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The Employment of Ex-Prisoners Released under the Belfast Agreement

1 Introduction

This paper is written in the context of the consideration by the Committee for Finance and Personnel of the Civil Service (Special Advisers) Bill 2012¹, which includes a provision to exclude individuals with a serious criminal offence from the post of special adviser (Clause 2). In response to discussions within the Committee², this paper briefly considers the effectiveness of guidance for the employment of prisoners released in relation to the Belfast Agreement³.

¹ Call for Evidence on the Civil Service (Special Advisers) Bill: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Public-Notice/>.

² Committee for Finance and Personnel 3 October 2012.

³ For a summary and background to the Bill, see Research and Information Service Bill Paper 141/12 *The Civil Service (Special Advisers) Bill 2012*: http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/14112.pdf.

2 The Context of the Employment of Ex-Prisoners

Among the commitments in the Belfast Agreement is the following⁴:

The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Subsequent to the commitments of the Belfast Agreement, the following is stated in the St Andrews Agreement⁵:

The Government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners.

3 The Employment of Ex-Prisoners

Studies of former prisoners in Northern Ireland have highlighted difficulties in finding employment due to having unspent convictions⁶.

Sir George Quigley and Sir Nigel Hamilton were tasked with convening a working group on the employment of ex-prisoners, which led to the publication of voluntary guidance for employers. This guidance recommends that convictions for conflict-related offences prior to the Belfast Agreement should not be taken into account in applications for employment unless materially relevant to the employment being applied for⁷. In response to difficulties reported by ex-prisoners in accessing employment, the Consultative Group on the Past suggested the guidance was not well used and that it should be set in statute⁸.

A review of the guidance was completed in March 2012. The conclusions are summarised as follows⁹:

- 1) Where the Employers' Guidance has been implemented by employers it has functioned well and without difficulty;

⁴ Belfast Agreement, 'Prisoners': <http://www.nio.gov.uk/agreement.pdf>.

⁵ Agreement at St Andrews, Annex B: http://www.nio.gov.uk/st_andrews_agreement.pdf.

⁶ For example, Peter Shirlow (2001), *The State they are In: Republican Ex-Prisoners and Their Families*, Belfast: Tar Isteach; Adrian Grounds and Ruth Jamieson (2003), 'No Sense of an Ending: Researching the experience of imprisonment and release among Republican ex-prisoners' in *Theoretical Criminology*, 7(4) 347-362; Bill Rolston (2007), 'Demobilisation and Reintegration of Ex-combatants: The Irish Case in International Perspective' in *Social Legal Studies*, 16(2) 259-280; Kieran McEvoy (2008), *Enhancing Employability in Prison and Beyond: A Literature Review*, Belfast: NIACRO; Bill Rolston (2011), *Review of Literature on Republican and Loyalist Ex-Prisoners*, Jordanstown: University of Ulster; etc.

⁷ Office of the First Minister and deputy First Minister (2007), *Recruiting People with Conflict-Related Convictions: Employers' Guidance*, Belfast: OFMdfM, p.4: http://www.ofmdfmi.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf.

⁸ Consultative Group on the Past (2009), *Report of the Consultative Group on the Past*, Belfast: CGPNI, p.82.

⁹ Peter Shirlow, Fergus Devitt, Brendan Mackin and Alan Mercer (2012), *Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions*, p.5.

- 2) A range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement;
- 3) Given this, the view of the Review Panel is that the Employers' Guidance should be complemented by legislative change;
- 4) The Panel recommends either –
 - a. removing Article 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998, or
 - b. allowing Article 2 (4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998;
- 5) In the interim and in the absence of the Guidance being supported by statutory change a review panel should exist as an appeal mechanism for job applicants with conflict-related convictions;
- 6) The Panel notes the increased cooperation between ex-prisoner groups from across the political divide and recommends that these groups should continue to work together to engage with employers and develop employability and training initiatives to meet employer needs.

Article 2(4) of the 1998 Order, as referred to in conclusion 4 above, states the following¹⁰:

In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.

The Article was used in the appeal to the House of Lords in 2009 by John McConkey and Jervis Marks¹¹, who were refused employment on the grounds of their conflict-related convictions.

¹⁰ Section 2 of the Fair Employment and Treatment (Northern Ireland) Order 1998:

<http://www.legislation.gov.uk/nisi/1998/3162/article/2/made>.

¹¹ [2009] UKHL 24 20 May 2009: <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm>.