PREM 19/2747

S
3003

Confidential filing.

Review of the Prevention of Terrorism (Temporary Provisions) Act 1976.

IRELAND

January 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~1.2.80~~		~~7.7.88~~					
6.2.80.							
~~9.2.81~~		~~11.7.85~~					
~~12.3.85~~		~~19.7.88~~					
~~17.2.82~~		~~3.8.88~~					
~~17.2.82~~		~~18.8.88~~					
~~18.2.82~~		~~29.11.88~~					
~~1.2.82~~		17.1.89					
~~24.5.82~~							
~~25.1.83~~							
~~27.1.83~~							
~~8.2.83~~							
~~4.2.83~~							
21.6.83							
~~29.6.83~~							
~~6.7.83~~							
~~8.7.83~~							
~~18.1.83~~							
~~26.6.88~~							
~~6.6.88~~							
~~14.6.88~~							
~~15.6.88~~							
~~21.6.88~~							
~~24.6.88~~							
~~4.7.88~~							

PREM 19/2747

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
L(83) 13th Meeting, Item1	6/7/1983
L(83) 77	29/6/1983
H(83) 14th Meeting	28/6/1983
H(83) 26	21/6/1983
H(83) 7	1/2/1983
CC(83) 11th Meeting, Item 1	12/3/1981

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed C Wayland Date 30 August 2016

PREM Records Team

Note for top of File

Papers about Northern Ireland Emergency Provisions Act 1978

Do NOT go on this file

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

17 January 1989

Dear Stephen,

PREVENTION OF TERRORISM BILL

We spoke about your Secretary of State's letter to the Home Secretary of today's date proposing the addition to the Bill of a new clause designed to prevent terrorists using a range of everyday articles in pursuit of their activities. Whatever view Ministers may take on the merits of your Secretary of State's proposal, as I explained it would be very difficult for us to table an amendment to the Bill on these lines during the Commons' Committee Stage. If we were to go ahead on that basis, the amendment would have to be tabled tomorrow. And putting it down at this late stage in Committee proceedings would provide the Opposition with further ammunition with which to argue that we were allowing inadequate time in Committee for consideration of matters of substance brought forward by the Government during Committee proceedings. This could well make more difficult our task of securing the conclusion of the Committee Stage next week. It is also quite likely that if we proceeded in this way the Bill would arrive in the House of Lords without this new provision having been debated substantively in the Commons.

In these circumstances, the Home Secretary felt that if it was decided to introduce a provision on the lines which your Secretary of State proposes it would be sensible to do this at Report Stage in the Commons. Mr King indicated that he was content to accept the Home Secretary's view on the best tactics to adopt, and our Ministers have therefore agreed that we should not bring forward an amendment during Committee Stage. We here will, however, now consider the substance and further handling of Mr King's proposal as rapidly as possible and the Home Secretary will write to Mr King about it shortly.

/I am copying

Stephen Leach, Esq
Principal Private Secretary
Northern Ireland Office

CONFIDENTIAL

I am copying this letter to the Private Secretaries to the other recipients of your Secretary of State's letter and of the Secretary of State for Trade and Industry.

Yours sincerely,

P J C MAWER

Ireland: Review of Prev of Terrorism Jan 80

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Rt Hon Douglas Hurd CBE MP
Home Secretary
Queen Anne's Gate
LONDON
SW1H 9AT

17 January 1989

Await return
CBP
17/1

Dear Home Secretary,

PREVENTION OF TERRORISM BILL

requested.

When I wrote to you on 22 November, I explained that I was urgently examining a means of introducing tighter control over the use by terrorists of transceivers and frequency scanners and that I might need to ask you to include, for this purpose, a new clause in the Prevention of Terrorism Bill.

My attention was first drawn to the problem of transceivers by the General Officer Commanding Northern Ireland. The fact is that the terrorists are making increasing use of a wide range of radio devices in the planning and execution of their operations; but, if they are apprehended in possession of such equipment, there is at present no offence with which they can be charged. This is despite the fact that the security forces are often in no doubt that the equipment is being, or is about to be, used to assist the commission of a terrorist crime. I therefore asked my officials to prepare a draft offence of unlawful possession broadly along the lines of the provision in the Criminal Justice Act 1988 dealing with long-bladed knives. Following that work I have reviewed the position further, and it is clear to me that in order to be able to react to the pace of change in terrorist techniques and equipment I need to have a

general power, which could be activated by affirmative order in respect of the particular item (whether substance or apparatus) which poses a threat. The common feature in the security challenges we face is that the terrorists are adapting a range of everyday articles for use as components in their improvised weapons and bombs. For example, known terrorists caught red-handed, in highly suspicious circumstances, in possession of agricultural fertiliser, from which home-made explosives are regularly prepared, or gas cylinders, which can subsequently be loaded with explosives to produce deadly mortar bombs, can, not infrequently, escape prosecution for any offence.

I believe that if we are to deal effectively with the terrorist threat in Northern Ireland, we must be in a position to respond to the changing tactics which the terrorists have shown themselves all too ready to adopt. For that purpose, I believe that we need a new power which will enable the RUC to prosecute those who are responsible for acquiring, storing and using the equipment on which the terrorist campaign depends. What I now propose, therefore, is that we should use the Prevention of Terrorism Bill to create a new offence in Northern Ireland of being in possession of certain defined items of equipment or material in circumstances which give rise to reasonable suspicion that those items have been, or are likely to be, used in the preparation, instigation or commission of acts of terrorism - the onus of proof being on the defendant to demonstrate that the equipment was not intended for this purpose. I hope that the maximum penalty which we would make available to the Courts would be consistent with the serious nature of the crimes for which this equipment is used. I understand that the decision on the level of penalty is for the Home Office, but I hope that you would be prepared to agree to a high maximum in the knowledge that the discretion as to the sentence to be imposed in each case would remain with the Courts. Finally, I propose that the "equipment" should not be specified in the Bill, but that it should instead be described or defined in an order or orders to be made by the Secretary of State. I recognise, of course, that Parliament would demand some explanation of what I have in mind; and we can give examples of the sort of equipment which might be included.

Supplementing this, Ian Stewart might explain privately to senior members on both sides of the Committee on Privy Councillor terms a little more about the background to this new provision. I fully recognise that there will be those who will argue that what I am asking for is a 'blank cheque'; and I therefore propose that any such order should require an affirmative resolution from both Houses before coming into effect.

Work is already in hand on the drafting of a suitable provision. I have asked for it to be available early this week so that there will be time to table an amendment to the Bill during the Commons Committee Stage. I recognise that this further provision does not help the handling of the Bill, and I should be happy to discuss with you my reasons for pressing for its inclusion at this late stage.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Attorney General, the Lord President, the Secretary of State for Defence and Sir Robin Butler.

Yours, etc.

Stephen Leach.

rr TK

[Approved by the Secretary of State and signed in his absence.]

Ireland. Review of Prevention of Terrorism Act 1976 Jan 80.

cgPC

QUEEN ANNE'S GATE LONDON SW1H 9AT

29 November 1988

CB
29/K

Dear Tom,

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) BILL

- will reserve if required

Thank you for your letter of 15 November seeking my agreement to the insertion into the Bill of a provision to enable you to refuse to grant or revoke an explosives manufacturer's licence on grounds of national security.

The manufacture and keeping of explosives in Northern Ireland is clearly a matter over which there must be effective control and I understand why you see the need for additional powers under the Explosives Act 1875. I am content for a suitable amendment to be made to the Prevention of Terrorism Bill.

Given the tight timetable for the Bill, it would be helpful if my officials could see the proposed amendment as soon as possible.

A copy of this letter goes to John Wakeham, to other members of H and L Committees and to Sir Robin Butler.

Yours,

Douglas.

The Rt Hon Tom King, MP.

cc PC

SECRET

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Rt Hon Douglas Hurd CBE MP
Home Secretary
1 Queen Anne's Gate
LONDON

22 November 1988

Dear Douglas

In the course of what has been a continuing review of the security threat and possible measures to reduce it, I have become increasingly convinced of the need for some more effective control over the availability of transceivers (two-way radio equipment). They are readily available over here and are regularly used, especially by PIRA, to facilitate terrorist attacks. Increasingly also the security forces are finding transceivers along with other terrorist equipment when terrorist 'hides' are discovered. I have no doubt (and my convictions are shared by the Chief Constable and the GOC) that if we could in some way limit the availability of these instruments to the terrorists we would have taken a major anti-terrorist initiative.

There are at present <u>some</u> controls over equipment of this kind. For example, I understand that it is illegal (under DTI legislation) to possess any wireless equipment capable of <u>transmitting</u> a message without a licence. But a licence is easy to obtain: and there is no effective deterrent to unlawful possession. Nor are the existing controls comprehensive. I believe that some equipment useful to the terrorist including machines which simply <u>receive</u> messages (eg a frequency scanning device), does not need to be licensed at all.

Under the Emergency Provisions Acts, the security forces are empowered to search for and seize certain items of equipment, but in the absence of any specific offence of 'possession' of a transceiver these provisions have not proved, in practice, to be a sufficient deterrent to terrorists. A much more rigorous control will be required if we are to make any impact on the terrorists' use of these machines in support of their lethal attacks.

I have been considering two possibilities for this. One would be an entirely new system of certification, managed by the police in the same way as they currently deal with firearms certification. Under this regime it would be an offence (punishable with a deterrent penalty) for anyone to possess a 'transceiver' without a certificate; and the police would be empowered to check the merits of the applicant's case for a licence as well as his personal suitability to possess such equipment. Following on the firearms precedent, it might also be an offence to supply such equipment to anyone who did not possess a certificate. As you will appreciate, we are still thinking through the implications of adopting such an approach, including the relationship between a new certification regime and existing licensing systems.

The other approach would be even more radical. It would in effect make it an offence to be in a public place in possession of a 'transceiver' (or a piece of equipment defined in legislation) without good reason, with the onus of proof of 'good reason' falling on the accused. I am thinking here of something along the lines of the ban on the possession of knives which we put into this year's Criminal Justice Act. In order that we should be able to keep up to date with changing technology, we might have to provide that the

'equipment' to which this provision would refer could be prescribed, by regulation or Order, under an enabling power in primary legislation. If this approach was adopted, and the existing licensing provisions stayed in place, it would be possible to convict someone of an offence even if he had a license for the equipment in question (ie it would be no defence for someone found in a hedge in South Armagh to produce a license for his transceiver).

Both approaches need a good deal of further thought and I have instructed my officials to press on with this urgently. They will of course also wish to involve legal advisers and their opposite numbers in your Department. But I am writing to you now because any legislation on this subject for Northern Ireland can only proceed by Westminster Bill and, in practice, we will have only one early opportunity to proceed in this way, ie in the Prevention of Terrorism Bill. I well understand your wish, which I know is strongly supported by the Business Managers that we should not at this stage to be seeking to lengthen any further what is already a long and complicated Bill; and I appreciate, too, that a controversial provision would be even more unwelcome. At this stage, however, I am not so much making a bid for an extra clause as giving you some advance indication that I might need to ask you at short notice to take a provision dealing with transceivers as a Government amendment at a later stage in the Bill's passage through the House. Whichever approach was adopted (the 'certification' procedure or the ban on 'possession') I would hope to secure my objective by way of a short enabling clause, which would allow me to put the details of any new regime into subordinate legislation.

I will try to have a word with you about all this as soon as an

opportunity presents itself. In the meantime, my officials will be in touch with yours as they pursue both approaches.

I am sending a copy of this letter (for information only at this stage) to John Wakeham.

Yours

TK

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

18 November 1988

CM.

Dear Mr. de Waal,

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) BILL

As you know, the Bill is to be considered by the Legislation Committee on 21 November. If the Committee approves introduction of the Bill in the House of Commons as proposed I should be grateful if you would arrange for notice of presentation to be Tabled on 23 November for introduction of the Bill at the commencem ent of public business Thursday 24 November. After consulting the Home Secretary's office I can confirm that we should like the Bill published on Friday, 25 November at 9.30 am.

The Bill should be presented by Mr Secretary Hurd, supported by:

The Prime Minister
Secretary Sir Geoffrey Howe
Mr Secretary Younger
Mr Secretary King
Mr Secretary Rifkind
Mr Tony Newton
Mr Douglas Hogg

It has been agreed that there will be no Press Conference on 25 November but that a Press Notice will be issued that day. I should be grateful if you would arrange for 115 copies of the Bill, addressed to the Home Secretary, to be delivered to the Vote Office on the morning of 25 November.

I am sending copies of this letter to Andy Bearpark (Prime Minister's Office), Shaun Mundy (Cabinet Office), Alison Smith (Lord President's Office), Murdo Maclean (Chief Whip's Office, Commons), Rhodri Walters (Chief Whip's Office, Lords) and Brian Shillito.

Yours sincerely

John Gilbert

J A GILBERT
Parliamentary Clerk

C H de Waal Esq CB QC

CONFIDENTIAL

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

8 August 1988

Dear Martin,

PREVENTION OF TERRORISM BILL

In the Home Secretary's absence, I am writing to acknowledge and thank you for your Secretary of State's letter of 3 August.

We note that your Secretary of State remains of the view that the proposed new investigative powers should be exercised in Northern Ireland by executive means. You will have seen from the Lord President's letter of 3 August that this question is now to be discussed at a meeting of H Committee, and we look forward to the resolution of the issue by this means: an early meeting is desirable, since the result may require further difficult consultations with the financial institutions. In the meantime, officials will consider the possibility of some form of quasi-judicial scrutiny, as mentioned by your Secretary of State.

Finally, we are looking into your Secretary of State's request that the definition of "terrorist funds" should include funds forming part of the resources of a proscribed organisation. At first sight, we believe that this point should be encompassed by the definition which has been adopted in early prints of the Bill (which refers to "funds which may be applied or used for the commission of, or in furtherance of or in connection with, acts of terrorism .... connected with the affairs of Northern Ireland"), and was deliberately cast in these terms to meet the concern expressed to us by your Department about racketeering, but we are happy to look again at this point.

Copies of this letter go to the Private Secretaries of those who received copies of your Secretary of State's letter, and Trevor Woolley (Cabinet Office).

Yours sincerely,

P J C MAWER

Martin Donnelly, Esq

CONFIDENTIAL

PS/PM

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the
Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

3 August 1988

Dear Home Secretary

PREVENTION OF TERRORISM BILL

I am sorry that we were unable to hold the meeting which had been arranged to discuss the Prevention of Terrorism Bill. As it has not been possible for us to meet, I am taking this opportunity of letting you have my latest views on the Bill and our plans to combat the problem of paramilitary racketeering in Northern Ireland.

I know that you share my concerns about the fundamental importance of this issue. Unless we can disrupt the terrorists' fund-raising activities, we face little prospect of achieving any lasting reduction in the level of violence or of undermining the paramilitaries' grip on society. Despite a major new initiative by the RUC and our own efforts to coordinate the Government's response, there are few if any signs that the problem is coming under control. In the climate of fear engendered by the paramilitary organisations, and given the increasingly sophisticated financial arrangements they make, the powers currently available to the RUC are proving almost entirely inadequate.

I accept that the Prevention of Terrorism Bill is not the ideal legislative vehicle for tackling a problem which, for the time being at least, affects only one part of the United Kingdom. But since we have committed ourselves to doing something about the general question of terrorist finances, I believe it would be a serious mistake if we failed to address the particular aspect of that problem which causes us most concern in Northern Ireland, namely paramilitary racketeering. I understand the concerns expressed by Geoffrey Howe and James Mackay but the fact is that, for the foreseeable future, the Prevention of Terrorism Bill is likely to be the only legislation which offers any prospect of making progress in this area. You will therefore understand why I attach such importance to the opportunity it presents.

You have proposed a new offence and a new set of investigative powers for the police. I very much welcome this approach because, with certain modifications, it could have a significant impact on the ability of the RUC to disrupt the terrorists' financial networks. The investigative powers are particularly important. They will mean that the RUC will no longer have to rely on evidence from the victims of terrorist crime who are understandably reluctant to come forward: nor will they be prevented from conducting their enquiries with the banks and the building societies by considerations of client confidentiality. The new investigative powers should enable the RUC to penetrate the terrorists' financial dealings and uncover the evidence on which successful prosecutions can be based.

As currently drafted however, I am concerned that these provisions will be of only limited value in Northern Ireland. In order to apply to a Court for the exercise of the investigative powers, the RUC will have to provide grounds for suspecting that the new offence may have been committed. In this context, it will be necessary for the RUC to demonstrate a clear link between the

funds they wish to investigate and the commission of terrorist crime. This is where the difficulties will arise. The terrorists are now so sophisticated in their financial transactions that, in all but a handful of cases, the RUC's suspicions are based entirely on intelligence information which they are unable to reveal in Court. The danger therefore exists that the powers will be rarely granted and that the main activities of the terrorists will, as now, escape investigation.

It is for these reasons that I would ask you to consider allowing the investigative powers to be exercised in Northern Ireland by executive means. I recognise the controversial nature of this proposal but I have little doubt that it would receive widespread support in Northern Ireland where representatives from both sides of the community are urging us to adopt strong measures against the racketeers. I see a clear parallel here with the existing powers under Section 12 of the Prevention of Terrorism Act which allow for continued periods of detention by the police to be authorised by the executive. I would propose that the new investigative powers should be authorised in the same way and for the same reason: namely that information on which police applications are based is derived from sensitive intelligence sources. In the drafting of such provisions we will, of course, need to take careful account of Patrick Mayhew's point about the European Convention on Human Rights. Provided that the Bill defines with sufficient precision the circumstances in which the powers can be exercised, it should be possible to avoid violating the ECHR. Some kind of quasi-judicial scrutiny along the lines created by the Interception of Communications Act, 1985, may also be necessary. Powers of this kind would represent a major step forward in our efforts to combat the racketeers: they are of central importance to our anti-racketeering proposals. Despite John Major's reservations, I believe it should be possible to persuade the main financial institutions to accept the need for special arrangements in Northern Ireland given the scale and nature of the problems we face.

I have examined very carefully the scope for redrafting the new offence so as to catch those who handle funds on behalf of organisations, like the UDA, which are not proscribed. I regret to say that none of the possible solutions I have looked at offers any realistic prospect of achieving this result and I am forced to conclude that this is not an issue which can be pursued through the Prevention of Terrorism Bill. However, if the definition of "terrorist funds" could be broadened to include funds forming part of the resources of a proscribed organisation this could be useful in cases involving Provisional IRA funds where the direct link with acts of terrorism may not always be easy to prove. I should therefore be grateful if you would consider such an amendment in principle: the exact wording can be settled at official level.

I am sending copies of this letter to the Prime Minister, the Foreign Secretary, the Attorney General and to members of 'H' Committee.

Yours sincerely

Martin Donnelly

TK

(Approved by the Secretary of State

and signed in his absence)

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

3 August 1988

Dear Douglas

PREVENTION OF TERRORISM BILL : TERRORIST FINANCES

Thank you for your letter of 24 May seeking H Committee's agreement to your proposals for strengthening the law dealing with terrorist finances.

The Prime Minister, through her Private Secretary, indicated that she was content with what you proposed and James Mackay, Geoffrey Howe, Malcolm Rifkind, John Major, Tom King and Kenneth Clarke (in his previous capacity) wrote indicating that they were also content. Kenneth Clarke and John Major emphasized the importance of consulting the banking community and other financial institutions and you have confirmed that you have this in hand. No other colleague has commented, and you may take it, therefore, that you have H Committee's agreement to your proposals.

I am writing separately to Tom King today confirming that colleagues are content with his proposals on search powers but suggesting that H Committee should meet after the holidays to discuss his proposals on terrorist finances on which some colleagues have expressed reservations.

I am copying this letter to the Prime Minister, members of H Committee, Geoffrey Howe, Patrick Mayhew, Kenny Cameron, Sir Robin Butler and First Parliamentary Counsel.

Yours ever

JOHN WAKEHAM

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

CONFIDENTIAL

IRELAND: Prevention of Terrorism Act 80

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

3 August 1988

Dear Tom

PREVENTION OF TERRORISM BILL : TERRORIST FINANCES

As you know, Douglas Hurd sent me and other H Committee colleagues a copy of your letter to him of 26 May in which you proposed that provisions should be included in the Prevention of Terrorism Bill planned for next Session to put beyond doubt that the security forces have the power of detention during searches of premises and vehicles. You wrote to Douglas and other H Committee colleagues again on 2# June proposing that the provisions on terrorist finances for which Douglas had sought agreement should contain a number of modifications in their application to Northern Ireland.

Douglas Hurd and Patrick Mayhew indicated that he was content with your proposals on search powers, though Patrick warned that they would need careful drafting to avoid conflict with Article 5 of the European Convention on Human Rights. No other colleague commented on this and you may certainly take it, therefore, that you have H Committee's policy approval for your proposals. While, as you will appreciate, any addition to the Bill which would have the effect of widening its scope is unwelcome from a business management point of view, I confirm that, in the circumstances, I would be content for the necessary provisions to be included in the Bill.

As to your proposed modifications to Douglas's proposals on terrorist finances, James Mackay wrote expressing reservations, and John Major said that this would cut across the priority which the banks attach to a court order procedure. In addition, you will recall that in earlier correspondence Geoffrey Howe indicated that he believed that the Bill should focus on terrorism as a whole and should single out Irish terrorism as little as possible. In view of colleagues' reservations, I think that we shall need to discuss this at a meeting of H Committee and we shall try to find a convenient date as soon as possible after the holidays.

I am copying this letter to the Prime Minister, members of H, Geoffrey Howe, Patrick Mayhew, Kenny Cameron, Sir Robin Butler and First Parliamentary Counsel.

Yours ever

JOHN WAKEHAM

The Rt Hon Tom King MP
Secretary of State for Northern Ireland

IRELAND: Prevention of Terrorism Jan 80

QUEEN ANNE'S GATE LONDON SW1H 9AT

19 July 1988

Dear Kenneth,

PREVENTION OF TERRORISM BILL

Thank you for your letter of 21 June about our proposals for strengthening the law on terrorist finances.

You suggested that we should talk to financial institutions other than the banks. We have already consulted the British Bankers' Association - which, we understand, also covers the interests of the British Merchant Bankers' Association - and the Building Societies' Association. The reaction from both has been helpful and positive and we are keeping them in close touch as our proposals develop. It seems to us, and to the Treasury, that the activities we are seeking to tackle are most likely to focus on accounts held with banks and building societies, but I accept that there may be cases in which terrorists engage in more sophisticated forms of financial activity. We will therefore send details of our proposals to the other institutions suggested by your officials.

Copies of this letter go to the Prime Minister, Geoffrey Howe and other H Committee colleagues, Patrick Mayhew and Sir Robin Butler.

Yours ever,

Douglas.

The Rt Hon Kenneth Clarke, QC., MP.

cc PC

QUEEN ANNE'S GATE LONDON SWIH 9AT

19 July 1988

Dear John,

PREVENTION OF TERRORISM BILL

Thank you for your letter of 15 June about our proposal for terrorist finance.

My officials are continuing their consultations with the relevant outside bodies, including the banking associations. It is obviously important that we have the banking world with us when we come to introduce our proposals, and my officials will write again shortly to the banking associations and to a number of other finance institutions with more details of these proposals.

I have already discussed with John Wakeham, Tom King's proposals for additional powers in Northern Ireland. We have agreed to discuss the matter further with Tom King. I accept that the banks would have to be consulted again if it is decided to pursue this course of action.

Copies of this letter go to the Prime Minister, Geoffrey Howe and other H Committee colleagues, Patrick Mayhew, Sir Robin Butler and First Parliamentary Counsel.

Yours,

Douglas

The Rt Hon John Major, MP.

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

The Rt. Hon. Douglas Hurd, CBE, MP,
Secretary of State for the
Home Department,
Home Office,
50 Queen Anne's Gate,
London,
SW1H 9AT

12 July 1988

Dear Douglas,

PREVENTION OF TERRORISM LEGISLATION :
TERRORIST FINANCES

I have seen a copy of Tom King's letter to you of 24 June, suggesting that the new proposals on terrorist financing be adapted to meet the circumstances of Northern Ireland.

I note that there is some concern from colleagues about his proposal that the police in Northern Ireland be entitled to exercise new investigative powers in relation to terrorist financing by executive authority alone rather than by judicial warrant. If, nevertheless, such a provision were to be included in the Bill, it would be necessary, in my view, to have the circumstances in which the powers were to be exercised clearly and closely defined; the provision would be an unusual one and we would wish to avoid ECHR difficulties.

I am copying this letter to the Prime Minister, Geoffrey Howe, Members of 'H' Committee, Kenny Cameron and Sir Robin Butler.

Yours ever,
Patrick

IRELAND: revised Prevention of Terrorism Act

13 VII

Jan '80

LCPC

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

NDD 7/7

The Right Honourable Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1

7 July 1988

Dear Douglas,

PREVENTION OF TERRORISM LEGISLATION - TERRORIST FINANCES

flap

Tom King sent me a copy of his letter to you of 24 June in which he suggested some modifications for Northern Ireland of your proposals for dealing with terrorist finances in the Prevention of Terrorism Bill.

I have to say that I have reservations about the suggestions Tom King makes. The purpose of your proposal is to provide a new offence which should help in the fight against all terrorism, throughout the United Kingdom and internationally, together with new investigative powers linked to obtaining evidence in relation to the new offence. While I fully sympathise with the problems the RUC face the new offence is not designed specifically to counter the problems arising in Northern Ireland. To widen it - and the linked powers - in the way suggested would have the effect that for example a Libyan terrorist would receive different treatment in Belfast and Birmingham. Although the Prevention of Terrorism (Temporary Provisions) Act 1984 distinguished between Northern Irish and other terrorism for certain purposes throughout the United Kingdom, to use this legislation to apply a different regime only in Northern Ireland would be a new departure. I hope therefore that Tom will reconsider whether this is the proper vehicle to attain the objectives he has in mind.

I am copying this letter to the Prime Minister, Members of H Committee and Sir Robin Butler.

Yours ever,

Jam.

021/4206

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Douglas Hurd CBE MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

CDS 5/7

4th July ~~June~~ 1988

Dear Home Secretary,

PREVENTION OF TERRORISM LEGISLATION

I have seen a copy of Tom King's letter of 24 June with his suggested modifications to your proposals to strengthen the law on terrorist finances.

I have already commented in my letter of 15 June on his suggestion to exercise the proposed powers of investigation by executive authority within Northern Ireland. In earlier consultation the banks have attached priority to a judicial procedure, and we shall need to consult them further before we reach a final decision.

I note Tom King's intention to put to you further proposals to widen these powers of investigation and the offence of money laundering. At this stage I should like to comment only that such proposals seem likely to raise some fumdamental issues about the scope of the new powers, and detailed consultation with banks and other interests would seem certain to be required if they are to be pursued.

I am copying this letter to the Prime Minister, Geoffrey Howe, colleagues in H Committee, Patrick Mayhew, Kenny Cameron, First Parliamentary Counsel and Sir Robin Butler.

Yours sincerely,

for JOHN MAJOR

(Approved by the Chief Secretary and signed in his absence)

IRELAND: Prevention of Terrorism Act 80

CC/C

HCC PS/SofS(B)
PS/MR STANLEY (LTR)
PS/PUS (LTR)
PS/SIR K BLOOMFIELD
MR STEPHENS
MR INNES
MR CHESTERTON
MR HEWITT

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

CBP ov

MISS PEASE
MR KNIGHT
MR SHANNON
MR BELL
MR TEMPLETON
MR BENTLEY
(HO)

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1M 9AT

24 June 1988

CBP 24/6

Dear Secretary of State,

PREVENTION OF TERRORISM LEGISLATION - TERRORIST FINANCES

flap

Thank you for sending me a copy of your letter to John Wakeham of 24 May containing proposals for dealing with terrorist finances in the Prevention of Terrorism Bill. I am broadly content with your approach in so far as it affects the problem of terrorist funding in the rest of the United Kingdom but I believe it will be essential to make certain modifications in relation to the proposed new powers in Northern Ireland where the paramilitary racketeering problem is altogether more acute.

You are already familiar with the scale and nature of the problem faced by the RUC. For some time now, the paramilitary organisations on both sides of the community have been engaged in a wide range of legal and illegal activity to raise the funds necessary for their continuing campaign of violence. The money derived from activities such as extortion in the construction industry, smuggling across the border with the Republic of Ireland, profits from legitimate businesses, or the control of

drinking clubs and gaming machines is used to purchase arms and ammunition, to pay the wages of active terrorists and to extend the influence of the paramilitaries in their own communities. Racketeering is not only a major social and economic problem,it is also the single most important source of terrorist finances. We cannot hope to reduce still further the level of violence nor undermine the influence of the terrorists without tackling the sources of paramilitary financing except by the use of rather more radical measures than are proposed for the rest of the UK.

Against this background I propose three modifications of your proposals to apply in Northern Ireland only. First, given the extent to which in Northern Ireland finance that is ultimately destined for paramilitary organisations is passed through businesses, organisations and individual not directly connected with terrorism, I think it will be necessary to widen the circumstances in which the new investigative powers can be used rather beyond the wording you have proposed in paragraph 6 of your Annex A. Second, whilst I welcome your proposals to provide these new investigative powers, in Northern Ireland they will be of only limited value if the RUC are required to seek authority for their exercise from the Courts. Most of the information available to the RUC arises from sensitive intelligence sources and cannot be produced in Court. It is therefore essential that the new powers of investigation are exercised in Northern Ireland by executive authority.

Third, whilst the new offence of handling terrorist funds is welcome, the value of this offence in the Northern Ireland context is limited to some extent by the need to demonstrate a clear link with terrorism. Where funds are raised by paramilitary organisations which are not proscribed or used for purposes connected only indirectly with terrorism, such as the support of prisoners' families, or are raised behind the front of legitimate

businesses, the offence will be difficult to prove. I therefore consider that in the Northern Ireland context we shall need to widen somewhat the ambit of this offence. I have asked for urgent advice on this point and am seeking Counsel's opinion on how it might be tackled.

I expect to be able to put to you shortly proposals for widening both the offence of handling terrorist funds and the new investigative powers that would be applicable in Northern Ireland only. In the meantime, I should be grateful for your agreement to the new investigative powers being triggered in Northern Ireland by executive action.

I am copying this letter to the Prime Minister, Members of H Committee and Sir Robin Butler.

Yours sincerely,

J. J. Watkins
(Private Secretary)

for TK
(approved by the Secretary of State and signed in his absence).

DMC/3173

IRGNO. Prevention of
Terrorism Jan 80

dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Douglas Hurd, MP
Home Secretary
2 Queen Anne's Gate
LONDON
SW1H 9AT

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

tlex 8811074/5 DTHQ G
ex 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 21 June 1988

Dear Douglas,

PREVENTION OF TERRORISM LEGISLATION

Your letter of ~~24~~ flap May to John Wakeham sought agreement to proposals for strengthening the law dealing with terrorist finances.

In general, I am content with the proposals but I think it important that, in the same way as you have consulted the banks, you should talk to other financial institutions not so much to obtain technical views as to 'sell' the proposals to them. Their co-operation will be vital if we are to achieve the desired objective.

I also have a number of detailed points on the proposals which seem best pursued at official level. I would be grateful if your officials could pursue these with mine before instructions to Counsel are finalised.

LS1ABU

dti

the department for Enterprise

I am copying this letter to the Prime Minister, the Foreign Secretary and other H colleagues, and to Sir Robin Butler.

KENNETH CLARKE

LS1ABU

IRELAND : Prevention of Terrorism, Jan 80

014/4210

CONFIDENTIAL

CCDC

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Douglas Hurd CBE MP
Home Secretary
50 Queen Anne's Gate
London
SW1H 9AT

CCDC(26)

15th June 1988

Dear Douglas,

PREVENTION OF TERRORISM LEGISLATION

Thank you for copying to me your letter of 24 May to John Wakeham on prevention of terrorism legislation.

I am content with the proposals to strengthen the law on terrorist finances, subject to two points. First, the proposal to exercise the investigative powers in Northern Ireland by the executive rather than the judiciary cuts across the priority attached by the banks to a court order procedure. I understand that this proposal has not been put to the banks. If you and Tom King are inclined to pursue the matter, we should need to consult them about it before we reach a final decision. Second, I understand that there are some outstanding points of detail to resolve following the earlier consultation exercise. I should be grateful if your officials would pursue these with the relevant outside bodies, consulting the Treasury and the Bank of England, as proposals for the legislation are developed.

I am copying this letter to the Prime Minister, Geoffrey Howe, colleagues in H Committee, Patrick Mayhew, Kenny Cameron, First Parliamentary Counsel and Sir Robin Butler.

Yours Ever,

John

JOHN MAJOR

IRELAND: [illegible] & terrorism - Jan '80.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CONFIDENTIAL

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

14 June 1988

Dear Douglas,

PREVENTION OF TERRORISM LEGISLATION

Thank you for copying to me your letter of ~~24 May~~ 8 Apr to John Wakeham setting out in more detail your proposals for implementing the recommendation made by Lord Colville for strengthening the law dealing with terrorist finances.

I am generally content with what you propose but, as you will be aware, there is already a substantial difference between our countries in relation to the confiscation of the proceeds of crime and this will require to be taken carefully into account in the detailed drafting of the provisions and would wish any such provisions to apply to Scotland.

I am copying this letter to the Prime Minister, H Committee colleagues, the Foreign Secretary, the Lord Advocate, the Attorney General, First Parliamentary Counsel and Sir Robin Butler.

Yours ever,

MALCOLM RIFKIND

IRELAND - Prevention of Terrorism Jan 80

FCS/88/113

HOME SECRETARY

Prevention of Terrorism Legislation

1. Thank you for copying to me your letter of 24 May to John Wakeham. Your proposals seem excellent: we are particularly grateful that you propose to extend the legislation on financing to cover international terrorism. Firstly, this extension addresses a real and probably increasing concern; secondly, I am glad that this legislation no longer covers Northern Irish terrorism alone. This is fully consistent with our determination to focus the new PTA firmly on terrorism as a whole, singling out Irish terrorism as little as possible.

2. For the same reasons, I take the view that investigative powers in Northern Ireland should be kept in line with those judged to be acceptable for the rest of the UK, and should therefore be exercised by the judiciary rather than the executive.

3. My officials will keep in touch with yours as drafting proceeds.

4. I am sending copies of this minute to the Prime Minister, members of the H Committee, and Sir Robin Butler.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
13 June 1988

IRELAND: Prevention of Terrorism
Jan 80

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

6 June 1988

CBB 67.

Dear Douglas,

Prevention of Terrorism Legislation

Thank you for sending me a copy of your letter of 24 May to John Wakeham with your proposals for strengthening the law dealing with terrorist finances.

On the assumption that there will not in fact be very many cases arising out of the new proposed offence and that I can therefore contain any additional workload for the Crown Court within existing provision, I agree that we should proceed as you propose.

I am sending copies of this letter to the Prime Minister, the Foreign Secretary, members of H Committee, the Attorney-General, the Lord Advocate, First Parliamentary Counsel and Sir Robin Butler.

Yours ever,

James.

The Right Honourable
Douglas Hurd CBE MP
Home Office
Queen Anne's Gate
London
SW1

IRELAND: Prevention of Terrorism, Jan 80

CONFIDENTIAL

VC

PC.

C CDL
DES
DTI pr
NIO
CWO
SO
Corg-al-A
WO
CS, HMT
trsp
CO

DOE
DTp
LRD
LPSO
LCO
FCO

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

26 May 1988

Prevention of Terrorism Legislation

The Prime Minister has seen a copy of the Home Secretary's letter of 24 May to the Lord President conveying detailed proposals for strengthening the law dealing with terrorist finances. Subject to the views of colleagues, she is content with the proposals.

I am copying this letter to the Private Secretaries to the Lord President, the Foreign and Commonwealth Secretary, members of H Committee and to Sir Robin Butler.

(CHARLES POWELL)

Philip Mawer, Esq.,
Home Office.

CONFIDENTIAL

VC

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

25 May 1988

Dear Ms Smith

PREVENTION OF TERRORISM LEGISLATION

You will have received recently from the Home Secretary a letter to the Lord President dated 24 May 1988.

The letter has now also been copied to the Attorney General, the Lord Advocate and First Parliamentary Counsel. I would be grateful, therefore, if those to whom I am copying this letter could ensure that those mentioned above are included amongst the copy recipients of future correspondence on this subject.

I am copying this letter to the Private Secretaries to the Prime Minister, the Foreign Secretary, Members of H Committee, the Attorney General, the Lord Advocate, First Parliamentary Counsel and Sir Robin Butler.

Danny Lafayette

DANNY LAFAYETTE
Clerical Officer
Home Secretary's Office

Ms Alison Smith

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

24 May 1988

Dear John,

PREVENTION OF TERRORISM LEGISLATION

In my memorandum of 29 December 1987 (H(87)39) I sought the agreement of colleagues to the re-enactment of the Prevention of Terrorism (Temporary Provisions) Act 1984. I now seek colleagues' agreement to detailed proposals for strengthening the law dealing with terrorist finances.

I attach at Annex A our detailed proposals. In essence we propose to create a new offence of handling or otherwise being concerned in dealings in funds which are either the proceeds of terrorist activity or are likely to be used to promote activity by terrorist organisations. This will supplement the offences in the present Prevention of Terrorism Act of contributing funds or property for a proscribed organisation or towards acts of terrorism, which will be re-enacted. The maximum sentence on conviction for all these offences will be 14 years imprisonment, an unlimited fine, or both, which would represent a significant increase for the existing offences.

The existing offences apply only to Northern Irish terrorism. I propose that all these offences should apply also to contributions towards acts of international terrorism. This is not a simple matter. Although the arrest powers in s12 can be used in respect of people suspected of acts of international terrorism, Ministers had to give undertakings in Parliament during the passage of the 1984 Bill that the powers would not be used in respect of representatives of organisations whose activities are not directed against United Kingdom interests. An administrative solution will not suffice for the present proposals, as the scope of the offence of contributing to international terrorism must be clear on the face of the Act. The definition we have suggested is the result of extensive discussions between Departments and agencies concerned.

We propose that the police should be given new powers of investigation, modelled on the powers in the Drug Trafficking Act

/1986.

The Rt Hon John Wakeham, MP

CONFIDENTIAL

1986. This should facilitate finding and following funds and producing evidence of terrorist related offences which can be used in court proceedings.

Some heartening consultations have taken place with the Banking Associations and the Committee on Banking Services. The British Banking Association told us that their Northern Irish membership welcome this initiative and the banks and the building societies are keen to co-operate.

I have also been discussing with Tom King the related problem of paramilitary extortion and racketeering in Northern Ireland, and I hope that we may be able to come forward with an additional proposal to strengthen the attack on this problem in due course. I am also considering with him whether the investigative powers should be exercised in Northern Ireland by the executive rather than the judiciary.

I should be grateful for colleagues' agreement that the proposals set out in the Annex to this paper should be incorporated in the Prevention of Terrorism Bill to be presented in the next session of Parliament, (subject to further consideration in respect of Northern Ireland).

Copies go to the Prime Minister, the Foreign Secretary, H colleagues and to Sir Robin Butler.
+ attorney general, Lord Advocate, Chief Parliamentary Counsel.
(~~as before~~ H.O to PS/cpc 25.5.89)

Yours,

Douglas.

ANNEX A

NEW PROVISIONS IN RESPECT OF TERRORIST FINANCE

1. The new offence of handling terrorist funds

The offence will be committed where a person handles or is otherwise concerned in dealings in another person's funds to the benefit of that person, knowing or suspecting that person is or has been concerned in the commission, preparation or instigation of acts of Northern Irish or international terrorism. For these purposes the funds are

(i) the proceeds of activities engaged in in furtherance of or in connection with acts of Northern Irish or international terrorism; or

(ii) funds which may be used or have been used in furtherance of or in connection with such acts of terrorism.

2. It is proposed to include comparable provision to s24(3) and (4) of the 1986 Act which relax the contractual duty of confidentiality in certain circumstances and provide defences to the offence.

3. On conviction for the offence of handling terrorist funds a person will be liable to a maximum sentence of 14 years imprisonment, an unlimited fine or both. As with other offences under the PTA the Attorney General's consent will be need for prosecution.

Extension to international terrorism

4. It is proposed to extend the offence in s10 to cover also contributions to international terrorism. This will be defined as

(i) contributions to acts of international terrorism committed in the UK, and

(ii) contributions to acts of international terrorism committed abroad but triable in the UK.

New investigative powers

5. It is proposed to strengthen the powers of the police to investigate terrorist funds by introducing new investigative powers modelled on those in s27 and 28 of the Drug Trafficking Offences Act 1986.

6. A constable or, in Scotland, the Procurator Fiscal will, for the purposes of an investigation into the commission, preparation or instigation of acts of Northern Irish or international terrorism, be able to apply to a court (a circuit judge or, in Scotland, the sheriff) for an order for the production of particular material or material of a particular description or for a constable to be given access to such material.

7. When making the order, the court will also be able to make a further order requiring a person to allow entry to the premises to obtain access to the material. Other detailed provisions will follow the provisions of the Drug Trafficking Offences Act.

8. Where the court is satisfied that an order for the production or for access to be given to material has not been complied with or that, whilst such an order could be made, it would be impracticable to do so it is proposed that it will have power to issue a warrant authorising a constable to enter and search the premises specified in the warrant and that a constable would have power to seize and retain material (other than items subject to legal privilege or excluded material) likely to be of substantial value to the investigation.

9. Grounds for making the order

Before the order may be granted the court will have to be satisfied that:

(a) there are reasonable grounds to suspect

(i) that the material sought relates to funds reasonably believed to be the proceeds of activities engaged in in furtherance of or in connection with acts of Northern Irish or international terrorism or which it is reasonably believed may be used in furtherance of or in connection with such terrorism;

or

(ii) that a specified person has been engaged in or concerned with the preparation, instigation or commission of any act of terrorism

and

(b) that there are reasonable grounds for suspecting that the material sought is likely to be of substantial value to the investigation under way and that it does not consist of or include items subject to legal privilege or is not excluded material (as defined in s10 and 11 of the Police and Criminal Evidence Act 1984); and

(c) that there are reasonable grounds for believing that it is in the public interest that the material be produced or access be given to it having regard to the benefit likely to accrue to the investigation and the circumstances in which the person in possession of the material holds it.

From: The Private Secretary

PM.

R2415

1. NLP to see.
2. Prime Minister to note.

N.L.W. 24.5.

Home Office
Queen Anne's Gate
London SW1H 9AT

23 May 1988

Dear Nigel,

You may like to be aware of a case the Government is defending this week at the European Commission of Human Rights.

The case (Brogan, Coyle, McFadden and Tracey v the United Kingdom) concerns section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. These four men were detained in Northern Ireland in 1984 and were held for periods of four to six days before being released without charge. The four men claim that their detention was contrary to Article 5 of the European Convention on Human Rights because it was said they were arrested solely for the purpose of interrogation, contrary to Article 5(1)(c) and they were detained for a period in excess of that permitted under Article 5(3) (the right to be brought promptly before a judge or judicial authority).

The Commission of Human Rights found last year that there had been no breach of Article 5(1) (right to liberty), but that in two of the cases in which the men had been held for five to six days there had been a breach of Article 5(3).

