

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

Report on the Operation in 2006 of the Terrorism Act 2000



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Report on the Operation in 2006 of the Terrorism Act 2000

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

June 2007

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7th June 2007

REVIEW OF THE OPERATION IN 2006 OF THE TERRORISM ACT 2000

Thank you for your report on the operation of the Terrorism Act 2000 in 2006. I am grateful to you for providing a comprehensive review and have carefully considered your comments and recommendations. I would like to take this opportunity to respond formally to these.

As before, I will be placing a copy of your report and the Government's response in the House library and on the Home Office website.

I hope that therefore that the attached annex has responded to your main concerns and provided an update on the progress that we are making. We welcome the fact that your reports identify areas of concern as well as those areas of the Act that are working well.

JOHN REID

Counter-Terrorism Bill

Countering the threat facing the UK from terrorism demands an innovative and flexible approach. As part of this, we must continuously review our legislation to ensure that it remains up to date and effective. Your annual reports, of course, have a key part to play in that process. As you will be aware I have today announced that we intend to bring forward a new counter terrorism Bill. I now intend to consult widely on the measures proposed for the Bill and would like to reach cross party consensus on these wherever possible.

We agree with the comment that any consolidation of counter terrorism laws should await consideration of this Bill and will look to do this following Royal Assent.

Role of independent reviewer

You suggest that the role of independent reviewer be expanded and we are currently discussing the detail of this with you separately.

The Proscription Regime

We are pleased to note that you continue to regard the proscription regime as 'a necessary and proportionate response to terrorism'. We welcome your assessment that the procedures used to determine whether an organisation should be proscribed are 'generally efficient and fair'.

The changes made during 2006 to admit glorification of terrorism as a basis of proscription have allowed for two groups to be proscribed already on this basis. As a result of their proscription, the activities of those two groups in glorifying terrorism have ceased.

We welcome your appraisal of the system for reviewing proscriptions, and note your recognition that those involved 'are conscious of the human rights implications' of proscription.

We also note your recognition that there are means available to proscribed groups and others affected by a proscription to appeal that proscription. As you say, such groups should apply first to the Secretary of State for deproscription if they feel they have been unjustly proscribed, and if this is refused they may then appeal that refusal to the Proscribed Organisations Appeals Commission (POAC).

We note your concern over the timing of current proceedings before POAC. Hearing dates are of course set by the Commission itself and are at least partly dependant upon the availability of Commission members. We are equally interested in obtaining a speedy resolution in these matters. It is also important however to ensure that time for case preparation is sufficient,

especially when this may involve a number of different organisations and many thousands of documents.

We are also aware of the shortage of security-vetted lawyers in Government service, and are actively engaged in increasing the pool of lawyers who have undergone security vetting.

Conditions of detention

The Metropolitan Police Service fully supports your views on existing conditions of detention for terrorist suspects and is looking into how best to address these concerns.

Pre-charge detention

As you know, the police have asked me to consider the possibility of needing more than the current period of pre-charge detention at some point in the future because terrorist operations are becoming larger and more complex and involve greater amounts of evidence. I am very keen to take this issue forward on a consensual basis, as I have made clear to the Home Affairs Select Committee, and am discussing it with colleagues in Government and more widely to see if a consensus can be achieved.

Stop and search powers – Section 44

We welcome your observation that section 44 remains necessary and proportionate to the counter the serious risk of terrorism. We note your comment that work continues to improve the usage of section 44 powers and we acknowledge that sensible and proportionate use of these powers is reliant upon a clear understanding of their operation. Within a broader counter-terrorism approach, these powers help to deter and disrupt terrorist activity by creating a hostile operating environment for prospective terrorists and remain an important tool.

We note your assertion that it would be damaging for use of these powers to appear arbitrary and geographically unfocused or unjustified. We continue to work closely with the Association of Chief Police Officers to address these issues, although the decision to authorise the powers is ultimately one for the Chief Constable of the Police Force concerned rather than the Home Office. You have noted that the Home Office continues to scrutinise critically police applications for these powers.

