IRISH TERRORISTS ON THE RUN: OUTSTANDING EXTRADITION CASES

Thank you for your letter of 15 August.

I understand – and to an extent share – your concern about the impact on confidence in the administration of justice of a decision to drop outstanding extradition requests. But I am satisfied that the decision will be accepted as a natural consequence of the passage of the two year point under the early release scheme, and therefore consistent with the Good Friday Agreement. To continue remorselessly with these cases would be increasingly hard to justify. We would run the risk of appearing vindictive and undoubtedly face criticism from the Irish Government for leaving them in an awkward position. Even those who oppose the decision will see it as a politically undesirable development, rather than as a reflection on the justice system itself.

I enclose a copy of the draft statement I intend to make. As you will see, at its heart is an assertion that, in my judgement, it would now be disproportionate
to continue to pursue the extradition requests, given how little time, if any, the people concerned stand to serve in custody even if we succeeded. I agree with you that I may well face judicial review, but I am advised that a challenge is unlikely to succeed.

As drafted, the statement also, I think, meets your point about fettering the discretion of the Sentence Review Commissioners. I would merely be saying that those concerned appeared to be eligible for the statutory scheme. In fact, the scheme is such that it is not difficult to work out whether someone is eligible, by reference to their offence, the sentence they received for it, when it occurred and whether they support an organisation which has been specified as one whose supporters are not to benefit from the scheme. I would certainly make it clear that I am not pre-empting any decision of the Sentence Review Commissioners if the person chose to return to Northern Ireland. Indeed, I think that is implicit in the latter part of the draft statement.

That brings me to what would happen in cases where someone who is currently subject to an extradition request wanted to return to Northern Ireland voluntarily. Having taken informal soundings of the RUC and the Co-Chairs of the Sentencing Commission, officials have prepared the attached draft outline of an administrative scheme which would enable such a person to be given a reliable prior indication of what would happen to them. Each case would need to be considered on its merits both by the RUC and the prosecuting authorities in respect of any outstanding offences and by the Sentencing Commission in respect of potential release on licence. The Sentencing Commission has indicated that it would be prepared to give a
preliminary view of this kind on the basis of "sample papers". If the consideration was favourable and the person decided to return he would then be brought within the statutory early release scheme on a fast-track basis and be subject to all the normal licence conditions.

I believe that this fully meets your concern that the scheme should not in any way fetter in advance the discretion of the prosecuting authorities. This does, however, create a particular awkwardness over the continuing liability for prosecution for the escapees themselves or any escape related offences. I understand that you have now asked the Director to review the evidential position and to discuss public interest considerations in relation to those issues and I hope that that can be concluded speedily. Once the new position on extradition is announced we shall come under very early pressure to make it clear whether those concerned can return to Northern Ireland without fear of prosecution in connection with the escapes.

To go further than an administrative scheme would, as you have said, require legislation either to enable the Sentencing Commission to entertain applications from outside Northern Ireland or, more radically, to confer immunity from fresh prosecution. Neither is an attractive prospect.

I am keen to resolve this matter quickly and, if possible, to announce the new policy before the end of the month, so it would be helpful to know as soon as possible if you see any problems with what I propose.
A copy of this letter goes to the Prime Minister and the Home Secretary (with your letter of 15 August).

I am sorry to trouble you with this urgent letter while you are away, but I know you will understand.

PETER MANDELSON