Both the Commission and the Government have referred the case to the European Court of Human Rights. The Government has submitted a memorial and there will be an oral hearing on 25 May, at which the Solicitor General will represent the Government. The proceedings before the Court will not be confined to the issues on which the Commission found a breach of the Convention. There will be a complete rehearing of all the issues and the proceedings will be held in public. The case is likely to attract press attention, particularly in Ireland.

I am copying this letter to Tony Galsworthy (FCO), David Watkins (NIO), Michael Saunders (Solicitor General's Office) and Trevor Woolley (Cabinet Office).

Yours sincerely,

P J C MAWER

N L Wicks, Esq., CBE.

CONFIDENTIAL

Ref. No: HA(83)14

Prevention of Terrorism Bill

2nd Reading, House of Commons

Monday, 24th October 1983

Conservative Research Department,
32 Smith Square,
London SW1
Tel. 222 9000

Enquiries on this brief to:
MR NIGEL CLARKE

The Prevention of Terrorism Bill

1. Background

In 1972 the IRA extended its terrorist campaign from Ulster to Great Britain with the clear and unmistakable object of intimidating the British public and coercing the Government into expelling Northern Ireland from the United Kingdom in defiance of the democratically determined wishes of the majority of people in the Province. Since 1972, 79 people have been killed in Great Britain as a direct result of Irish terrorist activity (Hansard, 18 January 1983, WA Col. 93). Of those 79 victims of Irish terrorism, 43 died in 1974, the year in which the Prevention of Terrorism Act was first passed. The most extreme of all the recent atrocities that had taken place in the United Kingdom led the Labour Government to decide that it and the police must have fresh powers to deal with the IRA campaign. On 21st November 1974 21 people died and 180 were injured when two pubs in Birmingham were destroyed by IRA bombs. Legislation was introduced on 27th November, and came into effect on the 29th.

The 1974 Act:

* proscribed the IRA in Great Britain (where hitherto it had been legal)
* gave the Home Secretary powers to exclude from Britain persons suspected of involvement in terrorism
* gave the police powers to hold a suspect for up to seven days with the permission of the Home Office, which was always required if anyone was held beyond 48 hours.

All these provisions were retained when a Second Act (replacing the first) was passed in 1976. In addition it:

* made it an offence to offer financial contributions towards, or withhold information about, acts of terrorism
* laid down that the whole Act should be renewed once a year (the 1974 Act had been renewed every six months)
* conferred power on the Secretary of State for Northern Ireland to exclude UK citizens based in Great Britain from the Province.

2. The Jellicoe Review

The Government has followed the example of its predecessor by commissioning a full review of the operation of this special, anti-terrorist legislation. Both Governments have recognised that the powers in question must be kept under the closest scrutiny. Labour's review was carried out in 1978 by Lord Shackleton, who

made a number of recommendations for improvement in the way the Act was used. As a result, conditions of greater comfort were provided for those detained under the Act, and provision was made for the review of exclusion orders after three years).

In March 1982 Lord Jellicoe was asked to conduct a further review with exactly the same terms of reference that the Labour Government had given Lord Shackleton, namely:

> "Accepting the continued need for legislation against terrorism, to assess the operation of the Prevention of Terrorism (Temporary Provisions) Act 1976, with particular regard to the effectiveness of this legislation and its effect on the liberties of the subject, and to report."

In carrying out his task, Lord Jellicoe left virtually no stone unturned. He held extensive discussions with officers of the Metropolitan Police Special Branch; visited nine police authorities covering very different types of area (Scottish, rural, urban etc.); scrutinised the immigration procedures at a number of ports; took both oral and written evidence from political and non-political bodies; studied a large number of official papers at the Home Office (including a host of exclusion orders); paid several visits to Ulster; made reports on anti-terrorist legislation in other countries, and examined practice in France and West Germany at first hand. His report was published in February 1983 (Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976 Cmnd. 8803).

3. The Jellicoe Report

The main recommendations of the Report were as follows:

* Limitation of Powers. All special anti-terrorist powers would lapse after five years (with annual renewals during each five year period). After the expiry of this fixed term, a fresh Bill would be needed to keep counter-terrorist provisions in being (para 14).

* International Terrorism. Because of the growing threat to citizens of this country from international terrorists (para 23), the legislation would be extended to enable the police to arrest all terrorists whatever their complexion may be, and not just those connected with Ireland (para 77).

* Improved Safeguards. Exclusion orders would expire automatically after three years and would not be used to exclude British citizens from that part of the United Kingdom where they live (Great Britain or Northern Ireland as the case may be), if they have been settled there for three years. (At the moment they can be used to exclude those who have been settled for less than twenty years). Furthermore, anyone on whom an exclusion order was served would be given seven days (rather than 96 hours at present) to lodge objections, and would have a personal interview with the Secretary of State's Adviser (an official who had access to the relevant papers).

* Access to Solicitor. An absolute right of access to a solicitor after 48 hours' detention would exist throughout Great Britain (it already applies in Ulster).

* More explicit guidance for police on their use of emergency powers.

* Unless circumstances permit, all applications for extended detention (i.e. after the initial 48 hours) should be seen personally by the appropriate Secretary of State.

* Landing and embarkation cards should be completed by all passengers on commercial flights and sailings between Great Britain and Ireland (both parts).

4. Some General Points from the Report

Lord Jellicoe made a number of more general remarks in the course of his Review, from which his proposals stemmed:-

(a) The Need for Special Legislation: 'if special legislation effectively reduces terrorism, as I believe it does, it should be continued as long as a substantial terrorist threat remains' (para 1). 'If the power of extended detention were abolished, the police both in Northern Ireland and on the mainland would be seriously handicapped in dealing with terrorists' (para 65).

(b) Limitations on Special Legislation: 'such legislation should remain in force only while it continues to be effective, only if its aims cannot be achieved by the use of the general law, if it does not make unacceptable inroads on civil liberties, and if effective safeguards are provided to minimise the possibility of abuse' (para 9)

(c) The Spread of Terrorism: 'it has been strongly represented to me across a broad band of political opinion that it makes little sense to have special legislation to deal with terrorism from one source only' (para 13). 'It seems to me an inescapable conclusion that terrorism associated with causes beyond the United Kingdom now poses a greater threat than it did several years ago' (para 23)

(d) Dealing with International Terrorism: 'I am satisfied - and have, I hope, justified my view - that the arrest powers in this Act have been of considerable benefit in dealing with Northern Irish terrorism. This being so, I believe that they should be available for use in dealing with international terrorism' (para 76).

5. Jellicoe's comments on some of the main criticisms of the Act

(a) The police cannot be trusted with these powers, which they use at random in connection with all manner of non-terrorist suspects.

Jellicoe:

'I am satisfied on the basis of wide consultation, examination of individual cases, and the statistical evidence set out in the previous chapter that in the great majority of cases arrests are made and extensions of detention sought under section 12 because of police believe this to be necessary to prevent terrorist acts or to bring to justice those responsible for their Commission' (para 67).

(b) The GLC Police Committee recently said: 'the wide powers given to the police have no effect in preventing activities such as the planning of bombs in cities like London' (18 February 1983).

Jellicoe:

'It has led to the charging and subsequent conviction of a large number of people guilty of very serious criminal offences connected with terrorism which in many cases would not and could not have resulted from arrest under other powers'. (para 56)

(c) It is clear that the powers are used widely and indiscriminately because most of those arrested and detained are not charged or excluded.

Jellicoe:

'The figures show the use of the Act's detention powers to have declined significantly in recent years'. Between 1974-8 and 1979-82 the rate of exclusion and charge rose from 9 to 17%. 'The arrest and detention powers in the Act have been used more rarely but with a generally higher proportion of 'catches' than in earlier years. These figures demonstrate and increase in both the selectivity and the effectiveness of the use of these powers by the police on the mainland, which is at variance with the assertions of a number of the Act's critics' (para 46).

(d) These powers are not needed in Ulster where alternative emergency powers are available under the Emergency Provisions Act (1978).

Jellicoe:

The Emergency Provisions Act only enables the police to detain suspects for 72 hours. But the police require a longer period because since the early 1970s the terrorist groups have greatly improved their 'techniques of remaining silent under prolonged police pressure ... The Royal Ulster Constabulary have

argued persuasively to me that the section 12 power is more than ever necessary to deal with the improved security and organisation of the terrorist groups they are combating' (para 57). Furthermore extended detention has in a number of cases led suspects to turn Queen's evidence (para 63).

(e) Exclusion orders are wrong because they cause great hardship, and suspected terrorists are often excluded on inadequate grounds.

Jellicoe:

The recommendations in favour of limiting exclusions to those who have not been settled in the UK for 3 years should reduce hardship (para 185). 'In no case to my knowledge has an exclusion order been made on any grounds other than those specified in the legislation. I say this after examining papers on a considerable number of cases, and discussing exclusion with police officers, civil servants, the Secretary of State's Advisers and ministers themselves. I am convinced that all those who have administered the system of exclusion have done so with fairness and integrity' (para 187)

The report does not deal with a general criticism that is often made by the Labour Party and the Irish community in this country; namely, that it is an overtly anti-Irish measure, which implies that all Irishmen, are potential terrorists. However, it is clear from the report that Lord Jellicoe found no evidence whatever to suggest that the police were using the Act to hound the Irish community, or that they regard 'Irish' and 'terrorist' as synonymous terms. This country has given special privileges to Irish citizens, which shows how highly their contribution to our community is valued. The Prime Minister has said:

"We are all conscious of the contribution by Irish men from North and South to politics and literature over many centuries. Where would even British Conservatism be without the great Edmund Burke, English literature without Sheridan, Shaw, Joyce and Wilde? ... Despite our differences over the years, relations between the Republic of Ireland and Britain are still closer than those of most independent sovereign states' (Airey Neave Memorial Lecture, 3rd March 1980).

6. The Bill Itself

The Bill incorporates changes recommended by Lord Jellicoe and replaces the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1976.

The Bill will have a limited life of 5 years and will be subject to annual renewal.

Part 1 of the Bill proscribes the IRA and the INLA, and further allows the Home Secretary to proscribe any other organisations which appear to be concerned with terrorism in the UK. It will be an offence to dress, or display any article in a public place, in such a way as to suggest membership or support for a prescribed organisation.

Part 11 deals with exclusion orders. The Home Secretary will have the power to exclude from Great Britain, Northern Ireland or the United Kingdom generally any person whom he is satisfied is or has been concerned in the commission, preparation, or instigation of acts of terrorism connected with Northern Irish affairs.

Following the Jellicoe Report, the Bill introduces a 3 year period for exclusion orders, and reduces, from 20 to 3 years, the period of residence which excludes a British Citizen from this procedure. Part II also outlines changes to the system of representations against exclusion orders:-

(i) The period of time within which representations may be made is extended from 96 hours to 7 days;

(ii) The subject of an exclusion order will have the absolute right, within the United Kingdom and the Republic of Ireland, to an interview with an Adviser nominated by the Home Secretary.

Part III makes it an offence to make contributions to or recieve contributions from acts of terrorism relating to Northern Irish affairs, or to withold information about such acts. This follows a proposal of the Jellicoe report by making it clear that it is not an offence for a person to refuse to incriminate themselves.

Part IV relates to arrest and detention, and the operation of the Bill in the context of ports. This part of the Bill relates not only to terrorist activities conncected with Northern Irish affairs but to international terrorism also, as recommended by Lord Jellicoe.

A constable may arrest, without warrant, a person reasonably suspected of an offence under the Bill, and detain them for up to 48 hours. A further recommendation of the Jellicoe Report is implemented: The Secretary of State will have discretion to authorise flexible periods of detention for up to 5 days. (Under the 1976 Act, such discretion over the length of detention did not exist).

Clause 13 empowers the Secretary of State to make orders for the travel into and out of the UK, and for arrangements for the removal of, persons subject to exclusion orders. An order may confer powers of arrest, detention and search upon examining officers and, in the case of searches, persons acting on their behalf.

Part V of the Bill deals with supplementary provisions; in particular that the Bill should be subject to annual renewal, and have a total life of 5 years.

7. Opposition Policy

(i) Labour policy

From the outset, the Prevention of Terrorism Act was condemned by elements in the Labour Party. 60 Labour MPs voted against thier Government when the original legislation received its second reading on 28th November 1974. The feelings of those who desire a surrender to terrorism have been well expressed by Joan Maynard (Labour MP for Sheffield, Brightside), who has said:

> "I could never support it because I could see that it was a serious erosion of civil liberties in this country and had really nothing to do with preventing terrorism at all. It was just another aid to be given to the police to collect information and harass the Irish population over here and anybody else who sympathised with them.... Whenever anybody's come from Northern Ireland, particularly trade unionists, to speak at rallies or meetings over here, they've met harassment at the ports and been arrested on many occasions." (Ireland: Voices for Withdrawal, p.19)

What was until recently the view of the minority has now become the opinion of the majority. At its Conference last year, the Party voted to scrap the Act. In these circumstances, it is hardly surprising that Ken Livingstone and others at the GLC should consider giving money to the 'Troops Out Movement' to undertake 'research' into the operation of the Act (without even pausing to consider the real research done by Lord Jellicoe). £53,000 was the sum that some of the GLC Police Committee wanted to award the Troops Out activists to help them gather anti-police propaganda. Such conduct can hardly fail to give encouragement to terrorism. The IRA and other terrorist groups may well conclude that because the Labour Party is officially against emergency powers, it is also against the retention of British forces in Northern Ireland. But in fact official Labour policy on Northern Ireland does not propose withrawal from Ulster. On the contrary, it specifically rejects precipitate withdrawal, as the section below shows. If Labour gives terrorists the wrong impression of its policies, it has only itself to blame.

(ii) Labour policy on Northern Ireland

The Labour Party has allowed Mr. Ken Livingstone to become its best-known commentator on Irish affairs. Wide coverage has been given to his statements calling for the withdrawal of British troops and negotiations with the Provisional Sinn Fein, which Mr.Foot described as 'a terrorist organisation' (Daily Telegraph, 26th February 1983). Much less has been heard about the official party policy prepared with great care by a special study group under Mr. Alex Kitson, and endorsed by the party conference in 1981. Officially Labour has firmly repudiated the idea of 'an immediate or early withdrawal of troops' as advocated by Mr. Livingstone (Labour's Programme 1982). According to Mr. Kitson, a British withdrawal 'would lead to a bloodbath' (Socialist Youth, February 1983). Furthermore, the official party line decrees that Irish

unity should not occur as a result of a deal with Sinn Fein, but 'by peaceful means and on the basis of consent', an approach which leaves Labour's leaders free to support Ulster's existing constitutional position (since the consent of the majority in the province cannot be obtained). There is no sign that any efforts are being made to resolve this clear conflict between Mr. Livingstone and the 'troops out' lobby on the one hand, and official party policy on the other.

(iii) Alliance Policy

Both SDP and Liberal MPs supported the Continuance Order for the 1976 Act when it was approved on 7th March 1983. Indeed, the original legislation in 1974 had been introduced by Mr. Roy Jenkins when he was Home Secretary in the then Labour Government. In his speech on 7th March, Mr. Jenkins confirmed his support both for the need for legislation and for the proposals contained in the Jellicoe Report.

The Liberals were more cautious; they would support further legislation if, in the words of Mr. Bill Pitt, then Liberal Home Affairs spokesman, 'it does not make unacceptable inroads upon civil liberties' (Press release, 10th February 1983). He did not define this further in relation to the recommendations of the Jellicoe Report.

NC/LC
18/10/83

6. APPENDIX: STATISTICS

Persons detained under the Prevention of Terrorism Act

	Total	Extension of detention granted	Exclusion order made	Charged with offence under Act	Not charged or excluded
1974 (from 29 Nov)	59	46	12	-	39
1975	1,067	137	46	3	958
1976	1,066	60	23	8	986
1977	853	29	17	6	792
1978	622	23	49	3	552
1979	857	240	48	39	704
1980	537	126	45	11	451
1981	274	56	10	22	226
1982	220	37	11	6	192
1983 1st quarter	44	6	2	2	37
2nd quarter	39	5	1	4	30

Home Office

50 Queen Anne's Gate London SW1H 9AT
Telephone 01-213 3030/4050/5050
(Night line 01-213 3000)

NEWS RELEASE

July 8, 1983

GUIDANCE NOTE

PREVENTION OF TERRORISM BILL

The Prevention of Terrorism Bill is published today. It incorporates changes recommended by Lord Jellicoe in his Report* and replaces the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1976 which confers on the Secretary of State powers designed to help prevent acts of terrorism.

Amongst the more important of these changes are

- the extension of the special powers of arrest and detention to international terrorists
- the introduction of a limited life of three years for exclusion orders
- the reduction from 20 to 3 years of the period of ordinary residence which exempts a British citizen from the exclusion order provisions
- the extension of the period within which representations against exclusion orders may be made, and the introduction of an absolute right for excluded persons to make representations in person to an Adviser nominated by the Secretary of State.

The Bill will have a limited life of 5 years and will, like the present Act, be subject to annual renewal.

The Secretary of State will have the power under Part I to proscribe, in Great Britain, organisations which appear to him to be concerned in terrorism occurring in the United Kingdom and connected with Northern Irish affairs. It makes it an offence to belong to or support the activities of a proscribed organisation and to dress or to display any article in a way which suggests membership of or support for such an organisation. Schedule 1 lists the

---

* Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976 Cmnd 8803 Published February 1983

organisations which are currently proscribed: these are the Irish Republican Army and the Irish National Liberation Army. This Part of the Bill follows closely Part I of the 1976 Act.

Part II enables the Secretary of State to make orders excluding from Great Britain, Northern Ireland or the United Kingdom persons whom he is satisfied are or have been concerned in the commission, preparation or instigation of acts of terrorism connected with Northern Irish affairs. It implements the recommendations of the Jellicoe Report by introducing a 3 year life for exclusion orders and reducing - from 20 years to 3 years - the period of ordinary residence which exempts a British citizen from this procedure. It also introduces changes to the system under which the subject of an exclusion order may make representations against the order: these include an extension from 96 hours to 7 days of the period within which representations may be made (unless the person consents to removal under the order, in which case the period is extended to 14 days) and the introduction of an absolute right, within the United Kingdom and the Republic of Ireland, to an interview with an Adviser nominated by the Secretary of State.

Under Part III it will be an offence to make or receive a contribution towards acts of terrorism relating to Northern Irish affairs or to withhold information about such acts. This implements a recommendation of the Jellicoe Report by making it clear that it is not an offence for a person to refuse to incriminate himself.

Part IV is the only part of the Bill which relates not only to terrorist activities connected with Northern Irish affairs but also to international terrorism, another recommendation of Lord Jellicoe's report. (Although the equivalent provisions of the 1976 Act - sections 12 and 13 - were not limited on their face to acts of terrorism related to any particular country or territory they were in practice limited to Northern Ireland-related terrorism, following an undertaking given during the passage of the Act.)

Police powers to arrest and detain for up to 48 hours without a warrant, persons suspected of terrorist involvement are conferred in Part IV. It implements Lord Jellicoe's report by enabling the Secretary of State discretion to authorise flexible periods of detention for up to 5 days, provided that the total period authorised does not exceed 5 days. (Under the 1976 Act the Secretary of State could only make one order authorising an extension of 5 days: there was no discretion to vary the period.)

The Secretary of State will be able to make an order providing for the control of entry to Great Britain and Northern Ireland and the procedure for the removal from those territories of persons excluded.

Part V contains supplementary provisons. These include: exclusion orders made under the 1976 Act and still in force shall have a life of 3 years from the date of the passing of this Bill; the Bill to be subject to annual renewal; and to have a total life of 5 years.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

5 July 1983

Dear Davies,

PREVENTION OF TERRORISM BILL

As you know, Legislation Committee will be considering this Bill tomorrow morning. Subject to the Committee's recommendations and the approval of the Legislative Programme by the Cabinet on Thursday, 7 July, we propose to introduce the Bill at the commencement of public business on Friday, 8 July. I should be grateful therefore if you would arrange for notice of presentation to be tabled on Thursday, 7 July with publication at 10.00 am on Friday morning.

The Bill should be presented by Mr Secretary Brittan, supported by:

Mr Chancellor of the Exchequer
Secretary Sir Geoffrey Howe
Mr Secretary Prior
Mr Secretary Younger
Mr Attorney General
Mr Solicitor General for Scotland
Mr David Waddington

We are not having a Press Conference at the time of publication but there will be some press briefing and it would be helpful if 80 copies of the Bill addressed to the Home Secretary were delivered to the Vote Office at 10.00 am on the morning of 8 July.

I am sending copies of this letter to Willie Rickett (Prime Minister's Office), Richard Watson (Cabinet Office), David Heyhoe (Lord President's Office), Murdo Maclean (Chief Whip's Office, Commons), David Beamish (Chief Whip's Office, Lords) and Brian Shillito.

Yours sincerely,

T C MORRIS
Parliamentary Clerk

P J Davies Esq

Ireland 2

PRIME MINISTER

Prevention of Terrorism

Attached is an H paper by the Home Secretary which seeks the Committee's agreement to the introduction of the Bill based on the Jellicoe review of the super powers legislation. The main points of this were:

1. An Act with a limited lifespan of five years subject to annual review;

2. Limitations on the powers of exclusion contained in the Bill;

3. The extension of the powers in the Bill to international terrorists as well as Irish ones.

The Opposition voted against the renewal of the Act in March on the grounds that the Jellicoe revisions were insufficient. I imagine that they will do the same with the Bill. The Government has however demonstrated its own flexibility by lifting the exclusion order on Adams, the elected member for West Belfast, which ought to diminish the force of their objections.

21 June 1983

Ireland

CONFIDENTIAL

PRIME MINISTER

H Committee

The minutes attached discussed:-

I The Prevention of Terrorism Act

The Committee agreed to the Home Secretary's proposal that during the next renewal debate, he should give a commitment to replace the Act by a new one along the lines proposed by Lord Jellicoe which would have a maximum life of five years.

II Reform of the Schools Council

The Committee endorsed Sir Keith Joseph's proposal that the proposed school Curriculum Development Council should be established as a separate new body rather than as the legal successor to the Schools Council, as the Government had originally envisaged.

TF

9 February, 1983.

CONFIDENTIAL

H(83)4* 8/2/83
Item 1.
Ireland

CONFIDENTIAL

1. PREVENTION OF TERRORISM

The Committee considered a Memorandum by the Home Secretary (H(83) 7), to which was attached the report of Lord Jellicoe's review of the Prevention of Terrorism (Temporary Provisions) Act 1976.

THE PARLIAMENTARY UNDER-SECRETARY OF STATE, HOME OFFICE said that the Prevention of Terrorism (Temporary Provisions) Act 1976 was subject to annual renewal. It next fell to be renewed by 24 March 1983 and the continuance order would probably be debated on 15 March. Lord Jellicoe had carried out a review of the operation of the Act, which he had submitted to the Home Secretary on 12 January and which was to be published on 9 February. It would be expected that the Government would during the debate on the continuance order give its general reaction to Lord Jellicoe's report. The debate would raise very sensitive issues and although the continuance of the 1976 Act had not hitherto been seriously opposed there was a possibility that the Opposition Front Bench would on this occasion vote against renewal. There would need to be consultation on the report's recommendations before the Government could give its considered reaction to most of them, but it was necessary at this stage to seek agreement on two elements which involved legislation. During the debate on 15 March the Government would be expected to say whether it was seeking the renewal of the 1976 Act for the last time. Lord Jellicoe had proposed that that Act should be replaced by a new Act which would require annual renewal and which would have a maximum life of 5 years. It would be helpful to be able to say that if renewal was sought in 1984 it would be only for a short period until the 1976 Act could be repealed and replaced by a new Act. This would imply not only acceptance of Lord Jellicoe's recommendation, but a commitment to introduce a Bill at the beginning of the next Session. The second element involving legislation on which he sought the Committee's agreement was that Lord Jellicoe had made three recommendations which could be implemented by amendment to the Police and Criminal Evidence Bill which was before the House of Commons. These were, that a person detained under the 1976 Act in Great Britain should have a right of absolute access to a solicitor after 48 hours, as was already the practice in Northern Ireland; that it should be possible for the police to require that the interview should take place in sight and hearing of a uniformed police inspector; and that a detained person should be able to consult a solicitor

privately at any time and have a relative informed of the fact and place of his detention unless a senior policeman believed, on a specified ground, that it would be undesirable. These amendments could be made to the Bill at the Report Stage after Easter. In Scotland and Northern Ireland they would have to be implemented by force orders until a suitable opportunity for legislation arose.

In discussion, it was agreed that there was a very strong case for renewing the 1976 Act in March, and for replacing it in due course with the new Act proposed by Lord Jellicoe. There was no need to make a commitment to the introduction of a Bill early in the 1983-84 Session; it would suffice if the Bill were introduced in the course of 1984, but details of timing could be considered at a later stage. On the proposed amendments to the Police and Criminal Evidence Bill, it was pointed out that there might be some criticism that they would not for the present have legislative force in Scotland and Northern Ireland. The second amendment would require the police to record and inform the detained person of the grounds on which it had been decided that an interview should take place within the sight and hearing of a police officer. This requirement could cause serious difficulties in Northern Ireland where it could involve recording doubt about the integrity of some solicitors, and the police could find themselves having to justify in court the reasonableness of such doubt. It was likely that lawyers in Great Britain would also object to some of the proposals on the ground that they breached the principle of confidentiality between lawyer and client.

THE HOME SECRETARY, summing up the discussion, said that the Committee agreed that the Prevention of Terrorism (Temporary Provisions) Act 1976 should be replaced during the next Session by a new Act on the lines proposed by Lord Jellicoe, which would require annual renewal and which would have a maximum life of 5 years. The Committee also agreed that the proposed amendments should be made to the Police and Criminal Procedure Bill, but the Parliamentary Under-Secretary of State, Home Office, should first ensure, in consultation with the Attorney General and the Minister of State, Northern Ireland Office, that they were in a form which would cause the minimum possible difficulty in Northern Ireland.

The Committee -

Took note, with approval, of the Home Secretary's summing up of their discussion and invited the Parliamentary Under-Secretary of State, Home Office, to be guided accordingly.

2. REFORM OF THE SCHOOLS COUNCIL

Previous Reference: H(82) 8th Meeting, Minute 3

The Committee considered a Memorandum by the Secretary of State for Education and Science (H(83) 5) about the setting up of the new bodies to replace the Schools Council.

THE SECRETARY OF STATE FOR EDUCATION AND SCIENCE said that although most of the interests involved with the Schools Council had regretted the Government's decision to replace the Council with a separate examinations council and a schools curriculum development body, the preparations for establishing the new examinations body had in practice presented little difficulty. A chairman had been appointed, and the examinations council itself should be set up in the next few days, at a cost of £1.25 million in the first year. The establishment of the school curriculum development body was proving more difficult. The Government's proposals were being resisted both by the local authority associations, and by the teachers' unions. They had accepted many of the Government's objectives for the proposed new body, but were arguing that its duties should be the responsibility of a reconstituted and more limited Schools Council. The motivation for this attempt to persuade the Government to modify their proposals for setting up a completely new body was largely political, although it was supported by the Association of County Councils as well as the Association of Metropolitan Authorities. The objective case for retaining the Schools Council in a reduced form was based on the need for educational continuity; the financial advantages of minimising the cost of severance payments and pension transfer arrangements; and the practical problems, such as the loss of charitable status, involved in establishing a new body. Theoretically, the cost of setting up two new bodies could be between £0.4 million and £3.6 million, compared with £0.4 million to £1.4 million if the curriculum development body were the legal heir to the Schools Council. But he expected to be able to eliminate or greatly reduce this difference in costs by establishing the two new bodies before the Schools Council was abolished, thereby avoiding redundancy compensation, and by arranging for the Schools Council Pension Scheme to remain in existence, thereby avoiding transfer payments. The costs would be met from his existing programmes for 1982-83 and 1983-84. He was convinced that the Government's objectives would best be served by the abolition of the

4

PRIME MINISTER

H Committee : Prevention of Terrorism

Attached is a H paper covering the Jellicoe report on the Prevention of Terrorism (Temporary Provisions) Act, a copy of which you have already seen. The Home Secretary is proposing to table the renewal notice for the Act on 16 February for debate in early March. He proposes at that time to announce his acceptance of the Jellicoe recommendation that there should be a new Act with a maximum life of five years. A Bill would be introduced at the beginning of the next Session with the objective of an effective date of mid March. The other major recommendations of the Jellicoe report such as the conversion of the present Act into an all-purposes Anti Terrorist Act are still under consideration.

The Home Secretary's judgement is that this is the minimum necessary to secure the continuing bipartisan acceptance of the Prevention of Terrorism Act. As he acknowledges however, it is possible that the Opposition, who abstained last year, may vote against renewal this year. It would be unfortunate in Parliamentary terms to lose bipartisan support for anti terrorist legislation but in the wake of the Ballykelly bombing there can be little doubt of the extent of public support for its continuation.

TF

2 February 1983

Ireland

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon William Whitelaw CH MC MP
Home Office
Queen Anne's Gate
LONDON
SW1

27 January 1983

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

In your minute to the Prime Minister of 23 January you proposed that the Prevention of Terrorism Act should be renewed again in its present form.

As far as Northern Ireland is concerned it is essential, for the moment, for the security forces in Northern Ireland to retain the anti-terrorist powers vested in them by the Act and I therefore strongly support your proposals. I note that the renewal debate will provide an opportunity to debate the Jellicoe report.

I am copying this note to the Prime Minister, the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, and Scotland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney-General, the Lord Advocate and Sir Robert Armstrong.

ssd

Ireland Jan '80: Prevention of Terrorism

CONFIDENTIAL

Ireland

10 DOWNING STREET

From the Private Secretary

25 January, 1983.

The Prime Minister has now seen the Home Secretary's minute of 23 January about the Prevention of Terrorism (Temporary Provisions) Act 1976. Mrs. Thatcher agrees with the Home Secretary that the Act should be renewed for a further 12 months, and subject to the views of colleagues, approves the Home Secretary's intention to lay the renewal order before Parliament by 16 February.

I am sending copies of this letter to the Private Secretaries to the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Timothy Flesher

Colin Walters, Esq.,
Home Office.

CONFIDENTIAL

CONFIDENTIAL

Prime Minister:

Lord Jellicoe recommended that the Act was still needed. The Opposition abstained last year; it is possible that they may oppose the renewal this year although following the Bellykelly bombings, this is perhaps unlikely. Agree to the Home Secretary's proposals?

PRIME MINISTER

24/1

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

The Prevention of Terrorism (Temporary Provisions) Act 1976 will lapse on 24 March unless renewed. I propose that the Act should be renewed for a further 12 months.

The threat posed by terrorist organisations has not diminished during the last year. The bomb explosions in Hyde Park and Regent's Park on 20 July when 11 people were killed and 59 injured made 1982 the worst year for deaths caused by Irish terrorist incidents in Great Britain since 1974. I believe that we cannot do without the protection which the Act affords; the police, both in Northern Ireland and on the mainland, consider the legislation indispensable in their response to terrorism.

As you know, Lord Jellicoe gave me his report on the operation of the Act on 12 January. He makes general recommendations, some of which require legislation. It is therefore possible that this is the last time that I shall be asking the House to renew the Act in its present form. The renewal debate will provide an opportunity for the House to debate the report.

The Order to renew the Act is subject to affirmative resolution, and I hope to lay it before Parliament by 16 February unless I hear that you or other colleagues see difficulties about what I propose.

I am sending copies of this note to the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

23 January 1983

CONFIDENTIAL

file

10 DOWNING STREET

From the Private Secretary

24 January 1983

Thank you for your letter of 17 January with which you enclosed a copy of Lord Jellicoe's report on his review of the Prevention of Terrorism (Temporary Provisions) Act 1976.

The Prime Minister has noted both the contents of the report and the Home Secretary's intentions as to its publication and to the Government's response.

(Timothy Flesher)

Colin Walters, Esq.,
Home Office

PRIME MINISTER

LORD JELLICOE'S REVIEW
OF THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT

I attach a copy of Lord Jellicoe's Report following his Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act. You need only look at the summary of recommendations and conclusions which is flagged at 'A' and if you wish to do so Chapter 9 is about exclusion (flag 'B').

Lord Jellicoe's principal conclusion is that so long as this special legislation effectively reduces terrorism, it should be continued so long as a substantial terrorist threat remains. He believes that it meets the test of effectiveness at present. He considers that the Act should have a maximum duration of 5 years without the possibility of further extension so that new legislation will be required if special powers were still needed.

The first substantive section of the report is about the powers of arrest and interrogation contained in the Act and in particular the power to hold for 72 hours, extendable on application to the Secretary of State (usually the Home Secretary) for a further 5 day extension. Lord Jellicoe concludes that if this power of extended detention was abolished, the police in Northern Ireland and the mainland would be seriously handicapped. He recommends, however, much closer Ministerial involvement in applications by the police for special extensions. The principal controversial recommendation here will be that this power of extendable detention should be available for use against suspected international terrorists of any group, cause or nationality (although not for domestic terrorists unconnected with Northern Ireland). This will be a major departure and would convert legislation specifically intended to deal with the Northern Ireland situation into an all-purposes anti-terrorist measure.

The second substantive section of the report deals with the powers of the police to detain people at ports of entry. The principal conclusion here is that these controls will need to be retained for the present.

/The third

The third section of the report (and most interesting) is about exclusion, i.e. the powers used by the Home Secretary against the three members of Sinn Fein in the aftermath of the Ballykelly bombing. As you know, the Act enables the Home Secretary or, as appropriate, the Secretary of State for Northern Ireland, to exclude British citizens either from Great Britain or from Northern Ireland or from the United Kingdom. The large majority of exclusion orders are made against British citizens living in Northern Ireland who wish to come to Great Britain. The main arguments against this power of exclusion (which were repeated at the time of the Ballykelly bombing) were that it turns Northern Ireland into a dumping ground for terrorists and is indicative of the belief that terrorists are acceptable in Belfast but not in London. Lord Jellicoe rejects this argument mainly on the grounds that exclusion harms the terrorist organisations which should be to everyones advantage. He argues nevertheless that in future people should not be excluded from a part of the United Kingdom in which they are ordinarily resident (which can happen now). He rejects the argument that exclusion should be subject to judicial review; it is a matter of public policy.

The final part of the report deals with a number of miscellaneous provisions and its principal conclusions are the power to proscribe organisations should remain and that the provision which makes failure to give information relating to terrorism to the police an offence should, subject to various additional safeguards, continue in force.

The Home Secretary intends to publish the report next month and to be in a position to comment on some of the recommendations in time for the renewal debate in March. The report should go some way to allaying fears about some of the civil liberties implications of the Act but is unlikely to convince the critics.* Many of the recommendations would require primary legislation and would therefore be a major undertaking.

TF.

19 January 1983

* most of whom are, of irreconcilable

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

17 January 1983

Dear Tim

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976
REVIEW OF OPERATION

You will recall that in March last year the Home Secretary announced that Lord Jellicoe had accepted his invitation to carry out a review of the Prevention of Terrorism (Temporary Provisions) Act 1976. The Home Secretary has now received Lord Jellicoe's report and I attach a copy.

Lord Jellicoe has made a detailed and thorough study and has examined the operation of the Act closely. He concluded, as did Lord Shackleton when he reported in 1978, that the need for this type of legislation continues while the present level of threat from terrorism remains. But you will see from the summary of conclusions and recommendations that Lord Jellicoe makes definite and far-reaching proposals, some of which, if accepted, would require legislation to alter the terms of the present Act.

The Home Secretary will wish to discuss the proposals in detail with colleagues in due course and hopes to be in a position to make comments of substance on at least some of the recommendations in the report at the renewal debate on the present Act, in March.

Arrangements are in hand for the publication of the report next month. The Home Secretary proposes to announce publication by means of an arranged Question and Answer. The reply will probably be limited to an expression of thanks to Lord Jellicoe and a broad welcome of his report but without detailed commitment.

I am sending copies of this letter and the enclosure to the Private Secretaries to the Lord Chancellor, the Foreign and Commonwealth Secretary, the Secretaries of State for Defence, Northern Ireland and Scotland, the Attorney General and Sir Robert Armstrong.

Yours ever
Colin

C. J. WALTERS

Tim Flesher, Esq.

CONFIDENTIAL

Spare copy in Folder attached to File.

REVIEW OF THE OPERATION OF THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

BY THE RT HON EARL JELLICOE, DSO, MC

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department

Dear Secretary of State

You announced in the House of Commons on 15 March last year that I had accepted your invitation to review the operation of the Prevention of Terrorism (Temporary Provisions) Act 1976. My terms of reference were:

> "Accepting the continuing need for legislation against terrorism, to assess the operation of the Prevention of Terrorism (Temporary Provisions) Act 1976, with particular regard to the effectiveness of the legislation and its effect on the liberties of the subject, and to report".

I now submit my report.

I wish by way of preface to thank all those, and they are many, who have helped me with my enquiry.

I received the fullest assistance and cooperation throughout from all the police forces I visited in the United Kingdom. It is invidious to single out individuals, but I should record my special indebtedness to Sir John Hermon, Chief Constable of the Royal Ulster Constabulary, Sir George Terry, Chief Constable of Sussex, who kindly organised a meeting at Lewes with senior officers from those forces most concerned with the operation of this Act, and Sir Peter Matthews, the recently retired Chief Constable of Surrey. They and their colleagues at all levels gave me unstintingly of their time. I must also thank the numerous officials in the Home Office, Northern Ireland Office and Scottish Office (especially Matthew Stirrat, Assistant to the Chief Inspector of Constabulary for Scotland) whose advice and experience have been of great value to me; and those officials in the Foreign and Commonwealth Office and their colleagues at posts abroad who provided me with a good deal of useful information.

I am most grateful to the many individuals and organisations, representing a wide variety of opinion about this legislation, who gave evidence to me, oral or written or both, in Great Britain and Northern Ireland. They are listed at Annex C to the report.

There are a number of other individuals who provided considerable assistance. Lord Shackleton, Judge Harry Bennett and my friend Lord Goodman advised me on a

number of points. My thanks are due also to the three Advisers to the Home Secretary on exclusion order cases, Lord Alport, Mr Hugh Carlisle and Lord Underhill, for their comments and for sparing the time to come to see me. In addition, I consulted Lord Diplock and Lord Scarman on several occasions. They have been generous of both time and advice and I am very grateful to them.

Finally I wish to express my special thanks to the three people with whom I have worked most closely during the enquiry. Lawry Byford, since 1 January Her Majesty's Chief Inspector of Constabulary for England and Wales, accompanied me on many of my visits, together with his Staff Officer, Chief Superintendent Steve Vessey. I am particularly conscious of my debt to them, and to Howard Webber the Home Office Principal who was attached to me for the duration of the enquiry. He has been of the greatest help to me throughout this period.

Yours sincerely

JELLICOE

HOWARD WEBBER
(Secretary)

12 January 1983

CONTENTS

L.R.

PART I: INTRODUCTION

CHAPTER I: GENERAL APPROACH AND MAJOR CONCLUSIONS

1. I was invited in March 1982 to review the operation of the Prevention of Terrorism (Temporary Provisions) Act 1976. Four years had elapsed since Lord Shackleton's examination of the Act (1), and it was considered that the time was right for a further look at this legislation. I took some time to consider my reply, partly because I was unfamiliar with this troubled area of our national life and partly because my proposed terms of reference, as Lord Shackleton's, required the acceptance of 'the continuing need for legislation against terrorism'. In effect it was necessary for me to reach a major conclusion before taking on the job. Before doing so, I satisfied myself from preliminary enquiries and from a close perusal of the parliamentary debates since 1974 that some form of special legislation was indeed required to deal with the continuing threat posed by terrorism throughout the United Kingdom. As a conclusion of principle this is perhaps of limited significance. But I have since become convinced, in the course of the more detailed enquiries I have carried out in the last nine months or so, that <u>if special legislation effectively reduces terrorism,as I believe it does, it should be continued as long as a substantial terrorist threat remains.</u> This is my first general conclusion. I mention my others below.

<u>Method of work</u>

2. I decided to adopt an approach to the review broadly similar to that of Lord Shackleton. It consisted of three main elements: discussion with the police and study and assessment of their procedures under the Act; consideration of the role of the Home Secretary and the Secretaries of State for Scotland and Northern Ireland (for the government plays a vital part in the administration of this Act, particularly in the areas of extended detention and exclusion); and taking the views of interested people and groups, including the major political parties.

---

(1) Cmnd 7324, published August 1978

3. I concentrated on the first of these areas during the earlier stages of the review, as I wished to gain a first-hand impression of the Act's operation 'on the ground' and of its role in preventing terrorism. I began with extensive discussions with officers of the Metropolitan Police Special Branch, which for historical reasons has overall responsibility in Great Britain for matters relating to Irish Republican terrorism. I visited the National Joint Unit, which co-ordinates inquiries and applications from police forces in Great Britain concerning people held under the Prevention of Terrorism Act. It is housed at New Scotland Yard, but is staffed jointly by members of the Metropolitan Police Special Branch and of provincial Special Branches. I also had full briefings from officers of the Metropolitan Police Anti-terrorist Branch, which has operational responsibility for dealing with terrorist incidents within the Metropolitan Police District. In the course of my visits to New Scotland Yard I discussed the Act with officers of all ranks and of a wide range of experience.

4. The other mainland police forces I visited were Strathclyde, Dumfries and Galloway, Merseyside, West Midlands, Sussex, Kent, Hampshire and Surrey. I examined the controls set up under this legislation at Heathrow, Gatwick, Birmingham, Liverpool and Glasgow airports. Similarly, I watched the operation of the police and (where applicable) immigration controls at the seaports of Dover, Southampton, Liverpool, Stranraer and Cairnryan, while members of the staff attached to me visited and reported on the operation of the controls at Fishguard, Pembroke Dock and Holyhead. I wished to see how the Act was operated at those ports with direct sea or air links with Northern Ireland or the Republic of Ireland, and also at some of the ports which serve international destinations. At the latter, although passengers may be stopped and and questioned under this legislation, the task of examination is carried out primarily by immigration officers, operating under the Immigration Act.

5. In addition to examining the port controls. I had two major aims in my visits to police forces around the country. The first was to gain as great an understanding as possible of police views on the Act. (I also had the opportunity of long discussions with very senior officers of all the above police forces and the Royal Ulster Constabulary at a meeting at Lewes, under

...../arrangements

arrangements made by the Chief Constable of Sussex.) The second was to examine the conditions under which people are detained under this Act. During many of my visits around the country I spent time examining cell accommodation and the procedures employed by different forces in dealing with Prevention of Terrorism Act cases. This was a matter to which Lord Shackleton had paid much attention, and I was particularly concerned to see how far his recommendations for the improvement of conditions had been implemented. I should have liked to be able to satisfy myself that the recommended improvements had been made. However, as will be clear from the discussion in Chapter 5, I was not able fully so to do.

