

5561
27 SEP 1988

PS/Secretary of State (L & B)

cc PS/PUS (L & B)

Mr Burns
Mr Innes
Mr Steele

1. Mr Jackson
2. Mr Stephens
1. 26/9.

PRIME MINISTER'S MEETING : 29 SEPTEMBER

Following the series of bilaterals that the Secretary of State has had with colleagues in the past week or so, we have assumed that he will wish to put a fresh minute to the Prime Minister before next Thursday's meeting setting out progress on those matters where decisions were taken at the 6 September meeting, and offering new proposals in the light of further work that has now been done.

I now attach a draft minute. It has three attachments:

Annex A deals with Remission. It sets out what we understand to be the line agreed with the Home Secretary on Tuesday. However, the note of that meeting suggests that it was agreed that the first step - pre-Carlisle - will be to reduce remission to 33% for all those serving 5 years or more; there is no reference to the other leg - i.e. applying only to crimes of violence. We have assumed that the note was mistaken and that the two legs (i.e. the full Brittan formula) continue to apply. If not, Prison Department would wish to consider the implications of what is a new proposal - that of reducing remission for all prisoners serving more than 5 years.

Annex B deals with Restriction of Access to the Media, a paper agreed with the Home Office in the light of the Home Secretary's agreement to use his powers of direction.

Annex C deals with Disqualification, a remit from the 6 September meeting.

There are two subjects that are not dealt with in the draft minute. First, Intelligence Coordination, which I am led to understand is being dealt with separately. Secondly, Guidelines on Informants, which was not mentioned in the note of the meeting with the Home Secretary and the Attorney, and on which it may be necessary to add a short paragraph on the Secretary of State's instruction on Monday.

[signed]

D CHESTERTON

23 September 1988

WH/5376

26 SEP 88
124

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DRAFT MINUTE TO THE PRIME MINISTER

NORTHERN IRELAND

When we met with colleagues on 6 September, we decided that action should be taken on certain matters and that further consideration should be given to others. This minute sets out progress in those areas where decisions were taken and makes proposals in the light of further work done since then.

Identity Cards

The aim is to produce a fully worked-up scheme by mid November. A meeting has been held with representatives of the police and army to define the scope and purpose of the scheme. Lawyers are looking at the legislative requirements and initial contact has been made with experts in the Passport Office and CCTA. We are also examining the resource implications including manpower and capital costs. The next stage of our study will be to approach commercial companies (one has already been in touch with us) to see what sort of technology is currently available. We shall be keeping the Home Office fully informed because of the political implications associated with the introduction of ID cards in only one part of the UK. Consultation with the Foreign Office will be necessary on the handling of visitors - especially those from the South.

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Minimum Sentences

I have discussed the relative merits of statutory minimum sentences and sentencing guidelines issued to the judiciary at some length with the Lord Chancellor and the Attorney. We all agree that there are serious disadvantages with imposing mandatory minimum sentences: They would be seen as a serious criticism of the Northern Ireland judiciary just as a new Lord Chief Justice had taken over; and they have been tried before in Northern Ireland but abandoned as a failure. In view of this, I think that minimum sentences can only be seen as a measure of last resort, and the Lord Chancellor and I will pursue urgently the possibility of sentencing guidelines to ensure that any tendency on the part of Northern Ireland judges to give unduly lenient sentences is halted. We also, of course, have the power to refer lenient sentences to the Court of Appeal. I shall report back to you on progress.

Reactivation of Remission

Douglas Hurd and I have agreed that the necessary provisions will be contained in the Prevention of Terrorism Bill. I have also agreed with the Attorney General that the change should apply to any relevant offence committed after the provision comes into effect. I shall be writing shortly to the Home Secretary and Attorney General setting out the form of the proposal. Instructions to Counsel will be available very shortly.

