

Confidential filing

Disqualification of Prisoners
from Election to
Parliament

PARLIAMENT

MAY

~~JUNE~~ 1981

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
8.6.81							
A-6-81							
22.6.81							
23.6.81							
25.6.81							
31.7.81							

PREM 19/554

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC (81) 19 th Conclusions, Minute 1	14.5.81
C (81) 25	1.6.81
CC (81) 21 st Meeting, Minute 4	4.6.81
CC (81) 22 nd Conclusions, Minute 1	11.6.81
CC (81) 25 th Conclusions, Minute 1	25.6.81

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate CAB (CABINET OFFICE) CLASSES

Signed *Wayland*

Date 21 July 2011

PREM Records Team

File

ag
Pattison

31 July 1981

Now that the Representation of the People Act is on the Statute Book, we have amended our Guide to General Elections as set out in your two letters of 19 June.

We are most grateful to you for drawing our attention to the need to record these changes.

M. A. PATTISON

Sir Henry Rowe, K.C.B., Q.C.

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NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

Murdo Maclean Esq
Private Secretary to
the Chief Whip
12 Downing Street
LONDON SW1

M. Raftery
Bonnie Minister

(2)

Print
24/7

24 July 1981

Dear Murdo,

mb

FERMANAGH AND SOUTH TYRONE BY-ELECTION

Mr Gerry Fitt MP telephoned the Secretary of State this morning about the Fermanagh and South Tyrone by-election.

Mr Fitt believes very strongly that it would be unwise to allow a writ for the by-election to be moved at the present time. He thinks that it would encourage those responsible to continue the hunger strike at least until the day of the by-election even if for other reasons they might have been ready to stop their action earlier. He appreciates, however, that the Government cannot in the present circumstances oppose the writ. His inclination is to oppose it himself. He would do so on the grounds that to pass the motion would encourage the continuation of the hunger strike, because the H block candidate if he were to win would not come to Westminster and has very questionable affiliations, and because with the recess there is no longer any urgent need to select a new MP. He would also offer the electorate of the constituency his services if they wished to make representations through a Member of Parliament. Mr Fitt believes that a number of Government backbenchers would be willing to join him in the lobby.

The Secretary of State's initial inclination is to encourage Mr Fitt to proceed but he would value the opinion of the Chief Whip. He will be seeing Mr Fitt on other matters at 5.00 pm on Monday, 27 July and will be glad of a word with the Chief Whip on the telephone before then. The Secretary of State is not clear whether if the writ were moved and opposed it would still be possible for

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CONFIDENTIAL

two Members of Parliament to make use of the recess elections procedure or whether the Speaker would reject an approach on the grounds that Parliament had postponed matters. Mr Fitt did not seem to be aware of whether or not it will be possible for him to move an amendment to the motion allowing the election to proceed at some specified date in the future. The Secretary of State would be glad to know whether this would be possible and whether such a device would similarly block the recess election procedure.

I am sending a copy of this letter to David Heyhoe in the Office of the Chancellor of the Duchy of Lancaster. The Secretary of State would of course be very glad to discuss the matter also with Mr Pym. A copy of the letter also goes for information to Michael Alexander at No. 10 Downing Street.

Tom,
Steph

S W BOYS SMITH

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22 pp's
Parliament



LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

J. Nursaw

W C SECRETARY, CB

LEGAL SECRETARY.

24 June 1981

Clive Whitmore Esq
10 Downing Street
LONDON S W 1

KW

24 v

Dear Clive,

REPRESENTATION OF THE PEOPLE BILL

You sent me a copy of your letter of 23 June to John Halliday in which, among other things, it is recorded that the Attorney General should confirm that it was not necessary to amend the Bill to deal with the problem of the issue of a by-election writ before the Bill had received Royal Assent. He has done so by way of a message yesterday to the Home Secretary's Private Office.

I am giving this the same circulation as your letter.

Yours sincerely,
John Nursaw

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

24 June 1981

VB
Parliament

Thank you for your letter of 19 June to Clive Whitmore about amendments to our Guide on Procedure for General Elections in the light of the provisions contained in the Representation of the People Bill.

Progress to date on the Bill seems to demonstrate that it would be dangerous to make assumptions yet about the form in which it will finally be enacted! We are grateful to you for drawing to our attention the likely need for amendments to our Guide. If we may, we will come back to these when the Bill has completed its passage through Parliament.

M. A. PATTISON

Sir Henry Rowe, K.C.B., Q.C.

