

cc: PS/PUS (B) 5/25  
PS/PUS (L) Without enclosure  
Sir Maurice Oldfield  
Mr W E Bell  
Mr Moriarty  
Mr Wyatt  
Mr Ranson  
Miss Kelley  
Mr Marshall



IMB/61/80/5

Mr Hannigan

*M. P. [Signature]*

*W. J. [Signature] 6/5*

*Miss Owens:  
Please Mr. [Signature]  
for any views.  
[Signature] 6/5*

*sent 9/5/80 p*

FIRST REPORT OF THE WORKING PARTY ON THE ADMINISTRATION AND ENFORCEMENT OF THE LAW RELATING TO TERRORISM

- ...
1. I attach the first report of this revived Working Party (its previous report was circulated in 1977). The Working Party saw its task as finding worthwhile improvements in the effectiveness of the law in helping to deal with terrorism in Northern Ireland. We have considered both improvements to the present criminal justice system, and proposals which, if adopted, would actually change the nature of the criminal justice system.
  2. We came to the broad conclusion that there is not a great deal to be done to improve the existing criminal law. The main terrorist acts which we wish to condemn are already criminal: we concluded (paragraphs 19 - 24) that creating a statutory offence of conspiracy (to replace the present common law offence) or creating a new offence of terrorism would add nothing to the legal armoury.
  3. The crucial problem is not the definition of criminal behaviour, but producing evidence in court to substantiate allegations of criminal behaviour: we therefore considered a number of ways of surmounting the obvious difficulties which face the Police and the Prosecution. We considered whether there could be a relaxation in the rules of evidence to enable witnesses to give secret evidence, or to admit hearsay evidence - but have concluded (paragraphs 25 - 29) that there is no practical step that could be taken short of virtually introducing detention. We also considered (paragraphs 42 - 48) the so-called right of silence - whether an accused person should be allowed to continue to remain silent in the face of Police questioning, or during court proceedings: there is great attraction in any measure which leads to a suspect answering

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Police questions, and having to explain his conduct - but there is in fact no way of compelling a suspect to answer questions, the most one can do is to impose a penalty for failing to answer. We considered that it would be helpful to introduce such an offence, but felt on balance that the advantages of creating such an offence were outweighed by the practical disadvantages, and the very strong objections of principle.

4. We have thus been unable to find any single change in the law which, if adopted, would produce a major shift in the balance of advantage and disadvantage vis-a-vis the terrorist. But in the course of our discussions we have identified a number of more modest measures which we think are worth taking, and which in combination should add usefully (I would not put it higher than that) to the armoury of the Police and the Prosecution: these are listed in the annex to this note, as also are four changes which we recommend in order to confirm what we believe and hope the present law already permits.

5. As the report indicates, the Working Party is still at work on a number of suggestions which have arisen more recently, and is also examining the Emergency Provisions Act with a view to formulating advice on which if any section should be amended or abandoned. We plan to submit this further report by early June.

6. I do not expect, however, that the total package of measures recommended by the Working Party will amount to the substance of a major Bill. If the recommendations are approved, we are more likely to be talking in terms of a minor amending Bill to the Emergency Provisions Act.

7. First however we need to consider the mechanics of putting this report to the Secretary of State and, if necessary, to other Ministers. The Working Party included representatives of the Army and the Police, and representatives have been present from the Attorney General's office, the Courts Service and the Director of





Public Prosecutions. If action is to be taken on the recommendations, however, the Secretary of State will wish to be satisfied that the GOC, the Chief Constable, the Attorney General, and possibly the Lord Chancellor, are personally content with what is proposed. Subject to your views, and those to whom this note is copied, I suggest we proceed as follows:

- (a) Submit the report to the Secretary of State under cover of a brief submission identifying the main issues discussed, and listing the recommendations for action. If the Secretary of State wishes, there could then be a discussion with officials before .....
- (b) Circulate a similar paper to SPM (due to meet next on May 20th) at which the GOC and Chief Constable can offer their comments on the report.
- (c) Subject to any points which emerge at either of these two stages, recommend the Secretary of State to write to the Attorney General and the Lord Chancellor asking for their formal views on those of the recommendations which he has decided to accept.

A handwritten signature in black ink, appearing to be 'I M Burns', written in a cursive style.

I M BURNS  
1 May 1980



### Measures Recommended

1. The offence of dressing or behaving in a public place in a manner likely to arouse apprehension of membership of a proscribed organisation (Section 25 of the Emergency Provisions Act) to be triable on indictment as well as summarily (Paragraph 9).
2. Create a new offence covering -
  - (i) The transmitting of information supplied by a proscribed organisation
  - (ii) Knowingly giving assistance to a proscribed organisation  
Including assisting in the organisation of a meeting of a proscribed organisation  
(Paragraph 18)
3. Reintroduce a provision that a statement made to the Police may be admitted in evidence if the witness is no longer able to be brought before the court (Paragraph 28)
4. Provide that a court should admit in evidence any photograph film etc, even where the photographer or film processors are not called upon to give evidence, provided it appears to the court that it is not possible or practicable to secure their attendance (Paragraph 35).
5. Give the Police a power to apply to the courts for an order requiring a person to supply to the Police any photographic or documentary evidence which the Police have reason to believe may be useful in the investigation of a schedule offence - such documents etc being handed to the Police both for use in the investigation, and for safe custody until trial (Paragraph 37).
6. In addition, Ministers have already decided in principle to introduce legislation at a convenient opportunity to create an offence of passing a road block on a road which has been blocked under the Emergency Provisions Act





7. The Working Party have also noted that the Department of the Environment are proposing certain changes to improve the law on the eviction of squatters: in principle these changes should probably be contained in housing legislation, but any Bill which results from the Working Party's proposals may prove to be the only opportunity to act on DOE's proposals<sup>7</sup>

Measures Recommended to ensure that existing practices can be maintained, or to reinforce our existing view of the law

8. The law should be amended to remove any doubt that dressing or behaving either in public or in private, in such a way as to arouse reasonable apprehension of membership of a proscribed organisation is evidence of profession of membership of that organisation (Paragraph 9).

9. The law should be amended to confirm that Section 21(1)(B) of the Emergency Provisions Act already makes it an offence to make any kind of material contribution to the sources of a proscribed organisation (Paragraph 14).

10. If the law does not already permit this, members of the security forces should be permitted to take such steps as may be necessary to protect forensic evidence on the body or clothes of a suspect (Paragraph 32).

11. If the law does not already permit this, the Police should be given power to order the taking of skin swabs from a suspect, or other samples from his clothing or his person (Paragraph 32).