As you know, a significant step was taken in July 2006 with the publication and dissemination of the comprehensive Stop and Search Practice Advice produced by Centrex. This advice covers all aspects of stop and search activity, giving guidance to all ranks of the Police Service from strategic leads to practitioners. It provides clear guidance on the rationale and process for obtaining authorities, the appropriate use of the powers and community impact factors. You have expressed an expectation that the use of section 44 powers will lessen and that this may be linked to a fuller understanding at the

operational level of the various stop and search powers available. We believe that the Centrex advice thoroughly clarifies the stop and search powers and surrounding issues, particularly that officers should be prepared to consider the full range of stop and search powers available to them.

Part VII - Provisions relating to Northern Ireland

We welcome your continued careful consideration of the Northern Ireland provisions contained in Part VII of the Act. We are also grateful to you for the objective and balanced view you have brought to your reporting on Part VII of the Terrorism Act the Act over the last five years.

Your decision to incorporate the operation of Part VII of the Act back into the main body of your report highlights the continuing moves being made towards normalisation in Northern Ireland. Part VII of the Act will be repealed on 31 July 2007 and the Justice and Security (Northern Ireland) Act makes some replacement arrangements. These consist of a new system of non-jury trial and some new powers designed to enable the police and military to operate effectively.

You find that the special provisions of Part VII that were used throughout 2006 were well administered, used sparingly and still necessary in some regards. You also note the reduction in the use of many of the powers with no adverse impact in relation to public order. This reflects the transition to a normalised security environment and the immense progress in Northern Ireland over the last two years.

We also welcome your observations in relation to the effectiveness and fairness of the current Diplock court system while noting the continuing attempts to try as many cases as possible in jury courts. We hope, like you, that this trend will continue under the new arrangements for non-jury trials outlined in the Justice and Security (Northern Ireland) Act.

Intuitive stops at ports

We agree that there is a need for more intelligence-led examinations at ports. There is also difficulty in defining profiles for terrorists although some indicators are supplied by JTAC and the Security Service. In lieu of specific intelligence or profiles, there is value in reviewing the passengers who are selected for examination at ports and we have been looking at a range of techniques to supplement current approaches.

It is likely that, with better selection processes in place, the number of stops at ports will decrease but the quality of intelligence retrieved from a smaller number of persons of interest will improve. It is still important that travellers expect to be stopped and challenged because, as you state in your report, it provides a useful deterrent.

Reading passports electronically on departure from the UK

Border Control currently operates intelligence-led immigration exit checks. At Heathrow and Gatwick alone, this means 10 – 12% of *all* passengers departing the UK have their passports checked electronically.

In the long term (by 2014), e-Borders will provide full border coverage of both inbound and outbound journeys. E-Borders is a cross-cutting initiative, co-ordinated by the Border and Immigration Agency in partnership with the Police Service, Intelligence Agencies, Her Majesty's Revenue and Customs (HMRC) and UK Visas. It is intended that e-Borders will transform UK border control through the use of an advance passenger information processing system and will adopt a proactive intelligence-led approach in response to challenges.

Closing the gaps in the short and medium term, in advance of e-Borders, is achievable but would require considerable investment. In response to a request from the Prime Minister in October last year, work was undertaken on the counter terrorism risk at the border, which identified options for mitigating that risk and associated costings for additional activity. Those options are currently being considered as part of our 2007/08 programme of work within the Border Management Programme (BMP).

Special Branches, progression and abstraction

We agree that the degree of abstraction of Special Branch officers, particularly from ports, remains a serious concern. This has been further evidenced in the review of Dedicated Security Posts funding carried out by the National Co-ordinator of Ports Policing (NCPP) in 2006. The NCPP collects quarterly statistics from ports which detail abstractions. Where those abstraction levels are outside what is considered acceptable, the NCPP takes up the issue with the police force concerned. The NCPP hopes to set up a formal inspection process of ports in the future and the question of abstractions will become one focus for such scrutiny.

Exchange and sharing of information

Thank you for drawing attention to the difficulties in the exchange of information and intelligence. These issues were also highlighted in a recent independent strategic intelligence review of the border agencies. The BMP recognises that the lack of a common IT strategy between the agencies places limitations on closer working. However, the BMP is reviewing structures and processes and is actively pursuing a number of the recommendations that come out of the recent intelligence review.

Sections 36-38 of the Immigration Asylum and Nationality (IAN) Act 2006 introduce data sharing provisions which will facilitate the pooling and joint analysis of bulk data by the border agencies, as well as a permissive power to disclose specified data to the Security and Intelligence Services, to the extent that the disclosure is necessary for defined purposes.

