be served if, from the start, their duties are regarded as complementary in character.

50. Accordingly, the Secretary of State will have the following main areas of responsibility in relation to Northern Ireland:

- (a) he will undertake the necessary consultations with the elected representatives of Northern Ireland to determine how an acceptable basis for the devolution of powers may speedily be achieved.
- (b) thereafter, he will exercise direct ministerial responsibility in relation to certain reserved services administered either by his own Department or, where appropriate, by Northern Ireland Departments acting as his agents.

1097

(c) he will represent Northern Ireland's interests in the United Kingdom Government, both generally and in relation to the allocation of financial resources to Northern Ireland.

Conditions for devolution of powers

51. As soon as the Assembly has been elected, the Secretary of State will discuss with representatives of the parties how devolution on a basis of government by consent may take place. Hitherto, the executive dispositions in Northern Ireland have been made by the Governor under the Act of 1920 and in accordance with the current British constitutional conventions. But those conventions have been applied to Northern Ireland in a situation where:

- (a) the same party has been the majority party after each General Election; and
- (b) that party has never returned to Parliament in the course of half a century a member from the minority community which comprises more than a third of the population.

It is from this situation that there flows the problem, as described in the Paper for Discussion, of "binding the minority to the support of new political arrangements in Northern Ireland".

Formation of the Executive

52. There is no future for devolved institutions of government in Northern Ireland unless majority and minority alike can be so bound. This is not to say that any "right of veto" can be conceded to violent, subversive or unconstructive elements determined, if they can, to undermine any new system from the outset. But the Government does not believe that this is the wish of the overwhelming majority in either community. What has to be found—through their representatives—is a system of exercising executive power in Northern Ireland which is broadly acceptable to them. One important means of ensuring this will be more effective participation by the Assembly as a whole, through its structure of committees, in the development of policy; but it is the view of the Government that the Executive itself can no longer be solely based upon any single party, if that party draws its support and its elected representation virtually entirely from only one section of a divided community. The Executive must be composed of persons who are prepared to work together by peaceful means for the benefit of the community. Members of the Executive will be required to take an appropriate form of official oath or make an affirmation on taking up their appointment.

53. It is this central issue which, after the election of the Assembly, the Secretary of State will urgently discuss with its elected leaders. The objective of the discussions will be to seek an agreed understanding which the United Kingdom Government can with confidence recommend to Parliament as a fair and viable basis for the devolution of power. When the Government is satisfied:

- (a) that the procedures of the Assembly and the proposed method of exercising executive powers will, taken together, be a reasonable basis for the establishment of government by consent (that is to say, with substantially wider support from the community as a whole than would necessarily be indicated by a simple majority in the Assembly);

(b) in particular, that executive powers will not be concentrated in elected representatives from one community only; and

(c) that any proposed arrangements will represent not just a theoretical framework for fair and acceptable government, but a system which can and will be worked effectively by those concerned,

it will seek the approval of Parliament for the devolution by subordinate instrument of extensive law-making powers to the Assembly, and for a broadly corresponding devolution of executive powers to a Northern Ireland Executive, which will be constituted in accordance with the arrangements that have been agreed.

Legislative powers

54. Whatever powers to legislate may be devolved upon a regional law-making authority in Northern Ireland, it must and will be made clear that such devolution does not diminish in any way the right of the United Kingdom Parliament to legislate for Northern Ireland, as for any other part of the United Kingdom, in relation to any matter whatever. In practice, it is to be expected that, in the context of an acceptable and smooth-running scheme of devolution, Parliament would legislate for Northern Ireland within the field of wholly devolved powers only in the most rare and exceptional circumstances or at the request of the Northern Ireland Executive; but there can be no room for ambiguity about the right to do so.

55. In considering the scheme for the devolution of law-making powers, full advantage can be taken of the experience gained in operating the Act of 1920. In order to keep the 1920 constitution operating in the face of changing circumstances, numerous constitutional amendments, enablements and savings had to be made. Difficult questions arose about the constitutional competence of the Northern Ireland Parliament to legislate, which had to be determined by the courts. Artificial drafting contrivances had to be used to prevent a specific "invasion" by Westminster of a field transferred to Stormont from debarring any future Stormont legislation in that field. What is required for the future is a more flexible scheme which will allow Northern Ireland measures, subject to appropriate ministerial and—in suitable cases—parliamentary scrutiny, to have, when finally approved, the same force as an Act of Parliament, and a like freedom from questioning, as distinct from interpretation, by the courts (save in the special case of measures alleged to be of a discriminatory character).

56. The scheme which is now proposed will have the following features:

(a) "*Excepted*" matters (i.e. those in respect of the substance of which the Assembly may not in any circumstances legislate).

Within this category will be various matters of national importance inappropriate for consideration other than by Parliament, e.g. the Crown, foreign affairs, the Armed Forces and honours and titles. These were outside the competence of the Northern Ireland Parliament. To this category will be added a further list of matters in respect of which the Northern Ireland Parliament had some degree of legislative power but which are now considered appropriate for permanent exclusion from the Assembly's law-making powers. These will include certain powers of taxation, special powers of the kind hitherto taken under the Civil

Authorities (Special Powers) Acts, prosecutions, elections and the franchise and the appointment of magistrates and judges.

- (b) "*Reserved*" matters (i.e. those excluded for the present from the normal legislative competence of the Assembly but in respect of which the Assembly may exceptionally legislate with the agreement of the United Kingdom Government).

Within this category will be certain matters within the field of law and order, including the criminal law, the courts, penal institutions and the establishment and organisation of the police.

- (c) "*Transferred*" matters (i.e. all other matters not covered in categories (a) and (b) above and in respect of which the Assembly will have unrestricted competence to legislate).

57. All measures passed by the Assembly will have the force of law when approved by the Queen in Council and the channel for submission to the Privy Council will be the Secretary of State. If he is of the opinion that any measure either deals substantially with a "reserved" matter, or touches incidentally on an "excepted" matter, he will cause it to be laid before Parliament together with his recommendations relating to it, so that an opportunity will be offered for the will of Parliament to be made known. If, however, he is of the opinion that the measure relates solely to a "transferred" matter and does not run contrary to statutory restraints, e.g. on legislation of a discriminatory nature (see paragraph 63), he will cause it to be submitted directly to the Privy Council.

