

## NATIONAL ARCHIVES

### IRELAND



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S199X

MEMORANDUM FOR THE GOVERNMENT

Proposed anti-terrorist legislation

Copy for S13983

1. Pursuant to the Government decision (S.11438 C) of 29 July 1976, the Minister for Justice submits herewith the texts of

(1) two draft Resolutions to be moved in both Houses of the Oireachtas under Article 28.3.3<sup>o</sup> of the Constitution (Appendix 1),

S. 19929

(2) a draft Emergency Powers Bill

and

S. 19924

(3) a draft Criminal Law Bill

which have been prepared by the Parliamentary Draftsman. Memoranda by the Attorney General dealing with the Constitutional issue giving rise to the need for the draft Resolutions, and with the associated question of the implications for the State's obligations under the European Convention on Human Rights, are attached (Appendix 2). Explanatory notes on the provisions of the two draft Bills are contained in Appendix 3.

2. The Emergency Powers Bill has only one substantive provision i.e. providing for the arrest, questioning and keeping in custody of suspects for up to 7 days. The provision will lapse after 12 months from the date of the passing of the Act unless continued in force by Government order. Where it has lapsed it can be reactivated by Government order. The Act itself will automatically expire when the Dail and Seanad resolve that the national emergency now to be declared has ceased to exist. The use of the word "detention" and analogous words has deliberately been avoided in the Bill.
3. The Criminal Law Bill has a total of 18 sections providing for substantive changes in the law. 7 of these (sections 2, 3, 4, 5, 6, 7 and 19) represent amendments of or additions to the Offences against the State Act, 1939, including increases in penalties, a new offence of "recruiting" and improved Garda powers of search of buildings, vehicles, etc. under warrant. 4 sections (8, 9, 10 and 18) relate to prisons and provide for searching of persons by prison officers (and members of the Defence Forces performing duties corresponding to those of prison officers), the creation of new




offences of aiding escapes and bringing in or out unauthorised articles, and consecutive sentences of imprisonment for offences committed by prisoners already serving sentences. 3 sections (11, 12 and 13) confer new or wider powers on the Gardai - in relation to the taking of fingerprints, the carrying out of tests of a person's skin or hair to establish contact with firearms or explosives, the searching without warrant of vehicles and their occupants and the retention as evidence of articles found in the course of searches (whether authorised by the Bill or otherwise). The remaining 4 sections deal with the taking of photographs etc of prisons and courthouses (section 14), the murder of a kidnapped person, kidnapping itself (sections 15 and 16), and bomb hoaxes and the like (section 17).

4. (a) Two alternative versions of section 15 (which deals with murder of a kidnapped person) are given in the text. Both versions are for discussion only and the Minister is not necessarily recommending that any new provision on this matter be included.
- (b) The first version provides, broadly, that it shall be capital murder where a kidnapped person is murdered and the kidnapping is for, either -
- (i) ransom - (whether there be "political" motivation or not) or
  - (ii) the pressurising of the Government of this or any other State.
- (c) The second version was recommended by the Attorney General on the basis that the precise extent of the present law is open to some doubt. This version is confined to providing that where a kidnapping etc has taken place in course or furtherance of an offence under section 7 of the 1939 Act ("obstruction of Government"), and the kidnapped person is murdered, it will be capital murder. The point at issue here is that if demands of a kidnapper are rejected and he murders in pique or frustration, the proposed change would ensure that he could not argue that, at that point, the question of "obstructing" or "intimidating" the Government had ceased to be at issue.
- (d) Both versions have the defects of their qualities. Both are of course implicitly based on the assumption that provision for capital murder is beneficial. On that assumption, the first version is more "effective" but of course is liable to generate much controversy. The second, while it could make all the difference to the verdict in a particular case, is deliberately



designed to be a "marginal" amendment. (The Minister doubts that he could "sell" the idea that it is merely clarifying - the counter to that is that the "clarification" could have been in the reverse direction just as easily if clarity was all that was sought). At all events, even this version does, inevitably, open up for debate in Parliament the whole issue of capital murder and the question is whether - even if inherently a "good" provision - it is worth this price.

