

**THIRD REPORT OF THE
INDEPENDENT REVIEWER
PURSUANT TO SECTION 14(3)
OF THE PREVENTION OF
TERRORISM ACT 2005**

LORD CARLILE OF BERRIEW Q.C.

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

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BACKGROUND

1. For ease of reference this report will follow the broad format of my first two reports on this subject, published in February 2006 and 2007 respectively¹.
2. Parliament repealed the powers of detention of terrorism suspects provided by the *Anti-Terrorism, Crime and Security Act 2001, Part 4*.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 2001 Act powers permitted the detention, subject to ensuing review and appeal, of foreign nationals who were suspected of being international terrorists. The provisions were introduced following the aircraft bombing of the World Trade Center in New York on the 11th September 2001.
3. *The Prevention of Terrorism Act 2005 [PTA2005]* replaced the 2001 Act detention powers with a system of control orders. *PTA2005* came into force on Royal Assent, on the 11th March 2005. The Act remains in force having last been renewed in March 2007³.

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

² [2004] UKHL 56

³ SI 2007/706, and SI 2006/512

4. The enactment of *PTA2005* 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* has been passed⁴. It introduced some new terrorism-related offences. Of particular note are *section 1* (encouragement of terrorism), *section 2* (dissemination of terrorist publications), *section 5* (preparation of terrorist acts), and *section 6* (training for terrorism). Undoubtedly these 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.
5. 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. For brevity, such a person is described in this report as a controlee.
6. Pursuant to *section 14(3), (4) and (5)* of the *PTA2005* I have the duty of reviewing the operation of the Act, and certain other reviewing responsibilities.
7. As with all my reports as independent reviewer of terrorism legislation, I hope that this one is comprehensible to the general reader as well as those with a special interest. I welcome representations and comments: contact details are provided in paragraph 97 below.

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

8. I have received a few representations about control orders during the year - though there has been a large amount of comment about them in the printed and broadcast media. In terms of public comment, I receive far more correspondence of various kinds concerning stop and search under terrorism provisions, detention periods before charge, and activity at ports of entry.

SUMMARY OF THE POWERS

9. A good summary of the powers can be found on the Home Office website⁵. The remainder of this section reflects the information summarised there or discoverable from there.

10. There are 2 distinct species of control order - *derogating and non-derogating*. Control orders are intended to provide a combination of potential control measures. These should be matched to the circumstances of the particular case.

11. Some key statistics covering March 2005 to January 2008 relating to non-derogating control orders will be of interest -
 - The total number of individuals who have ever been made the subject of a control order is 31. (The total number of control orders made is higher as some individuals have had more than one order made against them.)

 - There are 15 control orders currently in force.

 - The total of 15 also includes 2 absconds (May 2007) whose control orders remain in force. These two orders expire in February 2008.

⁵ E.g. see <http://security.homeoffice.gov.uk/legislation/current-legislation/prevention-terrorism-act-2005/?version=4>.

- The total of 15 includes too an individual who absconded (in May 2007) but later handed himself in to the police. After being found not guilty by a jury of breaching his control order obligations he was served with a new control order (his 'old' control order had expired). In the recent (23-29 January 2008) mandatory High Court review of both of the control orders, the judge indicated that he will quash the new order (though the judgment had not yet been handed down so the order had not yet been quashed at the time of writing). The judge has not yet indicated whether he will conclude the original order was necessary and proportionate.

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

 - One individual's order was revoked in August 2007 as the assessment of the necessity of the control order changed.

 - Two individuals did not have their orders renewed (in July 2007) as the assessment of the necessity of the control orders changed.

 - A controlee absconded 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 in August 2006 before it could be served. The new order was therefore never in operation.

- The control orders of 3 individuals expired in June 2007, August 2007 and December 2007 respectively. Control orders last for 12 months and these 3 individuals had absconded in September 2006, June 2007 and January 2007.
- There have been 7 control order absconds in total.

12. Annex 1 sets out the current cases (anonymised) and obligations. There are up to 23 measures used or in contemplation to date. The longest curfew is 16 hours, and the average curfew 10 hours.

13. Annex 1 also sets out in graphical form the number of control orders since their introduction.

14. I 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 State by the minimum measures needed to ensure effective disruption and prevention of terrorist activity. I have discussed this with officials on several occasions during the year. Each control order is tailored to what are perceived to be the controls needed to protect national security, having regard to what is known about the individual and his connections, and the risks he is thought to present. The Home Secretary must normally apply to the courts to impose a control order 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 decision.

15. In emergency cases the Home Secretary may impose a provisional 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 making of the Home Secretary was obviously flawed.
16. 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.
17. 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 wishes.
18. A control order and its conditions can be challenged. There was in 2006 a fundamental but unsuccessful challenge to the compatibility of the legislation with the *European Convention on Human Rights*⁶. The case has now been determined by the House of Lords - see paragraph 60 below - and the challenge was again unsuccessful on that point.

⁶ See 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).

19. In 2007 control orders have been subject to considerable further scrutiny by the courts. These are summarised in paragraphs 58-63 below.

20. Controlees have the option of anonymity. Anonymity is probably of advantage both to the controlee and to the government. In particular, for the controlee it avoids publicity that might lead to harassment in the community where he/she lives, or that might prejudice a fair trial if criminal charges are brought later, as has occurred and may well happen with increasing frequency.

CONTROL ORDERS TO DATE

21. The current and historical position is summarised in the key statistics given in paragraph 11 above. The matrix of obligations is in Annex 1 to this report.
22. Annex 2 to this report describes charges for breaches of control orders during 2007. Annexes 3-6 contain anonymised examples of existing control orders.
23. 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.
24. It is said all too easily that the authorities have a panoply of means of enforcement of control orders, including electronic and physical surveillance.
25. All forms of surveillance involve considerable human resources. This is especially so of watching and following. A complete package of measures requires a secure place of observation, requiring willing and co-operative occupiers of nearby premises. Understandably, this may be seen as a risk as well as a major inconvenience to anybody asked to provide such premises. Observation of individuals generally requires a 24 hour presence of several officers, observing, logging, and taking images.
26. This 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. Nobody, least of all those who have to administer and enforce them, likes control orders. Other measures may be more appropriate – perhaps Anti-Social Behaviour Orders, or civil proceedings for an injunction against specified activities.

