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For Gullwing 2285
An interesting line at 'x'
When we have this meeting I
would like to be aware of how
much we can say about
the content of the
legislation.

29/11

J M Dowdall Esq
Department of Finance and Personnel
Parliament Buildings
STORMONT

29 November 1989

Dear John

STREET AND HOUSE TO HOUSE COLLECTIONS

Thank you for your letter of 27 November.

I am happy to join in a discussion as to departmental responsibility for future legislation on this subject, and shall contact you shortly with a view to arranging one.

In the meantime, I would merely comment that, until the content of the legislation is settled, it is extremely difficult to come to any view about its classification for constitutional purposes - because the question is open-ended. Unless the proposals fall clearly on one side of the reserved line or another, perhaps whichever Department most feels that new legislation is necessary should take initial responsibility for preparing it. When draft instructions are reasonably finalised, it could then, if necessary, hand over to the other Department, if that is where real responsibility lies. Close consultation between NIO, DFP and anyone else interested would, of course, be necessary along the line.

Yours sincerely

Ralph

T R ERSKINE



Mr T R Erskine
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27 November 1989

Dear *Ralph,*

STREET AND HOUSE TO HOUSE COLLECTIONS

One of the long standing issues which I have taken over with my latest post is the question as to whether NIO or DFP should promote proposed new legislation on the supervision of public collections has been a matter of some controversy in recent years. You may recall that both NIO and DFP have sought the views of your department at different points in the preliminary stages of the proposed legislation, which is currently in abeyance following its withdrawal from the PACE(NI) Order. Although the initiative for the proposed legislation came from the NIO, there appears to be no current pressure from that quarter for the legislation to be taken forward as a matter of urgency. However, it is clear that the existing legislation should be strengthened and an essential preliminary to new legislation is for NIO and DFP to come to a definitive and mutually agreed position on which department should take the matter forward. It is in this area that I would be grateful for your opinion.

Ken Millar wrote to you on 28 June 1989, setting out the chain of events leading to the present impasse. In your absence, Ken Jones replied on 21 July and suggested that a possible way forward was for the 2 departments to jointly formulate proposals about what is required. We have not to date taken up this suggestion for a number of reasons, including concentration on coming to a preliminary view on the way forward for NI on charity law reform in the light of proposals for England, Wales and Scotland. In addition, however, I would like to be as clear as possible on the constitutional position before taking this further with NIO.

Could I ask you to meet to discuss the basis of the differing views on this question and whether they can be resolved, so that whichever department takes the legislation forward can do so in the knowledge that the constitutional proprieties are being properly observed? Perhaps when you have the opportunity to consider this again we could arrange a suitable time.

Yours sincerely

John Dowdall
J M DOWDALL

DBoy-9.80

Mike Quinn

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K Millar Esq
Department of Finance and Personnel
Parliament Buildings
STORMONT

21 July 1989

Dear Millar

STREET AND HOUSE TO HOUSE COLLECTIONS

1. Please refer to your letter of 28 June to Ralph Erskine.
2. The views reported in Alan Shannon's minute of 17 May 1988 should be read in the context that they were expressed by me specifically in support of the proposition that the PACE (NI) Order was not a suitable vehicle for amending this aspect of the law. Having now seen Erskine's letter of 1 May 1987 to Power, I would respectfully accept that section 5 of the Police, Factories Etc. (Miscellaneous Provisions) Act 1916 (c. 31) contains elements of a reserved nature. Nevertheless broadly similar functions under the House to House Charitable Collections Act (Northern Ireland) 1952 (c. 6) were transferred to DFP in 1987. The "charitable purposes" under that Act are not as strict as those under the Charities Act (Northern Ireland) 1964, and encompass benevolent or philanthropic purposes. Ultimately the constitutional classification of the proposed legislation will depend on what is to be done and how it is to be accomplished.
3. It is not for this Office to say which Department should sponsor legislation; that ought to be dictated by the policy. May I suggest, therefore, that NIO and DFP should together formulate some proposals about what is required. It may then become apparent who is better placed to proceed.