5. The Minister has sought to confine the second Bill to matters which either have a direct bearing on the Offences against the State Acts or, at all events, have a "substantial anti-I.R.A. content" even if, in form they are not amendments or extensions of those Acts or confined to subversive activities. Accordingly, the Minister has omitted a number of provisions (including some recommended by the Committee presided over by the Attorney General) even though they might be desirable amendments of the general criminal law. What he intends is to have these matters dealt with on their own merits divorced from the I.R.A. context.

6. The Minister wishes to emphasise that, in general, the text of the Criminal Law Bill is provisional at this stage, as the drafting was completed only yesterday (9 August) and he has not had an opportunity of studying the totality of the measure<sup>or</sup>/of gauging its likely overall effect on the current situation. It is possible that when he has considered the draft Bill more fully, he may have some amendments to suggest either by way of addition or omission; and it is likely in any event that minor<sup>or</sup>/drafting amendments will prove necessary. The Minister would, therefore, ask the Government to approve the text of the Bill as submitted, on the understanding that he may make such amendments as, with the agreement of the Taoiseach, he may consider desirable (provided of course that no change involving any major point of policy will be made without the specific approval of the Government).
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7. In the memorandum which he submitted on 29 July the Minister for Justice adverted to the possibility of a change of IRA tactics in the event of the introduction of heavier penalties for membership and other offences. Since then, and independently of the Minister, senior officers of the Garda Síochána have emphasised that a change of tactics is a very real risk and that in order to counter it the law will need to be amended in whatever way may be possible so as to strengthen the hand of the prosecution. Some of the provisions in the Criminal Law Bill are designed with this in mind.
8. The Attorney General has advised that keeping a person in custody for up to 7 days without charging him (as provided for in the Emergency Powers Bill) is likely to be regarded as an infringement of Article 5 of the European Convention on Human Rights and that accordingly the State would be in breach of the Convention unless it exercises its right under Article 15 to derogate from its obligations on the grounds of the existence of "a public emergency threatening the life of the nation". The Attorney has stated, however, that a decision to derogate is likely to bring into public debate the compatibility of section 30 of the Offences Against the State Act, 1939 with both the Convention and the Constitution and that this indicates the desirability of repealing section 30, leaving the proposed new 7 days' custody provision available during the operation of the Emergency Powers legislation.
9. While appreciating the risk of a successful Constitutional challenge to section 30 of the 1939 Act, and of a challenge under the Convention, the Minister is opposed to a repeal of the section because the  
 r.l.w Emergency Powers legislation will continue in force only so long as the national emergency arising from the armed conflict in the North remains in existence, whereas past experience shows that even in the relatively peaceful intervals between successive IRA campaigns the need has arisen for the Gardaí to exercise some of their powers under section 30. Part V of the 1939 Act (which includes section 30) can, on the face of it, be activated by Government in circumstances in which the Oireachtas would not be asked to declare a national emergency.



10. As the draft Resolution declaring a national emergency refers to an "armed conflict" in Northern Ireland, it may be desirable, as a matter of courtesy, that advance notification of the wording of it should be given to the British Government.

Decisions Sought

11. The Minister for Justice requests the Government
- (a) to approve the texts of the two draft Resolutions and two draft Bills submitted, subject, in the case of the draft Criminal Law Bill, to a decision about section 15 and to such amendments (not involving major points of policy) as the Minister, with the agreement of the Taoiseach, might think desirable to make on further consideration;
  - (b) to authorise the Taoiseach to move the Resolutions in Dail and Seanad Eireann: and
  - (c) to authorise the Minister to present the Bills to the Dail and to have them circulated to Deputies.



RESOLUTIONS FOR BOTH HOUSES OF THE OIREACHTASFirst Resolution

THAT Dail Eireann/Seanad Eireann hereby resolves, pursuant to sub-section 3<sup>o</sup> of section 3 of Article 28 of the Constitution, that the national emergency occasioned by the armed conflict referred to in the resolution, pursuant to the said Article, of Dail Eireann/Seanad Eireann of the 2nd day of September, 1939, has ceased to exist.

