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Reference Code:	2021/52/703
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Prisoners and the Northern Ireland Peace Process

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A Westminister Seminar, 12 March 1998

Summary note on the Irish Government's Approach

1. It is widely recognised that both Republican and Loyalist prisoners made a significant contribution to the achievement of the ceasefires. There is a general recognition among the participants in the multi-party talks of the importance of prisoner questions and of the need for the outcome of the peace process to address the situation of all those, whether Loyalist or Republican, who have been imprisoned as a result of the conflict in Northern Ireland.

2. The Report of the International Body identified continued action by the Governments on prisoners as one of the measures which would bolster trust. The Irish Government fully shares this view.

3. This view has guided our approach to prisoners within our own jurisdiction, as well as to the situation of prisoners in Northern Ireland, Britain and elsewhere. Speaking shortly after the IRA ceasefire was restored on 20 July 1997, the Taoiseach set out the Government's approach:

> "In the context of talks it will also be essential that they focus in an imaginative and compassionate way on all the questions relating to those who have been imprisoned in the context of the conflict, both Republican and Loyalist, while also giving full attention to the concerns of victims of violence. The question of prisoners must be addressed in a constructive and generous way. That will be the approach of this Government ....."

4. We have sought to proceed in a manner which is both sensitive and imaginative. Careful balances have to be struck between the need for justice

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and the need to encourage confidence. Since the re-establishment of the IRA ceasefire in July, 1997, the Government has granted early release to 16 prisoners who had been imprisoned in connection with the Northern Ireland conflict. In addition, between August 1994 and February 1996, we had already released 36 persons who were also imprisoned for offences connected with the conflict.

5. We certainly do not wish to suggest that the concerns of those who have suffered from violence and their families should be forgotten. Our aim, rather, is to build confidence in the peace process and thereby minimise the risk of future victimisation. We should add that early releases in the Irish jurisdiction are made on the basis that the persons concerned will keep the peace and be of good behaviour and that they will not, through publicity or otherwise, do anything which might cause annoyance or distress to any person who may have been affected by the offence which led to their imprisonment. Each case is considered individually on its own merits.

6. The Government attaches importance to the transfer of prisoners from Britain to Ireland under the terms of the European Convention on the Transfer of Sentenced Persons. We have been consistently guided by the principle that, wherever possible, prisoners should be permitted to serve their sentences close to their families A total of seventeen Republican prisoners in Britain have been transferred to prison in this Irish jurisdiction since the Convention came into effect in Ireland on 1 November 1995. This figure includes eleven transfers which have taken place since 3 December 1997. The Government look forward to further transfers taking place soon.

Embassy of Ireland

March 1998

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Prisoners

Background Note

1. It is widely recognised that both Republican and Loyalist prisoners made a significant contribution to the achievement of the ceasefires. There is a general recognition among the participants in the multi-party talks of the importance of prisoner questions and of the need for the outcome of the peace process to address the situation of all those, whether Loyalist or Republican, who have been imprisoned as a result of the conflict in Northern Ireland.

Government position

2. The position of the Government in relation to prisoner issues was stated by the Taoiseach on 24 July 1997, when he said:

"In the context of talks it will also be essential that they focus in an imaginative and compassionate way on all the questions relating to those who have been imprisoned in the context of the conflict, both Republican and Loyalist, while also giving full attention to the concerns of victims of violence. The question of prisoners must be addressed in a constructive and generous way. That will be the approach of this Government, returning to the same approach that existed prior to February 1996. All those in this jurisdiction who have been imprisoned in the context of the conflict will benefit from these measures. We will urge the British Government and the authorities in other jurisdictions, where prisoners related to the Irish conflict are held, also to adopt an imaginative and generous approach."

3. Since the re-establishment of the IRA ceasefire in July, 1997, the Government has granted early release to 16 Republican prisoners. In addition, between August 1994 and February 1996, we had already released 36 persons who had been imprisoned in connection with the Northern Ireland conflict. Such releases are made on the basis that the persons concerned will keep the peace and be of good behaviour and that they will not, through publicity or otherwise, do anything which might cause annoyance or distress to any person who may have been affected by the offence which led to their imprisonment.

