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- 1 Mr P. P. P. AT 9
- 2 Mr Sullivan 8/15/9

PSE 86/371

To see a return ps

M  
12/9

- cc PS/Ministers (B&L)
- PS/PUS (B&L)
- PS/Mr Bloomfield 9/8
- Mr Brennan 20/11/9
- Mr Stephens 3/12/9
- Mr Chesterton
- Miss Elliott
- Mr McConnell
- Mr Reid

PS/Secretary of State (B&L)

DISTRICT COUNCILS

1. This note and attached Appendix is in response to your telephone conversation earlier today seeking information on a number of questions asked by the Secretary of State.
2. Within DOE we already had prepared a skeleton first draft of a paper designed to identify possible actions which could be taken by Unionist Councillors and to consider consequential procedural implications and remedies by Government. This paper is enclosed but I hasten to add that it had been our intention to circulate the paper for comment to those concerned. Its contents will be of particular interest to and would require further consideration from PAB, CPL, the Chief Electoral Officer and our own Departmental Solicitors and we will be completing this exercise by seeking comments directly from those concerned.
3. In relation to the specific questions posed, the position would be as follows:-
  - a. What is the position about Quorums in the 18 Councils with an Unionist majority?  
  
The information in paragraphs 2.2 and 2.3 below is relevant, from which you will see that 10 Councils could continue convening meetings and transacting business.
  - b. If Councillors resign on mass, would this lead to by-elections or could Councils continue to meet and co-opt new members?  
  
The information in paragraphs 4.1 and 4.2 is relevant here. Again 10 Councils could continue by co-option (given the assumption in paragraph 3.1(c)) but co-option would not be possible in 8 Council areas and so since Council meetings could not be held to co-opt, the Town Clerk would refer the matter to the Chief Electoral Officer after the due date. It would be for the CEO to hold the subsequent by-elections.
  - c. If Councillors do not call by-elections can the Secretary of State or DOE intervene and call by-elections?

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If a Councillor resigns, then the procedures at paragraphs 2.4-2.6 below apply automatically. Should a Council not co-opt a new member or should no meeting take place, then the matters would be handled by the Town Clerk and subsequently the Chief Electoral Officer under electoral law. There would be no need for other intervention at that stage. Circumstances would be different however if Council business was thwarted by boycott, in which case paragraph 4.3 below is relevant.

- d. If it is necessary to appoint Commissioners what are the implications and what would be the mechanics?

In this situation, the possible remedies are outlined in paragraph 5.2. The action to be taken would depend on circumstances. The complete replacement of all Councils by a Commissioner (Option (a)) would require the suspension of all subsequent by-elections, and also involve the removal of all Councillors appointed to all other public bodies. Further thought would need to be given to the persons to be appointed, to the nature of the work to be done (including the number of meetings required with each Town Clerk exercising these functions), the personal profile of the Commissioners to be appointed, and other necessary considerations. It would, for example, be possible to contemplate the appointment of a small number of Commissioners who could handle the affairs of all 18 Councils.

4. I hope this information satisfactorily deals with these questions.

*P. Barry*

*PP* **D BARRY**  
Department of the Environment (NI)

8 September 1986

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## LOCAL GOVERNMENT - POSSIBLE ACTION AND REMEDIES

### 1. PURPOSE

- to identify possible actions by Unionist Councillors during the next months
- to consider the legal/procedural circumstances then arising
- to consider available remedies to Government

### 2. BACKGROUND - PROCEDURES/REQUIREMENTS

2.1 (a) Councils only required by statute to meet twice annually -

(i) AGM in June; and

(ii) to strike Rates in February.

(b) Current adjournment policy also includes limited delegations to Town Clerks in majority of Unionist controlled Councils so Clerks need Council decisions on a range of licensing, contractual, staffing and regulatory matters which are not being dealt with. Delegation not possible in respect of land, rates, borrowing.

(c) High Court judgements already given in Belfast, Ballymoney and likely in 4 other Council areas determine that delegations to Clerks as part of protest against Anglo Irish Agreement is unlawful and that Councils must meet to transact business.

