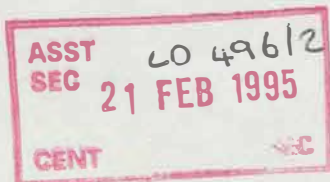


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DJW/25/2

FROM: D J WATKINS
US CENT SEC
DATE: 20 FEBRUARY 1995

CC: Mr McCartney, DFP Sols
Mrs Devlin
Mrs Kenny



PS/Mr Fell - B

REVIEW OF HURD POLICY

1. I attach the final draft of the Review papers. My intention is to put them forward on Wednesday - just after the launch of the JFD, as suggested by PUS at COG.
2. The papers remain largely as before, though with the following key changes:
 - reinsertion of the word "withdraw" to describe our recommendation. We have canvassed a wide range of alternatives, none is more accurate and meets the political need. On the one hand it would be useless to say that we were simply adjusting the Policy; whereas on the other, irrespective of the Hurd Policy, we will always need to be vigilant against the risk of paramilitary fraud. Withdrawal, we conclude, best suits our bill;
 - we have deleted the word "normally". This was originally used to guard against a situation where, despite withdrawal of the Policy, a SofS direction may have to be issued in an exceptional case in due course. But the downsides are obvious; and we have crafted the Parliamentary Reply in a way which guards against subsequent criticism;

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- we have reworked the Parliamentary Reply in order, we hope, to accommodate Mr Fell's concerns while meeting the proper anxieties of our legal advisers.

3. I should be glad to know if Mr Fell is content for these papers to go forward on Wednesday.

80.

D J WATKINS

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DJW/16/2

FROM: D J WATKINS
US CENT SEC
DATE: FEBRUARY 1995

CC: PS/Michael Ancram (DENI,B&L) - B
PS/Sir John Wheeler (DFP,B&L) - B
PS/Baroness Denton (DED,DANI,B&L)-B
PS/Mr Moss (DOE,DHSS,B&L) - B
PS/PUS (B&L) - B
PS/Mr Fell - B
Mr Thomas - B
NI Permanent Secretaries
Mr Legge - B
Mr Bell - B
Mr Blackwell - B
Mr Brooker - B
Mr Daniell - B
Mr Shannon - B
Mr Steele - B
Mr Williams - B
Mr Leach - B
Mr Wood - B
Director, TFU - B
Mr Maccabe - B
Mr Brooker - B
Mr Marsh - B
Mr Perry - B
Mr Stephens - B
Mr Currie - B
Mrs Brown - B
Mr Bramley - B
HMA, Dublin - B
Mr Lamont, RID - B
Mr Beeton - B
Ms Collins, Cabinet Office
Mr McCartney, DFP Solicitors
Mrs Devlin - B
Mr Bentley, HOLAB - B
Mrs Madden - B
Mrs Kenny

PS/Secretary of State (B&L) - B

REVIEW OF HURD POLICY

1. Officials have conducted a review of this Policy in the light of the ceasefires. We wish to submit our recommendation that the Policy be withdrawn and that in future we rely on other appropriate measures.

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2. Introduced in 1985, the Policy's aim was to prevent public funds being used to improve the standing or further the aims of paramilitary organisations, whether directly or indirectly. It was applied to prevent the diversion of public funds to paramilitary organisations, but its primary purpose was to prevent legitimisation of those organisations in local eyes.
3. In light of the current ceasefires and the interest expressed at both XD and LXD, COG commissioned a review team comprising DFP Solicitor's Branch, [REDACTED] and Central Secretariat to consider the continuing need for the Hurd Policy. The review team's report is attached as Annex A to this submission. The terms of the Policy, as announced in the House, are at Annex B and, as subsequently expanded, at Annex C.
4. Since its introduction the Policy, and its blanket application to the Conway Mill in particular, has been deeply unpopular, both here and in the United States. It has constantly, regardless of Government denial, been seen as a form of political vetting. In terms of meeting Ministers' objectives of hindering the legitimisation of paramilitary organisations it has not been conspicuously successful, but rather has brought the Government, for little political return, into disrepute in many nationalist, US and some loyalist eyes. As a counter-terrorist measure the Policy has also had a very limited effect (see paragraphs 14-17 of Annex A).

OPTIONS

5. Officials considered four main options for the Policy:

Option I : Continue Policy
(paragraphs 19-22 of Annex A)

Rejected as inconsistent with the Government's commitment to respond imaginatively to the ceasefires and to move the peace

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process forward. Would provide Sinn Fein and others with a high profile anti-Government propaganda platform. Would also inhibit a response to the mounting pressure to develop radical measures to help ex-paramilitary prisoners reintegrate into the community.

Option II : Apply only to Groups with no declared ceasefire
(paragraphs 23-24 of Annex A)

Rejected as those paramilitary organisations that have not declared a ceasefire command little community support and in any event appear to be observing de facto ceasefires. Hurd has never been applied to any groups associated with these organisations, so this option would only provide publicity for them and be counter productive in terms of the Government's objectives.

Option III : Suspend and review later
(paragraphs 25-26 of Annex A)

Considered unnecessarily cautious. Rejected as the Policy, if withdrawn, could be re-imposed by Ministerial decision at any time, and so spurious. Would also commit Ministers to re-imposing the Policy, probably in its entirety, if the peace process failed. Given its limited effectiveness to date it would be imprudent to tie Ministers' hands in this way.

