



SENTENCE REVIEW  
COMMISSIONERS

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ANNUAL REPORT 2008

SENTENCE  
REVIEW  
COMMISSIONERS

ANNUAL REPORT 2008

Report for the year ended 31 March 2008

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

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**Joint Chairmen**

**Sir John Blesloch KCB and Brian Currin**

The Rt Hon Shaun Woodward MP  
Secretary of State for Northern Ireland  
Castle Buildings  
Stormont Estate  
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 Annual Reports every year since the first in 1998/1999.

This, our tenth report, covers the year ended 31 March 2008. The layout and, generally, the content of this Report follow the line adopted in last year's report.

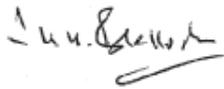
Chapter One summarises the background to the Commissioners' tasks and Chapter Two describes some general issues we addressed during the year. Chapter Three gives details of the caseload with which we dealt and Chapter Four deals with staff and resources. With the approach of the 10<sup>th</sup> anniversary of the Good Friday Agreement, we considered it timely to summarise the cases dealt with since our inception on a year by year basis. This summary can be found at Annex C.

The Commissioners are aware of the ongoing plans for the devolution of policing and criminal justice matters to the local Assembly. We are also aware that our function will be reserved so we will therefore still be accountable to you. We currently share the Secretariat with the Life Sentence Review Commissioners, whose functions will be devolved to the local Assembly. We understand that this difference should not be a bar to our continuing to share our administrative support.

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 BELLOCH, KCB**

*Joint Chairman*



**BRIAN CURRIN**

*Joint Chairman*

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# Chapter 1



## Chapter One

### Background

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

The part of the Agreement dealing with prisoners 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 Annex A.

### 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 10 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.

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.

The list of specified organisations for the period 1 April 2007 to 31 March 2008 was:

- The Continuity Irish Republican Army
- The Loyalist Volunteer Force
- "The Orange Volunteers"
- The "Real" Irish Republican Army
- The Red Hand Commando
- The Red Hand Defenders
- The Ulster Volunteer Force

### The Accelerated Release Date

The Act provided that any prisoners given release dates after the second anniversary of the Act's commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the later.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners' declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

## 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 be entitled to be released from prison (normally after completing 50% of the sentence<sup>1</sup>). 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.

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<sup>1</sup> This will change with the commencement of the Criminal Justice Order 2008 which will introduce a new sentencing framework to Northern Ireland

## The Commissioners

The two joint Chairmen and eight other Commissioners appointed by the Secretary of State to serve until 31 July 2012 and who served throughout the year are:

Sir John Blesloch KCB <i>Joint Chairman</i>	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 <i>Joint Chairman</i>	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. In June 2007 was appointed an international adviser to the Independent Consultative Group set up to look at ways for Northern Ireland to deal with its troubled past. Also chairs the International Group for Dialogue and Peace in the Basque Country.
Dr Silvia Casale	Independent Criminologist. President of the United Nations Subcommittee on Prevention of Torture (UN SPT) and member of the European Committee for the Prevention of Torture (CPT). 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 and Fellow of the Royal College of Psychiatrists. Has an interest in the victims of violence and has lectured and published on the psychological and social impact of civil disorder and violence. Formerly a member of the Mental Health Commission, the Criminal Injuries Compensation Appeal Panel (Northern Ireland) and transitional Life Sentence Review Commissioner. Was President of NI Medico-Legal Society in 1999-2000.

- 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. Also a Life Sentence Review Commissioner.
- Dr Adrian Grounds University Senior 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. Also a Life Sentence Review Commissioner.
- Ms Clodach McGrory Practised at the Bar of Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and a member of the Irish Human Rights Commission from 2000 to 2006. She is currently a part-time Chairperson of Social Security Appeal Tribunals. Also a Life Sentence Review Commissioner.
- 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. Also a Life Sentence Review Commissioner.

Mr Donal McFerran      Qualified solicitor who practised as partner in a litigation firm in Belfast. Has served as a Deputy Resident Magistrate, was appointed a Deputy County Court Judge in 1990 and is a legal member of the Mental Health Tribunal. Also a Life Sentence Review Commissioner.

All Commissioners serve on a part-time basis.

# Chapter 2



## Chapter Two

### Approach

The Commissioners are under a duty to implement one of the most sensitive parts of the Agreement, and their first priority continues to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held three 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 some of the issues thus considered and the conclusions that were reached.

### Recalled Prisoners

When a prisoner's licence is suspended by the Secretary of State, Section 9(3)(b) of the Act states that the Commissioners shall consider his/her case. Rule 28 outlines the process and Schedule 2 of the Rules lists documents prisoners are asked to provide to help determine whether or not the licence should be revoked.

Previously the Commissioners have not proceeded to consider the suspension of a licence if the prisoner involved did not make an application for it to be so considered. However, the Commissioners have reflected on this position and concluded that the legislation in fact bestows on them a duty to consider all suspensions whether or not the prisoner makes an application to them. This year saw the completion of the first such case.

A further recall case raised many issues not previously encountered by the Commissioners. The main issue surrounded whether an oral hearing to decide on whether the applicant had broken the conditions of his licence could take place in advance of the criminal trial in respect of the recall charges without that trial being prejudiced. Over a period of months the Commissioners offered various suggestions to allow the hearing to proceed and minimise any prejudice but all were refused by the prisoner's legal representatives. As a result the applicant was granted leave to judicially review the Commissioners in respect of the delay in holding an oral hearing. Following leave being granted, the High Court ordered the applicant's release as interim relief. The oral hearing was then part heard and adjourned at the applicant's request until such times as either party chose to restart the process or the conclusion of the applicant's criminal trial.

