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AUS (Security)
14 May 1993

To: 1. PS/Mr Mates (B & L)
2. PS/SofS (B & L)

cc: PS/Mr Atkins (DED, DOE & L)
PS/Lord Arran (DANI, DHSS & L)
PS/Mr Hanley (DENI, B & L)
PS/PUS (B & L)
PS/Mr Fell
Mr Ledlie
Mr Thomas
Mr Williams
NI Permanent Secretaries
Mr Blackwell
Mr Lyon
Mr Wood (B & L)
Mr Gibson
Mr Whitlaw
Director, TFU
Mr Stephens

TERRORIST EXPLOITATION OF THE CONSTRUCTION INDUSTRY IN NORTHERN IRELAND

1. The Secretary of State will recall that he asked officials to carry out further consultations about the proposals to prevent terrorist exploitation of the Construction Industry in Northern Ireland. David Gibson (DED), John Whitlaw (DOENI) and I have completed that exercise, and the purpose of this submission (which has been agreed by Gibson & Whitlaw) is to report its outcome, to identify options for the way forward, and to offer advice as to what we should do.

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Background

2. On 5 February we issued a consultative paper about the Government's proposals. In total, some 165 copies of the consultative paper were issued to 35 organisations and individuals. A distribution list is attached at Annex A. We asked for responses by 5 March, with a view to holding meetings during that month and reporting to Ministers by Easter. In fact, a number of respondents commented only after our deadline had expired, and we completed our round of meetings only in early May.

Outcome of the consultative exercise

3. Comments were received from 25 organisations and individuals. These are summarised in Annex B. With only a few exceptions, respondents recognise that fraud is widespread in the construction industry, and accept that terrorists may be exploiting the situation. Some query whether the problem is as widespread as the consultative paper suggests; others argue that terrorists may be organising frauds in GB as readily as in NI, and with greater profit. In terms of the detail of the analysis, those with personal experience of extortion would see that as the main source of terrorists' income; those with experience of other abuses such as sub contract malpractices or social security fraud see them as providing the main opportunity for substantial terrorist income. But in general, the analysis is endorsed, and respondents acknowledge that something should be done about terrorist exploitation of the industry.

4. The most important body representing construction employers (the Construction Employers Federation), while having a mixed reaction generally, supports payment by electronic transfer through a designated bank account. The largest construction trade union (the ATGWU) offers its support for the Government's proposals. But wider business interests, the professional bodies in the construction industry, and importantly the clearing banks, and other respondents have reservations about the effectiveness of the

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Government's proposals, reflecting four key concerns. First, some fear the proposals might have little effect on those individuals and organisations which ignore existing procedures: they argue that it is unrealistic to seek to regulate closely such a fragmented industry with so many casual workers; that certain employers would ignore the new regulations; and that there are areas of the Province where it would not be possible, without serious risk to life, to carry out inspections. Second, several anticipate an extensive administrative burden, and consider that smaller firms would find the measures extremely onerous. Third, the bankers foresee practical problems: they conclude that the present banking aspects of the proposals are unworkable, might result in additional costs for them for no benefits, and could result in a lower standard of service to existing customers. Fourth, there is concern about the impact on individuals: SACHR (which was not selected for inclusion in this round of consultations but has volunteered comments) advances the view that the effect of the proposed legislation would be unjust and would undoubtedly weigh heavily against some of the poorer sections of the community; they see the requirement for ordinary tradesmen and labourers to carry a registration card when working on building sites as inappropriate and contrary to human rights.

5. Several respondents express the view that Government has contributed to the problems of the construction industry by failing to enforce as vigorously as it could existing regulation arrangements. CBI, in particular, says it would be unable to support the introduction of wide ranging legislation, while there are alternative measures which do not appear to have been pursued. They recommend:

- (i) further efforts on all construction sites in Northern Ireland to enforce existing measures to deal with tax, social security and VAT frauds, coupled with additional resources for enforcement.

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- (ii) a role for the public sector in giving a lead by using its contracting power to introduce specific contractual conditions to assist in tackling abuse, for example specifying means of payment to sub contractors and employees.
- (iii) a role for voluntary measures by the industry itself including, for example, a register of contractors, and voluntary introduction of appropriate payment schemes.
- (iv) the introduction of heavier penalties for breaking existing laws.
- (v) a need to reconsider Revenue procedures and how to improve their effectiveness and enforcement, for example, by restricting the use of Tax Exemption Certificates, or obliging all contractors to operate Pay As You Earn on all payments to labour only sub contractors.
- (vi) better exchange of information among relevant departments and agencies.

Other respondents put forward separately proposals which replicate or could enhance the CBI package of measures.

Options

6. In sum, there is little whole hearted support for the Government's proposals: some have doubts about whether the problem is as extensive as our analysis revealed, and a rather larger group have doubts as to whether the proposals would solve the problem. None of the respondents has identified an obstacle which would mean that the Government's proposals would not work, although there is a strong lobby in favour of testing to the limit the enforcement of existing powers before seeking new powers.

