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Northern Ireland: The Release of Prisoners under the *Northern Ireland (Sentences) Bill*

Bill 196 of 1997-98

This paper sets out the current arrangements for the release of prisoners serving sentences in Northern Ireland and the rules governing the transfer of prisoners. It goes on to consider the issue of the release of prisoners in the context of the peace process in Northern Ireland and the terms of the *Northern Ireland (Sentences) Bill*, which had its Second Reading in the House of Commons on 10 June 1998.

Mary Baber

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Summary

The first part of this paper describes and sets out the background to the current arrangements for the release of prisoners serving fixed sentences and sentences of life imprisonment in Northern Ireland. It also describes the home leave schemes for prisoners in Northern Ireland

The paper goes on to describe the rules governing the transfer of prisoners from prisons in England and Wales and Scotland to prisons in Northern Ireland and the use which has made of these rules to transfer prisoners to Northern Ireland. It goes on to set out the arrangements for repatriating prisoners from the UK to prisons in other countries, including the Republic of Ireland

The background to the peace process in Northern Ireland is set out in Research Paper 98/57 *Northern Ireland: political developments since 1972.*The third part of this paper considers the issue of the release of prisoners in the context of the peace process and includes information on the release of prisoners in Northern Ireland as part of negotiated settlements and otherwise over the course of this century. It sets out the relevant parts of the Belfast Agreement reached at the multiparty talks on Northern Ireland on 10 April 1998 (the Good Friday Agreement) and some of the debate following the statement on the Agreement made by the Secretary of State for Northern Ireland, Marjorie Mowlam, to the House of Commons on 20 April 1998.

The final part of this paper describes the provisions of the *Northern Ireland (Sentences) Bill [Bill 196 of 1997-98]*, which provides for the release on licence of certain prisoners serving sentences of imprisonment in Northern Ireland. It includes a summary of the debate on the Second Reading of the Bill in the House of Commons, which took place on 10 June 1998.

A paper issued by the Secretary of State for Northern Ireland on 20 April 1998 entitled *Prisoners and the Political Settlement*, which describes what the Government would be prepared to do in respect of prisoners in the context of a peaceful and lasting settlement in Northern Ireland, is set out in the Appendix to this paper.

CONTENTS

I Current arrangements for the release of prisoners in Northern Ireland

A. Prisoners serving fixed ("determinate") sentences

There is no parole system in Northern Ireland. The terms of imprisonment imposed on prisoners serving fixed sentences of imprisonment are instead subject to remission. The rate of remission has been varied on a number of occasions in recent years, particularly where prisoners serving sentences for "scheduled offences" are concerned. "Scheduled offences" are those offences set out in the schedule to the Northern Ireland emergency legislation, currently Schedule 1 of the *Northern Ireland (Emergency Provisions) Act 1996.* As well as a number of offences specifically concerned with terrorism, they include general offences such as murder, manslaughter, riot, kidnapping, false imprisonment, theft, robbery, blackmail and obtaining property by deception, offences involving criminal damage and arson, and crimes of violence such as assault occasioning actual bodily harm, causing grievous bodily harm and wounding with intent to cause grievous bodily harm . In England and Wales and Scotland remission was abolished following the introduction of new arrangements for discretionary and automatic early release introduced in England and Wales by the *Criminal Justice Act 1991* and in Scotland by the *Prisoners and Criminal Proceedings (Scotland) Act 1993.*

In February 1976 the Secretary of State for Northern Ireland, Merlyn Rees, laid a *Treatment of Offenders (Northern Ireland) Order 1976* before Parliament increasing the rate of remission of sentence for all prisoners serving fixed sentences of imprisonment from one third to one half. The equivalent rate of remission elsewhere in the United Kingdom was then one third and the introduction of a higher rate for Northern Ireland was explained on the basis that the parole system, which had been introduced in Scotland, England and Wales by the *Criminal Justice Act 1967*, had not been, and would not be, extended to Northern Ireland.

In November 1988, a few days before publishing the Bill which became the *Prevention of Terrorism (Temporary Provisions) Act 1989*, the then Prime Minister, Margaret Thatcher, announced that the Bill would contain provisions reducing from a half to one third the level of remission on fixed sentences of five years or more imposed on people convicted of scheduled offences[1]. The restriction of remission to a maximum of one third of the term imposed for people convicted of scheduled offences became section 22 of the *Prevention of Terrorism (Temporary Provisions) Act 1989.* Remission of one half of sentence remained for people convicted of offences other than scheduled offences, or people convicted of scheduled offences and sentenced to fixed terms of imprisonment of less than five years. Section 22 of the 1989 was subsequently re-enacted in the Northern Ireland emergency legislation and can now be found in section 15 of the *Northern Ireland (Emergency Provisions) Act 1996.* The section enables the Secretary of State to make orders substituting different lengths of

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[1] HC Deb Vol 142 c.26, 22.11.1988; "Government announces changes to remission arrangements for prisoners sentenced for terrorist offences in Northern Ireland" NIO Press Notice 22.11.1988

sentence and different maximum periods of remission for those currently specified. Any such orders will be subject to annulment under the negative procedure[2]

In October 1995 the Secretary of State for Northern Ireland, Sir Patrick Mayhew, introduced a Bill designed to restore one-half remission for people convicted of scheduled offences and sentenced to fixed terms of imprisonment of five years or more. This Bill, which became the *Northern Ireland (Remission of Sentences) Act 1995,* contains a provision designed to enable the Secretary to suspend, and later revive, the operation of the section providing for one-half remission. An order suspending the operation of the section providing for one-half remission must be approved by both Houses of Parliament under the affirmative procedure either before it is made, or, if it appears to the Secretary of State that, for reasons of urgency it is necessary to make such an order before such approval is sought, within forty days of its being laid before Parliament after having been made. The *Northern Ireland (Remission of Sentences) Act 1995* came into force on November 17th 1995.

As has already been mentioned, the provision in the Northern Ireland emergency legislation providing for a maximum of one-third remission in cases involving people sentenced to fixed terms of imprisonment of five years or more for scheduled offences was re-enacted in 1996 as section 15 of the *Northern Ireland (Emergency Provisions) Act 1996.* The 1996 Act came into force on 25 August 1996[3].

Since the *Northern Ireland (Remission of Sentences) Act 1995* came into force on 17 November 1995 approximately 240 prisoners have been released early, of whom 2 have had to be recalled for breaching the terms of the licences under which they were released. Under these arrangements about half of the remaining eligible prisoners would have been released in the next 2 years[4]

B. Prisoners serving life sentences

A paper by Professor Brice Dickson of the University of Ulster at Jordanstown on "Executive Involvement in Sentence Reduction", prepared for the Standing Advisory Commission on Human Rights and published in the Commission's report for 1995-96, describes the current arrangements for reviewing the cases of prisoners serving life sentences in Northern Ireland as follows[5]:

10. In Northern Ireland the death penalty for murder was officially abolished by section 1(1) of the Northern Ireland (Emergency Provisions) Act 1973; life imprisonment was substituted as the mandatory sentence for murder. By section

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2 s.60(5) *Northern Ireland (Emergency Provisions) Act 1996*

3 "Northern Ireland (Emergency Provisions) Act 1996" NIO Press Notice 17.6.1996

4 "Northern Ireland (Sentences) Bill" - NIO press notice 5.6.1998

5 Twenty-First Report of the Standing Advisory Commission on Human Rights Report: Report for 1995-96 HC 467, 11July 1996 p.195-196

1(2) of the 1973 Act a court which sentences a convicted person to life imprisonment may declare the minimum period which in its view should elapse before the Secretary of State orders his or her release on licence under section 23(1) of the Prison Act (NI) 1953, and by section 1(3) of the 1973 Act the Secretary of State must not release a life sentence prisoner on licence until there has been consultation with the Lord Chief Justice of Northern Ireland together with the trial judge, if available. Since 1983 the Secretary of State has also sought advice from a special non-statutory body set up to consider life sentence prisoners, the Life Sentence Review Board. This Board consists of senior civil servants, plus some professional advisers.

11. The LSRB is assisted in its work by the Life Sentence Unit at the Northern Ireland Office, which gives preliminary consideration to each case soon after sentencing or the determination of any appeal, with a view to identifying any circumstances which might call for an early release. Cases are reviewed again by the Unit after three years and six years; these reviews will examine the annual reports on the prisoners prepared by prison staff and the Unit is guided by its own memoranda detailing other similar cases. If no recommendation for early release has been made after six years into the sentence (which is extremely rare) the LSRB will not review the case until a further four years have elapsed (or two years in the case of a person who was under 18 when he or she committed the offence in question). The power of the Life Sentence Unit to refer a case to the Board for a review before the normal 10-year point in the sentence has been reached was exercised most recently in the case of Private Lee Clegg, whose sentence was reviewed in 1995 before he had served four years in custody (the Secretary of State then decided to release him). It seems, however, that the Board cannot prematurely review a life sentence if the prisoner concerned is at the same time serving a determinate sentence for another offence (officials have suggested that this is one reason why the discretionary life sentences imposed on three men for their alleged involvement in the killings of two Army corporals in Belfast in 1988 cannot yet be reviewed).

12. Once the retributive period of a sentence has been served the Life Sentence Review Board believes that it is difficult to justify detention on the sole ground that the prisoner is a danger to the public, so it will thereafter review the case annually. At none of these reviews, however, is the prisoner entitled to appear personally, nor does he or she see any of the statements, documents or prison reports put before the Board, although the current practice is to invite the prisoner to make written representations to the Board prior to the review. No written reasons are given to the prisoner once a decision has been reached. Three prisoners recently challenged the legality of the early release system for discretionary lifers in Northern Ireland at the European Commission of Human Rights, their complaint being that the changes made to the English system as a result of an earlier European challenge had not been extended to Northern Ireland. The Commission held the applications to be inadmissible, largely because the prisoners had been released within a few months of the LSRB's recommendation to the Secretary of State.

Professor Dickson goes on to summarise arrangements for the release of life sentence prisoners in the Republic of Ireland as follows:[6]

> 13. In the Republic of Ireland all lifers, whether discretionary or mandatory, as well as all other prisoners who have served a term of seven years, have their cases reviewed by a Sentence Review Group which was set up in 1989. The Group proffers advice to the Minister of Justice, who is free to accept or reject it, the advice being expressly related to the following four criteria: the nature of the offence for which the person was convicted, the offender's behaviour since conviction, public safety and any compassionate grounds for release. According to Justice, a highly respected English pressure group, the longest a person has served in prison since the establishment of the Sentence Review Group in Ireland has been 17 years, while the shortest period has been eight years.

The Northern Ireland minister, Adam Ingram, described the work of the Life Sentence Review Board in the following Written Answer to a Question from Kevin McNamara on 26 February 1998:[7]

> Mr. McNamara: To ask the Secretary of State for Northern Ireland what factors determine whether or not a prisoner's sentence is reviewed by the Life Sentence Review Board; what is the statutory basis of the board; and what are the criteria for a life sentence review.
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> Mr. Ingram [holding answer 25 February 1998]: The cases of life sentence prisoners in Northern Ireland are normally reviewed by the Life Sentence Review Board at the ten year point of sentence but in some cases this review can take place earlier where the individual circumstances warrant such action. The cases of those sentenced to be detained during the pleasure of the Secretary of State are normally considered at the eight year stage of sentence. Again this may be earlier where the circumstances of an individual case suggest that it would be appropriate.
>
> There is no statutory basis for the Life Sentence Review Board.
>
> There are no set criteria for life sentence reviews. Each case is considered on its own individual merits. However, before the Review Board will recommend to the Secretary of State that a provisional release date should be set, it must be satisfied that the offender has served a period sufficient to reflect the gravity of the offence and that release would not present an unacceptable risk to the public.

