Prime Minister

4 May 2001

NORTHERN IRELAND: LEGISLATING ON OTR'S

Summary

We need to decide how much work we want officials to do over the next few weeks, and on what policy assumptions, to give us the option of legislating for an amnesty very early in the new Parliament, if the context is right. My recommendation is that we should not, at this stage, authorise the drafting of the Bill, but that my officials should take the preparatory work as far as they can short of that. On the policy, the working assumption should be that protection from prosecution should be selective and reversible. If possible it would be better to avoid creating an independent “Immunities Commission”. The legislation should exclude members of the security forces from the amnesty arrangements, though we should not underestimate the difficulty of holding this line in Parliament in the face of an inevitable press campaign. There remains the risk that we shall have to use the Parliament Act to get the legislation through the House of Lords.
**Detail**

1. In the Hillsborough Statement of 8 March we accepted publicly for the first time that it would be a natural development of the Early Release Scheme to discontinue the prosecution of pre-Good Friday Agreement offences allegedly committed by supporters of organisations now on ceasefire. The words were hedged around and have attracted less attention than we might have feared. What they mean, though, is that in any big deal on decommissioning after the election, Sinn Fein will want a firm commitment on the substance and timing of amnesty legislation, (unless the prosecuting authorities were to change their present view of the public interest in all the outstanding cases).

2. The chances of a decisive and comprehensive breakthrough by the end of June are questionable, but clearly we need to plan for success. My assumption is that if a deal were done you would want the option of being able to introduce amnesty legislation to Parliament very quickly thereafter, possibly even by the summer recess, though it will inevitably take some months to get legislation through and there remains a risk that we may need the Parliament Act to override resistance in the House of Lords. We shall not have a Bill ready for July unless officials can do some further preparatory work over the next few weeks. Given the sensitivities, however, we need to decide how far this should go.

3. The legislation will need to extend to England and Wales and deal with the question of the security forces, so both the Home Office and MOD will need to be consulted further at the right moment. And we cannot get a Bill drafted without Margaret Beckett's agreement to approach Parliamentary Council. But my inclination, subject to your views, is to confine the work in-house
within the NIO for the moment, subject to involving one or two of Gareth Williams' officials who have also had a copy of Sir Quentin Thomas' report on the options for amnesty. We can widen the circle as necessary after the election if the chances of early legislation increase.

4. An amnesty scheme is bound to be controversial, irrespective of the details. As with the early release scheme we shall need to find some mechanism to assure people that supporters of dissident organisations will not benefit. Since suspects are innocent in the eyes of the law, distinguishing between the "deserving" and the "undeserving" will be much more difficult than was the case with the early release scheme. Sir Quentin's view was that it should in theory be achievable by creating a new test which the prosecution and the courts would have to consider before the case could proceed. There will also be a strongly held view that PIRA supporters should lose their protection from prosecution for old offences, if PIRA were to abandon their ceasefire. These issues need more work, but in principle I am attracted to a selective and reversible scheme which does not involve the creation of some kind of "Immunities Commission". (Sinn Fein will never accept a procedure which involved applicants having to admit their guilt to a Commission. An applications process without admissions of responsibility would be widely criticised by victims groups as a charade).

5. The most difficult question will be what to do about the police and the army. There is unlikely to be a clever way of drafting this scheme so that it conveniently draws a line around soldiers and police officers. So if we want to exclude them we shall have to do so explicitly on the face of the Bill. I have enormous difficulty with this personally – on grounds of fairness and
equity, and considering our responsibility towards those who risked their lives to combat acts of terrorism which are now to be set aside. However, on the merits of both principle and the future of Northern Ireland, I have been persuaded that it is the right approach. It is a key principle for us that the security forces operate within the rule of law. To do anything which undermined that position or which implied some equivalence between their actions and those of the terrorists would be very damaging, including internationally.

6. All that said, there is a makings of a very difficult and dangerous press campaign and public perception here – “our lads still to stand trial while murdering bastards let off”. We should not underestimate the parliamentary passion. Despite the arguments of principle against equivalence, the crude press attack will be that the amnesty should either be for everyone or no-one. Defeating this line of argument in Parliament will require a huge effort, even in the right context.

7. We do not need to resolve all the issues at this stage, but are you content for my officials to carry this forward as far as they can over the next few weeks, on the basis of this policy steer, so that we keep open the option of having a Bill ready for introduction before the summer recess?

JOHN REID

/JH