Second Resolution

THAT Dail Eireann/Seanad Eireann hereby resolves, pursuant to subsection 3<sup>o</sup> of section 3 of Article 28 of the Constitution, that, arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State.



## OIFIG AN ARD-AIGHNE

Re: Article 28 (3) (3) of the Constitution

1. Article 28(3)(3) provides for circumstances in which legislation enacted by the Oireachtas can avoid possible invalidation by the Courts. Legislation enacted "in time of war or armed rebellion" can escape a constitutional challenge if it is "expressed to be for the purpose of securing the public safety and the preservation of the State" in such a time.

2. The phrase "time of war" does not merely include a time in which the State is itself a belligerent in an armed conflict. The Article provides that "time of war" includes:

"a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and "time of war or armed rebellion" includes such time after the termination of any war, or any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist".

3. In September, 1939, each House of the Oireachtas resolved:

"pursuant to sub-section 3 of Section 3 of Article 28 of the Constitution that arising out of the armed conflict now taking place in Europe a national emergency exists affecting the vital interests of the State".

(see Dail Debates, Vol. 77, Col. 19-20).



## OIFIG AN ARD-AIGHNE

2.

No resolution that the "national emergency" has ceased to exist has been passed by either House.

4.

If it was thought necessary to introduce legislation for the purpose of securing the public safety and the preservation of the State and if it was thought desirable that it should have the protection afforded by this Article its validity would be open to challenge on the following grounds:

- (a) Any legislation which purported to be enacted for a "time of war" when it was manifest that no such time existed would be ultra vires the powers of the Oireachtas.
- (b) As the State is not now "at war" any legislation which was declared to be in respect of a "time of war" could only be validly enacted if prior to its enactment the Resolutions referred to in the Article had been passed.
- (c) The "war" referred to in the 1939 Resolutions was that then taking place in Europe. The "national emergency" referred to in the Resolutions was that created by that war.
- (d) The need, it would be suggested, to secure the public safety and preserve the State would in present circumstances arise from the armed conflict in Northern Ireland (in respect of which no Resolution had been passed) and not from the armed conflict in Europe, referred to in the Resolutions. It would follow, therefore, that the Oireachtas could not validly rely on the armed conflict referred to in the Resolutions to justify the legislation and assert that the legislation was necessary to deal with the "national emergency" created by that armed conflict. If it could not do so, then the legislation could not claim the benefit of the 1939 Resolutions. Accordingly, it would be argued, that, in the absence of appropriate Resolutions, it would be ultra vires.



## OIFIG AN ARD-AIGINE

3.

In my opinion there is considerable force in such arguments and there would be serious danger of a successful challenge to any legislation now enacted which relied on the 1939 Resolution.

5. It would be open to each House of the Oireachtas to decide by Resolution
- (a) that there is an "armed conflict" in Northern Ireland and
  - (b) that arising out of this armed conflict a National Emergency exists affecting the vital interests of the State.

I do not think that such a Resolution could be successfully challenged in the Courts.

6. If the Resolutions referred to in the preceding paragraph were adopted then legislation which was express to be for the purpose of securing the public safety and the preservation of the State in time of war (i.e. the "armed conflict" referred to the new proposed Resolutions) would have the benefit of the protection from constitutional challenge given by this Article.

7. Prior to the adoption of new Resolutions it would be advisable for each House of the Oireachtas to pass a Resolution to the effect that the national emergency occasioned by the war referred to in the 1939 Resolutions has ceased to exist.

*Seamus Costello*

28 July, 1976



## OIFIG AN ARD-AIRGHEINE

Proposals to extend the provisions of Section 30 of the Offences Against the State Act, 1939.