Legislation to deal with violence and subversion

58. Following the publication of the Report of the Diplock Commission (Cmnd. 5185), which conclusively showed how terrorism strikes at the root of the fundamental freedom to live in peace and, by fear and intimidation, impedes the ordinary machinery of justice in dealing effectively with it, the Government believes it has a responsibility to bring before Parliament necessary provisions for the more effective combatting of terror and violence. Parliament will be asked to approve legislation for that purpose.

59. This legislation will give effect to the recommendations of the Diplock Commission for improving the administration of justice at times when it is put under strain by the effects of terrorism. The provisions will have effect only when Parliament agrees that they are necessary because of circumstances in Northern Ireland.

60. The Bill will also contain proposals based on the results of the Government's review of the Special Powers Act. That Act and the Regulations made under it were created at varying times to deal with problems then current. They are open to the criticism, above all, that, in spite of their far-reaching character, no provision has existed for their regular review to see whether they remained justified by the special needs of the situation. The Bill will propose the repeal of the Special Powers Act and the re-enactment into law only of strictly necessary provisions which, like those provisions implementing the Diplock report, will be operative only during an emergency and with the approval of Parliament.

61. The procedures for detention are at present contained in the Detention of Terrorists (Northern Ireland) Order 1972, which was introduced as an interim

measure pending the Report of the Diplock Commission. That Report made it clear that so long as intimidation continued some such form of detention would be necessary. The new Bill described above will, therefore, make provision for detention, as at present laid down in the Order, but, like the other provisions in the Bill, it will remain operative only while Parliament is satisfied that the situation in Northern Ireland requires it.

62. All the provisions in the Bill will apply only to Northern Ireland, since they arise entirely out of the special needs of the situation there.

Restraints upon devolved legislative powers

63. The constitutional Bill will include a general provision to the effect that, in the exercise of any responsibilities devolved upon it, the Northern Ireland Assembly shall not have power to make any law of a discriminatory character. This is one component of a complex of proposals designed to afford protections and safeguards amounting to a charter of human rights. This subject is comprehensively discussed in Part 4.

64. The Bill will also provide that, in the exercise of powers devolved upon it, the Assembly may not impose upon any member of an appointed body, or upon any person paid out of public funds in Northern Ireland, as a condition of his appointment, service or employment, any requirement to make any form of oath or declaration save when such an oath or declaration is required in comparable circumstances in the rest of the United Kingdom. In the meantime, a draft Order-in-Council under the Northern Ireland (Temporary Provisions) Act 1972 will be prepared, amending existing Northern Ireland legislation so as to bring it in this respect into line with that in the rest of the United Kingdom; in particular, it will remove, in time for the forthcoming local government elections, the requirement for a statutory declaration of allegiance to be made by a Councillor on acceptance of office.

Executive powers

65. As already described, the scheme of legislative powers will be of a flexible character. It is, however, not possible to provide for the same degree of flexibility in the exercise of executive powers, since it must be clear beyond doubt precisely where ministerial responsibility lies in respect of any matter. It must lie either with the United Kingdom Government through one of its Ministers or with the Northern Ireland Executive through the political Head of one of its Departments. But if executive responsibility does not permit of a flexible approach, administration certainly does. To reserve a responsibility to a United Kingdom Minister, either permanently or for the time being, is by no means to stand in the way of a high degree of local involvement in administration, through an agency arrangement for the performance of functions by a Northern Ireland Department, or the allocation of advisory or managerial responsibilities to elected or statutory bodies in Northern Ireland, or in other ways.

66. Those functions of the United Kingdom Government in Northern Ireland which under direct rule have been the responsibility of United Kingdom

Ministers other than the Secretary of State, such as the Chancellor of the Exchequer and the Secretary of State for Defence, will remain so.

67. The general intention in the devolution of executive powers will be to transfer to the Northern Ireland Executive those responsibilities exercised before direct rule by the Government of Northern Ireland with the following principal exceptions:

- (a) responsibility for the appointment of county court judges, magistrates, coroners and a limited number of other appointments of a quasi-judicial nature will be reserved to the Lord Chancellor; and responsibility for the administration of the courts and tribunals in question will be reserved to the Secretary of State.

Hitherto there has been a division of responsibility, in that the Lord Chancellor has made appointments to the Supreme Court of Northern Ireland and has been answerable to Parliament for the administration of that Court, whereas other judges, magistrates, coroners and members of various quasi-judicial tribunals have been appointed by Northern Ireland Ministers, who have been responsible to the Northern Ireland Parliament for the administration of these courts and tribunals. It is the view of the Government that all judicial appointments should be made by or on the recommendation of the Lord Chancellor, and that there should be a unified administration of the courts for which the Secretary of State should be answerable to Parliament.

- (b) ministerial responsibility for the conduct of public prosecutions will remain vested in the Attorney-General.

The Director of Public Prosecutions for Northern Ireland will, therefore, remain responsible to the Attorney-General in the United Kingdom Government.

- (c) ministerial responsibility for all matters connected with elections or the franchise will be reserved to the Secretary of State.

The Government believes that, as a matter of principle, Ministers should be answerable to Parliament for arrangements for central and local government elections in Northern Ireland as in other parts of the United Kingdom, but the detailed arrangements for such elections in Northern Ireland will continue to be made by an independent statutory officer, the Chief Electoral Officer, and his staff.

- (d) ministerial powers under any legislation empowering the Executive to take exceptional measures in the law and order field to cope with an emergency situation (e.g. the legislation to replace the Special Powers Act), will also be reserved to the Secretary of State.