6. The Act is United Kingdom legislation, and its powers, with the exception of Part I, apply to Northern Ireland as well to Great Britain. The arrest powers in the 1976 Act have been used in Northern Ireland in recent years far more frequently than when Lord Shackleton conducted his review, and I paid several visits to the Province in order to gain some understanding of its use there. In addition to many discussions with officers of the Royal Ulster Constabulary, I visited the two 'police offices' at Castlereagh in Belfast and Gough Barracks in Armagh, where the vast majority of those arrested under this Act are detained; and Strand Road, Londonderry, which is also on occasion used for these cases. In my visits to Northern Ireland, I felt to some extent in the shadow of an enquiry which looked at these matters in a far more detailed way than I was required to do: the enquiry into police interrogation procedures carried out in 1978/79 by Judge Bennett and his colleagues, Sir James Haughton and Professor John Marshall. I have found their report (2) required reading, and I believe that it has had a major and wholly beneficial impact on the treatment and interrogation of terrorist suspects in Northern Ireland. I believe too that the way its recommendations have been carried out has been of great value in meeting criticism from abroad, particularly from the United States of America, of previous methods of police questioning in Northern Ireland. In conducting the Northern Ireland part of the review, I was naturally also conscious of the enquiry, announced by the Secretary of State for Northern Ireland, into the operation of the Northern Ireland (Emergency Provisions) Act 1978. I did not wish to prejudge any of the issues to be examined by this enquiry. However, as will be seen from Chapter 4 of my report, there

...../are

---

(2) Cmnd 7497

are areas in which the powers of the Emergency Provisions Act overlap those of the Prevention of Terrorism Act. It will be for the review into the Emergency Provisions Act to consider whether these overlapping provisions of the two Acts should be more closely aligned and possibly embodied in consolidated Northern Ireland legislation. I am inclined to the view that this would be desirable.

7. In the Home Departments, I was given full access to all papers relating to cases under this legislation, and held discussions with many of the ministers and officials most directly concerned. I had the benefit of discussing various aspects of the Act with the Home Secretary's Advisers on exclusion order cases, Lord Alport, Lord Underhill and Mr Hugh Carlisle, QC (I did not have the opportunity to meet the Adviser appointed by the Secretary of State for Northern Ireland). In addition, in order to gain an international perspective on responses to terrorism, I obtained through the Foreign and Commonwealth Office a substantial amount of material on foreign legislative provisions in this area. I also paid visits to France and West Germany in order to discuss the administrative and operational aspects of counter-terrorist policies in these two countries and the threat posed by terrorism to their respective societies. I was impressed during these visits and through what I have learned elsewhere by the common approach of those responsible for countering the terrorist threat in the countries which are faced with this problem. I am convinced that there is great benefit in developing the closest possible international co-operation in this area, at both the political and operational levels.

8. So much for the input of the review from what might be termed the Establishment. I was equally anxious to hear and discuss a wide range of other views on this legislation. I issued a general invitation for written evidence and wrote to those organisations and individuals who had submitted evidence to Lord Shackleton, asking for their further considered views. This drew a significant response for which I am most grateful. I also received oral evidence from the home affairs spokesmen of the major United Kingdom political parties and had extensive discussions with representatives of most of the major political parties, and some of the public bodies, in Northern Ireland in the course of my visits there. In addition, I took evidence from a number of academics who have made a close study of this

...../legislation

legislation. Annex C to this report contains a complete list of those who provided me with written or oral evidence or both. This list demonstrates the wide spectrum of information and opinion available to me; and, as my acknowledgements show, I received valuable advice from a number of other quarters. If, despite this, I have failed to produce an informed and reasonably well-balanced report, the fault must of course be laid entirely at my door.

General conclusions

9. I should at this point turn to discussion of those conclusions and recommendations which are of general relevance to the future of this legislation and which therefore arise more naturally here than in any of the sections which deal with the Act's individual powers. I referred to the first of these, concerning the need for special legislation, in my opening paragraph. There is a counter-balancing principle which is to my mind of equal importance: such legislation should remain in force only while it continues to be effective, only if its aims cannot be achieved by use of the general law, if it does not make unacceptable inroads on civil liberties, and if effective safeguards are provided to minimise the possibility of abuse. Metaphors of balance are perhaps overused, but they seem to me apt in this context. It will be apparent from the structure and argument of the report that I have sought throughout to follow the prescription in my terms of reference to weigh up the benefits of the legislation against its costs. I might mention here one practical aspect of this. I found that some of those powers most likely to infringe civil liberties are also the least valuable and the least used. I can quote as examples the lack of a requirement for 'reasonable suspicion' as a condition for prolonged detention at a port, and the present provision whereby a United Kingdom citizen who may have lived for up to twenty years in one part of the United Kingdom may be excluded from that part. It has been my aim, as will be seen from my more detailed recommendations to suggest how these and other powers in the Act might be refined, in order that their most useful features may be retained, their least useful allowed to lapse, and the safeguards against possible abuse strengthened without impairing the operational effectiveness of the powers.

10. My conclusion that exceptional powers require exceptional safeguards is based partly upon principle. I think there is truth in an observation by Ralf Dahrendorf, Principal of the London School of Economics and a former

...../Commissioner

Commissioner of the European Community, that "there is a fundamental liberty about life in Britain which is not easily found elsewhere" (3). Accordingly, if Parliament sees fit to grant the Executive and the police very special powers in very special circumstances then they should be required to exercise those powers as selectively, as humanely and as openly as is consistent with the demands of security. But there are other considerations also. It has been argued by many, including some who gave evidence to me, that this type of legislation represents a victory for the terrorist. Terrorist 'theoreticians' see it as a major aim to force governments to pass increasingly severe laws to counter the threat which they pose. This 'victory' will, it is argued, be enhanced if the legislation is operated in such a way as to alienate that part of the community which the terrorists claim to represent. If this happens, they will not only be likely to gain increased support from within the community; they will also be assisted to present themselves as its legitimate protectors. The support may simply be passive, in that members of the community refuse or are reluctant to assist the police, or it may be more active. Whether or not one accepts the theoretical basis of these arguments, it seems plain that exceptional legislation will be - at best - ineffective if it is operated against the will of the public. The most important assistance which the police can have in the fight against terrorism is not special powers but the support of the public. It is vital that such powers do not unnecessarily alienate - either in their essence or in their operation - any section of the law-abiding population in Great Britain or in Northern Ireland.

11. Two subsidiary conclusions flow from this. First, the terms and operation of emergency legislation should be as close as possible to those of the general law. In framing my detailed recommendations in Part II, for example, I have been conscious of the passage through Parliament of the Police and Criminal Evidence Bill. Amongst other matters, this would replace the Judges' Rules with a code governing, for England and Wales, the treatment of suspects in police custody. My recommendations in this area are designed to accord with the spirit, and where possible the letter, of its provisions. Second, I believe that this special anti-terrorist legislation should be framed and administered so as to minimise rather than to accentuate the differences between Northern Ireland and the rest of the United Kingdom. The desirability of this was strongly impressed upon me by almost all of those

...../whom

(3) Ralf Dahrendorf: On Britain (BBC Publications, 1982), p.15

whom I met during my visits to Northern Ireland. These visits also gave me an opportunity of observing at first hand the conduct of the Royal Ulster Constabulary. It is my considered belief that, operating under conditions among the most difficult and dangerous faced by any police force in Western Europe, it has developed, following the Bennett Report, a system for the detention and questioning of terrorist suspects which reflects well on its professional skills and on the integrity of the officers concerned. I believe that mainland police forces have something to learn from these strict and strictly controlled procedures.

12. The terrorist scene in the United Kingdom is rather more complex than is often portrayed; moreover, it is not static but is constantly changing and developing. One must bear in mind, for instance, that in certain areas Loyalist terrorism poses a threat as great as, if not greater than, terrorism on behalf of the Republican cause. There seem to me to have been few constant factors over the past few years in relation to terrorism connected with Northern Ireland. Among these few has been the failure of the groups involved to renounce the use of violence, and,particuarly in Northern Ireland itself, the improvement in the quality of police operations against terrorists. The latter has been based largely on the improved quality of intelligence received and of its analysis; and one consequence has been that the terrorist groups concerned have themselves been obliged to adopt more sophisticated techniques to maintain their own security. I discuss this further in Part II.

13. Going beyond the Northern Ireland context, the major trend of terrorism within the United Kingdom is its increasing 'internationalisation'. This has two aspects: the growing international links of those terrorist groups which are associated with Northern Ireland, and the increase in the number of terrorist incidents in Great Britain unconnected with Northern Ireland. I discuss in the next chapter how within Great Britain the balance has swung in recent years from 'Irish' towards 'international' terrorism. In these circumstances it has been strongly represented to me across a broad band of political opinion that it makes little sense to have special legislation to deal with terrorism from one source only. It was argued in addition that many in the Irish community see the present legislation as anti-Irish rather than anti-terrorist. I accept the force of both these

...../contentions

contentions. It does in fact seem strange to me that the Act's powers of arrest and extended detention, which I am convinced have been of considerable value in combatting terrorism connected with Northern Ireland, have, by the undertakings of successive governments, not been made available for use against terrorism from other sources. In Chapter 4 I make recommendations designed to remedy this.

14. My final general conclusion grows out of the two which have preceded it. Special powers require exceptional safeguards, and it must be ultimately for Parliament, which granted these powers, to satisfy itself that both powers and safeguards are well used and effective. Equally, if the 'terrorist scene' is an evolving one, then legislation enacted to deal with the situation at one period may well need substantial amendment by Parliament in the light of changing circumstances. The Prevention of Terrorism Act rightly contains provision for annual renewal by order, subject to the affirmative resolution of both Houses of Parliament. The annual renewal debate is the only regular, formal opportunity which Parliament has to scrutinise this legislation in detail and, though valuable, it has two major drawbacks. First, there is no real possibility of amending the Act during renewal; in practice, it has to be accepted or rejected in its entirety. Second, the renewal debates have not on the whole received the parliamentary time which they merit. There have been exceptions, but in the Commons they tend to be held late at night and to last no more than ninety minutes or so, and in the Lords they can be even briefer and more perfunctory. I am sure that Parliament should be given a genuine opportunity from time to time to consider coolly whether the legislation really needs to remain in force and, if so, whether it requires amendment in the light of changes in the terrorist scene. In my view both these aims would best be achieved through a requirement for periodic full re-enactment by Parliament. I recommend, therefore, that the Prevention of Terrorism Act should require annual renewal as at present but should have a maximum life span of five years, without the possibility of further extension. Any further counter-terrorist legislation would require a new Bill.

15. There is a precedent for the procedure which I am suggesting. The Armed Forces Act, which enables the Acts governing discipline in the Armed Forces to remain operative, combines annual renewal with a need for five-

...../yearly

yearly re-enactment. I would not wish to place too much weight on this as a precedent, since the need for annual parliamentary approval in this very specialised area is of distant constitutional origin. Before 1955, indeed, the Armed Forces legislation required annual re-enactment, so the present procedure, while retaining an important element of annual review, represents a simplification of earlier practices and some decrease in parliamentary scrutiny. In contrast, my recommended requirement for the full re-enactment of the Prevention of Terrorism Act is intended to achieve a significant increase in parliamentary scrutiny. Nonetheless, I believe that this would be amply justified for legislation whose impact, actual and potential, upon our traditional civil liberties is so great.

16. I naturally considered how long a life span I should propose for this legislation before the need for its full re-enactment. Three years seemed the absolute minimum; seven years a possible maximum. I decided that five years was appropriate both because of the precedent of the Armed Forces Act and because five years is the maximum length of a Parliament. Thus re-enactment would probably occur once, but certainly not more than once, in each Parliament. If my recommendation concerning re-enactment is adopted - and it is one to which I attach very considerable importance - I would hope that a Bill giving effect to it and to those of my other recommendations which the government finds acceptable and which require legislation would be introduced as soon as parliamentary time permits.

17. I believe that the procedures for considering possible amendments to the Armed Forces legislation might also, with profit, be adapted for use with this Act. Review of the Armed Forces Act is entrusted to a parliamentary Select Committee taking evidence in open session. This would be inappropriate with counter-terrorist legislation, since an effective review will require the assessment of information too sensitive to be made available outside a restricted circle. I recommend, nonetheless, that re-enactment should be preceded by a review of the Act's operation and consideration of suggested amendments. I have no firm opinion on the appropriate form of such a review or as to whether it should be carried out by an individual (such as Lord Shackleton's review or my own) or by more than one person. If, however, it is to have the degree of access to classified information which I have been permitted and which is, I believe, quite

...../essential

essential if the review is to have real substance and validity, then it must sit in private, although its report should be published.

18. There is one further matter which I should mention here, as it was raised by a number of witnesses. The inclusion of 'Temporary Provisions' in the title of this Act rings increasingly hollow as the years go by and the Act remains in force. Five yearly re-enactment would in practice make the Act more 'temporary' than at present. Nonetheless, I see no reason why this should be included in the title of the legislation. Accordingly, I recommend that 'Temporary Provisions' be removed from the title of any new Act.

E.R.

CHAPTER 2: BACKGROUND

The terrorist scene in the United Kingdom

19. The major terrorist incidents of recent years, both in Northern Ireland and in Great Britain, are too well known and well remembered to need describing here. The major trends in terrorist action, however, are perhaps less apparent.

20. Throughout the last ten years the dominant terrorist organisation in Northern Ireland has ben the Provisional IRA; in recent years, the Irish National Liberation Army has carried out a number of particularly vicious attacks. On the Loyalist side, the Ulster Volunteer Force and Ulster Freedom Fighters have been the most significant groups.

21. In Northern Ireland there have been over two thousand deaths attributable to terrorism since 1972. The worst year for terrorist activity was 1972 itself and the level of violence remained high throughout the mid-1970s. Since 1977, the statistics have shown a substantial decline in the number of terrorist murders. This decline is reflected also in the number of terrorist attacks; the Royal Ulster Constabulary recorded twelve thousand shooting and bombing incidents in 1972, but by the late 1970s this figure had been reduced to about one thousand a year. This decline can be attributed to a number of causes including the increasing effectiveness of measures by the security forces, growing rejection by the community of violence as a means of achieving political objectives, and the terrorists' response, which has been to become more selective in their targets and methods than was once the case. Although such activity is at a significantly lower level than it was a few years ago, one must not forget that every terrorist murder is a major personal tragedy and that terrorism still poses a severe threat to the economic, political and social stability of Northern Ireland. The evil and senseless killings in the public house in Ballykelly, County Londonderry, as my review was drawing to a close, were an all too vivid reminder of the ruthlessness of the terrorists and of their total disregard for the consequences of their actions provided that such actions contribute, according to their peculiar logic, towards the achievement of their political aims. Ballykelly was not only a disaster in human terms; it was also a warning against complacency.

22. In terms of both incidents and casualties the mainland of Great Britain has suffered substantially less from terrorism than has Northern Ireland. It is distasteful to play a numbers game in this area, but it is nonetheless important to point out that, by contrast to the two thousand deaths in Northern Ireland, about one hundred people have been killed in Great Britain by terrorist action since 1972. In Great Britain also the worst years were the early and mid-1970s, with forty-five deaths attributed by the police to terrorist action in 1974 - the year in which the Prevention of Terrorism Act was first passed. However, the London park bombings of July 1982 made last year, in terms of deaths and serious injuries, the worst since 1975.

23. The most notable trend in this area in Great Britain has been the increasing threat posed by international terrorism. Before the late 1970s, this was scarcely significant compared to the activity of groups connected with Northern Ireland. Since 1978, however, the police on the mainland have had to deal with as many acts of terrorism unrelated to Northern Ireland as those on behalf of the Republican or Loyalist cause. Statistics of terrorist incidents are not reliable, begging as they do many questions of definition and interpretation; it is for this reason that I have not included tables on terrorist activity. In any case, the number of incidents is a very approximate measure of the terrorist threat, since it takes no account of the scale or seriousness of each event: on the whole, acts of terrorism carried out hitherto by terrorist groups associated with the Middle East, for instance, have led to far fewer casualties than those carried out by the Provisional IRA. But this should not lead one to underestimate the seriousness of the international terrorist threat in the United Kingdom. The Iranian Embassy siege of 1980, the hijacking of a Tanzanian airliner to Stansted airport in February 1982, and the attempted murder of Mr Argov, Israeli Ambassador, in June 1982 were the most widely reported but by no means the only such incidents. It seems to me an inescapable conclusion that terrorism associated with causes beyond the United Kingdom now poses a greater threat than it did several years ago, both relatively and absolutely. From the information presented to me I see no ground for believing that this threat will diminish in the short term.

The Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976

24. As I have indicated, the IRA terrorist campaign in Great Britain of the 1970s reached a climax in 1974. The Prevention of Terrorism (Temporary Provisions) Bill 1974 was introduced to Parliament following the most extreme of these atrocities, the bombing of two public houses in Birmingham on 21 November 1974, in which twenty-one people died and 180 were injured. The Bill was introduced in the House of Commons on 27 November and came into force on 29 November. The background to the 1974 Act is given more fully in Lord Shackleton's report, and need not be repeated here. The 1974 Act differed from that of 1976 in four substantial particulars: it did not include offences of making contributions towards, or withholding information about, acts of terrorism (sections 10 and 11 respectively of the 1976 Act); it provided for renewal by both Houses of Parliament every six months rather than annually; and it did not include provision for the exclusion from Northern Ireland of United Kingdom citizens based in Great Britain.

25. At the second renewal, in November 1975, the Home Secretary, Mr Jenkins, said that although he was convinced that special powers should remain in force, he believed it right to seek further parliamentary approval for this and to provide the opportunity for more prolonged debate than was possible during renewal. Accordingly he introduced a Bill to replace the 1974 Act, which went through its parliamentary stages between November 1975 and March 1976 and came into force on 25 March 1976.

Main provisions of the 1976 Act

26. The Act contains three separate parts and three Schedules. Part I deals with proscribed organisations, and, unlike the rest of the Act, relates only to Great Britain. Comparable provisions in Northern Ireland are contained in separate legislation. The only organisations proscribed in Great Britain at present at the Irish Republican Army (both Official and Provisional wings) and, since July 1979, the Irish National Liberation Army.

27. Part II deals with exclusion orders. An order can be made prohibiting a person from being in or entering either Great Britain or Northern Ireland or, if he is not a citizen of the United Kingdom and Colonies, the United Kingdom as a whole. An exception is provided, in that a United Kingdom citizen may not be excluded from one part of the United Kingdom if he was

...../born

born and has always lived there, or if he has lived there for the previous twenty years. The crucial test for the making of an order is that the Secretary of State is satisfied that a person is or has been concerned in terrorism related to Northern Ireland affairs, or is trying or may try to enter the territory in question for this purpose. The Act provides a procedure under which the subject of an exclusion order may make representations against it. These representations are considered by an independent adviser, but the final decision remains that of the Secretary of State.

28. Part III contains general and miscellaneous provisions. Section 10 creates an offence of making or receiving contributions towards acts of terrorism. Section 11 makes it an offence to fail to disclose to the police information about terrorism connected with Northern Irish affairs. Section 12 contains the central power of arrest without warrant, and provides for the detention of terrorist suspects for up to 48 hours or, by the direction of the Secretary of State, up to seven days. Section 13, together with Schedule 3, establishes a security control over travellers entering or leaving Great Britain or Northern Ireland. The details of this are set out in the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1976, which deals with Great Britain, and an equivalent order for Northern Ireland. Section 14 to 19 contain supplementary provisions including (section 17) that for annual renewal by order.

Lord Shackleton's review

29. At the first renewal of the 1976 Act, the Home Secretary, Mr Rees, agreed to consider the possibility of setting up a review of its operation. In pursuance of this, my predecessor, Lord Shackleton, was appointed in December 1977 to carry out the review. His report was published in August 1978, and the government's response to his recommendations was announced during the renewal debate in March 1979. As I made clear in my introductory chapter, and as will be obvious to readers of this report, I was much influenced in my method of operation by the work of Lord Shackleton. It may be helpful if at this stage I summarise the main conclusions and recommendations of his report and the government's response to them. I consider the effect of these recommendations, individually and in greater detail, elsewhere in my report. The order in which I set out his recommendations is that followed in the rest of this report.

30. Lord Shackleton recognised that the Act's powers of arrest and interrogation (section 12) had serious implications in terms of civil liberties, but concluded that they were necessary to deal with the exceptional threat posed by terrorism. He considered, however, that steps should be taken to improve the conditions of detention of people held under the Act. He recommended specifically that thought be given to improving the standards of diet, exercise and comfort accorded to them. He noted that police cells were in general not designed to house prisoners for lengthy periods, and that what was acceptable for an overnight stay might be less so in the case of a person detained for up to seven days. He also recommended that the fullest possible record should be kept of interviews with people detained under the Act. Such records, he argued, were invaluable both for intelligence purposes and as a safeguard against malicious complaints. Finally, he recommended that there should be greater uniformity of practice in informing people of their rights when taken into custody. These recommendations were accepted by the government, and embodied in circulars to the police issued by the Home Departments. HM Inspectors of Constabulary were asked specifically to bear these matters in mind when making their inspections. I deal with their implementation in Chapter 5.

31. Lord Shackleton made two recommendations concerning the Act's powers of examination and detention at the ports (section 13 and the Supplemental Temporary Provisions Order). He recommended that in no case should a person be liable to be detained under these powers at a port for more than seven days, and that an examining officer should have power to detain a person on his own authority for no more than 48 hours, a direction from the Secretary of State being required for an extension of detention for up to a further five days. Thus, as far as length of detention was concerned, the port powers were to be brought into line with the arrest powers 'inland'. (Previously, there had been provision for a person to be detained at a port for seven days on the authority of an examining officer, and for the Secretary of State to grant an extension of detention for an indefinite period, provided that it expired not more than five days after the conclusion of the passenger's examination.) These recommendations, too, were accepted and were implemented by means of an amendment to the Supplemental Temporary Provisions Order. (I discuss the port powers in Part III of the report.)

32. On the power to exclude (sections 3 to 9 of the Act; discussed in Part IV of this report), Lord Shackleton recommended that consideration should be given to a review of exclusion orders in order to see whether any might safely be revoked. This recommendation was accepted, and implemented administratively: all exclusion orders are now reviewed three years after the making of the order, if the excluded person has indicated a wish for a review. Lord Shackleton recognised that in some cases exclusion could cause serious hardship to the family of excluded persons, and argued that the longer the power to exclude remained, the stronger was the case for providing financial assistance to relatives and friends in order to make it easier for them to visit those excluded. After substantial consideration, the government rejected this recommendation, as also the related proposal that financial assistance might be provided to cover the removal expenses of the family of excluded persons: it was argued that there were other, higher priorities than this for new government expenditure.

33. In relation to the offence of withholding information about acts of terrorism, Lord Shackleton argued that 'there are genuine doubts about its implications in principle and about the way it might be used in the course of interviewing someone'(1). He believed that it had 'an unpleasant ring about it in terms of civil liberties', and recommended that it should lapse in Great Britain. He did not, however, express any final view about the need for the section to remain in force in Northern Ireland. This recommendation also was rejected by the government. The Home Secretary stressed during the 1979 renewal debate that there had been insufficient opportunity to judge the full value of the section; and that it would be wrong to deprive the police of this power at a time when there was a renewal of terrorist activity in Great Britain. I deal with section 11 in Chapter 11 of my report.

34. Finally, Lord Shackleton pointed out that much of the argument concerning this Act current when he was conducting his review was very general in nature, and thus unhelpful. He ascribed this in part to the inadequacy of the statistics then publicly available about the Act's operation, and recommended that relevant statistics should be published regularly to enable more informed discussion to take place. This recommendation was accepted, with the result

...../that

(1) op cit, paragraph 132

that quarterly bulletins of statistics are now published by the Home Office (relating to Great Britain)and the Northern Ireland Office (relating to Northern Ireland). The evidence presented to me by organisations and individuals has been, almost without exception, of an extremely high standard; I believe that the provision of relevant statistics has been to a substantial degree responsible for this.

PART II: ARREST AND INTERROGATION

CHAPTER 3: THE POWER OF ARREST - LAW, PROCEDURE AND PRACTICE

35. In this part of the report, I discuss the law and practice governing arrest and interrogation under the Prevention of Terrorism Act, including interrogation procedures and the rights of the suspect at the police station. I examine the effectiveness of the special powers contained in the Act in terms of criminal charges and exclusions following arrest (though I do not believe that these are the sole important criteria of effectiveness) and attempt to judge what contribution they have made to the prevention of terrorist acts. The welfare of suspects in police custody was a subject with which Lord Shackleton was particularly concerned, and I made a special point in my visits to police forces around the country of examining the extent to which his recommendations in this area had been implemented. I deal with this in Chapter 5.

36. There is a substantial overlap between this Part and the next, on the port controls. The procedures for extending detention beyond 48 hours are the same whether the initial detention took place 'inland' or at a port, as are the rights of the detained person at the police station. These matters are, therefore, discussed here. On the other hand the primary purposes of the port controls are rather different from those of the Act's powers of arrest, and discussion of this is left for Part III.

The arrest powers in the 1976 Act

37. Section 12 of the Prevention of Terrorism Act provides as follows:

> "12. (1) a constable may arrest without warrant a person whom he reasonably suspects to be -
>
> (a) a person guilty of an offence under section 1, 9, 10 or 11 of this Act;
>
> (b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism;

(c) a person subject to an exclusion order.

(2) A person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest; but the Secretary of State may, in any particular case, extend the period of 48 hours by a further period not exceeding 5 days."

It goes on to say that various provisions in the general law concerning the duty of the police to produce an arrested person before a court do not apply following arrest under the section.

38. There are several points worth noting in this section. First, it authorises arrest only on the basis of 'reasonable suspicion'. This suspicion may be that the person has committed a particular offence (sub-section 1(a)); or that he is subject to an exclusion order - a matter capable of simple verification; or that he is a person concerned in terrorism. But since in all cases a constable is required to have reasonable suspicion, arrest will be lawful only when he has grounds which will stand up to objective scrutiny. It is clear from the judgement of the Lord Chief Justice for Northern Ireland in ex parte Lynch(1) that the courts are competent in an application for habeas corpus to consider and pronounce upon the grounds for arrest. Second, under section 12(1)(b), the reasonable suspicion need not be related to a specific offence: a constable need not suspect a person of involvement in any particular offence in order to ground arrest legitimately(2). The then Attorney General described the intended width and purpose of the power during the passage of the equivalent clause of the Prevention of Terrorism Bill 1974:

'What is necessary is that the constable should suspect on reasonable grounds that the person in question is concerned in either the commission, preparation or instigation of acts of terrorism even if he is not at that stage able to satisfy himself precisely what they are. There cannot be any question of arresting simply because a constable thinks "This is the sort of person who would be likely to commit acts of terrorism."'(3)

---

(1) [1980] NIJR 126
(2) ibid at 131
(3) Official Report, 28 November 1974, col 905 (H.C.)

Third, the terms of the power do not confine its use to terrorism connected with Northern Ireland. It has, however, been so confined in practice: I discuss this further in Chapter 4. Fourth, detention following arrest may be for an initial period of up to 48 hours, and this may be extended by the Secretary of State for up to a further five days. No additional grounds are provided for this: an extension of detention is lawful in any case where the initial arrest was lawful. Finally, there is no requirement to bring the arrested person before a court at any stage in his detention.

39. Section 12 applies throughout the United Kingdom. But since other powers of arrest are not uniform between England and Wales, Scotland and Northern Ireland, the impact of the section in different parts of the country and its variation from powers of arrest in the general law are not identical. I consider this topic in more detail in the next chapter, when discussing the need for the section 12 power.

Extension of detention

40. Lord Shackleton in his report described the procedures followed when the police feel it necessary to detain someone under the Act for more than 48 hours. These have not changed substantially since he reported in 1978 save that, in accordance with his recommendation, the same procedures now apply also in respect of people detained at ports beyond 48 hours; prior to 1979, they could be held for seven days solely on the authority of an examining officer. Applications from police forces in Great Britain are in general filtered through an office at New Scotland Yard, called the National Joint Unit and staffed jointly by officers from the Special Branches of the Metropolitan Police and provincial forces. (The exception to this rule is that applications in respect of Loyalist terrorist suspects arrested under section 12 in Scotland are made directly to the Scottish Office by the police force concerned.) Applications are submitted on a standard form, signed usually by an officer of not lower than Commander rank (which is equivalent to the rank of Assistant Chief Constable in a provincial force). This form sets out the name and circumstances of the detained person, the intelligence traces recorded against him, his criminal record (if any) and the reason for the application.

41. The Home Office processes applications relating to detentions in England and Wales, the Scottish Home and Health Department those in Scotland, and the Northern Ireland Office those in Northern Ireland. The legislation provides that 'the Secretary of State' may extend a period of detention. This does not mean that an extension has to be in writing under the Secretary of State's own hand, and it could in law be carried out on his behalf by an official. However, while there have been rare occasions when authority to detain beyond 48 hours has been granted on the responsibility of an official, the application has been seen and approved by a minister as soon as possible thereafter.

42. During the passage of the 1974 Bill, the then Home Secretary, Mr Jenkins, said: "As the provision is drafted it would be possible for an official to exercise these powers, but it is the intention that the Secretary of State or, if he is away, a minister in the Home Office, or possibly another Secretary of State - although I think in this context a Home Office minister would be more meaningful - will exercise them. There will be no question of there not being ministerial knowledge of exactly how many people are involved. The only exception is that it might be necesssary for an official to make a decision overnight in the event of something happening - a matter which would be referred to the minister the next morning."(4) This clearly implied that as a matter of practice the Home Secretary would see all such applications when he was available to do so. This is not the case at present within the Home Office, where, after consideration by officials up to senior level, the papers are passed to a junior minister for his decision. In the Scottish Office, on the other hand, the Secretary of State sees all applications when he is available to do so.

43. Applications for extension of detention in Northern Ireland are dealt with in a similar manner, although they are not filtered through the National Joint Unit. As in Scotland, the Secretary of State authorises extended detention personally when he is available.

44. The Act does not prescribe the form in which authorisation of extended detention is to be relayed to the police. The practice throughout the United Kingdom is for this to be done by telephone, followed by a confirmatory letter.

---

(4) Official Report, 28 November 1974, col 903 (H.C.)

Use of the power: inferences from the statistics

a) Great Britain

45. Table 1 in Annex D provides figures on the use in Great Britain of the detention powers in the Prevention of Terrorism Act. (Except where the context suggests otherwise, I use the term 'detention' in a general sense, to cover arrest under section 12, as well as detention at a port.) Between 29 November 1974 (when the 1974 Act came into force) and the end of 1982, 5555 people were detained under the Act in Great Britain, 3959 (about 70 per cent) at ports and 1,596 (about 30 per cent) elsewhere. Exclusion orders were made against 261 (nearly 5 per cent) of these and 394 (about 7 per cent) were charged with a criminal offence. Thus about 12 per cent of all people detained under the Act in Great Britain were either charged or excluded - or, to put it another way, nearly 90 per cent were released without further action. Closer examination of these figures enables further distinctions to be drawn between the use of the Act at ports and elsewhere, and reveals changes in its use over time.

46. Detention, charge and exclusion. The figures show the use of the Act's detention powers to have declined significantly in recent years. The annual average number of detentions in the period from 1975 to 1979 was about 900; this number declined to about 500 in 1980 and about 250 in 1981 and 1982. This suggests that the Act is being used more selectively, which is borne out if one looks at the charge and exclusion rate. As I noted, the overall rate is about 12 per cent. In the period 1974 - 1978, only about 9 per cent of those detained were either charged or excluded. From 1979 to 1982, this rate was about 17 per cent - more than one in six - with the exclusion rate increasing from 4 per cent in 1974 to 1978 to 6 per cent in 1979 to 1982 and the charge rate from 5 to 11 per cent. Thus, in the period since Lord Shackleton reported, the arrest and detention powers in the Act have been used more rarely but with a substantially higher proportion of 'catches' than in earlier years. These figures demonstrate an increase in both the selectivity and the effectiveness of the use of these powers by the police on the mainland, which is at variance with the assertions of a number of the Act's critics.

47. Between the beginning of 1979 and the end of 1982, 459 extensions of detention beyond 48 hours were granted in Great Britain, and 210 (46 per cent) of these resulted in charge or exclusion. Thus 249 people over this period had their detention extended beyond 48 hours and were then released without being charged or excluded. (Comparisons with the period before 1979 are not appropriate here, since examining officers at the ports were then entitled to detain persons for up to seven days without the need for a ministerial extension of detention.)

48. Results of arrest under section 12. One welcome result of Lord Shackleton's review is that the published statistics on the use of the Act have improved substantially in both quantity and usefulness. But they have not hitherto distinguished between the results (and, by inference, the circumstances and grounds) of arrest 'inland' under section 12 and those of detention at the ports under Article 10 of the Supplemental Temporary Provisions Order. The latter is discussed in Part III (and Table 7 in Annex D compares and contrasts the results of the use of the two powers on the mainland); I am, for the moment, considering 'inland' arrests. Between the beginning of 1979 and the end of 1982, 551 people were arrested under section 12 on the mainland. Nearly thirty per cent (150) of these were charged with criminal offences. However, the charge rate has fallen from 32 per cent in 1979 to 15 per cent in 1982. Exclusion on the other hand has been very rare following arrest under section 12. Only fifteen exclusion orders were made against people arrested under this section between the beginning of 1979 and the end of 1982, which suggests that exclusion is now used very infrequently against people resident on the mainland. Two-thirds of the 'inland' charges were made after an extension of detention had been granted; overall, over 40 per cent of section 12 arrests on the mainland in which the Secretary of State approved an extension resulted in a criminal charge.

49. The use of these powers by individual police forces. During the whole period of the Act's currency (to the end of 1982), three police forces accounted for almost two-thirds of all arrests and detentions on the mainland: Merseyside with 1,301, the Metropolitan Police with 1,202 and Dumfries and Galloway with 1,112. Table 8 in Annex D provides a breakdown

between port detentions and section 12 arrests since the beginning of 1979. Two forces were responsible for more than half of the 551 arrests during this period, with the Metropolitan Police arresting 186 suspects and Strathclyde 108. No other mainland force approached this frequency of use: the next most frequent were Merseyside and West Yorkshire, with 26 and 23 respectively. A charge is far more likely to follow a section 12 arrest than an Article 10 detention (see Chapter 6). It is not surprising, therefore, to find that the Metropolitan Police and Strathclyde Police together account for more than half of all criminal charges brought following detention or arrest under the Act, with 44 and 62 respectively out of a total of 201.

50. The pattern of exclusion conforms more closely than that of charge to the overall distribution of detention, with the Metropolitan, Merseyside and Dumfries and Galloway police forces being the 'applying' forces in more than three-quarters of the total number of exclusion orders made against persons detained under the Act (88 out of 114) from the beginning of 1979 to the end of 1982.

b) Northern Ireland

51. The inferences to be drawn from the statistics on arrest and detention under the Act in Northern Ireland are on the whole simpler for a number of reasons. First, there have been a negligible number of detentions at the ports of Northern Ireland (a total of three since the beginning of 1979), since Republican and Loyalist terrorism is very much an indigenous problem in the Province, to be dealt with internally. Thus in effect I am dealing only with arrest under section 12 of the Act. Second, exclusion orders made by the Secretary of State for Northern Ireland have been considerably rarer (for all years other than 1981) than those made by the Home Secretary and in practice my main concern is therefore with charge following arrest. Third, there is a single police force in Northern Ireland, by contrast with the fifty-one on the mainland, and thus there are no comparisons to be drawn between the practices of different forces. Fourth, a considerable majority of arrests under section 12 in Northern Ireland have led to the granting of an extension of detention beyond 48 hours by the Secretary of State (I discuss the figures and the reasons for this below), and there is accordingly less need to draw comparisons between the results of arrests lasting less than and those lasting more than 48 hours.

52. Between the coming into force of the 1974 Act and the end of September 1982, [1,847] people were arrested under section 12 in Northern Ireland, and extensions of detention were granted in [1,482] of these cases. The proportion of extension, around four-fifths, has remained roughly constant throughout this period. It is substantially higher than that for extensions of detention on the mainland, which has run at around a quarter of all detentions. There are two major reasons for this. First, the majority of mainland detentions have occurred at the ports where applications for extension of detention are relatively rare. (The proportion of extended detentions following arrest 'inland' in Great Britain has run at over 40 per cent, whereas that at ports has been less than 20 per cent.) Second, and probably more important, there is an alternative power of arrest in Northern Ireland in section 11 of the Northern Ireland (Emergency Provisions) Act 1978, which permits the police to arrest suspected terrorists and to detain them on their own authority for up to 72 hours. I discuss in the following chapter the overlap between this provision and the arrest power in the Prevention of Terrorism Act, but, to oversimplify, section 12 is likely to be used in Northern Ireland in cases where the police have good grounds for believing from the outset that they will require the suspect to remain in custody for more than 72 hours. On the mainland, no such choice exists. An arrest which in Northern Ireland could be carried out under the Emergency Provisions Act will, in Great Britain, have to be made under section 12 of the Prevention of Terrorism Act.

53. Tables 10 and 13 in Annex D provide figures on the use of section 12 in Northern Ireland. Between November 1974 and the end of September 1982, [761] people were charged with criminal offences following arrest under section 12 or its predecessor, [697] following an extension of detention and [64] without an extension. (There were, in addition, a number of people charged with offences under the Prevention of Terrorism Act who were not initially arrested under the Act.) Thus, about 40 per cent of all arrests under the Act in Northern Ireland resulted in charge, and about 45 per cent of persons held for more than 48 hours were finally charged. For the reasons suggested above, the most worthwhile figure to use as a basis of comparison between Great Britain and Northern Ireland in this respect is the proportion of 'extended' section 12 arrests which resulted in a criminal charge. This proportion is virtually the same in Great Britain and in Northern Ireland; though, as one would expect, the tables indicate a far higher number of serious charges in Northern Ireland, including over 300

charges of murder or attempted murder, and over 350 of offences connected with explosives or firearms. (The total number of charges is higher than [761], since a number of people were charged with more than one offence.)

54. The figures also show a fairly major variation between the charge rate in different years: to quote the most extreme examples, 60 per cent of people detained in Northern Ireland under this Act for more than 48 hours in 1977 were charged, while the equivalent proportion for 1981 was less than 35 per cent.

CHAPTER 4: THE POWER OF ARREST - DISCUSSION AND RECOMMENDATIONS

55. There can be no clear proof that the arrest powers in the Prevention of Terrorism Act are, or are not, an essential weapon in the fight against terrorism. The subject is too complicated for that, and there are too many questions to which the answers must remain indefinite. Nonetheless, I have heard and read evidence from an unusually wide range of interests, and this perhaps enables me to take a more informed view than most on these difficult matters. As elsewhere in the report, I have sought to identify the common ground and to consider whether it offers a possible way forward. In this chapter I am concerned with the section 12 power of arrest as such: first, whether it is necessary in Northern Ireland and Great Britain; second, whether the checks and safeguards on its exercise are adequate in principle or as applied; and third, whether the extent of its application is appropriate. Much of what I have to say is relevant to both Great Britain and Northern Ireland. I hope that it will be clear from the context when this is not so.

The need for the power

56. The major argument in favour of the section 12 power is that it has led to the charging and subsequent conviction of a large number of people guilty of very serious criminal offences connected with terrorism, which in many cases would not and could not have resulted from arrest under other powers. The number of charges and convictions for such offences following section 12 arrests (see Chapter 3 and the statistical annex) is the primary evidence for this. On the other hand, two major arguments have been put to me against the existence of the power, particularly in Northern Ireland, both of which have variants, and both of which are also based on scrutiny of the statistics. First, it has been argued that the security forces in Northern Ireland made little use of the section 12 power (or its predecessor in the 1974 Act) for several years after it became available to them. They relied for the arrest of terrorists almost entirely on the 72 hour arrest power in section 11 of the Emergency Provisions Act and its predecessor. The argument runs that since the police did not need to hold suspects in custody for up to seven days during the mid-1970s - when terrorist violence in Northern Ireland was at a higher level than more recently - they do not

require such a power now; and that there must be less need still for it on the mainland, where the level of terrorism has been considerably lower. A more Northern Ireland-centred variant of this argument is that the Prevention of Terrorism Act was passed in response to a bombing campaign on the mainland, was designed primarily for use on the mainland, and should not therefore be used in Northern Ireland.

57. The answer to this, in my view, is that while the number of terrorist incidents has declined from a peak in the early 1970s, there has also been a change in the nature of the terrorist threat and in the response to it of the security forces. As I explained in Part I, the quality of intelligence gathered has improved, and this has meant that the major terrorist groups have been obliged both to become more conscious of their internal security and to ensure that their activists are well trained in the techniques of remaining silent under prolonged police questioning. To put the matter at its simplest, all these factors have meant that while the police in Northern Ireland found that only in relatively few cases before the late 1970s was there a significant advantage in holding suspects for more than 72 hours, this has not been the case more recently. The Royal Ulster Constabulary have argued persuasively to me that the section 12 power is more than ever necessary to deal with the improved security and organisation of the terrorist groups they are combatting. In a sense the police in Northern Ireland have 'grown into' the section 12 power and I believe that in the most serious cases it is more valuable at present in Northern Ireland then ever before.

58. The second argument is that if the police have not gained sufficient evidence to charge within the first 48 or 72 hours, then an additional four or five days is unlikely to alter this situation. A variant of this argument is that virtually all worthwhile admissions are made in the first two or three days of detention and that what comes after this is not only meagre but inherently unreliable, because of the psychological effect on the suspect of extended detention.

59. I would acknowledge that from the papers I have seen and the consultations I have had it seems right to conclude that the majority of initial admissions come within the first 48 or 72 hours of detention. But this conclusion is subject to vital qualifications. There have been a number of serious cases

where the initial admission came at a later stage than 48 hours. As I noted, many terrorists have been trained in anti-interrogation techniques. In some cases this may mean that they remain silent for a full seven days. In others, however, the interviewing officers may be able to build up a relationship with the suspect which removes his initial resistance and encourages him to talk, possibly on the fourth or fifth day of detention. There are also cases where terrorist suspects refuse to supply their names, and where fingerprints must be taken and compared simply for the purpose of establishing identity. These operations in themselves may occupy the first 48 hours.

60. Even where initial admissions are made in the early stages of detention, there are a number of reasons why a period of extension may be required. Scientific examination of articles seized at the time of arrest is sometimes vital in building up a case. This inevitably takes time. Terrorists often take considerable trouble to avoid leaving identifying marks at the scenes of their crimes and traces of explosives on themselves. But although the forensic scientist may be one step ahead, examination of scenes of crime, suspects' clothing and so on may take several days to complete and collate. Again, even where a terrorist suspect answers questions from the start of his detention, the replies must be checked against intelligence and new lines of enquiry followed up. Finally, although admissions made after 48 hours' detention may in many cases relate to terrorist activity in which the suspect took only a minor part, this information may be crucial in helping to identify those who were more directly responsible: the intelligence-gathering aspect of interrogation is vital and should not be ignored.

61. Before leaving the question whether special powers of arrest are necessary, I should discuss briefly features specific to the law of Northern Ireland and of Scotland which may have some bearing on the answer. I have already mentioned that there is an overlap in the powers available to the police in Northern Ireland to arrest suspected terrorists. Under section 12, they may detain suspects for 48 hours and, if the Secretary of State agrees, for a further five days. Under section 11 of the Emergency Provisions Act, they may arrest and detain suspected terrorists for 72 hours without the need for ministerial approval. The RUC have told me that in practice the existence of these overlapping powers has posed few problems. Once an

arrest has been made under section 11, it cannot be 'converted' into a section 12 arrest; but wrong decisions have not been common, in the sense that there have been few cases when, having arrested under section 11, the police realised at a later stage that more than 72 hours' detention would be necessary if they were to be able to charge a suspect. Section 12 is in general used for the more complex cases - for instance, where a large scale terrorist conspiracy is suspected - whereas section 11 tends to be employed more when the police do not believe that questioning in depth and at length will be essential.

