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Paper 1

Covering paper (CP)
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MEASURES TO CURB THE UNCONSTITUTIONAL ACTIVITIES OF SINN FEIN

INTRODUCTION

1. Although Sinn Fein was deproscribed in May 1974, in the hope that irridentist nationalists could be persuaded to pursue their aims by constitutional rather than violent means, there has never been any doubt that it remains closely, if not inextricably, linked with the Provisional IRA. Although Sinn Fein's political influence has increased recently, there is no indication that the organisation has wavered in its support for violence. Indeed, its leaders openly support violence as a means of achieving their political aims, and it is a source of intense irritation to many that they appear able to do so, both in Ireland and the UK, with impunity.

2. This paper examines ways in which the activities of Sinn Fein may be curbed with the intention either of forcing it to desist from overt support of violence or enabling other constitutional parties to wean away its support.

OPTIONS

3. Much of the increase in the influence and credibility of Sinn Fein in recent times derives from its successes at the polls. This has been variously assessed to come from:

- (a) the enfranchisement of that section of the nationalist population who, out of disillusionment, apathy or a total rejection of constitutional politics, previously did not bother to vote for constitutional nationalist parties;

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(b) assiduous attention to cultivating local 'gratitude votes' by dealing with local grievances and issues;

(c) personation of votes.

4. The growing support and influence of Sinn Fein adds considerable weight to its support for PIRA's campaign of violence. The following appear to be the options which are open to the Government to either curb the activities of Sinn Fein as an organisation or to curb, more specifically, the activities of members of Sinn Fein which are calculated to promote violence:

(a) proscription;

(b) curbing Sinn Fein's constitutional activities;

(c) taking legal action against Sinn Fein's leaders for promoting violence;

(d) controlling the media.

PROSCRIPTION

5. The most drastic and, on the face of it, most obvious way of preventing Sinn Fein from eroding the position of the constitutional parties still further and curbing its activities which help to sustain the campaign of violence would be to proscribe it. There is little doubt that Sinn Fein meets the current criteria for proscription in the Northern Ireland (Emergency Provisions) Act 1978, in that it is regularly concerned in promoting or encouraging terrorism. There is also little doubt that proscription would disrupt its activities - at least in the short term - and that many would welcome the move as a sign of the Government's resolve to end terrorism.

6. However, it is doubtful whether, in the long term, such a move would either erode Sinn Fein's support or curb violence appreciably. Such a move would be seen by many, both within and outside the British Isles, as persecution and a crude attempt to stifle a genuine constitutional political party. Hence, it could generate rather than erode sympathy and support for Sinn Fein. Moreover, there would be considerable resistance to making proscription retrospective. Hence, those within the organisation would be faced with the choice of either renouncing or confirming their membership. If they chose the former they would be free to continue their activities under another guise; if the latter, they would be challenging the Government to arrest and try them. If members of Sinn Fein were sent to jail, either directly or indirectly for the non-payment of fines, they could well become martyrs, particularly if they engaged in a hunger strike. In that event, there would be an enormous upsurge in support for Sinn Fein.

7. Clearly many of the adverse political and practical effects mentioned above would be lessened if the Republic were to proscribe Sinn Fein at the same time. However, for the moment both the Government of the Republic of Ireland and HMG have decided not to proscribe Sinn Fein.

CURBING SINN FEIN'S CONSTITUENCY ACTIVITIES

8. Another method of reducing Sinn Fein's influence would be to reduce its capacity to attract 'gratitude votes' by curbing its ability to pursue local grievances or issues with the Government or its agencies. Although Ministers and senior Government officials have refused to meet Sinn Fein on major policy issues, it is proving difficult for officials at local level to do so, and this is where

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Sinn Fein's activities are most felt. At a practical level, an official in an NIHE office or a Social Security office would be hard pressed to distinguish a representative of Sinn Fein from those of a number of other welfare right's and voluntary organisations. Even if he were to be recognised as such, it would be unfair to the complainant to treat his case any less expeditiously or favourably because of his choice of representative. Not is it likely that the official would be inclined to do so, given the proven capacity of Sinn Fein to intimidate.

