

Fifth Report of the Independent Reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005

Lord Carlile of Berriew Q.C.

Presented to Parliament on 1 February 2010 (Session 2009-2010)

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CORRECTION

The table on page 65 should read as follows:

Current Cases (as of 10 December 2009 – 12 cases)

	Electronic TAG	Residence/ Curfew	Tel reporting	Visitors	Pre-arranged meeting	Prohibited associates	No contact with CO	Permit police entry	24 hours powers	Comms	Specify mosque	Geographical area	UK Departure	Financial	Transfer of money / goods	Travel docs	Must not leave GB	Ports / rail	Daily to police station	Employment notification	No IT assistance	Religious advice etc	Academic / training	Coms outside people UK	Entering prohibited places	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
01	X	14	X			X		X	X	X	X	X	X	X	X	X		X		X		X				
02	X	8	X	X	X	X		X	X	X						X	X	X		X			X			
03	X	12	X			X		X	X	X	X	X		X	X	X	X	X	X	X			X			
04	X	12	X	X	X	X		X	X	X	X	X			X	X		X		X			X			
05	X	8	X			X		X	X	X	X	X	X	X	X	X		X		X			X			
06	X	16	X	X	X	X		X	X	X	X	X		X	X	X	X	X	X	X			X			
07		X				X										X	X	X	X							
08		X				X										X	X	X	X							
09	X	12	X	X	X	X		X	X	X		X		X	X	X	X	X	X	X			X	X	X	
10	X	12	X	X	X	X		X	X	X		X		X	X	X	X	X	X	X			X	X	X	
11	X	14	X	X	X	X		X	X	X	X	X			X	X	X	X	X	X		X	X	X	X	
12	X	12	X		X	X		X	X	X	X	X		X	X	X	X	X		X		X	X	X	X	
TOTAL (FOR 12 CURRENT CONTROL ORDERS)																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
TOTAL	10	12	10	6	7	12	0	10	10	10	7	9	3	7	9	12	9	12	7	10	0	3	10	4	4	

September 2010

LONDON: THE STATIONERY OFFICE

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**Presented to Parliament pursuant to section 14(6)
of the Prevention of Terrorism Act 2005**

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OF TERRORISM ACT 2005**

SUMMARY OF KEY CONCLUSIONS

My main conclusions in this report are:

1. 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.
2. Control orders are in my view no longer suitable for cases where the main objective is to prevent travel abroad. In such cases, after further legislation, there should be available a Travel Restriction Order, with a limited range of obligations.
3. The control orders system functioned reasonably well in 2009, despite some challenging Court decisions.
4. A power of personal search of controlees by a constable should be added to the legislation as soon as possible.

BACKGROUND TO THE REPORT

1. This report includes my annual review of the operation in 2009 of the control orders system. . For ease of reference this report will follow the broad format of my first four reports on this subject, published in February 2006, 2007, 2008 and 2009 respectively¹. During 2009 the Courts have been as active as they were in 2008 in their scrutiny of the powers in question. Paragraph 18 below contains a short digest of the principal judicial decisions and their implications.
2. The effect of Court intervention in 2009 has brought the continued viability of control orders into sharp focus. That their viability should now receive close attention has been recognised by the current Home Secretary The Rt. Hon Alan Johnson MP. On the 10th September 2009 he wrote me the letter attached as Annex 1 to this Report. Since receiving that letter I have pursued a programme of consultation on the policies behind, and the future, if any, of control orders. My conclusions from that process are to be found in paragraphs 85-101 below,
3. Parliament repealed the powers of prison detention of terrorism suspects without charge, provided by the *Anti-terrorism, Crime and Security Act 2001, Part 4*. The repeal followed the decision of the House of Lords in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*². The powers contained in the 2001 Act permitted the detention, subject to review and appeal, of foreign nationals who were suspected of being international terrorists. Those provisions were introduced immediately following the aircraft bombing of the World Trade Center in New York on the 11th September 2001.

¹ For all my reports see www.homeoffice.gov.uk and follow the 'security' links

² [2004] UKHL 56

4. The *Prevention of Terrorism Act 2005* [PTA 2005] replaced the 2001 Act detention powers with a system of control orders. *PTA 2005* came into force on Royal Assent, on the 11th March 2005. The Act remains in force having last been renewed on the 11th March 2009³.

5. The enactment of *PTA 2005* occurred before the London suicide bombings of the 7th July 2005 and the events of the 21st July 2005. Since those events the *Terrorism Act 2006*⁴, and the *Counter-Terrorism Act 2008* have both been passed. Both introduced some new terrorism-related offences and significant changes to other material provisions. Of particular note in the 2006 Act were *section 1* (encouragement of terrorism), *section 2* (dissemination of terrorist publications), *section 5* (preparation of terrorist acts), and *section 6* (training for terrorism). Those provisions have contributed to the charging of more individuals with terrorism-related criminal conduct. This trend is welcome – it is in the public interest for the conventional charge and trial process to be used whenever possible, rather than control orders.

6. The *Counter-Terrorism Act 2008* introduced changes that might increase the potential for the normal criminal process to be used against terrorism suspects. *Section 28* improves jurisdictional law, by permitting proceedings in any part of the United Kingdom for terrorism offences committed in any other part of the UK. *Sections 30-33* require the Courts to treat a terrorism connection as an aggravating factor in the sentencing of persons convicted of a range of serious offences set out in *Schedule 2*, or of “*any ancillary offence in relation to an offence specified in*

³ The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009: SI 2009 no 554

⁴ The current version of all statutes is now available via www.statutelaw.gov.uk

[the] Schedule". To date there have been no cases in which these provisions have been used.

7. Other changes introduced by the 2008 Act include *section 78*, which introduces into *PTA 2005 new sections 7A, 7B and 7C*: these facilitate the searching of controlees' premises with a view to securing compliance with control orders, and are described in paragraphs 143-148 below. *Sections 79-81* make procedural changes primarily resulting from experience of *PTA 2005* before the Courts.
8. A control order may be made against a person reasonably suspected of involvement in terrorism-related activity, whether a UK national or not, and whether the terrorist activity is domestic or international. The control order must also be considered necessary for purposes connected with protecting the public from a risk of terrorism. For brevity, such a person is described throughout this report as a controlee.
9. Pursuant to *section 14(3), (4) and (5)* of the *PTA 2005* I have the duty of reviewing the operation of the Act. I also have certain other reviewing responsibilities.
10. As with all my reports as independent reviewer of terrorism legislation, I hope that this one can be understood by the general reader as well as those with a special interest. I welcome representations and comments: contact details are provided in paragraph 169 below.
11. During 2009, as in previous years, I have received many general representations about control orders - though, as before, I have received far more correspondence concerning stop and search under counter-terrorism powers, detention periods before charge, and activity at ports of entry.

12. Following the Home Secretary's letter set out in Annex 1, I have received the utmost assistance from officials with whom I have raised various questions about control orders. In addition, I have enjoyed significant advice from others, notably Professor Clive Walker of Leeds University. This should be regarded as a viability review. In that context, I remind myself that executive security measures of all hues should be tempered by the values of individual rights and constitutionalism and by practical experience, which demonstrates the value of judicial review and the occasional exaggeration of security concerns⁵.
13. Insofar as I do not accept the advice given by or to be inferred from others, the responsibility is mine and my gratitude for their contributions is undiminished.

⁵ D. Dyzenhaus, *The Constitution of Law* (Cambridge University Press, 2006) chapter 1; G.R. Stone, *Perilous Times* (W.W. Norton, 2006) page 546.

SUMMARY AND USE OF THE POWERS

14. A good summary of the powers can be found on the Home Office website⁶. The remainder of this section reflects the information summarised there or discoverable from there.

15. There are 2 distinct species of control order - *derogating* and *non-derogating*. A derogating order is one containing obligations incompatible with the right to liberty under *Article 5* of the *European Convention on Human Rights*. Non-derogating control orders can impose conditions short of a deprivation of liberty under *Article 5*. No derogation from *Article 5* has been made to date in relation to control orders. Only non-derogating control orders have therefore been made.

16. Control orders are intended to provide a combination of potential control measures. These should be matched to the circumstances of the particular case. The purpose of control orders is as part of the CONTEST strategy of the government against terrorism. Delivery of the CONTEST strategy is organised around four key workstreams - PURSUE, PREVENT, PROTECT, PREPARE⁷.

17. Some key statistics covering March 2005 to 10th December 2009 relating to non-derogating control orders will be of interest-

⁶ E. g. see <http://security.homeoffice.gov.uk/legislation/current-legislation/prevention-terrorism-act-2005/?version=4>

⁷ See *The National Security Strategy of the United Kingdom* [Cm. 7291, 2008 and Cm. 7590, 2009]

- In total, there have been 45 individuals who have ever been subject to a control order. (The total number of control orders made is higher as some individuals have had more than one order made against them.)

- As of 10 December 2009, there were 12 control orders in force, 3 fewer than a year earlier.

- Of the 33 other individuals who have been at some point - but are no longer - subject to a control order,
 - 10 were served with notices of intention to deport and either held in custody or granted bail. 6 of these have now been deported.

 - 9 individuals have had their control orders revoked (because the assessment of the necessity of the control order changed).

 - 2 individuals have not had their orders renewed as the assessment of the necessity of the control orders changed.

 - 2 individuals had their orders revoked as the Government concluded that the disclosure requirements required as a result of the decision of the House of Lords in *AF & Others* could not be made because of potential damage to the public interest.

- 1 individual absconded (in August 2006) after the Court of Appeal confirmed the quashing of his order - a new order had been made to serve on the individual but he absconded before it could be served. The new order was therefore never in operation.
- 2 individuals had their control orders quashed by the High Court. One of these was the individual who had absconded, but subsequently handed himself in to the police.
- 2 individuals had their control orders revoked on direction of the Court.
- 5 individuals' control orders expired, following their absconding from their control orders. These 5 individuals had absconded in, respectively, September 2006, January 2007, May 2007, May 2007 and June 2007. Control orders last for 12 months. Their control orders expired in, respectively, April 2007, December 2007, February 2008, February 2008 and August 2007.
- There have been 7 control order absconds in total.

18. There was considerable Court activity during 2009. In the Table below I provide a summary of the most important decisions.

TABLE OF COURT DECISIONS IN 2009

SSHD = Secretary of State for the Home Department

Name of applicant, date and reference	Court and nature of appeal	Decision
AU 20. 01. 2009 [2009] EWHC 49 (Admin)	Administrative Court - Substantive review	There is nothing in the PTA to prohibit SSHD from making a control order after a prosecution for a terrorism-related offence; and nothing to prevent SSHD from relying on matters that were the subject of the prosecution. Controlee's 16 hour curfew did not deprive him of his liberty, although during the period that he lived away from his family the lawfulness of this restriction was finely balanced. Continuing social isolation resulted not from obligations imposed by the order but by the unwillingness of friends/ family to seek HO approval to visit.
GG & NN 12. 02. 09. [2009] EWHC 142 (Admin)	Administrative Court - Substantive review	Although the Court found that the initial imposition of a control order on NN was justified, the Court found that it was no longer necessary and quashed his control order. GG's order was upheld but SSHD required to move him from the town in which the control order required him to live to a more suitable location. Obligation requiring GG to submit to a search of his person in the residence was quashed on the grounds that the PTA does not make provision for a search of the person.
AT & AW 20. 03. 2009 [2009] EWHC 512 (Admin)	Administrative Court - Substantive review	The control order imposed on AT remained necessary and proportionate but one obligation quashed and SSHD directed to amend another. In the case of AW, control order quashed on the grounds that the decision to make the control order was made on a materially erroneous basis. The judgment left it open to the SSHD to decide whether or not to apply to the court for permission to make a new order.
AV 30. 04. 2009 [2009] EWHC 902 (Admin)	Administrative Court - Substantive review	SSHD was ordered to revoke the control order on grounds that it was no longer necessary by the time of the hearing.
[Keynote decision on disclosure] AF & Others 10. 06. 2009 [2009] UKHL 28	House of Lords	In order to comply with Article 6 (right to a fair trial) of the European Convention on Human Rights, the House of Lords ruled unanimously that sufficient disclosure must be given to AE, AF & AN to enable them to give effective instructions to their special advocates. AE, AF & AN remitted to High Court for consideration in the light of the judgment.