27. I share the view that control orders remain a necessity for a small number of cases, in the absence of a viable alternative for those few instances.

28. It is now clear to controlees that if they are in breach of anything other than minor aspects of conditions, the police will pursue them wherever they are situated. As changes proposed in *Clause 71* of the current *Counter-Terrorism Bill 2008* will emphasise, those knowingly giving shelter from legal obligations have a clear civic duty to facilitate compliance with the law. If they do not do so, they will have little cause for complaint if police enter their premises, even places of religious worship. In so entering the police must show full respect for the nature of the premises concerned, and do the minimum reasonably necessary to fulfil their duty. Every effort should be made to involve community leaders and avoid giving offence.

29. 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 presents a challenge.

30. 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.

CONTROL ORDER POWERS AND OBLIGATIONS

31. *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.”

32. *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.

33. *“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 to be involved in terrorism-related activity;

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.”

This provision is subject to minor amendment by *Clause 72* of the *Counter-Terrorism Bill*.

34. Section 2 sets out the basis upon which the Secretary of State may make a non-derogating control order. Section 2(1) requires that she

“(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.”

35. 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.”*

36. 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 she 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 do this in every case.

37. Much of the information is derived from intelligence. The sources and content of such intelligence in most instances demand careful protection in the public interest, given the current situation in which a concerted and strategic response to terrorism (and especially suicide bombings) is needed. The techniques of gathering intelligence, and the range of opportunities available, are wide and certainly in need of secrecy. Human resources place themselves at risk – not least, by any means, those who offer unsolicited information out of disapproval of conduct and events at which they may have been and might continue to be present.
38. There may be a few cases in which it would be appropriate and useful to deploy in a criminal prosecution material derived from public system telephone interceptions and converted into criminal evidence. Although the availability of such evidence would be rare and possibly of limited use, I restate that it should be possible for it to be used and that the law should be amended to a limited extent to achieve that. I agree with the cautious conclusions of the Committee of Privy Councillors chaired by Sir John Chilcot, contained in their report published on the 6th February 2008⁷. Their report contains 9 tests to be passed before any such evidence will be admitted in a court.
39. I would have reached the same decision as the Secretary of State in each case in which a control order has been made, so far as the actual making of the order is concerned. The Courts have provided additional guidance of the extent of the obligations, as set alongside obligations under the *ECHR*. Measuring the proportionality of the obligations is a difficult task, and inevitably the Courts will sometimes have to resolve conflict between a naturally cautious security establishment and the public policy imperative of as little State control as possible of unconvicted persons.

⁷ *Privy Council Review of Intercept as Evidence* TSO Cm 7324 of 2008.

40. Like her predecessor, the present Home Secretary and her 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 herself, not her officials. 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.
41. In accordance with my obligations under *section 14(5)(b)* I report that the Secretary of State has acted appropriately in relation to her powers under *section 3(1)(b)* of the Act, in connection with the use of the power to make urgent non-derogating orders. In one instance it was through the process of review that I was able to point out that a factual error had been made inadvertently in the information provided to the Secretary of State. This was drawn to the attention of officials and thereby to Ministers. The Home Secretary reviewed the decision in the light of the corrected information and maintained her original decision.
42. The quality of preparation of cases for the Secretary of State by officials and the control authorities concerned is 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.
43. My conclusion in paragraph 39 above does not mean that the Secretary of State is correct in every case. Court procedure for the review of the decisions made by the Minister has led to the quashing of orders, as described. In 2007 3 control orders were quashed, though all of these were later upheld by higher courts.

44. In the past year again I have been aware of the potential psychological effects of control orders. Certainly this is a relevant consideration in relation to the obligations imposed by such an order. Those representing the controlees must (and surely have a professional and ethical duty to) ensure that any such evidence is drawn to the attention of the Home Office as early as possible. Subject to verification, such evidence should be acted upon whenever possible. There is support in case law for the proposition that, where the State takes coercive measures that could affect the physical or mental well-being of the individual, it is under a duty to monitor effectively the impact of those measures⁸.
45. The key to the obligations is proportionality. In each case they must be proportional to the risk to national security presented by the controlee. The minimum obligations consistent with public safety provide the only acceptable basis for control orders.
46. Two years ago I urged a procedure whereby officials and representatives of the control authorities meet regularly to monitor each case, with a view to advising on a continuing basis as to the necessity of the obligations imposed on each controlee. Included in those considerations must be the effect on their families, especially any children living with them. The Control Order Review Group [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. They involve officials from the Home Office, police and other relevant parts of the public service. They scrutinize each control order methodically and in turn and in detail, and discuss the proportional needs of the case.

⁸ *Keenan v UK* [2001] 33 EHRR; or link to <http://www.lawtel.com/~4f496462a9624799baefb4c190e50a04~/content/display.asp?ID=AG0001228.htm>.

47. The terms of reference of the CORG are as follows-

Terms of reference for the Control Orders Review Group (CORG) [Revised December 2007]

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 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.*

48. Despite the good work of the CORG, and the continuing process of review, I remain 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. 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 would likely not be permitted by the courts.
49. Last year I advised that, as a matter of urgency, a strategy is needed for the ending of the orders in relation to each controlee: to fail to prepare for this now whether on a case-by-case basis or by legislation (if appropriate) would be short-sighted.
50. It is now my view that it is only in rare cases that control orders can be justified for more than two years. After that time, at least the immediate utility of even a dedicated terrorist will seriously have been disrupted. The terrorist will know that the authorities will retain an interest in his or 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. Many terrorists prefer to use for operational purposes 'clean skins', persons who are not known ever to have been arrested, as largely has been evident from terrorism plots uncovered in the UK since September 2001, and indeed well before in a context different from violent jihad. A controlee most certainly does not fall into the category of a 'clean skin'.

