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*From the Secretary of State for National Heritage*  
The Rt. Hon. Peter Brooke, CH, MP

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C93/7337/14510

The Rt Hon Lord Wakeham  
Lord Privy Seal  
68 Whitehall  
London  
SW1A 2AT

24 December 1993

*Dear John,*

You will recall that, following an intervention at Prime Minister's questions on 2 November from Jill Knight, the Prime Minister replied to the effect that an interview by Mr Gerry Adams in the previous week had stretched the Northern Ireland broadcasting restrictions to the limit and perhaps beyond and that it was a matter that perhaps we should examine. He subsequently asked me to review the way the restrictions are operating.

2. My officials have consulted the other Government Departments which have an interest in this area, they have been in touch with the broadcasting regulatory authorities, and I have had a meeting with all the main broadcasting organisations (at their request). The results of those contacts are set out in the attached paper, prepared by my officials, which reviews the way the restrictions are operating and the policy which the Government should adopt in future.

3. In the light of this advice, I have concluded that the letter of the law is being followed. This is not an easy position to have come to. The broadcasters have always made it clear that they are opposed to the restrictions and see no justification for them. I do not believe that there has been a conscious effort to undermine or ridicule the restrictions on this occasion. Nor do I believe there is a concerted effort by the broadcasters to act together in this way.

4. I have considered whether to recommend withdrawing the Notices. Since they were introduced the restrictions have been criticised by journalists and the broadcasting organisations. They are widely misunderstood throughout the world but most importantly in the United States and amongst our Council of Europe partners. While I am satisfied that they have made some contribution to addressing the points referred to above, it is obviously impossible to quantify what benefit they have provided and it is at least debatable whether those benefits out-weigh the indirect interference with the principle of freedom of

expression.

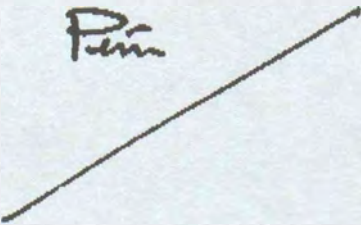
5. However, I have concluded that to remove the restrictions would have a dramatic political and diplomatic impact which could be misconstrued in the present circumstances. I conclude that there are no grounds at present for such a dramatic change of policy, though I do believe this is something we could return to were circumstances to change and provide a context in which the restrictions could be removed.

6. I have also considered whether there is reason to tighten the restrictions in some way. My officials have set out in the paper some options which would include a complete proscription of appearances by the spokesman for the organisations concerned. It might also be possible to proscribe the use of sound (in connection with television pictures) - this would be a sub-titling option which has been mentioned in the newspapers. There appears to be little support for such measures within Government, and I believe it would be difficult to justify interfering to a much greater extent with freedom of speech unless there was a much more specific need directly related to national security. Such a need exists, for example, in relation to those who are actually members of terrorist organisations and for whom there are special measures in place.

7. I understand that the Prime Minister would like this issue to be resolved quickly and so I would welcome views from you and from colleagues by 10 January 1994. Given the political sensitivity of this issue, and the strength of feeling expressed by some, we could consider convening a meeting to discuss this approach.

> 8. I am sending a copy of this letter to the Prime Minister, to all members of EDH, to Michael Heseltine and to Sir Robin Butler.

*James Cook*  
*PB*



PETER BROOKE

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## REVIEW OF THE NORTHERN IRELAND BROADCASTING RESTRICTIONS

Report to the Secretary of State for National Heritage

### Summary

1. The Secretary of State asked his officials to prepare a report on the operation of the Northern Ireland broadcasting restrictions. This report by officials of the Department of National Heritage has been prepared after inviting comments from the Northern Ireland Office, the Home Office, the Foreign and Commonwealth Office, the Scottish Office, the Ministry of Defence, and the Cabinet Office. The Independent Television Commission, the BBC and the Radio Authority were asked for their views. The Secretary of State also agreed to meet, at their request, representatives of the main broadcasters in the UK, and what they had to say is reflected in this report.

