SENTENCE REVIEW COMMISSIONERS

Annual Report 2003

Report for the year ended 31st March 2003

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

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SENTENCE REVIEW COMMISSIONERS

5th FLOOR WINDSOR HOUSE
9-15 BEDFORD STREET
BELFAST
BT2 7SR

Tel: (028) 90549412/16/18/19/29
Fax: (028) 90549427
e-mail: ***sentrev@belfast.org.uk***
website: ***www.sentencereview.org.uk***

Joint Chairmen
Sir John Blelloch KCB and Brian Currin

The Rt Hon Paul Murphy 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 you and your predecessors Reports for 1998/99, 1999/2000, 2000/2001 and 2001/02.

This, our fifth report, covers the year ended 31st March 2003. 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' tasks and Chapter Two describes some general issues we addressed during the year. Chapter Three gives details of the caseload with which we dealt, which was again markedly lower than that in the previous year. One new application was received and one substantive determination was issued. During the year, one oral hearing was held and, at the end of the year, there were three applications outstanding, all of which were awaiting oral hearings. Finally, Chapter Four deals with staff and resources, both of which were reduced to reflect the diminished caseload.

In each of the cases with which they dealt this year, the Commissioners had the opportunity to implement their agreed policy that provided as far as practicable, for the fair and equitable handling of material certified by the Secretary of State as "damaging information".

Commissioners had expected that the two cases at present before the Courts at Judicial Review would have helped clarify these issues, but the judicial process has not yet been completed in either case, and so it may be a little while before Commissioners are in a position to review their policy on handling "damaging information".

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

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

Yours sincerely

SIR JOHN BLELLOCH KCB *BRIAN CURRIN*

Joint Chairman *Joint Chairman*

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CHAPTER ONE

Background

The Report

This Report is the fifth to be made by the Sentence Review Commissioners ("the Commissioners") and covers the year from 1st April 2002 to 31st March 2003.

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

On 12th October 2001, the Secretary of State made the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 2001, re-specifying the Loyalist Volunteer Force and specifying the Ulster Defence Association and the Ulster Freedom Fighters.

Thus the list of specified organisations for the period 1st April 2001 to 12th October 2001 was:

The Continuity Irish Republican Army
"The Orange Volunteers"
The "Real" Irish Republican Army
The Red Hand Defenders

From 13th October 2001 to 31st March 2003, the list was:

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

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 subject 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.

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

Licence Arrangements

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

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

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

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again. Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements.

The Commissioners

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

Sir John Blelloch KCB *Joint Chairman*	Permanent Under-Secretary of State at the Northern Ireland Office 1988 - 1990, having previously served as Belfast-based Deputy Secretary from 1980 to 1982. Between 1982 and 1988 successively Deputy Secretary (Policy) and Second Permanent Under-Secretary at the Ministry of Defence.
Mr Brian Currin *Joint Chairman*	A South African lawyer working in mediation and institutional transformation. Founded the National Directorate of Lawyers for Human Rights, in 1987 and headed it for eight years. Involved in political prisoner releases, amnesty and Truth and Reconciliation processes in South Africa. Has worked in Sri Lanka, Rwanda and the Middle East on political transformation and civil rights issues.
Dr Silvia Casale	Independent criminologist, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and a consultant to HM Chief Inspector of Prisons. Has worked in Sweden and the United States and as a member of the Parole Board for England and Wales. Has published extensively on prison issues.
Dr Peter Curran	Consultant psychiatrist recently retired from 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. Appointed a member of the Criminal Injuries Compensation Appeal Panel for Northern Ireland in 2002.
Mr Ian Dunbar CB	Director of Inmate Administration and a member of the Board of HM Prison Service until his retirement in 1994. Previously Director of Prisons for the South West Region and Governor of various prisons in England and Wales. Has worked for HM Inspectorate of Prisons and conducted the inquiry into disturbances at Risley Remand Centre.
Mrs Mary Gilpin	Former member of the Scottish probation service and social worker. Member of the Board of Visitors for HMP Maze 1985-1997, serving a term as Chairman. Former Secretary to the Northern Ireland Association of Members of Boards of Visitors. Involved in setting up Dismas House, a hostel for use by prisoners and their families. Appointed a Life Sentence Review Commissioner in October 2002.

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

All Commissioners serve on a part-time basis.

