



SENTENCE REVIEW  
COMMISSIONERS

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ANNUAL REPORT 2005

# SENTENCE REVIEW COMMISSIONERS

## ANNUAL REPORT 2005

Report for the year ended 31 March 2005

Presented to Parliament pursuant to Schedule 1 (6)  
to the Northern Ireland (Sentences) Act 1998

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**Joint Chairmen****Sir John Belloch KCB and Brian Currin**

The Rt Hon Peter Hain MP  
Secretary of State for Northern Ireland  
Stormont Castle  
Belfast  
BT4 3TT

Dear Secretary of State,

Sub-paragraph 6(1) of Schedule 1 to the Northern Ireland (Sentences) Act 1998 requires us, as joint Chairmen, to make a report to you, as soon as practicable after the end of the financial year, on the performance of the Sentence Review Commissioners' functions during the year. We have accordingly forwarded to you and your predecessors Reports for 1998/99, 1999/00, 2000/01, 2001/02, 2002/03 and 2003/04.

This, our seventh report, covers the year ended 31 March 2005. While the layout and, generally, the content of this Report follow the lines adopted in previous years, we felt the time was now right to summarise a lot of what has been repeated in previous years. It should be noted that all our previous Reports, which include this information, are still available on the Commissioners' website.

Thus, Chapter One summarises the background to the Commissioners' tasks and Chapter Two describes some general issues we addressed during the year. Chapter Three gives details

of the caseload with which we dealt, which was slightly greater than that in the previous year, and Chapter Four deals with staff and resources.

Once again this year, the Commissioners had the opportunity to implement our agreed policy that provides, as far as practicable, for the fair and equitable handling of material certified by the Secretary of State as 'damaging information'.

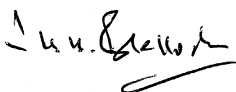
As we advised you in our letter last year, two such cases came before the Courts for Judicial Review. In the first, the judgement endorsed the validity of the Commissioners' process for handling 'damaging information'. In the second, the judgement again endorsed that process but overturned their decision on where the onus of proof lay in considering the question of danger to the public. This second case has now been sent on appeal to the House of Lords, from which a decision is expected later this year.

Details of these and the other cases processed and our associated policy considerations can be found in Chapter Two.

Finally, as joint Chairmen, we should again record our appreciation and gratitude for the continuing support of our fellow Commissioners, and for the commitment, expertise and professional approach that they so commendably brought to the task.

Similarly, and also on behalf of all the Commissioners, we should thank our Secretariat for maintaining the excellent standard of administrative support upon which we have come to rely.

Yours sincerely



**SIR JOHN BLELLOCH, KCB**

*Joint Chairman*



**BRIAN CURRIN**

*Joint Chairman*

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# Chapter 1



## Chapter One

### Background

The work of the Commissioners has its origins in the Agreement reached on Good Friday (10 April) 1998 between the participants in the multi-party negotiations, subsequently endorsed by referendum.

The part of the Agreement dealing with Prisoners committed both Governments to putting in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or of similar offences elsewhere. The arrangements were to protect the rights of individual prisoners under national and international law.

Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.

### The Act and Rules

The Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998 ('the Act') and through various pieces of subordinate legislation made under it, most particularly the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998 ('the Rules'). Both were passed by Parliament in late July 1998.

The Act provides for the appointment of Commissioners and sets out the criteria that must be met for a prisoner to be eligible for early release. It also provides that the extent by which an eligible sentence is reduced shall be one third of the time that the prisoner would otherwise have spent in prison. For a fixed-term prisoner this means release after one third of the sentence pronounced by the court (since all such prisoners would, but for the Act, have been entitled to 50% remission).

The Rules set out in detail the procedures under which prisoners apply for early release and the Commissioners consider their applications. Within the terms of the Rules there is provision for the views of the Secretary of State (represented by the Prison Service) to be made known and taken into account by the Commissioners. The Rules normally give both

parties access to the same information. However, in certain circumstances information classified by the Secretary of State as 'damaging' may be withheld from the prisoner (and any representative nominated by the prisoner). If this happens, there is provision for the Attorney General to appoint a person to represent the interests of the prisoner.

