

Northern Ireland (Sentences) Bill, 1998

A BILL TO

Make provision about the release on licence of certain persons A.D. 1998. serving sentences of imprisonment in Northern Ireland.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sentence Review Commissioners

1. (1) The Secretary of State shall appoint Sentence Review Commissioners, and one of them shall be appointed chairman, Sentence Review Commissioners
 - (2) The Secretary of State shall so far as reasonably practicable ensure that at any time-
 - (a) at least one of the Commissioners is a lawyer, and
 - (b) at least one is a psychiatrist or a psychologist.
 - (3) In making appointments the Secretary of State shall have regard to the desirability of the Commissioners, as a group, commanding widespread acceptance throughout the community in Northern Ireland.
 - (4) Schedule 1 (which makes further provision about the Commissioners) shall have effect.
 - (5) In subsection (2)(a) "lawyer" means a person who holds a legal qualification in any jurisdiction.
2. Schedule 2 (which makes provision about the procedure to be followed in relation to the Commissioners' functions) shall have effect. Commissioners' procedure.

Eligibility for release

3. (1) A prisoner may apply to Commissioners for a declaration that he is eligible for release in accordance with the provisions of this Act. Applications.
 - (2) The Commissioners shall grant the application if (and only if)-
 - (a) the prisoner is serving a sentence of imprisonment for a fixed term in Northern Ireland and the first three of the following four conditions are satisfied, or
 - (b) the prisoner is serving a sentence of imprisonment for life in Northern Ireland and the following four conditions are satisfied.
 - (3) The first condition is that the sentence-
 - (a) was passed in Northern Ireland for a qualifying offence, and
 - (b) is one of imprisonment for life or for a term of at least five years.

- (4) The second condition is that the prisoner is not a supporter of a terrorist organisation.
 - (5) The third condition is that, if the prisoner were released immediately, he would not be likely-
 - (a) to become a supporter of a terrorist organisation, or
 - (b) to become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland.
 - (6) The fourth condition is that, if the prisoner were released immediately, he would not be a danger to the public.
 - (7) A qualifying offence is an offence which-

<ol style="list-style-type: none"> (a) was committed before 10th April 1998. (b) was when committed a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996, and (c) was not the subject of a certificate of the Attorney General for Northern Ireland that it was not to be treated as a scheduled offence in the case concerned. 	1973 c. 53. 1978 c. 5. 1991c.24. 1996 c. 22.
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 - (8) A terrorist organisation is an organisation specified by order of the Secretary of State; and he may specify only organisations which he believes-
 - (a) are concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
 - (b) have not established or are not maintaining a complete and unequivocal ceasefire.
 - (9) In applying subsection (8)(b) the Secretary of State shall in particular take into account whether an organisation-
 - (a) is committed to the use now and in the future of only democratic and peaceful means to achieve its objectives;
 - (b) has ceased to be involved in any acts of violence or of preparation for violence;
 - (c) is directing or promoting acts of violence committed by other organisations;
 - (d) is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997.

	1997 c. 7.
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 - (10) The Secretary of State shall from time to time review the list of organisations specified under subsection (8); and if he believes-
 - (a) that paragraph (a) or (b) of that subsection does not apply to a specified organisation, or
 - (b) that paragraphs (a) and (b) apply to an organisation which is not specified,
 he shall make a new order under subsection (8).
- 4. (1)** If a fixed term prisoner is granted a declaration in relation to a sentence he has a right to be released on licence (so far as that sentence is concerned) on the day on which he has served-
- Fixed term prisoners.

