



An Chartlann Náisiúnta
National Archives

Reference Code: 2019/101/2207

Creator(s): Department of Foreign Affairs

Accession Conditions: Open

Copyright: National Archives, Ireland.
May only be reproduced with
the written permission of the
Director of the National
Archives.

RESTRICTIONS ON BROADCASTING IN IRELAND AND BRITAIN

Irish legislation

Previous legislation

Section 31 of the Broadcasting Authority Act 1960 empowered the Minister for Communications to direct the [RTE] Authority in writing to refrain from broadcasting matter or matter of any particular class. The section also required the Authority to comply with the direction.

An Order was made on foot of this section on 1 October 1971 and supplemented by a further Order on 18 October 1976. The initial Order required RTE to refrain from broadcasting any matter of the following class, ie any matter that could be calculated to promote the aims or activities of any organisation which engages in, promotes, encourages or advocates the attaining of any particular objective by violent means. In 1976 the supplemental order required RTE to refrain from broadcasting interviews or reports of interviews with spokesmen for the IRA, Provisional Sinn Fein and any organisation classified as unlawful in Northern Ireland.

Current legislation

The Broadcasting Authority [Amendment] Act 1976 provides that the Authority is prohibited from including in any of its broadcasts or in any written or recorded material which is published, distributed or sold by RTE anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.

In addition, s 16 of the Amendment Act repealed and re-enacted s 31 in three new subsections. The first provides that where the Minister for Communications is of the opinion that the broadcasting of a particular matter or any matter of a particular class would be likely to promote, or incite to, crime or would tend to undermine the authority of the State, he may by Order direct the Authority to refrain from broadcasting the matter or

any matter of the particular class and the Authority shall comply with the Order.

The next two subsections provide that any such Order may remain in force for up to 12 months and that every such order shall be laid before each House of the Oireachtas and may be annulled by Resolution of either House passed within the next 21 sitting days.

The effect of the amending Act of 1976 in relation to the 1960 legislation was to confine an Order to the specific purpose stated in the Act; to provide that it has a maximum life span of 12 months; and to provide the opportunity to either House to annul the Order.

The first Order under the "new" s 31 was made in 1977.

The current provision governing restrictions on broadcasting is the Order of 1987 which was renewed most recently in January of this year until 19 January 1990 [copy attached].

The present restrictions reiterate the first sub-section of the "new" s 31. They also prohibit RTE from broadcasting any interview or report of an interview with a spokesman or spokesmen of the IRA, Sinn Fein, Republican Sinn Fein, UDA, INLA and any organisation proscribed in Northern Ireland under the Northern Ireland [Emergency Provisions] Act [these include the UVF, and UFF].

In addition, the Order prohibits any broadcast, whether purporting to be a party political broadcast or not, made by, or on behalf of, or advocating, offering or inviting support for Sinn Fein as well as any broadcast by any person representing or purporting to represent Sinn Fein. [These provisions were added when RTE in accordance with the standard procedures for the allocation of air time for party political broadcasts offered such time to Sinn Fein on the occasion of the general election in February 1982.]

Consideration of the new legislation by the courts

A Sinn Fein candidate at the 1982 General Election sought an order quashing the prohibition on broadcasts by Sinn Fein on the ground that the "new" s 31 violated the Constitution [Lynch v Cooney - 1982]. The action succeeded in the High Court but was successfully appealed to the Supreme Court where it was held that the State had a Constitutional obligation to intervene to prevent television or radio broadcasts aimed at advocating or securing support for organisations which seek to overthrow the State or its institutions by violence, or which would in any way be likely to have the effect of promoting or inciting to crime or endangering the authority of the State.

The Supreme Court also held that the "new" s 31 did not exclude review by the courts and that any opinion formed by the Minister must be one which is bona fide held and factually sustainable and not unreasonable.

It went on to say that a democratic State has the clear and binding duty to protect its citizens and its institutions from those who seek to replace law and order by force and anarchy, and the democratic process by the dictates of the few. It is abundantly clear that the Minister was not only justified in forming the opinion that he did form, but, also, that he could not have formed any other.

Other aspects of the application of the legislation

The most recent application of the legislation related to an interview of Martin McGuinness carried by RTE's Morning Ireland programme on 15 March 1988. It resulted in the dismissal of the journalist Jenny McGeever.

The NUJ has been preparing a challenge to s 31 in Strasbourg for some time but has not yet proceeded with the application. Sinn Fein may also proceed with an application to Strasbourg. There have been reports that the delay on the part of the NUJ is due to their concern that their application would be joined by Sinn

Fein's.

British legislation

The Broadcasting Act 1981, s 29[3], provides that the Home Secretary may at any time by notice in writing require the Authority to refrain from broadcasting any matter or classes of matter specified in the notice and it shall be the duty of the Authority to comply with the notice.

On 19 October 1988 the British Home Secretary required by notice addressed to the BBC and the IBA to refrain from broadcasting certain matters. A copy of the notice to the Chairman of the IBA is attached. The essence of the restriction is a prohibition on the broadcast of words spoken by a person where he represents or purports to represent an organisation specified in the Notice.

Comparison of the Irish and British restrictions

The British Act of 1981 uses the language of the "old" s 31 of the Irish Act. Unlike the current s 31, the British legislation, therefore, does not contain any general limitation on the matters or classes of matter which can be prohibited from the airwaves, it allows for an indefinite ban and it does not give Parliament the opportunity to annul the notice.

Furthermore, unlike the British Order, an Order under s 31 can be tested in the courts against the Constitution.

The British restriction focusses on words spoken whereas the restriction on RTE relates to interviews or reports of interviews. Thus British TV can report an interview as a newspaper would [eg a photograph on the screen with the words spoken in caption which, of course, tends to draw attention to the matter] but RTE is precluded from acting similarly.

The British restriction does not apply at election time. The Irish restriction bans election broadcasts by Sinn Fein only [presumably because it is the only organisation captured by the restriction which may contest elections].

The British Home Secretary was not therefore correct to say when he announced the issuing of his notices that "These restrictions follow closely the lines of similar provisions which have been operating in the Republic of Ireland for some years past."

Apart from the case of *Lynch v Cooney*, the Irish restrictions have not caused much legal difficulty whereas the wording of the British restriction has caused much confusion as to what would constitute a legal broadcast. Such was the confusion that it was suggested that Senator Ted Kennedy could not be interviewed. However, the BBC recently carried a 30 second interview with Gerry Adams on the topic of a grant by the International Fund for Ireland. It was reported that the Home Office agreed that this broadcast would not fall foul of the restriction as Adams could be considered as speaking not as a representative of Sinn Fein but of another body "such as an elected council" [Adams is an MP].

Sid

Anglo-Irish Section

23 March 1989

cc Mr. O'Sullivan
Mr. Ryan (Inst)
Mr. O'Connor (Lundee)
Mr. Higgs (Political)