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Mr J Stephens - 8 - B
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REVIEW OF SECURITY: LONGER IMPRISONMENT FOR TERRORISTS

1. As requested in Mr A W Stephens' minute of 24 August to you and Mr Steele, which we discussed yesterday, I attach for your consideration and that of copy recipients a first draft of a paper which the Secretary of State intends to send to colleagues seeking their agreement to measures which would ensure longer terms of imprisonment for those convicted of serious terrorist offences.

2. The draft paper seeks to give substance to the proposals outlined in the relevant Annex attached to the Secretary of State's minute of 23 August to the Prime Minister. An unfortunate consequence of this is that the measures are focused more specifically on terrorists than apparently needs to be the case. This is undesirable if we are seeking to cling - however precariously - to our policy of treating terrorists like other criminals wherever possible. In the case of the measures affecting remission it could have unfortunate consequences for the maintenance of relative calm and stability in the prisons.

3. Mr Jonathan Stephens has pointed out that the power for the courts, at their discretion, to order a person with an unexpired portion of a remitted sentence outstanding, who is convicted of a further offence to serve the unexpired portion in custody, is provided for in Article 3 of the Treatment of Offenders (NI) Order

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1976 (attached). A new order to replace that one is at present in the consultation stage with a view to laying and making the Order before the end of this year. It would, therefore, be easily possible to amend Article 3 in the new Order to achieve the effect desired by the Secretary of State provided the measure applied to all prisoners and not terrorists only.

4. Subject to the views of our Legal Advisers, this approach seems to me to have the following considerable advantages:

- a. it treats all convicted persons equally;
- b. it achieves our objectives earlier than could be achieved through the Prevention of Terrorism Bill;
- c. it is likely to arouse less controversy if effected through the Order than through the PT Bill which is controversial enough as it presently stands; and
- d. the measure would not be subject to amendment by Parliament.

5. Again, subject to the views of our Legal Advisers, it seems to me that the main amendment would be to the final five lines of Article 3(1), and would be something along the lines of the following:

X "the court shall, without prejudice to its powers to deal with him in respect of the offence, order that he be returned to prison, or where appropriate, to a young offenders' centre for such period referred to in paragraph (3), such period to be served concurrently without further remission with any sentence of imprisonment awarded for the offence; and, where it is a magistrates' court, exercise the powers conferred by paragraph (4)."

Article 3(2) seems to provide a saving for those whose previous convictions were for minor offences, but it is for consideration

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X that there should also be a saving for those whose latest offence would also fall within the scope of Article 3(2). Finally, it would be for the Legal Advisers and the Draftsmen to decide whether 3(10) would require amendment to reflect the requirement that the period of imprisonment representing the unexpired portion of the remitted sentence should not attract further remission.

7. I should be grateful to know whether you believe this route is worth pursuing and how, in the limited time available we might persuade the Secretary of State to change tack.

8. So far as the proposed measures imposing minimum sentences are concerned, could I ask you and copy recipients to look closely at the appeals mechanism I have suggested in paragraph 7 of the paper. You will see that it would undoubtedly further fuel the flames of controversy over these measures because it interposes the Executive into the appeals machinery. I have done this to prevent the judiciary easily circumventing the purpose of this measure by the Court of Appeal routinely reducing awards of mandatory minimum sentences by the Crown Courts when offenders exercised their right of appeal.

9. If we are to have the paper in final draft form by midday Thursday 1 September, I am afraid I must ask for comments by no later than midday Wednesday 31 August.

[Signed]

B A BLACKWELL
Policy Development Unit
26 August 1988

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MEASURES AFFECTING THE LENGTH OF IMPRISONMENT FOR TERRORISTS IN NORTHERN IRELAND

Summary

1. This paper proposes measures for inclusion in the Prevention of Terrorism Bill to ensure that terrorists convicted of serious terrorist crimes in Northern Ireland receive longer sentences of imprisonment on conviction than is usually the practice there at present. It goes on to propose measures amending the present remission scheme in Northern Ireland so as to provide a greater deterrent to reinvolverment in terrorist crime.

Background

2. In the light of the high level of terrorist activity, the security forces in Northern Ireland have often expressed concern that, after they have worked very hard at great risk to obtain evidence capable of sustaining convictions against terrorists, the culprits are frequently released from prison in what they consider to be an unacceptably short period of time given the seriousness of the offences committed. Their worries on this score are compounded by the problem of reinvolverment. Recent statistics show that 40% of terrorist prisoners released in 1984 were reconvicted within two years of release, half of them for terrorist offences; and a special statistical exercise, undertaken last year, based on intelligence

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X information, showed that one-third of terrorist prisoners released in 1985 became reinvolved in terrorist or terrorist-related activity within ²⁴(18) months of leaving prison. Furthermore there is evidence that prisoners convicted for non-terrorist crimes become committed to terrorism while in prison and subsequently become involved in terrorist crime on release.