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7. Against that background, there are essentially three options facing Ministers. One option would be to abandon the project; a second option would be to proceed with the proposals for new legislation; and a third would be to respond to that strand in the consultations which favours testing existing powers by attempting to set up and get results from a taskforce drawn from Government Departments and other agencies.

Abandon the project

8. The first option would be to say that the lack of support for the Government's proposals is such as to make it impossible to move forward at this time. Ministers could admit that it has not been possible to develop support among the wider business community for the Government's proposals to solve the problem. They could identify the complex technical issues which have arisen, notably the banking aspects, and could pray in aid the adverse public spending climate, and the difficulty of finding a legislative slot. But that would be to ignore the substantial body of opinion that there is a problem of fraud in the construction industry and that it has a terrorist dimension which it is necessary to tackle at the earliest opportunity. Following the leaking of the consultative paper, that view emerged strongly in public comments by the Northern Ireland Members of Parliament and the Northern Ireland media. Moreover, and most importantly, to refrain from taking action would be to afford the terrorists the opportunity to continue to exploit the construction industry.

Proceed with proposals

9. The second option would be for Ministers to proceed with a regulation scheme for the construction industry. They would seek to build on the consensus that the problem exists and should be tackled. They would point out that no respondent has come up with a more effective way of addressing the problem or has identified an insuperable obstacle to the Government's proposals. A disadvantage would be that the wider business community has reservations about

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Government taking new powers when it is not making, to their mind, the best use of its existing powers. While it would be possible to incorporate some interim measures in a programme to carry forward the Government's proposals, that is unlikely to satisfy CBI, the Northern Ireland Chamber of Commerce and Industry and the Northern Ireland Economic Council. So Ministers would have to anticipate a degree of criticism and less than full support.

10. Given the difficulty of finding a legislative slot, the first step might be to announce the proposals formally by way of a White Paper. Either by that means or some other, it would be necessary to afford an opportunity for consultations with the political parties and the Human Rights lobby, neither of which was included in the consultations to date. It would also be necessary to discuss in detail with the banks in Northern Ireland how the Government's proposals might be made to work. The Northern Ireland Bankers' Association has identified practical problems and disadvantages for their members, although it may be that their problems are not as intractable as they have suggested. Certainly Girobank plc and the building societies reacted more positively to the proposals. Proceeding with the Government's proposals would be a firm response to an urgent problem, and would, we believe, prevent the terrorists from continuing their frauds.

Task force

11. The concern of CBI and others with ineffective enforcement of the existing schemes operated by the Revenue Departments and the Department of Health and Social Services leads us to propose a third option. It might be possible to pull together under NIO leadership a task force drawn from existing departments - Department of Environment (NI), Customs and Excise, Inland Revenue, and Department of Health and Social Services - with an interest in preventing fraud. It would provide a means of focusing and co-ordinating the application of existing powers against terrorist exploited frauds and scams. It would require the co-operation of a wide range of Northern Ireland and United Kingdom departments, and would have to liaise closely with the RUC.

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12. Although much valuable work has been and is being done, the existing arrangements for tackling terrorist exploitation of the construction industry could be improved significantly. The key to dealing with terrorist financial crime is to cut off the opportunities to carry out or exploit frauds, and at the same time to attack the income of terrorists and their collaborators. The investigative and enforcement powers of the Revenue Departments are thus crucial. The RUC is not currently equipped to tackle complex fraud, nor does it have the jurisdiction over, for example, TEC and VAT fraud, so there are good reasons why they would not be able to develop further their current approach. The TFU has the expertise to tackle terrorist financial crime, but it has limited powers and resources, and a wide remit.

13. A dedicated taskforce which commanded the wholehearted support of UK and NI Government departments and the RUC could carry out detailed, intelligence-led financial investigations of individuals and groups, including financial advisers and front businessmen; it could seek to enhance the existing legal and administrative measures designed to prevent fraud against the Revenue and Social Security departments; it could promote fraud and loss prevention measures and deterrence among the clients of the industry; and it could encourage the construction industry itself to take action designed to disrupt and curtail sources of terrorist finances. It would have a clear focus on tackling terrorist fraud, which would mean that it would sit alongside the TFU. It would need access to the TFU intelligence database, and the use of TFU analysts. It might need to deploy a range of approaches, reflecting legal, investigative, accounting and technical disciplines. It need not be an expensive option, as its overall size is unlikely to exceed, say, 15-20 individuals, and a number of those should be drawn from officials already engaged in investigating and preventing fraud in departments other than NIO. In the first instance there could be a small planning team of 4/5 officials which would be able to say fairly quickly whether or not sufficient co-operation was forthcoming to ensure that the task force had a realistic prospect of success.