CHAPTER TWO

Approach

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

Previous Reports explained how the Commissioners developed detailed procedures to deal with applications as efficiently as possible; and the approach that 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 determined their approach in relation to:

Damaging Information
Danger to the Public
Danger to the Public – Short Time Served
Determinate Sentence Reduced on Appeal
Determining Eligibility
Human Rights Act 1998
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
Revocation Cases
Setting a Date
Transferee Cases

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

Damaging Information

Two cases in which the Secretary of State had certified that some of the material put forward on his behalf was 'damaging information' have not yet been concluded, because decisions taken by Commissioners have been referred to the Courts by way of judicial review.

Human Rights Act 1998

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

In giving effect to the 1998 Sentences Act, the Commissioners may, conceivably, be faced with some course of action which could be inconsistent with one or more convention rights. They have been advised that where they conclude that such inconsistency exists their duty is to comply with section 6(1). This legal duty to comply depends upon a number of factors. However, in the minds of the Commissioners there remains a number of ambiguities in the interpretation of the Human Rights Act and they are**,** therefore**,** still in the process of taking legal advice. To date their procedures have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and secondary legislation (the Commissioners' Rules) with the Human Rights Act.

There are currently two cases being judicially reviewed both involving application of the Human Rights Act**.** The Commissioners await any guidance the High Court may deem appropriate.

On a separate but related matter, and again in light of developments in Human Rights case law, Commissioners agreed to look again at the case of a prisoner who two years before, had been refused release on grounds of danger to the public. They have been advised that the passage of time in itself is regarded as a sufficient "change of circumstances" to review the case. They also agreed, that as a matter of policy, prisoners making application in similar circumstances would have their cases reviewed at intervals until they were otherwise given a tariff and consequently referred to the Life Sentence Review Commissioners.

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.

One application and two 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.

Two preliminary indications were issued during the period of the report, one in respect of an application for early release and the other in respect of an application for a review of suspension of licence following recall to prison by the Secretary of State. In both cases the Commissioners had indicated that they were minded to refuse the applications because they

were not satisfied that the applicants, if released immediately, would not be a danger to the public.

Oral Hearings

Both parties to an application 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. Both prisoners in the cases mentioned above challenged the preliminary indications.

During the period of this report, one oral hearing was held, in which the initial decision to refuse the application for a review of the suspension of a licence was upheld following a challenge by the prisoner and his licence was subsequently revoked.

At 31 March 2003, there were three 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. One substantive determination was issued in the course of the year.

Cumulative Business Trends

	2002				2003
	Mar	June	Sept	Dec	Mar
Applications received	605	606	606	606	606
Applications not eligible	53	53	53	53	53
Applications sent to respondent	549	550	550	551	551
Responses received	549	550	550	550	551
Applications not proceeded with after response received	53	53	53	53	53
Applications withdrawn before issue of preliminary indication	2	2	2	2	2
Preliminary indications issued	496	496	497	497	498
Applications withdrawn after issue of preliminary indication	8	11	11	11	11
Challenges received (less those subsequently withdrawn)	32	29	30	30	31
Oral hearings held	25	25	26	26	26
Substantive determinations issued	483	483	483	484	484
Applications under consideration	6	3	3	3	3

Table 1: Cumulative business trends

Table 1 shows the state of business at the end of each quarter. In total, one application was determined during the year, which was refused and three applications were withdrawn by the applicants following issue of the preliminary indication. Three applications were still under consideration at 31 March 2003.

Where applications have been 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 of pending judicial review proceedings.

Judicial Review

Two applications were made during the year but have not yet been concluded.

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 year covered by this report.

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

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

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2003 was:

£000

Programme expenditure:

	2002/03	*2001/02*
Commissioners' remuneration[1]	21	*51*
Commissioners' travel, accommodation and expenses	19	*32*
Legal advice or representation for applicants	4	*11*
Legal costs[2]	42	*23*
Premises*	24	*61*
General administration*	20	*20*

Running costs:

Staff salaries etc*	35	*121*
Miscellaneous*	0	*1*
Total Expenditure	167	*320*

1 In the case of Commissioners in full-time employment, the employer is reimbursed.
2 Mainly costs incurred in responding to challenges by way of judicial review.

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

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.

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[3]-
    - The Continuity Irish Republican Army
    - The Loyalist Volunteer Force
    - "The Orange Volunteers"
    - The 'Real' Irish Republican Army
    - The Red Hand Defenders
    - The Ulster Defence Association
    - The Ulster Freedom Fighters.

(This list 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.

[3] list as at October 2001.

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 where you have served one third of the sentence (plus any remission you have lost), or

  - 28th July 2000.

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

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

- If you are serving a life sentence imposed before 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

  - 28th July 2000,

This date will be determined by the Commissioners.

- If you were sentenced after 28th July 1998:

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

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

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

How do I apply?

You apply by sending to the Sentence Review Commissioners, 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.