R



QUEEN ANNE'S GATE LONDON SW1H 9AT

24 June 1981

Dear Michael

NB PM

KW

24 June

REPRESENTATION OF THE PEOPLE BILL

Thank you for your letter of 23 June.

As you know, we agreed at the Prime Minister's meeting yesterday to extend the disqualifications provided by the Bill to cover prisoners in the Republic of Ireland. I was advised that the amendments which had been tabled to that effect were technically defective. I therefore authorised the tabling of a Government amendment last night for Committee Stage tomorrow.

On the specific points in your letter:

1. I agree that it may be less easy for the returning officer to be satisfied at nomination stage whether a person is detained in the Republic than if he is detained in the United Kingdom. There must be a reasonable chance, however, that the fact would become known in time. If for any reason it did not, and the prisoner was successful at the poll, he would, of course, be automatically disqualified. I am satisfied that no extra time need be provided for the nomination process.
2. We have carefully considered the points made about appeals. No provision was made suspending the operation of the disqualification pending appeal under the pre-1967 legislation (nor is there such a suspension in operation, following bankruptcy). I have concluded that it would be opening far too wide a loophole to do so. A prisoner may seek leave to appeal at any time, and appeals procedures can be protracted. I am aware that some members feel that a sitting member, at least, should be allowed to have an appeal settled before disqualification took effect. At first I was attracted to that possibility. But it could result in a constituency being in effect unrepresented for a very long time (the appellant being in prison pending his appeal), and this lack of representation is, of course, an important justification for the whole Bill. I also see difficulty in trying to justify to the general public treating sitting MPs more generously than candidates.

The Rt. Hon. Michael Jopling, M.P.

/cont.....

3. I agree that a Member (or prospective candidate) could find himself convicted and imprisoned in the Irish Republic. He would then, of course, be immediately disqualified. (In the case of a sitting Member his seat would, of course, become vacant). There is no escape from these effects if the disqualification is to extend to the Irish Republic, as we agreed yesterday it should.

Perhaps I should confirm that, in the light of Sir Henry Rowe's letter of 22 June to Murdo Maclean, I do not now intend to table an amendment dealing with the timetable for any by-election which may be pending when the Bill comes into force.

I am copying this letter to those who received my minute of 23 June.

*Yours
Lester*

to Press



Am Hassan

MD

PRIME MINISTER

REPRESENTATION OF THE PEOPLE BILL:
DISQUALIFICATION OF PRISONERS IN THE REPUBLIC OF
IRELAND

We agreed at Cabinet on 4 June that our Bill to disqualify for membership of the House of Commons convicted persons detained in prison in pursuance of a sentence of more than twelve months should disqualify only those in prison in the United Kingdom and should not extend to the Republic of Ireland.

Since we took that decision, it has been reported that the Provisionals intend to nominate as a candidate at the pending by-election in Fermanagh and South Tyrone someone serving a prison sentence in the Republic. Although there are arguments of practicability and simplicity in restricting the disqualification to the United Kingdom, these are less strong now that the disqualification does not extend to people released on parole or on licence, and there was a very strong feeling in the debate on Second Reading of the Bill that it would be indefensible to allow prisoners in the Irish Republic to escape the disqualification.

The Committee Stage of the Bill is on Thursday. Subject to your views and to those of any of our Cabinet colleagues, I propose to have an amendment tabled this evening to extend the disqualification to prisoners in the Irish Republic.

I am copying this minute to Cabinet colleagues, to Sir Robert Armstrong, and to First Parliamentary Counsel.

Law

23 June 1981

CONFIDENTIAL



10 DOWNING STREET

From the Principal Private Secretary

23 June 1981

SUBJECT.

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LAD.
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JFA
Parliament.

cc. Market act.

Dear John,

Representation of the People Bill

The Prime Minister held a meeting this afternoon to discuss the Home Secretary's minute of 23 June 1981 in which he proposed that an amendment to the Representation of the People Bill should be tabled to extend disqualification to prisoners serving a sentence of more than twelve months in the Republic of Ireland. As well as Mr. Whitelaw, the Foreign and Commonwealth Secretary, the Attorney General, the Chief Whip, Mr. Adam Butler and Sir Robert Armstrong were present.

