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B/11/10/MLR

MINISTER OF STATE (L&B)

cc	PS/Sofs (L&B)	BLIS
	Sir K Bloomfield	BLIS
	Mr Stephens	
	Mr Burns	BLIS
	Mr Chesterton	BLIS
	Mr Elliott	BLIS
	Mr Innes	BLIS
	Miss Pease	BLIS
	Mr Steele	BLIS
	<del>Mr Jackson</del>	BLIS
	Mr Kendrick	BLIS
	Mr McVeigh	BLIS
	Mr Ginn	BLIS
	PS/PUS(L)	

PRISONS STRATEGY REVIEW

As you are aware, a few months ago Prisons Department commissioned a Strategy Review covering all major aspects of their work. This has now been completed and a copy is attached. It is a comprehensive and clearly presented piece of work which I think reflects credit on Mr Daniell, who was mainly responsible for preparing the report.

2. The Review is important in terms of both the future running of the Prison Service in Northern Ireland and our current use of resources. It was commissioned against the background of a static prison population, over-provision of accommodation and rising costs, which has become a matter of serious concern to me as Accounting Officer. It comes at a time when the prison system in Northern Ireland seems to have entered a period of relative calm and stability after almost two decades of incident and controversy, as well as rapid growth in population and staff. This provides us with a convenient opportunity to take stock of policies which have developed on an ad hoc basis over the years, in response to the pressure of day-to-day events, and to see whether we can devise a sensible and coherent strategy for the management of the prison system in the years ahead.

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3. Nevertheless, a word of caution is required. Prison issues in Northern Ireland are highly emotive and many of the matters dealt with in the Review are capable of being exploited by the paramilitaries, both inside and outside the prisons, to the possible detriment not only of the prison system but also of the wider political/security situation. There is also the particular problem of dealing with the Prison Officers Association, which over the years has built up an undue influence in the prisons. It may be that reform can only be achieved if management is prepared to "take on the POA"; but that requires very careful consideration, not least because of the implications for the security forces. At the present time, as you are aware, officials are in the early stages of negotiations with the POA on the local "Fresh Start" proposals. There is a real danger that the disclosure or implementation of some of the proposals in the Review, or perhaps, even the existence of the Review, could be used as an excuse to break off these negotiations. On the other hand, those involved in the negotiation may at some stage find some reference to the Review unavoidable: for example, possible changes in the prison estate clearly have a bearing on the staffing issues surrounding "Fresh Start". Thus, the whole exercise needs to be handled with great care and the timing of any major changes will be a matter of sensitive political judgement.

4. Some of the issues raised in the Review are already under active consideration by the Prisons Department - overall objectives, industrial relations and questions of financial accountability come into this category. Others impinge on the wider political scene and for that reason are set out with a range of options which need to be addressed by Ministers. The major items concerned in the Review are:-

1. The need for a published Statement of Objectives.
2. The link between regimes and security/control.
3. The segregation/integration issue.

4. The possibility of ending Special Category now that the number involved have reduced to 102.

5. The size of the prison estate (should an establishment be closed?).

5. Many of these issues are inter-related and the Review document needs to be considered as a whole. As it stands it discusses options rather than making recommendations for action. I suggest that as a next step you may wish to discuss it with senior officials, including Mr Steele and the Heads of Divisions in Prisons Department as well as Mr Stephens and myself. There is a lot of "meat" in the document and you may feel that, say, half a day should be devoted to an in-depth discussion, using the items listed in para 4 as an agenda. You could then consider what recommendations to make to the Secretary of State.

6. The Review is an important document. The intense interest in its outcome from the Treasury and others is founded upon the expectation of significant savings. While this would be a desirable, perhaps essential, outcome, an equally important feature is the opportunity the Review affords to reduce the disproportionate influence of both the prisoners and prison officers in the running of the prisons and to generally underpin the position of prison management by demonstrating that Ministers are prepared to take hard decisions.

