Dear Peter,

TERRORISTS ON THE RUN

Thank you for your letter of 25th May in reply to my letter to you of 19th May seeking further information in relation to Government dealings with [redacted]. These are not easy or straightforward matters and I am grateful to you for the assistance you have given. This letter concerns the consideration that will need to be given to the remaining thirty-five names provided to No 10 by Sinn Fein.

The Director of Public Prosecutions for Northern Ireland together with the Crown Solicitor’s Office and the RUC have given preliminary consideration to the list of thirty-six names (which includes [redacted]). It would appear that of those thirty-six, seventeen relate to persons already convicted of offences and who have escaped custody, ten relate to persons who may be subject to prosecution for offences committed in Northern Ireland and six to persons who may be subject to prosecution for offences in England and Wales. The former will need to be considered by the Director of Public Prosecutions for Northern Ireland and the latter by the Director of Public Prosecutions for England and Wales, in both cases in consultation with me. Three cases have yet to be identified.

Primary responsibility for the consideration of the seventeen post-conviction abscondees falls to you as Secretary of State for Northern Ireland as I have no direct role to play in relation to serving prisoners. I have, however, sought detailed information about each of the cases from the Crown Solicitor. That information has been faxed to me today and I enclose a copy. The exercise does, however, raise matters of general principle in which I do hold an interest. They are matters for your own legal advisers to consider but I hope it will be helpful if I set out some preliminary thoughts.
CONFIDENTIAL - PERSONAL

The Rt Hon the Lord Williams of Mostyn QC

A decision whether or not to continue to seek a person's extradition is one made on public interest grounds. Such a decision will have been made by you or your predecessors as Secretary of State prior to instructions being given to the Crown Solicitor to commence extradition proceedings. Thought will need to be given in each case as to whether the public interest has changed in relation to that individual since his or her position had last been considered. Whatever test is applied in order to reach a decision it has to be justifiable and may be susceptible to challenge by judicial review.

A decision not to seek extradition would mean that the original warrant or warrants would have to be withdrawn. The grant of such a warrant is a judicial act carried out by the Resident Magistrate and an application would have to be made to the court for a withdrawal. Whilst the majority of Resident Magistrates may not raise any question over a withdrawal in the light of your decision, some may wish to question the basis on which they are being asked to act.

Further, a decision not to extradite leaves two issues unresolved. The first is whether any charge ought to be brought in relation to the escape. That would be a matter for the Director of Public Prosecutions for Northern Ireland in consultation with me but in reaching any decision we would have to consider the effect of a decision by you not to have sought extradition on the public interest in prosecution. The second and perhaps more difficult problem is whether or not you decide to continue with an extradition, that does not affect the fact that the person concerned still has a prison sentence to serve. If the individual concerned returns voluntarily to the United Kingdom he will be arrested and taken to prison to complete that sentence. You, as Secretary of State, will then have to consider whether or not to exercise the Royal Prerogative in order to achieve an early release. Again any such action may be susceptible to judicial review - together with any requirement for disclosure - by any party that can show sufficient interest - such as victims. I understand that a number of the seventeen were convicted of murder.

A more general point arises. Although the decision whether or not to press for extradition is primarily a matter for you, such a decision does have an effect on overall confidence in the administration of justice. In particular, it has a bearing on any decision the Director of Public Prosecutions for Northern Ireland and I may take in relation to those awaiting prosecution. As you know, a decision to prosecute is based on both sufficiency of evidence and public interest. If you reach a decision not to extradite because it is no longer in the public interest to do so then it is arguable that for me not to reach the same decision in relation to those who merely await prosecution would be unreasonable. You have already raised the issue of how damaging conflicting decisions on public interest would be in relation to [redacted] case but I see similar problems arising in relation to all the cases to be considered - and the list of thirty-six provided so far is described as "preliminary".

CONFIDENTIAL - PERSONAL

65
I am seriously concerned that the exercise that is being undertaken has the capacity of severely undermining confidence in the criminal justice system in Northern Ireland at this most sensitive of times. Individual prosecution decisions have to be justifiable within the framework in which all prosecution decisions are reached and I am not persuaded that some unquantifiable benefit to the peace process can be a proper basis for a decision based on the public interest. Conversely it may well be a proper basis for some kind of legislative solution – as it was for the early release provisions in the Northern Ireland (Sentences) Act 1998. Given the importance of agreeing the basis upon which we are considering these cases I suggest we meet to discuss the way forward.

I copy this letter at this stage to the Prime Minister and to Jack Straw. Other ministerial colleagues may need to be copied in later as the matter progresses.