Rt Hon Lord Irvine of Lairg QC
Lord Chancellor
House of Lords

14th May 2002

Dear Deny,

As you know, one of the most contentious unresolved issues in the Northern Ireland political process is the position of people who are still wanted for offences connected with the troubles committed before the Belfast Agreement – the so-called “on the runs” (OTRs). It is a problem which mainly affects members of the Provisional IRA, since they, rather than loyalists, have tended to escape justice by fleeing to the South.

Sinn Fein have argued for several years that it is anomalous that such people should be unable to benefit from the early release provisions of the Agreement, under which almost all IRA prisoners have now been freed. At the conclusion of the Weston Park talks last July, the Prime Minister and the Tánaiste published proposals for breaking the then impasse which included acceptance that it would be a natural development of the early release scheme for such people not to be prosecuted, provided they did not support an organisation which had been specified as failing to maintain a cease-fire, and undertook to take “such steps as are necessary to resolve this difficulty, so that those concerned are no longer pursued”. After the IRA’s decommissioning act in October we confirmed that we would follow through on the commitment by March.
We have always accepted that this commitment, which amounted to an amnesty for pre-Agreement scheduled offences, would be politically extremely controversial. It has been made even more so by subsequent events, and although an amnesty Bill has been drafted ready for introduction, the Prime Minister and I concluded a month or so ago that it would be a mistake to try to take it through Parliament in the present climate.

Nevertheless, the Prime Minister's commitment to Sinn Fein remains, and we have been thinking about how best to discharge it. In part, we are already doing this through an informal administrative process which Peter Goldsmith has helpfully put in place, under which the DPP and the police consider in relation to cases put to us by Sinn Fein whether there is any outstanding requirement to prosecute. This is enabling a number of the cases to be winnowed out, but there is a hard core, which could end up being as many as 50 or 60, where - short of legislation - the person could not return to Northern Ireland without being arrested for questioning or charge.

Part of the reason an amnesty would be unmanageably controversial is that, by wiping out even the prospect of prosecution, it would go further than the early release scheme. There would be no sense that justice had been done by the conviction of the guilty, nor would the court have any opportunity to mark the seriousness of the offence. In Northern Ireland at least, the proposal would be less objectionable if the criminal justice system was seen to do its work, even if the eventual penalty was remitted.
In that spirit, David Trimble put a proposal to the Prime Minister some weeks ago in the following terms:

"An arrangement should be made for OTRe who wish to come back to enter into discussions with the Northern Ireland Office and the prosecuting authorities to determine what charges they face. If they so wish, an arrangement could be made to allow them to come back to be formally charged and, following a guilty plea, they could apply for release under the early release scheme. They could then be granted bail at a formal appearance in court. Following a guilty plea, they would receive a notional sentence, immediately apply under the early release scheme and be released on licence."

We are sure that a scheme which simply required members of the IRA to appear before British courts in the normal way and plead guilty would not be acceptable to Sinn Fein, but with No 10 we have developed, in very general terms, a possible model which builds on Trimble's proposals. This is described in the enclosed note. (Note 17140) New free cover Following: following: final.

Legislation on these lines would still be controversial, chiefly because there would be no liability to custody. But there would be the significant advantages that the people concerned would be seen to have been brought to justice; the facts of cases could become known through trials, which would, to some extent, meet the desire of victims' families to know more of the truth about what happened to their loved ones; and, crucially, the activation of the early release scheme would bring licensing requirements into the picture and make it easier for us to argue
that what we were doing was consistent with the Agreement. We are also pressing Sinn Fein to get the IRA to do something about the so-called “exiles” — people whom the IRA have themselves forced to leave Northern Ireland, for a variety of reasons.

Jonathan Powell and Bill Jeffrey floated a scheme on the lines described in the note informally and without prejudice at a recent meeting with Gerry Adams. Rather to their surprise, he said that in principle he was interested and would like to explore it with us in more detail. Since then, there have been some more detailed discussions, and we now believe that something on these lines would be acceptable to Sinn Fein.

Jonathan and Bill have also had a helpful discussion with Peter Goldsmith, and I understand that Jonathan has mentioned the matter to you in passing. You have an obvious interest in the proposal for a special judicial tribunal to deal with the outstanding cases, as has David Blunkett, since — although its principal focus would be on Northern Ireland — to achieve the result we want it would need to have jurisdiction throughout the UK.

I would be very grateful for any immediate reactions. In my view, something on these lines represents our best hope of resolving what is almost the most intractable, if not the most intractable remaining issue in the Northern Ireland political process. We are probably out of time for legislation in the current session, but to keep our options open I have asked for work to be done rapidly to turn the outline scheme in the note into instructions to counsel. It would be helpful if you could agree to your officials being involved in that work.
I am copying this letter to the Prime Minister, David Blunkett and Peter Goldsmith, and to Sir Richard Wilson and First Parliamentary Counsel.