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IMMEDIATE MCFAX PLEASE

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Sec 3

Mr Bloomfield M

- cc PS/PUS (L&B) M
- Mr Stephens M
- Mr Brennan
- Mr Barry M
- Mr Erskine M
- Mr Ferneyhough M
- Mr Elliott M
- Miss Elliott
- Mr McConnell M
- Mr Hammond
- Mr Spence M

ACTION AGAINST SINN FEIN

Following the Secretary of State's meeting on 5 March we have prepared the attached draft discussion paper. Cabinet Office are thinking in terms of a meeting of H Committee before Easter, and if that comes to pass, we will need to have a paper to circulate by the middle of next week. I intend, therefore, to put the draft up to the Secretary of State in the course of Tuesday, 18 March. I should therefore be grateful for any comments on the attached draft by midday on Tuesday.

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14 March 1986
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STORMONT HOUSE ANNEX

DRAFT DISCUSSION PAPERIntroduction

1. There is widespread public concern in Northern Ireland, shared by the Government, over the role and activities of elected representatives whose attitude to terrorist violence appears incompatible with a genuine commitment to constitutional politics. The purpose of this paper is to describe the nature of such concern; to examine briefly the options available in seeking to remove its causes; and to serve as a constructive basis for more detailed consideration of issues which are potentially both controversial and complex.

Background

2. It is a fundamental principle of democracy that all those who subscribe to the democratic process should be free to participate in elections, regardless of their political opinions. ^{shady} But it is clear that any reasonable definition of legitimate political activity must exclude the use or threat of violence against political opponents, or in alleged pursuit of political objectives. It is also clear that those who are committed to subversion of democratic institutions should not be permitted to exploit the electoral process in pursuit of their aims. In Northern Ireland these considerations are real ones. 7

3. The main threat to stable, local democracy in Northern Ireland recently has come from Sinn Fein, whose candidates at the District Council elections in May 1985 made no secret of their support for "the armed struggle" - a euphemism for the terrorist crimes, including murder, carried out by the Provisional IRA. But while Sinn Fein's activities and provocative statements give greatest public offence, other politicians also from time to time are ambivalent about the use of violence for political ends.

4. It is understandable that the presence of Sinn Fein representatives in Council Chambers should give rise to particular alarm. Their party's "military wing" has in the past been responsible for a number of assassinations of elected representatives, in Northern Ireland and in Britain; and prominent Sinn Fein Councillors have sought to justify the IRA's terrorist campaign, even were that to include

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the murder of individuals employed by their own Council. In these circumstances, it is natural for other Council members to fear that information gleaned by Sinn Fein activists in the course of their elective duties might be made available to terrorist organisers. Similar considerations would apply to other elected bodies in Northern Ireland if Sinn Fein members were present, such as a future Assembly if Sinn Fein representatives were to stand and win seats.

5. The Government has held a series of meetings with Northern Ireland councillors, Assembly members and party delegations. There have been two Court judgements on the legality of Council action aimed at excluding Sinn Fein members from Council proceedings. (B) Against this background, the Government has examined a number of possible ways of giving effect to the widely held view that those who condone or support terrorist violence should not be permitted to play a part in democratic institutions. At the same time, great care must be taken to ensure that any measures adopted should not inhibit the legitimate expression of political views nor conflict with the principles of free elections and elective representation.

Options

6. The following list of measures, which is not necessarily exhaustive, has emerged. It reflects a wide variety of perceptions of the problem, and thus of approaches towards its resolution.

7. Proscription: banning Sinn Fein, which would in turn produce demands for the proscription of other presently legal organisations in Northern Ireland, has been rejected by successive United Kingdom Governments since 1976 on grounds of principle and practicality. Proscription of a political party with significant public support, however extreme its policies, would have profound implications for the democratic system as a whole; and it could give rise to formidable problems of enforcement with no certain prospect of compensating benefits for public order and safety. Its consequences would go far beyond the scope of the specific concern to deal with the presence on elected bodies of those who reject the democratic process. This was recognised in discussion with Ministers by a number of delegations otherwise disposed to proscription.

