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Prime Minister

Prime Minister

IRISH PRISONERS

The purpose of this minute is:

- (i) to outline for you and colleagues the approach I am following on the difficult issue of the transfer and repatriation of Irish prisoners sentenced for terrorist offences in England; and
- (ii) to raise the timing of the announcement of decisions on the repatriation of three more prisoners to the Irish Republic (pre-figured in Quentin Thomas' letter of 9 July to Sinn Fein) and on the transfer of responsibility for decisions on the temporary release of prisoners on temporary transfer to Northern Ireland.

2. Following the decision to move Irish terrorist prisoners out of the SSUs in the light of the announcement of the ceasefire and the revised threat assessment, attention will focus increasingly on the transfer of prisoners to Northern Ireland and repatriation to the Irish Republic - and on the implications of such moves for the early release of prisoners.

3. My approach to these issues is guided by the principle, adopted by successive Home Secretaries, that prisoners should serve their sentences close to their family, wherever practicable. In determining applications the key policy we apply - which is the same for any repatriation/transfer application from any prisoner, irrespective of offence or nationality - is that no substantial reduction in time served would be likely to result. For that reason:

- (i) assurances have been sought - and received - from the Irish Government that they intend to continue to enforce sentences imposed here in the case of repatriated prisoners; and
- (ii) some prisoners have been transferred to Northern Ireland only on a temporary basis. The differences in remission rates and the operation of the life sentence system in Northern Ireland mean that there would be substantial reductions in the time to be served if the prisoners were to be transferred permanently to Northern Ireland - a point to which I return below.

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Repatriations to the Irish Republic

4. Six terrorist prisoners have so far been repatriated to the Republic. In each case the Republic has given assurances that "save for exceptional circumstances arising" the prisoner could expect to serve out his entire sentence save only for remission at the standard rate of 25 per cent, and in normal circumstances would not be released before his automatic release date in England and Wales. The Republic have confirmed that "exceptional circumstances" could include developments in the peace process; but there is a commitment to inter-governmental consultation before any change in the current policy of enforcing sentences in full. To date, two of the six prisoners have been released. One reached the end of his sentence. The other died following temporary release on compassionate grounds. There has been no indication that the Republic will not continue to enforce the sentences of the other four prisoners.

5. Following the election of the new Government I have received confirmation from Mr O'Donoghue, the new Minister for Justice, that he stands by the assurances previously given on all points, and that they will apply in the case of three cases currently under consideration: Vincent Wood, Dennis Kinsella and Patrick Hayes (case details attached at Annex A). I am now minded to proceed with these repatriations. A decision to refuse them would be difficult to defend in the light of the previous decisions and the assurances we have been given, and would be damaging to the peace process and our relations with the Irish Government.

6. Nevertheless, we cannot overlook the fact that repatriation of such prisoners is likely to be perceived - on both sides of the argument - as heralding the prospect of early release. Indeed in a speech on 24 July the Irish Taoiseach announced:

"The question of prisoners must be addressed in a constructive and generous way. That will be the approach of this Government, returning to the approach that existed prior to February 1996. All those in this jurisdiction who have been imprisoned in the context of the conflict will benefit from these measures."

7. This issue will become sharper as the further applications for repatriation are processed. The current applications outstanding are listed at Annex B. You will see that they include the Balcombe Street gang, in whose cases I will shortly set the tariff. I am, therefore, proposing to handle all these cases very much on a case by case basis; and it seems to me essential that the Irish Government continue to understand the over-riding need to recognise that any programme of early release of terrorist prisoners may blow back on our consideration of repatriation applications, and in particular that the premature release of any repatriated prisoner risks a highly adverse public reaction in this country. I am arranging a meeting with Mr O'Donoghue later this month at which I propose to underline these points - without, of course, calling into question the assurances he has already given me. I will also explore with him

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the handling of high tariff life sentence cases, including whole life tariffs. And, unless there are pressing reasons for acting more urgently, I would prefer to delay my final decision on Wood, Kinsella and Hayes until after that meeting.