2. There is general recognition that the restrictions are being made to look foolish, little enthusiasm for tightening them, and little support in Government for abandoning them at present.

3. On balance officials find all of the options are difficult in one way or another and, for the time being at least, maintaining the status quo presents the least practical difficulties.

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## Background

4. In October 1988 the Home Secretary issued Notices to broadcasters restricting access to the media by terrorist groups and their supporters. The measures were justified on four grounds:

- that offence has been caused to viewers and listeners by the appearance of the apologists for terrorism particularly after a terrorist outrage.
- that such appearances had afforded terrorists undeserved publicity, which was contrary to the public interest.
- that these appearances had tended to increase the standing of terrorist organisations and create a false impression that support for terrorism is itself a legitimate opinion.
- and, that broadcast statements were intended to have, and did in some cases have, the effect of intimidating some of those at whom they were directed.

5. The Northern Ireland broadcasting restrictions currently take the form of Notices issued by the Secretary of State to the BBC in pursuance of clause 13(4) of its license and by the Independent Television Commission (ITC) and the Radio Authority to the independent television and radio companies under section 10(3) of the Broadcasting Act 1990. The effect of the Notices is to require the broadcasters to refrain from broadcasting words spoken by a person speaking as a representative of an organisation specified in the Notice or where the words spoken support or solicit or invite support for such an organisation. The organisations are those proscribed for the purposes of the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978, as well as Sinn Fein, Republican Sinn Fein and the Ulster Defence Association. It is permitted, however, to broadcast the words of a person representing one of these organisations at a Parliamentary, European Parliamentary or local election.

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6. Immediately after the restrictions were imposed, the Home Office were asked to clarify a number of areas of doubt. The Home Office's letter of 24 October 1988 to the BBC states in terms the Government's interpretation of the restrictions on a number of points which are germane to the present review. The Home Office said "the Notice permits the showing of a film or still picture of the initiator speaking the words together with a voice-over account of them, whether in paraphrase or verbatim". The letter also makes it clear that "the person caught by the Notice is the one whose words are reported and not the reporter or presenter who reports them".

7. In the case of independent radio and television companies, the ITC and the Radio Authority have incorporated the Home Office guidance in their programme codes, which all licensees are required to comply with. The BBC have specifically instructed their producers to avoid lip-synch, and actors are not asked to mimic the phrasing or pace of the original words. However, they do intend that viewers should see that the words spoken by an interviewee and portrayed by the "second voice" are one and the same. They believe it is important that audiences should be in no doubt that they are watching material which has been affected by the Notice.

8. It is unrealistic, however, to refer to the "spirit" of the restrictions. From the very beginning, the broadcasters - unanimously - have opposed the restrictions. In their submission to the Secretary of State, the BBC say that they are opposed to the restrictions because they:

- deprive audiences of the opportunity to hear and judge for themselves a range of opinion in Northern Ireland;
- unreasonably constrain journalists in their duty to provide a full and independent service of news;
- and damage Britain's reputation, and the credibility of British broadcasting, overseas.

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It is worth noting that since the restrictions were introduced, despite this opposition, the regulators have not themselves identified a breach of the restrictions for which they would be justified in imposing sanctions. The sanctions available to the regulators of independent broadcasters are to impose a financial penalty on the holder of the licence, or to serve on the broadcaster a notice reducing the period for which the licence is to be enforced by a specified period not exceeding two years.

**Broadcasts of Interviews with Gerry Adams, 25 October 1993**

9. The matter which appears to have caused concern amongst some Members of Parliament was the broadcasting of Interviews with Gerry Adams on BBC and Channel 4 on 25 October 1993. The interviews were conducted only a few days after the Shankill outrage, which involved a bomb placed in a fish and chip shop above which was a set of meeting rooms used by Loyalist organisations. A number of shoppers and passers-by were murdered and IRA accepted responsibility for the bombing. Two interviews, more extensive than usual, were commissioned in which Mr Adams was asked about the position of Sinn Féin. The context of the interviews was therefore the developing story of talks between John Hume MP and Mr Adams about a cessation of violence by the IRA, contrasted with the murder of innocent people.