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14. While the option is attractive, offering a prospect of early action, there are also disadvantages. It could be seen as a climb down by Government, a retreat from taking the necessary powers to tackle the problem. It would require a major political impetus to secure the co-operation of the Revenue departments. While the Government could be seen to take early action, results might not come about quickly. Existing departments are unlikely to want to move quickly to improve their preventive measures, and financial investigation takes time to come to fruition. The regulation scheme proposed rested primarily on preventing fraud, whereas the task force option leans more heavily on a traditional investigative and prosecution approach. It follows that the task force option would not offer as high a probability of success as the Government's regulation proposals. Nevertheless, if whole heartedly supported, and given the impetus of the support of the Secretary of State and his Cabinet colleagues, such a task force could bring a new energy and commitment to dealing with terrorist exploitation of the construction industry. On that basis, it is our judgement that a task force would have a realistic prospect of making a significant impact on the problem.

Conclusion

15. If Ministers decide they do not wish to abandon this project, the options of a taskforce and proceeding with the Government's proposals are not mutually exclusive. Indeed, certain action would be common to both options, and for instance, it might be possible to press ahead with the development of a secure payments system which could operate on a voluntary or statutory basis, as Ministers determined. New legislation would take time to implement and there would be a case for the adoption of interim measures, that is, an approach not unlike the suggested taskforce. And equally, if the taskforce is the preferred option, it is more likely to gain co-operation from within the construction industry if it is presented in the context of a commitment to legislate if insufficient progress is made in the prevention of terrorist exploitation. There is a risk of losing impetus in the face of

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temporising by the construction industry and Government departments. To avoid that, Ministers might wish to take a preliminary decision now, and review it in 6 months time to satisfy themselves that adequate progress has been made and that the exercise has long term prospects of success.

16. Ministers are invited to note the outcome of the consultative exercise (paras 3 to 5 and Annex B); note the options available to them (para 7); consider the arguments set out in respect of each (paras 8 to 14); and determine the way forward. If they decide they wish to put in train action to tackle the problem of terrorist exploitation, Ministers may also wish to review their decision in 6 months time (para 15).

SGD

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ANNEX A

CONSULTATIVE PAPER DISTRIBUTION

<u>Wider Business Interests</u>	<u>Additional Copies</u>
CBI	25
NI Chamber of Commerce and Industry	5
NI Economic Council	23
Institute of Directors	
Chairman, Industrial Development Board	
NIC/Irish Congress of Trade Unions	20
Chief Executive, Tyrone Crystal	
<u>Construction Industry Employer Interests</u>	
Construction Employers Federation Ltd	
Construction Industry Training Board	
Secretariat, NI Construction Industry Advisory Council	30
██████████ Henry Brothers	
<u>Construction Trade Union interests</u>	
UCATT	
GMBU	
Furniture Timber and Allied Trade	
ATGWU	1
<u>Professional bodies</u>	
NI Builders Merchants Association	1
Royal Society of Ulster Architects	
Royal Institution of Chartered Surveyors	
Association of Consulting Engineers	
Institution of Civil Engineers	
Confederation of Associations of Specialist Engineering Contractors	4
Institution of Structural Engineers	
Institution of Mechanical Engineers	
Institution of Electrical Engineers	

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CONSULTATIVE PAPER DISTRIBUTION

Construction industry supplier interests

Additional Copies

Timber Importers Federation
Building Material Producers

Banks and building societies

Building Societies Association
NI Bankers' Association

17

Public Sector

NIPSA
Social Security Agency
HM Customs and Excise
Inland Revenue
RUC

3

Copies issued on request

SACHR
Central Secretariat

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ANNEX B

1. On 14 December 1992, the Secretary of State said that he would like a further consultative exercise carried out, with the object of developing support for the proposed regulation framework and inspectorate for the Construction Industry in Northern Ireland. On 5 February 1993, the Northern Ireland Office published to selected organisations and individuals a consultative paper on the subject. In total, some 165 copies of the consultative paper were issued to 35 organisations and individuals. The closing date for comments was 5 March 1993, but this was not applied rigidly.
2. In broad terms, most of the responses confined themselves to commenting on the Government's proposals. Views on the Government's proposals are grouped into six key areas: wider business interests; construction employer interests; construction trade union interests; professional bodies; banks and building societies; and human rights interests. Some respondents also emphasised the need to utilise more fully the existing legislation and enforcement resources, and this theme is dealt with in paragraphs 27 to 30 below.
3. Towards the conclusion of this round of consultations, the document was "leaked" to a journalist. There was limited reporting of its contents, and it was considered appropriate to forward copies to the Opposition Spokesmen and to the leaders of the Northern Ireland Parties. In addition, those Members of Parliament - Mr Trimble and Mr Amess - who requested a copy received one. The comments made in the media are summarised in paragraph 26 below.

Wider business interests

4. There were five responses which fall into this group: from the Confederation of British Industry, Northern Ireland Chamber of Commerce and Industry, the Northern Ireland Economic Council,

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the Chairman of the Industrial Development Board, and the Northern Ireland Committee of the Irish Congress of Trade Unions.

