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LIAISON SUB-COMMITTEE ON CONFIDENCE BUILDING MEASURES: MEETING ON 4 FEBRUARY

PRISON ISSUES - PAPER BY THE BRITISH GOVERNMENT

GENERAL

1. The British Government recognises the importance of prisoners for many of the participants in the talks process and their supporters. The Secretary of State has said that she is prepared to discuss the parties' concerns and to work on an account of what could happen in respect of prisoner releases in the context of a peaceful and lasting settlement being agreed.
2. At the meeting of the Liaison Sub-Committee on Confidence Building Measures on 13 January the Secretary of State offered a paper setting out areas in which she believed the views of parties need to be clarified in relation to the possible release of prisoners.
3. This paper fulfils that remit and also considers the substantive proposals made by some of the parties in their submissions to the Sub-Committee. Issues are identified that require further clarification by the parties in preparation for renewed discussion in the Sub-Committee at a future meeting. However, it is not the intention of this paper to exclude any proposal from consideration.
4. To assist with consideration of the issues discussed in this paper an annex is attached which gives some statistical information about prisoners in Northern Ireland.

PRISONERS AND THE POLITICAL PROCESS

5. Throughout the process the government has demonstrated a willingness to address the prisoner issue. A number of significant changes have already been made to permanent release arrangements, temporary release schemes and prison regimes.
6. Under the previous government changes to the arrangements for the release of determinate sentence prisoners were made by the Remission of Sentences Act (which came into force in November 1995). The Act works by bringing forward the date of release for prisoners convicted of serious scheduled offences to the mid-point of sentence. In practice this means that prisoners are released steadily over a period of

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time rather than in groups. More than 250 prisoners have already been released under this scheme, which has continued in force throughout the process, and in time a further 300 will benefit.

7. Changes to the various temporary release schemes were also introduced under the previous administration including - a reduction of the time-served required for Christmas home leave from 11 years to 10 years; an increase in the number of days of pre-release leave; and the extension of the circumstances in which compassionate temporary release may be granted.

8. These policies have been continued and extended under the current government. To take account of the continuing cease-fires the Secretary of State reduced the maximum knock-back for life sentence prisoners from five to three years. Further changes to temporary release arrangements have also been introduced, particularly in relation to Christmas home leave which is now available to a wider group of prisoners and has been increased from 7 to 10 days.

PARTY POSITIONS

9. A number of the parties (UDP, PUP, SDLP, Sinn Fein, Irish Government) made specific recommendations regarding the release of prisoners in their submissions to the Sub-Committee. The other parties did not address the issue of prisoners in their submissions.

10. The recommendations made may be summarised as follows:

- a) There should be some form of early release for terrorist prisoners. Eligibility for early release should take account of the paramilitary affiliation of a prisoner, the attitude of his paramilitary group to the political process and if the group has maintained a cease-fire.
- b) The life sentence review procedures should be changed for terrorist prisoners. There should be automatic release after a set period (perhaps 10 years) and the first review should be advanced. The procedure should also be more open.
- c) Determinate sentence terrorist prisoners should receive 66% remission.

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- d) More generous treatment might be given to prisoners who have been convicted of certain offences, or who are serving long sentences.

11. Leaving aside for the purposes of this paper the basic issue of broad principle in relation to the different treatment of so-called "political prisoners", these proposals raise a series of issues requiring further clarification.

ISSUES RAISED

Who could be granted early release?

12. The submissions propose that any changes should only apply to what have been described as 'political' or 'politically motivated' offenders and that only prisoners linked to organisations that support the political process and have maintained a cease-fire should benefit.

13. There are a series of difficulties with the different aspects of this proposal.

- National and international law prohibits, in certain circumstances, discrimination on the grounds of political opinion (or other grounds).
- Using the idea of membership of a paramilitary organisation would give a benefit to members of illegal organisations.
- Some prisoners convicted of scheduled offences (which it has been suggested are political offences) are not terrorists; some prisoners affiliated to paramilitary groups have been convicted of non-scheduled offences.

14. In addition there are practical problems with deciding whether a person is a member of a paramilitary organisation.

- Many terrorist prisoners have not been convicted of membership of any paramilitary organisation.
- Some prisoners convicted of terrorist offences have distanced themselves from terrorism and are no longer affiliated to groups.
- Some prisoners who committed offences while a member of one group are now affiliated to another group.

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- Some prisoners who are or were not affiliated to a paramilitary group (or are or were affiliated to a group that does not qualify) may claim affiliation to obtain a benefit.
- Some prisoners who are affiliated to a group may have committed crimes which would not be regarded by anyone as 'political'.