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## VI SPECIAL CATEGORY

6.1 This section of the review examines the related issues of the future of Maze Compound and special category status. Since 1976, when the decision was taken no longer to grant special category status the number of such prisoners in custody has fallen from around 1500 to around 100 today. These life and pleasure prisoners are kept in 3 compounds at Maze, on the basis of their paramilitary affiliation as follows:-

<u>Current numbers</u>	<u>Estimated for end of</u>		
	<u>1989</u>	<u>1991</u>	<u>1994</u>
UDA            32	22	9	3
UVF            38	12	6	0
PIRA <u>32</u>	<u>15</u>	<u>13</u>	<u>13</u>
102	49	28	16

The estimated figures are based on the assumption that existing policy on releases is maintained. The 13 PIRA prisoners shown as remaining in 1991 and 1994 are those who have so far refused to co-operate with the life sentence review process; a change of heart on their part, which may well occur in the near future, might produce a lower figure for 1994.

6.2 The Compound sector at Maze was until 1986 run as a separate prison despite being adjacent to Maze Cellular and within the same outer perimeter. Given the gradual rundown in numbers of special category prisoners it was clear that this arrangement was untenable on management and economic grounds. The decision was therefore taken to annex the remaining 3 compounds to Maze cellular thus integrating the management structure of the 2 prisons; this would allow for services (kitchens, visiting arrangements, etc) to be merged and provided on an

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integrated basis and for the perimeter of the combined prisons to be considerably reduced, with the compound area forming in effect a "blister" on the cellular prison. In all it was expected that staff savings of around 200 would be achieved, with the surplus officers being transferred to the new prison at Maghaberry. Largely due to difficulties in negotiations with the POA, all of the economies that should have accrued from annexation have not yet been achieved. Nevertheless, manpower has been reduced from 422 to 179, although the apparent saving of 243 officers has been eroded by the need to deploy staff to additional posts created on the cellular site as a direct consequence of annexation. The net saving to date is 180 with the possibility of further small savings as the annexation package is completed.

- 6.3 Annexation should produce a substantial reduction in the annual cost per prisoner in the compounds (£110,000 excluding capital expenditure) compared with an average for the Northern Ireland system as a whole of around £44,000 per annum (see Appendix H table 1). The 179 men now deployed to look after 102 inmates in special category gives an officer/inmate ratio of 1.8 which is still higher than the Northern Ireland average of 1.6 (see Appendix H table 2) but represents a significant improvement on the pre-annexation ratio of 3.8. However, even with the full savings attainable as a result of annexation, the special category annex will continue to be the least efficient part of the male prison estate in Northern Ireland. The position will gradually deteriorate as the numbers of prisoners reduce without corresponding reductions in prison staff. Maze Compound can be argued to fare still less favourably in comparison with other units in efficiency terms when it is appreciated that those staff who are deployed there contribute less to the regime than their colleagues because of the nature of special category and the lack of contact between staff and prisoners. The difficulty is that staffing levels there are determined not by prisoner numbers but by the need to secure a given area.

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6.4 The figures given above show that, with no change in policy on releases of prisoners with indeterminate sentences, we are approaching the point when numbers will dwindle to such an extent that the remaining prisoners may volunteer to leave the Compounds (as happened with the last 8 prisoners in the OIRA Compound) or the prison authorities will reasonably feel able to move them without provoking any serious protest. In the meantime, given the value for money case and the overall policy objective of "normalisation" we need to consider the options for accelerating the process. The remainder of this chapter addresses some general factors to be taken into account before considering options for action.

Undertakings given to existing special category prisoners

- 6.5 In considering the future of the remaining special category prisoners, it is necessary to bear in mind any undertakings that may have been given by Government about their status. Appendix E contains the major parliamentary statements on this made since the announcement in November 1975 that special category status would be phased out. It is clear that there is scope for differing interpretations of what was said.
- 6.6 In the 1975 debates on the Order to proscribe the UVF, which was the vehicle for the announcement of the phasing out of special category, it was made clear that existing special category prisoners would not be affected and would not be deprived of their status. In context, the point was being made that the decision no longer to grant special category status to those imprisoned for offences committed after 1976, did not extend to removing that status from those who already had it. It need not be read as a commitment never to deprive them of that status in the future. However the words used, when taken in isolation, could be taken that way by those who wished to

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argue the case. Between 1976 and 1980 statements on the special category issue were confined to reaffirming the Government's commitment to run down special category as numbers of such prisoners reduced through releases. In 1980 it was announced that no more prisoners would be admitted to special category status whether or not the offences concerned were committed before 1 March 1976; but it was made clear that those prisoners with special category status would be allowed to retain it if they wished. More recently in 1981 and 1982, the waters were muddied in that Ministers stated clearly that they did not regard any of the undertakings given as amounting to a commitment that special category would be retained indefinitely; on the other hand, it was recognised that there were "wider considerations" in taking action retrospectively to alter the terms on which those prisoners were serving their sentences.

