



Memorandum to the
Home Affairs Committee
Post-Legislative Assessment
of the Prevention of Terrorism Act 2005



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

February 2010

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MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

POST-LEGISLATIVE ASSESSMENT OF THE PREVENTION OF TERRORISM ACT 2005

INTRODUCTION

This memorandum provides a preliminary assessment of the Prevention of Terrorism Act 2005 (2005 Ch. 2) and has been prepared by the Home Office for submission to the Home Affairs Committee. It is published as part of the process set out in the document *Post Legislative Scrutiny – The Government’s Approach (Cm 7320)*.

OBJECTIVES OF THE PREVENTION OF TERRORISM ACT 2005

2. The Prevention of Terrorism Act 2005 (2005 Act) provides for the making of control orders by the Secretary of State or the High Court (in Scotland, the Outer House of the Court of Session). A control order is a preventative measure that can be imposed on a suspected terrorist for purposes connected with protecting members of the public from a risk of terrorism.

3. Obligations may be imposed on an individual by a control order if they are considered necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity. An illustrative, but not exhaustive, list of obligations is set out in section 1(4) of the 2005 Act (and further explained in section 1(5) to (8)). Specific obligations imposed under a control order are tailored to the individual concerned and must each be necessary and proportionate. They could for example include measures ranging from a ban on the use of communications equipment to a restriction on an individual’s movement.

4. The legislation makes provision for both derogating and non-derogating control orders. A derogating control order is one that imposes obligations that amount to a deprivation of liberty within the meaning of Article 5 (right to liberty) of the European Convention on Human Rights (ECHR) and would therefore require the Government to derogate from all or part of that Article of the ECHR before the order could be made. A non-derogating control order is one in which the obligations imposed do not amount to such a deprivation of liberty. No derogation from Article 5 has been made in relation to control orders. Only non-derogating control orders have therefore been made. References to control orders throughout the rest of this memorandum are to non-derogating control orders.

5. To make a control order, the Secretary of State must reasonably suspect that the individual is or has been involved in terrorism-related activity and consider that it is necessary to make a control order imposing obligations on the individual for purposes connected with protecting members of the public from a risk of terrorism.

6. The Secretary of State makes a control order after seeking permission from the High Court. However, in cases of urgency, the Secretary of State can make an order without first seeking the permission of the court, but he must refer it immediately to the court for confirmation. The order lasts for a period of 12 months but may be renewed.

7. There is an automatic review process by the High Court to determine whether the Secretary of State's decision to make a control order was flawed. In other words, the judge must agree (a) that there is reasonable suspicion that the individual is or has been involved in terrorism-related activity, and (b) that a control order is necessary to protect members of the public from a risk of terrorism. The judge must also satisfy himself that each obligation imposed by the order is necessary, and compliant with the ECHR – including Articles 5 and 8 (right to respect for private and family life). The judge will further ensure that the individual's right to a fair hearing in accordance with Article 6 (right to a fair trial) is protected. If any of these tests are not met, the judge can quash the order, quash one or more obligations imposed by the order or give directions for the revocation of the order or for the modification of the obligations it imposes. The court may consider the case in open and closed session – depending on the nature and sensitivity of the information under consideration. Individuals are represented in open court by a lawyer of their choice. Special advocates are used to represent the interests of the individuals in closed sessions.

8. There is also a right of appeal to the High Court against a decision by the Secretary of State to renew a control order or to modify an obligation imposed by a control order without the controlled person's consent, and against a decision by the Secretary of State to refuse a request by a controlled person to revoke his order and/or to modify any obligation under the order.

9. Breach of any of the obligations of a control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years or a fine or both.

IMPLEMENTATION

Prevention of Terrorism Act 2005

10. The Prevention of Terrorism Act 2005 repealed the powers under Part 4 of the Anti-terrorism, Crime and Security Act 2001. The Part 4 powers allowed the detention pending deportation of foreign nationals even if removal was not currently possible if the Secretary of State reasonably believed that the person's presence in the UK was a risk to national security and reasonably suspected that the person was involved with international terrorism linked with Al Qa'ida. The repeal came into effect on 14 March 2005. It followed the December 2004 decision of the House of Lords in *A & Others v. Secretary of State for the Home Department [2004] UKHL 56*. The Law Lords quashed the derogation order made under the Human Rights Act 1998 and concluded that Part 4 of the 2001 Act was incompatible with Articles 5 and 14 (prohibition of discrimination) of the ECHR, making a declaration of incompatibility.

11. The 2005 Act replaced the Part 4 powers with a system of control orders (which may be made against suspected terrorists of any nationality). With the exception of the repeal provisions outlined above, the 2005 Act came into force on Royal Assent, on 11 March 2005.

The Counter-Terrorism Act 2008

12. The Counter-Terrorism Act 2008, which received Royal Assent on 26 November 2008, makes further provision relating to control orders including making amendments to the 2005 Act.

13. Sections 10 – 13 of the Counter-Terrorism Act 2008 introduce police powers to take fingerprints and non-intimate samples from an individual subject to a control order and to use such material for specified purposes. The primary reason for these provisions is not, as has been suggested, to allow the taking of the fingerprints and samples from controlled individuals. These can already be taken if it is necessary and proportionate to do so, by including an obligation to that effect in a control order. However, even where necessary and proportionate, in such circumstances the fingerprints/samples could only be used for limited purposes connected with the order. The purpose of these provisions is to provide equivalent powers and safeguards in relation to individuals subject to control orders as currently apply to fingerprints and samples taken from individuals on arrest. So section 10, for example, allows for the routine taking, use (for the purposes set out in the Police and Criminal Evidence Act 1984 (PACE) as amended by the Counter-Terrorism Act 2008), storage and retention of fingerprints and non-intimate samples taken from controlled individuals. By definition controlled individuals are reasonably suspected of involvement in terrorism-related activity. By taking and retaining the fingerprints and non-intimate samples of controlled individuals, we strengthen the ability of the police to prevent, detect and investigate crime and increase the chances of such individuals being prosecuted. These powers 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 (S & Marper)* concerning limits on the retention of biometric material. The provisions relating to DNA in the Crime and Security Bill currently before Parliament do this.

14. Section 78 of the Counter-Terrorism Act 2008 inserted sections 7A to 7C into the 2005 Act, providing additional police powers to enter and search the premises of individuals subject to a control order where such persons are reasonably suspected of absconding or of failing to grant access to premises; and allowing the police to apply for a warrant to enter and search premises for the purpose of monitoring compliance with a control order. This section came into force on 16 February 2009.

15. Sections 79-81 contain technical amendments to the 2005 Act that do not substantively affect the implementation of control orders. These sections also came into force on 16 February 2009.

