

POLITICAL PROGRESSPoints to make

1. Opposing terrorism: Absence of constructive political dialogue helps to keep the tiny minority of terrorists in business. The Government's determination to oppose terrorism through firm and fair action by the security forces acting within the law is being backed up by efforts to achieve political progress, develop the economy further and ensure that Northern Ireland is a fair society, free from religious or political discrimination.
2. Devolution: Direct rule by the British Government offers little scope for involving Northern Ireland elected representatives in decision-making. District councils have very restricted powers and Government policy, therefore, aims to devolve more powers to local elected representation because this is the approach most likely to command widespread acceptance and serve the interests of all.
3. Inter-party talks: We therefore seek dialogue between the parties with the aim of reaching agreement on steps to or towards devolution. Agreement will not be easy to reach, but Mr King's talks earlier this year with Unionists and the SDLP offered some prospect of progress: Mr King is now seeking further talks with the parties.
4. Accommodation between traditions: Agreement about the future government of Northern Ireland will require an accommodation between the constitutional political representatives of the two traditions in Northern Ireland. We recognise that Unionists remain opposed to the Agreement and that SDLP might prefer to look to all Ireland solutions. Accordingly, Mr King has offered inter-party talks without preconditions; essential if politicians in the Province, not terrorists, are to set the political agenda.

5. Minority role: Any political settlement must give a sufficient role to the minority community, if it is to achieve widespread acceptance. A major aim of the Anglo-Irish Agreement is to reassure the minority that their interests will be reflected in decision-making. Northern Ireland must be a fair society for all. British Governments have legislated to ensure that elections are free; public housing is fairly allocated; and a Fair Employment Bill will be introduced to Parliament very shortly.

#### Status of Northern Ireland

6. The position is clear in law and under the Anglo-Irish Agreement. Northern Ireland is a part of the United Kingdom, by the democratically expressed wish of a majority of the entire electorate there. The Government upholds this position precisely because it is the wish of a majority and HMG has repeatedly stated that any change in the status of Northern Ireland is possible only with the consent of a majority of its inhabitants.

#### Sinn Fein

7. Position on Sinn Fein is clear. We condemn their support for the violence of the IRA. Ministers will therefore have no contact with them.

## ELECTED AUTHORITIES (NI) BILL

### (i) Declaration against violence

Many people find it highly offensive that district councillors in Northern Ireland should exploit the democratic process to support violence overtly. Accordingly, the Government published the Elected Authorities (NI) Bill on 24 November which, amongst other provisions, requires a declaration against terrorism to be signed by all candidates for district council and Assembly office in Northern Ireland. Intended to contribute to stability for local democracy. Breach of the declaration could lead to disqualification for 5 years. Enforcement by civil action. Declaration is not an oath of allegiance - simply an addition to existing declaration in candidate's consent to nomination form.

### (ii) Extension of local government franchise

Response to nationalist criticism. Old Stormont law involved special residence and nationality qualifications. Bill will enfranchise approximately 10,500 people who presently may vote at Parliamentary and Assembly, but not district council elections in Northern Ireland.

## THE INTERNATIONAL FUND FOR IRELAND

Line to take

- Very grateful for the generous US contributions to the Fund. These are being put to good use. They will now be backed up by a major contribution from the EC as well as by the donations from Canada and New Zealand.
- Criticism of the Fund is misguided. It has done, and is doing, a lot for deprived areas - cf, the £6 million programme - on top of existing plans - announced last September. It has created a lot of new jobs and saved many others.
- The Fund is independent of the Government. But I know that the Board will want to take serious note of the suggestions its American friends are making about how the money might be spent.

## Background

The International Fund for Ireland - an independent international organisation - was founded by agreement between HMG and the Irish Government in 1986. Its Chairman is Charles Brett. Its objectives are to promote reconciliation and alleviate deprivation.

Funding has come from:

- The US (3 instalments totalling \$120 million)
- Canada (\$Canadian) 2 million
- New Zealand (\$NZ) 300,000

The US Congress agreed in December to a fourth contribution of \$10 million in 1989. And more money (\$8 million) is to come from Canada.

On 15 December, the European Parliament adopted the 1989 EC budget, including the projected first contribution of 15 million ECU to the Fund. Two further contributions of 15 million ECU seem probable, in 1990 and 1991. (15 million ECU = about £10 million).

