

C O N F I D E N T I A L

cc PC



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SECRETARY OF STATE  
FOR  
NORTHERN IRELAND

The Rt Hon Kenneth Baker MP  
Secretary of State for the Home Department  
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MBAM  
file  
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16 December 1991

Dear Kenneth.

**ANGLO-IRISH EXTRADITION: SPECIALITY**

As you know, in the wake of the failure of the Sloan, Magee, and McKee extradition cases on 15 November, the Irish Government announced that it was preparing legislation to block the loopholes which, it now accepts, exist in Irish law on the political offence exception to extradition. An Irish Bill is being prepared with what appears from here to be due expedition. As your officials are aware, we are seeking to reconvene Working Group II of the Anglo-Irish Conference in order to ensure that we can make a proper input to the Irish amending legislation.

So far, so good. However, the Irish from the Taoiseach down are also letting it be known that it is likely to prove politically essential for them to make some commitment, during the Bill's passage in the Dail or conceivably earlier, to bring into effect the provision in their Extradition (Amendment) Act 1987 which would apply the existing Irish rules on speciality to Anglo-Irish

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extradition (where the rule of speciality currently takes the form of an informal "Gentleman's Agreement" between the respective Attorneys.) The effect of activating the latent provision (which could be done by order) would be to bring extradition from the Republic to the United Kingdom to a halt, until such time as the UK adopted a statutory speciality rule.

Purely on the merits, the British side sees no need for a British statutory speciality rule for Anglo-Irish extradition. The Gentleman's Agreement in practice works, as the Ellis case demonstrated. I know, too, that your Department would see wider policy reasons for not adopting a statutory speciality rule based on the terms of the Republic's current legislation, which is noticeably different from the rule which we operate along with much of the rest of the world. That said, there may be something in the Irish argument that movement on speciality is politically necessary if they are to get their amending legislation through the Dail. We have an interest in ensuring that the Dail does not amend the Bill in still more unhelpful directions. Most significant of all, we cannot simply tough it out because the Irish do have the ability, unilaterally through their order-making power, to bring Anglo-Irish extradition to a standstill.

We therefore need to proceed with some care if we are to achieve the twin objectives of contributing to the successful passage of the Irish Bill; and simultaneously persuading the Irish not to rush into committing themselves to activate the latent provision on statutory speciality.

The best short-term approach in the view of officials, who have addressed the issues interdepartmentally, is to refer the speciality question for technical discussion, and without commitment to legislate, to Working Group II of the Anglo-Irish Conference, in which your, Douglas Hurd's and Paddy Mayhew's officials would participate as well as my own. A technical



exchange could help clarify the issues and in particular ensure that the Irish fully understand that our present statutory speciality provisions (in relation to non-Anglo-Irish extradition) differ significantly from theirs. I could reasonably ask Ray Burke and Gerry Collins not to commit themselves prematurely while this exploration was in train.

For their part, the Irish would have obtained some movement from the UK position which I explained to them at the last Anglo-Irish Conference: namely that we would consider the issue of statutory speciality only when and if a legislative vehicle became available. Instead, they would be able to say that the two Governments were examining the question jointly. (There would still be no commitment to British legislation.) This evidence of UK engagement offers the best prospect of heading them off from entering any early commitments to bring their latent provision into force, although success is not guaranteed.

This course of action has been discussed with your officials. Perhaps I could take it, unless I hear from you before the next meeting of the Anglo-Irish Conference on 18 December when I will need to discuss these matters with Ray Burke and Gerry Collins, that you are content for the issue of speciality to be examined jointly in Working Group II in the way proposed? I want to be able to say on 18 December that I have consulted you, as the Minister with the lead responsibility for extradition policy.

Copies of this letter go to the Prime Minister, the Foreign Secretary and the Attorney-General, and to Sir Robin Butler.

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