The Home Secretary said that he did not pretend that the Bill was perfect. It was intended to deal with an emergency and tried to block as many loopholes in the electoral system as possible. But there was a real danger that the further one went the more the Bill got into the whole field of electoral law and raised yet further loopholes. It was quite clear from yesterday's Second Reading debate that the House of Commons was determined to extend disqualification to prisoners in the Republic. If the Government did not itself move an amendment to this effect, a back bencher would do so and the amendment would be carried. Even when the Bill was amended in this way, it would still be possible for the IRA to put up a candidate like Gerry Adams or a known member of the IRA who was wanted by the police in Northern Ireland but who was living in the Republic, though not in prison. The Bill, as amended, would not stop the nomination of such a candidate. But he thought it would be sufficient to accept the clear wishes of the House of Commons and to support the amendment in Mr. Douglas Hogg's name which in clause one, line one, after "Kingdom" inserted "or elsewhere in the British Isles or the Republic of Ireland".

The Home Secretary added that he was considering whether to accept an amendment which would provide that a sitting Member of the House of Commons who was sentenced to prison for a term of more than twelve months would not be disqualified immediately but would have a decision postponed until his appeal had been heard.

/The Attorney General

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The Attorney General said that, although Mr. Hogg's amendment was not as tightly worded as it might be, it would serve the intended purpose. More generally, although it was a good rule that hard cases made bad law, he agreed with the Home Secretary that the situation in Northern Ireland was such that the present Bill had to be passed as soon as possible. He was, however, concerned that the election timetable, even when extended, might not allow sufficient time between the closing date for the submission of candidates' nomination papers and the publication of the final list of candidates for the Returning Officer to receive the answers to his enquiries about candidates said to be in prison in the Republic of Ireland.

The Foreign and Commonwealth Secretary said that the Irish Government would not like the proposed amendment which extended disqualification to prisoners in the Republic but it was something they would have to put up with. The fact was that if the present loophole was left in the Bill, an IRA prisoner in the Republic would exploit it sooner or later, and this would be no more in the interests of the Irish Government than it was in ours. In any case it was clear that the Bill was going to be amended in the way under discussion, whether the amendment was tabled by the Government or not, and so the Irish Government would have to live with the extension of disqualification.

The Chief Whip said that he too was concerned that Returning Officers might have insufficient time to make full enquiries about candidates who might be in prison in the Republic. He had also earlier raised with First Parliamentary Counsel the question of the effect on the Warrington by-election if the writ for that by-election was issued before the Bill received Royal Assent. First Parliamentary Counsel's advice had originally been that the Bill should be amended to make it absolutely certain that if the writ was issued before Royal Assent, the by-election would take place on the existing timetable and not on the new one provided for in the Bill; but he now took the view that such an amendment was not necessary.

Mr. Butler suggested that, in the interests of denying the IRA as much opportunity to embarrass the Government and to score propaganda victories as possible, we should consider whether disqualification should be extended not only to the Republic of Ireland but also to Commonwealth countries.

The Home Secretary said that he believed that in present circumstances the proposed election timetable would allow Returning Officers enough time to make enquiries about candidates thought to be in prison in the Republic as well as about those serving sentences in the United Kingdom. But he could not guarantee that either now or in the future, when the circumstances of our relations with the Republic might be different, Returning Officers would always get a timely and accurate answer. This was a risk which we had to take. He did not favour extending disqualification beyond the Republic. To do so in respect of Commonwealth countries would mean consulting their Governments before the Bill became law, and it was plainly impossible to do that between now and Thursday. He did not believe that if an IRA prisoner in a United States prison stood as a candidate in an election in the

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/United Kingdom

CONFIDENTIAL

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United Kingdom, this would have much public effect. If we prevented prisoners in the United Kingdom and the Republic from being nominated, we should have dealt with by far the most substantial part of the problem.

The Prime Minister, summing up the discussion, said that the meeting agreed that the Bill should be amended to provide for an extension of disqualification to prisoners serving a sentence of more than 12 months in the Republic of Ireland, and the Government should accept Mr. Douglas Hogg's amendment for this purpose. The Attorney General should confirm that it was not necessary to amend the Bill to deal with the problem of the issue of a by-election writ before the Bill had received Royal Assent.

I am sending copies of this letter to Brian Fall (Foreign and Commonwealth Office), David Heyhoe (Chancellor of the Duchy of Lancaster's Office), Jim Nursaw (Law Officers' Department), Murdo Maclean (Chief Whip's Office), Celia Hadden (Northern Ireland Office) and David Wright (Cabinet Office).

Yours ever,

Alvin Whiston.

John Halliday, Esq.,
Home Office.

CONFIDENTIAL

FROM: THE RT HON MICHAEL JOPLING MP



Government Chief Whip
12 Downing Street, London SW1

23rd June 1981

Thank you for sending me a copy of your minute of the 23rd June to the Prime Minister about extending the disqualification of prisoners to the Republic of Ireland.