Yours sincerely

*Kenneth Jones*A K R JONES

cc A D Shannon, Esq
NIO
Stormont House Annexe

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1. Mr. Boylston 29/6
2. Mr. Martin

28th June 1989

Dear Mr Eskine

STREET AND HOUSE-TO-HOUSE COLLECTIONS

1. You may recall that you wrote to Murray Power on 1 May 1987 in response to his letter of 29 April 1987 seeking clarification of the constitutional position as to whether NIO or DFP should promote proposed new legislation on the supervision of public collections. The general thrust of your advice was that, on balance, NIO should take the proposed legislation forward as it primarily concerned reserved matters.
2. The attached paper (submission to Minister by NIO on the PACE (NI) Order) has only recently been made available to DFP and as you can see it refers to further advice to the NIO from the Legislative Draftsman (possibly from Mr Jones as per cc list) on a number of issues. On the basis of this advice the Minister agreed to drop the provisions from the PACE (NI) Order.
3. While the question of which Dept should eventually initiate the collections legislation is not specifically spelt out in the paper, there is a strong imputation (see para 10) that it should fall to DFP in view of the impending changes to Charity Law in GB (enclosed is a copy of the relevant section, of the recent white paper on Charities in GB).
4. As you are aware from previous correspondence, DFP has serious reservations about undertaking the role envisaged. DFP accepts its responsibilities in regard to bona-fide Charities and is quite prepared to offer advice on the likely impact that new legislation (concerning the criminal law or otherwise) may have on such Charities. However the proposed legislation is directed at curbing "the apparent ease with which collections can be raised in the street or from House-to-House by organisation **misrepresenting** themselves as Charities or **intimidating** the public into making donations" (Para 8). These seem to us to be law and order issues, which therefore fall outside DFP's narrow remit in regard to bona fide Charities.
5. I would welcome your opinion on the constitutional and associated legislative issues involved and on the apparent conflict between the position as stated in the NIO submission, and our earlier understanding (based on your 1 May 1987 advice) that NIO should take forward the regulations as they primarily concerned reserved matters.
6. I would also be grateful to have your opinion on the constitutional propriety of DFP, whose functions are confined to transferred matters, conferring a power on the Chief Constable, (and processing appeals to the Secretary of State against the Chief Constable's decisions), in view of his 'reserved' status.

Yours sincerely

K MILLAR

DMcG-9.29c MM

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cc: PS/SofS (B&L)-B
PS/PUS (B&L)-B
Mr Stephens-B
Mr Innes-B
Mr Bentley (HOLAB)
Mr Chesterton-B
Mr Hewitt-B
Mr Brooker-B
Mr Templeton (ARU)-B
Mr Jones (LDO)
Mr Brearley-B

PS/Mr Stanley (B&L)-B

REFORM OF THE LAW ON CHARITABLE COLLECTIONS: PACE (NI) ORDER

1. The Minister will recall that we have already instructed the Legislative Draftsman to include in the PACE (NI) Order, provisions which would empower the Secretary of State to regulate the means by which collections for charitable and other purposes are raised, either by way of street collections or house to house collections. Since this matter will be discussed at the meeting on Combatting Terrorism, on the 18th May, I thought it appropriate to draw the Minister's attention to the substantial objections which have been raised by the Legislative Draftsman, in response to our instructions.

2. To begin with, the Draftsman has questioned the remit of the NIO to legislate in this field. And certainly, it is the Department of Finance and Personnel, rather than the NIO, which is responsible for Charity Law in Northern Ireland. However, we had been advised that because the law on street collections related to police matters and the criminal law, it was, for our purposes, a "reserved" matter (and therefore NIO's responsibility) while the law on house-to-house collections was a "transferred" matter (and thus DFP's responsibility) within the terms of the Northern Ireland Constitution Act 1973. Accordingly, it seemed appropriate that the NIO, which has the power to legislate in both the "reserved" and "transferred" fields, should take the lead in preparing the necessary instructions.

3. But the Draftsman has now suggested that if we have put forward these instructions simply because of the reference to "police" in the title of the 1916 Act which governs the law relating to street

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2

collections, or because the police are empowered to issue licences authorising those collections, then our reasons for doing so would justify including in the Order, material on almost any subject in respect of which the police have powers. Accordingly, we have now been forced to reconsider whether there is in fact any significant difference in constitutional terms between the law on street and house-to-house collections. And if not, whether a Northern Ireland Department (ie the DFP) rather than NIO should take responsibility for this legislation.