- 6.7 We have publicly admitted that removal of special category status would not be a straightforward issue in terms of principle and equity; and enough has been said to give ammunition to those who will argue that undertakings were given that special category status would not be removed from those who already had it. There may be scope for judicial review if the decision is taken to transfer these prisoners to the regime applied to others in the system; and care would have to be taken to effect the change in a manner that could be defended in law as a reasonable use of administrative discretion. A decision to transfer a special category prisoner involved in an escape plot to Maze cellular was recently challenged in an application for judicial review, although the case was subsequently dropped; and there have been cases in England where decisions to transfer prisoners from open to closed conditions have been challenged.

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6.8 In the course of this Review, no undertakings about where special category prisoners are to be held have been identified. Moreover it is clear that in the late seventies and early eighties planning was proceeding on the basis that when sufficient cellular capacity became available, special category prisoners would be transferred out of Maze Compound.

Attitude of Special Category Prisoners

6.9 Special category prisoners from each of the factions come into the category of "forgotten men"; their situation is no longer a major issue and as their numbers dwindle their significance will diminish still further. They are relatively content with their present existence where they are left to their own devices and while morale is not especially high there are no indications to suggest that defections from special category are likely at present. The UDA O/C, Ralph Henry, is thought likely to stamp hard on any moves by individuals to relinquish their status. The main preoccupation in the PIRA Compound at present is over whether to co-operate with the Life Sentence Review process. Given the minimal contact between prisoners and staff in Maze Compound, we do not have reliable intelligence or even a good feel for how the inmates there would react if special category were to come under threat or be removed. The best guess is that all three factions would feel bound to mount some form of protest; and that within each faction there would be a hard core (size unknown) determined to push that protest all the way and to stir up the rest of the prison. Elsewhere in Maze Cellular there would be support for the special category prisoners, especially on the republican side where special category is regarded as sacrosanct, but how wholehearted such support would be is open to question.

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6.10 While special category prisoners may not arouse great passion in the community at present, this would change if action were taken to remove their status and integrate them with the rest of the prison system. In July of this year, the "Ulster" Magazine railed against the NIO policy of strip searching special category prisoners which was seen as a ploy to secure the transfer of prisoners to cellular conditions for punishment and thus end special category by the back door. However, the assessment is that on the loyalist side, particularly with the disarray of the UVF, the paramilitaries would not be in a position to mount a major campaign over the issue. The loyalist politicians would however need careful handling and might feel bound to create difficulties if the decision were taken to end special category.

6.11 The Provisionals are looking for an "issue" over which they can mobilise the minority community, particularly as there is no Northern Ireland election in the near future. Despite their current reticence over "prison" campaigns, the opportunity afforded by mishandling of the special category problem would be too great for them to pass over. At best it could develop into a running sore such as strip searching, or MacBride; at worst a major campaign within the prisons might be combined with violence, probably directed against prison staff outside. In such circumstances, the Irish, the Bishops and constitutional nationalist groups could be expected bitterly to criticise the Government for playing into the Provisionals' hands.

#### The Options

6.12 Retain special category status and transfer compound prisoners to Maze Cellular - this would involve translating the compound situation to H-Blocks, ie leaving cell doors open 24 hours a day, withdrawing staff from wings and leaving the prisoners in overall control of their accommodation. Such action might be taken

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immediately or delayed until the 3 factions could be comfortably accommodated in one wing each. H1 and/or H2 might be used, thus keeping the prisoners in one phase and achieving a degree of isolation from other parts of the prison. The prisoners would be unlikely to object. There are differing views on the likely impact of such a move on the prison system as a whole and on Maze Cellular in particular. One assessment is that with special category inmates being kept well isolated from the rest of the inmates, the risk of provoking serious unrest elsewhere in the system is small. The risk would diminish if the move could be delayed for long enough to achieve a substantial reduction in the number of special category prisoners. The other view is that this would be a radical and controversial move, unsettling the rest of the prison and carrying a "contamination" risk. The whole issue of political status, effectively dormant since the hunger strike could be rekindled. Prison staff might react badly and control and security would be more difficult to maintain in such circumstances than in the compounds. Finally by taking such a step, we would be failing to grasp the nettle at a time when numbers of special category prisoners are falling towards critically small levels and, in doing so, we would probably delay the disappearance of special category for longer than would be the case if it were allowed to fizzle out in the compounds.