There are 3 points on which I should welcome your views:-

- 1) if we do extend the disqualification to the Republic of Ireland, how does the Returning Officer find out whether the candidate is in prison, and will this process add further to the time which we must allow him to carry out the procedure?
- 2) are we doing anything on Appeals
- 3) it is just possible that a UK Member of Parliament could be in the Republic on holiday or otherwise, be arrested and subsequently prone to a contentious judgment by the Irish Courts. This could then place him in an extremely difficult position vis-a-vis a by-election or General Election. I realise that this is an unlikely eventuality but nevertheless, so was the situation which has taken us down this road in the first place.

I am sending a copy of this letter to the recipients of yours.

The Rt Hon William Whitelaw CH MC MP
Home Office
Queen Anne's Gate, SW1



Top
Copy .. Paterson
Legislation

10 DOWNING STREET

From the Private Secretary

22 June 1981

The Prime Minister has seen your letter of 19 June to David Heyhoe, about amending the Representation of the People Bill to cover the question of the timing of issue of by-election writs.

The Prime Minister has not followed the fine detail of the drafting of the Bill: against that background, she has commented that it seems doubtful whether the proposed amendment will actually clarify the matter. But if the Home Secretary is confident that it will do so, she is content that he should go ahead as he proposes.

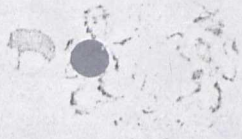
I am sending copies of this letter to Murdo Maclean (Chief Whip's Office), Stephen Boys-Smith (Northern Ireland Office), David Heyhoe (Chancellor of the Duchy's Office), David Wright (Cabinet Office) and to Sir Henry Rowe.

M. A. PATTISON

John Halliday, Esq.,
Home Office.

HL

Top copy
Parliament, Legislation



Chancellor of the Duchy of Lancaster

22 June 1981

Dear Tom,

REPRESENTATION OF THE PEOPLE;
TIMING OF ISSUE OF BY-ELECTION WRITS

Thank you for your letter of 19 June on this subject.

As I have already mentioned to you on the telephone, the Chancellor of the Duchy agrees that, despite the difficulties, the course of action proposed by the Home Secretary is the best available.

You explained, when we spoke, that the Home Secretary does not intend to declare an intention to introduce the amendment in his opening speech today. You may like to know that the Chancellor of the Duchy has discussed this point with the Chief Whip and both are in full agreement with the Home Secretary's decision.

I am copying this letter to the recipients of yours.

Yours ever
David

D C R HEYHOE
Private Secretary

J F Halliday, Esq
Private Secretary to the
Home Secretary
Queen Anne's Gate
LONDON



Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone Direct line or 273 5288
Switchboard or 273 3000

19 June 1981

C A Whitmore Esq
10 Downing Street
London SW1

Dear Clive

GENERAL ELECTIONS - COUNTING OF DAYS

I very much regret that in my earlier letter of today I blundered by miscounting the Saturdays falling within the period of an election campaign. There are in fact three of them.

Consequently the amendments I sent you are not correct in so far as they substitute (21 days for 20 days) or (21st day for 20th day.) The correct substitution should have been 22 and 22nd.

Yours sincerely

A handwritten signature in cursive script that reads 'Henry Rowe'.

H P ROWE

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Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone Direct line 01 273 5288
Switchboard 01 273 3000

19 June 1981

C A Whitmore Esq
Prime Minister's Office
10 Downing Street
London SW1

Dear Clive

PROCEDURE FOR GENERAL ELECTIONS

If the Representation of the People Bill becomes law in its present form your Guide will need some amendments in section I - Choice of Date. I will list them.

Paragraph 3.

To the words in brackets add "and the Schedule to the Representation of the People Act 1981" and for "20 days" substitute "21 days".

Paragraph 4.

For "20 days" (twice) substitute "21 days".

Paragraph 5.

After "1969 Act" add "and the Schedule to the 1981 Act", for "ninth day" substitute "tenth day", for "eighth day" substitute "sixth day", for "17th day" substitute "18th day" and for "20th day" substitute "21st day". Further, "Sundays and Bank Holidays" should become "Saturdays, Sundays and Bank Holidays", "not counting Sundays" should become "not counting Saturdays and Sundays" and

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(farther down) "from Saturday to Tuesday" should become "from Friday to Tuesday".

