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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

*How to await
Other replies*

The Rt Hon Peter Brooke MP
Secretary of State for Northern Ireland
Northern Ireland Office
Whitehall
London SW1

A

19 September 1989

Dear Peter:

NORTHERN IRELAND INQUESTS

Thank you for your letter of 15 September, in which you asked for my views on your proposal to defer the introduction of the Order in Council regarding the compellability of witnesses suspected of causing a death.

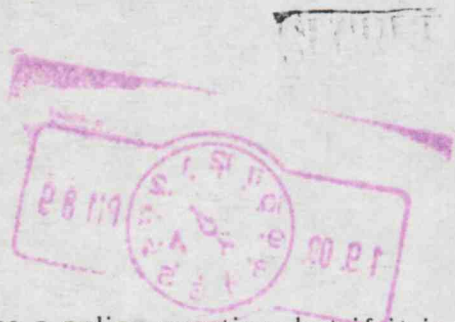
The discussion in H Committee in July this year, which confirmed the decision taken in January on the introduction of the Order, was recorded to be on the basis that the House of Lords appeal hearing was expected early next year. The Committee agreed that the presentational difficulties of the introduction of the Order would be still greater if it were to follow upon a ruling by the House of Lords upholding the decision of the Northern Ireland Court of Appeal.

The principal question, then as now, is whether it is essential for reasons of national security and physical safety, and in order to deprive terrorists and their sympathisers of propaganda opportunities, that witnesses who are suspected of having caused a death should not be compellable; or whether these concerns can equally well be met by ensuring that the witnesses, though compellable, are adequately screened. This question must be answered in relation not only to the three inquests but in relation to all future proceedings.

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That is of course a policy question, but if it is decided that non-compellability is essential, my own view is that, for the reason given above, the Order should be introduced as soon as possible, rather than waiting for the result of proceedings in the House of Lords - proceedings in which, as Senior Crown Counsel has advised, there is a substantial chance that the government will not be successful.

If, on the other hand, it is not thought essential that suspects should be non-compellable, we shall have to seek to have them protected, together with our other witnesses, by screening and by public interest immunity certificates. If the coroner rejects our submissions in any significant particular, and all appeals fail, we could then achieve the desired protection only by way of legislation. It seems to me that that would have to be limited to providing for 'enhanced screening' in specified circumstances, since if we were to go for non-compellability we should by then have to do so without being able to rely on the rationale of the Wright Committee's original recommendation which gave rise to the 1963 Order (double jeopardy): our true reason would be seen to lie in security considerations alone.

I am copying this letter to the **Prime Minister**, James Mackay, John Major, Douglas Hurd, Tom King, and to Patrick Walker and Sir Robin Butler.

Lawson

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