5. The views of CBI and NICCI show a high degree of convergence, and can be taken together. The following seven key points emerge:

- (i) Neither organisation dissents from the analysis of the problem put forward, and both indicate support for practical initiatives to tackle and defeat terrorist activity.
- (ii) Both see a major role for enhancing enforcement of existing legislation. CBI see a need for immediate action to address the various problems, and recognise that action which depends on legislation is likely to be longer term. The CBI's package of alternative measures is described in paragraph 26 below. NICCI believes that the problem of terrorist exploitation is, in part, the result of a failure adequately to enforce the present legislation.
- (iii) Both foresee practical problems with the Government's proposals, specifically as regards banking. They recognise that banks, building societies and other financial institutions are not obliged to open an account for any individual, and that a high proportion of construction industry employees, particularly those involved in casual labour may not already have bank accounts. Additionally, NICCI remarks that most companies operate a number of bank accounts, for example, for salary payments to senior executives which they would wish to keep in confidence.
- (iv) Both see significant costs. CBI see the administrative burden as extensive, and consider that smaller firms

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will find the measures extremely onerous. In addition to direct administrative costs in monitoring, recording and reporting the required data and obtaining the appropriate licences etc, they believe there is likely to be initial set up costs of appropriate IT terminals and necessary software. They believe that bank charges will add further costs. While larger companies may be able to absorb a significant percentage of the cost by using existing staff, there is some likelihood that the smaller firm will be disproportionately affected with an immediate impact on cost competitiveness. NICCI do not disagree with that view, and comment that compliance costs in regard to other Government requirements are already growing faster than any other sector of business costs. Related to costs, both also believe that the measures would put a considerable administrative burden on all construction employers and have a significant impact on flexibility. CBI believe that many of the practical problems that may arise could lead to costly delays and stoppages which, again, would have disproportionate impact on a smaller company.

- (v) Both express concern about the impact of the proposals on individuals. In particular, CBI is anxious with regard to the extent of personal detail which may be required for the registration cards, as carrying identification may pose certain dangers for employees in sensitive areas. NICCI is more concerned that employers could be placed in a position of denying work to some potential employees, in particular casual workers, if they have failed to register or have lost their card. Delays in the issue or renewal of registration cards could therefore have a profound impact on some families.
- (vi) Both also express concern that those individuals and companies involved in illegal operations would ignore the new regulations, by maintaining two sets of books or

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by joining the black economy, which would continue to exist and indeed might increase, because the additional burdens introduced by the new regulations would make it more attractive to trade off record. Allied to that, NICCI believe that larger companies would be likely to be further disadvantaged because they would incur costs implementing the system, while smaller competitors might be tempted to ignore it or resort to the black economy. CBI also see no reason why a system of licensing and registration should preclude the possibility of continuing fraud.

- (vii) Particularly in regard to the continued activities of paramilitaries, CBI believes that in major sites located in difficult areas, the inspectorate would not be able to undertake the necessary monitoring operations. They foresee that on many sites full security backup may be required, and are concerned that the measures being proposed may well have the effect of driving the problems further underground. NICCI note that workers currently paid by cheque tend to remove their cash soon after lodgement, and deduce that there would be nothing to prevent a worker who had a bank account making payments to terrorist organisations (presumably by way of extortion).

6. The Northern Ireland Economic Council also express support for the Government's broad intentions, but enter four reservations about the proposals:

- i) first, they would wish to see a quantification of the costs and benefits;
- ii) second, they would welcome a comparison of the proposals with other options, such as a more rigorous implementation of existing regulations;
- iii) they would like to see a compliance cost assessment;
- iv) they believe the practicalities of implementing the

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scheme may not have been clearly thought through, particularly with regard to electronic funds transfer, as well as possible problems in issuing registration cards to building workers. They suggest a working group of relevant interests.

7. Mr McGuckian, Chairman of the Industrial Development Board, believes that on the one hand those who wanted to get around the regulations could do so; and on the other hand, the rest of the industry would be involved in expensive controls, which would suffocate a lot of small businesses. He believes that the loss of individual freedom would be a major victory for the men of violence, and indicates a lack of sympathy for the type of approach proposed in the consultative paper.
8. The Northern Ireland Committee of the Irish Congress of Trade Unions welcomes the intentions underlying the consultative paper, and acknowledges that racketeering in the construction industry is a major source of fraud which helps fund terrorist groups. The Committee is, however, concerned about the proposed registration scheme. It sees advantages in a scheme designed to combat fraud in the construction industry, and not only terrorist abuse. It would prefer the registration scheme to be less overtly an anti terrorist measure, and not so closely identified with the Northern Ireland Office and RUC. It would wish to have a clear cut mechanism of appeal for those who are refused registration or are deregistered at a later date. The Committee also has difficulties with the need to carry "identification cards": it is concerned that what is proposed is almost an embryonic system of national identity cards; and that the proposed card would carry details which would identify those from one section of the community who might be working in a neighbourhood predominantly occupied by the other section of the community. It believes that the scheme could not be proof against counterfeiting, and that the paper is over-ambitious in its views of the ability of the proposed scheme to eradicate terrorist racketeering.