2.2 Meetings of Councils can only be convened either by Chairman or by 5 or one-fifth of whole number of Councillors, whichever is the greater. If Unionists resign or boycott - and subject to assumptions in para 3 below - meetings could not be convened in 7 Councils - Ballymena, Ballymoney, Banbridge, Carrick, Castlereagh, Larne and Newtownabbey - but could in 11 others.

2.3 Business can only be transacted if a quorum is present - ie, one-quarter of whole number of Councillors. If Unionists resign or boycott and subject to assumptions below - business could not be transacted in Ballymena, Ballymoney, Banbridge, Castlereagh, Coleraine, Larne and Newtownabbey but could in 11 others - combination of 2.2 and 2.3 therefore affects 8 Councils, but 10 could continue in business (4 depending on SF votes, ie, Antrim, Cookstown, Limavady and Lisburn).

2.4 If a Councillor resigns he immediately ceases to be a Councillor from date of receipt of resignation by a Clerk.

2.5 If a Councillor is disqualified or fails to attend a meeting called in a 3 month period, he ceases to be a Councillor but the vacancy must be declared by a meeting of the Council.

2.6 Where a casual vacancy occurs, either by 2.4 or 2.5, a Council meeting must be held within 42 days to co-opt a new member. If there are no objections then co-option takes place - otherwise the matter is referred to Chief Electoral Officer within 7 days of the 42 period for by-election. If no meeting takes place, the Clerk would also refer the matter to Chief Electoral Officer.

### 3. VARIABLES AND ASSUMPTIONS

3.1 To consider possible actions and legal remedies, it is necessary to make the following assumptions.

(a) all UUP, DUP Councillors will adhere to party policy (defections from hard line policy could help in 2.2 and 2.3 above, eg, Carrick, Coleraine;

(b) all Independents (except where personal standing already known) will vote as Independent Unionists or Independent Nationalists;

(c) all non-Unionists, ie, SDLP, Sinn Fein and Alliance would agree re holding meetings (paras 2.2 and 2.3) and co-option (para 2.6) if casual vacancies occur.

3.2 There are a number of variables not possible to address without a detailed paper on each Council area:-

- (a) procedures under Standing Orders of a Council re actions of Council officials (eg, on payment of accounts);
- (b) different delegations to Clerks;
- (c) ability and willingness of Clerks to withstand decisions of Councils which may be ultra-vires.

#### 4. POSSIBLE COURSES OF ACTION BY COUNCILLORS

##### 4.1 Unionists resign seats and stand again (substitute referendum)

- (a) if they all resign than all casual vacancies could be filled in 10 Council areas by co-option (2.6 above) and Antrim, Ards, Armagh, Belfast, Cookstown, Craigavon, Dungannon, Limavady, Lisburn and North Down would be entirely non-Unionist. The necessary by-elections in the remaining 8 would not result in change of control. In 4 of these 10 Councils, SF votes are essential to co-option;
- (b) if co-options do not take place and by-elections are called, then, assuming the same percentage of first preference votes are cast as in May 1985 the Councils in Belfast, Armagh, Cookstown, Dungannon and Limavady would change control to have Nationalist majorities and Craigavon would be marginal;
- (c) either (a) or (b) above would also result in more seats for Sinn Fein in the 18 Unionist-controlled Councils and also in 8 Councils currently Nationalist-controlled.

##### 4.2 Unionists resign seats and do not stand again

- (a) 4.1 (a) above applies to co-options and again 10 Councils could continue without by-elections;

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(b) if by-elections are called in the other 8 Councils, then the following number of Councillors need to be elected to produce minimum number for quorums for meetings:-

(c) Ballymena (5), Ballymoney (3), Banbridge (1), Carrickfergus (1), Castlereagh (2), Coleraine (1), Larne (2), Newtownabbey (2);

(d) all 18 Councils would be entirely non-Unionists (unless there were dissidents), as well as the current 8 Nationalist controlled Councils.

