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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

10 July 1989

Dear Stephen,

ANTI-TERRORIST LEGISLATION IN NORTHERN IRELAND

The Prime Minister has seen a copy of your Secretary of State's letter of 6 July to the Home Secretary proposing a fundamental review of the whole field of anti-terrorist legislation in Northern Ireland. She has commented that she is very much against a major review so soon after the 1987 Act and thinks it will be upsetting for the security forces. Her preference would be to take powers simply to extend the Act after 1992. She would be grateful if colleagues would consider this suggestion in parallel.

I am copying this letter to the Private Secretaries to the Home Secretary, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Defence Secretary, the Secretary of State for Scotland, the Attorney General and to Sir Robin Butler.

Yours sincerely,

C. D. POWELL

Stephen Leach, Esq.
Northern Ireland Office

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SECRETARY OF STATE
FOR
NORTHERN IRELAND

Rt Hon Douglas Hurd CBE MP
Home Secretary
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50 Queen Anne's Gate
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NORTHERN IRELAND OFFICE
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LONDON SW1A 2AZ

*I am very much against
a major review so soon
after the 1989 Act. It will
be most upsetting
for the Security
forces. Perhaps I
take power to*

Prime Minister

*wonder if it is really
wise to pull the plant up
by its roots & start all*

6 July 1989

*over again. We have a
structure of anti-terrorist
legislation which we need: and
the assumption should be that*

Dear Douglas,

ANTI-TERRORIST LEGISLATION IN NORTHERN IRELAND

The Northern Ireland Emergency Provisions Acts will lapse in March 1992. My experience in putting together the 1987 Act suggests that much work will be involved in their replacement. It is, therefore, not too early to begin thinking about the new legislation that will have to replace them, either in whole or in part, and the relationship of that new legislation to the Prevention of Terrorism Act 1989

*we continue to need
it
unless
shown
otherwise.
EDP
7/7*

It seems to me essential that, as in the past, we secure a distinguished and suitably qualified figure to undertake a fundamental Review of the whole field of anti-terrorist legislation in Northern Ireland. I want to proceed rapidly with the selection of this Reviewer, and officials have already had some contact on the issue. I should accordingly much appreciate any suggestions for this task which you or copy recipients might have. However, the main purpose of this letter is to share my thinking with you and copy recipients about the scope and objectives of our Review.

My basic approach is conditioned by two factors: first, the Review will be important because it will help shape anti-terrorist legislation in Northern Ireland well into the 1990s; but at the same time the fact that we have commissioned an independent review will be important presentationally, especially abroad, where it will be central to our justification for having effective anti-terrorist legislation. Its value on both counts will, in my view, be enhanced if it is perceived by informed opinion, both at home and abroad, to be as wide-ranging, fundamental and resting on as few assumptions as possible.

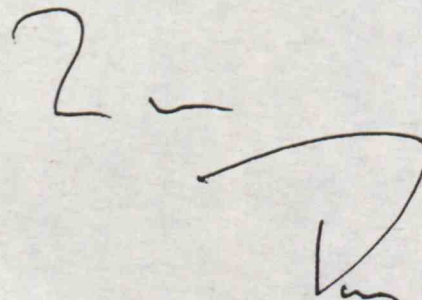
They don't

Against this background, the Reviewer should, as I see it, be asked to proceed on the assumption that our aim is that, so far as the exigencies of the situation in the Province allow, terrorism in Northern Ireland (and in GB) should be dealt with in accordance with the ordinary criminal law. But he should also proceed in the knowledge that it is our view - which will be reinforced in due course by many of the influential bodies who will make submissions to him - that, in the present and immediately foreseeable situation, some differences to the ordinary criminal law will continue to be needed to deal with terrorists and terrorist offences (once again in Great Britain as in Northern Ireland); but it must thereafter be for the Reviewer to decide and recommend in the light of his own conclusions precisely what those differences should be. Hence, in asking him to advise on the scope and content of future anti-terrorist law in the Province, we will be asking him to consider departures from the normal criminal law without pre-conceptions and to ensure that they are both needed and justified on first principles, and in the light of the evidence he finds. We would, in effect, therefore be asking him to proceed as if he had a blank sheet of paper before him. He need take nothing within the existing corpus of anti-terrorist law as given. Rather his task would be to examine the situation in the Province and only then, guided by the

representations and evidence he would receive, reach conclusions about what legislative provision is necessary in order to ensure that the security forces can effectively prevent, detect and deter terrorists and, ultimately, secure convictions in the courts.

The issues go, however, wider than purely Northern Ireland law. Because several of the exceptions from the ordinary criminal law applying only to terrorism and those suspected of terrorist offences in the Province are contained in the Prevention of Terrorism Act 1989, which is a UK-wide piece of legislation, the Review cannot avoid examining the continuing need, in the Northern Ireland context, for those provisions also. I would wish the Reviewer to consider, therefore, whether anti-terrorist provisions necessary in Northern Ireland could, or should, be contained in future in legislation applicable only in Northern Ireland. (However, I hope that you will accept that the corollary should also apply: if it appears to the Reviewer that the 'extra' provisions required only in Northern Ireland were either so few in number or insignificant that they could more conveniently be included in UK-wide legislation, then he should be free so to recommend.)

All this points, I believe, to casting the eventual terms of reference in wide terms, so as to place as few constraints as possible on the Reviewer. However, before drafting them, we need to settle our basic approach. Since this has implications which go beyond my own responsibilities, I should be most grateful for your and colleagues' views on what I am proposing. Copies of this letter go to the Prime Minister, James Mackay, Geoffrey Howe, George Younger, Malcolm Rifkind, Paddy Mayhew and Sir Robin Butler.



TK

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