### Damaging Information

Once again this year, the Commissioners had the opportunity to implement their agreed policy that provides, as far as practicable, for the fair and equitable handling of material certified by the Secretary of State as 'damaging information'.

Last year, in an application to review the suspension of a licence, the Commissioners' revoked a prisoner's licence in a decision based solely on "damaging information". The prisoner subsequently was granted leave for judicial review but the Commissioners' decision was upheld by the Court. The prisoner subsequently appealed to the Court of Appeal where the Court refused to allow the appeal to proceed. The Court decided that the Commissioners became *functus officio* in relation to prisoners who have had a tariff set in accordance with the Life Sentences (Northern Ireland) Order 2001 and that tariff has expired, as was the case here. The prisoner has applied for leave to petition the House of Lords but as yet no decision has been made as to whether his case will be accepted by their Lordships.

### Recording of Oral Hearings

In line with a decision taken by the Life Sentence Review Commissioners (LSRC) last year, the Commissioners felt that as SRC cases were becoming more legalistic and contentious they also would routinely record oral hearings.

### 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 that could be inconsistent with one or more Convention rights. They have been advised that, where they conclude that such inconsistency exists, their legal duty would be to comply with section 6(1). Accordingly, the Commissioners continually keep under review the policies and procedures that they have adopted in order to discharge their statutory responsibilities. To date these have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and the secondary legislation (the Commissioners' Rules) with the Human Rights Act.

# Chapter 3



## Chapter Three

### Casework

The work of the Commissioners is mainly dependent on the number of prisoners who apply to them in accordance with the provisions of the Act. During the period of this Report, applications were received and cases processed as follows (see also table1):

#### Applications Received

Three applications for review of the suspension of a licence were received. Three other prisoners had their licences suspended but did not make application. In accordance with their policy decision of last year the Commissioners proceeded to consider the suspensions without the prisoner's participation in the process. Two further applications (claiming a change in circumstances since the applicant's last determination in accordance with Section 9 of the Act) were also received.

#### Consideration by Panel

Commissioners issued seven preliminary indications. In five cases they were minded to revoke the applicant's licence because they were not satisfied that, if released immediately, the applicant would not be a danger to the public. In the other two cases they were minded to refuse the applicant's further application for the same reason.

#### Oral Hearings

Commissioners completed one oral hearing. Three other cases were part heard and adjourned. At 31 March 2008 there were eight oral hearings pending.

#### Issue of Substantive Determination

The Commissioners issued two substantive determinations. In both cases the prisoner's licence was revoked.

Table 1

Table 1 shows the state of business at the end of each quarter, the total cases processed in the year and the total cases processed by the Commissioners since their appointment.

	June	Sept	Dec	Mar	Total 2007- 2008	Total 1998- 2008
Applications received	4	3	0	1	<b>8</b>	628
Applications not eligible	0	0	0	0	<b>0</b>	53
Applications sent to respondent	3	4	0	1	<b>8</b>	571
Responses received	3	4	0	0	<b>7</b>	570
Applications not proceeded with after response received	0	0	0	0	<b>0</b>	54
Applications withdrawn before issue of preliminary indication	1	0	0	0	<b>1</b>	3
Preliminary indications issued	2	2	1	2	<b>7</b>	515
Applications withdrawn after issue of preliminary indication	1	0	0	0	<b>1</b>	13
Challenges received (less those subsequently withdrawn)	1	2	0	2	<b>5</b>	46
Oral hearings held	0	1	0	0	<b>1</b>	36
Applications withdrawn or lapsed following oral hearing	0	0	0	0	<b>0</b>	2
Substantive determinations issued	0	1	1	0	<b>2</b>	494
Applications under consideration at period end	7	9	8	9		

# Chapter 4



## Chapter Four

### Staff and Resources

For most of the year covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and a team of five staff. A further staff member took up post in January 2008 to cover a post temporarily vacated by maternity leave.

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

Since October 2001, the Secretariat has also supported the work of the Life Sentence Review Commissioners appointed under the Life Sentences (Northern Ireland) Order 2001, who occupy the same accommodation. It is an increase in the workload of this body that necessitated the increase in staff indicated above. 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 2008 was:

	£000	
Programme expenditure:	2007/08	2006/07
Commissioners' remuneration	48	44
Commissioners' travel, accommodation and expenses	29	31
Legal representation for applicants	21	33
Legal costs <sup>2</sup>	49	102
Premises*	18	17
General administration*	10	8
Running costs:		
Staff salaries etc*	36	31
Total Expenditure	267	266

<sup>2</sup> Mainly costs incurred in responding to challenges by way of judicial review.

# Annex A



## Annex A

### Guidance for Applicants

#### Purpose

This leaflet gives an outline of –

- Who is eligible for early release
- How to apply
- What will happen.

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;
- The Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 1999;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2001;
- The Northern Ireland (Sentences) Act 1998 (Amendment of Section 10) Order 2000;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2004; and
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2005.

#### 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 10 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 Loyalist Volunteer Force
  - "The Orange Volunteers"

- The “Real” Irish Republican Army
- The Red Hand Commando
- The Red Hand Defenders
- The Ulster Volunteer Force

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

- if you are 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?

You would qualify for release on 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, 5th Floor Windsor House, 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) 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

You 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.

Where your application has been allowed, the determination will specify the sentence(s) in respect of which you have a right to be released under the Act. In relation to a life sentence, it will also specify the release date that the Commissioners consider appropriate.

Where your application has been refused, or where a previous determination is being revoked, the determination will include a statement of the reasons why.

### **Can the Secretary of State have the substantive determination revoked?**

The Secretary of State is required to apply to the Commissioners to revoke the 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 the Commissioners make their final determination.

### **Can I appeal against a refusal?**

The only way of challenging a substantive determination by the Commissioners is by means of judicial review.

