

SENTENCE REVIEW COMMISSIONERS

Annual Report 2001

Report for the year ended 31st March 2001

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

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SENTENCE REVIEW COMMISSIONERS

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Joint Chairmen

Sir John Blelloch KCB and Brian Currin

The Rt Hon Dr John Reid MP
Secretary of State for Northern Ireland
Castle Buildings
Stormont
BELFAST
BT4 3SG

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 your predecessors Reports for 1998/99 and 1999/2000.

This, our third, covers the year ended 31st March 2001. The layout and, generally, the content of this Report follow the lines adopted in previous years. Thus Chapter One sets out the background to the Commissioners' task and Chapter Two describes some general issues we addressed during the year and the conclusions we reached about them. Chapter Three gives details of the caseload with which we dealt, which was again lower than that in the previous year. Seventeen new applications were received, and twenty-two substantive determinations were issued of which ten related to applications received before 31st March 2000. During the year four oral hearings were held and at the end of it there were six applications outstanding, five of which were awaiting oral hearings. Finally Chapter Four deals with staff and resources, both of which were reduced with the fall in caseload.

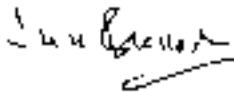
Two contingencies provided for in the legislation arose for the first time in the year. Section 8 of the Act requires the Secretary of State to apply to the Commissioners to revoke a substantive determination if, at any time before the prisoner is released, he believes that one or more of the relevant conditions for early release is no longer satisfied. The Commissioners received the first application under this section in July 2000 in respect of two life sentence prisoners who had been due to be released but were charged with a number of violent offences alleged to have taken place when they were on pre-release home leave.

Second, the Commissioners considered for the first time an application from a prisoner for the confirmation of a licence that had been suspended by the Secretary of State. Besides being the first application of its kind, it also involved consideration of both "open" material and a further body of material that had been certified as "damaging information" by the Secretary of State. In a substantive determination dated 9th January 2001, the Commissioners upheld the Secretary of State's decision and revoked the licence. Leave was subsequently granted for this determination to be made subject to judicial review and this process had not been completed by the end of the year. The outcome of that review and any action taken following it will be included in our next Report. Two other judicial review cases were decided in the year, both in the Commissioners' favour.

Last year we referred to discussion with your officials, drawing on our experience of the 1998 Act, about arrangements for dealing with life sentence prisoners in the future. These discussions continued, culminating, in March 2001, with a written submission by the Commissioners as a part of the public consultation on a proposal for a Draft Life Sentences (Northern Ireland) Order 2001 with its associated draft rules. We have been pleased to be able to contribute to this process.

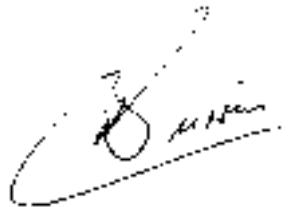
Finally, as joint Chairmen, we should like once again to place on record our appreciation of and our gratitude for the commitment and expertise that our fellow Commissioners have devoted to the task. All of us would, similarly, like to record our thanks to our Secretariat for all their cheerful and expert support.

Yours sincerely



SIR JOHN BLELLOCH, KCB

Joint Chairman



BRIAN CURRIN

Joint Chairman

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CHAPTER 1



CHAPTER ONE

BACKGROUND

The Report

This Report is the third to be made by the Sentence Review Commissioners ('the Commissioners') and covers the year from 1st April 2000 to 31st March 2001.

The Agreement

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

The part of the Agreement dealing with Prisoners (Annex A) 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 Annexes B & C.

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 10th 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 were 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. Such offences are tried before a judge sitting alone in a non-jury ('Diplock') court.

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.

On 30th July 1998, the Secretary of State made the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1998, specifying the following four organisations:

The Continuity Irish Republican Army

The Loyalist Volunteer Force

The Irish National Liberation Army

The 'Real' Irish Republican Army

On 18th November 1998, the Secretary of State made the Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998, removing the Loyalist Volunteer Force from the list of specified organisations.

