

1. Mr Innes cc PS/Mr Scott (B&L) - M
 PS/PUS (B&L) - M
 2. PS/Secretary of State (B&L)M Mr Stephens
 Mr Ferneyhough
 Mr Elliott
 Mr Shannon
 Mr Bell - M
 Mr S Hewitt
 Mr D A Hill - M

HEAD OF DIVISION

27 OCT 1986

POB-NIO BELFAST

SPECIAL MEETING OF THE CONFERENCE ON ACTION UNDER ARTICLE 9(a)

1. I attach main briefing as requested on questioning of suspects held in the Republic of Ireland and defensive briefing as follows on:

- a. three judge courts (Article 8)
- b. Flags and Emblems (Article 5)
- c. RUC accompaniment of UDR patrols (Article 7(c))
- d. allegations against the security forces in Strabane (Article 7(c))
- e. Army operations in South Armagh (Article 7(c)); and
- f. Stalker/Sampson (Article 7(c)).

2. Officials are agreed that the Secretary of State should resist attempts by Mr Dukes to broaden the discussion to include matters covered by Article 7(c). The Irish should be discouraged from seeking to establish a linkage between progress on 9(a) and 7(c), and the Secretary of State will wish to indicate firmly that while the importance of 7(c) matters and progress under other Articles are acknowledged by HMG this special meeting has been called to concentrate on progress under Article 9(a); other matters should be raised at the next meeting of the Intergovernmental Conference.

Brian Blackwell

B A BLACKWELL
 Law and Order Division

27 October 1986

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QUESTIONING OF SUSPECTS DETAINED IN THE OTHER STATE'S
JURISDICTION

British Government's Objective

1. To obtain Irish agreement in principle to the establishment of reciprocal arrangements between the RUC and the Garda Siochana which would allow persons detained in one jurisdiction who were suspected of committing offences in the other to be questioned by officers from the other police force.

2. As a fall back position in the face of Irish rejection of the proposal, to obtain Irish agreement to an urgent special study by Legal Working Group II of the legal position in both jurisdictions affecting the questioning of suspects by police from the other jurisdiction with a view to overcoming any legal obstacles in the way of agreeing on reciprocal arrangements.

Irish Government's Likely Objective

1. To convince HMG of the legal, security and political difficulties involved in any reciprocal arrangements and to block any early progress in this field.

Line to take

If Article 9(a) of the Agreement is to mean anything in practical terms the British Government believes it should be possible to come to early agreement on reciprocal arrangements to allow RUC and Garda officers to question persons suspected of terrorist or other crimes who are held in custody in the other's jurisdiction. This is common practice between police

forces in Europe and certainly the RUC see no difficulty about allowing Garda officers to come to Northern Ireland to question persons suspected of committing crimes in the Republic.

Early agreement on reciprocal arrangements would provide the most convincing practical evidence of the two Government's joint determination to deal effectively with terrorist crime.

Background

1. Most police forces in Europe have reciprocal arrangements allowing the questioning of persons suspected of crimes in one jurisdiction who are detained in another. In most cases the arrangements are so routine that they do not require reference to governments.
2. At present the Garda will on occasions agree to the presence of RUC officers at a police station where a suspect is being questioned but only for the purposes of briefing the Garda interviewing officers out of the presence of the suspect. The RUC have no objections in principle or practice to allowing Garda officers to come to Northern Ireland to interview directly persons suspected of committing crimes in the Republic.
3. This subject was raised by the RUC in the joint RUC/Garda Working Party on Legislation, Procedure and Related Matters in Both Jurisdictions which reported before the last meeting of the Intergovernmental Conference. The Garda Commissioner rejected the proposal to allow RUC officers to interview persons detained in the Republic who were suspected of committing crimes in Northern Ireland on the grounds that "it is settled Garda policy that officers from any external Police Force are not permitted to interview suspects detained within

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the jurisdiction of the Republic of Ireland or to be present during such an interview".

4. The Irish are likely to expand on their objections on two counts: legal difficulties; and security problems. Neither need be insurmountable given the will to arrive at suitable reciprocal arrangements. In the almost certain eventuality that the Irish will seek to rule out this proposal on the grounds of legal and security difficulties the British side should pass for an urgent examination of the legal position in both jurisdictions affecting reciprocal arrangements for questioning. An appropriate body to carry out such an examination would be Legal Working Group II.

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THREE-JUDGE COURTS

Line to Take (if raised)

1. As the Prime Minister made clear we gave this very serious consideration but decided against making the proposed change.
2. There is no point in asking us to reconsider.
3. We of course remain committed to the search for measures to enhance public confidence in the administration of justice in Northern Ireland. I look forward to discussing what has been done, and what further steps might be taken, at the next regular meeting of the Conference.
4. I have so far avoided revealing that a decision has been taken, let alone what that decision was, but it will become clear soon enough (in the mid-December Parliamentary debates on the Emergency Provisions Act, if not before).

