



**UM BILLE UM DHÍCHOIMISTÚNÚ, 1996
DECOMMISSIONING BILL, 1996**

EXPLANATORY MEMORANDUM

General

1. The purpose of the Bill is to enable effect to be given to the Report of the International Body which was presented to the Irish and British Governments on 22 January, 1996.

2. The International Body — which comprised Senator George Mitchell, General John de Chastelain and Prime Minister Harri Holkeri — was established by the two Governments on 28 November 1995 to provide an independent assessment of the decommissioning issue. The two Governments asked the Body, *inter alia*, to report on the arrangements necessary for the removal from the political equation of arms held by organisations which supported the use of arms for political purposes and to identify and advise on a suitable and acceptable method for full and verifiable decommissioning.

3. The Northern Ireland Arms Decommissioning Bill, 1996 will enable effect to be given to the Report of the International Body insofar as Northern Ireland and Britain are concerned.

Section 1 (Interpretation)

4. This section provides for certain necessary definitions and related matters.

Section 2 (Regulations in relation to decommissioning)

5. This section enables the Minister for Justice to make regulations providing for the decommissioning of arms. It provides that those regulations may make provision for the four methods of decommissioning identified in paragraph 44 of the Report of the International Body, i.e. the transfer of arms to a Commission, to be established by an agreement between the two Governments, or to designated representatives of either Government for destruction; the provision of information to the Commission or to designated representatives of either Government, leading to the discovery of arms for subsequent destruction; the depositing of arms for collection and subsequent destruction by the Commission or by designated representatives of either Government; and the destruction of arms by those in possession of them.

6. *Subsection (1)* provides that regulations may make provision for the decommissioning of arms. *Subsection (2)* provides that the regulations may make provision for the locations and times at which decommissioning of arms or any particular method or manner of decommissioning may take place (*subsection (2)(a)*), the methods and manners by and in which the decommissioning may take place, which include the methods referred to in paragraph 5. above, but

would also permit any combination of those methods or variation of them or other methods (*subsection (2)(b)*), and for the destruction of decommissioned arms (*subsection (2)(c)*).

Section 3 (Provisions relating to Commission)

7. The International Body recommended that the decommissioning process should take place to the satisfaction of an independent Commission to be appointed by the Irish and British Governments. The section makes provision for such a Commission, which it is intended will be established by agreement between the Irish and British Governments.

8. *Subsection (1)* enables the Minister for Justice to appoint a day, after consultation with the Secretary of State, when the subsequent provisions of the section will come into operation. *Subsection (2)* provides that the Commission shall be independent in the performance of its functions. *Subsection (3)* provides that it shall have the legal capacity of a body corporate. *Subsection (4)* provides that the Minister may make provision as respects inviolability, exemptions, facilities and immunities, privileges and rights in relation to the Commission, its property and persons connected with the Commission. *Subsection (5)* allows the Minister to amend or revoke any order made under the section (with the exception of an order under *subsection (1)*). *Subsection (6)* enables the Commission to be dissolved by the Minister, after consultation with the Secretary of State. *Subsection (7)* provides that an order under the section shall be laid before each House of the Oireachtas and shall be annulled if a resolution annulling it is passed by either House within twenty-one sitting days.

Section 4 (Regulations in relation to Commission)

9. The section enables regulations to be made regarding the Commission (*subsection (1)*).

10. *Subsection (2)* specifies, without prejudice to the generality of *subsection (1)*, the matters for which regulations may provide. These are the membership of the Commission (*subsection (2)(a)*), the terms and conditions under which members of the Commission may hold office and staff may be employed (*subsection (2)(b)*), the provision to the Commission of moneys, premises, etc. (*subsection (2)(c)*), the maintenance of accounts (*subsection (2)(d)*), proof of documents executed by the Commission (*subsection (2)(e)*), the prohibition of the disclosure of information (*subsection (2)(f)*) and the functions of the Commission and its role generally in relation to the decommissioning of arms (*subsection (2)(g)*). Those functions and that role may include the making of arrangements for the decommissioning of arms and the joining or assisting by the Commission in any such arrangements (*subsection (2)(g)(i)*), the taking possession of arms decommissioned (*subsection (2)(g)(ii)*), the observation, verification and supervision of the decommissioning of arms (*subsection (2)(g)(iii)*), the recording of information for the purpose of monitoring the process of the decommissioning of arms (*subsection (2)(g)(iv)*), the making of reports (*subsection (2)(g)(v)*) and the facilitating and securing of the safe and secure movement, handling and storage of arms during and after decommissioning (*subsection (2)(g)(vi)*).