Transfer of prisoners to Northern Ireland

8. There are currently 12 terrorist prisoners on temporary transfer to Northern Ireland. There is one outstanding transfer request; and we may receive more from a group of recently convicted terrorists.

9. I attach at Annex C a schedule of the terrorist prisoners currently on temporary transfer to Northern Ireland. Because of the different remission rate in Northern Ireland, one of the determinate sentences prisoners (Liam McCotter) would be released immediately if he were to be given a permanent transfer - almost one year earlier than if he had remained in prison in England and Wales. Others would receive a reduction in time to be served of around 3 to 4 years. It is more difficult to assess the impact in the case of life sentence prisoners - which include Patrick Magee, the Brighton bomber and Paul Kavanagh and Thomas Quigley, all currently serving whole life tariffs, following judicial recommendations that they should serve a minimum of 35 years. But there is no tariff system in Northern Ireland; and, based on current practice our assessment is that permanent transfer would lead to a reduction of time to serve of up to 5 years in the 20 year tariff cases, 5-10 years in the 25 year tariff case and over 10 years in the whole life tariff cases.

10. I have no doubt that we will come under continuing pressure from the Republican movement to grant these prisoners permanent transfers. We must deal with that as it arises; and you may wish to discuss tactics collectively. There is a view which Mo Mowlam has raised with me - that we should grasp this nettle sooner rather than later. But we have to recognise that any shift in policy which is seen to be favourable to these terrorist prisoners is likely to be greeted with public outrage and to be damaging to confidence in the criminal justice system generally. (It would also weaken our stance on repatriations). I do not think it can be justified in present circumstances - and will always be very difficult.

11. However, the new transfer arrangements under Schedule 1 of the Crime Sentences Act 1997, which I propose to implement on 1 October, do make much more defensible a move which I know will be welcome to Mo Mowlam: namely the transfer of responsibility for decisions on temporary release (including applications for compassionate release) to the Northern Ireland jurisdiction.

12. So long as we had to maintain the position that the prisoners concerned were only temporarily transferred to Northern Ireland it was not easy to justify applying different temporary release arrangements from those applying to prisoners in this jurisdiction. But the new legislation replaces the concept of temporary and permanent transfers with "restricted" and "unrestricted" categories. The "restricted" category enables us to retain control over the release date in the sending jurisdiction - which is, for the reasons noted above,

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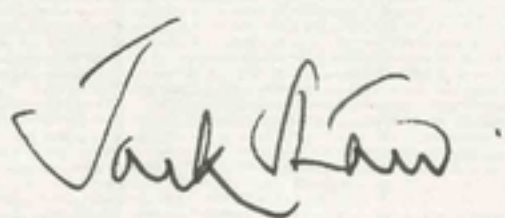
the reason for opposing unrestricted transfers. But the transfer can, in all other senses, be treated as permanent; and it does, I believe, make sense for decisions on temporary and compassionate release - and the associated decisions on security categorisation - to be taken in Northern Ireland where different security considerations apply. This will enable transferred prisoners to benefit from the sometimes more generous temporary release arrangements that apply in the special circumstances of Northern Ireland. The security authorities here are content with this proposal, subject to procedural safeguards relating to public safety which we are confident can be put in place.

Timing

13. I am conscious that this is a particularly sensitive moment in the peace process; and that both decisions we are on the point of making - the further repatriations and the transfer of responsibility for temporary release - may be presented as further concessions to Sinn Fein. They are not; and I believe we can mount a robust defence of them. But the risk is there. Equally, delay in making these decisions may be damaging.

14. Subject to your views, I propose to await the outcome of my meeting with Mr O'Donoghue later this month before making final decisions in the three repatriation cases, and to announce the shift on temporary release policy on 1 October to coincide with implementation of the legislation (or shortly before if that would help prevent leaks). Both announcements can anyway be very low key. Mo Mowlam, with whom I have cleared this minute, is content with this approach.

15. I am copying this minute to colleagues on IN, the Secretary of State for Scotland and to Sir Robin Butler.



18th.

September 1997

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