Which prisoners or groups of prisoners could be considered for early release?

If affiliation were the best method of selecting prisoners, how could affiliation be determined?

What changes might be made in respect of lifers?

15. It has been suggested by some of the parties that the Life Sentence Review Board might be directed by the Secretary of State to take a different approach to the cases of terrorist life sentence prisoners who are eligible (under any criteria that might be agreed) to be considered for early release.

16. Life sentence prisoners serve a period in custody proportionate to the nature of their particular offence which also takes account of factors in relation to risk and deterrence. Although the period to be served by life sentence prisoners is considered on the basis of the individual case, there is an expectation that prisoners convicted of similar offences will serve similar periods in custody (except where there are ongoing concerns over the risk of further serious offences being committed). The Life Sentence Review Board advises the Secretary of State on matters in relation to the release of individual life sentence prisoners. The Secretary of State makes release decisions and sets the general policy for the operation of the LSRB.

17. Principles of natural justice make it difficult for the Secretary of State to direct the LSRB to treat prisoners differently according to their affiliation (other than in respect of risk, which is already taken into account). It would also be contrary to the principle of fairness if the release of all non-terrorist and some terrorist lifers were considered on the basis of their particular offence, while at the same time certain terrorist lifers were automatically released after a given period in custody because of

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their perceived affiliation. This approach could also exclude any consideration of risk in individual cases.

If changes to LSRB arrangements are not the best method, what procedures might be put in place to consider the early release of life sentence prisoners?

Should there be 66% remission?

18. The recommendation was made by some of the parties that remission for scheduled offenders should be increased to 66%. However, a change to the law of this kind would not discriminate between prisoners affiliated to the different paramilitary organisations and would benefit organisations who have maintained a cease-fire as well as those that have continued to engage in violence.

Would the parties want changes to be made to remission rates even though such changes would benefit prisoners who are affiliated to organisations that have continued to engage in violence?

If a change to the remission rate were not appropriate, are there other methods that might be used?

Could some offences or offenders receive special treatment?

19. Some of the parties have suggested that in addition to a general early release scheme for terrorist prisoners some prisoners might receive special treatment. In particular, it has been suggested that prisoners serving disproportionate sentences should benefit as should prisoners convicted in circumstances in which it is alleged that there has been a miscarriage of justice. However, these categories focus on matters which are primarily the responsibility of the judiciary. For the executive to intervene would compromise the integrity of the criminal justice process. However, other criteria might be appropriate.

Could prisoners convicted of any particular offences or serving particular sentences (for example, sentences over 10 years) receive more favourable treatment?

Could prisoners convicted of certain offences (for example, offences committed during the cease-fires) be excluded?

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What about licenses, working out and supervision?

20. Views have not been expressed in the submissions to the Sub-Committee on whether prisoners released early should be subject to special licensing provisions or supervision and in what circumstances prisoners might be recalled to prison.

Although, it has been suggested by some that prisoners released on license could be subject to recall should the faction that they are affiliated to return to violence, such a condition of release would pose serious legal questions. Some parties have recommended that the working out scheme for life sentence prisoners should be abandoned, others have suggested that prisoners should be given early release to undertake work in the community.

Could prisoners granted early release be released on license or under supervision?

If yes, what conditions might apply and in what circumstances could prisoners be recalled to prison?

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ANNEX

The British Government considers that it may be of value to provide some background information to the parties regarding prisoners serving sentences in Northern Ireland for offences connected to terrorism.

This paper is based on records held by the Northern Ireland Office for management purposes. Except where otherwise indicated the figures are for prisoners serving determinate sentences of three years or more who will be released after 30 April 1998 and who are held at Maghaberry or the Maze. The short term work force at Maze has been excluded from the figures. Female prisoners held at Maghaberry are included with the total figures for Maghaberry.

PRISON POPULATION

As of 26 January 1998 there were 1513 prisoners in custody in Northern Ireland. This includes both sentenced and remand prisoners, female prisoners and young offenders. Prisoners were held in prison and young offender establishments as follows.

Establishment	Remand	Sentenced	Total
Maghaberry (Male)	204	263	467
Maghaberry (Female)	4	15	19
Magilligan	0	339	339
Maze	96	436	532
Young Offenders Centre	53	103	156
Total	357	1156	1513

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MAIN OFFENCES OF PRISONERS HELD AT MAGHABERRY AND MAZE

The main offences of determinate sentence prisoners (serving three years or more and due to be released after 30/4/98) are as follows.

