The Committee on the Administration of Justice

LIFE SENTENCE AND SOSP PRISONERS IN NORTHERN IRELAND.

C.A.J. PAMPHLET NO. 12

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THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

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If you would like to join the CAJ or find out more about its activities, please contact:

C.A.J.
45/47 Donegall St.,
Belfast
BT1 2FG

Tel. 0232 232394

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PREFACE

This pamphlet is the product of almost a year's research and discussion on the part of the C.A.J's sub-group on prisons. The person mainly responsible for drafting and editing was Stephen Livingstone. We are grateful to him for the many hours of work which he dedicated to the task.

INTRODUCTION

At 1st July 1988 there were 406 life sentence prisoners and 32 prisoners held at the Secretary of State's pleasure in Northern Ireland. This constitutes around 27% of the average daily prison population, a figure considerably higher than the average of 6% which prevails in the rest of the United Kingdom. Many of these prisoners were sentenced in the early or mid 1970's[1] and are now reaching the stage where if they had been sentenced in the rest of the UK they would be expecting review and release (unless there are psychiatric problems or a trial judge's recommendation of an especially long minimum sentence). They are reaching this stage in numbers in excess of anything experienced before in the history of the U.K's prison system. The high number of life sentence prisoners in Northern Ireland is clearly attributable to the level of politically related violence and in particular, murder, over the last 20 years. There is naturally considerable public concern over the impending release of people who have killed in the service of paramilitary organisations at a time when those organisations are still active.

These factors alone suggest a need to keep the procedures for the release of life sentence prisoners under review. However over the last 2-3 years there has been growing public concern over the operation of the present system for the release of life sentence prisoners. A dissatisfaction with the present system was evident in the Bennett Report[2] and has since been expressed by a wide range of politicians and groups, such as NIACRO, Quaker Lifer Group, Peace People, Campaign for Lifers, Justice for Lifers. This concern, which is discussed in greater depth below, centres on three issues. A sense of **uncertainty** over the length of sentences and the criteria on which release decisions are taken, allegations of **inconsistency** between prisoners

1 See appendix one, on sentence of life sentence prisoners in Northern Ireland.
2 See Report of the Committee on Interrogation Practices in Northern Cmnd 7497

regarding releases, and allegations of **political bias** in release decisions. These concerns have been expressed most forcefully by the relatives of prisoners, in particular the relatives of prisoners held at the Secretary of State's Pleasure (SOSP's) who feel the normal presumptions in the criminal justice system in favour of younger offenders have not been exercised in their case.

The Committee on the Administration of Justice believes there is substantial justification in these concerns and that there exists a good deal of room for improvement in the present life sentence release procedures. This would focus on greater openness of the procedure to those affected by it and greater accountability. It would encourage the replacement of current procedures which appear to be shrouded in mystery with the development of clear and publicly available standards to guide the authorities and provide a basis for the accountability of their decisions. The CAJ believes this can be achieved in a way which satisfies the government's legitimate concern for the safety of the public and those involved in prison administration. Such a development is in keeping with trends elsewhere in the prison system, for example the development of more formal procedures as a result of judicial and administrative activity in the sphere of prison discipline, and the need for clearer standards and procedures regarding the recall of life sentence prisoners released on licence required by the European Court in the **Weeks**[3] case.

The rest of this pamphlet deals with an outline of the present system, criticisms of that system, and proposals for reform.

3 Weeks v United Kingdom Application 9787/1982.

THE PRESENT SYSTEM FOR LIFE AND SOSP RELEASES

A life sentence is the mandatory sentence for murder. It is also the maximum sentence for attempted murder, manslaughter, causing an explosion and the most serious firearms and sexual offences, where it may be imposed at the discretion of the trial judge. The sentence of Detention at the Secretary of State's pleasure is an automatic sentence under S 73(1) of the Children and Young Persons (Northern Ireland) Act 1968 for a person found guilty of a murder committed when they were younger than 18 (though they may be over 18 at the date of conviction). As the release procedure for SOSP's is almost identical to that for lifers the discussion of that procedure below will apply to both, though any differences will be pointed out where relevant.