4. There are a number of prisoners serving 40 years for the capital murder of Gardaí in our jurisdiction. The IRA-aligned prisoners currently serving 40 year sentences have been granted very limited concessions since the first IRA cease-fire, most recently when three of them were granted Christmas parole. The Christmas leave concession should be taken at face value and not regarded as a precursor to any move towards the early release of any of the "40-year prisoners".

Prisoners in Britain

5. At present, there are thirteen convicted Republican prisoners in Britain. In addition, there is now only one republican on remand there, since Róisín McAliskey's release (see separate note).

6. The trial of Seamus McArdle, charged in connection with the 1994 bombing in Canary Wharf, began on 12 January but on 20 February the judge ordered a re-trial as the jury

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could not agree on a verdict. On 10 February 1998, the trial judge directed the jury to find Patrick McKinley, who was also on trial in connection with the Canary Wharf bombing, not guilty as there was insufficient evidence.

7. Regular consular visits to prisoners are made by the Embassy, London. A full round of consular visits took place between 17 and 19 November and an Embassy official visited prisoners in Belmarsh again on 9 January.

8. While conditions of detention in general have improved since the August 1997 decision to downgrade the security classification of a number of prisoners and to transfer them out of Special Secure Units, there have been complaints from some of the prisoners about certain aspects of their conditions. These have included 22-23 hour lock-ups, difficulties concerning visits by relatives, forcible DNA testing, sleep deprivation, and strip-searching. The fact that Seamus McArdle continues to be held in the Special Secure Unit of Belmarsh prison is a matter for concern. Representations concerning these issues are made on an ongoing basis at both political and official level to the relevant British authorities.

Transfer of Republican prisoners

9. The transfer of Republican prisoners from Britain under the terms of the European Convention on the Transfer of Sentenced Persons is accorded a high priority by Government. A total of seventeen Republican prisoners in Britain have been transferred to prison in this jurisdiction since the Convention came into effect here on 1 November 1995. This figure includes eleven transfers which have taken place since 3 December 1997. There had been no transfers from Britain between December 1996 and 3 December 1997.

10. Of the thirteen convicted prisoners currently in Britain, ten have requested transfer to this jurisdiction, one has requested a transfer to Northern Ireland, another has not yet made a transfer application and the intentions of Michael Gallagher, who was recently sentenced, are not yet known. Five of the applications made (see para 11) have been consented to by the Irish side and await the consent of the Home Secretary. The other applications are at different stages in the procedures set out under the Convention.

11. On 30 January, the Home Secretary set the tariffs (that is, the minimum time to be served) of the **Balcombe Street Four** at whole-life. The four men have to date spent over twenty years in prison. The Minister for Justice, Equality and Law Reform consented to their transfers from Britain on 17 February 1998. Their applications have been returned to the Home Office for the consideration of the Home Secretary. The application of **Paul Magee**, who also has a whole-life tariff, was consented to by the Minister for Justice, Equality and Law Reform on 2 January and is also awaiting the decision of the Home Secretary.

12. The Home Secretary has said that he will consider the release of prisoners serving whole-life tariffs once they have served 25 years, and thereafter at five year intervals. On 10 November 1997, he described in the House of Commons his policy on revising, either by reducing or increasing, the tariff of a mandatory life sentence. In this context, he said that he would be open to the possibility that, in exceptional circumstances, including for example exceptional progress by the prisoner whilst in custody, a review

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and reduction of the tariff might be appropriate. He said that he would have this possibility in mind when reviewing at the twenty five year point the cases of prisoners given a whole-life tariff.

13. With regard to the transfer applications of Paul Magee and the Balcombe Street Four, which if approved would involve their continued imprisonment in this jurisdiction, officials of the Department of Justice, Equality and Law Reform have advised the Home Office that had each of them "received a life sentence for a similar offence in this jurisdiction, [they] could expect, save for exceptional circumstances arising, to serve a period similar to that which [they] could expect to serve in England and Wales based on the considerations set out in the Home Secretary's response to Parliament on 10 November, 1997."

