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12 THINGS THEY DON'T WANT YOU TO KNOW

ABOUT THE NI OFFENCES BILL

A Better Way to a Better Ireland

12 THINGS THEY DON'T WANT YOU TO KNOW ABOUT THE NORTHERN IRELAND (OFFENCES) BILL...

AND ONE THING THAT NEEDS TO BE DONE ABOUT IT

Introduction

The Northern Ireland (Offences) Bill was introduced on 9 November 2005.

Since then there has been a heated debate on what this Bill does. Everybody agrees that under this Bill, on the runs will be able to apply to a “certification commissioner” to confirm that they are eligible under the legislation. Once they have an eligibility certificate, they really have a skip jail card. While they can be prosecuted by a special prosecutor and while they can be tried before a Special Tribunal, once they have the skip jail card they don't have to spend a day in court – never mind prison.

But there are vital things that are not being explained about this legislation. Things that people are deliberately not making clear.

In this document, we highlight these 12 things that they don't want you to know, including the final proof that Sinn Fein signed up to state killers being protected.

1. This Bill is not required by the Good Friday Agreement

Peter Hain, when pressed, admitted this in the House of Commons: “*The right hon. Gentleman is correct to the extent that the Bill did not flow from the Belfast agreement—the Good Friday agreement.*”

The Agreement provided that prisoners convicted of scheduled offences would be released after a maximum of two years.ⁱⁱ But this Bill provides that they will not even have to spend a day in court, never mind prison.

This Bill arose from a side deal done by Sinn Fein with the British Government during the Hillsborough negotiations of March 2003.ⁱⁱⁱ This built on an earlier and much more limited side deal done at Weston Park in 2001.^{iv}

2. SF and the British Government negotiated the side deal that led to this Bill

The British Government and Sinn Fein both say that this Bill was discussed with the parties. “*This has been part of the discussions we have had with parties in Northern Ireland going back several years*” – Tony Blair.^v

In fact, the SDLP was not made privy to the papers at Hillsborough or at Weston Park. But we suspected enough to warn against them at both sets of negotiations.

And each time when the side deals were published, we made public that they were outside the Good Friday Agreement. We have also made our own positive proposals for truth and justice.^{vi}

3. This Bill applies to anybody charged with any one of the 2,100 killings of the Troubles.

Tony Blair said that the Bill dealt with “*an anomaly we had to resolve in respect of those people who had not been convicted but had been sought pre-1998.*”^{vii}

Sinn Fein’s Conor Murphy said likewise after the Bill was published. He claimed that it “*should resolve the cases of a very small number of people who wish to return home.*”^{viii}

Untrue. And they both know it.

This Bill applies to anybody who could at any time be charged with any one of the 2,100 unsolved killings of the Troubles – as well as anyone charged with any other crime in connection with the Troubles.^{ix} Under laws implementing the Good Friday Agreement these people faced a maximum of two years in jail.^x Now they won’t have to spend a single day in court.^{xi}

4. This legislation allows loyalists away with past murders even while they hold onto their guns, deal drugs, carrying out “punishment” beatings and intimidate. Sinn Fein signed up to this.

The British Government refused to introduce this legislation until the IRA decommissioned and committed to end all activity.

But loyalist killers will benefit from this Bill without having to:

- decommission a single bullet or
- end their drug dealing, crime and intimidation.

Loyalist paramilitary organisations will benefit so long as they are not specified by the Secretary of State – that is to say so long as he finds that they have maintained their ceasefire.^{xii}

The Secretary of State confirmed this to Mark Durkan in the House of Commons:

Mark Durkan: “*The Bill will benefit not only the IRA but the loyalist paramilitaries, who have made no moves on decommissioning whatever, so where is the logic there? ...*”

Peter Hain: “*I agree with the hon. Gentleman’s point about loyalist paramilitaries. Whether they are on the run or uncovered by the historic investigations, they will of course find themselves the target of this legislation.*”^{xiii}

For example, the Secretary of State has not specified the UDA. So its members should be able to skip even a day in jail for the hundreds of murders they carried out before the Agreement. Yet the latest IMC report found that the UDA:

- is involved in drug dealing and “punishment” shootings,
- has planned and supported sectarian attacks on Catholic homes and
- is still recruiting.^{xiv}

Also, the Secretary of State did not specify the UVF this Summer even though it admitted four murders and threatened more. It was only when the UVF fired 115 shots at the police that he specified them. So loyalists will believe that they can carry out murders while getting a skip jail card under this Bill.