9. Hence, although Sinn Fein's ability to gain publicity for its activities by meeting Ministers and senior officials has been curbed, there is little scope for curbing its activities at grass roots level, where it is being most effective in winning the 'gratitude votes'. Nor would it be fruitful for the Government to overtly assist other constitutional parties to erode this 'gratitude vote' by stepping up their own grass roots constituency activities. Indeed any such direct support would be counter-productive. However, there may be scope indirectly for encouraging an increase in such activities, and also in persuading agencies on the ground, such as the churches and voluntary organisations to channel cases towards representatives of the constitutional parties. There may also be some scope for welfare rights organisations and voluntary bodies to undertake some of the role which Sinn Fein is currently carrying out so effectively, and DHSS and DENI may wish to examine ways of achieving this. There are also examples, in GB, of local authorities becoming more actively involved in welfare rights, and this is also an area which might be examined further.

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CURBING PERSONATION

10. A major indication of the magnitude of support for Sinn Fein within the nationalist community has been the size of the vote they have received in recent elections. Although the effect of personation should not be exaggerated, it is believed to have played a part in this success, and any curb on personation will help to diminish Sinn Fein's claim that a sizeable proportion of the nationalist community endorses its support for terrorism. Steps are being taken to minimise the effects of personation at forthcoming elections [CPL to provide details if required].

LEGAL ACTION AGAINST SINN FEIN'S LEADERS

11. It is a source of offence to many that Sinn Fein continues to benefit from the support generated by its constituency activities, whilst its leaders openly advocate and profess support for the crimes of proscribed organisations. We have considered how, either within the existing law or by devising new measures, those who openly advocate support for violence can either be prevented from doing so or be brought to justice. This can be achieved either directly - by taking legal action against those who make such statements or indirectly by denying publicity to their statements.

12. The papers at Annexes B and C examine the existing legislation and possible new measures to secure the successful prosecution of those who advocate or profess support (either explicitly or implicitly) for those who commit acts of violence or for organisations that promote or organise such acts. The paper at Annex B examines ways of bringing prosecutions under the current legislation on 'incitement' and related offences. It concludes that existing legislation is neither suitable nor sufficient for dealing with the problems defined above, and advocates the urgent examination of new measures aimed at preventing:

- (a) support for the activities of a proscribed organisation; and
- (b) general expressions of support for violence as a means of achieving political aims (as opposed to incitement to commit specific acts of violence).

13. The paper at Annex C examines the use of film, photographs and video recordings as evidence that an offence has been committed. It concludes that existing legislation and procedures relating to the admissibility of evidence are drawn too tightly to permit the most effective use of such material. It advocates the examination of new measures aimed at making photographic and related material more easily admissible as prima face evidence, by relaxing some of the burden of proving its authenticity at each stage of it processing and reversing the onus of proof.

CONTROL OF THE MEDIA

14. The paper at Annex D examines ways of controlling the media and concludes that, if it were necessary, there are sufficient powers to prevent broadcasts by or in support of terrorists. It concludes that such controls should not be introduced at this time. However, it may be of interest to pursue with the Irish Government what benefits they see accruing from their own measures to control such broadcasts.

15. This paper also concludes that there are no existing ways of preventing the press from publishing articles intended to generate support for terrorism. On the whole the press both in the UK and in the Republic of Ireland behave responsibly and provide a balanced and reasonably accurate coverage of events. Editorial comment, similarly, tends to be well balanced. However, this paper

concludes that there may well be a case for bringing in a new measure to curb the minority press from publishing articles or statements which purport to come from a proscribed organisation and which are likely to elicit support for that organisation. The paper also recommends the examination of a new measure aimed at assisting the police to obtain material evidence from either the broadcasting authorities or the media, if they have reason to believe that it would assist them in the investigation of a specific scheduled offence.

CONCLUSION

16. Proscription of Sinn Fein, at the moment, would be likely to be counter-productive as a means of curbing the organisation's overt support for violence. Similarly; there is limited scope for curbing its grass-roots activities which are winning it a large 'gratitude vote' within the community. However, there may be ways, either by using current legislation or by introducing new measures, to prevent the leaders of Sinn Fein from overtly expressing support for violence as a means of achieving their political aims. It is recommended that a team of officials, including representatives from the Law Officers' Department, ^{be set up} to examine such new measures and make substantive recommendations to Ministers. It may also be possible, if the timescale permits, to seek the views of Sir Geroge Baker on these measures.