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Construction industry employer interests

9. Six responses have been received from construction industry employer interests. Of those, the Construction Employers Federation Ltd is the most important. The Construction Industry Training Board aligns itself with the response of its Chairman, [REDACTED]. There is a response from the Northern Ireland Housing Executive. There are also responses from two individuals, [REDACTED] of Henry Brothers, and [REDACTED] of John Sinton Ltd.
10. The Construction Employers Federation make the following points:
- i) They are concerned that those who are determined to find a way around the regulation scheme may be able to do so no matter how tight the enforcement;
 - ii) they are anxious that any additional regulation of their industry should provide a level playing field, that is should be enforced equally on large and small employers;
 - iii) they consider PIRA gets the bulk of its construction related money by site collections from individual workers;
 - iv) they are aware of an upsurge in social security fraud (but not in other frauds or extortion) and are concerned that insufficient attention is given to this in the Government's proposals;
 - v) they would like to see registration cards (if introduced) held by social security offices while individuals were unemployed;
 - vi) they express doubts as to a number of the proposed mechanisms, and do not believe the existing proposals would solve the real problem;
 - vii) they support payment by electronic transfer through a designated bank account, and subject to the addition of measures to deal with social security fraud, they believe that a workable and effective package could be put together;

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- viii) the Government is avoiding its responsibilities: under the current tax regime, persons who are in practice employees are treated as self-employed, and have the opportunity to evade payment of tax; Government should improve the tax and social security systems, rather than add a new system;
 - ix) they would welcome further discussion being restricted to those with a practical role in terms of the construction industry and its future.
11. The Northern Ireland Housing Executive welcomes the proposals, recognising that any solution to the problem would have to be underpinned by legislation and enforced by Government. A number of the proposed mechanisms have already been adopted as good practice by the Housing Executive, including payment by automated credit transfer and disqualification from tendering of those firms convicted of social security or tax abuses. They do, however, seriously doubt whether Government can police the registration requirements in an industry with a highly mobile workforce. Theirs is the only response in this group to raise the question of costs: it foresees that tender costs will rise, and makes an early bid for an increase in NIHE funding to compensate.
12. [REDACTED] a leading contractor and Chairman of the Construction Industry Training Board, believes that the paper is well informed, and that if the regulation scheme could be implemented, it would be a very good thing for Northern Ireland. But, like the Housing Executive, he sees a difficulty in getting it adopted comprehensively: his concern is the fragmentation of the industry into a large number of small competing firms, and the presence of a large number of labour only sub-contractors, who currently keep no records and will not do so, even where there is the incentive of being paid gross (ie no deduction of tax). His Chief Executive makes the point that it would help to foil social security fraud if those registered on the scheme had to surrender their card in order to draw social security benefit.

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13. [REDACTED] of Henry Brothers also indicates support for the scheme, conditional on its being enforced equally against all, and its being administered in such a way as not to impose costly delays on contractors. He raises some interesting cases:

- i) he identifies the vast range of diverse creditors of building firms, and indeed of employees, and wonders how the scheme would apply to payments to such people;
- ii) he also points out that some construction companies are part of a group involving other activities, and within a group there will be transfers of funds and management charges, which could disguise frauds unless monitored closely;
- iii) he considers that the problems are at least partly of Government's making; and
- iv) he offers the view that there is a high level of fraud in Great Britain, and that terrorist groups are involved in the construction labour market in GB. He advocates a holistic approach to an overall national problem.

He emphasises the onus is on Government to provide evidence that the problem exists, in order to convince the construction industry to accept the proposed costs and burdens.

14. [REDACTED] does not think that the problem justifies the proposed solution. He considers that builders already have enough regulations to contend with, and that, over time, they would cause to fall into disuse a system which relied on them checking registration cards and doing business by electronic transfer. He believes that the existing statutory agencies have sufficient powers to deal with the problem.

Construction trade union interests

15. Of the trade unions involved in the construction industry, only the largest, the ATGWU, responded. [REDACTED] emphasises

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that the Union is (and he anticipates other Unions would be) behind Government in tackling the problem of terrorist exploitation of the construction industry. He agrees that the fraudulent practices identified in the consultative paper are not peculiar to Northern Ireland, but that the Government's concern is quite properly with the use to which the proceeds are put in Northern Ireland. He believes that the costs are infinitesimal, compared to the benefit that the community could reap from the introduction of the scheme.

16. Concern had apparently been expressed in the Joint Council of the Construction Industry that the introduction of an overtly anti terrorist measure would mean admitting that the industry is experiencing a high level of corruption, and that in turn could drive contracts away from Northern Ireland companies. Mr Freeman is similarly concerned that the introduction of the regulations scheme could be projected by mischievous people as another set of emergency provisions - the argument that NI has to be treated differently from the rest of the United Kingdom - and Government would have to address the public relations issue, particularly as the industry is a major employer of Roman Catholics. Government would also have to be prepared to operate the scheme with care and sensitivity. The ATGWU undertakes to do everything possible to assist the Government on this occasion, and to make common cause with the employers in the industry, and would if necessary make their support for Government known in public.