3. Comparisons between the length of sentences for terrorist offences handed out by the judiciary in Northern Ireland compared with those handed out in England and Wales are set out in Annex A. They indicate clearly that sentencing policy in Northern Ireland is more lenient than in England and Wales despite the fact that there is very little divergence in the two jurisdictions between the maximum sentences available for the more serious offences commonly committed by terrorists. And, although clear trends are difficult to discern, there is some evidence that average sentences are actually falling in Northern Ireland for such offences as possession of firearms with intent, wounding with intent, arson, robbery and hijacking.

The Proposals

4. It is proposed that the Northern Ireland (Emergency Provisions) Act 1978 (EPA 1978) should be amended in the Prevention of Terrorism Bill to require the imposition of minimum sentences for the most serious of the terrorist-type offences set out in Schedule 4 to that Act, and to require that upon reconviction for a scheduled offence the unexpired portion of the remitted determinate sentence of any

recidivist should be served consecutively with the sentence imposed for the latest offence.

4. In determining those offences to which mandatory minimum sentences should be applied, two factors are relevant. First, the offences should be those which are, in the main, committed by terrorists - therefore they should be among the scheduled offences set out in Schedule 4 to the EPA 1978. Second, if the scheme is to achieve its purpose of keeping the most committed and dangerous terrorists out of circulation, the minimum sentence would need to be high - therefore, the offences affected should be the most serious offences listed in the Schedule with maximum sentences for 10 years or more.

5. The offences proposed are listed at Annex B. They all involve or imply a threat to life by violence. The policy, therefore, is somewhat comparable to developments in England and Wales whereby previous Home Secretaries have announced that those guilty of serious crimes of violence - murder of police or prison officers, terrorist murders, sexual or sadistic murders of children or murder in the course of robbery - should normally be expected to serve at least 20 years in prison, while those sentenced to more than five years imprisonment for offences of violence should only be eligible for 6 months parole at the end of the unremitted portion of their sentence. Since this measure is directed specifically at terrorists it would not bite on those offences at Annex B in circumstances where the Attorney General had exercised his power to certify that they should not be treated as scheduled offences.

6. The maximum sentences for the offences at Annex B are in each case one of three: 10 years, 14 years or life. It is proposed that the tariff of minimum sentences should be 7 years where the maximum is 10, 10 years where the maximum is 14 and 15 years where the maximum is life.

7. To take account of any anomalies that may arise, it is proposed that there should be provision to enable a person sentenced to the prescribed minimum sentence for a scheduled offence to seek the Court's permission to petition the Secretary of State who may refer his sentence to the Court of Appeal on the ground that the sentence was inappropriate in the special circumstances of the particular case.

8. To avoid any problems that might be caused by retrospection the new measures would only take effect on offences committed after the legislation had come into effect.

9. Northern Ireland has no equivalent to the parole schemes in prisons in Great Britain under which a prisoner serving a determinate sentence can be released after serving as little as one-third of his sentence. In Northern Ireland since 1976 all prisoners in Northern Ireland serving a determinate sentence have been awarded remission of one-half of their sentence. Remission can only be lost for specific disciplinary offences. Having served one-half of his sentence in custody, a prisoner in Northern Ireland is then given conditional release. If he is reconvicted before the full balance of his sentence expires, then the court may order his return to prison to serve all or some of the remaining period. The

court can order this to run consecutively or concurrently with any fresh sentence which may be imposed for the latest offence. In practice, the courts use this power relatively infrequently, preferring - if anything - to impose a proportionately longer fresh sentence.

10. To enhance deterrence of reinvolved in terrorist offences it is proposed that the Prevention of Terrorism Bill should insert a provision in the EPA 1978 that, upon conviction for a scheduled offence, a person who has outstanding an unexpired portion of an earlier remitted sentence for any offence shall be required to serve in custody, without further provision for remission, the unexpired portion of his remitted sentence consecutively with any new custodial sentence imposed for the latest offence. This latter part of the sentence would be subject to the usual rules on remission.

11. To avoid possible breach of the ECHR the measure would not apply to persons currently released on remission but would apply to those sentenced prisoners in custody and to all those convicted and sentenced after the legislation came into effect.

Conclusion

12. Further measures are urgently required to ensure that terrorists convicted and imprisoned for serious crimes of violence are kept out of circulation for longer periods than at present, and that all convicted prisoners released on remission are more effectively deterred from reinvolved or involvement in terrorist

crime than at present. Colleagues are therefore invited to agree to the inclusion in the Prevention of Terrorism Bill of amendments to the EPA 1978 as described above prescribing minimum sentences for specified scheduled offences and requiring persons convicted of a scheduled offence who have outstanding an unexpired portion of a previously remitted sentence to serve that unexpired portion consecutively with any fresh sentence imposed by the court.