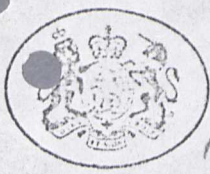
I hope I have not missed anything.

Yours sincerely

Henry Rowe

H P ROWE

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Top Copy 1.
Parliament, Leg.

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

June 1981

To you not initially
call writ with the default
it seems doubtful whether
amendment will
clearly the matter. 19
if it will go
ahead in
Home Office
sufficiently
not

Prime Minister
Do you agree with the Home
Secretary's view on the
handling of the Fermanagh
writ in relation to the new
Bill? MAF 19/6/81

Dear David,

REPRESENTATION OF THE PEOPLE BILL:
TIMING OF ISSUE OF BY-ELECTION WRITS

The Home Secretary has been considering the question which Murdo Maclean put to First Parliamentary Counsel, and to which Sir Henry Rowe replied in his letter of 17 June. He agrees that, since the Warrington writ may be issued before the Bill receives Royal Assent, the Bill should be amended to put beyond doubt the timetable on which any pending by-election should be held. He agrees that the amendment should provide that any election for which a writ had been issued before Royal Assent should take place on the existing, rather than the new timetable.

assume?

This would mean - of course - that if the Fermanagh writ had also been issued before Royal Assent the existing timetable would apply. We assume that such an amendment could be so drafted as not to affect the new procedure for disqualifying nominations. The returning officer at Fermanagh could then still disqualify a nomination if the last day for handing in nomination papers fell after Royal Assent.

This is a big assumption

As you know, the invalidation of nominations takes place as soon as practicable after the last day for nominations, which falls at the returning officer's discretion between the fourth and eighth day after the issue of the writ. Provided that the Bill was enacted in sufficient time before the by-election took place, therefore, the nomination of an IRA prisoner could be declared invalid before voting took place. This might make the position of the Chief Electoral Officer in Northern Ireland even more difficult, however, and the Home Secretary considers that it would still be prudent to seek to defer the issue of the Fermanagh writ if an attempt is made to move it before Royal Assent. He realises that to defer the Fermanagh writ, while allowing the Warrington by-election to proceed, with a provision on the face of the Bill preserving the existing timetable for by-elections pending on Royal Assent, is not an ideal combination of decisions to defend. But he sees no better alternative, and believes that the reasons for such an approach would be generally understood.

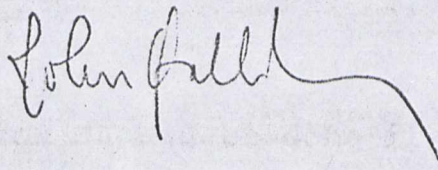
/The Home Secretary

David Heyhoe Esq

The Home Secretary would prefer to introduce the amendment in the House of Commons. He is considering whether to declare an intention to introduce it during the debate on Second Reading.

I am sending a copy of this letter (with - for convenience - a copy of Sir Henry Rowe's letter) to the Private Secretaries to the Prime Minister, the Chief Whip, the Secretary of State for Northern Ireland, Sir Robert Armstrong and to Sir Henry Rowe.

Yours ever,

A handwritten signature in cursive script, appearing to read 'John F. Halliday', with a long, sweeping tail extending to the right.

(J F HALLIDAY)

M. Maclean

M. Wasserman
N. Tamjit

5288

Murdo Maclean Esq
Government Whips' Office
12 Downing Street
SW1

17 June 1961

Dear Murdo

REPRESENTATION OF THE PEOPLE BILL

You asked me to say what I think should be done if a writ to fill the Warrington seat were moved before the Representation of the People Bill had received the royal assent.

There would clearly be neither need nor justification for tampering with the proposed new disqualification. The disqualification would bite as soon as the Bill became law. If, at that time, the election campaign was still under way a disqualified candidate could not be validly elected; and if it was over and a disqualified person had been elected he would lose his seat on royal assent.

But it would be necessary to do something about the Parliamentary Election Rules which the Bill seeks to modify. One could not allow a situation to arise where it might not be clear whether a notice of election had been valid, nomination papers received in time, or the polling day appointed correctly. These matters are independent of the new disqualification and any uncertainty about them could therefore throw doubts on the validity of the election of a perfectly respectable candidate.

The best way to deal with the situation would then be to postpone the changes in the Parliamentary Election Rules so that they would not affect any election for which a writ had been issued before royal assent. This could be done by an amendment to clause 3, which, if necessary, could be made in the Lords.

