

PROPOSALS

IN RELATION TO ON THE RUNS (OTRs)

APRIL 2003

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1. Within a context of acts of completion, the British Government would bring before Parliament the legislation necessary to resolve outstanding cases on a basis involving due judicial process, and showing sensitivity to the position of victims. The Irish Government would address similar cases in its jurisdiction. A related issue would be the complete ending of exiling and allowing those exiled to return.
2. This paper outlines the proposals for the British legislation.
3. There would be two elements to the process - a body to establish eligibility for the scheme and a special judicial tribunal to hear cases.
4. Legislation would set out who and what offences qualified for the scheme. A qualifying offence would be any scheduled or equivalent offence committed before 10 April 1998. It would include offences committed by, or in the course of, escaping, or committed as part of an incident involving a scheduled offence. A qualifying person would be someone:
 - who was not a supporter of a specified organisation;
 - who was not currently involved in acts of terrorism; and
 - who had not been convicted of a serious offence committed after 10 April 1998 for which he had received a sentence of five years or more.
5. An individual who believed that he was covered by the terms of the legislation would apply in writing to an Eligibility Body. The applicant or his representative would be asked to confirm that he was not a supporter of a specified organisation. The Eligibility Body would ask the Secretary of State for information, including details of any charges brought in relation to offences allegedly committed after 10 April 1998, and any information on whether the applicant is a supporter of a specified organisation or is involved in terrorism. The information from the applicant and the Secretary of State would be considered and a determination reached as to the eligibility of the individual against the criteria set out above.
6. The applicant or the Secretary of State would be entitled to challenge the determination. Where the material on which a challenge was based was of a sensitive nature, procedures would be put in place to ensure that it was safeguarded.
7. Once someone had been declared eligible, he or she would be free to return to Northern Ireland without risk of arrest for questioning or charge in relation to a qualifying offence.

8. Once a certificate had been granted, the matter would be passed to a Special Judicial Tribunal, with the powers of a criminal court, consisting of a senior judge (but no jury). The relevant prosecuting authorities would be able to bring charges before the Special Judicial Tribunal against any person whom the Eligibility Commission had declared eligible. The applicant would not be required to be present at the trial. He would be able to plead not guilty and, if he wished, instruct a defence to be mounted. The Special Judicial Tribunal would not have the power to remand in custody.
9. In the event of conviction, the Special Judicial Tribunal would pass sentence, but the person convicted would immediately qualify for the early release scheme. The Eligibility Body would exercise the relevant powers of the Sentence Review Commission under the Northern Ireland (Sentences) Act 1998. There would be two significant changes to the Act:
 - the existing two year minimum period in custody would be reduced to zero;
 - the requirement that, to qualify, the sentence needed to be of at least five years would be removed.
10. On receiving a determinate sentence the individual would be immediately released on licence. The licence could be revoked and the sentence passed by the Special Judicial Tribunal effected. This would happen if:
 - the cease-fire of the organisation of which the individual was a supporter broke down, and it therefore became a specified organisation; or
 - the individual became a supporter of a specified organisation; or
 - the individual became involved in terrorism; or
 - the individual committed a serious crime for which he received a sentence of 5 or more years.

In the case of individuals receiving a life sentence, an assessment would have to be made of whether the individual was a danger to the public before he or she could be released on licence.

11. There would be normal rights of appeal against conviction or sentence.