MEASURES TO CURB THE ACTIVITIES OF SINN FEIN
THE USE OF INCITEMENT AND RELATED OFFENCES

PROBLEM

1. Public figures and publications frequently profess support or sympathy in general terms, rather than specifically, for organisations or individuals that profess to or use violence. In most cases it is fairly clear that the intention of these statements is to generate public support for illegal organisations, their methods and their aims.

AIM

2. To examine whether existing or new legislation can be used to prevent public statements likely to promote or generate support for violence or those organisations or individuals that commit acts of violence as a means of achieving their political aim.

EXISTING LEGISLATION

3. Common Law Offence of Incitement

It is an indictable offence at common law to solicit or incite others to commit or attempt to commit an offence, even though that offence does not take place. To sustain a prosecution there must be evidence that a person bribed or in some other way solicited one or more identifiable persons to commit one or more specific offences. General exhortations to defy the law or break it in unspecified ways, or expressions of general approval for those who do would not be actionable under the existing interpretation of this offence.

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4. Incitement to Hatred (Public Order (NI) Order 1981)

It is a statutory offence in Northern Ireland to publish or distribute threatening, abusive or insulting material or to use words at a public meeting which are threatening, abusive or insulting, with the intention of stirring up hatred against or fear within any section of the public which is identified by its religious belief, colour, race or ethnic origins. The maximum penalty for such an offence is two years' imprisonment and/or a fine of £1,000. Statements or articles which are intended to stir up hatred against the forces of the Crown or agencies of Government clearly do not fall within the ambit of this provision, which is modelled on the lines of race relations legislation in GB. However, one significant difference between the two is that it is no longer necessary in GB to prove intent; if the words used were likely to have the stated effects this is sufficient to sustain a prosecution.

SOLICITING SUPPORT FOR A PROSCRIBED ORGANISATION (SECTION 21 OF THE NI (EMERGENCY PROVISIONS) ACT 1978)

5. It is a statutory offence in Northern Ireland to solicit or invite any person to become a member of a proscribed organisation or to provide financial or other support for such an organisation. General public statements of support or approbation for the aims and activities of specific proscribed organisations are unlikely to fall within the ambit of this provision, which is aimed more directly at the activities of its recruiting agents and fund raisers. More general statements of approbation for, say, the 'armed struggle of nationalist freedom fighters' are even less likely to fall within the ambit of this provision.

SEDITION/SEDITIONOUS LIBEL

6. It is an indictable offence to make any statement calculated to: promote ill-will between the Sovereign's subjects; incite

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persons to use unlawful means, and in particular physical force, in any public matter connected with the state, or bring into hatred and contempt the Crown, Government, law of constitution. This, somewhat archaic, offence was not intended to stifle free speech or discussion, but only such statements and discussions which seem calculated, in the circumstances, to incite 'tumult, violence or outrage'. It is difficult to see how some of the statements by Sinn Fein leaders in recent times do not fall within these criteria.

COMMENT

7. There appear to be no existing common law or statutory powers which are likely to be wholly effective in preventing or bringing to justice those who express support, in general terms, for the aims and methods of terrorists and terrorist organisations. The common law offence of incitement must relate to the commission of one or more specific offences, and the legislation on incitement to hatred is geared to prevent violence being incited on the grounds of religion, colour or race. Similarly, the legislation in the EPA relating to the soliciting of support for such organisations relates to the activities of recruiters and fund raisers, and is not drawn in sufficiently wide terms to be useful against those who solicit or invite or advocate general approval and support for the activities of terrorists.

8. A possible exception is the common law offence of sedition which, on the face of it, might be used against those whose statements are intended, or seem calculated to stir up 'tumult, violence or outrage'. However, even this offence requires the speaker's or writer's words to directly tend to achieve these violent results. The persons we are concerned with are unlikely to attempt to incite mob violence directly. On the face of it their statements are more calculated to justify, explain or glorify the acts of violence of

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terrorists and terrorist organisations, with the intention of generating support for them.