<p>BM 03.07.2009 [2009] EWHC 1572 (Admin)</p>	<p>Administrative Court - Modification appeal</p>	<p>Article 6 applied to BM's appeal against relocation because the appeal is determinative of a civil right. Although the court would have upheld the requirement for BM to be relocated to another location on the basis of the closed case supporting relocation, further disclosure of the reasons for the relocation must be given to BM to comply with Article 6. As no further disclosure could be made, the court ordered that the modification be revoked.</p>
<p>AP 15.07.2009 [EWCA] Civ 731</p>	<p>Court of Appeal</p>	<p>There is no authority to support the proposition that a 16 hour curfew cannot amount to a deprivation of liberty. In the absence of a bright line according to the length of the curfew, the test must embrace other aspects of the factual matrix (such as the extent of social isolation as a result of the other restrictions in the control order). However, it is the 'core element of confinement' that is the starting point, to which the other restrictions are ancillary. If the core element is insufficiently stringent then the other restrictions (for example impacting on Article 8 [right to respect for private and family life]) cannot make such a curfew into a deprivation of liberty. In this case a curfew of 16 hours was upheld.</p>
<p>GG 23.07.2009 [EWCA] Civ 786</p>	<p>Court of Appeal</p>	<p>The Court of Appeal found unanimously that s1(3) of the PTA cannot be read as allowing the inclusion of a personal search obligation in control orders, and that its omission from the list of example obligations in s1(4) means there is no statutory basis for the power to include an obligation to submit to a personal search.</p>
<p>AN 31.07.2009 [EWHC] 1966 (Admin)</p>	<p>Administrative Court - Substantive review</p>	<p>As the decision to make an order had been based on grounds the core of which could not now be relied upon, the decision must be flawed. The order was properly made and renewed and therefore the appropriate remedy was to order SSHD to revoke the order rather than to quash it. The court indicated SSHD was free to decide whether or not to apply for permission to make a new control order on the basis of the remaining material.</p>
<p>AS 21.10.2009 [EWHC] 2564 (Admin)</p>	<p>Administrative Court - Substantive review (1st of 2 judgments in same proceedings)</p>	<p>All significant material that is essential to establishing either reasonable suspicion or the necessity for a control order must be disclosed to the controllee in order to meet the test set out in <i>AF & Others</i>. There is an obligation on the controlled person to give the necessary instructions - if he chooses not to do so, he cannot insist on further disclosure and the hearing will not be unfair.</p>

BB/BC 11. 11. 2009 [EWHC] 2927 (Admin)	Administrative Court - Substantive review	BB & BC are subject to control orders which impose lighter obligations. The court found that Article 6 applied and House of Lords in <i>AF & Others</i> had identified an “irreducible minimum” of disclosure which must be made in all control order cases regardless of the stringency of the obligations.
BH 17. 11. 2009 [EWHC] 2938 (Admin)	Administrative Court - Modification appeal	Controlee appealed SSHD’s decision to refuse to modify controlee’s geographical boundary to let him attend a legal appointment outside his boundary without requiring him to be escorted by the police (who will not escort the individual without searching him first). The court found that the decision was lawful since his legal representatives were able to visit him within his boundary instead. In circumstances where it would not be proportionate to refuse to modify the boundary for a purpose such as attending an urgent medical appointment, SSHD would not be able to insist that a controlled person be escorted by the police, if the police would not escort the individual without searching him first.
BG/BH 15. 12. 2009 [EWHC] 3319 (Admin)	Administrative Court - Substantive review	Control orders upheld. The detail of the judgment cannot be reported for legal reasons.
AS 21. 12. 2009 [EWHC] 3390 (Admin)	Administrative Court - Substantive review (2nd of 2 judgments in the same proceedings)	While the control order was properly imposed, the court ordered it should now be revoked on the grounds that it was no longer necessary. Sufficient disclosure had been made of the two central allegations in the case to ensure the proceedings were compliant with Article 6.
AM 21. 12. 2009 [EWHC] 3053 (Admin)	Administrative Court - Substantive review	Control order upheld. The crux of the case has been disclosed to AM and sufficient detail has been provided to enable him to give effective instructions. The SSHD made the decision to impose a control order and had not improperly delegated the decision to make a control order. The Court ordered some minor changes to the obligations.

19. There were other Court decisions not relating to issues of major principle. I have not included these in the table. All are reported (except where court imposed reporting restrictions are in place), and can be found on legal internet libraries, for example <http://www.bailii.org>.
20. Annex 2 to this review summarises the cases (anonymised) and obligations as of 10 December 2009. An 'X' in the Table indicates that the particular obligation applies to the individual concerned.
21. There are up to 25 types of measures used or previously used up to now. The longest curfew is 16 hours, and the average curfew 12 hours (down from 13.3 hours last year). Two individuals have no curfew, and if they are not included, the average curfew length is 10 hours.
22. Annex 3 sets out in graphic form the number of control orders since their introduction. The corresponding graph in my report a year ago contained a minor and insignificant error, which has been corrected in this year's updated version.
23. I have emphasised in my previous reports that the intention is that conditions imposed under a control order should be specific and tailored to the individual. The aim is to secure the safety of the public by the minimum measures needed to ensure effective disruption and prevention of terrorist activity. Again I have discussed this with officials on several occasions during the year. I have attended some meetings of the Control Order Review Group [CORG]. CORG is a multi-disciplinary group in which every control order is discussed in detail.

24. Each control order is intended to provide what are perceived to be the controls needed to protect national security, having regard to what is known about the individual and his/her connections, and the risks he/she is thought to present.
25. The Home Secretary must normally apply to the courts for permission to impose a control order before it is made based on an assessment of the available intelligence information. If the court allows the order to be made, the case is automatically referred to the court for a judicial review of the Home Secretary's decision.
26. In emergency cases the Home Secretary may impose an urgent order, which must then be reviewed by the court within 7 days in the same way that the court would review a non-urgent control order before it is made. At this initial review the court decides whether the decision of the Home Secretary was obviously flawed.
27. At the full judicial review the court decides whether the person involved poses a threat to the safety and security of the general public and may consider the case in open and/or closed session. Where national security requires a closed session in the absence of the controlee and his chosen legal advisers, a trained and security-cleared independent lawyer described as a Special Advocate represents the interests of the controlee in the closed sessions. Special advocates have been appointed in all cases to date.
28. Non-derogating control orders are limited to 12 months' duration. If the Home Secretary wishes to renew a control order there is no automatic referral to a full judicial review, but the individual can apply to the court for a further judicial review if he/she wishes.

29. An individual control order and its obligations can be challenged, but the system as a whole has been held to be lawful. There was in 2006 a fundamental challenge to the compatibility of the legislation with the *European Convention on Human Rights*⁸. This was unsuccessful.
30. Controlees have the option of anonymity. Anonymity is of advantage both to the controlee and to the government. In particular, for the controlee it avoids publicity that might lead to harassment of the individual and their family in the community where they live, or that might prejudice a fair trial if criminal charges are later brought.

⁸ See, in addition to *AF & Others*, referred to in the Table in para 18 above, the judgment of the Court of Appeal, consisting of the Lord Chief Justice, the Master of the Rolls and the President of the Queen's Bench Division in *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140; on appeal from Sullivan J at [2006] EWHC 1000 (Admin); upheld on this point by the House of Lords [2007] UKHL 46. The *AF & Others* judgment followed on from these appeals.

CONTROL ORDERS DURING 2009

31. The current and historical position is summarised in the key statistics given in paragraph 17 above. The matrix of obligations is in Annex 2 to this report.
32. Annex 4 describes the only charge for breaches of control orders during 2009. The person concerned allegedly breached their curfew, failed to report to the electronic monitoring company, tampered with electronic monitoring equipment, and entered prohibited premises. These allegations had not been adjudicated upon at the time of my writing this report.
33. There have been other breaches of control orders that have not been made the subject of criminal charges. Most of these are in themselves of minor significance, e. g. a few minutes' lateness in reporting; although the cumulative effect of such breaches may be regarded as serious. Some have been passed over because of family exigencies or emergencies which had given rise to the breach.
34. During the year I have visited a number of existing and past controlees. A repeated theme of complaint was that they claimed to have no personal point of contact for emergencies. This is not accepted as a fair criticism by the police or officials in the Home Office. Whether it is or not, in my view in every case the controlee should be given a list/roster of numbers with a name or designation for contact in emergencies - for example, the need to take a child to A & E in circumstances that would constitute a breach of the order. Given that some controlees are moved to neighbourhoods where they are unknown and have no family contacts, this emergency contact system should be as personal in its approach as possible.

35. Some apparent breaches still occur because the tagging and contact equipment and service fail. For the most part, these are more reliable than in the past. Prosecutions are not pursued where incidents are not considered as breaches, for example due to technical problems with the equipment.
36. Breach proceedings are subject to the usual prosecution procedures and standards applied by the Crown Prosecution Service. The standard of proof required is the ordinary criminal standard, namely proof beyond reasonable doubt. Annexes 5-8 contain anonymised examples of existing control orders. I draw particular attention to Annex 8. The overriding objective of this type of order is to prevent the controlee from travel for terrorism-related purposes.
37. Absconding by persons who are or predictably are about to be controlees is an embarrassment to the system. The viability of enforcement must always be considered when a control order is under consideration. Enforcement of control orders is resource-intensive for the police, and affects the several police forces with controlees resident in their areas. Not all are in the Metropolitan Police area. In some cases the requirements of the control order may compel the controlee to change his address, including the city or town where he lives. A decision to this end may be founded on intelligence and informed by the individual's personal circumstances.

THE MERITS OF CONTROL ORDERS AND POSSIBLE ALTERNATIVES

38. The real issues about control orders are summarised in the following questions:

- Are control orders or something like them necessary?
- If so, are they fair?
- Are they effective?
- Are they enforceable?
- Is there a better alternative?

39. It should be emphasised that nobody, least of all those who have to administer and enforce them, likes control orders. In every case alternatives are sought if available.

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

41. The main arguments presented to me for and against the continuation of control orders can be summarised as follows:

For	Against
Provide public security and comfort where intelligence cannot be made admissible court evidence in criminal proceedings	Can change the rules of evidence, e. g. to allow intercept
Valuable safety net	Blunt instrument, offensive to human rights
Careful inquiry and advice given by CPS and prosecution occurs wherever possible	If rules of evidence were changed, more prosecutions would be advised
Protects UK as compared with foreign jurisdictions regarded as having no competent authority to deal with persons deported	As much protection could be provided without control orders, with 'normal' policing and surveillance
At least some persons discharged from control orders would resume terrorist activities	It would be known that they were subject to scrutiny, so their utility as terrorists would be very small
Capacity for necessary surveillance would mean significant moving of resources from other policing etc work	Not accepted
Excessive cost of alternatives	Cost not relevant in human rights context
System of law is ECHR compatible and special advocates have been effective	Special advocates complain that they cannot deal fully with cases because of limited assistance. Court disclosure requirements render control orders impracticable
Prevents foreign travel for training and insurgency	A very heavy-handed way of achieving a limited objective

42. I have reviewed the 12 cases current as of 10 December 2009, as part of my assessment of the future of control orders. For national security reasons I can give little detail in this report. However, the following can be published and may be of assistance.

43. Three of the controlees have been the subject of orders for more than 2 years. CO1, as I shall call him for this report, is in his 5th year. Substantial risk assessments have been carried out on all three. There is significant and credible intelligence that CO1, and CO2 and CO3, continue to present actual or potential, and significant danger to national security and public safety. I agree with the assessment that the control order on each has substantially reduced the present danger that exceptionally they still present despite their having been subject to a control order for a significant

period of time. Unless control orders were replaced by some equally disruptive and practicable system, in these cases the repeal of control orders would create a worryingly higher level of public risk.

44. CO4 and CO5 are assessed separately via intelligence as remaining associated with extremist groups. In their cases there appears to be some prospect of the control order bringing their terrorist activity effectively to an end.
45. CO6 is assessed as a dangerous terrorist who would re-engage with terrorism the moment he could. I agree with this assessment, and that the control order is an effective intervention. I have no doubt that the removal of his control order would immediately increase risk in the UK and to UK interests elsewhere.
46. CO7 and CO8 are assessed as still wishing to travel abroad for terrorism training and, presumably, active service thereafter. The main purpose of the control order is to prevent this occurring.
47. CO9 and CO10 are assessed as having already been trained abroad, and to wish to travel abroad to engage in active service as terrorists.
48. CO11 is assessed as having been trained abroad in terrorist activity, and to have been involved in considerable terrorist planning and facilitation in the UK. The control order is effective in limiting such activity, though he continues to attempt to remain active. The ending of the control order would increase risk to the public.
49. CO12 falls into a broadly similar category to CO11.

50. From the above it can be seen that there are three broad groups, which I would summarise as portrayed by intelligence product to be:

- (a) very high risk, continuing and determined terrorists posing a real risk to national security and the public in the UK and abroad;
- (b) those already trained and wishing to travel abroad for further training and/or active terrorism;
- (c) those in relation to whom the principal information is of wishing to travel abroad for terrorist training.

51. I am aware that at Ministerial and official level there has been active consideration of alternatives to control orders. The question to be addressed is whether any or a combination of the alternatives provide a sufficient toolkit to manage the risk posed by suspected terrorists, always bearing in mind the imperatives of complying with human rights legislation and other civilised aspects of a fair legal system. Currently control orders are a targeted tool of last resort, used to plug what is perceived to be a gap in the absence of viable alternatives.

52. **Prosecution** remains the preferred approach for dealing with suspected terrorists. There has been considerable success in prosecuting terrorists. Nearly 250 individuals have been convicted of terrorism-related offences since the 11th September 2001.

