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File

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FROM A P WILSON
US (LAW AND ORDER)
11 OCTOBER 1991

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PS/Secretary of State (B&L)

cc PS/PMG (B&L)
PS/PUS (B&L)
PS/Mr Fell
Mr Ledlie
Mr Lyon
Mr Alston
Mr Deverell
Mr Cooke
Mr Leach

14/10
C. M. Humphreys

COOKSTOWN SHOOTING: DEATH OF MR MCGOVERN: INDEPENDENT INQUIRY

I am responding to your minute of 7 October addressed to Mr Ledlie. The Secretary of State had asked for information about his own legal powers in relation to the setting up of some kind of investigation (including, perhaps, one involving a police officer from another Force).

2. It may be helpful to draw a distinction at the outset between the investigation of a possible crime and an inquiry into an incident - since the two can be different, even though, in the present case, they are not.

3. The investigation of a possible crime is always a matter for the police. Within Northern Ireland, under the present law only members of the RUC have the necessary powers for this purpose - although a member of another Force (without the powers of a constable) could be invited to lead or supervise an RUC inquiry (cf Mr Stevens). There is no role here for the Secretary of State, otherwise than as someone whose advice to the RUC Chief Constable might carry considerable weight.

4. By contrast, an inquiry into an incident is something which, in certain circumstances, the Secretary of State might institute. However, before doing so, he would need to

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satisfy himself that he would not in that way prejudice any possible future criminal proceedings. Any sort of public inquiry could have this effect; and that is why it is usual (with the agreement of the DPP) for an assurance to be given to potential witnesses that, by coming forward, they will not lay themselves open to a prosecution. Public inquiries are not, therefore, usually held when the possibility of criminal proceedings is still a real one.

5. So far as I am aware, there is only one legal power under which the Secretary of State can establish an inquiry. That is under the Tribunals of Inquiry (Evidence) Act of 1921, which applies throughout the United Kingdom. Tribunals established under this Act have the full legal powers of a court to compel the attendance of witnesses and to require evidence on oath. In practice, this power has been very rarely used. Instead, Ministers have chosen to invite independent persons of some standing (often, but not always, judicial or legal figures) to conduct inquiries into controversial incidents. Such inquiries have a strong moral or persuasive authority, but no legal powers.

6. In brief, the Secretary of State has no legal power to require the Chief Constable to involve a senior officer from the mainland police in the police investigation which must follow every incident in which a crime may have been committed. He could establish his own inquiry into such an incident either on a non-statutory basis or under the 1921 Act. But it would, I believe, be unprecedented for that Act to be used for the purpose of seeking to establish the facts about a single controversial death. (The Widgery Inquiry into the events on "Bloody Sunday" in January 1972, when 13 persons died, was held under the 1921 Act).

(signed)

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