What will happen when I apply?

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

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

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

- The Prison Service (acting on behalf of the Secretary of State) are 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 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

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

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.

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[1]:
    - The Continuity Irish Republican Army
    - The Loyalist Volunteer Force
    - "The Orange Volunteers"
    - The 'Real' Irish Republican Army
    - The Red Hand Defenders
    - The Ulster Defence Association
    - The Ulster Freedom Fighters.

(This list 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

[1] List as at October 2001.

- 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.

ANNEX E

Statistical Analysis of the Prison Terms Served by Applicants Granted Early Release

1. Introduction

In last year's Report, as all potential initial applications had been processed, the Commissioners considered it appropriate to publish statistical information on the outcome of the process of early release under the Agreement. This year, as there have been no further releases, the statistics remain the same. However, the Commissioners decided to publish them again for completeness.

This analysis looks at the effect of the early release scheme in terms of the periods of imprisonment actually served by successful applicants. Those serving life and fixed-term sentences are considered separately. For each, the analysis looks at the periods that each prisoner would have served in the absence of the scheme and the periods that he or she actually served. From this is derived aggregate data on how early prisoners were released and the percentage of the original sentence that they did not serve because of the scheme.

The analysis covers all prisoners released under the early release scheme between the coming into force of the legislation in July 1998 and 31st March 2002, with the exception of the small minority of successful applicants – about 10% - for whom the calculations would be problematic or meaningless because they:

- applied after being recalled to prison for breach of licence conditions; or
- had been unlawfully at large for a significant proportion of the sentence period; or
- applied only in respect of the unexpired portion of a licence period.

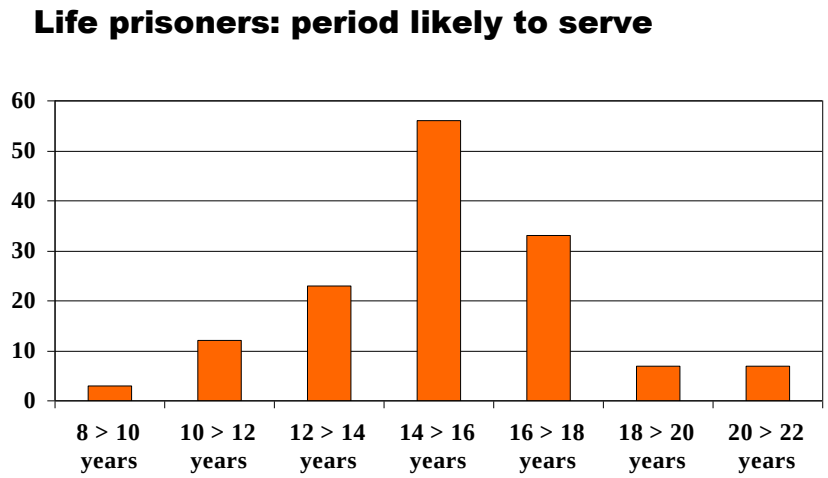
Where a prisoner applied in respect of more than one sentence, the analysis relates only to the sentence with the latest release date – the 'index' sentence. Where a prisoner was serving a combination of determinate and life sentences, perhaps imposed at different times, the 'index' sentence will normally be the life sentence with the latest assumed release date.

The provisions of the legislation mean that eligible applicants became entitled to early release on completing two-thirds of the period that they would otherwise have spent in prison. Those who remained in prison on 28th July 2000 - the second anniversary of the coming into effect of the legislation – became eligible for accelerated release on that date (or the date when they had completed two years in prison, whichever was the later).

2. Life Sentence Prisoners

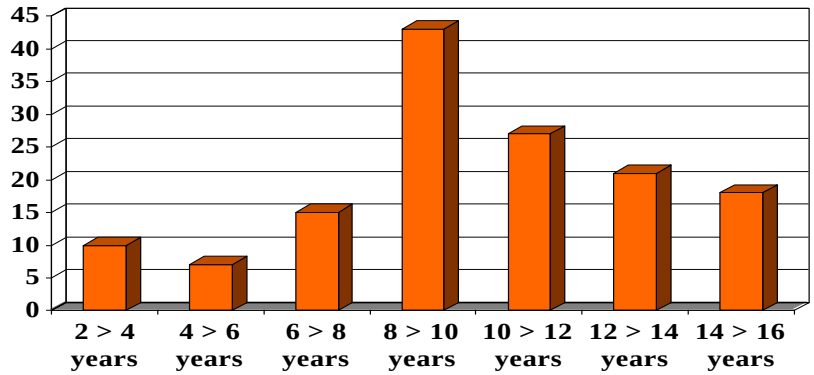
The analysis covers 141 of the 159 life sentence prisoners granted early release, one of whom has since been recalled to prison and had his licence revoked (See Chapter 3 - Casework).