Alleged Miscarriages of Justice - Danny McNamee and John Kinsella.

14. In July 1997 the Criminal Cases Review Commission (CCRC) in Britain decided to refer the case of **Danny McNamee** to the Court of Appeal. Mr. McNamee was sentenced to 25 years in 1987 in connection with the 1982 Hyde Park bombings. Mr. McNamee, his family and the IRA all state that he is not a member of the IRA. His solicitor contends that the prosecution failed to disclose the presence of the fingerprints of a convicted IRA bomb-maker on evidence used against Mr. McNamee. Doubt is also cast on the reliability of the evidence of the forensic scientist used by the prosecution. A date for Mr. McNamee's appeal hearing has not yet been set, but it is understood that it will probably take place in a few months time. Mr McNamee was transferred to Northern Ireland in July 1997. His security classification was downgraded from top risk to high risk on 23 October 1997 which has given him greater possibilities of obtaining compassionate and temporary leave.

15. Another potential miscarriage of justice case is that of **John Kinsella**. Mr. Kinsella, a Dubliner living in Nottingham, was convicted in 1994 of hiding explosives on behalf of an IRA unit. Two members of the unit, which included his nephew Denis Kinsella and Pádraic MacFhloinn, were convicted of blowing up the Warrington gas works. John Kinsella, accused of being the quartermaster for the unit, was sentenced to 20 years imprisonment. This was reduced to 16 years on appeal. John Kinsella claims not to have been aware that the bag he hid for his nephew contained explosives. One of the grounds of John Kinsella's appeal submission states that "...MacFhloinn corroborates the Appellant's account that he was not involved in the planning of the explosions." MacFhloinn has written that John Kinsella is not an IRA member and never has been and may appear as a witness during the appeal hearing. On 2 March, at a Direction hearing held regarding Mr Kinsella's appeal, consideration was given to the practicalities of MacFhloinn, who is now in Portlaoise, giving evidence at the appeal hearing. The matter will be raised by the British with the Department of Justice, Equality and Law Reform.

Prisoners in Northern Ireland

16. As of 26 January 1998 there were 499 convicted paramilitary prisoners held in the Maze prison and a further 33 convicted paramilitary prisoners held in Maghaberry prison. The 499 paramilitary prisoners in the Maze prison are broken down as follows: IRA, 224; INLA, 19; UDA/UFF, 121; UVF, 107; LVF, 19. In Maghaberry prison the 33 are broken

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down into 11 republican and 22 loyalist prisoners.

17. In September 1997 the Secretary of State stated, in a letter to David Ervine, that the LSRB would would take into account the "quality" and "enduring nature" of each of the ceasefires in arriving at any recommendations for release.

18. On 9 January 1998 the Secretary of State met with loyalist prisoner in the Maze prison. At that meeting the Secretary of State said that she recognised the importance of the prisoner issue to both sides and that it needs to be "resolved alongside progress on all the other issues, to the satisfaction of the participants in the process". She went on to say that, "we are prepared, in the Liaison Sub-Committee on confidence building measures, to discuss parties' concerns and to work on an account of what would happen in respect of prisoner releases in the context of a peaceful and lasting settlement being agreed".

19. The British Government tabled a paper on the prisoners issue at the Talks Liaison Sub-Committee on confidence building measures on 4 February 1998. The paper did not contain any new substance on British thinking but invited the parties to provide their views and looked forward to further discussion of these issues in the Sub-Committee. It addresses prisoner issues under five main headings: Who could be granted early release?; What changes might be made in respect of lifers?: Should there be 66% remission?; Could some offences or offenders receive special treatment?; What about licences, working out and supervision? The prisoners issue is due to be considered again at the Sub-Committee in the weeks to come.

