

Office of the Independent Chairmen

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11 December 1996

TO: ALL PARTICIPANTS

IRISH GOVERNMENT DECOMMISSIONING BILL 1996

The Office of the Independent Chairmen has been asked by the Irish Government Delegation to circulate the attached document to participants to talks.

Madeline Magee

MADELEINE MAGEE

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Decommissioning Bill 1996

The Minister for Justice, Mrs. Nora Owen, T.D., today (11 December) published the Decommissioning Bill, 1996.

The purpose of the Bill is to enable effect to be given to the Report of the International Body which was presented to the Irish and British Governments in January last. The Bill will provide the statutory framework for detailed arrangements in relation to decommissioning of arms to be put in place when agreement on those arrangements has been reached.

The Minister for Justice recalled that the Report of the International Body, chaired by Senator George Mitchell, had been accepted by the Irish and British Governments and widely welcomed on its publication in January. That Report remains the basis on which the Government foresees progress on decommissioning being possible. She said that the Bill being published today was consistent with the terms of that Report and would enable effect to be given to the recommendations it contained in relation to the modalities of decommissioning. She went on to express the hope that the Bill's publication, and the recent publication of the corresponding British legislation - the Northern Ireland Arms Decommissioning Bill - would

facilitate progress being made in the Northern Ireland Talks so that substantive negotiations, including on decommissioning, could get underway quickly.

The main provisions of the Bill are:

- * to make provision for regulations to be made by the Minister for Justice in relation to the means by which arms may be decommissioned in this jurisdiction to include any or all the methods identified in the International Body's Report;
- * to provide for the establishment of an independent commission by agreement between the Irish and British Governments:
- * a prohibition on the taking of proceedings in relation to an offence, where the act constituting the offence, or an act that is an ingredient of the offence, was part of the process of decommissioning; and
- * a prohibition on the forensic examination or testing of arms made available for decommissioning, except in limited and specified circumstances, and provision that such arms, or information obtained in the course of decommissioning, will not be admissible by or on behalf of the State in proceedings for an offence.

11 December, 1996



AN BILLE UM DHÍCHOIMISTÚNÚ, 1996
DECOMMISSIONING BILL, 1996

Mar a tionscraíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Regulations in relation to decommissioning.
 3. Provisions relating to Commission.
 4. Regulations in relation to Commission.
 5. Prohibition of certain proceedings.
 6. Prohibition of certain testing, etc., and certain evidence.
 7. General provisions as to regulations.
 8. Expenses.
 9. Short title and commencement.
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ACTS REFERRED TO

Explosive Substances Act, 1883

1883, c. 3

Explosives Act, 1875

1875, c. 17

Firearms Act, 1925

1925, No. 17

Firearms Acts, 1925 to 1990



AN BILL UM DHÍCHOIMISÚNÚ, 1996
DECOMMISSIONING BILL, 1996

BILL

entitled

- 5 AN ACT TO MAKE PROVISION IN RELATION TO THE
DECOMMISSIONING OF FIREARMS, AMMUNITION
AND EXPLOSIVES AND FOR THAT PURPOSE TO
MAKE PROVISION IN RELATION TO A COMMISSION
10 ESTABLISHED BY AGREEMENT BETWEEN THE
GOVERNMENT AND THE GOVERNMENT OF THE
UNITED KINGDOM AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1—(1) In this Act, save where the context otherwise requires— *Interpretation.*

- 15 “act” includes omission and a reference to the doing of an act
includes a reference to the making of an omission;

“the agreement” means the agreement between the Government and
the Government of the United Kingdom establishing the
Commission;

- 20 “arms” means a firearm within the meaning of the Firearms Acts,
1925 to 1990, and includes ammunition within the meaning of the
Firearms Act, 1925, an explosive within the meaning of the Explosives
Act, 1875, and any other substance or thing that is an explosive
substance within the meaning of the Explosive Substances Act, 1883;

- 25 “arrangements” means arrangements made by the Commission pur-
suant to regulations;

“the Commission” means the commission established by the
agreement;

- 30 “the corresponding law” means the law of the United Kingdom cor-
responding to this Act;

“decommissioning”, in relation to arms, means—

(a) destroying the arms, or

35 (b) transferring to, or doing an act leading to the collection and
destruction of the arms by or on behalf of, the Com-
mission or a person designated by the Minister or, if
appropriate, the Secretary of State, in or outside the
State, and cognate words shall be construed accordingly;

"destruction" includes making permanently inaccessible or unusable and cognate words shall be construed accordingly;

"enactment" includes an instrument made under a power conferred by statute;

"functions" includes powers and duties; 5

"the Minister" means the Minister for Justice;

"regulations" means regulations made by the Minister under this Act;

"Secretary of State" means a Secretary of State in the Government of the United Kingdom. 10

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other provision is intended, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and 15

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment. 20

Regulations in relation to decommissioning.