4. More importantly, the Draftsman has stressed that in his view, it would be wrong in principle to repeal an Act of Parliament and replace it with a regulation-making power; he has suggested that the effect would be that no-one would be able to make a collection on the street or from house-to-house, except on such terms as the Secretary of State might see fit to specify. He took the view that such a power would be much too wide and that the appeals procedure we envisaged would provide considerable scope for challenges by way of judicial review. And while he agreed that it was important to try to preclude collections for dubious purposes or organisations, he believed that bona fide charities would be so considerably affected by the proposals that they might well raise objections to our method of approach.

5. Indeed, in suggesting that the provisions relating to Charity Law do not belong in this Order, nor can they be accommodated easily within its structure, the Draftsman has also suggested that there is every likelihood that aside from questioning our approach, the major charitable organisations might raise considerable objections to the nature and scope of our proposals. And should this happen, it might seriously prejudice our attempts to get the much more important provisions of the Order on to the statute book. He has therefore suggested that it would be more appropriate for reform of the law on charitable and other collections to be taken forward by way of a separate Order-in-Council. This would have the effect of replacing obsolete primary legislation with fresh primary legislation rather than with subordinate legislation. And it would also have the

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3

benefit of allowing the bona fide charity organisations an opportunity to carefully consider the proposals and to comment on them separately.

6. At present however, the Draftsman cannot give us a timetable for the preparation of separate Order; though he has indicated that much would depend upon the speed with which instructions could be prepared and upon other drafting commitments. We had suggested that he might examine our draft regulations which have already been prepared, with a view to restructuring them into an appropriate Order, but he is not entirely satisfied with that suggestion and has indicated that in his view, the Criminal Justice (Serious Fraud) and PACE Orders should to be given first priority. But he has confirmed that promoting a separate Order on Charity Law offers the real advantage that the very important reforms of the law relating to Police and Criminal Evidence will not be delayed by issues arising in relation to material which is unrelated to them.

7. On reflection, we now believe that the Draftsman's views and suggestions are convincing. And we would fully endorse his view that these provisions be removed from the PACE (NI) Order in order to minimise controversy during the consultative process and to ease the eventual implementation of more important measures. We therefore believe that consideration be given to the introduction of a separate Order-in-Council which would provide a primary legislative vehicle for the reforms which Ministers consider necessary.

8. However before recommending this course to Ministers we thought it right to consider whether abuses of the current law are so serious and widespread as to warrant immediate and far-reaching reforms. It is already against the law to raise a street collection without the appropriate permit; and a recent case in the Bangor area in which a defendant was fined £15 for raising an illegal street collection, indicates that the RUC have no difficulty in enforcing the law where offences have been committed; indeed the level of fine imposed, indicates the limited importance which Magistrates attach to the offence. Furthermore, it is currently against the law to

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raise a house-to-house collection without the appropriate permit; so it is open to the RUC to prosecute those responsible for raising house-to-house collections without the appropriate permit. Moreover, the PACE provisions, together with the other measures planned to combat paramilitary racketeering, should prove helpful in enforcing the current law. But there are other difficulties, and these centre on the apparent ease with which collections can be raised in the street or from house-to-house by organisations misrepresenting themselves as charitable or intimidating the public into making donations. No doubt some of these difficulties could be eased by changes in RUC operational policy; but others of course relate to deficiencies in the law itself.

9. At this stage, and while we recognise Ministers' concern about the need to strengthen the law relating to collections, it is evident from discussions with the RUC that what they are seeking is the introduction of a range of measures which, while having the incidental effect of restricting paramilitary fund-raising, would modernise the law and improve the ability of the police to prevent fraudulent fund-raising by any person or organisation under the guise of charity. But stricter controls particularly those involving heavier fines and perhaps imprisonment will effect the bona fide charitable organisations as well. So it is not simply the question of paramilitary fund-raising with which we are being asked to deal; and we consider that since reform of the law on charitable collections is very likely to take on a much broader perspective and attract much wider controversy than we had at first imagined, we believe it would be much better to reassess the position and perhaps look elsewhere for a solution.