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1. The proposals to extend the power to detain a person arrested under Section 30 of the 1939 Act so as to permit his detention for a period of seven days after arrest is likely, in my opinion, to be declared unconstitutional. The power to arrest a suspect for the purpose of instituting criminal proceedings against him could not, of course, be impugned. But if an arrested person is not charged with an offence within a reasonable time the courts could, in my opinion, regard his detention thereafter as unlawful; and a law which permitted a suspect's detention after arrest for a period of seven days without charge is likely to be regarded as an unconstitutional interference with his constitutional rights. A fortiori, the power to arrest and detain for seven days, not a suspect to a crime, but a person who is suspected of having information relating to an offence, would infringe the constitutional guarantees of liberty.
  
2. The proposals, therefore, could only be lawfully enacted pursuant to the provisions of Article 28(3)(3) of the Constitution. The proposal should be contained in a separate Bill, whose preamble would declare it to be for the purpose of securing the public safety and preservation of the State "in time of war". The Bill should be a substantive measure and not merely an amendment to the 1939 Act. Furthermore, it would be advisable to provide for its initial operation for a limited period and for its extension thereafter from time to time by Government Order. It should be proceeded by a Resolution of the two Houses of the Oireachtas, as outlined in my opinion of the 28th day of July, 1976, and for the reasons contained in that opinion.
  
3. The proposals, also need to be considered in the light of the State's obligations under the European Convention on Human Rights.
  
4. Article 5 of the Convention provides that everyone has the right to liberty and that no one can be deprived of his liberty save in the six cases set out in the Article. The sub-paragraph relevant to the present proposals is sub-paragraph (c) of paragraph 1, which allows:-



## OFFICE AN ARD-AIGHNE

2.

"The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence..."

Sub-paragraph 3 of this Article is also relevant. It provides that:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) shall be brought promptly before a Judge... and shall be entitled to trial within a reasonable time or to release pending trial".

5. The European Court of Human Rights has decided in the Lawless Case that sub-paragraph (c) of paragraph 1 and paragraph 3 should be read together;

"Paragraph 1 (c) of Article 3 can be construed only if read in conjunction with paragraph 3 of the same Article, with which it forms a whole;... Whereas it (i.e. paragraph 3) entails the obligation to bring everyone arrested or detained in any of the circumstances contemplated by the provisions of paragraph 1(c) before a Judge for the purpose of examining the question of deprivation of liberty or for the purpose of deciding on the merits..."  
(See p.52 of Judgment).

6. The proposals to permit arrest on suspicion would not be contrary to the Convention provided the arrest was for the purpose of bringing the arrested person before a "competent legal authority". An arrest for the purpose of interrogation only would infringe the Article. A re-enactment, therefore, of the power given in Section 30 of the 1939 Act to arrest a person suspected "of being in possession of information relating to the commission... of an offence" is likely to be regarded as a breach of the Article.



## OIFIG AN ARD-AIGHNE

3.

7. The detention, after arrest, for a period of seven days prior to charging the arrested person is also likely to be regarded as an infringement of the Article. There is an obligation to bring an arrested person "promptly" before a Judge. I think that it is probable that the Commission (and the Court) would view the permitted period of seven days in the contemplated legislation as breach of this obligation.
- 8.
- (a) A power to derogate is given "in time of public emergency threatening the life of the Nation" (see Article 15 of the Convention). The measures taken in derogation must not exceed what is "strictly required by the exigencies of the situation". The Secretary-General of the Council of Europe must be informed of the measures taken and the reasons therefor.
- (b) If challenged, the onus of proof will be on the Government to show that a "public emergency" within the meaning of the Article existed and that the measures taken were strictly required by the exigencies of the situation. On the information available to me I think that the Government could discharge this onus and that the Commission (and the Court) would find that the right to derogate had arisen, that it had been properly exercised, and that accordingly no breach of Convention had occurred.
9. A decision to legislate without derogation would result in considerable danger that the proposed legislation could be successfully challenged before the organs of the Convention. A decision to derogate, on the other hand, is likely to bring into public debate the compatibility of Section 30 of the 1939 Act both with the Convention and the Constitution. In my opinion there is considerable danger that the last part of sub-section 1 of that section (which empowers arrest of a person who is suspected merely of having information) would be held incompatible with the Convention. This fact together with the danger of a successful constitutional challenge to the Section indicates the desirability of repealing Section 30. This would mean that the proposed exceptiona