- (a) one third of his sentence, plus
 - (b) one day for every day of remission which he has lost, and not had restored, in accordance with prison rules.
 - (2) If the day arrived at under subsection (1) falls on or before the day of the declaration, the prisoner's right to be released under that subsection is a right to be released by the end of the day after the day of the declaration.
 - (3) If a prisoner would have a right to be released on or by the end of a listed day he has a right to be released on or by the end of the next non-listed day; and the listed days are-
 - (a) Saturday,
 - (b) Sunday,
 - (c) Christmas Day,
 - (d) Good Friday, and
 - (e) a public holiday in Northern Ireland.
 - (4) If a prisoner is released on licence under this section his sentence shall expire (and the licence shall lapse) at the time when he could have been discharged on the ground of good conduct under prison rules.
5. (1) If the length of a sentence is treated as reduced by a period of custody in accordance with section 26 of the Treatment of Offenders Act (Northern Ireland) 1968 (duration of sentence) for the purposes of section 4(1) above the period of custody must be treated as having been served as part of the sentence. Fixed term prisoners: special cases. 1968 c. 29 (N.I.).
- (2) If a sentence of at least five years is supplemented by a period of imprisonment in accordance with section 16(2) of the Northern Ireland (Emergency Provisions) Act 1996 (conviction of scheduled offence during period of remission) for the purposes of section 4(1) above the 30 supplementary period must be treated as part of the sentence. 1996 c. 22.
- (3) If-
- (a) a sentence of less than five years is supplemented by a period of imprisonment in accordance with section 16(2) of the 1996 Act, and
 - (b) the supplementary period relates to an earlier sentence of at least five years for a qualifying offence (within the meaning of section 3 above),
- the prisoner may make an application under section 3 in respect of the supplementary period and the application shall be granted if (and only if) the second and third conditions are satisfied.
- (4) References in this section to section 16(2) of the 1996 Act include references to-
- (a) section 23(2) of the Prevention of Terrorism (Temporary Provisions) Act 1989, and 1989 c. 4.
 - (b) section 15(2) of the Northern Ireland (Emergency Provisions) Act 1991. 1991 c. 24.

6. When Commissioners grant a declaration to a life prisoner in relation to a sentence they must specify a day which they
- (1) believe marks the elapse of about two thirds of the period which the prisoner would have been likely to spend in prison under the sentence. Life prisoners.
- (2) The prisoner has a right to be released on licence (so far as that sentence is concerned)-
- (a) on the day specified under subsection (1), or
- (b) if that day falls on or before the day of the declaration, by the end of the day after the day of the declaration.
- But if he would have a right to be released on or by the end of a listed 10 day (within the meaning of section 4(3)) he
- (3) has a right to be released on or by the end of the next non-listed day.
7. (1) The Secretary of State must inform the Commissioners of the length of time served by persons-
- (a) sentenced in Northern Ireland to imprisonment for Life, and Life prisoners:
- (b) released on licence after 1982 and before 1999. specified dates
- (2) In specifying a date under section 6(1) Commissioners must have regard to-
- (a) information given under subsection (1) above, and
- (b) previous decisions of Commissioners.
- Before Commissioners specify a date under section 6(1) the Secretary of State may notify them of cases which he
- (3) believes are particularly relevant in the prisoner's case; and the Commissioners may take the notification into account.
8. Before a prisoner is released under section 4 or 6 the
- (1) Secretary of State may apply to Commissioners to revoke the declaration on the ground that any of the applicable conditions in section 3 is not satisfied. Application to revoke declaration.
- (2) The declaration may be revoked if (and only if)-
- (a) circumstances have changed since it was made, or
- (b) reliance is placed on evidence not adduced when it was made.
9. (1) A person's licence under section 4 or 6 is subject only to the conditions- Licences: conditions.
- (a) that he does not support a terrorist organisation (within the meaning of section 3),
- (b) that he does not become concerned in the commission, preparation 35 or instigation of acts of terrorism connected with the affairs of Northern Ireland, and
- (c) in the case of a life prisoner, that he does not become a danger to the public.
- (2) The Secretary of State may suspend a licence under section 4 or 6 if he believes the person concerned has broken or

is likely to break a condition imposed by this section.

- (3) Where a person's licence is suspended-
 - (a) he shall be detained in pursuance of his sentence and, if at large, shall be taken to be unlawfully at large, and
 - (b) he may apply to Commissioners to consider his case.
- (4) On consideration of a person's case-
 - (a) if the Commissioners think he has not broken and is not likely to break a condition imposed by this section, they shall confirm his licence, and
 - (b) otherwise, they shall revoke his licence.
- (5) Where a person's licence is confirmed-
 - (a) he has a right to be released (so far as the relevant sentence is concerned) by the end of the day after the day of confirmation, or
 - (b) if he is at large, he has a right (so far as the relevant sentence is concerned) to remain at large.