In Answer to an earlier Question from Mr McNamara Mr Ingram had listed the cases considered by the Board between 1995-1998 as follows[8]:

> Mr. McNamara: To ask the Secretary of State for Northern Ireland if she will list the cases considered in (a) 1995, (b) 1996, (c) 1997 and (d) 1998 by the Life

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6 ibid p.196
7 HC Deb Vol 307 c.335W 26.2.1998
8 HC Deb Vol 307 c334-335 26.2.1998

Sentence Review Board; indicating the paramilitary affiliation of the offender; how long he or she had served; and what decision was taken.

Mr. Ingram [holding answer 25 February 1998]: The Life Sentence Review Board's advice to my right hon. Friend the Secretary of State is confidential. The paramilitary affiliation of prisoners is recorded for prison management purposes, not for classification.

During 1995 the Life Sentence Review Board considered 41 cases (19 Loyalists, 10 Republicans and 12 non-terrorists). Of these 23 prisoners were recommended for consultation with the judiciary. The remaining 18 cases were deferred for periods of between one and five years for future consideration by the Life Sentence Review Board.

During 1996 the Life Sentence Review Board considered 47 cases (24 Loyalists, 11 Republicans and 12 non-terrorists). Of these 23 prisoners were recommended for consultation with the judiciary. The remaining 24 cases were deferred for periods of between one and five years for future consideration by the Life Sentence Review Board.

During 1997 the Life Sentence Review Board considered 51 cases (22 Loyalists, 18 Republicans and 11 non-terrorists). Of these 25 prisoners were recommended for consultation with the judiciary. The remaining 26 cases were deferred for periods of between one and five years for future consideration by the Life Sentence Review Board. Since October 1997 the maximum deferral in any individual case has been three years.

The first Review Board meeting of 1998 is taking place today, therefore comparable statistics for 1998 are not yet available.

Statistics on Republican, Loyalist and other life sentence prisoners released on licence since 1985 are set out below:

Republican, Loyalist and other life sentence prisoners released on licence

Indeterminate sentence prisoners released on licence since 1985
Figures relate to life sentence and Secretary of State's pleasure prisoners

	Republican	Loyalist	Other	Total
1985	4	6	0	10
1986	7	6	2	15
1987	14	12	2	28
1988	7	19	2	28
1989	12	25	1	38
1990	37	35	3	75
1991	14	11	1	26
1992	21	27	0	48
1993	18	33	3	54
1994	32	15	2	49
1995	8	11	4	23
1996	9	7	3	19
1997	5	11	0	16
1998	2	3	4	9

Figures include prisoners detained at the Secretary of State's pleasure.
Excluding those released on medical grounds or who provided significant assistance to the authorities.

Source: HC Deb 16 February 1998 c499w

The *Observer* reported on 16 July 1989 that 19 people serving life or indeterminate sentences for terrorist offences on both sides of the sectarian divide had been given provisional release dates for early 1990 set by the Secretary of State for Northern Ireland, Tom King. The article added that this was believed to be the largest single batch of terrorists to be set free since the Ulster troubles began[9]. An article in the *Independent* on August 28th 1990 referred to the release from 1985 onwards of a large number of life sentence prisoners in Northern Ireland, most of whom had been convicted of terrorist murders, as an attempt to turn the "tide of terror". The article suggested that what it referred to as "this unique experiment" was designed not just to return offenders to the community but to strike at the roots of support for the IRA and other paramilitary organisations. It added that it had been judged to be a clear success.[10]:

The *Independent* noted that the men released between 1984 and 1990 had served an average of 12 years and three months, markedly less than the minimum of 20 years for prisoners convicted of terrorist murders in England and Wales specified by the Home Secretary, Leon Brittan, in a Written Answer in November 1983[11] and followed by subsequent Conservative Home Secretaries.

A Written Answer of 22 July 1996 from the Northern Ireland minister Sir John Wheeler noted that, from the start of the IRA ceasefire of September 1994 -February 1996 until the

9 "King to set free 19 terrorists" - *Observer* 16.7.1989
10 "'Lifers' freed in attempt to turn tide of terror" - *Independent* 28.8.1990
11 HC Deb Vol 49 c.506W, 30.11.1983

date of the Answer, 41 life sentence prisoners convicted of scheduled offences had been released on licence in accordance with the normal life sentence review procedures[12].

In a Written Answer of February 16th 1998 the Northern Ireland minister Adam Ingram said the average time served in prison by life sentence prisoners released on licence since 1985 i.e. those recommended for release by the Life Sentence Review Board was 14 years 4 months in the case of Loyalist prisoners, 14 years 11 months in the case of Republican prisoners and 12 years 3 months in other cases (The classification into Republican and Loyalist is the perceived affiliation at the time that the offence was committed.)[13]

A prisoner serving a life sentence who is released will be released on licence and the licence may subsequently be revoked. In a Written Answer on February 16th 1998, Mr Ingram said that 18 licences had been revoked since 1985: 3 Republican 10 Loyalist and 5 others. Of these 18 prisoners, 2 had been re-convicted of further serious terrorist-type offences: 1 Republican and 1 Loyalist[14].

Home Leave

A range of home leave schemes are available to all prisoners in Northern Ireland except those classified as "Top Risk". The schemes have been progressively extended in recent years. Before 1985, Christmas Home Leave was not granted to any prisoner serving an indeterminate or life sentence unless he or she had been given a release date. Since then it has been extended to include these and other categories of prisoner. On 27th September 1990 the Northern Ireland minister, John Cope announced plans to reduce the criterion for eligibility for Christmas Home Leave from 13 to 12 years, increasing from 120 to 150 the number of indeterminate or life sentence prisoners eligible to apply for the 1990 Christmas Home Leave Scheme.[15]. The criterion was subsequently further reduced to 11 years.

On 12 June 1995 the Secretary of State for Northern Ireland, Sir Patrick Mayhew, announced changes to the Compassionate Home Leave Scheme, increasing the maximum period of compassionate leave authorised for attendance of a family funeral from 24 to 48 hours, (subject to a satisfactory assessment of risk), extending compassionate leave in the event of the serious illness of a relative to include grandparents and grandchildren, and reducing from 10 to 6 years the length of sentence which a prisoner would have to serve before qualifying for a period of compassionate leave to visit a relative who had been unable through medical disability to visit the prison for at least 18 months[16].

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12 HC Deb Vol 282 c70W, 22.7.1996
13 HC Deb Vol 306 c498W 16.2.1998
14 ibid. c499W.
15 "Northern Ireland minister confirms condition change for prisoners' Home Leave scheme" - NIO Press Notice 27.9.1990
16 "Changes to Compassionate Home Leave Scheme for Northern Ireland prisoners" - NIO Press Notice 12.6.1995

Further changes in pre-release leave and other leave arrangements for prisoners were announced by the previous Government on 21st November 1996. These included:

- An increase in Christmas Home Leave from 7 to 10 days for prisoners who have served 11 years or more

- An increase in the pre-release leave available to determinate sentence prisoners, increasing the allowance for longer serving female prisoners while bringing the allowances of male and female prisoners into line

- The introduction of fortnightly weekend home leave for life sentence prisoners who have been recommended for release by the Life Sentence Review Board

- Changes in medical leave to reduce the numbers of prisoners having to be escorted to attend hospital

A Northern Ireland Office press notice of 2 December 1997 announced that all eligible prisoners would be allowed to spend a longer period of 10 days with their families over Christmas 1997. Between 400 and 450 prisoners out of a total of 1218 prisoners in custody would be affected. In previous years only those prisoners who had served more than 11 years of their sentences, were permitted to have 10 days home leave; other prisoners were granted 7 days. The Northern Ireland Office press notice gave figures for number of prisoners granted temporary release in previous years, showing that since 1993 more than 20% of the average daily population of prisons in Northern Ireland, including HMP Maze, has been granted temporary release over the Christmas period. It added that[17]:

6. Since 1993 the following changes have been made to the scheme.

· 1996 - prisoners who had served more than 11 years in custody were granted an additional 3 days of leave, giving them 10 days in total;

· 1997 (September 12) - prisoners who had served 10 years in custody became eligible (previously the time-served requirement was 11 years) and all prisoners who were eligible for pre-release leave were made eligible for Christmas home leave (previously only prisoners in the last year of sentence were eligible);

· 1997 (today) - all prisoners granted Christmas home leave to receive 10 days.

The Northern Ireland Prison Service website describes the current leave arrangements as follows[18]:

The Prison Service is committed to helping prisoners re-integrate into the community and to prepare them for release offers a range of pre-release leave and outside work schemes.

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[17] "Longer Christmas leave for prisoners" - NIO press notice 2.12.1997

[18] http://www.nio.gov.uk/prisintr.htm#reg

Prisoners who have served more than ten years in prison are allowed two periods of temporary release each year. They are permitted ten days at Christmas and one week which they may take during the rest of the year. Only prisoners who are identified as being Top Risk are excluded from this scheme.

In addition all prisoners are entitled to pre-release leave towards the end of their sentence to help them prepare for their return to the community. Some prisoners, particularly those convicted of offences against children or who otherwise pose a particular risk, may be subject to restrictions.

In circumstances where a close relative of a prisoner dies or is seriously ill the Prison Service may grant a period up to a maximum of 72 hours compassionate temporary release. Between 1 August 1996 and 31 July 1997 compassionate temporary release was granted on 610 occasions.

II Transfers of prisoners to prisons in Northern Ireland and the Republic of Ireland

A. Transfer of prisoners from prisons in England and Wales and Scotland to prisons in Northern Ireland

The transfer of prisoners between England and Wales, Scotland and Northern Ireland was governed by the Part III of the *Criminal Justice Act 1961* until October 1st 1997, when the provisions of Part III of the 1961 Act were replaced by section 41 and Schedule 1 of the *Crime (Sentences) Act 1997*.

The Home Secretary, Jack Straw, set out the background to and current arrangements for the transfer of prisoners between the different jurisdictions within the UK in a Written Answer to a Question from Hazel Blears on 28 October 1997[19]:

Mr. Straw: The Government attach considerable importance to enabling prisoners to maintain family ties while serving their sentences. As part of a number of measures to facilitate family contact, there is provision for prisoners to transfer to another United Kingdom jurisdiction, or to one of the islands, where they have close family members.

The Criminal Justice Act 1961 provided for inter-jurisdictional transfers to be made on either a permanent or a temporary basis. Permanent transfers were normally refused where, as a consequence of differing early release provisions applying in the various jurisdictions, a reduction in time to serve would have been likely to result.

In 1992, an inter-departmental working group recognised the particular difficulties posed in relation to the permanent transfer of long-term prisoners to Northern Ireland because of differing early release provisions, and recommended that consideration be

[19] HC Deb Vol 775-778, 28.10.1997

given to amending the legislation to overcome this problem. This recommendation was accepted and has been given effect in the Crime (Sentences) Act 1997 (section 41 and schedule 1) brought into force on 1 October 1997.

The new provisions provide for prisoners to be transferred to another jurisdiction on either an unrestricted or a restricted basis. In the case of an unrestricted transfer, the administration of the prisoner's sentence will become a matter entirely for the receiving jurisdiction. A restricted transfer will be subject to conditions whereby the sending jurisdiction will continue to administer certain specified aspects of the sentence.