68. Certain other powers previously exercised by the Northern Ireland Government and Ministers will be reserved to the United Kingdom Government and Ministers because of the current security situation in Northern Ireland, and accordingly will not be devolved in present circumstances. In particular:

- (a) ministerial powers in relation to the police will be reserved to the Secretary of State;

- (b) ministerial powers under any legislation concerned with “public order” (e.g. control of unlawful assemblies, offences involving riot, injury or intimidation, and the control of firearms and explosives) will be reserved to the Secretary of State, as will ministerial responsibility in connection with the Royal Prerogative of Mercy; and
- (c) ministerial powers under any legislation concerned with penal establishments and the treatment of persons in custody will be reserved to the Secretary of State.

Law and order

69. The reservation of broad “law and order” powers for the time being must not exclude Northern Ireland involvement in matters of great concern to its people; and, indeed, many of the practical problems in relation to policing and other matters cannot be solved without a high degree of public co-operation and goodwill. This interest will be fully acknowledged in the new structure in a number of ways. First, the Northern Ireland Executive will be invited to act as an advisory committee to the Secretary of State in relation to those responsibilities reserved to him. He will therefore have an opportunity to discuss matters of general public concern and interest with the elected leaders of the Northern Ireland community, and to take their views fully into account.

70. Second, democratic participation in restoring to all parts of Northern Ireland the full benefits of a normal police service is essential. The Police Authority, which will continue to have a statutory responsibility for the management of the police service, will be re-constituted following consultations with the Assembly so as to introduce into it an element drawn from elected representatives. In addition, the new District Councils which will come into being in October, will be able to form the basis of local committees with advisory responsibilities in relation to the policing of their districts. They could, for example, invite the local police commander to attend meetings so that they could keep themselves informed of the way their district was being policed; they could explain problems and put forward suggestions; they could offer advice; they could help to promote recruitment; they could encourage local citizens to help prevent intimidation, vandalism, etc.; they could provide links with tenants’ associations and other groups whose co-operation was important to good relations in the district; and they could take special interest in such matters as road traffic and road safety.

Transferred executive powers

71. All other powers previously exercised by the Government and Ministers of Northern Ireland which include such matters as the health service, social benefits and welfare, employment and training, education, agriculture, industrial development and the planning and development of the regional infrastructure, will be available for devolution to a Northern Ireland Executive. Broadly these amount to all the powers hitherto exercised through the existing Northern Ireland Departments except those in the law and order field.

Appointment of Heads of Departments.

72. The constitutional Bill will provide that formal appointment of persons to be the political Heads of Departments in Northern Ireland for the purpose of administering services under the devolved executive powers will be effected by the Secretary of State. These Departments will include a central secretariat whose political Head will lead the Assembly and preside over the Executive. This is a power of appointment analagous with that conferred upon the Governor by Section 8 of the Government of Ireland Act 1920, but when an agreed understanding on the formation of an Executive is reached in discussion with elected representatives, it would be the intention to make appointments in accordance with that understanding.

73. Collectively, the Heads of Departments will form a body to co-ordinate the policies and activities of the administration as a whole, and to determine financial and other priorities. This body will constitute the Executive of Northern Ireland. The Heads of Departments and the Head of the central secretariat will receive appropriate salaries in those capacities. The Government will seek the advice of the Review Body on Top Salaries on what these salaries should be.

74. Devolved services will continue to be administered by the established Northern Ireland Departments and reserved services can, in suitable cases, be performed by a Northern Ireland Department on an agency basis. The arrangements for the administration of services reserved for the time being will, as far as possible, be such as to permit a later devolution at some appropriate stage to Northern Ireland institutions. Some of the services concerned, for example in the penal field, must in practice be closely co-ordinated with other social services, and in such cases the argument for an agency arrangement is strong. In other cases, the service may be more appropriately administered by the Secretary of State's Office in Northern Ireland, but arrangements can be made for secondment to that Office of suitable Northern Ireland officials.

75. Existing powers under Northern Ireland law to make Transfer of Functions Orders should be adequate to cope with any departmental re-organisation in Northern Ireland which the Executive and Assembly consider desirable after the new arrangements take effect; and, of course, the powers of the Northern Ireland Assembly would include the power to legislate for departmental organisation.

The Civil Service of Northern Ireland

76. The Civil Service of Northern Ireland will remain a distinct service under the Crown. Since the broad pattern of services to be carried out in Northern Ireland, whether under devolved institutions or otherwise, will remain the same, its officers need not fear any deterioration in their career prospects or conditions of service. It will, however, be the concern of the Government to ensure that, even in isolated individual cases, the interests of members of the Northern Ireland Civil Service are protected. Throughout the crises and upheavals of recent years their loyalty to the Crown and to the concept of service which

they share with their United Kingdom colleagues has been a vital stabilising factor in a difficult situation. They have continued to operate, under whatever ministerial direction the law provided, those services upon which the life of the community depends.

Restraints upon devolved executive powers

77. The Bill will provide that, in the exercise of devolved executive powers, no Department of Northern Ireland may act in a discriminatory way. This statutory bar to any form of discriminatory action will also apply to any authority, body or agency in Northern Ireland which is subject to investigation by the Parliamentary Commissioner for Administration, the Northern Ireland Parliamentary Commissioner for Administration, or the Northern Ireland Commissioner for Complaints, and to the Post Office.

Replacement of existing institutions and constitutional provisions

78. Under the new arrangements the Northern Ireland Assembly will replace the Parliament of Northern Ireland. A proper acknowledgement is due to the work of that Parliament and its Members and Senators. The pension rights of members of the Northern Ireland House of Commons will be safeguarded.

79. At Stormont, as at Westminster, provision has in the past been made by specific legislation for the payment of pensions to persons who have served in the office of Speaker of the House of Commons. The Secretary of State will, in due course, seek the approval of Parliament for an appropriate pension provision in respect of the present Speaker of the Northern Ireland House of Commons.

80. Due regard must also be had to the interests of the career officers of Parliament, the Clerk of Parliaments and his staff. While the new Assembly must obviously be free to make its own dispositions in this respect, it will no doubt wish to make full use of the expertise which exists amongst these professional servants of Parliament. Their interests will, however, be protected.

