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E. R.

MR PALMER

TRANSFER OF PRISONERS WITHIN THE UK

I attach a note which explains our policy on these transfers and considers whether it should be maintained in its present form or be relaxed. It is timely to carry out a review since three years have elapsed since the present policy and its presentation were agreed in Ministerial correspondence; and in any event we have to consider the matter in the light of the Report on the subject by the Standing Advisory Committee on Human Rights and in order to decide on the terms of the reply to be recommended to the Secretary of State.

2. Before putting proposals to Ministers we should welcome comments from recipients both within the Prison Department and in other parts of the office.

S C JACKSON

19 May 1986

CC PS/PUS (B&L)
Mr Stephens
Mr Brennan
Mr Gilliland
Mr Elliott
Mr Chesterton
Mr Innes
Mr Blackwell ✓
Mr Bell
Mr G Hewitt ✓
Mr McConnell
Mr Kendrick ✓
Mr D McNeill
Mr Ginn

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TRANSFER OF SENTENCED PRISONERS WITHIN THE UNITED KINGDOM

Background

The issue of "repatriation" (a word frequently used by Republican prisoners and their supporters because of the prisoner-of-war connotations) of prisoners convicted and serving sentences in England but with homes and families in Northern Ireland is raised from time to time both by the Republican propaganda machine and in other quarters. The present policy is based on agreement reached in correspondence early in 1983 between the Secretary of State and the Home Secretary of the day (Mr Prior and Mr Whitelaw, as he then was, respectively).

2. This paper -

- (i) describes the present policy and the way in which it has operated;
- (ii) notes some problems which have arisen and proposals for change, in particular by the Northern Ireland Standing Advisory Commission on Human Rights in their Report sent to the Secretary of State in January this year;
- (iii) considers and reaches conclusions on the possibilities for changing the present approach.

3. These issues have been discussed with Home Office officials, but not - except in regard to the odd individual case - with the Scots, who have no Republican prisoners in their system but only the odd Loyalist.

4. The Ministerial correspondence in 1983 was the result of a need to agree a revised set of criteria between the different UK jurisdictions for considering applications for transfer. Before that we had tended to use the arguments of scarcity of accommodation and staff as our reasons for refusing to accept terrorist-type prisoners on transfer to Northern Ireland, and we were coming close to conceding that these prisoners were being treated as a separate class because of the nature of their

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offences. We were anxious to arrive at a solution which would enable us to say that all prisoners' applications were considered on their merits, whilst at the same time not obliging us to take prisoners likely to add to our security and control problems.

The law

5. The relevant law is in section 26 of the Criminal Justice Act of 1961. This provides that a prisoner convicted and sentenced in one jurisdiction within the UK may ask to be transferred to another jurisdiction to serve his sentence there. It is for the "exporting" country to decide whether the applicant prisoner should be transferred and to make the necessary formal order, but the authorities in the receiving country are always consulted first. Only if they agree does the transfer proceed. Where a prisoner is transferred to serve his or her sentence, he or she is treated for all purposes as though the sentence had been imposed in the receiving jurisdiction.

The size of the problem

6. There are of the order of 50 prisoners convicted in England of terrorist-type offences who were domiciled in Northern Ireland at the time of their arrest

The campaign for "repatriation"

7. The Provisional Republican Movement see the issue as providing them with another emotive topic with the prospects of arousing sympathy both among Catholics in Northern Ireland and internationally. In fact the issue has not so far raised the head of steam which we thought it might, but it remains a potential propaganda field (it was mentioned to us briefly in the recent discussion in the IC Secretariat of a range of prison issues).

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The criteria agreed in 1983

8. The basic criteria which the Home Office and NIO have operated since the 1983 agreement are as follows:-

- (i) the prisoner must have at least six months of his sentence still to serve;
- (ii) he must have been domiciled in the jurisdiction to which he wishes to go at the time of the offence;
- (iii) he must have family ties there;
- (iv) both Departments must be reasonably satisfied that the prisoner will conform fully with a normal prison regime subsequent to transfer; and
- (v) the offence should not have been so serious as to raise issues of public confidence.

9. (v) above is a matter for the Home Office alone. They fear that if a person convicted of a particularly atrocious and/or notorious crime were seen to be returned by the authorities to his own country where, among other things, he might find his sentence less incongenial public confidence in the administration of justice might be jolted.

Numbers of prisoners transferred

10. The number of transfers since 1981 are as follows:-

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(a) Great Britain to Northern Ireland

| <u>Year</u> | <u>Terrorist-type offences</u> | <u>Non-Terrorist</u> | <u>Total</u> |
|----------------|------------------------------------|----------------------|--------------|
| 1981 | - | - | - |
| 1982 | - | - | - |
| 1983 | - | 3 | 3 |
| 1984 | - | 1 | 1 |
| 1985 | 1* | 3 | 4 |
| 1986 (to date) | 1 ⁰ | 2 | 3 |

*Shane Paul O'Doherty sentenced to life imprisonment in England for offences related to the sending of letter bombs from Northern Ireland to addresses in England.