2.—(1) Regulations may provide for the decommissioning of arms.

(2) Without prejudice to the generality of *subsection (1)*, regulations may make provision in relation to—

(a) the locations at which, the procedures by which and the times at or during which the decommissioning of arms or any particular method or manner of such decommissioning may take place, 25

(b) the methods and manners by and in which the decommissioning of arms may take place including— 30

(i) the transfer of arms to the Commission or to a person designated by the Minister or (if the transfer is to a person outside the State in accordance with the corresponding law) the Secretary of State for destruction, 35

(ii) the provision of information to the Commission or to a person in the State designated by the Minister or (if the information is provided to a person outside the State in accordance with the corresponding law) a person designated by the Secretary of State leading to the collection and destruction of arms by the Commission or a person designated by the Minister or (in the case of arms outside the State) the Secretary of State, 40

(iii) the depositing of arms for collection and destruction by the Commission or a person designated by the 45

Minister or (in the case of arms deposited outside the State in accordance with the corresponding law) the Secretary of State,

(iv) the destruction of arms by those in possession of them,

and

(c) the destruction of arms decommissioned in accordance with subparagraph (i), (ii) or (iii) of paragraph (b).

3.—(1) The subsequent provisions of this section shall come into operation on such day as the Minister, after consultation with the Secretary of State, may, for the purpose of enabling the agreement to have full effect, by order appoint.

Provisions relating to Commission.

(2) The Commission shall be independent in the performance of its functions.

(3) The Commission shall have the legal capacity of a body corporate.

(4) (a) The Minister may by order make provision for the purposes of paragraph (b) as respects inviolability, exemptions, facilities and immunities, privileges and rights in relation to the Commission.

(b) The Commission, its property and a person (being a member of the Commission or a member of the staff of, or a person performing functions assigned to him or her by, the Commission, an agent of the Commission or a member of the person's family who forms part of his or her household) shall have and enjoy inviolability, exemptions, facilities and immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as may be provided for in each case in the order under paragraph (a).

(c) An order made under this section may make different provision for different cases or classes of case.

(5) The Minister may by order amend or revoke an order under this section (other than subsection (1)).

(6) The Commission shall stand dissolved upon such day as the Minister may, after consultation with the Secretary of State, by order appoint, and the Minister may include in the order such transitional or consequential provisions as appear to him or her to be expedient.

(7) An order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

4.—(1) Regulations may make provision in relation to the Commission.

Regulations in relation to Commission.

(2) Without prejudice to the generality of subsection (1), regulations may provide for—

- (a) the membership of the Commission, including the number of members thereof,
- (b) the terms and conditions upon and subject to which the members of the Commission shall hold office as such members and the terms and conditions of employment of any staff of the Commission,
- (c) the provision to the Commission of such moneys, premises, facilities and services (including the services of staff) as may be necessary for the performance of its functions,
- (d) the maintenance by the Commission, and the inspection by or on behalf of the Minister and the Secretary of State, of accounts of moneys received or expended by the Commission,
- (e) the proof of documents executed on behalf of the Commission,
- (f) the prohibition of the disclosure by a member of the Commission or of the staff of the Commission or by any person providing a service to the Commission of information obtained by such member or person in the course of the performance of his or her functions as such member or person unless such disclosure is authorised by or on behalf of the Commission,
- (g) the functions of the Commission and its role generally in relation to the decommissioning of arms or any particular method or manner of such decommissioning, which functions may include all or any one or more of the following:
 - (i) the making of arrangements for the decommissioning of arms and the joining or assisting by the Commission in the carrying out of any such arrangements,
 - (ii) the taking possession of arms decommissioned pursuant to regulations or arrangements,
 - (iii) the observation and verification and, where appropriate, the supervision of the decommissioning of arms taking place in accordance with regulations or arrangements,
 - (iv) the recording of such information as may be specified for the purpose of monitoring the process of the decommissioning of arms,
 - (v) the making of reports on specified matters to such persons as may be specified,
 - (vi) the facilitating of the safe and secure movement, handling and storage of arms during and after their decommissioning, and the supervision of such movement, handling and storage,

and

(h) any other matters that the Minister considers necessary for the purposes of this Act.

