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Northern Ireland (Offences) Bill

These notes refer to the Northern Ireland (Offences) Bill as introduced in the House of Commons on 9th November 2005 [Bill 81]

NORTHERN IRELAND (OFFENCES) BILL

EXPLANATORY NOTES

1. These Explanatory Notes relate to the Northern Ireland (Offences) Bill as introduced in the House of Commons on 9th November 2005. They have been prepared by the Northern Ireland Office to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

SUMMARY

3. The purpose of the Bill is to give effect to proposals published in May 2003 to deal with those suspected of terrorist-related offences committed before the date of the Belfast Agreement (10th April 1998) in connection with the affairs of Northern Ireland, who have not yet been tried or convicted because they have been 'on the run'. The Bill also makes comparable provision for those who might be charged in the future with terrorism-related offences committed before that date, and for those who have already been convicted of such offences.
4. The Bill provides for a scheme which will operate in relation to offences that were committed before 10th April 1998 and are offences under the law of any part of the United Kingdom, and were committed in connection with terrorism and the affairs of Northern Ireland irrespective of whether committed for terrorist purposes or not (this may include offences committed

in the course of efforts to combat terrorism). Persons who are eligible for the scheme may be given a certificate. Persons who have not yet been convicted of offences in relation to which they have been given a certificate will be exempt from certain powers (eg the power to arrest). (Those who are eligible for the scheme from the point of charge benefit from the same exemptions, although it is only the power to remand in custody which will be relevant in practice.) They can still be prosecuted for offences in relation to which they have been given a certificate, but only before a Special Tribunal. If they are convicted, and sentenced to imprisonment, then, provided they satisfy certain conditions, they will be released on licence and will be in a similar position to persons released under the Early Release Scheme provided for by the Northern Ireland (Sentences) Act 1998 (c. 35). A person who receives a certificate in relation to a relevant offence whilst serving a custodial sentence for that offence is eligible for release on similar terms.

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5. The Bill provides for the creation of a number of bodies. Applicants to the scheme will apply firstly to a 'Certification Commissioner' who will decide whether the applicant is eligible for the scheme. The applicant will be eligible if he:

- does not support a specified organisation;
- is not concerned, or likely to be concerned, in the commission, preparation or instigation of acts of terrorism;
- has not been convicted of an offence committed on or after 10th April 1998 which would, if committed before that date, be an offence to which the Bill applies;
- has not, since that date, had a sentence of imprisonment imposed for a term of 5 years or more, for an offence under the law of any part of the UK, or in relation to a "serious foreign offence" (as defined).

The Bill provides for the applicant or the Secretary of State for Northern Ireland to appeal a decision of the Certification Commissioner to the 'Appeals Commissioners'.

6. Individuals who are currently wanted by the Police Service of Northern Ireland for offences covered by the scheme, and who at 1st November 2005 were so wanted and would have been arrested before that date but for the fact that they were believed to be outside the United Kingdom, can apply to the Commissioner in respect of those offences once the legislation is commenced. From the point at which they are granted a certificate, they will be exempt from certain police powers, including powers of arrest or questioning, in relation to the offences identified by their certificates. Individuals who are not currently suspected of involvement in offences covered by the scheme can apply for a certificate only if they are charged with such an offence in the future. Certificate-holders may only be tried in the Special Tribunal in respect of the offences specified on the certificate or offences arising from the incident(s) specified on the certificate. The Bill provides for the creation of a 'Special Prosecutor' to take forward any

prosecutions in the Tribunal. Certificate-holders need not attend the trial and there will be a right of appeal against the Tribunal's verdict or sentence to a 'Special Appeal Tribunal'.