The matter does not therefore appear to be desperately urgent. No one would want to propose an amendment for fun. You will no doubt assess the chances of a writ for Warrington being issued before royal assent. If they seem negligible you may leave it at that. But if an amendment were decided on we would of course appreciate an early warning.

Yours sincerely

H P ROWE

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Parliament AH

SUBJECT.

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CO*

10 DOWNING STREET

From the Principal Private Secretary

8 June 1981

cf. Market sec.

Dear John,

DISQUALIFICATION OF PRISONERS FROM ELECTION
TO PARLIAMENT

The Home Secretary raised the question of the disqualification of prisoners from election to Parliament when he saw the Prime Minister this morning. The Chancellor of the Duchy of Lancaster, the Chief Whip and Lord Thorneycroft were also present.

Mr Whitelaw said that since Cabinet had discussed the matter on Thursday of the previous week, reports had begun to appear in the press that the Labour Party were considering moving the writ for the Warrington by-election in the near future. If that happened, steps were bound to be taken to move the writ for the Fermanagh and South Tyrone by-election. This meant that we should have to be ready to move quickly to introduce the Bill, the principle of which the Cabinet had agreed last Thursday. He expected to get the first draft of the Bill from First Parliamentary Counsel today. The question which Ministers would need to decide shortly was whether, in order to get the Bill on the Statute Book quickly, legislation should be confined to the disqualification of convicted persons detained in prison in the United Kingdom for more than twelve months and the provision for arrangements for invalidating the nomination of such persons dropped from the Bill. If this was done, it might be easier to secure the co-operation of the Opposition during the passage of the Bill. On the other hand, they might well decide to oppose even a Bill which was confined to restoring the pre-1967 position by disqualifying people serving sentences of more than twelve months. He was seeing Mr Roy Hattersley that evening to try and establish where the Opposition stood.

In discussion it was pointed out that the Government was introducing this legislation in order to avoid a repetition of the election of somebody like Sands, but it was arguable that it was unwise to introduce legislation which provided for the invalidation of the nomination of prisoners generally simply

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because of this particular case. Moreover, it had been suggested that if electors wished to vote for someone in prison, they should be allowed to do so, even if their candidate won and was subsequently prevented from taking his seat. On the other hand, it could be argued that there was little point in allowing electors to vote for somebody who could not take his seat. Further, there was a risk that if the Bill was confined to restoring the pre-1967 situation in the interests of making it less controversial and more acceptable to the Opposition, it might not get full support from the Government's own back bench supporters who might well take the view that if there was going to be a Bill, it ought to provide for the invalidation of the nomination of prisoners.

The Prime Minister, summing up the discussion, said that the Home Secretary should see Mr Hattersley, as he was proposing to do, in order to establish the views of the Opposition and should then report back to his colleagues.

I am sending copies of this letter to David Heyhoe (Chancellor of the Duchy of Lancaster's Office), Stephen Boys-Smith (Northern Ireland Office) and David Wright (Cabinet Office).

Yours sincerely,

Alwi Whitman.

John Halliday Esq.,
Home Office.

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① Oppose =
② More difficult
if only pre '67.

Ref. A05040

PRIME MINISTER

Cabinet: Disqualification of Prisoners from Election to Parliament

BACKGROUND

The Cabinet agreed last week (CC(81) 21st Conclusions, Minute 4) that the proposed legislation to disqualify prisoners from election to Parliament should be confined to dealing with convicted persons detained in prison in the United Kingdom pursuant to a sentence of more than 12 months. It should not extend to prisoners in the Republic of Ireland, or to those released subject to executive recall. The Cabinet agreed that acting returning officers should have power to invalidate the nomination of persons disqualified by the Bill, but recognised that this provision might have to be modified in favour of a return to the pre-1967 position (when such prisoners could stand for election but if top of the poll could not be legally elected) in order to secure a wide measure of support for the Bill. The Home Secretary and the Chancellor of the Duchy of Lancaster were invited to consult other parties in the House of Commons, and report back as necessary.

2. The Shadow Cabinet has not yet formally considered the position, but we understand that Mr Hattersley has told the Home Secretary that the Opposition are not in favour of the introduction of a disqualification Bill before the Summer Recess. They take the view that it would be wrong to deprive the electorate of the opportunity of voting for the candidate of their choice, that it would be undesirable for any legislation to be directly linked to the vacancy in Fermanagh and South Tyrone, and that opinions might be expressed during the passage of any Bill at Westminster which would exacerbate the situation in Northern Ireland. The Opposition apparently have no intention of arguing that a convicted prisoner should, if elected, be released from custody in order to take his seat, and have said that, if in spite of their reservations a Bill is introduced before the Recess, they will allow a free vote on their side.