## OIFIG AN ARD-AIGHNE

4.

powers of detention would be available during the operation of the proposed emergency legislation. Presumably, the legislation would remain in operation while the threat from subversives existed. It would appear, therefore, that the repeal of the Section and its replacement by more extensive powers of detention under emergency legislation should not unduly restrict the powers which the Garda authorities might consider necessary for the adequate discharge of their duties.

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Appendix 3

Notes on Sections.



Sections 2 and 3

These two sections provide for increased maximum penalties of 15 years imprisonment for offences under sections 6 and 7 of the Offences against the State Act, 1939, which relate respectively to the usurpation of functions of government and the obstruction of government.

Section 4

This section provides for an increased maximum penalty of ten years imprisonment for an offence under section 15 of the Act of 1939 which prohibits unauthorised military exercises.

Section 5

This section provides for increased maximum penalties for the offence (under section 21 of the 1939 Act) of membership of an unlawful organisation. The proposed new maximum penalty of 5 years imprisonment on conviction on indictment is as recommended by the Committee established under the chairmanship of the Attorney General pursuant to the Government decision of 12th September 1975. Convictions on "membership" charges in many cases largely depend on the operation of section 3(2) of the Offences against the State (Amendment) Act, 1972, which allows as evidence of membership of an unlawful organisation the belief of a Chief Superintendent of the Garda Síochána. The Minister has previously drawn attention to the risk of a change of tactics by the IRA, and of the effectiveness of section 3(2) of the 1972 Act being thereby significantly lessened, if heavier penalties for membership are imposed. However that risk must be balanced against the desirability of having longer prison sentences for those who are convicted of the offence and, taking everything into account, the Minister is satisfied that the increased penalties proposed in the Bill are justified.

Section 6

This section creates a new offence of recruiting persons into an unlawful organisation. The maximum penalty will be on imprisonment for a term not exceeding ten years. The recruiting, especially of young people, by IRA agents is a most serious problem and must be regarded as a very grave offence. Propaganda by the IRA and by the front organisations and groups that support the IRA is invariably directed to winning recruits among young and impressionable boys and girls. The creation of the offence and the heavy



penalty will, it is hoped, be a warning and a deterrent, though it is recognised that there will be difficulty getting evidence on which to secure convictions for the offence.

#### Section 7

Section 29 of the Act of 1939 provides for searches of buildings etc in cases where a chief superintendent has reasonable grounds for believing that documentary evidence is to be found in relation to the commission of offences under the Act or treason. The search warrant issued by a chief superintendent is valid for one week from the date of issue and empowers a member, not below the rank of inspector, to execute the warrant. Section 7 of the Bill replaces and widens section 29 of the 1939 Act.

It empowers a superintendent, where he is satisfied that there is reasonable grounds for believing that any evidence relating to the commission or intended commission of an offence under the 1939 Act or a scheduled offence is to be found in any place, to issue a search warrant authorising a member of the Garda Síochána not below the rank of sergeant to search that place.

An increased maximum penalty of 5 years imprisonment is provided for an offence by a person who obstructs or attempts to obstruct a search or refuses to give his name and address or gives a false or misleading name or address.

#### Section 8

There appears to be no statutory provision expressly authorising the searching of prisoners or of visitors to a prison. The Prison Rules provide for such searching but it is not certain that for want of statutory authority the relevant provisions would stand up if challenged. The section provides the necessary authority.