62. I have naturally considered whether the initial period of detention under the Prevention of Terrorism Act should be increased to 72 hours, with the possibility of a four day extension, and have concluded that it should not. (One of the factors leading to my view that the initial period should remain 48 hours was that this is the period embodied in the Police and Criminal Evidence Bill after which, in England and Wales, the suspect in a serious case of non-terrorist crime would be required to be charged, released or produced before a magistrates' court for an extension of detention; I discuss this further below.) But the question does arise whether the continued existence of these two parallel powers is necessary. I am conscious that this goes beyond my present remit, particularly since a review of the Emergency Provisions Act will soon be under way. I believe that the 48-hour-plus-five-days power under section 12 should remain, and I must leave it to this review to consider whether the power of detention for 72 hours should exist in parallel, and, if not, whether and how the two might be assimilated.

63. There is one further factor specific to Northern Ireland which in practice enhances the value of the power of extended detention. This is the phenomenon of 'converted terrorists' -.ex-terrorist offenders who agree to give evidence against their erstwhile colleagues. In a number of cases, police have achieved considerable success by confronting a suspect with information provided by a converted terrorist. Such confrontations may require days of careful preparation, but their effect in some cases has been to bring a swift end to several days of silence or non-co-operation. There are, of course, problems both practical and legal in the use of this type of informant. In some instances they have been put under the most intense pressure, for example by the relatives of the persons they have implicated,

to withdraw their evidence at the stage of committal or trial. And as a matter of principle, it is unsatisfactory to give automatic immunity from prosecution where the informant himself may have committed serious criminal offences. It is thus legitimate for the prosecuting authorities to look for means of ensuring that, where appropriate, informants may themselves be charged but not made subject to undue influence before their trial. I am aware that this matter is being purused actively in Northern Ireland.

64. The most relevant feature of Scottish law is that in the investigation of non-terrorist crime the Scottish police have more limited powers to question suspects than their counterparts in the rest of the United Kingdom. Until recently the position in Scotland was, in general, that arrest could take place only when the police had sufficient evidence to charge the suspect; that when he was arrested they had immediately to do so; and that once charged he could not be questioned about the offence for which he had been arrested (though he could make a voluntary statement). The Criminal Justice (Scotland) Act 1980 provides that arrest on reasonable suspicion may be followed by up to six hours' detention without charge. Nevertheless, section 12 of the 1976 Act provides the Scottish police with a unique opportunity to question suspects in depth - an opportunity of which they make good use, as is shown by the charge rate of the Strathclyde Police, the main users in Scotland of section 12, in the figures recorded in the previous chapter. The rules on the admissibility of statement evidence in Scotland are more restrictive than in the rest of the United Kingdom, and the actual results of interrogation are less likely to be admissible at trial. But as is the case in Northern Ireland, England and Wales, questioning can lead to the finding of evidence which is admissible - particularly physical evidence, such as arms, ammunition and explosives. To this extent, section 12 of the Act is of special importance to the Scottish police.

65. In the light of my enquiries and of the evidence submitted to me, I have therefore come to the firm conclusion that if the power of extended detention were abolished, the police both in Northern Ireland and on the mainland would be seriously handicapped in dealing with terrorists. This is not to say, however, that detention for up to seven days has been the appropriate course of action in every case in which it has been used. It is to the subject of controlling the exercise of the power that I now turn.

Procedure and safeguards

66. In evidence to this review, witnesses critical of the power of extended detention have deployed a number of arguments, amounting to a claim that the power is abused or is open to abuse. Some have suggested, on the basis of statistical or anecdotal evidence, that the power is used in many if not most cases with no prospect of a criminal charge resulting. Witnesses have given as evidence for this the alleged fact that questioning has focussed more on the arrested person's political beliefs and activities than on possible terrorist involvement. There have been claims that many arrested people have simply been held in custody for seven days without any attempt to question them at all, suggesting the use of the power as a form of preventive detention; and that it has been used for low-level intelligence gathering, with detention for up to seven days (rather than any physical maltreatment) employed as a means of putting pressure on arrested persons to provide information about their associates. Finally, critics of the power as applied on the mainland have claimed that it has been used largely as a means of harassing the Irish population resident in Great Britain.

67. It would be wrong to suggest that abuses of the power have never occurred. But I am satisfied on the basis of wide consultation, examination of individual cases, and the statistical evidence set out in the previous chapter that in the great majority of cases arrests are made and extensions of detention sought under section 12 because the police believe this to be necessary to prevent terrorist acts or to bring to justice those responsible for their commission. I should state at this point that I believe it a valid use of this power to arrest and if necessary to extend the detention of an individual for the purpose of obtaining information, provided that suspicion of his involvement in terrorism is such as to bring him properly within the criteria for arrest laid down in the legislation. (This has implications for the present power to arrest under section 12 someone believed guilty of the offence of withholding information: see Chapter 11.) Clearly, extended detention should not be used for the purpose of gleaning minor information. But good intelligence can save lives, and if sensitive use of this power, under careful supervision, can aid the collection of such information from individuals who are themselves involved in terrorism, I see no objection to this.

68. There are, however two general propositions argued by the critics with which I would agree. First, as a general rule, no greater power should be used to achieve a given end if use of a lesser power can achieve the same end. Second, the wider the terms in which a power is couched, the greater is the possibility of abuse and thus the greater the need for effective safeguards. Where the traditional legal framework is adequate to the task, it should be preferred to the use of extraordinary powers. This is accepted good practice; but it is a truth which bears restatement, and I recommend, therefore, that the police throughout the United Kingdom should be reminded by the appropriate Secretary of State that the power of arrest under section 12 should be exercised only where the use of no other power is appropriate to the end sought. It is the responsibility of the supervisory grades of the police service and of the Secretaries of State to ensure that this rule is adhered to. Critics point to the low number of cases in which the relevant Secretaries of State have refused an extension of detention to support their argument that ministerial extension provides no real safeguard against abuse of the arrest power. However in my discussions with police officers throughout the United Kingdom I have been made aware that they regard the requirement for ministerial approval as a considerable hurdle to be cleared. Both they and the officers at the National Joint Unit are constantly reminded by this requirement of the importance and extraordinary nature of the powers they are exercising, and also that these powers are too valuable to be put at risk by the submission of weak cases. I have seen no application for an extension of detention which does not amply fulfil the criteria laid down in section 12 of the Act, and I believe that this is due in part to the need of the police to build a case for extended detention and to put it on paper. This is perhaps particularly true in Northern Ireland, where the police have available to them the alternative power of arrest under the Emergency Provisions Act.

69. There is, however, a new element to be considered. Hitherto, these arrest powers have stood virtually alone in United Kingdom legislation in laying down a strict time limit for detention before charge or release and in providing an external check during its course. If the Police and Criminal Evidence Bill becomes law in England and Wales, this will no longer be the case. I should describe briefly the scheme proposed in the Bill. It envisages that an arrested person might be detained at a police station

without charge only on one of two grounds: first, that although there was sufficient evidence to charge him on his arrival at the station, he was unfit to be charged (for instance, because he was drunk); and second, that there was insufficient evidence to charge him on his arrival at the police station and there were reasonable grounds for believing that his detention was necessary to secure or preserve evidence of the offence for which he had been arrested, or to obtain such evidence by questioning him. If neither of these criteria were satisfied, then he would have to be released, unconditionally or on bail. Detention under these criteria would be lawful only for as long as they continued to apply, and regular reviews of its continued need would be conducted. In any case, however, detention without charge could not continue for more than 24 hours without authorisation by a magistrate. In this procedure, a single magistrate, sitting in private, would be able to authorise detention for a further 24 hours (ie 48 hours altogether) in a serious case of an arrestable offence. The arrested person would have no right to be present at this hearing, though he might make written representations to the magistrate hearing the application. At the expiry of the second 24 hours, detention for a maximum of a further 48 hours (ie 96 hours in all) might be authorised by a magistrates' court. The hearing would again be in private but both sides would be present, with the detained person having the right to legal representation. In all cases, there would be an absolute limit of 96 hours on lawful detention without charge.

70. Several witnesses argued that this procedure should be used for extending the detention of people arrested under the Prevention of Terrorism Act (the legislation as drafted would not apply to arrests under the Act). I disagree. A magistrates' court is not in my view the appropriate forum for discussion of the issues of extreme sensitivity which invariably arise in Prevention of Terrorism Act cases and such a system could well, I believe, lead to a reduction in the quality of supervision of police action in such cases. A decision to extend detention should be taken on the fullest possible information, but where this information includes delicate intelligence material, the police, quite properly, believe it essential to keep it to as small a circle as possible. In addition, applications for extension arise relatively rarely on the mainland, and thus magistrates, by contrast with the ministers and officials presently involved, are unlikely to develop the expertise necessary to assess and base decisions upon intelligence reports. It was suggested as an alternative that responsibility for extending detention in

these cases might be given to a High Court Judge. I can see no real advantage in this scheme. If the hearing were to be in the presence of the detained person, unacceptable problems of security would arise; but in any case the decision whether to extend detention depends on criteria which are not susceptible of judicial assessment. There would be additional problems of availability: government ministers, on the other hand, already have to be on call virtually around the clock for a number of reasons. The requirement for a member of the government, answerable to Parliament, to approve extended detention seems to me to be clearly the best means of ensuring that the power is properly used.

71. Although I have concluded that this element of the scheme in the Police and Criminal Evidence Bill would not be appropriate for use in terrorist cases, the idea behind it may prove fruitful in this context. As I have said, one of my guiding principles has been that the powers available to deal with terrorism should differ as little as possible from those in the general law. Clearly the general law in England and Wales is moving towards an increase in the supervision exercised over the length and purpose of detention before charge. (In Scotland, police powers to detain before charge have always been strictly limited.) I believe that the procedures governing detention under the Prevention of Terrorism Act could move in this direction also. At present, ministerial control of detention is effective largely because its existence encourages the police to use particular care and discretion in the selection of cases to submit for extension. Some of those who, as ministers, have operated the system have suggested to me that there was room for an increase in the degree of supervision which they exercised. At present, extensions of detention are invariably requested, and granted, for the full five day period. I recommend that, wherever possible, applications for extended detention should specify the period required (which in many cases ought to be less five days) and justify this by reference to the results anticipated. All police applications set out not only the criminal and intelligence case against the suspect but also the reasons why an extension is sought. This part of the application should become more detailed, describing specifically what the police hope to gain by keeping the suspect in custody for an additional period. I further recommend that the Secretary of State should grant an extension of detention for a full five days only when he is satisfied that this, rather than a

lesser period, is necessary. It should, however, remain open to him to grant an extension for less than five days in the first instance and then, on a further application from the police, extend this by a further period, provided that the total period in detention, as at present, does not exceed seven days. This would require an amendment to section 12(2) of the Act, the wording of which appears to envisage a single extension only.

72. The introduction of this system should ensure that the police are aware constantly, and not just at the 48 hour point, that they are exercising extrordinary and grave powers, whose use must be justified in each case. I recommend that ministers in the relevant departments should take an active part in ascertaining how far the specific purposes for which an extension was granted have been achieved, and should satisfy themselves that people are not detained under this Act for longer than is absolutely necessary.

73. I have one further recommendation to make concerning the procedure for extending detention. I recommend that where circumstances permit, all applications should be seen and approved by the appropriate Secretary of State personally, and not by a junior minister alone. As I said in Chapter 3, this is the practice in the Scottish Office and Northern Ireland Office, but not at present, as I was somewhat surprised to learn, in the Home Office. I think the seriousness of these powers requires that they be considered by a Secretary of State personally when he is available to do so.

74. I should, finally, mention two further arguments put to me concerning the exercise of the powers of arrest and detention. The first is that the initial arrest should be on the basis of reasonable suspicion of the commission of a 'scheduled offence' rather than of involvement in terrorism; scheduled offences being those of the type most frequently committed by terrorists. Such a provision might operate satisfactorily in Northern Ireland, where the concept of a scheduled offence is now familiar. This would not be so on the mainland. The problem is that while scheduled offences in Northern Ireland - such as murder, firearms and explosives offences - are in fact generally committed by terrorists (since there is relatively little serious crime unrelated to terrorism) this is not the case on the mainland: most murders in Great Britain are not 'terrorist murders' and in practice this would

simply be a power to detain for up to seven days those suspected of any serious offence. I must therefore reject the suggestion. The second argument is that even if the initial arrest need not involve suspicion of a specific offence, an extension of detention should be granted only on such grounds. The recommendations above are designed to ensure that grounds for extension are stated specifically and that the length of detention is related closely to them. But I believe that provided the arrest is based on reasonable suspicion of one of the matters set out in section 12 there may be proper grounds for extending detention unrelated to the commission of a particular offence; as I said above, the obtaining of information is an example. Thus I must reject this view also.

The extent of the power

75. One noticable feature of the arrest power and the equivalent power of detention at the ports is that they are not, in terms, confined to terrorism connected with Northern Ireland. Section 12(1)(b) enables a person to be arrested who is reasonably suspected of being concerned in terrorism whether or not related to Northern Ireland affairs. This was deliberate. A police officer might have information which gave good grounds for suspecting that a particular individual was a terrorist but which did not identify the cause with which he was associated. It was felt that the suspect in such a case should come within the ambit of section 12. But it was made clear during the passage of both the 1974 and 1976 Bills that all the powers they contained were aimed solely at combatting terrorism related to Northern Ireland. The restriction on the use of section 12 in practice was re-emphasised in a Written Answer in 1980 by Mr Brittan, then Home Office Minister of State:

> "Only section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1976 and Article 10(1) of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1976, as amended, contain powers not specifically restricted to terrorism connected with Northern Irish affairs. Arrest is a matter for the chief officer of the force concerned, but an extension of detention under these provisions is granted only where a connection with terrorism related to Northern Irish affairs is established or suspected."(1)

---

(1) Official Report, 5 November 1980, Written Answers, col 571 (H.C.)

This restriction was emphasised in the confidential government circular to the police issued when the Act came into force.

76. I discussed in Part I the increasing threat in Great Britain from terrorism totally unconnected with Northern Ireland. Many fear that London, in particular, could become a battleground for warring Middle East terrorist factions; my own view is that we may be facing this threat for many years to come. To date, most of the victims of such outrages have been foreign nationals resident in Great Britain, rather than United Kingdom citizens. There is, however, no good reason to believe that this state of affairs will continue, and in any case this is pre-eminently an area where we must develop an internationalist approach: terrorists, after all, are no respecters of national frontiers. I believe it to be within my terms of reference to consider whether the arrest powers in the Prevention of Terrorism Act should be available to be used against terrorists not suspected of any connection with Northern Ireland. My conclusion, in relation to international terrorism, is that they should be so available. Terrorism connected with Northern Ireland is more intense in degree but is not essentially different in kind to terrorism from any other source: in all cases it exhibits similar features and is equally abhorrent. I am satisfied - and have I hope justified my view - that the arrest powers in this Act have been of considerable benefit in dealing with Northern Irish terrorism. This being so, I believe that they should be available for use in dealing with international terrorism from whatever source. (I deal in Part III with the question whether the powers of detention at the ports should be used in this way.) Clearly this view will not recommend itself to those who have argued that this power has been ineffective; but a number of witnesses criticised the power more on the grounds that it was aimed only against Irish people, and they welcomed the idea that it might be used to deal with the more general threat from terrorism. It is, however, for practical rather than political reasons that I favour this change.

77. I have deliberately confined to the sphere of international terrorism this discussion of extending the Act's power of arrest, and it is on grounds of the threat posed that I am in favour of such an extension. It is on the same grounds that I would oppose an extension of the power to deal with domestic terrorism unconnected with Northern Ireland. Nothing in the

past history or likely future activity of terrorist groups indigenous to Great Britain persuades me that the use of these powers against them is necessary or would be of real value. Indeed, it might well prove counter-productive, by assisting such groups to gain a coherence and an identity which they currently lack. I recommend, therefore, that the power of arrest in section 12(1)(b) of the Prevention of Terrorism Act should be available for use against suspected international terrorists of any group, cause or nationality, but that it should not be so available in respect of domestic terrorism unconnected with Northern Ireland. I make no firm recommendation as to the appropriate means of achieving this change, but my strong preference is for the proper extent of the section to be clear on its face and not, as at present, left for restriction by government circular. In any case, such a change should not be made without explicit parliamentary authority. The re-enactment of this legislation, which I recommended in Part I, would be an appropriate opportunity.

78. Prompt, firm and effective action by the police and other agencies has already helped to demonstrate that the United Kingdom is not a haven in which international terrorists can operate with impunity. My recommendation here would, if implemented, help to re-inforce that message.

Conclusion

79. The arrest powers in the Prevention of Terrorism Act have proved themselves far too valuable to be dispensed with while a substantial threat from terrorism remains; but equally , they are far too grave not to be subject to genuine safeguards. My recommendations in this chapter, as throughout the report, are designed to ensure that these exceptional powers are used with discretion and care; that they are not exercised when the use of other powers is more appropriate; and that they are available to meet the terrorist threat we are likely to face in the future, as well as that encountered in the past.

CHAPTER 5: THE DETAINEE AT THE POLICE STATION

80. In this chapter I consider the situation at the police station of people arrested under the Prevention of Terrorism Act, the extent of their rights and the means by which they are enforced. I concentrate, in the descriptive part at least, on the system in Northern Ireland, because it is there that the majority of arrests under the 1976 Act have taken place, and that, due to the scale and nature of the problem, a system has been developed for supervising the detention and questioning of terrorist suspects which is more complete, distinct and uniform than its mainland equivalent.

81. I should begin by mentioning three factors which have caused me to restrict the scope of this chapter. The first was that in examining the conditions of detention and interrogation of people held under the Act in Northern Ireland I was following in the footsteps of the Bennett Committee, which examined this subject in 1978/9, and whose admirable report(1) covered this ground far more thoroughly than I was required to do. The Bennett report has been of considerable benefit to me (and I was also able to discuss the report with Judge Bennett himself), and I have seen it as my major task in relation to Northern Ireland simply to give my views on the current operation of the 'Bennett system', rather than to examine the subject afresh. The second matter too relates to Northern Ireland. The review of the Northern Ireland (Emergency Provisions) Act 1978 will soon be beginning. I am not directly concerned with the operation of that Act; but in relation to such matters as conditions of detention, no distinction is drawn in Northern Ireland between people arrested under the Prevention of Terrorism Act and those arrested under the Emergency Provisions Act. My comments are therefore equally relevant to both. I have tried not to pre-empt the findings of that review, which must inevitably deal with many of the same issues as I have done. My treatment of the subject is thus not as full as it might otherwise have been, and in this respect only should perhaps be regarded as an interim report. The third limiting factor relates to England and Wales. This is the report of the Royal Commission on Criminal Procedure, and the action taken or proposed to implement its recommendations. An important feature in England and Wales of the treatment in police custody

---

(1) Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland (Cmnd 7497).

of suspected terrorists is that it is largely identical to that of other suspects in custody; and as will become clear, the Royal Commission's approach and the action proposed by the government are similar to the measures which I have in mind in the area with which I am concerned. I have, in effect, been spared the need to consider a new system in detail, since the plan of such a system is already available.

Northern Ireland

(a) Supervision, conduct of interviews and the notification of rights

82. The Bennett Committee concluded:

> "No other police force in the United Kingdom is called on to deal with so much violent crime in such unpromising circumstances as the RUC ..... the normal methods of detection of crime are hampered by special difficulties in Northern Ireland ..... hence there is a reliance on interrogation leading to admissions in many cases ..... but admissions and confessions are also a common feature of the prosecution case in England and Wales".(2)

This is still true, and is essential to an understanding of police operations against terrorists in Northern Ireland. It was such pressures (described in detail in the Bennett report) and the number of persons dealt with which led to the 'Bennett system' of safeguards for terrorist suspects in Northern Ireland.

83. When the Bennett Committee reported, all people arrested under the Prevention of Terrorism Act were in practice taken to one of two 'police offices', Castlereagh in Belfast and Gough Barracks in Armagh. This is still the case, except that since the beginning of 1981 a few detainees have also been held at Strand Road, Londonderry. I saw all three centres in the course of my visits to Northern Ireland.

---

(2) ibid, paragraph 404, conclusion 3

84. In discussing the supervision of suspects in police custody, the Bennett Committee identified three general features or principles from which many of their recommendations sprang.(3) The first was the division of functions between the uniformed and plainclothed branches of the RUC. (In this context, the primary role of plainclothed officers - who are members of the CID or Special Branch - is to conduct the interviews with suspects; while the uniformed officers are required to supervise all aspects of the suspect's welfare while he is in police custody.) The Committee noted the fact that in practice complaints had not been made by prisoners against the uniformed branch. Second, the Committee emphasised the need for proper supervision of both uniformed and detective staff, to ensure strict observance of the prescribed procedures. Third, the Committee noted that meticulous documentation could be a major element in ensuring the proper treatment of prisoners. On the basis of these three principles the Committee recommended a system of supervision (described in more detail below) which involved increasing the number and rank of supervisory uniformed oficers; improving the physical facilities for supervision (for instance, by providing closed-circuit television cameras in all interview rooms); developing an even stricter division of responsibility between the uniformed and plainclothed branches; and providing fuller documentation on all aspects of a prisoner's treatment while in police custody. My own observations, supported by the evidence I have received from a wide range of individuals and organisations, have convinced me that on the whole these recommendations have been implemented fully and fairly, and that the present system for supervising the detention of terrorist suspects in Northern Ireland is thorough and effective and reflects well on the professionalism of the RUC.

85. The Bennett Committee's recommendations on the supervision of interviews may be summarised as follows: the number and rank of supervisory officers at the police offices should be reviewed and where necessary increased; the responsibility of the uniformed inspectors for the welfare of prisoners should extend specifically to periods in an interview room, and they should if necessary enter the room to stop interviews; to help them in this task, wide-angle viewing lenses (already installed at Gough Barracks and Castlereagh)

---

(3) ibid, paragraphs 87 to 89

and closed-circuit television (CCTV) cameras should be installed in all interview rooms; interviews should take place only in an authorised interview room; prisoners should be accompanied by uniformed officers at all times except when in the interview room; and all these provisions should be made part of the RUC Code. These recommendations were accepted in their entirety by the government and the Chief Constable, and I was impressed by the commitment and obvious integrity of those officers whose responsibility it has been to implement them. In practice, the supervision arrangements at both Castlereagh and Gough Barracks are the responsibility of a uniformed chief inspector, with at least one inspector on duty throughout permitted interview times (8.00 am to midnight). The CCTV monitors are kept on whenever an interview is taking place, with the screens in a room in which uniformed officers are always present. There are two cameras and two screens for each interview room, which show it from different angles. All screens are situated together on one wall of the monitoring room. In addition, the divisional commander (at Castlereagh) and sub-divisional commander (at Gough Barracks) each have screens in their offices, on which they can view any of the interview rooms they choose. Similar arrangements apply at Strand Road, Londonderry, with CCTV monitor screens installed in both the station inspector's and the divisional commander's office.

86. One measure of the present system's operation is the number of complaints made against members of the RUC. Indeed, it was to a large extent the volume of complaints against the police, particularly those alleging assault by interviewing officers, which led to the Committee's appointment.. The relevant figures in the Bennett report deal with people arrested under the Emergency Provisions Act as well as those arrested under the Prevention of Terrorism Act. Though it goes beyond my remit, I thought it would be useful for the purposes of comparison to provide similar figures for the period since publication of the Bennett report. These appear as Table 14 in Annex D, and demonstrate clearly that the number of complaints from people held under the emergency legislation, both of assault and of other abuses, has declined significantly since the implementation of the report, even though the number of detentions under the legislation has increased. In relation particularly to complaints of assault, this accords fully with the evidence I received. Even witnesses in other respects strongly critical

both of the continued existence of the emergency legislation and of its application assured me that well-founded allegations of mistreatment during interview were now rare and justified complaints of physical assault virtually non-existent. Some believed that the provision of closed-circuit television was the factor primarily responsible; others placed more emphasis on the improvement in training and supervision procedures. I found the attitude of the RUC officers, both uniformed and plainclothed, to whom I spoke particularly noteworthy in this respect. There had clearly been some discontent when implementation of the Bennett report's recommendations was announced: some officers had seen this as a slur on their integrity. But the almost universal view was that in practice the present system had not only caused few difficulties to either branch, but had indeed actually helped them in their work, by reducing the potential for the making of false complaints by prisoners and providing a method by which it could be demonstrated that prisoners had been properly treated.

87. The Bennett Committee's recommendations on the conduct of interviews were as follows: female suspects should be interviewed only in the presence of female officers; no interview should encroach on normal mealtimes; interviews should not start or continue after midnight unless operational requirements demanded it; no more than two officers should interview a prisoner at one time, and no more than three teams of two officers should be concerned in interviewing one prisoner; officers should identify themselves at the start of interviews; and these provisions should be included in a new, separate section of the RUC Code. All of these recommendations were accepted, though with two qualifications: first, that in some cases it might be necessary to have more than two officers present in the interview room - for example, to ensure that a woman officer was present if two male officers were interviewing a female suspect; and second, that court duties, leave and sickness meant that four rather than three teams of two interviewing officers should be the maximum number. On timing of interviews, the Code provides that except for urgent operational reasons no interview should take place between midnight and 8.00 am, and that there should be a break in interviewing a prisoner of at least an hour between 12 noon and 2.30 pm and between 5.00 pm and 7.30 pm. My own observations and the evidence presented to me have indicated that these provisions of the Code are in general carried out scrupulously. But external control of the conduct of interviews is visual

only, and supervisory officers cannot as a matter of course hear what is happening in the interview room. I did receive some evidence to the effect that verbal abuse of suspects by interviewing officers was widespread. This is not an accusation which I am in a position to assess, and I would suggest that particular attention be paid to it in the review of the Emergency Provisions Act.

88. On notification to suspects of their rights, the Bennett Committee recommended as follows:

> 'Larger notices giving details of rights available to prisoners should be displayed in police offices and police stations, and each prisoner should be given a printed notice to keep for himself'(4)

The government and the Chief Constable did not implement this recommendation as it stood. The explanatory memorandum issued by the Northern Ireland Office on the subject includes the following passage:

> 'The Chief Constable agrees that the present notices setting out a prisoner's rights should be enlarged and this is being done. These notices will be prominently displayed in areas where the prisoner will have easy acccess to them ..... He will be allowed sufficient time to read and digest the information and will then be required to certify in writing that he has read and understood it. Given these safeguards, it is felt to be unnecessary to give the prisoner a copy of this notice.'

The notices were large, comprehensive and prominently displayed at the police offices; but some evidence to me suggested that prisoners were hampered in the exercise of their rights by not having a copy in their possession.

---

(4) ibid paragraph 404, recommendation 44

(b) Medical examination

89. Before the Bennett Committee reported, the RUC Code provided that a medical examination should be offered to terrorist suspects when taken into custody and again before release. There were also provisions for intermediate examination(5). The Committee recommended that while automatic medical examination after every interview was not necessary the prisoner should be reminded of this right after every interview. They also recommended that medical officers should see terrorist suspects during each period of 24 hours in order personally to offer them an examination. The second of these recommendations was already standard practice at Castlereagh and Gough Barracks; it was decided that since the right to medical examination would be among the matters covered in the notice of rights read by the suspect on his admission, it would be unnecessary to remind him of it after each interview.

90. I had a full and useful discusion both with the doctor, employed by the Northern Ireland Department of Health and Social Services but seconded to the Police Authority, who is in charge of medical examination at Castlereagh, and with representatives of the Association of Forensic Medical Officers, who carry out medical examinations at the other police offices and police stations throughout the Province. I received no evidence suggesting any criticism of the doctors responsible for medical matters at police stations in Northern Ireland. In practice they have wide responsibilities. It is part of their job to advise the uniformed and interviewing officers of any psychological strain from which the suspect may be suffering; and the RUC Code specifically provides that medical officers are entitled to examine the CCTV screens and otherwise to satisfy themselves that suspects are not being ill-treated under interrogation. But all the doctors to whom I spoke were very conscious that it was not for them to usurp the role of the uniformed supervisory officers, and, on other than medical matters, they would simply report to the latter anything which gave cause for concern. The doctors employed at Castlereagh, where most people arrested under the Prevention of Terrorism Act are held, treat the prisoners as they would any other patients, going on 'ward rounds' each morning and offering examination at any time to

---

(5) Chapter 7 of the Bennett report

any prisoner. Suspects have a right to be examined by their own doctor, in the presence of the doctor appointed to cover the police office in question. I did receive some evidence of dispute between the suspect and the police in some cases as to whether the presence of an outside doctor had been requested.

91. The independence in theory of those who carry out medical examination in the police offices is guaranteed by the terms of their employment; their independence in practice, by the quality of the doctors employed. This is perhaps best demonstrated by the fact that, when complaints arise of police misconduct, they are often made in the first instance to the doctor in the course of a medical examination. The members of the Association of Forensic Medical Officers spend only part of their time examining people in police custody; most are general practitioners and spend the bulk of their working time in the community. (It was simply pressure of work at Castlereagh which required the establishment of full-time posts.) Their view, from their experience both inside and outside the police offices, was that the present system of medical examination provided a safeguard for both police and prisoner. They believed that subject to minor amendment the system now both commanded and deserved public confidence. I accept this assessment, though I should record that one of the Association's witnesses suggested that one or two recent cases at Castlereagh had not been handled with the sensitivity they had required.

(c) Access to legal advice and notification of arrest to third parties

92. The Bennett Committee noted that whether or not the Judges' Rules could be held to apply to the detention and questioning of people arrested under the emergency legislation (I deal with this topic below), in practice the RUC consistently refused to allow such prisoners access to a solicitor at any time before they were charged or released. The Committee considered this unjustifiable, and recommended that 'without prejudice to their existing rights, prisoners in Northern Ireland should be given an unconditional right of access to a solicitor after 48 hours and every 48 hours thereafter ..... but solicitors should not be permitted to be present at interviews'.(6) This recommendation was accepted, with one proviso (see below),

---

(6) ibid paragraph 404, recommendation 45

and incorporated in the RUC Code. As with the other Bennett recommendations, I am satisfied that on the whole it has been carried out. But by contrast with most of the other recommendations, there has been a body of evidence to the effect that the spirit of the recommendation has not been fully observed. It has been alleged that in some cases requests by a suspect for the presence of a solicitor have not been passed on; and that on occasion a solicitor has been sent away from Castlereagh or Gough Barracks on the grounds - subsequently disputed - that the prisoner had not requested his presence. The police, on the other hand, have told me that solicitors sometimes appear at the police offices at the instigation of paramilitary groups, rather than in response to a detainee's request. I return briefly to this subject below, in my recommendations.

93. This was perhaps the most controversial recommendation in the Bennett report in terms of some officers' fears of its effect on police operations. In accepting it in principle, the Northern Ireland Office and the Chief Constable decided that it should be made subject to an important proviso. Thus the relevant section of the RUC Code provides that where an officer of Assistant Chief Constable rank or above believes that an interview with a lawyer in the absence of the police may unreasonably delay or hinder the processes of investigation or the administration of justice, he may direct that it take place in the presence of a uniformed officer of inspector rank or above not directly concerned with the investigation of the case. The provision was designed to prevent a solicitor with access to a terrorist suspect from conveying important information, either by accident or design, to others in the terrorist organisation still at large. The discretion is in practice exercised by the uniformed Assistant Chief Constable for the region concerned. The figures show that it was exercised on 45 occasions in respect of people held at Castlereagh between July 1979 and June 1982, and in 140 cases over the same period at Gough Barracks. Substantially more people are detained at Castlereagh than at Gough Barracks which makes these figures somewhat surprising, and suggests that attention should be paid to developing criteria and guidelines for the exercise of the discretion.

94. Another area of doubt is that of access to solicitors before 48 hours. If the Judges' Rules apply to people arrested under the emergency legislation, then the police have discretion before this point to refuse access to a solicitor on the same grounds as, after 48 hours, an Assistant Chief Constable may exercise the 'uniformed inspector' proviso. In practice, however, terrorist suspects are very rarely granted access to a solicitor before 48 hours' detention have elapsed: access was granted in these circumstances on only fifteen occasions between July 1979 and June 1982. Thus the situation in practice on access in the first 48 hours is as it was throughout the whole period of detention before the Bennett Committee reported. As the Committee commented:

> 'When the purported exercise of a discretion always brings about the same result, it is a fair inference that the discretion is either not being exercised at all or not being exercised fairly'.(7)

I return to this subject below.

Great Britain

95. I mentioned above that one of the most important features of the treatment at the police station of terrorist suspects in England and Wales is that it is in general no different from that of those suspected of non-terrorist offences. (As I noted, the Scottish system in non-terrorist cases is essentially different because of the absence in Scotland of general police powers to detain suspects before charge for more than a very limited period.) Since in this respect I am concerned with no more than a very minor part of a larger system and since the more general questions have so recently been the subject of prolonged study by the Royal Commission on Criminal Procedure, my remarks in this section are primarily concerned with how Lord Shackleton's recommendations about the detainee at the police station have been carried out.

96. Given the small volume of terrorist crime in Great Britain compared to serious crime as a whole, it is not surprising that there is no distinct system for the treatment in custody of terrorist suspects. In Northern

---

(7) ibid, paragraph 276

Ireland, it is the amount of terrorist crime, the relative lack of serious crime with no terrorist connection, and concentrated propaganda campaigns against the police which have made the highly uniform and systematised procedures at Castlereagh and Gough Barracks not only necessary but also practicable. These pressures have not hitherto been present on the mainland to anything like the same degree. One consequence of this is that procedures for dealing with terrorist suspects are not uniform, but vary considerably between mainland police forces. Lord Shackleton's recommendations in this area were intended partly to inject an element of uniformity. He recommended that

> 'more thought needs to be given to improvements in matters such as diet, exercise and comfort',(8)

on the basis that people arrested under the Prevention of Terrorism Act were liable to be detained longer than those arrested under other powers, and kept in cells not designed for extended detention. To this extent the recommendation was not only for some degree of uniformity but also for a distinction to be drawn between the treatment of terrorist and other suspects. I found on my visits to police stations around Great Britain considerable variation in the arrangements on all these matters and, on the whole, no such distinction being drawn (though in most forces I visited, special and more comprehensive documentation was provided in respect of persons held under the 1976 Act). I should however describe briefly the arrangements in one force - Merseyside Police - where special efforts have been made.

97. Persons detained under the Prevention of Terrorism Act in the Merseyside force area are taken to the Main Bridewell in Liverpool, which is used primarily for keeping in custody prisoners due to appear at the adjoining magistrates' court. The Bridewell is a forbidding building - constructed by French prisoners during the Napoleonic wars for their own incarceration - but is, inside, considerably less depressing than its outer appearance suggests. Following Lord Shackleton's report, three cells were set aside for the custody of people held under the 1976 Act. All cells in the Bridewell possess their own W.C. (this is not uncommon), a small, translucent external

---

(8) Cmnd 7324, paragraph 144

window, and a good mattress, blanket and pillow; persons held under the 1976 Act are in addition supplied with bed linen (almost unique on the mainland, but standard practice in the Northern Ireland police offices), and a more varied diet is provided for them. The Bridewell is nearer to a Northern Ireland police office than perhaps is any other police station on the mainland. Its sole purpose is detention - the uniformed chief inspector in charge has the formal title of 'Governor' - and the scale of the operation means that in practice a clear distinction is drawn between the (supervisory) role of the uniformed branch and the (investigative) role of the detective officers.

98. It would, however, be an oversimplification to conclude that this type of arrangement is necessary as a means of ensuring that adequate attention is paid to the welfare needs of suspects held for these extended periods. Some of the police forces I visited deal with terrorist suspects relatively rarely, and this itself may ensure that when such cases do arise they are supervised with particular care. On the other hand, some forces which have been responsible for a high proportion of arrests under the Act have, from my observations, failed to implement Lord Shackleton's recommendations in this area. As I have noted, a major part of the success of the post-Bennett system in Northern Ireland is due to the strict division of responsibility between the different branches of the police service; this was also an important theme running through the recommendations of the Royal Commission. It seems to me that it is in those forces where this distinction is blurred that the spirit of the Shackleton recommendations is most likely to be neglected. One of the factors leading to this blurring is, I believe, the relative rank of the officers involved. In many cases the gaoler may be a young uniformed constable, while if the matter is serious the interviewing officers may be of very senior rank. It has been my observation, and has indeed been confirmed in some cases by the police themselves, that the more serious the case, and thus the larger this gap, the less significant is the role of the uniformed officer, and thus the less attention is likely to be paid to such matters as diet, exercise and the recording of details of these matters in one central place. The keeping of accurate records is more important than it might appear, particularly for the protection of the officers concerned against false complaints, for it is difficult to establish the facts of a case if only some of the relevant matters are recorded in the

gaoler's custody record, and the rest - if at all - in the interviewing officer's notebook. (In Northern Ireland, details - requests and complaints made by the prisoner, visits to him by family and lawyer, offers of food and exercise and so on - are recorded by the gaoler on a 22-page 'prisoner arrest form'; a specific duty is laid on the interviewing officers to pass on to the gaoler any matters which should be recorded on this form.) To sum up my impressions: I visited no police station where terrorist suspects were treated in any respect worse than those suspected of non-terrorist crimes; but there were a number of stations in which such suspects had been held and where little attention seemed to have been paid to Lord Shackleton's recommendations on welfare.

99. There are no current statutory provisions in the United Kingdom entitling suspects to consult a solicitor before charge. There is a provision in Scotland (Criminal Procedure (Scotland) Act 1975, sections 19 and 305) but this applies only when a suspect has been charged. The subject is at present governed in Northern Ireland by the Judges' Rules and RUC Code (which incorporates the entitlement to see a solicitor after 48 hours' detention); and in England and Wales, by the Judges' Rules and section 62 of the Criminal Law Act 1977. (As I noted above, other than in cases under the 1976 Act, the police in Scotland have very limited powers to question suspects before charge. There is thus no need for a general provision dealing with access before this stage, and, although the Judges' Rules do not apply in Scotland, the Scottish police apply a similar discretion to their colleagues in England and Wales in relation to access to a solicitor for people arrested under the 1976 Act.) Paragraph (c) of the preamble to the Judges' Rules provides:

> "that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such cases no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so".

This should be taken together with paragraph 7(a) of the administrative directions appended to the Rules:

"A person in custody should be supplied on request with writing materials. Provided that no hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice:

(i) he should be allowed to speak on the telephone to his solicitor or to his friends;

(ii) his letters should be sent by post or otherwise with the least possible delay;

(iii) telegrams should be sent at once, at his own expense."

Section 62 of the Criminal Law Act 1977 states that:

"Where any person has been arrested and is held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him, without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary."

This section is relevant because the person in custody might use the entitlement to notify a solicitor of his arrest.

100. The terms of section 62 clearly show that it applies to persons arrested under the Prevention of Terrorism Act, and indeed the Home Office circular to the police on the operation of the section makes a specific reference to its application in such cases. It has, however, been questioned (at least in Northern Ireland) whether the Judges' Rules apply to people arrested under the emergency legislation: it has been argued(9) that the Rules were designed to deal with questioning where a specific offence is involved, and, following ex parte Lynch (10), arrest in such cases need not

---

(9) See, for example, C K Boyle: 'Notes on the Northern Ireland (Emergency Provisions) Act 1978', Current Law Statutes Annotated (1978).

(10) See paragraph 38, above.

be based on suspicion relating to a specific offence. I shall not, however, attempt to pursue this controversy to a conclusion: first, because the government proposes to replace the Judges' Rules with a code issued to supplement the provisions of the Police and Criminal Evidence Bill; and second, because the Judges' Rules are incorporated in general force orders, and all police officers to whom I spoke considered that they applied in relation to Prevention of Terrorism Act arrests in the same way as to arrest under other powers.

101. Lord Shackleton made no recommendation about access to solicitors, but he did comment: "It would be quite exceptional, in my view, for there to be sufficient grounds to deny a person in custody the right of access to a solicitor throughout a seven day period".(11) It is, indeed, uncommon for access to be denied for the whole period of detention, but I did find disturbing, in this area as in others, the lack of uniformity apparent in the practices of different mainland police forces. This is not a problem which applies only in relation to terrorist cases, and I see no reason to dwell on it, since the Judges' Rules may soon be replaced. I should, however, mention by way of example that in some forces access has never in practice been denied for more than 48 hours, while in others it has been relatively common for five or six days' detention to be completed before a suspect is permitted to consult a solicitor. But as the Royal Commission on Criminal Procedure recorded, research on the subject of access to legal advice has indicated that in practice few suspects actually ask to consult a solicitor while they are in police custody.(12)

Recommendations

102. I have made clear my view that in general the present system in Northern Ireland for dealing with terrorist suspects at the police station operates in a way which reflects credit both on the police officers involved and on

---

(11) op cit, paragraph 148

(12) See Royal Commission Report, paragraph 4.83 and the references cited therein.

the thoroughness of the work of Judge Bennett and his committee. A major question which I had to consider, therefore, was whether the 'Bennett system' in all its rigour should be brought into use on the mainland.

103. The Northern Ireland procedures were developed as a response both to the high level of terrorist violence in the Province and to a concentrated campaign of complaints against the RUC. It was the latter which made the present regime at Castlereagh and Gough Barracks necessary; it was the former, in a sense, which made it possible, given the hundreds of suspects arrested each year under the emergency legislation in Northern Ireland and charged with offences of terrorism. Neither of these factors has hitherto applied to the same degree on the mainland, and while I would not wish the possibility to be ruled out I do not believe that the situation at present in Great Britain is such as to require the establishment of centralised police offices, closed-circuit television in interview rooms and so on. There are on the other hand many aspects of the system in Northern Ireland which should be regarded simply as good practice. I was struck, reading the Bennett report and visiting the police offices on the one hand, and reading the report of the Royal Commission on Criminal Procedure on the other, by their similarity of approach on many key issues - particularly on the division of responsibility between the different branches of the police service and on the need for full documentation of all matters concerning a suspect's rights. Many of the proposals embodied in the Police and Criminal Evidence Bill and the draft code relating to the treatment of persons in police custody are similar if not identical to measures in force at Castlereagh and Gough Barracks. (Obviously, the detailed content of the code may well change considerably before it comes into operation. For the purposes of this discussion, however, I am assuming that the principle of issuing such a code will be accepted.) I have thus found my task much simplified and subject to additional or alternative provisions relating to welfare, access to legal advice, and the right not to be held incommunicado, I recommend

that all provisions of the Home Office draft code relating to the treatment of persons in police custody should apply to persons arrested or detained under the Prevention of Terrorism Act in England and Wales. The legislation and the code will not apply in Scotland, but I believe that procedures followed in terrorist cases should be as far as possible uniform throughout Great Britain. Observance of the rules will be a duty on members of police forces in England and Wales, enforceable under the police discipline code. I recommend that the provisions of the draft code, insofar as they are to apply to persons arrested or detained under the 1976 Act, should be incorporated also in the general orders of Scottish police forces.

