CONFIDENTIAL

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Right Honourable John Wakeham MP
Lord President
68 Whitehall
LONDON
SW1A 2AT

20 January 1989

Dear Lord President,

When we met yesterday I explained that I was grateful to the Lord Chancellor for his agreement that an appeal to the House of Lords should be mounted in respect of the decision of the Northern Ireland Court of Appeal in the case of Burns, Toman and McKerr. I understand that the other recipients of his letter of 16 January were also content with this course. As a separate issue, we also discussed the general question of what might be done to prevent members of the security forces from having to appear at inquests in Northern Ireland into cases of death in which they were involved, should an appeal to the House of Lords fail.

Technically it would be possible to amend the Coroners Act (NI) 1959 by Order in Council so as to reinstate Rules 9(2) and (3) which were ruled to be ultra vires by the Northern Ireland Appeal Court. The effect of those rules (which were peculiar to Northern Ireland) was that noone who had caused a death was a compellable witness at the inquest into that death, irrespective of whether he or she had any connection with the security forces. However, any Order which sought to re-establish that position in Northern Ireland alone would be open to the telling criticism that if such a measure is right for the Province, it should also be right for England and Wales, since the

underlying issues of principle are exactly the same. Therefore I could not justify an Order which aimed to re-establish in Northern Ireland alone this general exemption for everyone who had caused a death.

However, I also believe that we must take some action to protect RUC and Army witnesses who are involved in deaths and would otherwise have to appear at inquests. If the Lords turn down our appeal, we could approach future inquests on the basis that we would, through Counsel, seek judicial review of any decision by the coroner to allow a question which could either be damaging in security terms or which was irrelevant to the purposes of the inquest. Additionally, there could be greater use of public interest immunity certificates; but these are open to challenge and, in any event, continued reliance on such certificates might well bring them into disrepute. My conclusion is that we cannot be sure that we can adequately protect the national interest during sensitive inquests even by a combination of these methods. Moreover, there would still be no getting around the increased risk and threat to individual servicemen who have to attend inquests, nor the increase in the resources which would need to be devoted to protecting them. And there is the added risk that, if our appeal to the Lords fails, we can expect to see a succession of challenges against inquests held before the NI Court of Appeal's judgement on the basis that they were invalid. This would provide a succession of opportunities for terrorist propagandists to attack the security forces.

I therefore believe that we must change the law. The problem is, however, that an Order in Council could not appropriately be used to achieve the protection which is needed. One option (despite the practical and political difficulties which I do appreciate) would be to seek to make the necessary changes in the Prevention of Terrorism Bill. I should be looking for new provisions which expressly exclude members of the security forces who are involved in deaths while carrying out their duties from the obligation to attend as witnesses at the inquests. I believe the new provisions could be fully justified on the grounds that due to the terrorist situation in Northern Ireland it is in the public interest for protection to

continue to be available to members of the security forces who come into this category.

As we noted yesterday, the timetable motion for the Prevention of Terrorism Bill is down for debate on 23 February. This may well mean that it is preferable to seek the inclusion of the necessary provisions in the Lords. However, if that proves unacceptable, the alternative which we will have to consider is to introduce a separate freestanding Bill to achieve the protection which the security forces need and deserve.

We agreed yesterday that these complex issues needed further consideration and that an early meeting of colleagues was the best way of taking matters forward. I should be most grateful if you would agree to chair such a meeting in the course of next week. I suggest that our Private Offices be in touch to make the necessary arrangements.

This meeting will also provide an opportunity to discuss the new clause I have already proposed for inclusion in the Prevention of Terrorism Bill, if colleagues wish to do so. My letter of 17 January to Douglas Hurd sets out what I am proposing here. Work on this clause is considerably more advanced than on the provisions relating to inquests and I must stress that I attach considerable importance to securing it in the Prevention of Terrorism Bill, if at all possible at Report Stage but otherwise in the Lords.

I believe that Geoffrey Howe, Douglas Hurd, George Younger, James Mackay, Paddy Mayhew, John Belstead and David Waddington would wish to attend our meeting, in view of their interest in these matters. I am sending copies of this letter to them as well as to the Prime Minister and Sir Robin Butler.

Yours, etc.

S. J. Leach.

[Approved by the Secretary of State and signed in his absence.]

r.r. TK