

Office of the Independent Chairmen

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MEETING OF LIAISON SUB-COMMITTEE ON DECOMMISSIONING WEDNESDAY 25 FEBRUARY 1998 (1440)

CHAIRMAN: Mr Holkeri

THOSE PRESENT: International Independent Commission
British Government
Irish Government

Alliance
Labour
Northern Ireland Women's Coalition
Progressive Unionist Party
Social Democratic & Labour Party
Ulster Unionist Party

1. The Chairman convened the meeting at 1441 and sought approval of the record of the previous meeting on 14 January which had been previously circulated. Hearing no objections the Chairman declared these approved as circulated. Moving, on the Chairman invited both Governments to outline comments on their draft schemes and regulations which had been distributed to the participants prior to the session.
2. The British Government said it welcomed the opportunity to take the Sub-committee through its draft decommissioning scheme. It was conscious that the Sub-committee had had only a short time to consider the papers, and it looked forward to receiving any comments which the participants might have when they had had the opportunity to look at them in more detail. The British Government said it should like first of all to say again that it thanked the Independent International Commission on Decommissioning for all the work they had done on drawing up their

proposals for decommissioning upon which its schemes were firmly based. It had taken those proposals and prepared the draft scheme which had now been circulated to the parties.

3. Whilst the wording of its draft scheme was not connected to the Irish Regulations the substance was the same. The main reason for this stemmed from legislative differences in the procedures which allowed the British Government to make a non statutory scheme whereas the Irish Regulations were statutory. In drawing up the scheme its officials and legal advisers had worked closely with their opposite numbers in the Department of Justice, Equality and Law Reform. It recognised that decommissioning on the lines envisaged in the papers was essentially a voluntary activity, and would require the building of confidence on all sides.

4. Therefore the British Government said the scheme had to be as open as possible, allowing the Commission as much freedom as was possible and proper in terms of specifying how they should satisfy themselves as to the bona fides of those offering decommissioning. Again, everyone would need to be assured that decommissioning was genuine and that arrangements were in place to ensure public safety and proper verification. The British Government said that if the Subcommittee was content, it should like now to go through the scheme on a paragraph by paragraph basis.

5. Paragraph one gave details of the statutory cover for making a scheme and would, when activated, state when the scheme came into force, at which point a person could start to act in accordance with the scheme and thereby benefit from the amnesty and from the prohibitions on the evidential use of decommissioned weapons in criminal proceedings and forensic testing. Paragraph two provided for the method of decommissioning to be either by the provision of information to enable the Commission to collect and destroy arms, or for the destruction of arms by persons in unlawful possession of them, or both.
6. It was a requirement of section three of the Northern Ireland Arms Decommissioning Act 1997 that one or more of four methods of decommissioning suggested by the International Body had to be included in any scheme. The British Government had concentrated on the two of those four methods which the Commission considered most likely to find favour with groups holding weapons. This did not, of course, exclude the possibility of other methods and it would be prepared to draw up alternative schemes as required.
7. Paragraph three provided that words used in the scheme carried the same meaning as those used in the Act - except where otherwise stated - and paragraph four defined the Commission and the term "proscribed organisation" and "contact person". Paragraph five specified the amnesty period; (the dates would be added before the scheme was made). The amnesty period could be of any length but could not go beyond the maximum period allowed for in Section two of the Northern

Ireland Arms Decommissioning Act 1997. At the moment that period ended tomorrow, 26 February, but the British Government was shortly to lay before Parliament an Order extending the maximum period to 27 February 1999. This Order was an entirely technical measure and it would be taking it forward as quickly as possible.

8. Paragraph six anticipated that the Commission would deal with general enquires in relation to the decommissioning of arms. Paragraph seven stated when a person could be deemed to start acting in accordance with the scheme, ie when he had satisfied the Commission that he was contacting them on behalf of a proscribed organisation and he provided the Commission with sufficient information to indicate a clear intention to decommission specified arms. Paragraph eight required a person to comply with the requirements of the scheme if he wished to continue to act in accordance with it and thus attract the statutory amnesty.

