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The Release of Prisoners as Part of the Belfast Agreement 1998

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 summarises the circumstances and conditions of the release of prisoners as part of the Belfast Agreement 1998³.

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 Prisoner Releases and the Belfast Agreement

Secondary sources indicate that the release of prisoners with conflict-related convictions was seen as a key demand and key concession for various negotiators⁴, was seen as controversial to many⁵ and was a major area of conflict during the discussions⁶, reflected by being one of the two remaining issues to be resolved on the eve of the Belfast Agreement⁷. The release of prisoners was to take place over a period of two years, which was a compromise of proposals of longer and shorter periods⁸, but was seen as a major confidence-building measure of the agreement⁹.

Full primary source documentation on the negotiations is not in the public domain.

With regard to prisoners, the Belfast Agreement states the following¹⁰:

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.
2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.
3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.
4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.
5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support

⁴ Jeremy Smith (2002), *Making Peace in Ireland*, London: Longman, pp.229, 240.

⁵ G.K.Peatling (2004), *The Failure of the Northern Ireland Peace Process*, Dublin: Irish Academic Press, pp.10, 12, 18, 74.

⁶ Graham Dawson (2007), *Making Peace with the Past? Memory, Trauma and the Irish Troubles*, Manchester: Manchester University Press, p.23.

⁷ The other being the decommissioning of paramilitary weapons, Frank Millar (2004), *David Trimble: The Price of Peace*, Dublin: Liffey Press, p.66.

⁸ Deaglán de Bréadún (2008), *The Far Side of Revenge: Making Peace in Northern Ireland*, Cork: Collins, p.132.

⁹ John Bew, Martyn Frampton and Iñigo Gurruchaga (2009), *Talking to Terrorists: Making Peace in Northern Ireland and the Basque Country*, London: Hurst, p.147.

¹⁰ Belfast Agreement, 'Prisoners': <http://www.nio.gov.uk/agreement.pdf>.

both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Provisions for prisoners under the Agreement were introduced by the Northern Ireland (Sentences) Act 1998¹¹. This provides for the establishment of the Sentence Review Commissioners¹² (Section 1), to whom applications may be made for release¹³. The four conditions for release are as follows (Section 3):

1. The prisoner has been sentenced for life or at least five years for a scheduled offence in relation to the conflict in Northern Ireland before 10 April 1998
2. The prisoner is not a supporter of a specified organisation¹⁴
3. The prisoner is not likely to become a member of a specified organisation or to be involved in the commission, preparation or instigation of acts of terrorism
4. The prisoner would not be a danger to the public

From 1998 to 2012, 482 prisoners have been released under these provisions, 21 of whom have been recalled¹⁵.

¹¹ Northern Ireland (Sentences) Act 1998: <http://www.legislation.gov.uk/ukpga/1998/35/data.pdf>.

¹² Website of the Sentence Review Commissioners: <http://www.sentencereview.org.uk/>.

¹³ See also House of Commons Library Research Paper 98/65 *Northern Ireland: The Release of Prisoners under the Northern Ireland (Sentences) Bill*, which sets of the background to the Northern Ireland (Sentences) Bill: <http://www.parliament.uk/documents/commons/lib/research/rp98/rp98-065.pdf>.

¹⁴ These are subject to change, as designated by the Secretary of State, currently the Continuity Irish Republican Army, the Loyalist Volunteer Force, The Orange Volunteers, The 'Real' Irish Republican Army, The Red Hand Defenders and Óglaigh na hEireann.

¹⁵ Sentence Review Commissioners (2012), *Annual Report 2011/2012*, Norwich: The Stationery Office, p.25.