On 11th April 1999, the Secretary of State made the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 1999, removing the Irish National Liberation Army from the list of specified organisations and adding the Red Hand Defenders and the organisation using the name 'The Orange Volunteers'.

Thus the list of specified organisations that applied throughout the period covered by this Report was:

The Continuity Irish Republican Army

'The Orange Volunteers'

The 'Real' Irish Republican Army

The Red Hand Defenders

The Accelerated Release Date

The Act also provides that any prisoners given release dates after the second anniversary of the Act's commencement will be released by the Secretary of State on that day, or when they have served two years in prison, whichever is the later. The Secretary of State is empowered to vary these arrangements by subordinate legislation.

The latter power was exercised on 25th July 2000 through the making of the Northern Ireland (Sentences) Act 1998 (Amendment of Section 10) Order 2000. This further provides that a prisoner cannot be released at any time when an application for revocation of the Commissioners' declaration has yet to be finally determined. This amendment was made to overcome the risk that two prisoners who had been the subjects of such an application in July 2000 would have had to be released under the accelerated release provisions before the Commissioners had had sufficient time to consider the application. Other issues raised by the application are discussed in Chapter Two.

The remaining prisoners eligible for accelerated release were released on 28th July 2000.

The Commissioners

The two joint Chairmen and eight other Commissioners re-appointed by the Secretary of State on 24th July 2000 to serve until 31st July 2005 are:

<p>Sir John Blelloch KCB Joint Chairman</p>	<p>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.</p>
<p>Mr Brian Currin Joint Chairman</p>	<p>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.</p>
<p>Dr Silvia Casale</p>	<p>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.</p>
<p>Dr Peter Curran</p>	<p>Consultant psychiatrist based at the Mater Hospital, Belfast. 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 for eight years.</p>

- 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.
- Dr Adrian Grounds** University Lecturer in Forensic Psychiatry at the Institute of Criminology and Department of Psychiatry at the University of Cambridge since 1987. Honorary Consultant Psychiatrist at Addenbrooke's Hospital, Cambridge. A forensic psychiatrist with an interest in the effects of long-term imprisonment.
- Ms Clodach McGrory** A Barrister with a particular interest in human rights work. Practised at the Bar of Northern Ireland from 1990 to 1995. Subsequently worked at the Law Centre (Northern Ireland). Member of the Standing Advisory Commission on Human Rights 1998-99. Appointed a member of the Irish Human Rights Commission in January 2001.

[Dr Duncan Morrow](#)

Lecturer in Politics at the University of Ulster and a member of the Community Relations Council. 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.

[*Mr Dave Wall](#)

Chief Executive of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) 1987-2000. Former member of the Board of the Northern Ireland Partnership and of the sub-committee of the Northern Ireland Voluntary Trust responsible for allocating European Union Peace and Reconciliation funding to ex-prisoner organisations.

[All Commissioners serve on a part-time basis.](#)

*Mr Wall resigned as a Commissioner on 9th January 2001, having been appointed to a senior position in the Department for Social Development.



[Standing:](#) Dr Peter Curran, Mr Dave Wall, Dr Duncan Morrow, Mr Ian Dunbar, Dr Adrian Grounds

[Seated:](#) Ms Clodach McGrory, Mrs Mary Gilpin, Sir John Belloch, Mr Brian Currin, Dr Silvia Casale

CHAPTER 2



CHAPTER TWO

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.

The Commissioners' first and second Reports explained how, at a series of plenary meetings, involving all Commissioners, detailed procedures were developed to deal with applications as efficiently as possible. These plenary meetings also addressed the approach that the Commissioners would take in considering the applications so as to ensure that the eligibility of applicants would be fully and fairly examined.

The Reports explained in detail how the Commissioners arrived at the approaches to be taken in relation to:

- Damaging Information
- Danger to the Public
- Danger to the Public – Short Time Served
- Determinate Sentence Reduced on Appeal
- Determining Eligibility
- Incorrect or Incomplete Applications
- Legal Aid
- Oral Hearings
- Prioritising Applications
- Qualifying Offences – "Terrorism and the affairs of Northern Ireland"
- Qualifying Offences – Unexpired Portions of Non-Qualifying Offences
- Recall Cases
- Setting a Date
- Transferee Cases

During the year covered by this Report, the Commissioners have continued to have plenary meetings and to discuss in depth the approach to be taken 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.