9. Paragraph nine showed the sort of information which the Commission would need in order better to handle, and make arrangements for, each decommissioning event and paragraph 10 required the Commission to keep a record of such information. Paragraph 11 required that a person neither disclose nor do anything which affected the accuracy of information which had been provided to the Commission. If there were to be any changes to that information then, again, the Commission was required to keep a record of such changes.

10. Paragraph 12 allowed the Commission to make such arrangements as it considered appropriate and allowed it to require compliance with any conditions necessary on the grounds of public safety. Paragraph 13 allowed for persons acting with the contact person, to act in accordance with the scheme and benefit from the provision. Paragraph 14 required that nothing be done with arms which was not necessary to comply with arrangements made by the Commission. This was intended to ensure that the scheme could not be abused, eg, by those with a criminal purpose in mind seeking to benefit from the amnesty.

11. Paragraph 15 allowed the Commission to determine the location at which decommissioning might take place and paragraph 16 required that the movement of arms should be in accordance with arrangements made by the Commission. Paragraph 17 gave details of the sort of conditions which the Commission might impose and paragraph 18 required that the Commission should keep a record of any conditions imposed. Paragraph 19 allowed the Commission to give a document to those decommissioning their arms in order to prove that they were moving those arms after contact had been made with the Commission and paragraph 20 required that a person moving arms should tell the Commission when those arms had arrived at the decommissioning location.

12. Paragraph 21 empowered the Commission to evaluate arms to determine their stability and whether it was safe to move them; collect them; move them and destroy them. Paragraph 22 required people

opting for the self-destruct method to destroy their arms in accordance with arrangements made with the Commission and required that the Commission dispose of any residue. Paragraph 23 defined the destruction of arms. Paragraph 24 required that certain details of the arms should be logged before destruction. This was vital for the verification of the whole process.

13. Paragraph 25 allowed for people decommissioning their weapons or an intermediary of such people to be present at the ultimate destruction of those weapons. It also defined an "intermediary". Paragraph 26 ensured the confidentiality of any information gained by the Commission except in certain circumstances.

14. The British Government said that was a quick run-through the main paragraphs of the scheme. Its officials were ready to meet members of the Sub-committee and deal with any technical matters which arose from these paragraphs. It was of course happy to take any questions now and would welcome any suggestions on the draft scheme. It understood if participants found this a complex document and would wish to consider it in detail but was, however, happy to respond to views put forward during the course of the session.

15. The Irish Government said it was pleased to be present and to participate in the work of the Sub-committee on Decommissioning. Its purpose was to present to the Sub-committee the Draft Regulations - the Decommissioning Act, 1997 (Decommissioning) Regulations, 1998 -

which would enable the proposal made by the Independent International Commission on Decommissioning for decommissioning schemes to have legal effect in its jurisdiction.

16. The Irish Government said it would like to take this opportunity to thank the Commission warmly for the effective and efficient manner in which they had continued to discharge the mandate they had been given. The process of consultation which the Commission had engaged in resulted in the draft proposals for decommissioning schemes which they presented to the meeting of the Sub-committee held on 14 January. Those proposals were endorsed by the participants in the Sub-committee and the Commission were able to finalise them and present them to the Governments shortly afterwards. This meant that the Commission had already fulfilled that part of their mandate which required them to present to the two Governments proposals for schemes for decommissioning, having due regard to the views expressed by those consulted by it. Without the Commission's proposals, it would not have been possible to prepare the Draft Regulations.

17. The Irish Government said the Draft Regulations and the corresponding British Draft Scheme were the result of work, much of it inevitably technical in nature, by officials and legal advisors of both Governments. As was the case at other stages of this process, including the preparation of the legislation enacted by the Oireachtas and the British Parliament, there had been close and on-going consultation between officials from both Governments. The manner in which it was

taken forward also reflected the close co-operation that existed between the Irish Government Departments and the Northern Ireland Office. As a result, both drafts were designed to have the same effect and to be consistent with each other, while fulfilling the differing legal requirements and administrative practices in the two jurisdictions.

