



COUNTER-TERRORISM POWERS: Reconciling Security and Liberty in an Open Society:

A Discussion Paper

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

February 2004



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FOREWORD BY THE HOME SECRETARY



DAVID BLUNKETT

“I see no prospect of a significant reduction in the threat posed to the UK and its interests from international terrorism over the next five years, and I fear for a considerable number of years thereafter.”

(Eliza Manningham-Buller, Director General of the Security Service)

There is nothing new about the dilemma of how best to ensure the security of a society, while protecting the individual rights of its citizens. Democratic governments have always had to strike a balance between the powers of the state and the rights of individuals. In more extreme times, the American Civil War of the mid 19th century saw Abraham Lincoln suspending the right of habeas corpus for example, while in World War II UK citizens were interned on British soil. The challenge today is of course different.

In the early 21st century, the threat to our freedoms does not come in the main from conventional warfare from enemy states. The September 11 hijackers who murdered the crew before smashing the planes into two of the most densely populated office buildings in the world, had not issued a set of demands or previously publicly associated themselves with their cause. As with the terrorists who deliberately targeted the British Consul General in Istanbul in November, 2003, their murderous allegiances were secretive, allowing them to strike with maximum effect.

The devastation wrought by these attacks is a direct challenge to our democracy and freedoms which are deliberately exploited so they can, in turn, be destroyed. This presents modern governments with a more sophisticated set of questions as we strike the balance between security and liberty. My first responsibility as Home Secretary is to do everything I can to ensure our common security but is this security worth having if the price is a series of unacceptable restrictions on our hard-won freedoms? How should we configure our national law enforcement and legal structures to be effective against international terrorists (whether they are British or foreign nationals) who work across boundaries and exploit the slightest sign of weakness? How can we preserve effective judicial scrutiny of any restrictions on our freedom, while increasing our capacity to forestall the types of terrorist atrocity we have seen in New York, Washington, Bali, Casablanca, Jakarta and Istanbul?

The Newton Report, to which this paper responds recommends that the Part 4 powers in the Anti-Terrorism, Crime and Security Act 2001 (ATCS Act) should be replaced by new legislation. These powers allow for the indefinite detention of foreign terrorist suspects pending deportation. The Report recommends that new powers should be developed which would apply to both British and foreign nationals and which will not require a derogation from the European Convention on Human Rights. The Government believes that these powers continue to be an essential part of our defences against attack. This paper sets out our reasons for this belief, and the safeguards we have put in place to ensure that the powers are used properly and only where strictly necessary.

We recognise that under current legislation these powers will lapse in November 2006. My responsibility is to set out the reasoning for the powers as we consider how to proceed beyond that point. Lord Newton's Committee and Lord Carlile have already contributed extensively to this debate and their observations together with examples of steps taken by other countries are an important part of the discussion paper. I therefore hope that this document will begin a wider debate over the next months. It is important that this process should be inclusive and genuinely consultative. I am therefore proposing a far longer period of consultation – six months – than would normally be the case.

There are always certain rights which are non-negotiable. There are some – for example the right to life, the prohibition on torture, the presumption of innocence, the right to a fair trial – where we cannot compromise on the principles. But it is right to debate the way in which these principles are safeguarded and the processes through which they are secured.

The debate needs to begin now so that we – Parliament and the wider public – can reach an informed judgement on how to proceed in the years ahead. At the same time we are asking Parliament to endorse the Government’s continuing assessment of the nature of the threat which the UK faces from Al Qaida terrorists, to consider the Newton Committee’s Report into the ATCS Act and also to renew the powers under Part 4 of that Act.

I hope the discussion will focus on solutions. The Government’s mind is open on the long term way forward. We are not advocating any particular course. It is the Government’s ultimate responsibility to find a fair and effective balance between security and liberty but the rights we must balance belong to everyone. Ensuring a successful fight against international terrorism demands we all play our part in getting that balance right.

DAVID BLUNKETT

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PART ONE:

The challenge

1. There is no greater challenge for a democracy than the response it makes to terrorism. The economic, social and political dislocation which sophisticated terrorist action can bring, threatens the very democracy which protects our liberty. But that liberty may be exploited by those supporting, aiding, or engaging in terrorism to avoid pre-emptive intervention by the forces of law and order.