53. Measures have been introduced to improve the ability to prosecute. These have included new offences contained in the *Terrorism Act 2006* (for example, preparation of acts of terrorism); and additional mechanisms such as post-charge questioning (not yet in force) pursuant to the *Counter-Terrorism Act 2008*. Further, resources

have been increased to enable more and better evidence-gathering (for example, the size of the Security Service doubled between 2001 and 2008).

54. I am satisfied that prosecution is pursued whenever there is a case satisfying the charging standards contained in the policies of the Crown Prosecution Service.

55. **Intercept evidence** has been discussed widely, and has been the subject of a Privy Council review.

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

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

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

The Government have no higher duty than to protect the public. A critical tool in this is the warranted interception of communications that allows law enforcement and intelligence agencies to gather intelligence about those individuals who seek to do us harm.

Intercept material obtained under a RIPA warrant cannot currently be used as evidence in criminal trials. It has been, and remains, the Government's objective to find a way to make this possible. In February 2008, the Prime Minister accepted the findings of a Privy Council review, chaired by Sir John Chilcot, which recommended that intercept should be admissible as evidence subject to meeting nine operational requirements, which the review judged to be necessary to protect the public and national security. He set in train the necessary implementation process and established an advisory group, comprising the right hon. Sir John Chilcot, the right hon. Member for Berwick-upon-Tweed (Sir Alan Beith), the right hon. and learned Member for Folkestone and Hythe (Mr. Howard), and my right hon. And noble Friend Lord Archer of Sandwell, in order to help safeguard intelligence capability and protect the public.

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

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

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

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

These findings are disappointing. In the light of them, the Government conclude, as does the advisory group, that the model does not represent a viable basis for implementation. However, the Government also share the advisory group's view that the potential gains from a workable intercept as evidence regime justifies further work. We therefore welcome the group's suggestion of three areas of analysis, beyond the scope of the original work programme, intended to establish whether the problems identified are capable of being resolved. These areas are to examine:

Further enhancing the judicial oversight available.

Full retention of intercept material alongside alternative review requirements.

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

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

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

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

59. Outside commentators have made comparisons with other jurisdictions where intercept is admissible. These comparisons are ill-informed and misleading. In our adversarial legal system the requirements of disclosure of material by the prosecution to the defence (there being no equivalent requirements on the defence) are far more demanding and revealing than in the jurisdiction of any comparable country. For

example, in France a great deal of material is seen by the juge d'instruction but not disclosed to the defence, because of the inquisitorial nature of the criminal process there. We already disclose more than in other countries.

60. Other difficulties can be found in the huge resource problems implicit in the Home Secretary's statement above, and in the fact that in some countries the amount of potentially valuable intercept carried out on terrorist suspects is curtailed by the prospect of having to record and transcribe many thousands of calls/pages in every case. In addition, it is estimated that there is an opportunity cost if far more extensive surveillance etc. has to be deployed. Other targets would not be covered: this could result in an increased risk to the public from those individuals.
61. Intercept material remains important, as the Home Secretary said in his statement. Inculpatory intercept is followed up generally by the pursuit of admissible physical evidence, which generally is far more compelling than guarded remarks in telephone conversations.
62. I agree with the view expressed by the Home Secretary. In any event, it is unlikely that the admissibility of intercept would have led to the prosecution of any controlees since control orders were introduced in 2005.
63. Interception is a critical intelligence tool. It facilitates the targeted collection of evidence, which is often used in trials.
64. The intelligence dividend depends upon the secrecy of sources. It depends too on the secrecy of the diverse techniques used to obtain intercept.

65. The review described in the Home Secretary's statement above refers to a review of nine current or former control order cases by independent senior counsel. The review concluded that intercept as evidence would not have enabled a criminal prosecution to be brought in any of the cases studied.
66. **Deportation** is an important consideration in relation to terrorism suspects who are also foreign nationals. However, deportation is not possible in all cases. An individual may only be deported if their removal is compatible with this country's international treaty obligations. *ECHR Article 3* prohibits the deportation, removal or extradition of an individual if there are substantial grounds for believing that there is a real risk that they will be tortured or subjected to inhuman or degrading treatment or punishment on return.
67. The government has taken two main approaches to this matter. In the majority of recent national security deportations they have negotiated framework deportation with assurances (DWA) arrangements, as they are called. These are monitored carefully. DWAs exist with Algeria, Jordan, Ethiopia, Libya and Lebanon. The Lebanon agreement has not been used, and it is accepted that it might need re-negotiation if it were to be used, in the light of political developments there. The Libya DWA is on hold following an adverse Court of Appeal judgment in 2008. So far as Jordan is concerned, the publicised case of Abu Qatada is subject to an application to the European Court of Human Rights [ECtHR], with a hearing expected in late 2010.
68. The negotiation of DWAs is a time-consuming process, requiring assurances that are public, credible and reliable. Even where successfully agreed, there is no guarantee that the Courts will accept them, given the relatively low legal threshold required

for an individual to avoid deportation. This has happened with Libya, as described above.

69. The government sought by intervention in the ECtHR to argue that (a) where a person seeks to resist removal on the grounds of 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, this has an impact on the standard to which he must establish a risk of ill-treatment – he should at least be required to show that it is more likely than not that he would be subject to ill-treatment contrary to *Article 3*. The ECtHR rejected both arguments. This leaves the UK reliant on DWA arrangements. The effect is to make the UK a safe haven for some individuals whose determination is to damage the UK, hardly a satisfactory situation save for the purist.

70. **Where neither prosecution nor deportation is possible**, control orders are intended to plug the gap, subject to the judicially supervised system of law applied to them.

71. Other non-prosecution executive actions are available. Asset freezing may be imposed, where the individual is involved in committing, participating in or facilitating acts of terrorism. This is restricted in scope and difficult to enforce.

72. UN designation is another measure, which imposes an asset freeze, a ban on travel and an arms embargo. The individual must be associated with Al Qaeda or the Taliban. This measure too presents significant procedural and evidential problems, and is limited in scope.

73. Deprivation of British citizenship is available, and can be combined with deportation and exclusion, to enable certain dual nationals to be excluded from the UK. This applies to a limited range of people, and involves a drastic measure.
74. The three alternatives described in paragraphs 71-73 are of limited utility.
75. **The invocation of emergency powers** has been suggested as part of a solution more acceptable than control orders. In particular, this involves the proposed use in some way of *Part II* of the *Civil Contingencies Act 2004*. At the time of its discussion in Parliament, in 2003-4, what became the 2004 Act was recognised as containing the possibility of detention without trial. However, there would be considerable political difficulties if the provisions were applied to individuals, rather than to the nation or to regions (for which such emergency powers plainly are designed). A significant problem with using the 2004 Act to detain or restrict the liberty of terrorist suspects is that the Act prohibits emergency legislation made under it amending criminal proceedings and does not expressly allow for provision dealing with the detention of individuals.
76. In my view the use of powers related to the Civil Contingencies Act would diminish civil liberties and accountability for them.
77. **A different approach to the European Court of Human Rights and European Convention on Human Rights** could be considered. The possibility of this occurring generally has been signalled in another context by the Supreme Court

in *Horncastle*,⁹ in which the Court rejected the earlier decision of the ECtHR in *Al-Khawaja v UK*¹⁰. The latter case has now been referred on the request of the UK government to the Grand Chamber of the European Court.

78. One possibility would be to allow the government to appeal a Supreme Court judgment to the ECtHR (at present only individuals may do this). However, this would require agreement in the Council of Europe, currently unlikely given the huge backlog of cases there.
79. Another possibility would be for the UK government to follow the example of Italy, and ignore directions from the ECtHR to defer deporting an individual pending the Court's consideration of an application. This is undesirable: it has done considerable reputational damage to Italy (not least in relation to extradition requests it makes).
80. Derogation from *Article 3* is not possible under international treaty. Derogation from *Articles 5-6* is possible theoretically. However, the political ramifications of derogation, and the litigation consequences, make this an unrealistic aspiration.
81. Whilst cost cannot trump either rights guaranteed under the *European Convention on Human Rights* or general principles of fairness, it must be a consideration. Between April 2006 and August 2009, the Home Office spent approximately £10.8 million on control orders. Total costs for the Government will therefore be higher. Exact figures for the cost of reasonably complete physical and other surveillance to replace the system are not available, and contain many imponderables. In my view,

⁹ [2009] UKSC 14

¹⁰ [2009] EHRR 1

it would be many times greater than the cost of control orders.

82. It is sometimes said that the authorities have a panoply of effective means of enforcement of surveillance of suspects, irrespective of control orders.
83. All forms of surveillance involve considerable human resources. Observation of individuals generally requires a 24 hour presence of many officers, observing, logging, and recording images. This is especially true of physical watching and following. A complete package of measures requires secure places of observation.
84. The importance and difficulty of ensuring that control orders are enforced means that so-called 'light touch' control orders are not a realistic proposition save in exceptional cases. My discussions with Ministers and officials leave me with the conclusion that the limitations of so-called 'light touch' control orders are well understood. This conclusion is strengthened by the current view of the Courts in relation to disclosure: the judges have held that the standard of disclosure is the same for all control order cases.

THE FUTURE OF CONTROL ORDERS

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

86. However, I have reached the conclusion that the control order system could be improved by some reform.

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

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

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

- (a) the wearing of an electronic tag;
- (b) daily telephone reporting to the tag operating company;
- (c) notification of home address to the police;
- (d) notification of employment address to the police;
- (e) prohibition without consent of the Secretary of State from entering any airport, seaport, train or bus station providing direct travel links outside Great Britain;
- (f) surrender of travel documents;
- (g) prohibition against applying for or being in possession of travel documents; and
- (h) Prohibition on travelling outside Great Britain/the United Kingdom.

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

91. The government is examining watch list systematology following the Christmas Day 2009 Detroit aircraft incident. Alongside the conclusions of that examination, a short, special list (like a watch list, but for travel out of the UK) should be created

containing the details of all subject to a TRO. They should be entitled to maintain their anonymity (as with control orders), subject to the watch list being made available as necessary to all relevant Home Office, police, UKBA and other relevant officials and contractors.

92. It should be possible for a TRO to prohibit travel entirely, or travel to named countries. Breach (and its ancillary offences) should be triable either way, with a maximum sentence on indictment of five years' imprisonment and/or an unlimited fine.
93. I suggest that TROs and their constituent requirements should be appealable to (but not automatically reviewable by) a High Court Judge, or a Senior Circuit Judge with a criminal jurisdiction (of whom there are now more than in 2005 when control orders were introduced), with a right of appeal with permission to the Court of Appeal. Special Advocates should be appointed to such cases at the request of the Secretary of State or the Judge: this would enable the individual subject to the order to apply for the appointment of a Special Advocate, in the interests of justice. Whether disclosure in such circumstances inevitably would have to comply with the requirements flowing from the decision in *AF & Others*, referred to in the Table in paragraph 18 above is the subject of current litigation in *BB & BC*. The outcome of that litigation will affect the utility of this proposal. Closed hearings would have to be available in the interests of national security, as now with control orders.
94. It should be grounds for the removal of a TRO if the individual proves on the balance of probabilities that he/she has no intention of travelling for the purposes described. It should be open to the Judge to impose limitations on travel, for example within the EU.

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

96. I remain of the view that control orders or something very similar remain a necessity for a small number of cases, in the absence of a viable alternative for those few instances. These are the cases where, as now, the Secretary of State:

- (i) has reasonable grounds for suspecting that the individual is or has been involved in terrorism; and
- (ii) considers that it is necessary, for purposes connected with protecting members of the public from the risk of terrorism, to make a control order imposing obligations on that individual¹¹.

97. I have considered whether control orders can or should be replaced by something else, or even re-named. I have been unable to find, or devise, a suitable alternative for the important residue of cases that cannot be dealt with by prosecution, a TRO as suggested above, or by other effective means. I expect the number of control orders to remain low, hopefully around the present level.

98. I should emphasise that I have considered the effects of the Court decisions on disclosure. I do not agree that their effect is to make control orders impossible. There are and will be a small number of cases where the potential damage to national security will mean that there can be no control order because requisite disclosure cannot be achieved without disproportionate damage to national security. This is

¹¹ Prevention of Terrorism Act 2005, section 2(1)

a familiar problem in relation to prosecutions. For example, in Northern Ireland some cases have not been prosecuted because of the risk of such damage. This is a balancing exercise for the executive in each case.

99. For most cases, and especially new ones, it should be possible to provide sufficient disclosure to comply with legal requirements, without damaging the public interest.

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

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

COMMUNITY ENGAGEMENT

102. The government is devoting significant and increasing resources to building community awareness, and to countering radicalisation. These are correct and important aspirations, though their effective delivery continues to present a challenge. I am aware of a great deal of work being done to promote amongst Muslim communities a wider knowledge of the reasons for counter-terrorism laws and the way they operate. There is ample evidence of co-operation between the authorities and those communities, whose compliance with the law is often an example to others.

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

INFORMATION FROM CONTROLEES AND OTHERS

104. Whenever controlees are willing to discuss their own position and concerns, appropriately knowledgeable and qualified persons should be made available to them. Wherever possible, credit should be given for co-operation.