18. The Irish Government said its purpose in presenting the Regulations and Scheme in draft form to the Sub-committee was to allow the participants an opportunity to consider them and convey any views they might have on them to the Governments. This was in keeping with the terms of reference of the Sub-committee which required it to consider any legislative proposals by the Government and any proposed regulations. It looked forward very much to hearing those views and would, in the light of them, consider whether any changes were required to what was proposed. It appreciated that the Draft Regulations were quite detailed and were, of necessity, expressed in technical, legal language.

19. The Irish Government said it would propose to confine its remarks to the key elements of the Draft Regulations and their relationship to the proposals which the Independent International Commission tabled on 15 January. It wished to begin by explaining the approach it had adopted. The Draft Regulations were intended to reflect the Commission's proposals and transpose them into legal form. As the Minister for Defence had made clear on 14 January, the Irish Government said it was happy to accept the Commission's proposals for

decommissioning schemes. It had therefore sought to translate those proposals into legal form in a manner which gave effect to the key recommendations they contained while, also in keeping with the broader approach the Commission had recommended, maintaining maximum flexibility for the Commission themselves to decide on the arrangements appropriate to individual decommissioning events.

20. To that end the Irish Government had provided, where necessary and appropriate, for the detailed arrangements relevant to any particular decommissioning event to be a matter for the Commission to determine. This was consistent with its Decommissioning Act 1997 which permitted regulations to allow the Commission to make arrangements for the decommissioning of arms but which also made the various benefits the Act conferred dependant on compliance with those arrangements. Needless to say any such arrangements would have to be consistent with, and conform to, the terms of the Act and Regulations.

21. The Irish Government said the Draft Regulations also made provision for the two methods of decommissioning which were the subject of proposals from the Commission in the light of their assessment that those methods were the most likely to be employed by those who were being asked to decommission. Those methods were decommissioning based on the provision of information leading to the discovery of arms for subsequent destruction and decommissioning as a result of the destruction of arms by those in possession of them. The Irish Government said it also wished at this stage to make clear, however,

that it had not ruled out recourse to the other methods of decommissioning proposed by the International Body. Were the Commission, on the basis of any further consultations they might have, to take the view that specific provision needed to be made for other methods, the Irish Government would be happy to do this. The work the Commission had already done and the preparation of the Draft Regulations would mean that it should be a relatively easy task to meet any such need that may arise.

22. The Irish Government said it would, in addition to those general points, like to draw the attention of the Sub-committee at this stage to the key elements of the provisions made in the Draft Regulations and the thinking behind them. Regulation two would enable the regulations to be brought into effect on a specified day and to last for a specified period in accordance with the recommendation which the Commission made that the period of amnesty should last for a definite period of time. Regulation three provided for the necessary definitions. Regulation four provided for the two methods of decommissioning which were the subject of proposals from the Commission - decommissioning based on the provision of information leading to the discovery of arms for subsequent destruction and decommissioning as a result of the destruction of arms by those in possession of them.

23. Regulation five permitted the Commission to provide information to persons who contacted them with the purpose of seeking information in relation to the decommissioning of arms. Regulation six made clear

that the Draft Regulations provided for a process directed at arms held by paramilitary organisations. No distinction was drawn between paramilitary organisations on cease-fire and not on cease-fire as both Governments believed it important to keep open the possibility of all such groups availing of the decommissioning process. Regulation six also had the effect of making clear that the provisions of the Decommissioning Act 1997 governing the prohibition on the taking of proceedings and the prohibition on forensic testing would come into effect from the time that notice of a proposal to decommission arms was made to the Commission which was satisfied that it had been given on behalf of a paramilitary organisation and indicated a clear intention to decommission specified arms. This was in keeping with the recommendation which the Commission made that the amnesty period should be capable of coming into operation from the time that a paramilitary group or its authorised representative made a serious contact regarding a specific event for the purpose of decommissioning specific arms.

24. Regulation seven provided for the information which a person proposing to decommission arms might be required to provide the Commission and provided for the matters which they anticipated would need to be clarified. Regulation eight would enable the Commission to make appropriate arraignments for specific decommissioning events and Regulation nine would enable it to determine the location at which those events would take place. The effect of Regulation 10 would be to permit those in possession of arms to move them from their current location for

the purpose of decommissioning either with or without the participation of the Commission. The Regulation would, however, require any such movement to be in accordance with arrangements made by the Commission and subject to compliance with any conditions it might impose. This was in keeping with the recommendation the Commission made that any movement of arms should be with the knowledge of the Commission. Similarly the provision made in relation to the conditions which might be imposed - which take account of the requirements of public safety - were in keeping with the recommendation the Commission made.