After sentence, life sentence cases fall under the responsibility of the Life Sentence Unit in the Northern Ireland Office (NIO). Cases are looked at soon after sentence or determination of an appeal. Unless it is decided that earlier review is appropriate, cases are looked at again within the NIO after 3 and again after 6 years. Though cases may be referred earlier[4] they will normally first be considered by the Life Sentence Review Board after 8 years in the case of SOSP's and 10 in the case of Life sentence prisoners.

The Life Sentence Review Board was established in 1983. Its purpose is to advise the Secretary of State on the release of Life and SOSP prisoners. The Board is chaired by the Permanent Under Secretary of State at the Northern Ireland Office, and includes among its members senior NIO officials, a Principal Medical Officer of the DHSS, a Consultant Psychiatrist, and the Chief Probation Officer. In deciding whether a prisoner should be released, the Board is directed to have regard to two factors. Firstly whether the sentence served has been sufficient to satisfy the requirements of deterrence and retribution and secondly whether there is a risk that if released the prisoner will commit another offence of violence. In reaching the first decision it would appear that the Board takes into account factors similar to those employed by judges in reaching sentencing tariffs; the history of past releases is also taken account of. However it is clear that the second decision, on which fewer guidelines exist, is regarded as the more important. In making its decision the Board has available to it information about the offence for which the life sentence was imposed and the circumstances in which it was committed, the prisoner's age and background (including any previous

4 This will usually be on medical grounds, only 5 lifers and 2 SOSP's appear to have been released after serving less than 8 years, 3 of these were released on medical grounds.

offences), any comments made by the trial judge in passing sentence, annual reports prepared by prison staff on prisoners, and any medical and/or psychiatric assessments where relevant. Prisoners are informed when their cases are coming before the Board and are invited to prepare written submissions. They can also be interviewed by a prison governor. However they are not allowed to see any statements made about them which are considered by the Board nor are they allowed to appear in person or through a representative before the Board.

If the Board decides not to recommend release, the prisoner's case will be "put back" for review again in a specified number of years. There is no limit on the number of years for which the Board can put a case back but in practice a period between one and five years is set. A prisoner is not given any reasons as to why release is not being recommended nor any explanation as to why the period his case has been put back is two rather than one year for example. If the Board does recommend release then it will recommend to the Secretary of State that a provisional release date be fixed, ie one subject to the prisoners continued good behaviour. Thereafter the Secretary of State is required by law in all cases of murder to consult the trial judge (if available) or the Lord Chief Justice. It is also practice for the judiciary to be consulted in all other cases involving life sentences. The final decision on release is ultimately for the Secretary of State and it is clear that the overriding consideration is the need to protect the public from the risk of a repetition of the offence or some other crime of violence.

Though we have attempted to set out the release procedure as clearly as possible we are struck by the lack of information published concerning the release of life sentence prisoners in Northern Ireland in comparison with the rest of the United Kingdom.[5] Several factors remain particularly obscure,. for example, the type of training given to prison staff on writing reports. The information we have received on the form of these reports (reproduced at appendix 2) suggests they may be singularly unhelpful to making decisions, for example a judgement that a prisoner was "a leader" or "easily led"; neither seems likely to be in the prisoner's favour. It is not clear what factors Board members take into account in deciding whether someone can be regarded as likely to commit a further offence of violence. Why are some prisoners put back for 1 or 2 years while others are put back for 5? Another question which arises is what role does paragraph 14 of the NIO Memorandum "Life Sentence Prisoners in Northern Ireland"(1985) play? This states

5 See for example Smith ed. Life Sentence Prisoners, Home Office Research Study No. 51 H.M.S.O. (1979). Maguire, Pinter and Collis Dangerousness and the Tariff (1984) 24 British Journal of Criminology 250-268.

"Even where a prisoner may claim, or indicate by his behaviour and attitude in custody, that he has given up his paramilitary associations, the question must arise whether this can be relied upon in view of the pressures which he may face if and when he returns to his former environment".

How is information regarding the prisoner's "former environment" incorporated into the decision making process?