Transfers will continue to require the consent of the Secretary of State of both the sending and receiving jurisdictions. Normally, transfer requests will be approved only where the prisoner has at least six months left to serve in the receiving jurisdiction before his or her release date at the time of making the request, and where the prisoner has no outstanding appeal against conviction or sentence, is not charged with further criminal proceedings, and is not liable to any further period of imprisonment in lieu of payment of any outstanding monetary orders made by a court.

Each application will be assessed on its individual merits, taking into consideration:

(i) the purpose for which the transfer is requested;

(ii) whether the prisoner was ordinarily resident in the jurisdiction to which transfer is sought prior to the imposition of the current sentence; or whether members of the prisoner's close family are resident in that jurisdiction and there are reasonable grounds for believing that the prisoner will receive regular visits from them; or whether the prisoner has demonstrated through preparations that he has made for his life following release from prison that he intends to reside in the receiving jurisdiction upon release and he is in the later stages of his sentence;

(iii) whether there are grounds for believing that the prisoner may disrupt or attempt to disrupt any prison establishment, or pose an unacceptable risk to security; and

(iv) any compelling or compassionate circumstances.

When considering whether to make an unrestricted or a restricted transfer, the Secretary of State of the sending jurisdiction will take into account the period and terms of transfer requested by the prisoner, and whether, as a consequence of an unrestricted transfer, there would be likely to be any effect on the length of time which the prisoner would be required to serve, or on any post release supervision requirement.

Where an unrestricted transfer is granted, the prisoner will serve the remainder of his or her sentence in the receiving jurisdiction as if that sentence had been passed there, and will be subject for all purposes to the statutory and other provisions applying to prisoners within the receiving jurisdiction.
A prisoner granted a restricted transfer will automatically remain, for the duration of his or her transfer, subject to the law governing release on licence, automatic release, post release supervision and recall, applicable in the sending jurisdiction. In addition,

any other condition relating to the terms of a prisoner's detention as the Secretary of State of the spending jurisdiction may deem appropriate in any particular case or class of case may be attached to the transfer.

A prisoner transferred on a restricted basis will normally become subject for all purposes, other than those specified in any conditions attached to the transfer, to the statutory and other provisions applying to prisoners in the receiving jurisdiction (including, for example, such matters as categorisation).

In the light of the new arrangements the Government have taken the opportunity to consider how applications for temporary release from prisoners transferred to another jurisdiction on a restricted basis should be handled. In future, decisions on applications for temporary release for compassionate or other purposes submitted by prisoners granted a restricted transfer for the purposes of facilitating family ties, will normally become the responsibility of the jurisdiction to which the prisoner is transferred. Prisoners will be able to apply for periods of temporary release under the provisions existing in the receiving jurisdiction. Each such application will be considered by the appropriate authority in the receiving jurisdiction on its own merits and in accordance with the relevant criteria applying in that jurisdiction. Prisoners will normally, therefore, no longer be eligible to apply for temporary release under the provisions applying in the sending jurisdiction.

However, where a restricted transfer is time limited (for example, to enable the prisoner to receive accumulated visits), or for a purpose other than to facilitate family ties (for example, to attend judicial proceedings or to receive medical treatment), and the prisoner is expected to return to the sending jurisdiction, decisions on temporary release will continue to be made by the sending jurisdiction.

The effect of any conditions attached to a transfer will be explained to the prisoner concerned prior to transfer. Any conditions imposed may be reviewed at the request of the prisoner or either of the Secretaries of State party to the transfer at any time during the duration of the transfer, and may be varied or revoked by the making of a further order. A restricted transfer may not be made unrestricted without the consent of the prisoner concerned. Any requests for variation or revocation of conditions will be considered under the normal transfer criteria.

A prisoner granted a restricted transfer may be returned to the sending jurisdiction at any time if this proves necessary, for example, if the purpose for which the transfer was granted is no longer being fulfilled, at the request of the receiving jurisdiction (in the case of disruptive behaviour), or in the interests of the administration of the sentence (such as consideration by the Parole Board or to undergo post release supervision).

Transfer requests submitted by remand prisoners will be considered in accordance with the normal transfer criteria. However, in view of the need to ensure that the prisoner is available to the courts as required, normally such requests will be granted only where there are compelling or compassionate reasons for doing so.
Where a transfer is agreed, the timing of the prisoner's move will be subject to operational and security considerations in the sending and receiving jurisdictions.

In a Written Answer of 14 July 1997, the Home Office minister Joyce Quin, set out the number of transfers on either a temporary or permanent basis from prisons in England and Wales to Northern Ireland between 1992 and 1997 in the following table [20]:

Temporary and permanent transfers from England to Northern Ireland since 1992

	Prisoners serving less than four years		Prisoners serving more than four years	
	Temporary	Permanent	Temporary	Permanent
1992	2	0	11	5
1993	0	0	4	0
1994	0	1	15	5
1995	0	2	26	11
1996	0	3	39	3
1997	0	2	29	0

Source: HC Deb 14 July 1997 c26W

In a Written Answer of 20 May 1998, the Northern Ireland minister, Adam Ingram, said 16 prisoners convicted of offences in Great Britain had transferred to Northern Ireland in the last three years[21].On 19 November 1997, the *Guardian* reported a ministerial source as saying that only one prisoner classified as an Irish terrorist should be left in prison in England and Wales next year (i.e. in 1998)[22].

There was controversy in Scotland in October 1997 when it was reported that a Scottish prisoner, Jason Campbell, who was convicted of the sectarian murder in Scotland of a teenage football fan, had applied for transfer to Northern Ireland and that his transfer had been approved. The application was subsequently reported to have been blocked by the Secretary of State for Scotland, Donald Dewar[23]. On 6 November 1997 Mr Dewar said that applications from 3 prisoners for transfer from prisons in Scotland to Northern Ireland had been submitted to the Scottish Prison Service and would be considered on their merits[24]

[20] HC Deb Vol 298 c26W, 14.7.1997
[21] HC Deb Vol 312 c387-388W, 20.5.1998
[22] "Straw to send IRA prisoners home" - *Guardian* 19.11.1997
[23] "Dewar blocks move by killer who cheated the peace process" - *Times* 11.10.1997
[24] HC Deb Vol 300 c305W, 6.11.1997

B. Transfer of prisoners from prisons in the UK to prisons in the Republic of Ireland

The transfer of prisoners between the UK and other jurisdictions is governed by the *Repatriation of Prisoners Act 1984* and international agreements. The agreement governing transfers between the UK and the Republic of Ireland is the *European Convention on the Transfer of Sentenced Persons,* which was drawn up under the auspices of the Council of Europe. It was signed and ratified by the UK in 1985 and by the Republic of Ireland in November 1995.The procedures followed in arranging the transfer of a prisoner from one jurisdiction to another were explained in a letter from the former Director General of the Prison Service, Derek Lewis, set out in the following Written Answer of March 8th 1995 from the Home Office minister Michael Forsyth :[25] to a Question from Mr Tom Cox:

> The Home Secretary has asked me to reply to your recent Question about the consultation that takes place concerning Prisoners' release dates when prisoners are returned to their country of origin to complete their sentences.
>
> The transfer of prisoners between the United Kingdom and other jurisdictions is governed by the Repatriation of Prisoners Act 1984 and international agreements. These require that both jurisdictions concerned and the prisoner seeking repatriation, consent to any transfer. In considering repatriation requests made by prisoners here, the foreign jurisdiction is required to provide information as to how the remaining balance of a prisoner's sentence would he administered and release determined following transfer. If both jurisdictions then consent to the prisoner's transfer, this information is communicated to the prisoner in seeking his or her consent. A prisoner transferred to a foreign jurisdiction receives full credit for all time spent in custody here relating to completion of sentence prior to the transfer, including any remand time. Following transfer, the remaining balance of time to serve attracts the early release arrangements of the foreign jurisdiction.

In a Written Answer of 9 February 1998 the Home Office minister Joyce Quin said 26 prisoners had been repatriated from England and Wales to the Republic of Ireland since 1 November 1995, when the Republic ratified the Council of Europe Convention on the transfer of sentenced persons[26]. She added that 53 applications for repatriation to the Republic of Ireland submitted by prisoners in England and Wales had been withdrawn or resolved without a transfer[27]. In a subsequent Written Answer of 19 May 1998 Ms Quin said 23 prisoners convicted in England and Wales of terrorist-related offences had been repatriated to the Republic[28].
In an earlier Written Answer of 6 February 1998 Ms Quin said that 5 prisoners had been repatriated from the Republic of Ireland to England and Wales since 1 November 1995.[29]

The Northern Ireland minister Adam Ingram said in a Written Answer of 5 February 1998 that since November 1995 there had been 18 applications for transfer from the Republic of Ireland to Northern Ireland. Arising from these applications, 9 prisoners had been repatriated,

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25 HC Deb Vol 250 c.183-4 8.3.1995
26 HC Deb Vol 306 c23W, 9.2.1998
27 ibid. c.24W
28 HC Deb Vol 312 c326W, 19.5.1998
29 HC Deb Vol 305 c.807W, 6.2.1998

a further 4 applications had been approved; 2 were withdrawn; 1 was refused and 2 remained under consideration. He added that 6 applications had also been made for repatriation from Northern Ireland to the Republic; 5 were being processed and 1 had been withdrawn by the prisoner concerned[30]. The Balcombe Street gang[31], who were given life sentences in 1977 for several gun and bomb attacks, were subsequently transferred from prisons in England and Wales to the Republic of Ireland, after having been given "whole life" tariffs by the Home Secretary under the arrangements for dealing with prisoners serving mandatory life sentences for murder in England and Wales[32]. The setting of a tariff was a necessary step in the processing of their application for transfer to the Republic. Paul Magee, convicted in 1993 of the murder of Special Constable Glenn Goodman in North Yorkshire while on the run from an earlier sentence for the murder of an army officer in Northern Ireland, was also reported to have been transferred to prison in the Republic of Ireland[33]

III The release of prisoners as part of the peace process in Northern Ireland

In the 1995 report of a comparative study on the release and reintegration of politically motivated prisoners in a number of different parts of the world, including Northern Ireland and the Republic of Ireland, the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) said[34]:

> Our first, and overriding conclusion is that the issue of early release of politically motivated prisoners was critical to any peace process which follows a violent political conflict. Whatever the particular positions taken up by negotiating parties at any given time, we would argue that, until the question of prisoners is agreed then nothing, that will create a final solution, is agreed.

A comparative study by Michael von Tangen Page of the Department of Peace Studies at the University of Bradford also argued that Irish politically motivated violent offenders were pivotal to the long term success of the peace process, saying[35]:

> It is essential that the politicians within Sinn Fein and those representing loyalist paramilitary interests are able to secure some successes. Given that it is highly unlikely that there will be a united Ireland tomorrow, or alternatively, that any autonomous Northern Ireland parliament could operate without the involvement of

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30 HC Deb Vol 305 c768W, 5.2.1998

31 Eddie Butler, Hugh Doherty, Harry Duggan and Ire O'Connell

32 HC Deb Vol 305 c720W, 4.2.1998; "Balcombe Street gang will never be freed" - *Times* 2.2.1998

33 "Fury at Dublin's pointer to release of IRA prisoners" - *Guardian* 24.4.1998;

34 *Release and Reintegration of Politically Motivated Prisoners in Northern Ireland: A Comparative Study of South Africa, Israel/Palestine, Italy, Spain, The Republic of Ireland and Northern Ireland* - NIACRO (1995) p.43

35 *The Early Release of Politically Motivated Violent Offenders in the Context of the Republican and Loyalist Ceasefires in Northern Ireland* - Michael von Tangen Page (January 1995) p.20

the Irish Republic, it is important for the peace process that many of the paramilitaries' secondary demands, such as the early release of prisoners, are carried out.

