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ANNEX

EMERGENCY PROVISIONS BILL

A. BACKGROUND TO THE EMERGENCY LEGISLATION

Successive Northern Ireland (Emergency Provisions) Acts (EPA), along with the UK-wide Prevention of Terrorism Act 1989 (PTA), have provided a supplement to the ordinary criminal law and afforded the police and the Armed Forces in Northern Ireland additional powers to enable them to be as effective as possible in dealing with terrorism.

2. Successive Governments have said that the emergency legislation will remain on the statute book only for as long as necessary. Hence the EPA has a finite lifespan during which it is required to be renewed annually by both Houses of Parliament. The current EPA expires in August 1998 and the Government has said it will re-enact it, with amendments. (If this were not done and if there were no replacement legislation, a gap would be created, leaving the security forces with no means to counter terrorism, other than the ordinary criminal law.) In parallel, on foot of the Lloyd report of October 1996, the Government intends to establish a joint NIO/Home Office working party to produce a consultation paper which will form the basis for new and permanent UK-wide counter-terrorism legislation, to be brought forward at a later date.

B. DESCRIPTION OF PROPOSALS

The current EPA comprises seven substantive and separate parts dealing with the process of law and the powers of the security forces. In summary it:

- creates the "scheduled" offences and provides special judicial processes for them;
- creates additional powers of arrest, entry, search and seizure;

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- creates special offences against public security and public order;
- provides for internment without trial;
- regulates the private security industry;
- lays down arrangements for suspected terrorists in police custody.

2. While it is not yet possible to say precisely to what extent the provisions will be re-enacted as they stand, or to what extent they will be amended, the Government has signalled its intention to remove the internment power; to change the present procedures whereby offences may be certified out of the list of scheduled offences and treated under the ordinary criminal law; and to introduce audio recording of police interviews with terrorist suspects.

C. POLITICAL IMPACT

The Bill could be controversial, depending on the prevailing security situation in Northern Ireland and on the mainland, and the state of the political process at the time it is introduced. The Government will have to defend both its continued existence and any amendments which would render its provisions closer to the ordinary criminal law; however, the setting up of the working group and the promise of a consultation paper as a forerunner to future legislative change should help counter criticism.

D. PRESENTATIONAL CONSIDERATIONS

No special handling arrangements are anticipated. The Bill could be substantial/long. Ministers have yet to decide on the precise form and length of the Bill; the existing EPA contains some 64 sections and seven schedules.

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E. PUBLIC EXPENDITURE/MANPOWER IMPLICATIONS

The Bill will continue, possibly with modification, the current arrangements for the payment of compensation to persons affected by the exercise of the emergency powers. PES provision has been taken. There are no implications for the public service manpower level.

F. VALUE FOR MONEY IMPLICATIONS

Nil.

G. RISK OF LEGAL CHALLENGE

While the legislation continues to provide for any form of special treatment over and above the ordinary criminal law, we can expect it to remain open to challenge in the UK courts and under the European Convention on Human Rights. Aspects of the legislation have been so challenged in the past.

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