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Position of Senator Seamus Mallon in relation to elections for the Northern Ireland Assembly

TO: Secretary to the Government

FROM: W. Kirwan, Assistant Secretary.

You will wish to bring the papers beneath to the attention of the Taoiseach. He may wish to see, in particular, Mr. Murray's minute dated 27th July and the telexed report of remarks by the Secretary of State for Northern Ireland in the House of Commons on 26th July, during the debate on a Motion to approve an Order designating 20th October as the day for the election of the Assembly.

In my mss. comments on Mr. Murray's minute, I indicated that we would need to check that the Order turned up by the Department of the Environment had not been included in the repeals set out in Schedule 3 of the Northern Ireland Assembly Disqualifications Act 1975. It is now, however, quite clear from the remarks by Mr. Prior that the Order was not included in these repeals and continues to have effect. Mr. Prior's remarks make fully clear the legal basis for the British conclusion that Senator Mallon is disqualified. They also explain the legal basis for their view that the power to disregard a disqualification, apparently contained in Section 3(3) of the Northern Ireland Assembly Act 1973 is not in fact available to the Secretary of State.

The important point which therefore emerges from these papers is that not alone is Senator Mallon excluded from taking his seat in the proposed Assembly, if he wished to do so but he is also excluded from being a candidate for the election. In the British view, this situation could only be changed by primary legislation and it is clear from the remarks by Mr. Prior beneath that he does not intend to sponsor such legislation. It would be open to us to seek legal advice here as to the correctness of the British view of the legal position but there does not seem much point in this, since it is certain that the British will be guided by their own view, regardless of whether we might obtain any different opinion.

The question as to whether we would wish to make any issue of the position now disclosed with the British is, of course, linked with our attitude to the entire Prior initiative and, in particular, to (1) participation by the SDLP in the election and (2) in the event that they were to participate, the decision to be taken as to

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whether SDLP members elected would take their seats or not.

W. Kinnear

29th July, 1982.