51. I advise that there should be a recognised and possibly statutory presumption against a control order being extended beyond two years, save in genuinely exceptional circumstances. However, if a former controlee brings him/herself within the legislation thereafter, I do not suggest that they could not be made the subject of a fresh control order, on the basis of new material and a change in the circumstances.

COURT SUPERVISION

52. A system of law for the supervision by the court of non-derogating control orders is provided by *section 3*. 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*”. Following this the High Court will then undertake 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.
53. 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.
54. *Section 3* requires directions hearings to begin no more than 7 days from the making or confirmation of a control order. *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 am unable to report at this stage on the operation of the derogating provisions. Given the restrictive nature of non-derogating orders, and the reverberations that derogation would cause, I hold even more strongly than before to my previously 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.

55. I have received no complaints from controlees or those representing them to the effect that the court procedures are not working satisfactorily. Nor, other than through court transcripts, have I been informed of any adverse effects of the system on controlees. As always, I am willing to hear any such complaints, and would consider them in detail.
56. Again this year I have received no complaints about the special advocate procedure in control order cases. The special advocates are skilled and conscientious, and certainly useful. They have had an effect in the outcome of cases. Their use has been studied, with favourable comment, by other jurisdictions.
57. There have been important court decisions on control orders in 2007. The principal decisions of the Courts include the following.
58. In *Secretary of State for the Home Department v JJ and others (FC)*⁹ the majority in the House of Lords held that an 18-hour curfew meant near solitary confinement for an indefinite duration. The area open to them during their six non-curfew hours was not objectionable, but for the majority they were located in an unfamiliar area, devoid of social contacts and their lives were wholly regulated by the Home Office. This was incompatible with *ECHR Article 5* and therefore a nullity. Defects could not be cured by amending specific obligations and it would be contrary to principle to decline to quash an order, made without power to make it, which had unlawfully deprived a person of his liberty.

⁹ [2007] UKHL 45

59. In *Secretary of State for the Home Department v E and another* [House of Lords] it was held that the effect of the control orders (including a 12-hour curfew) did not deprive E of his liberty. It was also held that the duty to consult with police with regard to prosecution both prior to and during the existence of the control order are limited duties, and that breach of these duties will only lead to the control order being quashed in exceptional cases.¹⁰

60. In *Secretary of State for the Home Department v MB (FC)/Secretary of State for the Home Department v AF (FC)*¹¹ [House of Lords] it was held that the effect of the control order (including a 14-hour curfew) was not such as to deprive AF of his liberty. Further, non-derogating control order proceedings did not involve the determination of a criminal charge: there was no assertion of criminal conduct, only a foundation of suspicion; no identification of any specific criminal offence was provided for; the order was preventative rather than punitive or retributive in purpose. The obligations imposed had to be no more restrictive than was judged necessary to achieve the preventative object of the order. In any case in which a person was at risk of an order containing obligations of great stringency, the application of the civil limb of *ECHR Article 6(1)* entitled him to such measure of procedural protection as was commensurate with the gravity of the potential consequences. On procedural matters, evidence could only be withheld from the open hearings if strictly necessary; any difficulties caused to the defence had to be sufficiently counterbalanced by the measures taken by the court; what was sufficient was specific to each case; there was a difference between background information not essential to the outcome of the defence and evidence which was

¹⁰ [2007] UKHL 47

¹¹ [2007] UKHL 46

crucial to its determination; and in none of the European Court of Human Rights cases did the court have the assistance of a special advocate, whereas the UK domestic court did have such assistance. Whilst the court was not confident that Strasbourg would hold that every control order hearing in which the special advocate procedure was used would be sufficient to comply with *ECHR Article 6*, with strenuous effort it should usually be possible to accord the controlled person a substantial measure of procedural justice. The best judge of whether the proceedings afforded a sufficient measure of procedural protection was the judge who conducted the hearing. The majority of the Law Lords concluded that in order to ensure compliance with *ECHR Article 6* in every case, *Schedule 1 paragraph 4(3)(d)* of the Act had to be read and be given effect “except where to do so would be incompatible with the right of the controlled person to a fair trial”. Consequently, in the rare circumstances where the judge concludes that there is material which it is necessary to disclose in order for the controlled person to have a sufficient measure of procedural protection, the Secretary of State will be put to her election. This means the Secretary of State is then given a choice whether to disclose the information, or withdraw it from the case. If the latter, the case then proceeds without that material included. Either way, the case continues in a manner compliant with *ECHR Article 6*. If the material is withdrawn from the case, the judge must consider whether it was so crucial to the Secretary of State’s case on reasonable suspicion or necessity that, in the absence of such evidence the decision in relation to the order is flawed and so should be quashed.

61. There has been concern expressed about the apparent circularity of the read down. There can be no doubt that the lack of certainty in the language used will ensure the most careful consideration of each case by the Home Secretary.

62. In *Mahmoud Abu Rideh v Secretary of State for the Home Department (2007)*¹² it was held by Beatson J that modifications made by the Secretary of State to the appellant's control order were proportionate and necessary for purposes connected with preventing or restricting the appellant's involvement in terrorism-related activity. The appellant had been subject to control orders for over two years. The terms of Rideh's control order had previously been varied substantively on three occasions. The Judge found that the modifications to Rideh's control order obligations were not disproportionate to the current threat posed by him. The fact that he had consistently failed to comply with former obligations under his control orders meant that it was permissible for the Secretary of State to seek an alternative way of monitoring him. On the evidence, Rideh had completely failed to make the required exit and entry telephone calls. The Secretary of State was entitled to decide that the imminent departure of his family and thus the removal of that stabilising influence, and his possible prosecution for breaches of the control order, meant that he posed a greater risk of absconding. Therefore the modifications were a proportionate response to the degradation of control over Rideh resulting from his non-compliance with the control order. Further, whilst the mental state of a controlled person might have an impact on the severity of the effect of restrictions imposed, in Rideh's case his mental state did not cause the obligations to cross the line between restrictions on freedom of movement and deprivation of liberty. The effect of the modified obligations did not reach the threshold contemplated for *ECHR Article 3*, and in relation to *Article 8* was proportional.

