

FROM: WENDY JOHNSTON  
Policy & Planning (LSU)  
23 January 1997

cc PS/Secretary of State (L&B) - B  
PS/Sir John Wheeler (L&B) - B  
PS/Michael Ancram (L&B) - B  
PS/PUS (L&B) - B  
Mr Thomas - B  
Mr Steele - B  
Mr Shannon - B  
Mr Stephens - B  
Mr Bell - B  
Mr Brooker - B  
Mr White - B  
Mr Beeton - B  
Mr Lee - B  
(without fax enclosure)

Ms A Bharucha - B  
IPL

DELEGATION OF CONGRESS MEMBERS - VISIT TO LONDON  
MONDAY 17 FEBRUARY 1997

Further to our recent telephone conversation I am providing briefing in the cases of life sentence prisoners Kane, Kelly and Timmons for the Secretary of State's meeting on 17 February with the US Congressional delegation, to include Congressman Ben Gilman.

2. PUS, in his capacity as LSRB Chairman, has recently responded to Congressman Gilman, and similarly to Congressmen Peter King and James Walsh, regarding concerns which they jointly raised in correspondence about these three Casement Park cases. They also referred to the opinion of Peter Thornton QC. The Congressmen expressed the view that in the interests of natural justice and the promotion of peace and reconciliation in Ireland, an early parole be granted. A copy of PUS' response of 10 January 1997 is being faxed simultaneously for ease of reference.

Background to the cases

4. Kane, Kelly and Timmons are currently serving life sentences

(2 counts) for the murders of Corporals Howes and Wood in March 1988, the Casement Park murders. There are two other prisoners also serving life sentences for these murders, Henry Murphy and Alex Maguire who were prime movers in the incident and who received minimum recommendations from the trial judge of 25 years.

5. Kane, Kelly and Timmons are due to have their cases considered by the Life Sentence Review Board at its February 1997 meeting, at the early stage of 7 years. Murphy and Maguire will have their cases reviewed at the normal 10 year stage; they have now served 8 years and 9 months. Kane and Timmons, in whom the Congressman has an interest, were not present when Corporal Howes and Wood were actually killed. They were largely convicted on the basis of their behaviour inside Casement Park where the soldiers were stripped and beaten before being taken away to waste ground where they were shot.

6. There has been a considerable campaign on behalf of these three prisoners alleging that they had been unfairly convicted. Critics claim that the trial judge over-extended the doctrine of common purpose, that the photographic evidence was unsatisfactory, and that Kane in particular was convicted of confession evidence that was contradicted by the photographic evidence.

X | 7. Following an internal review of the cases in 1995 it was concluded that there were factors in these cases which merited review by the LSRB before the normal 10 year stage. The timing of the LSRB must, however, reflect the fact that each prisoner is also serving concurrent fixed term sentences of 15 years which will not expire until mid-1997. Therefore the earliest appropriate time for the LSRB review is February 1997, at the 7-year stage of sentence. An early review does not, of course, guarantee that early release will follow - the prisoners were advised of this when they were informed of the outcome of the internal review in June 1995.

### The Thornton Opinion

8. As indicated at paragraph 6 above there has been a considerable campaign aimed at proving that these men have been the subject of a miscarriage of justice. Separate submissions from the Lawyers Alliance for Justice in Ireland and the Committee on the Administration of Justice arguing that these convictions are unsafe and asking for them to be referred back to the Court of Appeal. The latter encloses the opinion of Peter Thornton QC. Criminal Justice Division have obtained Senior Crown Counsel's advice on both submissions and this was submitted to the Secretary of State under cover of a submission from Dr Power dated 3 January 1997. The Secretary of State's decision is awaited.

9. Lines to take regarding the Life Sentence Review of these cases are attached at Annex A. Mr Lee in Criminal Justice Division, to whom this minute is copied, will ensure that up-to-date lines are available nearer to the date of the meeting, taking account of the Secretary of State's decision and the timing of any announcement, should that be appropriate.

(signed)

C Doak

pp: W JOHNSTON (MISS)

Lines to take

## Life Sentence Reviews

- The cases of Kane, Kelly and Timmons are to be considered by the Life Sentence Review Board (LSRB) at its meeting tomorrow (18 February).
- These cases are being considered at the 7 year stage of sentence rather than the normal 10-year stage.
- Each prisoner has concurrent fixed terms of 15 years which do not expire until mid-1997. Therefore it would have been inappropriate to consider the cases any earlier than now.
- The LSRB does not consider issues of guilt or innocence.
- The cases will be carefully and thoroughly considered on their own individual merits and based on the facts as adduced by the Courts.
- Early consideration by the LSRB does not guarantee that a recommendation for early release will be made.
- Aware of Congressman Gilman's interest in the cases and that the recent representations which he made will be brought to the attention of the LSRB.

## The Thornton Opinion

- (Lines to be provided by Criminal Justice Division nearer the time of the Meeting.)

