

An Chartlann Náisiúnta
National Archives

Reference Code:	2021/52/723
Creator(s):	Department of Foreign Affairs
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

334/2

cc: Mr. O'Flaherty
D/Justice officials

COPY TO
MR O'DONNELL
MR HICKEY
MR [illegible]TON
[redacted]
MR CALLAGHAN
Ms. LARKIN
Mrs Mallett (for info)

Confidential

Date: 25 March 1998 **No of Pages: 1**

TO: HQ
FOR: Secretary Gallagher
cc P. McDonagh, Embassy London

FROM: Castle Buildings
FROM: Joint Secretary

Subj: Balcombe Street Four

1. The Secretary of State mentioned to us this week the efforts which she is making to have the Balcombe Street Four transferred to our jurisdiction at an early date.

2. It seems that, in response to a message which she sent to the Home Secretary on this subject, the latter has pressed for a commitment from our authorities that the life tariff recently set for the four individuals will be honoured if they are transferred.

3. She is already aware that the Minister for Justice has sent papers containing the requisite undertaking and she intends to reply to Jack Straw pointing this out and, in effect, asking why there should be any further delay on the British side in arranging the transfers.

4. She suggested, however, that, to allay any possible Home Office concerns on this point (whether justified or not), the Department of Justice might reinforce directly with the Home Office the undertaking given by the Minister.

5. She made clear her own assumption (as indicated also to Philip McDonagh last weekend) that, once the prisoners are transferred, it will be for the Minister for Justice to decide what should happen to them when their first review date arises and that, because of a different interpretation of the life tariff in our jurisdiction, this could well mean their release at that point (the 25-year mark).

6. Steve Magner mentioned the matter to his colleagues in D/Justice. Their response is that they have done all that is required of them and that the ball is quite clearly in the Home Secretary's court. The Home Office is, from previous cases, well aware of our

©DFA/2021/52/723

commitment to the maintenance of the integrity of sentences. If the Home Office had supplementary questions to ask, they would be happy to answer them. The suggestion was made that the point might be dealt with in informal contact between the Embassy in London and the Home Office.

©DFA/2021/52/723

31 March, 1998.

Dear Jack,

I refer to your recent letter concerning the repatriation of Paul Magee, Hugh Doherty, Martin O'Connell, Edward Butler and Harry Duggan.

I have noted your concerns in respect of the application of the whole life tariff in the event of the persons referred to being transferred to this jurisdiction. In this regard, I can assure you that the understandings already reached in the matter of transfers, and as indicated in my letter to you of 17 October, 1997, will apply in respect of each of these applicants. On transfer, their sentences will be administered, both in accordance with the provisions of the Convention on the Transfer of Sentenced Persons, and with due regard to the understandings reached between our two Governments in this matter.

I can further assure you that any future review of their sentences will also take into account the considerations set out in your statement to Parliament of 10 November, 1997. As regards, the possibility of their release, you will be aware that the reference to "exceptional circumstances" is intended to cover the possibility that both Governments might deem it right, in the context of reaching an eventual settlement of the Northern question, to bring forward the release of paramilitary prisoners generally. As stated previously, such undertakings given to another Government by the Minister of the day in this jurisdiction will not be departed from unilaterally by a succeeding Minister of the same or another Government.

I hope the above clarifies our position for you and that you might now be in a position to take a decision on these applications. I look forward to hearing from you in due course.

Yours sincerely,

JOHN O'DONOGHUE

John O'Donoghue, T.D.,
MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM.

Jack Straw MP,
Home Secretary,
Queen Anne's Gate,
London SW1H 9AT.

©DFA/2021/52/723

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

30 MAR 1998

John O'Donoghue Esq TD
Minister for Justice, Equality
and Law Reform
72-76 St Stephen's Green
DUBLIN 2
Eire

cc: 1. Secretary General
2. Michael Mellett Asst Sec.

P Mulcahy 30/3/98.

Dear John,

Your officials have recently written to mine conveying the Irish Government's consent to the repatriation of Paul Magee, Hugh Doherty, Martin O'Connell, Edward Butler and Harry Duggan.

As you will know, these five prisoners are each serving sentences of life imprisonment and in each case tariffs have been set at whole life. Whole life tariffs are set only in respect of those found guilty of the most horrific crimes and reflect the need for retribution and deterrence in such cases. A prisoner given a whole life tariff can normally expect, therefore, never to be released.

In England and Wales a whole life tariff, once set, is normally reviewed at the 25 year point and thereafter at five yearly intervals. The purpose of this review is not to determine whether a prisoner is suitable for release, but solely to determine whether a whole life tariff remains appropriate. As I recently made clear, when considering such tariffs in the future I will have regard to factors, beyond the sole criteria of retribution and deterrence, which may merit a reduction in tariff period. However, although each case is considered on its merits the presumption remains that for the purposes of retribution and deterrence the whole life tariff would normally remain appropriate. There is, as yet, no precedent for a reduction of a whole life tariff.

Your officials have indicated that had the prisoners concerned received a life sentence for a similar offence committed in the Republic, 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 my statement to Parliament of 10 November 1997.

©DFA/2021/52/723

CONFIDENTIAL

I take this to mean that, save for exceptional circumstances arising, the prisoners concerned could not normally expect to be released if they were repatriated to the Republic, and I very much welcome this. My judgement is that their whole life tariffs represent an appropriate response to the appalling crimes which they committed and that there are currently no grounds on which to consider any change in tariff.

You have, in the past, given assurances that the early release of terrorist prisoners repatriated from the United Kingdom to the Republic would not take place without consultation with the British Government. I would be grateful for confirmation that this would also apply if either you or a successor were to consider the release of any of the five prisoners whose cases are currently under consideration. It would also help me in considering these requests if you could give an indication of the factors which would be taken into account in the Republic in any future review of sentences of these prisoners.

Yours ever,

Jack.

JACK STRAW

©DFA/2021/52/723