FROM: JONATHAN STEPHENS  
Associate Political Director (L)  
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PS/Secretary of State (L&B)  
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MEETING WITH SINN FEIN: 26 JULY

The Secretary of State had a breakfast meeting at Hillsborough Castle yesterday morning with Garry Kelly and Alex Maskey.

Summary

2. Sinn Féin complained about the slow pace of progress on OTRs, With the IRA having delivered on its CBM, Adams and McGuinness' credibility was being undermined by the failure to deliver on clear commitments made to them.

3. The Secretary of State reminded Sinn Féin of the precise nature of the commitments. He had more sympathy with Sinn Féin on OTRs – an issue which he recognised had to be resolved but posed some real legal difficulties which could not be ignored. The Secretary of State undertook to look again at the cases of

Detail

4. Garry Kelly said that republicans, far from being triumphalist, feared that with the IRA CBM already delivered, HMG was now reneging on its own commitments: only three out of a list of 30 OTRs had been resolved; there was no visible progress on demilitarisation and the Policing Bill was a disaster. All this undermined the credibility of
Adams and McGuinness who had persuaded the IRA to undertake its confidence building measure on the strength of the Prime Minister’s commitments to them.

5. Political excuses did not wash when the Government had a huge majority. Sinn Féin assumed the Prime Minister knew of the legal technicalities when he made the commitments. Clear commitments have been given and should now be followed through.

OTRs

6. Gerry Kelly said that there had been a firm commitment to sort this issue out. The list of 30 Sinn Féin have provided, only three cases had been resolved so far. The list was likely to increase but not by a large number: Sinn Féin were targeting only the most clear-cut of cases.

7. The Secretary of State said that he had greater sympathy on this issue than on policing: OTRs were an uncleared-up conundrum of the conflict. The Prime Minister had never given a commitment to drop any specific cases: his commitment had been to ensure that the Attorney General would consider cases, but the Attorney General and the DPP(NI) were entirely independent of Government. The initial number talked about had been 12 cases a month, not 30. It had always been clear that the Attorney General’s consideration was without prejudice to the outcome. But the Secretary of State recognised the principle that this issue had got to be resolved.

8. Gerry Kelly said that Sinn Féin understood why, in his letter to Adams, the Prime Minister had set out the formal and technical position: when things got written down, everyone covered themselves. But in private meetings, the understanding had been clear: the Prime Minister had said that he would sort this out. It was not an issue which had much resonance in the wider community, but it was critical in the republican community. People indeed were assuming it was already sorted out and were talking of returning to Northern Ireland: Sinn Féin had to warn them not to. Adams and McGuinness’ credibility was undermined.

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9. The Secretary of State said that the legal issues were not mere technicalities or matters of tactics: if this were a matter of political will, the Government would simply hold its nerve and do it. But, decisions on prosecutions were for the Attorney General and the DPP: the Government had no powers to direct them. They had to be persuaded either that there was not sufficient evidence to justify prosecution or that it was not in the public interest to do so. Their decisions were open to judicial review and any idea that their decision had been reached on the basis of political expediency would not stand up. Even in the case of extraditions, where a decision on whether to pursue extradition was generally for the Secretary of State, this would also be open to challenge and solid non-political reasons were required. Even if extraditions were dropped, that would still not render the individuals free from arrest if they returned to Northern Ireland.

10. Finding a way through these legal issues was not easy, but it was his job to find it. If those already convicted returned to Northern Ireland from abroad and put themselves through the process of applying to the Sentence Review Commissioners, then the cases could be resolved very speedily indeed, but he rather doubted whether people would be prepared to do this. In that case, we might even need to take legislation either to provide an amnesty or to allow the Sentence Review Commissioners to consider such cases. But that would pose huge political problems and take time.

11. Gerry Kelly confirmed that no one would come back to put themselves through custody and take the chance of an application to the Sentence Review Commissioners.

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