### **Can I apply again after a refusal?**

You can make a further application, which the Commissioners will consider if, and only if:

- circumstances have changed since your most recent determination; or
- you submit new material that was not put before the Commissioners when they made that determination.

# Annex B



## Annex B

### Guidance on Review of Suspension of an Early Release Licence

#### Purpose

This leaflet gives an outline of -

- Who is eligible to have his or her case considered by the Commissioners
- How the process works

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;
- The Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No 2) Order 1998;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 1999;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2001;
- The Northern Ireland (Sentences) Act 1998 (Amendment of Section 10) Order 2000;
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2004; and
- The Northern Ireland (Sentences) Act (Specified Organisations) Order 2005

If you wish to use a lawyer to assist you in preparing for your review, 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 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 Loyalist Volunteer Force
  - “The Orange Volunteers”
  - The “Real” Irish Republican Army
  - The Red Hand Defenders
  - The Ulster Volunteer Force
  - The Red Hand Commando

(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.

### Do I have to apply?

No – the Commissioners have concluded that they have a duty to consider your case whether or not you make an application

### If I choose to apply what do I do?

You apply by sending the following to the Sentence Review Commissioners, Windsor House, Bedford Street, BELFAST, BT2 7SR –

- a fully completed application form (FORM D); and
- any supporting information or documents on which you wish to rely.

A copy of the form will be sent to you by the Commissioners when they are notified of the suspension of your licence.

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.

### How does the process work?

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.

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

When the single Commissioner directs that your case is ready, a panel of three Commissioners will be appointed to consider it 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.

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 I do not apply?

If you do not make an application, the process outlined above will go ahead without your participation. However, you will be sent a copy of the response papers provided by the Prison Service, the Commissioners' "preliminary indication" and their "substantive determination".

### 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

You 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 such times as, on referral following the expiry of your tariff, the Life Sentence Review Commissioners consider that you should be released under the terms of the Life Sentences (Northern Ireland) Order 2001.

### Can I appeal against my licence being revoked?

The only way of challenging a substantive determination by the Commissioners is by means of judicial review.

### Can I apply again after my licence has been revoked?

You can make a further application, which the Commissioners will consider if, and only if:

- circumstances have changed since your most recent determination; or
- you submit new material that was not put before the Commissioners when they made that determination.

# Annex C



## Annex C

### Summary of cases processed 1998-2008

By far the bulk of applications considered by the Commissioners were received within the first year of the Good Friday Agreement and the subsequent commencement of the Northern Ireland (Sentences) Act 1998. After that the workload dropped dramatically.

However since then, although the number of applications for declarations of eligibility for early release have all but disappeared, the number of cases in which the Commissioners have had to consider the revocation of a prisoner's licence following his recall to prison has gradually increased.

Also on the increase are further applications under Section 3, in which the applicant claims there has been a significant material change in his circumstances since the Commissioners last considered his case.

Please note this is not a statistical analysis but merely a summary of the number and type of cases processed in the last ten years.