HANDLING

3. You will wish to ask the Home Secretary to outline the position reached in his consultations with the Opposition so far, and on the likely views of other parties in the House of Commons. The Chancellor of the Duchy of Lancaster and the Secretary of State for Northern Ireland may wish to comment, and the Chief Whip will be able to report on the state of opinion among the Government's own supporters.

4. The Government have already said publicly that they would hope that any legislation on this subject would command wide all party support in Parliament. Should they nevertheless be prepared to go ahead if necessary without the agreement of the Labour Party? If so, the Cabinet will need to decide whether to retain the proposed power to invalidate nominations, or merely to restore the pre-1967 position. The latter course seems unlikely to make the Bill acceptable to the Opposition, and might be criticised by the Government's own supporters as giving the Provisional IRA scope for a repetition of the propaganda victory which they claimed over the election of Mr Sands. The Secretary of State for Northern Ireland will have views on which course would be preferable from the point of view of the internal situation in the Province.

5. The Cabinet have so far taken the view that if an attempt is made to move a writ for Fermanagh and South Tyrone before any legislation is ready for introduction, the Government should seek to have the debate on the writ adjourned until early in July. If the Cabinet decide on balance that the Opposition's attitude makes it undesirable to introduce legislation before the Summer Recess, they will have to reconsider the appropriate response to a motion for a writ. The Secretary of State for Northern Ireland feels that it would be undesirable for a by-election to be held in July or August, which are always particularly difficult months in Northern Ireland politics. It is, however, difficult to see what reasons the Government could advance publicly for opposing the immediate issue of a writ, particularly if the writ for Warrington were to be moved in the next few days. Any two members can, of course, effectively compel the Speaker to issue his warrant for a writ under the Recess Elections Act 1975 as soon as the Summer Recess begins.



CONCLUSION

6. It is urgent to reach a decision if a Bill is to be introduced and become law by the end of July. In the light of the reports from the Home Secretary and the other Ministers concerned, the Cabinet will need to decide whether to go ahead now with a Bill to disqualify prisoners from election to Parliament.

If the decision is to proceed with a Bill, the Cabinet will also need to take a policy decision on whether there should be a power to invalidate the nomination of persons disqualified under the Bill and invite the Home Secretary to bring a draft of the Bill before Legislation Committee for approval at the earliest possible opportunity.

If the Cabinet decide against proceeding with the Bill at this stage it would be for the Home Secretary, in consultation with the Chancellor of the Duchy of Lancaster and the Secretary of State for Northern Ireland, to consider how best to make the decision known to Parliament. You will wish also in that event, to record a firm decision on whether any steps should be taken to oppose or delay the issue of a writ for a by-election in Fermanagh and South Tyrone.

ROBERT ARMSTRONG

10 June 1981



Ref. Qf 0407

PRIME MINISTER

Disqualification of Prisoners from Election to Parliament

(C(81)25)

Background

Before 1967, any person convicted of felony and serving a prison sentence of more than 12 months was disqualified by the Forfeiture Act 1870 from standing as a candidate in Parliamentary elections, or sitting or voting in either House. This provision was repealed by the Criminal Law Act 1967, which abolished the distinction between felonies and misdemeanours. The Home Secretary has said in the House of Commons that the Government are considering whether changes in electoral law are desirable to prevent a repetition of the situation which arose from the election of Mr Robert Sands as Member for Fermanagh and South Tyrone in the by-election on 10 April, and that the Government would hope to proceed with all party agreement in this area. In the meantime, Cabinet have agreed that if any backbench member moves a new writ for Fermanagh and South Tyrone before the Government are ready to introduce amending legislation, the Leader of the House will seek to have the debate adjourned until early in July. The Second Reading of Mr James Molyneaux's House of Commons Disqualification Bill which is designed to prevent the election of convicted prisoners has been set down for 10 July.

2. The Home and Social Affairs Committee have agreed that a Bill should be introduced as a matter of urgency disqualifying persons serving a prison sentence of more than 12 months from election to the House of Commons, and that the disqualification should extend to those released from prison but subject to executive recall, and to prisoners serving sentences in the Republic of Ireland. Acting returning officers (AROs) would be given powers to reject the nominations of those they believed to be disqualified on these grounds, subject to appeal to an electoral court on an election petition.