But if he would have a right to be released by the end of a
- (6) listed day (within the meaning of section 4(3)) he has a right to be released by the end of the next non-listed day.
- (7) Detention during suspension of a licence shall not be made unlawful by the subsequent confirmation of the licence.

Release: further provisions

- 10.** (1) This section applies if-
- (a) a prisoner is granted a declaration in relation to a sentence, and
 - (b) the day on which he has a right to be released under section 4 or 6 (so far as that sentence is concerned) falls after the accelerated release day.
- He has a right to be released under the section concerned
- (2) (so far as that sentence is concerned) on the accelerated release day.
- But if the accelerated release day is a listed day (within the meaning of section 4(3)) he has a right to be released on the
- (3) next non-listed day.
- In the case of a sentence passed before the day on which
- (4) this Act comes into force, the accelerated release day is the second anniversary of that day.
- (5) In the case of a sentence-
 - (a) passed after the day on which this Act comes into force, and
 - (b) treated in accordance with section 26 of the Treatment of Offenders Act (Northern Ireland) 1968 as reduced by a period of custody beginning before the day on which this Act comes into force, the accelerated release day is the second anniversary of that day.

Accelerated release.

1968 c. 29 (N.I.).

- (6) In the case of any other sentence passed after the day 'on which this 40 Act comes into force, the accelerated release day is the second anniversary of the start of the sentence

(disregarding custody before the sentence was passed).

- (7) The Secretary of State may by order amend subsections (4) to (6).

- 11.** (1) If Commissioners refuse an application under section 3 they must give notice of their decision and the reasons for it to the prisoner and to the Secretary of State. Notice of decisions.
- (2) If Commissioners grant an application under section 3 they must-
- (a) give notice of their decision to the prisoner and to the Secretary of State. And
- (b) include in the notice a statement of the date specified under section 6(1), if the prisoner is a Life prisoner.
- (3) If Commissioners revoke a declaration under section 8 they must give notice of the revocation and the reasons for it to the prisoner and to the 10 secretary of State.
- (4) If the Secretary of State suspends a licence under section 9(2) he must give notice of the suspension and the reasons for it to the person concerned and to the Commissioners.
- (5) If Commissioners make a decision under section 9(4) they must give 15 notice of their decision and the reasons for it to the person concerned and to the Secretary of State.

- 12.** (1) This section has effect for the purposes of this Act.

Interpretation:
prisoners and
sentences.

- (2) A fixed term prisoner is a prisoner serving a sentence of imprisonment for a fixed term.
- (3) A life prisoner is a prisoner serving a sentence of imprisonment for life.
- (4) References to a Sentence of imprisonment for life include references to a sentence of detention at the Secretary of State's pleasure.
- (5) Two or more consecutive sentences being served by a prisoner shall be 25 treated as a single sentence if they were passed on the same occasion and each-
- (a) is for at least five years, and
- (b) was passed in Northern Ireland for a qualifying offence (within the meaning of section 3).

- 13.** (1) This section relates to evidence and information provided to Commissioners by or on behalf of a person in connection with his application under section 3 or with subsequent proceedings under this Act regarding his sentence. Inadmissibility.
- (2) The evidence or information shall not be admissible in-
- (a) proceedings for an offence under section 2(1), 3, 9, 10, 11 or 18 of the Prevention of Terrorism (Temporary Provisions) Act 1989; 1989 c. 4.
- (b) proceedings for an offence under section 29, 30(1), 31 or 35 of the Northern Ireland (Emergency Provisions) Act 1972; 1996 c. 22.

Act 1996;