2. The challenge, therefore, is how to retain long held and hard won freedoms and protections from the arbitrary use of power or wrongful conviction, whilst ensuring that democracy and the rule of law itself are not used as a cover by those who seek its overthrow.

3. The growth in the use of non-negotiable means of conflict and the use of terror methods has transformed the way in which we need to respond. Those for whom prosecution and punishment hold no fear, and who are prepared to take their own lives in destroying others, do not recognise normal processes of law or fear the consequences of detection.

4. In the more complex world of global migration and open borders, we must also face the challenges posed by international terrorists who do not hold British nationality but nonetheless have rights here under our international obligations. We must also look at how to protect ourselves from British citizens who may aid, abet or carry out acts of terrorism. In relation to the first of these, we have the opportunity of removal, drawing on the Immigration Act 1971, and where this is not possible, detention under Part 4 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS Act). For both, we have the criminal law and the Terrorism Act 2000 but that legislation was mainly framed by our experience of terrorism related to the affairs of Northern Ireland.

The threat we face

5. The terrorist attacks of 11 September 2001 established a new dimension to the terrorist threat, the infliction of mass casualties by horrific means, by suicide terrorists who struck without warning, without any claim or pretence to be advancing a negotiable cause. The starting point for any discussion therefore must be a realistic appraisal of this threat.

6. Although there remains a threat to the United Kingdom connected with the affairs of Northern Ireland, the main threat to the UK and its interests overseas is international, likely to be of long duration, involving groups of people engaged in long-term planning, using sophisticated new technology, science and communications available to them, skilled in practising deception and evading surveillance, and using multiple stolen or fraudulent identities. Despite successes since 11 September in disrupting Al Qaida's operations, the view of the Director General of the Security Service, as outlined in a recent lecture, is that "Al Qaida remains a sophisticated and particularly resilient terrorist group. The UK and our interests overseas are under a high level of threat from International terrorism. That level of threat has been constant for several years but the scale of the problem has become more apparent as the amount of intelligence collected and shared has increased. The absence of an attack on the UK may lead some to conclude that the threat has reduced or been confined to parts of the world that have little impact on the UK. This is not so. The initiative generally rests with the terrorists. The timing of any attack is of their choosing and for them patience is part of the struggle."

7. Today's terrorists present particular challenges. Their activities are developed in loose networks of multiple contacts in many countries, difficult to penetrate, presenting severe challenges to the security authorities who seek to discover and disrupt them at an early stage of their planning. The suicide terrorist is a new problem for the West, forcing us to consider difficult legal and operational issues if we are to anticipate and hence prevent suicide attacks. International terrorists can be foreign nationals or British citizens. The Government's assessment in 2001 was that the threat came predominantly but not exclusively from foreign nationals. That remains the case.

8. The Government believes that the powers in Part 4 of the ACTS Act are an essential element of our strategy to confront international terrorism. The use of these powers has had a disruptive effect on international terrorist activity in the UK. There is intelligence to suggest that the detentions, combined with a range of other measures, have changed the environment for UK based international terrorists and that their perception of the UK has also changed as they now view it as a far more hostile place in which to operate. That is why we are seeking to renew the Part 4 powers for a further year and why we have vigorously – and successfully – upheld them in the face of any legal challenge. Both the Special Immigration Appeals Commission (SIAC) and the Court of Appeal have upheld the Home Secretary's conclusion that there is a public emergency threatening the life of the nation within the terms of Article 15 of the European Convention on Human Rights (ECHR). To date, 13 individual appeals against detention have been heard and

11 determinations given, all of which confirmed the Home Secretary's decision to certify the individuals as suspected international terrorists.

9. In considering the threat we must assess the activities of Al Qaida in the two years since the passage of the ATCS Act. This helps us understand the nature of activity they favour, the targets they are most likely to attack and the motivations of the cells who carry them out.

10. The international terrorist campaign has continued without ceasing since 2001. The horrific bombing attacks in Bali in October 2002 claimed 202 lives. Within the past year, attacks in May included suicide bombings against residential compounds in Saudi Arabia, killing 34 people, five bombs in Casablanca which killed 44 people and, in August, an attack against the Marriott Hotel in Jakarta, which killed 12. Three suicide bombings in Istanbul in November claimed over 50 lives including those of the British Consul General and 12 members of staff at the Consulate, and marked the first specific attack on a British target.

