



PS/Secretary of State (B&L) M

FERMANAGH - SOUTH TYRONE BYE ELECTION  
WITHDRAWAL OF MR NOEL MAGUIRE

1. The Secretary of State may have seen from Press reports and elsewhere that Mr Noel Maguire's notice of withdrawal from this bye election was lodged at about 3.45 pm on the last day for nominations and withdrawals. We know also, from the Chief Electoral Officer, that Mr Maguire telephoned the Deputy Returning Officer at 2.30 pm that afternoon to announce the intention of withdrawal and was told that his written notice should be lodged by four o'clock.
2. Having taken advice, we are satisfied and the Chief Electoral Officer agrees that on a strict interpretation of the Rules the written notice should have been lodged by three o'clock. That is the last time for lodging both nominations and withdrawals: the extra hour, to four o'clock, allowed for objections to certain nominations does not apply to withdrawals in any way.
3. By the time this had come to the Chief Electoral Officer's and our notice on 1 April the list of nominated candidates had been published and the issue of postal ballot papers begun. It was thus too late then to make any change, and the Act makes no provision for the Returning Officer to revoke the statement of persons nominated and start again nor have we found any precedent for such action. It appears, moreover, that this technical error, made in good faith, did not conflict with the candidates' known wishes.
4. The election will now proceed with Sands and West as the only candidates. When it is over it will be open to any candidate or elector in the constituency or to anyone claiming to have had a right to be elected or to have been a candidate to



question the return by petition within 21 days. Any petition would be heard by the High Court, which could not declare the election invalid if it appeared that the election had been conducted substantially in accordance with law and that the breach had not affected its result.

5. While therefore there is the possibility of a petition it is an open question whether it would succeed. There is no action which the Secretary of State could or should take. The Chief Electoral Officer (and his deputies) act independently and we have no supervisory functions or power to intervene.

6. The facts of Mr Maguire's withdrawal, and in particular its timing, should be well known to those likely to be interested. In the circumstances, I understand that the Chief Electoral Officer does not have in mind to volunteer any statement on the subject. He will let me know if he decides otherwise or if he is questioned about the error. In view of our limited standing in the matter I advise strongly that nothing should be said by NIO to suggest any breach of the rules and that any questions relating to the conduct of the bye election should be referred, properly, to the Chief Electoral Officer.

R G SMARTT  
NIO  
Dundonald House

3 April 1981

CC PS/Mr Alison (B&L) M  
PS/PUS (B&L) M  
PS/Mr Bell ✓  
Mr Blelloch  
Mr Marshall M  
Mr Jamieson  
Mr Moriarty M  
Mr Wyatt  
Mr Gilliland  
Mr Chesterton M  
Mr Durling

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