CRITICISMS OF THE PRESENT SYSTEM

Perhaps the most frequently expressed criticism of the system, from both prisoners and their relatives, is that it leaves them feeling helpless and powerless. Lifers and their families frequently express a sense of being forgotten, of being unsure whether they can do anything to influence their fate or whether all is decided in advance. There is also a great deal of frustration at the fact that when prisoners are not released they are given no explanation of why they have not been released and feel therefore that they have no idea of what they could do in the period before the next review of their case in order to increase their chances of release. However serious the crimes which these people have committed they are sent to prison, as, and not for, punishment. Failure to inform a prisoner why s/he is not released when others are can only give rise to unnecessary anxiety for both the prisoner and their family, something conducive neither to good relations within the prison nor to the prisoner's ultimate rehabilitation into society.

A second set of criticisms concerns inconsistencies in release procedure. These are of two sorts. Firstly an inconsistency in that where a lifer and SOSP have been sentenced after involvement in the same crime the lifer has sometimes been released first, despite the general policy of the criminal justice system (articulated in the Lifer/SOSP split) of treating those involved in crime at a younger age differently and more leniently. For example one SOSP sentenced in 1973 is still in jail while his co-accused, serving life, was released after 13 years. The second inconsistency is that where two people have been sentenced to Life or SOSP cases for the same crime it has sometimes been the person whose involvement was more serious (eg he who pulled the trigger or planned the operation as opposed to he who acted as look out or drove the get away car) who has been released first. Most recently the releases of Private Ian Thain (after serving 2 years and 2 months) and former Supergrass Kevin McGrady (after serving 6 years) has fuelled this concern and outrage about inconsistencies. A widespread public perception has developed that the individualised criteria of retribution for the crime and risk of another serious offence are by-passed where the government feels that it is in its interests to do so. In these sorts of cases there may be reasons which justify these apparent discrepancies. However, as the present system tends to make release decisions on very vague criteria and offers no reasons for the decisions taken, suspicions of arbitrary if not biased action are likely to increase. A clear statement of criteria might help prisoners and their families to understand the relative weight given to the offence itself, the judge's recommendation, and behaviour while in prison. At the moment rumours exist among prisoners as to what informal criteria govern release, examples

being education, good discipline records, or renouncing political affiliations. Prisoners following these paths are inevitably very angry when they turn out in many cases not to have this effect.

A third set of criticisms involves allegations of political bias in release decisions. These allegations are particularly strong among republican prisoners and centre around two claims. Firstly, that prisoners who have been particularly forceful in representing prisoners demands are the least likely to be released. Secondly, that the policy described by paragraph 14 of the NIO explanatory memorandum has the effect of making republican lifers/SOSP prisoners hostages for an improved security situation in the areas of Northern Ireland from which they come and are likely to return. This seems at variance with the expressed policy of the government to treat them as individual criminals rather than as members of a politically motivated group. Related to these allegations are concerns over a lack of accountability. The Life Sentence Review Board exercises a great deal of power in deciding whether people will remain in prison or be returned to liberty. Yet at present this power lies totally within the Board's discretion and there appears to be no way of checking or challenging even a totally arbitrary or ill-considered exercise of that discretion. Allegations of political bias are difficult to prove. They would be much easier to prove or disprove, however, if the current policy on releases were not so shrouded in mystery. Similarly, more open decision making with clearer guidelines would allow independent parties to evaluate better the quality of that decision-making.

Before leaving these criticisms it is worth dealing with two arguments against change that have frequently been made to us. The first of these is that the present system is working well, that prisoners are being released and that the present Life Sentence Review Board has developed a good understanding of the factors involved in release decisions. To change the system, it is argued, would risk a hardening of the institutional arteries and a reduction of releases. As we suggest below we are not so confident that the system is working that well. Even if it were we find two reasons for disquiet with such an argument against reform. The first is that we are not claiming that everyone serving a life or SOSP sentence should be released as soon as possible. There are some whose crimes clearly deserve a long sentence. What we seek is a system that can more clearly and defensibly distinguish between such offenders and whose level and reasons for involvement suggest they should be considered for earlier release. Secondly the quality of the LSRB's decisions is currently very dependant on who its members are. Changes in personnel, which are likely to occur over time, could at present (given the absence of clear guidelines or procedure) bring about significant changes of approach. We do not think people's liberty should be dependent entirely on what the composition of the LSRB is at any one time.