7. Those convicted in the Special Tribunal and sentenced to imprisonment become eligible for release on licence under the scheme. Any other individuals convicted of offences covered by the scheme can also apply for certificates, which would make them eligible for release on licence in the same way. The grant of a licence will be subject to the provision of fingerprints and non-intimate samples in a manner required by the Secretary of State. In the case of a person serving a life sentence, he will not be eligible if he appears to the Secretary of State to pose a danger to the public. The Secretary of State may suspend a licence if he believes that an individual has failed to meet any of the conditions outlined above in respect of eligibility; or if the organisation that the person has supported becomes a specified organisation; or if he believes that an individual who has received a sentence of life imprisonment has become a danger to the public.

8. The Secretary of State must inform the Appeals Commissioners of his decision to suspend a licence; the Commissioners must then consider the case. If they believe that none of the conditions imposed by the licence has been or is likely to be broken, they must confirm the licence; otherwise they must revoke it. If a person's licence is revoked he will be required to serve the remainder of the sentence imposed by the Special Tribunal, subject to the release arrangements that would otherwise have applied in his case.

OVERVIEW

9. The Bill contains 27 clauses and 6 schedules.

10. Clause 1 specifies the offences that the Bill applies to. Clauses 2 to 6 detail the certification process.

11. Clauses 7 to 11 provide for the various exemptions and special procedures that a certificate of eligibility entails, in particular exemption from arrest, questioning etc in respect of a certified offence, and trial in the Special Tribunal. These clauses also provide for the release on licence of an individual convicted and sentenced by the Special Tribunal and the suspension and revocation of such licences.

12. Clauses 12 to 17 provide for appeals against decisions of the Certification Commissioner and Special Tribunal to the Appeals Commissioners and Special Appeal Tribunal respectively. Schedules 3 and 4 make further provision about the operation and procedures of the Appeals Commissioners. Schedule 5 deals with the Special Appeal Tribunal.

13. Clause 18 provides for the establishment of a Special Prosecutor. Clause 19 is an interpretation clause and clauses 20 to 27 deal with miscellaneous and general issues.

COMMENTARY ON CLAUSES

Clause 1 - Offences to which this Act applies

14. Clause 1 identifies offences to which this legislation applies. Subsection (1) makes clear that the Bill only applies to terrorist-related offences committed in relation to the affairs of Northern Ireland before 10th April 1998 - the date of the signing of the Belfast Agreement.

15. Subsection 1(a) provides that the Bill applies to offences under the law of any part of the UK committed in connection with terrorism and the affairs of Northern Ireland before 10th April 1998. This includes offences committed for terrorist purposes but may also include offences committed in the course of efforts to combat terrorism in Northern Ireland.

16. Subsection 1(b) provides that the Bill also applies to escape offences committed before 10th April 1998. Subsection (2) defines an 'escape offence' as an offence specified in paragraph 9 of Schedule 9 to the Terrorism Act 2000, or an equivalent offence committed elsewhere in the UK.

Clause 2 - Certification Commissioner

17. This clause provides for the appointment of the Certification Commissioner. It also gives effect to Schedule 1, which makes further provision about the Commissioner.

Clause 3 - Certificates of Eligibility

18. Clause 3 sets out the criteria that must be met for an individual to be considered eligible for the scheme. To be eligible an applicant must fall into one of the categories set out in subsection (2) and also meet the conditions specified in subsection (3).

19. An applicant falls into a subsection (2) category if one of the following applies:

- A senior member of the Police Service of Northern Ireland states that the Service has, and has had since 1st November 2005, reasonable grounds for suspecting the applicant to be guilty of an offence to which the Bill applies, and that the Service would have arrested this individual before that date had the applicant not been believed to be outside the UK (subsection (2)(a)). This is intended to cover individuals whom the police would have already arrested in connection with an offence under clause 1, had the individual been in the UK (see also clause 3(8) which defines a "senior member" of the PSNI);
- The applicant has been charged with an offence to which the Bill applies (but not convicted or acquitted of it) (subsection (2)(b)). This is intended to cover individuals who have already been charged with such offences in the past and have absconded before trial, and

individuals who are charged with such offences in the future;

- The applicant has been convicted of such an offence but has not been sentenced for it, is serving his sentence (whether in custody or on licence) or is unlawfully at large (subsection (2)(c)). This is intended to cover individuals who have absconded following conviction or who are currently serving sentences.