SECONDARY LEGISLATION

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Orders

16. Sections 1 to 9 of the 2005 Act must be renewed on an annual basis in order to remain in force. In late January or early February each year a draft Continuance in Force Order has been laid before both Houses of Parliament, providing for the continuation of sections 1 to 9 of the Act in force for another year. In February or early March each House debates the draft Order and votes on whether or not to approve that Order by resolution. This statutory instrument is *The Prevention of Terrorism Act 2005 (Continuance in Force of Sections 1 to 9) Order [year]*.

17. A list of renewal orders and Hansard references for previous renewal debates is at Annex A.

Civil Procedure (Amendment No. 2) Rules 2005 and subsequent amendments

18. The Schedule to the 2005 Act makes provision for the extension of Civil Procedure Rules to cover control orders proceedings. A Statutory Instrument was laid before Parliament on 14 March 2005 amending the Civil Procedure Rules (CPR) by inserting a new Part 76, containing rules about control order proceedings in the High Court and appeals to the Court of Appeal in such proceedings. The rules include special procedures for dealing with material the disclosure of which would be contrary to the public interest. In particular, the rules provide for the use of special advocates to represent the interests of anyone other than the Secretary of State in relation to such evidence. Equivalent provisions were made for Northern Ireland and Scotland.

19. Minor amendments have subsequently been made to Part 76 of the Civil Procedure Rules. In December 2007, minor amendments were made to address issues raised by the Joint Committee on Statutory Instruments in its fourteenth report of session 2004-2005. In October 2009, further minor amendments were made to reflect amendments to the 2005 Act made by the Counter-Terrorism Act 2008 – and to fulfil a Government commitment during the Parliamentary passage of the 2008 Act that it was minded to ask the relevant rules of court making bodies to amend the rules to make explicit that special advocates can cross-examine witnesses and adduce evidence. Although it was already in principle open to those at control order hearings, including special advocates, to apply to the court to call expert witnesses, the amendment brought this element of the rules into line with Special Immigration Appeals Commission (SIAC) rules, which had already been amended in this way.

20. A list of the relevant Statutory Instruments for England and Wales is at Annex A.

LEGAL ISSUES

21. The use of control orders has always been heavily litigated, not least because of the mandatory judicial scrutiny of each new control order by the High Court. As well as fact specific consideration of individual cases, a number of key issues of principle have been considered by the courts: the compliance of control orders with Articles 5 and 6 of the ECHR; the prospect of prosecuting the controlled individual; and whether the 2005 Act permitted the searching of controlled individuals. These are outlined in greater detail in the following paragraphs; the Government's response to the judgments is included in the section on the preliminary assessment of the 2005 Act.

Compliance with Article 5

22. In October 2007 the House of Lords handed down three judgments concerning Article 5. The Law Lords unanimously agreed in their judgments in *Secretary of State for the Home Department v E & Another* [2007] UKHL 47 (E) and *Secretary of State for the Home Department v MB & AF* [2007] UKHL 46 (MB & AF) that 12 and 14 hour curfews do not deprive an individual of his liberty. In *Secretary of State for the Home Department v JJ & Others* [2007] UKHL 45 (JJ & Others), the Lords judged (by a majority of three to two) that an 18 hour curfew did amount to a deprivation of liberty. Further, one of the Law Lords who concluded that control orders that included an 18 hour curfew did amount to a deprivation of liberty indicated that in his view 'the acceptable limit' of a curfew that did not breach Article 5 of the ECHR was

16 hours. 16 hour curfews have since been upheld by the High Court and/or the Court of Appeal; the Court of Appeal emphasised that the Article 5 compliance of control orders with 16 hour curfews amongst its obligations needs to be considered by the courts on a case by case basis.

Compliance with Article 6

23. In August 2006, the Court of Appeal ruled in *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140 (MB) that control order proceedings, including the use of special advocates combined with judicial scrutiny, were compliant with Article 6. It read down the 2005 Act to the effect that High Court reviews of control orders should consider whether the decisions of the Secretary of State relating to the control order 'are flawed' rather than 'were flawed' – thus that the Court considers whether the statutory test for the imposition of a control order is met at the time of the hearing (as well as whether it had been met at the point at which the Secretary of State made the order). It noted too that the Court should make a finding of fact whether or not the 'reasonable suspicion' limb of the statutory test in making a control order had been met; and that, in relation to the necessity limb, while paying a degree of deference to the Secretary of State's decisions, the Court must give intense scrutiny to the necessity for each of the obligations imposed on an individual under a control order. The Court of Appeal also did not consider that the 'reasonable suspicion' limb of the statutory test meant that proceedings were not compliant with Article 6.

24. In the House of Lords' October 2007 judgment on *MB & AF*, the Law Lords were unanimous in their decision that a non-derogating control order does not amount to a criminal charge. They did not find that the review process in the particular cases before them had breached the civil limb of the right to a fair trial under Article 6. The majority view was that in rare cases, the provisions in the 2005 Act might lead to a breach of Article 6 (civil). However, they concluded that it was possible under section 3 of the Human Rights Act 1998 to interpret the provisions so that they could be operated compatibly with Article 6 in all cases. The House of Lords read down the provisions under the 2005 Act enabling the court to withhold closed material from the controlled person, such that material could only be withheld if it was compatible with the right to a fair trial to do so. They also concluded that the High Court should examine the compatibility of control order proceedings with Article 6 on a case by case basis, to ensure that in every case the proceedings provide the individual with the substantial measure of procedural justice to which he is entitled under Article 6. The cases before the Lords on this issue were remitted back to the High Court to consider again on this basis.

25. Following the *MB & AF* House of Lords control order judgment on Article 6 of October 2007, High Court judges adopted varying interpretations of the judgment. The Court of Appeal handed down judgment in October 2008 in the cases of *Secretary of State for the Home Department v AE, AF, AM and AN* [2008] EWCA Civ 1148 (AE, AF, AM & AN), finding that there was no minimum amount of disclosure that must be made to controlled persons in order for the proceedings to comply with Article 6. The Court of Appeal, in interpreting the House of Lords judgment, held that in order to determine whether a hearing has been fair the court must consider all the relevant circumstances of a case, not just the amount of disclosure that

has been made. This could include the efforts made to disclose material, the effectiveness of the special advocates and the difference that the disclosure of the closed information would have made.

26. In June 2009, the House of Lords handed down a further judgment (*Secretary of State for the Home Department v AF & Others* [2009] UKHL 28 (*AF & Others*)) on compliance of control orders with Article 6. The House of Lords judgment of June 2009 maintained the Lords' October 2007 read down of control orders legislation, but felt obliged to take into account the February 2009 ECtHR judgment in *A & Others v the United Kingdom* (Application no. 3455/05) [2009] ECHR 301 (*A & Others*). It commented that the Court of Appeal's October 2008 judgment on control orders had correctly interpreted the October 2007 judgment of the House of Lords in *MB & AF*. However, the Law Lords concluded that they now had to replicate the test of the February 2009 ECtHR judgment in *A & Others* (handed down shortly before commencement of the House of Lords hearing in *AF & Others*) for the stringent control orders before them. The Lords held that 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. Provided that this requirement is satisfied there can be a fair trial notwithstanding that the controlled person is not provided with the detail or the sources of the evidence forming the basis of the allegations. Where, however, the open material consists purely of general assertions and the case against the individual is based solely or to a decisive degree on closed material the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be.

