



01-405 7641 Extn 3201

2
PRIME MINISTER
To be read with my
minute (below).

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

9 April 1981

PA

PRIME MINISTER

MS
10/4

ms.

BYELECTION - FERMANAGH-SOUTH TYRONE

I have been asked about the law in relation to Parliamentary candidates who are serving a sentence of imprisonment. Such a candidate is not disqualified for election or for sitting and voting (unless his offence is treason). The Forfeiture Act 1870 disqualified any person convicted of felony and sentenced to imprisonment for more than 12 months but the Criminal Law Act 1967 repealed this provision as part of the process of abolishing the division of crimes into felonies and misdemeanours. Should Mr Sands be elected he would not be able to attend Parliament because he is lawfully detained in prison. It would be open to the House to expel him as a person who is unfit for membership. Expulsion does not create any disability to serve again if he is re-elected. Erskine May (page 133) states that it is customary to order the Member, if absent, to attend in his place before an order is made for his expulsion and that, if he is in prison, it has been the practice to order the Governor to bring him in custody, if he so desires to be brought. This custom has arisen in relation to Members who have taken their seats (and the cases cited in Erskine May show that even in such cases the custom was not invariable). I can see no justification for ordering the Member to attend if he has not taken his seat.

I am copying this to the Home Secretary, the Lord Chancellor, the Secretary of State for Northern Ireland, the Leader of the House and the Chief Whip.

Mk.