



# An Chartlann Náisiúnta National Archives

<b>Reference Code:</b>	2018/68/24
<b>Creation Dates:</b>	22 December 1988
<b>Extent and medium:</b>	4 pages
<b>Creator(s):</b>	Department of the Taoiseach
<b>Accession Conditions:</b>	Open
<b>Copyright:</b>	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

NO 17

by Mr. Carph...  
2.12.88

*[Handwritten signature]*

Hurd's Statement  
22 Dec. 88 in  
Commons. Sep. 4

BROGAN: DRAFT STATEMENT

At the Second Reading of this Bill, I told the House that the Government was considering the judgement of the European Court of Human Rights in the case of Brogan and others. I said then that we should bring forward proposals before the Bill left this House. My hon. Friend was pressed on the point in this Committee and explained that we hoped, if possible, to be able to outline our proposals for the benefit of the Committee before the House rose for Christmas. I should now let the Committee know how far we have got.

CC PSS  
Mr Fallop  
Mr Arden  
Mr Neill  
Mr Mansel  
Mr Brown  
J  
22/12

When I spoke to this matter at Second Reading I explained that the judgement of the European Court of Human Rights raised highly complicated issues. It left open two ways in which we could proceed. We could decide to derogate under the Convention in respect of the powers to detain persons on reasonable suspicion of involvement in the commission, preparation or instigation of an act of terrorism as provided for in Article 15 of the Convention, or we could introduce a judicial element into the procedure for authorising extensions of detention in order to comply with Article 5.3 of the Convention. I reminded the House that the Court had recognised the difficulties of judicial control over decisions to arrest and detain suspected terrorists. The Court acknowledged that these factors might call for suitable procedural precautions. It also acknowledged the particular circumstances of Northern Ireland.

2.

Sir John, it remains our wish to find a judicial route through this problem if this can be achieved. But our own criminal justice system is radically different from those of the continental countries to which the European Commission and the Court of Human Rights are more accustomed. In those countries it is often the practice for an examining magistrate to have the power to authorise detention while himself leading the investigation. The periods of detention which may be authorised before there is anything we should recognise as a charge are often much more than the seven days maximum permitted under the Prevention of Terrorism legislation in this country. In authorising detention, the continental examining magistrate is not exercising a judicial function as we should interpret the role. The continental inquisitorial system and our system are different, having developed separately over centuries. Grafting the procedures of one system on to the other is not easy. It is reasonable to need weeks rather than days to consider the issues. We must pay proper regard to the tremendous pressures which are already faced by the judiciary, especially in Northern Ireland where most cases have to be considered. We are also concerned that information about terrorist intentions, which often forms part of the case for an extension of detention, does not find its way back to the terrorists as a consequence of judicial procedures which normally rightly require someone accused and his legal advisors to know the information alleged against him.

5.

In the time available since the European Court of Human Rights published its judgment on 29 November, we have begun work on these difficult issues. We have entered into discussions with the Judiciary. These have persuaded us that a further period of reflection and consultation is necessary before we can bring forward a firm and final view. We will of course inform the House as soon as that view is reached.

In the meantime, the position cannot be left as it stands. I have already made clear to the House that we shall ensure that the police continue to have the powers they need to counter terrorism, and in the case of Irish terrorism they continue to need to be able to detain suspects for up to seven days in some cases. In order to ensure that there can be no doubt about the ability of the police to deal effectively with such cases, the Government is today taking steps to derogate under Article 15 from the European Convention on Human Rights and Article 4 of the International Convention on Civil and Political Rights in respect of the powers contained in the 1984 Act and to be re-enacted in this Bill to detain those suspected of involvement in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland.

In respect of terrorism of an international character the powers available under the legislation are used to a substantially lesser degree, and the threat does not constitute an emergency threatening the life of the nation. Extensions of detention in respect of international terrorist suspects will be restricted to a maximum of two days (making four days in total) until final decisions have been taken on this matter.

Sir John, I explained to the House on Second Reading that it would not be sensible to rush into hasty decisions on a highly complicated problem such as this in a short timescale. Our further deliberations have reinforced us in the view that we should proceed with great caution, and make sure that we have in our sights a system which is both workable and credible before deciding finally which of the routes left open by the ECHR Judgment we should select.