

CONFIDENTIAL

Annex A

NOTE ON THE LEGAL BACKGROUND

1 Under section 2(2) of the Northern Ireland (Entry to Negotiations etc) Act 1996, the Secretary of State is under a duty to invite nominations from the nominating representative as soon as practicable after the elections. However, under 2(3) of the 1996 Act, the Secretary of State is under a duty **not** to invite nominations from Sinn Fein if, and for so long as, she considers the requirements in paragraphs 8 and 9 of the Command Paper¹ have not been met in relation to Sinn Fein. Whether or not they are met is a question of fact for the Secretary of State to determine in the light of all the information known to her. She is concerned only with whether they are now met. In reaching her conclusion, she must take into account all relevant considerations known to her and ignore all irrelevant considerations. The Secretary of State must be careful not to impose requirements additional to or different from paragraphs 8 and 9 or Command Paper 3232, since to do so would expose her to judicial review. Whether or not it would be politically desirable for Sinn Fein to be represented at the Talks is not relevant to the determination and should be ignored.

2. If the decision at the end of August is negative, given the expectations raised, the Secretary of State would still need to make an announcement indicating the reason and stating that she would keep the situation under review.

3. If an invitation to talks has been issued and later events demonstrate that the ceasefire is not after all unequivocal, or other requirements in the Command Paper are no longer met, the invitation must, under section 2(3) of the 1996 Act, be withdrawn by the Secretary of State at any point up to 9 September. If such events should occur after Sinn Fein enters talks on 9 September and therefore after their commitment to the Mitchell principles, the view taken to date is that Rule 29 of the Rules of Procedure would then govern the situation. This provides that, if a formal representation is made to the Chairman that a participant is no longer entitled to participate on the grounds that they have "demonstrably dishonoured" the Mitchell principles, the matter becomes one for appropriate action by both Governments.

¹ These requirements are to establish a commitment to exclusively peaceful methods and to have shown that they abide by the democratic process.

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