Criticism of the Fund runs on the lines that it is not doing enough to help the most deprived areas of Northern Ireland and that some of its grants tend to be irrelevant or even frivolous (there was much comment of this kind after Mr Brett's press conference, also on 15 December, to launch the Fund's second annual report - see the article from the 'Independent', attached). Washington telegram 27, also attached, reports that Congressman Donnelly, who has put some personal political capital into pushing for US money for the Fund, is particularly concerned about the role played by Mr Brett in deflating (or not deflecting) these criticisms. There is the real prospect of a public hearing in Washington on the way in which the US contributions to the International fund for Ireland have been spent.

Congressman Donnelly will already be aware that the Fund is independent of HMG. We and the Irish can offer guidance but not give instructions - ultimately, the Board act on their own responsibility. And there are no plans to replace the Chairman. We can however point out that the Fund have done, and are doing, a lot for deprived areas - cf Mr Brett's announcement of a £6 million programme - on top of existing plans - last September. And the grants the Fund has so far agreed to should create 4,500 new permanent jobs, save 1,500 others, and provide 4,000 temporary jobs in construction. Despite the criticisms we believe that the fund is spending its money wisely.

On the way in which the Fund presents itself, especially in the important US arena, we will obviously want to take serious note of what its American friends say. Donnelly apparently believes that Mr Brett should take more of a back seat and let other (preferably Southern) Board members speak for the Fund. There might be some mileage in this idea.

Criticisms of the Fund - one of the lines that it is not doing enough to help the most deprived areas of Southern Ireland and that some of its grants tend to be misapplied or even misused. These criticisms were made at the time of Mr Brett's speech on 15 December, 1991. The Fund's annual report for 1990-91 is also attached, reports that Mr Brett, who has not pursued political power, has been playing a particularly important role in securing US contributions to the International Fund for Ireland have been spent.

## THE INTERNATIONAL FUND AND CONWAY MILL

## Line to Take:

- The decision to refuse public funding for projects in the Mill was taken in the context of Government's policy not to provide assistance which might, either directly or indirectly, further the aim of paramilitary organisations. This policy is regularly reviewed to ensure that it is based on the most up to date information. I am looking at it again at present.
- I advised the Chairman of the International Fund that assistance from the Fund to projects in the Mill would therefore be contrary to the UK Government's social and economic policies.
- Following my current review I will seek an early opportunity to state publicly the Government's policy on this issue, particularly to clarify how this applies to applications to the Fund.

## Background:

The Secretary of State is fully aware of the background to the policy on Conway Mill, especially following recent meetings with Mr Brett and Mr John Hume. He has indicated that he is currently reviewing the policy as it applies to the Mill in light of latest information, and a submission on this will be forwarded within the next few days. Whatever the Secretary of State's decision on this review, it would be appropriate to state publicly the current policy about funding of projects within the Mill, and in particular to clarify the position of the International Fund in the application of this policy. This will be addressed in the submission.

**ANGLO-IRISH AGREEMENT: BULL POINTS**

1. The relationship between the UK and the Republic is unique.  
We are two sovereign independent states; but with so much in common; geography, family, language, legal tradition, Christian sentiment and now our partnership in the EC; our shared interests are uniquely numerous and close; it would be extraordinary, and damaging, if we did not have a close relationship, and institutions to reflect it. (Unionists do not dissent from this: Mr Molyneaux, for instance, has spoken in favour of the Anglo-Irish Intergovernmental Council within whose framework the IC operates.) The Agreement reflects both the relationship, and the special circumstances of Northern Ireland.
2. It was, and it remains, an honourable and principled package.

Background: It aimed at settling in a binding treaty that the status of Northern Ireland is determined by democratic choice of the people; so that the constitutional issue was for the time being taken out of politics, leaving the parties free to concentrate on working to or towards a political settlement in Northern Ireland. If in future a majority clearly wish for an formally consent to a united Ireland, we will support appropriate legislation. But the reality is that Northern Ireland will remain a separate entity for the foreseeable future.

It aimed at reassuring nationalists that their voice was heard in government, in the absence of devolved institutions.

It aimed at promoting cooperation wherever it was of benefit; most obviously, but not only, in securing the law-abiding population of both communities against the scourge of terrorism.