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

CONTROL ORDER POWERS AND OBLIGATIONS

106. By *PTA2005 Section 1* the power to make a non-derogating control order is vested in the Secretary of State; and to make a derogating order in the court on the application of the Secretary of State. The obligations placed on the controlee are those

“... necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity.”

107. *Section 1(4)* contains a non-exhaustive menu of potential obligations up to and including full-time house arrest. Such 24/7 house arrest would involve derogation. The subsection includes a prohibition on the possession of specified articles, and on the use of specified services and facilities: these provisions are used in many cases to prohibit the use of the internet and of mobile telephones.

108. The cases of *GG* and *BH*, referred to in the Table in paragraph 18 above, determined that there is no personal search obligation included in or permitted under *section 1*. This is an anomaly that has the potential for absurd consequences, and an amendment should be included in a suitable piece of legislation as soon as possible.

109. Following a clarificatory amendment inserted by the 2008 Act, “*involvement in terrorism-related activity*” is defined by *section 1(9)* as

“any one or more of the following

- (a) the commission, preparation or instigation of acts of terrorism;*
- (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;*

(c) *conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;*

(d) *conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraphs (a) to (c);*

and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.”

110. *Section 2* of the 2008 Act sets out the basis upon which the Secretary of State may make a non-derogating control order. *Section 2(1)* requires that he

“(a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity; and

(b) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to make a control order imposing obligations on that individual.”

111. Non-derogating orders are made for 12 months, and are renewable pursuant to *section 2(6)* if “*necessary for purposes connected with protecting members of the public from a risk of terrorism*” and “*preventing or restricting involvement by that person in terrorism-related activity*”.

112. As part of my function as independent reviewer, my task is to replicate exactly the position of the Home Secretary at the initiation of a control order. I call for and am given access to the same files as were placed before the Secretary of State when he was asked to determine whether a control order should be made. These files

include detailed summaries of evidence and intelligence material, as well as the draft Order and obligations. The summaries describe not only the activities alleged against the individual and the sources of information, but also the context of those activities in a wider and very complex terrorism picture. I review every case in this way. Of course, this is not the procedure followed in the courtroom, where the evidence is subject to examination and cross-examination. It will be appreciated that sometimes the evidence is materially different by the time it is looked at by a Court, owing to the passage of time.

113. A great deal of the information is derived from intelligence. International co-operation between intelligence agencies has been very effective in the protection of the British public, and is absolutely essential. The quantity of intelligence material available has increased as the police and the Security Service have developed their capacity to investigate and deal with terrorism. The sources and content of intelligence in most instances demand careful protection in the public interest. The techniques of gathering intelligence, and the range of opportunities available, are wide and certainly in need of secrecy. Human sources place themselves at risk – not least, the significant number of persons who offer unsolicited information out of disapproval of conduct and events at which they may have been and might continue to be present.

114. I would have reached the same decision as the Secretary of State in each case in which a control order has been made during 2009, so far as the actual making of the order is concerned. Measuring the proportionality of the obligations is a difficult task, and inevitably the Courts will sometimes have to resolve conflict between, on the one hand, a naturally cautious security establishment and, on the other hand, the

public policy imperative of as little State control as possible of unconvicted persons.

I can confirm that the Control Order Review Group [CORG] discusses the extent of obligations in every case, and that changes have been made to meet circumstances including the personal and family situation of the controlee and family members.

115. Like his predecessor, the present Home Secretary and his Ministers ask questions.

They do not act as a mere cipher when the papers are placed before them. The process is rigorous and structured in an appropriate way, so that the decisions are definitely those of the Home Secretary.

116. The input of officials is considerable, and at a senior level appropriate to the

responsibility. A permanent team dedicates its whole time to control orders. The complexity of administering some of them is formidable, not least because of the need to meet reasonable housing requirements. The burden upon officials and the cost of legal advice and representation has been increased by the extensive litigation on disclosure.

117. The quality of preparation of cases for the Secretary of State by officials and the

control authorities concerned has remained extremely high, as one is entitled to expect when a Secretary of State has to make a decision diminishing the normal rights and expectations of the individual.

118. The recent cases have emphasised that the key to judging the restrictions imposed

by a control order is proportionality, together with the ramifications of disclosure compliant with the decision of the House of Lords in *AF*. In each case the restrictions must be proportionate to the risk to national security presented by the controlee,

taking into account as appropriate the controlee's personal circumstances including health. The minimum obligations consistent with public safety provide the only acceptable basis for control orders.

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

120. The terms of reference of the CORG are as follows:

The purpose of the Group is:

1. To bring together the departments and agencies involved in making, maintaining and monitoring control orders on a quarterly basis to keep all the orders under frequent, formal and audited review.

2. To ensure that the control order itself remains necessary as well as ensuring that the obligations in each control order are necessary and proportionate. This includes consideration of whether the obligations as a whole and individually:
 - a. Are effectively disrupting the terrorism-related behaviours of and risk posed by the individual?
 - b. Are still necessary to manage the risk?
 - c. Need to be amended or added to in order to address new or emerging risks?
3. To monitor the impact of the control order on the individual, including on their mental health and physical well-being, as well as the impact on the individual's family and consider whether the obligations as a whole and/or individually require modification as a result.
4. To keep the prospect of prosecution under review, including for breach of the order.
5. To consider whether there are other options for managing or reducing the risk posed by individuals subject to control orders.

121. I can report, as before, that the work of CORG is well-organised and methodical. I am in no doubt that Ministers and officials have a genuine interest in seeing control orders brought to an end as long as the national interest can be protected. As in previous reviews, I am concerned about the ending, or endgame, of each control order. There has to be an end of the order at some point, in every case. As stated above, some of the controlees have already been the subject of their orders for a

considerable time. Their orders cannot be continued indefinitely – that was never intended and probably would not be permitted by the courts. I am satisfied that in every case there is an ongoing search for a strategy for the ending of the order.

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

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

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

COURT SUPERVISION

125. A system of law for the supervision by the court of non-derogating control orders is provided by *section 3*. The section has been amended by the *Counter-Terrorism Act 2008*. In every case there must be an application to the court for permission, in non-urgent cases to make the control order, and in urgent cases for the confirmation of the order. The language of *section 3(3)* makes it clear that the order will subsist unless the decision is “*obviously flawed*”. In each case the Administrative Court subsequently undertakes a full judicial review under *section 3(10)* which will hear all the evidence and consider whether the decision to make the control order was flawed. As can be seen above, this review procedure has proved effective.

126. At the *section 3(10)* judicial review hearing the Court has the power pursuant to *section 3(12)* to quash the order, to quash one or more obligations imposed by the order, or to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations imposed by the order.

127. *Section 3* requires directions hearings for non-urgent control orders to begin as soon as reasonably practicable after the order is made. The *2008 Act* amended *section 3(7)* and added a new *section 3(7A)*: this clarifies the arrangements for the controlee to make representations to the court.

128. *Section 4* provides the powers of the courts to make derogating control orders; *section 5* deals with issues of arrest and detention pending derogating control orders; and *section 6* provides for their duration. As no derogating control orders have been made to date, again I remain unable to report on the operation of the

derogation provisions. Given the restrictive nature of non-derogating orders, and the reverberations that derogation would cause, I hold as strongly as before to my often expressed hope that no derogating orders will be required. Plainly, the moment one was made it would require intensive review of every step in the statutory procedure and of its effect on the controlee.

129. I have received no complaints from controlees or the lawyers instructed by them to the effect that the court procedures are not working satisfactorily. Controlees and former controlees to whom I have spoken have emphasised strongly the points put on their behalf to the Courts about the disruption of their private and family lives. I am willing to hear any complaints, and consider them in detail. Where appropriate, I make comments to the Home Office as issues arise, rather than waiting to include them in reports.

SPECIAL ADVOCATES

130. Unlike recent years, this year I have received anxious representations from the special advocates [SAs] about their role in control order cases. The pool has been enlarged, and currently there are over 50 special advocates, all experienced and highly competent lawyers. They have had an effect on the outcome of cases, and in all cases have been of great assistance to the Court. Their use has been studied, with favourable comment, by other jurisdictions. They are all developed vetted, and examine closed material in relation to the person in whose interest they are instructed. The Special Advocates' Support Office provides them with administrative services.

131. The concerns expressed by special advocates were clearly expressed recently in an article by one of their number, Martin Chamberlain¹².

132. Following receipt of the closed evidence, the SA is prohibited from communicating with the person whose interests he/she has been appointed to represent or the representatives of the person, other than in writing and with the permission of the court. This permission is obtained by application, which is required to be on notice to the Secretary of State¹³.

133. The practical effect of this rule was explained by the nine SAs who submitted evidence to the House of Commons Constitutional Affairs Committee (CAC) in 2005, as follows:

¹² *Special Advocates and Procedural Fairness in Closed Proceedings* [2009] 28 C]Q 314

¹³ *SIAC (Procedure) Rules 2003 and Civil Procedure Rules CPR r. 76.25(2)*

“There is in fact no contact between the Special Advocates and the appellant’s chosen representatives in relation to the closed case... Under the SIAC (Procedure) Rules 2003, Special Advocates are permitted to communicate with the appellant and his representatives only before they are shown the closed material... Once the Special Advocates have seen the closed material, they are precluded by r. 36(2) from discussing the case with any other person. Although SIAC itself has power under rule 36(4) to give directions authorizing communication in a particular case, this power is in practice almost never used, not least because any request for a direction authorizing communication must be notified to the Secretary of State. So, the Special Advocate can communicate with the appellant’s lawyers only if the precise form of communication has been approved by his opponent in the proceedings. Such a requirement precludes communication even on matters of pure legal strategy (i. e. matters unrelated to the particular factual sensitivities of a case).”

134. The relationship between the Special Advocate and the appellant is therefore quite unlike that between the appellant and his open lawyers, in which communication is unconstrained, and protected by legal professional privilege and confidentiality. These features of the lawyer/client relationship are part of the fundamental constitutional right of access to a court, both in domestic law¹⁴ and under Article 6.¹⁵

135. The operation of the SA system in national security cases has been considered on three occasions by Parliamentary committees. The CAC in 2005 and the Joint Committee on Human Rights (JCHR) in 2007 and 2008 each identified the prohibition on communication as a problem with the system.

¹⁴ *R v Secretary of State for the Home Dept, ex p Daly* [2001] 2 AC 532.

¹⁵ *Campbell & Fell v United Kingdom* (1985) 7 EHRR 165, paras 111-113.

136. In 2007 the JCHR recommended:

“In our view, it is essential, if Special Advocates are to be able to perform their function, that there is greater opportunity than currently exists for communication between the Special Advocates and the controlled person. We were impressed by the preparedness of the Special Advocates to take responsibility for using their professional judgment to decide what they could and could not safely ask the controlled person after seeing the closed material. With appropriate guidance and safeguards, we think it is possible to relax the current prohibition whilst ensuring that sensitive national security information is not disclosed. We therefore recommend a relaxation of the current prohibition on any communication between the special advocate and the person concerned or their legal representative after the controlled person has seen the closed material.”

137. The JCHR returned to the topic in 2008, this time having heard evidence from Neil Garnham QC, another SA. The JCHR accepted Neil Garnham’s suggestion that SAs should have power to apply *ex parte* to a High Court judge for permission to ask questions of the controlled person, without being required to give notice to the Secretary of State.

138. In the event, none of these suggestions has been accepted. The position therefore remains that SAs can communicate with the controlled person only with the permission of the court and that applications for permission must be made on notice to the Secretary of State. Such permission is very rarely sought.

139. The SAs continue to consider that a relaxation of the current rule prohibiting communication is necessary - or "essential" as the JCHR put it in 2007. They propose:

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

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

MODIFICATION OF CONTROL ORDERS

141. *Section 7* provides for the modification, notification and proof of orders. By *section 7(1)* the controlee, on the basis of a change of circumstances affecting the order, may apply for revocation or modification of the obligations imposed by the order. If such an application is made, the Secretary of State has the statutory duty to consider it. By *section 7(2)* the Secretary of State has the power to revoke or modify the obligations of an order, save that he cannot up-rate it from a non-derogating to a derogating order.

142. *Section 7* allows too for applications to be made to the court for revocation or modification of control orders. I have received no representations to suggest that these provisions are defective or inefficient.

COMPLIANCE

143. The 2008 Act added some new sections to the Prevention of Terrorism Act 2005.

Section 7A provides the police with powers to enter, search and seize material from premises connected with the controlee if there is reasonable suspicion that the controlee has absconded, in order to ascertain whether he has absconded and, if so, to assist in pursuit and arrest.

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

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

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

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

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

CRIMINAL INVESTIGATIONS AFTER MAKING CONTROL ORDERS

149. Section 8 arises from the important concern that individuals suspected of terrorism offences should be prosecuted and convicted wherever possible, rather than made subject to executive action restricting their liberty.

