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PS/Secretary of State(L&B) - M

cc:-PS/Ministers(L&B) - M
PS/PUS(L&B) - M
1. PS/Mr Bloomfield - M
Mr Barry - M
Mr Brennan
Mr Stephens - M
Mr Erskine - M
Mr Reid - M
Mr Hammond
Mr Innes - M
Mr Spence - M
Mr Chesterton
Mr Gilliland - M
Mr Fernyhough - M
Mr Merifield - M
Mr Elliott - M
Miss Elliott
Mr Bell
Mr Ehrman
Mr Wood

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MUFAX ROOM
STORMONT HOUSE ANNEX

SINN FEIN AND PUBLIC BODIES

Dr Boyson was very grateful for sight of Mr Bloomfield's very comprehensive and well argued submission of 28 October.

2. Dr Boyson supports Mr Bloomfield's scheme of action outlined in para's 10-12 of the note.

William Gamble

WILLIAM GAMBLE
PS/Dr Boyson

29 October 1985

ssd

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HCS/10/77

PS/Secretary of State L&B

SINN FEIN & PUBLIC BODIES

1. At the meeting which the Secretary of State held on 23 September I was asked (paragraph 5(ii) of your note of 24 September) to set in hand a further examination of "half-way options".
2. I cannot identify further areas for useful potential action short of proscription beyond those set out in the paper attached to my minute of 30 July 1985. And while some extension/rationalisation of existing disqualification provisions could be desirable in its own right, I am persuaded that the only real possibility of mounting a comprehensive attack on the presence and influence of Sinn Fein lies with the imposition of a statutory declaration to be required as a condition of candidacy and/or office. I envisage here, for reasons fully set out in the earlier minute, not a "non-violence declaration" but rather a declaration effectively dissociating the individual making it from any connection with proscribed organisations.
3. Later in this submission I consider in detail how and in what form such a declaration might be required. But there are two fundamental questions to be considered at the outset

CAN SUCH A DECLARATION BE EFFECTIVE OR FOOLPROOF?

4. It is more than a debating point to say that a declaration could be to some extent effective, eg as minimum a demonstration by Government of its abhorrence of the methods and statements of Sinn Fein, without being absolutely foolproof. It is indeed inherently impossible to frame a form of declaration which would be foolproof in the sense that one could be assured in advance that no Sinn Fein member would in any circumstances be willing to make it. It is a fact that various politicians of Irish Nationalist sympathies, to whom the idea of Crown authority is anathema, have nevertheless at one time or another been willing to take the form of Oath of Allegiance required of a Member of Parliament in taking his seat. The

CONFIDENTIAL

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possibility of a declaration aimed at Sinn Fein is already being widely canvassed, and likely to be considered by Sinn Fein itself at its forthcoming Ard Fheis. We cannot at all rule out the possibility that Sinn Fein Councillors would be instructed to subscribe to any required declaration as a "mere form", not binding upon their consciences.

5. A declaration would, of course, be much reinforced if accompanied by an associated power to remove from office a person who subsequently spoke or acted in blatant breach of his declaration. The outcome of demands to exercise a power to remove would be problematical unless exercisable in the last resort at the Secretary of State's discretion; but even then, it would not be a straightforward matter. There would be a possibility that Sinn Fein members would marginally shift the tone and content of their comments (eg, avoiding after a city-centre bombing statements about "the right of the IRA to pursue the arms struggle", using instead some such alternative form as "understanding and sympathising with the objectives of the Republican movement").

WOULD SUCH A DECLARATION DO MORE GOOD THAN HARM?

6. As pointed out above, there cannot be an assurance that a declaration, even if associated with a power to remove, would be foolproof. While the unionist parties would be likely to welcome it, the reaction of the other parties is less certain. In the recent Assembly debate, Mr Close for the Alliance Party argued against "moving the goalposts in the middle of the game"; and on Friday last I heard on the radio Mr McGrady of SDLP arguing, in essence, for the wisdom of trying to accommodate whatever a democratic vote produces. There must be a risk that, in justifying any more or less draconian action by way of a declaration, we would come close to accepting that there is little practical distinction between PIRA and Sinn Fein, thus weakening our case against proscription itself, which still seems unappealing on security grounds.
7. There are, nevertheless, at least two very strong arguments for action
 - (a) I do not believe the situation in local government will do other than continue to deteriorate if no action is taken. Mr Needham's talks have been useful in

CONFIDENTIAL

CONFIDENTIAL

keeping a number of councils in play; but if, when that round is completed, Government has no action to propose, I would fear for the consequences for the working of District Councils;

- (b) We badly need some confidence-building measures for the unionist population in the context of a prospective Anglo-Irish agreement. To ask unionists to accept quietly both new Anglo-Irish institutions and the continued presence of Sinn Fein in councils, without a sign of government sympathy or response, is to ask in my view for too much.