- 6.13 The transfer of prisoners out of the Compound to an H-Block would achieve staff savings over the present Compound staffing complement of 179, particularly as men would not be required down the wings. Allowing for some enhancement of security-related tasks in this scenario, it is considered that the existing complement could be reduced by around 100.

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- 6.14 Transfer prisoners to Maze cellular with a modified special category status - in such a scenario prisoners would retain substantial free association but staff would have access to the wings during the day and there would be lock-up at night. This would give rise to the sort of considerations described at paragraph 6.12 above. However, prisoners would be less likely to co-operate and the pressures on staff, who would be less insulated from the prisoners might be considerable. The requirement to lock-up would reduce the scale of staff savings.
- 6.15 End Special Category now - This would mean transferring the prisoners to the cellular accommodation, either keeping them together in their factions or scattering them around the system - and then seeking to apply the normal regime. It could be achieved quickly thus giving rise to immediate savings. However, there are risks as indicated in paragraphs 6.9 to 6.11 and such action could well place the otherwise "forgotten man" right in the centre of the political stage.
- 6.16 It may be that the reaction inside and outside the prison could be calmed by combining the end of special category with the introduction of the sort of regime for segregated prisoners described in paragraph 5.12 above. With no staff down the wings, at least during the day, no work, free association and plenty of opportunity for wing based leisure activities, the way of life would be comparable to that in the compounds. In a sense the special category and segregation regimes would be merged. In such circumstances there would of course be an argument, difficult to refute, that we had resolved the special category issue not by bringing it to an end but rather by extending it to all prisoners who wanted it. The paramilitaries might see this as a vindication of their earlier campaigns and go on to seek further concessions. Other carrots that might be offered in these circumstances might include agreement to review the sentences of all special category prisoners within the year and perhaps to transfer those who wished to Belfast and/or Maghaberry.

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6.17 Work to a Strategy of ending special category within a specific timetable - in effect this means seeking to advance the time when special category would come to an end naturally. It might involve making contact with individual special category prisoners with a view to encouraging them to transfer to the ordinary regime. Incentives could be deployed such as the option of a transfer away from the Maze with the opportunity of taking advantage of a positive regime and enhancing the prospects for release. Thus the reduction in numbers brought about by release would be accelerated by voluntary transfer out of special category. The "trickle" approach to ending special category has its dangers - people could well become aware of what we were about and pressure might be put on prisoners not to co-operate. At some stage we would have to bite the bullet and bring special category to an end for the remaining prisoners by executive action rather than persuasion; but the ground would be prepared and the degree of reaction should be less than that which is suggested at paragraph 6.15 above. This option allows for positive progress towards closure of the Compound without running a serious risk of provoking major trouble in the prisons. It would mean delay, perhaps by as many as 3 years before staff savings would be achieved through closure; and the onus would be on management to secure the optimum savings that could be achieved through annexation.

6.18 Early release for special category prisoners - at its extreme this option would involve solving the problem by eliminating it entirely - ie by releasing all special category prisoners on licence. (This would become feasible in 1988 by which time all remaining fixed term prisoners will have been released from Maze Compound.) If any re-offended or could be shown to have become re-involved, then they would be returned to prison where they would resume their sentences under a normal regime.

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The less radical approach would be to make a positive effort to speed up the projected rate of releases indicated in paragraph 6.1 - perhaps by limiting the release criteria to retribution, ignoring the risk factor which is notoriously difficult to assess in these cases.

6.19 Against this approach is the argument of equity in that one class of prisoner would be treated demonstrably better than another for no better reason than convenience. We would in effect be giving the paramilitaries the ultimate victory over the special category issue - "early release of political prisoners"; and it would provide an incentive to reopen the campaign for special category status to be granted to other prisoners. At the very least other life and "pleasure" prisoners would demand similar treatment. As for returning to prison those who re-involved, there would be difficulties as evidence of re-involvement is usually obtained through intelligence sources which could not be deployed in court should the decision to return be challenged.

