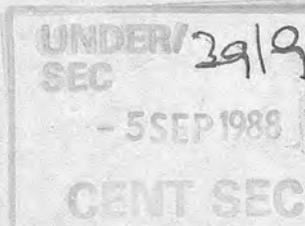


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PS/Mr Needham (L&amp;DOE) - B&amp;M

cc PS/SofS (L&B) - B  
 PS/Dr Mawhinney (L&B) - B  
 PS/Lord Lyell (L&B) - B  
 PS/PUS (L&B) - B  
 Mr Burns - B  
 Mr Murray DOE (NI) - M  
 Mr Spence - M  
 Mr Innes - B  
 Mr Chesterton - B  
 Dr Alford - B  
 Mr Clayton, HO o/r  
 Mr Osborne



**ELECTIONS (NI) BILL: CANDIDATES DECLARATION**

1. Instructions for the candidates' declaration part of the Elections (NI) Bill were sent to Counsel on 8 August. A summary of the Instructions (which follow very closely the detailed policy set out in Mr Kirk's submission of 26 November 1987) is at Annex A. This submission invites the Minister to note one or two knotty problems which have emerged in the course of work on the Instructions, and to which we will be giving further thought as work on this part of the Bill proceeds.

2. These are:

- (i) disqualified councillors standing again. A councillor who has been disqualified for breach of declaration can, if he is prepared to risk perjuring himself, stand again at the ensuing by-election; the election petition which is then required to unseat him can be brought only after the by-election. Sinn Fein could therefore gain propaganda advantage by standing. The likely course of events in this case is set out at Annex B:
- (ii) double jeopardy, where the same words or actions give rise both to criminal charges (eg for incitement) which may result in disqualification under existing law, and to breach of declaration. We have asked Counsel to reflect on the possibility of providing that where two periods of disqualification are imposed in respect of

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the same events, only the first imposed should count. I shall report further when we have his reaction; but even if such a provision can be devised, it will not prevent both civil and criminal proceedings being brought in respect of the same event;

(iii) there is nothing to prevent a councillor from resigning, acting in a manner which may breach his declaration, and then standing again at the ensuing by-election. The only way to prevent this (admittedly fairly unlikely) contingency would be to provide for a declaration to continue to bind after the councillor or Assemblyman had left office. This would depart from the basic principle of a declaration "as a condition of elected office" and be, in general, unenforceable;

(iv) it is just possible that the courts might interpret the phrase "violence for political ends" in the present declaration widely - wide enough, perhaps, to bring in actions such as the fight at Belfast City Council on 4 July. We have asked Counsel to think about this possibility. In the light of his response we can look at it again.

3. We shall be giving further thought to these problems as work on the Bill proceeds, and where appropriate will prepare defensive material for use in Parliament. But it seems best to draw them to Mr Needham's attention, for information, at this stage.

E L RICKARD

CPL

5 September 1988

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## ELECTIONS (NI) BILL SUMMARY OF PROPOSALS FOR A CANDIDATES' DECLARATION

Counsel is being asked to draft the following:

- (i) all candidates at district council or Assembly elections in NI should be required to make the following declaration:

"I declare and undertake that, if elected, I will neither support nor assist in word or deed or by display of written or other material (a) the activities of any organisation proscribed by law in Northern Ireland, or (b) acts of terrorism (that is to say, violence for political ends) connected with the affairs of Northern Ireland".

(A similar declaration would be required of persons co-opted to fill casual vacancies on councils).

- (ii) the declaration should form part of the candidate's consent to nomination. As such, it should be required to be delivered, subscribed by the candidate and attested by one witness, at the place and within the time fixed for the delivery of nomination papers. If the candidates' consent to nomination does not include the declaration subscribed as required by law, the candidate should not stand nominated for election, and his name should not appear on the ballot paper.
- (iii) In order to prevent disputes and negate any attempt by candidates to alter the wording of the declaration, any candidate who stands nominated should be deemed to have given a consent to nomination which included a declaration in the terms set out in the Bill.

- (iv) Where a councillor is alleged to have breached his declaration it should be open to the following (but not to others) to apply to the High Court for a determination to that effect:
- (a) the district council of which the Councillor in question is a Member;
  - (b) any other councillor of that Council;
  - (c) any person entitled to vote at an election to that Council.
- (v) In the case of an Assembly Member, the following should be able to apply to the High Court:
- (a) any other Member of that Assembly;
  - (b) any person entitled to vote in the constituency which the Member represents.
- (vi) the declaration should be capable of being breached by actions or statements in public anywhere in the world; or by actions or statements in the Assembly or district councils or their Committees, or sub-committees, whether in closed or open session. Assembly privilege (but not that of Parliament) should be set aside for this purpose. It should however be impossible for proceedings to be brought against an elected representative in respect of things done or said after he has ceased being a representative.

(vii) where the High Court makes a determination against any Councillor or Assembly Member, that Councillor or Assembly Member should be disqualified for council and Assembly office for five years from the date of the determination.

(viii) The part of the Bill dealing with local government elections should come into force on Royal Assent. The part dealing with the Assembly should be brought into force by commencement order.

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**DISQUALIFIED COUNCILLORS STANDING AGAIN**

Where a councillor is disqualified for breach of declaration, his seat will become vacant. Unless the council can agree on a co-option, a by-election will ensue. In such a by-election, it would be open to the disqualified councillor to permit himself to be nominated as a candidate.

2. For the nomination to be valid, however, the candidate must also give his consent to nomination in the form required by the local elections rules. The relevant part of the consent form reads:

"I further declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification contained in Section 4 of the Local Government Act (Northern Ireland) 1972, a copy of which is printed overleaf".

3. Subject to Counsel's views, disqualification for breach of declaration will be one of the disqualifications in Section 4 of the Local Government Act (NI) 1972; a candidate who signs a consent to nomination in this form in the knowledge that he/she is already disqualified for breach of a candidates' declaration would, therefore, be making a false declaration.

4. However, the local elections rules (in common with the parliamentary elections rules, on whose provisions they are modelled) do not allow the returning officer to invalidate a nomination because the declaration is false or because he judges a candidate, contrary to his declaration, to be disqualified under the Local Government (NI) Act 1972. The returning officer is entitled to declare a nomination invalid only on one of the following grounds:

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- (a) that the particulars of the candidate or the person subscribing the paper are not as required by law;
- (b) that the paper is not subscribed as so required.

5. The returning officer may decide to refer a candidate to the police for perjury if the latter has plainly made a false declaration; but he has no power to prevent the nomination going forward.

6. Disqualification must therefore occur after the election by petition. Under the Electoral Law Act (NI) 1962, a petition questioning a person's election on the grounds that he/she was, at the time of the election, disqualified for election may be presented either by four or more people who had a right to vote in the election, or by another candidate in the election. The petition must be presented to the High Court within 21 days of the day when the election was held; the High Court then appoints an Election Court which determines whether or not the election was, in fact, void. Where the election is declared void by the Election Court, the Court may either declare the runner-up to have been elected or direct that a fresh election be held. It may also make an order for costs.

7. Similar arrangements apply in the case of the Assembly.

8. Disqualification by petition can be controversial. The most notable instance in NI elections was the disqualification of Seamus Mallon from the NI Assembly in 1982, on the ground that he was a member of the Irish Senead, following a petition brought by Harold McCusker and other unionists. In this case, costs were awarded against Seamus Mallon.

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