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8. Oath of Allegiance: some delegations proposed the re-introduction of a declaration similar to that in force prior to April 1973, which required Councillors to "render true and faithful allegiance and service to Her Majesty Queen Elizabeth II, her heirs and successors according to law and to Her Government of Northern Ireland". A declaration of this nature, however, could not be readily enforced, nor does it bear directly on attitudes towards violence. It would cause considerable difficulties for constitutional nationalists. And it continues to appear inappropriate to local government, particularly since no such oath of allegiance is required of Councillors in Great Britain.

9. Extended Disqualification: under existing law, a person cannot be elected to local government if he has within five years preceding election day been sentenced to a term of three months or more imprisonment. It is for consideration whether this retrospective period should be extended, thereby disqualifying those with convictions dating from earlier years of the present terrorist campaign.

10. Incitement: it is generally acknowledged that the existing legislation on incitement to hatred is ineffective. Parliament is currently considering new legislation for Great Britain in the form of a Public Order Bill, which will cover incitement. When these new provisions have been enacted, the Government will consider whether strengthening the Northern Ireland law in this area would be appropriate. This might place additional constraints on the advocacy of violence.

11. A Declaration as a Condition of Elected Office: variants of this approach are considered in the remainder of this paper. It seems to offer the most practical and acceptable means of protecting democracy in Northern Ireland's elected institutions from the threat of those who support criminal violence for political ends. The Government believes that there would be wide-spread support for the proposition that elected representatives, irrespective of their political viewpoint, should sign a declaration committing themselves unequivocally to achieving their ends through the lawful political process and should abjure the methods of terrorist organisations in furthering their cause.

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12. In presenting this approach, however, a number of practical issues must be resolved. The main questions for decision are the wording of a declaration of non-violence; the stage in the electoral process at which the declaration should apply; and the appropriate mode of enforcement, which might be civil or criminal. Legislation would be required to provide for both a declaration and enforcement procedures.

13. The precise wording of the declaration will require careful consideration. It should not be so narrow as to be readily side-stepped. But nor should it be so wide as to be impossible to enforce or to catch legitimate expressions of political opinion. The Government believes that the most appropriate formulation might be along the following lines:

"I declare and undertake that I will neither support nor assist the activities of any organisation proscribed by law in Northern Ireland."

14. A declaration could be required at either of two stages in the electoral process. If required at the stage of candidature, it would introduce an additional qualification before a person could stand for election. The Government would not welcome an additional limitation on the right to stand. That consideration must, however, be weighed against the disadvantages of requiring the declaration from a candidate after he has been elected. At this later stage, the effect of disqualification for refusing to make a declaration is felt both by the candidate and those who voted for him. It would not necessarily be clear in advance which candidates might make themselves liable to disqualification if elected; the resulting uncertainty and confusion, together with the inevitable allegations of mass disfranchisement, could undermine the integrity of the electoral process; and there would be the danger of a indefinite series of by-elections if a refusal to sign the declaration were followed by the election of further candidates who similarly refused. The Government is therefore inclined to favour applying the declaration before election.

(f) 15. Enforcement of a declaration could either be through the

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The question for the courts to determine would effectively be whether the words or actions of an elected representative amounted to breach of the declaration. The offence would not be committed by any person other than an elected representative.

16. Alternatively, the enforcement procedure might operate through the civil courts. Legislation would be passed to enable any individual to bring an action in the High Court seeking the disqualification of an elected representative for breach of the declaration. No issue of criminal liability would arise. The costs of such litigation might, however, prove substantial; and it would therefore seem appropriate to empower additionally the Attorney General to bring cases where a breach of declaration had apparently occurred. If the Attorney General decided not to act, a private individual could do so.

Conclusion

17. The call for effective action against those who use the democratic process in order only to undermine it has been voiced strongly and widely in Northern Ireland. It reflects deep public concern. The Government accepts its responsibility to safeguard local democracy and to prevent the deliberate destabilisation of political life in the Province by apologists for violence. To this end, the Government believes that the requirement of a declaration, as set out in paragraph 13 above, from candidates for election to District Councils and the Assembly would be the most direct and productive means of protecting constitutional politics compatible with established democratic principles. However, to assist it in preparing legislative proposals, the Government would welcome the views of the constitutional political parties, and of other interested organisations and individuals, on the issues discussed in this paper.