

SENTENCE REVIEW COMMISSIONERS

ANNUAL REPORT 2011/12

Report for the year ended 31 March 2012



SENTENCE
REVIEW
COMMISSIONERS

Annual Report 2011/12

Report for the year ended 31 March 2012

Presented to Parliament pursuant to Schedule 1(6)
of the Northern Ireland (Sentences) Act 1998

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Chairman Mr. Brian Currin

The Rt Hon Owen Paterson MP
Secretary of State for Northern Ireland
Stormont House
Stormont Estate
BELFAST
BT4 3SH

Dear Secretary of State,

Sub-paragraph 6(1) of Schedule 1 to the Northern Ireland (Sentences) Act 1998 requires me, as Chairman of the Sentence Review Commissioners, to make a report to you, as soon as practicable after the end of the financial year, on the performance of the Sentence Review Commissioners' functions during the year. Annual Reports have accordingly been forwarded to you and your predecessors every year since the first in 1998/1999.

This, the fourteenth report, covers the year ending 31 March 2012. The layout and, generally, the content of this Report follow the line adopted in last year's report. It should be noted that all our previous Reports are readily available on the Commissioners website: www.sentencereview.org.uk

Chapter One summarises the background to the Commissioners' role and Chapter Two describes some issues that were addressed during the year including policy reviews, issues relating to the quality of Damaging Information provided and also rehabilitative work that can be completed within the prison environment which may reduce the risk posed by individual prisoners. Chapter Three gives details of the caseload with which we dealt and Chapter Four deals with staff and resources. I have also included a report summarising the cases dealt with since the Sentence Review Commissioners' inception on a year by year basis. This summary can be found at Annex A.

I am pleased to report that the NIO have taken on board concerns raised by Commissioners regarding the quality and quantity of the Damaging Information provided and they have reviewed and revised information when requested to do so by Single Commissioners and Special Advocates. I am also pleased to report that the revised Damaging Information policy which was introduced in 2011/12 in an effort to expedite cases to oral hearing has proven successful. This policy is currently under review in light of the A and AF decision and may be further revised in 2012/13.

2011/12 has brought changes within the body of Commissioners with Professor John Jackson appointed as a Commissioner in April 2011. I would like to take this opportunity to formally welcome Professor Jackson to the Sentence Review Commissioners and thank him for taking up the position. Looking ahead, in July 2012 there will be further changes to the structure of the Sentence Review Commissioners with reappointments/recruitment which will be reported in the 2012/13 SRC Annual Report.



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As Chairman, I should again record my appreciation and gratitude for the continuing support of my fellow Commissioners, and for the commitment, expertise and professional approach that they so commendably bring to the task.

Similarly, and also on behalf of all the Commissioners, I should thank the Secretariat for maintaining the excellent standard of administrative support upon which the Commissioners have come to rely.

Yours sincerely

BRIAN CURRIN
Chairman



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Chapter 1 - **Background**

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Background

The work of the Commissioners has its origins in the Agreement reached on Good Friday (10 April) 1998 between the participants in the multi-party negotiations, subsequently endorsed by referendum.

The part of the Agreement dealing with prisoners committed both Governments to putting in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or of similar offences elsewhere. The arrangements were to protect the rights of individual prisoners under national and international law.

Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.

The Act and Rules

The Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998 ('the Act') and through various pieces of subordinate legislation made under it, most particularly the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998 ('the Rules'). Both were passed by Parliament in late July 1998.

The Act provides for the appointment of Commissioners and sets out the criteria that must be met for a prisoner to be eligible for early release. It also provides that the extent by which an eligible sentence is reduced shall be one third of the time that the prisoner would otherwise have spent in prison. For a fixed-term prisoner this means release after one third of the sentence pronounced by the court (since all such prisoners would, but for the Act, have been entitled to 50% remission).