#### **Key**

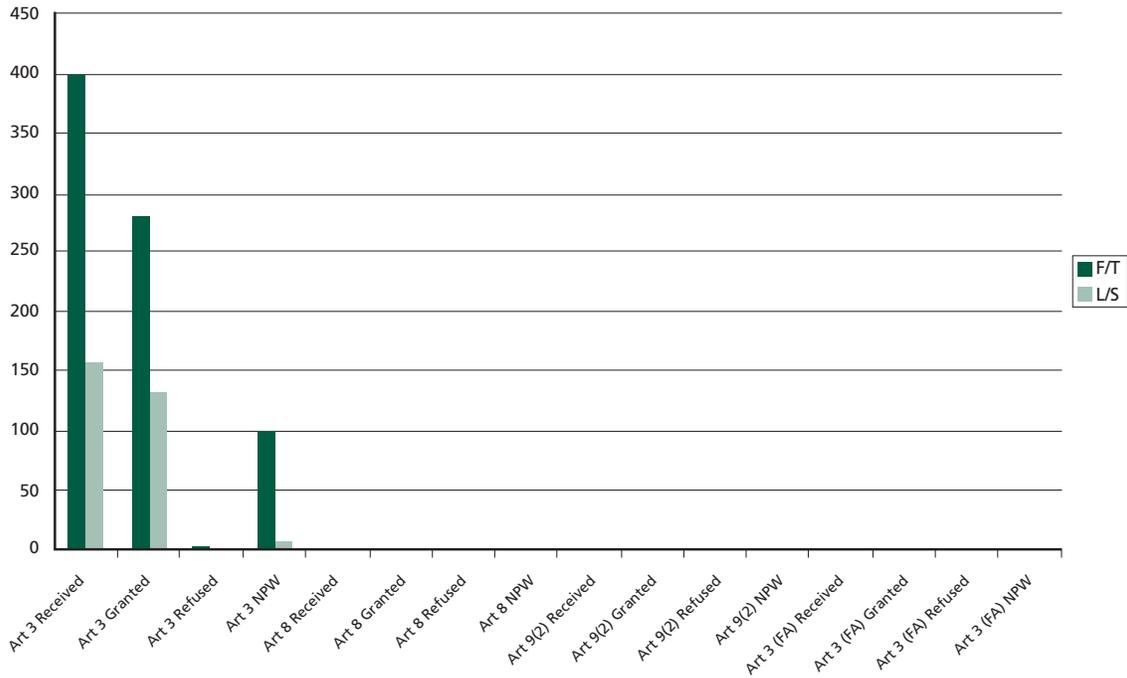
F/T – Fixed Term Prisoners

L/S – Life Sentenced Prisoners

NPW – Not Proceeded With

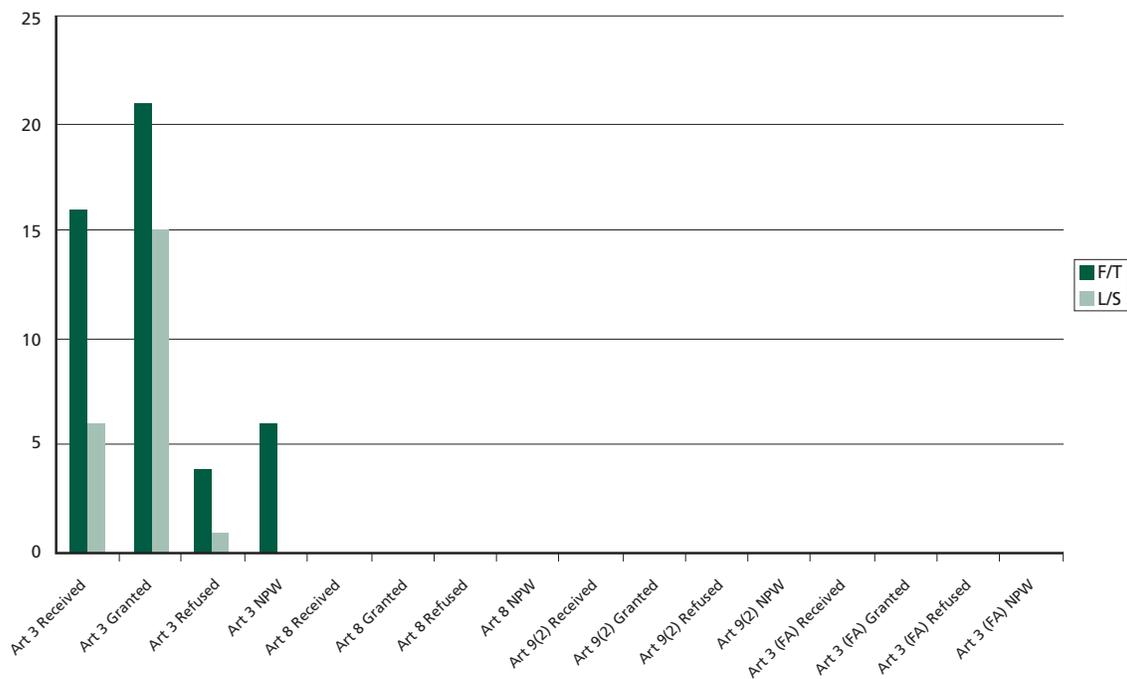
1998-1999

Applications by Type and Determinations Made



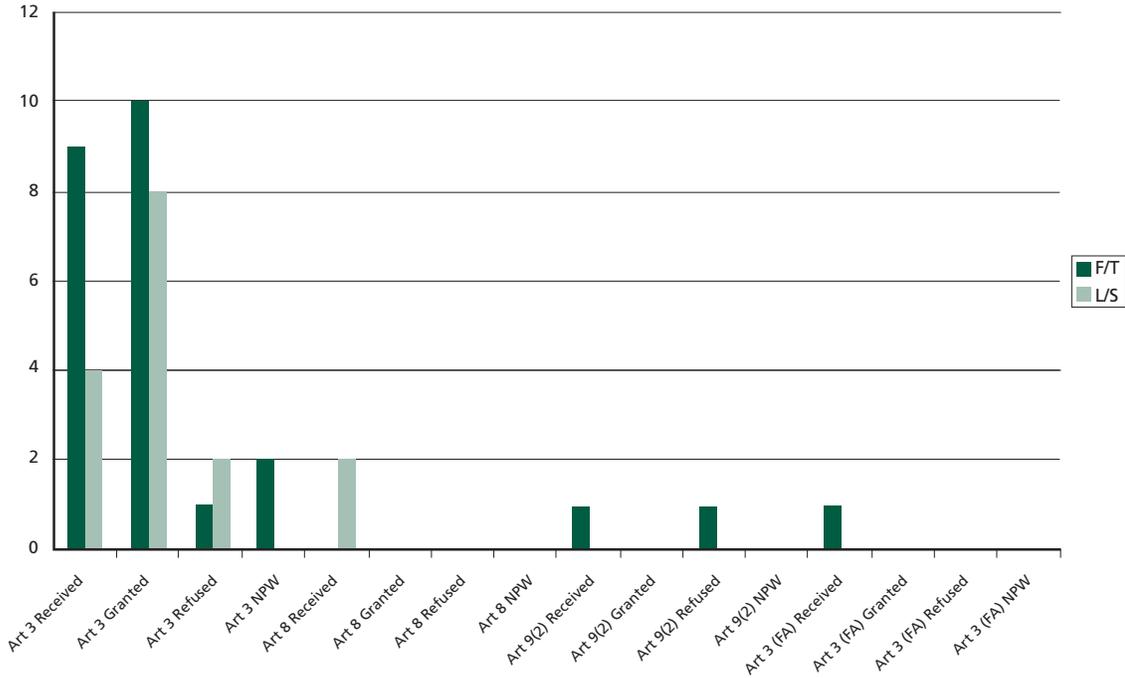
1999-2000

Applications by Type and Determinations Made



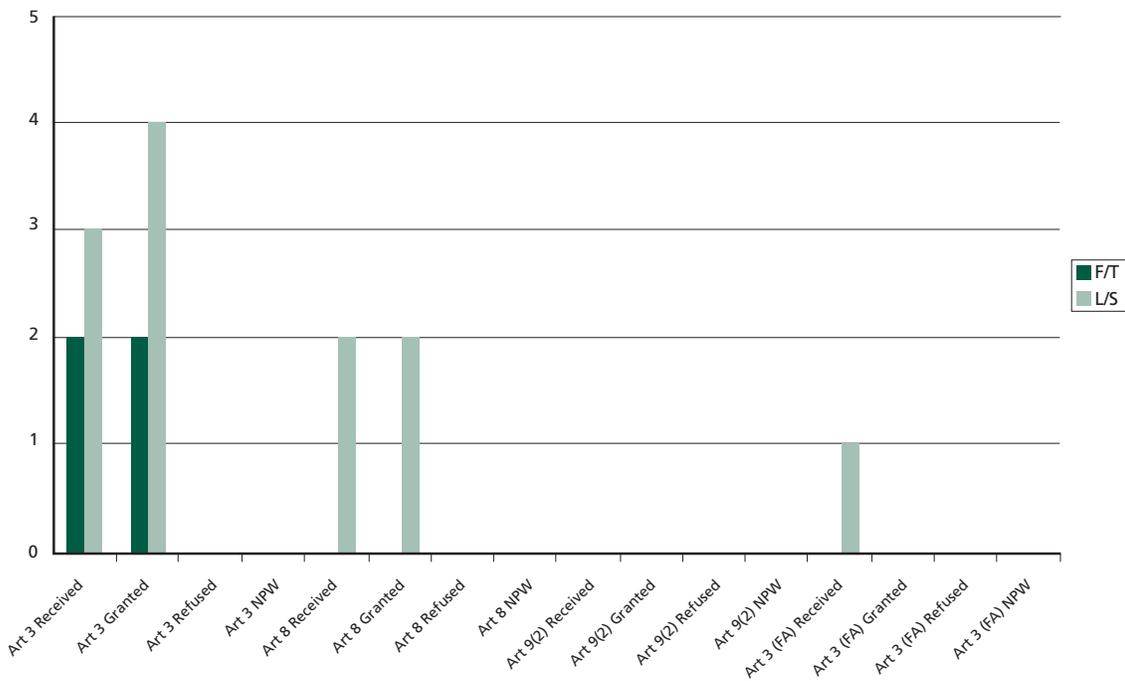
