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3 August 1987

Dear Harry,

EXTRADITION CHECKLIST FOR FUTURE CASES

You and most of the copy recipients to this letter will recall seeing, and commenting on, the draft checklist attached to Simon Marsh's minute of 1 May. In the light of those helpful responses, and a subsequent meeting internally, I now attach a revised checklist.

The checklist does not aim to be completely exhaustive and should not be used as a mechanical "failsafe" device; it is more a guide to the kinds of issues which must be addressed in individual cases. In this revised version we have tried to focus more clearly on who is primarily responsible for each particular link in the extradition process. But I am sure you will agree that our experience of recent cases has served to emphasise further the need for everybody to keep in close touch at all times, and for relevant expertise to be utilised as appropriate. Given the continuing high level of interest our Ministers take in extradition matters, we in the NIO are quite content, of course, to continue to operate as the co-ordinating machinery in each case.

I hope that you and copy recipients will find the checklist useful (we here are already using it in respect of the Doherty and Flynn cases). It may well need to be further revised in the light of experience of new cases, and any comments and suggestions would therefore be welcomed.

Yours truly,

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MR H NELSON, ROYAL COURTS OF JUSTICE *M*
cc Mr Burns
Mr Innes - *M*
Mr Steele - *M* *NI hunt service, Windsor House*
Mr Bell
Mr Blackwell - *M*
Mr Coston - *M*
Mr G Hewitt - *M*
Mr Marsh
Mr Monahan, RUC *M*
Mr Fraser, DPP (NI) *M*
Mr Longden, CPS
Mr Grange, LOD
Mr Hammond, HO
Mr Bentley, HO
Mr Wright, HO
Mr George, RID, FCO
Mr Sheinwald, Embassy Washington
Mr Adamson, Embassy Paris
Mr Fenn, Embassy Hague

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EXTRADITION CHECKLIST FOR FUTURE CASES

CAUTION: THESE ARE GENERAL PRINCIPLES ONLY. SPECIFIC PROCEDURES MAY VARY FROM STATE TO STATE AND FROM TIME TO TIME

1. Administrative Issues

- (a) Ensure that potential extradition cases are reported (usually by the police) to the NIO at the earliest opportunity;
- (b) Make inquiries - by NIO in the first instance - as to the precise nature of the extradition procedures in the requested State;
- (c) NIO ensure direct contact with relevant UK Embassy immediately and arrange a visit at the appropriate time;
- (d) NIO seek direct help (on advice from Home Office, - who can provide invaluable assistance - if appropriate), from the relevant authorities in the requested state at the earliest possible stage (ie before formal submission of the extradition request). This may not always be possible because of sensitivities in the requested state (eg France). But if it is, arrange an early visit to discuss the preparation of the request. Further visits after the request has been submitted should be offered so as to be seen to be as helpful as possible and to get a "feel" of the case. NO Legal Advisers and officials, and Crown Solicitor's Office, should accompany NIO officials on visits as appropriate;
- (e) NIO must establish close liaison with Crown Solicitor and RUC (through established channels of communication) and ensure a co-ordinated approach to the preparation of warrants. CPS expertise should be consulted, if necessary;
- (f) On receipt of papers from Crown Solicitor, NIO should process as at Annex A (after consideration as necessary under guidance of Legal Advisers);

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- (g) Home Office, and particularly Legal Advisers must be kept on-side by NIO at all times;
- (h) NIO should consider keeping requested State's Embassy in London onside, and British Embassy of requested State must be kept abreast of all NI developments as they arise which may be of any relevance to the case. (If case is not directly connected with USA, our Embassy in Washington must be informed of all major developments);
- (j) RID, FCO and Press Office must be kept in touch as appropriate.
- (k) NIO must establish, from our Embassy in the requested state or from direct contacts whether witnesses will be required and the sort of ground which such witnesses would be expected to cover, with a view to identifying suitable candidates as quickly as possible. NIO must also consider arguments likely to be deployed by defence witnesses.
- (l) NIO must secure a good translator (on advice from Home Office if necessary). Translate as many documents as possible into relevant language for transmission to Foreign authorities. Ensure speedy transmission of all documents;
- (m) NIO must work up contingency plan if any possibility of defendants being deported to Republic of Ireland rather than extradited (in consultation with Law Officers' Department and RUC);
- (n) If any possibility of fugitives being deported to UK we should support vigorously (as most straightforward means of successful outcome).
- (o) NIO to support RUC in ensuring adequate arrangements for the transfer of prisoners if the extradition goes ahead. See separate correspondence with the MOD.

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- (p) Be prepared for assessment of the extradition procedures with officials of requested State, whatever the outcome of the request.

