The Government Reply to
the Report by Lord Carlile of Berriew Q.C.

Fifth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005

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by the Secretary of State for the Home Department
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Home Office

HOME SECRETARY
2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Lord Carlile of Berriew QC
House of Lords
London
SW1A 0PW

25 MAR 2010

Dear Alex

FIFTH ANNUAL REPORT ON THE OPERATION OF THE PREVENTION OF TERRORISM ACT 2005

Thank you for your report on the operation in 2009 of the Prevention of Terrorism Act 2005.

I am grateful to you for providing another considered report – and in particular for the attention you paid to the ongoing viability of the control order regime in the light of the June 2009 judgment in *AF & Others*.

I agree with your conclusion that 'abandoning the control orders system entirely would have a damaging effect on national security. There is no better means of dealing with the serious and continuing risk posed by some individuals.' I note your emphasis that in reaching this decision you 'have considered the effects of the court decisions on disclosure' and that you 'do not agree that their effect is to make control orders impossible.' Again, this matches the Government's assessment of the impact of *AF & Others*.

I attach the Government's formal response to the main recommendations in your report. Copies of the Government response will be available in the Vote Office and a copy will also be placed on the Home Office website.

Yours
Alan

ALAN JOHNSON

GOVERNMENT RESPONSE TO LORD CARLILE'S REPORT ON THE OPERATION IN 2009 OF THE PREVENTION OF TERRORISM ACT 2005

Necessity and proportionality of control order system

The control orders system remains necessary, but only for a small number of cases where robust information is available to the effect that the suspected individual presents a considerable risk to national security, and conventional prosecution is not realistic. (Main conclusion 1)

Given the factors outlined [in paragraphs 38 to 84] above, it is my view and advice that abandoning the control orders system entirely would have a damaging effect on national security. There is no better means of dealing with the serious and continuing risk posed by some individuals. Of course, on their own control orders are not a failsafe or foolproof mechanism for full disruption of suspected terrorists. Further, because they are a resource-intensive tool for all involved in their management, self-evidently they cannot be used to manage the risk posed by all non-prosecutable suspected terrorists against whom there is robust intelligence. (Paragraph 85)

Control orders and other non-prosecution disruptions are regarded by the relevant authorities as cumulative in effect. I agree that the existence of the orders plays a significant part in hardening the environment and making it more difficult for terrorists to undertake terrorism-related activity. The orders contribute to a tougher environment for putative terrorists. Even a reduced number of control orders, if against critical police/Security Service targets, could still be of major operational benefit. (Paragraph 100)

In stark terms, the potential cost of losing control orders is that the UK would be more vulnerable to a successful terrorist attack. (Paragraph 101)

The Government agrees with your conclusion that the control order regime remains necessary and that abandoning it would have a damaging effect on national security. We accept that control orders cannot entirely eliminate the risk of an individual's involvement in terrorism-related activity – no executive action can – and that they are resource-intensive.

The Government notes your detailed analysis of the merits of control orders and possible alternatives. The Government's preference is, of course, to prosecute suspected terrorists. When we cannot prosecute, and the individual concerned is a foreign national, we look to detain and then deport them. We can only deport someone if doing so is compatible with our international commitments, including our obligations under the European Convention on Human Rights (ECHR). There remain a small number of suspected terrorists whom we can neither prosecute nor deport. Control orders remain the best available disruptive tool for managing the risk posed by these individuals. Control orders are also an important – and in many cases the only currently viable – means of preventing travel abroad by suspected terrorists. Abandonment of the regime would leave a public protection gap.

The Government also agrees that non-prosecution executive actions help to make it harder for suspected terrorists to operate. Control orders play their part in this.

The protection of human rights is a key principle underpinning all the Government's counter-terrorism work. The Government must protect individual liberty whilst maintaining the nation's security. It must protect the most important of civil liberties – the right to life – whilst also protecting other fundamental values. This is a challenge, but the Government has sought to find that balance at all times, including by introducing control orders.

Proposal for 'travel restriction orders'

Control orders are in my view no longer suitable for cases where the main objective is to prevent travel abroad. In such cases, after further legislation, there should be available a Travel Restriction Order [TRO], with a limited range of obligations. (Main conclusion 2)

Where the main purpose of executive action is to restrain an individual, who appears not to have participated in any other terrorist acts or planning, from leaving the United Kingdom to train as a terrorist or otherwise to participate in terrorist acts outside the United Kingdom, I recommend that control orders cease to be available and be replaced by Travel Restriction Orders [TROs]. To be clear, TROs are intended for the radicalised person whose first or early intentions are manifested by the desire to go for training and/or to act as an insurgent. These would replace the current 'light touch' control orders, as sometimes they are called. The *Counter-Terrorism Act 2008* made provisions for 'Foreign Travel restriction Orders' on conviction. However, there is no specific provision for the use of closed material in that context. My proposal deals with circumstances other than on conviction, and would provide proportionate protection in relation to a demonstrable intelligence-based risk assessment. (Paragraph 87)

I suggest that a TRO should be available for issue by the Home Secretary for up to a year at a time. The test should require the Home Secretary to be satisfied that there is reasonable suspicion of an intention to act as described in the previous paragraph, and that the Home Secretary considers that the TRO is necessary to protect others from the risk of terrorism. (Paragraph 88)

A TRO should have available a limited range of conditions, namely one or more of –

- **(a) the wearing of an electronic tag;**
- **(b) daily telephone reporting to the tag operating company;**
- **(c) notification of home address to the police;**
- **(d) notification of employment address to the police;**
- **(e) prohibition without consent of the Secretary of State from entering any airport, seaport, train or bus station providing direct travel links outside Great Britain;**
- **(f) surrender of travel documents;**

(g) prohibition against applying for or being in possession of travel documents; and
(h) Prohibition on travelling outside Great Britain/the United Kingdom. ((Paragraph 89)

Powers of search of the individual and premises should be included. (Paragraph 90)

The government is examining watch list systematology following the Christmas Day 2009 Detroit aircraft incident. Alongside the conclusions of that examination, a short, special list (like a watch list, but for travel out of the UK) should be created containing the details of all subject to a TRO. They should be entitled to maintain their anonymity (as with control orders), subject to the watch list being made available as necessary to all relevant Home Office, police, UKBA and other relevant officials and contractors. (Paragraph 91)

It should be possible for a TRO to prohibit travel entirely, or travel to named countries. Breach (and its ancillary offences) should be triable either way, with a maximum sentence on indictment of five years' imprisonment and/ or an unlimited fine. (Paragraph 92)