A second argument against change is that change might be for the worse. In particular that, through the medium of "parity", Northern Ireland might end up with a situation equivalent to that in England and Wales, where following a statement by then Home Secretary Leon Brittan in September 1983, a range of those convicted of murder, including terrorist murders, can expect a minimum of twenty years in jail. However, far from seeing this as the only alternative to the present system in Northern Ireland, we regard it as an example of what can happen with a purely executive system of release. It seems extraordinary that a politician, without securing the consent of Parliament or even being required to consult anyone as to the desirability or practicality of such an approach,[6] can effectively impose a minimum sentence for a class of crimes, such as "terrorist murders" which are defined neither by Parliament nor by the courts. It is to ensure the more effective consideration of individual cases that our main recommendations seek to move decisions on the release of life sentence cases from the executive to the judiciary. None of our proposals envisage giving greater power in these matters to the Secretary of State, nor do we feel that any reforms in Northern Ireland must inevitably take the direction of approaches that have already proved undesirable in the rest of the United Kingdom.

6 The lack of need for any consultation even with the Parole Board was surprisingly upheld by the House of Lords in Findlay v Secretary of State for the Home Department [1984] 3 ALL ER 801.

POSSIBLE ALTERNATIVES TO THE PRESENT SYSTEM

In general CAJ wishes to see openness and accountability in the issue of making decisions regarding the release of life sentence prisoners. We believe that in other areas of administration these principles of having clear guidelines as to the criteria on which decisions are taken and a willingness to explain decisions to those affected by them has proved valuable to both administrators and those affected by their decisions.

"Openness is the natural enemy of arbitrariness and a natural ally in the fight against injustice".[7]

To this end there are three models we would like to suggest for a reformed system.

The first, and we would suggest the **most desirable**, would be to abolish the indeterminate sentence, or at the very least to make it the maximum as opposed to mandatory sentence for murder. Our opposition to indeterminate sentences is based primarily on three arguments. Firstly that such sentences by their very nature always introduce an element of uncertainty into release dates and make any form of planning for serving a sentence very difficult. Secondly because the main criteria for release where indeterminate sentences are involved generally revolves around concepts like "risk of re offending" or "danger to the public". These concepts prove difficult if not impossible to evaluate in practice. Studies of the use of these criteria in decisions whether or not to release lifers in England have revealed widespread differences among the Home Office, prison officers and governors and the Parole Board as to what constitutes appropriate indication of a risk of committing a serious offence.[8] In effect indeterminate sentences always give the state power to detain a person for what s/he **might** do as opposed to what s/he **has** done, an idea generally repugnant to the criminal justice philosophy which underlies the law in the United Kingdom. Moreover, the present system leaves the issue of a person's liberty to the exercise of the administration's discretion rather than the decision of an independent court or tribunal. The risk will always therefore exist of releases being manipulated to serve political ends rather than depending on the

7 See Davis Discretionary Justioe; a Preliminary Inquiry Louisiana State University Press (1969) p.98.

8 See Maguire, Pinter and Collis note 6 p.261.

individual case. This power of preventive detention should be confined to situations of mentally disordered offenders, where a greater body of knowledge exists on the likelihood of someone committing another act of violence and clearer safeguards (in the Mental Health Order)[9] exist against its abuse. This is especially important given the fact that studies have shown that less than 1% of murderers commit second homicides. Thirdly the idea of a life sentence (and especially of a discretionary life sentence) is generally associated with a now outdated and largely rejected rehabilitative prison policy. Detaining an offender for an indeterminate period was seen in the early years of the twentieth century as offering the prison authorities maximum scope to "reform" a prisoner. Few now see prison as performing this function and indeed this is not a philosophy which prevails elsewhere in the Northern Irish prison system. The creation of the mandatory life sentence for murder appears largely to have been a side product of the debates over the abolition of the death penalty in the 1950's and 60's. In other words, there appears to have been inadequate public discussion at the time of the creation of mandatory life sentences as to whether a life sentence should in all cases be imposed upon conviction for murder. In calling for the end of the mandatory life sentence, we are entirely against the re introduction of the death penalty. We also realise that there is a risk that judges may award determinate sentences which are longer than those currently served by many lifers. However, unlike life sentences at present, prisoners would have a right to appeal against the determinate sentence and, as such sentences would be publicly pronounced, informed public debate could take place regarding the appropriate range. Another problem that would arise if this course of action were followed is that such a change would only affect prisoners sentenced in the future. As regards those already serving life sentences in prison we recommend a sentencing commission of NIO officials, chaired by a High Court judge, could be established to determine what appropriate determinate sentences would be.