9. Hence it would seem that to achieve the purposes set out at paragraph 2 above new measures are required.

POSSIBLE NEW MEASURES

10. Support for the activities of a Proscribed Organisation (See Section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1978)

In Great Britain it is an offence, punishable by up to five years' imprisonment and/or an unlimited fine, knowingly to arrange or speak at a meeting aimed at supporting or furthering the activities of a proscribed organisation, or which is to be addressed by a person belonging to or professing to belong to such an organisation. such a measure could be introduced into any redrafting of our own EPA, subsequent to Sir Geroge Baker's report on that Act. On the face of it such a measure could be used to curb the activities of those who organise or speak at rallies at which the activities of the IRA are given overt support. This could well be a joint-measure to be pursued with the Irish as a means of curbing Sinn Fein meetings both in the North and South at which there are 'Army spokesmen'. Such a measure would not bear upon those who published material aimed at achieving the same ends.

11. Support for Terrorist Violence

The Law Officers could be asked to consider a new offence aimed at the authors or originators of statements or material which is likely to promote violence by expressions of support or approval for either those committing the acts of violence or the results of those acts. The measure would need to be couched in general terms rather than being confined to support for specific proscribed

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organisations, if it is to encompass those who express general approbation for violence. Such a measure would be aimed at the originators or first publishers of material aimed at generating support for violence, rather than against those who report or comment fairly upon such statements. To be wholly effective against those who make public speeches, such a measure would have to be linked to other new measures relating to the use as evidence of film and video recordings of such events, and the reversal of onus of proof in such cases (see Annex B).

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MEASURES TO CURB THE ACTIVITIES OF SINN FEIN
ONUS OF PROOF RELATING TO FILMED EVIDENCE

PROBLEM

1. If a film, photograph or TV video recording shows some offence being committed, the public assume that this is proof positive that the offence occurred, and demand that action be taken against the offender. However, the courts attach little weight to photographic evidence which cannot be authenticated at each stage of its production and storage. On the other hand, photographers and technicians tend to be reluctant to give evidence in open court in Northern Ireland and cannot be compelled to do so if they live outside the jurisdiction. Hence, film or other photographic material can rarely be used effectively as evidence in court.

AIM

2. To devise a method of enabling a photograph, film or other similar record of an event to be accepted by the courts as evidence that such an event took place, unless evidence can be adduced by the defence to the contrary.

EXISTING POWERS OR LEGISLATION

3. There are no existing powers or legislation which can be used to achieve this aim.

COMMENT

4. Clearly films of other photographic records can be stage managed, superimposed or 'touched up' to present a completely false picture of events. In the absence of the photographer, who could testify that the events recorded actually took place, some other form of corroborative evidence would be needed. Moreover, it must

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be borne in mind that although a film record may be useful to the police in some cases, in other cases similar records could be used by the defence to discredit police evidence. Nevertheless, on balance, the Working Group on the Law Relating to Terrorism (LRT) proposed a new measure on the lines given below to overcome the problem defined above.

POSSIBLE NEW MEASURE

5. The Law Officers may be asked to consider whether legislation should be introduced to enable the courts to admit any photograph, film, video recording or similar material, notwithstanding that the photographer and processors of that material are not available or are unwilling to give evidence, and it is not practicable or possible to compel them to do so. Such a record should only be admissible, however, if another eye-witness to the events, which the photograph, film etc purports to record, testifies as to its accuracy. In such circumstances, the onus of proof would be placed upon the accused to disprove the accuracy and authenticity of the record. If the accused fails to do so, on the balance of probabilities, the court should be empowered to draw such inferences of fact from the evidence as it deems appropriate.

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MEASURES TO CURB SINN FEIN
CONTROL OF THE MEDIA

PROBLEM

1. Frequently Sinn Fein or the Provisional IRA use the media to publicise their own highly tendentious version of events, or stage manage illegal activities with the aim of encouraging their own supporters and discouraging or provoking others.

AIM

2. To consider whether the media could be prevented from being exploited by Sinn Fein/PIRA for propaganda purposes, possibly by controlling radio/TV broadcasts and media articles covering events or statements likely to support the activities of terrorist organisations and encourage terrorism.

EXISTING POWERS AND LEGISLATION

3. BBC Licence and Agreement

Clause 13(4) of the BBC's Licence permits the Secretary of State to "require the Corporation to refrain at any specified time or at all times from sending any matter or matters of any class specified in such notice".

