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From: PS/Secretary of State  
13 March 2001

To: Mr Pittall - O

cc: See Copy Distribution List

ON THE RUN: MEETING WITH GERRY KELLY, 12 MARCH

The Secretary of State met with Gerry Kelly, who was accompanied by Francie Malloy and Siobhan O'Hanlon, in Castle Buildings on 12 March to follow up the reference to OTRs in the Joint Statement by the two Governments following the talks at Hillsborough on 8 March. Douglas Bain, you and I were also present. The meeting was good-humoured and businesslike throughout. Sinn Fein chose to spring a surprise by telling us they had a further list of 30 OTRs for consideration.

2. The Secretary of State explained that the meeting had arisen from a brief discussion during the talks at Hillsborough on 8 March about the scope for making progress on OTRs. He believed there were about a dozen cases on which we could move almost immediately and had met Gerry Kelly and Francie Malloy at the weekend to discuss the way forward. We were dealing with two categories of cases. The cases of [redacted] fell into the first category. The case was straightforward since [redacted] was qualified for early release under the terms of the Sentences Act. However, [redacted] had escaped from [redacted] original sentence before serving the minimum two years required by the legislation. [redacted] case would require the exercise of the Royal Prerogative of Mercy.

3. The Secretary of State explained that the second category included the 10 Maze escapers and set out the basis on which their cases were being dealt with. Gerry Kelly asked about the cases of [redacted] and [redacted]. The Secretary of State said these cases had not yet been cleared through the system. There was no mystery to this. We were simply in the process of clearing them. Gerry Kelly said he believed their omission was down to 'inertia in the system' rather than anything sinister. Would it be possible to estimate how long it would take to clear them through the system? The problem was that [redacted] was a high profile case. [redacted] family had gone through a great deal of trauma and the case needed to be dealt with as quickly as possible. The Secretary of State asked you to check on progress and get back to Gerry Kelly in the next day or so.

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Gerry Kelly said Sinn Fein’s list of OTR cases was continuing to grow. They now had another 30 names. This should not come as a surprise. New cases were continually emerging. These were cases of which Sinn Fein had not even been aware when this issue was first raised. We now needed a system which would deal with these cases in a proactive manner and push them through to completion.

5. Gerry Kelly asked how the process would work in these cases. Douglas Bain explained that there would be two stages. First, the OTRs would have to be met in person within Northern Ireland to prepare their applications to the Sentence Review Commission and to be issued with a licence under Rule 27 to place them on temporary release. Thereafter, applications would be submitted to the Sentence Review Commission and the Commissioners would be invited to proceed immediately to a determination. Once the Commission had given a direction that an individual was eligible for release, a representative of the Secretary of State could issue a licence. Once again, this would have to be done in person.

6. Gerry Kelly sought clarification about whether it was necessary for OTRs to be met twice. Sinn Fein wanted the process to be as painless as possible and hoped it could be completed in a single action. Would it not be possible for a solicitor to collect the Rule 27 licence and submit the application to the SRC? Douglas Bain explained the legal reasons why the licence had to be given to the individual in person. Gerry Kelly asked whether it would be possible for a representative to collect the final licence from the Secretary of State’s representative? Douglas Bain explained that there was a legal requirement for the individual to sign a licence indicating that its conditions were understood. Gerry Kelly asked why there had to be a gap at all between the two stages: why could a representative of the SRC not be there on the first day to issue the licence? Douglas Bain explained that we needed to allow time for the SRC properly to consider each case. You added that we had done everything possible to make the process pain-free but we needed to observe the legalities. Gerry Kelly said that Sinn Fein believed they had got the process ‘melted down’ to a single meeting, but were now being told that two meetings would be necessary. You reiterated that a two-stage process was unavoidable if we were to avoid legal challenges.

7. Gerry Kelly asked whether it would be possible to deal with all 12 of the cases at once — in terms of explaining the conditions of licences. Douglas Bain agreed this would be possible. He also confirmed that the cases could be taken as soon as Sinn Fein were ready. You added that they could be taken in one or more tranches if this would be helpful. Gerry
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Douglas Bein explained that these cases could not be dealt with until the individuals returned to Northern Ireland. This was a requirement of the legislation. All papers needed to be signed by the individual within the jurisdiction. Gerry Kelly said he was clear enough about the process. He would return to us with a proposed venue. He suggested the Canal Court Hotel in Newry as a possibility.

8. Gerry Kelly asked about the remaining cases. You explained that of the 41 on the original Sinn Fein list, 8 had already been resolved and we had now dealt with a further 12. This left 21 cases, comprising 8 sentenced cases and 13 pre-trial cases. These were largely the hard core of cases where the prosecuting authorities had taken the view that there was sufficient evidence to support a prosecution and that it remained in the public interest to prosecute. Gerry Kelly asked whether there was any alternative to dealing with these cases through legislation. The Secretary of State said that if the prosecuting authorities maintained their current position, we had no alternative but to legislate. Gerry Kelly said that if there was no alternative, HMG should get on with the task of preparing the legislation now. The Secretary of State said such legislation was likely to be very difficult politically and in Parliament. As such, the context in which HMG was taking it forward would be extremely important. If the situation in Northern Ireland was deteriorating, our difficulties would be exacerbated.

9. Gerry Kelly said the difficulty for Sinn Fein was that a commitment had been given by the Prime Minister to sort this issue out. If legislation was necessary to do so, then we needed to get on with it.

10. Finally, Gerry Kelly raised a number of individual cases. He acknowledged that the case of [redacted] had been resolved, but asked for a letter confirming the position for the record. On the cases of [redacted], we needed to bear in mind the immense difficulty that would arise if Sinn Fein sorted out the problem over their continued imprisonment in [redacted] and they faced additional problems in the UK after their release.
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Paul Priestly

PS/Secretary of State

cc: PS/Secretary of State (B&L) - O
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    PS/Mr Pilling (B&L) - O
    Mr Jeffrey - O
    Mr Walling - O
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