Links with the Crown

81. There will be no weakening whatever in Northern Ireland's links with the Crown. All executive power in Northern Ireland as in Great Britain will continue to flow from Her Majesty The Queen. In general, where executive power is not devolved to the Northern Ireland Executive, it will be exercised either by The Queen in Council or by Her Majesty's Government. There will cease to be an office of Governor of Northern Ireland. Her Majesty's Lieutenants and Deputy Lieutenants of the counties in Northern Ireland will carry out those duties performed by such officers elsewhere in the United Kingdom. Her Majesty's Government pays tribute to the present Governor, Lord Grey of Naunton, and to Lady Grey, for the outstanding service they have given to Northern Ireland during a most difficult period.

Northern Ireland Privy Council

82. No further appointments to the Privy Council of Northern Ireland, or to its Executive Committee (the Cabinet of Northern Ireland) will be made;

but existing members of the Privy Council will retain their existing rank and style and obligations. Alternative arrangements will be made for the performance of those acts—principally the making of Orders—which various statutes require to be done in Council. Hitherto, Ministers of Northern Ireland, in protecting the confidentiality of Cabinet and other business, have been bound by the Privy Counsellor's Oath; for the future, all persons discharging executive responsibilities in Northern Ireland, including the Heads of Departments, will be bound by the Official Secrets Act. It would be right for those who have the custody of the records of the Executive Committee to apply to them the criteria accepted in the United Kingdom on a change of Administration; that is to say, records may be consulted by those who were present at particular meetings, but will not be made available to an incoming Administration.

Financial arrangements

83. The broad scheme of the financial provisions, which will be considerably simpler in form than those in the Act of 1920, will be as follows:

- (a) The Northern Ireland Assembly will not have power to legislate in the field of taxation with the exception of those taxes such as rates and licence fees for which the agreement of the United Kingdom Government has been given;
- (b) after devolution of powers, the revenue required to meet the cost of devolved services will be derived from the product of taxes levied locally (e.g. the rates); from certain non-tax revenue which accrues locally; from the yield of the "attributed taxation" of Northern Ireland, to be paid out of the Consolidated Fund of the United Kingdom into that of Northern Ireland; supplemented, if necessary, by an annual sum voted to the Secretary of State for Northern Ireland for that purpose.
- (c) the existing arrangements will continue for loans from the United Kingdom National Loans Fund to finance capital expenditure programmes in Northern Ireland.

84. There will be some exceptions to this broad scheme. The Agricultural Remoteness Grant will continue to be paid separately and arrangements for the National Insurance, Industrial Injuries and Redundancy Payments Schemes will be maintained as heretofore (i.e. inter-fund transfers will continue). The Joint Exchequer Board will be abolished, and no provision will be made in the new scheme for the payment of an "Imperial Contribution".

85. The financial relationships between the United Kingdom Government and the Government of Northern Ireland have hitherto been regulated not only by statute but by a whole pattern of agreements, arrangements and understandings. Apart from the broad constitutional provision which must be made, the two significant questions to be answered are:

- (a) if Northern Ireland's attributed revenue is to be supplemented out of voted moneys, how is the need to be measured?
- (b) what scope is there, in the context of such financial arrangements, for the development in the Northern Ireland Assembly of the politics of choices and priorities?

86. The Government believes it to be right that the broad objectives by which the financial requirements of Northern Ireland will be judged should be clearly stated. These are:

- (a) to accomplish as rapidly as possible, once violence has ended, the task of physical reconstruction and rehabilitation created by the disorders of recent years;
- (b) to create a sound base for the economy and to encourage external industrial investment;
- (c) to work progressively towards the achievement in Northern Ireland of those standards of living, employment and social conditions which prevail in Great Britain.

87. The overall level of public expenditure in Northern Ireland will be determined in the light of these objectives and will be compatible with public expenditure policies for the United Kingdom as a whole. The total for Northern Ireland, which will have to be acceptable to the Government and Parliament at Westminster, can continue to be settled through the existing arrangements of the Public Expenditure Survey. Within this total, however, Northern Ireland will enjoy a large measure of freedom of decision as regards its choice of priorities and policies in advancing towards the objectives stated above.

88. When the new institutions in Northern Ireland have been formed, the Government will discuss with them how these arrangements should be operated in detail so as to ensure the large measure of freedom of decision which the Government wishes to devolve. This will involve discussing how to divide expenditure (excluding expenditure on law and order, which will be reserved) into two broad categories. The first could consist of the cash social services, assistance to industry and employment as well as agriculture and fisheries. For these services certain limitations upon local freedom of decision will be inevitable. In the case of the cash social services, such as family allowances, unemployment and sickness benefit and pensions, it is difficult to envisage anything other than exact parity with Great Britain. In the case of assistance to industry and employment, consultation with the United Kingdom Government will be necessary to ensure that regard is paid to the general industrial and fiscal policies of the United Kingdom Government and to the problems of the Development Areas in Great Britain. Moreover, the United Kingdom Government cannot abrogate responsibility for the application in Northern Ireland of regional policies which will be the subject of negotiation with the European Economic Community in their application to the United Kingdom as a whole. Somewhat similar considerations apply also in the case of policies for agriculture and fisheries. But the intention will be within agreed guidelines to give Northern Ireland the widest possible measure of discretion and latitude in day-to-day operations.

89. The second category could embrace all other services, including, amongst others, education, health and personal social services, housing, roads, the nationalised fuel industries and local environmental services. These services account for well over half of Northern Ireland public expenditure. For these services, Northern Ireland would have a high degree of freedom and discretion

to determine relative priorities, to reallocate funds from one programme to another and to pursue distinctive policies different from those obtaining in Great Britain, provided always that they are directed towards the broad objectives stated in paragraph 86 and that their cost is kept within the annual totals for this category of expenditure. Within the Northern Ireland administration the Ministry of Finance would continue to play an essential role in co-ordinating and regulating total expenditure and approving individual programmes.

Part 4

A CHARTER OF HUMAN RIGHTS

90. This part examines the constitutional proposals from the standpoint of the individual. It outlines comprehensive provisions which will constitute a charter of human rights for Northern Ireland. In particular, these provisions will supplement existing safeguards with specific statutory restraints against the abuse of legislative and executive powers, with a commitment to establish effective machinery to deal with job discrimination and with the establishment of a Standing Advisory Commission on Human Rights which will keep the whole field under continuous surveillance.