For thirty years the British Government has failed to take loyalist violence seriously – even though loyalists have been responsible for over 800 murders – most of them sectarian. So the blatant double standard applied to loyalist violence, while appalling, is not new.

What is new is that Sinn Fein is complicit in this. Because, like in the Bill, the only requirement for a paramilitary organisation to get a skip jail card under the SF/British Government side deal is that it is not specified.^{xv}

5. People who have dealt drugs and robbed banks can get a skip jail card under this Bill

This Bill covers any pre-Agreement offence “in connection with terrorism and the affairs of Northern Ireland (whether committed for a terrorist purpose or not).”^{xvi}

So, a person who is charged with doing any of the following to raise money for a terrorist organisation will be able to get a skip jail card:

- drug dealing;
- racketeering;
- bank robbing; and
- counterfeiting

since it will be *in connection with* terrorism and the Bill does not require a terrorist purpose. Likewise, “punishment” beatings will be included. Even when they end in murder – like the UVF murder of Reverend David Templeton.

The Secretary of State may deny this. But it will be for the courts to say what this law means, not him.

And it’s not just the SDLP warning about this – independent NGO British Irish Rights Watch has too:

“This Bill, if enacted, will allow anyone who committed a crime prior to 10th April to claim that his or her motive was terrorist and to get out of jail free.”

6. The IRA will get its members outside the jurisdiction back, but people who have been expelled by the IRA will not be able to return

So long as the Secretary of State finds that an organisation has kept its ceasefire, it will be able to benefit.

However, the International Monitoring Commission in its latest report of 19 October 2005 concluded: “*We have no evidence at this stage that PIRA is generally allowing those that it has exiled to return to Northern Ireland safely.*”

So the IRA are able to get their own people home. But they are not allowing the people that they have exiled home.

7. Most appallingly, this Bill will give state killers a skip jail card

State agents – paid by the public – are to be let away with murdering the public.^{xvii}
The state has:

- killed over 300 in Northern Ireland and done much to stymie both truth and justice for its victims.
- colluded with loyalist paramilitaries in committing murders. One of its agents was even the UDA Director of Intelligence, who selected people for murder.^{xviii} It appears from the Stakeknife affair to have been complicit in provisional murders also – another thing they don't want you to know.

8. Sinn Fein accepted not only that loyalists get skip jail cards, but also state killers. We can prove this.

In return for the greater advantage of getting their on the runs back with no questions asked, Sinn Fein sold out the victims of collusion that they claimed to fight for. They let state killers and loyalists totally off the hook – without even securing truth.

Just look at Sinn Fein's record:

- The British Government confirmed to us that they had discussions on their plans with Sinn Fein over Summer.
- On 9 November, the day after the Secretary of State announced publicly that the on the run legislation would apply to state killers, Conor Murphy flew over to Westminster to welcome it and brief on it and issued a supportive press release.
- On 10 November Martin McGuinness was interviewed on *Hearts and Minds*. He
 - called our objections about state killers “naïve”.
 - said that he did “*not envisage that any people who were involved in the murders of nationalists ... is ever going to be brought before a court in this day and age.*” (Compare that to what he now says: “*we support the families of victims in their pursuit of justice and truth.*”)
 - admitted that state killers would be able to get the benefit of the legislation but said that the people who would “*gain most advantage from this are those nationalists and republicans who are on the run for over 30 years.*”

Not once did he say that the legislation should not apply to state killers. The full transcript of his comments is annexed.

- It was two whole weeks after the legislation was published before Gerry Adams said that he was opposed to state killers being included.

There is **final proof** – the side deal done by the British Government with Sinn Fein. It states that “a *qualifying offence would be any scheduled offence ... committed before 10 April 1998.*”¹ This side deal is annexed.