¹² 2007] EWHC 2237 (Admin).

63. In *Re Bullivant (AG)* [2007] EWHC 2938 (Admin), Collins J. made an important decision on the disclosure of evidence. He said that when the court was considering a control order, the Secretary of State should only seek to withhold material that it was clearly in the public interest not to disclose. The special advocate's role was clarified. Before seeing the closed material, the special advocate appearing on behalf of the individual could be involved with that person to enable the special advocate to understand such defence as might be put forward. The special advocate should identify those matters regarded by him/her as crucial and could in due course submit that a failure to disclose had rendered the proceedings unfair and in breach of the *ECHR Article 6*. Save in the most exceptional cases, the courts would not make a finding that the withholding of material had rendered the proceedings unfair before the evidence had been tested in open and closed hearings. There was also an ongoing duty to consider whether there should be further disclosure and the court could make an order accordingly. It is only in exceptional circumstances that a court will order disclosure based on fairness grounds alone prior to the testing of the evidence through the open and closed hearings. At the conclusion of the hearing the court must decide whether there will be a breach of *ECHR Article 6*, and give the Secretary of State the opportunity to remedy the breach by further disclosure.

64. All of these decisions emphasise the exceptionality of both control orders and of national security. One is left with the clear conclusion that control orders will never be regarded by the courts as acceptable routine, as opposed to an exceptional jurisdiction; and that challenges will not be regarded as an acceptable means of opening the door to wide disclosure if national security is to be affected. The decided cases strengthen the role of the special advocates.

65. 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.

66. As set out in Annex 2, some breach charges are pending at the time of writing.

MODIFICATION OF CONTROL ORDERS

67. *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 she cannot up-rate it from a non-derogating to a derogating order.

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

CRIMINAL INVESTIGATIONS AND CONTROL ORDERS

69. *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 depriving them of a proportion of their liberty.
70. 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.
71. *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.”*
72. 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 a strangely drawn 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”*.

73. I have seen letters from chief officers of police in relation to each controlee certifying that there was no realistic prospect of prosecution. Last year 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, the Security Service and the Home Office, on the basis of full consideration of the evidence and intelligence. Given the small number of cases, this cannot be an excessive request. As independent reviewer, I would hope to be shown the minuted results of that process in every case, as a matter of routine.
74. The quality of the letters concerning possible prosecution has improved, in the sense that some reasoning is now given. However, I should like to see further detail given to the Home Secretary in every case as to why additional investigation, or different forms of evidence gathering, might not enable a criminal investigation. As last year, I believe that continuing investigation into the activities of some of the current controlees could provide evidence for criminal prosecution and conviction. I encourage such investigation to continue. For example, information about international contacts, financial support for insurgents in Iraq, and the use of guarded language to refer to potential terrorism targets might be progressed to evidence of significant terrorism crime. As I indicate above, it is a given that it would be far better for prosecutions to occur, of course provided they pass the usual threshold standards (evidential and public interest, respectively) for prosecution applied in all cases by the Crown Prosecution Service. Very recently I have reviewed one case for which the possibility of a successful prosecution is currently being reviewed, and I shall be re-examining the case in due course.

75. Some amendments of an entirely procedural nature, which reflect changes in the law in Scotland, have been made during 2007¹³.

76. I remain of the view that, as a last resort (only), the control order system as operated currently in its non-derogating form is a justifiable and proportional safety valve for the proper protection of civil society.

¹³ [2007] SI1098

OFFENCES

77. *Section 9* sets out the offence of contravention of a control order.

78. There have now been numerous alleged contraventions. Annex 2 sets out breaches up to February 2008, with other cases pending. 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 3½ years' imprisonment for assisting an individual to breach their control order. Breaches may be regarded as serious criminal offences.

APPEALS AND OTHER PROCEEDINGS

79. *Sections 10 and 11* provide the system of appeals against control orders, control order court decisions and derogation matters.
80. *Section 10(4), (5) and (6)* make it clear that the principles applicable in non-derogating control order appeals are those applicable on an application for judicial review.
81. This means that such appeals are not analogous to a criminal trial. They are administrative court hearings. In lay language, the decision of the Secretary of State will be upheld unless shown to be founded on a mistake of law, or on a disproportionate assessment of the facts in their legal context, or perverse.
82. Last year I expressed the view that a controlee should be able to say to the court that the facts upon which the order was based can be shown to be seriously erroneous, or that subsequent events have caused a substantial change to the situation. For example, a very young person may be able to show, truly, the abandonment of an earlier expressed commitment to violent jihad. It seems to me a matter of common sense that the court should be able to take into account such a change of circumstances. The government should ensure that there is sufficient clarity in the legislation and recent judicial decisions to secure this end.
83. Judicial Review, as an examination of its developing history shows, is a robust jurisdiction where it applies. It certainly stands any international comparison, both in terms of accessibility and results. However, it does not always work as intended,

especially where it is a creature of statute. It is clear to me that it was intended by Parliament that the judicial review of control orders should encompass the correction of any serious mistakes, even factual, that could be established by evidence. I am strongly of the view that the High Court should be able to take into account any new evidence or error of fact of sufficient importance potentially to affect the appropriateness of a control order.

