WITNESS STATEMENT

CJ ACT 1967 S.9 mc Act 1980, ss.5A(3)(a) and 5B; MC Rules 1981 r.70

Statement of: The Rt. Honourable Peter Hain

Age (if under 21): Over 21

Address: The House of Commons
Westminster
London SW1

Occupation: Member of Parliament

This statement consisting of 8 pages signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false or do not believe to be true.

Signature........................................ Witnessed by ........................................

Date........................................

1. From 6th May 2005 until 27th May 2007, I held the office of Secretary of State for Northern Ireland, during a critical period in the recent history of this country in which the process referred to as the “peace process” was progressed and consolidated; throughout that time the objective of Tony Blair’s administration, of which I was part, was to achieve a permanent cessation of armed conflict, and the normalising of civic society.

2. The role of Minister of State, equally for my predecessors and my successor as for myself, demanded knowledge of and hands-on involvement in issues and aspects, major or minor, that could affect that objective. I have been asked on the basis of my own

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experience to comment on one of those aspects, referred to throughout as the issue of “On The Runs”.

3. The difficulties involved in arriving at, in particular, the two momentous events that took place in the period in which I held office (the IRA’s public announcement of July 2005 and the commencement of the Northern Ireland Assembly on 8th May 2007) are by now well known; overcoming fears, prejudices, beliefs and fixed positions which often seemed insurmountable. The resolution of those many and enormous difficulties relied upon patience and persuasion and in conjunction the offering of often imaginative and innovative proposals and counter proposals to and by the parties involved. These frequently required synchronisation – promises made on one side being dependent upon promises made on another. I have seen the statement of the chief negotiator for the government, Jonathan Powell and his assessment of the absolute necessity of those promises that were made by the Government being able to be relied upon; I do not repeat his comments but indicate my agreement with them.

4. A number of public statements committing the British and the Irish governments to further action on the issue of the “On The Runs” had been made following the Weston Park talks; a public commitment for “The two governments as soon as possible and in any event before the end of the year, to take such steps as are necessary in their jurisdictions to resolve this difficulty so that those concerned are no longer pursued”.

5. On 28th July 2005 the IRA publicly announced the formal end to its armed campaign. I on the same day sent a letter to Members of Parliament (the House of Commons not sitting at the time), outlining the Government’s response to the IRA statement, describing it as an historic turning point for Northern Ireland. I indicated that the way that the conflict had played out in Northern Ireland meant there would be some caution, but that since the IRA stated it was relegating physical force to history and dedicating itself to exclusively peaceful and democratic means, I invited all democrats to acknowledge the significance of that commitment. I undertook that the Government would implement those areas of the Joint Declaration of 2003 which were dependent upon this long awaited decision by the IRA. I stated that the Government would
introduce legislation in the autumn to resolve the outstanding issue of paramilitary suspects “on the run” and that we would move quickly to begin the normalisation programme outlined in the Joint Declaration. I stated that if the words of the IRA statement were born out in actions over the coming weeks and months, they would be seen as a historic milestone in the turbulent and often painful history of Northern Ireland.

6. On the 13\textsuperscript{th} October 2005, I made a statement to the House of Commons commenting on the developments in Northern Ireland during the summer recess period. I said that the “impossible” had happened; the war machine that brought death and destruction to thousands of people in Northern Ireland, Great Britain and beyond had gone. I spoke of a number of areas of the Joint Declaration of 2003 which were dependent upon acts of completion by the IRA. Amongst those I referred to the Government’s undertaking to legislate to deal with the position of individuals connected with paramilitary crimes committed before the Belfast Agreement, dealing with those suspects categorised as “On The Runs”, I referred to proposals that were published alongside the Joint Declaration in May 2003. I stated that this was not an amnesty, but that nevertheless the implementation of those proposals would be painful for many people, which I fully understood. However I stated, \textit{“The government believes it is a necessary part of the process of closing the door on violence forever”}.

7. The proposed legislation was in due course laid before the House, but it was not passed. I do not set out here the different objections that led to its abandonment. It was in this context that the already ongoing administrative scheme, although begun as a temporary measure, became the mechanism by which all of the “On The Run” applicants were enabled to have their position clarified.

