

Mr Kennedy ✓

Consequences of Mr Mallon's Disqualification

1. I felt that it would be useful to set out the consequences of Mr Mallon's disqualification under Section 1(1)(e) of the Northern Ireland Assembly Disqualification Act 1975.
2. This minute may be helpful for briefing the Speaker on the action that is now required.
3. The procedure is as follows:-
 - (a) The election court certifies in writing to the Speaker the conclusion of the trial of the election petition. This is being done today and might be forwarded to the Speaker via the Clerk of the Assembly (Section 77(1) of the Electoral Law Act (Northern Ireland) 1962).
 - (b) The conclusion, of course, is that the election of Mr Mallon is void and that the seat is vacant.
 - (c) The Speaker is required to inform the Assembly as soon as practicable of the conclusion of the election petition. But the Speaker must inform the Assembly in session and will be unable to do this until the Assembly resumes its sitting. (Section 26(7) of the Northern Ireland Constitution Act 1973)
 - (d) As soon as practicable after he has informed the Assembly the Speaker is required to give notice of the vacancy in writing to the Clerk of the Assembly. (Article 9(1) of the Northern Ireland Assembly Elections Order 1982)
 - (e) When informed of the electoral court's decision by the Speaker the Assembly is required to:-
 - (i) order that the certificate of disqualification is entered into the official record of proceedings of the Assembly;
 - (ii) give directions for altering the result of the election. (Article 4(2)(e) of the Northern Ireland Assembly Elections Order 1982)
 - (f) When the Assembly has been informed of the electoral court's decision by the Speaker the Clerk to the Assembly is required to delete Mr Mallon's name (?) from the book containing the names of elected Members that is kept at the Assembly (Rule 58 Schedule 2 of the Northern Ireland Assembly Elections Order 1982).
 - (g) The Clerk to the Assembly is also required to forward the notice of vacancy received from the Speaker ((d) above) to the Secretary of State. (Article 9(2) of the Northern Ireland Assembly Elections Order 1982)
 - (h) The Secretary of State is required to forward the notice of vacancy to the Chief Electoral Officer within 90 days of its receipt. (Article 9(3) of the Northern Ireland Assembly Elections Order 1982)
 - (i) When notice of vacancy has been forwarded to the Chief Electoral Officer a by-election shall be held to fill the vacancy and the date of the poll shall be determined in accordance with the timetable in Rule 1(3) of the Assembly election rules. (Article 9(4) and Rule 1(3) Schedule 2 of the Northern Ireland Assembly Elections Order 1982)

4. There are two further points of importance that should be noted. The first concerns the exception to Article 9(1) of the Northern Ireland Assembly Elections Order 1982; the second concerns the current views of the Northern Ireland Office about the timing of the by-election.
5. Article 9(1) of the Northern Ireland Assembly Elections Order 1982 provides that the Speaker shall inform the Clerk of a vacancy as soon as practicable after he has informed the Assembly. But Article 9(1) (a) and (b) enter an exception to this procedure by providing that the Speaker shall defer giving written notice of a vacancy until the Assembly has had the opportunity to consider making an order under Section 6(2) of the House of Commons Disqualification Act 1975 as applied by Article 10 of the Order. Article 9(1) (a) and (b) apply this exception where
 - "(a) the seat is vacant because a person is or becomes disqualified for membership of the Assembly under the Northern Ireland Assembly Disqualification Act 1975; and
 - (b) the grounds of such disqualifications or alleged disqualification which subsisted or arose at the material time have been removed".
6. Article 10 of the Northern Ireland Assembly Elections Order 1982 applies Sections 6 and 7 of the House of Commons Disqualification Act 1975 to the Northern Ireland Assembly and Section 6(2) of that Act provides that

"If, in a case falling or alleged to fall within subsection (1) above, it appears to the House of Commons that the grounds of disqualification or alleged disqualification under this Act which subsisted or arose at the material time have been removed, and that it is otherwise proper to do, that House may be order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section".
7. Taken together the provisions of Articles 9(1) (a) and (b) and Article 10 of the Northern Ireland Assembly Elections Order 1982, and Section 6(2) of the House of Commons Disqualification Act 1975 (as applied) might lead some people to suppose that the Speaker should delay forwarding notice of vacancy to the Clerk if the grounds of disqualification which subsisted or arose at the material time had been removed. This is not the case. There can be no question of delaying the issue of a notice of vacancy from the Speaker to the Clerk to allow the Assembly to consider making an order under Section 6(2) of the House of Commons Disqualification Act 1975 as applied by Article 10 of the Northern Ireland Assembly Elections Order 1982.
8. The Assembly has no power to make such an order because Section 6(3) of the House of Commons Disqualification Act 1975 (as applied) provides that no order made under Section 6(2) of that Act shall affect the determination of an election court. However the notice of vacancy to the Clerk of the Assembly must be delayed until the Assembly has resumed and has been informed of the determination of the election court.
9. The second point of significance concerns the issue of the Notice of Vacancy from the Secretary of State to the Chief Electoral Officer. The Secretary of State must issue this within 90 days of its receipt from the Clerk. However a new electoral register comes into force on 16 February 1983. Unless the political pressure to do otherwise proves irresistible, Northern Ireland Office propose to advise the Secretary of State to issue the Notice of Vacancy

after that date (ie) on 17 February 1983 so that the by-election can be held on the basis of the new register.

10. I have arranged for further legal briefing on this matter to be mufaxed urgently to me with clearer copies being placed in the Belfast Box.

J.E. Wolstencroft

J E WOLSTENCROFT

17 December 1982

cc Mr Whiteside
Mr W Smith