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### **THE PEACE PROCESS: TERRORIST PRISONERS**

This paper addresses the issue of prisoner releases in the event of a guaranteed peace and final settlement, and the scope for signalling now that there is some prospect of flexibility on releases in the right circumstances.

#### **Where we are now**

2. Since the first cease-fire a number of confidence building measures on prisoner issues have been taken.
3. In Northern Ireland itself:
  - since the Remission of Sentences Act was introduced in November 1995 more than 240 prisoners have been released early under its provisions; more prisoners have had a reduction of about a quarter of the time they are required to serve in custody; in time a further 300 prisoners will benefit;
  - all temporary release schemes have been extensively increased during the past three years; about 50 prisoners from the Maze receive compassionate temporary release every month; we expect about a third of all sentenced prisoners to receive Christmas home leave this year including more than 160 paramilitary prisoners from the Maze;
  - to ensure that the reviews of life sentence cases continue to take account of the changed circumstances of the cease-fires the Secretary of State for Northern Ireland has directed that in future no case should be knocked back for more than 3 years.

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4 In relation to prisoners sentenced on the mainland, since the latest cease-fire:

- Irish terrorist prisoners have been taken out of the SSUs;
- prisoners transferred from Great Britain to Northern Ireland now enjoy the same prison regime including access to temporary release as prisoners sentenced in Northern Ireland; though their release dates are those set in England and Wales.
- the process of transfers and repatriations from England has continued ; 18 prisoners (see attached table) have now been repatriated to the Republic of Ireland.

5. The scope for further confidence-building initiatives is, however, narrowing. Points of outstanding action - all benefiting republican , not loyalist prisoners - include:

- a. setting the tariff in the case of the Balcombe Street gang. This is an outstanding undertaking from the letter to Sinn Fein of 9 July - and a major source of continuing grievance. The Home Secretary has indicated that whole life tariffs are appropriate; but he is now reviewing that conclusion in the light of representations received from one of the prisoners (O'Connell). If a decision to set whole life tariffs is maintained, it will require careful handling. Much will depend on whether repatriation - or, alternatively, a transfer to Northern Ireland - can be brought off quickly (see (c) below).

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**CONFIDENTIAL**



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- b. processing the 15 outstanding repatriation applications. It seems unlikely that any of these can now be finalised before Christmas. 10 of the 15 are either with the Irish Government or depend on the legislation they are currently passing. The outstanding cases with the Home Office are those of the Balcombe Street gang (awaiting a final decision on tariff) and one in which action is suspended pending an appeal.
- c. arriving at some understanding with the Irish Government over the handling of repatriation requests involving prisoners with whole life tariffs: Magee (who murdered a special constable, and whose case has been with the Republic since July) and, potentially, the Balcombe Street gang. There may, for example, be an argument for accepting an assurance by the Irish Government that they would hold such prisoners for a minimum of 40 years (the current minimum sentence for murderers of a Garda officer), subject to review at 5 year periods after that; or even, given that in England whole life tariff cases have to be reviewed at the 25 year point and every 5 years thereafter, for accepting an assurance that they would do the same. An alternative approach, if repatriation in these cases looks unlikely or at best distant, would be to consider transferring the prisoners as an interim measure - if they so request it - to Northern Ireland.

## 6. New initiatives might include:

- a. a review of terrorist tariffs set by the Home Secretary and his predecessors to bring these more closely into line with the handling of such cases in Northern Ireland, and an explicit undertaking to take the quality and nature of the cease-fire into

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account in reviewing cases. However, there are problems associated with changing selected tariffs in the England and Wales life sentence system without prejudicing other, highly sensitive non-terrorist life sentence cases. It is difficult to see what this option would achieve in terms of greater consistency of treatment between life sentence prisoners which would not be better achieved by:-

- b. changing the status of prisoners on restricted transfer to Northern Ireland to an unrestricted basis. Their release dates would then be decided on the same criteria as prisoners sentenced in Northern Ireland. Determinate sentenced prisoners would benefit from 50% remission. Life sentence prisoners would have their release dates set by the Secretary of State on the advice of the Northern Ireland Life Sentence Review Board. If such a decision was made now, one determinate sentenced prisoner would be released immediately. Others would receive a reduction in time to be served of around 3/4 years. It is more difficult to assess the impact in the case of life sentence prisoners. But almost all the cases would come up for very early review - and a number would expect release in the course of next year. Based on current practice (under which prisoners convicted of terrorist offences will generally serve between 10 and 20 years), some of the prisoners concerned would probably go over the 20 year mark, but would still be likely to receive a significant discount. Our overall assessment is that unrestricted transfer would lead to a reduction of time to serve of up to 5 years in the 20 year tariff cases, 5 to 10 years in the 25 year tariff cases, and over 10 years in the whole life tariff cases. (The latter include the Brighton bomber) If this option were pursued, there could be a case for agreeing that



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the Irish Government should align its approach on repatriation cases involving life sentence prisoners to practice in Northern Ireland.