SCOPE AND NATURE OF POSSIBLE ACTION

8. If we are to take action, there are two major factors relevant to the decisions on how and when to act. These are first, the nature of the legislative process required to give effect to various possibilities. This aspect is covered in detail in Annex A to the submission, but the Secretary of State will see that certain matters would involve legislation by Bill rather than Order in Council.
9. Second, there is the question of whether legislation is to have effect upon those currently serving. There is, of course, a classic objection to retrospective legislation, particularly when it affects the rights of a citizen, and it could be argued that the right to serve in elective office is of such a character. Although a requirement that the holders of certain offices must make a future declaration to continue to hold office might not be retrospective in the technical sense, it would certainly be criticised as "changing the rules in the middle of the game". On the other hand, the idea of introducing requirements which will be relevant only at future elections (and thus not for District Councils, except at by-elections, until 1989) is somewhat absurd; rather like dealing with a gas leak by turning off the water.

A POSSIBLE SCHEME OF ACTION

10. Having regard to all these considerations, I would propose for the Secretary of State's consideration a possible scheme of action, which would be within the following parameters:-

CONFIDENTIAL

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- (a) It would be based, for the time being, solely upon legislative changes which may be introduced by way of Order in Council (but legislation by Bill would not be ruled out, if the first stage of action needed to be reinforced);
- (b) It would not seek at this stage to reverse the effect of any election conducted or appointment validly made so far (but it would hold out the prospect of progressively reducing the influence and effect of Sinn Fein in local government and in public bodies);
- (c) It would involve at this stage only the requirement of a declaration (but it would be made clear that, if people make declarations and subsequently act and/or speak in flagrant breach of them, the Government will not hesitate to take the further step of seeking a power to remove).

11. As the best-rounded way of presenting a possible scheme of action, I attach as Annex B a draft statement in which it might be announced and explained. For reasons set out more fully in my earlier submission of 30 July, I would not seek to catch up members of bodies established outside Northern Ireland (ie, the Westminster and European Parliaments). It will be seen that, in relation to the Assembly and District Councils, I have envisaged the declaration applying to candidacy, rather than at the later stage of seeking to take a seat. There are, I know, strong arguments for allowing any person not a member of a proscribed organisation to run for election; also for enabling the electorate itself to register its measure of support for any political creed, however unpleasant, which is not unlawful. I have opted for the candidacy stage because this avoids the need for legislation by Bill; but I recognise the strength of a contrary argument, which is that the whole matter is of such constitutional significance that it ought to be approached by Bill. However, timing is also important. If there is any chance of a "Mark II" Assembly, we cannot, in my view, afford to run the risk of Sinn Fein deciding both to run and to sit.

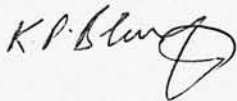
12. Finally it will be seen that I suggest holding back the power to remove at the first stage, while acknowledging that we could not afford, if we decide to go down the declaration road, to fail to follow it up in this way as a last resort. Better, though,

CONFIDENTIAL

E. R.

CONFIDENTIAL

if we have to introduce a pretty draconian power, that we should be seen to be driven to it by the cynical hypocrisy of members of Sinn Fein.



K P BLOOMFIELD

28 October 1985

CONFIDENTIAL

TYPES OF LEGISLATION

1. This Annex (which takes account of appropriate legal advice) considers what type of legislation (Order in Council, Bill etc) would be required for action in 3 distinct fields:

relating to councillors,
to Assembly members, and
to members of Area Boards etc.

The position appears to be as follows:-

- (i) **COUNCILLORS:** There is first the position of existing councillors. Here one would require a new power in law requiring councillors to make a declaration in a prescribed form within a stated time, and providing that the seats of any not doing so would be declared vacant (c.f. the provision in Section 7(2) of the Local Government Act (NI) 1972 that "if a person elected to the office of councillor does not make the declaration mentioned in sub-section (1) [to "truly and faithfully fulfill the duties..... according to the best of my judgement and ability"] and serve it on the Clerk of the Council, within the period of 2 months from the day of his election, the office of the person elected shall at the expiration of that period become vacant"). Since the pith and substance of such a requirement would be the fitness of councillors to hold office and the satisfactory execution of council business, with the electoral aspect (ie the inevitable consequence of a by-election) ancillary, it is considered that it could be put in place by means of an Order in Council under the Northern Ireland Act 1974. So, also, could a requirement bearing upon the fitness of councillors to hold office as Chairman or Vice-Chairman, or to serve on Council committees.