The requirement

91. In any society the average individual, the "man in the street", is probably less concerned with the detailed definition of authority and the law than with its effectiveness in ensuring certain basic standards. These may be summarised as:

- (a) the right to freedom within the law, including freedom to advance any political or constitutional cause by non-violent means;
- (b) the right to protection under the law, so that freedom is not taken away or diminished by violence, oppression or intimidation by others; and
- (c) the right to equality of benefit and opportunity, so that society will deal in an equitable and even-handed way as between one citizen and another, without bias or prejudice.

92. But this pattern of rights has to be matched by a balancing pattern of obligations:

- (a) freedom to advance one's own ideas involves a comparable freedom for others to advance theirs, and an acceptance that a minority has no right to force its views upon a majority, as distinct from seeking to convince them;
- (b) the right to protection under the law can only be maintained by a willingness to observe the law, including laws with which the individual may disagree, and to support the authorised agencies of law-enforcement;
- (c) the right to equality of benefit and opportunity is incompatible with abstention, non-participation or the avoidance of such communal obligations as paying, through taxation or otherwise, for public services available to all.

93. A fundamental problem since the earliest years of Northern Ireland's existence has been the disagreement not just about how Northern Ireland should be governed, but as to whether it should continue to exist at all. Those in Northern Ireland who have supported its continued membership of the United Kingdom have seen themselves as faced by an unremitting campaign to discredit and dismantle the constitutional system. Their opponents, on the other hand, have claimed that valid political opposition has been treated as

subversion, and used as a pretext to exclude them from any share of real power or influence in Northern Ireland's affairs.

94. The essence of the new constitutional and other arrangements is fairness; equality of treatment and of opportunity; the absence of bias of any sort. Any person in Northern Ireland, whatever his political beliefs, may advance them peacefully without fear. But no person or organisation can expect to be allowed to claim to be acting politically at one moment and then, given what appears a favourable opportunity, to turn to violence and subversion.

Protection of human rights

95. The protection of fundamental human rights in Northern Ireland will henceforth flow from a number of different sources. The principal protection is that afforded by our parliamentary democratic tradition and by the common and statute law. In addition, the United Kingdom, including Northern Ireland, has accepted the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. But because important areas of government will be devolved to subordinate institutions, and this involves written constitutional provisions, it is practicable to legislate for the protection of human rights in a way which cannot readily be done elsewhere in the United Kingdom. Thus the constitutional Bill will embody safeguards against religious or political discrimination in the use of the Assembly's law-making powers. The Secretary of State will not recommend Her Majesty in Council to give any discriminatory proposal the force of law; and even if it were to be enacted, its validity could subsequently be considered by the courts.

96. These safeguards will be matched by equally stringent checks against any abuse of the executive power. Any action of a discriminatory character by a Government Department, a local authority or a public body could be made the subject of court action, and the whole range of legal remedies is available to the litigant.

97. Moreover, these specific legislative safeguards are complementary to existing provision in the public sector. In Northern Ireland, as in the rest of the United Kingdom, alleged maladministration by Government Departments can be investigated by a Parliamentary Commissioner for Administration who in some respects has a wider remit than his United Kingdom counterpart; but in addition Northern Ireland has a unique office—that of the Commissioner for Complaints—responsible for investigating alleged maladministration (including discriminatory practices) in the public sector outside Government, i.e. local authorities and public bodies. To these provisions there will be added appropriate arrangements with an independent element for *ex post facto* reviews of the handling of complaints against the police to conform with those which the Government is planning to introduce in Great Britain.

98. Every public authority is required to operate under a fair employment code; an anti-discrimination clause (policed on an extra-statutory basis by the Parliamentary Commissioner for Administration) is written into all Government contracts, and a breach of its requirements can involve removal for a period from the Government contract list; and the allocation of publicly-provided housing, formerly a matter of much controversy in Northern Ireland,

is now the responsibility of a central Housing Executive, with a broadly-based membership and working to objective criteria.

99. A further significant point is that, when on 1 October 1973 the re-organisation of local services associated with the Macrory Report becomes fully effective, the area of public activity outside the control or influence of "central government", as represented either by the Government of the United Kingdom or the Northern Ireland Executive, will be greatly diminished. (As noted in the Paper for Discussion, the preponderant part of complaints of discrimination in the public sector was in the past concentrated against certain activities of a relatively few local authorities.) Moreover, the overall nature of the new constitutional arrangements will be a safeguard in itself, for it is inherent in the entire argument of this White Paper that devolved powers can only be exercised in the future on a broadly acceptable basis. Taken together, the general form of the settlement and the specific constitutional safeguards incorporated within it should amply guarantee fair and unbiased law-making and administration.

100. In the private sector there have been allegations of job discrimination on religious or political grounds. The Government has taken the view that it is essential to proceed in this matter with the goodwill and co-operation of the representative bodies on both sides of industry which have consistently demonstrated their concern for the social responsibilities of industry as well as for the economic well-being of Northern Ireland. Accordingly, the Northern Ireland Regional Council of the Confederation of British Industry, the Northern Ireland Chamber of Commerce and Industry and the Northern Ireland Committee of the Irish Congress of Trade Unions were invited to nominate representatives to join with representatives of Government, under the chairmanship of a Minister of State at the Northern Ireland Office (first Mr. Paul Channon, M.P., and subsequently Mr. William van Straubenzee, M.P.) to consider and report upon the problem. The Secretary of State has now received from the chairman of the Working Party a letter conveying interim conclusions, which are substantially reproduced in the following paragraphs.

101. The Working Party has agreed that its fundamental aim is to promote full equality in all aspects of employment opportunity within the private sector, and has formed the view that such equality of opportunity requires strict fairness and impartiality in all aspects of recruitment, appointment and promotion procedures including, where necessary, programmes of affirmative action designed to promote such ends. Affirmative action may, for example, include enlargement of the traditional field of recruitment or other positive steps designed to demonstrate commitment to full equality in employment practice; but it does not imply the introduction of a formal quota system.

