

THE REQUIREMENT FOR MEMBERS TO REGISTER THEIR MEMBERSHIP OF THE FREEMASONS IN THE ASSEMBLY'S STATUTORY REGISTER OF INTERESTS.

1. General Conclusion

A member could question this requirement in the Administrative Court Division of the High Court as a Devolution Issue under the Government of Wales Act 1998 (GOWA). The success of the challenge would very much depend on a decision pending in the Human Rights Court at Strasbourg established under the European Convention on Human Rights. The judgement is expected shortly.

2. The Competence of the Court to decide this matter.

Under section 107(1) of the GOWA 1998 Act, the Assembly cannot make any subordinate legislation or do any other act which is incompatible with "any of the Convention rights". These rights are those which are set out in Schedule 1 to the Human Rights Act 1998. In requiring, as part of the Annex to standing order 4 that Members register their membership of the Freemasons, the Assembly has either made subordinate legislation or done an act.

Under section 107(2) of the Government of Wales Act, a person can only bring proceedings in a Court if he would be a victim for the purposes of Article 34 of the European Convention on Human Rights. An Assembly Member who is required to register his membership of the Freemasons would be such a "victim" for this purpose.

3. The rights imposed by Schedule 1 to the Human Rights Act.

For the purposes of testing the validity of the Assembly's action, the Court would consider 3 relevant Articles set out in Schedule 1. These are Articles 8, 9 and 11 (copy attached Doc. A).

I do not think that the Assembly's action is in breach of either Article 9 or 11. A requirement to register one's membership of a body does not prevent a person from exercising the freedoms enshrined in these two Articles. Freemasonry is not being prohibited.

What would be in contention, in my opinion, is Article 8. In fact Article 8 establishes rights, the exercise of which could be challenged by reference to any of the interests required to be registered by the Annex to SO4.

4. The reason for the registration requirement

The reason for the current registration requirement is summarised in paragraph 35 of the Second Report of the Select Committee on Home Affairs on Freemasonry in Public Life - Session 1998-99. "Members of Parliament and of local authorities are already required to declare interests which might compromise their duties as servants of the public".

Would this reason be such as to come within the proviso of paragraph 2 of Article 8, thus enabling the registration requirement to legally interfere with the rights established under paragraph 1 of Article 8?

There is the possibility of the proviso relating to "the economic well being of the country" applying in so far as registration would make it more difficult for a person to illegally favour his/her own interests. It might be said that registration is necessary "for the protection of the rights and freedoms of others" in that the well being of a democratic society is being protected by registration requirement. However a Court might only construe "rights and freedoms" as relating to those set out in Schedule 1 to the Human Rights Act and the general concept, as opposed to specific concepts of protecting a democratic society, is not referred to in the schedule.

5. Is Freemasonry different to the other interests required to be registered?

Over the years, particularly in local government, there have been criminal cases that have pointed to the need for openness as regards elected member's personal interests. This has led to Members of Parliament, Members of the Scottish Parliament, of the Northern Ireland Assembly and local authority councillors being required to register those interests which are set out in the Annex to SO4 - apart from Freemasonry. Why was Freemasonry included as a registerable interest?

Here the debate, which took place in the Assembly on the 19th of May 1999, is instructive. The relevant parts are attached (Doc. B). In answer to William Graham's query about the necessity to register Freemasonry membership, the then First Secretary refers to two sources of information. The first is the NAAG report. The relevant page of the report is attached (Doc. C). It gives no reason why the Assembly as distinct to Parliament, the other devolved bodies and local authorities should require registration of Masonic membership. The other source, are two reports from the Commons Home Affairs Select Committee and the Government's replies to the reports attached. The documents are the basis for the First Secretary's conclusion in the last sentence of the Assembly Proceedings report on page 30 that, "Following the report from the Home Affairs Select Committee we are clearly moving forward and this Assembly should be at the forefront of the higher standards of public

service".

6. Consideration of the contents of the reports: (These are Doc. D. Third report for 1996 - 1997; Doc. E. Home Office's reply to Third report; Doc. F. Second report for 1998 - 1999, Doc. G. Home Office's reply to second report).

Arguments in favour of the continuation by the Assembly of the registration requirement

The second report at paragraph 37 recommends that the requirement for registration should be extended to MP's and local authority councillors.

There is an interesting inclusion of a reference to the number of Masons who are councillors in the Pembrokeshire County Council - paragraphs 26-30 of the second report with the conclusion that there must be concern about improper influences being brought to bear on council work.

The second report at paragraph 34 concludes that there are cases where allegations of improper Masonic influence may well be justified.

The third report concludes, "nothing so much undermines public confidence in public institutions as the knowledge that some public servants are members of a secret society, one of whose aims is mutual self - advancement" - paragraph 56.

The second report at paragraph 26 refers to admonition by the Local Government Ombudsman in respect of councillors who failed to declare membership of Freemasonry in connection with planning applications - note - admonition only, as such declarations are no a legal requirement.

Arguments in favour of the cessation by the Assembly of the registration requirement

The Home office's response is non-committal both about the paragraph 37 recommendation in the second report to extend registration to elected councillors and MP's, and about the conclusions drawn in paragraph 30 of the second report about the situation in Pembrokeshire County Council.

Paragraph 49 of the third report finds that most allegations relating to corruption involving Masons are groundless and may arise from paranoia about the obsessive secrecy of Freemasonry - see also paragraph 32 of the second report.

At present a voluntary system of registration among the judiciary and police is in existence. Such a voluntary system may not be sufficient in the case of the police and a decision as to whether to legislate will be made in the New Year - Paragraph 16 of the Home Office's

response to the second report.

Nowhere, (apart from the Assembly), is there currently a legal requirement to register, - "A requirement of public disclosure of such details might be held to be an interference with the rights and freedoms guaranteed under the European Convention on Human Rights" - paragraph 6 of the Home Office's response to the second report.

7. Conclusion

The above comment of the Home Office encapsulates the whole problem about the Assembly's current legal requirement to register. The Home Office's comment ends by emphasising that it would be necessary to ensure that a legal requirement to register is justified in the context of Human Rights legislation.

The First Secretary justified his recommendation for a legal requirement by referring to the 2 select committee reports and the Home Office's replies. Does the second report's conclusion at paragraph 34 of the report and its subsequent reproduction in full at paragraph 15 of the Home Office's reply together with an undertaking to consider whether to make registration of Masons in the police forces compulsory tilt the balance in favour of the Assembly if the matter is taken to Court? Much will depend on the decision, which is awaited from Strasbourg.

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