- (c) proceedings for an offence under section 5 of the Criminal Law Act 40 (Northern Ireland) 1967 which relates to an offence mentioned in paragraph (a) or (b); 1967 c. 18 (NI.),
 - (d) proceedings for an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence mentioned in any of paragraphs (a) to ©, or of attempting or conspiring to commit an offence so mentioned.
- (3) The evidence or information shall not-
- (a) be admissible in proceedings under paragraph 2, 2A, 3, 5, 6, 1 La, 12, 14 or 15 of Schedule 7 to the Prevention of Terrorism (Temporary Provisions) Act 1989; 1989 c. 4.
 - (b) be admissible in proceedings under article SO or 51 of the Proceeds of Crime (Northern Ireland) Order 1996; 1996 S.I 1299(N.I. 9).
 - (c) be admissible in proceedings under, or the subject of an order under, article 54 of that Order;
 - (d) be the subject of a notice under Schedule 2 to that Order.
- (4) Subsection (2) shall not prevent the admission of evidence adduced on behalf of the accused.
- 14.** (1) The Secretary of State may make orders suspending, or later reviving, the operation of section 3. Power to suspend and revive.
- (2) A suspension order under subsection (1) shall, subject to any later revival order, prevent-
- (a) the granting of a declaration on an application already made under section
 - (b) the release of a person under section 4 or 6 pursuant to a declaration already granted.
- (3) The Secretary of State may make orders suspending, or later reviving, the operation of section 10.
- (4) A suspension order under subsection (1) or (3) shall have no effect in 25 relation to a sentence in respect of which a licence under this Act is current or suspended when the order comes into force; but the order shall have effect in relation to the sentence if the licence is revoked after the order comes into force.

Miscellaneous

- 15.** (1) The Secretary of State may by order provide for sections 3 to 13 to have effect in relation to a prisoner in Northern Ireland who is serving a sentence passed in Great Britain for an offence- Sentences passed outside Northern Ireland.
- (a) within subsection (2) or (3), and
 - (b) committed in connection with terrorism and the affairs of Northern Ireland.
- (2) An offence is within this subsection if it-
- (a) was committed in England and Wales before 10th April

1998, and

- (b) is certified by the Attorney General to be an offence which would, if committed in Northern Ireland, have been a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996. 1973 c. 53.
1978 c.5
1991c. 24.
1996 c. 22
- (3) An offence is within this subsection if it-
- (a) was committed in Scotland before 10th April 1998, and
- (b) is certified by the Lord Advocate to be an offence which would, if committed in Northern Ireland, have been a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996. 1973 c. 53.
1978 c. 5.
1991 c. 24.
1996 c. 22.
- (4) An order under subsection (1) may-
- (a) provide for sections 3 to 13 to have effect with such modifications as may be specified;
- (b) provide for the removal of restricted transfer conditions imposed 1997 c. 43. Under paragraph 5 of Schedule 1 to the Crime (Sentences) Act 1997 (transfer of prisoners within the British Islands);
- (c) make different provision for different cases.
- (5) An order under section 14 shall have effect in relation to the operation of sections 3 to 13 as applied under this section.

General

- 17.** (1) Any order or rules under this Act-
- (a) shall be made by statutory instrument, and
- (b) may include transitional provisions and savings. Orders and rules.
- (2) An order under section 10(7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subject to subsection (4), no order shall be made under section 3(8), 14 or 15 unless a draft has been laid before, and approved by resolution of, 25 each House of Parliament.
- (4) An order under section 3(8) or a suspension order under section 14 may be made without a draft having been approved if the Secretary of State thinks it necessary by reason of urgency, in which case the order-
- (a) shall include a declaration to that effect, 30
- (b) shall be laid before each House of Parliament after being made, and
- (c) shall cease to have effect at the end of the period of 40 days (computed in accordance with section 7(1) of the Statutory Instruments Act 1946) starting with the day on which it was made unless a resolution has been passed by each House approving it. 1946c. 36.
- (5) If an order under section 3(8) or 14 ceases to have effect by virtue of subsection (4)(c) above, the detention of a person while the order was in force shall not be treated as unlawful by reason only of the order's ceasing to have effect.

- (6) Rules under Schedule 2 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
18. *Expenditure incurred by the Secretary of State by virtue of this Act shall be paid out of money provided by Parliament.* Money.
19. (1) Subject to subsections (2) and (3), this Act extends to Northern Ireland only. Extent.
- (2) An amendment by this Act of any other Act has the same extent as the Act amended.
- (3) Sections 13 and 15 extend to the whole of the United Kingdom.
20. This Act shall come into force on a day appointed by order made by the Secretary of State. Commencement.
21. This Act may be cited as the Northern Ireland (Sentences) Act 1998. Short title.

SCHEDULES
SCHEDULE 1
COMMISSIONERS

Section 1.

