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NH2/12

MR CHESTERTON-B
MR HAMMOND, HO
MR HAMILTON-B
MR HEWITT-B
MR MCCONNELL PAB-B
MRS BROWN DOE(NI)-M

MA 2/12

cc Mr Burns-B
Mr Barry DOE(NI)-M
Mr Innes-B
Mr Elliott-B
Mr Spence-B
Mr Bell-B

CANDIDATES' DECLARATIONS - DRAFT 'H' PAPER

I should be grateful for any comments on the attached drafts, if possible by 3pm tomorrow, Tuesday, 1 December, please.

(Signed)

D C KIRK
CPL
30 November 1987

1. MR McCuik 1706
2. MR Casin *cy 4/12*

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PS/SECRETARY OF STATE (L&B)-B

cc PS/Sofs (L&B)-B
PS/Mr Stanley (L&B)-B
PS/Dr Mawhinney (L&B)-B
PS/Mr Needham (L&B)B&M
PS/PUS (L&B)-B
PS/Sir K Bloomfield-B
Mr Burns-B
Mr A W Stephens-B
Mr Barry DOE(NI)-M
Mr Chesterton-B
Mr Hammond HO
Mr Elliott-B
Mr Innes-B
Mr Spence-B
Mr J McConnell-B

CANDIDATES' DECLARATION - DRAFT 'H' MEMORANDUM

1. If Ministers decide to seek colleagues' agreement to the introduction of a non-violence declaration, they may find it helpful to have available at tomorrow's meeting a draft of the memorandum which the Secretary of State might put to 'H' Committee, probably no later than next week (if we are to abide by the '7-day rule' for the circulation of papers to Cabinet Committees).

2. The draft has been prepared on the assumption that Ministers will be broadly content with the earlier discussion of the 'technical' aspects of a declaration (my minute of 26 November to PS/Mr Needham) and the advice in my minute of 27 November on the way ahead. Most of the text could be amended without the need for further consultation within the NIO. However, if Ministers do not accept the advice that enforcement of the declaration should be by civil process without the Attorney General's involvement - and this is a difficult issue - they may wish to discuss any alternative approach with the Attorney General, before a memorandum is circulated.

D C KIRK

CPL

November 1987

1706

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DRAFT 'H' COMMITTEE PAPER

PROPOSED ELECTIONS (NORTHERN IRELAND) BILL

MEMORANDUM BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

Introduction

1. This Memorandum seeks the Committee's policy approval to an Elections (Northern Ireland) Bill. The Bill's provisions would require all candidates in Northern Ireland District Council (and Assembly) elections to sign a declaration abjuring support for terrorist violence. I believe that such legislation is necessary to demonstrate the Government's abhorrence of those (particularly Sinn Fein) who support violence while exploiting the political process, and that it needs to take effect as soon as possible before the local elections in May 1989. The proposed Bill would also finally bring the local government franchise in Northern Ireland into line with that in Great Britain (thus resolving the 'I' voter problem).

Background

2. Colleagues will recall that 'H' Committee gave approval to my publishing a discussion paper on the proposed non-violence declaration (H(86) 21st Meeting, Minute 1), subject to further consultation on timing. Publication was delayed by the Irish and UK elections and took place on 12 October. (The text of the document, as published, is at Annex A). Comments were sought by 30 November.

3. The discussion paper reflected the Government's preference for a non-violence declaration as a means of dealing with the problems posed by Sinn Fein councillors. It invited comment particularly on the terms of the declaration and the means of enforcement. There had been wide support for a declaration in Richard Needham's prior consultations with councillors and other local politicians, although the paper discussed other options as well.

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Response to the Discussion Paper

4. There has been a mixed reaction to the discussion paper, coloured recently by the IRA bombing at Enniskillen. The Government's concern over the problems posed by Sinn Fein councillors is widely shared across the community. Unionist revulsion at the presence of Sinn Fein in the councils has, if anything, increased. The majority of unionist opinion, however, now seems to favour the proscription of Sinn Fein, although moderate unionists may be prepared to support a declaration as 'second-best'. The non-sectarian, moderate Alliance Party fully supports the concept of a declaration. The SDLP would be strongly opposed to action which had the effect of excluding Sinn Fein from the political process. They believe that the declaration, as currently drafted, is one-sided and would prove counter-productive. The Irish Government take a similar view (which they have helpfully not expressed publicly), as do the Labour Party here.

5. Sinn Fein have indicated that their councillors would sign the declaration and will not be prevented from representing their voters.