Narey Inquiry

20. Mr. Martin Narey, Head of Security and Policy Division in HM Prison Service in London, was originally asked to head an inquiry into the escape of Mr. Liam Averell from the Maze prison on 10 December 1997. Following the murder of the LVF leader, Mr. Billy Wright, in the Maze prison on 27 December 1997, the Narey Inquiry was extended to investigate this incident also.

21. It is understood that the Narey Inquiry has been completed and its report submitted to Northern Ireland Security Minister, Mr. Adam Ingram. We are advised by the Secretariat that while the British Government hope to publish the Report "at the earliest opportunity", it will first need to be discussed with the Secretary of State's Cabinet colleagues. Consequently its publication will not take place this week.

22. In addition, it was announced following Wright's murder that H.M. Chief Inspector of Prisons for England and Wales, General Sir David Ramsbotham, would be asked to undertake a full detailed inspection of the Maze prison, covering all areas. We understand that this investigation is on-going.

23. Mr. Martin Mogg stood down as Governor of the Maze prison on 13 February 1998, a position he held since last October. He will continue in his other, more senior post, as Prison Service Director of operational management. The Northern Ireland Prison Service maintain that Mr. Mogg's dual role was always meant to last only six months. Mr. Mogg said in a recent BBC interview that one person should not hold both jobs. On 9 March 1998, the Northern Ireland Prison Governors' Association, in an unprecedented move, voted no confidence in the Chief Executive of the Northern Ireland Prison Service, Mr.

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Alan Shannon. The Prison Officers' Association has backed the call for Mr. Shannon's resignation. The Secretary of State expressed her "absolute confidence" in Mr. Shannon, but went on to say that, "civil servants get moved periodically and at some point in the future Mr. Shannon will be moved like Mr. Mogg was moved a couple of month ago".

Lee Clegg/ Casement Two/ Life Sentence Review Board

24. Lee Clegg, the British Army Private convicted of Karen Reilly's murder in June 1993, was subsequently released by the then Secretary of State in June 1995, following a recommendation from the Life Sentence Review Board (LSRB). Clegg had served only two years of his life sentence. Clegg appealed his conviction in February 1994 and again in January 1995, but on both occasions the conviction was upheld. In January 1997, the then Secretary of State referred Clegg's case back to the Northern Ireland Court of Appeal. On 27 February 1998, the Appeal Court quashed Clegg's murder conviction and ordered a re-trial. A date for the re-trial has yet to be set.

25. The operation of the LSRB has been problematic for confidence in the administration of justice. It appears to many nationalists that the LSRB treat convicted British soldiers more generously than other cases. The cases of Guardsmen Mark Wright and James Fisher and the Casement Two were reviewed by the LSRB in October 1997. The Secretary of State announced on 27 October 1997 that Wright and Fisher would be referred to the LSRB in a year, when they have served six years. On 26 January 1998, Wright and Fisher were granted leave for judicial review of the Secretary of State's decision of October 1997. No date has been yet set for the judicial review hearing.

26. The Casement Two, Seán Kelly and Michael Timmons, were each sentenced to life imprisonment for murder and to concurrent fixed terms of 15 and 10 years each on charges of grievous bodily harm and false imprisonment, arising from the murder of two British Army corporals (Derek Wood and Robert Howes) at the funeral of Kevin Brady in Anderstown, West Belfast in March 1988. A third defendant Patrick Kane, was also sentenced with Timmons and Kelly. The Court of Appeal delivered a summary judgement instructing Kane's release on 20 June 1997, on the basis of a psychological report that stated that Kane had a mental age of 11. The Casement Two's cases were referred to the Secretary of State for her personal recommendation. The Secretary of State then referred the cases for consultation with the judiciary, to examine the possibility for their release on licence when they have served nine years imprisonment. A provisional release date has now been set for February 1999 and Kelly and Timmons are due to commence the Working Out (Pre-Release) Scheme in May 1998. Kelly and Timmons were informed by the Governor of the Maze that they were to begin their Working-out scheme in early January. They were subsequently informed that an administrative error had occurred and that they were to report back to the Maze. We made representations on their behalf for them to be allowed to start the scheme, without necessarily prejudicing their release date, but without success.

11 March 1998

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