Section 5 (Prohibition of certain proceedings)

11. The International Body recommended that individuals involved in the decommissioning process should not be prosecuted for possession of arms being decommissioned and that amnesties should be established in law in both jurisdictions. This section makes the necessary provision for the purposes of our law.

12. *subsection (1)* provides that proceedings shall not be instituted against a person for an offence in relation to any particular arms provided that, at the time of the commission of the offence, the person concerned was engaged in the process of the decommissioning of those arms in accordance with regulations or arrangements (*subsection (1)(a)*); any requirements of the regulations or arrangements were satisfied as respects both the person and the decommissioning (*subsection (1)(b)*); the decommissioning was taking or took place at a time or during a period specified in regulations or arrangements (*subsection (1)(c)*); and the act constituting the offence, or an act that is an ingredient of the offence, was a part of the process of decommissioning and was done in pursuance of regulations or arrangements under which decommissioning was taking place (*subsection (1)(d)*). Provision is also made for regulations which may specify particular offences to which the section applies, either generally (*subsection (2)*) or by reference to particular methods of decommissioning (*subsection (3)*). *Subsection (4)* is intended to meet the possibility of decommissioned arms being misappropriated following their decommissioning and provides that the prohibition on proceedings will not apply to an offence alleged to have been committed by the use of arms after they have been decommissioned.

Section 6 (Prohibition of certain testing, etc. and certain evidence)

13. The International Body also recommended that arms made available for decommissioning, whether directly or indirectly, should be exempt under law from forensic examination, and information obtained as a result of the decommissioning process should be inadmissible as evidence in courts of law in either jurisdiction. This section provides accordingly, subject to certain limited exceptions which are set out in the section.

14. *Subsection (1)* provides that arms, anything resulting from the process of decommissioning, any substance or thing found on or in arms decommissioned, or anything on or in which arms decommissioned were when decommissioned in accordance with regulations or arrangements shall not be subjected to forensic examination or to testing, except to the extent permitted by *subsection (2)* or *(3)*. *Subsection (2)* will permit such examination or testing for certain specified purposes, intended to enable the safe handling of decommissioned arms and the discovery of information concerning an offence alleged to have been committed by the use of arms after they have been decommissioned (see paragraph 12 above). *Subsection (3)* prohibits the use by, or on behalf of, the State of arms or information, obtained in the course of, or as the result of, decommissioning, in criminal proceedings or any appeal in relation to such proceedings, other than an offence alleged to have been committed after the decommissioning concerned. *Subsection (4)* prohibits the use by, or on behalf of, the State of evidence of anything done for the purposes of decommissioning in such proceedings or appeals, subject again to an exception in the case of an offence alleged to have been committed after the decommissioning concerned. *Subsection (5)* provides for certain necessary definitions for the purpose of the section.

Section 7 (General provisions as to regulations)

15. These are standard provisions. *Subsection (1)* provides a regulation-making power for the Minister for Justice for any purpose in relation to which regulations are provided for by the Act. *Subsection (2)* provides that such a regulation shall be laid before each House of the Oireachtas and shall be annulled if a resolution annulling it is passed by either House within twenty-one sitting days. *Subsection (3)* provides that any regulations made under the Act may contain

any incidental or supplementary provisions that appear to the Minister to be expedient.

Section 8 (Expenses)

16. The section provides that expenses incurred by the Minister shall be paid out of moneys provided by the Oireachtas to such extent as may be sanctioned by the Minister for Finance.

Section 9 (Short title and commencement)

17. *Subsection (1)* provides for the Act's short title. *Subsection (2)* provides that the Act, other than *section 3*, shall come into effect by order or orders made by the Minister for Justice under this section. *Section 3(1)* contains special provision for the coming into operation of that section.

An Roinn Dlí agus Cirt,
Nollaig, 1996.