I suggest that TROs and their constituent requirements should be appealable to (but not automatically reviewable by) a High Court Judge, or a Senior Circuit Judge with a criminal jurisdiction (of whom there are now more than in 2005 when control orders were introduced), with a right of appeal with permission to the Court of Appeal. Special Advocates should be appointed to such cases at the request of the Secretary of State or the Judge: this would enable the individual subject to the order to apply for the appointment of a Special Advocate, in the interests of justice. Whether disclosure in such circumstances inevitably would have to comply with the requirements flowing from the decision in *AF & Others*, referred to in the Table in paragraph 18 above is the subject of current litigation in *BB & BC*. The outcome of that litigation will affect the utility of this proposal. Closed hearings would have to be available in the interests of national security, as now with control orders. (Paragraph 93)

It should be grounds for the removal of a TRO if the individual proves on the balance of probabilities that he/she has no intention of travelling for the purposes described. It should be open to the Judge to impose limitations on travel, for example within the EU. (Paragraph 94)

A TRO should normally remain in place for no more than two years, i.e. renewable once only, save in exceptional circumstances. There should be a presumption to this effect, rebuttable by the Secretary of State. (Paragraph 95)

The proposal for a new form of control order called a 'travel restriction order' is interesting. The Government agrees that there is a requirement for an effective, proportionate means of preventing individuals from travelling abroad to engage in

terrorism-related activity. Given that control orders are currently used to prevent travel – and particularly in recent years have been successful in so doing – we do not accept that a control order is no longer a suitable tool where the prevention of travel is its main purpose. We agree that a control order and the obligations it imposes must however continue to be tailored to the individual's personal circumstances and the nature of the terrorism-related activity that it is seeking to prevent and disrupt.

There will be cases where only light obligations – targeted specifically at disrupting an intention to travel abroad, in a similar form to that you suggest – will be appropriate. As set out below, two so-called 'light touch' control orders are currently in force. We remain aware, of course, that 'light touch' control orders have their limitations – and that you continue to criticise their efficacy. The proposed 'travel restriction orders' appear largely the same as 'light touch' control orders. The practical benefits of 'travel restriction orders' compared to so-called 'light touch' control orders are thus not immediately clear to the Government. Furthermore, the Government agrees with your observation that the utility of this suggestion will be affected by the ongoing litigation relating to *Secretary of State for the Home Department v BB & BC [2009] EWHC 2927 (Admin) (BB & BC)* (see below).

The Government considers that the practical consequences of creating a 'travel restriction order' merit further careful consideration before any decision is made on the proposal. The prevention of foreign travel to protect the public from a risk of terrorism may well be a reason for the imposition of an order, but not the sole reason. In such cases it would need to be clear that a wider range of obligations could be imposed on the individual to disrupt his terrorism-related activity – and it may well not be appropriate to use something called a 'travel restriction order'. Even if the sole purpose of the order is to prevent travel, it may be necessary and proportionate to impose more stringent obligations on an individual than those you suggest. For example, if the suspected terrorist who wished to travel needed the support of an associate to leave the country, then restrictions preventing that individual communicating with him may be considered necessary and proportionate. Similarly, if the suspected terrorist needed to communicate with an associate overseas in order to arrange his travel, then restrictions on the suspected terrorist's ability to use the internet may be considered appropriate. In other cases, the risk posed by the individual may be sufficient to justify the imposition of a curfew to disrupt his opportunity to travel. Separately, the creation of two parallel regimes for dealing with suspected terrorists could cause unnecessary confusion (including legal challenges as to which regime should apply) and may further increase the resource burden on the Government and the courts.

Nonetheless, it remains important to prevent suspected terrorists from travelling aboard in certain circumstances. Consequently, the Government is considering this recommendation further.

Functioning of the control order system despite challenging court decisions

The control orders system functioned reasonably well in 2009, despite some challenging Court decisions. (Main conclusion 3)

We welcome your conclusion.

The key judgment of 2009 was the June 2009 House of Lords judgment in *Secretary of State for the Home Department v AF & Others [2009] UKHL 28 (AF & Others)* on the compliance of control order proceedings with Article 6. The Lords held that, for the stringent control orders before them, in order for control order proceedings to be compatible with Article 6, the controlled person must be given sufficient information about the allegations against him to enable him to give effective instructions to the special advocate in relation to those allegations.

As you know, the High Court has since upheld four control orders, following court proceedings that were compliant with the Article 6 test laid down in *AF & Others*. The Government therefore remains of the view that the control order regime remains viable. The Government's position was set out in greater detail in its memorandum to the Home Affairs Committee on post-legislative scrutiny of the Prevention of Terrorism Act 2005 (Cm 7797), which was laid before Parliament on 1 February 2010.

Amendments to the legislative framework for control orders

A power of personal search of controlees by a constable should be added to the legislation as soon as possible. (Main conclusion 4)

Other changes introduced by the 2008 Act include *section 78*, which introduces into *PTA2005* new *sections 7A, 7B* and *7C*: these facilitate the searching of controlees and their premises with a view to securing compliance with control orders… *Sections 79-81* make procedural changes primarily resulting from experience of the 2005 Act before the Courts. (Paragraph 7)

The 2008 Act has added some new sections to the Prevention of Terrorism Act 2005. *Section 7A* provides the police with powers to enter, search and seize material from premises connected with the controlee if there is reasonable suspicion that the controlee has absconded, in order to ascertain whether he has absconded and, if so, to assist in pursuit and arrest. (Paragraph 143)

***Section 7B* permits forced entry by the police where there is reasonable suspicion that the controlee is not granting access to premises where at the time he is required to be situated under the order. This power is for the purpose of determining whether any of the obligations imposed by the control order have been contravened, and, if so, for material that may assist in the investigation of the contravention. (Paragraph 144)**

***Section 7C* allows for a warrant for entry and search to be issued at magistrates' court level for the purposes of determining whether the controlee is complying with the obligations of a control order. The bar for such warrants is quite high: by *subsection (5)* the warrant must be *necessary* for the purposes of determining whether the controlee is complying with the obligations imposed by or under the control order. (Paragraph 145)**

Sections 10-13 of the Counter-Terrorism Act 2008 provide a power for a constable to require fingerprints and other non-intimate samples from a controlee. They have yet to be brought into force; and are subject to ongoing amendment before they come into force. (Paragraph 146)

The recent provisions are a proportionate and necessary part of a workable control orders system, with a reasonable range of enforcement powers. (Paragraph 147)

It is logical and necessary that powers of personal search be available. In the light of recent judicial decisions, as a compliance tool and to ensure police and public safety, such powers should be added by legislative amendment, as soon as possible. (Paragraph 148)

The Government agrees that powers to search an individual subject to a control order are a necessary and proportionate part of a workable, enforceable control order regime. Consequently the Government has introduced an amendment to the Prevention of Terrorism Act 2005 making provision for such powers in the Crime and Security Bill currently before Parliament.

