

POLICY - CONFIDENTIAL AND PERSONAL

ANNEX

SENTENCE REVIEW COMMISSION

1. To address the issue of prisoners in the context of a political settlement the Northern Ireland Office would propose the creation of a Sentence Review Commission.
2. The advantages of a Commission are:
 - it would be a clearly political step reflecting the progress made in the context of the talks towards an ultimate settlement;
 - by focussing on those offenders convicted of terrorist-related offences it would protect the ordinary criminal justice system from being undermined by concessions made to support the political dialogue;
 - it would protect a future devolved Northern Ireland administration from being involved in potentially contentious decisions in relation to terrorist offenders;
 - the body could be empowered to discriminate between prisoners on the basis of their paramilitary affiliation and so could exclude from consideration (or treat less favourably) prisoners belonging to factions still engaged in violence;
 - the consideration of cases and the setting of release dates would tie offenders and the factions that they are members of into the process over a period of time.
3. Against these advantages we recognise that to treat terrorist offenders more favourably will be unpopular with many in the Unionist community and Great Britain. The appointment of a Commission would also provide ammunition for those who would suggest that those convicted of terrorist offences are political prisoners.

The Operation of a Sentence Review Commission

4. The Commission would consider cases on the basis of individual applications made by prisoners sentenced to life imprisonment or to long determinate sentences (the precise qualifying period would have to be considered).

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5. The Secretary of State would issue guidance to the Commission regarding the sort of cases to be considered and the factors to be taken into account in considering sentences. It would be for the Commission to make decisions in relation to individual cases.
6. In each case the Commission would decide whether to accept the application (on the basis of the nature of the offence and affiliation of the offender). We would suggest that only prisoners affiliated to organisations maintaining cease-fires or those prisoners who had clearly broken with the paramilitaries should be eligible for consideration. We would want to consider further whether sectarian offences would qualify (in the knowledge that more loyalists have been convicted of sectarian offences than republicans). Those cases not accepted by the Commission would be dealt with by the normal criminal justice mechanisms.
7. In those cases accepted by the Commission it would have the power to:
 - recommend immediate release;
 - recommend release at a specified future date; or
 - set a date for further review of the case.
8. In deciding about release the commission would be required to consider whether the offence was of a type that would no longer be committed as a result of a peace settlement and whether in the particular case there would be undue risks to the public (because of the nature of the original offence or the prisoner's mental state).
9. We would imagine that the Commission would be directed to operate within a general framework of up to 15 years for life sentence cases (the LSRB generally works in the range 10 to 20 years) and a reduction of about a third for determinate sentence prisoners. The Commission would be given access to information relating to previous release decisions.
10. The final decision to release would rest with the Secretary of State. Although this would have the disadvantage of bringing her into the process, it would allow sensitive security information (which might not be disclosable to an independent

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body) to be included in the decision making process in exceptional cases. The Secretary of State would be required to give reasons in cases if she refused release.

Licence

11. Release would be on licence. In the case of life sentence prisoners this would be life licence. For determinate prisoners the licence would be until they would have otherwise have been released with remission. It might be possible to develop a more restrictive licence than has been used hitherto. For example the licence used in the Republic of Ireland requires prisoners not to give offence to victims or their families. However such a licence might be difficult to enforce in any meaningful way.

Numbers of Cases

12. The numbers of cases that the commission would have to deal with would vary depending on the criteria adopted. The following figures give an indication of the possible workload of a commission. There are about 150 scheduled life sentence prisoners of whom 77 have served 5 - 10 years and 55 have served 10+ years. Comparable figures for the time served by determinate offenders are not available at this time. However there are between 50 and 60 scheduled determinate prisoners with sentences of 20+ years (ie serving periods of imprisonment of more than 10 years).

Period of Operation

13. We would expect that the Commission would be required to be in place for at least 12 months with further hearings after that period as necessary to consider cases where a decision on a release date had been deferred. The Commission may also be required to consider applications from prisoners who in the future are convicted of crimes committed in the past.

Breakdown of the Cease-fires

14. If the cease-fires broke down it would not be possible to recall prisoners who had already been released unless they committed further offences or became a risk to the public. The fact that a person had at some stage been affiliated to an organization that no longer maintained a cease-fire would not in itself justify recall to prison.

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15. It would of course be possible to prevent further releases either in whole or in part. The latter might be preferable in circumstances where there was not a complete break-down. In such circumstances the Commission would be directed to reconsider the cases of those prisoners affiliated to organisations that had broken the cease-fire.

Extent

16. The intention would be to include all prisoners convicted of offences in relation to the violence in Northern Ireland. Either:

- prisoners sentenced anywhere in the United Kingdom would be able to apply to the Commission; or
- those prisoners on restricted transfer to Northern Ireland would be permanently transferred to allow their cases to be considered by the Commission on the same basis as other terrorist offenders convicted for offences committed in relation to Northern Ireland.]

Membership

17. It is envisaged that the commission should have a mixture of local and overseas members. It would be helpful if at least one of the overseas members was a judge with experience in criminal sentencing - membership of the commission would put a UK judge in an invidious position. Depending on the workload and the time-scale within which it is to be completed, more than one panel might be required.

Servicing and Support

18. The commission would require administrative support which could either be directly recruited or comprise seconded civil servants. It would be preferable if the commission was perceived to be at arm's length from the Northern Ireland Office and the Northern Ireland Prison Service. This is particularly relevant in relation to the assessment of psychiatric and psychological risk where there would be advantages if the commission could call on independent advisers.

Legislative Requirements

19. Although it might be possible to set the commission up administratively, legislative authority would be required to release determinate sentence prisoners on

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licence. Legislation would also be needed if life sentence cases were to be released without reference to the Lord Chief Justice and the trial judge (which would be considerable kindness to them).

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