(and similarly  
to Congressman King  
and Watsch)



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Permanent Under-Secretary of State  
SIR JOHN CHILCOT KCB

Tel: 0171-210 6459

Congressman Benjamin A Gilman  
Congress of the United States  
Washington  
DC 20515

10 January 1997

*Dear Congressman Gilman,*

Many thanks for your letter of 22 November in which you made representations on behalf of Messrs Kane, Kelly and Timmons and suggested that they be granted early release.

I am, of course, very much aware of concerns that have been raised by various legal and human rights groups which have made representations on behalf of these prisoners. However, it might be helpful if I were to explain how their cases are being handled within the Northern Ireland life sentence review system.

Messrs Kane, Kelly and Timmons are due to have their cases considered by the Life Sentence Review Board for the first time in February 1997 when they will have served approximately seven years in custody. By contrast, the majority of life sentence prisoners have their cases considered by the LSRB for the first time when they have served 10 years.

The decision to review these cases much earlier than normal was taken in the light of their unique circumstances. However, the decision about the timing of first LSRB review also took into account the fact that all three prisoners have concurrent fixed-term sentences for associated offences totalling 15 years. These fixed sentences must be served regardless of any decisions relating to their life sentences. This means that with remission, the earliest date from which they might expect to be released from the fixed sentences would be mid-1997.

I should also explain that it is not the function of the LSRB or Ministers to make judgements about guilt or innocence or to substitute their views for decisions of the Courts; life sentence cases are considered on their individual merits in the light of

the facts as determined by the Courts. However, the Secretary of State for Northern Ireland has a statutory power to refer a case to the Court of Appeal. The normal criterion he would expect to be fulfilled before exercising his power is that there should be some new evidence or other consideration of substance which has not been before the court (and which was not previously available to be brought before the court) and which appears to cast doubt on the safety of the conviction.

I should also add that the Secretary of State has received an opinion of Mr Thornton QC on the cases of Messrs Kane, Timmons and Kelly. Mr Thornton has also made a separate submission on Patrick Kane's intellectual impairment. When the Secretary of State has received advice on Mr Thornton's opinion he will, as always, give it the most careful consideration before making a decision as to whether or not it would justify him in referring the cases to the Court of Appeal again.

Finally, I can assure you that your representations will be brought to the attention of the Life Sentence Review Board when it considers the cases in February 1997. I am writing in similar terms to Congressmen King and Walsh.

Yours sincerely  
John G. King

## PRISONS ISSUES

### NORTHERN IRELAND (REMISSION OF SENTENCES) ACT 1995

#### Line to take

- more than 170 prisoners have been released and in time a further 300 prisoners will benefit from the scheme introduced under the Act;
- in effect it restores parity between those convicted of scheduled and non-scheduled offences and allows all prisoners convicted in Northern Ireland to be released after they have served half their sentence;
- the Act is one factor which has contributed to the significant fall in prison population from 1900 in 1994 to approximately 1530 at present;

#### **(political prisoners?)**

- the Government does not accept the outrageous claim that those who commit murder are political prisoners;
- no-one in Northern Ireland is imprisoned for their beliefs, all have committed crimes under the criminal law;

#### **(a concession to terrorists?)**

- the Act is not a concession to terrorists, but a proportionate response to the changed circumstances of life in Northern Ireland;
- the introduction of the Act demonstrated that HMG was and is prepared to respond positively to changes in the security situation;

(What about attacks by the IRA?)

- the Act gives the Secretary of State the power to suspend the scheme should the circumstances require it and he has said the matter will remain under review;

(What if released prisoners re-offend or pose a risk?)

- The Act gives the Secretary of State the power to recall any prisoners on licence who present a risk to the safety of the public or who is likely to commit further serious offences.

Background

There have been surprisingly few calls for the Remission of Sentences legislation to be suspended and for those prisoners already released to be returned to custody. Following the bomb attacks at Canary Wharf and Aldwych the Secretary of State took advice on the mechanics of suspending the scheme but decided not to take any immediate action.

2. The Northern Ireland (Remission of Sentences) Act 1995 came into force on 17 November. 85 prisoners were released on that day and since then a further 85 prisoners have been released.

3. All prisoners are released on licence which continues until the date that they would have been released under Section 15 of the EPA 1996. While the effect of the legislation is to allow earlier release it is incorrect to say that the legislation restores remission.

4. The Act gives the Secretary of State the power to suspend the scheme (with the agreement of Parliament), but no indication has been given of what circumstances might trigger suspension.

#### OTHER REGIME CHANGES DURING THE CEASE-FIRES

##### Points to Make

- the cease-fire have allowed other changes to the prison regime including -
- greater access to telephones at HMP Maze;
- the extension of the compassionate temporary release scheme; (over a 12 month period from June 1995 more than 700 requests for temporary release from prisoners at HMP Maze were granted);
- increases to the pre-release home leave allowed to all prisoners;

##### Background

Identifying appropriate regime changes has proved difficult due to the relaxed regime which existed at HMP Maze prior to their commencement. Prisoners are not locked in their cells overnight giving them a level of freedom on the wings normally only allowed to trusted prisoners.

2. The average population of the Maze is 520 so 700 compassionate home leaves in a year represents about 10% of the population per month.