It denies all legitimacy to terrorism because the constitutional future of Northern Ireland is solely dependent **on the free choice of its inhabitants.**

3. It is a balanced package. It favoured no one part of the community in Northern Ireland to the exclusion of any other.

Each part of the community benefits if there is greater willingness from the other to agree on participation in government (NB that matters for which a devolved administration became responsible would be removed from the ambit of the IC).

Each part of the community found its eventual aspiration reflected, in the only practicable way: by recognition that it depended on consent.

Each part of the community benefits from closer co-operation, most manifestly so with co-operation against the terrorist.

It excludes no one from the political process. It is not founded on the notion that a gain for one community is automatically a loss to the other; much of the criticism of it was based on this fallacy.

4. It is showing results. It may not be perfect. Make realistic comparisons. No other practicable policy would have brought the benefits it has. No one could reasonably deny the benefits are worth having.
5. Security co-operation. Spirit and machinery of co-operation transformed. Much greater contact between the two police forces at every level; the two police chiefs rarely met before the Agreement; now they meet frequently; so at lower levels; there is much joint planning; the two security machines understand each other better. This is in everyone's interests,

but would not have come about without the Agreement. So, for example, our security forces' co-operated in the massive arms search mounted in the Republic last year. We have much to be grateful to the Irish security forces for: this year they have recovered 290 weapons, 140,000 rounds of ammunition and 110 lbs of explosives.

6. [DEFENSIVE: There has been some increase in terrorist activity since 1985 - because of overseas resupply, regrouping, changed tactics: nobody credibly attributes that to the Agreement - very glad the new machinery of co-operation is there, or many of the arms and explosives found lately in the Republic might have ended up killing people in Northern Ireland. But for the Agreement it would have been worse. Suggestion that it encouraged terrorism wholly unfounded in fact. Terrorists hate it: constructive political and security activity a potent threat to them.]
7. Co-operation with the Republic - intensified strikingly. Whole new phase in Anglo-Irish understanding. Conference and Secretariat remarkable innovation in international relations. Greater contact, mutual understanding. Our relationship better ballasted. The growing understanding our contact in the Conference (and Secretariat) has brought enables us to talk through our inevitable differences.
8. Political progress: we have always tried to promote dialogue. We have not seen a great deal in recent years. Little prospect of domestic advance before 1985. But changes in the political climate can be detected: more willingness now to consider new ideas; more flexibility; more signs of compromise. Not building high hopes, but more than we had.
9. [DEFENSIVE: Reassurance to the two communities: difficult to measure - even by opinion polls, which give varying results. Nationalists at least make clear that they would rather have the Agreement than not. As for Unionists, the early fears so

irresponsibly sown about the Agreement are being overcome) though slowly; in time a much greater realisation of its positive aspects will come.]

10. What decisions has the Agreement led to? Conference makes no decisions; you cannot reliably say such and such a decision would have gone the other way but for the Conference.

But there have been many decisions in the improved climate since Agreement signed, of particular interest to minority, on many of which we have had, and valued, cogent and detailed Irish views, including:

- decision to bring in tougher fair employment legislation
- new procedures for police complaints
- repeal of Flags and Emblems Act
- new assistance to deprived areas of Belfast
- undertaking to enfranchise 'I' voters.

Now we are working together on ways of boosting public confidence in the security forces and in the administration of justice.

11. The International Fund, based on generous support from old and valued friends, has spread benefits throughout the community. So far received \$120 million from the United States, and other contributions from Canada and New Zealand. A major EC contribution promised, as well as further money from Canada. The Fund uses this money (75% in Northern Ireland) to work for reconciliation deprivation: it concentrates on backing job-creating business, on disadvantaged areas and on community relations.

His Majesty's Government are committed to the Agreement and will continue to work for its implementation. The Agreement has been a success and the Government will continue to work for its implementation.

12. Missed opportunities. The government cannot do everything. Progress in Northern Ireland depends on its people and their elected representatives. Had opportunities been grasped, more could have been made of international goodwill; Northern Ireland might now be run by a stable devolved government, responsible to the people of Northern Ireland.