The Government welcomes your conclusions relating to amendments made to the legislative framework for control orders by the Counter-Terrorism Act 2008. The section 7A powers do not contain a separate power of seizure; once on the premises, the seizing of material would be carried out under existing police powers. As you note, the powers relating to the taking of fingerprints and non-intimate samples of controlled persons have not yet been commenced. They will be brought into force once we have amended them to take into account the European Court of Human Rights' (ECtHR) judgment in *S & Marper v the United Kingdom – (Application no. 30562/04) [2008] ECHR 1581* concerning limits on the retention of biometric material. Provisions in the Crime and Security Bill currently before Parliament make such amendments.

Breaches, absconds and the use of so called 'light touch' control orders

Annex 4 describes the only charge for breaches of control orders during 2009. The person concerned allegedly breached their curfew, failed to report to the electronic monitoring company, tampered with electronic monitoring equipment, and entering prohibited premises. These allegations had not been adjudicated upon at the time of my writing this report. (Paragraph 32)

There have been other breaches of control orders that have not been made the subject of criminal charges. Most of these are in themselves of minor significance, e.g. a few minutes' lateness in reporting; although the cumulative effect of such breaches may be regarded as serious. Some have been passed over because of family exigencies or emergencies which had given rise to the breach. (Paragraph 33)

Breach proceedings are subject to the usual prosecution procedures and standards applied by the Crown Prosecution Service. The standard of proof required is the ordinary criminal standard, namely proof beyond reasonable doubt… (Paragraph 36)

Absconding by persons who are or predictably are about to be controlees is an embarrassment to the system. The viability of enforcement must always be considered when a control order is under consideration. Enforcement of control orders is resource-intensive for the police, and affects the several police forces with controlees resident in their areas… (Paragraph 37)

It is sometimes said that the authorities have a panoply of effective means of enforcement of surveillance of suspects, irrespective of control orders. (Paragraph 82)

All forms of surveillance involve considerable human resources. Observation of individuals generally requires a 24 hour presence of many officers, observing, logging, and recording images. This is especially true of physical watching and following. A complete package of measures requires secure places of observation. (Paragraph 83)

The importance and difficulty of ensuring that control orders are enforced means that so-called 'light touch' control orders are not a realistic proposition save in exceptional cases. My discussions with Ministers and officials leave me with the conclusion that the limitations of so-called 'light touch' control orders are well understood. This conclusion is strengthened by the current view of the Courts in relation to disclosure: the judges have held that the standard of disclosure is the same for all control order cases. (Paragraph 84)

As the Government noted in response to your previous report on the operation of the Prevention of Terrorism Act 2005, control orders cannot entirely eliminate the risk of an individual's involvement in terrorism-related activity. No executive action can do this. In some cases control orders have successfully prevented involvement in terrorism-related activity. In others – the majority – they have restricted and disrupted that activity without entirely eliminating it.

The Government must, of course, work within the legal framework for control orders, in particular on human rights. Within these limits, it is difficult to prevent all breaches and absconds. Control orders do not equate to house arrest, and – as you acknowledge – all forms of surveillance involve significant resources. Nonetheless, the Home Office works with partners to take every available step to protect the public from the threat we face from terrorism, including continuing to ensure that all control orders are as effective as they can be. Considerable work has been carried out by the Government to reduce the risk of absconds, with notable success. There have been no successful absconds since June 2007. We continue to keep all current control orders under review – to ensure both that they and the obligations they impose remain necessary and proportionate, and that the control order regime more generally is as effective as possible. We introduced new police powers of entry and search in the Counter-Terrorism Act 2008 specifically to aid enforcement and monitoring of control orders, and in the light of court judgments during 2009 have included provision for a power to search controlled individuals in the Crime and Security Bill currently before Parliament.

The police, the prosecuting authorities and the courts all take the enforcement of control orders seriously. Where we have evidence that a control order obligation has been breached, the prosecuting authorities will take appropriate action. As you note, any potential prosecution is subject to the usual tests set out in the Code for Crown Prosecutors: whether the evidential threshold is met, and whether prosecution would be in the public interest. Eight individuals have been or are being prosecuted for one or more breaches of their control order obligations. (One of these resulted in conviction, with the individual being sentenced to five months' imprisonment; one resulted in acquittal; one individual absconded and there is a warrant outstanding for his arrest; one has left the UK voluntarily and the charges against him have been left to lie on file; no evidence was offered in relation to another as it was no longer in the public interest to continue with the prosecution; and three are awaiting trial.) In addition to these headline prosecution figures, the prospect of prosecution for breach should have a deterrent effect on controlled individuals. As you suggest, when there is reasonable excuse for an individual breaching their control order, such as a medical emergency, the individual will not be charged.

We accept that so-called 'light touch' control orders can provide less assurance against engagement in terrorism-related activities and specifically against absconds. However, the Government has always maintained that there may be specific circumstances where it is necessary and proportionate to have a less stringent control order. Indeed, all control orders are tailored to the risk posed by the individual concerned, and there is consequently variation in the obligations imposed by different control orders.

There are currently two so-called 'light touch' control orders in force. More stringent control orders had been imposed against these individuals. However, they were revoked on Article 6 grounds in the light of *AF & Others* and new control orders with significantly reduced obligations imposed in their place. The Secretary of State unsuccessfully argued before the High Court in *BB & BC* that in such cases Article 6 was not engaged – or, even if it was, the level of disclosure required in *AF & Others* did not apply. The Secretary of State is appealing the judgment; the control orders remain in force – and the effect of the judgment has been stayed – pending the outcome of that appeal.

Emergency contacts for controlled persons

During the year I have visited a number of existing and past controlees. A repeated theme of complaint was that they claimed to have no personal point of contact for emergencies. This is not accepted as a fair criticism by the police or officials in the Home Office. Whether it is or not, in my view in every case the controlee should be given a list/roster of numbers with a name or designation for contact in emergencies – for example, the need to take a child to A & E in circumstances that would constitute a breach of the order. Given that some controlees are moved to neighbourhoods where they are unknown and have no family contacts, this emergency contact system should be as personal in its approach as possible. (Paragraph 34)

The Government accepts that controlled persons need additional contact details to those normally available to the public such as the emergency services and

non-emergency public services phone numbers (for example for the police, NHS and local authority services). However, as you acknowledge, the Government does not accept the main thrust of the concerns expressed to you by certain controlled persons. This is because the Government already provides controlled individuals with contact numbers for use, including in the case of an emergency.