INDEPENDENT BROADCASTING AUTHORITY ACT 1973

4. Section 4(1) of the IBA Act states that it is the Authority's duty to satisfy themselves, as far as possible, "that nothing is included in their programmes which offends against good taste or decency or is likely to encourage or incite to crime or to ... be offensive to public feeling". Section 22(3) of that Act empowers

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the Secretary of State at any time, by notice in writing, to require the Authority to refrain from broadcasting any matter or classes of matter specified in the notice.

SEDITIONOUS LIBEL

5. Sedition is an offence in common law prohibiting any conduct, whether by word, deed or in writing, which directly tends to raise discontent or promote ill-will between the Sovereign's subjects, incites persons to use unlawful means, and particularly physical force, in any public matter connected with the state, or brings into hatred or contempt the Sovereign, the Government, the laws or the constitution. A seditious libel is the publication of sedition, and the publisher is equally liable with the writer. Any article calculated to promote and encourage terrorism would seem to fall within the ambit of this offence.

COMMENT

6. Sufficient powers already exist to allow the Secretary of State to prevent the broadcasting of any material likely to, or tending to support and promote terrorism. Mr Merifield's note of 14 December sets out the pros and cons of such a step. These are, in short:

(a) Pros

- (i) the likelihood of terrorism being promoted and counter-terrorism being provoked by broadcasts of terrorist propaganda or activities would be diminished by controls on broadcasting;

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- (ii) the Government would be seen to be taking the same stern counter measures against terrorist propaganda as those which are already in force in the Republic (under a 1976 Amendment to the Broadcasting Authorities Act 1960);
- (iii) Sinn Fein/PIRA would be denied an effective platform for the dissemination of their propaganda and self-justification, which could diminish their political and electoral appeal.

Cons

- (i) any attempt at 'censorship' would run counter to HMG's policies on freedom of speech and freedom of the media, and would provide Sinn Fein/PIRA with a propaganda coup;
- (ii) broadcasts of terrorist activities and interviews with terrorists and their apologists frequently expose their true nature and are generally counter-productive from their point of view;
- (iii) the present system of self regulation by the broadcasting authorities would be jettisoned, and the results of such an act could not be predicted; indeed, in the end they may prove to be counter-productive from HMG's point of view.

7. The Working Party on the law relating to terrorism in 1980 concluded that the arguments against controlling broadcasting outweighed those in favour of such a measure, and Mr Merifield's note reiterates this conclusion. However, the LRT Group's report reflected the concern of the police that the broadcasting authorities might not always willingly make available film, etc, which might be of use to the police in their investigation of scheduled offences. The Group recommended therefore that the police should be given the power to apply for a warrant to search for and seize such material.

8. As far as the press is concerned there is no effective mechanism or power for regulation or control, apart from the archaic law on sedition and seditious libel. The LRT Working Group concluded that, on balance, the press presented a fair and balanced picture of events (with some minor exceptions) and that no controls were either necessary or desirable. However, they did recognise that some minor publications blatantly acted as vehicles for terrorist propaganda. To allow these to continue to publish such propaganda, which gave support to terrorist organisations and gave offence to many law abiding people, seemed to the Group to smack of weakness. The Group doubted whether these publications were seditious as they did not directly tend to stir up violence and outrage, but concentrated instead on justifying and glorifying acts of violence and presenting criminals as 'freedom fighters'. Hence, the Group recommended the introduction of a new offence of passing on information supplied by a proscribed organisation with intent to give encouragement to that organisation.

POSSIBLE NEW MEASURES

9. Publishing Material from a Proscribed Organisation with intent to support it

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The Law Officers could be asked to consider a new measure aimed at preventing the publication of statements from proscribed organisations, or articles about the activities of such organisations, which are intended to elicit succour and support for those organisations. Such a measure should not bear upon articles which are merely fair and full reporting or unbiased comment on events.

SEARCH AND SEIZURE OF FILM, ETC

10. The Law Officers could also be asked to consider a new measure aimed at allowing the police to apply for a search warrant to search premises for photographs, film, video recordings or other material which they had reason to believe might be of assistance to them in the investigation of a specified scheduled offence, and to seize and retain such material until either a decision was taken not to proceed or any subsequent legal proceedings were completed. It would be for consideration whether such a power should operate throughout the whole of the United Kingdom under the Prevention of Terrorism Act or only in Northern Ireland under the Emergency Provisions Act. It would also be worth considering whether such an offence should be discussed with the Irish, as a measure which might be operated reciprocally in both jurisdictions.