Scheduled offences are offences like murder, bomb making, possession of weapons and so on. Once an offence is scheduled, it is tried in a Diplock Court.

State killings in Northern Ireland are scheduled offences. The killers of Peter McBride were convicted of scheduled offences. So were other soldiers convicted of murder during the Troubles – like Lee Clegg. And they were tried in Diplock Courts.

Sinn Fein, in their side deal, signed up to state killers getting away with it. So Martin McGuinness and Gerry Adams are just not telling the truth when they now say:

“Sinn Féin did not support, propose, discuss, or accept that members of the British state forces should be part of this process.”

They accepted it in the Hillsborough side deal.

9. Killers will benefit from secrecy – and victims will have no voice

The Secretary of State has sweeping powers to cover up the truth:

- He can prevent information about an applicant for a certificate - or skip jail card - being made public;^{xix}
- He can prevent information about the reasons why a skip jail card is given or withheld from being made public;^{xx}
- He can withhold from the certification commissioner – who decides whether or not to issue skip jail cards – information on national security grounds;^{xxi}
- The Special Tribunal will also be able to allow spooks to give evidence from behind screens – and not have their identities disclosed. Of course, if spooks are themselves accused, they won't have to turn up in court at all.

Meanwhile victims will have no voice – adding to the unfairness:

- They were not consulted about these proposals.
- Victims do not have to be notified until a decision is taken on whether to issue a skip jail card. They have no power to lodge objections.^{xxii}
- There is no provision for victims to be represented at trials.

10. Prosecutions under this Bill will be hampered – benefiting killers.

A person who satisfies the basic conditions of the legislation can be tried before a special tribunal at which he can plead guilty or innocent.

However, the prosecution will be hampered in putting its case since the accused cannot be arrested, detained, have samples taken or be searched once he has a certificate – or skip jail card. Nor can any premises, whether or not his, be searched in connection with the offence. Nor can any power to obtain information be exercised in relation to him.^{xxiii}

¹ Paragraph 4. See Annex 1.

11. This Bill robs the public and victims of their best chance to get truth

This Bill does not just deny families justice, it robs them – and the public - of truth. Because there is no time limit in this legislation, the killers of 2,100 have no incentive to come forward and tell the truth.

They can sit back and wait to see if the police ever come to charge them – secure in the knowledge that if they do, they need not worry - they can apply under this legislation to avoid jail at any time.

An opportunity to at least provide for truth for victims – and the public - is therefore lost.

12. Victims can be imprisoned for failing to turn up in court, but killers cannot be

The accused cannot be compelled to turn up at the trial.^{xxiv} Perpetrators will therefore be spared the discomfort of having to look their victims in the eye. This will help protect the colluders of the British Army's Force Research Unit, as well as members of all paramilitary organisations.

By contrast, the victim, if a witness, may be compelled to appear in the court in a process to which he or she may fundamentally object. If the victim fails to do so, he or she may be imprisoned for contempt of court.^{xxv}

WHAT MUST BE DONE

The British Government has made clear that it has little appetite for this legislation. Gerry Adams, two weeks after the legislation was published, claimed that he was opposed to protection for state killers. If that is so, then there is a simple thing that he must do: **Call on Tony Blair to withdraw this legislation now and go back to the drawing board.**

That means engaging constructively and openly with victims, parties and the public on proposals for truth and justice and how to resolve the issue of On the Runs in a proportionate manner. An important part of this process would involve establishing the Victims' Forum referred to in the Joint Declaration so that victims themselves would have a say on any truth process.

Meanwhile, the SDLP will table amendments to limit the damage of this Bill. We will work for justice and, where justice has been forfeited, we will work for truth and respect for victims.

ANNEX 1

PROPOSALS IN RELATION TO ON THE RUNS (OTRs) APRIL 2003 PROPOSALS IN RELATION TO ON THE RUNS (OTRs)

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.

ANNEX 2

MARTIN MCGUINNESS ON OTRS

BBC HEARTS AND MINDS

10TH NOVEMBER 2005

Noel Thompson: Let's start with OTRs first. Mark Durkan says you entered into an alliance of sleaze with the government which has delivered, secured, an amnesty for the security forces. Are you proud of that?

