**DAVID FORD: THE OTR QUESTIONS**

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The breaking of the story of the on the runs, when John Downey walked free from the Old Bailey, promises to trouble the Haass project; approximately two hundred republican terrorists, as a result of a private deal between Tony Blair and Gerry Adams, have secured what are arguably grants of immunity.

The NIO has not said what lawful power it relied upon to do this: but, most likely, ministers will refer to – if questioned by Lady Justice Hallett, the Westminster select committee and the Stormont justice committee – the so-called royal prerogative, exercised mainly by ministers on behalf of the sovereign.

The most interesting questions to be asked regionally relate to David Ford, who, following the devolution of policing and justice powers, on 12 April 2010, became the Northern Ireland justice minister.

First, was the NIO ‘administrative scheme’ devolved, in the dying days of the Brown government? Schedules 2 and 3 of the Northern Ireland Act 1998 suggest that it must have been. The devolution order transferred the royal prerogative of mercy to David Ford. But did the NIO think it retained other prerogative powers?

Second, could the Cameron government have done anything after the 2010 general election, as suggested by Therese Villiers in her statement to parliament on 25 February 2014? She wrote: ‘The [NIO] subsequently dealt only with pending cases for which requests had been received prior to the general election.’ This does not make sense: either the power was transferred with devolution or it was not; the general election is irrelevant.

Third, when did David Ford learn about what he called ‘this tawdry scheme’? He states he was given a briefing by presumably officials, on the evening of Friday, 21 February 2014. The following Wednesday, he went to see the secretary of state at Hillsborough. Two days after that, he told the assembly that the on the runs administrative scheme still rested with the NIO. But how can this be reconciled with Therese Villiers statement to parliament?

Fourth, did Nick Perry, the permanent secretary of the department of justice, know? Undoubtedly yes. As director-general of criminal justice and policing, in the NIO, until 2010, the official buck would have stopped with him. He either signed the letters, or advised a minister to so do. When he was devolved, along with his directorate, the work, the knowledge and the draft letters were transferred from London to Belfast.

Fifth, is there any merit in David Ford’s reference to ‘strict civil service rules’, under which the administrative scheme was kept from him by his permanent secretary? The answer is little. It is true that, following a 1921 Northern Ireland statute, the relationship between ministers and officials in Belfast differs from that in London. The ‘powers or duties’ belong to the department, which is a legal entity. The minister has no legal existence, but offers ‘direction and control’ to his officials.

If, as David Ford convincingly protests, he did not know about letters going out from the department of justice after 2010, he – and his permanent secretary – might escape criticism and even sanction. That is the Northern Ireland way of looking at it.

But there is also a United Kingdom view, which is not so favourable to the minister of justice. This is not a case of a change of government, where officials keep the previous government’s papers from new ministers. It was simply devolution, where powers, once embodied in the NIO, came over to the new department of justice at Stormont.