84. *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.
85. There are amendments to the Act proposed in the Counter-Terrorism Bill 2008 currently before Parliament.
86. *Clause 71* clarifies in a necessary and proportional way the powers of entry and search available without warrant where it is reasonably suspected by the police that a controlee has absconded; and where the search is to ensure that the controlee is where directed by a control order. Power of entry is also given, with a warrant, to secure compliance with the other requirements of an order.
87. *Clause 72* of the Bill proposes amendment of *section 1(9)* to clarify the meaning of involvement in terrorism-related activity.
88. *Clause 73* amends notice periods in a minor way, and *Clause 70* the anonymity provisions.

89. *Clauses 10 - 13* provide equivalent powers relating to the retention, storage and use of fingerprints and DNA of controlees as currently apply when arrests are made under the Police and Criminal Evidence Act 1984. This will mean that the procedures and safeguards that generally apply, also apply in control order cases. Reporting at the time the Bill was announced that the police cannot currently take fingerprints or DNA from individuals on control orders is inaccurate.
90. The Schedule to the Act sets out the rule making powers. These have been exercised by the enactment of the *Civil Procedure Rules 1998, Part 76 Proceedings under the Prevention of Terrorism Act 2005*¹⁴. 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. The rules of court continue to work reasonably well. Case management is appropriately both firm and flexible.

¹⁴ SI 2005/656: in force 11th March 2005.

DURATION OF CONTROL ORDER PROVISIONS, AND REVIEW

91. *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.
92. 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.
93. 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.
94. I have the duty under *section 14(5)(b)* to report on the extent (if any) to which the Secretary of State has made use of her powers to make non-derogating orders in urgent cases without the permission of the court. There has only been one case in 2007 when the urgency procedure under *section 3(1)(b)* was used by the Secretary of State. This occurred in February 2007, when a new, less stringent, control order was served in

response to the quashing of existing order by the High Court.¹⁵ The court subsequently gave permission for the making of the new order.

95. 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. I have done so above.

96. *Sections 15 and 16* require no further comment.

¹⁵ This was the *section 3(10)* hearing for E. The quashing of the original order was later overturned by the Court of Appeal, and the House of Lords upheld the Court of Appeal’s decision to overturn the judgment of the High Court – see above.

ADDRESSES FOR COMMENTS AND REPRESENTATIONS

97. 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 2008

ANNEX 1 CURRENT CASES (AS OF 24 JAN 2008 - 15 CASES)

	TAG	Residence/Curfew	Tel reporting	Visitors	Pre-arranged meeting	Prohibited associates	No contact with c/o	Permit police entry	24 hours powers	Comms	Specify mosque	Geographical area	UK Departure	Financial	Transfer of money / goods	Travel docs	Must not leave UK	Ports / rail	Daily to police station	Employment notification	No IT assistance	Must not lead prayers etc	Academic/training
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Case 1	X	16	X	X	X	X		X	X	X	X	X	X	X	X	X		X		X		X	X
Case 2	X	16	X	X	X	X		X	X	X	X	X	X	X	X	X		X		X		X	X
Case 3	X	16	X	X*	X	X		X		X	X	X	X	X	X	X		X		X		X	X
Case 4	X	16	X	X*	X	X		X	X	X	X	X	X	X	X	X		X		X		X	X
Case 5	X	14	X					X	X	X	X	X	X	X	X	X		X		X			X
Case 6		3	X	X*	X			X	X	X			X	X	X					X			X
Case 7		12	X	X*	X			X	X	X			X	X	X	X		X	X	X			
Case 8	X	8	X					X		X						X	X	X		X			X
Case 9		X						X	X							X		X	X	X			
Case 10		X						X	X							X		X	X				
Case 11	X	9	X			X		X	X							X	X	X	X	X			X
Case 12	X	8	X			X		X	X							X	X	X	X	X			
Case 13	X	8	X			X		X	X	X						X	X	X		X			
Case 14	X	12	X					X	X	X				X	X	X	X	X	X	X			
Case 15	X	16	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
TOTAL	11	13	13	7	7	8	0	15	13	11	6	6	8	9	9	14	5	13	7	14	1	5	8