10. We have reviewed tapes of the Interviews which were shown on the BBC1 One o'clock news and repeated in the main bulletins thereafter and Jon Snow's interview on Channel 4 News. Although it does not appear to have been the intention of either broadcaster, the dubbing of both interviews was such as to give the impression to some viewers that at points in the interview the words were those of the speaker himself. Both broadcasts, however, made it clear that the voice was not that of Mr Adams himself and showed a sub-title that the voice of an actor was used. Possibly also leading to some concern, Mr Adams appears to be shown in a well appointed office setting, pleasantly lit, and behind his shoulder to the right of the television screen is shown a framed photograph or poster with Republican memorabilia.

11. Neither of the interviewers were at all deferential, nor could they be said to have given a comfortable platform to Mr Adams. Nevertheless it was a little unusual to see him interviewed according to the conventions usually used for interviews of establishment figures.

12. The reaction from the general public has been muted. The Department of National Heritage has received very few letters on the subject. The Independent Television Commission has received no complaints, and Channel 4 is reported to have had nineteen telephone calls, with one to ITN.

**Have the existing restrictions been effective?**

13. We have not found, or had drawn to our attention by any of those whom we have consulted, any quantitative information on which to base an assessment of whether or not the Government has been successful. The four points of concern which the measures seek to address are in themselves somewhat intangible. In these circumstances, the only approach to assessing the effectiveness of the restrictions has been to consult those Departments with a direct interest in Northern Ireland and security matters, as well as the organisations responsible for regulating broadcasting in the United Kingdom.

14. It also has to be recognised that the expectations of some of those who support the restrictions in Parliament may be much greater than were the Government's when the measures were introduced. It was not part of the Government's purpose in imposing the restrictions to prevent those who are indirectly associated with the IRA or Protestant terrorists ever from appearing on the news or in current affairs programmes. Still less did the Government intend that the restrictions should contribute to reducing the level of terrorist violence in the UK or the level of recruitment to terrorist organisations. We have accordingly not made any attempt to assess the effectiveness of the restrictions on these points.

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15. Among the Government Departments we have consulted there is a feeling that the measures have had some success although it may be rather limited and difficult to quantify. The Northern Ireland office advise that the restrictions may be an irritant to Sinn Fein and could conceivably have played some part in impeding any electoral growth. However they believe that there is little hard evidence of this, that the restrictions have been effectively exploited by Sinn Fein for propaganda purposes, and that they have been only marginally effective in reducing the offence caused by appearances of members of Sinn Fein after terrorist atrocities. The Ministry of Defence believe that the restrictions seem to have deterred media interviews and to have limited exposure to the broadcast media, but their real value may have been in the public stigma on the "name" of Sinn Fein and in providing a constant reminder to the viewing public that the points which Gerry Adams and his associates seek to make should not be accepted at face value. They too, however, recognise the propaganda opportunity the restrictions provide, and go on to argue that continued condoning of the use of synchronised voice-over would make the Government look unacceptably foolish.

16. The Home Office also mentioned that the restrictions serve as an irritant to Sinn Fein and are seen by the provisional movement as hindering it in the achievement of its objectives. They believe the restrictions have been of value in increasing the range of pressures brought to bear on Republicans to abandon the "armed conflict". The Foreign and Commonwealth Office comment that the appearances of Gerry Adams with the dubbing effect in British originated news makes our restrictions appear to foreign observers in this country petty and ineffective and may well contribute to sympathy for Sinn Fein which would not otherwise exist among those watching his appearances. They also mention that the restrictions have some potential to damage our national image as a defender of human rights. Officials at the Scottish Office also mentioned the intelligence suggesting the measures serve as an irritant, but go on to suggest that any offence on the part of ordinary viewers is probably compounded by annoyance at the way in which lip-synching is used. They consider the regulations are probably counter-productive to the extent that the voices of actors used to speak the words of Gerry Adams, in particular, are probably more softly and sympathetically conveyed when compared with the real thing.