#### Section 9

Aiding a prisoner to escape or attempt to escape is an offence (Section 5 of the Tumultuous Risings (Ireland) Act, 1831, section 18 of the Convict Prison (Ireland) Act, 1854 and section 32 of the Prisons (Ireland) Act, 1856). It seems desirable, however, to have a modern provision in relation to escapes with a very stiff maximum penalty. The proposed provision also



makes it an offence to give assistance to an escaped prisoner to evade recapture or to injure any person or property in a prison. There appears to be no statutory provision in relation to either of these matters. The maximum penalty proposed for an offence under the section is ten years imprisonment.

#### Section 10

There is a real need to have a clear and unambiguous provision about "smuggling" material into or out of prisons. Section 19 of the Convict Prisons (Ireland) Act 1854 prohibits the bringing in and the carrying out of unauthorised material, but only in respect of "Convict Prisons". Section 34 of the Prisons (Ireland) Act 1856 prohibits the taking of unauthorised material into a prison but it does not prohibit the taking of such material out of a prison. A comprehensive statutory provision to control the taking of material into and out of the prisons is particularly necessary when large numbers of subversives are in custody as at present. The provision is not specifically linked to attempting at escape. Smuggling can, of course, have other purposes than facilitating an escape.

#### Section 11

Sub-section (1) of this section gives to the Garda Síochána certain powers in relation to persons who are arrested, kept in custody and questioned under the provisions of any enactment for the time being in force. Factually the situation envisaged is where a person has been arrested either under the arrest provision in the Emergency Powers Bill or under section 30 of the 1939 Act. Under sub-section (5) of section 30 the arresting Garda has already power to do the things mentioned at (a), (b) and (c) of sub-section (1) of this section and also to take or cause to be taken the arrested person's fingerprints. Paragraph (d) of sub-section (1) empowers the Garda also to take or cause to be taken the arrested person's palm prints. Paragraph (e) provides that the



Garda may make or cause to be made tests designed for the purpose of ascertaining whether the arrested person has been in contact with firearms or explosives. Paragraph (f) provides that the Garda may seize and retain for testing anything that the arrested person has in his possession. (This includes the person's clothing). Sub-section (2) provides that any person who obstructs or attempts to obstruct the Gardaí or any other person acting under the powers conferred by sub-section (1) or who on demand fails or refuses to give his name and address or gives a name or address which is false or misleading shall be guilty of an offence and shall be liable to the penalties provided.

#### Section 12

This section relates to situations in which the Gardaí are stopping cars (e.g. at road check points) when they suspect that serious offences of the kind specified in Sub-section (1) have been, are being or may be about to be committed. The section authorises a Garda to search a vehicle even though he has no suspicion in relation to that specific vehicle. If before or after the search of the vehicle he forms a reasonable suspicion that any occupant of the vehicle is concerned in an offence to which the section applies or that there is evidence of such an offence in the vehicle or on any such occupant, the Garda may search any or all of the occupants. Sub-section (3) of the section empowers the Gardaí to use reasonable force to compel a person to comply with a requirement to stop a vehicle. The requirement to stop a vehicle for a member of the Gardaí is in section 109 of the Road Traffic Act, 1961. The sub-section provides that the Gardaí may place a barrier or other device in the path of the vehicle to force it to stop.

The Gardaí have at present no general powers of search without warrant in the circumstances envisaged in the section and the efficiency of road checkpoints depends on the willingness of the majority of law-abiding citizens voluntarily to undergo searches. Apart from remedying this situation



the section also, in subsection (3), authorises the use of barriers or other devices. (e.g. spiked mats) to compel the driver of a car to stop when required to do so by a Garda (under section 109 of the Road Traffic Act, 1961).

Section 17

This section provides that in the course of any search by a member of the Gardaí, the prison staff or the Army anything found that he believes to be evidence of any offence or suspected offence may be seized and retained for use as evidence in any prosecution. The thing seized may be retained for up to six months - this is to take account of the time scale involved in the commencement of proceedings in certain cases - or if proceedings are commenced, until the conclusion of proceedings where the thing is required for use in evidence. The section also provides that the Police Property Act, 1897, shall thereafter apply. The 1897 Act makes provision for the disposal of property that has come into the possession of the Gardaí in connection with a criminal charge. An application to the District Court may be made either by the Gardaí or by a claimant of the property and the Court may make an order for its disposal.