⁰A prisoner named McNaught sentenced in Scotland for firearms offences committed on behalf of a Loyalist paramilitary organisation.

(b) Northern Ireland to Great Britain

| <u>Year</u> | <u>Soldiers or ex-soldiers</u> | <u>Others</u> | <u>Total</u> |
|----------------|------------------------------------|---------------|--------------|
| 1981 | 2 | - | 2 |
| 1982 | 1 | - | 1 |
| 1983 | 1 | 1 | 2 |
| 1984 | 3 | 1 | 4 |
| 1985 | - | - | - |
| 1986 (to date) | - | - | - |

11. We are sometimes criticised on the ground that while soldiers who commit serious crimes in Northern Ireland are invariably transferred to serve their sentences, we are unwilling to transfer

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people from Northern Ireland convicted and sentenced in Great Britain. We explain the different approach by reference to criterion (iv) in paragraph 8 above - a soldier sentenced in Northern Ireland can be relied upon to co-operate fully in prison in Great Britain and not to seek to subvert the system.

The application of the 1983 criteria to persons sentenced in Great Britain for terrorist-type offences

12. There has so far been only one case since 1983, that of Shane Paul O'Doherty, where we have been sufficiently persuaded on the "conformity" criterion to agree to accept a Republican prisoner for transfer. There have been one or two others where the reports from prisoners in England have been reassuring to some degree, but not to the point of satisfying us that the prisoner concerned would agree to confirm fully with a normal prison regime.

13. The prisoners in Great Britain wishing to be transferred to Northern Ireland to serve their sentences fall into three broad categories:-

- (i) Those who more or less openly profess continued allegiance to the paramilitary cause and who are known, even though the evidence may not be clear or producible, to be taking part in/plotting/subversive activities of one kind or another.
- (ii) Those who do no more than associate, in varying degrees, with other paramilitary-type prisoners where the opportunity presents itself, but where the prison authorities have no hard evidence that they are involved in subversion (even if the question may arise whether they would, in certain circumstances, go along with schemes planned by others).

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- (iii) Those who claim to have cut any paramilitary links which they previously had - or they may claim never to have had any - and the authorities are satisfied beyond reasonable doubt after a period of close observation that the claim is genuine. This is the Shane Paul O'Doherty situation.

14. Unless we are to take the view that because we do not have a problem in straight accommodation terms we should take all prisoners in Northern Ireland whose homes and families are in the Province, there could scarcely be any question of our taking prisoners in category (i) above. Our view in the Prison Department is that notwithstanding the position in terms of accommodation alone, the influence of 50 or so high risk prisoners serving long sentences for terrorist-type offences, some of them particularly notorious ones, would pose a major security/control problem over and above those we have already and which were described in detail in the Hennessy Report. The arrival of a new, potentially militant element might well have serious de-stabilising consequences; repatriation would be regarded by the returning prisoners and their "comrades" as a notable victory; the prisoners and their fellow inmates might decide to mark the event by some spectacular incident or by commencing some further campaign of subversion; and both prison staff would see the move as a major concession and an indication of weakness on the Government's part.

The SACHR Report

15. The SACHR Report is a reasonably balanced study of the subject, and they have not allowed themselves to be carried away on a propaganda tide. They specifically reject the argument for the automatic transfer of prisoners between jurisdictions but conclude that ".....there is scope for an approach being adopted by the responsible authorities which is more flexible than that which would appear to be operating at present". The final paragraph of the Report is perhaps worth quoting in full:-

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"The Commission therefore suggests that consideration be given to a modification of the requirements which have to be satisfied before an application for transfer can be granted. The Commission is quite satisfied with requirements (a) and (b) as stated in paragraph 5 above. It is also satisfied that consideration must also be given to the applicant's behaviour or likely behaviour, should transfer be granted. However, the present requirement that 'the prisoner can be relied upon ... to co-operate fully in a normal prison regime', can seldom, if ever, be satisfied by a person convicted of a terrorist-related offence. As such, therefore, it is probably unrealistic and should be replaced by a less exclusive requirement. The overriding consideration should in the Commission's view, be the assessment of the relevant Northern Ireland authorities. The third requirement might therefore be whether they are of the opinion that the applicant will not pose an unacceptable risk to the security or efficient running of the Northern Ireland prison service. The Commission feels that in all the circumstances, it may be advantageous - and more humanitarian - to apply such a test in a way which would allow some transfers to be made which the present requirement does not permit."

