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## NOTE FOR THE RECORD

## RETURN OF ROBERT PETER RUSSELL FROM THE REPUBLIC

1. On Thursday 25 August I attended a meeting in the Law Courts, chaired by the Deputy DPP, Alasdair Fraser, with representatives from the Crown Solicitor's Office and the RUC, to discuss arrangements concerning Russell's return on Saturday 27 August.
2. I was told that after being handed over at the border, Russell would be taken direct to Lisburn Magistrates Court to be remanded in custody on the charges arising from the escape. It was warrants requiring Russell to face these charges that had been backed by the authorities in the Republic; although no warrant had been sent to the Republic requiring Russell to be returned to serve the remainder of his original sentences, the courts in the Republic had been told, and had taken note, that if Russell were returned to face charges then the original sentences would also be put into effect. On the basis of this information I was asked how Russell would be treated in prison and where he would be held. I explained that the Governor of Maze Prison held a valid warrant against Russell requiring him to serve 3 concurrent terms of 20 years' imprisonment; the effect of this warrant had been interrupted by Russell's escape and, regardless of to what establishment Russell returned, this warrant would immediately resume its effect. As soon therefore as he returned to prison custody, he would resume serving his 20-year sentence. It was our view that no court proceedings were required for this process to start: the Governor held a valid warrant and would put it into effect. Although Russell would be sent to custody by the Magistrates on remand, he would also therefore be serving a sentence. In such circumstances our practice was to treat the individual as a sentenced prisoner and, bearing in mind his classification and the length of his sentence still to serve, he would be held under our normal procedures in the Maze Prison. He would be held there, regardless of whether the court in its Remand Order specified another prison establishment; we had powers under the Prison Act, regardless of any court orders, to transfer prisoners between prisons at our own discretion. We therefore had no strong views as to whether he should be remanded to Belfast Prison or to Maze Prison, since in either circumstance we would, in fact, hold him in Maze Prison. Once there, he will be treated as a sentenced prisoner and would not be entitled to the privileges normally accorded to prisoners solely on remand.
3. In the light of this it was decided that the DPP should apply to Lisburn Magistrates Court for Russell to be remanded to the Maze Prison. This would both be in accordance with where the prison authorities actually planned to hold him and also that Russell's further remand hearings would continue to take place at Lisburn, which was the Petty Sessions district in which the escape offences had been committed.
4. There then followed a long debate as to whether, when Russell was handed over at the border, he should be arrested under Section 38 of the Prison Act (NI) 1953 as well as on foot of the warrants which had been backed by the Republic's authorities. On the one hand, the Crown Solicitor took the view that an arrest under Section 38 would make it absolutely clear that Russell was being returned to prison to serve his original sentence; on the other hand, the Deputy DPP took the view that this was clear anyway and that Section 38 was simply a procedural device and its use might possibly run the risk of confusing the operation of the other warrants. I repeated the view that, as prison authorities, we did not

consider an arrest under Section 38 a necessary preliminary to putting Russell's original sentence back into effect but, equally, we could have no objections to Section 38 being used if others considered it suitable. This debate was eventually resolved by deciding that it was a matter neither for the DPP nor the Crown Solicitor and that it was for the RUC to decide whether to use Section 38: I had the impression that they would not use it. Regardless of whether section 38 was used, the Deputy DPP took the view that Russell should be informed at some stage that his original sentence was being put into effect; I said that I would ensure that the interviewing Governor in reception specifically told Russell this.

5. Subsequently I gave considerable thought to the question of whether Russell could make any legal claim for the privileges of an untried prisoner. There is no doubt that our practice is, where a prisoner is both on remand and serving a sentence, that he is treated as a sentenced prisoner, but looking at the legal basis for this practice (and the Deputy DPP thought there was a remote possibility that the issue might be raised) the position is less clear. One interpretation is that, although he will also be serving a sentence, Russell nonetheless falls within one of the categories outlined in Rule 73 and should therefore be defined as an untried prisoner. Having consulted Mr Durling, however, we concluded that Rule 73 had to be read in the light of section 13(4) of the Prison Act (NI) 1953: this clearly does exclude, from the special treatment envisaged under the section, those prisoners who are already serving a sentence. In addition, it could be argued that in interpreting Rule 73 we should take into account, not just whether Russell met any of the particular circumstances outlined in the rule, but also whether there were any other relevant circumstances which should affect his treatment, such as the fact that he would also be serving a sentence. Bearing in mind these considerations, and the fact that we were proposing to treat Russell in accordance with longstanding custom and practice and Russell's treatment in prison would not bear on the validity of his custody, we decided that Russell should not be treated as an untried prisoner. I am satisfied that this was the right decision but it is worth recording that there is enough vagueness in Rule 73 to make for a nice legal argument were the issue ever to be brought to court.

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Prison Regimes Division

30 August 1988

cc Mr Jackson  
Mr Gilmore *JK*

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