The Government ensures that controlled individuals always have a telephone available for their use in their home which they can use to call health professionals, the emergency services or friends and family in an emergency. All controlled individuals can contact the dedicated team in the Home Office that is responsible for the management of control orders during office hours. Where the individual is subject to electronic monitoring and a curfew he can also contact the electronic monitoring company at any time in respect of his compliance with his curfew and any other monitoring conditions. The electronic monitoring company can contact local police officers and relevant Home Office officials on a 24 hour basis. Where a controlled individual is required to reside in Home Office-provided accommodation, the controlled individual is also provided with an emergency contact number to call in the event of a serious problem with the accommodation. All controlled individuals also have an assigned police 'contact officer' whose role is to provide regular and familiar contact with the controlled individual.

The Government would also highlight that section 9 of the Prevention of Terrorism Act 2005, which makes provision relating to offences for breach of a control order, makes it an offence to contravene an obligation in a control order 'without reasonable excuse'. As you explain in paragraph 33 of your report, cases of genuine family emergency – which would therefore satisfy the requirement for there to be reasonable excuse for a breach – would not lead to prosecution of the controlled person as this would not satisfy the evidential sufficiency test under the Code for Crown Prosecutors.

The Government is satisfied, therefore, that controlled individuals have sufficient avenues through which to contact people in an emergency, and that an offence under section 9 of the 2005 Act would not be committed if there was a breach of the control order as a result of a genuine emergency. Some controlled individuals and their legal representatives have, however, suggested that the Government should go further and allow a local police officer or other responsible individual to change the restrictions imposed on the controlled individual as he sees fit. This would require a change in the legislation and is not something the Government is prepared to implement: we think the system approved by Parliament in the 2005 Act remains appropriate, as all restrictions imposed on a controlled individual must be carefully considered by officials acting on behalf of the Home Secretary who are in turn advised by the police and Security Service (and other authorities as necessary).

Technical problems with monitoring equipment

Some apparent breaches still occur because the tagging and contact equipment and service fail. For the most part, these are more reliable than in the past. Prosecutions are not pursued where incidents are not

considered as breaches, for example due to technical problems with the equipment. (Paragraph 35)

As the Government noted in response to your fourth annual report on control orders, the Home Office works closely with the companies responsible for electronic tagging, the police and the Ministry of Justice to ensure that the monitoring of individuals on control orders continues to be carried out effectively.

The monitoring equipment is designed to alert the monitoring company to suspected breaches automatically. There are, inevitably, occasions when this sensitive equipment gives what we believe, after investigation, to be a false alarm. In such circumstances, we ensure that the issue is investigated and resolved as soon as possible.

All types of electronic monitoring equipment are subject to rigorous testing before being approved for use. The National Audit Office report of 2006 on electronic monitoring concluded that the equipment was robust and effective.

Number of individuals on control orders

The continuing relatively low number of control orders, set alongside the vastly greater number of known terrorism suspects, confirms that the Home Secretary remains rightly reluctant to expand their use. (Paragraph 40)

The Government continues to believe that control orders remain the best available disruptive tool for managing the risk posed by individuals whom we can neither prosecute nor deport. Non-derogating control orders can only be imposed where there is reasonable suspicion of the individual's involvement in terrorism-related activity, and where the order is considered necessary to protect the public from a risk of terrorism. The imposition of control orders is considered on a case by case basis. There is no linear relationship between the number of known terrorist suspects and the number of control orders in force.

Effectiveness of control orders

Three of the controlees have been the subject of orders for more than 2 years. CO1, as I shall call him for this report, is in his 5th year. Substantial risk assessments have been carried out on all three. There is significant and credible intelligence that CO1, and CO2 and CO3, continue to present actual or potential, and significant danger to national security and public safety. I agree with the assessment that the control order on each has substantially reduced the present danger that exceptionally they still present despite their having been subject to a control order for a significant period of time. Unless control orders were replaced by some equally disruptive and practicable system, in these cases the repeal of control orders would create a worryingly higher level of public risk. (Paragraph 43)

CO4 and CO5 are assessed separately via intelligence as remaining associated with extremist groups. In their cases there appears to be some prospect of the control order bringing their terrorist activity effectively to an end. (Paragraph 44)

CO6 is assessed as a dangerous terrorist who would re-engage with terrorism the moment he could. I agree with this assessment, and that the control order is an effective intervention. I have no doubt that the removal of his control order would immediately increase risk in the UK and to UK interests elsewhere. (Paragraph 45)

CO7 and CO8 are assessed as still wishing to travel abroad for terrorism training and, presumably, active service thereafter. The main purpose of the control order is to prevent this occurring. (Paragraph 46)

CO9 and CO10 are assessed as having already been trained abroad, and to wish to travel abroad to engage in active service as terrorists. (Paragraph 47)

CO11 is assessed as having been trained abroad in terrorist activity, and to have been involved in considerable terrorist planning and facilitation in the UK. The control order is effective in limiting such activity, though he continues to attempt to remain active. The ending of the control order would increase risk to the public. (Paragraph 48)

The Government does not comment on individual control order cases. In general terms, we welcome your assessment of the effectiveness of many current control orders and note your assessment in some specific cases that the removal of the control order would immediately increase risk in the UK and to UK interests elsewhere. As outlined above, the Government considers control orders to be largely effective, but continues to work to ensure that individual orders are as effective as they can be. The Government also agrees with your conclusion that the control order regime remains necessary and that abandoning it would have a damaging effect on national security.

Intercept as evidence

As independent reviewer, I have said repeatedly that I am not opposed in principle to the admissibility of intercept if this can be achieved without (a) affecting national security, and (b) decreasing the effectiveness of the criminal trial process. I am however convinced that it is not the quick and easy solution that some have assumed and asserted. (Paragraph 56)

On the 10th December 2009 the Rt. Hon Alan Johnson MP, the Home Secretary, made the following written statement to the House of Commons:

"The Secretary of State for the Home Department (Alan Johnson):

> **The Government have no higher duty than to protect the public. A critical tool in this is the warranted interception of communications that allows law enforcement and intelligence agencies to gather intelligence about those individuals who seek to do us harm.**
>
> **Intercept material obtained under a RIPA warrant cannot currently be used as evidence in criminal trials. It has been, and remains, the Government's objective to find a way to make this possible. In**

February 2008, the Prime Minister accepted the findings of a Privy Council review, chaired by Sir John Chilcot, which recommended that intercept should be admissible as evidence subject to meeting nine operational requirements, which the review judged to be necessary to protect the public and national security. He set in train the necessary implementation process and established an advisory group, comprising the right hon. Sir John Chilcot, the right hon. Member for Berwick-upon-Tweed (Sir Alan Beith), the right hon. and learned Member for Folkestone and Hythe (Mr. Howard), and my right hon. [a]nd noble Friend Lord Archer of Sandwell, in order to help safeguard intelligence capability and protect the public.

In my written ministerial statement to the House of 16 July I provided an update on the progress of the implementation programme. I said that I would make a formal report to Parliament on the results and conclusions after end of the summer recess.