102. With this central objective in mind, the Working Party proposes to recommend three inter-related and mutually reinforcing steps. These are:

- (a) a declaration of principle and intent which in the first instance would be signed jointly by representative employer and trade union organisations and then promulgated by them for adoption throughout industry and commerce;
- (b) the preparation and issue of a Guide to Manpower Policy and Practice, based on manifestly fair principles and sound management procedures, for use by all those concerned with recruitment and employment;

(c) the establishment by statute of an Agency with powers *both* to investigate individual complaints of discrimination in employment on religious or political grounds, which would be made unlawful, *and* itself to initiate in certain circumstances inquiries into patterns of employment in particular companies or industries or among categories of workers. The Working Party envisages that the Agency should discharge an important advisory and educational role in addition to its functions of investigation or inquiry. Where it was satisfied on inquiry that an unlawful discriminatory practice existed, the Agency would seek, through conciliation and other administrative procedures, to secure voluntary compliance with the law; but it would be able, as a last resort, to apply to the courts for a range of *civil* remedies.

103. The Working Party point out in their letter that the representatives of the interests cannot bind their organisations, and that full consultation will therefore be essential when the final report is published. Nevertheless, the Government regards the interim conclusions of the Working Party as a most significant advance towards effective action in a most important area with the co-operation of responsible organisations on both sides of industry, and, when the necessary consultations have been carried out, will propose to Parliament comprehensive legislation in this field.

104. The assurance of fairness and equality of opportunity, not only in employment but across the whole field of public and private activity, cannot be secured by the work of any single body or agency. Northern Ireland already has its Community Relations Commission and its Parliamentary Commissioner for Administration and Commissioner for Complaints. Now, in addition, a statutory Agency concerned with fair employment practice is envisaged. If further protections at any time prove to be necessary, the right course could be to modify, adapt or use some of this existing machinery or to create new machinery or law. What is important is that there should be effective co-ordination of the activities of all the agencies working in this field, and that the United Kingdom Parliament and Government should have a continuous flow of information enabling them to discharge their responsibilities for human rights in Northern Ireland, as in every other part of the United Kingdom. To that end, provision will be made in the constitutional Bill for the Secretary of State to appoint a Standing Advisory Commission on Human Rights for Northern Ireland, charged with the duty of keeping in touch with the activities of all public agencies active in the field of human rights and of producing an annual report, to be laid both before Parliament and the Northern Ireland Assembly, including recommendations as to any further statutory provision which it considers should be made. The Commission would have a relatively small but high-level membership, including the Chairman of the Community Relations Commission and of the proposed fair employment Agency, and the holder or holders of the offices of Parliamentary Commissioner for Administration and Commissioner for Complaints.

The acceptance of obligations

105. In circumstances where the individual will be protected by a comprehensive charter of human rights, the community as a whole can properly seek from him an acknowledgement of its own rights. He has the obligation to bear his share of the collective burdens which are a part of civilised life. He cannot

call for "law and order", yet be reluctant to observe laws he dislikes and justice to those who protect public order. He cannot demand every benefit which society can offer, yet fail to play his part in paying for those benefits. Private armies; failure to co-operate with the police by withholding information on violent crime; civil disobedience; rent and rates strikes—all of these developments are incompatible with an equitable pattern of rights and obligations as between society and the citizen. A prompt end to these practices is the contribution which the individual can make to the success of the settlement.

RELATIONS WITH THE REPUBLIC OF IRELAND

106. When the Paper for Discussion referred to the "Irish dimension" of the Northern Ireland situation, it was not making a political judgment but acknowledging an evident fact; that Northern Ireland is affected in numerous ways by what happens in the Republic of Ireland, and that the reverse is equally true.

107. At this point it may be appropriate to set out again the conclusions reached in Paragraph 78 of the Paper for Discussion:

"Whatever arrangements are made for the future administration of Northern Ireland must take account of the Province's relationship with the Republic of Ireland: and to the extent that this is done, there is an obligation upon the Republic to reciprocate. Both the economy and the security of the two areas are to some considerable extent inter-dependent, and the same is true of both in their relationship with Great Britain. It is, therefore, clearly desirable that any new arrangements for Northern Ireland should, whilst meeting the wishes of Northern Ireland and Great Britain, be so far as possible acceptable to and accepted by the Republic of Ireland, which from 1 January 1973 will share the rights and obligations of membership of the European Communities. It remains the view of the United Kingdom Government that it is for the people of Northern Ireland to decide what should be their relationship to the United Kingdom and to the Republic of Ireland; and that it should not be impossible to devise measures which will meet the best interests of all three. Such measures would seek to secure the acceptance, in both Northern Ireland and in the Republic, of the present status of Northern Ireland, and of the possibility—which would have to be compatible with the principle of consent—of subsequent change in that status; to make possible effective consultation and co-operation in Ireland for the benefit of North and South alike; and to provide a firm basis for concerted governmental and community action against those terrorist organisations which represent a threat to free democratic institutions in Ireland as a whole."

108. These conclusions received a general welcome from widely representative spokesmen of political and other interests in the Republic of Ireland. It is now possible to make progress in a way which could significantly reduce or eliminate any remaining points of friction in the relationship between the peoples of these islands.

109. It is noteworthy that virtually all the Northern Ireland political parties have envisaged some sort of scheme for institutional arrangements between North and South which many described as a "Council of Ireland", although there were different concepts of such a Council, and in some cases an emphasis upon conditions which would have to be met before it could operate successfully.

110. As far as the United Kingdom is concerned, it favours and is prepared to facilitate the formation of such a body. The constitutional proposals would permit the new Northern Ireland institutions to consult and co-ordinate action through a Council of Ireland. There are undoubtedly many matters of substantial

national interest such as tourism, regional development, electricity and transport. The widespread interest which exists in the idea of a Council is a firm basis for moving to a specific discussion of the matter. There have been arguments that the Government should at this stage, in consultation with the Republic of Ireland, write into the constitutional Bill for Northern Ireland a complete scheme for such a Council. These arguments are, however, unrealistic. If a Council is to be set up not merely as a statutory concept, but as a useful working mechanism in North-South relations, it must operate with the consent of both majority and minority opinion in Northern Ireland, who have a right to prior consultation and involvement in the process of determining its form, functions and procedures. There are clearly a number of different levels at which such a Council might operate, including the inter-governmental and the inter-parliamentary.

