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Ann. London

Meeting in Secretariat on Public Order Order

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Mr O'Ceallaigh

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Dr
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Mr. O'Donovan and I attended a meeting in the Secretariat yesterday at which the British side (a) briefed us on their plans in relation to the Public Order Order; and (b) raised a new proposal in relation to the Emergency Provisions Bill. Messrs. O Ceallaigh, Ryan and O Críodáin were also present on the Irish side. The British side consisted of Brian Blackwell, David Hill (both of the NIO) and Steve Hewitt.

Public Order Order

The draft Order is due to be laid before Parliament today. It is expected that agreement will be reached between the Whips on a half-day debate in the first week of March. In the light of views expressed in that debate, the British Government may voluntarily introduce some modifications but will be under no obligation to do so. It is hoped that the Order will be ready for presentation to the Privy Council at the latter's meeting on 18 March and that it will come into effect on 1 April in time for the Easter parades.

In the light of comments received during the consultation period up to 16 January, the British Government has made a number of changes to the draft Order. These are set out in detail in the attached note and are also covered in the attached press statement.

The major changes are as follows:

(i) Parades and processions

Two modifications of the provisions relating to seven-day advance notification of parades and processions are being proposed.

First, where it is not reasonably practicable to give seven days' notice, notice should be given "as soon as is reasonably practicable". This measure is designed to facilitate the holding of 'spontaneous' parades or other processions, e.g., in support of industrial action or to welcome a victorious sports personality or team, where the organisers can show* that the reason for the procession arose at short notice. The British side accepted, in discussion of this measure, that there was a possibility that certain groups would try to exploit it for purposes other than those envisaged. They pointed out, however, that the measure related purely to advance notification and that the RUC would have effective powers under the other sections of the Order to combat undesirable processions.

Secondly, the Secretary of State would have powers to exempt certain descriptions or classes of processions from the notification requirement. This measure is designed primarily to ensure that the Salvation Army will not be required to give advance notification. This is how it will be presented in public. It will be left exclusively to the Secretary of State to determine the "descriptions or classes". (The alternative of specifically naming the Salvation Army was considered but was dropped for technical reasons).

(ii) Incitement to hatred

Instead of the two Articles in the existing draft Order, there will be ten Articles dealing with this subject. The effect of the changes will be to extend the offence from the spoken word and written material to cover tape and video recordings, broadcasts (except those by the BBC and IBA) and cable transmissions. These amendments bring the Order almost into line with the UK Public Order Act 1986. The exception is that the Order does not cover plays (for a technical reason related to the fact that the Theatres Act, to which the UK Act refers substantially, does not extend to Northern Ireland).

* The onus will be on the defence not the prosecution

In response, the Irish side indicated that it did not have major problems with any of these changes.

A point of concern, however, is the fact that we were given only one day's advance notice both of the date on which the Order would be laid before Parliament and of the proposed amendments (which are not inconsequential). Yesterday's briefing, furthermore, was not volunteered by the British side but took place at the behest of the Irish side of the Secretariat. We should make known our concerns on this point.

*This will
be done
through
Secretariat*

Emergency Provisions Bill

Dr

The British side reported on the present state of play in the Standing Committee. They indicated that Clause 1 (the bail provisions) will be substantially re-written, the effect being not so much to remove the judge's residual discretion as to impose so many conditions on his discretion that it becomes quite limited in practice. They also expect that Clause 8 (prohibiting the gathering of information on certain people) will be amended to exclude public representatives (a proposal from Seamus Mallon and Enoch Powell). There will be a number of other amendments, essentially of a drafting nature. The Bill will remain in Committee for another few weeks and will be reported back to the House towards the end of next month.

The British side then raised an amendment in relation to border road closures which the Government intends to propose in Committee today. (A note on this subject is also attached). They wish to give the Secretary of State the power to authorise the closure or continued closure of border crossings). Under the existing EPA, the Secretary of State has power to authorise closures. However, there are a number of border crossings which have been closed since before the EPA came into effect. These long-standing closures are authorised only under a general Order made in 1970 under the Civil Authorities (Special Powers) Act by the Stormont Minister for Home Affairs. Although this Order has been continued ever since, the British

side are concerned that it could be challenged in the courts and feel that they could more effectively prosecute individuals for attempting to unblock closed border roads if the Secretary of State were given explicit powers under the EPA to close, or continue to close, border crossings.

In response, the Irish side highlighted the political sensitivity of this issue and said that the tabling of a proposal of this kind would be neither desirable or appropriate under present political circumstances. While we had no problems of substance with the proposal, it would clearly be open to misinterpretation and some members of the Standing Committee ^{*} could be expected to give it adverse publicity. In any event, a proposal of this kind should first be given full consideration in the Conference. The British side indicated that they had only discovered this loophole at a late stage, that they did not wish to miss the present legislative opportunity to close it and that it would be more desirable to raise the proposal in the Committee stage than later in the House. They would, however, report the Irish views tonight to Nicholas Scott.

David Donoghue

David Donoghue,

19 February 1987.

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** especially Seanus O'Fallon.*