For all the reasons given above we believe all life sentences should be replaced by determinate sentences, or at the very least that there should be an end to the mandatory life sentence.[10] However given the widespread public feeling that the taking of life merits a particular sentence we recognise some may find this an unacceptable reform. If the mandatory life sentence is to be retained a second model would be to **judicialise** release procedure. Concerns about the accountability of the procedure and political manipulation of releases could we feel be met if the decision to release was taken out of the hands of the executive. Appropriate models for this type of

9 See for example the provisions in the Mental Health (Northern Ireland) Order 1986, Art 70-85, notably Art 83 on procedure.

10 A House of Lords select Committee has been established to examine the mandatory life sentence for murder. Surprisingly its remit does not seem to extend to Northern Ireland.

procedure exist in the Mental Health Review Tribunal and the Parole Boards of many American states. The Tribunal should have a legally qualified chair and include a number of people familiar with the prison system, former members of Boards of Visitors might be one pool from which members could be drawn. The Tribunal should meet three years after the prisoner is sentenced and, after hearing evidence from both the prisoner and prison authorities, set a provisional release date. The prisoner would be entitled to petition the Tribunal to bring that release date forward. Six months before the provisional release date the Tribunal could hear any representations from the prison authorities as to why the prisoner ought not to be released at the date set. The Tribunal would have to issue clear written reasons for its provisional release date or for any decision to bring that release date forward or to extend it. Both the prisoner and prison authorities would be entitled to be legally represented and to see and challenge any statements made by the other side. While the criteria for release would still be whether a sufficient time had been served to meet the requirements of deterrence and retribution, and whether the prisoner posed a serious risk to the public, the Tribunal could be given clearer guidelines as to how to apply these. Such guidelines could specify the weight to be given to such factors as the judge's comments, the prisoner's age and past record, behaviour in prison, employment prospects and family situation. Again the procedures of American Parole Boards' scoring system could offer helpful examples. These guidelines would also be of help in specifying reasons for the decisions taken by the Tribunal.

Both of the above recommendations would require new legislation and would leave the procedures for release of life sentence prisoners substantially out of line with those in the rest of the United Kingdom. They would however be in line with recommendations made by the National Council for Civil Liberties, the Howard League and other groups in England as regards desirable changes in release procedures in England and Wales, and indeed we see no reason why these changes could not be introduced on a UK wide basis. On a general level we feel the government has too often employed the notion of maintaining parity with the rest of the UK as an excuse for failing to make desirable changes in Northern Ireland. Moreover this notion has been used selectively, the government remaining happy to have the procedure for trying many criminal offences in Northern Ireland, for example, clearly out of line with the rest of the UK.

Even if the government refuses to pass such legislation we feel that changes can be made in the existing administrative system which would go some way towards meeting its critics. These changes, which we outline below as our third model, will still however leave an element of uncertainty and arbitrariness in the system and will leave doubts regarding public accountability

The first change we recommend is that the government follow the recent policy of the Home Office in England which has been reinforced by the High Court in the **Hanscomb** case.[11] This policy is to have the initial decision on the number of years necessary to satisfy the requirements of deterrence and retribution decided upon by the trial judge, leaving any review committee largely to consider the issue of the risk of reoffending. We feel that the judge's recommendation could be publicly announced to the prisoner. The understanding would then be that, although a prisoner could then petition the review committee for early release on one of a number of specified grounds, eg medical, family circumstances, there would be a presumption that the committee would not consider his case until the period for deterrence and retribution had nearly elapsed.

When the case does come before the life sentence review committee there should be a presumption in favour of release unless the committee is satisfied that there is a substantial risk that the prisoner will commit another offence of violence. Such a presumption would be in conformity with the principle outlined above that the use of sentences of preventive detention is justified only on rare occasions.