The Rules set out in detail the procedures under which prisoners apply for early release and the Commissioners consider their applications. Within the terms of the Rules there is provision for the views of the Secretary of State (represented by the Northern Ireland Office) to be made known and taken into account by the Commissioners. The Rules normally give both parties access to the same information. However, in certain circumstances information classified by the Secretary of State as 'damaging' may be withheld from the prisoner (and any representative nominated by the prisoner). If this happens, there is provision for the Attorney General to appoint a Special Advocate to represent the interests of the prisoner.

The papers submitted by the prisoner (known as the 'applicant') and the Secretary of State (known as the 'respondent') are considered by a panel of three Commissioners who give their initial view in writing in the form of a 'preliminary indication'. The Rules allow either party to challenge the preliminary indication and have the issues considered afresh at an oral hearing. If there is no such challenge, or after an oral hearing, the final decision of the Commissioners is given to both parties in the form of a 'substantive determination'. The Commissioners have no power to reconsider a substantive determination, so the only way in which either party can challenge the outcome is by way of judicial review.



Eligibility for Early Release

The eligibility criteria laid down by the Act are that:

- the prisoner is serving a sentence of imprisonment in Northern Ireland;
- the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10 April 1998;
- if the sentence was passed in Northern Ireland, the offence:
 - was a scheduled offence; and
 - was not the subject of a certificate of the Attorney General that it was not to be treated as a scheduled offence;
- if the sentence was passed in Great Britain, the offence:
 - was committed in connection with terrorism and with the affairs of Northern Ireland; and
 - is certified as one that would have been scheduled, had it been committed in Northern Ireland;
- the prisoner is not a supporter of a specified organisation;
- if the prisoner were released immediately, he would not:
 - be likely to become a supporter of a specified organisation; or
 - be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
 - if a life-sentence prisoner, be a danger to the public.

Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those most likely to be committed by terrorists. They include murder and manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

It should be noted that the Act does not require offences in Northern Ireland to have been committed by or on behalf of a terrorist organisation but simply requires them to have been tried as scheduled offences.

The Specified Organisations

The Act requires the Secretary of State to 'specify' by subordinate legislation any organisation believed to be concerned in terrorism connected with the affairs of Northern Ireland which has not established or is not maintaining a complete and unequivocal ceasefire. Specification of an organisation means that its supporters are not eligible to benefit from the early release arrangements.

The list of specified organisations for the period from 23 July 2008 to 31 March 2012 was:

- The Continuity Irish Republican Army
- The Loyalist Volunteer Force
- The Orange Volunteers
- The "Real" Irish Republican Army
- The Red Hand Defenders
- Óglaigh na hEireann (ONH)



The Accelerated Release Date

The Act provided that any prisoners given release dates after the second anniversary of the Act's commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the later.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners' declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

Licence Arrangements

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

For a fixed term prisoner the licence remains in force until the date when he or she would otherwise have been entitled to be released from prison under the legislation in place at that time. For a life prisoner, the licence remains in force for the rest of his or her life.

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again. Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements or circumstance change which support a further application from the prisoner.



The Commissioners

The Sentence Review Commissioners are an independent body made up of a Chairman and eight other Commissioners* appointed by the Secretary of State to serve until 31 July 2012. The following Commissioners served during this reporting period:

Mr Brian Currin *Chairman*

A South African lawyer working in mediation and institutional transformation. Founded the National Directorate of Lawyers for Human Rights, in 1987 and headed it for eight years. Involved in political prisoner releases, amnesty and Truth and Reconciliation processes in South Africa. Has worked in Sri Lanka, Rwanda and the Middle East on political transformation and civil rights issues. In June 2007 was appointed an international adviser to the Consultative Group on the Past set up to look at ways for Northern Ireland to deal with its troubled past. Also works extensively on peace process facilitation in the Basque Country. He is convener and member of the International Contact Group for the Basque Country. Mr Currin is currently also involved in the peace process in Madagascar.

Dr Silvia Casale CMG

Independent Criminologist. Advisor to the Council of Europe National Preventive Mechanism (NPM) Project. Former President of the United Nations Subcommittee on Prevention of Torture (UN SPT) and former President of the European Committee for the Prevention of Torture (CPT). Currently works as a member of the International Contact Group for the peace initiative in the Basque Country. Has worked in Sweden and the United States and as a member of the Parole Board for England and Wales. Has published extensively on prison issues.