104. Since the content of the code is not yet fixed, the following list is merely indicative of those provisions which I believe should be fully applied to cases under the 1976 Act: those relating to custody records; information to persons in custody (though the content of the information will require some amendment); searching of detained persons; Commonwealth citizens and foreign nationals in custody (which will become of more importance if, as I recommend, the arrest power may be used in respect of suspected international terrorists); conditions of detention; medical treatment; cautions (insofar as questioning is related to a specific offence); interviews; treatment of persons in custody; recording of interviews and statements; questioning of mentally disordered persons; questioning of children and young persons; use of interpreters (which, again, will be of relevance in relation to international terrorism); questioning of deaf persons; and charging of persons in custody.

105. In general the effect of this will be to bring the procedures for the treatment and questioning of terrorist suspects in custody on the mainland far closer than at present to those in operation in Northern Ireland. In one respect the provisions of the code go beyond the present Northern Ireland system. They provide that a suspect shall be given a notice of his rights for his retention while in custody. As I have mentioned, the Bennett Committee made a similar recommendation, which was not accepted by the government and Chief Constable. I received evidence that a suspect may be hampered in exercising his rights by not possessing a copy of the notice, and it is clear that this can cause problems when he is in police custody

for up to seven days. Accordingly, I recommend that all prisoners arrested under the Prevention of Terrorism Act in Northern Ireland should be given a printed notice of rights for their retention; this requirement should be added to the appropriate section of the RUC Code.

106. At paragraph 96 I noted that observance of Lord Shackleton's recommendations on diet and comfort was patchy and variable. Like Lord Shackleton, I am not advocating special treatment for terrorist suspects; but his view, with which I fully agree, was that particular attention should be paid to these matters simply because people arrested under these powers are liable to spend longer periods in police custody than other suspects. The question of exercise is adequately covered in the draft code. I recommend that special provision be made in the code to the effect that persons arrested or detained under the 1976 Act in England and Wales should be supplied with clean bed linen, as well as with mattress, blankets and pillow, and that they should be offered a varied diet. A similar provision should be added to force orders in Scotland. It has been suggested to me that prisoners might use sheets to harm themselves or others. Merseyside Police - one of the few mainland forces to offer this facility - seem to face few problems in this regard, but forces should be free to use disposable sheets and pillowcases, as is the practice of the RUC. (Incidentally - and I accept that this lies outside my terms of reference - I can see no argument against the provision of disposable bed linen for all persons who have to stay overnight in police custody. Such a measure would be a matter more of elementary decency than of pampering the suspect; and in the case of terrorist as of all other suspects, these are people who often have not been charged with, let alone convicted of, a criminal offence.)

107. The draft code deals with the question of recording the product of interviews. I considered carefully whether it would be appropriate to make any recommendation regarding the use of tape recorders. I decided that it would not, although in principle I am strongly in favour of the use of tape recorders in this field. I have noted the recommendations of the Royal Commission on Criminal Procedure on tape recording(13) and the government's intention to establish field trials on the basis of the recording of

---

(13) RCCP Report, paragraph 4.27

whole interviews between police and suspects. These trials will no doubt enable an assessment to be made, amongst other things, of whether the creation of a permanent record of whole interviews will deter the gathering of criminal information. But the gathering of information on terrorism seems to me to raise that problem in a particularly acute form. I have suggested that the obtaining of information is and should remain a valid purpose of arrest, provided that the arrest is based on legitimate grounds. As the Bennett Committee wrote in relation to Northern Ireland:

> "We believe that the fact that a permanent and reproducable record ws being made, which the suspect could not later disown, would increase his reluctance to speak to a greater degree than elsewhere. It is to be emphasised also that in our view the prisoner's lawyers, at least if he were charged with an offence, would have to have the right to listen to the whole of the tape in order to decide whether any edited version was a fair one. Once a copy of the tape passed out of the hands of the police, it would be impossible to be sure into whose hands it might fall."(14)

These arguments seem to me to apply equally strongly in respect of terrorist suspects in Great Britain. I believe however that the question should be reconsidered following the field trials in England and Wales and the separate Scottish experiment, which also involves recording whole interviews, and in the light of decisions taken subsequently about the future of tape recording police interviews generally.

108. Despite the comprehensiveness of the procedures envisaged in the Police and Criminal Evidence Bill and the draft code, there are two related areas in which special provision will be required for suspects arrested and detained under the Prevention of Terorism Act: access to legal advice and notification of arrest to third parties. Under the Bill (as introduced) all persons detained at a police station are to be entitled to consult a solicitor at any time during their detention unless, in the case of a person detained for a serious arrestable offence, an officer of superintendent rank or above has reasonable grounds to believe that access to a solicitor would:

---

(14) op cit, paragraph 199

(a) lead to interference with or harm to evidence connected with a serious arrestable offence, or interference with or harm to other persons; or

(b) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) hinder the recovery of any property.

When a person has been detained at a police station for 48 hours the police will lose even this limited right to deny him access to a solicitor. His absolute right of access after 48 hours will arise from the procedures for authorising extended detention which I described in Chapter 4, and will not exist apart from those procedures; thus it will not arise in respect of persons held under the 1976 Act, whose detention is extended by the Secretary of State. I discussed earlier in this chapter the position of terrorist suspects in Northern Ireland. Following the Bennett report, they have an absolute right to access after 48 hours' detention and every 48 hours thereafter, with the proviso that if an officer of at least Assistant Chief Constable rank considers that a private consultation may unreasonably delay or hinder the process of investigation, he may direct that the interview take place within the sight and hearing of a uniformed inspector not connected with the case. I see no reason why rights in this respect should be any less in Great Britain than they are in Northern Ireland and I recommend that this system should apply throughout Great Britain for persons held under the Prevention of Terrorism Act. In relation to England and Wales, this absolute right should be included in the Police and Criminal Evidence Bill; in relation to Scotland, pending an appropriate legislative opportunity, it should be incorporated in force orders. In the Metropolitan Police, the discretion should be exercised by an officer of at least Commander rank. It is essential that it be exercised at a very high level, to ensure that it is not operated in an arbitrary manner or unnecessarily.

109. The Police and Criminal Evidence Bill, as introduced, incorporates amendments to the Legal Aid Act 1974 which would enable a magistrates' court to order legal aid in respect of any suspect whom the police wish to hold without charge for more than 48 hours. An absolute right of access in the case of terrorist suspects might be somewhat hollow in the absence of similar provisions, and thus I recommend that persons detained under the Prevention of Terrorism Act for more than 48 hours anywhere in the United Kingdom should be entitled to legal advice on a similar financial basis to 'ordinary' suspects in England and Wales under the proposals in the Police and Criminal Evidence Bill.

110. As I have noted, evidence was submitted to me of a conflict in some cases between police and suspect in Northern Ireland on the question whether a solicitor had been requested. To avoid such a conflict in future, I recommend that it should be the duty of the uniformed custody officer, after the suspect has spent 48 hours in custody, to remind him of his absolute right to consult a solicitor and to ask him if he wishes to exercise this right. The reply should be entered on the custody record, and the suspect should be invited to sign it. If he refuses to sign, this should be noted. This provision should apply throughout the United Kingdom and should be incorporated, as appropriate, in force orders and in the draft code relating to the treatment of suspects.

111. In discussing the system of access in Northern Ireland, I noted that use of the 'uniformed inspector' proviso varied between police offices in a way which was difficult to explain. There is a clear need for greater uniformity here, particularly if similar provisions are to apply throughout Great Britain also. The three criteria set out in paragraph 108 for the exercise of the discretion to refuse access provide a useful model in this respect. But, given that one of the purposes of a section 12 arrest may be the gathering of intelligence, it follows that the risk of prejudicing intelligence may be a matter properly to be taken into account by an Assistant Chief Constable when considering whether to exercise this proviso. Accordingly, I recommend that an Assistant Chief Constable (or equivalent) should be permitted to exercise the 'uniformed inspector' proviso where he has reasonable grounds to believe that an interview between the suspect and his solicitor out of the sight or hearing of a uniformed inspector would (a) lead to

interference with or harm to evidence or witnesses in connection with a serious arrestable offence; or (b) lead to the alerting of other terrorist suspects not yet arrested; or (c) hinder the recovery of any property; or (d) seriously prejudice the gathering of intelligence. The relevant ground should be entered on the custody record and the detained person informed. This provision should apply throughout the United Kingdom.

112. This, finally, leaves the matter of access to a solicitor in the first 48 hours of detention, and of notification of arrest to third parties. The evidence I received in Northern Ireland was to the effect that the police carry out the latter obligation fairly and fully; but the RUC themselves told me that it is not usual practice to allow access to a solicitor for terrorist suspects before 48 hours' detention have elapsed. Clearly there are cases where access should be, and is legitimately, denied for this period. But I believe that this should be on the basis of the exercise of a genuine discretion, rather than of an unspoken but nonetheless real policy to deny access. Denial of access before 48 hours in non-terrorist cases in England and Wales will, under the Police and Criminal Evidence Bill, be proper only on one of the three grounds set out in paragraph 108. In addition the Bill will replace section 62 of the Criminal Law Act 1977 with a provision permitting notification of arrest to a third party to be denied only on one of the same three grounds. I am in favour of similar provisions applying to people held under the Prevention of Terrorism Act, but, as with the 'uniformed inspector' proviso, an additional ground for delaying access or notification should be incorporated, relating to the risk of prejudicing the gathering of intelligence. Thus I recommend that any person detained at a police station under the Prevention of Terrorism Act should be entitled a) to consult privately with a solicitor at any time during his detention, and b) to have a friend or relative or other person known to him or likely to take an interest in his welfare informed without delay of the fact and place of his detention, unless an officer of superintendent rank or above believes on reasonable grounds that such consultation or notification would have one of the four consequences set out in paragraph 111. These provisions should apply throughout the United Kingdom. In both cases, the police should lose this limited discretion on the expiry of 48 hours' detention. In England and Wales, this should be incorporated in the Police and Criminal Evidence Bill. In Scotland, it should become part of force orders, and in Northern Ireland

of the RUC Code. I should, however, refer to the comment of the Bennett Committee that the incorporation of its recommendations in the RUC Code should be pending changes in legislation or in the content or status of the Judges' Rules.(15) It is now proposed that the Judges' Rules should be replaced in England and Wales by a new statute and code. I would suggest that consideration be given to similar changes in Northern Ireland, which might include legislation on these recommendations. A decision on this, however, should await the outcome of the review of the Northern Ireland (Emergency Provisions) Act 1978.

Conclusion

113. I have considered in some detail how conditions of detention at the police station might be more closely regulated - though, as I have said, I am here in the shadow of both the Bennett Committee and the Royal Commission on Criminal Procedure. Treating with humanity and commonsense those detained under this legislation - who may, after all, turn out to be wholly innocent - seems to me of fundamental importance if the Act is not to alienate any section of the law-abiding population. I thus attach considerable weight to the recommendations in this chapter.

---

(15) op cit, paragraph 279

PART III: THE PORT POWERS

CHAPTER 6: LAW, PROCEDURE AND PRACTICE

114. In this Part I describe and discuss the system of examination set up at ports of entry under the 1974 Act and continued under the 1976 Act. The description of the law is, with minor variation, applicable throughout the United Kingdom. But as will become clear, the powers have been used considerably more in Great Britain than in Northern Ireland and, accordingly, discussion focuses primarily on their use on the mainland. Although the basis and purpose of the port controls differ from those of the 'inland' powers of arrest, as do the grounds for detention at the ports, procedures are virtually identical for extending detention in both cases and for dealing at the police station with both classes of detained person. (There is one minor exception to this rule: all applications for extension of detention at the Scottish ports are made through the National Joint Unit, while applications relating to suspected Loyalist terrorists arrested in Scotland under section 12 are made direct to the Scottish Office.) Thus the recommendations in Part II are intended, except where stated otherwise, to apply to detention at the ports in the same way as to arrest under section 12 of the Act.

115. Some of the evidence I received suggested a widespread belief among the travelling public that the system of port examination under this Act was designed to control the movement of people between the island of Ireland and Great Britain; in particular, that it had created a frontier between the two parts of the United Kingdom. This is an understandable view, but it is a mistaken one; and it may be helpful if, before describing the law and practice of the port controls, I explain the fundamental difference between these controls and those operated under the Immigration Act.

116. The prevention of terrorism legislation established a system under which everyone entering or leaving Great Britain or Northern Ireland might be examined. But whereas the Immigration Act in effect requires the Immigration Service to be satisfied that each person seeking to enter the United Kingdom from outside the Common Travel Area may properly be given leave to so do, these port controls are essentially permissive. They permit all passengers

to be examined, but their purpose is simply to enable the police to detect terrorists entering or leaving the country. They are aimed at a far narrower range of individuals than the immigration control. Although they cause some inconvenience to a wider section of the travelling public, this is akin more to the delay caused by the baggage searches undertaken by carrying companies and port authorities than to examination under the Immigration Act: both the baggage searches and port controls are primarily deterrent and protective; immigration control is far more general in its application. Again by contrast with the Immigration Act, there is no requirement under this legislation for a traveller to obtain leave to enter the country, nor does an 'examining officer' have power to refuse entry.

The law

117. Section 13 of the 1976 Act, together with Part I of Schedule 3 to the Act, empowered the Secretary of State to make provision by order for a security control over travellers entering or leaving Great Britain or Northern Ireland. The Prevention of Terrorism (Supplemental Temporary Provisions) Order 1976, which was made under this section, established the system in Great Britain; a similar order was made for Northern Ireland. Control is exercised by 'examining officers' who are police officers, immigration officers, and officers of HM Customs and Excise acting as immigration officers. In Northern Ireland, the functions of examining officers may also be performed by members of the Armed Forces on duty. In general, police officers from the Special Branches of the relevant police forces perform this function. Most of the work takes place at those ports in Great Britain which serve destinations in Northern Ireland or the Irish Republic. Immigration control is not exercised on these routes, since they involve travel within the United Kingdom or the Common Travel Area, where there is no immigration control. However, any person entering Great Britain or Northern Ireland from outside the Common Travel Area is also liable to examination under the prevention of terrorism legislation, and immigration officers at the international ports can and on occasion do examine individuals who, because they are patrial under the Immigration Act, are exempt from immigration control; of which more below.

118. The purpose of examination is to determine whether the person concerned appears to be or to have been concerned in terrorism, is subject to an exclusion order (see Part IV) or may be suspected of having committed certain of the Act's offences. Following initial examination (Article 5(1) of the Order) he may be required in writing to submit to further examination (Article 5(2)). Article 10 provides a power of detention in respect of anyone liable to be examined. Before Lord Shackleton reported, examining officers could detain people on their own authority for up to seven days, which period could be extended for as long as necessary to complete examination and consequent action. Lord Shackleton recommended that in this respect the power of detention at ports should be brought into line with that of arrest under section 12. This was accepted and Article 10 as amended provides that a person may be detained pending his examination for up to 48 hours on the authority of an examining officer and for up to a further five days if the Secretary of State so directs.

119. As with the section 12 power of arrest, there is nothing in the wording of the provisions on examination and detention to confine their use to terrorism connected with Northern Ireland. But as with section 12 (see Chapter 4, paragraph 75), they have been so confined in practice. There is, however, a notable distinction still between these port powers and the power of arrest under section 12. The latter may be exercised only on a basis of reasonable suspicion (though not necessarily of commission of a particular offence: see Chapter 3), but anyone who has arrived in or is seeking to leave Great Britain or Northern Ireland by ship or aircraft may be examined, and anyone liable to examination may be detained. Detention is lawful provided the initial examination is lawful, and there are far wider grounds for examination than for arrest under section 12. The absence of a requirement for reasonable suspicion at any stage of detention undoubtedly reduces the power of the courts in this area, but it does not remove them entirely. In re Boyle, O'Hare and McAllister(1), Lord Justice Donaldson (as he then was) described the power of examination as follows:

---

(1) Divisional Court, 30 October 1980 (unreported).

> 'It follows that under Article 5..... an officer has to satisfy himself of the only matter upon which he must be satisfied, namely, that the person whom he seeks to examine is in the category of person where he can say to himself bona fide "I wish to find out whether this person has, for example, information which he or she should have disclosed under section 11". He does not have to have any grounds for thinking that they have the information, but merely that the person concerned shall be in a category or there should be special circumstances which in his view make it reasonable that he should find out and that he should ask questions.'

He did, however, go on to say that the court would import a qualification to the unfettered exercise of the power, 'namely, that it will enquire, if it has reasonable grounds for suspicion, whether the person concerned [the examining officer] is acting bona fide and whether.....his conduct is prima facie such as no reasonable person could have taken'.

120. There is one other feature of the power of detention worth noting: that it is not, in terms, a power of arrest. (There is a specific power of arrest provided in Article 11 of the Order; but that Article is intended mainly to deal with the case where a person has already entered Great Britain or Northern Ireland, perhaps clandestinely, without going through the controls. The remainder of the Article deals with the searching of premises for the purpose of exercising this power of arrest.) However, a person detained under Article 10 is in practice, and would probably in law, be treated in all respects as a person arrested. There is no fixed point at which formal detention necessarily begins. If a passenger refuses to co-operate in his initial examination, it may be necessary to detain him at that stage. In practice, most examining officers consider that they have detained an individual when they serve him with notice of further examination. But since there is no prescribed duration for initial examination, even this provides no very clear rule. A consequence of the uncertainty of definition is that the statistics of detention do not reflect with accuracy the number of passengers examined for more than any particular length of time. I return briefly to this matter in the next chapter.

121. Powers ancillary to those of examination and detention are provided in Articles 6, 7 and 8 of the Order. Article 6 obliges travellers to provide examining officers with any information and documents required for the examination. They must in particular (if required) produce a passport or other document establishing their identity and nationality. It is noteworthy, however, that the requirement is simply to produce any documents which they may be carrying: there is no duty on a passenger to carry any such document if he does not wish to. Under Article 7, examining officers may search any person being examined, along with his baggage. They may also search any ship or aircraft. Article 8 empowers the Secretary of State to prescribe standard forms for landing and embarkation cards which examining officers may require passengers to complete. The requirement to complete a card arises only if the Secretary of State makes a direction. This was done for the first time in 1977, and thus the landing and embarkation cards which were used before then by several police forces were issued on a non-statutory basis (though the information they requested was of the type which passengers were in any case required to provide under Article 6). Cards in use since then have been issued under the authority of the Order. However, this provision, as most in the Order, is permissive: it is for each chief officer of police to decide whether and to what extent landing and embarkation cards will be used within his force area, and there is a striking lack of uniformity in this regard in Great Britain.

122. Police manpower to carry out checks under this legislation is of course limited. The Supplemental Temporary Provisions Order provides a system of designation of ports to limit the number of ports where a police presence is necessary. In brief, 'designated ports' in Great Britain are the main air and sea ports used for commercial passenger traffic with the Irish Republic and Northern Ireland. There is generally a permanent Special Branch presence at these ports to carry out checks under the legislation, and no special permission is required for a boat or aircraft to land there from elsewhere in the Common Travel Area. Ships carrying fare-paying passengers, and aircraft whether or not carrying such passengers, need the approval of an examining officer to call at a non-designated port for the purpose of allowing passengers or crew to embark or to disembark (though in any case, transit passengers and members of ships' crew are

liable to be examined under Article 5). The inclusion within these provisions of controls on private flights was an innovation in the 1976 Order and represented a considerable extension of examining officers' powers. It had been considered that this extension would close a potential loophole by giving the police greater control over the movement of light aircraft. The circular providing guidance to the police on the use of these powers emphasised that they should be used only to detect terrorists and not to apprehend other criminals.

123. Finally, the Secretary of State is empowered to specify the areas at ports to be used, and the facilities to be provided, for the examination of passengers. In addition a duty is placed on the captains of ships and aircraft to ensure that passengers embarking and disembarking (and, if it is thought desirable, crew members) do so in accordance with arrangements approved by an examining officer. As I have said, Article 5 of the Order enables examination to be carried out on anyone who has arrived in or is seeking to leave Great Britian, wherever he has come from or intends to go. But the main purpose of the control is to examine passengers travelling within the Common Travel Area. Thus designation, the provision of landing and embarkation cards and other ancillary matters - including the provision of facilities for examination by carrying companies and port authorities - are linked specifically to the passage of ships and aircraft between Great Britain, Northern Ireland, the Islands and the Republic of Ireland.

Use of the powers: inferences from the statistics

124. In Part II, I set out total figures on detention, charge and exclusion under the prevention of terrorism legislation in Great Britain. I now examine more closely the figures relating specifically to detention at the ports.

125. Detention, charge and exclusion. The fall in the average annual total of detentions under the legislation in Great Britain (from 900 in the period from 1975 to 1979 to around 500 in 1980 and 250 in 1981 and 1982) was due largely to a fall in the use of detention at ports. Between 1975 and 1979, 650 people a year, on average, were detained under Article 10 or its predecessor; in 1980 this figure fell to 440, and in 1981 and 1982 to about 160.

126. Comparisons based on length of detention are difficult, since it was only in April 1979, following publication of Lord Shackleton's report, that the period for which examining officers could detain travellers on their own authority was reduced from seven days to 48 hours. I concentrate, therefore, on the period from April 1979 to the end of 1982. Of the 1,198 people detained at the ports during this period,, extensions of detention were granted against 225, an 'extension rate' of about one fifth (one tenth in 1981 and 1982). This is considerably less than half the extension rate for 'inland' arrests over the same period. Given the different basis and purposes of detention at the ports and arrest under section 12, this is unsurprising. These differences are reflected in the figures on charge and exclusion. Section 12 is a power of arrest based on reasonable suspicion. When an examining officer decides to question a passenger, it is only in rare cases that he will at this stage have formed more than faint doubts as to the passenger's bona fides. In practice, formal detention is likely to take place at the point of further examination under Article 5(2). But even here the examining officer will not have had the time or opportunity to develop a high degree of suspicion. In any case, most of those examined will have only just entered Great Britain, so the prospect of a criminal charge is fairly remote. Thus the rate of charge following detention at the ports is very much lower than that following arrest inland. Between the beginning of 1979 and the end of 1982 only 51 people were charged with criminal offences following detention at the ports, which represents a charge rate of 4 per cent. Interestingly, only four of these were charged after an extension of detention had been granted; the remainder were charged within the first 48 hours. In addition, the charges laid were on the whole not very serious. Most, when they came to trial, resulted in a fine and only five in a custodial sentence.

127. Exclusion, however, is more common following a port detention than following an inland arrest. Between April 1979 and the end of 1982, 95 people were excluded following detention at a port or airport, compared with thirteen excluded following arrest under section 12. This represents an exclusion rate at the ports of 7 per cent. All these 'port exclusions' followed the granting of an extension of detention, which means that exclusion was the result in over 40 per cent of port detentions lasting longer than 48 hours. This proportion is almost the same as that of extended section 12 arrests on the mainland which resulted in a criminal charge; which illustrates the differing purpose and nature of the two powers.

128. The use of these powers by individual police forces. Dumfries and Galloway Constabulary (457), Merseyside Police (337) and the Metropolitan Police (207) together accounted for three-quarters of port detentions in the years 1979 to 1982, and also for three-quarters of all exclusions in this period. Surprisingly, the fourth highest user of the port detention powers since 1979 has been Kent Constabulary, with 67 detentions, rather than a force with direct sea or air links with Northern Ireland or the Republic of Ireland. This is partly explained by the fact that the port of Dover deals with more passengers than any United Kingdom port except Heathrow airport.

129. To put these figures in context, it is perhaps worth recording that in 1981 there were almost 90 million passengers through the ports in the United Kingdom and the Islands, and only 181 port detentions under this legislation. Even at Stranraer, Cairnryan and Liverpool Docks, where the detention rate was highest, on average in 1981 only one passenger in 25,000 was detained under the legislation. In fact at these ports as at all others more passengers were arrested under general powers, for other purposes, than were detained under the prevention of terrorism legislation.

The controls in practice

130. In my trips around the country I visited ports of widely varying size, and where very different degrees of use had been made of the powers of examination and detention in the Supplemental Temporary Provisions Order. These included sea ports serving destinations in Northern Ireland and the Republic of Ireland (Liverpool, Stranraer and Cairnryan); 'international' sea ports (such as Dover and Southampton); major international airports (Heathrow and Gatwick); and airports used primarily for domestic or short-haul flights (such as Liverpool, Speke and Belfast, Aldergrove). It is difficult to generalise about the nature of the control exercised and it is simplest to discuss the subject in two parts: first, in relation to those ports serving destinations in Northern Ireland and the Republic of Ireland, which, for brevity, I call the 'Irish' ports (this includes, for instance, police controls at the Belfast Shuttle at Heathrow airport); and second, Special Branch controls at international ports and the relevance there of the Prevention of Terrorism Act. I am concerned here with the process leading up to formal detention, since after this point there is no real distinction between procedures in port cases and those in cases of arrest under section 12; I dealt with these in Part II.

131. The 'Irish' ports. The most notable feature of the Prevention of Terrorism Act controls at sea ports and airports serving destinations in Northern Ireland and the Republic of Ireland is their lack of uniformity. One can draw a broad distinction between the nature of the controls at sea ports on the one hand and airports on the other. However, even within these classes there is a wide variation in facilities, staffing levels, equipment, allocation of resources and method of control. One feature common to the police controls at almost all the 'Irish' sea ports and most of the airports is the standard of accommodation for both police and passengers, which is in general substantially inferior to that enjoyed by the Immigration Service at ports serving foreign destinations. The Order enables responsibilities to be placed on carrying companies and port authorities similar to those which may be imposed on them under the Immigration Act. There seem to be two main reasons why this similar statutory responsibility has not had a similar effect. (In fact, I understand that there has been no formal designation of control areas under either the Immigration Act or the prevention of terrorism legislation; however, similar powers to do so exist in both cases.) First, the prevention of terrorism legislation is temporary only, with a requirement for annual renewal and with repeated government statements that it should remain in force no longer than is required by the terrorist threat. Carriers and port authorities argue that they should not be expected to provide extensive facilities for a control whose continued existence cannot be foreseen more than twelve months ahead. The police have on the whole been sympathetic to this view, and have refrained from pressing for substantial improvements. Second, the Immigration Service and HM Customs and Excise are national services, forming part of central government, which can, accordingly, require facilities of a relatively uniform and high standard through the country. Facilities at the 'Irish' ports, on the other hand, are negotiated locally by the relevant police force. Uniform national standards are unlikely to be achieved by this means. The result is that accommodation at these ports at best tends to have a temporary and makeshift air, and at worst - at some of the sea ports - is quite simply unacceptable. In some cases, embarking or disembarking passengers are obliged to wait crowded on a ship's gangway, or even in the open, exposed to the elements, for a substantial period while checks are carried out. I found the good humour and patience with which passengers subjected themselves to this

inconvenience both admirable and extraordinary. The great majority clearly accept the need for such checks, and this leads them to tolerate apparently without complaint conditions which are in some cases primitive and depressing. I return to this subject in the next chapter.

132. One of the more striking manifestations of lack of uniformity is in the use made of landing and embarkation cards. On the majority of air routes between Great Britain and the island of Ireland, passengers are required to complete them. Heathrow airport is an exception in this regard, while on a few routes the completion of cards is in effect requested by the airline concerned rather than by the police. On the sea routes, by contrast, landing and embarkation cards are little used. At Stranraer and Cairnryan, for instance, they are filled in only by those passengers whom the port officers wish to examine; at other ports, they are completed by the examining officer himself as a means of starting the interview. Bemusement at the lack of uniformity in 'carding' practice is not confined to the general public: one very senior officer of the RUC mentioned to me his surprise at being required to fill out a card at Gatwick airport when there was no such provision at Heathrow.

133. Questioning of passengers is more common at airports than at sea ports, partly because numbers are more manageable. At some airports, all passengers are spoken to, however briefly; at others the check is more selective. Delays at the airports are slight (except for those passengers actually detained for further examination). Landing cards are distributed on the aircraft for arriving passengers, and are thus filled in by the time the passenger reaches the control. My own observation suggests that with three or four officers on the control a plane-load of seventy passengers, with all spoken to briefly, would pass through in about five minutes. Departing passengers, of course, present themselves for examination over a longer period, which prevents substantial delay. The situation is different at the sea ports where a single boat may be carrying more than a thousand foot passengers and several hundred more in vehicles. Staffing at sea ports (and the size of the examination area itself) would have to be substantially increased to enable arriving passengers, in particular, to pass through the controls with similar speed. At one port, where the policy is to question all passengers, it took almost an hour for the 970 passengers on board (of whom up to half were travelling in private cars or other vehicles) to clear the control.

134. Among the major criticisms of the port controls in the evidence I received was that examining officers stop for examination only those with what might be popularly supposed to be a 'terrorist appearance': people looking unkempt, casually dressed, long haired and so on. This complaint, that the police tend to act on the basis of somewhat naive stereotypes, was particularly strong in Northern Ireland, and was made as forcefully by those in favour of the controls as by those opposed to them. From my own observation I believe that there is some truth in this view. I would agree to a large extent with those examining officers who told me that with experience and practice they develop a 'nose' for passengers with terrorist links. But few of those whom I saw examined at the ports had other than this stereotypical 'terrorist appearance'. I would not wish to make too much of this from the point of view of inconvenience to the travelling public. After all, as I have noted, only one of every 25,000 passengers using the major 'Irish' ports in 1981 was formally detained under this legislation, while of all the thousands of passengers whom I saw embarking and disembarking none was delayed for more than an hour. In addition - and this tribute is overdue - all examinations which I witnessed were carried out by the officers concerned with exemplary politeness and good humour. But it is as important for the maintenance of public confidence as for operational reasons that examining officers do not cast their net too narrowly and do not ignore the possibility that a terrorist suspect may have an appearance of the utmost respectability.

135. Although I am here concerned primarily with procedures leading up to formal detention, there is one matter relating to prolonged detention itself which I should mention. I received a significant body of evidence that examining officers on occasion fail to fulfil their obligation under section 62 of the Criminal Law Act 1977 to permit a detained person to notify a third party of his detention. (Neither section 62 nor the Judges' Rules apply in Scotland. But as I noted in Part II, the practices of the Scottish police in dealing with suspected terrorists are similar to those of their colleagues in England and Wales. In any event, evidence on this issue related to Scottish ports also.) Section 62 gives the police a qualified discretion to refuse notification, but I received little evidence of this problem arising following an 'inland' arrest. In my view it should be only in the rarest of cases that the discretion to refuse notification should be exercised at the ports: the worry to relatives and friends when, for instance, a person fails to return to his home in Northern Ireland from a trip to Great Britain, or fails to arrive at his destination in Great Britain, can be very considerable.

136. The international ports. The role of Special Branch officers at the international ports is substantially different from that at the Common Travel Area ports. At the latter, much of their time is given over to the examination of passengers under the prevention of terrorism legislation; at the former, examination - albeit for different and rather more general purposes - is mainly the task of the Immigration Service. At these ports, Special Branch officers are very much in the minority: at Heathrow airport, for instance, there are nearly ten times as many immigration officers as Special Branch officers. Much of the work of Special Branch at these ports is concerned with 'normal' crime. This is the case also at the Common Travel Area ports, but the absence of primary responsibility for examination throws it into sharper relief.

137. Special Branch officers to whom I spoke at the international ports were on the whole conscious that they, as well as their colleagues at the 'Irish' ports, possessed powers of examination under the Prevention of Terrorism Act. Officers at one large airport, however, were under the impression that Home Office guidance had been issued to the effect that the powers should not be used in respect of travellers between Great Britain and foreign destinations. This is not so; but as I have noted, the powers ancillary to those of examination and detention do not apply in this situation. In any case, however, due to the numbers involved and the nature of the control it is in practice immigration officers who identify those travellers in whom the police might be interested, and to notify the police of this. Thus the effectiveness of these controls at the international ports is likely to depend on the quality of liaison between the Immigration Service and Special Branch, the training which the former receive on terrorism related to Northern Ireland, the willingness of individual immigration officers to involve themselves in these matters and instructions from headquarters about the proper role of the service in this area.

138. Liaison seemed satisfactory. To a large extent its quality is bound to depend on the personalities involved, particularly at a small port, but failings were on the whole institutional rather than personal: the Special Branch tended to feel that the Immigration Service was prevented by its basic statutory functions from being as helpful as it might be. There were, however, clear gaps in the training and knowledge of immigration officers in

matters connected with Northern Irish terrorism. A circular was issued to all immigration officers when the 1974 Act came into force, which has since been renewed. But some immigration officers to whom I spoke were not aware of the existence of this circular, and certainly did not keep in mind the provisions of the prevention of terrorism legislation when dealing with people not subject to immigration control. It is not surprising that the Immigration Service is more aware of the problems posed by suspected foreign terrorists, since they will invariably be subject to immigration control. I am criticising neither individual officers, nor the Immigration Service as a whole: their job was never intended to include examination under the prevention of terrorism legislation. But since immigration officers are examining officers under the Order, and since the effectiveness of the control at the international ports will depend to a great extent on their ability to identify people who may be connected with Northern Irish terrorism, there is here a major potential source of assistance which is not being fully used. The main current value in the designation of immigration officers as examining officers seems to be twofold. First, immigration officers have no powers other than those in the prevention of terrorism legislation to examine people once they have satisfied themselves (by checking passports or other travel documents) that they are exempt from immigration control. Nonetheless, initial examination may create a suspicion in the mind of an officer that such a person should be examined further in connection with possible terrorist involvement, and if he lacked the powers of an examining officer, he would be either discouraged from carrying out such checks or open to challenge if he did so. Second, the police may on occasion - for instance, after a particular terrorist outrage - wish all persons leaving the country to be examined. This would be impossible at the international ports without the assistance of the Immigration Service; and without their designation as examining officers, immigration officers would lack powers to question those exempt from immigration control. This is not to say, however, that the Immigration Service could not play a larger role, and I return to this subject in the next chapter.

CHAPTER 7: DISCUSSION AND RECOMMENDATIONS

The basis of the powers

139. I began the last chapter by emphasising the distinction to be drawn between the port powers in the prevention of terrorism legislation and powers of examination under the Immigration Act. There is as real a distinction between the port powers and the power of arrest in section 12 of the Act. It is reasonable to use the rate of 'action' following arrest - charge, conviction, exclusion and so on - in order to gauge the need for and success of the section 12 arrest power. It is not valid to do so in the case of the port powers. Their primary purpose is to deter those involved in terrorism from attempting to enter a particular territory, by demonstrating that they are likely to be caught. The value of a deterrent power is not demonstrated by the numbers apprehended. I was therefore at pains to distinguish the charge and exclusion rate following arrest 'inland' from that following detention at the ports. The first questions to be answered in relation to the port powers are, rather, whether such controls are necessary and whether they can be effective in their deterrent aim without causing unacceptable inconvenience to the travelling public.

140. My answer to both questions is 'Yes'. I believe that while there remains a significant threat from terrorism related to Northern Ireland, it will be necessary to retain port controls in something like their present form; and that if they are operated with the discretion and sensitivity which the public has a right to expect, the inconvenience they cause can be kept at a minor level. Given the nature of the problem, the main weight of the control inevitably falls at the 'Irish' ports in Great Britain. I have considerable sympathy with those representatives of the Northern Ireland community who expressed to me the view that this created a frontier between Northern Ireland and the rest of the United Kingdom. In practice the port controls can seem very like this. But as I explained in the last chapter, in their principles and purpose they are very different: they operate on the basis that minor inconvenience to innocent people is an acceptable price to pay for an increase in the safety of all. For this view to be valid, it is necessary, of course, that inconvenience is kept to a minimum. One aspect of this is that people should not be detained without good reason, and it is in considering the exercise of the power of formal detention that comparison with the section 12 power of arrest becomes relevant.

141. The figures quoted in the previous chapter relating to the exclusion rate of persons held for more than 48 hours at the ports suggest that the power of detention is operated on the whole with care and discretion. But I am concerned here primarily with the legal basis of the power. Initial examination at the ports might pass a test of reasonable suspicion in those cases in which it is based on intelligence received concerning the movements of a particular terrorist suspect. Most of the time, however, the decision to examine a passenger is based more on an examining officer's instinct and experience than on specific intelligence. It would be wholly unrealistic to impose at this stage a requirement of reasonable suspicion, and the power to examine is couched in the widest terms (see Chapter 6, paragraphs 118 and 119). I would not wish to narrow the grounds on which initial examination may be carried out; but I see no reason why, as at present, these grounds should be adequate to justify examination and detention for up to 48 hours and, if the Secretary of State so directs, for up to a full seven days. At some point, I believe, a requirement for reasonable suspicion should be imposed on the lines of that in section 12. Serving police officers throughout the country have told me that in practice such a requirement applies at present: they would not seek to examine and detain a passenger for a prolonged period in the absence of reasonable suspicion. To enshrine this test in the legislation should therefore cause no significant problems, but it is not easy to define the point at which reasonable suspicion should be required. If the requirement is to have real meaning, then the examining officer should be granted sufficient time to form the suspicion, or to remove his initial doubts. The imposition of a time limit seems to be the surest way of achieving this, and I believe that this should be linked to a clarification of the concept of further examination and of the rights of a person examined.

142. I would envisage a two stage procedure: any person examined at a port for more than one hour - whether or not it has been necessary formally to detain him - should be handed a notice of rights, and should be invited to sign to acknowledge receipt. The examining officer should lose the right to examine (and detain) a passenger after twelve hours unless he has by that time formed reasonable suspicion of one of the matters in section 12(1) of the parent Act (rather than Article 5(1) of the present Order). If he has

formed such a suspicion and wishes to examine and detain the passenger further, he should be obliged to serve a further notice to this effect and to invite the passenger to sign for this. All time limits - the one hour before service of the first notice, twelve hours before service of the second and 48 hours before an extension of detention is required from the Secretary of State - should run from the point of initial examination, and not from that of formal detention. The requirement for reasonable suspicion for examination beyond twelve hours should be made part of the Supplemental Temporary Provisions Order, and the requirement to serve the notices should be included in force orders. The content of the rights - of access to a lawyer, notification of detention to third parties and so on - would be identical to those to be accorded to someone arrested under section 12 (see Chapter 5), and the grounds for withholding them (where applicable) and sanctions for breach of the rules should be the same in both cases. I so recommend.

143. This appears to be a somewhat complex scheme, but this is because it is designed to achieve several ends: first, to impose a requirement for reasonable suspicion at an appropriate point during examination; second, to ensure that the passenger is fully aware of his rights and is able to exercise them at an early stage of examination, whether or not he has been formally detained; and third, to bring the practice of prolonged examination at the ports closer to that of arrest under section 12 of the Act. I believe that it is better based on length of examination than on formal detention, since the latter may occur after five minutes' questioning (if the passenger is unco-operative) or several hours, or not at all. In any case, while a passenger undergoing examination who has not been formally detained is of course free simply to walk away, in most cases he would be so detained if he chose to do so; lack of formal detention does not necessarily imply freedom.

144. In Chapter 4, I recommended that section 12 should be available for use against suspected international terrorists of any group, cause or nationality. It is clearly appropriate to consider whether the application of the port powers should be extended in the same way. One is here dealing, in effect, with suspected terrorists who are foreign nationals, and who will in most cases be subject to immigration control on their arrival in the

United Kingdom. In practice, therefore, the task of initial examination generally falls on the Immigration Service. If during his examination an immigration officer was given reason to believe that an individual was involved in international terrorism, he would be able to notify a police officer, who, if the grounds in section 12(1) were satisfied, could arrest the individual under that section. On the other hand, foreign nationals entering the United Kingdom from the Republic of Ireland are not in practice subject to immigration control, since they have come from within the Common Travel Area. In order that suspected foreign terrorists might be examined in these circumstances, I recommend that the application of Article 10 of the Order should be extended to cover suspected international terrorists of any group, cause or nationality.

145. Finally, I should mention the desirability of ensuring that accurate statistics are provided on this particularly important part of the law. At present, published statistics on the use of those powers are based on the number of detentions. As I explained in Chapter 6, 'detention' is considered by most forces to begin at the point of further examination. But since this view is not universal and since the period of initial examination is not prescribed this does not necessarily give an accurate picture of the numbers of people 'held for examination' at the ports. I recommend that the published statistics should include figures on the number of people examined at the ports for more than one hour - that is, the number served with the first of the notices I recommend above.

The powers in practice: the 'Irish' ports

146. Uniformity and carding. I commented in Chapter 6 on the lack of uniformity in the operation of the controls at the 'Irish' ports. Up to a point this is inevitable, and is indeed desirable if it means that the intensity of the checks at a particular port on a given day cannot be predicted by passengers. Unless Great Britain is to be turned into a fortress the control has to be selective, and variety of this type can prove very helpful. It has, for instance, been the policy of some police forces to mount an occasional 24 hour intensive exercise where all passengers, and sometimes all crew members of private boats seeking to enter the force

area concerned, are examined individually. This is a sensible practice, though it is of course important that for such operations normal port manpower is augmented so as to minimise any additional delay to the travelling public.

147. Other aspects of this variety are, however, far less positive. The efficiency of the control at any port will depend on a number of factors - the number, quality and level of training of examining officers, the standard of communications and other equipment, force policies and so on. All these factors are likely to remain fairly stable over time at a particular port, but if there is too high a degree of variation in their mix between different ports, the result will be a predictable lack of uniformity whose major consequence will be a reduction in the deterrent effect of the whole system. It is reasonable to believe that major weaknesses in the controls will be known to those whose entry they are designed to deter. There is little to be gained by providing a superbly effective standard of control at one port if at another the standards are known to be substantially lower. I recognise that the principles of local policing and the operational independence of the chief officer of police are basic to the British system of law enforcement. But we are here dealing with an essentially national function: the primary purpose of these controls is to prevent the entry of terrorist suspects to Great Britain as a whole, rather than to an individual police force area. I conclude that lack of uniformity between different ports is a real weakness of the current control. As a layman, I am able to do little more than assert the principle that greater uniformity in the allocation of resources - human and material - would be desirable in this area. I recommend, therefore, that HM Inspectors of Constabulary for England and Wales and for Scotland should mount an early study of the number of police personnel and standard and amount of equipment - particularly communications equipment - at airports and sea ports serving destinations within the Common Travel Area, and recommend minimum levels of staff and equipment which should be available. I trust that the government and the police authorities involved would pay the closest attention to these recommendations.

148. There is one area where I feel that a specific move towards greater uniformity would be beneficial to the control as a whole. As I mentioned in the last chapter, policy on the provision of landing and embarkation cards varies from port to port: on the whole there is no requirement to complete them at sea ports, by contrast with most airports. It was the unanimous view of the police officers, from detective constable through to Chief Constable, of the forces where 'carding' is used, that it performs a very useful function. The requirement to complete a card need in no way affect the selectivity of the control, but in those cases where an officer wishes to examine a passenger, the card can provide a helpful starting point for the conversation. It is of course quite possible for false details to be entered on a landing or embarkation card. However a person who has done so is likely to feel at a real psychological disadvantage when being questioned; and it is a criminal offence knowingly to supply false details. From the point of view of the travelling public, carding poses few problems. Arriving passengers can fill them in on board their ship or aircraft (as happens at present where carding is used), and departing passengers invariably have plenty of waiting time in which to complete cards. I recommend, therefore, that landing and embarkation cards should be completed by all passengers on commercial flights and sailings between Great Britain and the island of Ireland.

149. I should emphasise again that this recommendation, if accepted, would merely extend to all the ports involved a requirement which already exists at some, at the discretion of the chief officer of police. I certainly do not intend an increase in the number of passengers examined. The result of wider use of carding might in practice be a reduction in delay, since at present those passengers selected for examination are often required to fill in a card as a preliminary to this, with consequent delay both to themselves and to other travellers.

