

Pre-Charge Detention

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Habeas Corpus

Ancient common law writ used to determine legality of detention

See e.g. Art 39, Magna Carta:

‘No freeman shall be taken or imprisoned or disseised ... except upon the lawful judgement of his peers or the law of the land’

Habeas Corpus

- 1679 Habeas Corpus Act
- Fourth Amendment:
 - ‘The right of the people to be secure ... against unreasonable searches and seizures, shall not be violated ...’
- Largely superseded by PACE 1984
- 24 hours, up to max of 72 hours

Article 5(3) ECHR

Everyone arrested or detained ... shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ...

Brogan v United Kingdom

(1988) 11 EHRR 117

- Prevention of Terrorism Act (Temporary Provisions) Act 1984
- 3 suspected IRA members detained for 4 days without being brought before a judge
- Court held violation of Article 5(3) ECHR because suspects not brought 'promptly'.

Brogan v United Kingdom

‘Judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Art 5(3), which is intended to minimise the risk of arbitrariness’

Pre-charge detention since 2000

- Terrorism Act 2000 introduces judicial authorisation of detention in terrorism cases past
- Schedule 8 of Act allows suspect and lawyer to be excluded from hearing and denied access to evidence (*Ward v PSNI*, 21 Nov)

Pre-charge detention since 2000

Terrorism Act 2000	7 days
Criminal Justice Act 2003	14 days
Terrorism Act 2006	28 days
Terrorism Bill 2007	58 days?

The case for going further

Home Office Options Paper, July 2007:

‘there has been no case in which a suspect was released but a higher limit than 28 days would definitely have led to a charge’

The case for going further

‘The Government believes that there will be cases in the future, possibly quite soon, in which more than 28 days will be needed for charges to be brought’

The case for going further

- ‘Scale and nature of threat’, esp risk of mass casualties without warning
- ‘Increasing complexity of cases’ including:
 - Increased amounts of material seized
 - Use of false identities
 - International links

Threshold for arrest

- Arrest = ‘reasonable suspicion’
- What is suspicion based on?
- Typically based on analysis of large amounts of surveillance and intercept

Threshold for charge

- Section 6, Code for Crown Prosecutors
- applies where ‘the suspect presents a substantial ... risk if released, but much of the evidence may not be available’
- CPS Threshold Test requires ‘reasonable suspicion that the suspect has committed an offence’.

Pre-charge detention abroad

Canada	1 day
United States	2 days
Russia	5 days
France	6 days
Ireland	7 days
Turkey	7.5 days
Australia	12 days
Zimbabwe	21 days

From Arrest to Charge in 48 Hours

- Study of complex terrorism cases in the US since 9/11
- Ten alleged plots between 2002 to 2007, including threats to blow up the Sears Tower, JFK Airport, and the Brooklyn Bridge
- 51 suspected terrorists arrested by FBI
- All charged within 48 hours of arrest

Alternative measures

- Post-charge questioning
- Civil Contingencies Act 2004
- Clarifying the threshold test
- Lifting the ban on intercept evidence
- Evidence-led investigations