Tenure

1. A Commissioner-
- (a) shall hold office in accordance with the terms of his appointment, and
- (b) may resign by notice in writing to the Secretary of State.
2. The Secretary of State may dismiss a Commissioner if satisfied-
- (a) that he has without reasonable excuse failed to carry out his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal,
- (b) that he has been convicted of a criminal offence,
- (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
- (d) that he is unable or unfit to carry out his functions.

Remuneration and allowances

3. (1) The Secretary of State shall pay such remuneration, fees and allowances as he thinks fit to or in respect of a Commissioner.
- (2) If a person ceases to be a Commissioner otherwise than on the expiry of his term of office, the Secretary of State may pay him compensation if in the Secretary of State's opinion special circumstances make it appropriate.

Staff premises, etc.

4. The Secretary of State shall provide for the Commissioners the services of such staff and the use of such premises and other facilities, as he thinks appropriate.

Annual report

5. (1) The chairman shall, as soon as reasonably practicable after the end of each financial year, make a report to the Secretary of State on the performance of the Commissioners' functions during the year.
- (2) The Secretary of State shall lay a copy of the report before each House of Parliament.
- (3) In sub-paragraph (1) "financial year" means-
- (a) the period starting with the date on which the first Commissioner is appointed and ending with the second 31st March following that date, 35 and
- (b) each successive period of twelve months.

Disqualification of Commissioners

6. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert- 1975 c. 24.
- "Sentence Review Commissioner".
7. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert- 1975 c. 25.
- "Sentence Review Commissioner".
8. In section 4 of the Northern Ireland (Elections) Act 1998 (disqualification) after subsection (4) insert- SCH 1
1998 c. 12.
- "(4A) A Sentence Review Commissioner is disqualified for membership of the Assembly."

Disapplication of Acts

9. The following provisions shall not apply in relation to the appointment of Commissioners-
- (a) section 19 of the Northern Ireland Constitution Act 1973 (discrimination by public authorities), 1973 c. 36.
- (b) section 17 of the Fair Employment (Northern Ireland) Act 1976 (discrimination by employers). 1976c.25

SCHEDULE 2
COMMISSIONERS' PROCEDURE

Section 2..

Rules

1. The Secretary of State may make rules prescribing the procedure to be followed in relation to proceedings of the Commissioners wider this Act; and in particular rules may make provision for the matters set out in this Schedule.

Allocation of cases

2. The rules may provide-
 - (a) for the allocation of proceedings to panels of Commissioners;
 - (b) for the taking of specified decisions by a single Commissioner.

Conduct of proceedings

3. The rules may require the Commissioners conducting the
 - (1) proceedings to include a psychiatrist or psychologist in specified circumstances.

The rules may prevent a person who is serving a sentence of
 - (2) imprisonment or detention from representing or acting on behalf of a prisoner.
 - (3) The rules may provide for applications to be dealt with in the order decided by the Commissioners.

Applications

4. The rules may require an application to be made in a specified form and to be accompanied by specified documents.

Evidence and information

5. (1) The rules may make provision about evidence and information, including provision-
 - (a) requiring Commissioners to send to the Secretary of State copies of applications and such related documents as the rules may specify;
 - (b) requiring the Secretary of State to provide specified information to the Commissioners;
 - (c) for the giving of evidence by or on behalf of the Secretary of State, the Royal Ulster Constabulary and others;
 - (d) about the way in which information or evidence is to be given;

for evidence or information about a prisoner not to be disclosed to anyone other than a Commissioner if the
 - (e) Secretary of State certifies that the evidence or information satisfies conditions specified in the rules;
 - (f) preventing a prisoner from calling any witness without leave of Commissioners.

SCH. 2

Exclusion of persons from proceedings

6. The rules may permit Commissioners to hold proceedings in
 - (1) specified circumstances in the absence of any person, including the prisoner concerned and any representative appointed by him.
Where prisoner and any representative appointed by him are excluded from proceedings by virtue of sub-paragraph (1), the
 - (2) Attorney General for Northern Ireland may appoint a person to represent the prisoner's interests in those proceedings.

Successive applications

7. The rules may prevent successive applications under any provision of this Act being made in specified circumstances.

Legal aid

8.
 - (1) The rules may allow Commissioners to award a prisoner money for legal advice or representation.
 - (2) The Secretary of State shall pay any sums which the Commissioners award.