Average Length of Curfew: 10 Hours

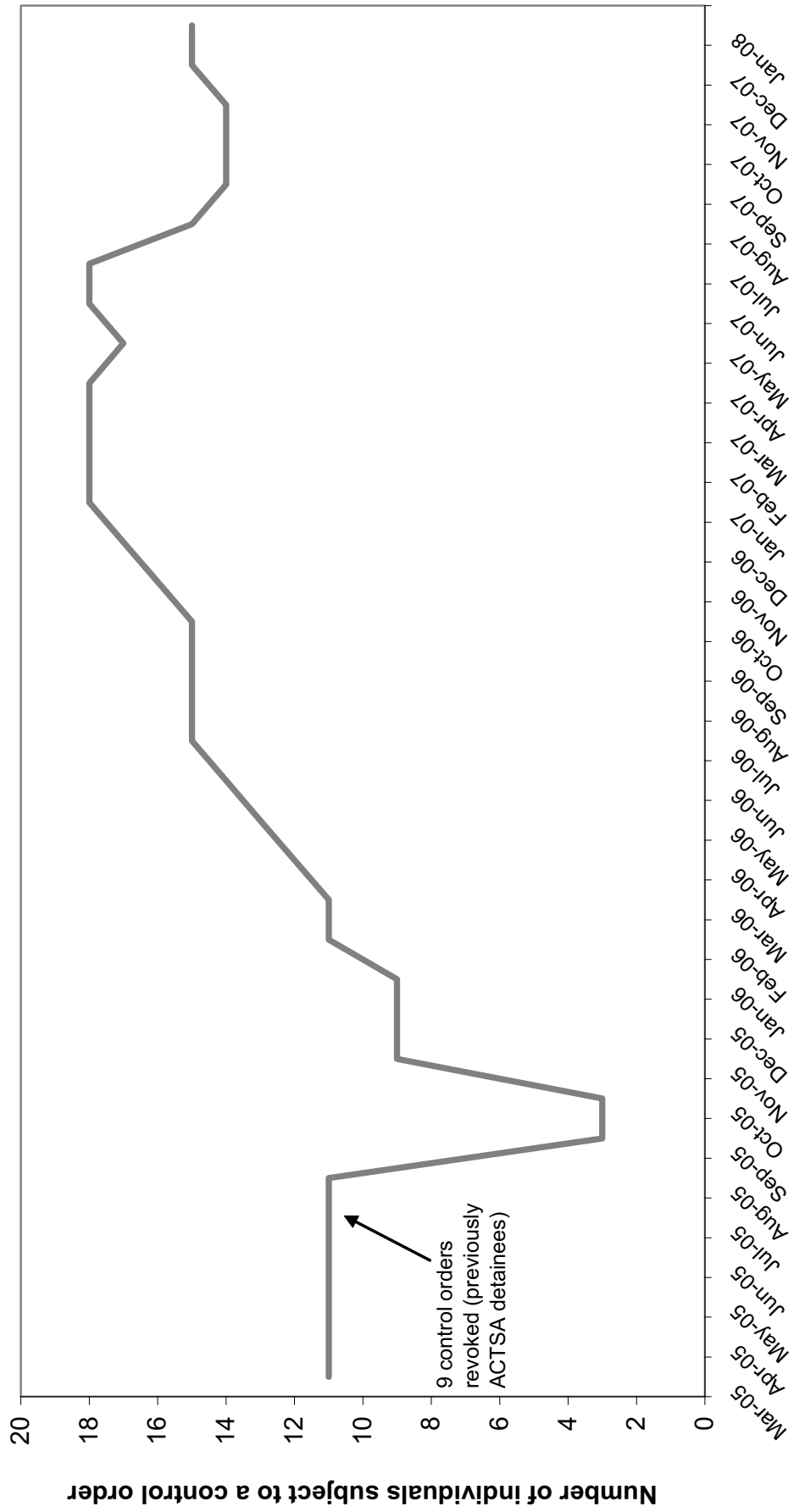
NB: a renewal or variation of a control order is listed separately to the original order, so there are more control orders than there are individuals who have been subject to a control order.

KEY:

1. TAG
2. SPECIFIED RESIDENCE / CURFEW
Numbers indicate hours of curfew; crosses indicate individuals with no curfews.
3. REPORT DAILY (BY TELEPHONE) TO MONITORING COMPANY
4. RESTRICTED ENTRY OF VISITORS TO RESIDENCE
*indicates specified family members and others 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. COMPLIANCE WITH ANY OTHER RESTRICTIONS WITHIN FIRST 24 HOURS OF ORDER BEING SERVED
10. RESTRICTION ON USE/ OWNERSHIP OF COMMUNICATIONS EQUIPMENT
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 UK
18. PROHIBITION FROM ENTERING PORT/ INTERNATIONAL RAILWAY STATION
19. REPORT DAILY IN PERSON TO SPECIFIED POLICE STATION
20. NOTIFY HOME OFFICE OF EMPLOYMENT (AND SEEK PRIOR APPROVAL FOR EMPLOYMENT IN NOTIFIED AREAS, E.G. PUBLIC TRANSPORT)
21. MUST NOT PROVIDE IT RELATED TECHNICAL ADVICE/ ASSISTANCE
22. NOT TO LEAD PRAYERS IN MOSQUE/ OR ANYWHERE EXCEPT FOR OWN RESIDENCE
23. AWAIT APPROVAL BEFORE STARTING ACADEMIC STUDY AND/ OR TRAINING COURSE

Number of individuals subject to a control order
(Mar 05 - Jan 08)



ANNEX 2 BREACH CHARGES SINCE JANUARY 2007 (accurate as of 1 February 2008)

Cases/Obligation(s) breached	Charge(s)	Date of arrest	Date of charge	Status at present
Case A Reporting and residence	Contravening his control order obligations	December 2006	December 2006	January 2007 - pleaded guilty to 3 counts of late reporting and 1 count of residing at an alternative address without first notifying the Home Office. Convicted of breaches and sentenced to 5 months' imprisonment
Case B Curfew	Contravening his control order obligations	May 2007	May 2007	Bailed until hearing date - not yet scheduled
Case C Residence and police reporting	Contravening his control order obligations	February and June 2007	February and June 2007	Acquitted of all charges by a jury in December 2007
Case D Reporting, communications, residence and financial	Contravening his control order obligations	July and September 2007	September 2007	Bailed until further notice
Case E Curfew, boundary and residence obligations	Contravening his control order obligations and conspiracy to contravene his control order obligations	September 2007	September 2007	Remanded in custody until May 2008

ANNEX 3

SCHEDULE

THIS SCHEDULE SETS OUT THE OBLIGATIONS IMPOSED ON:

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 and shall remain in the residence at all times save for a period of 8 hours between 9am and 5pm, 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.
- 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 must only use this telephone for the purpose of complying with this obligation.
- 4.1) Subject to obligation 4.2 you shall not permit any person to enter the residence, save for:
 - (a) your nominated legal representative as notified to the Home Office;
 - (b) in an emergency, members of the emergency services or healthcare or social work professionals;
 - (c) any person required to be given access under the tenancy agreement for the residence, a copy of which shall be supplied to the Home Office; and

- (d) any person aged 10 or under.
- 4.2) 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 to the Home Office the name, address, date of birth and photographic identity 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.
- 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 17 below; or
 - (b) attend any pre-arranged meetings or gatherings (other than attending but not leading, group prayers at a 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 communicate, directly or indirectly, at any time or in any way with the following individuals:
- XXX
- XXX
- XXX

- 7) You must permit entry to police officers and persons authorised by the Secretary of State or by the monitoring company, 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 your residence or any vehicle controlled by you;
 - (b) removal of any item;
 - (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 as may be considered necessary to ensure compliance with the obligations imposed by this control order; and
 - (e) the taking of your photograph.
- 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 such directions, or on earlier direction.
- 9) You shall not:-
- (a) bring or permit into the residence; or
 - (b) use, have, acquire or keep (whether in or outside the residence, whether directly or indirectly);

any communications equipment or any equipment capable of connecting to the internet or components thereof other than one fixed line telephone in the residence and/or the dedicated line maintained by the monitoring company. This prohibition includes but is not limited to mobile telephones, SIM cards, fax machines, pagers, computers, public telephones and/or internet facilities or electronic storage devices including but not limited to zip drives and/or USB pen drives.