27. The cases before the House of Lords were remitted to the High Court for consideration in the light of the judgment. All other control order proceedings will similarly reflect the latest Law Lords judgment. The High Court, applying the test set out in the preceding paragraph, is considering whether disclosure of sensitive material must be made to the controlled person in order to comply with the right to a fair trial on a case by case basis. Where the judge concludes that there is material that it is necessary to disclose in order for the controlled individual to have a sufficient measure of procedural protection, even though disclosure of that information would be damaging to the public interest, the Secretary of State will be put to his election. In other words, the Secretary of State is given a choice whether to disclose the information, or withdraw it from the case. If the latter, the case then proceeds without reliance on that material, or the Secretary of State (or the court) may decide that there is no longer sufficient material on which to uphold the control order.

Prosecution

28. Section 8 of the 2005 Act makes provision relating to the prosecution of controlled persons. A decision on whether to investigate a particular individual is an operational matter for the police and whether to prosecute is a matter for the Crown Prosecution Service. Section 8(2) requires that, before making a control order against an individual, the Secretary of State consults the police regarding the prospects of prosecution of that individual for a terrorism-related offence. The Act also requires the police to consult the Crown Prosecution Service.

29. The House of Lords' judgment of October 2007 in the case of *E* confirmed the Government's position that the duty on the Secretary of State to consult the police, and still less knowing the result of that consultation, are not condition precedents for making a control order.

30. Section 8(4) and 8(5) of the 2005 Act place a duty on the chief officer of police in conjunction with (where he considers it appropriate) the relevant prosecuting authority to keep the prospects of prosecution of a controlled individual under review. The statutory provisions were supplemented by the Court of Appeal judgment in *Secretary of State for the Home Department v E & S* [2007] EWCA Civ 459 of May 2007, which confirmed that the Secretary of State must periodically consult the police on the prospects of prosecution and do what he can to ensure the police's consideration is meaningful, by providing any relevant information available to him to the police:

"Once it is accepted that there is a continuing duty to review pursuant to MB's case, it is implicit in that duty that the Secretary of State must do what he reasonably can to ensure that continuing review is meaningful... it was incumbent upon him to provide the police with material in his possession which was or might be relevant to any reconsideration of prosecution. The duty extends to a duty to take reasonable steps to ensure that the prosecuting authorities are keeping the prospects of prosecution under review. The duty does not, however, extend to the Secretary of State becoming the prosecuting authority. The decision whether to prosecute lies elsewhere."

31. The Court of Appeal also overturned the High Court's decision to quash *E*'s control order. The High Court had quashed the order because this ongoing duty relating to the prospects of prosecution had not been met. The Court of Appeal overturned the decision because, in this case, the failure by the Secretary of State to keep the prospects of prosecution under review had not made any practical difference. It emphasised that 'Not every breach of an obligation renders a subsequent decision flawed'. The Court of Appeal's conclusions on ongoing prosecution and remedy were also supported by the House of Lords' judgment on *E* in October 2007.

Power to search controlled individuals

32. The 2005 Act provides that the Secretary of State may impose 'any obligations' on an individual that are considered 'necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity.' The Act then provides a list of obligations that the control order 'may include'. The list does not include an obligation for the individual to allow himself to be searched. The Government's position is that the wording of the Act makes clear that the list of obligations that may be imposed is indicative rather than definitive. Consequently, prior to July 2009 control orders routinely included an obligation that the individual submit to a personal search in his residence.

33. In July 2009, the Court of Appeal in the case of *Secretary of State for the Home Department v GG* [2009] EWCA Civ 786 held that the 2005 Act as drafted is insufficient to authorise the imposition by a control order of an obligation to submit to a personal search. In November

2009, the High Court in the case of *BH v Secretary of State for the Home Department [2009] EWHC 2938 (Admin)* found that a requirement for a controlled person to submit to a personal search prior to being escorted by the police outside the controlled person's boundary as a condition of the temporary relaxation of the controlled individual's boundary, had no statutory authority and was unenforceable.

NON-JUDICIAL REVIEWS AND REPORTS

34. In addition to Court reviews of individual control orders, there is regular scrutiny of the operation of the 2005 Act as a whole. This includes:

- Independent annual review of the operation of control orders legislation by the independent reviewer of terrorism legislation;
- Annual renewal of the legislation after a debate and vote by both Houses of Parliament; and
- Ministers reporting to Parliament every three months on the exercise of the control orders powers during that time.

Review by the independent reviewer of terrorism legislation

35. Under section 14 of 2005 Act, the independent reviewer of terrorism legislation, currently Lord Carlile of Berriew Q.C., produces an annual report on the operation of the Prevention of Terrorism Act 2005, which is laid before Parliament. His most recent report was published on 1 February 2010. The Government produces a formal response to the recommendations in Lord Carlile's reports, which are also laid before Parliament. A list of Lord Carlile's reports and the Government responses are at Annex A.

36. Lord Carlile has consistently concluded that the control order system is a justifiable and proportionate means of protecting the public from terrorism. In his 2010 report, he states that '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.' He also emphasises that in reaching this conclusion he has 'considered the effects of the Court decisions on disclosure. I do not consider that their effect is to make control orders impossible.' He has also consistently confirmed that he would have made the same decision as the Home Secretary in terms of making individual control orders.

37. Lord Carlile has, however, made a number of recommendations concerning the implementation of control orders. Some of these are common to several of his reports. For example, his 2008, 2009 and 2010 reports suggest that it is that it is only in a few cases that control orders can be justified for more than two years. The Government accepts that control orders should be imposed for as short a time as possible, commensurate with the risk posed. However, the Government has national security concerns about imposing an arbitrary end-date to control orders, regardless of the risk posed by that individual. The High Court has supported our view. The statutory test in control orders legislation already ensures that the Secretary of State can only lawfully renew a control order if it is necessary to do so. And 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. Thus, rigorous judicial scrutiny of the necessity of the control order continues throughout the duration of the order. Consideration of appropriate exit strategies is an integral part of the formal review held each quarter for every control order and exit strategies have been implemented for a number of individuals who were subject to control orders. Lord Carlile has praised the Government's active consideration of exit strategies and he accepts that some control orders will need to last longer than two years.

38. Lord Carlile has in previous years commented on, for example, the need to monitor effectively any potential impact of control orders on controlled individuals' mental health. He has also regularly emphasised his desire to see clearly documented the results of consultation regarding the prospects of prosecution of controlled individuals; the Government welcomes his acknowledgement in the 2010 report that the prospects of prosecution are always considered, and that the letters regarding the prospects of prosecution include more detail than previously.