Prisoners and their families are widely recognised as an important constituency in attempts to underpin the peace process. An article in the *Financial Times* of April 17th 1998 described the prisoners issue as having been a crucial element in the talks which resulted in the Belfast Agreement[36] The Government has said that throughout the current political process it has accepted the importance of prison issues to the participants[37]

In an article which appeared in the *Belfast Telegraph* on 21 April 1998 the political historian Eamon Phoenix observed that the problem of prisoner releases had bedevilled every major attempt to settle the Irish question this century, from the 1916 Rising through the 1920s Troubles to the IRA border campaign of the 1950s[38]. He said the precedent had been set by the British Government in the wake of the 1916 Easter Rising, when all those prisoners who were sentenced to life imprisonment or interned in the wake of the Rising had been released by June 1917. These prisoners included Eamon de Valera, the future Taoiseach. Again in 1921, Eamon Phoenix noted, all IRA prisoners were released as part of the negotiations for a truce between the British Government and Sinn Fein at the end of the 1919-1921 Anglo-Irish War. These included a leading IRA commander, Sean MacEoin, who went on to be a Cabinet minister in the Republic of Ireland. The Northern Ireland Prime Minister James Craig and his southern counterpart Michael Collins agreed in their pact of 30 March 1922 to "arrange for the release of political prisoners for offences committed before the date thereof". Three years later, an agreement was signed which included a comprehensive release of prisoners. Eamon Phoenix adds that the ending of the IRA campaigns during the Second World War and the late 1950s was also followed by the accelerated release of prisoners. In 1961, the minister of Home Affairs in the Stormont cabinet, Brian Faulkner, released internees before the IRA officially ended its "Border Campaign" of 1959-62 and other key IRA prisoners were released early on licence. An article published in the Belfast Telegraph on 5 July 1995 suggested that both the release of IRA prisoners in 1961 and the release of the remnants of the Official IRA after 8 years in 1989 could serve as precedents for the release of prisoners[39]

In an article on the prisoners issue in the context of the negotiations in April 1998 the *Financial Times* commented that the policy of the previous government was to try to separate the prisoner issue from the peace process and apply increased remission rates across the board to both paramilitary and ordinary prisoners[40]., which it did with the *Northern Ireland (Remission of Sentences) Act 1995*, reversing changes introduced in 1989. As has already been mentioned, more than 130 scheduled offenders were released on licence between the half-way and two-thirds part of sentence as a result of the changes in remission rules introduced by the Conservative Government under the 1995 Act[41].

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36 "Prisoners issue revealed as crucial to agreement" - *Financial Times* 17.4.1998
37 HC Deb Vol 302 c9W, 1.12.1997
38 "Prisoners still hold the key 80 years on" - *Belfast Telegraph* 21.4.1998
39 "What Lee Clegg's release means for prisoners here" - *Belfast Telegraph* 7.7.1995
40 "Prisoners issue revealed as crucial to agreement" - *Financial Times* 17.4.1998
41 HC Deb Vol 282 c70W, 22.7.1996

On 31 May 1995 the *Belfast Telegraph* claimed that an offer of 66% remission was being made by the Conservative Government as part of the negotiations which were then taking place following the previous paramilitary ceasefire[42]. NIACRO has estimated that if remission rates were raised to two thirds for prisoners serving fixed sentences of more than five years, there would be fewer than 200 paramilitaries left in prison in Northern Ireland and all would be released within five years[43]

In his speech opening the Second Reading debate on the Bill which became the *Northern Ireland (Remission of Sentences) Act 1995* the Secretary of State for Northern Ireland, Sir Patrick Mayhew, said that 340 of the 471 prisoners to whom the 1995 Act applied would be released by the end of the decade[44] The present Secretary of State for Northern Ireland, Marjorie Mowlam, said in answer to a question on 13 May 1998 that if the present scheme continued, without introducing any change to the previous Government's scheme, half the prisoners would be out in 2 years[45]. These schemes were not changed after the Canary Wharf bombing and the breakdown of the 1994-1996 ceasefire.

A. The Belfast Agreement of 10 April (Good Friday) 1998

The Belfast Agreement reached at the multi-party talks on Northern Ireland and signed on Good Friday, 10 April 1998, contains the following statement about prisoners[46]:

PRISONERS

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.

2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.

3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners

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42 "Plans revealed for early release" - *Belfast Telegraph* 31.5.1995
43 "Jury is out on Ulster prisoners" - *Financial Times* 20.8.1997
44 HC Deb Vol 266 c26, 30.10.1995
45 HC Deb Vol 312 c363O, 13.5.1998
46 *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 p.25

who remained in custody two years after the commencement of the scheme would be released at that point.
4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.
5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

In her statement to the House of Commons on the Belfast Agreement, the Secretary of State for Northern Ireland made the following comments about the release of prisoners[47]

> The agreement also commits both Governments to put in place mechanisms to provide for an accelerated programme for the release of prisoners. Let me be clear: this is not an easy issue for anyone, but it is an indispensable part of this agreement. For our part, the British Government will establish an independent sentence review body to look at each prisoner on a case-by-case basis to determine their eligibility for release.
>
> Most eligible prisoners will qualify for release on licence within two years. If the circumstances allow, the remainder will be released at that point. It must be emphasised, however, that this time frame is variable, depending on the degree of genuine commitment to peace.
>
> Prisoners associated with groups that do not maintain a complete and unequivocal ceasefire will not qualify. Prisoners who do qualify will be released on licence and returned to prison if they engage in any further terrorist activity. These are crucial safeguards, and a briefing note giving more detail of the specifics of the proposed arrangement has been placed in the Libraries of both Houses.

The briefing note to which the Secretary of State refers is set out as an Appendix to this paper.

In responding to the statement the Conservative shadow spokesman on Northern Ireland, Andrew Mackay, expressed concern about the lack of progress on decommissioning terrorist weapons and said[48]:

> Will the Secretary of State confirm that no member of the new Assembly will be appointed a Minister until his paramilitary associates have engaged in substantial decommissioning? Can that be incorporated in the forthcoming legislation, along the lines of the letter that the Prime Minister sent to the right hon. Member for Upper Bann?
>
> Will the Secretary of State assure the House that there will be no early release of prisoners if decommissioning is not well under way? Can she allay fears in the Province by promising today that prisoners will not be released early if their

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47 HC Deb Vol 310 c481, 20.4.1998
48 HC Deb Vol 310 c.483, 20.4.1998

parliamentary associates resume violence in any shape or form, and that, in the case of those released, their licence will be revoked if such violence resumes? Will she reconsider the case of Guardsmen Fisher and Wright in the light of these developments?

In replying to these comments the Secretary of State said[49] :

As to the early release of prisoners, I hope that I made it clear to the hon. Gentleman that several security safeguards are built into the agreement. I am sure that he and his colleagues understand that, according to the nature of the agreement, several things must happen in parallel in order to build confidence. That has always been the situation, whether it be decommissioning, the release of prisoners, changes to the police force or normal acts of governance.

She added[50]:

The hon. Gentleman knows that it is difficult for me to say a lot about Fisher and Wright, as, like my predecessors, I have a semi-judicial role in that decision. As Mr. Fisher and Mr. Wright were convicted of scheduled offences, they will be able to benefit from the review and from any other proposals that are on the table. As the hon. Gentleman knows, their cases are up for review again in autumn this year.

Like the hon. Gentleman, I would like to see decommissioning tomorrow. I would like it to happen forthwith, as the Prime Minister said at the end of the week of the talks, and as we have said on numerous occasions. The mechanisms that will make decommissioning possible are in place. The Prime Minister's letter to which the hon. Gentleman referred said not only that decommissioning should start immediately but that he would like to put in place mechanisms to enable a review some months into the process, to ensure that all the machinery was working. It is built and structured in such a way in the agreement that it represents mutually assured progress or mutually assured destruction. That is why I am hopeful, and that is why I believe that the decommissioning that we would all like to see is crucial.
The hon. Gentleman asked, in the context of decommissioning, whether Ministers would be able to serve. It is clearly stated in the agreement that Ministers have to sign up to the principles of a democratic and peaceful way forward. That is a crucial step for anyone who seeks to be a Minister in the Assembly.

The leader of the Ulster Unionist Party, David Trimble, made the following comments about the statement on the Belfast Agreement[51]

With regard to the position on prisoners, as I am sure the right hon. Lady knows, that matter causes very great and very real concern in the community in Northern Ireland. The sentence review body will look at each prisoner on a case-by-case basis to determine eligibility for release. I should be grateful if she could give some indication as to the sort of criteria that the review body might be adopting, so

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[49] ibid. c484-485
[50] ibid.
[51] ibid. c488

that the public have some assurance that the circumstances of individual cases will be considered; the gravity of those cases does need to be taken into account.
In that context, I note that the Irish Government have already said that, irrespective of the release provisions, if people are found guilty of the murder of Garda McCabe, they will not be released. The contrast is bound to be keenly felt when people who have been guilty of murdering policemen in the United Kingdom are released.

May I again press the right hon. Lady on the question of security force prisoners? The case of the two guardsmen was mentioned, and of course I endorse the comments that were made about that by other Members; but there are quite a few security force prisoners, and I think that we should be doing more than just leaving their cases to be considered in the normal way, particularly as among those members of the security forces who are in prison--I think that he is now one of the longest life sentence prisoners--is a man who was unjustly convicted.

In commenting on the statement on the Belfast Agreement the Conservative MP Douglas Hogg said[52]:

The right hon. Lady well knows that there is an explicit linkage in the agreement between the release of prisoners and the cessation of murder. That is welcome in so far as it goes. However, there is no explicit linkage between decommissioning and the release of prisoners; nor is there an explicit linkage between the appointment of the First Minister, his or her deputy, Chairmen of Committees or Ministers, and decommissioning and the cessation of murder.

Why is that? Are there, perhaps, side agreements or letters of comfort--for example, the letter from the Prime Minister to the right hon. Member for Upper Bann (Mr. Trimble)? If so, what are those side agreements, and would the right hon. Lady please put them in the Library of the House?

The Secretary of State replied that[53]:

There are no side agreements. The letter from my right hon. Friend the Prime Minister to the right hon. Member for Upper Bann (Mr. Trimble) is in the public domain--it has already been published. Does the right hon. and learned Gentleman want to see any other information? As he knows, I write to many Members of Parliament about Northern Ireland. The letter to which we have referred is the one that I believe to be relevant, and it has been published. There are no side deals, and there is nothing that is not in the public domain.

There is quite consciously no bartering of prisoners for weapons--no link between the two. All along, the Government have believed that that would be an unacceptable bargain to strike. All we have said is that a number of changes are necessary in the context of overall peace being the first step. If we have an overall peace agreement, other things will follow if there is to be change.

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[52] ibid. c491
[53] ibid. c.491

> Everyone has to change--we have to change, the Irish have to change, and the parties have to change. We all have to adapt and find a future in which we can all live. There are no side deals and no bartering, but the early release of prisoners, changes in the police system, greater equality and a whole host of other things will follow as confidence, respect and trust are built among the people.