The fixed line telephone must on request be delivered up to a person authorised by the Secretary of State for inspection and approval prior to it being permitted into or to remain in the residence.

It shall not be a breach of this obligation to permit a person to bring into the residence a mobile phone, provided that any such mobile phone shall remain switched off at all times whilst you are in the residence.

For the avoidance of doubt, this obligation means amongst other things:-

- (aa) you may not use, have, acquire or keep any communications equipment or any equipment capable of connecting to the internet or components thereof other than one fixed line telephone in the residence and/or the dedicated line maintained by the monitoring company;
- (bb) you may not permit whilst you are in the residence any other person to use a mobile phone in the residence; and
- (cc) you may not connect to or use by any means, directly or indirectly, the internet at any time.

- 10.1) Subject to obligation 10.2, you may attend any mosque of your choosing, from those within your permitted area (see obligation 11).
- 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 from the Home Office shall not be required for subsequent visits to that mosque.
- 10.3) You shall not be permitted to lead prayers, give lectures or provide any religious advice.
- 11) You may not at any time leave the permitted area marked on the attached map 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 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.
- 13) You shall not maintain or use more than one account (“account” includes credit, debit and store card accounts). 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 a permitted account opened subsequent to the service of this control order within 2 days of its opening; and
 - (b) statements of the permitted account on a monthly basis, to be provided to the Home Office within 7 days of their receipt.
- 14) You shall not 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.
- 15) Within 24 hours of service of this order, you must:
- (a) surrender any passport, identity card or any other travel document (other than any genuine passport issued by the [other nationality] authorities) to a police officer or person authorised by the Secretary of State; and
 - (b) notify the Home Office of any [other nationality] passport you have in your possession or which is available for your use.

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

- 16) You are prohibited from entering or being present at any of the following:
- (a) any 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.
- 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:
- (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.
- 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:
 - 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
 - (b) you have received approval in writing from the Home Office for the training course or academic study course.
- 18.2) Where any approval is 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, 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.

ANNEX 4

SCHEDULE

THIS SCHEDULE SETS OUT THE OBLIGATIONS IMPOSED ON: XXX

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:

1. You shall at all times wear an electronic monitoring device (“the tag”).
2. You shall reside at XXX (“the residence”) and you must remain in the residence for a period of 8 hours between 12am (midnight) and 8am each night or as specified in the directions given in writing referred to at obligation 10 below. “Residence”, in the case of your 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.
3. In addition, you must report to the monitoring company (as notified to you), via the telephone provided to you by the monitoring company once each day between the hours of 4pm and 5pm. You must only use this telephone for the purpose of complying with this obligation.
4. You shall not apply for, or have in your possession, or available for your use, any passport, identity card, travel document or travel ticket which would enable you to travel outside Great Britain.
5. You are prohibited from entering, or being present at, any of the following:-
 - (a) any airport or sea port;
 - (b) any part of a railway station that provides access to an international rail service

without prior permission from the Home Office.

6. You must not leave Great Britain.
7. You must permit entry to police officers and persons authorised by the Secretary of State or by the monitoring company 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;
 - (b) removal of any item;
 - (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 as may be considered necessary to ensure compliance with the obligations imposed by this control order; and
 - (e) the taking of your photograph.
8. You shall not use or keep (whether in or outside the residence, whether directly or indirectly) any equipment capable of connecting to the internet or components thereof (including but not limited to desktop/laptop computers, mobile phones, public telephone and/or internet facilities) or electronic storage devices (including but not limited to zip drives and/or USB pen drives).
- It shall not be a breach of this obligation to permit your visitors to bring into the residence any mobile telephones capable of connecting to the internet, provided that they remain switched off at all times whilst you are in the residence.
- For the avoidance of doubt:
- (a) you may not have or use any mobile phone capable of connecting to the internet; and
 - (b) you may not connect to or use by any means, directly or indirectly, the internet at any time.
9. To ensure compliance with obligation 8 you must disclose to your designated police officer or persons authorised by the Secretary of State the make and model of any new mobile telephone that comes into your possession, after the of service of this order, as soon as reasonably practicable and in any event within 24 hours of it coming into your possession.
10. 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 any service, renewal or modification of your control order by a police officer or other person

authorised by the Secretary of State. Such prohibitions or restrictions shall cease to be effective 24 hours (or earlier if notified in writing) after the giving of the directions.

11.1 You must not commence any new employment unless and until:

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

11.2 Where any approval referred to in 11.1(b) above is subject to conditions, you must comply with those conditions.

ANNEX 5

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 reside at XXX (“the residence”) and shall remain in the residence at all times save for a period of 21 hours between 8am and 5am or as specified in the directions given in writing referred to at 5 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. Each day, you must report to the monitoring company by the telephone provided by the monitoring company:
 - (a) on the first occasion you leave the residence;
 - (b) on the last occasion that you return to it; and
 - (c) once between 6pm and 7pm every evening.
- 3.1 You shall not permit any person to enter the residence, save for:
 - (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 tenancy agreement and/or for the maintenance of the water, electricity, gas and/or telephony supply who are operating in their professional capacity.

3.2 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 identity 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.