150. Examination and the treatment of passengers. The work of examining officers at the 'Irish' ports, though vital, is for much of the time not particularly interesting. Various means have been tried for improving job satisfaction and hence morale. At some ports it has been the policy for examining officers to take Prevention of Terrorism Act cases through from initial examination to the final outcome, whether charge, exclusion or

release. This is a perfectly reasonable practice, but if it is to bring genuine benefit both to the officer and to the general public, it is important that adequate training be provided in the techniques of questioning. The majority of examining officers attend courses organised by the National Ports Office at New Scotland Yard, which provide the factual and intelligence background to their work. However, training in interrogation is not included. I recommend, therefore, that all examining officers - and all other officers who may be called upon to carry out such functions - should receive training in the techniques of questioning suspected terrorists.

151. There is an understandable temptation for examining officers to purport to use their powers of examination under this legislation for purposes for which they were not designed, such as questioning in connection with non-terrorist crime. Clearly, legitimate examination can give rise to 'windfall' information unrelated to terrorism, but the powers should not be exercised with this in mind. It is not for me to say whether police officers at ports should be given additional powers of examination related specifically to non-terrorist crime, but if the existing powers are used in this way, examining officers are liable to forfeit public confidence and thus put at risk the continuance of this vital legislation. I recommend, therefore, that examining officers be reminded by government circular that their powers under this legislation should be used solely for the purpose of apprehending those who may be suspected of involvement in terrorism. I received some evidence that examining officers on occasion fail to identify themselves as such or to mention the purpose of the examination. I recommend that examining officers should be required to do so, either orally or by means of a notice clearly visible to passengers.

152. Accommodation. One factor which has a major effect upon public percep tion of the port controls, and probably upon their efficiency also, is the quality of accommodation provided for passengers and examining officers. As I indicated in the previous chapter, this in some instances is grossly inadequate, though it is a problem which affects sea ports more than airports. It is quite understandable that carrying companies should not wish to provide better facilities than are strictly necessary, particularly since the legislation is temporary only. But against this there are several

points to be made. First, the legislation enables a duty to be placed on port authorities and carrying companies to provide adequate facilities, similar to that which may be imposed on them under the Immigration Act. Second, I believe that it should be publicly and widely recognised that controls of this type are likely to be necessary for as long as a significant threat remains from terrorism connected with Northern Ireland, whatever might happen to the other powers in the legislation. Third, even when these controls can safely be dispensed with, I suspect that the police will wish to retain a presence at the 'Irish' ports, as at most other ports, for the purposes of crime detection (whether they will need specific statutory powers in this situation is not something which I am required to consider). Fourth, I am not suggesting that lavish or expensive accommodation need be provided. It would constitute a substantial step forward if all passengers waiting to pass the controls were protected from the elements, and if the police had separate rooms provided for examination and for the necessary telephone checks. Finally, while I believe that the requirement for examination is right, it becomes wholly unreasonable if it involves passengers in waiting for considerable periods in uncomfortable, cold or wet conditions. I recommend, therefore, that HM Inspectors of Constabulary for England and Wales and for Scotland should include in their study of resources an examination of the physical accommodation provided at the designated ports, and recommend minimum standards to be observed by those responsible. The carrying companies, port authorities and Department of Trade should be involved in this study.

153. Private boats and aircraft. I make no recommendation in relation to the control exercised over private boats and aircraft. I believe the balance is struck correctly at present. It would be impossibly restrictive on sea-going traffic if specific permission were required for any boat from elsewhere in the Common Travel Area to land at a non-designated port. This requirement lies only in respect of boats carrying passengers for reward, and I believe that this is right. The police forces concerned have good liaison with those, such as HM Coastguard Service, whose business it is to keep note of the comings and goings of private craft at the smaller harbours, and if these links remain strong I see no need for change in this area. The regulation of private air travel is stricter, but stricter control is more practicable. The police have discretion to refuse private fliers permission

to land at an undesignated airfield from elsewhere in the Common Travel Area, or vice versa. Given the risk of terrorists seeking to enter or leave by this means, I believe that it is important for the police to retain this discretion. I am satisfied that applications are treated sympathetically, and although the requirement to obtain permission is undoubtedly a nuisance for legitimate private fliers, I received no evidence of real hardship, commercial or otherwise, resulting from the operation of the scheme.

The controls in practice: the international ports

154. There is of course no reason to suppose that a terrorist, even if resident in Northern Ireland, will necessarily seek to enter Great Britain directly. Indeed, the more effective are the controls at the 'Irish' ports, the greater is the possibility that he will make his way to the Continent and then try to enter Great Britain through one of the international ports. In this case, he would most probably be examined by an immigration officer in the first instance. Unless there were to be a vast and, in my view, unjustifiable increase in the number of Special Branch officers based at the international ports, the Immigration Service must in practice continue to perform this function. As I have pointed out, immigration officers are at present examining officers under the prevention of terrorism legislation, but they exercise their powers only in the rarest of instances. At most ports, liaison between Special Branch and the Immigration Service is good, and arrangements in relation to suspected international terrorists appear to be satisfactory - but mainly because such people are subject to immigration control, and thus the object of examination under the Immigration Act. This is not the case with suspected terrorists connected with Northern Ireland, the majority of whom will not be subject to immigration control. I appreciate that the Immigration Service is hard-pressed, but believe that there is potential for it to play an enhanced role in relation to the apprehension of such suspects. I would not envisage that this would create a substantial increase in its workload since the role of immigration officers would not in practice extend beyond the very early stages of examination. It is more a matter of training and information, and accordingly I recommend that immigration officers should receive training similar to that of Special Branch port officers on the powers contained in the Prevention of Terrorism Act and on terrorism connected with Northern Ireland; and that they should be instructed to exercise their powers of initial examination under this legislation whenever they believe this to be necessary.

PART IV: EXCLUSION

CHAPTER 8: LAW, PROCEDURE AND PRACTICE

155. In this chapter I describe the system of exclusion. Discussion of it and assessment of the fullness and fairness of the procedures followed are left for the following chapter.

The law

156. In practice, exclusion orders made against people in Great Britain (whether excluding them from Great Britain or from the United Kingdom as a whole) are the responsibility of the Home Secretary, and orders against people in Northern Ireland are made by the Secretary of State for Northern Ireland. By contrast with extensions of detention (see Chapter 3) the Secretary of State for Scotland is not involved in these cases (though he may be applied to if the Home Secretary is not available).

157. Under Part II of the Act, the Secretary of State may make an order against a person forbidding that person from being in or entering Great Britain or Northern Ireland or the United Kingdom as a whole. He may exercise these powers if:-

i) it 'appears to him expedient to prevent acts of terrorism (whether in the United Kingdom or elsewhere) designed to influence public opinion or Government policy with respect to affairs in Northern Ireland' (section 3(1)); and

ii) he is satisfied that any person either -
a) 'is or has been concerned in the commission, preparation or instigation of acts of terrorism', or
b) 'is attempting or may attempt to enter' Great Britain, Northern Ireland or the United Kingdom 'with a view to being concerned in the commission, preparation or instigation of acts of terrorism' (sections 4(1), 5(1) and 6(1)).

These are the operational limits within which the power to exclude may be invoked. The other restrictions on its exercise relate to the citizenship and place and period of residence of its potential subject.

158. A citizen of the United Kingdom and Colonies may not be excluded from the United Kingdom as a whole (section 6(3)). He may, however, be excluded from Great Britain unless he has lived there throughout his life or for the twenty years prior to the consideration of his exclusion (section 4(3)). Section 5(3) of the Act provides equivalent restrictions on the power to exclude United Kingdom citizens from Northern Ireland. Schedule 2 to the Act prescribes how the period of ordinary residence is to be computed. There is no further restriction on the power to exclude a United Kingdom citizen, although before such an order may be made against a person who is ordinarily resident in the region from which he is to be excluded, the Secretary of State is obliged to consider 'whether that person's connection with any territory outside [Great Britain or Northern Ireland] is such as to make it appropriate that such an order should be made' (sections 4(2) and 5(2)).

159. Section 6 of the Act allows the Secretary of State to make an order excluding a person from the United Kingdom as a whole, and it is under this section that non-United Kingdom citizens are dealt with. There is no residence bar on exclusion under this section, although 'in deciding whether to make an order under this section against a person who is ordinarily resident in the United Kingdom, the Secretary of State shall have regard to the question whether that person's connection with any territory outside the United Kingdom is such as to make it appropriate that such an order should be made' (section 6(2)).

160. Exclusion orders remain in force until revoked, and any person who is subject to an order and 'fails to comply' with it commits an offence (section 9(1)). Section 9 also makes it an offence to be 'knowingly concerned in arrangements for securing or facilitating the entry' of an excluded person to the area from which he has been excluded, or to harbour him once he has arrived. Someone convicted of any of these offences is liable, on conviction on indictment, to up to five years' imprisonment.

161. Section 7 of the Act permits an excluded person to make representations against the order within 96 hours of its being served on him. He may not be removed before this time has elapsed unless he consents to removal. Representations are considered by Advisers appointed by the Secretary of State. The excluded person, provided that he has not been removed, has a right to an interview with the Adviser. The Secretary of State may refuse to refer the matter to his Adviser if he considers the grounds for representation to be 'frivolous'. Having received the Adviser's report and the excluded person's representations, the Secretary of State is required to reconsider the case 'as soon as may be' (section 7(6)). The final decision rests with him: the Adviser's function is simply to advise.

Applications and consideration

162. The procedure by which exclusion orders are applied for, considered and made is basically similar to that for granting extensions of detention, described at paragraphs 40 to 44 above. Cases to be considered by the Home Secretary are filtered through the National Joint Unit at New Scotland Yard by the mainland police force in whose area their subject is to be found. Applications are rather fuller than those for extension of detention. If the application follows detention, the police will be able to incorporate the results of several days of questioning, and they will at least have had more time to prepare the case. The submission produced by Home Office officials is also generally more substantial than that for an extension of detention, because it is recognised that an exclusion order has a more fundamental, and usually a harsher, effect on its subject than the extension by five days of his period in police custody. This submission, coupled with the police application, is considered by senior officials and presented, through a junior minister, to the Home Secretary for decision. On rare occasions where he has been unavailable, another Secretary of State has been asked to consider the application in addition to a junior minister in the Home Office. Thus all exclusion applications are considered and all orders signed by a Secretary of State. A similar procedure is followed in Northern Ireland cases, except that there is no equivalent there of the National Joint Unit.

Extent of use of the power a) Great Britain

163. Table in Annex D provides figures on use of the exclusion power, but it is worth recording here the number of applications and orders made for each year since the 1974 Act came into force.

TABLE 1

	Applications	Orders made	Applications refused
1974 (from 29 November)	22	19	3
1975	61	50	11
1976	28	24	4
1977	18	18	-
1978	57	53	4
1979	58	53	5
1980	59	49	10
1981	17	11	6
1982	16	15	1
	336	292	44

164. This table does not show a consistent decline in the use of exclusion in Great Britain: the substantial reduction in numbers in 1976 and 1977 was followed by an increase in the two following years. However, the decline in 1981 and 1982 compared with the immediately preceding years seems to be of genuine significance. Equally important, I believe, is the fact that very few exclusion orders have been made in recent years against people not detained at a port. This is an approximate measure of the extent to which the power has been used against people ordinarily resident in Great Britain (approximate, since someone resident in Great Britain may be detained at a port, while a non-resident may be arrested inland). Up to the end of 1982, there were 85 'non-port' exclusion orders made by the Home Secretary. In the early years of the Act's operation, the majority of exclusions were of this type: 52 'non-port' exclusions, out of a total of 93 orders made up to the end of 1976. Since then the proportion has dropped considerably, with (to the end of 1982) 33 such exclusions out of a total of 199 since that date. The statistics suggest therefore that exclusion is used increasingly rarely in Great Britain, and, within this diminishing use, more rarely still against people who are settled in Great Britain. I shall discuss the significance of this finding in the next chapter.

165. Up to the end of 1982, 230 excluded persons had been removed from Great Britain to Northern Ireland, and 37 from Great Britain to the Republic of Ireland. This is a fairly though not wholly accurate guide to the citizenship of the excluded person, and indicates that the power has been exercised predominantly against citizens of the United Kingdom - though many of these will have been dual nationals, with citizenship of the Irish Republic also.

166. Table 1 also records the number of occasions on which the Home Secretary has refused an application for exclusion put forward by the police. This has happened in roughly one eighth of applications. I believe that nothing of significance can be read into this proportion or into its fluctuation from year to year. Too many variables are involved: the terrorist situation, the seriousness of the cases, the extent to which the weaker cases are filtered out before they become formal applications and so on.

Extent of use of the power b) Northern Ireland

167. The power to exclude citizens of the United Kingdom and Colonies from Northern Ireland was an innovation in the 1976 Act, introduced to import an element of reciprocity to the exclusion procedure. Under the 1974 Act, the Secretary of State for Northern Ireland could exclude from the United Kingdom terrorists who were not citizens of the United Kingdom. To the end of 1982 the Secretary of State for Northern Ireland had made [22] exclusion orders, [7] excluding persons from Northern Ireland, and [15] from the United Kingdom as a whole. Eleven of these [22] orders were made during 1981.

The Adviser system

168. A person against whom an exclusion order has been made is entitled to make representations to an Adviser appointed by the Secretary of State for this purpose. If the excluded person has not been removed (which can occur only with his consent or after 96 hours have elapsed without his making representations), he is entitled to an interview with the Adviser. In the course of considering representations, the Adviser sees all the papers on the case available to officials and to the Secretary of State. On the basis of these and, where appropriate, the interview, he writes a report to the Secretary of State, who reconsiders the case.

169. Up to the end of 1982, 43 persons excluded by the Home Secretary had made representations against their order within the terms of the Act, and in 14 of these cases the order was revoked. There is no obligation on the Secretary of State to accept the Adviser's recommendation, but in the vast majority of cases he has done so: in two cases he revoked an order where the Adviser recommended that it be confirmed and in one case he confirmed an order which the Adviser recommended should be revoked. Representations against exclusion have become rarer in recent years, both in absolute terms and relative to the use of the exclusion power. Overall, about one excluded person in seven has made representations, but of the 26 people excluded in Great Britain in 1981 and 1982 only one asked for his case to be referred to an Adviser.

170. In Northern Ireland there have been only two cases where representations have been made against exclusion, one of which resulted in revocation of the order.

Three-year review

171. In his report on the operation of the Act, my predecessor Lord Shackleton wrote as follows:-

> 'It has been the practice to reconsider any particular case [of exclusion] if this is requested by the person concerned or by a Member of Parliament on his behalf, drawing upon advice from the police as to whether or not the subject would present a threat if the order were revoked. If the Act is to continue it must be recognised that the longer it does so the greater the possibility that the circumstances of any particular case may have changed. I recommend that consideration be given to a general review of all the exclusion order cases so as to establish whether there are any in which the order might with safety be revoked.'(1)

---

(1) op cit paragraph 127

172. The Home Secretary accepted this recommendation, and announced a system of review in the renewal debate on the Act in March 1979. The basis of the scheme is as follows:-

a) Each exclusion order is reviewed, on application by the excluded person, three years after it is made.

b) The Home Office writes to the excluded person at his last known address asking if he wishes to have the order reviewed and enclosing a questionnaire dealing with matters such as residence and employment in the period since exclusion.

c) Where no address is known, the Home Office relies upon an excluded person hearing through other channels of his right to review: no action is taken unless an application is made for the order to be reviewed.

d) All those excluded since the scheme was introduced have been told in writing at the time of exclusion of the right to apply for review after three years.

e) Completed questionnaires are passed by the Home Office to the police, who make whatever enquiries they consider necessary to form a view on the question whether the exclusion order can be revoked. In a number of cases, as part of their enquiries, the police have travelled to Northern Ireland to interview the excluded person, if he has agreed to this.

f) The police assessment, together with a covering submission and any written material submitted by the excluded person, is put to the Home Secretary for decision in the same way as the original application for exclusion.

A similar scheme operates in Northern Ireland.

173. People excluded since March 1979 (the 'generation' now becoming eligible for review) will have received a notice at the time of their exclusion setting out their right to have the order reviewed three years later - though whether they will have kept or remembered this is another question. Those excluded before that date will not have been told, and in many cases may not have heard of the review. The Home Office has received few letters from excluded people indicating that they were aware of their right to a review. The major means of setting the review in motion is therefore a letter from the Home Office to the last known address of the excluded person. This has severe limitations as a means of transmitting information. The Home Office will have had an accurate address at the time of exclusion only if the excluded person was resident in the area to which he was removed, and even in these cases he may have moved in the meantime. Of 195 people who were eligible for three-year review by the end of 1982, 'last known addresses' were available in 160 cases. Questionnaires were sent to all of these, but only 54 were returned completed. On receiving a copy of a completed questionnaire, the practice of the Metropolitan Police (who carry out this function on the mainland) is to seek information from the Royal Ulster Constabulary (if the excluded person is resident there) on the person's terrorist involvement since exclusion. If this is significant the police will tend to recommend that the order remain in force. If there is little or no information available, they will often seek an interview with the excluded person to assess his current involvement in terrorism and how this has changed since his exclusion. They then produce a report which, as I noted above, is submitted through officials to the Home Secretary in the usual way.

174. The total number of orders reviewed or in the process of review in Great Britain by the end of 1982 was 59. This includes not only those who completed and returned their questionnaires, but also those who wrote in themselves, or had their Member of Parliament or lawyer write in, to request review (though not necessarily because they were aware of their right to a review). Of these 59, 20 orders were revoked, 28 confirmed and 11 were still under consideration at the end of 1982.

CHAPTER 9: DISCUSSION AND RECOMMENDATIONS

175. I have found consideration of the system of exclusion to be the most difficult part of my task. It is in many ways the most extreme of the Act's powers: in its effect on civil liberties, it is in my view more severe than any other power in the Act; in its procedure and principles it departs more thoroughly from the normal criminal process than any other part of the Act; it has aroused substantial resentment even among many, particularly in Northern Ireland, who support the aims and content of the remainder of the legislation; it has led to criticism of the United Kingdom in the international fora on human rights; its value is difficult to demonstrate in a convincing way, both for reasons of security and because it is the most essentially preventive part of the Act; and yet those ministers and police officers who have operated the system are convinced that exclusion has on occasion saved lives throughout the United Kingdom. I begin this chapter with an assessment of how exclusion has operated in practice. I then consider, one by one, the major arguments against it which have been put to me.

The case for exclusion

176. I have discussed exclusion with the police (both the forces making the applications and the officers based at New Scotland Yard who prepare them for submission to the Home Secretary), Home Office officials involved, junior ministers who have considered applications, and present and past Home Secretaries, who have taken the final decision on exclusion. I have had similar consultations in Northern Ireland. I have also examined a large and representative sample of exclusion order applications, including a number where the Secretary of State has declined to make an order. It is difficult to generalise about these cases, but there are some points on which all those who have administered the system are unanimous, and with which, from my own examination, I agree. First, there have undoubtedly been cases where exclusion has rid Great Britain of dangerous terrorists. Second, in a number of cases - not necessarily the same - terrorists have found their effectiveness in general substantially impaired by the fact that they were no longer able to travel legally between Northern Ireland and the mainland,

or between the Republic or Ireland and the United Kingdom as a whole. Third, although in a number of such cases there has been no room for doubt as to the terrorist sympathies and activities of those concerned, the form and sensitivity of the case against them has been such that no other means have been available of dealing with them. I am not saying that all successful applications for exclusion are illustrations of these three points. If I were, I should not have wished to recommend additional safeguards. Nor am I suggesting that the benefits of every exclusion order have outweighed its costs in terms of civil liberties and of hardship to the excluded person and his family. I conclude, in effect, that, the exclusion of some people under these powers has materially contributed to public safety in the United Kingdom and that this could not have been achieved through the normal criminal process.

177. In discussing the power of arrest under section 12 of the Act, and in particular the use made of it in Scotland, I noted that many of those involved in Great Britain in Loyalist terrorism were born on the mainland and have lived there all their lives. They are thus exempt from the possibility of exclusion from Great Britain. For this among other reasons, the majority of exclusion orders in Great Britain have been made against those who the Secretary of State was satisfied had been involved in terrorism on behalf of the Republican cause. At paragraph 164 I pointed out that while the number of exclusion orders as a whole made in Great Britain has declined significantly over recent years, the number made against people resident in Great Britain has fallen even faster. From the evidence presented to me, it seems that this reflects a genuine change in the nature of the terrorist threat faced on the mainland. In the early 1970s, the IRA relied for their mainland operations on a number of supporters and activists who had been resident in Great Britain for a considerable period in some cases. Many were actually responsible for the commission of terrorist acts, while others provided material help; and operations were not in general carried out by teams sent over for that purpose from the island of Ireland. This has not been the case in recent years. Those responsible for the terrorist outrages on the mainland during 1981 and 1982 probably operated as small, self-contained and independent units, making relatively little use of indigenous supporters on the mainland and probably also keeping away from areas where Republican sympathisers might be expected to gather. Many of those

convicted of even the most serious terrorist acts on the mainland during the early and mid-1970s had lived there for a substantial period. This situation has altered substantially, and the change is in part due to the prosecution, where possible, of those responsible and their exclusion wherever evidence was too sensitive to be made public.

178. This type of exclusion was most valuable during the mid-1970s. I believe the need for it to have declined markedly since then, and it is upon this judgement that I base one of my recommendations (see paragraph 181). More recently the power has been used, for instance, against individuals who there was good reason to believe had come to Great Britain in order to set up a Provisional IRA 'active service unit', or who were being used by the Provisional IRA as couriers of information or materials; their exclusion will undoubtedly have disrupted the IRA's lines of communication. Other exclusion orders have been made against people who had travelled from Northern Ireland to Scotland for the purpose of obtaining arms or explosives for use by extreme Loyalist organisations. (Orders have been made on similar grounds by the Secretary of State for Northern Ireland.) For obvious reasons of security I am unable to give details of these cases, but I believe strongly that exclusion has played a significant part in preventing acts of terrorism, or in making the commission of terrorist acts more difficult, and that, regrettably, the power cannot simply be abolished at present. My conclusion is that the power to exclude should remain available to the Secretary of State in extreme cases; that its severity should be mitigated in the way I suggest below; and that the possibility of abolishing it should be kept under regular review, without prejudice to the Act's other powers. I attempt no judgement on the question how much longer the power will be needed. I would say, however, that, unlike arrest under section 12 of the Act, my answer would not be 'as long as a significant threat from terrorism remains'. Exclusion is a poor substitute for criminal prosecution. The value of all the powers in the Act must be measured against their cost in terms of hardship to the individual and damage to our civil liberties. In both these areas, the balance is weighted against exclusion (though I believe that the changes I propose below to the system would mitigate this), and thus it must be measured against a sterner test of value. In sum, I believe that it should be one of the first powers in the Act to be repealed; but that the time for this is not yet.

The case against exclusion

179. It is not an easy task to strike a balance between the views of those who oppose and those who support the continuance of exclusion. Many of their arguments do not meet at any point, but, rather, run on parallel tracks. The costs and benefits are so different in kind as to make comparison particularly difficult, yet I believe that it is worth attempting. I have, I hope, dealt above with the argument that exclusion has not been successful in reducing the level of terrorist violence in Great Britain or Northern Ireland. I turn now to the other main arguments against exclusion.

180. (i) Exclusion turns Northern Ireland into a dumping-ground for terrorists. Clearly, this view relates specifically to the exclusion from Great Britain of citizens of the United Kingdom. But as the majority of exclusion orders have been of this type, it is fundamental. It appears in several forms: that the exclusion of citizens of the United Kingdom from Great Britain is a denial of the concept of a United Kingdom and thus wholly wrong in principle; that the exercise of such a power suggests that the government believes a bomb in Belfast to be less a matter for concern than a bomb in London; that exclusion is counter-productive in practice, since it alienates the population of Northern Ireland. The factor common to these arguments is that exclusion in practice treats Northern Ireland as a second-class territory, and that the alleged reciprocity - the provision for excluding terrorists from Northern Ireland - is a sham. (In fact, [seven] orders have been made excluding United Kingdom citizens from Northern Ireland.)

181. In my visits to Northern Ireland, I was impressed by the unanimity of view expressed to me on this point. Every political party from which I received oral evidence - and these included both Unionist and Republican parties - expressed the view that the power to exclude had been used so as to turn Northern Ireland into a 'terrorist dustbin'. These witnesses were arguing from various premises, and towards different conclusions, but this identity of view from a wide range of Northern Ireland opinion is something which should be taken into account. I have noted that the power to exclude people settled in Great Britain has been exercised with decreasing frequency; but when it does occur, it can have severe effects not only on the excluded

person and his family, but also on the population of Northern Ireland. They are obliged to receive someone with substantial terrorist connections, who, though probably born in Northern Ireland, has left it some years earlier to set up home in the mainland. He is already, presumably, deeply alienated from government policy in relation to Northern Ireland or he would not have turned to terrorism in the first place. His exclusion, which will mean uprooting him and his family from the mainland, is almost certain to alienate him still further, and it is Northern Ireland which will have to bear the brunt of this. This seems to me wrong. Accordingly, I recommend that citizens of the United Kingdom and Colonies should not be liable to exclusion from that part of the United Kingdom in which they are settled. This would apply, of course, to exclusion from either Great Britain or Northern Ireland. But it should apply only to United Kingdom citizens.

182. The question arises as to the meaning of 'settled', which I am not using in any technical sense. It is certainly not my intention that, for example, a member of the Provisional IRA, if he succeeds in slipping through the port controls, should thenceforth be free from liability to exclusion. Rather, I would hope that this recommendation could be implemented so that British citizens who had genuinely made their home in one part of the United Kingdom could not be forcibly removed from it by the process of exclusion. I have been advised that use of the phrase 'ordinarily resident' by itself might not achieve this aim. The details are not for me to decide, but I should think that if someone from Northern Ireland has been ordinarily resident in Great Britain for, say, a continuous period of three years, then he should no longer be liable to exclusion from Great Britain. Calculation of this period should be on the same basis as under the legislation at present; for instance, time spent serving a prison sentence on the mainland should not be included. There are, of course, a number of exclusion orders still in force against people who, at the time of their exclusion, were, under this definition, settled in that part of the United Kingdom from which they were excluded. In such cases, the normal rules on review should apply, subject to the amendments on the duration of exclusion which I recommend at paragraphs 198-199.

183. Implementation of this recommendation should ensure that only people who 'belong' in Northern Ireland might be excluded there, and thus put an end to the suggestion that Northern Ireland is a dumping ground for terrorists. What of the argument that exclusion reflects a government view that a bomb in Northern Ireland is a matter of less importance than a bomb in England? One answer to this is that, as I have tried to show, there have been a number of cases where exclusion has benefitted the law-abiding population throughout the United Kingdom - for example, by disrupting terrorist lines of communication and supply. I need not repeat these arguments here, but two further points should be made. First, once a man has been excluded from the mainland, his usefulness as a terrorist may well be reduced. If he did not know it before, he will have been made aware of the interest of the police in him, and it is less likely that he will be as willing to involve himself deeply thereafter. Even if he is, his terrorist colleagues and masters may be reluctant to use him again. Second, my further recommendations on exclusion are designed to ensure that all the potential effects of an exclusion order - including those in the 'receiving territory' - are examined and assessed while the case is being considered.

184. I should, finally, mention a related argument which was put to me somewhat tentatively by more than one witness in Northern Ireland. This is that there should be power under the 1976 Act to exclude citizens of the United Kingdom from the United Kingdom as a whole, particularly if they possess dual citizenship (such as citizenship of the Republic of Ireland in addition to that of the United Kingdom). In my view this would be wholly wrong. To prevent United Kingdom citizens from living or travelling in one part of their country is a considerable denial of civil liberties (though if my recommendation in this section were accepted, its effects would be limited); to prevent them from living in any part of their country, including that part in which they were born and had spent their lives, is unacceptable.

185. (ii) Exclusion causes immense family hardship. I agree that exclusion can cause financial hardship and emotional suffering to the family of the excluded person. Much of the evidence presented to me critical of exclusion has focused on cases of people excluded from Great Britain following substantial periods of residence there - as much as nineteen years in a few cases - who had married English wives and had had children who had never lived anywhere but in England. It has been pointed out that the effect of

exclusion in such a case is either to break up the family or to require the wife and children to uproot themselves to live in an alien and possibly hostile environment, where also unemployment is substantially worse than on the mainland. Exclusion is not a punishment, in the sense that this is not the intention with which it is imposed. But in such cases it can have the effect on the subject and his family of a punishment of very considerable severity. I trust that my recommendation above - that citizens of the United Kingdom should no longer be liable to be excluded from that part of the United Kingdom in which they have settled - will meet this argument. It should incidentally also meet the views of those who have argued for financial assistance to be provided for the families of excluded persons, either for removal expenses or for the purpose of making visits (Lord Shackleton recommended that such a provision be considered). In the majority of such cases, liability to exclusion would be removed.

186. (iii) People have been excluded on inadequate grounds. There are several variants of this argument. The most extreme is that people without any terrorist involvement have been excluded, solely for political reasons; others have argued that people have been excluded where evidence of their terrorist involvement is insufficient or unreliable; or, more generally, that the criteria for exclusion are too wide and in practice amount to guilt by association; or that exclusion has been used in the wrong type of case, for instance to remove from Great Britain people who, though their past involvement with terrorism was unquestionable, had left Northern Ireland for the purpose of breaking their links with terrorist groups and starting a new life.

187. In no case to my knowledge has an exclusion order been made on any grounds other than those specified in the legislation. I say this after examining papers on a considerable number of cases, and discussing exclusion with police officers, civil servants, the Secretary of State's Advisers and ministers and former ministers themselves. I am convinced that all those who have administered the system of exclusion have done so with fairness and integrity. In each application for exclusion which I have seen, a case, based on reliable intelligence or evidence, has been made out to the effect that the subject of the application has been involved in terrorism. The submissions by civil servants to the Secretary of State invariably assess

this evidence, in order to help him to decide whether he can be satisfied of the individual's involvement. Considerable attention is paid, as it should be, to the specific words in the Act.

188. Some witnesses have argued that the lack of criminal charges laid against excluded persons in Northern Ireland following their removal from Great Britain indicates that the power to exclude has been misused. With respect, this view seems to spring from a misunderstanding of the nature of exclusion. It is a substitute, and is recognised by both police and government as an inferior substitute, for criminal proceedings. If a charge is possible, it should be brought; thus if there is sufficient evidence in Northern Ireland to charge someone, he should be removed from Great Britain under a warrant issued in Northern Ireland rather than by means of an exclusion order.

189. In all the exclusion cases I have examined there have been grounds on which the Secretary of State could be satisfied of the subject's involvement in terrorism. But many of these cases are very finely balanced, and clearly it is vital that the Secretary of State should receive the fullest possible information before reaching his decision. In exercising his powers, he is constrained by the overriding provisions of section 3(1), namely that he:

> "may exercise the powers conferred on him by this Part of this Act in such way as appears to him expedient to prevent acts of terrorism (whether in the United Kingdom or elsewhere) designed to influence public opinion or Government policy with respect to affairs in Northern Ireland".

This means that exclusion may be used only as a means of combatting terrorism related to Northern Ireland; but it also limits exercise of the power to situations where the Secretary of State believes that this will contribute to the prevention of terrorist acts within or outside the United Kingdom. He is, in other words, required to consider the effect of an exclusion order on the threat of terrorism not only in the territory from which its subject would be removed but also elsewhere. In the police applications and civil service submissions which I have seen, these wider considerations have

invariably been implicit. I believe that there would be merit in making them explicit. For example, an application for the exclusion of a United Kingdom citizen from Great Britain should discuss specifically the possible effects in Northern Ireland of the exclusion. In this, the direct views of the Royal Ulster Constabulary would be of considerable benefit to the Secretary of State, as would the views of mainland forces in relation to the exclusion of a United Kingdom citizen from Northern Ireland. I recommend, therefore, that all applications for the exclusion of a citizen of the United Kingdom and Colonies should include the direct views of the police in both the 'excluding' and the 'receiving' territory on the merits of exclusion.

190. (iv) There should be a right of appeal against exclusion. A person against whom an exclusion order has been made has no right to know the grounds for the making of the order; to have a public hearing on the exclusion; to cross-examine those who have made the case against him; or to appeal to a court or tribunal against exclusion. The decision to exclude is that of the Secretary of State, and although the excluded person is entitled to make representations against the order and these representations are considered by an independent Adviser, the final decision rests with the Secretary of State. The arguments against the present system are really of three types, all of which were well put in evidence to my review, and which should be distinguished: first, that the final decision should not rest with the Secretary of State; second, that the review process should incorporate more safeguards and place greater emphasis on elements of due process; and third, that the present Adviser system does not provide a genuine independent review.

191. I cannot accept the first argument. Exclusion is a matter of public policy. It is based not merely on the conduct of the excluded person, but also - once his terrorist involvement is established - on matters such as the security situation at the time exclusion is considered and the danger the person poses to the public at large. Neither the courts nor any form of tribunal could properly be expected to carry out an examination of all these issues and to reach a binding decision. It is noteworthy that Lord Gardiner's committee which in the mid-1970s examined, amongst other things, the procedures governing internment in Northern Ireland recommended that the final decision should rest not with any body or tribunal, but solely with the Secretary of

State.(1) (I return to Lord Gardiner's report below.) The Secretary of State is and should remain accountable to Parliament for the way he discharges this onerous responsibility. It is the duty of Parliament to ensure that this accountability has real meaning. I should add that, although in practice the Advisers' recommendations have almost invariably been accepted, the Advisers themselves have indicated to me that they would not favour a system where their decisions were binding.

192. The second argument is that review procedures should import more elements of due process. I accept that the secrecy of the present procedure is a barrier to the maintenance of full public confidence in the system, and that the appearance of openness and fairness would be of benefit in countering this. But I believe that to import elements of normal criminal procedure into the review process would be to create a number of serious problems. I return to the report of Lord Gardiner's committee. Internment is a more serious matter still in terms of civil liberties than exclusion, and yet Lord Gardiner and his colleagues recommended that the then current 'trial' model of review be changed to one less formal and less open. Their reasons for so recommending seem to me wholly convincing. They described the procedure as follows:-

> "The evidence for the Crown is given almost exclusively by Army officers and police officers, who are usually members of Special Branch. Normally they give their evidence behind screens, so that they cannot be identified by the respondent or his legal advisers. Sometimes voice scramblers are used as a further precaution. Occasionally, despite these precautions, respondents do identify witnesses. ..... A serious consequence of the concealment of identity of witnesses is that the respondent's lawyer is handicapped in the cross-examination which is essential for effective adversarial procedure."(2)

---

(1) Cmnd 5847, paragraph 159.

(2) ibid, para 130

The committee commented:-

> "The most cogent criticism was that the procedures are unsatisfactory, or even farcical, if considered as judicial. The adversarial method of trial is reduced to impotence by the needs of security. The use of screens and voice scramblers, the overwhelming amount of hearsay evidence and the in camera sessions are totally alien to ordinary trial procedures. The quasi - judicial procedures are a veneer to an enquiry which, to be effective, inevitably has no relationship to common law procedures."(3)

193. These arguments seem to me unanswerable. I am convinced that the introduction of such procedures would not only lead to no improvement in the process for reviewing exclusion orders but would in practice constitute no more than a parody of due legal process and would thus contribute to a loss of public confidence in the legal system. This brings me to the third argument, that the Adviser system is in practice a cosmetic device which provides no real safeguard. My consideration of the Advisers' work, discussion with the Advisers and examination of the statistics lead me to reject this argument in its simplest form. In 45 cases (throughout the United Kingdom) the subject of an exclusion order has made representations against the order, and, following reference to an Adviser, 15 of these orders have been revoked. No doubt cases where representations are made are not wholly typical, and borderline cases are over-represented. But a revocation rate of one-third is substantial and in the face of these figures it is difficult to sustain the criticism that review by an Adviser does not provide a real safeguard.

194. These figures, however, and discussion with the Advisers have led me to look again at the present system. Reference to an Adviser depends on the making of representations by an excluded person, but as I pointed out in Chapter 8, it is becoming increasingly rare for representations to be made. I believe that the Adviser system is not only a safeguard for the excluded person, but also of assistance to the Secretary of State. The Advisers have exphasised that an interview with the excluded person is of crucial importance in helping them to reach a view on the necessity for exclusion: without it - in the absence of full written representations - they are merely going over

---

(3) ibid, para 152

the ground previously trodden by officials and the Secretary of State. These two considerations have suggested to me that some means should be found of making more frequent both reference to an Adviser and the personal interview between Adviser and excluded person.

195. One of the factors accounting for the low rate of representations under the present system is no doubt that representations in their fullest form - involving an interview with the Adviser - in practice require the subject to spend an additional period in custody while the Adviser sees him and prepares his report and while this is considered by the Secretary of State. The subject of an exclusion order will in most cases be required to decide whether to request an interview at a point when he has already spent up to seven days in police custody and when his major preoccupation is likely to be the earliest possible return to his home. If he signs away his right to an interview by agreeing to immediate removal, he may well consider that little purpose would be served by making written representations within 96 hours - which is still, of course, open to him. I do not see that there is any necessary connection between consent to removal and loss of the right to an interview with the Adviser, and I do not believe that this right should lapse with removal. Accordingly, I recommend that the subject of an exclusion order should be entitled to make representations against the order within seven days (rather than 96 hours, as at present) of the serving of the order on him, and to have a personal interview with the Secretary of State's Adviser despite the subject's removal in pursuance of the order. The right to an interview should apply to all persons excluded - whether from Great Britain, Northern Ireland or the United Kingdom as a whole - provided that they have been removed within the United Kingdom or to the Republic of Ireland: it would be clearly unreasonable for the Adviser to have to travel further than this to conduct an interview. As to the mechanics of this, I recommend that when the order is served, the subject should receive also a notice of his right to make representations, and should be asked to sign to acknowledge receipt of this; he would not be required to indicate at this stage whether or not he intends to make representations. The interview with an Adviser could take place at a police station in Northern Ireland or Great Britain; arrangements for the Republic of Ireland would depend upon consultation with the authorities in the Republic. If, as I suspect, one result of implementing this scheme were an increase in the incidence of representations, then consideration should be given to expanding the panel of Advisers.

196. Section 7 of the 1976 Act, which sets out the present procedure for the making of representations, indicates that the rights arise only after service on the excluded person of a notice of the making of the order (section 7(1)) and that there is no obligation to serve such a notice at a time when he is outside the United Kingdom. In recent years, no exclusion orders have been made against people who were at the time outside the United Kingdom, but clearly there is power to do so. At present, the right of such people to make representations would arise if or when they attempted to enter the United Kingdom, since it would be at this point that it would be necessary to serve on them notice of exclusion. I recommend that a similar procedure should apply under the proposed system, if the order is not served due to the excluded person being outside the United Kingdom. But the revised system for representations should apply fully in the case of an individual excluded from Great Britain or Northern Ireland who, at the time of exclusion, is in the other part of the United Kingdom. I see no reason to suppose that the current practice of not making exclusion orders against people outside the United Kingdom will change, but if my recommendations on the duration of exclusion orders, and for a requirement for a new order if exclusion is to remain in force, are accepted (see paragraph 198), this question will become more than theoretical.

197. I should mention here a further minor recommendation. Section 7(4) of the 1976 Act provides that the Secretary of State shall refer representations to his Advisers 'unless he considers the grounds to be frivolous'. The Secretary of State has never refused to refer representations on these grounds, and there would seem to be no need for this provision. I recommend that section 7(4) of the Act be dropped.

198. (v) Exclusion orders should have a fixed duration. At present, exclusion orders remain in force until or unless they are revoked by the Secretary of State. Following publication of Lord Shackleton's report, the system of three-year review was introduced. It has been represented to me that this is inadequate, and that, instead, exclusion orders should remain in force for a fixed period of time. I accept this argument. I have no criticism of the operation of the three-year review, but I believe that

something more is needed. Since the Secretary of State has made an exclusion order it should be for him to justify its continuance, rather than for the excluded person to provide grounds for its revocation. It is reasonable to assume that a number of people who were excluded during the early years of the Act's operation and for one reason or another have not applied for a review of their order are no longer involved in terrorism. It is wrong in my view that their orders should stand. Accordingly I recommend that exclusion orders should henceforth be made only for a fixed term of three years. I further recommend that if it is considered necessary to continue an individual's exclusion beyond this period, this should be done on the basis of a fresh application by the police, detailing recent intelligence on him and setting out the reasons why exclusion remains necessary; a new exclusion order signed by the Secretary of State would be required for exclusion to last beyond three years. The proposed procedures on reference to an Adviser (paragraphs 195-196) should apply in relation to 'renewed' exclusion orders.

199. This leaves the problem of existing exclusion orders. I suggest that orders which have been in force for less than three years should cease to have effect when the three year point is reached (to be replaced, if necessary, by a new exclusion order, as I recommend above). Orders which have been in force for more than three years should lapse immediately subject to the need for the police, officials and ministers to consider whether in any case a new order should be made. It is an administrative question how fast this can be achieved; but I would hope that within a year of introducing 'three-year' exclusion, no 'old' exclusion orders more than three years old would remain in force.

Conclusion

200. I have concluded, albeit with some reluctance, that for the present at least a residual power to exclude must remain. I believe that the need for it is likely to decline still further, and that it should be allowed to lapse as soon as it is no longer considered strictly necessary. In the meantime, I hope that the measures I have recommended will, if implemented, both mitigate its harsher effects and help to ensure that it is used only in those cases where the need for it is greatest.

PART V: OTHER PROVISIONS

CHAPTER 10: PROSCRIBED ORGANISATIONS AND CONTRIBUTIONS TOWARDS ACTS OF TERRORISM

201. In this chapter I discuss together the provisions on proscription (sections 1 and 2 of the Act) and the offences of inviting, receiving or making available contributions towards acts of terrorism (section 10). To a large extent, the offences under section 10 supplement those in sections 1 and 2. One of the main purposes of the latter is to stem the flow of funds to terrorist organisations; section 10 is intended to prevent money being used to finance acts of terrorism, whether or not they are committed by proscribed organisations.

The law and its use

202. Sections 1 and 2, which make up Part I of the Act, apply in Great Britain only. The proscription of organisations in Northern Ireland is governed by the Northern Ireland (Emergency Provisions) Act 1978. Under section 1 of the Prevention of Terrorism Act, the Secretary of State may proscribe 'any organisation that appears to him to be concerned in terrorism occurring in the United Kingdom and connected with Northern Irish affairs, or in promoting or encouraging it' (section 1(3)). Proscription is achieved by order, and may be reversed by the same means. The Irish Republican Army (both Provisional and Official wings) and the Irish National Liberation Army are proscribed under the Act. The former was proscribed under the 1974 Act also; the latter, from July 1979.

203. Section 1(1) creates four types of offence relating to proscribed organisations:

i) belonging or professing to belong to such an organisation;

ii) soliciting support for such an organisation;

iii) knowingly making or receiving any contribution towards the resources of a proscribed organisation; and

iv) arranging, helping to arrange or addressing a meeting, knowing that the meeting is in support of a proscribed organisation or is to be addressed by a member of such an organisation.