I am today publishing a Command Paper setting out the work programme's findings and conclusions. Copies will be available in the Vote Office. I am also placing in the Libraries of both Houses copies of a separate report to my right hon. Friend the Prime Minister by the advisory group. The Prime Minister and I are grateful to the advisory group for its work. I echo their recognition both of the complexity and sensitivity of the work programme and the commitment and thoroughness of officials in undertaking it.

Any implementation of intercept as evidence must, as set out in the original Privy Council review, ensure that trials continue to be fair and that the operational requirements to protect current capabilities are met. As noted in the advisory group's interim report to the Prime Minister, reported in my predecessor's written ministerial statement of 12 February and placed in the Libraries of both Houses, there is an intrinsic tension between these legal and operational requirements.

The work programme set out to develop a model for intercept as evidence that successfully reconciled these requirements, based on the approach recommended by the Privy Council review. This model has been subject to extensive practical testing, with the close involvement of senior independent legal practitioners. This testing has demonstrated that the model, if fully funded, would be broadly consistent with the operational requirements. However, it would not be legally viable, in that it would not ensure continued fairness at court. This has been confirmed by a recent European Court of Human Rights case (Natunen v Finland). The result would be to damage rather than enhance our ability to bring terrorists and other serious criminals to justice.

These findings are disappointing. In the light of them, the Government conclude, as does the advisory group, that the model does not represent a viable basis for implementation. However, the

Government also share the advisory group's view that the potential gains from a workable intercept as evidence regime justifies further work. We therefore welcome the group's suggestion of three areas of analysis, beyond the scope of the original work programme, intended to establish whether the problems identified are capable of being resolved. These areas are to examine:

Further enhancing the judicial oversight available.

Full retention of intercept material alongside alternative review requirements.

Advances in technology which might make full retention and review more manageable.

The Government agree with the advisory group that while continuing to seek innovative and imaginative approaches, these should not be at the cost of the operational requirements, and hence national security or public protection. I am grateful for the advisory group's agreement to continue in its current invaluable role and for agreeing to be similarly engaged on interception related matters that have arisen in the context of the Coroners and Justice Bill.

The Government will report the results of this activity to Parliament before the Easter recess." (Paragraph 57)

In the light of that statement, in preparing this report I am bound to proceed on the basis that intercept evidence will not be available in terrorism trials for the foreseeable future. (Paragraph 58)

Outside commentators have made comparisons with other jurisdictions where intercept is admissible. These comparisons are ill-informed and misleading. In our adversarial legal system the requirements of disclosure of material by the prosecution to the defence (there being no equivalent requirements on the defence) are far more demanding and revealing than in the jurisdiction of any comparable country. For example, in France a great deal of material is seen by the juge d'instruction but not disclosed to the defence, because of the inquisitorial nature of the criminal process there. We already disclose more than in other countries. (Paragraph 59)

Other difficulties can be found in the huge resource problems implicit in the Home Secretary's statement above, and in the fact that in some countries the amount of potentially valuable intercept carried out on terrorist suspects is curtailed by the prospect of having to record and transcribe many thousands of calls/pages in every case. In addition, it is estimated that there is an opportunity cost if far more extensive surveillance etc. has to be deployed. Other targets would not be covered: this could result in an increased risk to the public from those individuals. (Paragraph 60)

Intercept material remains important, as the Home Secretary said in his statement. Inculpatory intercept is followed up generally by the pursuit of

admissible physical evidence, which generally is far more compelling than guarded remarks in telephone conversations. (Paragraph 61)

I agree with the view expressed by the Home Secretary. In any event, it is unlikely that the admissibility of intercept would have led to the prosecution of any controlees since control orders were introduced in 2005. (Paragraph 62)

Interception is a critical intelligence tool. It facilitates the targeted collection of evidence, which is often used in trials. (Paragraph 63)

The intelligence dividend depends upon the secrecy of sources. It depends too on the secrecy of the diverse techniques used to obtain intercept. (Paragraph 64)

The review described in the Home Secretary's statement above refers to a review of nine current or former control order cases by independent senior counsel. The review concluded that intercept as evidence would not have enabled a criminal prosecution to be brought in any of the cases studied. (Paragraph 65)

It has been and remains the Government's objective to find a way if possible to allow the use of warranted intercept material as evidence in criminal trials. This is why in February 2008 we accepted the findings of the Privy Council review (Cm 7324) recommending that intercept material should be made admissible – subject to meeting nine operational requirements, which the review judged to be necessary to protect the public and national security. The findings of the resulting programme of work (Cm 7760) were published under cover of the Home Secretary's statement to Parliament of 10 December 2009. Its findings, with which the cross-party Advisory Group of Privy Counsellors (AGPC) agreed, were that the model recommended for development by the Privy Council review would not be a viable basis for implementation. This was due to an inability to reconcile the operational requirements with the requirements necessary for trials to be fair.

Reflecting the Government's ongoing desire to introduce intercept as evidence, further scoping work was commissioned with the agreement of the AGPC to establish whether the problems identified in the original work programme were capable of being resolved. The AGPC reported the findings of this work in their letter to the Prime Minister on 25 March 2010. Their findings underline the complexity and difficulty of the issues raised. None of the approaches examined successfully reconcile the requirements for trials to remain fair with those necessary to protect operational capabilities. In some cases the problems are such that further work is not justified. In some others the position may be less categorical. Accordingly, the Advisory Group has suggested further, more focused work building on that undertaken previously and intended to establish whether the remaining approaches could be implemented in a way that is operationally sustainable and affordable. The Government agrees that this would be useful.

In any case, as we have previously noted, the introduction of intercept as evidence would not remove the need for control orders. As you acknowledge, the Privy

Council Report noted that it had 'not seen any evidence that the introduction of intercept as evidence would enable prosecutions in cases currently dealt with through control orders.' The report highlighted that a review of nine current or former control order cases by independent senior criminal counsel had concluded that:

> 'the ability to use intercepted material in evidence would not have enabled a criminal prosecution to be brought in any of the [control order] cases studied – in other words, it would not have made any practical difference. In four cases, Counsel concluded that such intercepted material as exists, even if it had been admissible (including the assumption that it could be made to meet evidential standards), would not have been of evidential value in terms of bringing criminal charges against the individuals in question. In the other five cases, although Counsel assessed that there was intercepted material capable of providing evidence of the commission of offences relating to encouraging, inciting or facilitating acts of terrorism (as opposed to the direct commission of terrorist or other offences), he stated that *"it is clear to me that in reality no prosecution would in fact have been brought against these five men"*. This was because deploying the crucial pieces of intercepted material as evidence would have caused wider damage to UK national security (through, for instance, exposing other ongoing investigations of activity posing a greater threat to the public, or revealing sensitive counterterrorism capabilities to would-be terrorists) greater than the potential gains offered by prosecution in these cases.'