She went on to say that the measures would not apply to anyone convicted after 10 April 1998[54]

In his speech during the debate in the Dail on the Belfast Agreement the Irish minister for Justice, Equality and Law Reform, John O'Donoghue, made the following comments about the release of prisoners:[55]

> The manner in which the issue of prisoners has been dealt with in the Agreement has attracted much media comment already. It was one of those difficult issues which all participants had to address. It is widely recognised that both republican and loyalist prisoners have made important contributions to bringing about and maintaining the ceasefires already in place. This contribution has been recognised through tangible measures on prisoner issues. This Government along, with its predecessors, has sought to underpin the peace process and the Provisional IRA ceasefire by granting early release to prisoners. Thirty six prisoners were granted early release during the first ceasefire and 25 have been granted early release since July 1997.
>
> The reality is that the Agreement would not provide a basis for a settlement of the Northern Ireland conflict and a fresh start unless the issue of prisoners was addressed. Let us also be clear about what the Agreement says in dealing with the issue of prisoners. What it provides is that both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of offences connected with the Northern Ireland problem in the context of implementation of the Agreement. That will be by way of a review process to be completed within a fixed time frame for the purpose of setting prospective release dates for all qualifying prisoners. The review process will take account of the seriousness of the offences for which a person was convicted and the need to protect the community while advancing the release dates of all qualifying prisoners. The Agreement makes clear that the intention is that, should the circumstances allow it, qualifying prisoners who remained in custody two years after the commencement of the relevant schemes would be released at that point. The Agreement also makes clear that prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the new arrangements.
>
> It would not be helpful at this point to speculate on how the proposed review will impact on individual cases. That will be the task of the review itself. What has to be understood is that it will be necessary, as part of implementation of the Agreement, to facilitate the release of as many prisoners as possible who are

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[54] HC Deb Vol 310 c493, 20.4.1998
[55] Dail Debates c1079-1080, 21.4.1998

affiliated to organisations which have established and are maintaining ceasefires in the period ahead.

While emphasising that I will not speculate about the implications of the Agreement for individual cases, it is right that I should comment on one case, that is the case of those facing charges arising from the murder of Detective Garda Jerry McCabe which has been the subject of certain recent media speculation. While obviously it would be inappropriate for me to comment in detail on any case pending before the courts, the Government has made clear in its contacts with all groups its view that persons who may be convicted in connection with this murder will not come within the ambit of the Agreement

In answer to an Oral Question on 22 April 1998 from the leader of the opposition, William Hague, about the early release of prisoners, the Prime Minister said[56]

I can confirm that prisoners who are a threat or who are attached to organisations that are carrying on violence will not be eligible for early release under this proposal. Those who are released are, in any event, released on licence, and that point must be well emphasised.

On 13 may 1998 the leader of the Ulster Unionist Party, David Trimble, asked the Prime Minister the following Oral Question[57]:

The Prime Minister will know that the recent behaviour of Sinn Fein-IRA has increased concern in Northern Ireland that it will take the benefit of inclusion in the assembly and prisoner release without accepting the matching obligations to show by its actions, including decommissioning, that there is a genuine peace. Will he make clear that those obligations, which are clearly set out in the agreement, will be made effective and reflected in forthcoming legislation?

The Prime Minister replied[58]:

Yes--I intend to make it clear that the commitment and the obligations in the agreement must all be fulfilled and that no one can choose to fulfil some parts of the agreement and not others. Especially after the events at the weekend, it must be clear and demonstrated, as the right hon. Gentleman has pressed me on many occasions to make clear, that if people are to take their places on the Northern Ireland Executive and participate in the provisions on prisoner release, we must be sure that violence is given up for good. We must demonstrate that clearly.

In a speech at Balmoral Showgrounds, Belfast on 14 May 1998 the Prime Minister sought to provide further assurance about the release of prisoners under the Belfast Agreement:

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56 HC Deb Vol 310 c.811O, 22.4.1998
57 HC Deb Vol 312 c364-365, 13.5.1998
58 ibid. c.365

There are other issues which are very hard to accept for many, particularly the many victims of violence, whose suffering we must never forget - for example the possibility of terrorist prisoners being released early or parties linked to paramilitary groups taking up office in the proposed Northern Ireland Executive. Many people have raised those concerns with me in passionate terms. I believe they deserve a full answer.

The concerns were of course anticipated and the Agreement contains safeguards:

- any use or threat of violence is completely incompatible with the principle of consent;

- the pledge of office for members of the new Assembly will contain a clear commitment to non-violence and exclusively peaceful means;

- the Assembly, on a cross-community vote, can remove office-holders in whom it does not have confidence because of failure to meet their responsibilities, including those set out in the Pledge of Office;

- the only prisoners whose cases can even be considered by the Independent Review Commission are those belonging to organisations which are observing a total and unequivocal ceasefire, each prisoner's case will be reviewed individually, and those released will only be out on licence, subject to recall;

- all the parties have now committed themselves to the total disarmament of all paramilitary organisations - decommissioning is to be completed within two years of the referendum;

- regular reviews of the implementation of the settlement, by the two governments and the parties, are envisaged. These provide an opportunity to ensure that parties are not picking only those parts of the settlement that they like.

These safeguards are vital. We will make them stick. But the truth is that great emotions are involved and people are still not convinced, even if they want to vote yes. The problem is: I believe that most people would be ready to accept even the hardest parts of the Agreement if they had genuine confidence that the paramilitaries were really ready to give up violence for good. I welcome Sinn Fein's endorsement of the Agreement and all that it implies. This is a historic shift. But after the experiences of the last thirty years, and some recent statements about no decommissioning, it is hardly surprising that for many that confidence is simply not there.

So how can we be sure that acceptance of the agreement by these parties will mean an end to violence and a genuine commitment to exclusively peaceful means, when we know that for example Sinn Fein and the IRA remain inextricably linked, as the weekend's events graphically illustrated.

In particular, how do we test it, judge it, assess it to be real? It is here that people feel that sentiments or intentions are not enough.

People want to know that if these parties are going to benefit from proposals in the Agreement such as accelerated prisoner releases and Ministerial posts, their commitment to democratic non-violent means must be established, in an objective, meaningful and verifiable way. Those who have used the twin tactics of ballot box an the gun must make a clear choice. There can be no fudge between democracy and terror.

The Agreement is what has to be implemented, in all its parts. In clarifying whether the terms and spirit of the Agreement are being met and whether violence has genuinely been given up for good, there are a range of factors to take into account:

- first and foremost, a clear and unequivocal commitment that there is an end to violence for good on the part of republicans and loyalists alike, and that the so-called war is finished, done with, gone; that, as the Agreement says, non-violence and exclusively peaceful and democratic means are the only means to be used;

- that, again as the Agreement expressly states, the ceasefires are indeed complete and unequivocal: an end to bombings, killings and beatings, claimed or unclaimed; an end to targeting and procurement of weapons; progressive abandonment and dismantling of paramilitary structures actively directing and promoting violence;

- full co-operation with the Independent Commission on decommissioning, to implement the provisions of the Agreement.

- and no other organisations being deliberately used as proxies for violence.

These factors provide evidence upon which to base an overall judgement - a judgement which will necessarily become more rigorous over time. What is more, I have decided that they must be given legislative expression directly and plainly in the legislation to come before Parliament in the coming weeks and months.

We are not setting new preconditions or barriers. On the contrary we want as many people as possible to use the Agreement as their bridge across to an exclusively democratic path. We will encourage them to take this path. But it is surely reasonable that there should be confidence-building measures from these organisations after all the suffering they have inflicted on the people of Northern Ireland. And we also have a responsibility to provide protection against abuse of the democratic process, and its benefits, by those not genuinely committed to it.

As has already been noted, under the these arrangements for 50% remission of sentence re-introduced in Northern Ireland in 1995, about 240 prisoners have been released early and about half of the remaining prisoners eligible for release would be released within the next few years without any changes being made to the current system[59].

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[59] "Northern Ireland (Sentences) Bill" - NIO press notice 5.6.1998

In answer to a Written Question from William Ross about the number of people in prison for crimes related to terrorist actions, their membership of proscribed organisations and their likely release dates under the current arrangements, the Northern Ireland minister, Adam Ingram provided the following information[60]:

The Prison Service does not record whether a person is in prison for crimes related to terrorist actions. The Prison Service records the number of prisoners convicted of scheduled offences, which are those offences generally committed as acts of terrorism. On 26 February 1998 there were 781 prisoners in custody who had been convicted of scheduled offences. This figure includes prisoners who have had their offence certified out by the Attorney-General as having no connection with terrorism. Only prisoners held in segregated wings at HMP Maze and a small number of female prisoners held at HMP Maghaberry can clearly be identified as being affiliated to particular proscribed organisations. In the normal course of events the following number of prisoners affiliated to these organisations would be released.

Prisoners affiliated to proscribed organisations who are due for release

	UDA/UFF	UVF	LVF	IRA	INLA
1998	8	10	0	28	1
1999	21	9	1	25	2
2000	16	7	1	18	1
2001	4	8	3	18	2
2002	7	1	2	15	0
Next five years	2	3	0	34	4

Prisoners due for release in the normal course of events, who were convicted of scheduled offences and sentanced to 3 years or more, in custody in HMP Maze at 26.1.98

Source: HC Deb 6 May 1996 c413w

Note:
The figures in this table relate to those persons convicted of scheduled offences and sentenced to three years or more who were in custody in HMP Maze on 26 January 1998. The complete record was not available for a small number of prisoners when the research on which this table is based was carried out and so the table slightly undercounts the number of prisoners to be released during this period.

In a separate Written Answer to a question from Kevin McNamara about the number of prisoners convicted of scheduled offences who would still be in prison at the end of each year under both the current arrangements, 66% remission and 75% remission Adam Ingram, provided the following table, based on prisoners serving determinate sentences of three years or more; held at Maghaberry or Maze for offences connected to terrorism; and who will be released after 30 April 1998. :[61]

[60] HC Deb Vol 311 c412-413W, 6.5.1998
[61] HC Deb Vol 436W, 20.4.1998

Number of prisoners convicted of scheduled offences remaining in prison at the end of each year under current arrangements 66% and 75% rates of remission

End of year	*Current arrangements*	*66% remission*	*75% remission*
1998	250	109	38
1999	182	59	9
2000	126	26	3
2001	84	8	2
2002	47	2	2
2003	31	2	1
2004	18	1	-
2005	8	1	-
2006	3	1	-
2007	1	-	-
2008	1	-	-
2009	1	-	-
2010	1	-	-
2011	1	-	-
2012	-	-	-

Notes:

Current prisoners for whom 66% and 75% remission would mean prior or immediate release, are included in figures for 1998.

1. Determinate sentenced prisoners serving sentences of three years or more; held at Maghaberry or Maze for scheduled offences; and who will be released after 30 April 1998.
2. Excludes: Life Sentence prisoners and prisoners detained at Secretary of State's Pleasure; remand; and fine default prisoners.

The Northern Ireland minister in the House of Lords, Lord Dubs, set out the Government's reasons for preferring a new system to one involving the existing arrangements for early release in a Written Answer to a Question from Lord Tebbit on 18 May 1998[62]:

Under the Belfast Agreement, the Government undertook to put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences. Existing powers of release are inadequate to give effect to what is proposed to be done. Determinate sentence prisoners are normally released as a consequence of remission. The maximum remission permitted under the Prison

[62] HL Deb Vol 589 WA143-144, 18.5.1998

Rules is one half of sentence, whereas prisoners covered by the agreement are to be released when they have served one-third of their sentence. It would not be possible to amend the rules to increase the rate of remission partly because remission under the rules can only be based on a prisoner's good conduct in prison, a factor which will not be relevant to whether he is a qualifying prisoner for purposes of the agreement. Nor can rules on remission be made which make provision for qualifying prisoners which is different from that for other prisoners. It is also intended to apply licence conditions to determinate sentence prisoners released as a consequence of the agreement and, for their recall, arrangements which will satisfy the ECHR, and this would not at present be possible if the prisoners were released on remission, at which point their sentences expire. These arrangements will be applied to life sentence prisoners. For prisoners who are transferred from England and Wales or Scotland as restricted prisoners, the new provisions will mean that they can be released earlier than would otherwise be the case. Release of prisoners who satisfy the qualifying criteria would not be possible in exercise of the Royal Prerogative of Mercy to pardon or remit sentence because no licence or condition could be imposed and no recall would be possible, even if it would otherwise be proper to use this Prerogative power for any or all of these categories of prisoners.

