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From the Private Secretary

16 June 1989

NORTHERN IRELAND INQUESTS

The Prime Minister has considered the Lord President's minute of 14 June on the question of Northern Ireland inquests. She is strongly of the view that the decision reached by the ad hoc meeting of colleagues on 25 January should be reaffirmed, thus restoring the status quo ante. She has commented that we must support the security forces against terrorism.

I am copying this letter to Sir Robin Butler.

C. D. Powell

Steve Catling, Esq.,
Lord President's Office.

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PRIME MINISTER

NORTHERN IRELAND INQUESTS

In December 1988, the Northern Ireland Court of Appeal declared ultra vires and void a long-standing rule which prevented a person being compelled to give evidence at an inquest in Northern Ireland if he was suspected of having caused the death of the person concerned. From the Government's point of view, the most important aspect of this rule was that it prevented members of the security forces from being compelled to give evidence regarding a death in which they were alleged to have been involved. As a result of the judgement, however, the law on the matter in Northern Ireland is now essentially the same as that in England and Wales: a witness can be compelled to give evidence but can rely on his privilege not to answer any question which might incriminate him.

2. The Government has been given leave to appeal to the House of Lords against the decision of the Northern Ireland Court of Appeal. This course of action would be abandoned, however, if it were decided to legislate to restore the status quo ante.

3. I held an ad hoc meeting of colleagues on 25 January at which it was agreed that an Order in Council should be introduced to restore the status quo ante, and that further consideration should be given to the possibility of extending protection to members of the security forces not directly involved (which would require primary legislation). However, the Lord Chancellor, who was not able to attend that meeting, has recently minuted me and members of H to suggest that we should reconsider that decision. His principal concerns were the difficulty of explaining why we

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are reintroducing a difference between the law in Northern Ireland and in England and Wales; the adverse reaction which could be expected from the Dublin Government; and, in relation to the "shoot to kill" inquests still to be held in Armagh, the allegation that might be provoked that we are involved in a cover-up. He suggested that, if we were to lose the appeal to the House of Lords, we would still be able to rely on other legal safeguards, notably the privilege against self-incrimination, and that in particularly sensitive cases a Minister could issue a public interest immunity certificate to prevent a line of inquiry ranging into inappropriate areas. He also said that he had been advised that effective security could be provided to protect security force witnesses at inquests.

4. The Foreign Secretary expressed support for the Lord Chancellor on the grounds that the introduction of an Order in Council to reverse the decision of the Northern Ireland Court of Appeal would be a blow to confidence in the administration of justice in Northern Ireland; that, as well as provoking allegations of a "shoot to kill" policy, it would sit uneasily with the position we took at the Gibraltar inquest; and, if as seems likely, we were not able to respond to the Brogan judgement by introducing a judicial system of review of detention under the Prevention of Terrorism Act in Northern Ireland, then there would be two cases in quick succession of instituting separate legal arrangements in Northern Ireland. The Foreign Secretary also suggested that aggrieved persons might seek ways of referring to Strasbourg inquests which were alleged to be less than satisfactory. However, he saw no difficulty about proceeding with the appeal to the House of Lords on the basis that there is a difference between seeking an interpretation of the law favourable to the Government and of changing the law in the face

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of an unfavourable decision.

5. The Chancellor of the Duchy indicated that he shared some of the Lord Chancellor's reservations and suggested that it might be best to expedite the appeal to the House of Lords and to take stock once the House of Lords had ruled on the matter.

6. The Home Secretary, while recognising the case for changing the law in Northern Ireland, said that the same security considerations did not apply in England and Wales and that the effect of an Order in Council would therefore be to restore another Northern Ireland exception to the general law applying in the rest of the United Kingdom. He suggested that it would be useful for colleagues to meet to discuss the matter to consider in particular whether it would be possible to build in sufficient safeguards short of the need for an Order in Council.

7. The Defence Secretary argued strongly in favour of the introduction of an Order in Council to reverse the Court of Appeal decision. His main concern was that the physical security of security force witnesses could not be guaranteed: while it might be possible to negotiate suitable arrangements if the witnesses were not compellable, this could not be guaranteed if witnesses were compellable. He also suggested that public interest immunity certificates would be a fragile basis for protecting operationally important detail, since too much would depend on coroners' willingness to accept our arguments. A further concern is that the appearance of security force witnesses at inquests would provide opportunities for anti-security force propaganda. He took the view that it would be better to introduce the Order in Council immediately rather than to await the outcome of the appeal to the House of Lords with a

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view to reversing it if the result were adverse.

8. The Northern Ireland Secretary fully supported the Defence Secretary's views. He did not believe that it would be unduly difficult to explain why the law needs to be different in Northern Ireland than in the rest of the United Kingdom; and he did not think this would have a significant impact on relations with the Republic. He agreed with the Defence Secretary that it would be better presentationally to introduce the Order in Council immediately rather than to await the outcome of the appeal to the House of Lords.

9. My own firm view, in the light of the very important security considerations to which the Defence and Northern Ireland Secretaries have drawn attention, is that we should maintain the decision taken at my meeting on 25 January. However, in view of the divergence of views among senior colleagues and of the Home Secretary's specific suggestion that we should meet to discuss the issue, I would propose to take this at a meeting of H, suitably augmented to include other interested Ministers.

10. I should be grateful to know if you share my view that subject to any new points which may emerge in discussion at H the right way forward would be to introduce an Order in Council to restore the status quo ante in advance of an appeal to the House of Lords. If so, I would ensure that, if the balance of argument in the Committee were against that view, the Committee did not come to a clear decision but that I should report their views to you.

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I am copying this minute to Sir Robin Butler.

A handwritten signature in blue ink, appearing to be 'JW', with a horizontal line underneath.

J W

14 June 1989

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