150. The section applies to a carefully drawn group of cases – those where the terrorism suspect may have committed an offence relating to terrorism, and the commission of that offence is being or would fall to be investigated by a police force. This is not as all embracing as it may seem at first glance, as it may exclude cases where on public interest grounds it had been pre-determined that there should be no investigation with a view to prosecution. However, as in previous years I am unaware of any cases where any such determination has been made.

151. *Section 8(2)* provides that, before a control order can be made or applied for, the Secretary of State must consult the chief officer of the police force for the material area *“about whether there is evidence available that could realistically be used for the purposes of a prosecution of the individual for an offence relating to terrorism.”*

152. If a control order is made, the chief officer of police has the obligation under *section 8(4)* to keep under review the possibility of an investigation and criminal prosecution. *Section 8(5)* contains an obligation (“must”) to consult the relevant prosecuting authority (in England and Wales the Director of Public Prosecutions) but, in relation to *section 8(4)* *“to the extent that he considers it appropriate to do so”*.

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

154. The quality of the letters concerning possible prosecution continued to improve in 2009, in the sense that some reasons are now given. As much detail as possible should be given to the Home Secretary in every case as to why additional investigation, or different forms of evidence gathering, would not enable a criminal prosecution to take place. It is a given that it would be far better for prosecutions to occur, of course provided they pass the usual threshold standards for prosecution (evidential and public interest, respectively) applied in all cases by the CPS.

OFFENCES

155. *Section 9* sets out the offence of contravention of a control order. Obstruction of a constable in the exercise of *sections 7A, 7B* and *7C* is made an offence by *section 9(3A)*, added by the 2008 Act.

156. Breach of any conditions without reasonable excuse is a criminal offence punishable on indictment by imprisonment of up to 5 years, or an unlimited fine.

157. As set out in Annex 4, breach charges brought in 2009 relating to one individual are pending at the time of writing. There were few significant breaches in 2009. Since January 2007 on one occasion a sentence of 5 months' imprisonment has been passed in breach proceedings. Furthermore, an individual who is not subject to a control order was convicted and sentenced to 3 ½ years' imprisonment for assisting an individual to breach their control order. Significant breaches should be regarded as serious criminal offences.

APPEALS AND OTHER PROCEEDINGS

158. *Sections 10 and 11* provide the system of appeals against control orders, control order court decisions and derogation matters.

159. *Section 10(4), (5) and (6)*, combined with subsequent case law, make it clear that the principles applicable in non-derogating control order appeals are a development of those applicable on an application for judicial review.

160. This means that such appeals are not analogous to a criminal trial. Control order cases are civil proceedings, in the form of administrative court hearings. In relation to the reasonable suspicion limb of the relevant statutory test, the Court of Appeal's August 2006 decision in MB confirmed that *'the court must make up its own mind as to whether there are reasonable grounds for the necessary suspicion'*. In relation to the necessity limb of the test, the Court of Appeal concluded that while the court should pay 'a degree of deference' to SSHD's decisions, it should give 'intense scrutiny' to the necessity of each obligation. The Court of Appeal also made clear that *'section 3(10) can and should be 'read down' so as to require the court to consider whether the decisions of the Secretary of State in relation to the control order are flawed as at the time of the court's determination'* [rather than *were flawed* at the time the order was made by the Secretary of State].

161. *Section 12* is a largely procedural provision dealing with appeals against convictions for breach of control orders before the quashing of the order or an obligation under it. Nothing complex has arisen as yet in relation to this section.

OTHER PROVISIONS

162. *Section 15* deals with interpretation; and section 16 with necessary supplemental provisions. Neither of those sections has been the subject of any difficulty in 2009.

163. The *Schedule* to the Act, with minor amendments under the 2008 Act, mainly sets out the rule making powers. These have been exercised by the enactment of the *Civil Procedure (Amendment No 2) Rules 2005*¹⁶. These rules include the appointment and responsibilities of special advocates, and the difficult issue of hearings in the absence of the controlee and his own legal representatives; and disclosure, much debated in the courts in 2008 and 2009. The rules of court continue to work reasonably well. Case management remains firm and flexible.

¹⁶ SI 2005/656: in force 11th March 2005; also *Act of Sederunt (Rules of the Court of Session Amendment No 4)(Prevention of Terrorism Act 2005) 2005*, SSI 2005/153; and *Act of Sederunt (Rules of the Court of Session Amendment No 5)(Miscellaneous) 2005*, SSI 2005/193

DURATION OF CONTROL ORDER PROVISIONS, AND REVIEW

164. *Section 13(1)* limited the original duration of the control orders system to 12 months from the 11th March 2005, the date on which the Act was passed. Subject to certain consultation obligations set out in the section, it may be continued for a year at a time. An affirmative resolution of each House of Parliament is required before continuation can occur, save in restricted circumstances of emergency (when resolutions would be required within 40 days). The affirmative resolution procedure enables debate in both Houses of Parliament, and requires approval in both.

165. As required by *section 14(1)* the Secretary of State has reported every three months to Parliament about the exercise of the control order powers. An increasing amount of information is now being provided in those quarterly statements; it is right that all possible information should be given, subject to considerations of national security and legitimate anonymity and personal confidentiality.

166. This report is my response to my duties under *section 14(3)* and *(4)*, namely to report on "*the operation of this Act*". My next report under that obligation will appear in a year's time.

167. I have the duty under *section 14(5)(b)* of reporting on the extent (if any) to which the Secretary of State has made use of his powers to make non-derogating orders in urgent cases without the permission of the court. I am happy to report again that there were no such cases in 2009.

168. I have the additional duty, under *section 14(5)(a)*, to provide my opinion on the implications for the “*operation of this Act*” of any proposal made by the Secretary of State for the amendment of the law relating to terrorism. There are no material proposals outstanding at the time of writing.

ADDRESSES FOR COMMENTS AND REPRESENTATIONS

169. Any comments or representations about this report or the review process should be sent by email to carlilea@parliament.uk or in hard copy to Lord Carlile Q. C. , House of Lords, London SW1A 0PW.

Alex Carlile

Lord Carlile of Berriew Q. C.

February 2010



Home Office

HOME SECRETARY

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

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

10 SEP 2009

Dear Alex,

IMPACT OF HOUSE OF LORDS JUDGMENT OF 10 JUNE 2009 ON CONTROL ORDERS

I am writing to ask if, in your forthcoming report on the operation of control orders legislation in 2009, you could specifically consider whether the House of Lords judgment on 10 June 2009 in *AF & Others* affects your view that control orders remain a largely effective, justifiable and proportional safety valve for the proper protection of civil society.

The Government has consistently assessed that control orders are the best available disruptive tool for managing the risk posed by the small number of suspected terrorists whom we can neither prosecute nor deport. The *AF & Others* judgment requires us to assess whether that conclusion remains valid.

The Government has reviewed all current control orders in the light of the judgment. It is clear that not all control orders will be adversely affected by it. For example, in *Secretary of State for the Home Department v. AT and AW* [2009] EWHC 512 (Admin), the High Court has already held that the test in the European Court of Human Rights judgment in *A & Others*, which has been replicated in the House of Lords judgment on control orders, would be met in AT's case. But the Government recognises that the judgment will require a greater degree of disclosure to be made in other control order cases.

In those cases, the Government is engaging with the special advocates to address this requirement to the timescales required by the High Court proceedings relating to the cases. Nonetheless, the Government's initial assessment is that the regime remains viable, and that there a number of strong reasons for maintaining it. This assessment is of course tentative, pending the development of case law through High Court reviews of individual control orders over the coming months.

To a similar timescale as your annual report, the Government will be publishing as a Command Paper a memorandum for the Home Affairs Select Committee on the Prevention of Terrorism Act 2005. This forms part of the Government's commitment to introduce a new mechanism for post-legislative scrutiny of legislation that received Royal Assent from 2005 onwards. The memorandum provides an opportunity for the Government to undertake a preliminary assessment of the impact of *AF & Others*. We will of course keep you informed of developments in this work.

However, this is a significant enough issue that it merits independent examination by you in your role as independent reviewer of counter-terrorism legislation, as well as by the Government. I have no doubt that you intended to cover *AF & Others* in your report in any case, but the continuing contentiousness of control orders makes it desirable to ask you to address the specific question outlined above. As always, your views will inform both the Government's consideration of whether to renew the powers in the 2005 Act and, if the Government does decide to renew the powers, the consequent Parliamentary renewal debates.

Your assessment will inevitably be limited by the extent to which ongoing litigation in the High Court has yet provided a meaningful indication of the likely practical impact of *AF & Others*. It seems plausible that the autumn judicial term will provide enough developments for you to come at least to some tentative conclusions. But I accept that at worst case your conclusion might be that we need more time before we can draw any firm conclusions.

Your sincerely
Alan

ALAN JOHNSON

CURRENT CASES (AS OF 10 DECEMBER 2009 – 12 CASES)

	Electronic TAG	Residence / Curfew	Tel reporting	Visitors	Pre-arranged meeting	Prohibited associates	Permit police entry	24 hours powers	Comms	Specify mosque	Geographical area	UK Departure	Financial	Transfer of money / goods	Travel docs	Must not leave GB	Ports / rail	Daily to police station	Employment notification	No IT assistance	Religious advice etc	Academic / training	Academic / training	Coms outside people UK	Entering prohibited places	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
Case 1	X	14	X			X		X	X	X	X	X	X	X	X		X		X		X	X				
Case 2	X	8	X	X	X	X		X	X	X						X	X	X		X			X			
Case 3	X	12	X			X		X	X	X	X	X		X		X	X	X	X	X			X			
Case 4	X	12	X	X	X	X		X	X	X	X	X	X	X	X	X		X		X		X	X			
Case 5	X	8	X			X		X	X	X	X	X	X	X	X	X		X		X			X			
Case 6	X	16	X	X	X	X		X	X	X	X	X		X	X	X	X	X	X	X			X			
Case 7		X				X										X	X	X	X							
Case 8		X				X										X	X	X	X							
Case 9	X	12	X	X	X	X		X	X	X	X	X		X	X	X	X	X	X	X			X	X	X	
Case 10	X	12	X	X	X	X		X	X	X		X		X	X	X	X	X	X	X			X	X	X	
Case 11	X	14	X	X	X	X		X	X	X	X	X			X	X	X	X	X	X		X	X	X	X	
Case 12	X	12	X		X	X		X	X	X	X	X		X	X	X	X	X		X		X	X	X	X	
TOTAL (FOR 15 CURRENT CONTROL ORDERS)																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
TOTAL	10	12	10	6	7	12	0	10	10	10	8	9	3	8	8	12	9	12	7	10	0	4	10	4	4	

Average Length of Curfew: 12 Hours

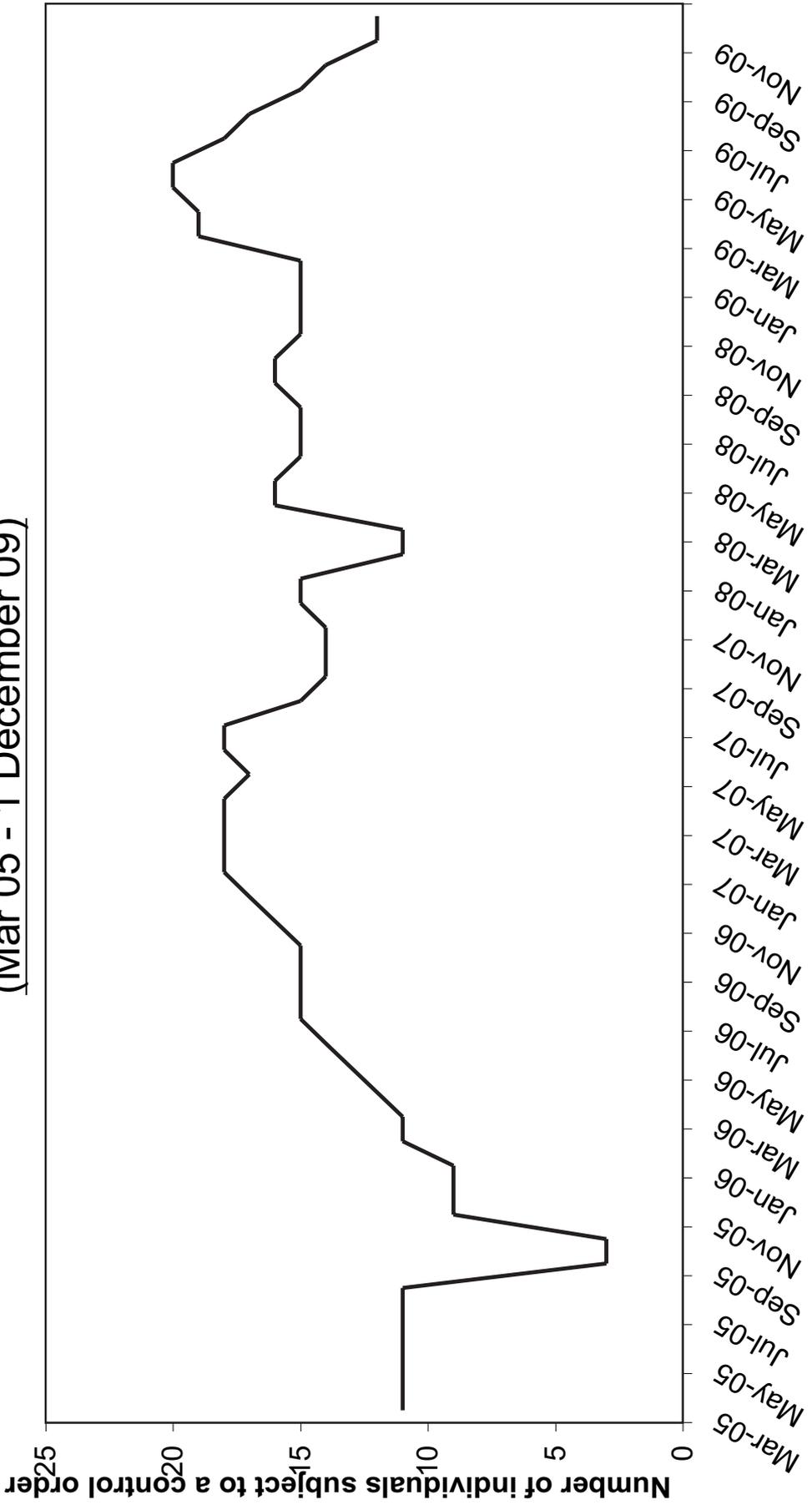
NB: a renewal or variation of a control order is listed separately to the original order, so there are more control orders than there are individuals who have been subject to a control order.