39. While the Government has not accepted all Lord Carlile's recommendations, it has made substantive changes as a result of his reports. For example, the Control Order Review Group (CORG) was established as a result of a recommendation by Lord Carlile. The CORG formally reviews each order currently in force on a quarterly basis. The Group brings together all relevant departments and agencies involved in making and maintaining control orders. The purpose is to ensure that each order and its obligations – individually and cumulatively – remain necessary and proportionate given the latest intelligence and other assessments made of the individual in question and to monitor its effects. Similarly, his recommendations regarding the level of detail provided in quarterly Written Ministerial Statements on control orders were implemented with effect from the December 2006 statement, with the caveat that we need to avoid publishing any information that could lead to the identification of an individual who is subject to an anonymity order.

Scrutiny by the Joint Committee on Human Rights (JCHR)

40. The Joint Committee on Human Rights (JCHR) has produced four reports on control orders to coincide with the renewal of the Prevention of Terrorism Act 2005. The Government has published formal written responses to each of the four reports. Full titles of the reports and the Government responses are at Annex A. The JCHR has consistently focused on its concern regarding compliance of the control orders regime with human rights, including but not limited to Articles 3, 5, 6 and 8 of the ECHR. It has also commented on the possibility of prosecuting controlled individuals and on the duration of individual control orders. The JCHR recommended a number of amendments to the 2005 Act that were debated but rejected by Parliament during passage of the Counter-Terrorism Act 2008.

Other Reports

41. Various reports have mentioned control orders as part of a wider mandate. For example, the United Nations Commission Against Torture and the European Commission against Racism and Intolerance have produced reports including commentary on control orders, to which the Government responds.

42. The Government is also aware that there has been academic interest in control orders but does not maintain comprehensive records of academic articles. For example, the January 2010 issue of the journal *Public Law* included an article by Professor Clive Walker on *The threat of terrorism and the fate of control orders*.

Written Ministerial Statements

43. In accordance with section 14 of the Prevention of Terrorism Act 2005, the Secretary of State reports to Parliament every quarter on the exercise of control order powers during the previous three months. The Government has also laid before Parliament a number of ad hoc statements on control orders. A list of Hansard references is at Annex A.

PRELIMINARY ASSESSMENT OF THE ACT

44. The Government's overall assessment is that control orders remain an important counter-terrorism power for protecting the public from the risk of terrorism. They are the best available disruptive tool for addressing the threat posed by suspected terrorists whom we can neither prosecute nor, in the case of foreign nationals, deport.

Necessity

45. The UK faces a serious threat from terrorism.

46. Prosecution is the Government's preferred approach for dealing with suspected terrorists. The police, intelligence agencies and Crown Prosecution Service have had considerable success in disrupting and prosecuting terrorists. Between 11 September 2001 and 31 March 2009, 217 individuals were convicted of terrorism-related offences; a further 29 defendants were awaiting trial as of 31 March 2009.

47. Significant effort has been made to introduce measures to improve our ability to prosecute such individuals. For example, the Government introduced new offences, including preparation of terrorist acts, training for terrorism and attendance at a place used for terrorist training, in the Terrorism Act 2006. Further, 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 it 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 concur, are that the model recommended by the Privy Council review would not be a viable basis for implementation. The crux of the problem is whether it is possible to create an intercept as evidence model that allows for the best evidence to be made available in court in a manner that is consistent with the principle of fairness of trials whilst simultaneously ensuring that the benefits that are derived from the current use of intercept are not lost. The Government is nonetheless undertaking further work, intended to establish whether the problems identified are capable of being resolved. The Government will report back by Easter.

48. In any case, the introduction of intercept as evidence would not remove the need for control orders. The Privy Council review 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 the results of an earlier review of nine current or former control order cases by independent senior criminal counsel. In four of these counsel concluded that even had the intercepted material been admissible (including the assumption that it could be made to meet evidential standards) it would not have been of evidential value in bringing criminal charges. In the other five cases, Counsel assessed that some intercepted material would have provided evidence of offences relating to encouraging, inciting or facilitating acts of terrorism, but he concluded that the individuals would not in reality have been prosecuted. This was because of the wider damage to national security that the use of that material in court would have caused – greater than the potential gains offered by prosecution in these cases. His overall conclusion was thus 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.

49. Where we cannot prosecute, and the individual concerned is a foreign national, we consider deportation. However, we can only deport someone if their removal is compatible with our international human rights commitments, principally our responsibilities under the ECHR. In particular, Article 3 (prohibition of torture) of the ECHR prohibits the deportation, removal or extradition of an individual if there are substantial grounds for believing that there is a real risk that he will be tortured or subjected to inhuman or degrading treatment or punishment on return.

50. We have taken two main approaches to addressing this challenge. First, we sought through interventions to the ECtHR in other cases to argue that (a) where a person seeks to resist removal on the grounds of a risk of ill-treatment in their home country, this may be balanced against the threat they pose to national security if they remain and (b) where the person poses a risk to national security, a different (higher) standard of proof applies when considering whether a ‘real risk’ of ill-treatment exists. The ECtHR rejected both arguments.

51. Separately, we have negotiated framework deportation with assurances (DWA) arrangements. The assurances received allow us to assess more precisely – and to demonstrate at appeal – that a particular removal is in conformity with our international human rights obligations. We keep the countries with whom we seek to negotiate a DWA arrangement under review, and pursue new arrangements with vigour. The UK currently has framework DWA arrangements with Algeria, Ethiopia, Jordan, Lebanon and Libya.

52. Despite the prioritisation of prosecution and deportation, where neither is possible, control orders often remain the only option available to disrupt a suspected terrorist. Negotiating credible and reliable deportation with assurances arrangements is a time consuming process; what matters is that assurances are public, credible and reliable. There is no guarantee that negotiations will be successful. And there are, of course, some countries that would simply not be prepared to engage with the United Kingdom on DWA or, if they did, would not produce credible and reliable assurances. Nor is there any guarantee that the Courts will

accept assurances that are agreed. Moreover, control orders are an important – and in many cases the only – currently viable means of preventing travel abroad by suspected terrorists.

53. Thus, the national security reasons for maintaining the regime remain strong. Lord Carlile, in his 2010 report on control orders, concludes that ‘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.’

Effectiveness

54. The key test of the effectiveness of the 2005 Act is whether control orders prevent or restrict controlled individuals from involvement in terrorism-related activity. Control orders affect an extremely small and targeted group of individuals. At the time of the Home Secretary’s last quarterly Written Ministerial Statement on control orders, for the period ending 10 December 2009, there were only twelve orders in force and only 45 individuals had ever been subject to a control order.

