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To: HQ **From: Belfast**
For: C. O Floinn **From: Joint Secretary**

Subj: Proposal to amend QC's Oath

1. I had a conversation today with Michael Lavery QC on the recent proposal by a committee of the NI Bar Council for the abolition of the undertaking to serve the Queen which forms part of the declaration which barristers are expected to take on being sworn in as QCs.

2. Lavery strongly supported this proposal, as might be expected, adding that the fact that there had been unanimous backing on the committee for it was encouraging. He paid tribute to the key role played by Fraser Elliott QC, a Protestant barrister.

3. As to the likely response from the Lord Chief Justice, the latter could be expected to take the traditional line that the very title of Queen's Counsel implies a readiness to serve the sovereign and that this element should, accordingly, be retained. Lavery suggested, however, that it would not be easy for the Lord Chief Justice to demonstrate that the authority in this matter rested with him. While the Lord Chief Justice is entitled to appoint barristers, he has no authority to attach conditions to this. Extensive research in the wake of the Magee High Court action failed to pinpoint how exactly the oath in question came into existence in Northern Ireland. However, the general view is that it originated with over-zealous Ministers of the new NI Government in 1922 and has been applied uncritically ever since.

4. Lavery suggested that, if the oath arose initially in the political domain, it would be open to the present Secretary of State to issue, in the light of the recommendation forwarded by the Bar Council, a statement proposing an alternative form of

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declaration. (The Bar Council have proposed that the new declaration should read: "I do sincerely promise and declare that I will well and truly serve all whom I may lawfully be called upon to serve in the office of one of her Majesty's Counsel learned in the law according to the best of my skill and understanding"). He noted that the Secretary of State already has a locus standi in relation to the appointment of barristers in that it is she who issues their Letters Patent.

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