An individual is not guilty of an offence of membership under this section if he became a member of the organisation before it was proscribed and has taken no part in its activity since its proscription (section 1(6)). The burden of establishing this lies on the defence. The maximum penalty for all these offences, if tried on indictment, is five years' imprisonment. Section 2 of the Act creates offences relating to public displays of support for proscribed organisations, and prohibits the wearing of any item of dress, or the wearing, carrying or display of any article in such a way as to arouse 'reasonable apprehension' that the individual concerned belongs to or supports a proscribed organisation. These offences may be tried only in a magistrates' court, and carry a maximum penalty of six months' imprisonment or £1,000 fine or both. Section 12(1) of the Act empowers a constable to arrest any person whom he reasonably suspects of having committed any offence under the Act other than an offence under section 2. The latter is provided with its own power of arrest without warrant, which does not attract the possibility of extended detention under section 12.

204. Section 10 creates offences similar to those at ii) and iii) above, but in this case the purpose of the prohibited contribution or collection is the financing of acts of terrorism 'occurring in the United Kingdom and connected with Northern Irish affairs' (sections 10(1), (2) and (5)). Penalties are as for the section 1 offences, and both sections empower the court to order the forfeiture of the money or property in question.

205. Prosecutions under section 10 in Great Britain have been more frequent than under any other of the Act's offence provisions, and penalties on conviction have been consistently higher than for other offences. Forty-three of the 107 charges under the Act in Great Britain (up to the end of 1982) have been for offences under section 10, as have 35 of the 85 convictions. A prison sentence was imposed in each of these cases, in 32 of them of longer than a year. No conviction in Great Britain for any other offence under this legislation has resulted in a prison sentence of longer than a year (though of course, as I showed in Chapter 3, many hundreds of

people arrested under this Act have subsequently been charged with other serious terrorist offences). By contrast, the offences under sections 1 and 2 have - in terms of prosecution and conviction - been little used. There have been seven charges under section 1 of the 1974 or 1976 Acts, of which five resulted in acquittal and only two in conviction. In both cases a prison sentence of less than a year resulted. There have in addition been two charges under section 2, which resulted in the offenders being fined. Apart from the low number of charges under these sections, and the disturbingly low conviction rate, it is notable that throughout the Act's existence no one has been charged with membership of a proscribed organisation, making contributions towards a proscribed organisation or arranging a meeting in support of a proscribed organisation: all seven charges under section 1 have related to soliciting or receiving support.

206. In Northern Ireland, just seven people have been charged under section 10. Five were convicted and two were awaiting trial as at 1 November 1982. One of the five was fined, one received a suspended sentence and three a sentence of immediate imprisonment.

Discussion and recommendations

(a) Proscription

207. It was suggested to me by a number of witnesses that the purpose of proscription was 'presentational' rather than 'practical'. On consideration it seems to me that this is only partly true. Admittedly, proscribing an organisation is unlikely either to impair substantially its capacity for carrying out terrorist attacks or to deter those most deeply involved in its activities. But the terms of the legislation suggest a wider range of purposes than the merely symbolic. At the least practical level, it enshrines in legislation public aversion to organisations which use, and espouse, violence as a means to a political end. But the legislation also prohibits public displays by or in support of proscribed organisations. The effect of this, if successful, will be not only the avoidance of public outrage, but also the averting of any danger of this outrage being expressed in disorder. More practically still, proscription is designed to stem the flow of funds to the organisations concerned.

208. It is at the more presentational level that proscription under this Act (ie in Great Britian) seems to have been most successful, in that there have apparently been few demonstrations or open displays of support by or on behalf of either the IRA or the INLA. The financial aspects of proscription, on the other hand, appear to have had less effect. The section 10 offences have been far more used, and have resulted in a far higher proportion of convictions, than the offences of contributing towards proscribed organisations. This is somewhat surprising: one of the purposes of proscription is to relieve the prosecution of the need to establish that the objects of the organisation concerned are unlawful. On the other hand, the police have told me that the flow of funds to proscribed organisations from sources on the mainland is relatively limited, which may be due in part to proscription. At the least, open collections for proscribed organisations are banned. Both the presentational and the practical purposes of proscription appear to me to be valid; the success of the provisions is questionable in the latter sphere, but, I believe, real in the former. I conclude, therefore, that proscription has had some - albeit relatively limited - beneficial effects.

209. This, of course, looks merely at one side of the balance. On the other side are arguments to the effect that proscription is wholly wrong in principle and cannot be justified; that its practical effects in terms of stifling legitimate political discussion inevitably outweigh any benefits it might bring; and that proscription, although defensible in principle, is not applied fairly at present in Great Britain.

210. The basic argument of principle against proscription is that banning an organisation is an unacceptable infringement of freedom of speech; instead, its members should be prosecuted for the criminal offences which they commit. I have much sympathy with this view. If one were starting absolutely with a clean slate, proscription would I believe be low on the list of priorities for inclusion in counter-terrorist legislation. But this is not the case. There is presently proscription in Great Britain, and the arguments against proscription are not necessarily the same as those in favour of deproscription. It cannot reasonably be argued that by not proscribing a particular organisation, the government is indicating approval of it or condoning its activities. Deproscription, on the other hand, would be understood as implying a change either in the government's attitude

towards an organisation, or in the attitude and conduct of the organisation itself. When proscribed, the IRA and INLA both practised and encouraged the use of violence to achieve their aims. This remains the case today, and while it continues to be so it would in my view be wrong to deproscribe them. The proscription provisions of the 1974 Act were introduced on an understandable wave of public resentment, and were, indeed, considered by many to be among the Act's most important provisions. I believe that time has proved this judgement to be mistaken; but there would be a further, equally understandable, wave of public resentment were the IRA or INLA to be deproscribed in Great Britain in the absence of a change in the conduct and attitude towards violence of these organisations.

211. I believe that this also answers those who argued to me that there should be 'symmetry' in proscription between Great Britain and Northern Ireland. (Under the Northern Ireland (Emergency Provisions) Act 1978, several organisations engaged in terrorism on behalf of the Loyalist cause are proscribed, as well as the IRA and INLA.) It is a reasonable argument that an organisation posing a threat in one part of the United Kingdom should be regarded in law as posing a threat to the United Kingdom as a whole. It has also been suggested that by proscribing in Great Britain only the IRA and INLA, the government is discriminating against Irish Republicanism, or against the Irish Catholic community in Great Britain. I believe this argument to be fallacious. The proscription of these organisations is based not on their political views or aims, but on their open and avowed use of violence to achieve those aims. Were their use of violence to cease, there would no longer be any ground for their continued proscription. I should be loath to see any addition to the list of proscribed organisations in the absence of a clear and demonstrable need for this, and I do not believe that a search for 'symmetry', whether between Northern Ireland and Great Britain or between Republican and Loyalist terrorist groups, is a sufficient reason for adding to the list.

212. This brings me to the argument, advanced by a number of witnesses, that the effect of proscription has been to inhibit free discussion about the future of Northern Ireland. I fully accept that frank and untrammelled political discussion is essential to political progress in Northern Ireland. I was very concerned to read in the evidence of a number of organisations representing the Irish community in Great Britain that the proscription

provisions of this legislation have been widely seen within that community as creating an atmosphere in which discussion had been curtailed for fear of police action. If this were a necessary and inevitable result of proscription, then I should recommend without hesitation that the power to proscribe should lapse forthwith. But I cannot believe that this is the case, despite the obvious sincerity of those who argued it to me. The power to proscribe may be exercised only against organisations involved in violence for political ends, and it cannot be emphasised too strongly or too often that it is not the ends themselves which are the target of these provisions. I do, however, agree with these witnesses that there is a potential problem here. It is asking a lot of the police service to apply these provisions fully in relation to the proscribed organisations themselves, while not affecting the free expression of views about Northern Ireland. I note that in the substantial circular to the police issued when the 1976 Act came into force, guidance was given on several of the Act's major provisions, but not on the operation of sections 1 and 2. I believe that there is a gap here which should be filled. Accordingly, I recommend that the police service throughout Great Britain should be given guidance by circular on the proper use, and limits on the use, of sections 1 and 2 of the Act.

(b) Contributions towards acts of terrorism

213. By contrast, section 10 of the Act is far less controversial. Prosecutions and convictions for offences under the section, particularly in Great Britain, suggest that it fills a genuine need. I was particularly struck by the evidence which I received in Northern Ireland of the means by which terrorist activities are funded. I was told of large sums paid out, particularly in the construction industry, to bogus 'security firms' which are in reality no more than front organisations for terrorist groups from both the Republican and Loyalist sides. Equivalent practices exist in the field of gaming machines in Northern Ireland. It seems to me vitally important that the police have adequate powers to deal with this problem. In the words of Sir John Hermon, Chief Constable of the RUC:

> "Money is a crucial factor in the continuance of terrorism.....Quite simply it finances murder and destruction. Every pound in the coffers of the paramilitary organisations is a nail in the coffin of an innocent victim of their murder gangs".(1)

Both the RUC and the police on the mainland confirm that section 10 of the Act provides them with sufficient powers. I have, therefore, no recommendation to make about this section. I should, however, refer to Sir John Hermon's announcement, in September 1982, that he had set up a special detective team for the purpose of investigating the extortion and protection rackets operated by terrorist organisations. I believe that this investigation could be of great importance and I trust that effective action will flow from it.

---

(1) Speech by Sir John Hermon, reprinted in 'Police' magazine, October 1982

CHAPTER 11: WITHHOLDING INFORMATION ABOUT ACTS OF TERRORISM

214. The offence of withholding information about acts of terrorism was new to the 1976 Act. A clause to similar effect had been introduced during the passage of both the 1974 and 1976 Bills by Mr George Cunningham MP. In 1974 the clause failed to receive a Second Reading. In 1976, the government resisted the new clause to begin with, on the grounds that the need for it had not been demonstrated and that an offence of withholding information should be considered in the context of the criminal law as a whole, rather than in this particular area. (A similar offence in the general law of England and Wales had been abolished by the Criminal Law Act 1967; of which more below.) During the committee stage of the 1976 Bill, the Home Secretary, Mr Jenkins, agreed to look again at the question. The result of this was the introduction of a government clause, which became section 11 of the 1976 Act.

215. The offence thus had controversial beginnings, and has proved controversial ever since. It has aroused strong feelings both for and against, and Lord Shackleton's recommendation that it be allowed to lapse was the only major recommendation in his report not to be accepted by the government. For all these reasons, I have examined the relevant arguments in some detail, and have, indeed, found section 11 one of the most difficult issues with which I have had to deal.

The law and its use

216. Section 11 provides that it is an offence for a person to withhold information if he knows or believes that the information might be of material assistance in preventing an act of terrorism or in catching those who have committed an offence involving an act of terrorism. The application of the section is explicitly confined to terrorism occurring in the United Kingdom and connected with Northern Irish affairs (section 10(5)). The information may be disclosed to a constable, or to a procurator fiscal (in Scotland), or to a member of the security forces (in Northern Ireland). The maximum penalty on conviction on indictment is five years' imprisonment, which makes this an arrestable offence under the Criminal Law Act 1967. An additional power of arrest is, however, provided in section 12(1)(a) of the Prevention

of Terrorism Act: a constable may arrest under section 12 anyone whom he reasonably suspects to be guilty of this offence, with the consequent power to detain him for up to seven days if the Secretary of State so directs.

217. The section does not make clear what kind of information it is intended to cover. It seems, however, that it was not the intention of the legislature that section 11 should be used to prosecute an individual for a failure to incriminate himself. There is judicial suport for this view, in the Scottish case of HM Advocate v Von (1) where Lord Ross argued as follows:

> "In enacting the provisions of the Act of 1976, if Parliament had intended to make statements of suspects admissible against them in the event of their being subsequently charged I would have expected Parliament to have made that clear. I cannot believe that Parliament intended to alter the well established principle of our law that no man can be compelled to incriminate himself."

218. The only clear evidence on the use of section 11 lies in the statistics on prosecution and conviction for the offence. (As I argue below, however, neither those who support nor those who oppose the retention of this offence would argue that these figures tell the whole or even most of the story.) In relation to Great Britain, these are at Table 4 in the statistical annex, and in relation to Northern Ireland at Table 12. In Great Britain, up to the end of 1982, fourteen people had been charged under the section and nine convicted. Seven of these received a non-custodial sentence, and two a sentence of imprisonment of less than one year. In Northern Ireland, up to 1 November 1982, sixty-two people had been charged under the section. Sixteen of these cases were not proceeded with, and a further sixteen were still awaiting trial on that date. Of the remaining thirty, twenty-two were convicted and eight acquitted. Nineteen of these received a non-custodial sentence and only three a sentence of immediate imprisonment.

Discussion and recommendations

219. The existence and exercise of this section gave rise to a striking variety of arguments in the evidence presented to me. All the major arguments,

---

(1) (1979) Scots Law Times Notes, 62 at 64

however, related to one of three general areas, which I shall consider separately: the value of the offence; its effect upon civil liberties and the right to silence; and the risk of abuse which it entails.

220. The value of the offence. Those who argue against the existence of this offence on the grounds that it is unnecessary receive powerful support from the figures on prosecution and conviction. In Northern Ireland the number of prosecutions has been low, and the conviction rate of those charged has run at below 50 per cent. In Great Britain the conviction rate has been somewhat higher, but prosecutions have been few; and almost all of those prosecuted and convicted in Great Britain were apprehended in only a handful of police operations. There is, therefore, little in these figures to support the argument that the offence should remain on the statute book. Indeed, were the figures the major consideration I should be inclined to recommend that the section be allowed to lapse. But while I must take them into account I do not see them as a crucial factor. The need for an offence in the criminal law is not necessarily determined by the number of persons prosecuted and convicted for it. The purpose of this provision is not to secure the maximum number of convictions, but to help the police to obtain sufficient information to prevent terrorist acts and to apprehend those responsible for committing them. The only question to be answered under this heading (matters of civil libererties being discussed below) is whether the existence of this offence assists the achievement of these aims.

221. It is significant that prior to the coming into force of section 11 the firm view of the police service was that there was no need for it and that it would be of no real assistance to them. This was maintained even after the government had accepted the spirit of Mr Cunningham's amendment and had agreed to introduce a clause along similar lines. While I do not believe that this shows the section to have been without value, it does suggest to me that were it to lapse, the police would, perhaps with some difficulty, find it possible to cope with this: an ability to adapt to changing legislation and public expectation is not the least of the abilities which the police service has developed over the years. Because of my own doubts, therefore, I felt obliged to put a number of police forces to a substantial amount of trouble in providing chapter and verse of instances in which

section 11 had been of real value. It is virtually impossible to say with certainty what in any given case finally persuaded an individual to provide information about planned or committed terrorist acts. But the police are convinced that on a number of occasions an individual's knowledge that he was liable to prosecution if he failed to provide such information was a major if not a vital factor in persuading him to do so; and from the information with which they provided me, relating to several separate cases, this seems at least a reasonable inference. The police believe, further, that the conviction of a number of very dangerous terrorist criminals would have been seriously hampered if not rendered impossible but for the existence of the sanction provided by this offence. In addition, the Royal Ulster Constabulary told me that section 11 has been of considerable value in combatting an aspect of terrorist activity specific to Northern Ireland: the 'hijacking' of private motor cars in order to assist in the commission of terrorist acts. In some cases, the car's owner may not report such an incident to the police from a fear - often well-founded - of reprisals. But the police believe that on a number of occasions the existence of this offence has persuaded the owner to provide them with relevant details and thus perhaps to help prevent a serious offence.

222. I should stress, however, that this was not a universal view among the police officers with whom I discussed this section. There was a wide range of responses from different police forces, some arguing that their task would be made substantially more difficult without section 11, and others in which the possibility of using the section in any form seems rarely to be considered. My conclusion is that the section is of significant value to the police service, but that the service could operate without it if required to do so. In my view, however, the section should lapse only if the difficulties it causes or may cause in terms of abuse and of damage to civil liberties are genuinely serious and irremediable. It is to these questions that I now turn.

223. The effect upon civil liberties and the right to silence. The arguments of principle against section 11 are that it represents a 'dangerous innovation' (a phrase used in evidence to me) in the criminal law, by providing a criminal sanction for a mere failure to provide information; and that it is morally wrong to create an offence of failing to inform on one's friends or relatives. Clearly the section does provide such a sanction, but provisions of this type are in fact far from new to the criminal law.

224. The Criminal Law Act 1967 abolished in England and Wales the classification of criminal offences into felonies and misdemeanours. The Act followed in large measure the recommendations of the Criminal Law Revision Committee (CLRC) in its Seventh Report, of 1965. Among the consequential amendments was the abolition of the offence of misprision of felony. In the words of the CLRC: 'misprision of felony consists of concealing or procuring the concealment of a felony known to have been committed'.(2) The principle of the offence was therefore identical to that of section 11, in that it required no more than knowledge of a particular state of affairs and concealment of information about that state of affairs. The Committee recommended, however, that there was no need for such an offence other than to deal with the case where an individual accepted a bribe in return for not disclosing information. A new offence to this effect was created by section 5 of the 1967 Act. This applied only in England and Wales. An Act to similar effect was passed in Northern Ireland in 1967, but there the offence of misprision was retained. Section 5 of the Criminal Law Act (NI) 1967 provides that:

> "..... where a person has committed an arrestable offence, it shall be the duty of every other person, who knows or believes -
>
> (a) that the offence or some other arrestable offence has been committed; and
>
> (b) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence;
>
> to give that information, within a reasonable time, to a constable and if, without reasonable excuse, he fails to do so he shall be guilty of an offence....."

---

(2) CLRC Seventh Report, paragraph 37

Although, therefore, this offence exists at present only in Northern Ireland, it is of general application there, and predated the current emergency. It does not apply, as section 11 does, to information which might be of assistance in preventing particular acts (which is why section 11 is of value in Northern Ireland despite the existence of this general offence); but this does not affect the principle, which is that a criminal sanction should be available against the concealment of information.

225. The point of this digression is to show that, far from being something new, the offence of withholding information has a substantial pedigree. There are few provisions in the Prevention of Terrorism Act which do not have unwelcome effects upon civil liberties; my task has been to see whether their costs in this area are outweighed by their benefits in preventing acts of terrorism. In my view the arguments of principle against section 11 are weakened by the fact that an essentially similar offence existed in the general law of England and Wales until 1967, and still exists in the general law of Northern Ireland.

226. A related argument is that the question whether it should be an offence to withhold information should be considered in the context of the criminal law as a whole rather than in temporary provisions of this type. But the essence of this legislation is that it provides powers not available in the general law. If one accepts in principle - as I have done - the need for extraordinary legislation to deal with an extraordinary situation, it is the nature of the provisions which matter, not the fact that they depart from the general law. A somewhat more sophisticated argument along these lines is that section 11 makes possession of a political motive the crucial element in the offence, moreover a political motive not of the offender himself: if an individual overhears plans for a murder and does not report this to the police, he commits an offence if the planned killing was by or on behalf of a terrorist group, but not if it was for personal motives. This may indicate a gap in the general law - though it is not for me to say so - rather than something wrong in principle with section 11. But if, as seems to be the case, the main reason for not having such an offence in the general law is that it is not necessary, this is no argument against creating an offence in a specialised area where the need for it is shown.

227. It has also been suggested to me that section 11 infringes the right to silence. The validity of this claim depends upon what is meant by 'the right to silence'. I take it to mean the right not to incriminate oneself (3), and in this sense, as I noted above (see paragraph 217), the section appears not to affect the right. I accept fully, however, that lack of clarity in this area of the law may cause confusion, not to mention the possibility of abuse. I return to this below.

228. To my mind, the most serious argument of civil liberties against section 11 is that people should not be obliged by law to inform on their friends and relatives. As a statement of principle this seems unexceptionable, but I believe that its validity is not absolute. It depends, rather, on the nature of the information withheld. I would suggest that the moral dilemma for the recipient of information, while clearly an important factor, should not be considered of overwhelming importance if his going to the police might prevent a terrorist murder. In other words my approach to this argument is not that it should override all other considerations, but that it should be borne constantly in mind when use of the section is being considered. It is thus more appropriately discussed in the context of the possibility of abuse.

229. More positively, it is widely accepted that the public has a duty to assist the police in preventing and detecting crime. The preamble to the Judges' Rules begins:

> "These Rules do not affect the principles -
>
> (a) that citizens have a duty to help a police officer to discover and apprehend offenders".

In most areas, this duty is moral only and is not backed up by legal sanction. But in the case of terrorism, which is almost by definition criminal activity aimed at society as a whole, it seems to me reasonable that there should be more than a merely moral duty to assist the police. I conclude, therefore, that section 11 of the Act is of genuine value, and that this value is not outweighed by the arguments of principle against it. I believe that subject

---

(3) See R V Sang [1979] 2 All ER 1222 at 1230, per Lord Diplock

to the recommendations in the following section, designed to guard against the possibility of abuse, the section should remain in force.

230. The possibility of abuse. I agree to a large extent with those witnesses who argued that there is substantial potential for abuse of a provision of this kind in the counter-terrorist sphere. Such abuse could take place either at the stage of detention and interrogation, or at that of prosecution. It is, however, relatively easy to dispose of the latter. Prosecution for the offence requires the consent of the Attorney General or, in Scotland, of a procurator fiscal. I am satisfied that the practical effect of this requirement is to sift out all but the most serious cases, and to ensure that those who might be called 'victims of circumstance' - the unwilling recipients of information about acts of terrorism - are not prosecuted. The most appropriate use of the offence might be in cases where there is a technical difficulty in framing a charge of more direct involvement. The sparing use of prosecution under section 11 suggests that it is treated with a very proper caution. On the other hand, the high rate of acquittal suggests that even higher standards would not be out of place.

231. A greater potential for abuse, however, arises at the interrogation stage. Three possible dangers have been instanced to me. First, as I mentioned above, is the danger of unfair pressure being placed by the police on, for instance, the relative of a terrorist who, without any involvement in terrorism himself, happens to pick up information of the type covered by the section. Such a person would have the choice between providing the information and perhaps seeing the individual concerned convicted, with the risk of reprisals to add to the inevitable conflict of loyalty; and not providing the information and risking prosecution. Such a choice will probably put a relative under considerable strain, and it is strain which can be occasioned simply by the police bringing to his notice the provisions of section 11. As I argued above, in extreme cases - where the withholding of information might lead to death, serious injury or the escape of a terrorist offender - I believe that this can be justified; but it is vital that it is not used in a routine manner. I recommend that the police throughout the United Kingdom be advised by circular that section 11 should be used only where they suspect that information is being withheld which could if revealed prevent acts of terrorism or lead to the apprehension of terrorist offenders.

232. Second, reasonable suspicion that an individual is guilty of an offence under the section is a ground for arrest under section 12, and for consequent detention for up to seven days if the Secretary of State so directs. In discussing the powers of arrest and interrogation (see Chapter 4), I argued that arrest under section 12 could be justified for the purpose of obtaining information, provided that the individual concerned was otherwise suspected of involvement in terrorism. The corollary to this is that people not suspected of involvement in terrorism should not be liable to arrest and extended detention under these powers solely on the ground that the police suspect them of possessing relevant information. The police throughout the United Kingdom have told me that as a matter of practice their primary use of section 11 is to assist them in obtaining information from those against whom they have intelligence, but probably not admissible evidence, to suggest deeper involvement in terrorism than the mere possession of information. I believe that this should be given legislative effect. Accordingly I recommend that an officer's reasonable suspicion that an individual is guilty of an offence under section 11 of the Act should no longer be a sufficient ground for that person's arrest under section 12. I would re-emphasise that arrest under section 12 is and should remain perfectly lawful where a person believed to be in possession of information about terrorism is also suspected of terrorist involvement. Additionally, Article 5 of the Supplemental Temporary Provisions Order provides that one of the purposes of examination at the ports may be to determine whether there are grounds for suspecting that an individual is guilty of an offence under section 11. This seems to me unnecessary; the other grounds of examination are sufficiently wide. I recommend, therefore, that this provision be dropped from Article 5.

233. The third argument is that section 11 can be used to put pressure on people to make self-incriminating statements. While it seems clear that it was not Parliament's intention that section 11 should be used in this way, and while Lord Ross' judgement in Von (4) supports this view, this restriction does not appear on the face of the legislation. Furthermore, a number of police officers with whom I discussed this issue in England and Northern

---

(4) op cit

Ireland were unaware of it, which suggests that there is a real danger of the section being misused, albeit innocently. (In Scotland, by contrast, the Von decision led to the adoption of guidelines to the police which require them to inform a suspect specifically that the provisions of section 11 do not oblige him to incriminate himself.) It is notable that the equivalent offence in the general law of Northern Ireland makes this restriction explicit, as does the narrower provision under section 5 of the Criminal Law Act 1967. The Northern Ireland provision is to the effect that 'where a person has committed an arrestable offence, it shall be the duty of every other person' possessing relevant information to provide it. I recommend that section 11, also, should be amended to make it clear that the information which it is an offence to withhold relates only to the conduct of third parties, and not to that of the person being questioned.

E.R.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Paragraph

PART I : INTRODUCTION

1. If special legislation effectively reduces terrorism, as I believe it does at present, it should be continued as long as a substantial terrorist threat remains. 1

2. Legislation of this type should remain in force only while it continues to be effective, only if its aims cannot be achieved by use of the general law, if it does not make unacceptable inroads on civil liberties, and if effective safeguards are provided to minimise the possibility of abuse. 9

3. The major trend of terrorism beyond the context of Northern Ireland is its increasing 'internationalisation'. This has had two aspects: the growing international links of terrorist groups associated with Northern Ireland, and an increase in the number of terrorist incidents in Great Britain unconnected with Northern Ireland. 13

4. The Act should require annual renewal as at present, but should have a maximum duration of five years, without the possibility of further extension. Any further counter-terrorist legislation would require a new Bill. 14

5. Re-enactment should be preceded by a review of the Act's operation and consideration of suggested amendments. 17

6. 'Temporary Provisions' should be removed from the short title of the Act. 18

L.R.

Paragraph

PART II: ARREST AND INTERROGATION

7 If the power of extended detention were abolished, the police both in Northern Ireland and on the mainland would be seriously handicapped in dealing with terrorists. 65

8. It is a valid use of the section 12 power to arrest and if necessary extend the detention of someone suspected of involvement in terrorism where the arrest and extension are primarily for the purpose of gaining information about terrorism. 67

9. The police throughout the United Kingdom should be reminded by the appropriate Secretary of State that the power of arrest under section 12 should be exercised only where the use of no other power is appropriate to the end sought. 68

10. Wherever possible, applications for extended detention should specify the period required (which in many cases ought to be less than a full five days), and justify this by reference to the results anticipated. 71

11. The Secretary of State should grant an extension of detention for a full five days only when he is satisfied that this rather than a lesser period is necessary. It should, however, remain open to him to grant an extension for less than five days in the first instance and then, on a further application from the police, extend this by a further period, provided that the total period in detention, as at present, does not exceed seven days. 71

12. Ministers should take an active part in ascertaining how far the specific purposes for which an extension was granted have been achieved, and should satisfy themselves that people are not detained under this Act for longer than is absolutely necessary. 72

E.R.

Paragraph

13. Where circumstances permit, all applications for extended detention should be seen and approved by the appropriate Secretary of State personally, and not by a junior minister alone. 73

14. The power of arrest in section 12(1)(b) should be available for use against suspected international terrorists of any group, cause or nationality, but it should not be so available in respect of domestic terrorism unconnected with Northern Ireland. 77

15. In general, the recommendations in the Bennett report have been implemented fully and fairly and the present system for supervising the detention of terrorist suspects in Northern Ireland is both thorough and effective. 84

16. Implementation of Lord Shackleton's recommendations on the welfare of persons held under this Act in Great Britain has been patchy and variable. 96 to 98

17. Subject to additional or alternative provisions relating to welfare, access to legal advice and the right not to be held incommunicado, all provisions of the Home Office draft code relating to the treatment of persons in police custody should apply to persons arrested or detained under the Prevention of Terrorism Act in England and Wales. 103

18. The provisions of the draft code, in so far as they are to be applied to persons arrested or detained under the 1976 Act, should be incorporated in the general orders of Scottish police forces. 103

19. All prisoners arrested under the 1976 Act in Northern Ireland should be given a printed notice of rights for their retention; this requirement should be added to the appropriate section of the RUC Code. 105

L.R.

Paragraph

20. Special provision should be made in the draft code to the effect that persons arrested or detained under the 1976 Act in England and Wales should be supplied with clean bed linen, mattress, blankets and pillow, and that they should be offered a varied diet. A similar provision should be added to force orders in Scotland. 106

21. The right of absolute access to a solicitor after 48 hours' detention under the emergency legislation, which applies in Northern Ireland, should apply also throughout Great Britain for persons held under the Prevention of Terrorism Act. In relation to England and Wales, this absolute right should be included in the Police and Criminal Evidence Bill; in relation to Scotland, pending an appropriate legislative opportunity, it should be incorporated in force orders. 108

22. Persons detained under the Act for more than 48 hours anywhere in the United Kingdom should be entitled to legal advice on a similar financial basis to 'ordinary' suspects in England and Wales under the proposals in the Police and Criminal Evidence Bill. 109

23. It should be the duty of the uniformed custody officer, after the suspect has spent 48 hours in custody under the Act, to remind him of his absolute right to consult a solicitor and to ask him if he wishes to exercise this right. The reply should be entered on the custody record, and the suspect invited to sign. If he refuses to sign, this should be noted. This provision should apply throughout the United Kingdom and should be incorporated, as appropriate, in force orders and in the draft code relating to the treatment of suspects. 110

24. An Assistant Chief Constable (or equivalent) should be permitted to direct that an interview between solicitor and suspect, in pursuance of the right of absolute access after 48 hours, should take place within both the sight and hearing of a uniformed inspector unconnected with the case, if he has reasonable grounds to believe that an interview in the absence

...../of these

of these conditions would 'i) lead to interference with or harm to evidence or witnesses in connection with a serious arrestable offence; or (ii) lead to the alerting of other terrorist suspects not yet arrested; or (iii) hinder the recovery of any property; or (iv) seriously prejudice the gathering of intelligence. The relevant ground should be entered on the custody record and the detained person informed. This provision should apply throughout the United Kingdom. 111

25. Any person detained at a police station under the Prevention of Terrorism Act should be entitled (a) to consult privately with a solicitor at any time during his detention, and (b) to have a friend or relative or other person known to him or likely to take an interest in his welfare informed without delay of the fact and place of his detention, unless an officer of superintendent rank or above believes on reasonable grounds that such consultation or notification would have one of the four consequences set out at recommendation 24. In the case of both (a) and (b), the police should lose this limited discretion to refuse on the expiry of 48 hours' detention. These provisions should apply throughout the United Kingdom, and should be included, as appropriate, in the Police and Criminal Evidence Bill and in force orders. 112

26. Consideration should be given to replacing the Judges' Rules in Northern Ireland by a new statute and code governing suspects' rights. 112

Paragraph

PART III: THE PORT POWERS

27. Except where otherwise specifically stated, all recommendations in Part II of the report should apply to persons detained under this legislation at ports in the same way as to persons arrested 'inland'. 114 and 142

28. While there remains a significant threat from terrorism related to Northern Ireland, it will be necessary to retain port controls in something like their present form; and if they are operated with the discretion and sensitivity which the public has a right to expect, the inconvenience they cause can be kept at a minor level. 140

29. Any person examined at a port for more than one hour - whether or not it has been necessary formally to detain him - should be handed a notice of rights, and should be invited to sign to acknowledge receipt. This provision should apply throughout the United Kingdom and should be included in force orders. 142

30. An examining officer should lose the right to examine (and detain) a passenger twelve hours after the start of examination unless he has by that time formed a resonable suspicion of one of the matters in section 12(1) of the Prevention of Terrorism Act. If he has formed such a suspicion and wishes to examine and detain the passenger further, he should be obliged to serve a notice to this effect and to invite the passenger to sign for this. These provisions should apply throughout the United Kingdom. The requirement for reasonable suspicion should be included in the legislation, and that for service of the notice should be incorporated in force orders. 142

31. The application of Article 10 of the Order should be extended to cover suspected international terrorists of any group, cause or nationality. 144

Paragraph

32. The published statistics on the Act's operation should include details of the number of people examined at ports for longer than one hour. 145

33. HM Inspectors of Constabulary for England and Wales and for Scotland should mount an early study of the number of police personnel and standard and amount of equipment - particularly communications equipment - at airports and sea ports serving destinations within the Common Travel Area, and recommend minimum levels of staff and equipment which should be available. 147

34. Landing and embarkation cards should be completed by all passengers on commercial flights and sailings between Great Britain and the island of Ireland. 148

35. All examining officers - and all other officers who may be called upon to carry out such functions - should receive training in the techniques of questioning suspected terrorists. 150

36. Examining officers should be reminded by government circular that the powers under this legislation should be used solely for the purpose of apprehending those who may be suspected of involvement in terrorism. 151

37. Examining officers should be required to identify both themselves and the purpose of their examination, either orally or by means of a notice clearly visible to passengers. 151

38. HM Inspectors of Constabulary for England and Wales and for Scotland should include in their study of resources an examination of the physical accommodation provided at the designed ports, and recommend minimum standards to be observed by those responsible. The carrying companies, port authorities and Department of Trade should be involved in this study. 152

Paragraph

39. Immigration officers should receive training similar to that of Special Branch port officers on the powers contained in the Prevention of Terrorism Act and on terrorism connected with Northern Ireland; and they should be instructed to exercise their powers of initial examination under this legislation whenever they believe this to be necessary. 154

PART IV: EXCLUSION

40. The statistics suggest that exclusion is used increasingly rarely in Great Britain, and, within this diminishing use, more rarely still against people who are settled in Great Britain. 164

41. The exclusion of some people under these powers has materially contributed to public safety in the United Kingdom; this could not have been achieved through the normal criminal process. 176

42. The power to exclude should remain available to the Secretary of State in extreme cases. Its severity should be mitigated as suggested below, and the possibility of abolishing it should be kept under regular review, without prejudice to the Act's other powers. 178

43. Citizens of the United Kingdom and Colonies should not be liable to exclusion from that part of the United Kingdom in which they are settled. 'Settled' is not used in a technical sense, but might be defined as ordinary residence for a continuous period of three years immediately prior to consideration of exclusion. 181 and 182

44. All applications for the exclusion of a citizen of the United Kingdom and Colonies should include the direct views of the police in both the 'excluding' and 'receiving' territory on the merits of exclusion. 189

Paragraph

45. Exclusion is a matter of public policy, and the final decision must remain that of the Secretary of State, answerable to Parliament, and not that of any judicial authority. 191

46. The subject of an exclusion order should be entitled to make representations against the order within seven days (rather than 96 hours as at present) of the serving of the order on him, and to have a personal interview with the Secretary of State's Adviser despite the subject's removal in pursuance of the order. The right to an interview should apply to all persons excluded - whether from Great Britain, Northern Ireland or the United Kingdom as a whole - provided that they have been removed within the United Kingdom or to the Republic of Ireland. 195

47. When an exclusion order is served, the subject should receive also a notice of his right to make representations, and should be invited to sign to acknowledge receipt of this; he would not be required to indicate at this stage whether or not he intends to make representations. 195

48. A person who is outside the United Kingdom at the time when an exclusion order against him is signed should, as now, be entitled to make representations only when he attempts to enter the United Kingdom. But the revised system for representations should apply fully in the case of an individual excluded from Great Britain or Northern Ireland who, at the time of exclusion, is in the part of the United Kingdom from which he has not been excluded. 196

49. Section 7(4) of the Act (about 'frivolous representations') should be deleted. 197

50. Exclusion orders should have a fixed term of three years. 198

Paragraph

51. If it is considered necessary to continue an individual's exclusion beyond three years, this should be done on the basis of a fresh application by the police, detailing recent intelligence on him and setting out the reasons why exclusion remains necessary; a fresh exclusion order signed by the Secretary of State would be required for exclusion to last beyond three years. 198

PART V: OTHER PROVISIONS

52. Proscription has had some - albeit relatively limited - benficial effects. 208

53. There should be no addition to the list of proscribed organisations in the absence of a clear and demonstrable need for this, and a search for 'symmetry' - whether between Northern Ireland and Great Britain or between Republican and Loyalist terrorist groups - is not a sufficient reason for adding to the list. 211

54. The police service throughout Great Britain should be given guidance by circular on the proper use, and limits on the use, of sections 1 and 2 of the Act. 212

55. Section 11 of the Act is of genuine value, and this value is not outweighed by the arguments of principle against it. Subject to the recommendations below, the section should remain in force. 229

56. The police service throughout the United Kingdom should be advised by circular that section 11 should be used only where they suspect that information is being withheld which could if revealed prevent acts of terorism or lead to the apprehension of terrorist offenders. 231

Paragraph

57. An officer's reasonable suspicion that an individual is guilty of an offence under section 11 of the Act should no longer be a sufficient ground for that person's arrest under section 12. But arrest under section 12 is and should remain perfectly lawful where a person believed to be in possession of information about terrorism is also suspected of terrorist involvement. 232

58. Examination under Article 5 of the Supplemental Temporary Provisions Order should no longer be proper solely in order to determine whether there are grounds for suspecting an individual of being guilty of an offence under section 11. 232

59. Section 11 should be amended to make it clear that the information which it is an offence to withhold relates only to the conduct of third parties, and not to that of the person being questioned. 233

E.R.

ANNEX A

TEXT OF PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

C.R.

ANNEX B

TEXT OF PREVENTION OF TERRORISM (SUPPLEMENTAL TEMPORARY PROVISIONS) ORDER 1976

E.R.

ANNEX C

LIST OF WITNESSES TO THE REVIEW

ø = oral evidence
w = written evidence

w ø	The Alliance Party of Northern Ireland
w	Association of Chief Police Officers of England, Wales and Northern Ireland
w	Association of Chief Police Officers (Scotland)
ø	Association of Forensic Medical Officers
w	Association of Scottish Police Superintendents
w	The Rev Robert Bell and Rev Alan E Tilson
w	Miss E Bolton
w ø	David Bonner Esq
ø	The Lord Boston of Faversham, QC
w	The British Institute of Human Rights
w	British Midland Airways Ltd
w	Communist Party of Great Britain
ø	The Rt Hon J D Concannon, MP
w	The Connolly Association
w	George Cunningham Esq, MP
ø	The Most Rev Dr Edward Daly, Bishop of Derry
w	Miss M T Dillane and Miss S McNulty
w	Federation of Irish Societes
w ø	The Rt Hon Reg Freeson, MP
w ø	Dr T Hadden
w	Haldane Society of Socialist Lawyers
w	Haringey Irish Association
ø	The Lord Harris of Greenwich
ø	The Rt Hon Roy Hattersley, MP
w	Paddy Hillyard Esq
w	Home Affairs Panel of the Liberal Party
w ø	The Lord Hylton
w	Irish Civil Rights Association
w	Irish in Britain Representation Group
w	Irish National Council
w	Ivan Lawrence Esq, QC, MP
w	The Law Society
w ø	Alastair D W Logan Esq
w	A W Lyon Esq, MP

E.R.

w	J Murray Esq
w ø	National Council for Civil Liberties
w	National League of Young Liberals
w	National Union of Students
w	The Northern Ireland Association of Socialist Lawyers
w	Northern Ireland Civil Rights Association
w	Northern Ireland Labour Party
ø	W Pitt Esq, MP
ø	The Police Authority for Northern Ireland
w	Police Federation of England and Wales
w	The Police Superintendents' Association of England and Wales
w	The Presbyterian Church in Ireland
w	S Preston Esq
w	A A I Priscott Esq
ø	The Rt Hon Merlyn Rees, MP
w	Scottish Council for Civil Liberties
w	Social Democratic and Labour Party
w	The Society of Conservative Lawyers
w	The Society of Labour Lawyers
w	Clive Soley Esq, MP
w ø	Standing Advisory Commission on Human Rights
w	Neil Stewart Esq
w	The Rt Hon John D Taylor, MEP
w	Philip A Thomas Esq
w	Lt Cdr T M Tuke, RN (Dukes Transport (Craigavon) Ltd)
w ø	Ulster Democratic Unionist Party
w	Ulster Flying Club (1961) Ltd
w ø	Ulster Unionist Party
w ø	Ulster Young Unionist Council
w	C P Walker Esq
w ø	Dermot P J Walsh Esq
w ø	Professor Paul Wilkinson
w	Woodgate Air Services Ltd
w ø	The Workers' Party

ANNEX D

STATISTICS

I GREAT BRITAIN

a) Home Office Statistical Bulletin No 1/83, for the fourth quarter of 1982

Table 1: Persons detained under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976, by outcome.

Table 2: Persons detained under the 1974 and 1976 Acts and applications for extension of detention, by police force area.

Table 3: Applications for exclusion orders, by quarter in which the application was made and outcome.

Table 4: Persons detained under the 1974 and 1976 Acts and charged with offences under the Acts, by section under which charged and outcome.

Table 5: Persons detained under the 1974 and 1976 Acts and charged only with criminal offences other than under the Acts, by principal offence and outcome of charge.

Table 6: Persons detained under the 1974 and 1976 Acts and not charged with a criminal offence or excluded, by length of detention.

b) Other tables

Table 7: Persons detained under the 1976 Act, extensions granted and persons charged and excluded, by whether detained at port or airport or elsewhere.

Table 8: Persons detained under the 1976 Act, charged or excluded, by whether detained at port or airport or elsewhere and by police force area.

Table 9: Persons detained under the 1976 Act and charged with offences, by where detained and whether extension of detention was granted.

II NORTHERN IRELAND

Table 10: Persons detained under the Prevention of Terrorism Acts 1974 and 1976, extensions of detention and charges, by year.

Table 11: Exclusion orders signed, by year.

Table 12: Persons proceeded against for offences under the 1976 Act, by section of the Act.

Table 13: Persons charged following detention under the Prevention of Terrorism Act with offences other than offences under the Act, by offence and outcome of charge.

Table 14: Complaints against members of the RUC.

III CHANNEL ISLANDS AND ISLE OF MAN

Table 15: Persons detained in the Channel Islands and Isle of Man under the Prevention of Terrorism Acts 1974 and 1976, by year.

Table 16: Persons detained in the Channel Islands and Isle of Man under the 1974 and 1976 Acts, by length of time detained.

Table 17: Exclusion orders made in the Channel Islands and Isle of Man.

Table 1 Persons detained under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976, by outcome

Great Britain, 29 Nov 1974 - 31 Dec 1982

Number of persons

Date of detention		Detentions			Extension of detention[a] granted for person detained		Exclusion order made[b]	Charged with offence			Not charged with offence or excluded
		Total	at port or airport	elsewhere	at port or airport	elsewhere		Offence under Acts	Conspiracy to commit offence under Acts	Other offence	
1974 (from 29 November)		59	10	49	-		46	12	-	-	8	39
1975		1,067	630	437	-[c]		137	46	3	-	60	958
1976		1,066	812	254	1[c]		59	23	8[d]	-	49	986
1977		853	661	192	-		29	17	6[d]	-	38	792
1978		622	509	113	-[e]		23	49	3	-	18	552
1979		857	573	284	105[e]		135	48	39	18	48	704
1980		537	441	96	86[e]		40	45	11	-	30	451
1981		274	163	111	17[e]		39	10	22	3	13	226
1982		220	160	60	17[e]		20	11	6	-	11	192
1981	1st quarter	58	43	15	8		1	4	3	-	1	50
	2nd quarter	72	34	38	2[e]		22	1	8	3	4	56
	3rd quarter	60	35	25	2[e]		3	2	4	-	4	50
	4th quarter	84	51	33	5		13	3	7	-	4	70
1982	1st quarter	37	31	6	4		-	1	-	-	2	34
	2nd quarter	44	40	4	2[e]		2	3	3	-	3	35
	3rd quarter	85	48	37	4[e]		14	3	1	-	5	76
	4th quarter	54	41	13	7		4	4	2	-	1	47
Total		5,555	3,959	1,596	226		528	261	98	21	275	4,900[f]

(a) Extension of period of detention beyond 48 hours, except where noted otherwise.