The papers submitted by the prisoner (known as the 'applicant') and the Secretary of State (known as the 'respondent') are considered by a panel of three Commissioners who give their initial view in writing in the form of a 'preliminary indication'. The Rules allow either party to challenge the preliminary indication and have the issues considered afresh at an oral hearing. If there is no such challenge (or after an oral hearing) the final decision of the Commissioners is given to both parties in the form of a 'substantive determination'. The Commissioners have no power to reconsider a substantive determination, so the only way in which either party can challenge the outcome is by way of judicial review.

The procedures are described in detail in Annex A.

### Eligibility for Early Release

The eligibility criteria laid down by the Act are that:

- the prisoner is serving a sentence of imprisonment in Northern Ireland;
- the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10 April 1998;
- if the sentence was passed in Northern Ireland, the offence:
  - was a scheduled offence; and
  - was not the subject of a certificate of the Attorney General that it was not to be treated as a scheduled offence;
- if the sentence was passed in Great Britain, the offence:
  - was committed in connection with terrorism and with the affairs of Northern Ireland; and
  - is certified as one that would have been scheduled, had it been committed in Northern Ireland;
- the prisoner is not a supporter of a specified organisation;
- if the prisoner were released immediately, he would not:
  - be likely to become a supporter of a specified organisation; or
  - be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
  - if a life-sentence prisoner, be a danger to the public.



Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those most likely to be committed by terrorists. They include murder and manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

It should be noted that the Act does not require offences in Northern Ireland to have been committed by or on behalf of a terrorist organisation but simply requires them to have been tried as scheduled offences.

### The Specified Organisations

The Act requires the Secretary of State to 'specify' by subordinate legislation any organisation believed to be concerned in terrorism connected with the affairs of Northern Ireland which has not established or is not maintaining a complete and unequivocal ceasefire. Specification of an organisation means that its supporters are not eligible to benefit from the early release arrangements.

The list of specified organisations for the period 1 April 2004 to 14 November 2004 was:

- The Continuity Irish Republican Army
- The Loyalist Volunteer Force
- "The Orange Volunteers"
- The "Real" Irish Republican Army
- The Red Hand Defenders
- The Ulster Defence Association
- The Ulster Freedom Fighters.

This list is subject to review by the Secretary of State at any time and on 15 November 2004, the Secretary of State made the Northern Ireland (Sentences) Act (Specified Organisations) Order 2004, removing the Ulster Defence Association and the Ulster Freedom Fighters from the list of specified organisations.

Thus the list of specified organisations for the period 15 November 2004 to 31 March 2005 was:

The Continuity Irish Republican Army

The Loyalist Volunteer Force

“The Orange Volunteers”

The “Real” Irish Republican Army

The Red Hand Defenders

### **The Accelerated Release Date**

The Act provided that any prisoners given release dates after the second anniversary of the Act’s commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the later.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners’ declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

## Licence Arrangements

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

For a fixed-term prisoner, the licence remains in force until the date when he or she would otherwise be entitled to be released from prison (normally after completing 50% of the sentence). For a life prisoner, the licence remains in force for the rest of his or her life.

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again.

Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements.

## The Commissioners

The two joint Chairmen and eight other Commissioners appointed by the Secretary of State to serve until 31 July 2005 and who served throughout the year are:

|  |  |
|--|--|
| Sir John Blelloch KCB<br><i>Joint Chairman</i> | Permanent Under-Secretary of State at the Northern Ireland Office 1988 - 1990, having previously served as Belfast-based Deputy Secretary from 1980 to 1982. Between 1982 and 1988 successively Deputy Secretary (Policy) and Second Permanent Under-Secretary at the Ministry of Defence. |
|--|--|

|  |   |
|--|---|
| Mr Brian Currin<br><i>Joint Chairman</i> | A South African lawyer working in mediation and institutional transformation. Founded the National Directorate of Lawyers for Human Rights, in 1987 and headed it for eight years. Involved in political prisoner releases, amnesty and Truth and Reconciliation processes in South Africa. Has worked in |
|--|---|

