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Present Legal Basis for Detention .

1. The Northern Ireland (Emergency Provisions) Act 1973 repealed the Civil Authorities (Special Powers) Act (N.I.) 1922 and legislated in its place the recommendations of the Diplock Commission, including the procedures relating to detention which have been in force since November 1972 under the Detention of Terrorists (N.I.) Order 1972. The Act is subject to renewal by Parliament at Westminster.

2. The main features of the detention procedures are:

- Where it appears to the Secretary of State for Northern Ireland that a person is suspected by an unnamed person of having been concerned in the commission of an act of terrorism, the Secretary of State may make an interim custody order for the temporary detention of that person for a period of 28 days unless the detained person's case is referred by the Chief Constable of the RUC to a Commissioner. Although a totally innocent person may be detained under the order for a period of 28 days on a suspicion of a person unknown to him, he has no enforceable right to compensation and a detention made in accordance with the order is not reviewable by any Court.
- A Commissioner (who holds office at the pleasure of the Secretary of State) may, following an enquiry, make a detention order in respect of a suspected person for an unlimited period without trial or direct that the person be discharged. The Commissioner's enquiry takes place in private except that the arrested person (the respondent) may be represented by Counsel and may be present himself. Although the Commissioner may require the respondent to answer any question put to him there is no provision whereby

the respondent or his Counsel may, as of right, examine or have examined witnesses against him. Further, the Commissioner may conduct any part of the proceedings in total secrecy in the absence of the respondent and his representative. The respondent has no opportunity of examining or testing the evidence given in his absence. The Commissioner may receive oral, documentary or other evidence, however obtained, notwithstanding the fact that such evidence would normally be inadmissible in a court of law. There is no presumption of innocence in favour of the respondent and there is an imbalance in favour of the person or persons seeking to establish that the respondent should be detained indefinitely.

- A Commissioner's decision may be appealed to a Tribunal which considers evidence heard by the Commissioner in secret, or itself takes evidence in secret. It may also consider evidence obtained by means of torture, inhuman or degrading treatment or punishment. The appellant has no right to be present at the appeal save where fresh evidence is tendered to the Tribunal with its consent. Although the appellant may be represented by Counsel or a solicitor at the appeal, neither his Counsel nor solicitor is entitled, as of right, to make representations to the Tribunal, whether orally or in writing and at best may do so only with the permission of the Tribunal.
- Once the provisions of the enquiry have been complied with the normal courts appear to have no power to set a detainee free even if it should appear that he is completely innocent of any criminal offence or activity.

Conditions of Detention

3. Now officially known as H.M. Prison, the Maze, Long Kesh houses special category (i.e. political) convicted persons, persons on

remand awaiting trial and persons on whom Interim Custody or Detention Orders have been served. On 1st February 1975 there were 503 persons in detention (186 on Interim Custody Orders and 317 on Detention Orders).

4. Each compound or cage at Long Kesh contains two or three Nissen huts measuring approximately 24' x 66', and, according to the authorities, capable of accommodating 65 men each. By that reckoning, no hut is at present overcrowded but in fact one of the most widespread complaints is of total lack of privacy and overcrowding and this is no doubt accounted for not only by the relatively small space per man but also by the fact that they live a cheek-by-jowl existence particularly because the interior of the huts are designed on an open-plan basis.

Most recently, Dr. Edward Daly, Bishop of Derry, in May 1974, condemned conditions as "vile, inhuman and deplorable". Four Loyalist politicians also described the Maze in similar terms at this time and the question of the restrictive conditions under which visits were allowed was the subject of much publicity during the period March-June 1974. During September 1974 many of the detainees and convicted prisoners threw their food over the wire fences surrounding the camp in protest at the conditions in the prison. Many privileges were withdrawn as a result. However on the 3rd October it was announced by the Governor of the camp that privileges were being restored and that the protests would end pending further talks with the prison authorities. Several threats had been made, during these protests, by Republican prisoners to burn down the camp if any prisoners were ill-treated.

On the 15th October 1974 a riot developed at Long Kesh, after a confrontation between four prison officers and some Republican prisoners. The majority of the huts, the prison hospital and the new kitchen were completely burned to the ground in the rioting.

The rioting was subdued mainly by the use of CS gas and rubber bullets. Initially 29 prisoners had to be taken to hospital of whom nine were detained. Seventy-eight were later taken to hospital for treatment and X-Rays. Twenty-three soldiers and fourteen prison wardens had to receive hospital treatment.

It is believed that conditions at Long Kesh are still not satisfactory, but reconstruction of the camp has been going on now for some time and it is expected that former standards, if not actual improvements, could re-obtain there without much further delay. The Guardian of 6 February 1974 reports that cell blocks to accommodate 200 prisoners have been started and will be completed by the autumn. (This innovation would be a result of the Gardiner Report recommendations.)

5. James Moyne, a Republican detainee, died in Long Kesh on 13 January 1975. It was alleged by relatives, fellow detainees and some doctors that the authorities did not respond quickly enough to his illness and that they were negligent in leaving him in Long Kesh with medical problems. Enquiries with NI elected representatives, priests and doctors have not been able to establish facts fully enough to enable us to come to a reliable conclusion about these allegations.

The last report of the Red Cross (May 1974) stated that the infirmary was in a good state of maintenance and that the medical equipment available was adequate. The infirmary was destroyed in the October rioting but has since been replaced.

6. The Report of the Gardiner Committee has now been published (see separate brief) and it did not recommend the end of detention without trial. Moreover, paragraph 170 of the report stated:

"Release linked to the state of violence in the community ... would lend substance to the detainees' complaint that they are being used as 'political hostages'; that if outside violence halts releases, they are being penalised for the activities of others rather than for what they themselves are alleged to have done. We do not think that such a policy is consistent with the requirements of social justice."

The report did, however, recommend phased releases linked to a programme of social rehabilitation.

It is of course impossible to predict what the actual rate of releases or phasing-out may be, but as the following chart shows there has been little change in the overall numbers for the past six months:

	<u>I.C.O.s</u>	<u>D.O.s</u>	<u>Total</u>
<u>1974:</u> 30 September	362	197	559
31 October	174	367	541
30 November	149	334	483
11 December	189	362	551
<u>1975:</u> 1 January	202	360	562
1 February	186	317	503

The number of Loyalists detained has decreased from 65 in July 1974 to 15 in January 1975.

During the recent ceasefire there were three releases on Christmas Eve; twenty on New Year's Eve and twenty-five on 15 January 1975 and four others on unknown dates during this period. All these releases were on the orders of the Secretary of State. The Commissioners also released nine detainees around the same period. Last week six Roman Catholics were served with I.C.O.s after the breakdown of the ceasefire.