8. The scheme addressed the position of individuals who through Sinn Féin put their names forward. To qualify for consideration the offences for which each individual who believed he or she might be suspected, or “wanted” (in some cases already convicted and having escaped from prison), should have been committed before the signing of the Good Friday Agreement in 1998 and have been connected with the conflict in Northern Ireland. The group to which the individual concerned was affiliated (ie the IRA) must
adhere to the commitment to cessation of armed conflict. Whilst the first cases pressed by Sinn Féin concerned those who lived and had family in the North of Ireland, the scheme extended to applicants in the Republic of Ireland who had no such relationships and to persons whose extradition had been actively sought from within other jurisdictions. The scheme was not limited to offences committed in the North of Ireland.

9. As Secretary of State, I was conversant not just with the implications but with the running of the scheme, which was a scheme endorsed by every branch of Government including by those tasked with considering prosecutions. The procedure was in a number of ways wholly unprecedented. The individuals concerned were told, in terms and in writing, by the Northern Ireland Office in responses to Sinn Féin in respect of each applicant, either that they were liable to arrest if they entered the jurisdiction or, via a personal letter whose key phraseology was in essence common to all, that on the basis of current information that they were not wanted and would not be arrested. I was involved in the extensive discussions that surrounded attempts to bring in legislation and/or to consider alternative mechanisms. When these could not be achieved, it was the administrative scheme that persisted.

10. There were a number of exceptional features to the scheme. The first, of course, involved Sinn Féin being formally put on notice; individuals who otherwise might not know with any certainty that they could be subject to arrest were alerted. The second was that the scheme progressed in a non public manner. Confidentiality was maintained for the individuals who submitted their names to the scheme; neither the names of the applicants nor the outcome of the applications were subjected to publicity. There was in consequence an enhanced reliance upon the internal checks being correctly done and correctly notified as the recipient was dependent upon and trusting in the sole evidence of an assurance, namely the letter he/she (or on his/her behalf Sinn Féin) received from the Northern Ireland Office. I am informed that the Court has been provided with internal documents that show that at a number of junctures discussion took place with a view to reducing the burden of verification that rested upon the departments concerned, but this was rejected on the basis that corners could not be cut. It was intended that the assurances be just that, reliable assurances as to the position of the applicants and
implicit in that, that the process by which the assurances had come to be given, had been
competent and robust. Throughout my period of time in office, I was confident that was
precisely the position.

11. I have been made aware that John Downey, an “On The Run” applicant, in July 2007
received a letter in the same terms as other persons at the same time. I have seen the
letter, which in phraseology repeated in letters to many applicants previously, provides
an assurance that he was not liable to arrest if he entered the jurisdiction; on its face it
informed him that he was not wanted in the North of Ireland, nor was there any interest
from any other police force in the United Kingdom (on the basis of information from the
PSNI). I confirm that was the assurance that was intended by the Government to be
understood by the recipients of such letters.

12. I have been informed that Mr Downey was nevertheless arrested in 2013, on the basis of
a 30 year old warrant which was at all relevant times on the Police National Computer
and moreover, was known to the PSNI. I have been shown the underlying
documentation which suggests that shortly before that letter was sent, the PSNI wrongly
informed the NIO via more than one communication in answer to specific questions that
checks on the Police National Computer had been conducted and that neither he nor nine
other recipients were wanted by an external force. That information included
confirmation that checks had been conducted on the Police National Computer (ie that
would establish whether or not any applicant was wanted by other police forces in the
UK). I have been informed that those answers to the Northern Ireland Office were wrong
and that the letter of assurance subsequently sent out by the NIO was based upon a
mistake and that Mr Downey was still wanted by the Metropolitan police.