2000-2001

Applications by Type and Determinations Made



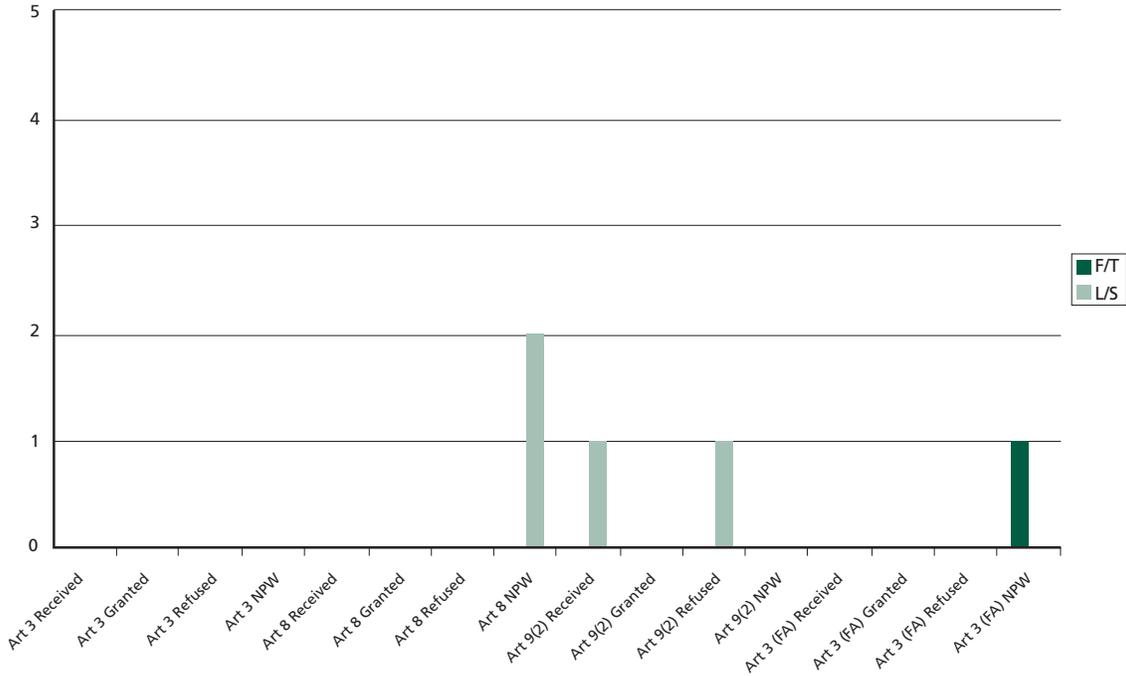
2001-2002

Applications by Type and Determinations Made



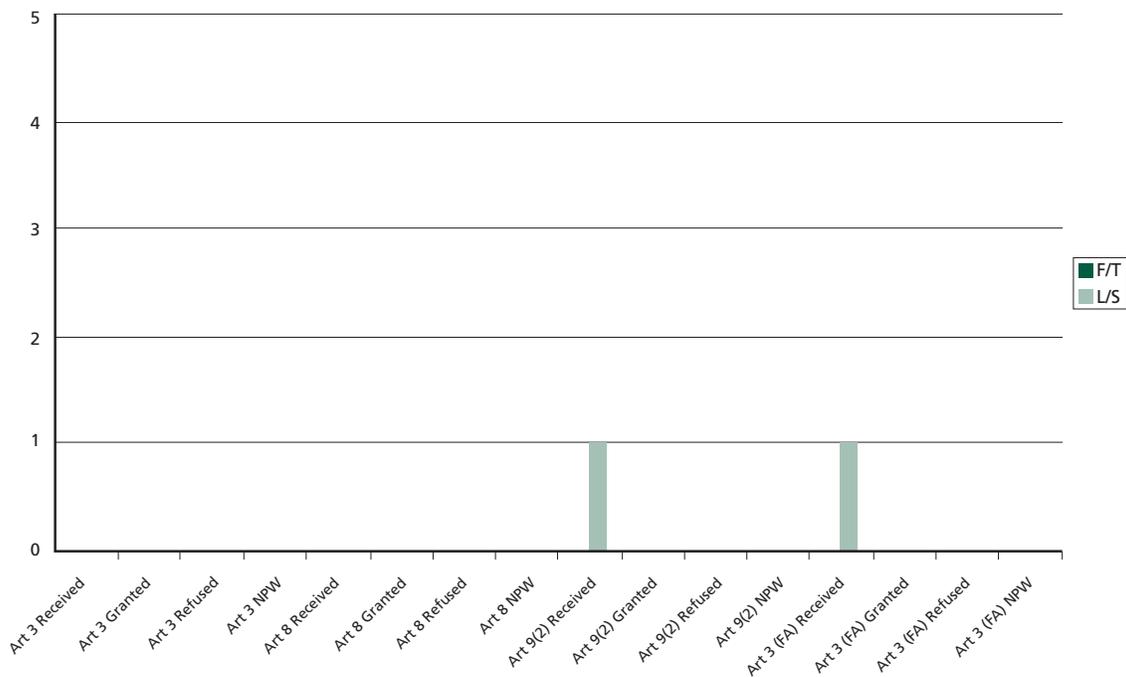
2002-2003

Applications by Type and Determinations Made



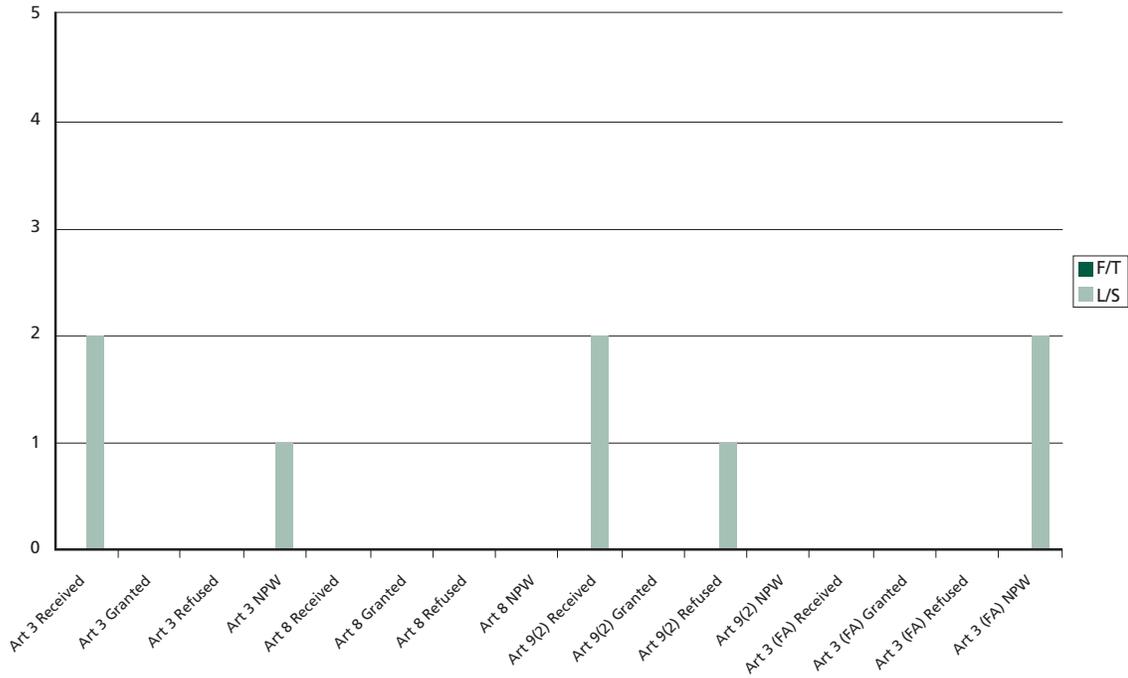
2003-2004

Applications by Type and Determinations Made