Professional Bodies

17. There were seven responses from professional bodies within the construction industry: architects, chartered surveyors, civil engineers, structural engineers, and specialist engineering contractors. Their views have a number of common points:
- i) none admits experience of the problem, and, for example, the specialist engineering contractors representing the

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larger sub-contractors say that their members certainly did not engage in sub-contract fraud;

- ii) nonetheless, several take the view that the measures proposed would not work because they could not be enforced in certain areas of the Province; associated with that is a concern about the security of those who would be expected to enforce the scheme;
- iii) there is also a concern that such a scheme would simply displace fraud into, for example, computer fraud; and would displace those engaged in social security fraud into the black economy; and would displace terrorist fraud into robbery and extortion;
- iv) while some argue that the majority of contractors endeavour to employ only bona fide labour, one respondent admits that contractors can make profits at present only by taking the lowest available sub-contract tender, and that means turning a blind eye to social security fraud and other abuses;
- v) the specialist engineering contractors are very concerned at the widespread use of domestic contractors: in effect a builder submits his tender, priced on the basis of a sub-contract bid by a member of CASEC; if the tender is successful, he may not follow through on the original sub-contract but offers the work to other sub-contractors in search of the keenest price; the client would not get the value of the reduction in contract cost;
- vi) there is a general concern at the probable expense that builders would incur from having to comply with the new arrangements;
- vii) there is a widespread feeling that the problem should be dealt with by the existing bodies and procedures, if possible enhanced by a central office to enable employers to check the validity of documents presented to them.

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18. The Institution of Civil Engineers, while making some points similar to those outlined above, has a forceful analysis:
- i) they agree that the problem of terrorist exploitation needs to be tackled, but are not aware that the construction industry is involved to the extent alleged;
 - ii) they foresee that registration cards will not solve the problems of forgery and use of false names; and that companies will evade the requirement to operate through a single bank account;
 - iii) they believe the inspectorate will not be able to stop the present abuses of the system, and so will in effect penalise the honest, and do nothing to halt the dishonest;
 - iv) the proposals would set NI apart from the rest of the United Kingdom, provide ammunition for those who claim the situation is abnormal, and give the Province bad publicity;
 - v) the problems of control and tracing of self employed are no different than in the rest of the UK;
 - vi) there are already wide powers available, and it would be more cost effective to add the proposed 75 additional posts to the RUC anti racketeering squad.

Banks and Building Societies

19. The Building Societies Association considered the proposals, and feel that measures to reduce terrorist exploitation are to be welcomed, and would be fully supported by building societies. Officials also had meetings with the Northern Ireland Bankers' Association, Girobank Northern Ireland and with [REDACTED] Managing Director of First Trust Bank. NIBA concluded that the proposals are unworkable, might result in additional costs for them for no benefits, and could result in a lower standard of service to existing customers.

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20. Specific points raised by the bankers against the proposals are:

- i) it is unreasonable to expect small building firms to have sophisticated payroll departments, and to forward all the information for electronic transfer: only the largest firms would use computer compatible media; transaction details would vary from week to week; and if 40,000 transactions had to be keyed in weekly, that would stretch the resources of banks;
- ii) there are also risk issues - there would be employers and employees who did not already have bank accounts and whom the banks would not want as customers; banks have the right to decide whom they wanted as customers;
- iii) the Government's proposals would mean a bank inputting data through BACs say on Wednesday to make payments on Friday, without any guarantee that the employer's account would have adequate cleared funds on Friday; in effect, the bank would be guaranteeing the transaction; this is not a service the banks would wish to offer widely, particularly to building firms which are notoriously unreliable as customers;
- iv) there is a risk that the Government's proposals would encourage frauds against the banks: the banks are concerned about the possibility of customers entering into collusive frauds; the security of cash withdrawal cards depended on customers keeping confidential their PINs; and giving a customer a cheque book and guarantee card was the equivalent of the bank guaranteeing an overdraft of £3,000;
- v) the banking system in NI could not cope with the volume of additional transactions proposed: it had to be assumed that every week 40,000 workers (ie employees and self employed) would want to withdraw their full week's wages from a bank - they would block bank counters, and cause a deterioration in service to existing customers;

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- vi) there would be problems in ensuring that branches had sufficient cash to service the demands of building workers;
- vii) they had considered offering a withdrawal service only through Automatic Teller Machines, but these would not allow withdrawal of the precise amount of wages earned, and there would still be problems about ensuring stocks of cash and avoiding inconvenience to existing customers.