11. Since the introduction of the Terrorism Act 2000, 6 people have been convicted in the UK for terrorist offences. Others have been convicted for a range of criminal offences eg. credit card fraud. There have also been successful prosecutions in Europe most notably in Germany where there have been 6 terrorist prosecutions since the 11 September attacks.

12. Usama Bin Laden continues to send a consistent message. As he said in a tape issued on 12 February 2003:

“We stress the importance of the martyrdom operations against the enemy – operations that inflicted harm on the United States and Israel that have been unprecedented in their history, thanks to Almighty God.

We also point out that whoever supported the United States, including the hypocrites of Iraq or the rulers of Arab countries, those who approved their actions and followed them in this crusade war by fighting with them or providing bases and administrative support, or any form of support, even by words, to kill Muslims in Iraq, should know that they are apostates and outside the community of Muslims.

It is permissible to spill their blood and take their property.”

13. He continues to praise those who perpetrated the 11 September attacks and commend their example to his followers. Intelligence suggests that Al Qaida and its associated groups are planning terrorist attacks in many countries across the globe. All are designed to kill and terrify. Targets include people, buildings and facilities so as to generate maximum impact including heavy casualties, causing shock, outrage, and social, economic and political destabilisation and potential unrest. Methods of attack include hijacking of aircraft so as to crash them into buildings, destruction of aircraft in mid-air by explosives, and suicide bombs delivered either in vehicles using very large quantities of explosives or by individuals.

14. The terrorists have a long standing interest in acquiring primarily a chemical and biological capability, but also radiological and nuclear material. While much of this effort is on a scale that would cause only modest casualties, there is also an aspiration to undertake mass casualty attacks. But any CBRN attack will have an impact out of proportion to the number of victims – as shown by the anthrax letters in the United States in Autumn 2001 – because it would cause widespread fear amongst civilian populations.

15. The threat is global, and continuing. The indications now are that the threat is particularly high against the UK and UK interests overseas, because of the evidence and information that terrorist cells are active in the UK.

16. The public are entitled to expect that Government will protect its right to life and liberty by doing everything possible to prevent such attacks, in face of the activity and threats set out above. The issue therefore is how to protect public safety in face of this threat, in accordance with the rule of law and our international obligations, including under the ECHR.

Our current approach and the future

17. In addition to the provisions in the general criminal law, the UK has some of the most developed and sophisticated anti-terrorism legislation in the world. This is principally because of our long-standing experience concerning terrorism related to the affairs of Northern Ireland. The Terrorism Act 2000 re-enacted and made permanent powers which had developed over many years to deal with these threats and also established a framework to deal with international terrorism. Extradition powers, to enable terrorist suspects (both foreign nationals and British citizens) to face trial in other countries, can also be used and these have been significantly reinforced in the Extradition Act 2003.

18. In addition Section 4 of the Nationality, Immigration and Asylum Act 2002 introduced a power to remove British citizenship from those who were previously nationals of another country or who have dual nationality. We are keeping the operation of these powers under review to ensure that they work efficiently.

19. In the aftermath of 11 September, many countries introduced legislation which would have been unprecedented in other circumstances. The United States in the USA PATRIOT Act took powers which enabled them for the first time to detain foreign nationals in certain specified circumstances. Canada, Australia and India have also taken new powers, and within the European Union, concerted action was taken in the Framework Decision agreed in December 2001. Details of how other countries address the problems posed by the threat from international terrorism are set out in more detail below.

20. The ATCS Act strengthened the UK's counter-terrorist powers. In addition to the Part 4 detention powers, measures were included to cut off terrorist funding, ensure that Government departments and agencies can collect and share information required for countering the terrorist threat, streamline relevant immigration procedures, ensure the security of the nuclear and aviation industries, improve the security of dangerous substances that may be targeted or used by terrorists, extend police powers available to relevant forces, ensure we can meet our international obligations to counter bribery and corruption, and update parts of the UK's anti-terrorist powers.

