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GOVERNMENT POLICY TOWARDS PROVISIONAL SINN FEIN

At the meeting which the Secretary of State held on 23 September, he asked that the security forces should be consulted on the desirability and implications of proscribing Provisional Sinn Fein. I have since discussed the matter, separately, with the Deputy Chief Constable (in Sir John Hermon's absence abroad) and the GOC.

2. Their reactions were virtually identical. They acknowledged that from the political point of view there might at some stage be a balance of advantage in favour of proscribing PSF; but they doubted if it would make any significant difference in security terms, and they felt some anxiety that it might set them some awkward problems.

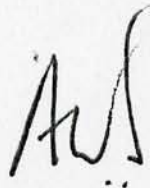
3. It might admittedly be easier on some occasions to make a membership charge stick against a notorious Provisional activist (in the absence of sufficient evidence to support more serious charges) if PSF as well as PIRA were an illegal organisation. But even if that proved so, the gain would be a limited one if the Courts maintained their reluctance to award more than a couple of years' imprisonment for membership alone. However, should PSF respond to proscription by reconstituting itself under another name, then it might well turn out to be no easier to prove membership of PSF than of PIRA.

4. It would certainly be extremely awkward for the RUC if PSF adopted the alternative course of retaining its identity after being proscribed, and challenging the Government to prosecute all its thousands of members. It was seldom helpful to the police to have a law which was not or could not be fully enforced. This difficulty would of course be all the greater if it were deemed necessary to proscribe the UDA at the same time as PSF, and if the UDA then responded in the same way.

5. The Secretary of State might wish to use the opportunity of next week's Security Policy Meeting to probe these views further (in which case it would be helpful if we could forewarn the Chief Constable and the GOC of such intention). But I rather doubt if any new angles would emerge as a result.

The Mechanics of Proscription

6. I attach for information a note which sets out the procedural steps that would be required to give effect to a decision to proscribe PSF and examines, in particular, the timing considerations that would need to be addressed.



A W STEPHENS

17 October 1985

THE MECHANICS OF PROSCRIPTION

1. The Secretary of State is empowered by Section 21(4) of the Emergency Provisions Act 1978 to make an Order to add an organisation to the list of proscribed organisations in Schedule 2 of the Act. Under Section 32, such an Order may be made by the Secretary of State either after a draft has been approved by an affirmative resolution in both Houses of Parliament, or by the urgency procedure. In the latter case the Order ceases to have effect after 40 sitting days unless approved by both Houses of Parliament. It must be laid before Parliament before it can come into effect.

2. When INLA was proscribed in 1979, the urgency procedure was used, and the then Secretary of State announced during a renewal debate that he had already signed the Order to proscribe INLA, and that it would come into effect at midnight. The detail, timing and logistical arrangements were affected by the following considerations:
 - (a) the desirability of keeping in step with Great Britain. The Home Secretary made a similar Order under the Prevention of Terrorism Act by the same urgency procedure, and was present when the decision was announced to the House. Home Office Ministers supported NIO Ministers during the subsequent debates in both Houses on the motion to approve the two Orders;

 - (b) the desirability of informing the Irish in advance, although it was accepted at an early stage that they would not be able to proscribe INLA in the Republic at the same time. (It was one of the first acts of Dr Fitzgerald's second term of office);

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(c) the desirability of laying the Orders in print, rather than typescript, which meant that they had to be signed a least a day before they were laid;

(d) the tactical use which the RUC intended to make of the power. They were said to be geared up to make a swoop on INLA members, which persuaded Ministers to leave the minimum possible period between laying the Order and bringing it into force.

3. In the light of the above, the eventual timetable was:

Order made 29 June 1979
laid before Parliament 2 July 1979
came into force 3 July 1979.

4. The mechanics are therefore straightforward. The Order is simple, and a suitable version could be drawn up at very short notice, and if necessary dealt with under the urgency procedure so that, as happened in the case of INLA, it came into force at midnight, having been announced an hour or two in advance.

5. Proscription of Provisional Sinn Fein would of course give rise to quite different issues. The question has been around for so long that it might be difficult to justify using the urgency procedure. It was relatively easy to justify the proscription of INLA, but many, including the official opposition would argue that it was inappropriate to proscribe Sinn Fein in this way, and would use our own arguments against us. While the Order could be brought into force almost immediately, there would be grounds for allowing a period of notice. The mechanics of achieving proscription would be appreciably more complicated if it were desired to try to encourage the Irish to act similarly at the same time. Finally, the Home Secretary would again have to consider carefully whether Sinn Fein should be proscribed in Great Britain; he would probably face even greater difficulties in justifying such a decision.

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