3. Any legislation will have to be passed before the Summer Recess if it is to apply to the next by-election in Fermanagh and South Tyrone, since once the Recess has begun the Speaker is obliged to issue his warrant for a writ if any two Members deliver to him a certificate that the previous Member is dead. The Home Secretary, while not disputing the conclusions of H Committee in principle, believes that it will not be possible to meet all their objectives in a measure sufficiently short, simple and uncontroversial



to be passed by the end of July. He therefore proposes that the immediate Bill should be limited to disqualifying convicted persons serving a sentence of more than 12 months in the United Kingdom, and to invalidating the nomination of such persons in Parliamentary elections. Wider issues, including the possibility of introducing a residential qualification for Membership of the House of Commons, would be taken up in the Home Secretary's general review of electoral law and procedures.

Handling

4. You will wish to ask the Home Secretary to introduce his memorandum, and then to ask the Secretary of State for Northern Ireland, the Lord President and the Chancellor of the Duchy of Lancaster whether they agree in principle that the Bill should be kept to the minimum necessary to prevent convicted prisoners in the UK from standing in Parliamentary elections. The Lord Chancellor and the Attorney General may also wish to comment. If the Home Secretary's general approach is accepted, you may then wish the Cabinet to consider in turn each of the points raised in C(81)25.

5. Confining the disqualification to persons serving sentences in the United Kingdom will certainly attract some adverse Parliamentary criticism, since it will mean that convicted terrorists serving prison sentences in the Republic of Ireland will be free to stand in UK Parliamentary elections. The practical and political difficulties of extending the disqualification to prisoners in the Republic or other parts of the world are, however, formidable. Do the Cabinet agree that this is a problem better left to be dealt with at a later stage by introducing a residential qualification as part of a general reform of electoral law? Do the business managers think that the Home Secretary's limited proposal would make the Bill easier or more difficult to carry in both Houses? The Attorney General will be able to say how this solution would compare with the situation which existed before 1967.

6. The Home Secretary recommends that disqualification should not apply to convicted persons released on parole, or otherwise subject to executive release. This would permit the Price sisters and other paroled terrorists to stand in UK Parliamentary elections. Is this acceptable? The Attorney General can confirm that this would in essence restore the position which existed before 1967, and would be consistent with the voting disqualification in the representation of the People Act 1969.

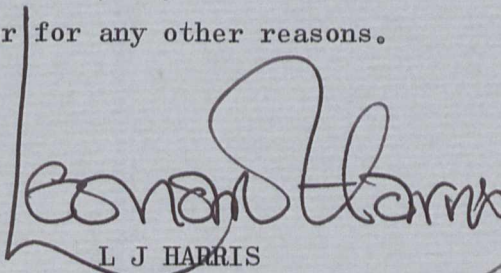


7. The power to invalidate nomination will be attacked as denying electors the opportunity to express their opinions through the ballot box. The alternative would be to permit convicted prisoners to stand and to be elected, but to prohibit them from sitting or voting as Members of the House of Commons. The Secretary of State for Northern Ireland would be prepared to accept this approach if it would ease the passage of the legislation. It would, however, leave open the possibility of further propoganda victories of the kind which the PIRA claimed in the case of Mr Sands, and could be used as an excuse for escalating violence on the grounds that the Government were deliberately frustrating the democratic process. Provided that the Home Secretary is satisfied that AROs in Northern Ireland will be willing and able to operate the proposed system, the Cabinet may agree that the balance of advantages lies in preventing convicted prisoners from being nominated in Parliamentary elections.

8. Subject to agreement on these points of detail, you may wish to ask the Home Secretary to outline the next steps as he sees them. The Government are committed to trying to secure a wide measure of support for any legislation, but the Bill will have to be ready for introduction at the beginning of July if it is to be passed before the Summer Recess. The Chancellor of the Duchy of Lancaster and the Secretary of State for Northern Ireland will have views on the best method of carrying out consultations in the limited time available.

Conclusions

9. Subject to any points made in discussion, you will wish to guide the Cabinet to accept the recommendations for legislation put forward in C(81)25, and to invite the Home Secretary in consultation with the Chancellor of the Duchy of Lancaster and the Secretary of State for Northern Ireland to seek the agreement of other parties to them as a matter of urgency. The Chancellor of the Duchy of Lancaster can give drafting authority so that there need be no delay in bringing the Bill before Legislation Committee and introducing it as soon as the consultations have been completed. The Home Secretary might be invited to report to you immediately any further difficulties which arise as a result of the consultations or for any other reasons.


L J HARRIS

2 June 1981