KEY:

1. ELECTRONIC TAG
2. RESIDENCE SPECIFIED/CURFEW
Numbers indicate hours of curfew.
3. REPORT DAILY (BY TELEPHONE) TO MONITORING COMPANY
4. RESTRICTED ENTRY OF VISITORS TO RESIDENCE
*indicate specified family members and legal representatives have unrestricted access to residence.
5. PRE-ARRANGED MEETINGS OUTSIDE THE RESIDENCE REQUIRE APPROVAL
6. LIST OF PROHIBITED ASSOCIATES
7. NOT TO CONTACT SPECIFIED CONTROL ORDER INDIVIDUALS
8. PERMIT ENTRY TO POLICE OFFICERS
9. FIRST 24 HOURS TO SECURE COMPLIANCE
10. RESTRICTION ON COMMUNICATIONS EQUIPMENT IN THE RESIDENCE (VARIATIONS BETWEEN COMMS OBLIGATION)
11. ATTEND SPECIFIED MOSQUE/S
12. GEOGRAPHICAL RESTRICTIONS
13. NOTIFY HOME OFFICE OF INTENDED DEPARTURE FROM UK
14. FINANCIAL OBLIGATIONS - HOLD ONLY ONE ACCOUNT
15. PRIOR APPROVAL FOR TRANSFER OF MONEY / GOODS ABROAD (APART FROM PERSONAL LETTERS)
16. SURRENDER TRAVEL DOCUMENTS
17. MUST NOT LEAVE THE GB
18. PROHIBITION FROM ENTERING PORT/RAILWAY

19. REPORT DAILY TO SPECIFIED POLICE STATION
20. NOTIFY HOME OFFICE OF EMPLOYMENT
21. MUST NOT PROVIDE IT RELATED TECHNICAL ADVICE/ ASSISTANCE
22. NOT TO LEAD PRAYERS IN MOSQUE/ OR ANYWHERE EXCEPT FOR OWN RESIDENCE OR SAY, WRITE OR PUBLISH ANYTHING THAT WOULD GLORIFY, ENCOURAGE, INDUCE OR ASSENT AN ACT OF VIOLENCE
23. PRIOR APPROVAL FOR ACADEMIC STUDY AND TRAINING
24. CONTACTING INDIVIDUALS OUTSIDE THE UK REQUIRES PRIOR HOME OFFICE APPROVAL
25. NOT TO ENTER PLACES THAT MAINLY PROVIDE INTERNET ACCESS, MONEY EXCHANGE, COMPUTERS

Number of individuals subject to a control order
(Mar 05 - 1 December 09)



ANNEX 4: BREACH CHARGES SINCE JANUARY 2009

Cases	Obligation(s) breached	Charge(s)	Date of arrest	Date of charge	Status at present
Case A	Curfew; reporting to monitoring company, tampering with electronic monitoring equipment and entering prohibited premises.	Contravening his control order obligations.	9 December 2009	10 December 2009	Remanded to prison on 11 December 2009. No date yet fixed for trial.

ANNEX 5

PREVENTION OF TERRORISM ACT 2005, SECTION 2

SCHEDULE

THIS SCHEDULE SETS OUT THE OBLIGATIONS IMPOSED ON:

XXXX

OBLIGATIONS

- 1) You shall permit yourself to be fitted with and shall thereafter at all times wear an electronic monitoring tag (“the tag”). You must not damage or tamper with the tag, the tag monitoring equipment and/or the telephone provided by the monitoring company (including the associated line).
- 2.1) You shall reside at XXXX (“the residence”) and shall remain in the residence at all times save for a period of 12 hours between 08.30 and 20.30 or as specified in the directions given in writing referred to at obligation (8.1) below. “Residence”, in the case of a flat, encompasses only that flat and any private outside garden associated with it but, in particular, does not include any communal area either inside or outside to which any person not within the residence would have unrestricted access. “Residence”, in the case of a house, encompasses only the house and any private outside garden associated with it which can be accessed without passing through any communal area to which any person not within the residence would have unrestricted access.
- 2.2) In order to secure compliance with obligation (2.1) you shall comply with directions given in writing, by a police officer or other person authorised by the Secretary of State, relating to any occupancy rules associated with the residence.
- 3) Each day, you must report to the monitoring company (as notified to you) via the telephone provided by the monitoring company:
 - (i) on the first occasion you leave the residence after a curfew period has ended; and
 - (ii) on the last occasion you return to it before a curfew period begins.

You are permitted to use the telephone/s provided by the monitoring company only for the purposes of complying with this obligation or as directed by the Home Office.

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

XXXX

- 5.1) You shall not permit more than one visitor to enter the residence while you are in the residence. For the purposes of this obligation the following individuals are not classified as visitors:

- (a) your wife and children;
- (b) your nominated legal representative as notified to the Home Office;
- (c) members of the emergency services or healthcare or social work professionals who are operating in their professional capacity;
- (d) any person aged 10 or under; and
- (e) any person required to be given access to the property under the occupancy agreement and/or for the maintenance of the water, electricity, gas and/or telephone supply who are operating in their professional capacity.

- 5.2) Individuals listed under obligation (4) may not enter the residence at any time.

- 6) You shall not, outside of the residence:

- (a) meet any person by prior arrangement, other than:
 - (i) a person referred to in obligation (5.1)(a) to (d) above;
 - (ii) for health or welfare purposes at an establishment on a list provided to and agreed by the Home Office before your first visit;
 - (iii) for academic or training purposes at an establishment notified and agreed by the Home Office before your first attendance in accordance with obligation (16) below;
 - (iv) for employment purposes at a place of employment notified and agreed by the Home Office before your first visit in accordance with obligation (17) below; or
- (b) attend any pre-arranged meetings or gatherings (other than attending but not leading, prayers at a mosque),

save with the prior agreement of the Home Office. In relation to the proposed meeting/s, you must supply in writing to the Home Office the time/s, date/s and full address/es of the proposed meeting/s. The Home Office may request further details such as full name/s; date/s of birth; and/or photographic evidence of attendees at the meeting/s. The Home Office will notify you in writing if further details are required.

For the avoidance of doubt, a meeting shall be deemed to take place outside of the residence if one or more parties to it are outside of the residence.

- 7.1) You must permit entry to your residence and/or any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, to police officers, on production of identification, at any time to verify your presence at the residence and/or to ensure that you can comply and are complying with the obligations imposed by this control order. Such monitoring may include but is not limited to:
- (a) a search of the residence and/or a search of any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in;
 - (b) removal of any item to ensure that it does not breach the obligations imposed by this control order;
 - (c) inspection/modification or removal for inspection/modification of any article to ensure that it does not breach the obligations imposed by this control order; and
 - (d) the taking of your photograph.
- 7.2) You must, within seven days of notification of the imposition of this obligation, identify to the Home Office any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, other than your residence as stated in obligation (2). If you subsequently obtain ownership, control, or any other interest in any building, land vehicle or other place in the United Kingdom after the notification of the imposition of this obligation you must inform the Home Office of any such building, land, vehicle or other place within 2 days of your obtaining any such ownership, control or other interest.
- 7.3) You must permit entry to your residence to police officers and/or persons authorised by the Secretary of State and/or persons from the monitoring company, on production of identification, at any time permitting the installation of such equipment in your residence as may be considered necessary to ensure compliance with the obligations imposed by this control order.

8.1) In order to secure compliance with the obligations imposed by the control order, you shall comply with such other prohibitions or restrictions on your movement as may be required by directions given in writing at the time of service of the control order or a modification thereof by a police officer or other person authorised by the Secretary of State. Such prohibitions or restrictions shall cease to be effective 24 hours after the giving of such directions, or on earlier direction.

9.1) Subject to obligations (9.2) to (9.5), you shall not (whether directly or indirectly) use, have, acquire or keep (whether in or outside the residence) or bring or permit into the residence the following without the prior permission of the Home Office:

- (a) any equipment capable of connecting to the internet;
- (b) any computer/s or component/s thereof with the exception of one desktop computer in the residence which must not be capable of connecting to the internet;
- (c) any equipment and/or item/s that could be used to store digital data;
- (d) any encryption software that is new and/or additional to the encryption software intrinsic to your permitted computer's operating system;
- (e) any fixed line telephone/s and/or mobile telephone/s with the exception of one fixed line telephone in the residence and the dedicated line maintained by monitoring company;
- (f) SIM card/s;
- (g) fax machine/s; and
- (h) pager/s.

9.2) You may permit a third party to bring the following device(s) into your residence whilst you are in the residence if the device(s) are switched off (where applicable) and not used at any time whilst you are in the residence and the third party agrees to make the device(s) available for inspection for the purposes of obligation (9.3) below:

- a) mobile telephone/s;
- b) any equipment and/or item/s that could be used to store digital data;
- c) SIM card/s;
- d) portable gaming device/s; and
- e) pager/s.

- 9.3) In order to ensure your compliance with obligations (9.1) and (9.2), any of the devices/ equipment referred to in obligations (9.1) and (9.2) must on request be delivered up to a person authorised by the Secretary of State for inspection (which may require removal) to ensure that it complies with the conditions in obligations (9.1) and (9.2).
- 9.4) The prohibition against permitting the equipment / device(s) referred to at obligation (9.1) does not apply to such equipment / device(s) belonging to police officers; employees of the electronic monitoring company; any person required to be given access to the property under the occupancy agreement and/or for the maintenance of the water, electricity, gas and/or telephone supply who are operating in their professional capacity; or members of the emergency services or healthcare or social work professionals who are operating in their professional capacity.
- 9.5) You are not permitted to make, directly or indirectly, any changes to the contract, number and/or telephone services associated with the one permitted fixed telephone line in your residence referred to in obligation (9.1)(e) unless you have notified the Home Office in writing at least 7 days prior to any proposed change and you have received written approval to undertake the change.
- 10.1) Subject to obligation (10.2), you may attend any mosque of your choosing from those within your permitted area.
- 10.2) Before your first visit to any mosque that you wish to attend, you must obtain approval from the Home Office. The prior approval of the Home Office shall not be required for subsequent visits to that mosque.
- 11) You may not at any time leave the area marked on the attached map at Annex A (the width of the line itself is within the permitted area) without the consent of the Home Office. This area is bordered by XXXX
- 12) You shall not send any documents or goods to a destination outside the UK (whether yourself or through an intermediary) without the prior agreement of the Home Office. For the purposes of this obligation, documents should not be taken to include personal letters written by you.
- 13.1) Within 24 hours of service of this order, you must:
- (a) surrender any passport(s), identity card(s) or any other travel document (other than any passport(s) issued by the xxxx authorities) to a police officer or person authorised by the Secretary of State; and

- (b) notify the Home Office of any passport(s) you have in your possession or which is available for your use.

13.2) Furthermore, prior notification must be given to the Home Office before you may apply for or have in your possession any passport(s), identity card(s), travel document(s) or travel ticket(s) which would enable you to travel outside the UK.

14) You must notify the Home Office of any intended departure from the UK and notify it of the port of embarkation and disembarkation at least 24 hours prior to your intended departure time. You must also notify the Home Office if and when you intend to return to the UK at least 24 hours prior to your intended arrival time and report to the Home Office immediately upon arrival that you are or were subject to this control order. The requirement to report on arrival shall continue to apply whether or not this control order remains in force at the time of your return to the UK.

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

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

without prior permission from the Home Office.