21. The meetings held with [REDACTED] and Girobank NI were more positive. While expressing concern that the scheme as outlined would be unprofitable for the operating banks, and emphasising the need to avoid shifting the focus of terrorist fraud to the banks, both considered that the proposals were not unworkable. Among the points made were

- i) it might be possible to restrict new account holders or to encourage new account holders to withdraw their money by cash dispenser cards: that would help the banks considerably; but there would be drawbacks - in general, cash dispenser machines tend to hold notes of fairly large denominations, and a worker would not be able to withdraw anything less than £10; so he would have to leave part of his salary in his account until it mounted up to a round sum of £10; there were other possibilities, such as the employer rounding up the amount, or the bank rounding up the amount, although in the latter case there were bound to be charges;
- ii) an electronic transfer system would operate most efficiently if the banks could be presented with composite instructions on magnetic tape; there were various options to accomplish that - there were private sector pay roll bureaux which already undertook the preparation of pay rolls for large employers and one

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could be commissioned to do so on behalf of the construction industry as a whole; another option would be for one bank to undertake the work - if all employers held accounts with that bank, it could prepare magnetic tape instructions to pay staff via each of the different banks in which staff held their accounts;

- iii) under Bank Giro, a client makes a payment to a bank with his instructions, and the bank having secured its money then forwards the instruction, so that the bank's money is never at risk;
- iv) At one time, Giro bank had operated an internal electronic transfer scheme on behalf of employers, whereby the employer was required to make an upfront payment and Giro bank then paid wages on his behalf; the scheme had fallen into disuse only because Giro bank had changed its marketing strategy;
- v) Bank Giro, or some electronic system, is seen as preferable to the use of non transferable cheques - the latter were high in cost and imposed a liability on banks, as well as not having a guaranteed clearing period;
- vi) if necessary, it would be possible to devise a stand alone electronic transfer scheme to be operated either by all financial institutions in Northern Ireland, or by one bank on behalf of all financial institutions in Northern Ireland;
- vii) there would be individuals to whom neither Giro bank nor any other bank would wish to offer such a current account, either because they were fraudulent or they had a history of bad debt; in the case of Giro bank, it might be possible to offer people a link account, that is a deposit account, (thus limiting the potential for fraud) with a cash card;

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viii) financial institutions in Northern Ireland could have problems with potentially up to forty thousand individuals wishing to obtain cash across the counter every week - the banks had only some 300 branches; in the case of Girobank, it operates through six hundred and fifty post offices, and it had for some time been a selling point for Giro bank that no one was more than a mile or two from a post office.

Human Rights Interests

22. Comments have been received from the Standing Advisory Commission on Human Rights, and from the NI Association for the Care and Resettlement of Offenders.
23. In coming to a conclusion that the proposals are not appropriate, SACHR offers the following views:
 - i) there can be no doubt that various funds are obtained from the construction industry, which may well find their way into the hands of terrorist organisations;
 - ii) in general, when one employer employs another in the construction industry, there is no abuse of statutory arrangements: this is contrasted with engagement of workers "on the grip" or as a "lump labour force": in the latter case, prices are cheaper reflecting abuses of employers liability insurance, National Insurance, income tax and other exchequer requirements, and safety regulations;
 - iii) the consultative paper fails to take into account the social background to the construction industry - wages are low, employment uncertain, unemployment high, and doing the double is not socially stigmatised;

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- iv) requiring ordinary tradesmen and labourers to carry a registration card when working on building sites is inappropriate and contrary to human rights; it would be seen as an identity card, and would become widely used outside the construction industry;
- v) there would inevitably be political consequences in further alienating large and important sections of the community;
- vi) the requirement to carry a registration card would have security implications and this might put people's lives at risk, in addition, their safety could be compromised by the existence of duplicate photographs in Government Departments or in the offices of employers;
- vii) the proposed scheme to compel working men to open bank accounts is inoperable: periodic changes of employment could result in workers having several weeks in the course of a year when they had no income; the disruption to family income would be continuous rather than 'once and for all'; it is unrealistic to expect workmen to keep bank accounts in credit, and they might therefore attract bank charges;
- viii) it is unrealistic to expect 'employers' to make credit transfer payments as many of those described as employers are no more than modest tradesmen;
- ix) in any event, cash would continue to be paid, and extortion would continue to be extracted as at present;
- x) the proposal to employ 75 additional civil servants to administer the scheme would be an unwarranted expense - arguably the money could be more cost effectively deployed on the enforcement of safety requirements;
- xi) there is no objection to the use of documentary evidence as evidence of employment to show for how long a bogus social security claimant has been working;
- xii) legislation with such a far reaching effect would be unacceptable without a complete parliamentary debate;

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- xiii) the commission rejects the proposal on disqualification: once a person has paid his debt to society, that person ought to have a right to a livelihood; to punish a tradesman or labourer by depriving him of the right to engage in his industry is deeply offensive to any basic concept of human rights and totally out of proportion to the perceived problem;
- xiv) the disqualification proposals appear to be at variance with existing provisions governing unauthorised disclosure of spent convictions, and with international obligations undertaken by the UK;
- xv) the parallel drawn in the consultative paper with professional bodies self regulatory powers is unwarranted; the proposal that a court would have to give reasons for not disqualifying a person is absurd; and to punish in the criminal law and disqualify a tradesman or labourer from pursuing his employment is not acceptable;
- xvi) the effect of the proposed legislation would be unjust, and would undoubtedly weigh heavily against some of the poorer sections of the community; the proposals go far beyond the exigencies of the situation.