7. Again, option 6(b) would only benefit Republican prisoners. It could be deployed either:

a. now, or in the near future, as a confidence building measure in the context of the current cease-fire and the peace process. The measure would be defended on the grounds that these terrorist prisoners were being treated on the same basis as other terrorist prisoners in Northern Ireland: an argument that would carry some weight, particularly in Northern Ireland itself. But the fact that the measures would in practice involve significant reductions in time served by terrorist prisoners - compared with what they would have served had they remained under Great Britain jurisdiction - would undoubtedly be seen in Great Britain as a major concession to terrorism. If the cease-fire were to break down, the political and public reaction against it would be even stronger. Agreeing to any arrangements which allowed a substantial reduction in time served would also run counter to our strict approach to repatriations to other jurisdictions - with the associated risk of undermining public confidence in the criminal justice system generally and repatriation in particular.

b. as a measure to be taken in response to a final settlement, either as the primary response on the prisoners front to the settlement, or as a step towards some more wide-ranging concession on the release of terrorist prisoners.

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**Prisoner releases in the event of a guaranteed peace and final settlement**

8. The key issue is whether there will/can be a lasting peace and final settlement without:

- a. the prospect of some concession involving the early release of terrorist prisoners in the event of a final settlement which goes further than any of the options outlined above; and
- b. some politically and publicly acceptable means of delivering such a concession.

Certainly both Sinn Fein and the loyalist parties - together with a number of parties of the middle ground (for example the SDLP and the Alliance) insist that moves of this kind must form part of a final settlement.

9. The case for tolerating some concession on the early release of terrorist prisoners in the context of final settlement would rest on:

- a. pure pragmatism. Without it peace would not be delivered. Prisoners are and will be a vital constituency and have a key role in cementing the peace process. They will continue to be a focus for dissent so long as they remain in prison. On the other hand if they are given a personal stake in a final settlement, they are likely to support the peace process.
- b. the need for reconciliation. If a lasting settlement is to be achieved, all the communities will have to face up to and accept living alongside people who have taken a terrorist path. Nationalist and loyalist opinion regards prisoners as part of the

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conflict. So long as they remain in prison, they are a bar to final reconciliation; and releasing them early is itself a clear signal of reconciliation.

- c. diminution of the main terrorist threat. In the context of a guaranteed peace there should be no threat from terrorists released from prison - or at least a significantly diminished threat.

10. We would expect that in Northern Ireland that the majority of the political parties would at least tolerate a statement on the early release of prisoners: the loyalist parties and Sinn Fein would be strongly in favour (and no doubt describe any move as "minimalist"); the SDLP, Alliance, Women's Coalition and Labour would welcome the step as contributing to confidence in the process. The UUP, who must rely in part on the support of the loyalist parties, would be likely to be fairly neutral. Only the parties who have remained outside the process, the DUP and the UKUP, would be likely to be critical (although it should be remembered that they did not condemn the changes to release arrangements in 1995).

11. But there are clearly substantial, political and presentational difficulties with any clear, public signal that early release of terrorist prisoners might be in prospect - even if this is clearly linked to a final settlement:

- a. there would be a strong risk of an adverse political and public reaction in Great Britain. It may put at risk Opposition support for the Government's policy on the peace process; and there might well be public opposition from the police and the judiciary;



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- b. it could be seen as diminishing the deterrent effect of sentences for terrorist offences and weakening greatly the Government's stance against terrorism - both nationally and internationally;
- c. it would risk prejudicing the Government's position in relation to the current status of the prisoners: on the grounds that it would be interpreted as a once and for all acknowledgement that they are, in fact "political" prisoners;
- d. the possibility of having to take action to upgrade prisoner security again if that is judged necessary to prevent escapes cannot be ruled out; and
- e. it is impossible to ignore the risk of a return to violence after what appears to be a genuine final settlement - when it would not be possible to recall prisoners released early from previous sentences

12. On the other hand:

- a. the scope for other "confidence-building" measures in relation to prisoners is narrowing all the time both in terms of feasibility and of impact on the peace process. It is difficult to go further without risk of corrupting existing systems and processes - with wider implications. It is increasingly evident that only a clear commitment on the release of prisoners will carry the trick.
- b. it should be possible to set the prisoners issue in a wider focus from the outset: setting it clearly in the context of a final settlement which secures peace and involves de-commissioning and of a wider search for reconciliation in the community.

(Homese)

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- c. it would be possible to signal the case for such an approach tentatively in the first instance, filling in details as debate and discussion developed.

13. There are strong arguments to suggest some new process would have to be devised to legitimise and effect early releases. There are likely to be policy, presentational and practical difficulties in the way of any attempt to use existing processes to reduce terrorist prisoner sentences on any scale:

- a. it would be difficult, for example, to devise release criteria for life sentenced prisoners (or where applicable, prisoners on parole) which do not either leave some prisoners in prison for very substantial periods of time after a settlement or distort the system in such a way as to risk prejudicing the handling of other cases;
- b. alternative mechanisms - such as the exercise of the Royal Prerogative - are even less attractive in policy and presentational terms.

14. All this points to a process which:

- a. has statutory authority and establishes statutory criteria for early release, with thresholds/tapers etc;
- b. is set in the wider context proposed above;
- c. involves some independent element: probably a statutory commission of some kind to which the prisoners would appeal. A

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separate note prepared by NIO officials, setting out how such a Commission might operate, is appended to this paper.

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