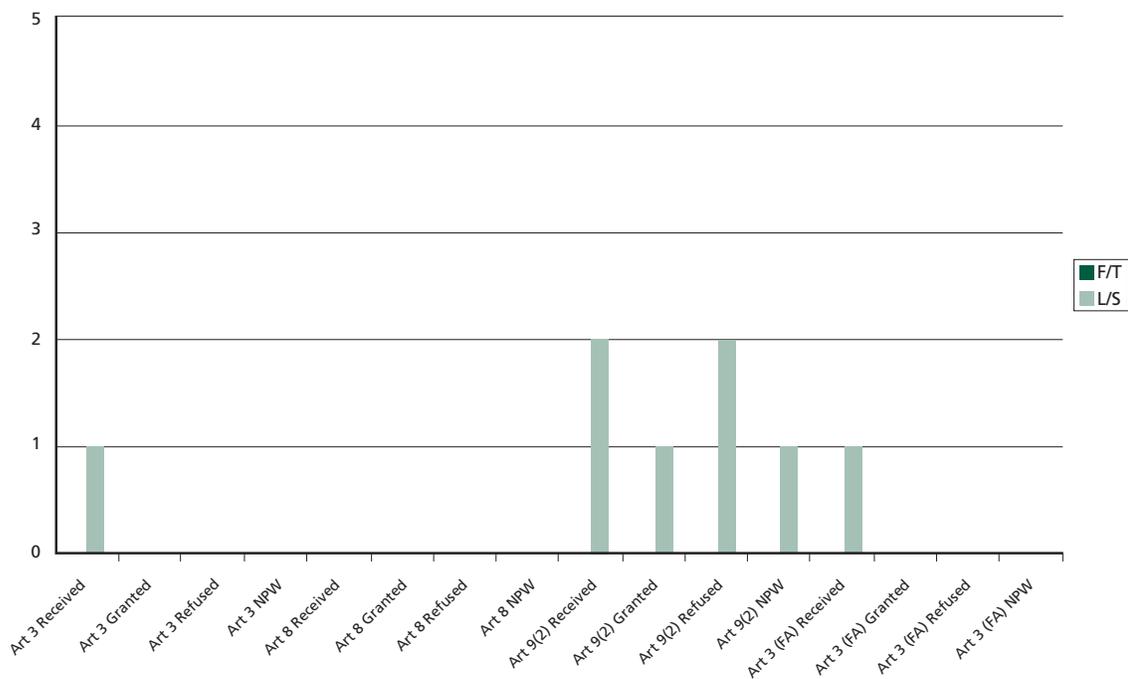
2004-2005

Applications by Type and Determinations Made



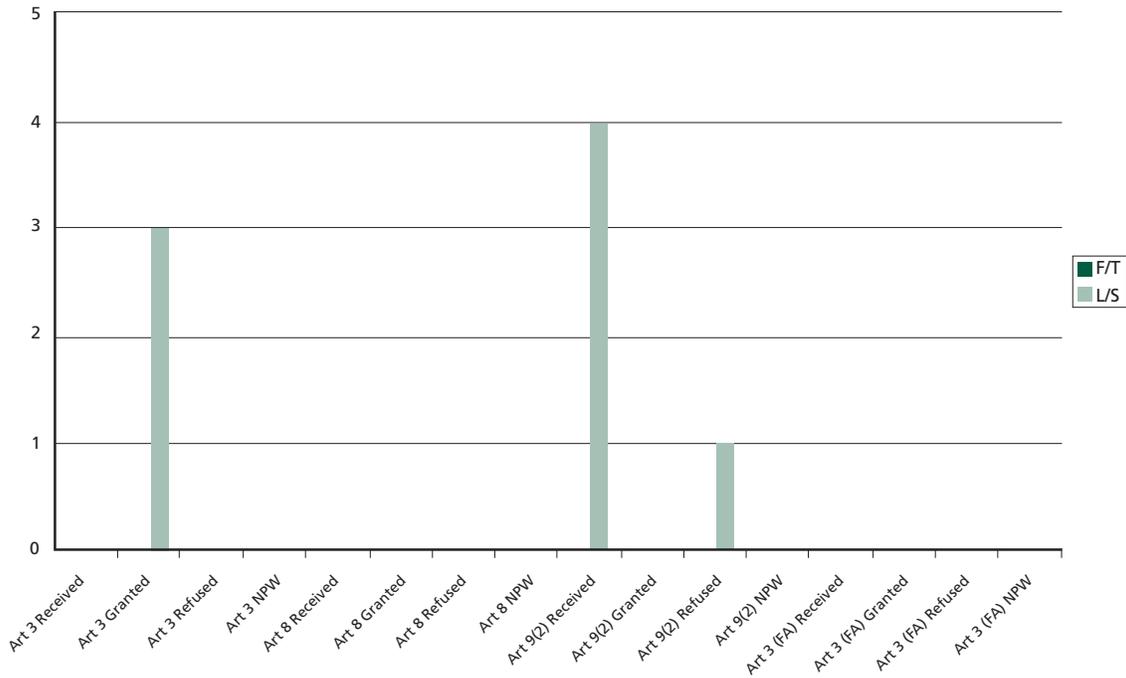
2005-2006

Applications by Type and Determinations Made



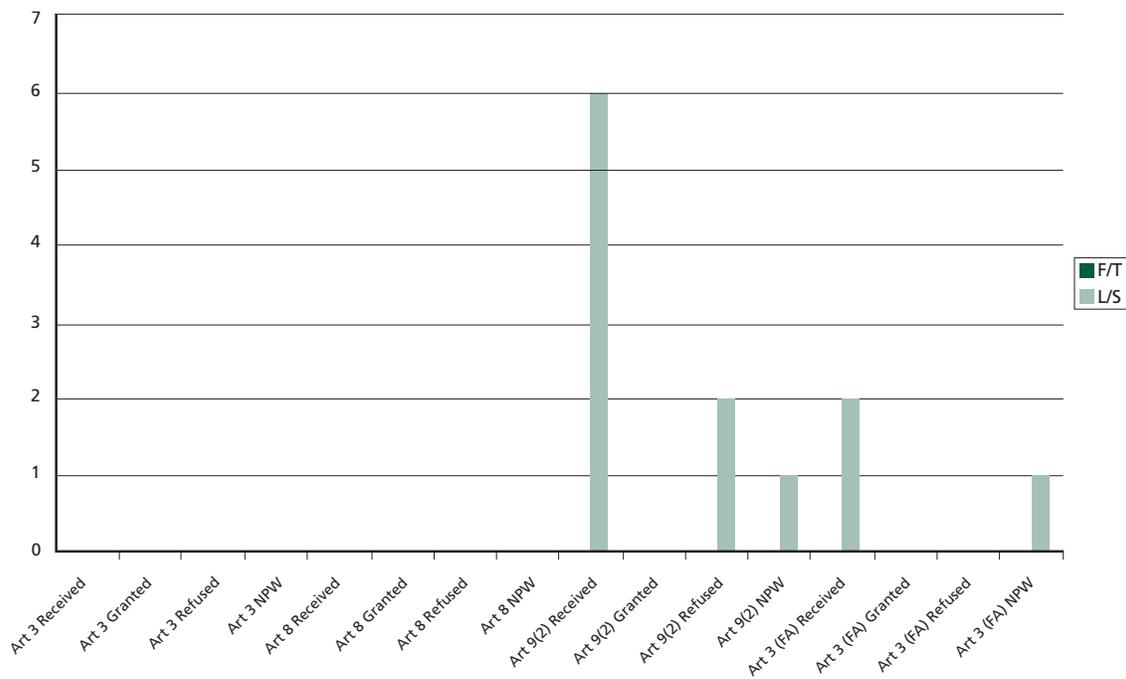
2006-2007

Applications by Type and Determinations Made

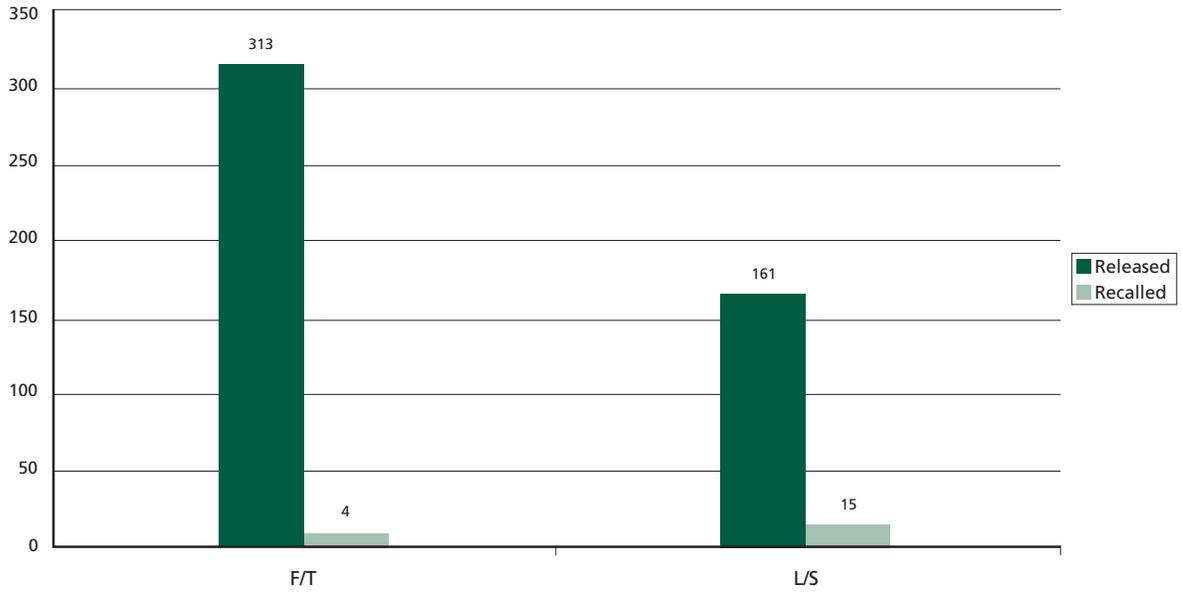


2007-2008