The composition of the review committee is a matter of particular importance. At the moment we feel it is too closely aligned with the Northern Ireland Office to ensure confidence that it considers each case in an independent and impartial manner. We would prefer that any new committee should have a legally qualified chairperson, this would hopefully ensure an attention to detail in considering the evidence on release and the development of some consistent principles on release decisions. The rest of the committee could perhaps be composed of one representative from the prison authorities and one from the probation and after care services. Such composition should ensure full consideration of the interests both of the prisoner and of the public in protection from violence. A pool of such people could be established from which selected panels could meet several times a year to consider cases. Both the prison authorities and prisoners could put evidence to the review committee and both should have the opportunity to be legally represented. The committee should have discretion to call medical and psychiatric evidence when it regards this as relevant. In order to ensure that the committee hears as full a case as possible, we recommend that all statements made by prison officers regarding a prisoner be made available to the prisoner. Such statements may contain factual allegations which are untrue and damaging to a prisoner's case for release. We do not feel that such a requirement would pose an undue risk to the safety of prison officers. Over the last 10 years the courts have increasingly required the making of

11 R v Secretary of State for Home Department ex parte Hanscomb, Times 4 March 1987

prison officers' statements available to prisoners in prison discipline cases without any notable increase in attacks on prison officers or threats to their safety. The suspicion that decisions are made on evidence that a prisoner has no opportunity to see or challenge has been particularly damaging to respect for the fairness of the present life sentence review procedure. It is also most important that the training of prison officers in writing reports is improved. At present we feel that the report forms encourage rather perfunctory reporting which fails to give a full picture of the extent to which the prisoner has developed. Indeed the design of these reports seems unlikely to encourage thoughtful consideration by a prison officer of a prisoner's development.[12] The requirement of a legal representative we also regard as most important. Such a representative could allow the prisoner to make the fullest possible presentation of their time in prison and to challenge any unfavourable impressions of them given by the prison authorities. Since 1984, prisoners have been allowed to make their own representations to the LSRB but the relevant form (reproduced at appendix three) leaves little space for a full account and, as the courts have recognised in several prison discipline cases, prisoners often have difficulty in presenting their own case.[13] On the principle that a person's liberty should not depend on their wealth, legal aid should be available for legal representation engaged in these hearings.

In coming to its decision the review committee should have regard to a set of publicly available criteria similar to those discussed with regard to the judicial tribunal of the second model. At the moment we are astonished that in making decisions about a person's liberty the LSRB appears to have even fewer criteria, or indications about how to apply these criteria, than DHSS officers considering applications under the Social Fund. The English Parole Board has for several years published in an appendix to its report the criteria it relies on in reaching its decisions and we see no reason why the LSRB cannot do likewise. Moreover, a recent Divisional Court case has held that, if the Home Secretary rejects a Parole Board recommendation to release a life sentence prisoner in England, he must do so only on the grounds of the prisoner's dangerousness, and in coming to such a decision must ignore irrelevant factors.[14] The implication of this decision is that some facts considered by the Secretary of State or the LSRB in assessing dangerousness may be legally irrelevant. If this is so, surely it would be better for all if the criteria for decision-making were published and were available for assessment.

12 See Appendix Two.
13 See for example R v Secretary of State for the Home Department ex parte Tarrant [1984] 1 ALL ER 799.
14 See R v Home Secretary ex parte Benson, Times 10 November 1988.

If the review committee decides to recommend release, it should forward that recommendation to the Secretary of State. If it decides against recommending release, there should a limit on the number of years the committee can specify before another review takes place. We would recommend two years, though there might be a provision for a longer period where a medical evidence suggests a prisoner's condition is unlikely to have improved within two years.