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EXTRACT FROM  
STRATEGY REVIEW  
APPENDIX E APPENDICES

STATEMENT MADE IN PARLIAMENT SINCE NOVEMBER 1975 PERTINENT TO  
THE POSITION OF EXISTING SPECIAL CATEGORY PRISONERS

Debates on Northern Ireland (Emergency Provisions) Act 1973  
(Amendment) Order 1975: Lords and Commons 4th November 1975

- a. Mr Rees: "Whatever was the validity of the introduction of special category status at the time - and I understood and supported the action then in the new situation I am sure that it is wrong. I want to end this system but the hard fact of life is that it cannot be ended while so many prisoners have to serve their sentences in compounds. If I were to end it now it would mean that the people would go into the compounds, and I would have changed only the name and made no difference to the facts of life".

(Commons Hansard 4 November 1975 Col. 238.)

"The effect of this scheme and the new prison building programme will enable me to bring to an end special category status. The facilities are not there for me to deal with those who have already been admitted to special category status. They will not be affected. But those sentenced for offences committed after 1 March 1976 will be accommodated in cellular accommodation and will not be able to claim special category status. Special category status is to end - slowly I admit."

(Commons Hansard 4 November 1975 Col 240.)

- b. Mr Airey Neave: "We agree also with a great deal of the other matters referred to by the Rt Hon Gentleman and we welcome the intention of the Government to end

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the special category. This is an essential step in making it clear that terrorists and murderers cannot be dignified with a political label."

(Commons Hansard 4 November 1975 Col 245.)

- c. Mr William Ross: "At some stage I have no doubt that the Secretary of State will contend that the special category status of prisoners should disappear entirely. At what point is it intended that these long term and life prisoners shall lose the special category status which they are allowed at present?"

Mr Orme: "Because of what we have said this evening, these people cannot be affected. The House might as well face up to this difficult problem. There may be possibilities, as the numbers reduce and circumstances change, that the situation will change. However, we must say very clearly that the status of those people who have at present claimed political status will remain."

(Commons Hansard 4 November 1975 Col 294.)

- d. Lord Donaldson: "We all deplore special category, while appreciating the reason why it had to be introduced. .... my Rt Hon Friend therefore has decided to end it for all offenders accused of crimes committed after 1 March 1976. Those in prison who already hold the status will not be deprived of it."

"I have no doubt that these penal reforms are highly desirable and much needed, and as I have said, they will enable us, in conjunction with the new accommodation to phase out special category status."

(Lords Hansard 4 November 1975 Cols 1069, 1070 and 1071.)

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- e. Lord Belstead: "On both sides of the House we know the reasons for the introduction of special category status, and on both sides of the House it is agreed that somehow or other this has to be ended."

(Lords Hansard 4 November 1975 Col 1073.)

Selection of Parliamentary Questions answered since 1976

- a. Mr Molyneux asked the Secretary of State whether he will make a statement on progress in phasing out special category status in Her Majesty's prisons in Northern Ireland.

Mr Concannon: "The rundown in the number of special category prisoners continues. At the end of February 1976 there were 1535 such prisoners, including 60 women; now there are 708, including 30 women. The policy of phasing out special category is working. The Government will not be deflected from this policy, and I trust that the House will give its firm backing to Her Majesty's Government on this important and vital issue."

(Commons Hansard 15 June 1978 Col 604.)

[This was the line consistently adopted in answers on this subject between 1976 and the end of the administration in 1979.]

- b. Mr Farr asked the Secretary of State for Northern Ireland if he will make a statement on the phasing out of special category status for convicted prisoners and about the protest by certain prisoners against this policy.

Mr Humphrey Atkins: "On 1 March 1976 there were more than 1500 special category prisoners. Since then, under the policy introduced by the previous

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administration and which we have continued, special category status has not been granted to any prisoner sentenced for an offence committed on or after that date . . . ."