2. Legal Issues

- (a) If fugitive not already in custody a request should be made for his provisional arrest. In most instances this should be done by the RUC through Interpol with NIO, Home Office, FCO and Crown Solicitor's Office informed. In the case of a fugitive in the US, however, the FCO should be asked to transmit the request for provisional arrest request through diplomatic channels to comply with Article VIII of the UK/US Extradition Treaty.
- (b) Ensure a thorough appreciation of requested State's domestic law in relation to extradition - if appropriate, by face-to-face contact in requested State.
- (c) Ensure that prosecuting authorities are satisfied there is adequate prima facie evidence (prior to ratifying European Convention on Extradition) - or corresponding requirement - and a detailed statement of facts for both alleged and convicted offences. The offences must be explained in full, with references to the relevant legislation (eg the reasons why in UK law an accessory to an offence can be treated as a principal must be clearly described);
- (d) In conjunction with Crown Solicitor's Office DPP (NI), and Home Office (with FCO if necessary) NIO ensure that where there is more than one potentially extraditable offence, a judgement is made whether to drop any which might cause difficulties;
- (e) NIO ensure that Crown Solicitor's Office are content that warrants are founded upon proper complaints;

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- (f) Ensure that any time limits in legislation or relevant treaties are met;
- (g) Explain to requested State the meaning of a Certificate of Conviction (in relation to foreign terms such as 'sentence of condemnation' or 'genuine verdict'). Ensure that the Certificate is correctly signed by the appropriate authority (eg Deputy Clerk must not sign as the Chief Clerk);
- (h) NIO ensure that question of applicability of ECST is addressed, where appropriate;
- (j) NIO provide, in consultation with Home Office, defensive briefing on UK's domestic record in extradition cases;
- (k) Provide assurances if necessary that UK will 'stick to extradition rules' if requested State agrees to extradition;
- (l) NIO ensure that letter of introduction for policemen charged with responsibility for bringing back the prisoners is signed by AUSS;
- (m) NIO must liaise closely with DPP (NI) and Crown Solicitor's Office over charges for extradited prisoners on their return to UK, ensuring that no charges other than those found extraditable are brought. It may be that the extradition was in respect of some convictions and not for others. If so, NIO must consider, in consultation with the Home Office, the most appropriate means of remitting the non-extraditable offences.

3. Political Issues

- (a) NIO ensure that the political importance of an extradition case going ahead and succeeding is put across to the requested State at the highest appropriate level;
- (b) Defence case may well turn on the political nature of various offences and the "brutality/unfairness" of NI justice and prisons. All state machinery must be seen to be above reproach to reasonable people;
- (c) Important for NIO to provide British Embassy of requested stage at an early stage with as much detailed information about behaviour of defendants while in NI custody, administration of justice in NI more generally, and Government's commitment to human rights. Be prepared to brief authorities of requested state;
- (d) Claims of "political" offences must be constantly exposed as hollow in whatever forum is available (any recognition of PIRA as a political movement - eg the 1972 negotiations or "special category" status - is ruthlessly exploited in extradition cases). NB Dutch Supreme Court ruled that for an offence to be political it had to be directly related to the political objective;
- (e) While requested State must be made aware by NIO of importance Government attaches to the case, avoid any risk of being seen to interfere with due process of law in a foreign country (this may, eg, mean relations with Public Prosecutor are kept at arms length);
- (f) NIO keep close watch on any relevant PIRA etc activities in relation to extradition case (eg Adams scoring propaganda points). Counteract any public "campaign" on behalf of defendants;

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- (g) NIO keep Irish Government informed of significant developments at appropriate times;
- (h) NIO bear in mind any possible ECHR dimension (eg fugitive may appeal to Commission to prevent extradition);
- (j) NIO provide unequivocal assurances that there will be no ill-treatment of returning prisoners.

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EXTRADITION: PROCESSING THE PAPERWORK IN THE NIO

NOTE: These procedures may vary, especially in numbers of sets of extradition papers required by requested State. In each case SIL must liaise with Crown Solicitor's Office, Home Office and British Embassy of requested state as appropriate to ensure that paperwork is processed correctly.

1. SIL seeks the agreement of the Secretary of State to pursue extradition proceedings.
2. Crown Solicitor supplies 3 sets of extradition papers together with 3 statements of facts. The original set of extradition papers, plus the duplicate set are "taped and sealed" with the Crown Solicitor's seal. The third set, the copy set, is for checking the information within the papers.
3. PUS (or an Under Secretary) signs certificate authenticating signatures on the extradition papers (certificate to be obtained from Home Office).
4. Certificate, original statement of facts, original set of extradition papers taped together and sealed with NIO seal: duplicate set treated likewise, but copy set remains untaped and unsealed.
5. Write formally to FCO requesting them to seek extradition of the relevant person(s) and enclosing original and copy set of papers. (Sample letter attached). Duplicate set of papers retained in SIL.