Revocation Cases

Section 8 of the Act requires the Secretary of State to apply to the Commissioners to revoke a substantive declaration if, at any time before the prisoner is released, he believes that one or more of the relevant conditions for early release is no longer satisfied as a result of a change in the prisoner's circumstances.

The Commissioners received the first applications under this Section in July 2000 when two life sentence prisoners, who had been due to be released on the accelerated release date (28th July), were charged with a number of violent offences arising from an incident alleged to have taken place when they were on pre-release home leave.

The Commissioners gave consideration to the particular procedural and evidential issues that might arise in such cases, concluding that:

- where the prisoner was facing a fresh criminal charge, the Commissioners must, from the outset, have access to the same quality of information from the Secretary of State as would be made available to the court in respect of a bail application;
- the matters likely to be at issue were such that the Commissioners would be more likely to request supplementary information than in normal applications;
- where written evidence was disputed, the author must be prepared to attend the oral hearing to answer questions; and
- where a criminal prosecution was pending, it may, having had regard to the views of both parties, be sensible to defer consideration of the application pending its outcome.

Recall Cases

During the year, the Commissioners considered for the first time an application from Mr John Adair for the confirmation of a licence that had been suspended by the Secretary of State. The proceedings were complicated by the fact that the evidence that had persuaded the Secretary of State that the applicant had broken, or was likely to break, the conditions of his licence by 'becoming concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland' comprised a body of normal 'open' material and a further body of material that had been certified as 'damaging information' by the Secretary of State.

The Commissioners' preliminary indication was that they were minded to confirm the applicant's licence. The Secretary of State challenged this and submitted an additional body of 'open' evidence prior to the oral hearing and additional 'damaging information' at the hearing. The Commissioners' substantive determination was that the licence should be revoked. The applicant was subsequently granted leave to have the Commissioners' determination judicially reviewed. As at 31st March 2001, no date for the hearing had been set. This application gave rise to a range of new procedural issues, the implications of which will be considered by the Commissioners once the outcome of the judicial review is known.

Human Rights Act 1998

The provisions of the Human Rights Act 1998 came into force on 2nd October 2000. From the outset of their work, the Commissioners have sought to interpret the legislation within which they operate in a manner compatible with the European Convention of Human Rights. They have taken particular account of Convention principles – especially those in article 6 dealing with the right to a fair hearing - when developing their own procedures. Since the coming into force of the Human Rights Act, they have further refined their approach in the light of the developing body of case law arising from the Act.

DRAFT LIFE SENTENCES LEGISLATION

During the year, the Commissioners were invited to comment, in the light of their experience since 1998, on proposals being developed by the Northern Ireland Prison Service for the review of mandatory and discretionary life sentences being served by prisoners who did not qualify for early release under the Northern Ireland (Sentences) Act 1998.

Discussions on various aspects of the proposals took place with officials of the Prison Service and the issues were further discussed in detail by the Commissioners at plenary meetings. In March 2001, the Commissioners made a written submission as part of the public consultation on the Proposal for a Draft Life Sentences (Northern Ireland) Order 2001 and the associated draft Rules.

CHAPTER 3



CHAPTER THREE

CASEWORK

This chapter describes the procedures at each stage in the processing of an application and also shows the outcome of the various decision-making processes.

Receipt of Applications

When an applicant submits an application, a file is opened and a Commissioner is appointed to be the 'single Commissioner' responsible for taking administrative decisions about the application.

Where there is a fundamental deficiency (e.g. no sentence of 5 years or more) the applicant is advised that the Commissioners will be unable to consider the application unless a qualifying sentence can be put forward. Where no such information is provided, the application is classed 'not proceeded with' and the file is closed.

Otherwise, within seven days of their receipt, a copy set of application papers is sent to the Prison Service to enable the Secretary of State's response to be made.