112. True progress in these matters can only be achieved by consent. Accordingly, following elections to the Northern Ireland Assembly, the Government will invite the Government of the Republic of Ireland and the leaders of the elected representatives of Northern Ireland opinion to participate with them in a conference to discuss how the three objectives set out in the Paper for Discussion may best be pursued, that is:

- (a) the acceptance of the present status of Northern Ireland, and of the possibility—which would have to be compatible with the principle of consent—of subsequent change in that status;
- (b) effective consultation and co-operation in Ireland for the benefit of North and South alike; and
- (c) the provision of a firm basis for concerted governmental and community action against terrorist organisations.

113. These objectives are inter-related. If and when firm agreements are reached, consideration can be given to the means by which they should be formally adopted as between sovereign states. But, consistent with the principle of consent, the first stage clearly must be discussions involving all the parties.

114. Under the proposals of this White Paper, certain important functions of government in Northern Ireland will be reserved to the United Kingdom Government rather than devolved to new institutions in Northern Ireland. Some of these relate to matters on which consultation and agreed co-ordinated action (e.g. in relation to the suppression of terrorism) is of the first importance, and this will involve consideration as to how the United Kingdom authorities can best be associated with discussion of these subjects either within a Council of Ireland concept or otherwise. Moreover, even within the area of powers devolved to Northern Ireland institutions, there will often be United Kingdom interests or repercussions, relating for instance to the provision of finance from United Kingdom sources or to international obligations, including those arising from membership of the European Economic Community.

115. It may be said that these proposals leave much unresolved; and so they do. But it would require either exceptional vision or exceptional foolhardiness to forecast the future development of relationships involving North and South in Ireland, the United Kingdom, and the British Isles and Europe. But there is much which can usefully be done to defeat terrorism by concerted action throughout Ireland, and to serve the economic and social interests of all the people, North and South.

SUMMARY AND CONCLUSION

Summary of Proposals

116. There follows a broad summary of the detailed proposals made in this White Paper:

(i) A comprehensive constitutional Bill will be presented to Parliament with the objective of bringing new permanent arrangements for the government of Northern Ireland into effect within the second year of the direct rule provisions of the Northern Ireland (Temporary Provisions) Act (para. 30).

(ii) The Bill will declare that Northern Ireland will remain part of the United Kingdom for as long as that is the wish of a majority of its people (para. 32).

(iii) As part of the United Kingdom, Northern Ireland will maintain its existing representation of twelve Members in the United Kingdom Parliament (para. 33).

(iv) There will be a Northern Ireland Assembly of about 80 members elected on this occasion by the single transferable vote method of proportional representation applied to the twelve Westminster Constituencies (para. 39).

(v) Elections to the Assembly will be held as soon as possible (para. 40)

(vi) The Assembly will have a fixed term of four years (para. 41).

(vii) The Assembly itself will elect its presiding officer and work out its own detailed methods and procedures (paras. 42 and 43).

(viii) There will be committees of the Assembly, whose members will reflect the balance of parties, associated with each Northern Ireland Department. The Chairmen of these committees who collectively will form the Executive will be the political Heads of the Departments and the committees will be associated with the development of new law and policy (para. 44).

(ix) Between the election of the Assembly and a devolution of powers the advisory functions of the Northern Ireland Commission will be undertaken by a committee composed of members of the Assembly (para. 47).

(x) There will continue to be a Secretary of State for Northern Ireland who will be a member of the United Kingdom Cabinet. He will undertake the necessary consultation leading to the devolution of powers, administer certain services reserved to the United Kingdom Government and be responsible for United Kingdom interests in Northern Ireland (paras. 48-50).

(xi) The purpose of the Secretary of State's consultations with parties in the Assembly will be to find an acceptable basis for the devolution of powers which will meet prescribed conditions, in particular as to the formation of an Executive which can no longer be solely based upon any single party, if that party draws its support and its elected representation virtually entirely from only one section of a divided community. Members of the Executive will be required to take an appropriate official oath or make an affirmation (paras. 51-53).

(xv) The United Kingdom Parliament will continue to have the power to legislate in respect of any matter whatever in Northern Ireland (para. 54).

(xiii) The Assembly, after a devolution of powers, will be able to legislate in respect of most matters affecting Northern Ireland. There will, however, be a limited range of matters on which it may legislate only with agreement and certain others which, because of their national importance, will be excluded from its legislative competence. Where agreement is required, a measure, having been passed by the Assembly, will be laid before the United Kingdom Parliament (paras. 56 and 57).

(xiv) Measures of the Northern Ireland Assembly will have the force of law when approved by the Queen in Council (para. 57).

(xv) Since the Government has no higher priority than to defeat terrorism and end violence, Parliament will be asked to approve specific emergency legislation for the more effective combatting of terrorism, including giving effect to the recommendations of the Diplock Commission. This will make possible the repeal of the Special Powers Act and the re-enactment by the United Kingdom Parliament of those provisions which are regarded as essential (paras. 58-62).

(xvi) The constitutional Bill will debar the Assembly from passing legislation of a discriminatory nature and from legislating to require an oath or declaration as a qualification for employment, office, etc., where this is not required in comparable circumstances in the rest of the United Kingdom. An Order-in-Council will shortly be brought forward to remove existing obligations which conflict with this principle (e.g. in relation to the requirement for a statutory declaration of allegiance by local government councillors) (paras 63 and 64).