- Sri Lanka, Rwanda and the Middle East on political transformation and civil rights issues.
- Dr Silvia Casale Independent criminologist, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and a consultant to HM Chief Inspector of Prisons. Has worked in Sweden and the United States and as a member of the Parole Board for England and Wales. Has published extensively on prison issues.
- Dr Peter Curran Retired Consultant psychiatrist and Fellow of the Royal College of Psychiatrists. Has an interest in the victims of violence and has lectured extensively on the psychological and social impact of civil disorder and political violence. Formerly a member of the Mental Health Commission and a current member of the Criminal Injuries Compensation Appeal Panel for Northern Ireland.
- Mr Ian Dunbar CB Director of Inmate Administration and a member of the Board of HM Prison Service until his retirement in 1994. Previously Director of Prisons for the South West Region and Governor of various prisons in England and Wales. Has worked for HM Inspectorate of Prisons and conducted the inquiry into disturbances at Risley Remand Centre.
- Mrs Mary Gilpin Former member of the Scottish Probation Service and social worker. Member of the Board of Visitors for HMP Maze 1985-1997, serving a term as Chairman. Former Secretary to the Northern Ireland Association of Members of Boards of Visitors. Involved in setting up Dismas House, a hostel for use by prisoners and their families. Appointed a Life Sentence Review Commissioner in October 2002.

- Dr Adrian Grounds University Senior Lecturer in Forensic Psychiatry at the Institute of Criminology and Department of Psychiatry at the University of Cambridge. Honorary Consultant Psychiatrist in the Cambridgeshire and Peterborough Mental Health Partnership NHS Trust. He is a Fellow of the Royal College of Psychiatrists. Appointed a Life Sentence Review Commissioner in October 2002.
- Ms Clodach McGrory Practised at the Bar of Northern Ireland from 1990 to 1995, subsequently worked at the Law Centre (NI) and was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999. Appointed to the Irish Human Rights Commission in December 2000 and is currently a part-time Chairperson of Social Security Appeal tribunals. Appointed a Life Sentence Review Commissioner in October 2002.
- Dr Duncan Morrow Chief Executive of the Community Relations Council and Lecturer in Politics at the University of Ulster. A member of the Corrymeela Community with a long-term interest in reconciliation and conflict resolution, he is the author of a number of reports into politics and community relations in Northern Ireland. Appointed a Life Sentence Review Commissioner in October 2002.
- Mr Donal McFerran A qualified solicitor with a Masters in Medical Law who practised as partner in a law firm dealing principally with defendants' litigation. Has served as a Deputy Resident Magistrate and was appointed a Deputy County Court Judge in 1990. A member of the Mental Health Tribunal, he holds a number of other General Medical Council appointments. Appointed a Life Sentence Review Commissioner in October 2002.

All Commissioners serve on a part-time basis.

# Chapter 2



## Chapter Two

### Approach

As the body of people charged with implementing one of the most sensitive parts of the Agreement, the Commissioners' first priority has continued to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held four plenary meetings at which they discussed in depth their approach with regard to aspects of their responsibilities that have either arisen for the first time or been brought into particular focus by experience relating to particular cases. The paragraphs that follow describe the issues thus considered and the conclusions that were reached.

### Damaging Information

Carried over from the previous year were two cases in which the Secretary of State had certified that material put forward on his behalf was 'damaging information'. In both, following judicial review, the Court endorsed the decision taken by Commissioners to accept the certified information. However, in one, the prisoner appealed to the Court of Appeal, which although endorsing the Commissioners' processing of the 'damaging information' ruled against them on the onus of proof in considering the question of danger to the public. They in turn appealed to the House of Lords from which a decision is expected later in the year.

The Commissioners received two further applications involving 'damaging information' during the year, both of which were processed in line with the existing policy. One application was withdrawn by the applicant following the issue of the preliminary indication and in the other, various matters stemming from the applicant's decision to change his legal representative remain to be resolved before the case is ready to proceed to oral hearing.

## Human Rights Act 1998

Section 6(1) of the Human Rights Act 1998 makes it "unlawful for a public authority to act in a way which is incompatible with a Convention right". The Commissioners have been advised that each of them is a public authority for the purposes of the Northern Ireland (Sentences) Act 1998.

In giving effect to the 1998 Sentences Act, the Commissioners may, conceivably, be faced with some course of action that could be inconsistent with one or more Convention rights. They have been advised that, where they conclude that such inconsistency exists, their legal duty would be to comply with section 6(1). Accordingly, the Commissioners continually keep under review the policies and procedures that they have adopted in order to discharge their statutory responsibilities. To date these have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and the secondary legislation (the Commissioners' Rules) with the Human Rights Act.