#### THE REVIEW

13. Review is - see Article 11 - concerned with the whole working of the Conference, and aims at judging whether any change is required in the scope and nature of its activities. A 'thorough and serious review which will take careful account of views ... on the past experience of the Conference, and on any changes which might be desirable in its scope and nature' [2 November communique]. NB. The Review is not a Review of the Agreement itself (eg Art 1 is unaffected).
14. The Review is no narrow exercise. It includes the Secretariat, which exists to service the Conference. We want to hear full spectrum of views from hon Members and others; from Northern Ireland and Great Britain.
- Indeed, as we have always said, we want to hear from parties in Northern Ireland, without preconditions, on widest range of political and constitutional matters.
15. [DEFENSIVE: Will views submitted on the Review be published? Any request for absolute confidence respected. Otherwise I might make public the general thrust, but no intention of publishing list of names of contributors.]
16. [DEFENSIVE: Will submissions be passed to the Irish? No: review submissions will not be passed on. They are to help us prepare our views.]

17. [DEFENSIVE: Will you see people to talk about the review?  
Hon Members know my door always open, to them and many others.  
It makes sense to see views in writing first.]
18. [DEFENSIVE: Debate matter for the Lord President. I know he  
will bear hon Members' wishes closely in mind.]
19. The last three years show that this government stands by its  
policies. It stands by its word. We implemented the Agreement  
believing it right for Northern Ireland and UK. So everyone  
knows where they stand. We shall stick by it for the future:  
including Article 1. The status of Northern Ireland depends on  
the wishes of its people.
20. There can be no end to sufferings of people of Northern  
Ireland, without partnership, based on mutual understanding  
between the communities; without growing trust and co-operation  
between the two parts of Ireland, no least, but not only, in  
our fight against the common enemy of terrorism. The time is  
long overdue for burying of the hatreds of the past. The  
Agreement gives expression to these principles. The only ones  
on which a better future for all the people of Northern Ireland  
can be built. Enormous potential in them to benefit people in  
all parts of Ireland.
21. [DEFENSIVE] Anglo Parliamentary Body. The two Governments have  
agreed (in Article 12) that they would support a Parliamentary  
Body, if it were to be established. But this is a matter for  
Parliamentary decision in Westminster and Dublin. Ministers  
are aware of the interesting proposals being canvassed by  
Mr Temple-Morris and his colleagues. They will be studying them  
carefully. There is no direct link, however, between these  
proposals (or any future body) and the Agreement.

## RESTRICTIONS ON ACCESS TO THE MEDIA

### Line to take

- These matters have been kept under review by Governments for many years. Following the terrorist incidents of the past year, this is one of a number of matters that we have looked at again. We believe that the time has now come to deprive these organisations of this easy platform for publicity.
- The harm is caused by direct broadcasts into peoples homes of the images and words of those who support violence. Second-hand reports in the press do not have the same impact.
- The apologists for terrorism gain a spurious respectability when treated in broadcasts as if they were constitutional politicians.
- Directions issued to the BBC and the IBA do not in anyway impose restrictions on the freedom of speech.
- The restrictions are broadly the same as provisions in Irish legislation which have been in place there for more than ten years.

### Background

1. The matter was fully debated in the House on 2 November and was approved by a substantial majority.
2. Copies of the notices are attached; there are exceptions for elections and Parliamentary proceedings.

1. In pursuance of clause 13(4) of the Licence and Agreement made between Her Majesty's Secretary of State for the Home Department and the British Broadcasting Corporation on 2nd April 1981, I hereby require the said Corporation to refrain at all times from sending any broadcast matter which consists of or includes -

any words spoken, whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where -

- (a) the person speaking the words represents or purports to represent an organisation specified in paragraph 2 below, or
- (b) the words support or solicit or invite support for such an organisation, other than any matter specified in paragraph 3 below.

2. The organisations referred to in paragraph 1 above are -

- (a) any organisation which is for the time being a proscribed organisation for the purposes of the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978; and

(b) Sinn Fein, Republican Sinn Fein and the Ulster Defence Association.

3. The matter excluded from paragraph 1 above is any words spoken -

(a) in the course of proceedings in Parliament, or

(b) by or in support of a candidate at a parliamentary, European Parliamentary or local election pending that election.

One of Her Majesty's Principal Secretaries of State.