The legislation requires the Commissioners to specify a date which they believe marks the completion of about two-thirds of the period which the prisoner would have been likely to spend in prison under the sentence. In order to arrive at this period, the Commissioners have to have regard to information provided by the Secretary of State about the length of time served by life sentence prisoners in Northern Ireland between 1982 and 1998, as well as to their own previous decisions. The periods arrived at therefore reflected the precedents established by the Life Sentence Review Board and took account of such factors as the number of separate incidents covered by the sentences under review, the gravity of the offence or offences, the number of victims, the applicant's role and his or her age at the time. A fuller description of the approach taken by the Commissioners can be found in their *Annual Report 1999*, pages 20 and 21.



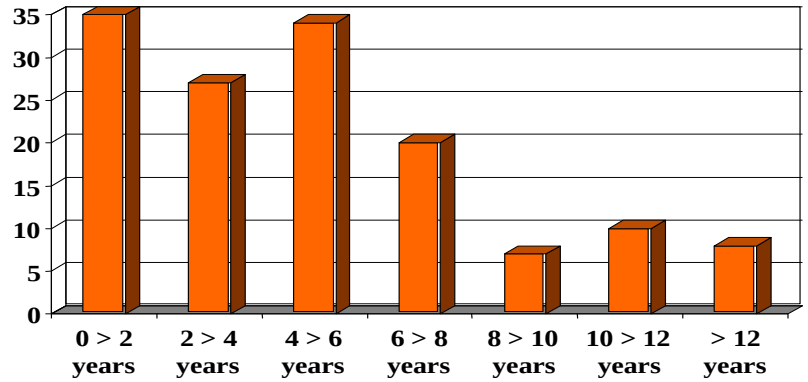
The chart above shows the periods arrived at by the Commissioners for the 141 life prisoners. They ranged from eight to twenty-one years, the average being fourteen years and eight months. Almost 80% fell between twelve and eighteen years.

Life prisoners: period served



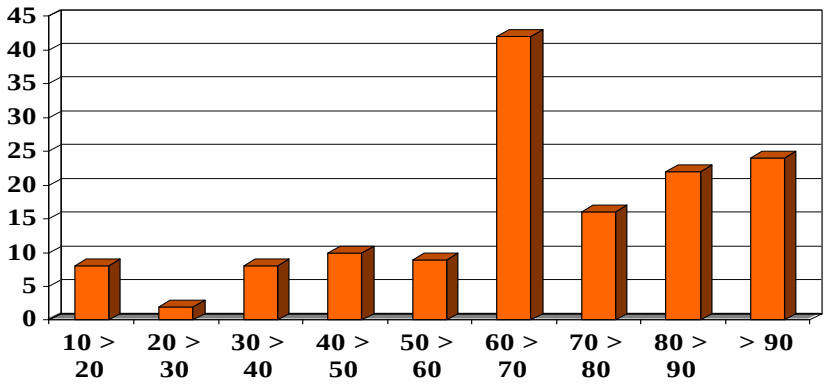
The chart above shows the actual periods served by the prisoners, which ranged from the minimum accelerated release period of two years to almost 15½ years. The average was just under ten years. Almost half of those who received early release had spent between 8 and 12 years in prison. Three served only the minimum two-year period.

Life prisoners: period not served



The table shows the extent to which the period spent in prison was reduced because of the early release scheme. This ranged from zero to more than fourteen years. The average was four years and ten months. More than two-thirds of life prisoners released under the scheme benefited by less than six years. About one in eight benefited by more than ten years.