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17. The ITC and the BBC, who have been consistently opposed to the restrictions, find nothing to suggest the restrictions have been effective. The ITC say that there has never been any evidence of a significant level of offence caused by interviews with representatives of Sinn Fein. They argue that electoral support for Sinn Fein has grown, albeit slowly, at the same time as the restrictions have been imposed. Neither have they received any evidence that interviews may be intimidatory. The BBC specifically say that they wish to make no comment as to whether the restrictions have achieved their purpose. However, they say that they have a range of adverse effects upon the BBC's ability to inform the public and maintain at home and abroad its reputation for truth and independence. The Notice, they argue, is damaging Britain's reputation in the world. The Radio Authority does not comment on the overall effectiveness of the restrictions. But they argue that speaking the words of a proscribed spokesman verbatim by an actor in such a way that the original speaker might as well have spoken them defies the four aims outlined originally by the Government.

#### **Wider considerations involved**

18. In the United States, and in other European countries, the restrictions are often referred to in any discussion of freedom of speech and the implications of international agreements on broadcasting and press freedom. The restrictions are of some benefit to Sinn Fein in the USA by enabling them to portray themselves as victims of censorship. It is important, therefore, in deciding whether to retain the restrictions to weigh up these costs to the United Kingdom.

19. Challenges to the restrictions have been mounted under the European Convention of Human Rights in two impending Court cases. We have submitted written observations in these cases which justify in very considerable detail the form which the restrictions presently take. The observations make clear that voice-overs are permitted, and seek to justify this both on grounds of principle (that this is the minimum intrusion on freedom of speech which is compatible with achieving our objectives) and of practice (that it is indeed effective). Were the Government to decide to tighten up the restrictions, we should have to submit further evidence explaining the reasons why we no longer agreed with the arguments submitted. Clearly this would cause some embarrassment but it would also have major implications for the likelihood of our success when the Court comes to decide on these cases. It could be disastrous for the prospects of success on these cases.

#### **Situation in the Republic of Ireland**

20. The Republic of Ireland has had its own stringent regulations in place since well before our own measures were introduced. Sections 6 and 31 (1) of the Irish Broadcasting Authority Act 1960, as amended by the Broadcasting Authority Act 1976, state that: "where the Minister is of the opinion that the broadcasting of a particular matter or of any matter of a particular class would be likely to promote, or incite crime or would tend to undermine the authority of the state, he may by order direct the Authority to refrain from broadcasting the matter or any matter of a particular class, and the Authority should comply with the order". The principal order made under the Act is the Broadcasting Authority Act 1960 (section 31) Order 1983, which has been renewed annually. It directs the Authority to refrain from broadcasting "any matter which is an interview or report of an interview" with a spokesman for various organisations - IRA, Sinn Fein, INLA, UDA and "any organisation which in Northern Ireland is a proscribed organisation" under the Northern Ireland (Emergency Provisions) Act 1978.

21. These restrictions go further than those in the United Kingdom. They prevent television and radio from direct quotation of what various spokesmen say. There is also no provision permitting those campaigning in Parliamentary elections to be reported freely as there is in the United Kingdom. This, as well as the explicit reference to excluding matter which would tend to undermine the authority of the state, are elements of the Irish practice which it has hitherto been thought would be undesirable to follow.

22. The Irish Minister of Culture has requested a review of the provisions as they apply in the Republic. As an opposition Labour spokesman he made it clear that he did not approve of the restrictions. However, our soundings suggest it unlikely that there will be support in the Irish Cabinet for a repeal of the measures. Any change in them would be made when they are due to be renewed in January 1994 and we cannot determine yet whether there might be adjustments. Clearly, however, there is potential for the two regimes to be compared and any change in the one country will lead to close comparison with the arrangements in the other.