#### 4.3 Unionists Boycott But Dont Resign

(a) if boycott (non-attendance in any circumstance by anyone, including Mayors/Chairman) takes place, meetings could continue to be convened and business conducted in 10 Councils, but not in 8 others;

(b) non-attending Unionists could be disqualified from membership if they failed to turn up at a meeting within a 3 month period in the 10 Councils at (a) above. If so co-option then is possible and paragraph 4.1 applies. Disqualification would not apply in the 8 others since no meetings could take place.

(c) to continue business in these 8 Councils, without by-election the number of Unionist defectors would have to be as in 4.2 (b) above;

(d) Sinn Fein support is essential in 4 out of these 10 areas to keep the Councils in business.

#### 4.4 Change Powers of Town Clerks

(a) from paras 4.1-4.3 above it will be seen that in the event of resignation or boycott business could continue in 10 Council areas and so Clerks could have the facility to obtain Council decisions. In the other 8 areas, with resignations there would be no Council meetings until by-elections took place - 4.1 and 4.2. Nothing could be done by non-Unionists in these 8 areas to hold meetings in the event of boycott.

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- these circumstances have a direct impact on the ability of Clerks to secure the delivery of services;

(b) if the 4 further High Court cases result in similar judgements to the Belfast case re-delegation to Clerks, this would be a significant influence on the remaining Clerks - and would certainly be used by Unionist Councillors to limit the action of Clerks, eg, they could instruct Clerks only to act in accordance with legal advice (which would be based on case law);

(c) paras 3.2 (a) and (b) would be relevant. The most important power is to provide and pay accounts for wages, salaries, goods, materials and services incurred in the delivery of Council functions. Within the current adjournment policies, these functions have only continued because Clerks have either had specific authority to so provide an pay - or because they have liberally interpreted their powers, eg, to obtain goods and materials without the award of contracts. Certain discretionary powers have not been exercised nor have decisions been taken about new facilities, etc.

Any action which inhibits the ability of Clerks to provide materials and/or pay accounts would have immediate and serious implications for the continued delivery of services. DOE would consider this to be the course of action with most significant impact on Council functions. Clerks would have to consider carefully their precise legal position in relation to previous financial authorisations from the Council and DOE to pay accounts, contractual obligations to both staff and suppliers and their personal position as officers of the Council with financial and other responsibilities. The likelihood is that a number would immediately seek help, advice and authority from DOE to continue in business, in a similar way to action necessary in Belfast to award contracts for annual supplies. Options available to DOE would be to:

(a) do nothing, and let Council jobs and services close (even temporarily);

(b) force Clerks to interpret the law as we would want to (and expose them to difficulties with their Councils);

- (c) use temporary powers as at 5 below in a similar way to that in Belfast.

Clerks are becoming increasingly concerned at being caught between their Councillors, their staff and functional obligations and the Department.

## 5. POSSIBLE REMEDIES

In a situation where a Clerk reports to DOE that his Council is unable or unwilling to perform functions then the following possible remedies could be considered. They would apply whether the difficulties arise through resignation, boycott or withdrawal of delegation, since the justification is "where it appears to the Head of DOE that a Council is unable or unwilling".

5.1 Do nothing - in the hope that local pressures force Councillors back to business, or others will take Court action, or sense will eventually prevail.

5.2 Use Local Government Temporary Provisions Order - this could be done in 4 ways, depending on local circumstances

- (a) complete replacement of affected Councils by appointment of Commissioner(s);
- (b) appointment of Commissioners for specific, essential functions on a continuing basis;
- (c) appointment of Commissioner on short-term, selective basis to handle outstanding problems (as recently in Belfast);
- (d) appointment as in (a) or (c) but with Commissioner delegating powers to Clerks to secure the provision of the services in question.

Under (a) it would be possible to suspend by-elections since the Orders to be made (one for each Council), could induce modification of the provisions relating to casual vacancies.

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5.3 Further Emergency Legislation

Large scale Council vacancies could exist in all 26 Councils and so it would be for consideration whether any further emergency legislation would be necessary relating to electoral matters, eg, to suspend elections, suspend all local government, etc.

Department of the Environment (NI)

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