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Copies to: OOS
 Col G. (JW)
 Col JG (IP)

ARREST POLICY

1. The issue of a new Directive by CLF raises the question of whether any adjustment is required to our arrest policy.

2. Arrest policy is of course in political terms a critical issue, at the heart of our military profile, and in previous Directives we have based our instructions closely on guidance which we have received from the Northern Ireland Office. Therefore - at the risk of slowing down the process of issuing our Directive - I must advise strongly that any important change which we wish to incorporate should be agreed by Minister. There is also the point that unless we carry the RUC and MI 12 etc with us, we are likely to find that persons will be released after arrest because the machinery for keeping them in custody will not be in operation.

3. The problem is to decide whether, and if so in what form, our arrest policy should be adjusted in respect of Protestants. Our present arrest instructions provide that soldiers are to arrest, in addition to persons caught red-handed in the act of committing an offence, persons in the following categories:

- a. Anyone against whom there is known to be evidence to justify the preferring of criminal charges.
- b. Anyone against whom there is thought to be evidence which might, after questioning, justify the preferring of criminal charges.
- c. Anyone known to be holding officer rank in the Provisional IRA even though there is no evidence to justify criminal charges.
- d. Provisional IRA volunteers who, on the strength of reliable intelligence, are known to be an exceptionally serious threat to security.
- e. Anyone in the company of a person arrested "red-handed" if the arresting soldier suspects him of having committed or being about to commit an act prejudicial to peace.

4. From this it will be seen that arrests are linked to the prospect of bringing criminal charges, except in the case of categories c and d - ie. Provisional officers and certain volunteers.

5. The policy does not therefore provide for the arrest of Protestant terrorists except with the object of bringing a criminal charge. Protestants are not, as the policy stands, arrested with a view to their being made subject to Interim Custody Orders (ICO's) and brought before the Commissioners.

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6. The Secretary of State has said, in laying down in his letter to the COC of 6th November the criteria which he uses in signing ICOs, that:

"In view of recent developments, Protestant terrorists may fall to be dealt with under the new Order. It is not possible at the moment to define the categories which I will be prepared to consider for interim custody and for the time being I will consider applications in respect of them on their merits."

This may merely indicate that S of S will consider an application for an ICO for a Protestant who at the time of arrest is believed to fall in the "criminally chargeable" category but who subsequently, while in custody, turns out not to be chargeable. If this is all that S of S's statement about Protestants means then no amendment to our arrest policy is called for.

7. If, on the other hand, we are to arrest Protestant terrorists who are not chargeable (for the same evidential reasons which lead us to resort to detention rather than prosecution for many Provisionals), then we need to extend our policy. This would be a big step to take. In favour of such an extension are the following factors:

a. There are Protestant terrorists who fall in this category, and also within the terms of the Detention of Terrorists Order (which provides at Section 4(1) that "where it appears to the Secretary of State that a person is suspected of having been concerned in the commission or attempted commission of any act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism the Secretary of State may make an order (hereinafter referred to as an "interim custody order") for the temporary detention of that person.").

b. The detention of Protestant terrorists would demonstrate the impartiality, in a sectarian sense, of the Army's policy and of the ICO and Detention machinery.

8. The following factors on the other hand argue against such an extension:

a. It is very difficult to lay down precise criteria for arrestable Protestant terrorists. (because we don't know enough about their Order etc. To talk about "Officer etc - as in our own of the Paper")

b. Arguably this is not the moment to start arresting Protestants for detention; there has been something of a decrease in large-scale organised Protestant terrorism, and detention of Protestants (and particularly the arrest of leaders such as Herron) might provoke a backlash which it would be difficult to contain.

c. It could be argued that it is better to struggle on with our present arrest policy than to undertake any radical new departure which might upset the run-up to the White Paper, etc, in unforeseen ways.

9. The position is therefore delicately balanced and must depend upon the political guidance which we are given. I suggest that we should seek a ruling on whether something along the following lines might be added to the categories of arrestable persons set out above:

"Protestant terrorists who are known on the strength of reliable intelligence to be an extremely serious threat to security, and for whom, in the absence of evidence which could form the basis of a criminal charge, a strong case could be made for an interim custody order."