20. The conditions that an individual must meet for a certificate to be issued are that:

- the applicant does not support a specified organisation;
- he is not concerned, or likely to be concerned, in the commission, preparation or instigation of acts of terrorism;
- he has not been convicted of a terrorist-related offence committed on or after 10th April 1998;
- he has not had a sentence of imprisonment of five years or more imposed on him whether in relation to an offence under the law of any part of the UK or a serious offence committed abroad, on or after 10th April 1998 (clause 3(8) defines a "serious foreign offence").

Under clause 4(4), the Secretary of State has the right to make representations to the Certification Commissioner about an application. If he has information that the conditions are not met, he may not only provide that information to the commissioner, but also make representations, for example in relation to the weight that it may be appropriate to place on that information.

21. Subsections (4) to (7) of clause 3 set out that the certificate issued to eligible applicants shall specify the offences to which the certificate applies. These are the "certified offences". Where a person has been charged or convicted, the certified offences are those in relation to which he has been charged or convicted. If an individual has not been charged or convicted but is subject to a statement from the PSNI, the certificate will be in respect of those offences in relation to which the police suspect the person and would have arrested him prior to the date of introduction. In the latter case the certificate will identify a specific incident or conduct rather than a specific offence. Subsection (7)(c) provides that an offence arising out of the same facts or committed in connection with this conduct or a certified offence will also be a certified offence for the purposes of the Bill. Subsection (7) also makes clear that references in the Bill to a certified offence in relation to a certificate holder are referring specifically to the offences certified on that person's certificate, and not on any other person's certificate.

Clause 4 - Making and Dealing with Applications for Certificates

22. Clause 4 sets out the various actions required to complete the certification process.

23. Subsection (1) provides for an application to be made by (or on behalf of) the applicant in a manner required by the Certification Commissioner. It

would be possible for an application to be made through an intermediary such as a solicitor. The applicant (or those acting on his behalf) must also provide any information required by the Commissioner (subsection (2)) in order to help identify the applicant satisfactorily. Subsection (3) provides that the applicant must also provide physical evidence of his identity, as required by the Commissioner, of a kind prescribed in rules made by the Secretary of State

24. Under subsection (4), the Commissioner must inform the Director of Public Prosecutions in order to indicate that the individual has applied for this scheme. The Commissioner must also inform the Secretary of State of the application, and he will be able to make representations to the Commissioner about the application (subsection (5)). As explained above, the Secretary of State might provide information in relation to the applicant's eligibility.

25. Under subsection (6), the Commissioner must give notice of his decision to grant or refuse a certificate, and the reasons for his decision, to both the applicant and the Secretary of State. This requirement to provide reasons will be subject to any rules made under subsection (8)(d) in order to protect sensitive information.

26. Subsection (7) requires the Secretary of State to make rules governing the procedure to be followed by the Commissioner. Matters likely to be covered by rules are set out in subsection (8) and include time limits upon the period between application and determination, disclosure of information, persons to be notified and the amendment of certificates. Provision may also be made for the protection of sensitive information which may be shown to the Commissioner in order to inform his decision.

27. Subsection (9) of clause 4 enables the Secretary of State to give directions to the Police Service of Northern Ireland. This is directed at the assistance that the Commissioner will need to help him make decisions about eligibility. Subsection (10) requires compliance of members of the PSNI with both rules and directions. Subsection (11) deals with the situation in which the Secretary of State believes that the provision of a particular piece of information to the commissioner would be prejudicial to national security or would pose a significant risk to the safety of any person. This subsection allows the Secretary of State the discretion not to provide that information to the Commissioner, and to ensure that it is not provided by the PSNI under subsection (9).

