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Stormont Castle
Belfast BT4 3ST

Amend contents
R2

Rt Hon Lord Mackay of Clashfern
Lord Chancellor
Lord Chancellor's Department
House of Lords
LONDON
SW1A 0PW

29 September 1989

Dear James,

INQUESTS: DRAFT CORONER'S ORDER

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I understand that you were out of the country when I wrote to Patrick Mayhew on 15 September (under the heading Ballynerry Inquest). Since then I have been reflecting on the replies which I have received from Patrick, dated 19 September, and from John Major, dated 24 September. I have, of course, been conscious throughout both that the subject matter of the draft Order-in-Council falls within your responsibility and not mine and that a decision to go ahead with the draft Order-in-Council, so as to restore the position that persons suspected of having caused a death should not be compellable witnesses at an inquest, has already in effect been taken twice. Nevertheless, I hope that you understood, having read my letter of 15 September, why I, as a newcomer to the scene should have had the doubts which I there expressed about going ahead now exactly as originally planned.

I entirely take Patrick's point that the central question is a policy one and that it is essentially one for Tom King and for me. Put simply that question is: "can we be satisfied that sufficient safeguards will exist for members of the security forces as individuals, for their future utility as part of our security effort in Northern Ireland, and for the sensitivity of the information to which they may be privy or to which questioning of them may lead, if persons suspected of causing a death remain, as they are now in the light of the LCJ's judgment, compellable witnesses at an inquest?" As you will have seen from my letter to the Attorney General I wondered whether we might, after all, be able to rely on the range of existing safeguards as an alternative to what would inevitably be highly controversial legislation. As I have settled in to my current post, I have become ever more aware of the political difficulties which our decision to

legislate will create - and not least of course with the Irish. But I wholly accept Patrick Mayhew's argument that we have taken a decision and that, notwithstanding the fact that we now have a date for our Appeal to the House of Lords, the fundamental issues which have previously been considered at length by colleagues have not changed. Accordingly, and on further consideration, I would not now press my colleagues to accept the whole of the alternative approach to legislation which I offered in the last paragraph on page 3 of my letter to Patrick Mayhew. In the light of his reply, I will think further about whether it would be sensible or safe to let at least one inquest proceed on the basis of compellability but with the safeguards of PII certificates and the privilege against self-incrimination. But in the light both of the new factor introduced by the settling of a date for the Appeal hearing and of my concern about the political (and, indeed, possibly "security") effects of legislating in the next few weeks, given our current difficulties with Irish and some Northern Irish opinion on this side of the water, I would like to press my argument, that we should defer implementation of a decision to legislate until after the Appeal to the Lords has been heard.

I hope that you and other colleagues will be content with this. I am sending copies of this letter to the Prime Minister, John Major, Tom King, Douglas Hurd and Patrick Mayhew, and (as before) to Patrick Walker and Sir Robin Butler.

Lawson

Prin

PB

IRELAND: SIMONIAN pr 27.