Offence	Maze	Maghaberry
Murder (Attempted)	67	17
Murder (Conspiracy)	64	6
Manslaughter	1	8
Explosives Offences	47	0
Firearms Offences	35	6
Hi-jacking/Kidnapping.	11	0
Membership, inc directing terrorism	2	0
Burglary/Robbery	20	19
Assault/Wound	9	5
Sex Offences	0	29
Drugs Offences	0	7
Other (Arson, Blackmail)	5	2
Total	261	99

In addition there are 113 life sentence prisoners at the Maze and 99 life sentence prisoners at Maghaberry (figures as of 27 January 1998). Almost all of these prisoners have been convicted of murder (a small number have not been convicted of murder but have been convicted of other very serious offences).

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PARAMILITARY AFFILIATION

Prisoners at the Maze are held in blocks according to their paramilitary faction. As of 26 January the different factions at the Maze had the following number of prisoners (these figures include 15 prisoners who were on temporary release, prisoners serving short sentences and remand prisoners)

Faction	INLA	LVF	PIRA	UDA/UFF	UVF
Prisoners	19	28	224	121	107

For management purposes the Prison Service records the perceived paramilitary affiliation of prisoners when they are committed to custody. For the prisoners at **Maghaberry** (serving three years or more and due to be released after 30/4/98) the figures are as follows:

Faction	Republican	Loyalist	No Affiliation	No Affiliation Recorded
Prisoners	11	22	33	33

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SENTENCE LENGTHS

The sentence lengths of prisoners at Maze and Maghaberry (serving three years or more and due to be released after 30/4/98) are as follows. The figures reflect the sentences as given by the courts and do not take account of remission.

Sentence	Maze	Maghaberry
3 years or more, but less than 10 years	45	51
10 years or more, but less than 15 years	74	24
15 years or more, but less than 20 years	67	19
20 years or more, but less than 25 years	48	4
25 years or more	27	1
Total	261	99

In addition, there are about 200 prisoners in custody or on the pre-release programme who are serving life sentences. The average period in custody served by a terrorist life sentence prisoner in Northern Ireland is just under 15 years. The periods that have been served by life sentence prisoners convicted in Northern Ireland and currently in custody are as follows (figures as of 27 January, not including prisoners who have been recalled or prisoners on restricted transfer).

Period Served	Less than 5 years	5 years or more, but less than 10 years	10 years or more, but less than 15 years	15 years or more
Number of Prisoners	38	93	56	9

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PERIOD STILL REQUIRED TO SERVE

The periods that determinate sentence prisoners at Maze and Maghaberry (serving three years or more and due to be released after 30/4/98) are required to serve before release is as follows. These figures take account of remission.

Period Remaining	Maze	Maghaberry
Less than a year	54	21
1 year or more, but less than 2 years	52	21
2 years or more, but less than 3 years	52	20
3 years or more, but less than 4 years	32	12
4 years or more, but less than 5 years	30	8
5 years or more	41	17
Total	261	99

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RE-OFFENDING RATES

There has been some discussion of the re-offending rates of prisoners convicted of terrorist offenders. It is not possible to provide a historical analysis of the re-offending pattern for all released terrorist prisoners. However, it is possible to offer figures for the number of life sentence prisoners and prisoners detained at the Secretary of State's Pleasure (SOSPs) released since 1983 (when the current release arrangements were put in place) who have had their licence revoked. A prisoner released on life licence may have his or her licence revoked if the Secretary of State considers that his or her continued liberty would be a risk to public safety. In many cases the prisoner will have been charged with or convicted of a new criminal offence, but this is not required by law.

The figures are given with reference to perceived paramilitary affiliation and all figures are as for 31 December 1997.

This table shows the number of revocations as a per centage of the total number of releases.

Affiliation	Releases	Revocations	Rev Rate
Republican	188	3	1.6%
Loyalist	213	10	4.7%
Non-Terrorist	23	5	21.7%
Total	424	18	4.25%

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This table shows the number of prisoners who have been recalled as a percentage of the number of life sentence prisoners currently in custody. The figures for England and Wales have also been included for comparison purposes.

Affiliation	Current Population	Recalls	Per centage recalled
Republican	74	2	2.7%
Loyalist	85	5	5.9%
Non-Terrorist	62	2	3.2%
NI Total	214	9	4.1%

England and Wales (1995 Figures)	3289	151	4.6%
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In addition, a number of released life sentence prisoners have been convicted of further criminal offences but have not had their licence revoked as they were not considered to constitute a serious risk to the safety of the public. Figures for these further offences have not been included.

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