(xvii) The Bill will provide for the discharge of executive functions in Northern Ireland on the following broad basis:

- (a) in general United Kingdom Ministers other than the Secretary of State will retain their existing responsibilities in relation to Northern Ireland (para. 66);
- (b) certain matters previously the responsibility of the Northern Ireland Government will be permanently reserved to the United Kingdom Government (that is, the appointment of certain judges, magistrates, etc.; the conduct of public prosecutions; elections and the franchise; and exceptional measures in the law and order field to cope with emergency situations) (para. 67);
- (c) certain other matters, notably in the "law and order" field, will be reserved to the United Kingdom Government because of the current security situation. Arrangements will, however, be made to secure the effective representation of local interests in relation to such matters, including a general advisory role for the Northern Ireland Executive itself, the addition of elected representatives to the Police Authority and the creation of links between District Councils and the police in their areas (paras. 68-70); and
- (d) responsibility for all other matters will rest with the Northern Ireland Executive (para. 71).

1117

(xviii) The Executive of Northern Ireland will consist of the political Heads of Northern Ireland Departments (including a central secretariat whose Head will preside over the Executive). Their formal appointment will be effected by the Secretary of State in accordance with any agreed understanding as to the formation of the Executive (paras. 72 and 73).

(xix) The Northern Ireland Civil Service will remain a distinct service under the Crown (para. 76).

(xx) The constitutional Bill will forbid executive action of a discriminatory nature by central and local government and other public bodies (para. 77).

(xxi) There will be no weakening whatever in Northern Ireland's links with the Crown. Where executive power is not devolved to the Northern Ireland Executive, it will be exercised either by The Queen in Council or by Her Majesty's Government. There will cease to be an office of Governor of Northern Ireland (para. 81).

(xxii) No further appointments will be made to the Privy Council of Northern Ireland (para. 82).

(xxiii) The Bill will include financial provisions of a straightforward character designed to accomplish as rapidly as possible the task of physical reconstruction, to create a sound base for the economy and to help Northern Ireland achieve those standards of living, employment and social conditions which prevail in Great Britain (paras. 83-86).

(xxiv) The Government will discuss with the Northern Ireland institutions what arrangements can be made to provide them with a large measure of freedom to determine expenditure priorities (paras. 88 and 89).

(xxv) The Bill will include proposals to provide the individual with the safeguards and protections of a charter of human rights. The statutory safeguards against abuse of legislative and executive powers have already been described (para. 95).

(xxvi) Appropriate arrangements will be made for *ex post facto* reviews of the handling of complaints against the police, with an independent element, to conform with those which the Government is planning to introduce in Great Britain (para. 97).

(xxvii) The Government will present to Parliament proposals to deal with job discrimination in the private sector (paras. 100-103).

(xxviii) The Bill will provide for the appointment by the Secretary of State of a Standing Advisory Commission on Human Rights (para. 104).

(xxix) In the context of the provisions constituting a charter of human rights, society is entitled to expect an acceptance by individual citizens of their obligations to the community as a whole (para. 105).

(xxx) The Government favours, and is prepared to facilitate, the establishment of institutional arrangements for consultation and co-operation between Northern Ireland and the Republic of Ireland (para. 110).

(xxxi) Progress towards setting up such institutions can best be made through discussion between the interested parties. Accordingly, following the Northern Ireland elections, the Government will invite representatives of Northern Ireland and of the Republic of Ireland to take part in a conference to discuss how best to pursue three inter-related objectives. These are the acceptance of the present status of Northern Ireland, and of the possibility—

which would have to be compatible with the principle of consent—of that change in that status; effective consultation and co-operation in the process for the benefit of North and South alike; and the provision of a firm basis for concerted governmental and community action against terrorist organisations (para. 112).

(xxxii) The United Kingdom Government must be associated with discussion of subjects touching upon its interests (para. 114).

Conclusion

117. Under the proposed settlement, Northern Ireland will continue to have a greater degree of self-government than any other part of the United Kingdom. While benefitting in full measure from all the practical advantages of the British connection—for the proposals embody political, financial and economic arrangements which are in general both flexible and generous—Northern Ireland will continue, to a very large extent, to make its own laws and administer its own services, particularly in relation to such crucial issues as employment, housing, development of the regional infrastructure and education.

118. These proposals are designed to benefit the law-abiding majority in both communities, who may have conflicting views on the ultimate constitutional destiny of Northern Ireland, but who seek to advance those views by peaceful democratic means alone, and have strong mutual interests in making social and economic progress. The proposals provide an opportunity for all such people to stand together against those small but dangerous minorities which would seek to impose their views by violence and coercion, and which cannot, therefore, be allowed to participate in working institutions they wish to destroy.

119. To all those who support the continued union with Great Britain, the proposals offer firm assurances that this union will endure and be defended, for as long as that is the wish of a majority of the people of Northern Ireland. They seek to strengthen the democratic institutions of Northern Ireland by winning for them that wide-ranging consent upon which the government of a free country must rest. They commit the whole United Kingdom to a major effort to narrow the gap in standards of living, employment and social conditions between Northern Ireland and Great Britain.

120. To all those who seek the unification of Ireland by consent, but are genuinely prepared to work for the welfare of Northern Ireland, the proposals offer the opportunity to play no less a part in the life and public affairs of Northern Ireland than is open to their fellow citizens.

121. To all, whatever their religion or their political beliefs, the proposals extend effective protection against any arbitrary or discriminatory use of power.

122. These, then, are the Government's proposals to Parliament, to the country, and above all to the people of Northern Ireland themselves for a way forward out of the present violence and instability. At every point, they require the co-operation of those people themselves if they are to have any prospect of success. They can be frustrated if interests in Northern Ireland refuse to allow them to be tried or if any section of the community is determined to impose its will on another. It should now be perfectly clear that these are prescriptions for disaster. The Government believes, however, that the majority of the people of Northern Ireland have an overwhelming desire for peace and that they will accept the opportunity which these proposals offer.

1120.

952

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London WC1V 6HB
13a Castle Street, Edinburgh EH2 3AR
109 St. Mary Street, Cardiff CF1 1JW
Brazennose Street, Manchester M60 8AS
50 Fairfax Street, Bristol BS1 3DE
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

*Government publications are also available
through booksellers*

SBN 10 152590 7