Local authority liaison officers

I suggest that a programme should be commenced of identifying one or two suitable officers in each local authority where there is a significant Muslim population. They should be given some training and be available to act as a point of liaison with councillors and other relevant interests within their authority areas, and should be available too when any critical incident arises. Ideally, such officers should have developed vetting, so that they can be entrusted with national security information when necessary. There already are PREVENT leads in all local authorities, government offices and police forces. (Paragraph 103)

As you acknowledge, there are already PREVENT leads in all Government Offices, Police Forces and local authorities who, as necessary, can and do support liaison work with councillors and other relevant interests. Appropriate levels of security clearance will also be provided; not all individuals will require developed vetting clearance in order to perform their functions effectively. Alongside this, the Government is carrying out further work with local delivery partners to look at what more can be done in the immediate aftermath of any counter-terrorism operation to help mitigate the impact on communities.

Availability of advice

Whenever controlees are willing to discuss their own position and concerns, appropriately knowledgeable and qualified persons should be

made available to them. Wherever possible, credit should be given for co-operation. (Paragraph 104)

We continue to agree. As the Government set out in its response to your last two reports on control orders, we consider as quickly as possible all requests from controlled individuals to meet specialist or qualified persons – as with all other requests for modifications of control order obligations. The Government also seeks representations from the individuals on their own position and their concerns – both in terms of the impact of the order and its obligations on them and their family and in terms of the open national security case against them.

Support for those who wish to raise with the authorities concerns about family members or friends

It is said that information concerning the alleged Detroit plane bomber Umar Farouk Abdul Mutallab was provided by his closest relatives. This is not an experience unique to that case. Every facility should be provided for families and friends to raise with the authorities concerns about their nearest and dearest, and these should be dealt with sensitively and securely. Almost all British Muslims are strongly opposed to violent Jihad. They must feel that a contribution towards disruption and detection will be dealt with the utmost discretion. Where the disruption contributes materially to a genuine decision by the individual to abandon any terrorist aims and activities, the authorities should always be prepared to consider leniency. (Paragraph 105)

The Government agrees that the vast majority of Muslims in the UK – as well as the wider population – reject Al Qa'ida's ideology.

There already exist well-established and well-publicised channels for concerned members of the community to report any concerns they have. Relevant phone numbers are:

- If there is a threat to life, call 999
- The police Anti-Terrorist Hotline – 0800 789 321 or 0800 032 4539 (the latter is a text phone service for people with speech or hearing difficulties – text messages from mobile phones are not accepted)
- The Security Service threat reporting phone number – 0800 111 4645 or 020 7930 9000

Contact can also be made through the Metropolitan Police and Security Service websites:

https://secure.met.police.uk/athotline/index.php

https://www.mi5.gov.uk/output/contact-form.html?subject=Reporting%20suspected%20threats

It is also possible to write to the Security Service at the following address:

The Enquiries Desk
PO Box 3255
London SW1P 1AE

These channels are discreet, manned by counter-terrorism professionals and offer a secure means for people to report any concerns, whether urgent or non-urgent. The precise handling of any concerns reported is of course considered on a case-by-case basis.

Role of the Control Order Review Group (CORG); use of control orders for more than two years

Officials and representatives involved in managing control orders meet regularly in the CORG to monitor each case, with a view to advising on a continuing basis as to whether the order should continue and how it should be administered. Included in those considerations must be the effect on the families of controlees, especially any children living with them. The CORG is now a matter of public knowledge, and its activities have been scrutinized by the High Court. I have attended some of its meetings, as an observer. I have been able to contribute when matters of principle and relevance to the review process have arisen. CORG includes officials from the Home Office, police and Security Service. They consider each control order in detail, and discuss the proportional needs of the case. One of the matters always discussed is the potential for bringing the order to an end, and the necessity of the obligations imposed on each controlee. (Paragraph 119)

I can report, as before, that the work of CORG is well-organised and methodical. I am in no doubt that Ministers and officials have a genuine interest in seeing control orders brought to an end as long as the national interest can be protected. As in previous reviews, I am concerned about the ending, or endgame, of each control order. There has to be an end of the order at some point, in every case. As stated above, some of the controlees have already been the subject of their orders for a considerable time. Their orders cannot be continued indefinitely – that was never intended and probably would not be permitted by the courts. I am satisfied that in every case there is an ongoing search for a strategy for the ending of the order. (Paragraph 121)

My view remains that it is only in a few cases that control orders can be justified for more than two years. After that time, at least the immediate utility of all but the most dedicated terrorist will seriously have been disrupted. The terrorist will know that the authorities retain an interest in his/her activities and contacts, and will be likely to scrutinise them in the future. For those organising terrorism, a person who has been subject to a control order for up to two years is an unattractive operator, who may be assumed to have the eyes and ears of the State upon him/her. (Paragraph 122)

Nevertheless, the material I have seen justifies the conclusion there are a very few controlees who, despite the restrictions placed upon them, manage to maintain some contact with terrorist associates and/or groups, and a determination to become operational in the future. Control orders should be imposed for as short a time as possible commensurate with the risk posed by each individual. This is considered on a case by case basis. If the control order has sufficiently disrupted the terrorist (after however long it had been in force), it would no longer be necessary; but if it has not sufficiently disrupted the terrorist, the government would argue that it remains necessary. The longer an order is in force without new intelligence (and therefore the more historic the material is), the harder it is to justify continuing necessity to the Courts. (Paragraph 123)

The government has rejected my view expressed in 2008 that there should be a recognised (and possibly statutory) presumption against a control order being extended beyond two years, save in genuinely exceptional circumstances. Nevertheless I believe that it is fully recognised that extended periods under control orders are likely to be reviewed with especial care by the courts. (Paragraph 124)

The Government welcomes your observations on the efficacy of the Control Order Review Group, which we established as a result of recommendations from your first report on control orders. As you know, the matters you highlight in paragraph 119 of your report are routinely considered at Control Order Review Group meetings. The quarterly Control Order Review Group process, supported by ad hoc review meetings as required, remains a rigorous internal safeguard to ensure the ongoing necessity and proportionality of control orders and the individual obligations imposed by those orders.

The Government accepts that control orders should be imposed for as short a time as possible, commensurate with the risk posed. However, the Government continues to have national security concerns about imposing an arbitrary end-date to control orders, regardless of the risk posed by that individual. Each order is addressing individual risk. There are obvious risks about assuming individuals no longer pose a threat after a defined period of time. If, to protect the public from the risk of terrorism posed by an individual, a control order is still necessary and proportionate, it is the Government's responsibility to renew that control order. A definite end-date would also mean individuals on control orders could simply disengage from involvement in terrorism-related activity on the basis that they knew they could re-engage at the end of that time period.