Against that background, Commissioners had earlier agreed that, as a matter of policy, they would look again at applications made by prisoners previously refused release on grounds of danger to the public. This was on the basis of advice received by Commissioners that they may regard the passage of time in itself as a sufficient 'change of circumstances' to review a case in accordance with Rule 9(2). Commissioners concluded that a period of eighteen months since a previous determination would suffice for the purposes of review, and that prisoners making applications in such circumstances would have their cases reviewed at intervals until they were given a tariff and consequently referred to the Life Sentence Review Commissioners.

However, when the first of these cases came before them, a panel of Commissioners heard and accepted persuasive legal argument that prompted their reconsidering the *vires* of their approach. The panel dismissed the application and it was subsequently discussed at plenary for further consideration of the associated policy. After careful consideration of all the issues involved, Commissioners concluded that in future, they would only reconsider this and similar cases where there had been a material change of circumstances or where new evidence or information was available so as to satisfy in full the requirements of Rule 9(2).



# Chapter 3



## Chapter Three

### Casework

The work of the Commissioners is dependent on the number of prisoners who apply to them in accordance with the provisions of the Act, and this year their workload slightly increased.

During the period of this Report, applications were received and processed as follows (see also table1):

#### Applications Received

Two applications for early release and two applications for review of the suspension of a licence were received.

#### Consideration by Panel

Commissioners issued four preliminary indications. In two cases they were minded to refuse early release and in a further two cases they were minded to revoke the applicants' licences. In all cases the reason was because they were not satisfied that, if released immediately, the applicants would not be a danger to the public.

#### Oral Hearings

Two oral hearings took place. The first case lapsed following the hearing and the second was dismissed at hearing. Another application was part heard but was adjourned for further assessment of the applicant.

At 31 March 2005, there were four oral hearings pending.

#### Issue of Substantive Determination

One substantive determination was issued in which the Commissioners decided that the applicant's licence should be revoked. This was a case that had been pending from the previous year

Table 1

Table 1 shows the state of business at the end of each quarter, the total cases processed in the year and the total cases processed by the Commissioners since their appointment.

|   | June | Sept | Dec | Mar | <b>Total<br/>2004-<br/>2005</b> | <i>Total<br/>1998-<br/>2005</i> |
|---|------|------|-----|-----|---------------------------------|---------------------------------|
| Applications received   | 0    | 3    | 1   | 0   | <b>4</b>                        | 611                             |
| Applications not eligible                                     | 0    | 0    | 0   | 0   | <b>0</b>                        | 53                              |
| Applications sent to respondent                               | 0    | 3    | 1   | 0   | <b>4</b>                        | 556                             |
| Responses received  | 0    | 3    | 1   | 0   | <b>4</b>                        | 556                             |
| Applications not proceeded with after response received       | 0    | 0    | 0   | 0   | <b>0</b>                        | 53                              |
| Applications withdrawn before issue of preliminary indication | 0    | 0    | 0   | 0   | <b>0</b>                        | 2                               |
| Preliminary indications issued                                | 0    | 1    | 2   | 1   | <b>4</b>                        | 501                             |
| Applications withdrawn after issue of preliminary indication  | 0    | 0    | 1   | 0   | <b>1</b>                        | 12                              |
| Challenges received (less those subsequently withdrawn)       | 0    | 2    | 0   | 1   | <b>3</b>                        | 35                              |
| Oral hearings held  | 0    | 1    | 0   | 1   | <b>2</b>                        | 29                              |
| Applications withdrawn or lapsed following oral hearing       | 0    | 1    | 0   | 1   | <b>2</b>                        | 2                               |
| Substantive determinations issued                             | 1    | 0    | 0   | 0   | <b>1</b>                        | 485                             |
| Applications under consideration                              | 3    | 5    | 5   | 4   |                                 |                                 |

# Chapter 4



## Chapter Four

### Staff and Resources

The Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and a team of four staff for the year covered by this report.

Throughout the year, the Commissioners have occupied accommodation on the 5th floor of Windsor House, Belfast.