25. Regulation 11 would require certain information to be recorded prior to the destruction of arms and was directed to verification. Those requirements would apply irrespective of which method of decommissioning was being employed. The matters to be recorded were based on the recommendation contained in the Commission's proposals and would be limited to the information strictly necessary for verification purposes, ie type, quantity, the name of the organisation by whom arms were being decommissioned and details of the decommissioning process itself. Regulations 12 and 13 set out the responsibilities of the Commission by reference to the particular method of decommissioning chosen.

26. Regulation 14 permitted the Commission to allow persons decommissioning arms to be present at the collection and the destruction of arms or the disposal of the residue of destroyed arms. Regulation 15

provided for the manner in which destruction could be effected by reference to different types of arms. Regulation 16 imposed a duty of confidentiality on the Commission in regard to information received by the Commission relating to the decommissioning process.

27. The Irish Government said it should also, on a more general note, draw attention to the fact that the effect of the definition of the Commission which was provided for in Regulation three and the provisions of other Regulations mentioned there would be to permit the Commission to delegate specified tasks to other persons. These included such matters as the transportation of arm, the carrying out of the safety evaluation of arms, their physical collection and destruction. Such support could be provided to the Commission from a number of sources and, while these would be matters which would need to be the subject of agreement with those groups involved in decommissioning arms, the Irish Government's preference at this stage would be for such technical assistance to be provided by its security forces.

28. The Irish Government said it hoped participants would find its explanation of the Draft Regulations helpful in considering both them and the corresponding Draft British Scheme and it looked forward to hearing the views of the Sub-committee on their content. The Draft Regulations were both detailed and technical in content. It was conscious also that participants might wish to have an opportunity to consider them in some detail and to compare them with the proposals which the Commission had made. Should the Sub-committee think it

useful, officials would be available to meet it and deal with any technical questions which participants might have once they had an opportunity to consider them in detail. The Irish Government said it wished to assure everyone that any views would be taken into account by both Governments in finalising the Draft Regulations and Draft Scheme. It would be prepared to make any appropriate changes to its draft in consultation with the British Government.

29. The Chairman said he now wished to invite the Commission to make comments as appropriate. The Commission welcomed the opportunity for participation and pointed out that they had only received copies of the scheme and regulations shortly before the participants had received their copies. Nevertheless, the Commission said it was in a position to respond to any points raised on the regulations and the content of the scheme. Given that participants had only received their copies a short time before the meeting, the Commission suggested that it might be better to call a further meeting of the Sub-committee to enable further consultation between the participants to take place at a time when greater consideration of the documents had occurred.

30. The Commission said it welcomed the draft scheme and regulations from the two Governments. The Commission's view was that these documents were sufficiently clear and robust for decommissioning to take place in both jurisdictions. The Commission said that the documents did not differ in many respects. It had given them a great deal of technical scrutiny. There were some differences in

structure; paragraph 10 of the Irish document was covered by five equivalent paragraphs in the British document; paragraph six of the Irish document was covered by paragraph seven and eight of the British document. However matching language was apparent in both the regulations and schemes. The Commission said there were now in place two of the three essential ingredients required for decommissioning to take place. The technical conditions had been put in place as had the legal basis. The most important aspect remaining was the political willingness to go forward with voluntary decommissioning.

31. The Commission said it had used the last six weeks to hold meetings with Government officials in both jurisdictions and the talks participants in order to review a series of decommissioning issues. It had also observed facilities for the destruction of weapons and issues associated with this and had done its homework fully in this regard. The Chairman then asked for comments from the participants.

