



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 This provision was repealed by the Criminal Law Act 1967, which abolished the distinction between felonies and misdemeanours.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.



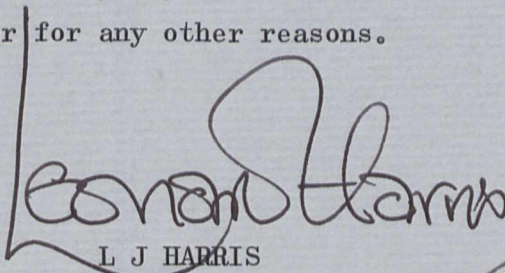


7. The power to invalidate nomination will be attacked as denying electors the opportunity to express their opinions through the ballot box. The alternative would be to permit convicted prisoners to stand and to be elected, but to prohibit them from sitting or voting as Members of the House of Commons. 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