HOME OFFICE

19th October, 1988

## PATRICK RYAN

Line to take

- Belgian decision not to extradite surprising and difficult to understand. Deeply dismayed by decision and method of conveyance to us.
- Irish Attorney General's decision not to back warrants causes great concern. We repudiate utterly, the assertion that Ryan would not receive a fair trial before a jury in England.
- Extradition request sent to Dublin during night of 25/26 November. Despite what the Irish say the documentation was not fatally flawed.
- Matter for concern that he still remains at large and that Irish did not seek provisional warrants as they could have done and as they were requested to do.
- But Anglo-Irish relationship deeper than a single extradition case, however important that case may be.
- Question of inviting the Irish to proceed extraterritorially against Ryan is still under consideration. But in any event only 2 out of the 4 charges are likely to be covered by the legislation.

## BACKGROUND

Ryan is wanted on four terrorist-related charges in Great Britain, not in Northern Ireland. The Belgian decision on 25 November not to extradite, however regrettable, is now a matter of history.

2. Some contingency planning had taken place with the Irish before the Belgian decision, and as soon as it was known that he was being deported to Dublin an extradition request was launched. One very minor defect in the documentation, about which the Irish were entirely relaxed at the time, was rectified within hours.

3. Under section 49 of the Irish 1965 Extradition Act Ryan could have been held in custody pending service of the documentation. This the Irish declined to do. Under section 2 of the Irish 1987 Extradition (Amendment) Act the Irish Attorney has to satisfy himself before allowing the warrants to be executed that there is a sufficiency of admissible evidence against the fugitive. After deliberating for over a week the Irish Attorney General decided not to endorse or execute any of the warrants. His primary reason was that the vast amount of media attention the case had caused would have made it impossible for Ryan to receive a fair trial. Ryan has now probably disappeared. The Attorney General is currently considering whether to invite the Irish to proceed extraterritorially against him; this is very much a second-best option and the determining factor will be the availability of crucial witnesses to give evidence in the Republic.

4. The case undoubtedly comes at a difficult time for the Irish, and does present them with political problems. It is therefore best not to drive them any further into their corner by appearing too aggressive; the Anglo-Irish relationship should go deeper than the details of one extradition case. The row only prejudices co-operation and our wider interests.

5. We are now working on a paper which suggests improvements in the workings of the extradition arrangements between the UK and Ireland.

## THE CRIMINAL EVIDENCE (NI) ORDER 1988

## THE SO-CALLED "RIGHT OF SILENCE"

Points to Make

The Order, which was made by Her Majesty in Council on Monday 14 November, implements recommendations of Criminal Law Revision Committee and in addition replicates provisions in Irish legislation.

Subject has been debated exhaustively over last 20 years; time for the Government to act.

The Order and the Home Secretary's statement of 20 October are further proof of Government's determination to make the law against serious organised crime, including terrorism and racketeering, more effective throughout the UK.

Measures do not remove an accused's right of silence.

An accused is still not obliged to say anything - remaining silent will not be an offence.

Measures correct what the police and the prosecuting authorities have increasingly seen as a perversion of justice.

Measures not a panacea for the problem of securing convictions of hardened professional criminals but will plant doubts in minds of lawbreakers as to whether their silence will protect them in the future.

Administrative guidance on new police cautions has been issued pending the incorporation of them in the codes of practice that will accompany the forthcoming PACE (NI) Order.

## BACKGROUND NOTE

The Order amends the criminal law to permit the courts in Northern Ireland to draw whatever inferences would be proper from the fact that an accused remained silent in four situations. Two are dealt with by provisions that have the same effect as provisions recommended by the Criminal Law Revision.

Committee in its 11th Report. The first is the "ambush" where having remained silent during police questioning the accused offers an explanation of his conduct for the first time at his trial when he might reasonably have been expected to offer it when being questioned. The second provides that once the prosecution have established that there is a case to answer, the accused should be warned that he will be called to give evidence and that if he should refuse to do so the court may draw such inferences as would appear proper.

The other two situations are covered in provisions which have the same effect at provisions in the Criminal Justice Act enacted by the Irish Parliament in 1984. One allows a court to draw such inferences as would appear proper from an accused's failure or refusal to explain to the police certain specified facts such as substances or marks on his clothing. The other makes similar provision where an accused fails or refuses to account to the police for his presence at a particular place.

The Home Secretary also announced on 20 October his intention to bring forward at the earliest opportunity legislation on this subject for England and Wales.