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Remission

Since our meeting on 6 September, I have discussed with the Home Secretary and the Attorney how we should proceed to our goal of reducing remission in Northern Ireland from its present level of 50%. We have had particular regard to the review that Mark Carlisle is conducting on Remission and Parole in England and Wales. It is due to be published in November and is likely to recommend that we abandon the present "Brittan" policy in favour of an approach based purely on length of sentence. I am reluctant to wait to take action until the approach in England and Wales in the light of Carlisle is settled, particularly since the Government may need a little time to decide precisely how to respond. Therefore, I propose that we introduce rapidly an Order in Council to enable us to bring Northern Ireland into line with British practice and I can then adjust further if and when we amend the approach in England and Wales in the light of Carlisle. A fuller note is attached at Annex A.

Right of Silence

An Order in Council has been prepared and is ready for introduction as soon as Parliament reassembles. The Home Secretary will be making a parallel statement on the position in GB by means of an arranged written answer or in the debates on the Prevention of Terrorism Bill. This will be on the lines that he was clear that we should also legislate on the issue for GB, and that was why the

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working group to study the issue had already been set up. When he had their report, he would decide how to take matters forward, taking account of the Northern Ireland experience. He believed that in any GB legislation it would be right at least to remove the 'right to ambush' and he would consider in the light of the report of his working group whether to go further.

There is a Privy Council meeting on 26 October. Since however the House only returns on 19 October, and if we are to have a debate on the Draft Order and possibly allow for the Home Secretary's statement, I suggest that we should aim to make the Order at the following Privy Council in mid-November.

Terrorist Finances

The Prevention of Terrorism Bill will provide new powers to deal with terrorist finances. It will create a new offence of handling terrorist funds; new police power of investigation; and will give the Courts the power to restrain and confiscate funds. The main difference for Northern Ireland, where the need is to tackle paramilitary racketeering, will be that the investigative powers will be triggered by executive action.

The provisions for England and Wales and for Scotland have been drafted. The new offence will apply throughout the UK and needs no amendment for Northern Ireland. Instructions have been sent to the draftsman to provide for the executive trigger of the investigative

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S E C R E T

powers in Northern Ireland, and the Attorney General's Office has been consulted. We are urgently checking the powers of restraint and confiscation to ensure that they will be applicable to Northern Ireland. We aim to have all this work completed by the end of September.

Power of Detention During Search

Most of the detailed policy issues have now been decided, and we expect to forward instructions to Counsel by the end of this month.

Proscription/Restriction of Access to Media

I continue to believe that proscription is a shot to keep in our locker. However, I think that we must respond to the general public disgust at appearances on television of those widely believed to be directly involved in terrorist activity. I have discussed this very carefully with the Home Secretary and the Attorney and the former has agreed that he might use his power of direction to the BBC and IBA in order to prohibit broadcasts by members or representatives of specific organisations (notably Sinn Fein and the UDA). We are all aware that the media themselves will bitterly object and that Sinn Fein will seek to make propaganda advantage internationally out of any such action. However, I am in no doubt about the general public support for a ban and we can point to the use of similar powers in

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the Irish Republic. The note at Annex B sets out our proposals.

Incitement

On 6 September, it was suggested that we might strengthen the law against incitement to violence. In fact, we enacted such provisions in the Public Order Order last year and to go further would take us into the area of a new general offence of supporting terrorism. We have look at that on a number of occasions and each time have concluded that it would offer us nothing of value. The Attorney and I have looked at it again but see no reason to depart from the earlier view.

Disqualification

The Attorney suggested on 6 September that we might alter the rules of disqualification for local council office to ensure that people cannot get released from prison having served sentences for serious offences and almost immediately stand for election (as certain Sinn Fein members have done in the past). I have looked at this proposal and agree that it is both practical and useful to take action. I attach a short note at Annex C setting out what is proposed.

At our last meeting we agreed that steps needed to be taken to improve the presentation of our policies in Northern Ireland. One particular suggestion was that computerised information retrieval might help us to capitalise on earlier comments attributed to terrorists and their apologists: the same point was identified by a review of the Northern Ireland Information Service which I instituted earlier this year, and the greater use of new technology by the information services in this, and in other matters, has already been approved. This facility will be useful, though we shall obviously have to consider with care the extent to which we should dignify the terrorists by getting involved in public debate about what they have said in the past.