The provisions in section 36 of the Act are specifically designed to free up the sharing of information between the agencies for all of their respective purposes and will underpin joint working arrangements being introduced by the e-Borders and BMP. The duty to share provisions relates to information about passengers, crew or other matters in respect of travel or freight as specified in secondary legislation and will include the data collected from carriers.

The duty to share information enshrined in section 36 will enhance existing data sharing capabilities, which are underpinned currently by a number of different statutory gateways. The obligation to share data will enable the Border Agencies to jointly pool and analyse data in connection with their purposes.

Secondary legislation to bring into force the duty to share provisions and the permissive power to disclose specified data to the Security and Intelligence Services is under development. Also under development are associated statutory codes of practice, which will govern the use of the information shared and the extent to which, or form and manner in which, shared information is to be made available.

In addition, Clause 39 of the UK Borders Bill provides that HMRC and the Revenue and Customs Prosecutions Office, as well as those authorised to act on behalf of those organisations, may supply the Secretary of State with information, documents or articles for use for those purposes which are specified in this provision, all of which relate to the exercise of the Secretary of State's immigration and nationality functions

HMRC deployment

HMRC's intelligence-led, risk based approach is informed by up to date threat assessments. Where the assessment does not indicate a significant threat at a particular location, HMRC do not regularly attend there, but tackle the threat in a mobile and flexible way through the deployment of a brigaded resource. We are exploring ways of increasing deterrence through more impactful, highly visible and unpredictable deployments at such locations.

HMRC performance indicators

We have noted your comments and, although HMRC are very much a supporting resource on terrorism matters to the Home Office and other law enforcement agencies, they are already exploring ways of recording the contribution of front line staff to the UK counter terrorism agenda. The BMP will be a key vehicle in delivering this.

General Aviation

The BMP has already begun a thorough review of General Aviation, the initial focus of which is the completion of a comprehensive threat and risk assessment. The results of that work should then allow the border agencies to jointly address any actions that need to be taken.

The NCPP has promoted a number of new initiatives aimed at General Aviation, including the development of a General Aviation training module for police officers. Forces have also been encouraged to increase the number of visits to airfields and develop local contacts. In addition, the NCPP National Maritime Security Strategy provides a framework for forces to cooperate in delivering improved protective services.

Information available to the control authorities about general aviation

In the long term, e-Borders will provide full border coverage of both inbound and outbound journeys, including General Aviation flights. Representatives from the key agencies have been meeting to address the risks from General Aviation traffic. Current thinking centres around the development of web based solutions through e-Borders to replace the current manual reporting system for General Aviation and small sea port traffic.

Fingerprints

Persons detained under Section 41 or Schedule 7 of the Terrorism Act 2000 at ports will normally be transported to the force designated detention centre where fingerprints will be taken. The introduction of Livescan at ports will now allow the police to take fingerprints quickly to establish or confirm identity. We acknowledge your ongoing concerns that statistics should be kept by the Home Office on the use of this power. Fingerprints taken at ports are recorded and these statistics will be available from forces.

Passenger Manifests

You mentioned your ongoing concern about the supply of passenger and crew manifests to ports officers.

As I mentioned in my response to your report last year, the IAN Act 2006 contains powers for the police to request routine, advance passenger and crew data for international air and sea journeys. The powers were originally scheduled to come into force on 1 April 2006. However, further preparatory work has been required and the commencement date has now been put back to 1 December 2007. Provisions in the Police and Justice Act 2006, which will allow the police to request passenger and crew data on domestic air and sea journeys, will also be brought into force at the same time. These powers, once introduced, will greatly increase the ability of the police to investigate terrorism and serious organised crime. The passenger and crew data received using these police powers will also be shared with the Border and Immigration Agency and HMRC.

Single Border Agency

The case for a single border organisation has been considered several times in recent years. The White Paper on Organised Crime in 2004, which set up the Serious Organised Crime Agency from April 2006, concluded that cross-agency co-operation between existing border agencies, including immigration and customs, was the preferable model to improve security and other controls at the frontier. The BMP was set up to ensure the border agencies, including UK Visas and SOCA, will work together collaboratively to achieve more effective working practices and the sharing of intelligence and risk assessments.



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