Articles 2 and 4 came into effect on 22 November and Articles 3, 5 and 6 which relate to police questioning will come into effect on 15 December.

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**BIRMINGHAM SIX, GUILDFORD FOUR AND THE MAGUIRES - DEFENSIVE USE ONLY****Line to take (if pressed)**

- These are matters for the Home Secretary.
- Matters of guilt or innocence are matters for courts. It is not for Ministers to intervene.

**Birmingham Six**

- Court of Appeal, after a long and careful review of the evidence, confirmed the convictions of the six men, the result of the verdict of a jury, should be regarded as safe and satisfactory.
- The Home Secretary remains ready to consider any new evidence or further considerations of substance.

**Guildford Four**

- Home Secretary has power to refer case to Court of Appeal if he thinks fit. In exercising this power he acts in an individual capacity and does not consult other members of Government.
- The case is currently under review. Further representations received in the latter part of last year caused the Home Secretary to delay a decision on whether or not there were grounds to justify him referring the case to the Court of Appeal. Nevertheless, the Home Secretary intends to announce his decision in January.

**Background**

These are matters for the Home Secretary and the Secretary of State should if possible not be drawn.

2. The Home Secretary has the power under section 17 of the Criminal Appeal Act 1968 to refer a case to the Court of Appeal. In exercising this power he acts alone and does not consult other members of the Government. In reaching a decision whether to refer a case to the Court of Appeal his concern is to establish whether there is new evidence or some other consideration of substance in the individual case to justify such a referral. These criteria normally exclude wider political or diplomatic issues.

3. As regards the case of the Guildford Four, the Home Secretary is considering representations received in the latter part of the last year from Cardinal Hume and the various solicitors acting on behalf of the four persons convicted. These recent representations caused the Home Secretary to delay reaching a final view on the matter, so that they could be fully taken into account. The Home Secretary intends to announce his decision before the end of the month. This was explained in reply to an arranged Question on 6 December (Written Answers, col. 113; copy attached).

4. Since the Home Secretary's decision on January 20 1987 regarding the Maguires, no new material has been presented to him on which to justify any further review of the case.

06 JAN '89 02:01 SIL DIVN NIO LONDON

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Date for answer:

December 1988

Written No 144

MR MICHAEL STERN (Bristol North West): To ask the Secretary of State for the Home Department, what progress has been made in considering representations about the case of the four persons convicted of offences arising from the bombing of public houses in Guildford and Woolwich in 1974.

MR DOUGLAS HURD

In April I received a report from the Chief Constable of the Avon and Somerset police on the results of enquiries made into certain matters raised with me since my statement of 20 January 1987 (cols 735-738). Since then, and in particular during October and November, I have received further representations about the case, both from the Cardinal Archbishop of Westminster, and from firms of solicitors acting for the four persons convicted, some of which purport to disclose new evidence. I have been asked to take these further matters into account in reaching my decision on whether to refer the case to the Court of Appeal, in the exercise of my power under Section 17 of the Criminal Appeal Act 1968. I have agreed to do so. My decision should obviously be based on the fullest available information. Further inquiries are now being carried out by the police into some of the new matters which have been raised and I intend to reach a decision in January.

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## EXTRADITION/EXTRATERRITORIALITY

Line to take

- Government is concerned that every effort should be made to bring terrorists to justice in the United Kingdom. There must be no hiding place anywhere for men of violence.
- It is common ground between the Irish and ourselves that extraterritorial jurisdiction may be a useful adjunct to extradition. Our mutual aim is to get fugitive terrorists behind bars; the venue of the sentence is a secondary consideration.
- We are determined to work together with the Irish Government to make all the arrangements for dealing with fugitive offenders as effective as possible.
- If a suitable case arises, the extraterritorial procedure will be used, as it was in the case of Crumlin Road escaper Gerard Sloan. Our policy is to use the most effective route in any given instance.

## Background

The main general issue at the moment is the Irish pressure on us to make greater use of the extraterritorial legislation for dealing with fugitive terrorists. This is machinery established in 1975 and 1976, whereby fugitives may be brought for trial in the Republic or Northern Ireland for offences committed in the other's jurisdiction. More limited arrangements exist for England and Wales. We are at one with the Irish in agreeing that in present circumstances it would provide a useful adjunct to extradition, but there are practical problems (eg over witnesses testifying in the Republic, different rules for the admissibility of evidence) which would restrict the scope for its use. The Irish are at present trying to stampede us into making more use of the extraterritorial route; there would be merit in seeking to make cautionary noises.