The working of Part 4 of the ATCS Act 2001

21. The ATCS Act Part 4 powers are special immigration powers, which allow the Home Secretary to certify and detain, pending deportation, foreign nationals who are suspected of involvement in international terrorism but whom he cannot remove from the United Kingdom. Normal immigration powers allow detention pending deportation only if there is a realistic prospect of removal.

22. This may not be possible for a number of reasons but in most cases it derives from a fear that deportation might result in those deported being subject, within their countries of origin, to torture or inhuman or degrading treatment or punishment, which is subject to an absolute prohibition under Article 3 of the ECHR. There can be no derogation from Article 3.

23. The Part 4 powers are the most controversial part of the ATCS Act. They required a derogation from Article 5 of the ECHR because the provisions of that article of the Convention prohibit deprivation of liberty except in specific circumstances which would

not cover those detained under the Part 4 powers. The ECHR envisages circumstances in which states faced with grave threats may need to suspend their full compliance with the terms of the Convention. They need to show, under Article 15, that they face “war or other public emergency threatening the life of the nation”.

24. The Government considered that there was such a public emergency and therefore drew upon its right under Article 15. Intelligence material and threat assessments provided by the Security Service demonstrated that the threat existed. It also showed that it came predominantly, but not exclusively from foreign nationals and that foreign nationals were using the UK as a base for international terrorist activities.

25. The Government’s assessment of the public emergency has been upheld by the court designated to examine the individual cases, SIAC, and by the Court of Appeal. SIAC’s determinations on these individuals, which have so far upheld each of the Home Secretary’s certifications, set out the nature of these terrorist activities, broadly in line with the Government’s own assessment of them.

26. SIAC is an independent judicial body set up by the Special Immigration Appeals Commission Act 1997 to hear appeals. It is a superior court of a record and is chaired by a Judge of the High Court.

27. The derogation is available only in relation to the international terrorist threat manifested on 11 September 2001. The Government has made that clear and the position has been confirmed by SIAC and the Court of Appeal. The derogation does not therefore extend to other forms of international terrorism.

28. These powers are subject to annual renewal by Parliament and a number of other safeguards. Part 4 makes provision for a review of the detention powers. Lord Carlile of Berriew QC has been appointed as the independent reviewer for this purpose. He publishes a report annually, and has recently done so for this year.

29. The Home Secretary has undertaken to use these powers sparingly. To date, 16 people have been certified and detained under the powers contained in Part 4 of the ATCS Act. Two of these have chosen to leave the United Kingdom, as the detainees are free to do at any time. One individual has been certified but is currently detained under other powers.

30. Those detained under the Part 4 powers have access to legal advisers of their choice and are able to challenge their detention through the courts:

- they are free to leave the UK at any time;

- under Part 4 they have the right of appeal to the SIAC. While the rules of the procedure for SIAC make provision for material to be presented in closed session (to enable intelligence to be heard) wherever possible material is presented in open court. A special advocate is appointed to represent the detainees interests in relation to closed material and closed SIAC proceedings;
- the SIAC powers cover both open and closed material. All material relied upon is placed before the Commission which sits in both open and closed sessions. The appellant is made aware of the substance of the case against him in open session but does not have access to sensitive material which is dealt with in close session, to ensure its protection;
- the system enables the subject to be represented by Counsel of their choice in open session. But a Special Advocate (who sees all of the material) is appointed to represent his interests in closed session. These are legal counsel (not Government officials) and include many leading practitioners in human rights issues;
- the Commission has been able to hear highly classified and sensitive material in Part 4 cases, which has, in turn, been rigorously tested by the special advocates appointed on behalf of the detainees. Intelligence officers from the Security Service have been closely examined on the material on which they have based statements about them;
- detainees can challenge SIAC's findings through the Court of Appeal and the House of Lords and ultimately to the European Court of Human Rights at Strasbourg, where there are appropriate grounds for doing so;
- there is a statutory review provision – the first review is after 6 months after certification if there is no appeal, or 6 months after determination of the appeal. Subsequent reviews are at 3 monthly intervals, when the intelligence case will be subject to renewed scrutiny to assess whether there has been any change in the terrorist threat posed by the detainee;
- detainees can apply for bail.