5 5.—(1) Proceedings shall not be instituted against a person for an offence in relation to any particular arms if— Prohibition of certain proceedings.

- (a) at the time of its commission, the person was engaged in the process of the decommissioning of those arms in accordance with regulations or arrangements,
- 10 (b) the requirements of the regulations or arrangements were satisfied as respects the person and the decommissioning,
- (c) the decommissioning was taking or took place at a time or during a period standing specified in the regulations,
- 15 (d) the act constituting the offence or an act that is an ingredient of the offence was a part of the process of the decommissioning and was done in pursuance of the regulations or arrangements.

(2) Without prejudice to the generality of *subsection (1)*, regulations may specify offences to which it applies.

20 (3) Regulations may provide that *subsection (1)*, in so far as it relates to any particular method or manner of decommissioning of arms, shall apply only to specified offences.

(4) Where arms have been decommissioned in accordance with regulations or arrangements, *subsection (1)* shall not apply to proceedings for an offence alleged to have been committed, after the decommissioning, by the use of, or in relation to, those arms.

25

6.—(1) Subject to *subsections (2) and (3)*—

- (a) arms being made available for the purposes of decommissioning in accordance with regulations or arrangements or taken into the possession of the Commission or a person designated by the Minister for the purposes of or following such decommissioning,
- 30 (b) anything resulting from the process of the decommissioning of arms in accordance with regulations or arrangements,
- (c) any substance or thing found on or in any arms decommissioned in accordance with regulations or arrangements, or
- 35 (d) anything on or in which arms decommissioned in accordance with regulations or arrangements were when so decommissioned or any substance or other thing found
- 40 on or in such a thing,

shall not be subjected to forensic examination or to testing.

(2) *Subsection (1)* does not apply to a forensic examination or to testing of—

Prohibition of certain testing, etc., and certain evidence.

(a) any substance or thing decommissioned in accordance with regulations or arrangements,

(b) any substance or thing referred to in *paragraph (b), (c) or (d) of subsection (1)*,

for the purpose of—

(i) determining—

(I) if it is or contains ammunition or an explosive or explosive substance,

(II) the quantity of ammunition, explosives or explosive substances present, or

(III) if the condition of the substance or thing is safe and stable,

or

(ii) discovering information concerning an offence alleged to have been committed after the decommissioning concerned.

(3) Arms decommissioned in accordance with regulations or arrangements or any other substance or thing referred to in *subsection (1)* or information obtained in the course, or as a result, of the decommissioning of arms in accordance with regulations or arrangements shall not be admissible in evidence by or on behalf of the State in proceedings in any court for an offence (other than an offence referred to in *subsection (2)(II)*) or in any appeal in relation to any such proceedings.

(4) Evidence of anything done for the purposes of the decommissioning of arms in accordance with regulations or arrangements shall not be admissible by or on behalf of the State in proceedings in any court for an offence (other than an offence referred to in *subsection (2)(II)*) or in any appeal in relation to such proceedings.

(5) (a) In this section, save where the context otherwise requires—

“ammunition” has the meaning assigned to it by the Firearms Act, 1925;

“explosive” means an explosive within the meaning of the Explosives Act, 1875;

“explosive substance” has the meaning assigned to it by the Explosive Substances Act, 1883;

“firearm” has the meaning assigned to it by the Firearms Acts, 1925 to 1990.

(b) In this section references to arms or firearms or ammunition or an explosive or explosive substance include references to any substance or thing that is a firearm or ammunition or an explosive or explosive substance for the purpose of the corresponding law and references to decommissioning and decommissioned shall be construed accordingly.

7.—(1) The Minister may make regulations for any purpose in relation to which regulations are provided for by any of the provisions of this Act. General provisions as to regulations.

5 (2) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after the regulations have been laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) Without prejudice to any specific provision of this Act, any regulations may contain such incidental or supplementary provisions as may appear to the Minister to be expedient for the purposes of the regulations.

15 8.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

9.—(1) This Act may be cited as the Decommissioning Act, 1996. Short title and commencement.

20 (2) This Act (other than section 3) shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

AN BILLE UM DHÍCHOIMISÚNÚ, 1996

DECOMMISSIONING BILL, 1996

BILLE

*(mar a tionscnaíodh)**dá ngairtear*

Acht do dhéanamh socrú i ndáil le díchoimisúnú arm tine, armlóin agus pléascán agus chun na críche sin do dhéanamh socrú i ndáil le coimisúin arna bhunú le comhaontú idir an Rialtas agus Rialtas na Ríochta Aontaithe agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Dlí agus Cirt a tholaic,
9 Nollaig, 1996*

BILL

*(as initiated)**entitled*

An Act to make provision in relation to the decommissioning of firearms, ammunition and explosives and for that purpose to make provision in relation to a commission established by agreement between the Government and the Government of the United Kingdom and to provide for related matters.

