

CONFIDENTIAL

CSNO



NORTHERN IRELAND OFFICE

WHITEHALL

LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Leon Brittan QC MP
Home Office
Queen Anne's Gate
London SW1

*Assent revs of
Home Secy, FCS
& Lord Chancellor.
CDF*

3 July 1984

Dear Leon

DEROGATIONS FROM INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

I am writing to you as the Cabinet Minister with lead responsibility for human rights issues generally to let you know of my response to the report prepared recently by an inter-departmental Working Group of officials on the issue of our notices of derogation from the UN Covenant on Civil and Political Rights (the CCPR) and from the European Convention for the Protection of Human Rights and Fundamental Freedom (the ECHR).

These notices of derogation refer to the emergency legislation made necessary by the situation in Northern Ireland - the Northern Ireland (Emergency Provisions) Act 1978 and the Prevention of Terrorism (Temporary Provisions) Act 1984. I am encouraged by the Working Group's conclusion that the withdrawal of the notices of derogation should not - save for one minor exception - put the United Kingdom at significantly greater risk of being found in breach of either the CCPR or the ECHR. The fact that a study of our emergency legislation can produce this conclusion is a tribute to the extent of the United Kingdom's concern to preserve human rights even in the face of a vicious and prolonged terrorist campaign.

I hope we can take advantage of the Group's conclusions to withdraw - or at least substantially reduce - our notices of derogation. This would reflect more fairly the United Kingdom's reputation in the field of human rights generally and improve the international perception of human rights in Northern Ireland in particular. As the report explains, the withdrawal of our notices of derogation would reduce the risk of criticism by the UN Human Rights Committee which will soon be considering our compliance with the CCPR on the basis of a report which needs to be submitted in August; it would also get us out of some bad company - Chile, Uruguay, Nicaragua and Peru.

In the first place we need to agree on the group's conclusions. I support them but I should be grateful to know that you and other recipients of this letter, and in particular Michael Havers, are content.

CONFIDENTIAL

/...

Secondly, we need to decide how to deal with the difficulty which the group has identified as arising from Section 14 (2) of the Northern Ireland (Emergency Provisions) Act 1978 which says that a member of HM Forces arresting a person for up to 4 hours under Section 14 (1) complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of Her Majesty's Forces. As the report concludes, there is a risk that the exercise of this power in this way would give rise to a breach of Article 9 (2) of the CCPR and Article 5 (2) of the ECHR.

As you probably know, Sir George Baker, in his recent review of the Northern Ireland (Emergency Provisions) Act said that he doubted whether Section 14 (2) was really necessary (albeit in the context of changes to the arrest power itself in Section 14 (1)) and we must certainly bear in mind during our consideration of his report the additional benefits which would flow from a decision to repeal, discontinue or amend Section 14 (2). That consideration will require extensive consultations, and faced with the need to make a decision before August we are effectively offered two choices: to withdraw the notices of derogation, leave Section 14 (2) as it is and live with any consequences; or to enter revised notices of derogation limited solely to Articles 9 (2) of the CCPR and Article 5 (2) of the ECHR.

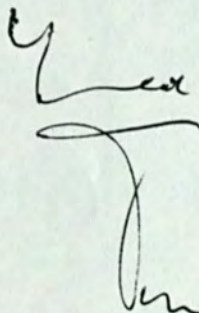
The latter option seems to me to be unattractive. It would draw attention to the power; greatly diminish the credit we could expect for withdrawing the vast majority of our notices of derogation; and would still require us to demonstrate that a state of emergency threatening the life of the nation existed in the UK and that our derogation met all the other criteria.

In the light of this I think we should accept whatever risks the first option carries. The arrest power is not arbitrary: the soldier concerned must have genuine 'suspicion' that 'an offence' has been or is about to be committed and this can be tested in court. And even so the arrest can only last a maximum of 4 hours so it is hardly draconian. If the worse came to the worse and a case was successfully brought against the UK in Strasbourg we would have to consider amending or dropping the power: but it is not a crucially significant part of the emergency powers and its repeal or amendment has already been suggested by Baker, so an adverse finding would not cause us too many difficulties. If we decide to take this course, however, I believe we should aim to reduce our exposure to the risk of being found in breach of the Covenant or Convention by expediting the consideration of Sir George Baker's recommendations on this point: even though the legislation which would be necessary to repeal Section 14 (2) or amend the Act could not be introduced for some considerable time we could discontinue Section 14 (2) at any time and/or agree on new operational instructions for soldiers which would make any breach of the Covenant or Convention unlikely.

CONFIDENTIAL

I should be grateful to know if colleagues are content that we should drop our notices of derogation in respect of these two instruments, despite the difficulty with Section 14 (2) of the EPA. If colleagues think it helpful I would of course be happy to attend a meeting to discuss the issues further before a final decision is reached.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Michael Heseltine, George Younger, Quintin Hailsham, James Mackay, Michael Havers and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Younger', written in a cursive style.

24 JUL 1984

12-2345
L 8 9 7 6 5 4 3 2 1