10. In this context we have had preliminary discussions with officials in the Voluntary Services Unit of the Home Office, who are preparing a White Paper, for issue in early 1989, and based on the recent recommendations of the Woodfield Committee, which reviewed Charity Law and amongst other things, recommended that the law on street and house-to-house collections should be regulated no differently. So plans to reform Charity Law are already in hand, and seem to offer the most appropriate opportunity for reform in

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Northern Ireland. The Home Office have agreed to consider whether the scope of the appropriate legislation could be directly extended to Northern Ireland if we thought it necessary; otherwise, and with the GB provisions to hand, the measures could be introduced here by way of a reciprocal Order-in-Council. Importantly, the GB measures will involve the repeal of existing legislation on both street and house-to-house collections. And the introduction of fresh legislation, covering both, is likely to be firmly within the scope of Charity Law. As a result, there should be no question of constitutional considerations getting in the way of composite NI reforms and it should then be open for DFP rather than NIO to replicate the necessary measures if required.

11. But Charity Law, and the means by which charities raise their funding, is such an extensive and complex issue that both the Government and the charitable organisations have already attached considerable importance to the proposed GB reforms. On the one hand, large charities, including Oxfam and the Save the Children Fund, are currently demanding tax incentives and an end to restrictions on television advertising to help them raise money; indeed they have already asked the Government to remove the powers of local authorities to limit flag days and other fund-raising events. On the other, the Government is increasingly concerned about the ability of unscrupulous collectors to exploit the good will of the public by raising collections which are no more than devices to line their own pockets. The battle-lines are already being drawn, and given the clear divergence of opinion, reform of the law will be highly controversial. Accordingly, we believe there would be considerable advantage in allowing these issues to be explored fully in GB, and in our having sight of the Home Office draft legislation, before these complex matters are addressed in the NI context, and final decisions taken as to where responsibility rests for legislating in this field.

Recommendations

12. In light of the Draftsman's comments, we would recommend that the provisions for reforming the law on collections for charitable

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6

and other purposes be removed from the PACE (NI) Order so as to minimise the likelihood of controversy surrounding the Order, to facilitate our meeting the Minister's deadline for publication and to ensure that the more important measures contained in the Order can be introduced as soon as practicable.

13. In addition, we consider that in seeking to tighten the law on collections we would be generating widespread and disproportionate controversy over the whole range of Charity Law and buying a packet of trouble we would be best to avoid. Indeed, in view of the comprehensive reforms to Charity Law, already planned for England and Wales, we would strongly recommend that reform of the NI law, relating to collections for charitable and other purposes, be postponed until the extent of the GB reforms is known. At that stage, Ministers could be advised as to whether the GB measures can be extended directly to NI, or introduced by separate Order-in-Council; and whether the basic framework of the legislation could be supplemented by measures which would take account of the particular difficulties in Northern Ireland.

14. Minister is therefore invited to agree:-

- (a) that provisions governing the reform of collections for charitable and other purposes, should not be included in the main PACE (NI) Order;
- (b) that we await the publication of the Home Office White Paper (early 1989) which will outline the Government's strategy in dealing with major reforms to Charity Law' and thereafter determine whether or not these can be extended directly to Northern Ireland or whether they can be introduced by a separate Order-in-Council supplemented by additional measures if necessary.

(signed)
A D SHANNON
Police Division (B)

17 May 1988

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6/12/87

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cc: PS/Mr Stanley (L) - B
Mr Stephens - B
Mr Innes - B
Mr Hodges
Mr Power
Mr A Templeton - B

1. Mr Shannon
2. PS/Mr Stanley (B) - B

REFORM OF THE LAW ON CHARITABLE COLLECTIONS

1. The Minister has asked for details of the arrangements which will be introduced to tighten the law relating to charitable collections, thereby enabling the RUC to control, more effectively, the raising of collections for charitable and other purposes, while at the same time restricting illicit fund-raising by paramilitary organisations.

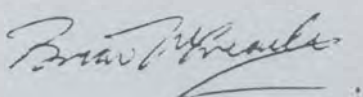
2. The present laws are fragmented, archaic and in need of overhaul and review; indeed the responsibility for collections is divided between DFP (House-to-House collections) and the RUC (street collections). Accordingly, we take the view that the present laws need to be repealed, and replaced by an appropriate provision in the forthcoming PACE (NI) Order which would empower the Secretary of State to make new regulations governing all methods of collection and for charitable and other purposes.

3. In our instructions to the Legislative Draftsman on the PACE (NI) Order, we have sought the inclusion of an appropriate enabling provision, which, since we want to move quickly on this issue, can be brought into effect by a separate Commencement Order, and in advance of the other PACE provisions.