Dr Peter Curran

Consultant Psychiatrist and Fellow of the Royal College of Psychiatrists. Has an interest in the victims of violence and has lectured and published on the psychological and social impact of civil disorder and violence. Formerly a member of the Mental Health Commission, the Criminal Injuries Compensation Appeal Panel (Northern Ireland) and transitional Life Sentence Review Commissioner. Was President of NI Medico-Legal Society in 1999 - 2000.

Mrs Mary Gilpin

A former member of the Scottish Probation Service and a retired social worker. She was a member of the Board of Visitors for HMP Maze from 1985 to 1997 and served two terms as a Chairperson as well as being Secretary to the Northern Ireland Association of Members of Boards of Visitors. She was closely involved in the establishment of Dismas House, a hostel for use by prisoners and their families.



Dr Adrian Grounds

Was a University senior lecturer in forensic psychiatry at the Institute of Criminology, University of Cambridge, and an honorary consultant forensic psychiatrist in the Cambridgeshire and Peterborough NHS Foundation Trust, until retiring in 2010. He is now an honorary research fellow at the Institute of Criminology. He is also a Parole Commissioner for Northern Ireland.

Dr Duncan Morrow

An academic in the University of Ulster currently developing engagement with communities and stakeholders as part of the University's Greater Belfast Development. Until 2011 he was Chief Executive of the Community Relations Council (CRC) and has taken an active role in peace building and the legacy of violence in the past. Dr Morrow is a Parole Commissioner for Northern Ireland. A native of Belfast, he is married with three teenage children.

Mr Donal McFerran

A qualified solicitor who practised as partner in a litigation firm in Belfast. He has served as a Deputy Resident Magistrate, and was appointed a Deputy County Court Judge in 1990 and is a legal member of the Mental Health Tribunal. He also served as a Parole Commissioner for Northern Ireland.

Ms Clodach McGrory

Practiced at the Bar in Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and served a term of office on the Irish Human Rights Commission from December 2000 until August 2006. She was a member of the Prison Review Team which was appointed by the Minister for Justice in June 2011 to conduct a comprehensive review of the Northern Ireland Prison Service and reported in October 2012. She is currently a part-time Chairperson of Social Security Appeal Tribunals and has been a Sentence Review Commissioner since 1998



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Prof John Jackson

A Professor of Law at the University of Nottingham and a qualified barrister. He was previously Dean of the School of Law at University College Dublin and has taught at several other universities including Queen's University Belfast, the University of Sheffield, the City University, London and University College Cardiff. He has held visiting professorships at Hastings College of the Law, University of California and the Faculty of Law, University of New South Wales and was a Fernand Braudel Senior Fellow at the European University Institute in 2007 – 2008. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review.

**All Commissioners serve on a part-time per diem basis.*



Chapter 2 - **Approach**

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Approach

The Commissioners are under a duty to implement one of the most sensitive parts of the Agreement, and their first priority continues to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held three plenary meetings at which they discussed in depth their approach with regard to aspects of their responsibilities that have either arisen for the first time or been brought into particular focus by experience relating to particular cases. The paragraphs that follow describe some of the issues thus considered and the conclusions that were reached.

Human Rights Act 1998

Section 6(1) of the Human Rights Act 1998 makes it “unlawful for a public authority to act in a way which is incompatible with a Convention right”. The Commissioners have been advised that each of them is a public authority for the purposes of the Northern Ireland (Sentences) Act 1998.

In giving effect to the 1998 Sentences Act, the Commissioners may, conceivably, be faced with a course of action that could be inconsistent with one or more of the Convention rights. They have been advised that, where they conclude that such inconsistency exists, their legal duty would be to comply with section 6(1). Accordingly, the Commissioners continually keep under review the policies and procedures that they have adopted in order to discharge their statutory responsibilities. To date these have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and the secondary legislation (the Commissioners’ Rules) with the Human Rights Act.