Since October 2001, the Secretariat have also supported the work of the Life Sentence Review Commissioners appointed under the Life Sentences (Northern Ireland) Order 2001, who occupy the same accommodation. Shared costs have been apportioned accordingly and are indicated as \*. All other costs were actually incurred.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2005 was:

|   | £000    |         |
|---|---------|---------|
| Programme expenditure:                            | 2004/05 | 2003/04 |
| Commissioners' remuneration <sup>1</sup>          | 37      | 14      |
| Commissioners' travel, accommodation and expenses | 29      | 17      |
| Legal representation for applicants               | 13      | 1       |
| Legal costs <sup>2</sup>                          | 88      | 23      |
| Premises*   | 24      | 24      |
| General administration*                           | 13      | 13      |
| <br>  |         |         |
| Running costs:                                    |         |         |
| Staff salaries etc*                               | 29      | 29      |
| Miscellaneous*                                    | 0       | 0       |
| Total Expenditure                                 | 233     | 121     |

<sup>1</sup> In the case of Commissioners in full-time employment, the employer is reimbursed.

<sup>2</sup> Mainly costs incurred in responding to challenges by way of judicial review.

# Annex A



## Annex A

### Guidance for Applicants

#### Purpose

This leaflet gives an outline of –

- Who is eligible for early release
- How to apply
- What will happen next.

The Commissioners have issued this for guidance only. For complete information, you or your advisers should study the relevant legislation: the Northern Ireland (Sentences) Act 1998, the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1999, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 2001 and the Northern Ireland (Sentences) Act (Specified Organisations) Order 2004.

If you wish to use a lawyer to assist you in preparing your application, you can apply for money to pay for legal advice and/or representation. You do this by applying to the Commissioners for a 'legal aid direction', using FORM B.

#### Am I eligible?

You will be eligible to have your sentence reduced if all of these apply:

- you are serving your sentence in Northern Ireland;
- the offence in question was committed before 10 April 1998;
- the offence was a 'scheduled' offence (or an equivalent offence if you were tried in court in Great Britain);
- you were given a sentence of five years or longer (including a life sentence);
- you are not a supporter of any of the following organisations<sup>1</sup> -
  - The Continuity Irish Republican Army
  - The Loyalist Volunteer Force
  - "The Orange Volunteers"
  - The 'Real' Irish Republican Army
  - The Red Hand Defenders

(This list may be changed at any time by the Secretary of State).

<sup>1</sup> list as at November 2004.

- if you were released immediately, you would not be likely to become :
  - a supporter of any of the organisations listed above, or
  - involved in acts of terrorism relating to Northern Ireland.
- if you are serving a life sentence, you would not be a danger to the public if released immediately.

**N.B.** A series of sentences being served consecutively must include at least one of five years or more in order to fall within the scope of the legislation. No sentence imposed for a non-scheduled offence can be reduced.

### When would I qualify for release?

If you are serving a fixed-term sentence imposed before 28 July 1998, the earlier of:

- the date where you have served one third of the sentence (plus any remission you have lost), or
- 28 July 2000.

This date will be determined by the Prison Service, if the Commissioners allow your application.

**N.B.** The date 28 July 2000 and the two-year period referred to below may be changed by Parliament in the future.

If you are serving a life sentence imposed before 28 July 1998, the earlier of:

- a date which the Commissioners consider represents about two-thirds of that which you would otherwise have spent in prison, or
- 28 July 2000,

This date will be determined by the Commissioners.

If you were sentenced after 28 July 1998:

- on the second anniversary of the date when you start to serve your sentence.

All release dates are subject to the normal rule that where the calculated date falls on a Saturday, Sunday or public holiday, release will take place on the next normal working day.



You cannot be released until after the Commissioners have made a substantive determination in respect of your sentence.

### How do I apply?

You apply by sending to the Sentence Review Commissioners, 5th Floor Windsor House, BELFAST. BT2 7SR:

- a fully completed application form (FORM A);
- any supporting information or documents on which you wish to rely; and
- any decision notices and reasons previously given by the Commissioners or the Secretary of State in response to a previous application on your behalf.

It is important that all relevant information, including any upon which you might wish to rely at a subsequent oral hearing, should be provided at this stage if unnecessary delay and the need for further applications are to be avoided.

You must send the Commissioners two sets of these papers, one containing the original application form being marked 'ORIGINAL' and the other 'COPY'.

### Who can help me apply?

You can ask anybody to help you prepare your application.

If you wish to use a lawyer you can apply for money to pay for legal advice and/or representation. You do this by applying to the Commissioners for a 'legal aid direction', using FORM B.

### What will happen when I apply?

As soon as we receive an application, we will send you a written acknowledgement.