32. The NIWC welcomed the documents submitted by the Governments, which it had not had much time to study, and had some preliminary questions and observations to put to the Governments. The NIWC asked the British Government if the language about the amnesty period meant that this matter would have to go back to Parliament every year, and if security would be provided to those named as contact persons by the paramilitaries. The British Government confirmed that the question of an amnesty would have to be revisited by Parliament each

year, and said that it would consider any reasonable request for personal security on the basis of individual circumstances, as was normal.

33. The NIWC asked the Irish Government, in relation to Regulation 5 of its regulations, how the information so provided could be ring-fenced. In relation to Regulation 6(2)(a), what would happen in the case of an organisation which had not been proscribed, or of a new organisation or faction? What was the thinking behind the reference to "shall not intentionally disclose" information in Regulation 7(3)(a), and would there be any sanction in such a case? The Coalition wondered about the reference to the political negotiations in Regulation 16(2)(c), saying decommissioning was meant to be stand alone initiative. The Government in its presentation had said that the impetus to start decommissioning would come from the paramilitaries themselves. Was it also envisaged that organisations might start at different times and proceed at a varying pace - in other words that there might be a multi-track approach?

34. The Irish Government said Regulation 5 might give rise to some concern at first reading, but was meant only to facilitate contacts. Information which might be provided under this Regulation was not the same as that referred to in Regulation 6. In relation to Regulation 6(c)(a), decommissioning could commence once the Commission was satisfied that the arms in questions were being genuinely handed over on behalf of a paramilitary organisation. There would have to be sufficient information to indicate which organisation it was. If a paramilitary

organisation which was not proscribed wished to decommission, arrangements would be made to enable that to happen. Regulation 7(3)(a) made it clear that there must not be any intentional disclosure of information. On Regulation 16(c) the Governments were setting out the circumstances where disclosure of information by the Commission would be permitted.

35. The NIWC asked both Governments, in relation to this last point, who these participants to negotiations would be, to whom the Commission might be reporting, since the negotiations were due to conclude by May? The British Government said this was perhaps a moot point, which might need to be considered after May. On proscribed organisations, the Governments would adapt quickly to take account of new organisations. The Commission said he hoped there would be some decommissioning before May.

36. Alliance said it welcomed publication of the Governments' documents. It said it wished to reserve the right to ask questions following further reading of the papers. The party had, however, consistently taken the view that it was for the Commission and the two Governments to take the lead on decommissioning. Nevertheless it was somewhat disappointing that the participants had only just received the Governments documentation a matter of weeks before the end of the process. Alliance said there was an element of unreality about all of this. The issue had moved extremely slowly and the party was concerned about reports that explosives had been used recently by other dissident

groups in attacks on property and hence on the process. Yet these explosives might have been the subject of decommissioning if matters had moved forward at a quicker pace.

37. Alliance also pointed out that it was disappointed by the absence of the UDP from the meeting. Given their association with paramilitary groups it was very unsatisfactory that it was not present. Alliance said all the technical and legislative apparatus was now in place, yet there was still no real commitment to decommission the arms. Therefore all the guns and weapons remained out there as the process approached its conclusion and hopefully a settlement. Alliance said this position was worrying. It fully accepted that the Governments and the Commission had done what they could but the current situation only diminished confidence in those parties around the table associated with groups who retained arms. It wondered whether the Commission, even at this stage, had had any further contact with these groups and if so what had been the outcome? The Chairman intervened to say that the UDP had informed him of their absence in advance of the meeting due to a previous engagement.

38. The SDLP thanked the Governments for distributing their documents. It welcomed the opportunity to hold further consultation with the Commission and both Governments on any aspects of detail arising out of the material. The party said some useful work had been done in advancing some aspects of decommissioning. Two of the three criteria had been established. The third could only be provided by

showing political will. The SDLP said it had to be remembered that decommissioning could only be a voluntary process and that was why the party wished to see as inclusive a political process as possible. The party said it also welcomed the evident continued co-operation of both Governments on the issue.

39. The Commission said there was nothing to indicate a lack of interest on the part of the UDP just because it was absent from today's meeting. The Commission said they had maintained contact with the party during its four week absence from the process. In relation to Alliance's comments, the Commission said they had met all the parties since the last Sub-committee meeting and with those individuals nominated by organisation as being able to speak for them on the decommissioning issue. The Commission said they had also met with those who were associated with paramilitary organisations that held weapons but it had not received any indication from such contacts that these groups were planning to decommission their weapons immediately.