Where the committee decides not to recommend release, there should be a requirement to give reasons for this decision. The giving of reasons is crucial to enable a prisoner to judge what changes in his behaviour are required by the prison authorities to convince them that his release would not put the public at risk of his committing a serious offence of violence. Although the issue of a parole board's obligation to give reasons has been litigated in England where the Court of Appeal held that there was no such obligation[15] we feel this decision predates extensive developments in the judicial review of prison authorities' action. Recently the House of Lords commented favourably on the effect of this judicial review on the quality of decision making in prison adjudication.[16] As a general point, we feel the requirement to give reasons improves the quality of decision-making as it forces the decision making body to develop consistent criteria for their decisions. Undoubtedly the requirement to give reasons raises the possibility of judicial review of the refusal to recommend release. However, there is no reason why even the prison authorities should regard this as a purely negative development. Given that the review committee's decisions are likely to be viewed as primarily "administrative" in character by the courts, judicial supervision of their decisions is likely to be limited and will be directed primarily at specifying what factors they ought to take into account in exercising their discretion and what weight should be given to them. Such a development is likely to be of assistance in developing a set of standards to guide the review committee in making its decisions and to provide those affected by decisions with a means of ensuring the accountability of those who make them.

15 See Payne v Lord Harris [1981] 1 ALL ER 754
16 See Leech v Governor of Parkhurst Prison [1988] 1 ALL ER 485, 492-3 per Lord Bridge.

REVOCATION OF RELEASE

Another area which may need looking at in the near future is the procedure for recalling life sentence prisoners released on licence. So far this has not given rise to any problems in Northern Ireland as the number of people released from life or SOSP sentences has been small and none has been recalled. However as releases increase the chances of situations occurring where recall is considered are likely to increase. Recently the procedure for recall of people on licence in England and Wales has successfully been challenged in the **Weeks** case in the European Court of Human Rights as failing to comply with Article 5(4) of the European Convention of Human Rights. Although this decision related to the recall of someone serving a discretionary life sentence we feel that the basis of the decision (that insufficient information was given to the prisoner to challenge the lawfulness of his recall) may apply to mandatory life sentence cases, too. Moreover, it would be invidious to have one procedure for discretionary lifers and another for mandatory. Another aspect of this case is significant for Northern Ireland. The Court considered but ultimately rejected an argument that the Parole Board was not independent of the executive.[17] The membership of the Parole Board is however considerably different from the LSRB and there must be a doubt whether the LSRB, containing as it does several NIO officials, would be seen as similarly independent by the European Court. If a change were therefore needed in the composition of the LSRB to consider recall cases, why could this not also be made to consider initial release decisions (ie into something more in line with our proposed model two)?

17 See Weeks note 3 supra.

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

The CAJ believes the present procedure for the review of life sentence and SOSP prisoners is seriously defective and there is much that can and should be done to improve it. Our aim is a fair review procedure which looks both to ensuring the safety of the public and to acknowledging that prisoners, however serious the crimes they may have committed, remain human beings with rights which must be respected. We feel this can be achieved by moving towards a review procedure which is more open and accountable and which makes decisions on the basis of more precise and publicly available criteria.

Our main recommendation is for a move towards determinate sentencing and in particular the end of the mandatory life sentence for murder.

Our second choice would be for release decisions to be made by an independent tribunal with a legally qualified chair. Both prisoners and prison authorities could be legally represented, a clear set of criteria for release decisions established, and reasons given for decisions.

Our third model, if change is to be confined within the present executive release system, would require the setting of minimum sentences by the trial judge, changes in the composition of the LSRB, more frequent reviews, allowing prisoners legal representation, providing published criteria on which release decisions are based, and ensuring that full reasons are given to prisoners refused release.

APPENDIX ONE

STATISTICS ON LIFE/SOSP PRISONERS

	SENTENCE		RELEASE		REMAINING
YEAR	LIFE	SOSP	LIFE	SOSP	
1973	26	4	0	0	35/4
1974	37	8	0	0	72/12
1975	56	18	0	0	128/30
1976	51	19	0	0	179/49
1977	71	7	0	0	250/56
1978	30	2	0	0	280/58
1979	19	5	0	0	299/63
1980	33	1	1	0	331/64
1981	14	3	2	1	343/66
1982	24	0	0	0	367/66
1983	30	0	1	2	396/64
1984	21	0	1	0	416/64
1985	13	0	4	7	425/57
1986	4	0	4	10	425/47
1987	2	0	15	11	412/36

These statistics are based on NIO figures which take year of sentence as the year someone who subsequently received a life sentence was committed to prison. Therefore they are somewhat at variance with those in the NI Prison Service Reports.