Background

1. The attached checklist summarises the measures to encourage public confidence in the administration of justice in NI which
 - (i) we have taken within the last two years;
 - (ii) we are considering; and
 - (iii) we might contemplate.
2. If the subject is raised, the Secretary of State should make clear to Mr Barry that the decision on 3-judge courts cannot be concealed for much longer.

MEASURES TO ENCOURAGE PUBLIC CONFIDENCE IN THE ADMINISTRATION
OF JUSTICE IN NORTHERN IRELAND

Measures Already Taken or Announced

1. An Order which increased the Attorney-General's discretion to certify cases out, so that they can be tried before a jury, was made in January 1986.
2. The Attorney-General's Written Answer of 19 March 1986 confirmed that the practice of the prosecuting authorities in deciding whether to mount prosecutions on the basis of evidence from an accomplice was the same in NI as it was in England and Wales; that in the absence of corroborative evidence "the availability of other cogent supporting evidence becomes an important factor"; and that without it it was "very unlikely that a prosecution will be instituted".
3. The Government's proposals for amending the Emergency Provisions Act have been set out in Parliament and discussed with interested parties. They include proposals to:
 - (a) introduce a test of reasonable grounds for suspicion for the exercise of most powers (especially arrest powers) under the emergency legislation;
 - (b) shift the onus in bail applications in scheduled cases from the defence to the prosecution;
 - (c) revise the provisions governing the admissibility of confession evidence in scheduled cases, so as to state the court's discretion to reject evidence in the interests of justice or of fairness to the accused; and
 - (d) introduce new provisions, parallel to those in the Police and Criminal Evidence Act 1984, conferring statutory rights on suspects in police custody, having been detained under the emergency legislation.

.. Substantial steps have been taken to eliminate avoidable delays between first remand and trial. Representatives of the relevant agencies, under NIO chairmanship, meet regularly to monitor and evaluate the situation. Steps which have been taken include:

- (a) the appointment of 3 more judges;
- (b) a 50% increase in the size of the Senior Bar;
- (c) reorganisation of RUC Crime Branch;
- (d) reorganisation of DPP procedures and the appointment of additional professional staff;
- (e) increases in Court Service staff;
- (f) new crime reporting arrangements for minor offences;
- (g) introduction of pro forma crime reports for straightforward cases;
- (h) revised procedures for time-tabling committal proceedings;
- (i) the appointment of a presiding judge to oversee the listing of cases at the Crumlin Road Courthouse;
- (j) a decision to allow scheduled cases to be heard other than at the Crumlin Road Courthouse, subject to security advice; and
- (k) a decision to increase maximum remand periods to release courtroom accommodation.

5. Another Roman Catholic was appointed to the High Court earlier this year. Of the ten judges now in the Supreme Court, 3 are Roman Catholic.

Measures under Consideration (not yet agreed or revealed to the Irish)

6. We are in discussion with HQNI and the RUC about the possibility of introducing a Code of Practice for the exercise of emergency powers.

Measures which could be introduced

7. Repeal the detention provisions in the EPA.

8. Create a new senior judicial post and split up the LCJ's administrative responsibilities.

9. Abandon or amend the proposal to increase maximum remand periods. The Irish have expressed concern about this. So have the SDLP, the Alliance Party and SACHR.

10. Reduce the list of scheduled offences, or further increase the Attorney-General's discretion to 'certify out' (though there seems very little scope for this).

11. There may be some slight scope for movement in the area of 'identity' issues in court administration (the flying of the Union flag or display of Royal arms on court buildings, the wording of judicial oaths, unnecessary references to the Queen in court proceedings etc) about which the Irish have expressed concern.

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FLAGS AND EMBLEMS

Line to Take (if raised)

1. I will shortly be publishing a Proposal for an Order-in-Council on public order law. This will envisage the repeal of the Flags and Emblems Act, but the Proposal will be the subject of a formal 6-week consultation period so the issue will continue to be open until - after the consultation period - I publish a Draft Order.

2. Repeal would have no practical effect, but both sides of the community have come to attach enormous political and symbolic significance to it. The effects of an emotional Loyalist reaction might outweigh - for nationalists - any benefits which they might perceive in repeal.

3. Loyalists will portray this as an extremely divisive and provocative step. It will be crucial for Irish Government and nationalist spokesmen to take a restrained line. I will ask my officials to discuss the point with yours via the Secretariat.