Option IV : Withdraw Policy, rely on other safeguards
(paragraphs 27-33 of Annex A)

Seen as having significant advantages and few if any disadvantages and is the option recommended by the review team.

6. A decision effectively to withdraw the Hurd Policy could be presented as a bold imaginative decision, not without risks, taken as an act of faith in the peace process. In practice given its limited success as a counter-terrorist measure, the

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existence of pretty effective administrative mechanisms for staunching any flow of public funds to paramilitary organisations, and its sparing use in recent years, withdrawal and reliance on other safeguards would be a relatively minor step for us. But it would have significant PR benefits both locally and internationally, and if Ministers can announce it soon and before pressure becomes greater, these could be significant.

7. This course would still leave Ministers free to decide, on the basis of information available to them in the exercise of their discretionary powers (such as giving grants), that grant should still be withheld should any particular and pressing case present itself of risk that public funds might otherwise be diverted. In such cases, likely to be small in number, a Secretary of State direction, based on intelligence information, to withhold assistance might be necessary. But in those instances the mischief being remedied would be misapplication of public funds, not political legitimisation, and so would be much less controversial than application of the current policy. Normally, however, where intelligence did suggest a risk of diversion of public funds to paramilitary organisations, a direction would not be necessary, and the possibility of diversion could effectively be circumvented by the imposition of particularly stringent and specific accounting provisions over and above those which apply as standard conditions of grant to ensure the proper use of public funds (described in para 6 of Annex A).
8. Such a change would also mean that groups denied funding under the Policy would be free to apply for support under any Government schemes for which they are eligible. Such applications would normally be executive matters for the departments/agencies concerned. Embarrassment to HMG would still be possible if, say, Sinn Fein tested the limits of our new stance with a number of applications at the margin, but this risk is believed to be small.

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9. In weighing up this recommendation, Ministers will also wish to consider the risk of read-across to our stance against Adams being permitted to fund-raise in the USA. Critics could seek to intensify their objections to our position on fund-raising as inconsistent with our liberalising on the Hurd Policy. Officials believe (para 28 of Annex A) that the two stances are not inconsistent since we are not objecting to Adams fund-raising per se, but to the possibility that funds so raised might be used to finance paramilitary organisations. On Hurd we would be taking a relaxing measure, while making it clear that our objection to Adams fund-raising has the same specific target rather than seeking to prevent fund-raising merely for political purposes.

TIMING AND HANDLING

10. If Ministers accept this recommendation (which has been endorsed by COG), timing and handling will be very important. A decision to withdraw Hurd and rely on administrative measures is a card of some value in the (L)XD process. It does not equate in value to larger security deployment or prisons issues, but it could usefully add to the momentum of progress. As such it does not seem a card of such value as to require to be held back until Sinn Fein or the loyalist representatives, for example, offer clear progress on a central question such as arms decommissioning. It might instead be seen as a measure which might be offered fairly early as part of the parallel process of measures, designed to encourage a strengthening of the peace process.
11. If this is accepted, it might be possible to make a two-stage approach. We might tell our (L)XD interlocutors that Ministers, taking account of wider developments in Northern Ireland, including in (L)XD, had put in hand a review of the Policy. Depending on progress in (L)XD we could then, at the stage judged appropriate, announce the Policy's withdrawal as

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recommended here. Change in the Policy could thus act as an incentive to strengthening the prospects of permanent peace.

12. The draw-back in this approach is that it would be distinctly risky to withdraw the Policy only as it might affect loyalist groups if, say, LXD was showing greater progress than XD; or vice-versa. Any change in the Policy would need to be universal in extent, even if progress in the two sets of dialogue was uneven. If Ministers believed that risk to be excessive, an announcement of their decision could be made in a single step. Our preference however is for the two-stage approach, and for us to take the initiative in (L)XD at the earliest appropriate moment once Ministers have reached decisions.

13. Ministers will wish to consider very carefully how to present a public announcement. This should be by way of written reply to an arranged PQ. A draft is attached (Annex F) together with possible supplementary material (Annex G). The key question which Ministers will wish to test in this area is how to respond to the challenge that there has not been sufficient change in the paramilitary organisations to merit material change in the Policy. Officials believe that the material in Annexes F and G provide a sufficient response.

14. Lastly, it would be prudent to seek the Prime Minister's endorsement, and a courtesy to alert the Foreign Secretary whose name is so closely associated with the Policy. It should also be copied to the Secretary of State for National Heritage on account of National Lotteries Act provisions explained in para 8 of the draft letter to No 10 at Annex H.

RECOMMENDATION

15. The Secretary of State is invited:-

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- (a) to agree in principle to withdraw the Hurd Policy and to rely in future on administrative measures described to prevent paramilitary fraud of Government assistance;
- (b) to signify whether he prefers the two-stage handling process proposed or a direct announcement;
- (c) to agree that timing of whichever approach he prefers be judged in the light of (L)XD tactics;
- (d) to write to No 10 on the lines suggested.

D J WATKINS
SC 28151

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