Clause 5 - No proceedings while application for certificate pending

28. Clause 5 provides that, where there has been an application for a certificate of eligibility, no proceedings can be commenced for an offence to which the Bill applies (or an offence connected to it) until the application is determined. Any proceedings already commenced are to be suspended until then also. This includes the adjournment of proceedings in court. Adjournment of court proceedings does not prevent the person being

remanded.

29. As a safeguard, subsection (3) provides that this can only happen in respect of a first application. If it is a second or subsequent application, proceedings may commence or continue unless the Certification Commissioner certifies that there has been a material change of circumstances since the previous application.

30. Subsection (4) sets out the points at which an application for a certificate is considered to be determined for the purposes of this clause. Proceedings are suspended until such time as the certificate is granted or refused and the routes of appeal are exhausted.

Clause 6 - Cancellation of certificate

31. Clause 6 enables the Secretary of State to cancel a certificate of eligibility if he believes that the conditions outlined in clause 3(3) in respect of eligibility are no longer met by the certificate-holder or that an organisation which the person supported is now a specified organisation. (Under clause 19, "specified organisation" is defined as having the same meaning as in section 3 of the Northern Ireland (Sentences) Act 1998 (c.35)). For example, this will enable the Secretary of State to cancel the certificate of individuals who are members of an organisation presently on ceasefire if that organisation subsequently becomes specified.

32. Under subsection (2) the Secretary of State must give notice of his decision to cancel a certificate and the reasons for it to the individual concerned. He must also inform the Director of Public Prosecutions. Subsection (3) allows for the Secretary of State to make rules in relation to the detail of any reasons given.

Clause 7 - Exemption from arrest etc

33. This clause provides for a certificate-holder to be exempt from the exercise of certain powers in respect of him in connection with a certified offence (as defined by clause 3(7)). In practice, the significance of the non-exercise of these powers will depend on which of the categories in clause 3(2) the individual falls into. Once a person is convicted, these powers may, if necessary, be exercised against the person in relation to that offence; for instance in the event of the person breaking the terms of his licence.

34. The powers defined in clause 7(2) are the normal powers exercisable in relation to a person who is being investigated for or has been charged with an offence.

35. Under clause 7(3), no power to obtain information exercisable in relation to criminal proceedings is exercisable in relation to a certificate-holder in connection with a certified offence. This does not, therefore, prevent a person from being required to give evidence in the trial of another person, (since clause 3(7) makes it clear that the reference to a "certified

offence" is a reference only to an offence of the person being required to give evidence that is covered by his own certificate) or in relation to a non-certified offence. Clause 7(4) provides that the issue of a certificate of eligibility does not render unlawful any arrest, search etc. done in relation to the certificate-holder before the certificate was issued.

Clause 8 - Trial by Special Tribunal

36. Clause 8(1) provides that any trial of a certificate-holder for a certified offence may only take place in the Special Tribunal. Clause 8(2) makes clear that the Tribunal may only try certified offences (subject to paragraph 4 of Schedule 2). By virtue of clause 3(7) there will be cases where a number of offences arising out of the same incident will be certified offences, so the Tribunal may in some circumstances try a person for a number of related offences.

37. By virtue of clause 8(3), a defendant need not appear in person before the Special Tribunal. He may enter a plea of guilty or not guilty *in absentia*, through a legal representative, but if he does not enter a plea, he will be taken as having pleaded not guilty to the charges against him. Under clause 8(6), the Tribunal is obliged to give a judgment stating reasons for a conviction as soon as is practicable after the time of conviction.

38. Subsection (7) provides for the powers of the Special Tribunal. The Tribunal is distinct from the Crown Court. The powers, authorities and jurisdiction of the Tribunal will mirror those of the Crown Court (paragraph (a)), and its actions will have effect as if done by the Crown Court (paragraph (b)). Subsection (8) gives effect to Schedule 2 which makes further provision for the Special Tribunal.