Background

1. The Irish should be left in no doubt that the course which the Secretary of State proposes to take is not an easy one, even though it is the best of the available options. They should also be reminded that the benefits of repeal for nationalists are intangible and may well be outweighed in the short term by the further alienation of the majority community.

2. The essential message is that the Irish must take a very restrained line when the Proposal is published.

UC ACCOMPANIMENT OF ARMY PATROLSLine to Take (if raised)

As I explained at the last Conference, it is the long-standing policy of the Government and the Chief Constable that patrols should be accompanied wherever resources and circumstances permit. At present the demands on police resources are such that officers have many other priorities to meet, but the Government is determined to maintain its policy and hopes to see further progress.

Background

A copy of the note which was passed to the Irish before the last meeting of the Conference is attached. We have asked the Chief Constable for his views on how, if at all, these figures and their successors might be presented publically.

RUC ACCOMPANIMENT OF MILITARY PATROLS

Note by the Northern Ireland Office

The RUC have carried out a detailed monitoring exercise of their accompaniment of military patrols, covering a 13-week period from 2 June to 31 August 1986. This paper summarises the results, and explains some of the factors which should be borne in mind when interpreting the figures. It is supplied on the condition that no reference will be made to any of the material without the consent of the British side.

The figures relate to the RUC accompaniment of patrols which have significant contact with the public in sensitive areas. Sensitive areas are defined for this purpose as nationalist areas or nationalist parts of an area where patrols will have contact with the community through, for example, vehicle checkpoints, searches, and planned operations. The transit of a patrol through an area is not regarded as patrolling for this purpose.

The results may be summarised as follows.

<u>Area</u>	<u>Approx No of Military Patrols</u>	<u>% Distribution Of Patrols</u>		<u>% of Patrols Accompanied by RUC</u>		
		Regular Army	UDR	Overall	Regular Army	UDR
Belfast	4,000+	85%	15%	85.8%	100%	75.7%
Rural East ⁽¹⁾	4,500+	60%	40%	32.4%	30.9%	34.7%
Rural West ⁽²⁾	11,500+	60%	40%	24.4%	22.2%	27.9%
Northern Ireland	21,000	67%	33%	41%	44.8%	33.8%

The following factors should be borne in mind in interpreting these figures.

- a. The overall figures do not mean that priority is given to the regular army as opposed to the UDR. In the sensitive areas of Belfast, the RUC invariably accompany regular army patrols, and the effect of this "skews" the provincewide figure. It will be noted that the figures for Rural East and Rural West show that although the UDR is less likely to be deployed in the most sensitive areas, a higher

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proportion of UDR patrols than regular army patrols has a police presence.

- b. The figures for Rural East are skewed by the high proportion of purely military (and hence unaccompanied) patrols in South Armagh where any police presence would put lives unnecessarily at risk. It is noteworthy that over 55% of UDR patrols in the Divisions covering the Downpatrick, Newcastle, Ballymena and Antrim areas are accompanied, and all UDR patrols in the Division responsible for the Portadown/Lurgan/Lisburn area.
- c. The scale of the military effort in Rural West poses particular difficulties for the RUC in resource terms. Despite this, a higher proportion of UDR than regular army patrols are accompanied and the pattern is closely followed in the four Divisions concerned. In three of them, the effort devoted was significantly higher at the end of the period than at the beginning.

It is the long-standing policy of the Government and the Chief Constable that patrols should be accompanied wherever resources and circumstances permit. At present, the demands on police resources - particularly in the border Divisions where terrorist activity is at a very high level - are such that officers have many other priorities to meet. In addition the marching season has imposed a very heavy strain on police resources. The Government is determined to maintain its policy and hopes to see further progress.

- (1) Rural East embraces the Divisions which cover Newtownards, Downpatrick, Newcastle, Armagh, Banbridge, Newry, Portadown, Lurgan, Lisburn, Antrim, Ballymena, and Larne.
- (2) Rural West embraces the Divisions which cover Cockstown, Dungannon, Magherafelt, Enniskillen, Lisnaskea, Omagh, Londonderry, Strabane, Coleraine, Limavady, and Ballymoney.

ALLEGATIONS AGAINST THE SECURITY FORCES IN STRABANE (if raised)Line to Take

I am aware of these allegations and have asked the police and army to comment on them. Every specific complaint will, of course, be thoroughly investigated in the usual way.

Background

During the past couple of months there has been a well publicised series of complaints about the conduct of the members of the security forces in several parts of the Province. Londonderry, West and North Belfast, Newry and now Strabane have all come in for attention. The complaints have generally been made by local Nationalist politicians and community representatives, but the Catholic clergy have also been vocal. Bishop Edward Daly has been particularly prominent in regard to Londonderry and Strabane. Although the concern of the constitutional politicians and clergy is undoubtedly genuine there is reason to think that the allegations have been given considerable impetus, if not actually fabricated, by Sinn Fein. The matter has been raised by the Irish through the Secretariat and we are currently awaiting advice from the RUC and HQNI. We understand that senior members of the RUC met members of the Catholic clergy in Strabane on 10 October to discuss the matter and that a further meeting has been arranged for the middle of next month so that the situation can be reviewed.