Your application will be allocated to a single Commissioner, who will be given responsibility for ancillary decisions on behalf of the Commissioners about your application (including any legal aid direction). He or she will also have the power to vary, on application, the time limits for particular actions.

The Commissioners will send a copy of your application to the Prison Service within a week of receiving it.

The Prison Service (acting on behalf of the Secretary of State) is required to give the Commissioners a written response within three weeks. The Commissioners will send you a copy of this response within a week of receiving it.

In prioritising the consideration of applications, the Commissioners will take into account the date on which the applicant would be likely to be released if the application were successful. Those with the earliest dates will generally be given priority.

A panel of three Commissioners will be appointed to consider the application and response and give a 'preliminary indication' of their decision. You and the Prison Service will be given written notice of the preliminary indication as soon as possible after the Commissioners have given it.

If the preliminary indication is that the Commissioners are minded to refuse your application, you and the Prison Service will be given a written statement of the reasons.

If the preliminary indication is that the Commissioners are minded to allow your application, you and the Prison Service will be given a written statement of the relevant sentences and, for any life sentence, the associated revised release date.

You and the Prison Service must each indicate to the Commissioners in writing within two weeks whether or not you wish to challenge the preliminary indication.

If neither of you challenges the preliminary indication within two weeks, the Commissioners will confirm it in the form of a 'substantive determination'. (See below for description)

### **What happens if there is a challenge?**

The Commissioners will set aside the preliminary indication and convene a hearing prior to making a substantive determination.

You will be given at least three weeks written notice of the date, time and place of the hearing.

The hearing will normally be held in the prison where you are held and conducted in private unless the Commissioners decide otherwise.

### Can I be represented by somebody else at the hearing?

You will be able to be represented by your lawyer or another person of your choice.

You may not, without obtaining the prior agreement of the Commissioners, be represented by anybody who is:

- serving a sentence of imprisonment;
- on licence, having been released from prison; or
- has an unspent conviction for an imprisonable offence;

You may not be represented by anyone who is liable to be detained under the Mental Health (Northern Ireland) Order 1986

You must give details of any representative on FORM A and notify the Commissioners and Prison Service within a week of any change in the name, address or occupation of your representative.

### What will happen at the hearing?

You and the Prison Service (on behalf of the Secretary of State) will be able to appear and speak at the hearing and may, in particular:

- make opening and closing submissions (in person and/or through a representative);
- hear each other's evidence and submissions;
- put questions to each other;
- call any witnesses authorised by the Commissioners; and
- put questions to any witnesses

You may not rely on or refer to material that was not included in the application or response papers without the leave of the Commissioners. If you wish to introduce additional material, you will need to make an ancillary application to the Commissioners.

### The substantive determination

You will be given written notice of the Commissioners' substantive determination as soon as possible after it is made. This notice will include:

- where your application has been refused, a statement of the reasons;
- where your application has been allowed, a declaration will specify:
- the sentence(s) in respect of which you have a right to be released under the Act;
- in relation to a life sentence, the release date that the Commissioners consider appropriate; and
- where a previous determination is being revoked, the reasons for this.

### Can I appeal against a refusal?

You can make a further application, but the Commissioners can consider it only if:

- circumstances have changed since your most recent previous determinations; or
- you submit new material that was not put before the Commissioners when they made that determination.

The only other way of challenging a substantive determination by the Commissioners is by means of judicial review.

# Annex B



## Annex B

### Guidance for Applicants whose Licences have been Suspended

#### Purpose

This leaflet gives an outline of -

- Who is eligible to have his or her case considered by the Commissioners
- How to apply
- What will happen next

The Commissioners have issued this for guidance only. For complete information, you or your advisers should study the relevant legislation: the Northern Ireland (Sentences) Act 1998, the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1999, the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 2001 and the Northern Ireland (Sentences) Act (Specified Organisations) Order 2004.

#### Am I eligible?

You will be eligible to have your case considered by the Commissioners if:

- You have been released early from prison under the terms of the Northern Ireland (Sentences) Act 1998; and
- The Secretary of State has suspended your licence.

#### Why can a licence be suspended?

The Secretary of State may suspend your licence if he believes that you have broken or are likely to break a condition of your licence.

These conditions are:

- that you do not support any of the following organisations<sup>1</sup>:
  - The Continuity Irish Republican Army
  - The Loyalist Volunteer Force
  - "The Orange Volunteers"

<sup>1</sup> list as at November 2004.