13. I have been shown a number of communications between the Northern Ireland Office
and the PSNI in June and July 2007. One to the Northern Ireland Office from the
Assistant Chief Constable Peter Sheridan of the 27th June 2007 responds to a query by
the NIO in relation to PSNI checks in which it is explained that,
“Our review set out to establish if X is wanted for arrest by PSNI for offences pre the
Good Friday Agreement or circulated as wanted for arrest by an external force and the

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existence of reasonable grounds (within the UK) or European Arrest Warrant. This can be established by an ICIS check (PSNI’s computer system), checks with Garda Síochána and the Police National Computer (PNC). These checks have all been carried out in relation to the letters forwarded to the Director of Public Prosecutions from the PSNI and they are the same checks that have been carried out during previous reviews”.

14. I note the internal communications in which requests for additional confirmation are made by officials at the Northern Ireland Office as to the exact position in relation to ten applicants of whom Mr Downey was one. In response the Northern Ireland Office is informed by the PSNI that all the names had been checked through the ICIS, the PNC and the An Garda Síochána computer systems. I note that the successive requests to ensure accuracy made by the Northern Ireland Office receive confirmation of its understanding of Mr Sheridan’s letter, provided by a Detective Sergeant, a Staff Officer to the Assistant Chief Constable.

15. The care with which the NIO sought to confirm its understanding is consistent with my experience of the way in which the scheme was and was required to be conducted and upon which the Government in its dealings with Sinn Fein on this issue depended. These were important assurances to be processed responsibly and carefully, issued in the name of the Government, intended by the Government to be reliable and anticipated as being relied upon.

16. I have been shown statements by Mr McGinty of the Attorney General’s office in which he indicates that had he been informed of such a mistake he would have immediately informed the relevant Law officers. He does not speculate on what steps would have been thereafter taken but comments, “It would have been a major incident and would have been reflected as such on our files and those of the PPS and NIO”.

17. I note Mr McGinty sets out the position in this way; “There was no intention by officials to mislead any individual into believing it was safe to return to the jurisdiction and then arresting them when they did”. He states that “the consequences of that happening
would have been serious and cast doubt on the whole process. It could call into question the status of all others who have been notified they were safe to return”.

18. I have been asked to comment from the viewpoint of the Secretary of State had it been brought to my attention at any stage that a letter had been sent out by the Northern Ireland Office to Sinn Féin and to an individual which contained so serious an error.

19. I am entirely sure that it would have been considered right and appropriate immediately to inform Sinn Féin that a letter had been provided that was provided in error. I do not speculate as to what steps the prosecuting authorities would have taken, but as Mr McGinty rightly says, and as I can confirm, the British Government did not intend individuals to be misled into believing they were safe to return to the jurisdiction and then be arrested. The opposite was the case; it was intended at all times that they should know with accuracy their position; hence the exceptional step taken from the time of the Weston Park talks and thereafter, of positively notifying Sinn Féin that particular individuals who had put their names forward were liable to arrest, an indication that no doubt allowed each to decide whether or not they might enter the jurisdiction in full knowledge of the risks if they did so. If despite what had been said in a letter to the contrary, Sinn Fein was thereafter informed that the individual concerned was still “wanted” he or she would have no doubt immediately been told; a transparent precautionary step would have in these exceptional circumstances been appropriately taken that would have allowed for the individual as well as the wellbeing of the process as a whole to be protected from unintended risk, consistently with both the letter and spirit in which this unique scheme had been constructed.

20. No mistake of such importance could or should have been permitted to have gone uncorrected. I am aware of how critically important it was throughout that most difficult of periods that promises made by and in the name of Government must be able to be taken at face value and adhered to. The underlying difficulty all had to overcome was the fear that any parties to the process, including the governments concerned, might make false promises or might not be true to their word. The entire record of the more than 10
years of extraordinary and often almost impossible obstacles to progress reflects precisely this. The peace process is not one that was fixed at any moment of time, whatever the major milestones achieved. It was and is one that has required constant adherence on all sides to their undertakings. I continue to maintain a close interest in the progression of the political process in Northern Ireland and maintain close contact with many of those currently involved in government. I am aware of the level of serious concern and uncertainty that this situation has engendered; I provide this statement in the hope that the Court might be assisted by my assessment of what each letter was intended by the Government to provide.