23. We recommend that we should keep in close touch with developments through the embassy in Dublin and be ready ourselves to offer an early indication to the Irish Government if we intend to change our own arrangements.

#### **Further extension of the restrictions in the United Kingdom**

24. Although many of those we have consulted regard the present situation as unsatisfactory, the great majority do not conclude that it would be appropriate to tighten the restrictions further. However, the Ministry of Defence, pointing out that the practice of using an actor's voice to speak over the moving image of Gerry Adams mocks the whole purpose of the restrictions, suggest that we should bring our restrictions broadly into line with those in the Republic.

25. We conclude, that Ministers should consider three main options:

- to maintain the status quo;
- to remove the restrictions altogether; and
- to tighten up the restrictions

26. Maintaining the status quo will be difficult to present given the concern initially expressed by Dame Jill Knight MP and others, about the way in which the broadcasters are applying the restrictions at present. It has little more to commend it than that the other two main options which present even greater difficulties of one kind or another. In presenting this option it may be helpful publicly to commend the BBC for its instructions that producers should avoid "lip-synching". But the Secretary of State will be aware that the controversy arose when these instructions were already in place and he cannot expect the broadcasters to do a great deal to assist the case for maintaining the status quo.

27. The Northern Ireland Office believe that, if the broadcasting restrictions had not been introduced, they would not favour their introduction. The Scottish Office, while stressing that their opinions are those of officials only, suggest that nothing much would be lost if the restrictions were scrapped entirely. In terms of broadcasting policy, the Department of National Heritage would argue that the benefits to be gained by continuing with the restrictions are very intangible. The reputation of the restrictions is damaging to us in the Council of Europe, and is counter to our wider policies on independence of the media under an Independent regulatory structure. Were the restrictions to be removed the restrictions on those who actually perpetrate acts of violence or directly represent them would remain. However, as the Northern Ireland Office have also pointed out, lifting the restrictions in the present circumstances would enrage many of the Government supporters and would send a wider message of a significant shift in the Government's policy towards Northern Ireland.

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28. Tightening the restrictions could take a number of forms. The measures could be broadened to align with those in the Republic of Ireland. However we would argue strongly against that on the grounds that permission to broadcast during election periods is an essential safeguard for freedom of speech and political diversity and that the political fallout would be out of all proportion to any offence or intimidation which would arise during election periods.

29. Other possible variants would be:

- to proscribe altogether all visual images of listed spokesmen ;
- to proscribe altogether visual images of interviews with the spokesmen already listed (permitting them to be seen walking or addressing a rally, for instance);
- to prohibit the broadcasting on television of any sound in association with visual images of listed spokesmen (which would permit the use of subtitles but not allow a sound interview or dubbing).

30. Tightening up the restrictions in any of these ways would present very real difficulties for the Government in Strasbourg. It would also (as the Scottish Office have pointed out) be seen as symbolic of a significant shift in policy with the result that a great deal of unwarranted significance would be attached to it, especially in the climate currently prevailing. Although this is by no means a point on which cut and dried advice can be given, further restrictions would not only compromise the Government's reputation for supporting free speech but would also lead to a deeper confrontation with the broadcasting bodies.

31. This leaves only the option mentioned by the Radio Authority, that we should make clear in the Notice that voice-overs should be limited to the voice of someone who is clearly a reporter using "reported speech" in the third person. If it were possible to draft a form of words which was legally binding along these lines, it would address one of the specific points which has been made about the present situation. On the other hand, we doubt whether there is much to be gained by small modifications to a system which is criticised from both directions.

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32. On balance, officials find all of the options are difficult in one way or another and, for the time being at least, maintaining the status quo presents the least practical difficulties.

DEPARTMENT OF NATIONAL HERITAGE  
22 DECEMBER 1993

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