In addition to improving the technology, we also need to improve the policy thrust of our presentation of work. To do this I have set up a new Information Strategy Group in Belfast, at which I will take the chair myself from time to time, to develop and maintain an information strategy for Northern Ireland. Both the army and the police have already agreed to join that group. The group met for the first time informally earlier this week. In addition, Ian Stewart and I are launching a series of speeches and television interviews to explain more positively the rationale behind our security policy, and the way in which it fits into our broader Northern Ireland policy. I delivered the first of these speeches on Monday, [and a signed article from me will be appearing shortly in the Daily Telegraph].

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There have also been specific problems in getting out our story after particular incidents: and with the police and army we are looking at the practicality of improving the speed with which we can get out an authoritative account - bearing in mind - that, unlike the terrorist, we have a responsibility to produce information that will stand up to subsequent scrutiny.

HME

Our technical experts are urgently examining the draft report which the consultants have submitted, to ensure that the figures and assumptions it contains are valid. In the light of this I shall be giving further thought as to how we can take this subject forward.

Border Security and Security Cooperation

In my minute of 20 September I set out the conclusions which George Younger and I had reached, and also put forward a draft of a further letter to the Taoiseach from you.

Conclusion

We are already well on course on implementing a number of the measures, that we have decided - though for obvious reasons finalising a scheme on Identity Cards must take a little longer. I

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hope that we can decide to proceed on Restricting Access to the Media, Remission and Disqualification, all of which will require action in Parliament. Along with the moves on which I have already reported to you following my discussions with the Defence Secretary, I believe that we are usefully strengthening our armoury against the terrorists and their apologists.

I am copying this minute to Geoffrey Howe, Douglas Hurd, George Younger, Paddy Mayhew, and Sir Robin Butler.

Our technical experts are currently reviewing the draft report which the consultants have submitted. It is possible that the figures and assumptions it contains are wrong. In the light of this I shall be giving further thought to the way in which the subject is forward.

Border Security and Security Administration

In my minute of 28 February I reported the draft report which George WH/5378 and I had prepared. I am now sending a draft of a further letter to the Treasury.

Conclusion

We are already well on the way to implementation of a number of the measures that we have decided - though the most important is still awaiting a scheme of Statutory Orders which I will be issuing. I

REMISSION

1. We agreed on 6 September that there was a strong case for bringing Northern Ireland's remission arrangements more into line with those elsewhere in the UK following the 1983 'Brittan' announcement on parole. We envisaged introducing one-third remission for those serving more than 5 years for crimes of violence, but retaining one-half remission for others; the conditional release scheme would continue to apply, subject to the changes I am proposing elsewhere, to all prisoners serving more than 1 year.

Legislative Vehicle

2. I have agreed with the Attorney General that this change would require an amendment to the Prison Act (NI) 1953, to be achieved by affirmative resolution Order in Council.

Carlisle Review

3. The Carlisle review of remission and parole in England and Wales will publish its report in November and is, I understand, likely to criticise the 'Brittan' policy and propose its replacement with an alternative. It could therefore be awkward to be introducing the 'Brittan' policy in Northern Ireland at about the same time. I have discussed this difficulty with the Home Secretary but we believe it would not be acceptable to postpone action until decisions are taken on the Carlisle Review, since that could result in considerable delay

Retrospection

4. I have decided that we should not put back the dates of release of those already serving sentences. To do so would result in

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immediate disorder and violence in the prisons, and would be perceived by moderate opinion on both sides of the community as unjust. It would also destroy our success in defusing prisons as an emotional issue and would put an end to recent encouraging signs that some previously hardline republican prisoners have become disenchanted with PIRA and are breaking with them. Changes could however, apply to remand prisoners without such a great risk and to all those who have yet to come before the courts.

