

SETTING: HOME AND SOCIAL AFFAIRS COMMITTEE - 15 APRIL
PAPER: MEMORANDUM BY THE HOME SECRETARY - H(81)29
SUBJECT: DISQUALIFICATION OF PARLIAMENTARY CANDIDATES

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Background

1. The Home Secretary's paper represents his initial thoughts on how the law might be changed to prevent convicted prisoners being Members of Parliament, thus avoiding a repetition of the Sands affair. The paper was only requested by MISC 55 on 13 April, so has been produced in a great hurry. It does not pretend to be an exhaustive survey of what is complicated territory.

2. In abolishing the distinction between felonies and misdemeanors, the Criminal Law Act 1967 removed a ground for disqualification from Parliament: that of a convicted felon serving a term of imprisonment exceeding twelve months. As a result the only way to remove Sands a Member of the House of Commons is by expulsion. If expelled, another prisoner could stand again at a subsequent by-election. Cabinet has decided against expulsion.

3. The Home Secretary's paper is aimed primarily at considering options for avoiding a repetition of the Sands affair. However it also has to take into account, as the Chancellor of the Duchy reported at Cabinet, that any new legislation will have general impact - it will affect all Parliamentary elections, Members and candidates. Legislation drawn up specifically to guard against Northern Ireland terrorist prisoners could have unforeseen, and perhaps undesirable, results if applied in a GB context.

Northern Ireland Interest

4. There are clear advantages from the Northern Ireland viewpoint of changing the law to deny convicted terrorists any repetition of the propaganda victory won by Sands. And it would also be desirable to do so before any by-election in Fermanagh and South Tyrone that may result from Sands' death. This latter course points to a short, simple Bill introduced immediately after Easter. However this is an extremely complicated field, and if legislation is drawn up and enacted in a hurry there is a real risk that it will not "get it right" and will either leave loopholes or choose the wrong option and be unnecessarily hard on prisoners who are not terrorists.

Options

5. The Home Office paper indicates that there are three approaches:

- (i) to prevent prisoners from being nominated and therefore running for election;
- (ii) to disqualify a person who is in prison at the time of election;
- (iii) to disqualify a member on the grounds of imprisonment (ie the pre-1967 approach).

6. The Home Secretary suggests that the simplest approach would be to disqualify all persons serving a sentence of imprisonment at the time of the election. This would however be extremely wide-ranging: it would eliminate a person in prison for a relatively minor offence. Certainly it would be seen in many circles as an unduly harsh response to the Sands affair, particularly since it would create a situation many times more restrictive than that which existed (largely satisfactorily) for 100 years up to 1967.

7. Two alternatives mentioned by the Home Secretary would be to disqualify persons in prison either for arrestable offences attracting maximum sentences of five years or more, or those serving sentences of more than six months. Either option, however, would fail to take account of the gravity of the particular offence and could thus create anomalies. Both options would in practice be tougher than the pre-1967 position. They would also complicate the Bill.

8. In considering the disqualification of sitting members, the Home Secretary merely points out that a resolution of the House to expel a Member may continue to be desirable.

Nomination

9. At MISC 55 the view was expressed that, if possible, new legislation should bar a prisoner from running for election. At present there is nothing to prevent a prisoner from standing in an election. If it is desired to prevent prisoners from standing (thus having the opportunity to demonstrate popular support for their cause), then it will be necessary for legislation to bear upon the nomination stage. The returning officer (who at present concerns himself only with checking

that nomination papers are correctly completed) could be obliged to reject a nomination on behalf of a person who is in prison (or is in some other way disqualified). The Home Secretary points out that this would be highly controversial and would fundamentally alter the role of the returning officer, extending his function beyond that of the mechanics of elections. This could create considerable problems for the returning officer and, if there were any opportunity to question the officer's decision (which would be demanded), could slow down the election timetable.

10. The Home Secretary has been unable to consider this option in any detail. It would undoubtedly be a new departure and would require careful study, including consultations with the parties and the returning officers themselves. If it is to be pursued a Bill could not be introduced immediately.

Imprisonment outside the UK

11. Given that all qualified British subjects, including Commonwealth citizens and citizens of the Irish Republic, are eligible to become MPs, the question arises of whether any disqualification of convicted prisoners should extend to persons imprisoned outside the UK. As the Home Secretary points out, this is a particularly crucial point so far as the Irish Republic is concerned. There may well be resistance to extending any provision to apply to Commonwealth countries: not only would there be concern about standards of justice in certain countries, but there might well be evidential problems and it will be argued that there really is very little likelihood of Commonwealth prisoners standing any chance of being elected to the UK Parliament. The question does however clearly arise of whether the provision could be extended to cover the Republic alone. This would of course make it plain that the legislation was directed towards the situation in Ireland and there could be objections on that score. Possible evidential problems would also have to be examined. This is clearly a matter for further consideration.

Local Elections

12. The Home Secretary's paper does not contain any proposals for changing the rules on disqualification as they affect local authorities. At present anyone convicted within 5 years before the election and sentenced to a period of imprisonment for three months or more is

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disqualified from election to local authorities; this provision applies in both Great Britain and Northern Ireland. So far as the forthcoming local elections in the Province are concerned, very few protesting prisoners would be qualified to become councillors as the vast majority of them have been convicted within the last five years. They could nevertheless stand and be disqualified after the election, which would in itself lead to complications. Given the use of Proportional Representation, an election court would find it difficult to declare a prisoner's election invalid and award the seat to the runner-up; consideration would have to be given to the implications for vote transfers and it might prove necessary to declare the whole election void in the electoral district concerned. However the indications are at present that the Provisionals do not intend to field candidates at the May elections.

Recommendation

13. The Home Secretary's paper indicates how complex and controversial any change in the law could be. In the time available, only superficial consideration has been given to the options. Certain possibilities have not been mentioned at all - eg requiring candidates to hand in their nomination papers in person, or requiring them to produce evidence that they are on a current electoral register. There is a clear conflict between the political desirability of an early Bill and the need for more time to consider the full range of options and the full implications of any given course of action. Unless the pressure for an early Bill is paramount, the Secretary of State is recommended to endorse the Home Secretary's conclusion that further examination of the options should be undertaken. A hasty decision could well turn sour - both in Westminster and in Northern Ireland terms. If necessary the Government retains the power to delay the issue of a writ for a further by-election in Fermanagh and South Tyrone until consideration of the options is complete.

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15 April 1981

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