

Government Response to the Report by David Anderson Q.C. on the Operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

November 2011

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25 OCT 2011

REVIEW OF THE OPERATION IN 2010 OF THE TERRORISM ACT 2000

Thank you for your helpful and detailed report on the operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. I would like to take this opportunity to respond formally to your observations and recommendations.

Government response to the annual report on the operation in 2009 of the Terrorism Acts

You noted in your report that the Government had yet to publish a response to the last annual report on the operation of the Terrorism Acts by Lord Carlile of Berriew QC. As you know, Lord Carlile delayed production of his report on the operation of the Acts in 2009 until after the General Election and formation of the new government. While his report was published in July 2010, it came after I had announced our intention to conduct a review of counter-terrorism and security powers. I considered that it was appropriate to await the outcome of our own review, which focused on many of the powers that the independent reviewer reports on (e.g. pre-charge detention, stop and search, proscription as well as the control orders regime) and to use the review's report to set out in detail our proposals, and in turn address Lord Carlile's principal concerns and recommendations.

Our review of counter-terrorism and security powers was completed in January of this year and, taken together with other subsequent reviews concerning the government's counter-terrorism strategy, addressed all but one of the substantive recommendations raised by Lord Carlile in his report.

Lord Carlile made one substantive recommendation, not addressed by these reviews, in which he proposed that the independent reviewer's remit be extended to include oversight of the Counter-Terrorism Act 2008. While I accept that the scope of the reviewer's powers should keep pace with relevant changes to primary legislation, I understand there would be an impact in terms of the burden placed on the role of Independent Reviewer. I am considering the implications further and would welcome your thoughts.

However, I do not now, therefore, propose to provide an additional formal response to Lord Carlile's last report.

Proscription

I welcome your comments about the effectiveness of proscription and your conclusion that no further changes should be made to the system for proscribing organisations. I was also pleased at your comments about the standard of advice provided by officials to Ministers following a de-proscription application.

I note your concerns about the process for proscribed organisations to apply for de-proscription and, specifically, your recommendation that all proscriptions should expire after a set period, unless the Secretary of State decides to re-proscribe the organisation. The Government is currently considering all options, including your recommendation, for how the de-proscription process could work in future. As this issue also relates to Northern Ireland related terrorism, I will liaise closely with the Secretary of State for Northern Ireland as part of this process.

Arrest and Detention – section 41

Both the Government and the police are acutely aware of the need to avoid too ready a recourse to the use of section 41 arrest and detention powers and that where they are used, this is done so lawfully. I agree that the requirement for reasonable suspicion in relation to each person arrested under section 41 of the Terrorism Act 2000 should be at the forefront of the police's considerations during terrorism investigations. I am confident that this is the case, even with the increased need for security as a result of next year's Olympic and Paralympic Games taking place in London. Your report on the arrests during the Papal visit under Operation GIRD was reassuring in this regard.

Pre-charge Detention of Terrorist suspects

You recommend that the mechanism for extending the period of pre-charge detention beyond 14 days in exceptional cases should not be primary legislation, but an order-making power coupled with appropriate safeguards, along the lines suggested by the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills in its Report of 23 June 2011.

I am clear, however, that an order-making power of the type proposed by the Joint Committee would not be a clear expression of the Government's intention to reduce the maximum period of pre-charge detention available in the vast majority of circumstances, from 28 to 14 days. The fact that more than 14 days has not been required since 2007 shows that such an extended period is not routinely required and I believe this should be reflected on the face of the legislation.

I believe that in most circumstances fast-track, primary legislation is the right mechanism for increasing the maximum period should it be necessary to do so. Such an approach, with prior Parliamentary scrutiny, acknowledges the exceptional nature of 28 day detention without charge. I do not believe the general order-making power proposed by the Committee properly reflects the serious divergence from pre-charge detention time limits elsewhere in the criminal justice system.

