C O N F I D E N T I A L

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ef: S0027/0010

From: Director, TFU
28 February 1994

To: 1. Mr Steele [I have discussed this submission with Mr Williams who agrees that it suggests a sensible way forward. SGD JMS 1/3]
2. PS/Minister of State (DFP, B&L)

cc 153/3 PS

/Secretary of State (B&L)

PS/PUS (B&L)
PS/Mr Fe[illegible]
Mr Legge
Mr Thomas
Mr Lyon
Mr Williams
Mr Daniell
Mr Leach
Mr Marsh
Mr Barbour
Mr Thompson
Mr Bentley, HOLAB
Mr Evans, HOLAB
Mr Heaton, HOLAB

IG CONFERENCE: TERRORIST MONEY LAUNDERING

1. The Minister may recall that the Republic of Ireland is currently enacting legislation to deal with money laundering, and that we have been concerned that it should apply to terrorist money laundering. This submission reports on recent discussions among NIO and ROI officials and proposes that further work be undertaken.

Background

2. The Criminal Justice (No.3) Bill 1993 is currently at report

tage in the Dail, and is expected to complete its parliamentary passage by the end of March 1994. It provides for the seizure and confiscation of the proceeds of drug trafficking and other serious offences; the creation of an offence of money laundering; and measures to give effect to a number of international instruments on drug trafficking, money laundering and mutual assistance in criminal matters.

3. The Minister discussed terrorist money laundering with Mrs Geoghegan-Quinn at the restricted security session of the Conference on 10 September 1993. Mrs Geoghegan- Quinn gave an assurance that the Bill she intended to introduce in this session would incorporate a new offence of money laundering and would cover terrorist money laundering.

Recent Discussions

4. Despite Mrs Geoghegan-Quinn's assurance, we pressed the Irish for further information and a meeting. This eventually took place on 11 February and a note of the meeting is attached. The outcome was disappointing. The Irish approach to legislation against terrorism and subversion has not involved the creation of terrorist finance offences. Consequently, the confiscation and money laundering provisions of their current Bill will not apply to the proceeds of terrorist activities, the resources of terrorist organisations, or money that could be applied for acts of terrorism. It also follows that the mutual co-operation provisions of the Bill do not apply to terrorist finance.

5. The Republic of Ireland does, however, already possess forfeiture provisions in its Offences Against the State Acts which apply to the resources of unlawful organisations, specifically the IRA and the INLA. They have operated those provisions on one occasion in 1985 to seize £1.5m IR. But the provisions are currently suspended and it is hard to see them being available other than in the most flagrant of cases.

6. For our part, we expressed our disappointment that the Bill would

not apply to terrorist finances. We pointed out that the Republic of Ireland had a serious terrorist finance problem and that in our view its existing legislative response was insufficient. We argued also that by failing to include terrorist in its provisions the Republic of Ireland had made its Bill much less effective than it could have been.

Advice

7. There are several courses open to the Minister. He could justifiably take offence at Mrs Geoghegan-Quinn's misleading him last September that her Bill would extend to terrorism when it does not. But the problem lies not so much with the Bill as with the Republic of Ireland's approach to legislation on terrorism and the absence of the necessary structure of terrorist finances offences from their existing legislation. Without such offences, amending the current Bill would be very difficult indeed, and in practical terms impossible at its advanced parliamentary stage.

7. We could of course simply leave the matter to the Irish: over time they may well come to recognise the problems they are creating for themselves. But that would be to ignore the very considerable benefits which would accrue to Northern Ireland if there were effective terrorist finance legislation in the Republic of Ireland rigorously enforced.

8. Accordingly, we recommend that there should be a further meeting at official level seeking to convince the Republic of Ireland officials that there is more work to be done by them in the area of terrorist finance legislation. We also recommend that the Minister should take an opportunity at the next Conference to record UK disappointment that an opportunity has not been taken up to make progress in an important area of harmonisation of criminal law.