40. The UUP said that it was fully supportive of Alliance's earlier comments. The party added that as long as the Commission could guarantee that the legislative basis remained intact to give effect to decommissioning, it had nothing further to say on this aspect of the issue. The UUP said that whether decommissioning was achieved or not within the timescale of the negotiations, it was quite clear that no normal society should ever accept that it had illegal organisations armed with illegal weapons. The party said it would never forego its position that all

paramilitary organisations had to decommission their weapons. The party recalled saying in September 1996 that rapid progress needed to be made on decommissioning with the setting up of a Chairman and delegate to deal with the problems that would be encountered in putting a decommissioning scheme in place. Rapid progress hadn't happened and only now was the process taking delivery of the details of the schemes and regulations. The UUP said this slowing up of the process had been very carefully orchestrated by both Governments but everyone had to live with what they had got - and everything was now in place for a willingness to engage in actual decommissioning. The UUP said that the situation hadn't even been reached where organisations were conditioning their rank and file to consider decommissioning in the face of an inclusive outcome being achieved through the political negotiations. It seemed there was still a long way to go on this.

41. The UUP said the whole issue had created an embarrassment for those who had sought decommissioning in good faith some 18 months previously. Now everyone was faced with an immediate problem because of the Governments' approach. The party said it had spoken earlier at the Sub-committee on Confidence Building Measures about the continuing erosion of the Mitchell Principles. Developing this point further, the UUP said that if there was an agreement at the end of the process the paramilitary organisation would still be no weaker than what they were two years previously. In this situation the party said the Governments were going to have to be prepared to concurrently agree to spell out to the genuine participants how they (the Government) would

face up to the abuse society would suffer in the wake of an agreement being achieved. The party said there was no point in the Governments saying they would be strong in the face of such abuse and deal with it in a pragmatic way. The UUP had already seen Government dealing with issues in a pragmatic way and this was no good. The party said there was an obligation on the Governments to provide a solution to this position - if no decommissioning occurred between now and 9 April. The party asked what the final stamp on such an agreement might be since the wrong impression was likely to be generated when a renewed and re-vigorated society become established only to find that there were no procedures in place to protect that society from the benefits of such an agreement.

42. The PUP said it wished to reserve its comments while it undertook further consultation within the party. The SDLP asked the UUP what it meant by the final stamp of approval in any agreement. The UUP said it would be irresponsible of any single party or parties to leave the process and ask society as a whole for an agreement which could not be held up because one or more paramilitary organisations could destroy it. The party was therefore asking the Governments to spell out exactly how they would deal with that threat of violence. If they didn't do anything then neither the UUP or the SDLP or anyone else could say that they had a reasonable guarantee that the agreed package would actually resolve the problems facing everyone. The PUP asked about those paramilitary organisations already outside the process and not likely to be bound into any decommissioning. The UUP said it would be content if those who

paid lip service to decommissioning could offer a practical example of it; then other organisations might be dealt with quicker than most people thought.

43. The SDLP suggested that the UUP was actually saying that there were organisations who effectively had a veto over what the political negotiations could achieve. Alliance said it was inevitable that the process would have to conclude that one strand of its strategy would end in failure. This situation had to be considered in political terms since it was a political problem and for some parties it was a substantial political problem. Alliance said some thought needed to be given about how this problem should be addressed. The PUP asked how many people outside the process actually believed there would be a settlement. The answer was not many, so everyone still had a lot of work to do on this. The party believed, however, that if a settlement was achieved and gained widespread support, weapons would become irrelevant.

44. The NIWC said it had to be remembered that decommissioning was always going to be a voluntary exercise. To the best of its knowledge, no promises had been made so none had been broken. The party said it was optimistic that the paramilitary organisations would have the confidence in the process to enable them to decommission voluntarily.

45. The Chairman asked for further comment. Hearing none he proposed that the meeting adjourn and that a further meeting be finalised

by the Business Committee in the week commencing 9 March. This was agreed.

Independent Chairmen Notetakers
26 March 1998