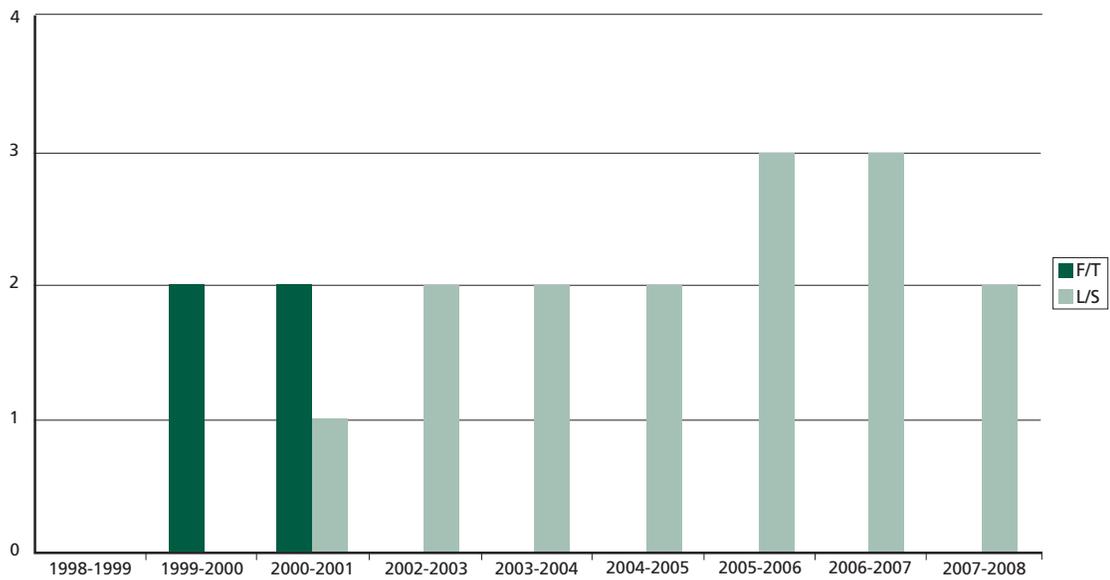
Applications by Type and Determinations Made



### Prisoners Released and Prisoners Recalled 1998-2008



### Number of Prisoners Recalled by Year



NB: The number of prisoners recalled is not the same as the number of recall applications processed. This is because prior to 2006-2007 the Commissioners did not consider the suspension of a licence if the prisoner involved did not make an application for it to be so considered. In 2006-2007, the Commissioners reflected on this position and concluded that the legislation bestowed on them a duty to consider all suspensions whether or not the prisoner makes an application to them. This they have done.



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