Conclusion

9. The Minister is invited to note the outcome of recent discussions and to approve the recommendation in paragraph 8 above that there

should be further discussions at official level If the Minister accepts also the recommendation that he draw Mrs Geoghegan-Quinn's attention to the matter, we will provide a speaking note in due course.

[signed]

DIRECTOR, TFU

C O N F I D E N T I A L

Ref:- S/0027/0010

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NOTE OF A MEETING AT MARYFIELD ON 11 FEBRUARY 1994

Present: Michael Mellett, Department of Justice
Ken O'Leary, Department of Justice
Dermot Cole, Department of Justice
Martin Williams, NIO
Director, TFU, NIO
Mr [redacted], TFU, NIO
Mr Wallace Thompson, CJPD, NIO
Clive Barbour, Secretariat

Introduction

1. The purpose of the meeting was to discuss the Criminal Justice (No. 3) Bill 1993, currently at Report Stage in the Dail, and expected to complete its parliamentary stages by the end of March 1994.

2. Mr O'Leary gave a very full account of the contents and thrust of the Bill which provides for:

- the seizure and confiscation of the proceeds of drug trafficking and other serious offences;
- the creation of an offence of money laundering;
- measures to give effect to a number of international instruments on drug trafficking, money laundering and mutual assistance in criminal matters.

Mr O'Leary's presentation is summarised in Annex A to this note.

Application of the Bill to terrorist finance

3. In discussion, the following points emerged:

a) the Irish approach to legislation against terrorism and subversion has not involved the creation of indictable

offences of contributing to, soliciting for, possession or use of, or laundering of terrorist funds;

b) consequently the confiscation and money laundering provisions of the Bill will not apply to the proceeds of terrorist activities, the resources of terrorist organisations, or money that could be applied for acts of terrorism;

c) it also follows that the mutual co-operation provision of the Bill do not apply to terrorist finance, and it will not be possible for UK government to seek in the Republic of Ireland the enforcement of confiscation and forfeiture orders; the attendance in the United Kingdom of suspects and witnesses resident in the Republic of Ireland; the taking of evidence in the Republic of Ireland for use in the United Kingdom; or the search for material relevant to investigations in the United Kingdom.

Republic of Ireland approach to terrorist finance.

4. Republic of Ireland officials were of the view that:

a) they were unaware of any problem with the manipulation of terrorist funds in the Republic of Ireland;

b) if there were such a problem, it would be revealed under the Bill because financial institutions in the Republic or Ireland would disclose any suspicious transactions, without concerning themselves as to whether they were politically motivated or drugs related;

c) whereas terrorist influence in Northern Ireland was pervasive, in the Republic of Ireland subversives had very little influence and it was unnecessary for the new disclosure legislation to apply directly to terrorism;

d) there were ample investigative powers and forfeiture powers where such funds were revealed;

e) the Public Order Bill (currently in the Senate) will create an indictable offence of blackmail and extortion to which the Criminal Justice Bill's provisions would apply.

The forfeiture provisions available in the Republic of Ireland to tackle terrorist finances are summarised in Annex B.

UK position

5. UK officials were of the view that:

a) they were disappointed that the Bill did not apply to terrorist finances;
b) the Republic of Ireland had a serious terrorist finance problem; and
c) by failing to include terrorism in its provisions, the Republic of Ireland had made its Bill much less effective than it could have been.

6. Director TFU outlined some Republican terrorist cross border financial activities. He pointed out that well known smugglers including Thomas Murphy and Eugene Hanratty had carried on large scale fuel and other smuggling for a number of years. They had no assets worth speaking of in Northern Ireland, but instead kept their assets in and carried on their crimes in the Republic of Ireland, using Northern Ireland for supply of fuels and other goods. Murphy in particular was known to have opened and closed companies in the Republic of Ireland as part of a complex fraud. The scale of these activities was in multi millions and could reasonably be regarded as damaging elements of the economy of the Republic of Ireland.

