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AN RÚNAÍOCHT ANGLA-ÉIREANNACH
BÉAL FEIRSTE

ANGLO-IRISH SECRETARIAT
BELFAST

Secure Fax: 860

DATE: 28 July 1998 **NO. OF PAGES (including this one):** 9

TO: Colm O Floinn
Anglo-Irish Division

FROM: Val O'Donnell

SUBJ: **Northern Ireland (Sentences) Bill, 1998:**

Order to be made by the Secretary of State under clause 3(8) of above Bill specifying organisations which will not qualify for the purpose of the early release of prisoners

1. I have been told by the British side that the above Order will not be tabled in Parliament until later this evening. They are making arrangements to fax a copy to us at the earliest moment - they anticipate around 7pm this evening

2. However, I have obtained an advance copy of a draft press notice (copy attached) which the Secretary of State intends to release in conjunction with tabling her Order. It indicates that the Secretary of State will specify the following organisations:

- LVF
- INLA
- CIRA
- "Real" IRA

PIRA, UDA and UVF will not be specified.

3. I understand that the legal advice given to the Secretary of State, in relation to the discharge of her duties under clause 3 of the Bill, was on the lines indicated in the Appendix.

4. I will transmit a copy of the Secretary of State's Order, on receipt here.

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Appendix

Secretary of State's powers relating to the issue of specifying an organisation under Clause 3(8) of the Northern Ireland (Sentences) Bill, 1998

Under Clauses 3(4) and 3(5) of the Northern Ireland (Sentences) Bill, which is expected to receive Royal Assent by 28 July, it is a condition before a prisoner can be considered for accelerated release that he or she must not be, nor be likely to become, a supporter of a specified organisation.

2. Clauses 3(8) and (9) of the Bill state that -

"(8) A terrorist organisation is an organisation specified by order of the Secretary of State; and he shall specify only an organisation which he believes -

(a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and

(b) has not established or is not maintaining a complete and unequivocal ceasefire.

(9) In applying subsection (8)(b) the Secretary of State shall in particular take into account whether an organisation –

(a) is committed to the use now and in the future of only democratic and peaceful means to achieve its objectives;

(b) has ceased to be involved in any acts of violence or of preparation for violence;

(c) is directing or promoting acts of violence by other organisations;

(d) is cooperating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms decommissioning Act 1997 in implementing the decommissioning section of the

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Agreement reached at multi-party talks on Northern Ireland set out in Command Paper 38883".

3. Clause 3(10) requires that the Secretary of State reviews the list from time to time in case changes in circumstances require it to be amended.

4. The Secretary of State needs to make a determination about which organisations would be regarded as specified organisations for the purposes of Clause 3(8). The intention is to make the Order specifying the relevant organisations before the summer recess so that the Sentence Review Commissioners can begin work in August. The draft Order is subject to affirmative resolution in both Houses of Parliament.

5. The test is whether the Secretary of State believes that organisations meet the criteria in Clause 3(8). In assessing whether the terms of Clause 3(8) are met, the Secretary of State is required, in particular, to take account of the four factors in Clause 3(9), though she is not precluded from taking account of other factors as well provided they are relevant to Clause 3(8)(b).

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DRAFT PRESS NOTICE

MO MOWLAM DECIDES ON ORGANISATIONS TO BE EXCLUDED FROM EARLY RELEASES OF PRISONERS

The Secretary of State for Northern Ireland, Dr Marjorie Mowlam MP, has announced that, subject to Parliamentary approval, supporters of four terrorist organisations will not benefit from the prisoner release provisions of the Good Friday Agreement.

They are the Loyalist Volunteer Force (LVF), the Irish National Liberation Army (INLA), the Continuity Irish Republican Army (CIRA) and the "Real" Irish Republican Army.

Dr Mowlam said that she had reached her decision to specify these organisations in the light of the best assessments of the police and other security forces, and in consultation with the Chief Constable of the RUC.

She said:

> "The crucial question which Parliament has directed me to address, in each case, is whether the organisation is maintaining a complete and unequivocal ceasefire. I have reached a view of whether that condition is met, in the round, taking full account of all four of the factors which the Prime Minister laid down during the Referendum campaign. It is inevitably a balanced judgement, in which any specific failure by an organisation has to be weighed alongside all the other available information, including an assessment of its intentions and good faith."

Dr Mowlam said that she had hesitated over the decision not to specify the Provisional Irish Republican Army (PIRA), in the light of reports that the RUC is pursuing a line of enquiry which assumes that the recent murder of Andrew Kearney was committed by the PIRA. She said:

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"The murder of Andrew Kearney - which was a vicious, cowardly and stupid act - was, the police believe, the work of members of the Provisional IRA. That investigation is continuing, and when caught and convicted - as they will be - those responsible will not benefit from this early release legislation. I note that Gerry Kelly of Sinn Fein has said that this murder was wrong and should not have happened. It most certainly was wrong, and certainly should not have happened. All right thinking people will condemn it in the strongest possible terms.