For the avoidance of doubt, any part of an airport, seaport or railway station which provides access to an international rail service referred to in obligations (15)(a) and (b) includes but is not limited to:

- (i) any car park;
- (ii) arrival / departure lounge;
- (iii) collection / drop off point; and/or
- (iv) any building or place

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

16.1) You must not commence any training course or academic study course provided by a third party, unless and until:

- a) you have provided the Home Office with the following information at least 14 days prior to the commencement of the training course or academic study course:

- i) the name and address of your training course provider or academic study course provider;
 - ii) the nature and location of your training course or academic study course;
 - iii) if known, the date on which you expect the training course or academic study course to commence and the timing of the training course or academic study course;
- b) you have received approval in writing from the Home Office for the training course or academic study course.

16.2) Where any approval referred to in obligation (16.1)(b) is subject to conditions, you must comply with these conditions.

16.3) Where you are already undertaking a training course or academic study course provided by a third party, you must provide the Home Office within 7 days of notification of the imposition of this obligation with the details required under obligation (16.1)(a). You must immediately cease your involvement in the training course or academic study course if you receive notification in writing from the Home Office to do so.

17.1) Within 7 days of notification of the imposition of this obligation, you must provide the Home Office with confirmation that you are not employed, or the following details of any current employment:

- (a) the name and address of your employer; and
- (b) the nature and location of your work.

17.2) The Home Office will notify you in writing of areas of employment which are referred to in this obligation as “notified areas of employment”. You must not commence any employment in a notified area of employment unless and until:

- (a) you have provided the Home Office with:
 - (i) the name and address of your intended employer;
 - (ii) the nature and location of your work; and
 - (iii) if known, the date on which you expect the employment to commence;
- and

- (b) you have received approval in writing from the Home Office for the new employment.
- 17.3) Where you are already employed in a “notified area”, you must cease employment immediately if you receive notification in writing from the Home Office to do so.
- 17.4) Where any approval referred to in obligation (17.2)(b) above is subject to conditions, you must comply with those conditions.
- 17.5) In relation to any new employment which is not in a “notified area of employment” that you have applied for or have commenced since the notification of the imposition of this obligation, you must provide the Home Office with:
- (i) the name and address of your new or intended employer; and
 - (ii) the nature and location of your work
- within 7 days of your new employment commencing or, if earlier, within 7 days of your applying for the new employment.
- 17.6) You must notify the Home Office if any of the details provided under obligations (17.1) and (17.5) change, within 3 days of the change.
- 17.7) You must notify the Home Office if you cease to be employed within 3 days of ceasing to be employed

ANNEX 6

PREVENTION OF TERRORISM ACT 2005, SECTION 2

SCHEDULE

THIS SCHEDULE SETS OUT THE OBLIGATIONS IMPOSED ON:

XXXX

OBLIGATIONS

The following obligations form part of the Control Order and are imposed on you by virtue of section 1(3) of the Prevention of Terrorism Act 2005.

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

- 1) You shall permit yourself to be fitted with and shall thereafter at all times wear an electronic monitoring tag (“the tag”). You must not damage or tamper with the tag, the tag monitoring equipment, and/or the telephone provided by the monitoring company (including the associated line).
- 2) You shall reside at XXXX (“the residence”) or at a property notified to you in writing by the Home Office and shall remain in the residence at all times save for a period of 12 hours between 09:00 and 21:00 or as specified in the directions given in writing referred to at obligation (7) below. “Residence”, in the case of a flat, encompasses only that flat and, in particular, does not include any communal area either inside or outside to which any person not within the residence would have unrestricted access. “Residence”, in the case of a house, encompasses only the house and does not include any outside space associated with it.
- 3.1) Each day, you must report to the monitoring company (as notified to you) via the telephone provided by the monitoring company:
 - (a) on the first occasion you leave the residence after a curfew period has ended;
and
 - (b) on the last occasion you return to it before a curfew period begins.

You are permitted to use the telephones provided by the monitoring company only for the purposes of complying with this obligation or as directed by the Home Office.

- 3.2) You must report to a designated police station (the location of which shall be notified to you at the imposition of this order) each day at a time and in a manner to be notified to you in writing by the police. The Home Office will notify you in writing if the time, day or location of the designated police station that you are required to report to changes.
- 4.1) Subject to obligation (4.3) you shall not permit any person to enter or remain at the residence while you are in the residence, save for:
- (a) your parents;
 - (b) your nominated legal representative as notified to the Home Office;
 - (c) members of the emergency services or healthcare or social work professionals who are operating in their professional capacity;
 - (d) any person aged 10 or under; and
 - (e) any person required to be given access to the property under for the maintenance of the water, electricity, gas and/or telephone supply who are operating in their professional capacity.
- 4.2) Individuals listed under obligation (12.1) may not enter the residence at any time.
- 4.3) You shall not permit any other individual to enter or remain in the residence while you are in the residence except with the prior agreement of the Home Office. In relation to those other individuals, you must supply the name, address, date of birth and photographic identification of the individual. The prior agreement of the Home Office shall not be required for subsequent visits by an agreed individual, but this does not prevent the Home Office withdrawing that agreement at any time and/or requiring the provision of further/updated photographic identity/photograph and/or details of visitors that have already been approved.
- 5) You shall not, outside of the residence:
- (a) meet any person by prior arrangement, other than:
 - (i) a person referred to in obligation (4.1) (a) to (c) above;
 - (ii) for health or welfare purposes at an establishment on a list provided to and agreed by the Home Office before your first visit;
 - (iii) for academic or training purposes at an establishment notified and agreed by the Home Office before your first attendance in accordance with obligation (15) below;

(iv) for employment purposes at a place of employment notified and agreed by the Home Office before your first visit in accordance with obligation (16) below; or

(b) attend any pre-arranged meetings or gatherings (other than attending prayers at a mosque),

save with the prior agreement of the Home Office. In relation to the proposed meeting/s, you must supply in writing to the Home Office the time/s, date/s and full address/es of the proposed meeting/s. The Home Office may request further details such as full name/s; date/s of birth; and/or photographic evidence of attendees at the meeting/s. The Home Office will notify you in writing if further details are required.

For the avoidance of doubt, a meeting shall be deemed to take place outside of the residence if one or more parties to it are outside of the residence.

6.1) You must permit entry to your residence and/or any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, to police officers, on production of identification, at any time to verify your presence at the residence and/or to ensure that you can comply and are complying with the obligations imposed by this control order. Such monitoring may include but is not limited to:

(a) a search of the residence whilst you are in the residence and/or a search of any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in;

(b) removal of any item to ensure that it does not breach the obligations imposed by this control order;

(c) inspection/modification or removal for inspection/modification of any article to ensure that it does not breach the obligations imposed by this control order; and

(d) the taking of your photograph.

6.2) You must, within seven days of notification of the imposition of this obligation, identify to the Home Office any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, other than your residence as stated in obligation (2). If you subsequently obtain ownership, control, or any other interest in any building, land, vehicle or other place in the United Kingdom after the notification of the imposition of this obligation you must inform

the Home Office of any such building, land, vehicle or other place within 3 days of your obtaining any such ownership, control or other interest in.

- 6.3) You must permit entry to your residence to police officers and/or persons authorised by the Secretary of State and/or persons from the monitoring company, on production of identification, at any time permitting the installation of such equipment in your residence as may be considered necessary to ensure compliance with the obligations imposed by this control order.
- 7) In order to secure compliance with the obligations imposed by the control order, you shall comply with such other prohibitions or restrictions on your movement as may be required by directions given in writing at the time of service of the control order or a modification thereof by a police officer or other person authorised by the Secretary of State. Such prohibitions or restrictions shall cease to be effective 24 hours after the giving of the directions, or on earlier direction.
- 8.1) Subject to obligations (8.2) and (8.4), you shall not (whether directly or indirectly) use, have, acquire, procure, buy, sell, provide or keep (whether in or outside the residence) or bring or permit into the residence the following:
 - (a) any equipment capable of connecting to the internet;
 - (b) any computer/s or component/s thereof;
 - (c) any equipment and/or item/s that could be used to store digital data;
 - (d) any encryption software;
 - (e) any fixed line and/or mobile telephone/s with the exception of one fixed telephone line in the residence, the dedicated line maintained by the monitoring company and one mobile telephone that is not capable of connecting to the internet, and one SIM card;
 - (f) SIM card/s, save for that referred to in obligation (8.1)(e) above;
 - (g) fax machine/s;
 - (h) portable gaming device/s; and
 - (i) pager/s.
- 8.2) You may permit a third party to bring the following device(s) into your residence whilst you are in the residence if the device(s) are switched off (where applicable) and not used at any time whilst you are in the residence and the third party agrees to make the device(s) available for inspection for the purposes of obligation (8.3) below:

- (a) mobile telephone/s;
- (b) any equipment and/or item/s that could be used to store digital data;
- (c) SIM card/s
- (d) portable gaming device/s; and
- (e) pager/s.

For the avoidance of doubt, obligation (8.2) only applies to any third party that you permit into the residence, and does not apply to your parents who permanently reside at the residence.

- 8.3) In order to ensure your compliance with obligations (8.1) and (8.2), any of the devices/equipment referred to in obligations (8.1) and (8.2) must on request be delivered up to a person authorised by the Secretary of State for inspection (which may require removal) to ensure that it complies with the conditions in obligations (8.1) and (8.2).
- 8.4) The prohibition against permitting the device(s) mentioned at (8.1) does not apply to such device(s) belonging to your parents who permanently reside at the residence; police officers; employees of the electronic monitoring company; any person required to be given access to the property for the maintenance of the water, electricity, gas and/or telephone supply who are operating in their professional capacity; or members of the emergency services or healthcare or social work professionals who are operating in their professional capacity.
- 8.5) To ensure compliance with obligation (8.1) you must disclose to your designated police officer or person/s authorised by the Secretary of State:
 - (a) the number, make and model of the mobile telephone and/ or the number of the SIM card permitted under obligation (8.1)(e) in your possession, custody or control, immediately upon the service of this notification;
 - (b) the number, make and model of any replacement mobile telephone and/ or the number of any replacement SIM card permitted under obligation (8.1)(e) that comes into your possession, custody or control as soon as reasonably practicable and in any event within 12 hours of it coming into your possession.
- 9) You shall not maintain or use more than one account (“account” includes accounts in which you have an interest or over which you have an element of control and includes debit and credit cards (including those issued by stores), in which you have an interest or over which you have an element of control). Such account must

be held with a bank or other approved financial institution within the UK. The following information must be provided to the Secretary of State:

- (a) details of all accounts held at the time of service of this control order, including any bank account in which you have an interest, or over which you have any element of control, within 2 days of such service;
 - (b) closing statements relating to any accounts additional to the one permitted account, within 14 days of service of this control order;
 - (c) details of a permitted account opened subsequent to the service of this control order, within 2 days of its opening; and
 - (d) statements of the permitted account on a monthly basis, to be provided within 7 days of their receipt.
- 10) You shall not transfer any money, or arrange for others to transfer, any money, or send any documents or goods to a destination outside the UK (whether yourself or through an intermediary) without the prior agreement of the Home Office.
- 11.1) Immediately following service of this order, you must surrender your passport/s, identity card or any other travel document to a police officer or persons authorised by the Secretary of State upon service of the control order.
- 11.2) You shall not apply for or have in your possession or available for your use any passport, identity card, travel document(s) or travel ticket which would enable you to travel outside Great Britain.
- 11.3) You must not leave Great Britain.
- 12.1) You shall not associate or be party to any communications from or with, directly or indirectly at any time or in any way with the following individual:
- XXXX
- 12.2) You shall not communicate, or be party to any communication from or with, directly or indirectly, at any time or in any way with individuals who are outside of the United Kingdom without the prior agreement of the Home Office. In relation to these individuals, you must supply the name, address and date of birth of the individual with whom you wish to communicate; the proposed mode of communication and details associated with that mode of communication; and the proposed date of the communication.
- 12.3) Where any agreement referred to in obligation (12.2) above is subject to conditions, you must comply with those conditions.

12.4) The prior agreement of the Home Office shall not be required for subsequent communication by the same mode of communication to the same details associated with that mode of communication to the same specified individual, but this does not prevent the Home Office withdrawing that agreement at any time.

13) You may not at any time leave the area marked on the map (the width of the line itself is within the permitted area) without the consent of the Home Office. This area is bordered by: XXXX.

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

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

without prior permission from the Home Office.

For the avoidance of doubt, any part of an airport, seaport or railway station which provides access to an international rail service referred to in obligations (14) (a) and (b) includes but is not limited to:

- (i) any car park;
- (ii) arrival / departure lounge;
- (iii) collection / drop off point; and/or
- (iv) any building or place

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

15.1) You must not commence any training course or academic study course provided by a third party, unless and until:

- (a) you have provided the Home Office with the following information at least 14 days prior to the commencement of the training course or academic study course:
 - i) the name and address of your training course provider or academic study course provider;

- ii) the nature and location of your training course or academic study course;

- iii) if known, the date on which you expect the training course or academic study course to commence and the timing of the training course or academic study course;

- (b) you have received approval in writing from the Home Office for the training course or academic study course.

15.2) Where any approval referred to in obligation (15.1(b)) is subject to conditions, you must comply with these conditions.