As you acknowledge, the possibility that some individuals remain a risk to the public after two years subject to a control order is not just a theoretical matter, notwithstanding the fact that control orders are largely effective in preventing or disrupting involvement in terrorism-related activity. The High Court has supported our view. In a judgment handed down in 2009 (*Secretary of State for the Home Department v GG & NN [2009] EWHC 142 (Admin)*), the High Court upheld the second renewal of a control order, meaning that the judge in that case also agreed that a control order remained necessary to protect the public

from a risk of terrorism for a longer period than two years. He made the following observations on this matter:

> 'Lord Carlile in reporting on the use of control orders has indicated that it is his view that no person should remain subject to an order for more than 2 years, save in rare cases. He believes that such a person's usefulness for terrorist purposes will have been seriously disrupted. The government has not accepted that there should be what it describes as an arbitrary end date for individual orders. If there is evidence that an individual remains a danger, an order should continue for however long is necessary. That I entirely accept, and, to be fair, Lord Carlile recognised that there could be cases in which a duration of more than 2 years was appropriate. Much will depend on whether there is material which persuades the Secretary of State and the court that the individual remains a danger because he has been, notwithstanding the order, continuing so far as he could his terrorist-related activities or because he is likely to do so once an order is lifted. That in my view is the position with GG.'

The statutory test in control orders legislation already ensures that the Government can only renew a control order if it is necessary to do so for purposes connected with protecting members of the public from a risk of terrorism, and considers the obligations imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity. Any decision by the Secretary of State to renew a control order can be appealed by the controlled person – and the High Court must agree that the test has been met. This ensures that rigorous judicial scrutiny of the necessity of the control order and its constituent obligations continues throughout the duration of the order.

The Government continues to work hard to identify exit strategies for every controlled individual, whilst ensuring that implementation of an exit strategy is not to the detriment of protecting the public from a risk of terrorism. This is an integral and significant part of the Control Order Review Group's formal quarterly review of each control order. The Government therefore welcomes your acknowledgement that we consider and pursue exit strategies for all individuals subject to control orders.

The Government has implemented exit strategies for a number of individuals subject to control orders:

- 10 have been served with notices of intention to deport (6 of whom have been deported);
- 9 individuals have had their orders revoked; and
- 2 individuals did not have their orders renewed.

Operation of the special advocates procedure

The SAs [special advocates] continue to consider that a relaxation of the current rule prohibiting communication is necessary – or "essential" as the

JCHR put it in 2007. They propose: (i) To allow communication on matters of pure legal strategy and procedural administration (i.e. matters unrelated to the particular factual sensitivities of a case). If necessary, it could be required that all such communications be in writing. (ii) To give SAs power to apply ex parte to a High Court Judge for permission to ask questions of the appellant, without being required to give notice to the Secretary of State. If the Judge considered that the proposed communication gave rise to any possible issue of national security, then it could be directed that the Secretary of State be put on notice of the communication, if the SA wished to pursue it, so as to enable any objection to be considered. (Paragraph 139)

I am broadly sympathetic to the complaints made by the SAs. I am fully aware of security concerns about modifying the system in the way they suggest. Those concerns are not about the SAs themselves, but about inadvertent leakage of sensitive material to controlees who may be extremely security-aware and adroit. Improved training and closer co-operation should resolve the concerns recorded above. I doubt that any rule changes are necessary. During 2010 I shall take careful note of the functionality of the SA system. (Paragraph 140)

This is a matter of long standing debate.

There is no absolute prohibition on communication between the special advocate and the controlled person after service of the closed material. A special advocate may take instructions from the individual before he has seen the closed material. And the special advocate can receive written instructions from the individual after he has seen the closed material. A special advocate can also communicate with the individual after he has seen the material, provided it is with the permission of the High Court. The special advocate must notify the Secretary of State when seeking permission, giving the Secretary of State time to object to the communication if he thinks it necessary in the public interest, although the final decision is that of the court.

The restrictions, including notice to the Secretary of State, enable the Secretary of State to take detailed instructions from the experts (in these cases the security and intelligence agencies) as to whether such communications are possible without causing damage to the public interest. The restrictions are essential to ensure that the sensitive material that is contained within the closed case is protected from inadvertent disclosure. The task of obtaining instructions from a controlled person on one or more facts contained within the closed case would be difficult to manage without running the risk of inadvertent disclosure. The reason for the requirement to provide notice to the Secretary of State is that there may be a range of factors not apparent from the closed material that would make communication between special advocates and the controlled person one that runs the clear risk of leading to the inadvertent disclosure of sensitive material. For example, a fact in the closed case may have come from a covert human intelligence source and it may be a fact only known to the source and the controlled person – in this example, even an allusion, no matter how circumlocutory, to the fact in issue runs the risk of causing damage (including potentially putting the source's life in danger).

Nick Blake QC, now a High Court judge but who gave evidence to the JCHR in 2007 while a special advocate, acknowledged in that evidence session that changing the rules to allow communication after service of the closed material would put 'enormous responsibilities' on special advocates not to disclose classified information inadvertently, and that a 'difficult problem' would be 'how far you could engage in a conversation which directs someone's mind to a topic or an area without crossing the line that would give something away which might endanger the public interest or public security. That is a very difficult judgment for a special advocate to be called upon to be made… '

If the communications between special advocate and controlled person do not relate to the facts within the closed material the risk of inadvertent disclosure is smaller and consequently in a number of cases the special advocate has obtained permission to communicate legal points and factual matters to the controlled person and take instructions from the controlled person on specific issues. In addition, during the course of hearings, the issue of whether any information can be given in open is constantly reviewed and if the special advocates consider that information given in evidence in closed session could be put to the controlled person in open, this will be considered by the Secretary of State and the court.

The final decision on whether to allow the communication is that of the court. The court will not be in a position properly to make an assessment of the potential damage to national security of such an application without having heard representations from the Secretary of State. Indeed, it would be unprecedented to have a procedure by which matters bearing on national security were to be decided in the absence of the relevant Secretary of State. The difficulty is more immediately obvious when considering circumstances in which judges new to national security matters are presiding – it would be impossible for them sensibly to make a decision without any advice from the Secretary of State. It is also possible that even if the rules were changed, the court would in practice be unwilling to permit such communications without having sought the Secretary of State's views, to ensure it did not breach its duty (notwithstanding *AF & Others*) to ensure information is not disclosed contrary to the public interest.