4. You shall not, outside of the residence:

(a) meet any person by prior arrangement, other than:

(i) those persons referred to in (3.1)(a) and (b) above, or

(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 12 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 11 below; or

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

5. You must permit entry to police officers and persons authorised by the Secretary of State or by the monitoring company, 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 any vehicle controlled by you;

(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 as may be considered necessary to ensure compliance with the obligations imposed by this control order; and
 - (e) the taking of your photograph.
6. 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.
7. You shall not:
- (a) bring or permit into the residence, or
 - (b) use, have, acquire or keep (whether in or outside the residence, whether directly or indirectly);
- any communications equipment or equipment capable of connecting to the internet or components thereof other than:
- (i) one fixed telephone line in the residence and/or the dedicated line maintained by the monitoring company; and
 - (ii) one or more computers in the residence.

This prohibition includes but is not limited to mobile telephones, SIM cards, fax machines, pagers, public telephones and/or internet facilities or electronic storage devices including but not limited to zip drives and/or USB pen drives.

Any computer permitted into the residence must be disabled from connecting to the Internet and shall not have installed any commercial, third party or bespoke encryption software programmes or packages. The fixed line telephone and any computer must on request be delivered up to a person authorised by the Secretary of State for inspection and approval prior to it being permitted into or to remain in the residence.

It shall not be a breach of this obligation to permit a person (any person specified in obligation (3.1) or (3.2) above) to bring into the residence a mobile phone, provided that any such mobile phone shall remain switched off at all times whilst you are in the residence.

For the avoidance of doubt this obligation means amongst other things:-

- (aa) you may not use, have, acquire or keep any communications equipment or any equipment capable of connecting to the internet or components thereof other than one fixed telephone line in the residence and/or the dedicated line maintained by the monitoring company;
 - (bb) you may not permit whilst you are in the residence any other person to use a mobile phone in the residence; and
 - (cc) you may not connect to or use by any means, directly or indirectly, the internet at any time.
- 8. 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.
- 9. You shall not maintain or use more than one account (“account” includes credit, debit and store card accounts). 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 any 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 to the Home Office within 7 days of their receipt.
- 10. You shall not 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.

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 Where any approval referred to in obligation 11.2(b) above is subject to conditions, you must comply with those conditions.
- 11.5 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
- 12.1 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 7 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.

12.2 Where any approval is referred to in obligation 12.1(b) is subject to conditions, you must comply with these conditions.

13.3 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 12.1(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.

ANNEX 6

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").
- 2) You shall reside at XXX ("the residence") and shall remain in the residence at all times save for a period of 10 hours between 8am and 6pm, or as specified in the directions given in writing referred to at obligation 5 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 assessed without passing through any communal area to which any person not within the residence would have unrestricted access.
- 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 must only use this telephone for the purpose of complying with this obligation.
- 4) You must permit entry to police officers and persons authorised by the Secretary of State or by the monitoring company, 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;
 - (b) removal of any item;

- (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 as may be considered necessary to ensure compliance with the obligations imposed by this control order; and
 - (e) the taking of your photograph.
- 5) 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.
- 6) You shall not:-
- (a) bring or permit into the residence, or
 - (b) use, have, acquire or keep (whether in or outside the residence, whether directly or indirectly)

any communications equipment or any equipment capable of connecting to the internet or components thereof other than one fixed telephone line in the residence and/or the dedicated line maintained by the monitoring company. This prohibition includes but is not limited to mobile telephones, SIM cards, fax machines, pagers, computers, public telephones and/or internet facilities or electronic storage devices including but not limited to zip drives and/or USB pen drives. The fixed line telephone must on request be delivered up to a person authorised by the Secretary of State for inspection and approval prior to it being permitted into or to remain in the residence.

It shall not be a breach of this obligation to permit a person to bring into the residence a mobile phone, provided that any such mobile phone shall remain switched off at all times whilst you are in the residence.

For the avoidance of doubt, this obligation means amongst other things:-

- (aa) you may not use, have, acquire or keep any communications equipment or any equipment capable of connecting to the internet or components thereof other than one fixed telephone line in the residence and/or the dedicated line maintained by the monitoring company;

- (bb) you may not permit whilst you are in the residence any other person to use a mobile phone in the residence; and
 - (cc) you may not connect to or use by any means, directly or indirectly, the internet at any time.
- 7.1) Subject to obligation 7.2 you may attend any mosque of your choosing, from those within your permitted area (see obligation 8).
 - 7.2) Before your first visit to any mosque that you wish to attend, you must obtain approval from the Home Office. The prior approval from the Home Office shall not be required for subsequent visits to that mosque.
 - 8) You may not at any time leave the permitted 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 the XXXX.
 - 9) You must notify the Home Office of any intended departure from the UK and notify it of the port of embarkation and disembarkation. You must also notify the Home Office if and when you intend to return to the UK 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.
 - 10) You shall not maintain or use more than one account. (“account” includes accounts in which you have an interest or over which you have any element of control). Such an account must be held with a bank or other approved financial institution within the UK. The following information must be provided to a person authorised by the Secretary of State:
 - (a) details of a permitted account opened subsequent to the service of this control order, within 2 days of its opening; and
 - (b) statements of the permitted account on a monthly basis, to be provided within 7 days of their receipt.
 - 11) You shall not 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.
 - 12) Within 24 hours of service of this order, you must:
 - (a) surrender any passport, identity card or any other travel document (other than any genuine passport issued by the [other nationality] authorities) to a

police officer or person authorised by the Secretary of State; and

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

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

- 13) You are prohibited from entering or being present at any of the following:
 - (a) any airport or sea port; or
 - (b) any part of a railway station that provides access to an international rail servicewithout the prior permission of the Home Office.
- 14.1) 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.
- 14.2) 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.
- 14.3) 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.
- 14.4) Where any approval referred to in obligation 14.2(b) above is subject to conditions, you must comply with those conditions.
- 14.5) 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:

- (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.

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:
 - 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
- 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.

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