Clause 9 - Entitlement to Licence

39. Clause 9 provides for certificate-holders, sentenced to a term of imprisonment by the Special Tribunal, to be released on licence as soon as possible after the grant of a certificate, in the case of a person already sentenced, or alternatively after sentencing. There is an exception in the case of certificate-holders sentenced to life imprisonment whose eligibility for licence is subject to the condition that they are not a danger to the public. A certificate-holder will only be granted a licence when he has complied with the requirements of the Secretary of State in relation to supplying fingerprints and samples which are necessary for identification purposes (subsection (2)).

40. Clause 9(1)(b) covers individuals who apply for certificates following conviction and have not been tried in the Special Tribunal. It provides for an individual who has been convicted of a certified offence to be released on licence as soon as possible after being granted a certificate. This applies whether the individual is serving the sentence in custody or is unlawfully at large. Release is again subject to subsections (2) and (3) regarding the provision of fingerprints and samples, and the view of the Secretary of State on whether the person poses a danger to the public in the case of a person

serving a life sentence.

41. Subsection (4) makes clear that an individual who has received a licence will not have to serve his sentence in custody unless the licence is suspended or revoked. An individual on licence will still be considered to be serving their sentence. Subsections (5) to (7) set out how the length of sentence is to be calculated in line with existing practice for remission. Sentences and licences expire at the point at which the person's period of custody would normally end. Subsection (8) sets out that a licence under this legislation replaces any pre-existing licence for the same offence.

Clause 10 - Conditions of licence

42. Clause 10 sets out the conditions to which a person's licence under clause 9 is subject. These are the conditions set out in clause 3(3), the condition that he does not become a danger to the public in the case of a person serving a life sentence, and the condition that no organisation that he has at any time supported becomes a specified organisation after the licence is given.

Clause 11 - Suspension and revocation of licence

43. If the Secretary of State believes that an individual has breached a condition of his licence, or is likely to do so, he may suspend the person's licence (see subsection (1)). The Secretary of State must give notice of the suspension, and the reasons for it, to the individual, who will be detained in pursuance of his sentence (see subsections (2)(a) and (6)).

44. Subsection (2)(b) also requires the Secretary of State to inform the Appeals Commissioners (see clause 13) of the suspension and the reasons for it. The Appeals Commissioners must then consider the case.

45. If the Appeals Commissioners believe that none of the conditions imposed by the licence have been broken, or are likely to be broken, they must confirm the licence and the individual will be released. If the Commissioners believe that the individual has failed to meet the conditions, the licence will be revoked and the person will be obliged to serve the remainder of his sentence.

46. Subsection (5) requires the Appeals Commissioners to give notice of and reasons for their decisions to the licence-holder and the Secretary of State.

47. Subsection (8) provides that on revocation of a licence, the person becomes subject to the release arrangements that would otherwise have applied in his case. An individual whose licence is revoked under this clause will not be able to apply for the reinstatement of that licence.

48. Subsection (9) enables the Secretary of State to make rules limiting reasons given under this clause from referring to certain matters. This is

designed to prevent disclosure of sensitive information.

Clause 12 - Rights of Appeal: Certificates of Eligibility

49. Appeals in relation to certificates of eligibility are provided for at clause 12. The applicant may appeal against refusal to grant a certificate; the Secretary of State may appeal against the grant of a certificate; and a certificate-holder whose certificate has been cancelled may appeal against the cancellation. Appeals in each case are to the Appeals Commissioners.

Clause 13 - Appeals Commissioners

50. This clause provides for the Secretary of State to appoint Appeals Commissioners. It gives effect to Schedule 3, which sets out specific provisions about the Commissioners, covering matters such as tenure of appointments, remuneration and staffing. Clause 13(2) requires the Secretary of State in making appointments under this provision to have regard to the desirability that they might command widespread acceptance throughout the community in Northern Ireland.