55. It is a matter of public knowledge that control orders cannot entirely eliminate the risk of an individual’s involvement in terrorism-related activity: there have been seven absconds from control orders (one of whom subsequently turned himself in to the police) and 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 has 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 the file; no evidence was offered in relation to another as it was no longer in the public interest to continue with his prosecution; and three are awaiting trial). But no executive action can entirely eliminate this risk in every individual case. 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 notes Lord Carlile’s conclusion in his 2009 report on control orders that control orders are ‘a largely effective necessity for a small number of cases, in the absence of a viable alternative for those few instances.’ In his 2010 report, Lord Carlile includes some more detailed commentary on effectiveness. For example, he states in relation to three controlled individuals that in each case the order ‘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...’ And in another case, he notes the controlled individual ‘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.’

56. 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 since been carried out by the Government to reduce the risk of absconds, with notable success. There has not been an

abscond 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. The first conviction and sentence to five months' imprisonment for breach of a control order, the successful conviction and sentencing to 3.5 years' imprisonment of another individual for assisting a controlled individual to abscond, and other charges brought against those who allegedly breach, demonstrate that the police, Crown Prosecution Service and the courts take enforcing control orders seriously.

57. The recent court judgments on the powers to search controlled individuals are causing operational difficulties. The Government's view is that powers to search an individual subject to a control order are a necessary and proportionate part of a workable, enforceable control order regime. Lord Carlile reaches a similar conclusion in his 2010 annual report. Consequently the Government will legislate for such powers when Parliamentary time allows.

Compliance with human rights

58. 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.

59. The Government has put in place extensive internal and external (including judicial) safeguards to ensure that there is rigorous scrutiny of the control orders regime as a whole – and that the rights of each controlled person are properly safeguarded. There are a number of mechanisms in place to protect the rights of the individual:

- The High Court giving permission for each control order to be made (in urgent cases, the Home Secretary may make a non-derogating order without permission but it must be confirmed by the High Court within 7 days).
- The mandatory review of each control order by the High Court.
- Appeal rights against a decision by the Home Secretary (a) to renew the control order; (b) to modify it without the controlled person's consent; and (c) to refuse a request by the controlled person for the (i) revocation or (ii) modification of a control order.
- Control orders time limited to 12 months, unless renewed by the Home Secretary.
- Regular (quarterly), formal and audited review of each order and the obligations it imposes by the CORG as well as other ad hoc internal reviews.
- Both the Government and individuals who are subject to control orders have the option of applying to the court for an anonymity order to protect the identity of the controlled individual.

60. There is also regular scrutiny of control orders legislation as a whole:

- Independent annual review of the operation of control orders legislation by the independent reviewer of terrorism legislation.
- Annual renewal of the legislation after a debate and vote by both Houses of Parliament. Before laying the renewal order, the Home Secretary consults the independent reviewer of terrorism legislation, the Intelligence Services Commissioner, and the Director-General of the Security Service.
- The Home Secretary must report to Parliament every three months on the exercise of his powers during that time.

61. Various House of Lords judgments have confirmed the way in which the 2005 Act operates in a manner fully compliant with the ECHR.

Article 3

62. Allegations that the intelligence on which control orders are based may have been gained through the use of torture are inaccurate. Our position on torture is clear. We unreservedly condemn the use of it and take allegations of mistreatment very seriously. If information is established to have been obtained by torture, it will not be admissible in criminal or civil legal proceedings in the UK as part of the case against an individual, regardless of where it was obtained. See the judgment of the House of Lords in *A & Others v Secretary of State for the Home Department (No 2)* [2005] UKHL 71.

Article 5

63. The Government has complied with the various court judgments concerning control orders and Article 5 to ensure that the obligations imposed in control orders are compatible with the right to liberty. The broad principles of the case law on Article 5 now appear to be (more) settled. It is clear that the approach taken by the courts to interpreting deprivation of liberty is case specific and carefully nuanced, and that the curfew is the core element in determining whether or not Article 5 has been breached.

Article 6

64. High Court reviews of control orders are one of a limited number of UK court proceedings that are likely to use sensitive material. Disclosure of sensitive – ‘closed’ – material to the individual concerned is not in the public interest. Disclosure is not in the public interest where it would damage the interests of national security, the international relations of the UK, or the detection or prevention of crime or in any other circumstances where disclosure is likely to harm the public interest. The individual is given as much information as possible about the case against him, subject only to legitimate public interest concerns. The special advocate system and disclosure procedure used in such hearings are designed to provide individuals with a substantial measure of procedural justice, in the difficult circumstances where, in the public interest, material cannot be disclosed to them. In control order hearings, even where such public interest concerns arise, these are now subject to the disclosure obligation set out in the June 2009 Law Lords judgment in *AF & Others*. The High Court judge reviewing a control order specifically considers the compliance of control order proceedings with Article 6.

65. As the Government has previously made clear and some of the Law Lords acknowledged, the judgment in *AF & Others* in particular puts the Government in an invidious position. Lord Hoffman stated ‘I agree that the judgment of the European Court of Human Rights (‘ECtHR’) in *A v United Kingdom*... requires these appeals to be allowed. I do so with very considerable regret, because I think that the decision of the ECtHR was wrong...’ Lord Brown commented that ‘Some of your Lordships may consider that [the balance between national security and the interests of a fair hearing] could and should have been struck differently, perhaps as it was in *MB*. Plainly there is room for at least two views about this... But... the Grand Chamber has now pronounced its view and we must accept it.’ Similarly, Lord Carswell observed that ‘Views may differ as to which approach is preferable, and not all may be persuaded that the Grand Chamber’s ruling is the preferable approach.’

66. The Government has faced and continues to face difficult choices as to how best to protect the public interest following the June 2009 judgment. We have had to balance the importance of protecting the public from the risk of terrorism posed by the individual against the risk of disclosing sensitive material. Disclosing this material potentially reduces the Government’s ability to protect the public from a risk of terrorism. Where the disclosure required by the court cannot be made because the potential damage to the public interest is too high (for example if disclosure could put the life of an informant at risk), we may be forced to revoke control orders even where we consider those orders to be necessary to protect the public from a risk of terrorism.

67. After the June 2009 judgment, the Government carried out a review of all control order cases current at that time to see what further disclosure would/will be required in the light of the June 2009 judgment – and whether it was possible to make that disclosure despite the fact that to do so would cause damage to the public interest. The Government considered that some control orders would not require greater disclosure as a result of the judgment. But the Government recognised that the judgment would require a greater degree of disclosure to be made in many control order cases.

68. As of 10 December, only two control orders had been revoked and not replaced by a new one as a result of *AF & Others*. In these cases the Secretary of State reached the view that it was not possible to make the required further disclosure because of the serious damage that would be caused to the public interest and so revoked the orders without replacing them with new orders.