5. Maintaining the current one-half remission for those already serving sentences will mean that there will be no change in the rate of release of prisoners for roughly 2½ years; I recognise that this does not meet the immediate concerns of the security forces but to knock back the dates of release of prisoners already serving sentences would in my view be counter-productive.

Conclusion

6. Colleagues will wish to note that:

- (i) remission will be reduced to one-third for those serving more than 5 years for crimes of violence;
- (ii) an Order in Council will be required;
- (iii) the Carlisle Review is likely to criticise the 'Brittan' formula but I plan to proceed anyway;
- (iv) the change will not apply to sentenced prisoners, so delaying its effect for roughly 2½ years but avoiding the worst of the likely protests.

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PS / POS - M
Mr James - M
Mr Steele - M

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STORMONT HOUSE ANNEX

Attachment to Mr Chedoke's
minute of 23 September to
PS / S of S "Prime Minister's
Meeting 29 September"

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26 SEP 88
123



SECRET

ANNEX B

RESTRICTION OF ACCESS TO THE MEDIA

From time to time, and particularly in the aftermath of a serious terrorist incident, the media (both broadcast and written) carry statements by representatives of Sinn Fein and other organisations with close links with terrorism. These range from interviews through signed articles to simple press releases claiming responsibility for atrocities. They are often highly offensive, though normally taking care to stop short of the law on incitement. We believe that there would be advantages in now introducing some restrictions on access to broadcasting to deny terrorists and their apologists the opportunity to seek status, publicity and respectability by putting forward their views to the general public. Such a step would signal that HMG was intent on taking positive action against people whose ideas are abhorrent to the vast majority of the population.

2. This paper sets out the provisions under which such restrictions might be imposed and the steps that would need to be taken before they could be implemented.

Existing powers in the UK

3. The Home Secretary already has extensive powers over the broadcasting of particular items. Under paragraph 13(4) of the BBC's Licence and Agreement he may by notice 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". Section 29 of the Broadcasting Act 1981 provides similar powers in relation to the IBA. These powers have been used only five times since they were first applied to the BBC in 1927 and in far less controversial circumstances than the present context. The last such direction was given 24 years ago.

Republic of Ireland provisions

4. A precedent for action of this kind already exists in the Republic of Ireland. Under the Broadcasting Authority Act 1960, as amended, the Irish Minister for Communications may, by annual Order, direct the broadcasting authority to refrain from broadcasting a particular matter or any matter of any particular class where he is of the opinion that it would be likely to promote, or incite to, crime or would tend to undermine the authority of the state. Such orders have to be approved by both Houses of Parliament.

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5. Currently RTE (the Irish broadcasting service) is directed to refrain from broadcasting any matter which is

- (i) an interview, or report of an interview, with a spokesman or with spokesmen for the IRA, Sinn Fein, Republican Sinn Fein, UDA, INLA or any organisation proscribed in Northern Ireland;
- (ii) a broadcast, whether purporting to be a party political broadcast or not, made by, or on behalf of, or advocating, offering or inviting support for Sinn Fein or Republican Sinn Fein;
- (iii) a broadcast by any person or persons representing, or purporting to represent, Sinn Fein or Republican Sinn Fein.

Form of proposed restrictions

6. It is proposed that the Home Secretary should use his existing powers to limit access by terrorists or their apologists to the broadcast media. Since the powers have not been used for such a long time, and never in such a specific way as is proposed, this action will be controversial and give rise to accusations of political censorship and encroaching on freedom of expression. In view of this, it is suggested that the Home Secretary should limit the direction to follow as closely as possible the terms of the Irish Order so that that document can be prayed in aid as a precedent. In addition, since the Irish Order involves a Parliamentary procedure, it is proposed that Parliament should be given an opportunity to debate the direction before it is made by means of a suitable Government motion in both Houses of Parliament.

7. One possible technical difficulty is that the elected (although currently non-sitting) MP for West Belfast represents Sinn Fein. If he were to take his seat, the Government would face the entirely new question of whether to ban a Member of Parliament from access to the media, presumably including the reporting of speeches made in the Chamber itself. [This could raise serious problems of Parliamentary privilege which are being explored further.]