Receipt of Response Papers

The Secretary of State is required to respond to the application papers within twenty-one days of receiving them.

When response papers are received they are checked against the application papers, and copied to the applicant within seven days. If there are material discrepancies, the single Commissioner will write to the applicant inviting him or her to correct the application.

Further information may also be requested in order to enable a panel properly to consider the application.

Fig 1 Applications and Response Papers Received

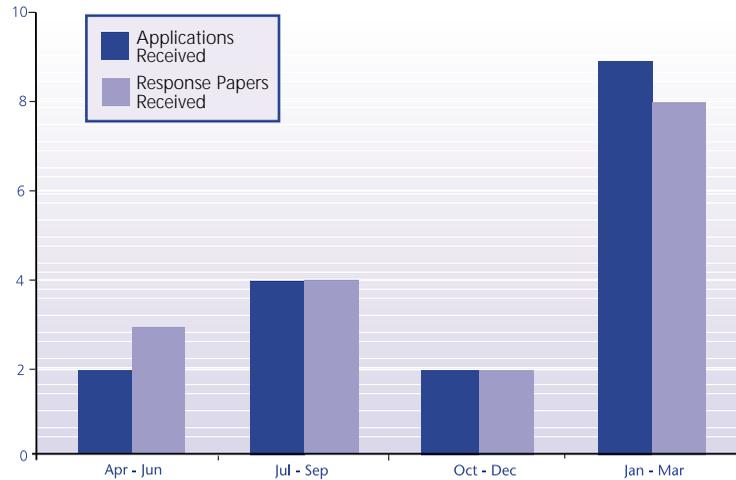


Fig.1 shows the numbers of applications and response papers received each quarter. Seventeen applications and sets of response papers were received in the 12-month period covered by the report.

Consideration by Panel

Once satisfied that the application and response papers are complete and consistent, the single Commissioner assigns the application for consideration by a panel of three Commissioners.

The panel then considers the application, recording in detail its conclusions on each of the criteria that have to be satisfied in order for the applicant to qualify for early release. Its overall conclusion is given in the form of a preliminary indication.

Fig 2 Preliminary indications issued and challenges received

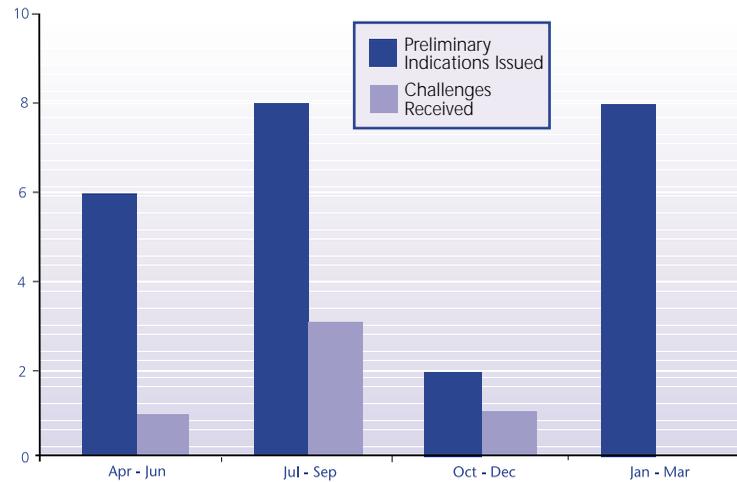


Fig.2 shows the number of preliminary indications issued in each quarter. It also shows the number challenged. Two preliminary indications issued in respect of normal applications were challenged by the applicant. In both, the Commissioners had indicated that they were minded to refuse the application, one because there was no qualifying offence and the other because they were not satisfied that the offence had been a terrorist offence connected with the affairs of Northern Ireland. Two preliminary indications issued in favour of applications by the Secretary of State for revocation of declarations of eligibility for early release were challenged by the prisoners on the basis that they would not, if released, be a danger to the public. The final challenge was against a preliminary indication to the effect that the Commissioners were minded to confirm a licence which had been suspended by the Secretary of State because he considered the prisoner to have breached its conditions.

