

RESTRICTED POLICY

FROM: N P PERRY
Security Policy & Operations Division
1 December 1995

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cc: PS/Michael Ancram (B&L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Legge - B
Mr Thomas - B
Mr Steele - B
Mr Bell - B
Mr Leach - B
Mr Brooke - B
Mr Watkins - B
Mr Daniell - B
Mr Wood (B&L) - B
Mr Stephens - B
Mr Bramley - B
Mr Maccabe - B
Mrs Collins - B
Dr Power - B
Supt Sayers RUC L/O
Mr Heaton, HOLAB - B



10/12/95

4/12

1. PS/Sir John Wheeler (B&L) - B: [Noted. J.W 4/12/95]
2. PS/Secretary of State (B&L) - B

PREVENTION OF TERRORISM ACT: EUROPEAN COURT OF JUSTICE JUDGEMENT:
JOHN GERRARD GALLAGHER

The Minister will be aware that judgement was given yesterday in the European Court of Justice in the case of John Gallagher, who was the subject of an exclusion order signed by the Home Secretary. The Court ruled that the decision to exclude Gallagher before the Home Secretary had received independent advice, and without Gallagher having had the opportunity to put his case to an independent adviser, was in breach of Directive 64/221/EEC (on the co-ordination of measures concerning the movement and residence of EC nationals on public policy or security grounds).

2. This submission provides initial advice on the likely implications of the decision. The Home Office are taking the lead

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responding but the judgement is of course relevant to the exercise of the Secretary of State's exclusion powers under the PTA.

Background and Implications

3. John Gallagher (who is no longer excluded from the UK) pursued a judicial review application against an exclusion order made against him in 1991 under the PTA, signed by the Home Secretary. The case was referred to the ECJ by the Court of Appeal for a ruling on two points. On 12 October, the Advocate General indicated that the ECJ would find against HMG on one of these points and yesterday's judgement confirms this.

4. The main result of the judgement is that an individual will from now on have to be given an opportunity to put his case to an independent adviser prior to an exclusion order being made. As the Minister is aware, the position hitherto has been that once an exclusion order is made the individual concerned has been removed from the relevant jurisdiction; it is at that point that he or she has been able to make representations against the exclusion and request an interview with the independent adviser. The ECJ ruling now requires that these procedures are completed before the decision to exclude is taken. This will require an amendment to Schedule 2 of the PTA. The question of compensation for those previously subject to exclusion orders may also arise.

5. The Home Office are now urgently considering how the ECJ's ruling can be met in the short term without releasing a suspect detained under PTA. Their initial view is that in due course a 'minded to exclude' procedure, not unlike a 'notice of intention to deport' regime under the Immigration Act 1971, will probably be needed. Pending an amendment to the PTA it will, however, be necessary to operate a regime within the spirit of the ECJ judgement. The Home Office therefore intend to ensure that an independent adviser will have a chance to interview any individual against whom an exclusion order is being considered, and to review the case against him within the permitted maximum 7 days detention under the PTA. This timescale, while tight, should in their view be

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possible. If this timescale cannot be met, legal advisers' advice is that the individual would have to be released.

6. While the Secretary of State has presently no exclusion orders in force, that position could change were the security situation to deteriorate. The NIO and RUC will therefore need to review their procedures also. We are in close touch with both the Home Office and the RUC on this issue. In the meantime, brief lines to take are attached.

Recommendation

7. The Minister and the Secretary of State are invited:

- (a) to note the possible implications of this ECJ ruling, and
- (b) that further advice will be provided shortly.

[signed]

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UES TO TAKE

Exclusion Orders

There are no exclusion orders from Northern Ireland presently in force. The judgement does not question the power to make exclusion orders, simply the procedures involved in making them. We hope that we will not have to use exclusion orders in the future, though while paramilitary organisations remain intact and in possession of weapons and explosives, the power to exclude remains an important part of the Government's counter terrorism armoury. If we do have to use exclusion orders again, procedures will take account of this judgement as appropriate.

Compensation

The case for exclusion is carefully considered in every case and found to be compelling. There is no evidence that earlier independent advice would have made any difference to this. It would be up to any person with a claim to show that he/she suffered loss as a direct result of the failure to follow procedures deemed necessary by the European Court.

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