Quality of Damaging Information

After meeting with Northern Ireland Office officials to discuss the ongoing problems with the quality of Damaging Information which had been highlighted in specific cases, Mr Currin reported that the required information had now been provided and the Commissioners will continue to monitor Damaging Information in 2012/13.



Policies and Procedures

Expediting Hearing Policy

Following on from the Special Advocate Policy, and in an effort to expedite cases to oral hearing, the Commissioners developed a policy to ensure that cases with Damaging Information could proceed to oral hearing as quickly as possible. To facilitate this process the Commissioners agreed that it would, in compliance with the legislation, be more beneficial to appoint the special advocate, if applicable, after open oral hearing. This policy has been successfully implemented, but is currently under review by the Commissioners to ensure compliance with the recent A and AF decisions.



Chapter 3 - **Casework**

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Casework

The work of the Commissioners is mainly dependent on the number of prisoners who apply to them in accordance with the provisions of the Act and the review process initiated by Northern Ireland Office. Cases processed within SRC are very complex and thus time consuming. During the period of this Report, one further application was received and cases were processed as follows (see table 1):

Preliminary Indications

Commissioners issued one preliminary indication. In this case they were minded to refuse the application because they were not satisfied that, if released immediately, the applicant would not be a danger to the public.

Oral Hearings

During the reporting period six oral hearings were held, this included two hearings which were part heard and carried into the 2012-2013 reporting period.

At 31 March 2012 there are three oral hearings pending.



Table 1

Table 1 shows the state of business at the end of each quarter, the total cases processed in the year and the total cases processed by the Commissioners since their appointment.

	Jun	Sep	Dec	Mar	Total 2011/12	Total 1998-2012
Applications received	0	1	0	0	1	636
Applications sent to respondent	0	1	0	0	1	579
Responses received	0	1	0	0	1	578
Applications not proceeded with after response received	0	0	0	0	0	55
Applications withdrawn / lapsed before issue of preliminary indication	0	0	0	0	0	3
Preliminary indications issued	0	0	1	0	1	525
Applications withdrawn / lapsed after issue of preliminary indication	0	0	0	0	0	13
Challenges received	0	0	1	0	1	52
Oral hearings held	3	1	1	1	6	47
Applications withdrawn / lapsed following oral hearing	0	0	0	0	0	2
Substantive determinations issued	2	1	0	1	4	506
Applications transferred to PCNI following tariff expiry	0	0	0	0	0	1
Outstanding Applications under consideration at year end.						3



Chapter 4 - **Staff and Resources**

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Staff and Resources

For most of the year covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and one case manager. They occupy shared accommodation with the Parole Commissioners for Northern Ireland on the 9th floor of Linum Chambers, Belfast.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2012 was:

Programme expenditure for 2011/12:

Financial Year	2010/11	2011/12
	£000	£000
Commissioners' remuneration	33	41
Commissioners' travel, accommodation and expenses	35	39
Legal representation for applicants	39	20
Legal costs	2	5
General administration	9	6
Running costs:		
Staff salaries etc	27	36
Total Expenditure	145	147



Annex A - **Summary of Cases**

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Summary of Cases Processed

By far the bulk of applications considered by the Commissioners were received within the first year of the Good Friday Agreement and the subsequent commencement of the Northern Ireland (Sentences) Act 1998. After that the workload dropped dramatically.