Oral Hearings

Both parties are required to respond to the preliminary indication within fourteen days, indicating whether or not they wish to challenge it. If either (or both) of the parties challenge the preliminary indication, it is set aside and the application is considered *de novo* at an oral hearing.

During the period of this report, four oral hearings were held. In three, the initial decision to refuse the application was upheld following a challenge by the applicant. In the fourth, the initial decision to grant the application was overturned following a challenge by the respondent.

At 31st March 2001 there were five oral hearings pending.

Issue of Substantive Determination

The substantive determination is issued as soon as possible after both parties signify that they do not wish to challenge the preliminary indication or, where there has been an oral hearing, as soon as possible thereafter. Fig.3 shows the numbers of substantive determinations issued in each quarter.

Fig 3 Substantive determinations issued

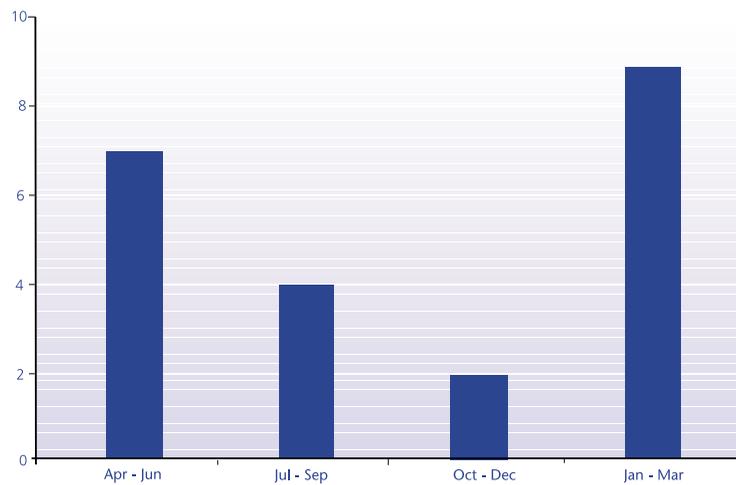


Table 1 Cumulative Business Trends

	2000										2001		
	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Applications received	580	580	582	582	585	586	586	588	588	588	588	589	597
Applications not eligible	53	53	53	53	53	53	53	53	53	53	53	53	53
Applications sent to respondent	525	525	527	527	530	531	531	532	533	533	533	534	542
Responses received	524	525	525	527	528	531	531	532	533	533	533	534	541
Applications not proceeded with after response received	54	54	*53	53	53	53	53	53	53	53	53	53	53
Applications withdrawn before issue of preliminary indication	2	2	2	2	2	2	2	2	2	2	2	2	2
Preliminary indications issued	464	468	469	470	472	477	478	478	479	480	480	481	488
Applications withdrawn after issue of preliminary indication	5	6	6	6	6	6	6	6	7	7	8	8	8
Challenges received (less those subsequently withdrawn)	25	25	26	26	26	29	29	29	29	30	30	30	30
Oral hearings held	18	18	19	20	20	20	20	20	21	21	22	22	22
Substantive determinations issued	453	453	458	459	461	464	464	465	465	466	467	467	475
Applications under consideration	13	12	10	9	10	8	8	9	8	7	5	6	6

* A previously ineligible application was proceeded with in May 2000, once the applicant had completed a sentence for a non-qualifying offence (rape), the remainder of which the Court had ordered him to serve before commencing a further sentence imposed for a qualifying offence.

Table 1 shows the state of business at the end of each month. In total, twenty-two applications were determined during the year, of which eighteen were granted, two refused, and one granted in respect of one sentence but refused in respect of another. The remaining determination revoked a licence that had been suspended by the Secretary of State. Six applications were still being processed at 31st March 2001.

Where applications were in the process for an abnormally long period, it was generally because the Commissioners were awaiting professional reports requested by them or by the applicant, or because further legal proceedings were pending against the applicant.

Judicial Review

In the course of the year, three applicants applied for leave to have the Commissioners' substantive determination judicially reviewed. One was refused leave and two were granted leave. Following a hearing, the Commissioners' decision in the first such case was upheld. As at 31st March 2001, no date had been set for the hearing of the second application.