Northern Ireland Office

August 1988

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COMPARISON OF SENTENCING POLICIES FOR TERRORIST OFFENCES

Although life imprisonment is available for the majority of serious terrorist-type offences, only 20 such sentences were actually imposed in Northern Ireland for scheduled offences other than murder in the nine year period from 1978 to 1986. This was out of a total of nearly 3000 sentences for which life was available but not mandatory. The figures are particularly revealing in the case of those firearms and explosives offences where life is available but not mandatory. During this period no life sentences were imposed for firearms offences although a total of 344 convictions were secured; and for explosives offences, only 2 life sentences were given out of a total of 299 sentences. In England and Wales, the picture is rather different. The 46 persons currently serving sentences for offences connected with Irish terrorism, have received a total of 8 life sentences for firearms offences and 34 for explosives offences.

This difference is similarly reflected in determinate sentences. During the period 1983 to 1987, only 23 sentences of 20 years or more were imposed in Northern Ireland on persons committing terrorist offences. These including 9 for explosives offences and 5 for firearms offences out of a total of 217 sentences. In England and Wales during the same five year period, there were 4 sentences of 20 years or more for explosives offences and 3 for firearms out of a total of less than 25 sentences.

It is difficult to compare average sentences because all the relevant information in respect of England and Wales is not available. But the following statistics, covering the most recent five year period for which figures are available, illustrate sentencing policy in Northern Ireland in relation to a number of the most serious crimes:

Sentences in Northern Ireland (1982 - 1986)

Offence	No of Sentences	Life	Average Determinate Sentence
Attempted Murder	73	1	12.8
Conspiracy to Murder	57	1	11.0
Explosives Endangering Life	83	0	8.4
Manslaughter	65	1	6.9
Firearms Endangering Life	214	0	5.7

In view of the high level of terrorist activity and of the worrying extent of reinvolverment, these average sentences for very serious crimes of violence - which attract 50% remission - are simply not long enough to keep the perpetrators out of circulation (thus reducing the number of experienced terrorists available to the paramilitary organisations) nor to provide an effective deterrent to those on the fringes of terrorism (thus reducing the flow of recruits into the ranks of active terrorists).

SCHEDULED OFFENCES TO BE SUBJECT TO MINIMUM SENTENCES

(The present maximum sentences for the offences are set out in the square brackets).

Common Law Offences

Attempted murder [LIFE].

Manslaughter [LIFE].

Offences against the Person Act 1861

Section 4: conspiracy, etc to murder [LIFE].

Section 18: wounding with intent to cause grievous bodily harm [LIFE].

Section 20: causing grievous bodily harm [LIFE].

Section 28: causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm [LIFE].

Section 30: placing explosive near building or ship with intent to do bodily injury [14 YEARS].

Explosive Substances Act 1883

Section 2: causing explosion likely to endanger life or damage property [LIFE].

Section 3: attempting to cause any such explosion, and making or possessing explosive with intent to endanger life or cause serious damage to property [LIFE].

Section 4: making or possessing explosives in suspicious circumstances [14].

Protection of the Person and Property Act (Northern Ireland) 1969

Section 3: throwing or using petrol bomb, etc [10 YEARS].

Hijacking

Offences under Section 1 of the Aviation Security Act 1982 (Aircraft) [LIFE].

Criminal Damage (Northern Ireland) Order 1977

Article 3(2): destroying or damaging property with intent to endanger life [LIFE].

Firearms (NI) Order 1981

Article 17: possessing firearm or ammunition with intent to endanger life or cause serious damage to property [LIFE].

Article 18: use or attempted use of firearm or imitation firearm to prevent arrest of self or other [LIFE].

Article 19: carrying firearm or imitation firearm with intent to commit indictable offence or prevent arrest of self or another [14 YEARS].

Article 23: possession of firearm or ammunition in suspicious circumstances [10 YEARS].

NI (Emergency Provisions) Act 1978

Section 23: training in making or use of firearms, explosives or explosive substances [10 YEARS].

Criminal Attempts and Conspiracy (NI) Order 1983

Article 9: conspiracy to murder [LIFE].

Article 10:

Article 11: under Section 1 of the Criminal Attempts Act 1981 (LIFE).

Article 12: Criminal Attempts (Northern Ireland) Order 1983

Article 13(2): destruction or damage to property with intent to endanger life (LIFE).

Article 14: Criminal Attempts (NI) Order 1983

Article 15: possession of explosives or ammunition with intent to endanger life or cause serious damage to property (LIFE).

Article 16: use or attempted use of firearm or imitation firearm to prevent arrest or other (LIFE).

Article 17: carrying of firearm or imitation firearm with intent to endanger life or cause serious damage to property or to prevent arrest or other (LIFE).

Article 18: possession of firearm or imitation firearm with intent to endanger life or cause serious damage to property or to prevent arrest or other (LIFE).

Article 19: Criminal Attempts (NI) Order 1983

Article 20: possession of firearm or imitation firearm with intent to endanger life or cause serious damage to property or to prevent arrest or other (LIFE).