IV The Northern Ireland (Sentences) Bill

The *Northern Ireland (Sentences) Bill* was introduced in the House of Commons on 4 June 1998 and had its Second Reading on 10 June 1998[63]. The Northern Ireland Office press notice of 5 June 1998 announcing the Bill's publication said the Bill was intended to implement the part of the Belfast Agreement dealing with prisoners and incorporate the commitments given by the Prime Minister during the Referendum campaign in Northern Ireland. For the most part, the Bill extends only to Northern Ireland.

Clause 1 and Schedule 1 of the Bill provide for the appointment by the Secretary of State of Sentence Review Commissioners, of whom at least one will have to be a lawyer (defined as a person who holds a legal qualification in any jurisdiction) and one a psychiatrist or psychologist. The Clause seeks to require the Secretary of State to have regard to the desirability of the Commissioners, as a group, commanding widespread acceptance throughout the community in Northern Ireland. The Secretary of State will have powers to dismiss any Commissioner if he or she is satisfied[64]:

(a) that he[65] has without reasonable excuse failed to carry out his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal,

[63] HC Deb Vol 313 c1082-1168, 10.6.1998
[64] Schedule 1 para. 2
[65] i.e. the Commissioner

(b) that he has been convicted of a criminal offence,
(c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
(d) that he is unable or unfit to carry out his functions.

Provision for the remuneration of Commissioners and the allocation of appropriate staff and premises is made in Schedule 1, which also seeks to require the chairman of the Commissioners to provide the Secretary of State with an annual report which will be laid before Parliament. Paragraph 9 of Schedule 1 is designed to prevent the application of section 19 of the *Northern Ireland Constitution Act 1973* (which concerns discrimination by public authorities) and section 17 of the *Fair Employment (Northern Ireland) Act 1976* (which concerns discrimination by employers) in relation to the appointment of Commissioners.

Clause 2 and Schedule 2 are designed to enable the Secretary of State to make rules concerning the procedure to be followed in relation to proceedings of the Commissioners. The rules may make provision about evidence and information and the conduct of proceedings, including whether or not a person serving a sentence of imprisonment or detention may represent or act on behalf of a prisoner. They may also provide for certain persons to be excluded from proceedings, including the prisoner concerned and any representative appointed by him, although in such cases it is intended that the Attorney General for Northern Ireland should have powers to appoint a person to represent the prisoner's interest in those proceedings. The rules may enable the Commissioners to award a prisoner money for legal advice or representation. They may also prevent successive applications under any of the Bill's provisions being made in certain specified circumstances. The rules will be made by statutory instrument subject to the negative procedure[66].

Referring to the Sentence Review Commissioners in her speech opening the Second Reading debate on the Bill the Secretary of State said[67]:

I would intend to appoint a psychiatrist or psychologist with expertise in risk assessment in criminal cases. In the rules of procedure that I may make under the Bill, I will require that a commissioner with such expertise would sit on panels considering applications from life sentence prisoners.

In answer to a Question from William Ross about whether all the lawyers appointed to the commission would be UK lawyers rather than those from other jurisdictions the Secretary of State said[68]:

With respect to the hon. Gentleman, I do not want to tie myself down in that way. We want to appoint, as clause 1 of the Bill states, a psychiatrist or psychologist and a lawyer with expertise. It is 99 per cent. likely that a lawyer with expertise in our criminal legal system would be of UK origin, so I can give the hon. Gentleman that much reassurance. However, I am more keen to ensure that we have a

[66] Clause 17
[67] HC Deb Vol 313 c1087, 10.6.1998
[68] ibid. c1088

balanced, independent body, including a lawyer and a psychologist or psychologist, which people can trust and respect. The body has not yet been selected and, as the hon. Gentleman well knows, all the parties in Northern Ireland can submit nominations for bodies of that nature; I look forward to receiving the nominations from his party.

Clause 3 of the Bill is designed to enable prisoners to make applications to the Sentence Review Commissioners for declarations that they are eligible for release under the provisions of the Bill. The Commissioners will only be able to grant such an application from a prisoner if he or she is serving a sentence of imprisonment in Northern Ireland for a fixed term or for life and a number of conditions are fulfilled. Three of these conditions, set out in Clause 3(3)-(5), apply both to prisoners serving fixed terms of imprisonment and to prisoners serving sentences of imprisonment for life[69]. They are -:

- that the sentence was passed in Northern Ireland for a qualifying offence, and is one of imprisonment for life or for a term of at least five years.

- that the prisoner is not a supporter of a terrorist organisation.

- that, if the prisoner were released immediately, he would not be likely to become a supporter of a terrorist organisation, or to become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland.

Where a prisoner serving a sentence of imprisonment for life is concerned Clause 3(6) provides a fourth condition, namely:

- that, if the prisoner were released immediately, he would not be a danger to the public.

Clause 3(7) describes a "qualifying offence" as one which:

(a) was committed before 10th April 1998,

(b) was when committed a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996[70] , and

(c) was not the subject of a certificate of the Attorney General for Northern Ireland that it was not to be treated as a scheduled offence in the case concerned.

The "scheduled offences", the current list of which is set out in Schedule 1 of the Northern Ireland (Emergency Provisions) Act 1996, are offences which must generally be tried by a judge sitting alone, without a jury, in what is colloquially known as a “Diplock court”[71]. They

[69] Clause 12(3) provides that references to sentences of imprisonment for life include reference to a sentence of detention at Her Majesty's Pleasure

[70] the scheduled offences are described on p.5 above

[71] after the chairman of the Commission whose 1972 report recommended their introduction: *Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland* Cmnd 5185 December 1972

may, however, be tried by jury if the Attorney-General certifies in a particular case that the offence is not to be treated as a scheduled offence in that case. Section 2 of the *Northern Ireland (Emergency Provisions) Act 1998* amended Schedule 1 of the 1996 Act by increasing the number of offences on the list which may be "certified out" by the Attorney-General in particular cases and tried by jury, rather than by a "Diplock Court". Most offences set out in the Schedule are now capable of being certified out.

"Qualifying offences" under the present Bill are therefore intended to be those scheduled offences committed before 10 April 1998 which the Attorney General for Northern Ireland considered should be tried by a judge sitting alone rather than by a judge and jury.

Clause 3(8) defines "terrorist organisation" as follows:

> (8) A terrorist organisation is an organisation specified by order of the Secretary of State; and he may specify only organisations which he believes-
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> (a) are concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
> (b) have not established or are not maintaining a complete and unequivocal ceasefire.

Clause 3 (9) seeks to provide the following guidance on how paragraph (b) of this provision should be applied

> (9) In applying subsection (8)(b) the Secretary of State shall in particular take into account whether an organisation-
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> (a) is committed to the use now and in the future of only democratic and peaceful means to achieve its objectives;
> (b) has ceased to be involved in any acts of violence or of preparation for violence;
> (c) is directing or promoting acts of violence committed by other organisations;
> (d) is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997.

This provision is intended to incorporate what the Prime Minister, in his speech at Balmoral Showgrounds on 14 May 1998, described as a range of factors to be taken into account in clarifying whether the terms and spirit of the Belfast Agreement were being met and whether violence had genuinely been given up for good[72]

Clause 3(10) is intended to require the Secretary of State to review the list of terrorist organisations specified under Clause 3(8) and to enable him or her to make new orders removing organisations from, or adding them to, the list.

Orders under Clause 3(8) listing those organisations which are to be considered "terrorist organisations" for the purposes of the Bill, and any subsequent amendment to the list, will

[72] See the Secretary of State's comments during the second reading debate on the Bill - HC Deb Vol 313 c.1083, 10.6.1998. Extracts from the Prime Minister's speech are set out in the previous section of this paper at p.26-27

have be made by statutory instrument. Under Clause 17, the draft of any such order will have to be laid before and approved by each House of Parliament under the affirmative procedure, except that in urgent cases the order may be made without a draft having been approved if the Secretary of State thinks it necessary for reasons of urgency. In such cases, the order will have to include a declaration to that effect, it will have to be laid before each House of Parliament after being made, and will cease to have effect 40 days from the date of its making[73] unless a resolution is passed by each House approving it. Clause 17(5) seeks to ensure that if an order lapses after 40 days, the detention of a person while it was in force is not treated as unlawful by reason only of the order having lapsed.

Where the Sentence Review Commissioners grant a declaration to a fixed term prisoner in relation to a sentence, Clause 4 is designed to provide that prisoner with a right to be released on licence, so far as that sentence is concerned, after having served one third of his sentence, plus one day for every day of remission which he or she has lost, and not had restored, under prison rules. If the day arrived at under this provision falls on or before the day of the declaration, the prisoner will have a right to be released by the end of the following day. If the day of release is a "listed day" (Saturday, Sunday, Christmas Day, Good Friday or other public holiday in Northern Ireland) the prisoner will have the right to be released by the end of the next non-listed day. If a prisoner is released under Clause 4 it is intended that his sentence should expire and the licence subject to which he or she was released should lapse at the time when he could have been discharged for good conduct under prison rules. These are the rules which, since the commencement of the *Northern Ireland (Remission of Sentences) Act 1995 in November 1995*, have provided for up to 50% remission for good behaviour[74].

Clause 5 seeks to make provision for the treatment of periods spent on remand in custody and for sentences supplemented by a period of imprisonment under section 16(2) of the *Northern Ireland (Emergency Provisions Act 1996)* as a result of the person concerned having been convicted of a scheduled offence during a previous period of remission.

Where the Sentence Review Commissioners grant a declaration to a prisoner serving a sentence of imprisonment for life, Clause 6 is intended to require the Commissioners to specify a day which they believe marks the elapse of about two thirds of the period which the prisoner would have been likely to spend in prison under the sentence. At that point the prisoner will have a right to be released on licence, so far as that sentence is concerned, on the day specified by the Commissioners or, if that day falls on or before the day of the declaration, by the end of the day after the day of the declaration. Clause 7 requires the Secretary of State to provide the Commissioners with information concerning the length of time served by prisoners sentenced to life imprisonment in Northern Ireland and released on licence between 1982 and 1999. The Commissioners will be required to take account of this information and their own previous decisions in setting a date for release. In addition, Clause 7 gives the Secretary of State powers to notify the Commissioners of cases which he or she believes are particularly relevant in the prisoner's case and enables the Commissioners to take these into account.

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[73] calculated in accordance with section 7(1) of the *Statutory Instruments Act 1946*

[74] See p.6

If the Commissioners refuse an application for a declaration of eligibility for release, Clause 11 is intended to require them to give notice of their decision and the reasons for it to the prisoner and the Secretary of State. If the Commissioners grant an application, Clause 11 they will also be required to give notice of their decision to the prisoner and to the Secretary of State and, if the prisoner is a life prisoner, to include in the notice a statement of the date specified in Clause 6(1), which is the date on which the prisoner would be eligible for release.

Clause 8 is designed to give the Secretary of State the power to apply to the Commissioners to revoke a declaration granted to a fixed term or life prisoner under Clause 3 on the ground that any of the conditions in that Clause is not satisfied. The declaration may only be revoked if circumstances have changed since it was made, or if reliance is being placed on evidence not adduced when it was made. If the Commissioners revoke a declaration under this provision, they will be required by Clause 11 to give notice of the revocation and the reasons for it to the prisoner and to the Secretary of State.