*Presented by the Minister for Justice,
9th December, 1996*

BAILE ÁTHA CLIATH
ARNA FHOLSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannacht díreach ón
OIFIG DHIOLTA FOILSEACHÁN RIALTAIS,
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UM BILLE UM DHÍCHOIMISTÚNÚ, 1996
DECOMMISSIONING BILL, 1996

EXPLANATORY MEMORANDUM

General

1. The purpose of the Bill is to enable effect to be given to the Report of the International Body which was presented to the Irish and British Governments on 22 January, 1996.

2. The International Body — which comprised Senator George Mitchell, General John de Chastelain and Prime Minister Harri Holkeri — was established by the two Governments on 28 November 1995 to provide an independent assessment of the decommissioning issue. The two Governments asked the Body, *inter alia*, to report on the arrangements necessary for the removal from the political equation of arms held by organisations which supported the use of arms for political purposes and to identify and advise on a suitable and acceptable method for full and verifiable decommissioning.

3. The Northern Ireland Arms Decommissioning Bill, 1996 will enable effect to be given to the Report of the International Body insofar as Northern Ireland and Britain are concerned.

Section 1 (Interpretation)

4. This section provides for certain necessary definitions and related matters.

Section 2 (Regulations in relation to decommissioning)

5. This section enables the Minister for Justice to make regulations providing for the decommissioning of arms. It provides that those regulations may make provision for the four methods of decommissioning identified in paragraph 44 of the Report of the International Body, i.e. the transfer of arms to a Commission, to be established by an agreement between the two Governments, or to designated representatives of either Government for destruction; the provision of information to the Commission or to designated representatives of either Government, leading to the discovery of arms for subsequent destruction; the depositing of arms for collection and subsequent destruction by the Commission or by designated representatives of either Government; and the destruction of arms by those in possession of them.

6. *Subsection (1)* provides that regulations may make provision for the decommissioning of arms. *Subsection (2)* provides that the regulations may make provision for the locations and times at which decommissioning of arms or any particular method or manner of decommissioning may take place (*subsection (2)(a)*), the methods and manners by and in which the decommissioning may take place, which include the methods referred to in paragraph 5. above, but

would also permit any combination of those methods or variation of them or other methods (*subsection (2)(b)*), and for the destruction of decommissioned arms (*subsection (2)(c)*).

Section 3 (Provisions relating to Commission)

7. The International Body recommended that the decommissioning process should take place to the satisfaction of an independent Commission to be appointed by the Irish and British Governments. The section makes provision for such a Commission, which it is intended will be established by agreement between the Irish and British Governments.

8. *Subsection (1)* enables the Minister for Justice to appoint a day, after consultation with the Secretary of State, when the subsequent provisions of the section will come into operation. *Subsection (2)* provides that the Commission shall be independent in the performance of its functions. *Subsection (3)* provides that it shall have the legal capacity of a body corporate. *Subsection (4)* provides that the Minister may make provision as respects inviolability, exemptions, facilities and immunities, privileges and rights in relation to the Commission, its property and persons connected with the Commission. *Subsection (5)* allows the Minister to amend or revoke any order made under the section (with the exception of an order under *subsection (1)*). *Subsection (6)* enables the Commission to be dissolved by the Minister, after consultation with the Secretary of State. *Subsection (7)* provides that an order under the section shall be laid before each House of the Oireachtas and shall be annulled if a resolution annulling it is passed by either House within twenty-one sitting days.