4. In consultation with the RUC, we have already drawn up draft regulations which will provide for:-

- (a) appeals to the Secretary of State against the Chief Constable's refusal to grant a permit for a collection;
- (b) the appointment of an advisory body (perhaps from within the Police Authority) to advise the Chief Constable on the granting of permits;
- (c) stricter vetting of applicants, tighter controls on the practical arrangements of fund-raising, and more stringent requirements on the use of, and accounting for, funds. When the regulations have been finally agreed, they can be brought into effect whenever the enabling power is introduced.

5. In the meantime, the Minister will wish to note the progress which has already been made and that, although we still need to clarify DFP's and PANI's functions under the regulations, and consult with a number of the major charitable organisations operating in NI, we are aiming to have the regulations agreed and ready for implementation in tandem with the legislative programme on the PACE (NI) Order.



B MCCREADY
Police Division (B)

1 December 1987

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Dr E M Power
Department of Finance and Personnel
Rosepark House
Upper Newtownards Road
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1 May 1987

Your ref: CH 19/81

3P/6.5
Dear Murray

STREET AND HOUSE-TO-HOUSE COLLECTIONS

Thank you for your letter of 29 April and its enclosures.

While I do not see any special legislative considerations which affect the sponsorship of the proposed Order constitutional factors undoubtedly have a major bearing. Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 (c. 31) confers power on the Chief Constable to make regulations governing collections in public places. The regulations have to be confirmed by the Secretary of State. Failure to comply with them is, of course, an offence.

Since section 5 deals so much with the police and criminal law, in my view it relates to a reserved matter. Responsibility for it therefore belongs to the Secretary of State and NIO. I find it difficult to see how section 5 could be amended (see paragraph 1 of the minutes of the meeting at RUC Headquarters on 28 January) without impinging on reserved functions.

I am reinforced in the view which I take in the preceding paragraph by the fact that all the earlier discussions on this subject have involved the police and NIO to the exclusion of DOFP. If there were devolution, and a devolved Executive, for whatever reason, proposed to repeal section 5, or to amend it so that the Chief Constable had to consult the Executive or district councils before making the regulations, I have no doubt that the Secretary of State could withhold his consent to the proposed legislation on the ground that it dealt with a reserved matter. I note, too, that the regulations by the Chief Constable require the consent of the Secretary of State. In my view, it must be for NIO (as involving a police matter) and not DOFP (despite the charitable aspects of section 5) to advise the Secretary of State as to whether the regulations should be approved or not.

The House-to-House Charitable Collections Act (Northern Ireland) 1952 is not restricted to purely charitable collections in the legal sense, but also covers collections for benevolent and philanthropic purposes. That Act deals with transferred matters - backed up by ancillary reserved provisions. But if it is to be amended so as to cover collections for paramilitary or related bodies, some question must arise as to whether the amendments would impinge on reserved or excepted matters. Since everything will turn on the form and content of the amendments, there is little that I can say on that topic in advance.

- 2 -

I mentioned this subject briefly to Richard Clayton, who is one of NIO's legal advisers in London. While he had not seen the papers, we were in general agreement about the line that I was proposing to take. That, of course, is without prejudice to anything that he may wish to say should the papers go to him.

Yours sincerely

Ralph

T R ERSKINE

c.c. Mr. Clayton



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Our Ref: CH 19/81

29 April 1987

Dear Ralph

LAW RELATING TO STREET AND HOUSE-TO-HOUSE COLLECTIONS

The attached papers relate to some proposals which the Northern Ireland Office are drawing together with a view to the preparation of an Order in Council which would substantially amend and tighten up the existing arrangements for the supervision of public collections.

As you will see, a spirited debate has developed on the subject of which department - NIO or DFP - should promote the new legislation and assume the regulatory powers thereunder. NIO believe that DFP should do so because of our statutory responsibility for charities, we believe that it is primarily a law-and-order matter and therefore should fall to NIO.

It strikes me that there may be legislative or constitutional considerations which ought to influence either the form of the Order or its ownership. If so, it could save much nugatory debate if they were clarified at this stage. I should accordingly be grateful for any observations which you feel able to make about either the broad form of the proposed legislation (as set out in the note of the 28 January meeting) or its proper position, both in the reserved/transferred spectrum and the field of departmental responsibility.

Yours sincerely

E M POWER

EMP/5

Enc

Mr McKinnon

You will be interested in the letter below from Mr Jones - I shall advise Mr Briggs about a reply when we have heard from Mr Erskine.

JEP
29/4