On balance, my judgement, taking all the relevant information available to me in the round, is that this tragic murder, despite its seriousness, does not overturn the weight of contrary evidence that PIRA is holding to its cessation. I have therefore decided not to specify PIRA in the Order. But I will keep that position under close review.

As the Prime Minister has said, the requirements on those who seek to benefit from the Agreement must become more rigorous over time. My clear message to PIRA, the UDA and others is that there must be an end to punishment attacks."

A fuller statement by Dr Mowlam is attached. A draft Order under section 3(8) of the Northern Ireland (Sentences) Act specifying the four organisations is being tabled this evening, and is due to be debated in the House of Commons on Wednesday 29 July and in the House of Lords on Thursday 30 July.

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STATEMENT BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

The Good Friday Agreement commits the British and Irish Governments to provide for an accelerated programme for the release of prisoners convicted of scheduled or similar offences.

The Northern Ireland (Sentences) Act which has just received Royal Assent creates a statutory basis for such a programme. Under section 3 of the Act, a prisoner is not to benefit from early release if he supports an organisation which I have specified by order. Under section 3(8) I must specify such an organisation if I believe that it:

(a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it;

(b) has not established or is not maintaining a complete and unequivocal ceasefire.

Under section 3(8) in reaching such decisions I am required in particular to take into account whether an organisation:

(a) is committed to the use now and in the future of only democratic and peaceful means to achieve its objectives;

(b) has ceased to be involved in any acts of violence or of preparation for violence;

(c) is directing or promoting acts of violence by other organisations;

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(d) is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the Agreement reached at multi-party talks in Northern Ireland set out in Command Paper 3883.

These four factors were set out in a speech by the Prime Minister in Northern Ireland in May during the Referendum campaign, when he undertook that they would be taken into account in deciding on the organisations to benefit from accelerated release. I am not precluded from taking account of other relevant factors.

I have decided to designate as specified organisations for the purposes of the Act the Loyalist Volunteer Force (LVF), the Irish National Liberation Army (INLA), the Continuity Irish Republican Army (CIRA) and the "Real" Irish Republican Army. Prisoners who support these organisations will not benefit from the early release arrangements. I am this evening tabling a draft Order under the new Act specifying these organisations, which I expect to be debated in both Houses of Parliament over the next few days.

I have reached these decisions in the light of advice based on the best assessments of the police and other security forces in consultation with the Chief Constable of the RUC.

I have not found them easy judgements to make. By its nature, the information available to me is not clear-cut. Public statements by organisations are not always matched by their actions. There can be a lack of clarity about whether, for example, attacks were sanctioned by the leadership of the relevant grouping.

The crucial question which Parliament has directed me to address is whether the organisation is maintaining a complete and unequivocal ceasefire. In relation to each organisation, I have reached a view of whether that condition is met, in the

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round, taking full account of all four of the factors which the Prime Minister laid down during the Referendum campaign. It is inevitably a balanced judgement, in which any specific failure by an organisation has to be weighed alongside all the other available information, including its overall behaviour and an assessment of its intentions and good faith.

In relation to the Provisional Irish Republican Army (PIRA), I have in particular taken account of the fact that the RUC are pursuing a line of enquiry which assumes that the recent brutal murder of Andrew Kearney - which was a vicious, cowardly and stupid act - was the work of the members of the PIRA. That investigation is continuing, and when caught and convicted - as they will be - those responsible will not benefit from this early release legislation. I note that Gerry Kelly of Sinn Fein has said that this murder was wrong and should not have happened. It most certainly was wrong, and certainly should not have happened. All right thinking people will condemn it in the strongest possible terms.

On balance, my judgement, taking all the relevant information available to me in the round, is that this tragic murder, despite its seriousness, does not overturn the weight of contrary evidence that PIRA is holding to its cessation. I have therefore decided not to specify PIRA in the Order. But I will keep that position under close review.

As the Prime Minister has said, the requirements on those who seek to benefit from the Agreement must become more rigorous over time. My clear message to PIRA, the UDA and others is that there must be an end to punishment attacks.

Early release of prisoners is, for many, the aspect of the Good Friday Agreement which is most difficult to swallow, not least by the victims of past atrocities and their families. I understand and share that sentiment. But the Agreement is a package for which the people of Northern Ireland have voted. Without the release of prisoners, it is extremely unlikely that agreement could have been reached. I believe early release will be a price worth paying if the Agreement which has to be

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accepted or rejected as a whole, helps to secure a lasting settlement to the problems of Northern Ireland, enabling the two communities to live in peace and harmony.

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