Life prisoners: percentage of likely period actually served

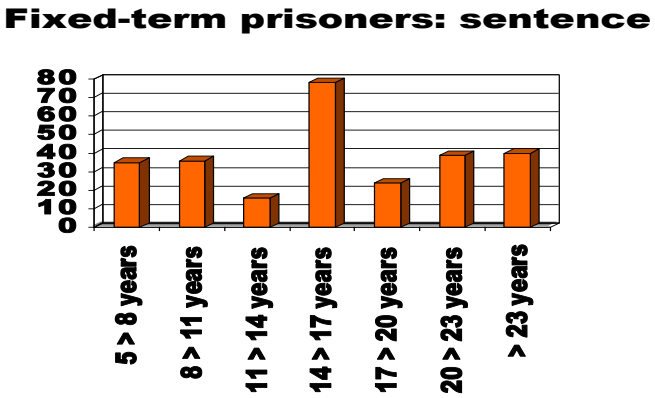


This table shows the percentage of the period likely to be served that successful applicants actually spent in prison. This ranged from 13% to 100%, with an average of 67%. Essentially, the prisoners fell into three groups. Those who had already served two-thirds or more of the likely period when the scheme was introduced in July 1998 stood to gain less than the statutory one-third reduction. They were released as soon as their applications could be processed (applications from prisoners whose calculated release dates were already in the past were dealt with first by the Commissioners – see *Annual Report 1999*, page 17). 44% of successful applicants fell into this category. Those who reached the two-thirds point between July 1998 and July 2000 became eligible for release as soon as they did so. This accounts for the 'bulge' of some 30% who were released at between 60% and 70%. The remaining quarter benefited, to varying degrees, from the accelerated release provisions. These granted release on 28 July 2000 to any eligible prisoner who had at that point spent two years or more in prison, and release at the two-year point to any who had not served two years by that date.

3. Fixed-term sentence prisoners

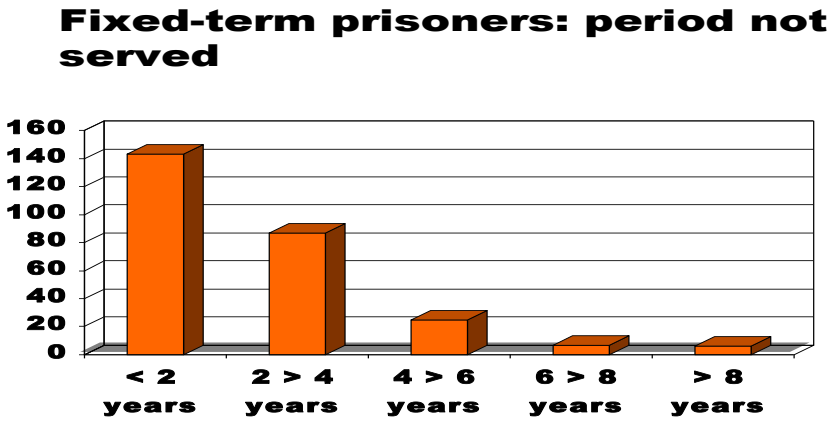
The analysis covers 268 of the 309 fixed-term sentence prisoners granted early release.

In the absence of the early release scheme, prisoners would have been entitled to unconditional release once they had served half of their 'index' sentence.

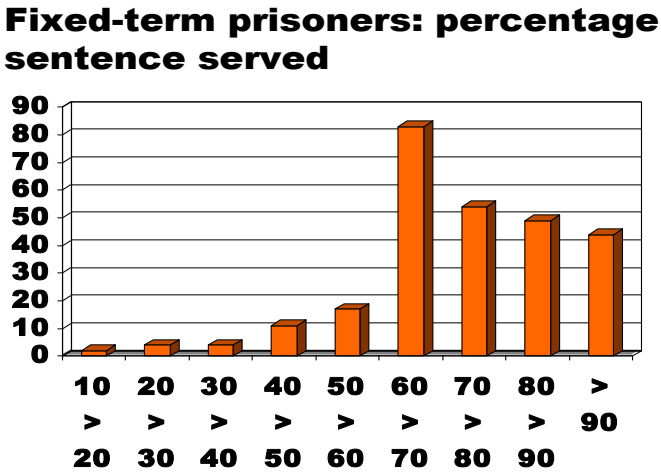


The chart above shows the 'index' sentences that successful applicants were serving, which ranged from the minimum eligible sentence of 5 years up to 30 years. They fell into three main groups, with 26% having received sentences between five and eleven years, 29% between fourteen and seventeen years and 30% twenty years or more. The average sentence was just under 15½ years.

The chart shows the periods actually served by successful applicants. These ranged from one year and eight months (half of a five-year sentence, less one third) to almost 12½ years. The average period served was just over five and a half years. 60% served between three and seven years.



The chart shows the extent to which the period spent in prison was reduced because of the early release scheme. This ranged from zero to 10½ years. The average was two years and one month. 85% of fixed-term prisoners released under the scheme benefited by less than four years. Six prisoners benefited by more than eight years.



This table shows the percentage of the period that they would otherwise have served that the prisoners actually spent in prison. This ranged from just under 16% to 100%, with an average of almost 72%. More than half of successful applicants had already served two-thirds or more of the half-sentence period when the scheme was introduced. Some 30% were released at the statutory two-thirds point. This left only one applicant in eight to benefit from the accelerated release provisions. Only ten prisoners served less than 40% of the period they would otherwise have served.