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to date for now.

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M. 14.1.Prime Minister**PRISONER ISSUES: SMYTH: TIME SERVED**

I have seen a copy of Mo Mowlam's minute of 10 December to you, seeking your agreement that time spent by an Irish republican prisoner, James Smyth, in custody in the United States while fighting extradition proceedings should be credited against his sentence. You have indicated that you are content with the proposal, subject to my views.

2. I am sorry to say that I cannot support Mo's proposal in this case. A favourable decision in this case, where there do not appear to be any exceptional circumstances in the individual case, will be seen as a significant weakening of our overall policy, which is UK-wide, on prisoners who escape and are detained pending extradition.
3. Although each case is considered on its merits, the general policy relating to cases where prisoners are extradited in order to complete a sentence is that discretion is not exercised unless an undertaking has been given to the country agreeing to the extradition or the prisoner has been led to believe that time spent in custody abroad will be credited. This is because to do otherwise would in effect allow prisoners to choose where to serve their sentences and encourage them to contest extradition proceedings. In some cases, conditions under which the prisoner is detained in another country to which he has fled may be more favourable to him, particularly if he is treated as a civil detainee and has available to him privileges which he would not have here as a convicted prisoner.
4. In England and Wales, this policy is founded on Section 49(2) of the Prison Act 1952, which determines that time spent unlawfully at large (which includes an escaped prisoner being detained pending extradition) should not count as time served as part of the prison sentence, unless the Secretary of State directs that the time should count. I understand that the legislation which applies in Northern Ireland is materially identical.
5. The Smyth case would be likely to attract publicity, and it would be very difficult to hold the existing policy line in future cases of prisoners applying to have time spent in detention abroad awaiting extradition credited to their sentence, either in Northern Ireland or the rest of the United Kingdom. We understand that there are other similar cases awaiting decision, concerning

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Republican prisoners held in detention in the United States. Those prisoners will take a favourable decision in the Smyth case as a clear expectation that there will also be a favourable decision in their case. There would also be serious consequences in respect of future cases in the rest of the United Kingdom. While it is correct that in two cases in England and Wales in the last two years, time in detention was credited to the prisoners concerned, it was considered in each case that there were good reasons for departure from the normal policy. In a more recent case, which involved deportation rather than extradition, we decided that time should not be credited.

6. I appreciate that there may be wider political considerations in this case. Nevertheless, I think it is important that we all understand what the consequences of a favourable decision in this case would be.

7. I am copying this to Mo Mowlam and Robin Cook.

Jack Straw

7th January 1998

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