15.3) Where you are already undertaking a training course or academic study course provided by a third party, you must provide the Home Office within 7 days of notification of the imposition of this obligation with the details required under obligation (15.1 (a)). You must immediately cease your involvement in the training course or academic study course if you receive notification in writing from the Home Office to do so.

16.1) Within 7 days of notification of the imposition of this obligation, you must provide the Home Office with confirmation that you are not employed, or the following details of any current employment:

- (a) the name and address of your employer; and

- (b) the nature and location of your work.

16.2) The Home Office will notify you in writing of areas of employment which are referred to in this obligation as “notified areas of employment”. You must not commence any employment in a notified area of employment unless and until:

- (a) you have provided the Home Office with:

- (i) the name and address of your intended employer;

- (ii) the nature and location of your work; and

- (iii) if known, the date on which you expect the employment to commence;

and

- (b) you have received approval in writing from the Home Office for the new employment.

- 16.3) Where you are already employed in a “notified area”, you must cease employment immediately if you receive notification in writing from the Home Office to do so.
- 16.4) Where any approval referred to in obligation (16.2(b)) above is subject to conditions, you must comply with those conditions.
- 16.5) In relation to any new employment which is not in a “notified area of employment” that you have applied for or have commenced since the notification of the imposition of this obligation, you must provide the Home Office with:
- (a) the name and address of your new or intended employer; and
 - (b) the nature and location of your work
- within 7 days of your new employment commencing or, if earlier, within 7 days of your applying for the new employment.
- 16.6) You must notify the Home Office if you cease to be employed within 2 days of ceasing to be employed.
- 17) You are prohibited from entering or being present at any of the following:
- (a) any shop or other premises which carries on any business that exclusively or mainly provides currency exchange and/or money transfer facilities whether domestic or international; and
 - (b) any shop or other premises which carries on any business that exclusively or mainly acts as a travel agency
- without the prior permission of the Home Office.

ANNEX 7

PREVENTION OF TERRORISM ACT 2005, SECTION 2

SCHEDULE

THIS SCHEDULE SETS OUT THE OBLIGATIONS IMPOSED ON: XXXX

OBLIGATIONS

The following obligations form part of the Control Order and are imposed on you by virtue of section 1(3) of the Prevention of Terrorism Act 2005.

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

- 1) You shall permit yourself to be fitted with and shall thereafter at all times wear an electronic monitoring tag (“the tag”). You must not damage or tamper with the tag, the tag monitoring equipment, and/or the telephone provided by the monitoring company (including the associated line).
- 2.1) You shall permit yourself to be taken to and thereafter reside at XXXX (“the residence”) and shall remain in the residence at all times save for a period of 8 hours between 09:00 and 17:00 or as specified in the directions given in writing referred to at obligation (8) below. “Residence”, in the case of a flat, encompasses only that flat and any private outside garden associated with it but, in particular, does not include any communal area either inside or outside to which any person not within the residence would have unrestricted access. “Residence”, in the case of a house, encompasses only the house and any private outside garden associated with it which can be accessed without passing through any communal area to which any person not within the residence would have unrestricted access.
- 2.2) In order to secure compliance with obligation (2.1) you shall comply with directions given in writing, by a police officer or other person authorised by the Secretary of State, relating to any occupancy rules associated with the residence.
- 3) Each day, you must report to the monitoring company (as notified to you) via the telephone provided by the monitoring company:
 - (i) on the first occasion you leave the residence after a curfew period has ended; and
 - (ii) on the last occasion you return to it before a curfew period begins.

You are permitted to use the telephone provided by the monitoring company only for the purposes of complying with this obligation or as directed by the Home Office.

- 4.1) Subject to obligation (4.3), you shall not permit any person to enter the residence, save for:
- a) your wife, XXXX;
 - b) your nominated legal representative as notified to the Home Office;
 - c) members of the emergency services or healthcare or social work professionals who are operating in their professional capacity;
 - d) any person aged 10 or under; and
 - e) any person required to be given access to the property under the occupancy rules and/or for the maintenance of the water, electricity, gas and/or telephone supply who are operating in their professional capacity.
- 4.2) Individuals listed under obligation (6) may not enter the residence at any time.
- 4.3) You shall not permit any other individual to enter the residence except with the prior agreement of the Home Office. In relation to those other individuals, you must supply the name, address, date of birth and photographic identification of the individual. The prior agreement of the Home Office shall not be required for subsequent visits by an agreed individual, but this does not prevent the Home Office withdrawing that agreement at any time and/ or requesting further/ updated photographic identity/photograph and/ or updated name and address details of visitors that have already been approved.
- 5) You shall not, outside of the residence:
- (a) meet any person by prior arrangement, other than:
 - (i) a person referred to in obligation (4.1)(a) to (d) above;
 - (ii) for health or welfare purposes at an establishment on a list provided to and agreed by the Home Office before your first visit;
 - (iii) for academic or training purposes at an establishment notified and agreed by the Home Office before your first attendance in accordance with obligation (18) below;

(iv) for employment purposes at a place of employment notified and agreed by the Home Office before your first visit in accordance with obligation (19) below; or

(b) attend any pre-arranged meetings or gatherings (other than attending prayers at your permitted mosque),

save with the prior agreement of the Home Office. For the avoidance of doubt, a meeting shall be deemed to take place outside of the residence if one or more parties to it are outside of the residence.

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

XXXX

7.1) You must permit entry to your residence and/or any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, to police officers, on production of identification, at any time to verify your presence at the residence and/or to ensure that you can comply and are complying with the obligations imposed by this control order. The monitoring may include:

a) a search of the residence and/or a search of any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in;

b) removal of any item to ensure that it does not breach the obligations imposed by this control order;

c) inspection/modification or removal for inspection/modification of any article to ensure that it does not breach the obligations imposed by this control order;

d) permitting the installation of such equipment in the residence as may be considered necessary to ensure compliance with the obligations imposed by this control order; and

e) the taking of your photograph.

7.2) You must, within seven days of notification of the imposition of this obligation, identify to the Home Office any building, land, vehicle, or other place in the United Kingdom that you own, control, or have any other interest in, other than your residence as stated in obligation (2). If you subsequently obtain ownership, control, or any other interest in any building, land, vehicle or other place in the United

Kingdom after the notification of the imposition of this obligation you must inform the Home Office of any such building, land, vehicle or other place within 3 days of your obtaining any such ownership, control or other interest in.

- 7.3) You must permit entry to your residence to persons authorised by the Secretary of State and/or persons from the monitoring company, on production of identification, at any time permitting the installation of such equipment in your residence as may be considered necessary to ensure compliance with the obligations imposed by this control order.
- 8) In order to secure compliance with the obligations imposed by the control order, you shall comply with such other prohibitions or restrictions on your movement as may be required by directions given in writing at the time of service of the control order or a modification thereof by a police officer or other person authorised by the Secretary of State. Such prohibitions or restrictions shall cease to be effective 24 hours after the giving of the directions, or on earlier direction.
- 9.1) Subject to obligations (9.2), (9.4), (9.5) and (9.6), you shall not (whether directly or indirectly) use, have, acquire or keep (whether in or outside the residence) or bring or permit into the residence the following:
 - a) any equipment capable of connecting to the internet;
 - b) any computer/s or component/s thereof;
 - c) any equipment and/or item/s that could be used to store digital data;
 - d) any encryption software;
 - e) any fixed line and/or mobile telephone/s with the exception of one fixed telephone line in the residence and the dedicated line maintained by the monitoring company;
 - f) SIM card/s;
 - g) fax machine/s; and
 - h) pager/s.
- 9.2) You may permit a third party to bring the following device(s) into your residence whilst you are in the residence if the device(s) are switched off (where applicable) and not used at any time whilst you are in the residence and the third party agrees to make the device(s) available for inspection for the purposes of obligation (9.3) below:
 - a) mobile telephone/s;

- b) any equipment and/or item/s that could be used to store digital data;
 - c) SIM card/s;
 - d) portable gaming device/s; and
 - e) pager/s.
- 9.3) In order to ensure your compliance with obligations (9.1) and (9.2), any of the devices / equipment referred to in obligations (9.1) and (9.2) must on request be delivered up to a person authorised by the Secretary of State for inspection (which may require removal) to ensure that it complies with the conditions in obligations (9.1) and (9.2).
- 9.4) The prohibition against permitting the devices / equipment mentioned at (9.1) does not apply to such devices / equipment belonging to police officers; employees of the electronic monitoring company; persons authorised by the Secretary of State; any person required to be given access to the property under the occupancy rules and/or for the maintenance of the water, electricity, gas and /or telephone supply who are operating in their professional capacity; or members of the emergency services or healthcare or social work professionals who are operating in their professional capacity.
- 9.5) You are not permitted to make, directly or indirectly, any changes to the contract, number and/or telephone services associated with the one permitted fixed telephone line in your residence referred to in obligation (9.1)(e) unless you have notified the Home Office in writing at least 7 days prior to any proposed change and you have written approval to undertake the change.
- 9.6) The prohibition against permitting the device(s) / equipment referred to at obligation (9.1) does not apply to mobile telephone/s and associated SIM card/s belonging to your legal representatives who are operating in their professional capacity.
- 10.1) Subject to obligation (10.2), you may attend one mosque of your choosing from those within your permitted area.
- 10.2) Before your first visit to any mosque that you wish to attend, you must obtain approval from the Home Office. The prior approval of the Home Office shall not be required for subsequent visits to that mosque.
- 11) You may not at any time leave the area marked on the attached map at Annex A (the width of the line itself is within the permitted area) without the consent of the Home Office. This area is bordered by:

XXXX

- 12) You shall not maintain or use more than one account (“account” includes accounts in which you have an interest or over which you have an element of control and includes debit and credit cards (including those issued by stores) in which you have an interest or over which you have an element of control). Such account must be held with a bank or other approved financial institution within the UK. The following information must be provided to the Secretary of State:
 - a) statements of the permitted account on a quarterly basis, to be provided within 7 days of their receipt.
- 13) You shall not transfer any money, or arrange for others to transfer, any money, or send any documents or goods to a destination outside the UK (whether yourself or through an intermediary) without the prior agreement of the Home Office. For the purposes of this obligation, documents should not be taken to include personal letters written by you.
- 14.1) Within 24 hours of service of this order, you must surrender your passport/s, identity card or any other travel document to a police officer or persons authorised by the Secretary of State upon service of the control order.
- 14.2) You shall not apply for or have in your possession or available for your use any passport, identity card, travel document(s) or travel ticket which would enable you to travel outside Great Britain without prior permission from the Home Office.
- 15) You must not leave Great Britain.
- 16) You are prohibited from entering or being present at any of the following:
 - (a) any part of an airport or sea port; or
 - (b) any part of a railway station that provides access to an international rail service without prior permission from the Home Office.

For the avoidance of doubt; any part of an airport, seaport or railway station which provides access to an international rail service referred to in obligation (16)(a) and (b) includes but is not limited to:

 - (i) any car park;
 - (ii) arrival / departure lounge;
 - (iii) collection / drop off point; and/or

(iv) any building or place

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

17.1) You must report in person to a designated police station (the location of which shall be notified to you at the imposition of this control order) each day at a time and in a manner to be notified to you in writing by the police.

17.2) The Home Office will notify you in writing if the time, day or location of the designated police station that you are required to report to changes.

18.1) You must not commence any training course or academic study course provided by a third party, unless and until:

a) you have provided the Home Office with the following information at least 14 days prior to the commencement of the training course or academic study course:

i) the name and address of your training course provider or academic study course provider;

ii) the nature and location of your training course or academic study course;

iii) if known, the date on which you expect the training course or academic study course to commence and the timing of the training course or academic study course;

b) you have received approval in writing from the Home Office for the training course or academic study course.

18.2) Where any approval referred to in obligation (18.1(b)) is subject to conditions, you must comply with these conditions.

18.3) Where you are already undertaking a training course or academic study course provided by a third party, you must provide the Home Office within 7 days of notification of the imposition of this obligation with the details required under obligation (18.1(a)). You must immediately cease your involvement in the training course or academic study course if you receive notification in writing from the Home Office to do so.

19.1) The Home Office will notify you in writing of areas of employment which are referred to in this obligation as “notified areas of employment”. You must not commence any employment in a notified area of employment unless and until:

- (a) you have provided the Home Office with:
 - (i) the name and address of your intended employer;
 - (ii) the nature and location of your work; and
 - (iii) if known, the date on which you expect the employment to commence;and
- (b) you have received approval in writing from the Home Office for the new employment.

19.2) Where you are already employed in a “notified area”, you must cease employment immediately if you receive notification in writing from the Home Office to do so.

19.3) Where any approval referred to in obligation (19.1(b)) above is subject to conditions, you must comply with those conditions.

19.4) In relation to any new employment which is not in a “notified area of employment” that you have applied for or have commenced since the notification of the imposition of this obligation, you must provide the Home Office with:

- (i) the name and address of your new or intended employer; and
- (ii) the nature and location of your work

within 7 days of your new employment commencing or, if earlier, within 7 days of your applying for the new employment

19.5) You must notify the Home Office if you cease to be employed, within 3 days of ceasing to be employed.

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