Section 14

There is at present no prohibition on the taking of photographs, sketches, etc. of any prison, Garda station or courthouse to correspond with the provisions of section 268 of the Defence Act, 1954, in respect of military installations. Sketches of prisons etc. have frequently been found in the possession of subversive prisoners and other subversive persons. The proposal is that it shall be an offence to make, have etc. any photographs etc. of any part of a prison, Garda station or courthouse with the intention of facilitating the escape of a person from lawful custody. Subsection (2) propose, in addition, that the Minister for Justice be empowered to prohibit the taking of photographs etc. of any part of a prison, Garda station or courthouse. Subsections (5) and (6) proposes that it shall be an offence for any prisoner or visitor to a prisoner to have any photograph etc. of a prison, Garda station or courthouse in his possession without the permission of the person in charge (which, in the case of a courthouse, is to be the court).

Note: intention will not have to be proved in the case of charges under subsections (2), (5) or (6)]. Subsection (2) is not to apply to persons taking photographs etc. in the normal course of duties or in connection with the prison, Garda station or courthouse.

Section 15

See paragraph 4 of the memorandum.



Section 16

Offences of kidnapping and false imprisonment are common law misdemeanours. The main effect of the section is that an accessory after the fact to a kidnapping or false imprisonment (e.g., a person who subsequently harbours or aids or assists the kidnappers) will be liable as principal.

Section 17

This section is designed to deal primarily with the matter of bomb hoaxes. These hoax calls pose a serious threat to the economic well being of the country, disrupt business life and involve the deployment of Garda manpower to investigate them. The streets of Central Dublin have had to be cleared for hours on many occasions during the past month, sometimes as often as three times in one day, and the alarm and apprehension generated on these occasions is not difficult to imagine.

The making of hoax telephone calls is an offence under section 13 of the Post Office (Amendment) Act, 1951 but the penalties provided - a fine not exceeding £10 or a term of imprisonment not exceeding one month or both - are clearly far too low. The section provides (a) on summary conviction for a fine not exceeding £300 or for a term of imprisonment not exceeding twelve months or both or (b) on conviction on indictment for a term of imprisonment not exceeding five years.



Section 18

For some years past the incidence of assaults on Prison Officers, assaults by prisoners on other prisoners, rioting and wilful damage to prisons and prison property has been increasing. The prisoners concerned - who are usually hardened criminals already serving lengthy sentences - are aware that, when they are prosecuted, the courts usually impose sentences which are concurrent with the sentences which they are already serving. Subversive prisoners have a particularly bad record in this respect. It is possible that in any particular case to which the proposed provision applied, the Court might decide to sentence the person concerned to a merely nominal period of imprisonment, but it is unlikely that, in general, Courts would nullify the effect of the proposed provision.

Section 19

This section is an amending provision to provide that the definition of 'document' in the Act of 1939 as amended by section 5 of the offences against the State (Amendment) Act, 1972, shall not apply in relation to any of the provisions of sections 13 or 14 of the Act of 1939.

Section 5 of the 1972 Act extended the definition of "document" in the 1939 Act so as to apply it to certain things that are (mostly) not documents in the ordinary sense such as photographs, discs, tapes and films. The purpose of the extension was primarily to bring things of the kinds mentioned within the scope of provisions of the 1939 Act such as sections 10 and 12, which relate inter alia to the distribution or possession of "documents" in connection with the purposes of an illegal organisation. But the extended definition is inappropriate in relation to section 13 and 14 of the 1939 Act, as those sections require printers of documents to record the names and addresses



of the persons for whom they have printed the documents and their own names and business addresses. The defect in section 5 was raised by Mr. Cluskey, Parliamentary Secretary to the Minister for Social Welfare on the Second Stage of the Dail debate on the Bill of the 1972 Act (29 November 1972, col. 304-305) and the section would have been amended had there been an opportunity to do so.