31. Those detained are free to leave the United Kingdom at any time and two have chosen to do so. If the detainees can find a country prepared to take them and to which they are prepared to go, they can be released from detention as soon as arrangements can be made for their departure from the UK.

32. It can be argued that as suspected international terrorists their departure for another country could amount to exporting terrorism: a point made in the Newton Report at paragraph 195. But that is a natural consequence of the fact that Part 4 powers are immigration powers: detention is permissible only pending deportation and there is no other power available to detain (other than for the purpose of police enquiries) if a foreign national chooses voluntarily to leave the UK. (Detention in those circumstances is limited to 14 days after which the person must be either charged or released.) Deportation has the advantage moreover of disrupting the activities of the suspected terrorist.

33. Lord Newton's report (paragraph 203) calls for the replacement of Part 4 in the following terms:

"We consider the shortcomings described above to be sufficiently serious to strongly recommend that the part 4 powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency. New legislation should:

- a. deal with all terrorism, whatever its origin or the nationality of its suspected perpetrators; and
- b. not require a derogation from the European Convention on Human Rights."

34. Lord Newton's report sets out several alternative approaches which are discussed further in a later section of this document. The Government does not believe any of these provides a workable solution to the challenges he poses. But his recommendations call for discussion on three points.

35. First, we consider Lord Newton's point that legislation should deal with terrorism whatever its origin. The current derogation was not undertaken lightly. It was the unprecedented threat posed by Al Qaida and its associated networks which led to the derogation. The Government, in seeking a proportionate response, therefore undertook to limit its use, and the application of Part 4, to the international terrorist threat posed by Al Qaida and its associated networks. The Government's action was designed to meet the requirement in Article 15 that the measures leading to the derogation "were strictly required by the exigencies of the situation".

36. Secondly Lord Newton proposed that new legislation should apply equally to all nationalities including British citizens. The Government believes it is defensible to distinguish between foreign nationals and our own citizens and reflects their different

rights and responsibilities. Immigration powers and the possibility of deportation could not apply to British citizens. While it would be possible to seek other powers to detain British citizens who may be involved in international terrorism it would be a very grave step. The Government believes that such draconian powers would be difficult to justify. Experience has demonstrated the dangers of such an approach and the damage it can do to community cohesion and thus to the support from all parts of the public that is so essential to countering the terrorist threat.

37. On the third point (that new legislation should not require a derogation from the ECHR), we do not agree with the Newton Committee. Obviously, the Government would prefer to meet the threat without the need for a derogation and would have done so if it believed that this was possible. But derogation is permissible within the terms of the Convention and the obligation to derogate is unavoidable in the circumstances which we face. The Government has recognised this from the outset and sought to keep the scope of the derogation to a minimum.

38. The Government is continuing its efforts to deport the SIAC detainees, knowing that any prospective deportation must be secure in terms of Article 3 of the ECHR, and that SIAC will want to be satisfied that this is the case. Work is underway to try to establish framework agreements with potential destination countries of the kind set out in paragraphs 254-257 of the Newton Report. The purpose of these agreements is to protect the deportees' human rights following departure from the UK.

39. Additionally, the Government is considering what further steps would be needed to improve the chances of a successful deportation. A key issue here is the anonymity of the detainees. As immigration cases their anonymity is protected unless they first disclose their identity themselves. This has long been Government policy and was given the force of law by orders from SIAC under the Contempt of Court Act 1981. In order to explore with a foreign government the possibilities of a deportation under the terms of a signed Memorandum of Understanding, SIAC would need to give permission for their identity to be disclosed, for strictly limited purposes.

40. The detainees' interests are of course represented in SIAC by their legal advisers. The Government would like to ask the detainees whether any further specific steps could be taken to increase the possibilities of return to their countries of origin and/or third countries. This would probably entail interviews with the detainees by immigration officers and Security Service staff. Arrangements could be made for this quickly. The Government is taking steps to raise these issues with SIAC and with the detainees' legal representatives.

41. In certifying an international terrorist, the Home Secretary has to reach a view that he reasonably believes that the person concerned presents a risk to national security if present in the UK and if he reasonably suspects that the person is a terrorist. That is a less stringent test than would apply in the case of criminal proceedings. The Home Secretary has exercised his powers of certification and detention only where he believes a case clearly meets the statutory test. Because of the impact that certification and detention has on the individual, the cases in which the Home Secretary has exercised his powers have, in practice, fallen well above the threshold required by statute.