- The 'Real' Irish Republican Army

- The Red Hand Defenders

(This list may be changed at any time by the Secretary of State).

- that you do not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland, and
- if you were serving a life sentence, that you do not become a danger to the public.

The Secretary of State must give you written notice of the suspension of your licence and of the reasons for it.

### How do I apply?

You apply by sending to the Sentence Review Commissioners, 5th Floor Windsor House, BELFAST, BT2 7SR:

- A fully completed application form (FORM D); and
- Any supporting information or documents on which you wish to rely.

It is important that all relevant information, including any upon which you might wish to rely at a subsequent oral hearing, should be provided at this stage if unnecessary delay and the need for further applications are to be avoided.

You must send the Commissioners two sets of these papers, one containing the original application form being marked 'ORIGINAL' and the other 'COPY'.

### Who can help me apply?

You can ask anybody to help you prepare your application.

If you wish to use a lawyer you can apply for money to pay for legal advice and / or representation. You do this by applying to the Commissioners for a 'legal aid direction', using FORM B.

### What will happen when I apply?

As soon as we receive an application, we will send you a written acknowledgement.

Your application will be allocated to a single Commissioner, who will be given responsibility for ancillary decisions on behalf of the Commissioners about your application (including any legal aid direction). He or she will also have the power to vary, on application, the time limits for particular actions.

The Commissioners will send a copy of your application to the Prison Service within three working days of receiving it.

The Prison Service (acting on behalf of the Secretary of State) must give the Commissioners a written response within three working days. The Commissioners will send you a copy of this response within three working days of receiving it.

A panel of three Commissioners will be appointed to consider the application and response and give a 'preliminary indication' of their decision. You and the Prison Service will be given at least three working days notice that the case is ready to be made the subject of a preliminary indication.

As soon as possible after giving the preliminary indication, the Commissioners will give you and the Prison Service a written statement as to whether they are minded to confirm or revoke your licence and a statement of the reasons.

You and the Prison Service must each indicate to the Commissioners in writing within seven days whether or not you wish to challenge the preliminary indication.

If neither of you challenges the preliminary indication within seven days, the Commissioners will confirm it in the form of a 'substantive determination'. (See below for description)

### What happens if there is a challenge?

The Commissioners will set aside the preliminary indication and convene a hearing prior to making a substantive determination.



You will be given at least three working days written notice of the date, time and place of the hearing.

The hearing will normally be held in the prison where you are held and conducted in private unless the Commissioners decide otherwise.

### Can I be represented by somebody else at the hearing?

You will be able to be represented by your lawyer or another person of your choice.

You may not, without obtaining the prior agreement of the Commissioners, be represented by anybody who is:

- serving a sentence of imprisonment;
- on licence, having been released from prison; or
- has an unspent conviction for an imprisonable offence.

You may not be represented by anyone who is liable to be detained under the Mental Health (Northern Ireland) Order 1986

You must give details of any representative on FORM D and notify the Commissioners and Prison Service within three working days of any change in the name, address or occupation of your representative.

### What will happen at the hearing?

You and the Prison Service (on behalf of the Secretary of State) will be able to appear and speak at the hearing and may, in particular:

- make opening and closing submissions (in person and/or through a representative);
- hear each other's evidence and submissions;
- put questions to each other;
- call any witnesses authorised by the Commissioners; and
- put questions to any witnesses but may not rely on or refer to material that was not included in the application or response papers without the leave of the Commissioners.

If you wish to introduce additional material, you will need to make an ancillary application to the Commissioners.

## The Substantive Determination

You will be given written notice of the Commissioners' substantive determination as soon as possible after it is made. This notice will comprise a statement as to whether your licence has been confirmed or revoked and a statement of the reasons.

### What happens to me if my licence is confirmed?

You are entitled to be released from prison immediately and to remain at liberty, subject to the conditions in the licence.

### What happens to me if my licence is revoked?

You will remain in prison until you are eligible to be released under normal arrangements.

### Can I appeal against my licence being revoked?

You can make a further application, but the Commissioners can consider it only if-

- circumstances have changed since your most recent previous determination; or
- you submit new material that was not put before the Commissioners when they made that determination.

The only other way of challenging a substantive determination by the Commissioners is by means of judicial review.

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