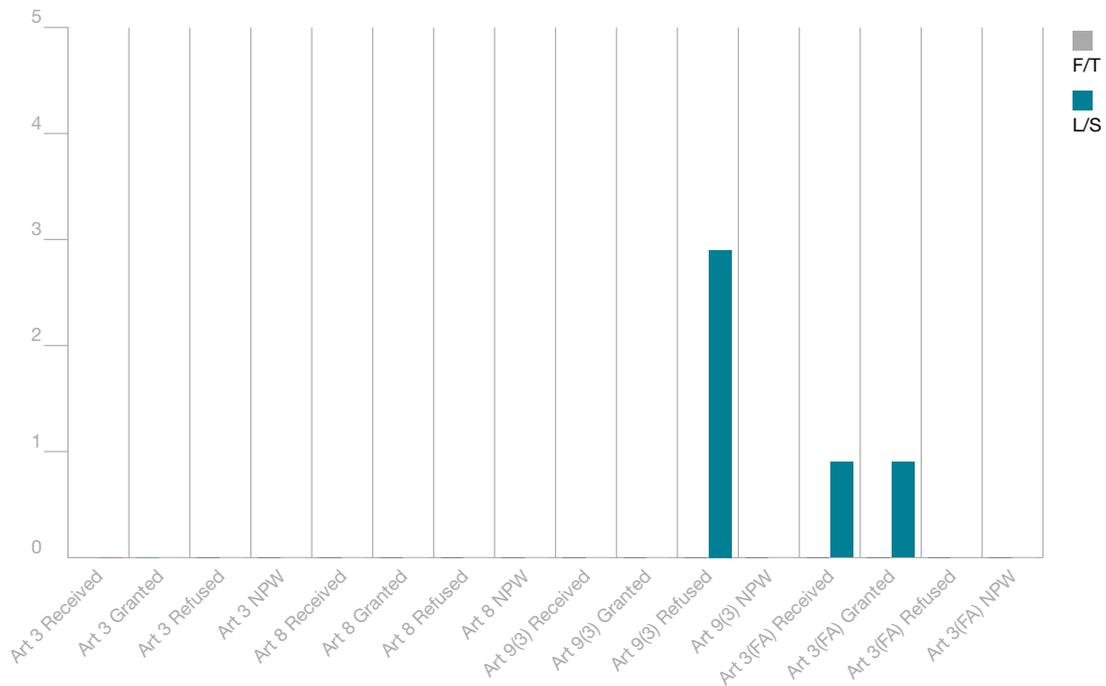
Further applications under Section 3 in which the applicant claims there has been a significant material change in his circumstances since the Commissioners last considered his case have increased.

Key

- F/T – Fixed Term Prisoners
- L/S – Life Sentenced Prisoners
- NPW – Not Proceeded With