(b) Exclusion orders made against person detained under the Acts at the time. See table 3 for total exclusion orders, including those made against persons not detained under the Acts.

(c) Extension of period of detention beyond 7 days.

(d) In addition, 9 persons were charged with offences under the Prevention of Terrorism (Temporary Provisions) Act 1976 without having first been detained under Section 12 of the Act or Article 10 of the Supplemental Provisions. Thus the total charged with offences under the Acts was 101.

(e) In addition, one application was refused in 1979, six in 1980, one in 1981 and one in 1982.

(f) Includes 13 persons brought to the courts for non-payment of fines and 1 who had escaped from prison in the Republic of Ireland and was returned to complete the sentence.

Table 2 Persons detained under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 and applications for extension of detention, by police force area

Great Britain, 29 Nov 1974 - 31 Dec 1982 — Number of persons

Police force area	Total detained	Extensions of detention granted[a]
England		
Metropolitan Police District	1,202	233
Avon and Somerset	51	3
Bedfordshire	60	3
Cambridgeshire	1	1
Cheshire	10	1
City of London	26	8
Cleveland	18	4
Cumbria	7	2
Derbyshire	4	1
Devon and Cornwall	42	7
Dorset	16	-
Durham	1	-
Essex	69	6
Gloucestershire	12	-
Greater Manchester	90	7
Hampshire	195	76
Hertfordshire	1	-
Humberside	13	-
Kent	121	16
Lancashire	94	11
Leicestershire	10	1
Lincolnshire	2	-
Merseyside	1,301	81
Norfolk	-	-
Northamptonshire	24	4
Northumbria	7	-
North Yorkshire	1	-
Nottinghamshire	3	-
South Yorkshire	4	-
Staffordshire	-	-
Suffolk	10	-
Surrey	95	25
Sussex	82	2
Thames Valley	17	5
Warwickshire	-	-
West Mercia	6	3
West Midlands	137	22
West Yorkshire	170	16
Wiltshire	6	-
British Transport Police	1	-
Total	3,909	538

Police force area	Total detained	Extensions of detention granted[a]
Wales		
Dyfed Powys	88	1
Gwent	4	2
North Wales	71	1
South Wales	80	3
Total Wales	243	7
Total England and Wales	4,152	545
Scotland		
Strathclyde	247	100
Tayside	3	2
Lothian and Borders	25	6
Dumfries and Galloway	1,112	96
Grampian	5	1
Northern	3	1
Fife	5	3
Central Scotland	3	-
Total Scotland	1,403	209
Total Great Britain	5,555	754

(a) Extensions of detention for persons originally detained in the stated police force area. In some cases the person was moved to another area and the extension was applied for by the force to which he was moved.

Table 3 Applications for Exclusion Orders, by quarter in which the application was made and outcome

Great Britain, 29 Nov 1974 - 31 Dec 1982

Number of applications

		Total applications	Application refused by Secretary of State	Exclusion order made: Total	Against person detained at port or airport	Against person detained elsewhere	Against person not detained under Act[a]	Person removed to: Northern Ireland	Republic of Ireland	Person outside G.B. when order made	Order revoked before person removed
1974	(from 29 November)	22	3	19	1	11	7	7	5	4	3
1975		61	11	50	25	21	4	32[b]	12	1	4
1976		28	4	24	15	8	1	17	6	-	1
1977		18	-	18	12	5	1	16	1	-	1
1978		57	4	53	40	9	4	49	3	1	-
1979		58	5	53	42	6	5	44	4	4	1
1980		59	10	49	42	3	4	43	5	-	1
1981		17	6	11	8	2	1	10	1	-	-
1982		16	1	15	9	2	4	12	-	3	-
1981	1st quarter	5	1	4	4	-	-	4	-	-	-
	2nd quarter	2	-	2	-	1	1	1	1	-	-
	3rd quarter	4	2	2	1	1	-	2	-	-	-
	4th quarter	6	3	3	3	-	-	3	-	-	-
1982	1st quarter	1	-	1	1	-	-	1	-	-	-
	2nd quarter	4	-	4	2	1	1	4	-	-	-
	3rd quarter	4	1	3	2	1	-	3	-	-	-
	4th quarter	7	-	7	4	-	3	4	-	3	-
Total		336	44	292	194	67	31	230[b]	37	13	11[c]

(a) For example: order made against a person detained under other powers, a person released from prison or a person already outside Great Britain.

(b) In addition, one person, although made subject to an exclusion order, was returned to Northern Ireland under other powers to face a charge of causing an explosion.

(c) In addition, 29 other orders were revoked after the person had been removed bringing the total number of orders revoked to 40.
14 orders were revoked and 29 confirmed following representations by 43 excluded persons under the provisions of the Acts.
20 orders were revoked and 28 confirmed following requests for review by 59 of the 198 excluded persons whose orders had been in force for more than 3 years: 11 such cases were still being considered on 31 December 1982.
6 orders were revoked for other reasons.

Table 4 Persons detained under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 and charged with offences under these Acts[a], by section(s) under which charged and outcome

Great Britain, 29 Nov 1974 - 31 Dec 1982

Number of persons

Section(s) under which charged	Total	Not proceeded with	Awaiting trial	Acquitted	Found guilty	Sentence:[b] Absolute or conditional discharge	Fine	Suspended sentence	Imprisonment 1 year and under	Over 1 year, up to 5	Over 5 years
1974 Act: Sec 1(1)(b) (soliciting or receiving money for a proscribed organisation)	4	-	-	3	1	-	-	-	1	-	-
1976 Act: Sec 1(1)(b) (soliciting or receiving money for a proscribed organisation)	3	-	-	2	1	-	-	-	1	-	-
Section 2(b) (displaying support for a proscribed organisation)	2	-	-	-	2	-	2	-	-	-	-
8(1) (refusal to complete embarkation card)	2	-	-	-	2	1	1	-	-	-	-
9(1) (failure to comply with exclusion order)	9	-	-	-	9	-	4	1	4	-	-
9(2)(a) (helping excluded person to breach the order)	3	-	-	-	3	-	2	-	1	-	-
10(1)(a) (soliciting money for use in acts of terrorism)	3	-	-	-	3	-	-	-	2	1	-
10(1)(b) (receiving money or property for use in acts of terrorism)	26	1	-	2	23	-	-	-	1	3	19
10(1) (both of above)	2	-	-	1	1	-	-	-	-	-	1
10(1) and 10(2) (soliciting and giving money for use in acts of terrorism)	2	-	-	-	2	-	-	-	-	1	1
10(2) (giving money or property for use in acts of terrorism)	2	-	-	-	2	-	-	-	-	2	-
11(1) (withholding information about acts of terrorism)	14	1	-	4	9	-	-	7	2	-	-
Schedule 3 (failure to co-operate with examination at port)	3	-	-	-	3	-	1	-	2	-	-
Article 5 and 8 (Supplemental provisions) (refusal to produce documentation or production of false documentation at examination at port)	23	1	-	-	22	1	13	-	8	-	-
Total	98[c]	5	-	12	83	2	23	8	22	7	21

[a] Persons charged with offences under the Prevention of Terrorism legislation are included in this table and not table 5 even if they were also given a more severe sentence for other offences.

[b] Most severe sentence.

[c] In addition, 9 persons were charged with offences under the Act without first having been detained under the Act. Of 8 persons charged under section 10(1)(b), 4 charges were not proceeded with and 4 persons were found guilty and sentenced to 5 years imprisonment. One person, charged under article 8(1) of the Supplemental Provisions (refusing to complete an embarkation card) was found guilty and fined.

Table 5 Persons detained under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 and charged only with criminal offences other than under the Acts (a), by principal offence (b), where charged and outcome of charge

Great Britain, 29 Nov 1974 - 30 Dec 1982

Number of persons

Principal offence[b]	Total	Not proceeded with	Awaiting trial	Acquitted or "not proven"	Found guilty	Non-custodial sentence:				Custodial sentence:			
						Absolute or conditional discharge	Fine	Other	Suspended sentence	Borstal, Detention centre	Imprisonment 1 year or less	Over 1 year, up to 5	Over 5 years
Charged in Great Britain													
Conspiracy to commit offences under Prevention of Terrorism legislation	21	5	2	7	7	-	-	-	2	-	2	-	3
Murder	3	-	-	3	-	-	-	-	-	-	-	-	-[c]
Attempted murder	5	-	-	-	5	-	-	-	-	-	-	-	3[c]
Conspiracy to murder	1	-	-	-	1	-	-	-	-	-	-	1	-
Causing/conspiracy to cause explosions	47	5[f]	-	11	31	-	-	-	-	1	-	3	27
Unlawful possession/conspiracy to possess explosives with intent to endanger life	19	-	-	6	13	-	-	-	-	-	2	5	8
Other violence against the person	7	-	-	-	7	1	5	-	-	-	1	-	-
Placing a hoax explosive device	1	-	1	-	-	-	-	-	-	-	-	-	-
Offences under Firearms Act 1968	31	2	3	-	26	1	11	1	2	-	2	5	4
Robbery or conspiracy to commit robbery	2	-	1	-	1	-	-	-	-	-	-	1	-
Burglary/aggravated burglary	14	1	-	1	12	-	4	-	2	-	3	1	2
Other Theft Act offences	64	9	-	1	54	4	29	3	5	1	8	4	-
Forgery	1	-	-	-	1	-	1	-	-	-	-	-	-
Other offences	25	4	-	1	20	4	12	1	-	-	3	-	-
Total charged in Great Britain	239	26	7	30	176	10	62	5	11	2	21	18	47
Returned to Northern Ireland and charged[d]													
Murder	6	1	3	-	2	-	-	-	-	-	-	-	2[c]
Manslaughter	4[e]	-	-	-	4[e]	-	-	-	-	-	-	1	3
Causing an explosion	9	2	2	-	5[e]	-	-	-	1	-	-	3	1
Unlawful possession of explosives	4	1	-	-	3	-	-	-	-	1	-	1	1
Arson	1[e]	-	-	-	1[e]	-	-	-	-	-	-	1	-
Firearms offences	6	1	-	-	5	-	-	-	4	-	1	-	-
Robbery	8[e]	-	1	-	7[e]	-	-	-	-	1	-	4	2
Burglary	8	-	-	-	8	1	-	-	-	1	5	1	-
Theft/receiving stolen goods	2	-	-	-	2	1	-	-	-	-	1	-	-
Other offences	1	-	-	-	1	-	1	-	-	-	1	-	-
Total charged in Northern Ireland	49	5	6	-	38	2	1	-	5	3	8	11	9

Returned to the Republic of Ireland and charged[d]													
Causing an explosion	1	-	-	1	-	-	-	-	-	-	-	-	-
Unlawful possession of explosives	1	-	-	-	1	-	-	-	-	-	-	1	-
Burglary	1	-	-	-	1	1	-	-	-	-	-	-	-
Theft	3	1	-	-	2	-	-	1	-	-	1	-	-
Desertion	1	-	-	-	1	-	-	1	-	-	-	-	-
Total charged in the Republic of Ireland	7	1	-	1	5	1	-	2	-	-	1	1	-
Returned to the Channel Isles and charged													
Theft	1	-	-	-	1	1	-	-	-	-	-	-	-
Total	296	32	13	31	220	14	63	7	16	5	30	30	36

(a) Persons charged with offences under the Prevention of Terrorism Acts are included in Table 4 and not this table, even if they were also charged with other offences.

(b) If charged with more than one offence, the principal offence is that for which the person was found guilty or that for which the most severe sentence was or could be imposed.

(c) Life imprisonment.

(d) These persons were not subject to an exclusion order but were returned under other powers to face charges.

(e) One person found guilty of arson, one of armed robbery and one of causing an explosion were also found guilty under the Northern Ireland Emergency Provisions legislation of membership of a proscribed organisation.

(f) One person died whilst remanded on bail.

Table 6 Persons detained under the Prevention of Terrorism (Temporary Provisions) Act 1976 and not charged with a criminal offence or excluded, by length of detention

Great Britain, 1 Jan 1979 - 31 Dec 1982 — Number of persons

Length of detention	1979	1980	1981	1982	1981				1982			
					1st quarter	2nd quarter	3rd quarter	4th quarter	1st quarter	2nd quarter	3rd quarter	4th quarter
Less than 2 hours	53	20	9	10	4	3	2	-	1	3	4	2
2 hours and less than 4	67	34	10	7	3	3	2	2	1	1	4	1
4 hours and less than 8	72	25	10	17	2	1	3	4	2	7	4	4
8 hours and less than 12	39	22	8	14	-	3	4	1	1	2	9	2
12 hours and less than 24	121	92	57	38	10	17	18	12	7	8	13	10
24 hours and less than 36	121	121	57	54	21	11	8	17	9	7	22	16
36 hours and less than 48	87	80	40	34	5	5	11	19	10	7	10	7
Total under 48 hours	560	394	191	174	45	43	48	55	31	35	66	42
2 days and less than 3	71	22	9	3	3	3	1	2	1	-	2	-
3 days and less than 4	27	11	7	5	-	6	-	1	1	-	2	2
4 days and less than 5	14	10	4	2	1	-	-	3	1	-	1	-
5 days and less than 6	8	7	6	7	-	3	1	2	-	-	3	4
6 days and less than 7	21	6	9	1	1	1	-	7	-	-	1	-
7 days	3	1	-	-	-	-	-	-	-	-	-	-
Total 48 hours or more	144	57	35	18	5	13	2	15	3	-	9	6
Total detained and not charged with offence or excluded	704	451	226	192	50	56	50	70	34	35	75	48

Table 7 Persons detained under the 1976 Act, extensions granted and persons charged and excluded, by whether detained at port or airport or elsewhere

Great Britain, 29 Nov 1974 - 31 Dec 1982 — Numbers and percentages

Year	Persons detained		Extensions granted				Persons charged				Persons excluded			
			Numbers		Percentages		Numbers		Percentages		Numbers		Percentages	
	Port or airport	Elsewhere	Port or airport	Elsewhere	Port or airport	Elsewhere	Port or airport	Elsewhere	Port or airport	Elsewhere	Port or airport	Elsewhere	Port or airport	Elsewhere
1974 (from 29 November)	10	49	-	46	-	94	..	..	..	..	..	..	..	..
1975	630	437	-	137	-	31	..	..	..	..	..	..	..	..
1976	812	254	1	59	-	23	..	..	..	..	..	..	..	..
1977	661	192	-	29	-	15	..	..	..	..	..	..	..	..
1978	509	113	-	23	-	20	..	..	..	..	..	..	..	..
1979	573	284	105	135	24(1)	48	13	92	2	32	40	8	7	3
1980	441	96	86	40	20	42	16	25	4	26	42	3	10	3
1981	163	111	17	39	10	35	14	24	9	21	8	2	5	2
1982	160	60	17	20	11	33	8	9	5	15	9	2	6	3
Total	3,959	1,596	226	528	19(1)	42(2)	51	150	4	27	99	15	7	3

(1) Extensions granted as a percentage of detentions which took place since the requirement to obtain the Secretary of State's authority to extend detention beyond 48 hours was introduced in April 1979.

(2) Percentage over the years 1979-82. Over the whole period 29 November 1974 - 31 December 1982, the proportion was 33 per cent.

.. not available

Table 8 Persons detained under the 1976 Act, charged or excluded by whether detained at port or airport or elsewhere and by police force area

Great Britain, 1 Jan 1979 - 31 Dec 1982

Number of persons

Police force area	Total detentions	Port or Airport				Elsewhere				Charged		Excluded
		1979	1980	1981	1982	1979	1980	1981	1982	Prevention of Terrorism Act	Other	
England												
Metropolitan Police District	393	105	64	18	20	85	28	50	23	17	27	23
Avon and Somerset	11	2	-	1	3	1	1	-	3	-	2	-
Bedfordshire	11	2	-	-	-	5	4	-	-	-	2	-
Cambridgeshire	1	-	-	-	-	-	-	1	-	-	1	-
Cheshire	2	-	-	-	-	-	-	2	-	-	-	-
City of London	1	-	-	-	-	1	-	-	-	-	-	-
Cleveland	11	-	-	-	-	1	7	3	-	-	-	-
Cumbria	2	-	-	-	-	2	-	-	-	-	-	-
Derbyshire	3	-	-	-	-	1	-	-	2	-	-	1
Devon and Cornwall	10	2	2	1	-	-	2	3	-	1	5	-
Dorset	-	-	-	-	-	-	-	-	-	-	-	-
Durham	-	-	-	-	-	-	-	-	-	-	-	-
Essex	28	7	2	1	7	4	4	2	1	-	2	-
Gloucestershire	1	-	-	-	-	-	-	-	1	-	-	-
Greater Manchester	27	7	5	5	3	-	1	6	2	1	1	3
Hampshire	47	10	3	8	4	16	-	2	4	-	1	3
Hertfordshire	1	-	-	-	-	-	-	1	-	1	-	-
Humberside	5	1	-	-	-	4	-	-	-	-	-	-
Kent	24	18	29	18	2	-	7	-	-	3	1	1
Lancashire	25	10	5	2	1	5	1	1	-	-	1	1
Leicestershire	1	-	-	-	-	1	-	-	-	-	-	-
Lincolnshire	-	-	-	-	-	-	-	-	-	-	-	-
Merseyside	363	144	118	47	28	19	2	1	4	8	5	21
Norfolk	-	-	-	-	-	-	-	-	-	-	-	-
Northamptonshire	1	-	-	-	-	1	-	-	-	-	-	-
Northumbria	2	-	1	-	1	-	-	-	-	2	-	-
North Yorkshire	-	-	-	-	-	-	-	-	-	-	-	-
Nottinghamshire	-	-	-	-	-	-	-	-	-	-	-	-
South Yorkshire	2	-	-	-	-	2	-	-	-	-	-	-
Staffordshire	-	-	-	-	-	-	-	-	-	-	-	-
Suffolk	2	1	-	1	-	-	-	-	-	-	-	-
Surrey	4	-	-	-	-	1	2	1	1	-	1	-
Sussex	50	12	9	10	2	9	5	2	1	-	-	1
Thames Valley	-	-	-	-	-	-	-	-	-	-	-	-
Warwickshire	-	-	-	-	-	-	-	-	-	-	-	-
West Mercia	4	-	-	-	-	3	-	1	-	-	-	1
West Midlands	31	9	6	-	-	15	-	1	-	1	2	1
West Yorkshire	41	7	10	1	-	14	4	4	1	2	5	3
Wiltshire	3	-	-	-	-	-	2	-	1	-	-	-
British Transport Police	1	-	-	-	-	1	-	-	-	-	-	-
Total	1,159	357	254	113	69	190	70	82	44	36	54	59

Police force area	Total detentions	Port or Airport				Elsewhere				Charged		Excluded
		1979	1980	1981	1982	1979	1980	1981	1982	Prevention of Terrorism Act	Other	
Wales												
Dyfed Powys	27	5	15	4	1	-	-	2	-	3	2	1
Gwent	1	-	-	-	-	-	1	-	-	-	1	-
North Wales	18	7	4	2	4	1	-	-	-	-	2	-
South Wales	18	13	2	-	-	1	1	-	1	-	1	-
Total Wales	64	25	21	6	5	2	2	2	1	3	6	1
Total England and Wales	1,223	362	275	119	94	192	72	84	45	39	60	60
Scotland												
Strathclyde	156	33	13	1	1	53	18	15	12	12	50	8
Tayside	1	-	-	-	-	-	1	-	-	-	-	-
Lothian and Borders	17	-	-	-	-	12	4	1	-	4	5	1
Dumfries and Galloway	479	178	150	42	80	17	1	1	3	10	7	44
Grampian	1	-	-	-	-	1	-	-	-	-	1	-
Northern	2	-	1	1	-	-	-	-	-	-	-	1
Fife	6	-	-	-	-	6	-	-	-	3	1	-
Central Scotland	3	-	-	-	-	3	-	-	-	-	1	-
Total Scotland	665	211	166	44	86	92	24	27	15	39	63	54
Total Great Britain	1,888	573	441	163	180	284	96	111	60	78	123	114

Table 9 Persons detained under the 1976 Act and charged with offences, by where detained and whether extension of detention was granted

Great Britain, 1 Jan 1979 - 31 Dec 1982 No of persons

Year	Detained at port or airport			Detained elsewhere			Percentage charged[(a)] Detained at port or airport			Detained elsewhere		
	Total	Extension granted	Other	Total	Extension granted	Other	Total	Extension granted	Other	Total	Extension granted	Other
1979	13	-	13	92	69	23	2	-	3	32	51	15
1980	16	3	13	25	17	8	4	3	4	26	43	14
1981	14	1	13	24	10	14	9	6	9	21	26	19
1982	8	-	8	9	4	5	6	-	6	16	20	14
Total	51	4	47	150	100	50	4	2	4	27	43	16

(a) Persons charged as a percentage of all detained persons in the given category.

TABLE 15

Persons detained in the Channel Islands and Isle of Man under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 (1)

Authority to detain	Place	Number of persons									
		1974 (from 29 Nov.)	1975	1976	1977	1978	1979	1980	1981	1982 (up to 1 Nov.)	Total
Number of persons detained under the Prevention of Terrorism (Temporary Provisions) Act (section 7 of 1974 Act and section 12 of 1976 Act)	Jersey	-	-	-	-	2	-	1	1	-	4
	Guernsey	-	-	-	-	1	4	6	3	1	15
	Isle of Man	-	7	9	5	-	6	8	1	2	38
Number of persons detained under the Prevention of Terrorism (Supplemental Temporary Provisions) Order (Article 9 of 1974 Order and Article 10 of 1976 Order)	Jersey	-	9	5	1	1	1	3	5	5	30
	Guernsey	-	-	5	4	-	-	1	-	-	10
	Isle of Man	-	21	33	19	5	5	4	2	-	89
Total		-	37	52	29	9	16	23	12	8	186

(1) Extended to Jersey by S.I. 1974 No 2025 and 1976 No 896, extended to Guernsey by S.I. 1974 No 2026 and 1976 No 772, and extended to the Isle of Man by S.I. 1974 No 2027 and 1976 No 895

TABLE 16

Persons detained in the Channel Islands and Isle of Man under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 by length of time detained

29 November 1974 to 1 November 1982

Length of detention	Place	Under section 7 of 1974 Act or Section 12 of 1976 Act	Under Article 9 of 1974 Order or Article 10 of 1976 Order	Number of persons Total
Less than 48 hours	Jersey	1	24	25
	Guernsey	15	-	15
	Isle of Man	37	84	121
More than 48 hours	Jersey	3	6	9
	Guernsey	-	10	10
	Isle of Man	1	5	6
Total		57	129	186

No applications for extensions of detention have been refused by the Lieutenant Governors of Jersey, Guernsey or the Isle of Man.

TABLE 17

Exclusion orders made in the Channel Islands and Isle of Man up to 1 November 1982

Place	1974 (from 29 Nov.)	1975	1976	1977	1978	1979	1980	1981	1982 (up to 1 Nov.)	Total
	Number of persons									
Jersey	-	3	-	-	2	-	1	-	-	6
Guernsey	-	-	2	-	-	-	1	-	-	3
Isle of Man	-	-	1	-	2	-	-	-	-	3
Total	-	3	3	-	4	-	2	-	-	12

CONFIDENTIAL

Chancellor of the Duchy of Lancaster

N.B.P.M.

A.J.C. 3/3

PRIME MINISTER

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976:
REVIEW OF OPERATION

I have seen the Home Secretary's further minute to you of 1 March proposing that Lord Jellicoe should be approached to head the review, or failing him Lord Harlech. I would be very content with either of these choices.

Copies of this minute go to the Home Secretary and the other recipients of his minute.

Janet Young

BARONESS YOUNG
2 March 1982

CONFIDENTIAL

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

2 March 1982

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976: REVIEW OF OPERATION

The Prime Minister has seen the Home Secretary's minute of 1 March. She is content for him to ask Lord Jellicoe to carry out this review. If Lord Jellicoe is unable to accept this invitation, she agrees that the Home Secretary should approach Lord Harlech.

I am sending copies of this letter to Michael Collon (Lord Chancellor's Office), Francis Richards (Foreign and Commonwealth Office), David Omand (Ministry of Defence), Muir Russell (Scottish Office), Stephen Boys-Smith (Northern Ireland Office), David Heyhoe (Lord President's Office), Jim Buckley (Chancellor of the Duchy of Lancaster's Office), Jim Nursaw (Law Officers' Department), Christine Duncan (Lord Advocate's Department) and David Wright (Cabinet Office).

W. F. S. RICKETT

John Halliday, Esq.,
Home Office.

CONFIDENTIAL

CONFIDENTIAL

Prime minister 1

Content for Lord Jellicoe to be asked to carry out this review? Sir Keith Joseph is hoping to appoint him Chairman of the MSC, but that only takes 1 or 2 days a month, and should not conflict with this. WR

PRIME MINISTER

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976: 1/3
REVIEW OF OPERATION

Now that you, and our colleagues, have agreed that the operation of the Prevention of Terrorism (Temporary Provisions) Act 1976 should be made the subject of a review, it is necessary to consider by whom it should be undertaken.

Clearly, he must be someone of similar public standing to Lord Shackleton, who carried out the earlier review, and someone who will be acceptable to a wide range of opinion, both inside and outside Parliament. On balance, I believe that he should be a person with administrative experience rather than a judge. My first choice would be Lord Jellicoe. He has served as a Home Office Minister, but this was well before the days of the Prevention of Terrorism Act. The Secretary of State for Northern Ireland agrees with this proposal. If Lord Jellicoe were unable to accept my invitation, I would propose to approach Lord Harlech.

I should like to settle this before the debate on the renewal of the Prevention of Terrorism Act, so I should be grateful for your comments, and those of other recipients, by 3 March.

I am sending copies of this minute to the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate, and Sir Robert Armstrong.

WIW

1 March 1982

CONFIDENTIAL

CONFIDENTIAL

From: The Private Secretary

Prime Minister (2)
To note

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

A.J.C. 2/3

John Coles Esq
10 Downing Street
LONDON
SW1

26 February 1982

Dear John.

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

The Secretary of State for Northern Ireland has seen the Home Secretary's minute of 10 February to the Prime Minister and subsequent correspondence concerning a review of this Act by a senior public figure.

Mr Prior acknowledges the force of Mr Whitelaw's arguments in favour of a review. Since more use is now made of the main provisions of the Act in Northern Ireland than in Great Britain, the major concern in Northern Ireland would be any hint at a weakening of the weapons available to the security forces against terrorists. The proposed terms of reference, which accept the continuing need for legislation of this type, are helpful in that regard and Mr Prior is content with Mr Whitelaw's proposal.

A review of the Prevention of Terrorism Act will doubtless strengthen the existing demands from the Opposition and others for a similar review of the Emergency Provisions (Northern Ireland) Act 1978 (the EPA). Mr Prior accepts that these demands will eventually have to be met, but believes that the two issues can and should be handled separately. He is unlikely however to be making any firm public commitment about reviewing the EPA before the renewal debate in July.

I am sending a copy of this letter to the Private Secretary to each of those who were sent a copy of Mr Whitelaw's minute, and to the Private Secretary to the Home Secretary.

Yours sincerely

Mike Hopkins

M W HOPKINS

CONFIDENTIAL

ssd

MO 21/17

PRIME MINISTER

I have seen a copy of the Home Secretary's minute to you giving advance notice of the proposal to institute an independent review of the Prevention of Terrorism (Temporary Provisions) Act 1976.

2. I am content to accept the Home Secretary's judgement that such a review is timely, on the understanding that, as proposed, the underlying need for some kind of legislation will not be a matter for consideration.

3. I am sending copies of this minute to the Secretary of State for the Home Department and the other recipients of his minute.

Ministry of Defence
18th February 1982

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

18 February 1982

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

Thank you for copying to me your minute of ~~10~~ February 1982 to the Prime Minister setting out your proposals for a review of this legislation.

I agree that a review is now necessary and have no comment to offer onthe detailed arrangements.

While I entirely agree with you that it is quite proper for us to assume the responsibility of saying such legislation is still necessary, I do not think we can expect an entirely smooth passage for this point of view in the renewal debate.

I am copying this letter to the recipients of yours.

GEORGE YOUNGER

CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

17 February 1982

Dear Colin,

Prevention of Terrorism (Temporary Provisions) Act 1976 : Mr Robert Parry's Oral Question

In your letter of 11 February to Mike Pattison you sought agreement to the terms of a reply which the Home Secretary proposed to use to a question by Mr Robert Parry.

The Foreign and Commonwealth Secretary has for his part no objection to the wording of the Home Secretary's proposed reply.

I am copying this letter to Mike Pattison (No 10).

Yours ever,

(J E Holmes)
Private Secretary

C J Walters Esq
Home Office
50 Queen Anne's Gate
London SW1

CONFIDENTIAL

PM/82/12

PRIME MINISTER

The Prevention of Terrorism
(Temporary Provisions) Act 1976

1. In his minute of 10 February, the Home Secretary proposed that the Prevention of Terrorism (Temporary Provisions) Act 1976 should be renewed for a further twelve months, but that its operation should be made the subject of a review by a senior public figure.

2. I welcome the proposal to make the Act subject to review in this way. There has been some public criticism of the Act abroad, especially from visitors to this country who have suffered inconvenience because of it. The announcement of a review with the terms of reference proposed should be useful in containing such criticism.

3. I am sending copies of this minute to the Secretary of State for the Home Department and the other recipients of his minute.

C

(CARRINGTON)

Foreign and Commonwealth Office, SW1

17 February 1982

HL

cc LCO LOD
FCO LAO
MOD CO
SO Ireland
NIO
LPO
COL

10 DOWNING STREET

From the Private Secretary

16 February 1982

Prevention of Terrorism (Temporary Provisions) Act 1976

The Prime Minister has seen your letter to me of 11 February.

Subject to any comments from colleagues, she is content with the course of action he proposes.

I am sending copies of this letter to Michael Collon (Lord Chancellor's Office), John Holmes (Foreign and Commonwealth Office), David Omand (Ministry of Defence), Muir Russell (Scottish Office), Stephen Boys-Smith (Northern Ireland Office), David Heyhoe (Lord President's Office), Jim Buckley (Chancellor of the Duchy of Lancaster's Office), Jim Nursaw (Law Officers' Department), Christine Duncan (Lord Advocate's Department) and David Wright (Cabinet Office).

M. A. PATTISON

C.J. Walters, Esq.,
Home Office.

HL

CONFIDENTIAL

Chancellor of the Duchy of Lancaster

PRIME MINISTER

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

TPM — I have seen the Home Secretary's minute to you dated 10 February 1982, and his Private Secretary's letter to yours of the following day. I agree entirely that we cannot afford to be without the Prevention of Terrorism Act and during the renewal debate we should make this perfectly clear. Nevertheless, the simultaneous announcement of a review with terms of reference as suggested should be of considerable help in maintaining support and fending off opposition and I support the Home Secretary's proposals.

I am copying this minute to the recipients of the Home Secretary's.

Janet Young

BARONESS YOUNG

16 February 1982

CONFIDENTIAL

From: THE PRIVATE SECRETARY

2 pps

1.

Prime Minister

Agree what Mr Whitelaw proposes, subject to any comments from colleagues?

MP 12/2

Yes NT

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

11 February 1982

Dear Mike

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS)ACT 1976

The Home Secretary yesterday minuted the Prime Minister proposing that the Prevention of Terrorism (Temporary Provisions) Act 1976 should be renewed for a further year, and that a review of the working of the Act should be announced during the renewal debate.

The Home Secretary is to be asked the following Question for oral answer (which is unlikely to be reached) by Mr. Robert Parry on 18 February:

> "To ask the Secretary of State for the Home Department, whether he proposes to seek the renewal of the Prevention of Terrorism (Temporary Provisions) Act."

The Home Secretary is minded to reply in the following terms:

Agreed NT

> "The Prevention of Terrorism (Temporary Provisions) Act 1976 is due to lapse, unless renewed, on 24 March. Renewal of the Act will require affirmative resolution by both Houses of Parliament, and I shall shortly lay a draft Continuance Order before Parliament."

In his minute, the Home Secretary has asked for agreement to the course of action proposed in it by 19 February. In view of his need to answer Mr. Parry's Question on 18 February, he would, however, now be grateful for agreement that he should answer this Question as proposed above by close of play next Wednesday, 17 February.

I am sending copies of this letter to the Private Secretaries to the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, Lord Advocate, and Sir Robert Armstrong.

Yours sincerely

C. J. WALTERS

M. A. Pattison, Esq.

CONFIDENTIAL

PRIME MINISTER

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

The Prevention of Terrorism (Temporary Provisions) Act 1976 will lapse on 24 March unless renewed. I propose that the Act should be renewed for a further twelve months, but that its operation should be made the subject of a review by a senior public figure.

In the present security situation, we cannot do without the protection which the Act affords; the police, both in Northern Ireland and on the mainland, consider it indispensable in their reponse to terrorism. But the Act contains extraordinary powers, and it is right that they should receive close, detailed and independent scrutiny from time to time. You will be aware of concern inside and outside Parliament about the Act. Last year, an Opposition motion to review the Act attracted considerable support, and this can be expected to be stronger still this year. I hope that the announcement of a review would help to maintain all-party support for the Act, and would be a valuable reminder to those who operate the Act that its powers must be exercised with sensitivity and discretion. Lord Shackleton carried out his review of the Act in 1978; a sufficient interval has elapsed since then to make a further review appropriate and timely. Although the security situation in Northern Ireland is very different from that in Great Britain, the Prevention of Terrorism Act applies throughout the United Kingdom, and I propose that the review should do so also. The Secretary of State for Northern Ireland agrees that if there is to be a review, it should be on a United Kingdom-wide basis.

Lord Shackleton's terms of reference were as follows:-

"Accepting the continuing need for legislation against terrorism, to assess the operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976,

with particular regard to the effectiveness of this legislation and its effect upon the liberties of the subject, and to report".

I propose identical terms of reference for a new review. It is quite proper for the Government to assume the responsibility of saying that a counter-terrorist law is still needed. As to the form of the review, my preference is again for that adopted in Lord Shackleton's case: an enquiry by one person, taking evidence in private, but with a report published in full. It would need to be undertaken by someone of similar public standing to Lord Shackleton.

If the review is to be announced at the next renewal debate in March, the aim must be to have it completed, and its report published, in good time for the March 1983 renewal.

The Order to renew the Act is subject to affirmative resolution, and I hope to lay it before Parliament by 2 March. I should welcome your comments, and those of our colleagues, by 19 February.

I am sending copies of this minute to the Lord Chancellor, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, Lord Advocate and Sir Robert Armstrong.

10 February 1982

FILE

VLB

Ireland

cc CO

9 Februxyy 1981

The Prime Minister has seen the Home Secretary's minute of 5 February, proposing renewal of the Prevention of Terrorism (Temporary Provisions) Act 1976. Subject to any comments from colleagues, she is content with what is proposed.

I am sendxng a copy of this letter to David Wright (Cabinet Office).

M A PATTISON

J. F. Halliday, Esq.,
Home Office.

Ex Press

Prime Minister (though NOT)

Content that Mr Whitelaw should seek renewal, subject to any comments from colleagues.

PRIME MINISTER

Yes MT

MHP 6/2.

RENEWAL OF THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

The Prevention of Terrorism (Temporary Provisions) Act 1976 will lapse on 25 March unless renewed. I propose, subject to your view and that of our colleagues, that the Act should be renewed for a further 12 months.

The Provisional IRA have made it clear that they have no intention of ending their terrorist campaign in Great Britain. There was a lull in their activity here for eight months following renewal last year. Since the beginning of December 1980, however, there have been bomb incidents at a Territorial Army Centre in Hammersmith; at gasholders in Bromley-by-Bow; and at RAF Uxbridge, for all of which PIRA have admitted responsibility. None of these incidents caused serious injury, but it is clear, at Hammersmith and Uxbridge at least, that death or serious injury was intended.

The firm view of the police is that the exceptional powers in the Act have made a major contribution towards reducing the amount of terrorist activity on the mainland, and that these powers will continue to be necessary while PIRA remain dedicated to action here. I fully support this view.

The Order to renew the Act is subject to affirmative resolution, and I hope to lay it before Parliament on or around 23 February. This will give time for debates in early March.

I am sending copies of this minute to the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Northern Ireland, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, the Attorney General, Lord Advocate and Sir Robert Armstrong. I will assume, unless I hear to the contrary by 12 February, that they are content.

5 February 1981

405 7641 Ext. 3040
Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

Ireland

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our ref: 400/77/34

5 February 1980

John Chilcot Esq
Private Secretary
HOME OFFICE
50 Queen Anne's Gate SWI

Dear Private Secretary

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1952

The Attorney General has seen the Home Secretary's minute of 31 January. He is in favour of the renewal of all the provisions of the Act for a further twelve months.

I have copied this letter to all the recipients of the Home Secretary's minute.

Yours sincerely,

for G J Adams

Copied to:

Private Secretaries to:

Secretary of State for Foreign & Commonwealth Affairs
Secretary of State for Defence
The Lord President of the Council
Secretary of State for Scotland
Secretary of State for Northern Ireland
Chncellor of the Duchy
The Lord Advocate
Sir Robert Armstrong
M O B Alexander Esq
No 10

CONFIDENTIAL

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

1 February 1980

Prevention of Terrorism (Temporary Provisions) Act 1976

The Prime Minister has seen the Home Secretary's minute to her of 31 January on this subject. Subject to the views of colleagues, she agrees that the Prevention of Terrorism (Temporary Provisions) Act 1976 should be renewed for a further 12 months.

I am sending copies of this letter to the Private Secretaries of the recipients of the Home Secretary's minute.

MA

John Chilcot, Esq.,
Home Office.

CONFIDENTIAL

(1)

Prime Minister
Agree, subject to views of colleagues?
Yes Mr.
RWJ 31/1

PRIME MINISTER

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

The Prevention of Terrorism (Temporary Provisions) Act 1976 will lapse on 25th March unless renewed. I propose, subject to your agreement and that of our colleagues, that the Act should be renewed for a further 12 months.

The Provisional I.R.A. have made it clear that they intend to pursue their campaign in Great Britain wherever and whenever they can. During the past 12 months they have been responsible for two series of letter bombs. More serious terrorist activity was prevented before Christmas by the arrest of members of an active service unit. Nine of those involved have been charged with offences including conspiracy to make explosions and conspiracy to aid an escape from prison. The Irish National Liberation Army assassinated Airey Neave on 30th March and has made plain its intention to carry out further attacks.

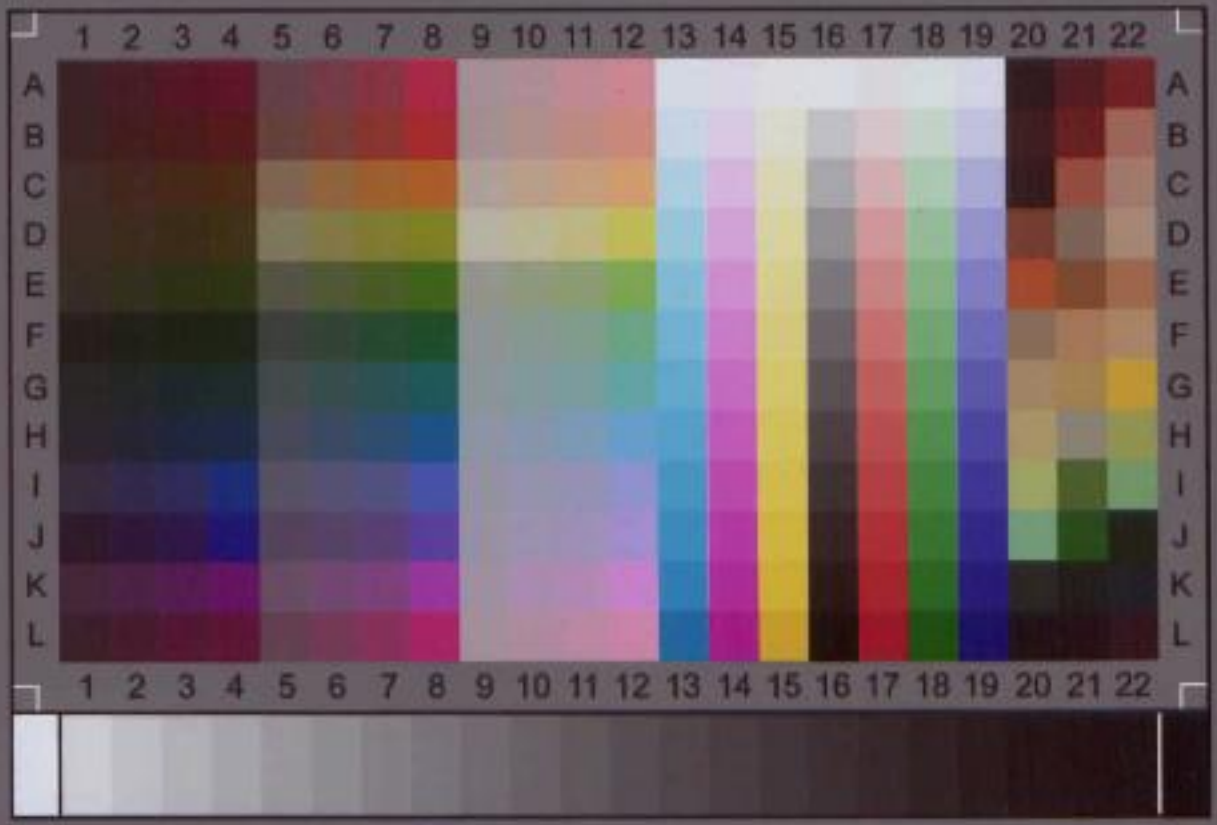
I agree with the police view that the exceptional powers contained in the Act and its subordinate legislation are still needed to deal with terrorism arising from the situation in Northern Ireland. To dispense with the Act now, with the P.I.R.A. and I.N.L.A. still dedicated to action on the mainland, would be foolish.

The Order to renew the Act is subject to affirmative resolution and I propose to lay it before Parliament in the week beginning 18th February. This will give time for debates in early March.

I am sending copies of this minute to the Secretaries of State for Foreign and Commonwealth Affairs and for Defence, the Lord President of the Council, the Secretaries of State for Scotland and Northern Ireland, the Chancellor of the Duchy, the Attorney-General and the Lord Advocate, and to Sir Robert Armstrong. I will assume, unless I hear to the contrary by 6th February, that they are content.

MT

31 January 1980


1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
A B C D E F G H I J K L
IT8.7/2-1993
2006:02
Image Access
IT-8 Target
Printed on Kodak Professional Paper
Charge: R090212