2. On extradition itself, the Irish law passed at the end of 1987 added the requirement that before a British warrant was "backed" the Irish Attorney General needed to be satisfied that there was a clear intention to prosecute based on a sufficiency of evidence. The law is due to be renewed by a motion of each house of the Irish Parliament in December, at which point it will become permanent. The law also provides for an annual report (to be made in the new year) on the workings of extradition from the United Kingdom, and in the discussions prior to its passage Mr Haughey undertook that if the law did not work it would be reviewed. We are contributing to the review process.

**DOHERTY****Line to take**

- Doherty is a convicted murderer. Naturally we believe that he should be returned to Northern Ireland to complete his prison sentence.
- We were pleased at the decision of the former US Attorney General to order his deportation.
- Understand that the Attorney General is to reconsider the case. Hope the decision will again be favourable but appreciate that this is entirely a matter for him.

**Background**

Doherty was convicted in June 1981 of the murder of SAS Captain Westmacott and several related offences. He escaped from Belfast Prison in the same month and was arrested by the US Immigration Service in June 1983. We requested his extradition under the 'old' extradition rules but the US District Court ruled that Doherty's offences were political. Since this he has been in custody pending the outcome of the tortuous immigration proceedings.

On 13 June 1988 the US Attorney General decided that Doherty should be deported to the UK, rather than the Republic of Ireland, but at the same time ruled that Doherty's request for political asylum in the US should be reconsidered by the Board of Immigration Appeals.

This was good news, but on 18 November, the Board of Immigration Appeals granted Doherty's motion to re-open the case for political asylum. It will now be for the new Attorney General to decide whether to allow Doherty to re-open his case or to go (finally) for deportation.

Either way there may be more years of legal wrangling before a decision is finally reached and we may yet have to switch to the extradition track, but this time under the 'new' rules put in place by the UK/US Supplementary Treaty.

Secretary of State's Lunch with Congressman Donnelly

(A) Bull Point Briefing on Fair Employment Bill

- . Bill is strong, radical, incisive; delivers fully on White Paper; goes further in key areas
  - . soon to have second Reading in Commons; Government moving fast; hope to have new Commission and Tribunal operational early next year
  - . Bill contains all key items identified by Congressman Donnelly on last visit:
    - compulsory monitoring
    - criminal penalties
    - economic sanctions
    - strong enforcement
    - affirmative action
    - increased resources
  - . monitoring: all public sector employers, and all private sector employers (with 10 or more employees - initially 25) must monitor workforces; in addition all public sector employers, and private sector employers (with 250 or more employees) must monitor their applications
- criminal penalties: for failure to register; to monitor; to respond to enquiries by Commission; and for supply of false information
- economic sanctions: power to withhold both Government grants and all public sector business from employers disqualified by the new Commission
- strong enforcement: (1) Directions of Commission can include goals/timetables (already legal); (2) unique new power for Tribunal to fine employers (up to £30,000) who disobey its orders; or to refer them to the High Court -

which can impose committal penalties or unlimited fines;  
(3) Orders of Tribunal can specify steps to be taken;  
timescale for taking them; and set a specific date for  
report back

- . affirmative action: defined explicitly in the Bill as practices designed to secure fair participation
- . increased resources: new Commission will retain continuity of existing Agency staff; but both staffing and financial resources to be doubled - (to have 65 staff and £1.5m)
- . Bill goes further than White Paper by
  - requiring the monitoring of applications (and providing for retention of application records by others)
  - requiring employers to review their practices once every three years and to assess what affirmative action is needed
  - giving Commission new powers (1) to enquire about both monitoring and review and to direct improvements (2) to audit compliance of entire public sector with legislation (3) to seek High Court injunction to stop the placing of a public sector contract with a disqualified employer
  - giving the Tribunal unique power to fine employers (up to £30,000)
  - extending the scope of grant denial to cover all discretionary financial assistance from NI Departments
  - extending the denial of public sector business to cover both contractors and sub-contractors

- making individual officers or members of corporate bodies in the public and private sector liable to prosecution if they consent to or connive at breach of statutory duties of monitoring and review, or if that breach is attributable to their negligence.