69. In two further cases, control orders have been revoked on Article 6 grounds and new control orders with significantly reduced obligations imposed in their place. The Secretary of State argued before the High Court in *Secretary of State for the Home Department v BB & BC [2009] EWHC 2927 (Admin) (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 lost both limbs of the argument but has been granted permission to appeal. The control orders remain in force – and the effect of the judgment has been stayed – pending the outcome of that appeal.

70. In all other current control order cases the Secretary of State considers that sufficient disclosure has been or can be made to the individuals to comply with the level of disclosure required in *AF & Others*. In a number of cases the Secretary of State has already decided that the balance of public interest lies in making some damaging disclosure of closed material to the individuals in order to continue to maintain the control order in force. However, it may be in other cases that the court requires the disclosure of damaging material that cannot be provided. In such cases it may be necessary to revoke the control order.

71. In the September 2009 Written Ministerial Statement on control orders, the Home Secretary explained that the Government assessed that the control order regime remained viable following the House of Lords judgment in *AF & Others* and that the national security reasons for maintaining the regime have not changed, but that this assessment would be kept under review as further control order cases were considered by the courts during the autumn.

72. Subsequent to the September 2009 statement, three High Court judgments upholding individual control orders, which were considered in the light of the requirements of Article 6 following *AF & Others*, have been handed down. The Government therefore maintains its view that the control order regime continues to be a viable and necessary part of the Government's counter-terrorism strategy. The Home Secretary specifically asked Lord Carlile to consider the impact of *AF & Others* on the continuing viability of the control order regime as part of his 2010 report on control orders. As has already been outlined, Lord Carlile reaches the same conclusion. He considers that the regime remains necessary, and confirms that recent court judgments on disclosure do not change that assessment.

73. There is ongoing litigation on the application of *AF & Others* to control orders that have been revoked. In July 2009 the High Court handed down a judgment in the case of *Secretary of State for the Home Department v AN [2009] EWHC 1966 (Admin)*. The court ruled that AN's control order should be revoked because the Secretary of State had decided not to make disclosure of a central part of the case (even though it was the Secretary of State's position that a control order could be maintained on the remainder of the case). AN has appealed against the ruling, arguing that his control order should have been quashed rather than revoked. In January 2010 the High Court handed down a ruling in the cases of *Secretary of State for the Home Department v AE & AF [2010] EWHC 42 (Admin)*. The court quashed AE and AF's control orders retrospectively (they had already been revoked by the Secretary of State) on the basis that insufficient disclosure could be made to them to comply with the *AF & Others* test. The court also found that disclosure in line with the *AF & Others* test would have to be made to AE and AF if the Secretary of State was to be permitted rely on closed material in order to defend himself against claims for damages. The Secretary of State is appealing against this decision.

74. The ongoing litigation on *BB & BC* and on the damages litigation does not affect the Government's overall assessment of the viability of the regime.

Article 14

75. The UK Government understands the importance of ensuring that the counter-terrorism measures it puts in place are not discriminatory. Control orders do not discriminate against

any particular nationality, race or religion. The Government does not impose control orders on discriminatory grounds – they are only directed against those involved in terrorism-related activity. As previously outlined, the High Court judge reviewing a control order specifically considers its compliance with the ECHR. A judge would never uphold an order if it was improperly imposed on a discriminatory basis including as a result of an individual's nationality, race or religion. No control order has ever been quashed by the courts on the basis that it did so discriminate.

Impact of control orders on the community

76. The overall aim of Government's counter-terrorism strategy is to reduce the risk from terrorism, so that people can go about their daily lives freely and with confidence. The community impact of a control order is considered both at the point of imposition of the order and during the lifespan of the order. Most controlled individuals, including all current controlled individuals, are the subject of court-imposed anonymity orders (so the media cannot identify them) – this helps reduce the impact on local communities, as well as helping to protect the controlled person from unwarranted media or public attention.

77. Alongside this, there is a wider programme of ongoing engagement with key opinion formers and community leaders which discusses and seeks to address, amongst other concerns, the impact of counter-terrorism legislation, including the use of control orders. This includes providing information on control orders to local partners for use with local Muslim communities which can help to reduce misunderstanding or ignorance of control orders.

78. A rapid evidence assessment on public perceptions of counter-terrorism legislation independently undertaken by the Defence Scientific and Technical Laboratory and due for publication shortly noted a divergence of opinion between the general population which mainly supported counter-terrorism legislation, including control orders, and select samples of Muslim individuals surveyed, which did not. The report makes clear that these samples of Muslim individuals may not be representative of all Muslims in the UK. It noted too that there has been limited research on public perceptions of the impact of counter-terrorism legislation – and none of high quality and high relevance. Nonetheless the report highlights concerns about counter-terrorism legislation felt by some parts of the community. The Government will continue to engage with all elements of the community about the use of counter-terrorism powers and its wider counter-terrorism strategy.

Impact on the controlled individual's mental and physical health

79. The impact of control orders on the physical and mental health of an individual and his family is taken extremely seriously by the Government when a control order is considered and imposed, and on an ongoing basis. We regularly seek representations from controlled individuals on the impact of the control order. The Government also takes account of lay assessments made by those who meet with controlled individuals on a regular basis (e.g. police officers), and where appropriate, we arrange for our own independent medical assessment of an individual's mental and physical health. Where there is a concern over the mental or physical wellbeing of a controlled individual the Home Office works closely with the Department of Health and the police to ensure the individual receives whatever care and/or attention he needs. Control orders do not prevent access to health or medical care and indeed

the Home Office modifies control orders to allow individuals to attend medical appointments outside their geographical boundary where necessary. The impact of the control order is also considered during each mandatory High Court review of the control order by the judge and often additionally during modification appeals relating to certain control order obligations. The High Court has accepted in a number of cases that an individual's mental health does not automatically outweigh the national security case against him, and the right of the public to be protected from a risk of terrorism.

Prosecution

80. Notwithstanding the favourable judgments of the Court of Appeal and the House of Lords on prosecution matters, as a result of recommendations made in 2007 by Lord Carlile, and various judgments, improved procedures in relation to the review of the prospects of prosecution have been put in place. As required by section 8(2) of the 2005 Act, before making a control order against an individual, the Secretary of State consults the police regarding the prospects of prosecution of that individual for a terrorism-related offence. The Act also requires the police to consult the Crown Prosecution Service. In every case an advice file is prepared by the police and examined by the Crown Prosecution Service, along with any available evidence. The Crown Prosecution Service returns the file to the police along with their recorded advice. The police subsequently write a letter to the Home Office on the prospect of prosecution, as required under section 8 of the 2005 Act. The letter from the police to the Home Office will explain the conclusion that has been reached and how it was arrived at.

81. The making of a control order does not preclude continued investigation of the prospects for prosecution. Indeed, under section 8(4) and 8(5) of the 2005 Act, the duty of keeping the prospect of prosecution under review is laid on the chief officer of police in conjunction with (where he considers it appropriate) the relevant prosecuting authority. New procedures have also been put in place in relation to the ongoing prospect 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. It is not appropriate for the Government to comment on any individual cases.