Procedure for implementing the restrictions

8. We are satisfied that a suitable direction can be drafted under the existing powers which will follow as closely as possible the pattern of the Irish provisions, limiting the ban to direct access to the media by persons belonging to or representing the same named organisations. This would prevent

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direct interviews or propaganda programmes but would not affect indirect reporting of action or developments involving the organisations themselves.

9. Before the relevant Parliamentary motion was tabled, the Home Secretary would need to meet the BBC and IBA to explain the action he proposed to take. The proposals will not be welcome to the broadcasters, although there is the presentational advantage that the decision has not been taken in relation to any particular past broadcast. The broadcasters may ask why they are being singled out and the press is not included; the Home Secretary will be able to point to the Irish precedent, and to indicate that press interviews of this kind do not have the same immediate impact as broadcasts.

10. The broadcasters will be free to signal their independence of the Government's action in a formal way since there is provision for both the BBC and IBA, if they think fit, to broadcast an announcement of the existence of the Direction, which may possibly in practice result in a reference to reporting restrictions in relation to particular news broadcasts.

11. Once the broadcasters have been informed, the appropriate Parliamentary motions can be tabled and debates held. Assuming the motions are carried, the Home Secretary can proceed to give a formal direction to the broadcasters.

Conclusion

12. There is little doubt that the announcement of our decision to impose these restrictions on the broadcasters will be vigorously opposed in some quarters as an attack upon freedom of expression, but the immediate political response is unlikely to last long. It is probable, on the other hand, that the terrorist organisations and their apologists will attempt to make continuing propaganda out of our action. It is also possible that the broadcasters may be less receptive than in the past to Government concerns about the reporting of those terrorist activities which would not be subject to the restrictions; for example, in recent discussions, the broadcasters have indicated that they may not give such prominence to IRA funerals as in the past, but in view of the ban they may feel under more pressure to cover as widely as possible other aspects of terrorist activity other than direct interviews.

13. Despite these drawbacks, the overall judgment is that the decision to take action in this way will be welcomed by a number of ordinary people who find interviews with apologists for terrorism on national news bulletins grossly offensive, particularly since they tend to appear in the aftermath of a

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major outrage. The action can be defended on the grounds that it goes no further than similar measures which the Irish Government has operated for many years.

The proposals will not be subject to the usual procedure, although there is the presentational advantage that the decision has not been taken in relation to any particular part of the... The broadcasters may ask why they are being singled out and the press is not included; the Home Secretary will be able to point to the Irish precedent, and to indicate that press interviews of this kind do not have the same immediate impact as broadcasts.

The broadcasters will be free to signal their independence of the Government's action in a formal way since there is provision for both the BBC and IRA, if they think fit, to broadcast an announcement of the existence of the direction, which may possibly in practice result in a relaxation of reporting restrictions in relation to particular news broadcasts.

Once the broadcasters have been informed, the appropriate Parliamentary Bill can be introduced and similar action taken. The action is essential, the Home Secretary has proposed to give a formal direction to the broadcasters.

Conclusions

There is little doubt that the proposed restrictions to impose these restrictions on the broadcasters will be vigorously opposed in some quarters as an unjustified curtailment of expression, but the immediate political damage will be just long. It is probable, on the other hand, that nationalist organizations and their apologists will attempt to continue propaganda out of our control. It is probable that the broadcasters may be less receptive than they have in the past about the reporting of their own activities which would not be subject to the same restrictions, for example, in news discussions, and it is probable that they may give such prominence to the news as in the past, but in view of the ban they may feel some self-censorship to avoid as wide a possible other aspects of national activity other than direct propaganda.