Secretary of State's Lunch with Congressman Donnelly

(B) Bull Point defensive briefing on likely areas of attack

The most likely areas of attack will be (i) affirmative action (quotas); (ii) goals/timetables (iii) Code of Practice (iv) specific Government Target (v) public sector enforcement (vi) individual cases (vii) religious specific training

(i) affirmative action (should include "quotas" like US)

- . "quotas" divisive; unfair; increase community polarisation; disrupt industry;
- . our definition is positive and broad - leaves Commission with wide discretion;
- . this is important because Commission will draw up the Code of Practice; it can spell out the details of affirmative action in its own Code

(ii) goals/timetables (should be in the Bill)

- . not necessary because already legal
- . can be included in Directions of Commission for both applications and appointments
- . will be important feature of affirmative action as detailed in the Code of Practice

(iii) Code of Practice (should be in the Bill)

- . Code sets out the detailed technicalities
- . and advises employers how to implement them
- . text not suitable for inclusion in legislation - must give advice in layman's language

- . will be available for Committee Stage in Commons

(iv) Government should set the SACHR target

- . the important targets are those set by individual employers
- . the SACHR target largely focuses on unemployment
- . what really matters is a greater share of employment by the under-represented community
- . we will be both evaluating our legislation and reviewing its impact on employment

(v) public sector enforcement (District Councils)

- . all public sector bodies statutorily registered (ie) they have no choice and must monitor/review
- . if they do not, criminal law applies
- . Commission will now audit their compliance (including District Councils) to ensure contracts only given to qualified contractors and sub-contractors
- . and Commission will have power to seek High Court injunction to stop placing of contract with a disqualified contractor or sub-contractor
- . and individual officers and members of corporate bodies will be liable to prosecution if they consent to, or connive at, breaches of statutory duties to monitor and review - or if their negligence results in such breaches

(vi) individual cases (present arrangements weaken position)

- . at present FEA both investigates and decides individual cases - this is regarded as unfair by employers; compromises the present Agency's acceptability
- . under new system Tribunal will decide - this is adoption of a most successful approach in sex discrimination cases
- . new Commission will have wide discretion to financially assist (1) where there is question of principle (2) when unreasonable to expect individual to take case forward (3) where any other special circumstances apply.

(vii) religious specific training (should have it to complement sex/race specific training)

- . true that sex/race specific training is permissible subject to merit at point of selection
- . but would be divisive in NI; would exclude people from training because of their religion; that kind of exclusion is what we want to get away from
- . and we can secure the same objective by less divisive means
- . that is why the Bill permits "outreach" training in areas of high unemployment and for the long-term unemployed - in practice both of these avenues are likely to facilitate greater access of minority community to training opportunities.

## CONFIDENTIAL

## OUTLINE PROGRAMME FOR VISIT BY CODEL : 11 - 12 JANUARY 1989

Wednesday 11 January

AM Approx 9.45 - 10.15	Depart Dublin Cross border (Killeen)	2 hire cars Drivers J Houlihan WZS 356 L Ormsby
11.30	Arrive Europa Hotel	
12.00	Meet with Mr Bob Myers, US Consul General Belfast	
12.25	Depart Europa Hotel	
12.45 for 13.00	Lunch with the Secretary of State for NI, Stormont House	
14.30 - 16.30	Official Briefings, Stormont House (Conference Room)	<i>Sos DC Marshman No progress involved in Smith's with efforts</i>
17.00 - 18.00	Meeting with Mr Charles Brett, Chairman of the International Fund for Ireland - Arnavally	
	Evening - arrangements are being made by Mr Kevin Peterson	

## OVERNIGHT EUROPA HOTEL

Thursday 12 January

10.15	Depart Belfast for Dungannon
11.30	Meeting with Father Denis Fall, St Patrick's Academy (including lunch)
13.30	Depart Dungannon for Armagh
14.00 - 15.00	Meeting with Cardinal O'Fiaich, Armagh
Approx 15.30	Depart Armagh for the Republic

**NB:** Visit to Londonderry no longer on - Mr John Hume unavailable - possible meeting however with Mr S Mallon maybe Wednesday evening?