The Options

6. We explained in the discussion paper that there were problems of principle and practice about proscribing Sinn Fein (or others, such as the UDA), which would be an inappropriate means of dealing with the specific problem of Sinn Fein councillors. In response to unionist demands for Sinn Fein's proscription after Enniskillen, the Prime Minister has recently reminded the House that it would be a 'blanket measure' which could well prove counter-productive. Most Sinn Fein councillors and their supporters do not practice violence, whereas members of the IRA (and other proscribed organisations) do. Proscription would be difficult to enforce; it would be

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widely opposed by constitutional nationalists (and abroad); and Sinn Fein could well re-appear in a different guise. I continue to believe the proscription would be the wrong response in current circumstances, although we should keep this option under review.

7. As regards the other options in the discussion paper, an oath of allegiance, although supported by many unionists, would be resented by many nationalists and offers little attraction. The possibility of tougher disqualification rules is widely supported by unionists. Anyone convicted of a criminal offence and sentenced to imprisonment for three months or more is at present disqualified from standing in council elections. I do not believe that there are sufficiently strong arguments for changes here in addition to the introduction of a declaration.

8. The introduction of a non-violence declaration would not be without difficulty, as the Committee has noted in previous discussions. It seems unlikely that it would lead to Sinn Fein's removal from the councils. There would be difficulties about enforcement. It would, however, oblige Sinn Fein councillors (and others) to moderate their rhetoric and it could give them a 'credibility' problem. Most importantly, it would demonstrate the abhorrence of the Government and most of the community for hypocritical 'bullet and ballot-box' politicians, even if the practical effects are modest. We may not keep many unionists in local government without it. Its effect on some loyalist extremists is an added bonus (which should help the SDLP to live with it).

The Proposed Declaration

9. There has been criticism that the terms of the declaration proposed in the discussion paper, do not go far enough, since they only catch support or assistance for proscribed organisations (which do not include, for example, the UDA). A

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broader formulation will not ease enforcement. I do not accept the unionist suggestion that it would be appropriate for candidates specifically to 'repudiate violence'. But I agree that the declaration's terms could usefully be widened, as follows:

"I declare and undertake that, if elected, I will neither support nor assist, in word, 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".

(Precise language would be subject to the views of the Parliamentary Draftsman.)

10. The proposed Bill would provide that all candidates should be required to sign such a declaration at the nomination stage. The declaration could be breached by actions in public anywhere (including Great Britain and abroad).

11. Enforcement raises difficult issues. Unionists believe that a criminal offence should be created. Three main reasons are advanced. It is argued that the 'offence' is serious enough to justify criminal status and penalties and the involvement of the Government in prosecutions. Individuals could, it is held, become terrorist targets if they pursue alleged breaches of the declaration, by civil process; and the cost and burden on them would be considerable. However, in my view, it would be wrong to criminalise actions that would not constitute an offence when committed by others. There would be substantial difficulties about prosecutions by the Attorney General, which would inevitably involve him in matters of political controversy. It is difficult to avoid individuals putting themselves at risk, since witnesses will be required under the criminal or civil options. However, district councils themselves could, I propose, be given a locus standi, along with individual

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councillors or electors, to bring civil actions. Individual councillors would be eligible for legal aid. I therefore propose that enforcement should be by civil process. A declaration by the High Court that a candidate's declaration had been breached would lead automatically to disqualification from council or Assembly office for a period of 5 years.

'I' Voters

12. The Bill would also abolish the category of 'I' voters (electors permitted to vote in UK Parliamentary elections, but prevented from voting in Northern Ireland district council elections by a separate and outdated residence qualification). It would do so by aligning the Northern Ireland district council franchise with the local government franchise in Great Britain. About 9,000 people would be affected, comprising Irish citizens registered since 1962; certain British citizens who at present fail to meet the residence requirement; some 2,000 Service voters, mainly spouses of Servicemen/women; and certain smaller categories. It would also disfranchise a small number of those whose present voting rights are anomalous - eg convicted prisoners, and certain voluntary mental patients. The law on qualification for council office would be adjusted to correspond with the new franchise. These changes would fulfil a public commitment given (in the Anglo-Irish context) in 1986, and already implemented in respect of the franchise for the Northern Ireland Assembly.

Recommendations

13. Colleagues are invited:

- i) to endorse the need for early action to introduce a declaration of non-violence to be signed by all candidates in Assembly and district council elections in Northern Ireland;

ii) to agree that 'I' voters should be enabled to vote in local government elections in Northern Ireland;

iii) to note that, if the Committee agree, I shall seek from 'L' Committee an early place for an Elections (Northern Ireland) Bill in the 1988/89 legislative programme (unless legislative time can be found in the current session).

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