"... Persons convicted of terrorist type offences committed before 1 March 1976 have continued to be granted special category, but I have decided that the time has come to put an end to new admissions. Accordingly no person charged on or after 1 April 1980 will be granted special category status whatever the date of their offence. Those prisoners who already have special category status ... will be allowed to retain it if they wish ...."

(Commons Hansard 26 March 1980 Col 616.)

- c. Mr J Enoch Powell: "Now that it has been determined - thanks not least to the Prime Minister's own determination - that political status for any prisoners is inadmissible in Northern Ireland or elsewhere will she take time to consider how best that status can now be withdrawn from the 350 prisoners in Northern Ireland who still enjoy it?"

The Prime Minister: "A number of us share the view of the Gardiner report that there should not be a separate category of prisoners and that there should be no such thing as special status. As the Right Hon Gentleman is aware, both the previous Labour Government and this Government decided that no further people should be admitted to that status. At the present time, apart from anything else, there would be practical reasons why one could not withdraw the special status from the others, because there is just not enough cell accommodation. But I should not wholly rest upon that immediately. There are wide

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considerations relating to withdrawing retrospectively the terms on which those sentences are being served."

(Commons Hansard 15 January 1981 Col 1528.)

- d. Mr J Enoch Powell asked the Secretary of State for Northern Ireland on what occasion or occasions, and in what terms, any indication was given at any time on behalf of Her Majesty's Government to persons convicted of crimes committed before March 1976 that they would continue to enjoy political status in Her Majesty's prisons in Northern Ireland indefinitely.

Mr Humphrey Atkins [pursuant to his reply, 20 January 1981, c. 156]: "At no time have any Government regarded the conditions for special category prisoners as conferring political status - this Government certainly do not. As for the continuation of special category status in respect of certain prisoners, no assurances have been given since the present Government assumed office. As regards the earlier period, I am aware only of the previous Administration's statements on the matter in Parliament."

(Commons Hansard 22 January 1981 Col 244.)

- e. Mr J Enoch Powell: "How can the Government hope for a return to normality in the Maze Prison, when they continue to accord special category status to several hundred prisoners in defiance of their own principle that such status is unjustified and unacceptable?"

Mr Alison: "In principle, special category status was abolished five years ago. The Government have accelerated the practice of phasing it out. That demonstrates clearly the Government's rejection of

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the concept of special category status. As long ago as 1975 a previous Secretary of State established the practice of leaving sentenced prisoners to serve out their time in the conditions under which they had embarked on them. A retrospective alteration of those terms gives rise to far wider considerations, as my Right Hon Friend the Prime Minister indicated to the Right Hon Gentleman in her reply to him on 15 February."

(Commons Hansard, 12 February 1981 Col 977.)

- f. Mr McCusker asked the Secretary of State for Northern Ireland how many prisoners in Her Majesty's Prison, Maze, are still in compounds; how many have transferred in recent years to cellular accommodation; and what efforts are made to encourage such transfers.

Mr John Patten: "On 14 February 1982 there were 335 prisoners housed in compound accommodation at Her Majesty's Prison, Maze. Of these, 287 were special category prisoners; the remainder provide the work force which services the compound prison.

Four prisoners in 1979, none in 1980, seven in 1981 and one so far this year have sought transfer to the cellular prison. All special category prisoners are aware that if they decide to relinquish special category status they will be given every assistance to do so, but no special inducements are offered to prisoners to move to cells."

(Commons Hansard 15 February 1982 Col 31.)

- g. Dr Mawhinney asked the Secretary of State for Northern Ireland whether he has any plans to eliminate special category status from Northern Ireland prisons on the opening of the new

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prison complex at Maghaberry; and what effect the opening of the new prison will have on the Northern Ireland prison system.

Mr Prior: "I have no plans at present to eliminate special category status or to move the remaining special category prisoners from their existing accommodation at Her Majesty's Prison Maze - compound."

Mr J Enoch Powell: "Will the Right Hon Gentleman confirm that there are no commitments or understandings which stand in the way of the complete abolition of special category status in the prisons of Northern Ireland and that it is desirable that this unacceptable anomaly be eliminated as soon as possible?"

Mr Prior: "There are no commitments or understandings of any kind. On the latter part of the Right Hon Gentleman's question, again this is a matter that must be kept under review to see how we get on."

(Commons Hansard 22 July 1982 Col 1224.)

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