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 staff numbering 5 for the greater part of the year covered by this report.

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

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2001 was:

	£000
Programme expenditure:	
Commissioners' remuneration ¹	66
Commissioners' travel, accommodation and expenses	46
Legal advice or representation for applicants	12
Legal costs	16
Premises	87
General administration	40
Running costs:	
Staff salaries etc	154
Miscellaneous	2
Total Expenditure	423

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

ANNEX A



ANNEX A

THE AGREEMENT

Prisoners

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

ANNEX B



ANNEX B

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 and 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 (Specified Organisations) Order 1999 and the Northern Ireland (Sentences) Act 1998 (Amendment of Section 10) Order 2000.

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 10th April 1998;
- the offence was a 'scheduled' offence and you were tried by a no-jury 'Diplock' court in Northern Ireland (or an equivalent offence if you were tried 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 -
 - The Continuity Irish Republican Army
 - The 'Real' Irish Republican Army
 - The Red Hand Defenders
 - The 'Orange Volunteers', being the organisation in whose name a statement described as a press release was published on 14 October 1998.

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

- 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 28th July 1998, the earlier of:
 - the date when you have served one third of the sentence (plus any remission you have lost), or
 - the date when you have served two years of the sentence.

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

- If you are serving a life sentence imposed before 28th 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
 - the date when you have served two years of the sentence.

The former date will be determined by the Commissioners.

- If you were sentenced after 28th July 1998:
 - the date when you have served two years of the 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.

N.B. The two-year period referred to above may be changed by Parliament at any time.

How do I apply?

You apply by sending to the Sentence Review Commissioners, P.O. Box 1011, 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.

Who can help me 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

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 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 release 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 the Secretary of State have the substantive determination revoked?

- The Secretary of State is required to apply to the Commissioners to revoke their substantive determination if at any time before you are released he believes that:
 - due to a change in your circumstances, or a change in the list of specified organisations, you no longer satisfy the conditions for early release; or
 - evidence or information that was not available to the Commissioners when they granted the determination suggests that you no longer satisfy the conditions for early release.
- If this happens, the Commissioners will reconsider your eligibility in the same way as they considered your original application. Even if you complete two years of your sentence while the Secretary of State's application is under consideration, you will still have to remain in prison until it is finally determined by the Commissioners.

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 C



ANNEX C

PROCEDURAL GUIDELINES FOR ORAL HEARINGS

These guidance notes have been drafted for the assistance of parties involved in the planning and conduct of oral hearings within the terms of the Northern Ireland (Sentences) Act 1998, (hereafter referred to as 'the Act') and the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules ('the Rules').

The Commissioners are specifically required, within the terms of rule 6(1), to make available to applicants and their representatives' information regarding any procedures they adopt in dealing with each case. These notes deal with the conduct of oral hearings arising out of a challenge to the preliminary indication by either party. These hearings are 'substantive hearings' within the context the Act.

Preliminary Matters

Within the terms of rule 4, each case is allocated to a panel of three Commissioners. Where the applicant is a life sentence prisoner at least one of the panel members will be a psychiatrist. Each of the panel members is entitled to an equal voice on questions of law, procedure and substance. No decisions are reserved for any particular member. The functions of the panel include giving preliminary indications, making substantive determinations and holding hearings, where required. In each case, one of the panel members is appointed to act as the chair of the panel. At the oral hearing, the chair will take account of the views of the other members in making decisions.

The chair will introduce the panel and all other persons present at the hearing and will explain the roles of the various parties. It is the responsibility of the Secretariat to keep an accurate record and therefore notes will be taken during the proceedings.

Both parties have the right to be represented at the hearing. The applicant should normally indicate the name, address and occupation of his or her appointed representative on the initial application form. Otherwise, the

applicant may make an ancillary application for the appointment of a representative. Where the applicant has not appointed a representative, the Commissioners may, with his or her consent, appoint an eligible person to act as such.