A prisoners' right to be released under Clause 4 or Clause 6 will be a right to be released on licence. Clause 9 is designed to ensure that a prisoner's licence is subject only to the conditions:

a) that he does not support a terrorist organisation (within the meaning of section 3)
b) that he does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland, and
c) in the case of a life prisoner, that he does not become a danger to the public.

Clause 9(2) seeks to enable the Secretary of State to suspend a person's licence if he believes the person concerned has broken or is likely to break one of these conditions. If the Secretary of State suspends a licence under this provision, he or she will be required by Clause 11 to give notice of the suspension and the reasons for it to the person concerned and to the Commissioners. A person whose licence is suspended is to be detained in pursuance of his section and if at large, is to be taken to be unlawfully at large. He or she may apply to the Commission to consider his case. If the Commissioners think that he or she has not broken and is not likely to break a condition imposed by Clause 9, they may confirm the person's licence, but if not, they will be required to revoke the licence. In either event, they will be required by Clause 11 to give notice of their decision and the reasons for it to the person concerned and to the Secretary of State. Where the Commissioners confirm the person's licence, Clause 9(5) is designed to provide that person with a right to be released by the end of the following day (or by the end of the next non-listed day, if the following day is a listed day i.e. a Saturday, Sunday or public holiday), or if he is at large, a right to remain so. Clause 9(7) seeks to ensure that the detention of a person while his or her licence is suspended is not rendered unlawful by the subsequent confirmation of the licence.

Clause 10 is intended to provide for the accelerated release of prisoners who are granted declarations by the Commissioners. Clause 10(4) provides that in the case of a sentence passed before the day on which the Bill comes into force, the "accelerated release" day is the second anniversary of that day. Where prisoners sentenced before the day on which the Bill comes into force are granted declarations giving them the right to be released on licence on

particular days which fall after the accelerated release day, Clause 10 (2) is intended to give them a right to be released on the accelerated release day, or, if that day is a listed day (i.e. a Saturday, Sunday or public holiday), on the next non-listed day. Clause 10(5) extends this provision to prisoners who are sentenced after the date on which the Bill comes into force but whose sentences are treated as reduced by periods of custody, such as periods spent on custodial remand, which begin before the date on which the Bill comes into force. Where prisoners sentenced after the date on which the Bill comes into force are granted declarations by the Commissioners, which may only happen where their offences were committed before 10 April 1998, Clause 10(6) is designed to set their accelerated release day as the second anniversary of the start of their sentence, disregarding custody before the sentence was passed.

It is thus intended that all prisoners who are granted declarations by the Commissioners that they are eligible for release under Clauses 4 or 6 should be released within two years of the implementation of the Bill or, if they are they are sentenced after the day appointed by the Secretary of State for that implementation, within two years of the start of their sentence.

Clause 10(7) seeks to give the Secretary of State powers to amend Clause 10(4), 10(5) and 10(6) by order. It is intended that such orders should be made by statutory instruments which will be subject to the negative procedure.

The *Prevention of Terrorism (Temporary Provisions) Act 1989* and the *Northern Ireland (Emergency Provisions Act 1996* contain a number of criminal offences relating to membership of, or support for proscribed organisations, making contributions of money and other property towards acts of terrorism or the resources of proscribed organisations, assisting in the retention or control of terrorist funds, or failing to disclose knowledge or suspicion that such offences are being committed and, in the case of the 1996 Act, displaying support in public for a proscribed organisation or wearing a hood, mask or other means of concealing identity in public. Where a prisoner makes an application under Clause 3, Clause 13 (which extends to the whole of The United Kingdom) is designed to prevent evidence and information provided to the Commissioners by or on behalf of that person in connection with his application, or with subsequent proceedings under the Bill concerning his sentence, from being admissible in proceedings for these. offences or in certain other specified proceedings, except where it is adduced on behalf of the accused.

The following organisations are proscribed in the UK as a whole under Schedule 1 of the 1989 Act :

i) Irish Republican Army (IRA);
ii) Irish National Liberation Army (INLA).

The following organisations are proscribed in Northern Ireland under Schedule 2 of the 1996 Act:

i) Irish Republican Army (IRA);
ii) Cumann na mBan;

iii) Fianna na hEireann;
iv) Red Hand Commando;
v) Saor Eire;
vi) Ulster Freedom Fighters (UFF);
vii) Ulster Volunteer Force (UVF);
viii) Irish National Liberation Army (INLA);
ix) Irish People's Liberation Organisation (IPLO);
x) Ulster Defence Association (UDA);
xi) Loyalist Volunteer Force (LVF);
xii) Continuity Army Council.

Clause 14, which also extends to the whole of the United Kingdom, is designed to enable the Secretary of State to make orders suspending, or later reviving, the operation of Clause 3. A suspension order made under this provision will prevent the granting of declarations on applications already made under Clause 3 and the release of prisoners under Clause 4 or Clause 6 in pursuance of declarations already granted. Clause 14 is also intended to enable the Secretary of State to make orders suspending, or later reviving, the operation of the arrangements for accelerated release within two years under. A suspension order will have no effect on sentences which are subject to current or suspended licences when the order comes into force, but that will affect any sentence if a licence is revoked after the order comes into force.

An order suspending or reviving the operation of Clause 3 or Clause 10 will have to be made by made by statutory instrument and approved by both Houses of Parliament under the affirmative procedure. As with orders under Clause 3(8) however, it is intended that it should be possible for a suspension order to be made without a draft having been approved if the Secretary of State thinks it necessary for reasons of urgency. The suspension order will have to include a declaration to that effect, it will have to be laid before each House of Parliament after being made, and it will cease to have effect 40 days from the date of its making[75] unless a resolution is passed by each House approving it. If an order lapses after 40 days, Clause 17(5) seeks to ensure that the detention of a person while it was in force is not treated as unlawful by reason only of the order having lapsed.

Clause 15 of the Bill, which also extends to the whole of the United Kingdom, is designed to give the Secretary of State the power to make an order applying Clause 3 to 13 to prisoners sentenced in England and Wales and Scotland for offences committed in connection with terrorism and the affairs of Northern Ireland, where the offences were committed in those jurisdictions before 10 April 1998, they are certified by the Attorney-General (or, in Scotland the Lord Advocate) as being offences which would have been scheduled offences had they been committed in Northern Ireland, and the prisoners concerned have been transferred to Northern Ireland. Such an order will have to be approved by both Houses of Parliament under the affirmative procedure. Clause 15(4) seeks to ensure that such an order may provide for Clause 3 to 13 to have effect subject to any specified modifications and that it may make different provision for different cases. Clause 15(4) also seeks to enable an order to provide

[75] calculated in accordance with section 7(1) of the *Statutory Instruments Act 1946*

for the removal of restricted transfer conditions imposed under paragraph 5 of Schedule 1 to the *Crime (Sentences) Act 1997*. Such conditions require a transferred person to be treated for particular purposes as if he were still subject to the provisions which would have applied for those purposes under the law of the jurisdiction from which the transfer was made.

The Northern Ireland Office press notice which announced the publication of the Bill set out the views of the Secretary of State for Northern Ireland on the Bill and its relationship with the Belfast Agreement as follows:

> The Agreement was reached as a package and the section dealing with prisoners is part of that package - endorsed by more than 71 % of the people of Northern Ireland. The Agreement cannot be cherry-picked by any party.
>
> The Bill contains rigorous safeguards as well as incorporating the four factors outlined by the Prime Minister.
>
> The safeguards are there to ensure that only those prisoners who have genuinely given up violence are released. There will be no general amnesty. The gates of the Maze Prison will not suddenly be thrown open.
>
> •An independent body will be set up to review each case prisoner by prisoner.
>
> •Prisoners who belong to organisations which have not declared and are not maintaining complete and unequivocal cease-fires will not be considered for release.
>
> •Those prisoners judged to be a danger to the public will not be released. •Those released will be on licence and can be re-imprisoned if they become involved with terrorism again.
>
> As the Prime Minister said during the Referendum campaign, the following factors will be taken into account. They are not new preconditions but are essential to help us reach an overall judgement on whether or not an organisation is genuinely observing a complete and unequivocal cease-fire. The four factors are, whether an organisation:
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> •is committed to the use now and in the future of only democratic and peaceful means to achieve its objective;
>
> •has ceased to be involved in any acts of violence or of preparation for violence;
>
> •is not directing or promoting acts of violence committed by other organisations;
>
> •and is co-operating fully with the Decommissioning body.
>
> I accept that for many, particularly the victims and their families, this is a difficult and painful issue. But many victims have also told me that they accept that dealing with the prisoners issue is necessary to help to ensure that there are not more victims in the future. That is what we all hope and expect from this Agreement

In her speech opening the Second Reading debate on the Bill the Secretary of State for Northern Ireland said[76]:

> The four factors that the Prime Minister outlined in his speech in Belfast on 14 May are central to deciding whether an organisation is on a ceasefire and committed to establishing and maintaining a complete and unequivocal ceasefire. The Prime Minister outlined four criteria covering a commitment to democratic peaceful means; involvement in any acts of violence or preparation of acts of violence; the use of proxy organisations; and full co-operation with the independent body on decommissioning. Those are the criteria on which I will judge whether a group is on a ceasefire.

Punishment beatings and the instigation of paramilitary activity are to be included in the four factors[77]. The Secretary of State also noted that the legislation would not remove the ban on proscribed organisations and that the IRA or UDA, for example, would continue to be proscribed. Membership of such organisations would continue to be a criminal offence[78]. In response to a comment from the Democratic Unionist Party (DUP) MP, Peter Robinson, that a person who belonged to a proscribed organisation such as the IRA would be entitled to release even though he or she was committing an offence by being a member of that organisation, the Secretary of State said[79]:

> The important thing to bear in mind is that the Bill is concerned with organisations that are unequivocally committed to establishing and maintaining a ceasefire and those belonging to such organisations: proscription is concerned with the long-term purpose of an organisation. The emergency provisions Acts will still apply in respect of proscription.

A number of Members expressed concern about the position of those prisoners who had already been transferred to the Republic of Ireland, including the Balcombe Street gang, who had been given a whole life tariff before their transfer from the UK, and Paul Magee, who was reported to have been given a 30 year tariff. The Secretary of State said that before the Home Secretary transferred Magee and others, he made it clear that he would only do so if the Minister of Justice in the Republic gave an assurance that the full tariffs would be served. She added that the Home Secretary had obtained an agreement from the Minister of Justice that the sentence would remain as it was[80]. The Bill does not, of course, apply to the Republic of Ireland, which will be making its own arrangements for the release of prisoners covered by the Belfast Agreement. The Secretary of State added that the assurances about the prisoners transferred to the Republic of Ireland had been given before the Bill was drafted and that the transfers did not relate to the Bill. The Conservative Party's Northern Ireland spokesman, Andrew Mackay, said he disagreed fundamentally with the Secretary of State's view of the

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[76] HC Deb Vol 313 c1084, 10.6.1998
[77] ibid
[78] ibid c.1087
[79] ibid. c.1089
[80] ibid. c.1086

likelihood of the transferred prisoners being released early, but would leave the matter for the present [81].