Moreover, no prejudice is caused by putting the Secretary of State on notice if permission is sought. The suggestion that the Secretary of State is at an advantage in seeing the questions that the special advocates wish to put to the controlled person is overstated. All that the questions will indicate is what will already be apparent to the Secretary of State – that is, areas of the closed case where the special advocates would want further information from the controlled person.

Nor is there any foundation to the claim that the Secretary of State might gain an advantage were a question to be asked without any information received in response subsequently being deployed in the proceedings. The courts have already made clear that they will not draw a negative inference from a controlled person's silence.

In any event, if the court grants permission, the special advocate's subsequent communications with the controlled person remain confidential. The special advocate will therefore have the opportunity to engage in a frank discussion with

the controlled person in confidence providing it is within the parameters set by the court.

In practice special advocates have only rarely sought permission from the court to communicate with the individuals in whose interests they are acting after service of the closed material. The Government respectfully suggests there is a case that greater attempts to use existing mechanisms for communication should be made before it is argued that fundamental change is required.

The arguments both for and against changes in the rules regarding communications between the special advocate and controlled individuals after service of the closed material have been explicitly argued before the courts and it is of note that following consideration of these arguments the courts have never suggested that such a change to the rules is necessary.

The Government maintains its view that the restrictions on communication after service of the closed material are an appropriate safeguard to ensure that sensitive sources are protected and the security of the UK is not compromised. The risk of accidental disclosure is not one that needs to be taken in order to achieve procedural fairness. We therefore welcome your conclusion that improved training and closer cooperation rather than rule changes should address the concerns expressed. The Security Service remains willing to listen to suggestions as to how the content of the training courses it runs for special advocates might be altered to provide the further help that the special advocates perceive to be currently lacking. It is engaged in discussions with the Special Advocates Support Office to ensure that the training remains fit for purpose. The Security Service also remains willing to help special advocates with specific enquiries or more generally to understand the nature of intelligence material.

Consultation on the prospects of prosecution and ongoing review of the possibility of prosecution

I have seen letters from chief officers of police in relation to each controlee certifying that there was no realistic prospect of prosecution. In 2006, 2007 and 2008 I urged that there should be more detail in those letters – for example, and if necessary in a closed version, an explanation of the sensitivity of material that could not be placed before a court of trial. The decision whether to prosecute should be taken following detailed and documented consultation in every case between the CPS, the police, and the Security Service, so that the Secretary of State can be satisfied that full consideration of the evidence and intelligence has occurred. The process is followed: I am satisfied that no control order has been made where a prosecution for a terrorism offence would have satisfied the CPS standards for the institution of a prosecution, in the period covered by this report. (Paragraph 153)

The quality of the letters concerning possible prosecution continued to improve in 2009, in the sense that some reasons are now given. As much detail as possible should be given to the Home Secretary in every case as to why additional investigation, or different forms of evidence gathering,

would not enable a criminal prosecution to take place. It is a given that it would be far better for prosecutions to occur, of course provided they pass the usual threshold standards for prosecution (evidential and public interest, respectively) applied in all cases by the CPS. (Paragraph 154)

As stated in previous Government formal responses to your reports on control orders, a decision on whether to prosecute a particular individual is an operational matter for the police and the Crown Prosecution Service.

Before making a control order, the Home Office consults the police about the possibility of prosecution of that individual for a terrorism-related offence in accordance with section 8 of the Prevention of Terrorism Act 2005. The Act also requires the police to consult the relevant prosecuting authority (normally the Crown Prosecution Service). In every case, an advice file is prepared by the police and examined – along with any available evidence – by the Crown Prosecution Service. The Crown Prosecution Service returns that file to the police, along with its recorded advice. The police subsequently write a letter to the Home Office on the prospect of prosecution. The letter from the police to the Home Office will explain the conclusion that has been reached and how it was arrived at.

The making of a control order does not preclude further investigation of the prospects for prosecution for a terrorism-related offence. Indeed, under section 8 of the 2005 Act, the duty of keeping the prospect of such a prosecution under review is laid on the chief officer of police in conjunction with (to the extent he considers it appropriate) the relevant prosecuting authority. As explained in previous Government responses to your annual reports on control orders, new procedures have also been put in place in relation to the ongoing prospects of prosecution. The police review any new material brought to their attention and, where it is necessary to do so, update the existing police file and consult the Crown Prosecution Service on the prospects of prosecution for a terrorism-related offence. Where prosecution does not result, this is because the case has not passed the relevant tests in the Code for Crown Prosecutors, to which you refer. It is not appropriate for the Government to comment on any individual cases.

The possibility of prosecution is considered on an ongoing basis by the police and is formally recorded on a quarterly basis through the CORG.

We welcome your continued acknowledgment in this year's report that the prospects of prosecution are always considered and that the letters regarding the prospects of prosecution include more detail than previously. We do not consider it appropriate for any further detail to be included in the letters.

Missing Annex 8 to your annual report

Unfortunately, Annex 8 of your annual report was omitted from the published version of the document. The Government apologises for this error. The relevant annex is included on the following page.

Annex 8

Prevention of Terrorism Act 2005, section 2

SCHEDULE

This schedule sets out the obligations imposed on: XXXX

OBLIGATIONS

The following obligations form part of the control order and are imposed on you by virtue of section 1(3) of the Prevention of Terrorism Act 2005:

Upon service of the control order and thereafter for the duration of this control order:

1) You shall continue to reside at XXXX ("the residence"). You shall also give the Home Office at least two working days notice, in writing, if you intend to stay overnight at any place other than the residence and such notice must specify the full address of that place and the length of time that you intend to stay at the alternative address.

2) You must report to XXXX Police Station each day between 12:00 and 13:00. If you wish to report to an alternative location and/or at an alternative time, the Home Office will consider such requests on a case by case basis.

3.1) Immediately following service of this order, you must surrender any passport/s, identity card or any other travel document in your possession to a police officer or persons authorised by the Secretary of State upon service of the control order.

3.2) You shall not apply for or have in your possession or available for your use any passport, identity card, travel document(s) or travel ticket which would enable you to travel outside Great Britain without prior permission from the Home Office.

3.3) You must not leave Great Britain without prior permission from the Home Office.

4) You are prohibited from entering or being present at any of the following:

a) any part of an airport or sea port; or
b) any part of a railway station that provides access to an international rail service

without prior permission from the Home Office.

For the avoidance of doubt, any part of an airport, seaport or railway station which provides access to an international rail service referred to in obligations 4(a) and (b) includes but is not limited to:

(i) any car park;

(ii) arrival / departure lounge;

(iii) collection / drop off point; and/or

(iv) any building or place

which is located at or for which the primary purpose is to serve an airport, seaport or railway station which provides access to an international rail service.

5) You shall not associate or be party to any communications from or with, directly or indirectly at any time or in any way with the following individual:

XXXX

without prior permission from the Home Office.

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