7. The Director appreciated that subversives who engaged in criminal activity could be convicted for their crimes, and confiscation could follow. Unless they engaged in drug trafficking, however, the onus would be on the State to prove that their assets were the proceeds of their crimes. This was unlike the situation in Northern Ireland, where engaging in the financing of terrorism was treated as severely as drug trafficking: effectively, the onus was on a terrorist financier to prove that he had come by

his assets honestly.

8. In response to questions, the Director agreed that it had not as yet been possible to obtain prosecutions and convictions under the United Kingdom's anti terrorist finance legislation. This was not a reflection on the legislation or the police effort. Terrorist finance is a very complex area and there are enormous technical and evidential problems to be overcome before prosecution is possible. The RUC were continuing their investigations and the long term prospects for prosecutions and confiscations were encouraging.

9. Against that background, it was judged essential that there should be a comprehensive structure of terrorist finance offences; and that the predicate offences of, for example, failure to disclose a suspicious transaction should be available in respect of terrorist money laundering; such offences are easier to prove than seeking to establish beyond reasonable doubt the terrorist intent and the terrorist association underlying a financial transaction.

10. Moreover, the United Kingdom had gone through something of the same thought process as the Republic of Ireland in developing money laundering legislation. A concern had been that if in Northern Ireland the coverage of the money laundering offence was less than comprehensive, the effect would be to create a loophole. An example would be an estate agent, or bureau de change, or other financial body laundering funds on behalf of a drug trafficker. When apprehended, they might adopt as a defence the fiction that they were working on behalf of someone they believed to be laundering funds for political ends. The effect would be that the unscrupulous money launderer would evade prosecution.

11. The offences in the Bill had not been designed or intended to operate against banks and building societies which would broadly speaking operate any set of rules scrupulously: they had been

designed to operate against the unscrupulous financial body who would seek every opportunity to evade them and if caught laundering funds would seek to avoid prosecution by any means possible. Moreover, while there may be no "unscrupulous banks", within them there are "unscrupulous employees" and they need to be under a requirement to disclose all suspicious transactions.

Way forward

12. It was agreed that this had been a useful exchange of views, and that both sides should consider afresh what had been discussed. The UK side noted that the Bill was close to completing its parliamentary process, and that the principal obstacle to applying the Bill to terrorist finance lay not in the Bill itself but rather in the absence of a structure of indictable offences relating to terrorist finance.

13. On that basis, the UK side enquired whether the Department of Justice would find it useful to have a further meeting dealing with the subject of terrorist finance in the Republic of Ireland and the UK structure of terrorist finance legislation. The Department of Justice saw merit in this, and asked if they might have a preliminary paper on the subject. For their part, the Department of Justice undertook to let NIO have a copy of their Offences against the State (Amendment) Act 1985, and copies of the relevant debates.

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CRIMINAL JUSTICE (NO 3) BILL 1993 **ANNEX A**

Confiscation

1. It is being increasingly recognised that the traditional methods of dealing with criminal offences that generate substantial amounts of money, and drug trafficking in particular, are not sufficient in themselves and what is required is a means of depriving persons who obtain large profits from crime of those profits. At present, the courts have only limited power to order the seizure and confiscation of criminal proceeds and Part III of the Bill extends that power to all cases where a person is convicted of an offence on indictment. Part III of the Bill is consequential on Part III and deals with the enforcement of confiscation orders and other matters.

2. The effect of these parts of the Bill will be to bring the legislation on confiscation in the Republic of Ireland closely into line with that in the United Kingdom. In the case of drug trafficking offences, the courts will determine whether or not an offender has benefited from drug trafficking, and will then be required to assess the amount to be recovered on the basis of assumptions and subject to a civil standard of proof. In the case of offences other than drug trafficking, courts are empowered to make confiscation orders on the application of the Director of Public Prosecutions; the amount to be paid will be such sum as the court thinks fit. There is a scheme for the enforcement of confiscation orders, including the realisation of property, restraint orders, appointment of receivers etc. As in the UK, there will be a facility to imprison those who do not satisfy confiscation orders, but imprisonment will not expunge the debt.