ARMY "FORTIFICATIONS" IN SOUTH ARMAGH (if raised)Line to Take

Most of the work connected with the army's fortified positions has been completed and the determination and payment of compensation claims continues apace. To date (27 October) more than 95 out of a total of 133 claims have been settled, and more than £47,000 has been paid out.

Background

We understand Mr Barry met a delegation of South Armagh farmers led by Seamus Mallon on 22 October. Apparently Mr Barry approached the matter in a very constructive way and told the delegation that, notwithstanding his natural regret that such works were necessary, he was very impressed with the speed with which compensation was being paid.

STALKER/SAMPSON (if raised)

Line to take

You will know the present position from what I told Parliament last week.

Once Mr Sampson has reported on the matters concerning the management of the RUC, I propose to make a statement on those aspects to Parliament at the earliest opportunity. You will understand, I am sure, that I have no role in the conduct of any criminal proceedings that may follow from Mr Stalker's or Mr Sampson's reports nor will it be appropriate for me to comment upon the individual investigations involved until all such proceedings are completed.

Background

See attached background note to last week's PQ.

Background Note

Mr Archer's question reflects his continued interest in the Stalker/Sampson case, particularly in the light of his letter of 16 October to the Secretary of State.

2. The Secretary of State knows that, since Mr Sampson took over the leadership of the inquiry in June, there have been circumstantial allegations of RUC malpractice and the alleged framing of Mr Stalker. It has, for example, been alleged - and denied by the RUC - that one of Mr Sampson's informants in his investigation of Mr Stalker had also worked for the RUC. We now understand, however, that Mr Sampson proposes to submit his report proper in two parts: the first, dealing with the "Hay barn incident" was submitted on 22 October; and the second, which Mr Sampson hopes to submit "as soon as possible", will address all the associated issues connected with all three of the cases under investigation. A third instalment will cover the public interest aspects of the inquiry, in particular the management of Special Branch, use of informers and cross border incursions. Mr Sampson will be confirming Mr Stalker's finding that there were no Force instructions to any police officer in Northern Ireland to use other than legitimate methods to bring offenders to justice, contrary to media suggestion of a "shoot to kill" policy. But he will also be making clear that his investigations raised very serious questions about the management and control of the force, and its operations.

The end of Mr Sampson's work is now in sight (although he believes that the only proper way to answer certain questions and criticisms not adequately dealt with in his report would be by means of a formal inspection of the relevant areas of the RUC by HM Inspectorate). The first priority, however, remains for the DPP(NI) to consider whether there are grounds for prosecution, and it would be wrong to make any statement that prejudiced the subsequent course of justice. There may also be grounds for disciplinary procedures against members of the RUC. The Secretary of State for Northern Ireland is the ultimate appellate authority in such cases, and he cannot therefore make statements compromising his quasi-judicial

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(No e. It is, however, his firm intention, at the earliest opportunity to make a full statement to the House on public interest matters arising from the report. Because Mr Sampson will be separating out the question of individual prosecutions (in parts 1 and 2) from the public interests aspects of his inquiry (in the third section), this should enable the Secretary of State to say something on the latter even before all criminal and disciplinary proceedings are completed.

KEY POINTS

1. I understand that the first part covers the incident on 24 November 1982 in which Michael Tighe was shot dead (Hay barn incident).
2. I also understand that Mr Sampson hopes to submit a second part as soon as possible. This will address the associated issues connected with all the cases under investigation.

A third section will cover matters concerning the management of the RUC. I propose to make a statement to the House on these aspects at the earliest opportunity.
3. In keeping with normal practice with police reports of this kind, Mr Sampson's report will not be published.
4. Once the DPP(NI) has received the completed report, along with any comments from the Chief Constable, he will decide what directions to give as to criminal proceedings.
5. Clearly the House would not expect me to comment on the criminal or disciplinary aspects of the inquiry.
7. No evidence has been found of any connection between the allegations against Mr Stalker and events in Northern Ireland.
8. Media speculation about the report is extremely unhelpful and damaging to the RUC's fight against terrorism.
9. Avoid implying that there will be no further inquiries etc after Mr Sampson' report is complete.
10. Avoid giving a firm commitment that Chief Constable will necessarily see the report in toto. (This is a matter for Chief Constable, Mr Sampson and the Law Officers).