2011 - 2012

Applications by Type and Determination Made



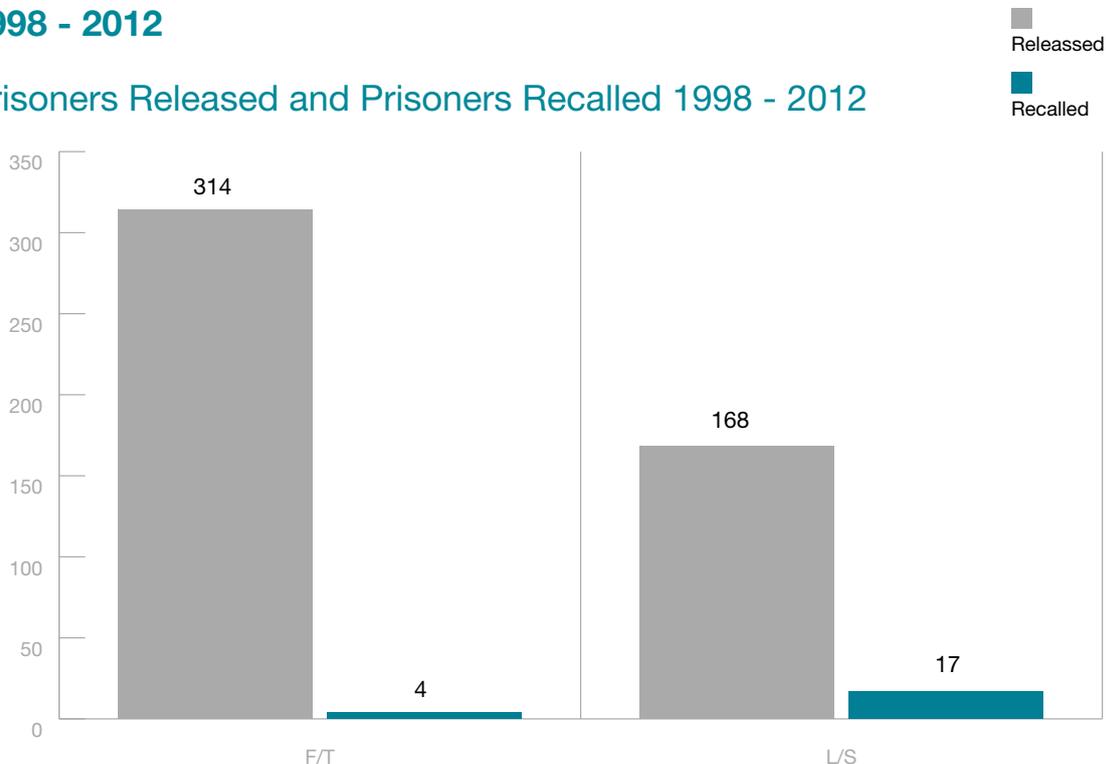


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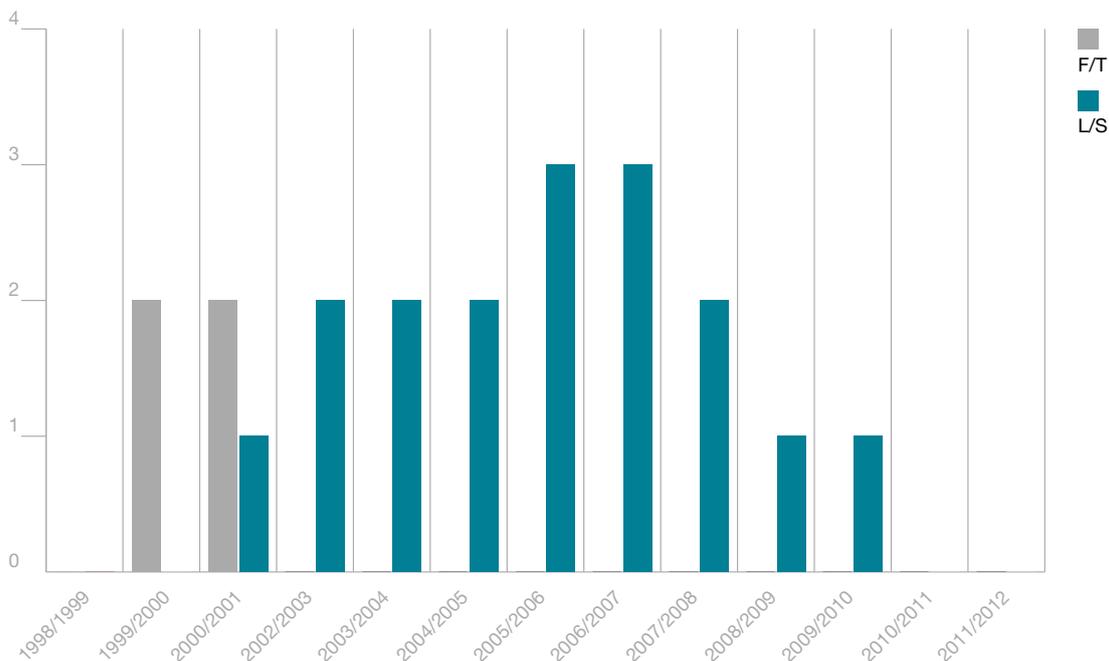
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1998 - 2012

Prisoners Released and Prisoners Recalled 1998 - 2012



Number of Prisoners Recalled Yearly



NB: The number of prisoners recalled is not the same as the number of recall applications processed. This is because prior to 2006-2007 the Commissioners did not consider the suspension of a licence if the prisoner involved did not make an application for it to be so considered. In 2006-2007, the Commissioners reflected on this position and concluded that the legislation bestowed on them a duty to consider all suspensions whether or not the prisoner makes an application to them. This they have done.



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