The Rt Hon the Lord Williams of Mostyn QC
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TERRORISTS ON THE RUN

Thank you for your letter of 2 June about the list of 36 names of persons on the run provided to No.10 by Sinn Fein. I have also seen your letter of 8 June to Jonathan Powell. In each case, I was grateful for the information you supplied in relation to those individuals already convicted of offences who have escaped custody.

The background to this, as I think you are aware, is that in the discussions running up to the IRA statement on 6 May, Sinn Fein argued that, once remaining prisoners had been released on the second anniversary of the early release scheme on 28 July, we should acknowledge that no public interest would be served by pursuing people suspected or convicted of offences committed before the Good Friday Agreement. They were given no encouragement in this, but in a letter to Gerry Adams, the Prime Minister agreed to arrange for you to look at a dozen or so individual cases fairly quickly, and to consider separately the issues which would arise after 28 July.
I agree with you that there is a distinction to be made between those cases where the person "on the run" may be subject to prosecution, and those where he or she has already been convicted and has escaped to another jurisdiction. The first category of cases is, I think, best dealt with as you are doing now, by review on a case-by-case basis. I would not want to argue for legislation preventing prosecution in any such case where the offence pre-dated the Good Friday Agreement.

We should, however, bear in mind that a decision not to exclude prosecution of pre-Good Friday Agreement offences will be controversial with Sinn Fein. In their terms the resolution of the conflict requires a line to be drawn under these cases, and they will point to earlier moments in Irish history in support of their case.

The post-conviction cases raise somewhat different issues, if only because of the operation of the early release scheme. Again the options are, broadly speaking, to legislate or to proceed case by case.

In favour of the case by case approach is the fact that it would avoid controversial legislation and enable me to examine whether the public interest served by extradition proceedings had changed in the meantime. But there are very significant disadvantages:
As you say, the discontinuation of extradition proceedings in any case would not, in itself, be sufficient to draw a line under that case. I would inevitably be drawn into considering the exercise of the Royal Prerogative to remit the remainder of the sentence. Both decisions would undoubtedly be challenged on judicial review, leading to high profile court cases which would focus public attention on the facts of the original offence rather than the rationale for my decisions.

Even the withdrawal of extradition proceedings combined with the exercise of the Royal Prerogative would leave significant loose ends. Unless accompanied by a decision by the DPP to abandon any prosecution for escape-related offences, they would, in particular, leave the person on the run still liable to prosecution for such offences. Crucially, the licence regime under which beneficiaries of the early release scheme remain subject to recall to prison if the organisation they support breaches its ceasefire or they again become involved in terrorism would not apply. I would find this impossible to defend.

In any event, the public interest considerations to which, in practice, I am likely to have regard – the improvement in the political situation and the fact that, if returned, the person
concerned would stand to be released from prison immediately or soon afterwards - will apply to almost all of the cases in question, and point towards a more general solution.

For these reasons, like you I incline towards an approach through legislation. This might involve a Bill to regularise the position of those who escaped while serving a prison sentence, who may now be subject to extradition proceedings but who, on return, would be subject to immediate or imminent release under the provisions of the Northern Ireland (Sentences) Act 1998.

The Sentences Act currently operates on the basis of applications to the independent Sentence Review Commissioners from eligible prisoners. To be eligible, prisoners must be in prison in Northern Ireland, be serving a sentence of at least five years for a scheduled offence committed prior to 10 April 1998 and not be a supporter of a specified organisation. If the application is granted, the prisoner will be given a release date on which he will be released on licence, provided he has served a minimum period of two years in custody. Section 9 of the Act sets out the licence conditions, namely that the person does not support a specified organisation, does not become concerned in acts of terrorism and, in the case of a life prisoner, does not become a danger to the public.
If a statutory approach were to be taken to the cases of escapees, the purpose of it might be to enable people to apply to the Sentence Review Commissioners whilst unlawfully at large. Amongst those on the current list, most would be eligible for immediate release, subject to the consideration of the Commissioners in each case, having already spent two years or more in custody. A few, however, would not and would be required to spend some months in prison before the two-year point was reached. Extradition proceedings against the latter could not be dropped until they had returned to serve this outstanding period.

One issue which would have to be resolved is whether, and if so how, to deal in the legislation or otherwise with the question of criminal charges for the escape itself or related offences. Some of these offences, particularly in relation to the Maze escape in 1983 when a prison officer was critically injured and subsequently died, could potentially be very serious. This aspect could be dealt with in a number of ways. The statute could, in effect, provide an amnesty for escape-related offences. Alternatively, you might wish to consider, at an early stage and on a case-by-case basis, the public interest and evidence requirements for prosecution. Or the matter could simply be left, with the attendant risk that an individual returning to Northern Ireland might be arrested in connection with the escape. The legislative option is again the only way in which a uniform approach could be guaranteed but might well be a step too far politically as it takes us well into amnesty territory for what were not trivial offences. Case-by-case consideration looks the most attractive
option from my perspective although this is ultimately a matter for the DPPs in consultation with you.

There is no doubt that legislation on the lines I have described would be highly controversial. The Good Friday Agreement made no provision for fugitives to benefit from the early release scheme, and such a provision could almost certainly not have been agreed with the unionists. During the passage of the Bill which became the Sentences Act, it was made clear that it did not represent an amnesty for those who had committed terrorist offences.

On the other hand, it cannot be denied that the passage of the two year point for the early release scheme creates a new situation. There would be little point in continuing to devote public resources to seeking the return of people with no significant outstanding liability to imprisonment, or in keeping such people in limbo indefinitely. And if something is to be done about them, it seems better that it should be approved by Parliament and have the effect of applying the licence conditions.

If we did decide on legislation, there would be a fine judgement to be made about timing. Given the problems with this year's legislative programme, I imagine that there is now no question of a Bill before next session. We would have to bear in mind that, once we made our intentions known, this would in itself have an effect on outstanding extradition requests, notably
the one involving the three men in the USA. I might need to take steps to halt proceedings in that case, if not in others.

Before taking a final view, I will want to consult other colleagues, including the Prime Minister. But as a first step I would welcome the discussion you suggest in your letter of 2 June. I hope it can be arranged as soon as possible.

For the moment, I am copying this only to the Prime Minister and Jack Straw, and to Sir Richard Wilson.

PETER MANDELSON