Despite these drawbacks, the overall impact of the decision to take action is that the proposals will be followed by a number of voluntary proposals and initiatives with specialists for interviews on national news, including a weekly interview, particularly since they tend to occur in the aftermath of a

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DISQUALIFICATION FOR COUNCIL OFFICE

1. This note considers the possible amendment of the legislation disqualifying a person convicted of an offence of violence from standing for office. In practice, "standing for office", in this context, means district council elections, which are next due in Northern Ireland next May. We have not considered parliamentary elections (where it is desirable that the same law should apply UK-wide), nor the Northern Ireland Assembly (dissolved in 1986). I now propose that the disqualification period for council office should run from the date of release from prison for a prison sentence of 3 months or more, rather than the conviction date, as at present.

Current Position

2. A person who has been sentenced to a term of imprisonment of 3 months or more by a court anywhere in the British Isles (including the Republic of Ireland) is disqualified for election as councillor in Northern Ireland for a period of 5 years from the date of conviction. The law is similar in Great Britain.

3. The Elected Authorities (Northern Ireland) Bill, to be introduced early next session, will include a requirement for district council candidates to sign a declaration that, if elected, they will not support or assist proscribed organisations, or terrorist activities connected with Northern Ireland. The penalty for breach of the declaration will also be disqualification for five years.

Discussion

4. The current disqualification arrangements do not distinguish between prison sentences for violent offences and those for other offences. Given the difficulties of arguing that a person sentenced to 10 years for violent crime was necessarily less suited for council office than a person with a 10-year sentence for fraud, it seems desirable that any change should apply equally to all types of crime and not only terrorist crime.

CONFIDENTIAL

5. A number of the present district councillors in Northern Ireland have served prison sentences of over three months for serious offences. 12 (out of 58) Sinn Fein councillors have served such sentences, as have 6 other councillors, including Unionists, mainly for lesser crimes.

6. If the disqualification period of 5 years were now to be dated from the end of sentence, and this were to apply retrospectively, ie to existing councillors we assess that 6 of the present Sinn Fein councillors (and no others) would be prevented from standing at next May's council elections. If the disqualification period were counted from the release date, 3 councillors would be "caught".

7. There are difficulties of definition and perhaps principle about any new scheme for disqualification which starts the period of disqualification from the end of a sentence, eg there are sentences of indeterminate length. It is therefore preferable to base any new scheme on the release date.

8. There are arguments against change. Any additional "restrictions" in the electorate's freedom of choice will be represented by some as an attack on civil liberties. The practical effect on the incidence of terrorism would probably be minimal. The disqualification rules, assuming they were not changed UK-wide, would diverge from GB, which could be difficult to justify. Any change which was retrospective in effect would be highly controversial, because it would prevent from standing in 1989 people whom we had previously accepted as councillors and who had not transgressed against the law since being elected. We could expect a challenge under the European Convention on Human Rights.

9. But there are also arguments for change. Unionists should be generally supportive of tougher rules, and others may be (particularly the Alliance Party). A small number of 'undesirables' would be prevented from standing for council office in future. Moreover, a change could help to underline our determination to deal

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with the "problem" of Sinn Fein councillors. It is particularly objectionable to many that, under the present rules, a person who has served a prison sentence of more than five years can be released and stand for council office almost immediately. This happened in one well-known case in Fermanagh in 1985.

Conclusion

10. The arguments in favour of change outweigh those against, provided that the change is not made retrospective. 'Retrospectivity' in relation to those already released from prison would be very difficult to handle. Accordingly, I proposed that the disqualification period (of 5 years) should run from the release date from prison for any persons serving prison sentences of more than three months at any time after the new legislation takes effect. Further consideration of the detailed provisions will be required, including their possible application to Assembly elections (but not to parliamentary elections).

11. This legislative change could be included in the Elected Authorities Bill or, if it applied only to council elections, in a parallel Order in Council, though to run a Bill and an Order in tandem in that way would be strongly criticized. In either case, there will be a tight timetable to have the provisions in effect in time for the May council elections. The Bill requires Royal Assent by early March. I shall discuss parliamentary handling with the business managers.

3. But there are also some... should be generally supportive of... particularly the... would be... However, a change would help to...