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Jack John :

JOHN ROWE'S REPORT ON THE NORTHERN IRELAND (EMERGENCY PROVISIONS)
ACT 1991

I am enclosing for your information a copy of the report by Mr J J Rowe QC on his fundamental review of the Emergency Provisions (Northern Ireland) Act 1991.

This review was commissioned by the Government at the end of 1993 with a view to assisting in reaching decisions about what to do when the present Act expires in August 1996. It was published on 17 February as a Command Paper.

As you will see from the enclosed press statement, most of the work undertaken by Mr Rowe was completed before 1 October 1994. The report therefore does not take full account of the IRA's cessation of military operations, nor that of the CLMC. You will see that Mr Rowe deals with these matters in the opening chapter of his report.

The Government has consistently said that the powers contained in the Emergency Provisions Act are kept under review and that they will remain in force no longer than necessary. But PIRA and Loyalist paramilitary groups remain intact and retain their capabilities to resume terrorism. The Government believes, therefore, that it would be premature to start dismantling the legislation now.



The Act is, of course, subject to annual renewal in Parliament and these will be an opportunity then to debate whether or not any of the powers could be dispensed with.

I have also announced the annual review of the legislation by John Rowe. It is of course open to Ministers to lapse any section of either Act at any time. This is something we shall be considering actively in the light of developments.

*John Mc Bride
to review.*

*John Rowe,
P.L.M.*

Sir John Rowe meeting:

Sir John's recently published report on the Emergency Provisions Act was the five year review of the 1991 Act, which lapses in 1996 if not re-enacted. His report was largely prepared before the ceasefires and he in effect declines to consider the changed circumstances brought about by the ceasefires. His conclusions are broadly in support of the status quo, and Sir John has been widely seen to be extremely cautious in all his reports. He does however recommend:

- * Dropping the internment power;
- * Abolishing exclusion orders;
- * The use of audio or preferably video taping in interrogations;
- * The incorporation of the EPA and the PTA into a single Act, subject to annual renewal and requiring re-enactment after three years;
- * Changes in the law on the use of lethal force, allowing a finding of manslaughter.

All of which would be in line with Alliance policy.

He also recommends strengthening the anti-racketeering money tracing powers, which in principle we would welcome.

Another recommendation is for making evidence from telephone tapping admissible - we would have to think about that.

He is now engaged on the annual review, normally a lesser exercise but given added relevance because it gives an opportunity to consider the affect of the ceasefires.

The following points might be made:

Welcome for points above.

Accept that it's too soon to conclude that the terrorist threat is at an end and that even if the ceasefires hold there are questions of related organised crime and racketeering to consider, but

Party position has always been no more emergency powers than absolute necessary; need to consider which powers are still essential and which merely convenient for security forces, and

Need to make a clear start to process of normalisation

Party has not itself reached clear conclusions on these matters as yet, but area which would need to be looked at include:

Reducing the number of scheduled offence

Scheduling in rather than scheduling out.

Reviewing army's powers

Reviewing stop and search powers in general.

Bring the rules on the right to silence into line (at least) with those in the UK (recent

UK legislation does not go as far as NI 1988 Act.
Reducing the time taken to get people to trial.

Two other important areas :

In Brogan (1988) the European Court of Human Rights held that detention for seven days without judicial consideration under the PTA violated Art.5 of ECHR, indicating four days as limit. HMG entered a derogation, excusing themselves from that part of the convention because of the emergency situation. In Branigan and McBride (no relation) 1993 the court accepted that there was an emergency situation justifying HMG's discretion to derogate. It is now very debatable whether the derogation is still valid, and certainly it cannot be sustained very much longer. HMG should therefore limit detention for questioning under the PTA to no more than four days and should in practice adopt that position (SOS has to approve any derogation beyond four days as it is).

In Murray the European Commission on Human Rights held that the denial of access to a solicitor for 48 hours under the EPA violated ECHR, not least because of the affects of the rights to silence provisions of the 1988 Criminal Justice Act. This goes before the full Court of Human Rights in June. Sir John has recommended no change. We should support the right of immediate access to legal advice.

SJW