24. [REDACTED] makes the following points on behalf of NIACRO:

- i) it would have a major concern about the potential in the proposals for increased discrimination against ex-offenders seeking employment;
- ii) the construction industry provides useful activity for a relatively unskilled labour force: to close this avenue to ex-offenders would be likely to leave them unemployed, unattached and without a stake in society;
- iii) only offences committed after the coming into force of the legislation, relevant to the issues being tackled by the legislation, should be considered as impacting on the granting of licences;

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25. However, because NIACRO was not on the original list of consultees, [REDACTED] had not had an opportunity to consult his Executive Committee and will write again when he has. On a personal basis, he offers his support for the intention underlying the proposals. He hopes that improved regulation of the construction industry would reduce the number of workers making fraudulent claims for benefit. He believes that a major consequence would be a rise in wage levels in the building trade.
26. The leaking of the consultative paper led to limited media coverage. Only the Belfast Telegraph had editorial coverage - "In principle, the Government's moves deserve public support" - and politicians were prominent among those offering views:
- i) Brian Feeney offered a 'broad welcome' - "What I am most keen on is registering building contractors and taking cash off the sites";
 - ii) Peter Robinson also welcomed the proposals, but said "If the Government are asking people to stand up to the paramilitaries the proposals must provide adequate protection for such people";
 - iii) David Trimble MP said in principle he backed any plan "that will deal with paramilitary racketeering and cut off the flow of money to terrorist organisations";
 - iv) Ulster Unionist MPs Ken Maginnis and Cecil Walker both welcomed the scheme in principle.

Alternative Ways of Tackling the Problem

27. Several respondents express the view that Government has contributed to the problems of the construction industry by failing to enforce as vigorously as it could existing regulation arrangements. A number of respondents, including

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the Northern Ireland Economic Council and the Northern Ireland Committee of the Irish Congress of Trade Unions would wish to see this issue, and the way forward in general, explored by a working group, representative of the construction industry, the financial institutions, and Government including the Revenue Departments.

28. CBI take the view that the various problems require immediate action, which could not await legislation. They see a need for a task force to include representatives from DHSS, Inland Revenue, Customs and Excise, Department of the Environment, Northern Ireland Housing Executive, Northern Ireland Office, Cl(3) and others. They foresee that it might be appropriate to involve representatives of the construction industry in certain aspects of the task force.
29. Combined with the above initiative, CBI recommend:
- (i) further efforts to enforce existing legislation on all construction sites in Northern Ireland, coupled with additional resources for enforcement.
 - (ii) a role for the public sector in giving a lead by using its contracting power to introduce specific contractual conditions to assist in tackling abuse, for example specifying means of payment to sub contractors and employees. (Mr Martin also supports a lead role for the public sector, and CASEC would wish to see a move to nominated subcontracts. The Construction Employers' Federation favours a scheme to give a 5% price advantage to honest firms tendering for public sector business.)
 - (iii) a role for voluntary measures by the industry itself including, for example, a register of contractors, and voluntary introduction of appropriate payment schemes.

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- (iv) the introduction of heavier penalties for breaking existing laws.
- (v) a need to reconsider the administration of revenue enforcement schemes, for example restricting the use of TECs or obliging all contractors to apply PAYE. CBI recognise that such changes would have a UK impact, but emphasise that fraud and abuse in GB are just as prevalent as in NI, and that terrorist organisations could also exploit the construction industry in GB.
- (vi) better exchange of information among relevant departments.

30. Other respondents put forward separately proposals which replicate or could enhance the CBI package of measures:

- i) [REDACTED] of the Construction Industry Training Board supports a lead role for the public sector;
- ii) CASEC would wish to see a move towards nominated subcontracts, ie the main contract would specify by whom and at what price each subcontract was to be carried out;
- iii) NI Housing Executive, ATGWU and SACHR are in favour of requiring the engagement of construction employees on a PAYE basis;
- iv) the NI Committee of the Irish Congress of Trade Unions believes that there would be merit in a broad based measure to combat all fraud in the industry (that is, not overtly targetted on terrorist fraud) and that under such a scheme the main contractors should retain responsibility for sub contractors down the line, including those who sub contract to sub contractors;
- v) the bankers would favour a requirement under tax legislation to disallow the deduction as a business expense of any wages paid to a person presenting an inaccurate or no National Insurance number - they

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believe that a similar system works well in USA and acts as a deterrent to collusive fraud by employers;

- vi) the Royal Institution of Chartered Surveyors proposes a central office to respond to employers' concerns about the validity of TEC and other documents.

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