In his speech on the Bill's Second Reading Andrew Mackay, thanked the Secretary of State for the way her officials had co-operated with the Opposition in drafting the legislation of the Bill. Noting that the Bill incorporated some, but by no means all of the safeguards sought by his party he said that although his party would not seek to divide the House on the Second Reading, there remained some areas of deep concern where his party believed the legislation was either too weak or ill-defined. He added that, unlike the Bill giving effect to the referendum, his party did not intend to allow this legislation to be "fast-tracked" through Parliament and would table amendments where it thought they were necessary to strengthen the Bill's provisions. He said he did not necessarily agree, especially in the context of an overall political settlement, with those who opposed the Bill, although he understood and sympathised with their arguments. He went on to say[82]:

> All the parties that signed up to the agreement signed up also to the principle that there can be no change in the status of Northern Ireland without the consent of the majority of its people. I believe that these arguments were well understood by the majority of the Unionist community in the referendum campaign. However, many Unionists found harder to accept the provisions of the agreement dealing with prisoner release and decommissioning. That is why the Opposition pressed for substantial decommissioning to take place before the early release of prisoners, and for this to be incorporated in the proposed legislation that is before us.
>
> Those of us who were in the Province campaigning for a yes vote in the final few days of the referendum campaign were left in no doubt that a significant number of moderate people in both communities finally decided to vote yes only when the Prime Minister had given them a clear and unequivocal assurance that decommissioning and the renunciation of violence would be incorporated in the legislation on early prisoner release and the setting up of the assembly.
>
> In the Opposition's view, the Bill goes only some of the way to satisfying those assurances and will, therefore, require amendment in Committee next week. The most serious omission is that it does not establish a clear legislative linkage between some actual decommissioning having taken place and the accelerated release of prisoners.
>
> To put it simply, the Bill merely states that
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> "the Secretary of State shall in particular take into account whether an organisation . . . is co-operating fully with"
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> the commission, whereas what the people of Northern Ireland and elsewhere expect is that the Secretary of State should release prisoners early only if such organisations are fully co-operating with the commission.

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[81] ibid. c.1092
[82] ibid. c1093-1094

> Incidentally, as the Prime Minister stated in his Balmoral speech on 14 May, such co-operation is implementing provisions within the agreement. Therefore, let us have no talk that amending the Bill will be in breach of the agreement; it strengthens the agreement.

The Northern Ireland minister, Adam Ingram, noted that the previous government had introduced legislation in 1995[83] which resulted in the release of a large number of terrorist-related prisoners, without any explosives or ammunition being handed in or any guns being decommissioned[84].

In his speech during the Second Reading debate on the Bill the leader of the Ulster Unionist Party, David Trimble, said[85]:

> As hon. Members have said, the Bill gives effect to part of the Stormont agreement. We must take the Stormont agreement as a whole, and should not pick and choose. Although this issue has caused great concern, nevertheless it is part of that agreement.

He went on to express some concern about the decommissioning issue, saying[86]:

> It was clear during the referendum campaign that the concept of early release caused considerable difficulties to the community in Northern Ireland and throughout the United Kingdom. It is clearly an interference with the normal judicial process for political reasons, so it is, in principle, undesirable. It also appears to many people, with justification, as a concession granted to terrorists, so it is distasteful. It also strikes many people that to approve, tolerate or acquiesce in these arrangements in some way dishonours the memory of those who have suffered as a result of terrorism. There is considerable difficulty with this measure.
>
> People would not find this concept acceptable unless they knew that, as a result of the agreement as a whole, there was to be a genuine ending of violence and a genuine peace. What might be tolerable in the context of a genuine and permanent end to violence would not be tolerable otherwise. That must be understood.
>
> In the discussions that led up to the agreement, when we entered reservations about the concept of early release, people said to us that such measures had been taken after previous emergencies. Indeed, there were releases after the emergencies in Northern Ireland in the '20s, '40s and '60s, when the terrorist campaign had ended. Most of those releases were of persons who had been interned, so the problem of people who had been convicted did not arise. However, a limited number of persons who had been convicted of terrorist offences were released after previous emergencies had ended. In those cases, the releases occurred when it was clear that terrorism had ended and been defeated. That marks a distinction from the present situation. We are asked to approve provisions for release when it is not clear that terrorism has ended or been defeated.

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[83] the increase in remission rates under the Northern Ireland (Remission of Sentences) Act 1995
[84] HC Deb Vol 313 c1095-1096, 10.6.1998
[85] ibid. c.1096-1097
[86] ibid.

> We hope that terrorism will end and that there will be a genuine peace, but, because it is not at this moment absolutely clear that that is the position, it is essential to ensure that the tests and conditions written into the Bill are firm and watertight and are adhered to in practice. Like the hon. Member for Bracknell (Mr. MacKay), we shall focus on the tests in the legislation. It is essential that those tests are in a satisfactory form and that we can have some confidence that the Government will stick to them in practice.
>
> The Government will have great difficulty with the people of Northern Ireland on this matter. The Secretary of State will have to establish credibility with the community. That credibility does not at present exist, and she will have to tackle that problem in what she says and in what she does in the coming weeks and months. She will have to create that confidence, so she has an awesome task in front of her.
>
> Will there be a genuine peace? That is the crucial question. The decommissioning of terrorist weapons has been and continues to be an important litmus test of sincerity. It must be dealt with if there is to be genuine peace. No one in his right mind would want those weapons to be left lying around to fall into who knows whose hands and be available for use by who knows who in the future.

A number of other Members expressed similar concerns about the decommissioning of weapons. The Conservative MP Andrew Hunter described the Bill as "incompatible with the rule of law", saying that it marked the "triumph of terror " and that the argument for releasing prisoners was "morally wrong"[87].

The Social Democratic and Labour (SDLP) MP Seamus Mallon referred to the Bill as "unique", saying that in his view there could be no perfect legislation on the subject because the issue was not a legislative matter but a political one.[88].He added that the accelerated release of prisoners was a "cold, harsh fact for all of us in the north of Ireland, but it is an inevitable an inescapable necessity for a lasting agreement".

Speaking for the Liberal Democrats, Phil Willis said his party whole-heartedly supported the agreement and would be whole-heartedly supporting the legislation[89]. He added that his party, along with its sister party the Alliance party in Northern Ireland, was keen to stress the importance of victim notification. He suggested that the Bill be amended to allow victims of terrorist acts to be notified when the perpetrators of acts from which they had suffered were released[90].

In his speech winding up the Second Reading debate on the Bill the Northern Ireland minister, Adam Ingram, said he would be happy to consider further questions on the issue of victim notification when the Bill came to be considered in Committee, with a view to tabling

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[87] ibid. c.1116
[88] ibid. c.1101-1102
[89] ibid. c1105
[90] ibid. c.1109

a Government amendment on the subject[91]. As far as the general question of the release of prisoners was concerned, he considered that in many ways the Government was building on legislation introduced by the previous Government[92]. He went on to make the following comments about decommissioning[93]:

> I tell the right hon. Member for Strangford that every hon. Member wants an end to paramilitary weapons. We all want decommissioning. The Government have initiated legislation to achieve that end. In the next few weeks, we will be signing the scheme to put into effect the means to achieve it. However, ultimately, the mechanism that those organisations would apply in decommissioning is voluntary. It is the organisations that will have to comply with the factors and produce the weapons. We do not have mechanisms to take weapons from organisations unless they co-operate with the schemes, which will be signed up to within the next few weeks.

An article in *The Times*[94] on 12 June 1998 quoted the Conservative Northern Ireland spokesman, Andrew Mackay, as saying the Bill was "fatally flawed". The article noted that the cross-party consensus was "in peril" following the tabling of amendments by the Ulster Unionist Party Leader Mr Trimble and the Leader of the Opposition William Hague for the Bills' Committee Stage. The amendments seek to provide a more express link between the decommissioning of weapons and the release of prisoners. *The Times* article noted that Sinn Fein had repeatedly said it would consider any new pre-conditions to be a breach of the Good Friday Agreement and that the Prime Minister had also ruled out new conditions.

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[91] ibid. c1160
[92] ibid, c,1162
[93] ibid. c.1162-1163
[94] "Disarmament threatens Ulster peace consensus" *The Times*, 12.61998

Appendix

PRISONERS AND THE POLITICAL SETTLEMENT

1. This paper sets out what the British Government would be prepared to do in respect of prisoners in the context of a peaceful and lasting settlement in Northern Ireland. The proposal will only be given effect in the context of an overall settlement endorsed by a referendum. However:

- Prisoners affiliated to groups that are continuing to engage in violence or that return to violence will not be given early release.

- Prisoners will be released on licence and will be recalled if they engage in terrorist activity after release.

2. The following safeguards would be part of the scheme:

- the Secretary of State will hold the power to suspend the scheme if the circumstances require it; in that case no prisoners would be released under the terms of the scheme and the Body would not consider any new cases..

- in life sentence cases the Body will also be required to consider if the protection of the public means that confinement is still necessary;

- the Secretary of State will keep under review those organisations that are excluded from the scheme; and

- the Secretary of State will hold the power to refer cases back to the Body should the individual circumstances of a prisoner change so that he may no longer qualify under the terms of the scheme.

3. The Government has said that there will be no amnesty for those convicted of terrorist offences and this remains the case. In this, the Government is mindful of the brutal nature of terrorist crime. An independent Sentence Review Body would be set up to operate the scheme. A short paper setting out how the Body would work is attached.

4. Prisoners affiliated to certain organisations or who themselves are likely to re-engage in terrorist violence following release would be excluded from the scheme. A prisoner would be told about any information that would adversely affect his application to allow him to challenge it or make further representations. The Government would also intend to set cut-off dates in relation to the offences that may be considered.

5. The Government believes that a widely acceptable political settlement would bring about a more normal peaceful society and this would have significant implications for persons convicted of terrorist offences. The scheme would apply to prisoners convicted of

scheduled offences that were not certified out by the Attorney General and who have been sentenced to life imprisonment, a determinate sentence of five years or more, or been made subject to an order requiring the prisoner to serve an unexpired portion made under section 16 of the Northern Ireland (Emergency Provisions) Act 1996. Prisoners convicted of similar offences in Great Britain and transferred to Northern Ireland would also be eligible to apply.

6. The legislation for the scheme would be introduced following the endorsement of any settlement by a referendum by June 1998. The Body would be expected to have considered all applications by June 1999. Prisoners would have the period they are required to serve in custody reduced. The period to be served by a life sentence prisoner is currently determined by the Secretary of State. The intention would be that life sentence prisoners who qualify would receive a discount of about a third of the period that they would otherwise serve in custody. Determinate sentence prisoners would be required to serve a third of their sentence before being released on licence.

7. Most eligible prisoners would be released within two years. At that point those prisoners still in custody would be automatically released if otherwise eligible for release under the scheme, This date would be set in legislation. The Secretary of State would have power to bring the date forward or to put it back depending on the circumstances and progress towards the creation of a more peaceful society.

ANNEX

PROCEDURES

A. The SRB is to be set up as an independent body which prisoners will apply to on an individual basis. The SRB will consider evidence presented to it and may request further information to enable it to make a determination,

B. The SRB will be composed of between three and five Members who will each be competent to exercise the powers of the Body. In addition the Secretary of State will appoint a number of Assessors to assist the Members in considering cases. These Assessors will include persons drawn from the community in Northern Ireland and persons with professional expertise in assessing risk-

C. To ensure that applications are processed quickly the SRB will consider applications and written material and make a preliminary finding in each case. If the prisoner and the Secretary of State accept this finding it will be made final subject to paragraph E below.

D. In those cases in which this process does not conclude the case the ISRB will consider the case further and may hold an oral hearing. At an oral heanng the SRB will allow the prisoner to present his case and consider such further materials as are made available. Following the further consideration of such material the SRB will make a decision which will be final subject to paragraph E below.

E Prisoners will be allowed access to legal advice to assist them in preparing their case. Except as provided for under the legislation the SRB will be responsible for its own procedures.