82. The possibility of prosecution is considered on an ongoing basis by the police and is formally captured on a quarterly basis by the CORG. Lord Carlile has acknowledged that the prospects of prosecution are always considered, and that the letters regarding the prospects of prosecution include more detail than previously.

Financial costs of control orders

83. The Home Office spent approximately £10.8 million on control orders between April 2006 and August 2009. These figures include: the cost of Home Office staff working on control orders; administrative costs relating to the management of control orders; legal advice and other legal costs (including many of the legal costs for the controlled individuals such as the costs of the special advocates and the Special Advocates Support Office, and the cost of meeting the costs of the controlled persons where this has been ordered by the court);

accommodation; subsistence; Council Tax and utility bills and telephone line rental/phone cards provided to controlled persons in the course of the administration of the control order; and the fees paid to Lord Carlile in his role as independent reviewer of the 2005 Act.

84. This is a significant sum of money. Given the Government's assessment that the control order regime remains a necessary and proportionate tool to protect the public from a risk of terrorism, we continue to devote the necessary resources to upholding the regime. The extensive internal and judicial scrutiny relating control orders to ensure that they remain fair and justified, including the automatic review of all control orders by the High Court and the ongoing litigation on the control order regime, means that there are, inevitably, significant legal costs associated with the process (over £8 million of the £10.8 million total). Disputes over the legal position have meant two appeals to House of Lords.

85. We continue to work with our stakeholders to minimise the costs of control orders. But viable alternatives to control orders that offered similar levels of assurance against risk, such as surveillance, would be considerably more expensive. Nor is the cost just financial. In many cases control orders are the only available option to manage the risk posed by a suspected terrorist. The reality is that without control orders there would be an unquantifiable increased risk to the public from controlled individuals.

ANNEX A – DOCUMENTS REFERRED TO IN THE MEMORANDUM

PRIMARY LEGISLATION

Prevention of Terrorism Act 2005

http://www.opsi.gov.uk/acts/acts2005/pdf/ukpga_20050002_en.pdf

Prevention of Terrorism Act 2005 – Explanatory Notes

http://www.opsi.gov.uk/acts/acts2005/en/ukpgaen_20050002_en.pdf

Counter-Terrorism Act 2008

http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080028_en.pdf

Counter-Terrorism Act 2008 – Explanatory Notes

http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080028_en.pdf

SECONDARY LEGISLATION

2006 Renewal

Home Secretary statement on the Prevention of Terrorism Act 2005, 2 February 2006 (Hansard, Vol. 442, Cols. 478-489 [inclusive])

Statutory Instrument

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006 (SI no. 512, came into force on 11 March 2006)

http://www.opsi.gov.uk/si/si2006/uksi_20060512_en.pdf

House of Commons Debate

House of Commons debate on 15 February 2006 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006, which was laid before the House on 2 February 2006 (Hansard, Vol. 442, Cols. 1499-1523 [inclusive])

House of Lords Debate

House of Lords debate on 15 February 2006 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006, which was laid before the House on 2 February 2006 (Hansard, Vol. 678, Cols. 1213-1239 [inclusive])

2007 Renewal

Statutory Instrument

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007 (SI no. 706, came into force on 11 March 2007)

http://www.opsi.gov.uk/si/si2007/pdf/uksi_20070706_en.pdf

House of Commons Debate

House of Commons debate on 22 February 2007 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007, which was laid before the House on 1 February 2007 (Hansard, Vol. 457, Cols. 434-460 [inclusive])

House of Lords Debate

House of Lords debate on 5 March 2007 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007, which was laid before the House on 1 February 2007 (Hansard, Vol. 690, Cols. 12-42 [inclusive])

2008 Renewal

Statutory Instrument

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008 (SI no. 559, came into force on 11 March 2008)

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080559_en.pdf

House of Commons Debate

House of Commons debate on 21 February 2008 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008, which was laid before the House on 30 January 2008 (Hansard, Vol. 472, Cols. 561-587 [inclusive])

House of Lords Debate

House of Lords debate on 27 February 2008 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008, which was laid before the House on 30 January 2008 (Hansard, Vol. 699, Cols. 719-738 [inclusive])

2009 Renewal

Statutory Instrument

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009 (SI no. 554, came into force on 11 March 2009)

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090554_en.pdf

House of Commons Debate

House of Commons debate on 3 March 2009 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009, which was laid before the House on 3 February 2009 (Hansard, Vol. 488, Cols. 734-763 [inclusive])

House of Lords Debate

House of Lords debate on 5 March 2009 on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009, which was laid before the House on 3 February 2009 (Hansard, Vol. 708, Cols. 848-866 [inclusive])

Civil Procedure Rules relating to control orders

Statutory Instrument 2005 No. 656 (L.16) Supreme Court of England and Wales, The Civil Procedure (Amendment No. 2) Rules 2005 (and accompanying explanatory memorandum). Introduces a new Part 76 to the civil procedure rules governing control order proceedings.

http://www.opsi.gov.uk/si/si2005/uksi_20050656_en.pdf

SI 2007 No. 3543 (L.31) Supreme Court of England and Wales, County Courts, England and Wales, The Civil Procedure (Amendment No. 2) Rules 2007 (and accompanying explanatory memorandum). Makes minor changes to Part 76.

http://www.opsi.gov.uk/si/si2007/pdf/uksi_20073543_en.pdf

SI 2009 No. 2092 (L.24). Supreme Court of England and Wales. The Civil Procedure (Amendment) Rules 2009 (and accompanying explanatory memorandum). Makes minor changes to Part 76.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092092_en.pdf

Reports on control orders

Independent reviewer of terrorism legislation's reports on control orders

Lord Carlile's Reports

First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew Q.C., 2 February 2006 (TSO, ID 185128, 02/06 327724 19585)

Second Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew Q.C., 19 February 2007 (TSO)

Third Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew Q.C., 18 February 2008 (TSO, ISBN 978-1-84726-596-8)

Fourth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew Q.C., 3 February 2009 (TSO, ISBN 978-0-10-850814-1)

Fifth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew Q.C., 1 February 2010 (TSO, ISBN 978-1-84987-151-8)

Government Responses to Lord Carlile's Reports

Letter from Secretary of State Charles Clarke to Lord Carlile of Berriew Q.C. regarding First Annual Review of the Operation of the Prevention of Terrorism Act (26 April 2006) (available on the Home Office website)

The Government Reply to the Report by Lord Carlile of Berriew Q.C., Second Report of the Independent Reviewer pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Presented to Parliament by the Secretary of State for the Home Department, by Command of

Her Majesty, July 2007 (TSO, ISBN 978-0-10-171942-1)

The Government Response to the Report by Lord Carlile of Berriew Q.C., Third Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Presented to Parliament by the Secretary of State for the Home Department, by Command of Her Majesty, April 2008 (TSO, ISBN 978-0-10-173672-5)

The Government Reply to the Report by Lord Carlile of Berriew Q.C., Fourth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, May 2009 (TSO, ISBN 978-0-10-176242-7)

The full reports are available on the Home Office website (www.homeoffice.gov.uk).