Other persons present at the hearing will include witnesses, who may be in attendance at the request of either of the parties or the panel, and anyone else, including other Sentence Review Commissioners, who may be there to observe the proceedings. Only the three panel members will play a role in the deliberations of the panel during and subsequent to the hearing.

Informality

In accordance with the requirements of rule 19(2) the hearing will be conducted in a fair manner, avoiding inappropriate formality and excessive length. The role of any lawyers present is a facilitative one. They are not the focus of the hearing and in this context legal language is to be avoided so far as is possible.

There is a fundamental difference between this type of inquisitorial hearing and judicial procedures which are generally adversarial by nature. The purpose of the oral hearing is to provide an opportunity for all available relevant evidence to be brought to the attention of the panel, as if for the first time, in order to assist them in coming to a determination on the issues. For this reason, 'neutral' language will be employed throughout the proceedings rather than the sort of terminology associated with adversarial judicial proceedings such as, for example, 'cross-examination' and 're-examination'.

The Issues

It is important to bear in mind the requirements of rule 15(3), namely that where either party indicates in accordance with rule 14(6) that s/he wishes to challenge the preliminary indication, the panel is obliged to disregard the preliminary indication and make the substantive determination pursuant to a hearing. This means that the oral hearing is not an appeal against the preliminary indication but is an entirely fresh hearing of the facts. Technically, therefore, the onus is on the applicant to establish *de novo* that s/he satisfies each of the qualifying conditions and does not fall foul of any of the

disqualifying factors. It is the responsibility of the respondent to provide the panel with any information relevant to the decisions which the panel will have to make. There will be no necessity for either the applicant or the respondent to present oral evidence at the substantive hearing in respect of non-contentious issues.

The chair will identify the non-contentious issues at the outset and indicate whether the panel accepts the evidence before it with regard to these matters. This would essentially be the information provided on the application form and in the response papers. The acceptance of these documents as evidence in respect of the non-contentious matters will be noted in the record of proceedings, as will all other evidence. The chair will then identify the issues for consideration at the hearing.

All oral hearings will be triggered either by a challenge to a preliminary indication to grant or refuse an application or, for a life sentence prisoner, by a challenge in respect of the release date indicated in a preliminary indication. In the latter type of case the primary issue for consideration will be the length of the period which the prisoner would have been likely to have spent in prison under the sentence. In such cases, the previous indication of the panel would have been disregarded and the purpose of the oral hearing is a search for relevant information which will assist the panel in making a substantive determination with regard to this matter.

In all other life sentence cases the parties will also be given the opportunity to make submissions and present evidence on the issue of sentence length, in addition to other relevant issues. It will be a matter for the discretion of the chair whether this issue should be addressed separately after all other evidence in relation to the eligibility criteria has been presented.

Damaging Information

The chair will indicate whether there is any damaging information in the case. If so, in accordance with rule 19(7), the applicant, his/her representative and any witness appearing for him will be required to leave the hearing when argument is being heard or evidence is being examined which includes or relates to any such damaging information.

There is no provision in the Act or in the Rules for the Applicant to challenge a certification by the Secretary of State of any information, document or evidence as damaging information at the hearing. However, the applicant will be given an opportunity to indicate his/her view with regard to the appointment of a representative under Schedule 2, paragraph 7(2).

Ancillary matters

Under rule 16(5) Commissioners may list ancillary and substantive hearings together. It is also possible that ancillary applications may be made at the hearing itself [rule 11]. If an ancillary application is made during the course of the hearing the panel is obliged to consider whether to adjourn the hearing in order to allow the other party to respond to the application.

In the event of an adjournment, rule 20(2) requires the panel to give such directions as they consider appropriate for ensuring the prompt consideration of the case at a resumed hearing. In light of this provision the panel will specify a reasonable date within which the other party will be required to submit his response to any ancillary application made during the course of the hearing.

Under rule 11(6), any decision made by a panel at an oral hearing with regard to ancillary matters is a final decision.

The chair will indicate whether there are any outstanding ancillary matters and deal with these prior to the opening statements from the parties on the substantive matters.