CONFIDENTIAL

Next there is the question of future councillors: that is those offering themselves for election and/or coming forward to take their seats after a requirement for a non-violence declaration takes effect. It goes without saying that it would be absurd to declare the seat of Mr X, an existing member of a Council, vacant by reason of his unwillingness to make the required declaration and then allow a situation in which he could continue to be returned at subsequent by-elections. While an Order in Council under the 1974 Act could be used to impose the obligation of the declaration on future councillors as a condition of taking their seats, it would require an Order in Council (subject to affirmative resolution) under Section 38 of the Northern Ireland Constitution Act 1973 (dealing inter alia with elections in respect of local authorities in Northern Ireland) to impose a declaration as a condition of candidacy.

(ii) **ASSEMBLY MEMBERS:** There is no current problem in the Assembly as Sinn Fein members elected to it have not taken their seats. To require a non-violence declaration of existing members would involve legislation by Bill. Turning to future Assembly members, the imposition of a requirement for a declaration as a condition of candidacy could be achieved by way of an Order by the Secretary of State (subject to negative resolution procedure) under Section 2(5) of the Northern Ireland Assembly Act 1973. On the other hand the requirement of a declaration from future Assembly members as a condition of taking their seats would (as mentioned above) not be an electoral matter and so would require a Bill.

(iii) **MEMBERS OF PUBLIC BODIES:** Requirement of a declaration to be made by members of such public bodies as the Area Boards, whether by existing members to retain their seats or as a condition of future membership, could be imposed by Order in Council under the Northern Ireland Act 1974, where the bodies concerned are appointed by the Secretary of State or by Departments under his direction and control.

2. Alongside the issue of requiring a "non-violence declaration" is that of what, if anything, one does about a person who makes the declaration in the required form but subsequently acts and/or speaks in flagrant breach of it. We could legislate by

CONFIDENTIAL

E. R.

CONFIDENTIAL

way of order in Council under the Northern Ireland Act 1974 so as to give the Secretary of State a power to remove councillors or members of public bodies; but it would require legislation by Bill to give the Secretary of State a matching power to remove Assembly members.

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STATEMENT ON NEW DECLARATION REQUIREMENTS

1. Since the local government elections in May, it is becoming increasingly clear that a number of those elected to District Councils, some of whom have subsequently been further elected to Council Offices or nominated to public bodies, are not only in open sympathy with unlawful violence, but seek to condone or justify individual terrorist outrages. It is relevant here that the close sympathy between Sinn Fein and the Provisional IRA has twice now come under judicial notice.
2. I understand and sympathise with the repugnance which genuine democratic politicians must feel in being asked to work alongside people who are wholly cynical about the democratic process, and hypocritical in pretending to share with other elected members any real interest in the welfare and development of their Districts.
3. It would be wholly contrary to the principles which this Government oppose to seek to set aside the outcome, however deplorable its effects, of the democratic process. But it is in no way incompatible with this to say that recent behaviour points to the need for more stringent future standards.
4. It is therefore the intention of the Government to prepare legislation which will, after it comes into force, require the making of a declaration in prescribed form as a condition of seeking and/or of holding certain defined types of public office in Northern Ireland.
5. The declaration will be to the effect that:

"I declare that I will uphold the laws of Northern Ireland, and that I do not and will not support the methods or assist the activities of any organisation proscribed by law."

CONFIDENTIAL

6. The declaration will be required
 - (a) as a condition of candidacy at future local government elections (including by-elections to the present District Councils);
 - (b) as a condition of candidacy at future Northern Ireland Assembly elections (including by-elections to the present Assembly);
 - (c) as a condition of appointment as Chairman or Vice-Chairman of any Council;
 - (d) as a condition of appointment by a Council to any Committee established under Section 18 of the Local Government (NI) Act 1972; and
 - (e) as a condition of appointment to any public body in relation to which District Councils have a statutory right to nominate members.
7. The first stage of action to deal with the present unacceptable situation can be put in place without needing new primary legislation in Parliament.
8. It is to be hoped that, after such a declaration is required, those who openly boast of their sympathy for proscribed organisations will not show such blatant hypocrisy and lack of integrity or conscience as to make false and empty declarations. If, however, it should become apparent in the subsequent words and/or actions of individuals that they had been prepared to make false declarations and thereafter to act in flagrant breach of them, it would be my intention to bring forward further provisions enabling me, after proper consideration and advice, to direct the removal of such a person from office.

CONFIDENTIAL