JCHR reports on control orders

JCHR Reports

House of Lords, House of Commons, Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of section 1 to 9) Order 2006, Twelfth Report of Session 2005-06 (14 February 2006, HL Paper 122, HC 915, TSO)

House of Lords, House of Commons, Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of section 1 to 9) Order 2007, Eighth Report of Session 2006-07 (4 March 2007, HL Paper 60, HC 365, TSO)

House of Lords, House of Commons, Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights (Ninth Report): Annual Renewal of Control Order Legislation 2008, Tenth Report of Session 2007-08 (20 February 2008, HL Paper 57, HC 356, TSO)

House of Lords, House of Commons, Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights (Ninth Report): Annual Renewal of Control Order Legislation 2009, Fifth Report of Session 2008-9 (27 February 2009, HL Paper 37, HC 282, TSO)

Government Responses to JCHR Reports

Letter from Secretary of State Charles Clarke to the Chair of the JCHR, Andrew Dismore MP regarding the JCHR's report on the renewal of the Prevention of Terrorism Act 2005 (22 March 2006)

Letter from Secretary of State John Reid to the Chair of the JCHR, Andrew Dismore MP regarding the JCHR's report on the renewal of the Prevention of Terrorism Act 2005 (01 May 2007)

The Government Reply to the Tenth Report from the Joint Committee on Human Rights Session 2007-08 HL Paper 57, HC 356, Counter-Terrorism Policy and Human Rights (Ninth Report): Annual Renewal of Control Order Legislation 2008, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, April 2008 (TSO,

ISBN 978-0-10-173682-4)

The Government Reply to the Fifth Report from the Joint Committee on Human Rights Session 2008-09 HL Paper 37, HC 282, Counter-Terrorism Policy and Human Rights (Fourteenth Report): Annual Report of Control Order Legislation 2009), Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, May 2009 (TSO, ISBN 978-0-10-176252-6)

Written Ministerial Statements

Quarterly Written Ministerial Statement – 16 June 2005

Control Order Powers (11 March 2005 – 11 June 2005) – The Secretary of State for the Home Department, Mr Charles Clarke (Hansard, Vol. 435, Cols. 23WS – 24WS [inclusive])

Quarterly Written Ministerial Statement – 10 October 2005

Control Order Powers (11 June 2005 – 10 September 2005) – The Secretary of State for the Home Department, Mr C. Clarke (Hansard, Vol. 437, Col. 9WS)

Quarterly Written Ministerial Statement – 12 December 2005

Control Order Powers (11 September – 10 December 2005) – The Secretary of State for the Home Department, Mr Charles Clarke (Hansard, Vol. 440, Col. 131WS)

Quarterly Written Ministerial Statement – 13 March 2006

Control Order Powers (11 December 2005 – 10 March 2006) – The Secretary of State for the Home Department, Mr Charles Clarke (Hansard, Vol. 443, Col. 88WS)

Quarterly Written Ministerial Statement – 12 June 2006

Control Order Powers (11 March 2006 – 10 June 2006) – The Secretary of State for the Home Department, John Reid (Hansard, Vol. 447, Col. 48WS)

Quarterly Written Ministerial Statement – 11 September 2006

Control Order Powers (11 June 2006 – 10 September 2006) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 449, Col. 122WS)

Quarterly Written Ministerial Statement – 11 December 2006

Control Order Powers (11 September 2006 – 10 December 2006) – The Secretary of State for the Home Department, John Reid (Hansard, Vol. 454, Cols. 40WS – 42WS [inclusive])

Ad hoc Written Ministerial Statement – 16 January 2007

Prevention of Terrorism Act – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 455, Cols. 33WS – 34WS [inclusive])

Quarterly Written Ministerial Statement – 22 March 2007

Control Orders (11 December 2006 – 10 March 2007) – The Secretary of State for the Home Department, John Reid (Hansard, Vol. 458, Cols. 55WS – 56WS [inclusive])

Ad hoc Written Ministerial Statement – 24 May 2007

Counter-Terrorism – The Secretary of State for the Home Department, John Reid (Hansard, Vol. 460, Col. 86WS)

Quarterly Written Ministerial Statement – 21 June 2007

Control Orders (11 March 2007 – 10 June 2007) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 461, Cols. 109WS – 111WS [inclusive])

Ad hoc Written Ministerial Statement – 21 June 2007

Counter-terrorism – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 461, Cols. 111WS – 112WS [inclusive])

Quarterly Written Ministerial Statement – 17 September 2007

Control Orders Statement (11 June 2007 – 10 September 2007) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 463, Cols. 126WS – 128WS [inclusive])

Quarterly Written Ministerial Statement – 12 December 2007

Control Order Powers Statement (11 September 2007 – 10 December 2007) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 469, Cols. 38WS – 40WS [inclusive])

Quarterly Written Ministerial Statement – 13 March 2008

Control Order Powers Statement (11 December 2007 – 10 March 2008) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 473, Cols. 24WS-26WS [inclusive])

Quarterly Written Ministerial Statement – 12 June 2008

Control Order Powers Statement (11 March 2008 – 10 June 2008) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 477, Col. 25WS)

Quarterly Written Ministerial Statement – 15 September 2008

Control Order Powers Statement (11 June – 10 September 2008) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Tony McNulty (Hansard, Vol. 479, Cols. 135WS – 137WS [inclusive])

Quarterly Ministerial Statement – 15 December 2008

Control Order Powers Statement (11 September 2008 – 10 December 2008) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Vernon Coaker (Hansard, Vol. 485, Cols. 82WS – 84WS [inclusive])

Quarterly Written Ministerial Statement – 12 March 2009

Control Order Powers Statement (11 December 2008 – 10 March 2009) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr Vernon Coaker (Hansard, Vol. 489, Cols. 26WS – 28WS [inclusive])

Quarterly Written Ministerial Statement – 15 June 2009

Control Order Powers Statement (11 March 2009 – 10 June 2009) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr David Hanson (Hansard, Vol. 494, Cols. 3WS – 5WS [inclusive])

Quarterly Written Ministerial Statement – 16 September 2009

Control Order Powers Statement (11 June 2009 – 10 September 2009) – The Secretary of State for the Home Department, Alan Johnson (Hansard, Vol. 496, Cols. 152WS-155WS [inclusive])

Quarterly Written Ministerial Statement – 15 December 2009

Control Order Powers Statement (11 September 2009 – 10 December 2009) – The Minister for Security, Counter-Terrorism, Crime & Policing, Mr David Hanson (Hansard, Vol. 502, Cols. 108WS – 110WS [inclusive])



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