Section 4 (Regulations in relation to Commission)

9. The section enables regulations to be made regarding the Commission (*subsection (1)*).

10. *Subsection (2)* specifies, without prejudice to the generality of *subsection (1)*, the matters for which regulations may provide. These are the membership of the Commission (*subsection (2)(a)*), the terms and conditions under which members of the Commission may hold office and staff may be employed (*subsection (2)(b)*), the provision to the Commission of moneys, premises, etc. (*subsection (2)(c)*), the maintenance of accounts (*subsection (2)(d)*), proof of documents executed by the Commission (*subsection (2)(e)*), the prohibition of the disclosure of information (*subsection (2)(f)*) and the functions of the Commission and its role generally in relation to the decommissioning of arms (*subsection (2)(g)*). Those functions and that role may include the making of arrangements for the decommissioning of arms and the joining or assisting by the Commission in any such arrangements (*subsection (2)(g)(i)*), the taking possession of arms decommissioned (*subsection (2)(g)(ii)*), the observation, verification and supervision of the decommissioning of arms (*subsection (2)(g)(iii)*), the recording of information for the purpose of monitoring the process of the decommissioning of arms (*subsection (2)(g)(iv)*), the making of reports (*subsection (2)(g)(v)*) and the facilitating and securing of the safe and secure movement, handling and storage of arms during and after decommissioning (*subsection (2)(g)(vi)*).

Section 5 (Prohibition of certain proceedings)

11. The International Body recommended that individuals involved in the decommissioning process should not be prosecuted for possession of arms being decommissioned and that amnesties should be established in law in both jurisdictions. This section makes the necessary provision for the purposes of our law.

12. *subsection (1)* provides that proceedings shall not be instituted against a person for an offence in relation to any particular arms provided that, at the time of the commission of the offence, the person concerned was engaged in the process of the decommissioning of those arms in accordance with regulations or arrangements (*subsection (1)(a)*); any requirements of the regulations or arrangements were satisfied as respects both the person and the decommissioning (*subsection (1)(b)*); the decommissioning was taking or took place at a time or during a period specified in regulations or arrangements (*subsection (1)(c)*); and the act constituting the offence, or an act that is an ingredient of the offence, was a part of the process of decommissioning and was done in pursuance of regulations or arrangements under which decommissioning was taking place (*subsection (1)(d)*). Provision is also made for regulations which may specify particular offences to which the section applies, either generally (*subsection (2)*) or by reference to particular methods of decommissioning (*subsection (3)*). *Subsection (4)* is intended to meet the possibility of decommissioned arms being misappropriated following their decommissioning and provides that the prohibition on proceedings will not apply to an offence alleged to have been committed by the use of arms after they have been decommissioned.

Section 6 (Prohibition of certain testing, etc. and certain evidence)

13. The International Body also recommended that arms made available for decommissioning, whether directly or indirectly, should be exempt under law from forensic examination, and information obtained as a result of the decommissioning process should be inadmissible as evidence in courts of law in either jurisdiction. This section provides accordingly, subject to certain limited exceptions which are set out in the section.

14. *Subsection (1)* provides that arms, anything resulting from the process of decommissioning, any substance or thing found on or in arms decommissioned, or anything on or in which arms decommissioned were when decommissioned in accordance with regulations or arrangements shall not be subjected to forensic examination or to testing, except to the extent permitted by *subsection (2)* or *(3)*. *Subsection (2)* will permit such examination or testing for certain specified purposes, intended to enable the safe handling of decommissioned arms and the discovery of information concerning an offence alleged to have been committed by the use of arms after they have been decommissioned (see paragraph 12 above). *Subsection (3)* prohibits the use by, or on behalf of, the State of arms or information, obtained in the course of, or as the result of, decommissioning, in criminal proceedings or any appeal in relation to such proceedings, other than an offence alleged to have been committed after the decommissioning concerned. *Subsection (4)* prohibits the use by, or on behalf of, the State of evidence of anything done for the purposes of decommissioning in such proceedings or appeals, subject again to an exception in the case of an offence alleged to have been committed after the decommissioning concerned. *Subsection (5)* provides for certain necessary definitions for the purpose of the section.

Section 7 (General provisions as to regulations)

15. These are standard provisions. *Subsection (1)* provides a regulation-making power for the Minister for Justice for any purpose in relation to which regulations are provided for by the Act. *Subsection (2)* provides that such a regulation shall be laid before each House of the Oireachtas and shall be annulled if a resolution annulling it is passed by either House within twenty-one sitting days. *Subsection (3)* provides that any regulations made under the Act may contain

any incidental or supplementary provisions that appear to the Minister to be expedient.

Section 8 (Expenses)

16. The section provides that expenses incurred by the Minister shall be paid out of moneys provided by the Oireachtas to such extent as may be sanctioned by the Minister for Finance.

Section 9 (Short title and commencement)

17. Subsection (1) provides for the Act's short title. Subsection (2) provides that the Act, other than section 3, shall come into effect by order or orders made by the Minister for Justice under this section. Section 3(1) contains special provision for the coming into operation of that section.

*An Roinn Dlí agus Cirt,
Nollaig, 1996.*