APPENDIX TWO

Class Officer's Report

Prisoner's Number Prisoner's Full Name

1. Record of employment in prison (with reasons for any change in work).
2. Particulars of work prisoner is currently engaged in.
3. Performance at work and any aptitude shown.
4. How would you describe the prisoner's character. Delete as applicable.

Pleasant/unpleasant; cunning/niaive; deeply criminal/not so; truthful/ deceitful; leader/easily led; easy to talk to/uncommunicative; independant/ dependant on others; beligerant/ready to compromise; - other comments.

5. How does he/she relate to staff - does not relate well/does relate well; does not approach staff/approaches staff only when necessary/approaches staff incessantly. - other comments.
6. Does he/she seek or avoid company of hardline paramlitaries.
7. Is prison doing him/her any good. If so in what way?
8. Detail any change of behaviour noticable since committal or last report.
9. Who visits? Are visits regular? What is prisoner's demeanour after visits?
10. With whom does he/she exchange letters?
11. How does he/she make use of his/her time?
12. Does he/she talk about his/her plans for release? What are they?
13. Do you think he/she would return to violence if released? If so why?
14. Any other additional information/comments.
15. P.O.'s remarks: Do you agree with the comments on the above? If not please say where you disagree
16. Any additional remarks.

Form AD 134B revised June '87

APPENDIX THREE

FORM GIVEN TO PRISONER TO COMPLETE

LIFE SENTENCE REVIEW BOARD

PRISONER'S NAME:

PRISONER'S NUMBER:

LOCATION:

PART A

1. Your case is due for review by the Life Sentence Review Board in the near future. The purpose of this form is to invite you to complete Part B below making any representations you wish the Board to take into account in considering your case.

2. You are not obliged to make representation on your own behalf, and your case will be fully considered by the Board whether you do so or not. You should understand that the invitation to bring to the attention of the Board any points which you consider to be relevant to the question of your release should not be taken as giving any indication about the likelihood or otherwise of a date being fixed for your release.

3. If you require any assistance in completing Part B, your Assistant Governor will help you.

NB When Completing this form please write clearly using black ink.

PART B

PRISONER'S SIGNATURE: _____
DATE: _____
[Continue on separate sheet if necessary]

APPENDIX FOUR

Selected Further Reading

Sentenced to Life, Campaign for Lifers, 1988

Justice for Lifers, Justice for Lifers, 1986

Life Sentence and SOSP Prisoners: An Explanatory Memorandum, Northern Ireland Office, 1985

Detention at the Secretary of States Pleasure, Julie Knight (NIACRO), 1984

Dangerousness and the Tarriff, (1984) 24 British Journal of Criminology 250

Licenced to Live, Coker, J. and Martin, J., Oxford Press, 1985

Whose Law and Order, Roslton, B. and Tomlinson, M., Belfast, 1988

LIST OF C.A.J. PUBLICATIONS

No. 1
The Administration of Justice in Northern Ireland: the proceedings of a conference held in Belfast on June 13th, 1981. (No longer in print).

No. 2
Emergency Laws in Northern Ireland: a conference report, 1982. (Photocopy available).

No. 3
Complaints Against the Police in Northern Ireland, 1982. (No longer in print).

No. 4
Procedures for handling complaints against the Police, 1983. (Photocopy available).

No. 5
Emergency Laws; suggestions for reform in Northern Ireland, 1983. (photocopy available).

No. 6
Consultation between the Police and the Public, 1985. (Shortly to be updated).

No. 7
Ways of Protecting Minority Rights in Northern Ireland, 1985. (Price £0.50)

No. 8
Plastic Bullets and the Law, 1985. (Shortly to be updated).

No. 9
"The Blessings of Liberty": An American Perspective on a Bill of Rights for Northern Ireland, 1986 (Price £1.50).

No. 10.
The Stalker Affair: More Questions Than Answers, 1988 (Price £1.50).

No. 11
Police Accountability in Northern Ireland, 1988 (Price £2.00)

No. 12
Life Sentence and S.O.S.P. Prisoners in Northern Ireland, 1989 (Price £1.50).