The scope for relaxing our present approach

16. We already accept prisoners where we are fully satisfied that a prisoner has given up any paramilitary associations and will conform fully if transferred to a prison in Northern Ireland. We have never explained openly and in detail what we mean by "conformity"; we have interpreted this in practice as not meaning that a prisoner should have a blemish-free record in custody, or that there should be a virtual guarantee that he will not offend against prison discipline, but that he will not seek, either on his own or in consort with others, to

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subvert the fabric of the prison system by joining in cohesive acts of indiscipline or in some other way. The effect of this approach almost inevitably is that our policy appears, and indeed does, work out in a way that is unfavourable to prisoners with Republican paramilitary links.

17. An interesting case worthy of mention is that of the Loyalist prisoner McNaught, whom we accepted on transfer from Scotland earlier this year. In Scotland, with no other committed Loyalist prisoners around, he appeared to be behaving well and to have no active paramilitary links. Yet on arrival at Maze he rapidly took steps to bring about his transfer to a Loyalist segregated wing (as he was a fixed-term prisoner and we felt able to regard him as medium risk, he was quickly transferred to integrated accommodation at Magilligan).

Does "conforming" necessarily mean willingness to remain in integrated accommodation?

18. We have only recently begun to address this specific question; at the time of the Ministerial correspondence in 1983 the position as regards mixed and segregated wings at Maze had not hardened in the way that it now has. Although prisoners also choose to be in segregated wings are not nowadays in breach of Prison Rules, we know that many of them are engaged in attempts of one kind or another to subvert/intimidate prison staff. Those also do not take part in such activities to any significant degree, or perhaps not at all, must be assumed to connive at the behaviour and attitude of their fellow-prisoners, to put it no higher.

19. We think that in the circumstances it is right for us to see "willingness to confirm with a normal prison regime" as including willingness to move to, and remain in, mixed accommodation. As Magilligan does not at present take life sentence prisoners, and as any

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life sentence prisoners transferred would be likely to be classified as high risk, we would not be able to transfer there a lifer who after transfer secured a move to a segregated wing. And a recent case of another prisoner whom we recently agreed to accept shows that this problem is not confined to persons sentenced for terrorist-type offences; a prisoner from Northern Ireland serving six years in England for armed robbery, a Catholic, sought to be transferred to a Republican segregated wing at Maze. Again, because of the prisoner's fixed sentence and his security classification, we were able to deal with the problem by transferring him to Magilligan. It may be, of course, that this inmate was pressurised into seeking a move to a segregated wing.

Prisoners in Great Britain whose reports are reasonable but there is no adequate reassurance of full conformity in the event of transfer

20. If any move is to be made to modify the present criteria, or the manner of their operation, it is to this group of prisoners - category (ii) in paragraph 13 above - that we need to look. SACHR have put their finger on the difficulty: are we asking too much by expecting inmates convicted in Great Britain of terrorist-type offences to satisfy us beyond reasonable doubt that they will co-operate fully in a normal prison regime, particularly if the degree of co-operation envisaged includes living in mixed accommodation? The fact that there has been only one accepted case in more than three years, and the Home Office tell us that they have no more O'Doherty's in the pipeline, could be said to indicate that we are setting an unjustifiably high standard.

Conclusion and recommendation

21. Nevertheless it seems to us from the Prison Department viewpoint that there is much to be said for adhering to the present criteria and, more importantly, for the manner in which we interpret them. Even if

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we substituted the form of words suggested by SACHR - that the test should be whether the applicant will pose an unacceptable risk to the security or efficient running of the Northern Ireland prison service - the crucial matter would be not the words themselves, but how we construed them. It may be that on one view only the most difficult of the Republican prisoners in England would pose an unacceptable (whatever that means) risk to the Northern Ireland service, but once we had accepted prisoners with moderately good reports also then achieved transfer to segregated accommodation we would be on a slippery slope.

22. In all the circumstances we think the proper course is for us to adhere to the present policy and approach, while remaining willing to look at individual cases put to us by the ~~Home~~ Home Office. In explaining the policy we can go on saying that we are not singling out terrorist-type prisoners for separate, less advantageous, treatment, and that all applications are considered on the same basis.

Persons sentenced in Great Britain for serious drug-related offences

23. To complete this review of the present arrangements it is appropriate to mention a current case where we have told the Home office at official level that we are not willing to accept a prisoner sentenced in England in August 1985 for importing and conspiracy to import heroin with a street value of more than £2 million. The Home Office do not see this by their standards as a case of a "particularly ruthless and unprincipled drug trafficker", people whom we have agreed should be excluded from consideration, but we are reluctant to accept a prisoner of this type when we have so far avoided having a major drug problem in our prisons. We have written to the Home Office explaining our reasons for not taking the prisoner, but they may come back to us.

S C JACKSON

19 May 1986

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