Martin McGuinness: **I think that's a silly comment.** When this began its life it was on basis of On the Runs and On the Runs specifically referred to nationalist and republicans who found themselves in difficult circumstances for over 30 years.

How many RUC men /UDR men or British soldiers could have been described as On the Runs? None. Why was that? Simply because they were fortunate in having an undeclared amnesty bestowed upon them by successive British Governments.

Noel Thompson: And now you have that written on paper
McGuinness: **Well how many of them will come forward to avail of that situation? The people who will gain most advantage from this are those nationalists and republicans who are on the run for over 30 years.**

I don't envisage that any people who were involved in the murders of nationalists, and Mark knows this better than I do, is ever going to be brought before a court in this day and age.

Noel Thompson: But you've taken that possibility away from victims?
McGuinness: Victims and relatives of victims know, for example in the case of the Bloody Sunday families, the British Army was effectively marched up to Buckingham Palace and were decorated by the British Queen for their activities in Derry on that day. So what's the likelihood of those people being brought before court.

People out there in our community have a good sense what this is all about. People know this is about resolving an anomaly which flows from the GFA, prisoner releases. The fact that there were people found themselves in this almost limbo situation.

SF has spoken today to a number of victims groups. There is a lot of anger within victim groups about the way which this situation is being reported and the fact that relatives of victims of state violence are being virtually being ignored in the course of this debate.

Noel Thompson: Mark Durkan is pointing out that it is you who are putting them in that position by giving an amnesty to security forces. He wants their voices to be heard

McGuinness: **Well Mark is very naïve then if that is the case. Because these people have effectively had an undeclared amnesty for over 30 years. Successive British Governments have stood over murderous activities**

of some elements of British intelligence services UDR, RUC, and British Army and that's a fact and people in nationalist and republican areas know that.

Noel Thompson: But they also know there have been inquiries and more inquiries planned?

McGuinness: How many soldiers or how many RUC men have appeared before court for murders of 100s of Catholics and nationalists that have taken place over the years - few and far between

Noel Thompson: And now they never will?

McGuinness: **They never would in my opinion. Anyone from the broad nationalist/republican constituency knows that the state always defends its service people. Those people who were involved, even in the importation of arms from S Africa, - what possibility is there that these people would ever stand before a court -I think there is no possibility whatsoever. I am not as naïve as Mark appears to be.**

ⁱ Hansard, 23 Nov 2005, column 1535.

ⁱⁱ Good Friday Agreement, Section on Prisoners, paragraph 3, implemented by the Northern Ireland (Sentences) Act, 1998

ⁱⁱⁱ See Annex 1.

^{iv} http://www.nio.gov.uk/weston_park_document.pdf

^v Remarks to Commons Liaison Committee, 22 November 2001. See PA report of same date "Ulster Amnesty essential to peace process says Blair."

^{vi} See Vindicating the Rights of Victims at <http://www.sdlp.ie/policy/documents/policydocs.shtm>.

^{vii} Speaking to the Commons Liaison Committee, 22 November 2005, reported by Press Association.

^{viii} Sinn Fein press release, 9 November 2005.

^{ix} Clauses 1(1) and 3(2).

^x Northern Ireland (Sentences) Act, 1998.

^{xi} Clauses 8(3) and 9.

^{xii} Clause 3(3). Specified organisation is defined in clause 19(1) to mean the same thing as in the Northern Ireland (Sentences) Act, 1998 – see section 3(8) of it.

^{xiii} Hansard, 23 Nov 2005, Column 1533.

^{xiv} Seventh report of the Independent Monitoring Commission, 17 October 2005.

^{xv} Paragraph 4 of the Hillsborough side deal – see Annex 1.

^{xvi} Clause 1(1).

^{xvii} Clause 1(1).

^{xviii} The Stevens report, 2003.

^{xix} Clause 4(8)(c).

^{xx} Clause 4(8)(d).

^{xxi} Clause 4(11).

^{xxii} Schedule 1, Paragraph 5.

^{xxiii} Clauses 7(1) to (3).

^{xxiv} Clause 8(3).

^{xxv} Clause 8(7).