While Parliamentary debates would have to be carefully handled, I am confident that Parliament could do so. It is important to note that Parliament would be discussing the principle of 28 day detention as opposed to discussing individual cases, which would remain a matter for the appropriate judicial authority. As for whether Parliament could react quickly enough to pass fast-track legislation, it has shown itself to be capable of doing so in the past when the circumstances demand it. The Government has, however, brought forward changes to the Protection of Freedoms Bill to include an order-making power which could be used when Parliament was dissolved, and it would not be possible to introduce primary legislation.

In accordance with your recommendation on the grounds for extension of detention, I will consider whether any amendments to Schedule 8 of the Terrorism Act 2000 are necessary in the light of the forthcoming judgment of the Supreme Court in *Duffy*.

Stop and search

The statutory Code of Practice provides robust and detailed guidance to the police on the new powers and how they can, and cannot, be used. While the Code of Practice refers to the use of “random” searches under the section 47A powers, this is in the context of a specific authorisation and the exercise of the powers must therefore be linked to the intelligence which justified the use of the authorisation.

However, I appreciate your comments that any guidance around this issue must be clear, particularly in light of the ruling of the European Court of Human Rights. Further detail and explanation will be provided in subsequent versions of the Code of Practice to make this point clearer.

Ports powers

I welcome your views on the port and border powers contained in Schedule 7 to the Terrorism Act 2000. The Government announced in January that we would consider these powers following completion of our review of counter-terrorism and security powers. We repeated this commitment in the revised version of CONTEST in July. The Government welcomes your recognition that these powers form a useful tool in the fight against terrorism but we similarly recognise that their application must not undermine the freedoms that we are trying to protect.

The work we have done to date has identified many of the issues that you have raised in your detailed recommendations. I am considering the best way to take this work forward.

You have raised the issue of the availability of passenger information both for domestic routes and European nationals travelling between EU nations. I fully recognise the value of advanced passenger information (API) in identifying individuals of interest and agree that this allows resources to be better targeted and the inconvenience to the wider travelling public to be reduced. The existing EU API Directive does not provide a legal basis for API collection on intra-EU routes. The Government will seek to use the European Commission's evaluation of the API Directive in late 2011 to highlight scope for improvements, with the possibility to re-open the Directive for amendment. We are separately considering what are the most effective and achievable options to increase the information to front line officers.

Work to improve the availability of information about freight en-route to the UK is also being taken forward. The Home Office is working with all border law enforcement agencies, HM Revenue and Customs as well as the freight industry to ensure that freight information is used effectively for counter-terrorism purposes. These security requirements must be balanced with the need to facilitate legitimate trade.

Statistics

I accept your recommendation that we need to improve the co-ordination of reporting practices and the overall process for preparing terrorism related statistics in Great Britain and Northern Ireland. My officials have agreed with the Police Service of Northern Ireland (PSNI) to include a Great Britain and Northern Ireland summary table at least once per year in future Home Office statistical bulletins to facilitate comparisons and the PSNI will provide charging figures on the principal offence basis. Further consideration is being given to your recommendation that statistics should be prepared in Great Britain and Northern Ireland recording the total number of charges and convictions for each offence under terrorism legislation. Accuracy of the data and the potential burden on the police (and criminal justice system more generally) of collecting more data are relevant to this consideration.

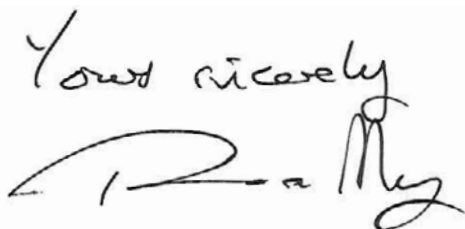
Future of Terrorism Legislation

Lastly, I accept your recommendation that any future amendment or consolidation of terrorism legislation should be conducted using clear guiding principles and agree that this should include those proposed by Lord Lloyd.

As has been the case in previous years, I will be placing copies of the Government's response to your report in House Libraries and publishing it on the Home Office website.

My officials and I will, as ever, continue to keep you updated on the progress on the work set out above.

Thank you again for your report.

A handwritten signature in black ink, appearing to read 'Theresa May', written in a cursive style.

The Rt Hon. Theresa May MP



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