Opening statements

This is essentially an opportunity for each party to highlight the key points which they wish to draw out from the body of evidence before the panel.

Where the parties have elected to be represented, the opening statements will be made by their representatives. There is no requirement to provide written submissions. However, any written submissions which the parties may wish to provide, either in advance or on the date of the hearing, would be welcomed. Written submissions received in advance of the hearing will be copied to the other party immediately.

In any event, the chair will ensure that each party has been made aware at the outset of all matters which the other party proposes to raise. This is important so that both parties have the opportunity to address all of the relevant issues when presenting their evidence. The parties, or their representatives, should also indicate in their opening statements the substance of the evidence which will be given by each witnesses whom they intend to call.

Presentation of evidence

As stated above, the onus is on the applicant to establish *de novo* that s/he satisfies all of the criteria. However, as the fundamental nature of these proceedings is inquisitorial, in practical terms oral evidence need only be presented in respect of the contentious matters as identified at the outset by the chair.

The applicant may or may not wish to give evidence and is under no obligation to do so. No adverse inference will be drawn from the failure of the applicant to give evidence. Where the applicant does choose to address the panel his or her evidence will usually be given before any other evidence is presented in the absence of any practical or other reason why not.

As a general rule the applicant may be led in evidence by his or her representative or by panel members. This principle also applies to the respondent and any other witnesses. Questions may be framed in such a way as to suggest a certain answer, affirmative or negative, from the witness. This departure from the normal procedure in judicial proceedings is in keeping with the emphasis on informality.

The order in which the parties will present their evidence, as set out at Annex A, follows the format for the presentation of evidence traditionally adopted in other proceedings. Each of the parties will be given the opportunity to present their case by giving evidence themselves and/or calling witnesses. The other party and the panel members may then ask questions. There will always be an opportunity for the party who introduced the evidence to ask further questions, if necessary, in order to clarify the evidence given. This format for the presentation of evidence is suggested as a guide to the panel and the parties recognising that not all of these steps will need to be followed in every case.

Each member of the panel will be entitled to ask questions of all witnesses and this will generally be done after the other party has had the opportunity to question the witness. However, a panel member may, with the permission of the chair, seek to clarify issues at any time during the proceedings, if appropriate.

Rule 19(6) specifically provides that the normal rules governing admissibility of evidence should not be applied. It will be a matter for the panel to decide what weight should be given to any evidence presented at the hearing by way of documents or information which would otherwise be inadmissible in a court of law. This will be a matter to be considered after the hearing and the view of the panel in relation to any such evidence will be recorded.

Within the terms of rule 19(2), the chair, on behalf of the panel, may curtail evidence which is not relevant or which is repetitive. The chair also has the discretion to refuse the admission of any document or to interrupt a witness giving evidence at any time if such evidence is considered inappropriate.

The chair may also require any person present at the hearing behaving in a disruptive manner to leave and may permit him to return, if at all, only on such conditions as s/he may direct [rule 19(5)].

Closing statements

The parties, or their representatives, will be allowed an opportunity to make closing submissions. This gives the parties the chance to recap on their principal arguments and to draw the attention of the panel to relevant matters arising from the evidence presented. In doing so, the parties may draw from the entire body of evidence before the panel, which would include the oral evidence of either party or any witness given by way of response to questions. As a general rule, the closing submission of the respondent will be made before that of the applicant, unless the chair considers this to be inappropriate.

Notification of Decision

At the conclusion of the hearing the parties will be advised of the procedure for communication of the decision of the panel. A written decision will be issued as soon as possible and, in any event, within seven days of the date of the hearing.

ANNEX D



ANNEX D

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 and the Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998, the Northern Ireland (Sentences) Act (Specified Organisations) Order 1999 and the Northern Ireland (Sentences) Act 1998 (Amendment of Section 10) Order 2000.

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:
 - The Continuity Irish Republican Army
 - The 'Real' Irish Republican Army

- The Red Hand Defenders
- The 'Orange Volunteers', being the organisation in whose name a statement described as a press release was published on 14 October 1998.

(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, P.O. Box 1011, 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.