Money Laundering

3. Part IV of the Bill provides for an offence of money laundering. The activities caught by section 27 are very wide ranging and they include those set out in the definition of "laundering" in the EC Directive. It will be an offence for a person to launder, whether by concealment or conversion, the proceeds of his or her own drug trafficking or other crime; and it will also be an offence for a person to launder another's proceeds of crime knowing or believing that the property that he or she is dealing with represents such proceeds. Although couched in terms rather different from UK legislation, the effect is broadly similar.

4. Section 28 sets out the measures to be taken to prevent money laundering, such as verification of identities in respect of transactions and the retention of records. This section sets out in particular the requirement of financial institutions to identify customers before opening accounts and entering into transactions on their behalf. It is supplemented by Part VII of the Bill which requires the disclosure of a suspicion that a money laundering offence has been or is being committed, and also provides that it will be an offence for a person who knows or suspects that an investigation is underway, to make a disclosure likely to prejudice the investigation.

5. The Republic of Ireland intends to rely to a very great extent upon guidelines emanating from a committee of the financial institutions to define what is a suspicious transaction. In this, they are following United Kingdom practice, in that guidance notes have been prepared by a Joint Money Laundering Steering Group. The UK guidance notes, however, supplement the Money Laundering Regulations 1993 which, in particular, require the institutions and businesses concerned to establish and maintain specific policies and procedures to guard against their businesses and the financial system being used for the purposes of money laundering, and cover

- internal controls and communication policies;
- identification procedures;

- record keeping;
- recognition of suspicious transactions and reporting procedures; and
- education and training of relevant employees.

The United Kingdom is thus more closely regulated than the Republic of Ireland will be.

Mutual Co-operation

6. Part VI of the Bill provides for international co-operation. It provides a procedure for the enforcement, by means of orders under Irish law, of confiscation orders made by the courts of designated countries for the confiscation of property acquired by or as a result of drug trafficking offences or conduct corresponding to an offence for which confiscation order could be made under Irish law. There is also a procedure for the enforcement of orders for the forfeiture of property. Certain kinds of documents issued in foreign criminal proceedings will be able to be served in the State, including summonses to appear as a defendant or witness, although the person in question will not be obliged under Irish law to comply with the notice. There is also a procedure by which evidence, including documents and other articles, may be obtained in the State for use in criminal proceedings in another country. Provisions of Irish law authorising a judge from the district court to issue a search warrant for obtaining evidence of an offence will be able to apply so as to authorise the issue of similar warrants for obtaining evidence of a similar offence under the law of a designated country.

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OFFENCES AGAINST THE STATE ACTS 1939-85 ANNEX B

1. Under Section 18 of the Offences Against the State Act 1939, organisations involved in a number of specified matters are declared to be unlawful. By Section 19, the Minister for Justice may issue a Suppression Order in respect of such organisations. Two such orders have been made and these deal with the IRA and INLA. Once an order has been made all the property of the suppressed organisation is forfeited to and vest in the Minister for Justice (section 22).

2. The Offences Against the State (Amendment) Act 1985 widens this forfeiture clause and provides a method for the collection of monies confiscated under its provisions. Section 8(1) declares that the property acquired by an unlawful organisation after it has been suppressed is also forfeited. Section 8(2) applies the forfeiture provisions to money not actually owned by the suppressed organisation but rather "held by any person for the use or benefit of, or for use or purposes of" it. The main purpose of the 1985 Act was to get at funds held by "front men" for the IRA and INLA. The Minister for Justice ensured the easy passage by referring obliquely to a particular bank account against which it was urgent to move.

3. Subsequently, in 1985 the State seized £1.5m IR in a Republic of Ireland bank account of a Mr Clancy from New York. Mr Clancy launched an appeal, but the appeal is not now active. The onus is on the person claiming the money to initiate the proceedings. He then has the burden of proving to the Court's satisfaction that Section 22 is not applicable and his ownership of the money.

4. The 1985 Act is currently suspended, but can be brought back into force by Order.

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