Framing the debate

42. As the previous discussion makes clear, the Government is convinced that the powers under Part 4 of the ATCS Act continue to be an essential component of our response to the threat from international terrorists. As a result of those powers, 17 people believed to be international terrorists have been certified. Two of these have chosen to leave the UK, the others remain in detention. In all 11 cases so far determined by SIAC following appeal against conviction, the Home Secretary's decision to certify has been upheld.

43. In framing these powers, the Government gave careful consideration as to whether any alternative measures would be sufficient to meet the threat. The Government concluded that there were no other measures, short of Part 4, which would be sufficient.

44. The Part 4 powers have proved an essential part of our armoury against attack. Nevertheless, the Government is willing to consider any realistic alternative proposals and approaches which take account of the Government's human rights obligations, for example, the right to a fair trial, and to learn from the experience of other countries. It is important that we do this alongside careful consideration of the existing terrorist threat and any future changes in its nature.

45. The paper is intended to stimulate further discussion on these issues. We will report further to the House later in the Session when this discussion period is concluded. As part of this consideration, we want fully to engage with members of Parliament and the wider public. The liberties and the security that we seek to balance through this task do not belong to Government but to people and communities. This concluding section therefore sets out some pointers for the discussion.

46. The Newton Report makes a number of recommendations to which we have given our detailed response in Part Two of this paper. Clearly, we reject the Report's central conclusion that the Part 4 powers should be replaced. We do not believe that a sufficient degree of protection would be afforded by the proposal that other restrictions on the freedom of international terrorist suspects could be put in place thus obviating the need for their detention.

47. The Committee has also put forward ideas on criminal offences and the criminal process which merit further discussion. These are set out in our detailed response to Lord Newton's Report in Part 2 of this document.

48. Alongside these proposals, we also need to consider the work of Lord Carlile who has suggested a more broadly drawn offence of acts preparatory to terrorism.

49. As part of the debate which we wish to stimulate, it is also important to have in mind existing reviews. The Government will shortly be publishing proposals in a White Paper on Organised Crime which will include discussion of whether improvements could be made to existing conspiracy law, particularly as it affects major organised crime cases, but also in respect of terrorism.

50. The question of whether to relax the blanket ban on the use of intercepted communications in court is discussed in paragraphs 208 to 215 of the Newton Report. Such relaxation could also be relevant in the context of other offences such as those involving organised crime. A review of the current prohibition on the use of such material is underway and will be reporting in the next few months.

51. The Newton Report sets out in paragraph 212 some of the reasons why only limited amounts of intercept material could be used in this way. These include the concerns of the intelligence and security services relating not only to the protection of sources and methods, but also to the need to ensure that interception for intelligence purposes is not impeded by the imposition of complex procedures to meet evidential requirements. The need to protect sources and methods arises particularly acutely in relation to material from foreign Governments, who might cease to make it available if it were to be used other than for intelligence purposes which stopped short of evidential use.

52. However intercept material is not the only kind of material which might be relevant to support a prosecution for a terrorist offence. Consideration may have to be given to

other relevant material, from the security and intelligence agencies, which will fall into the following categories: surveillance material, agent reporting and information provided by other governments.

How other countries address the problems posed by the threat from international terrorism

53. It is also important that this debate is informed by an analysis of the different ways in which some other mature liberal democracies have addressed this issue.

54. The United Kingdom is not alone in facing the terrorist threat, the threat is global. Countries openly aligned to and supportive the US's stance on the war on terror are considered more likely to face acts of aggression. Others may face threat because of historical links or because they are considered good operating bases for those planning attacks.

55. When the ATCS Act was drafted the approach adopted both in Europe and elsewhere was examined. The approaches adopted by other countries need to be viewed in terms of the threat that those countries face and their varying judicial systems. The examples consider terrorist legislation as well as how other countries deal with foreign nationals who are suspected of involvement in terrorism, but where there is little or no admissible evidence to prosecute and where they cannot be deported on ECHR grounds (equivalent to ATCS Act detainee case)

France

56. France does not have an offence of terrorism (nor a specific definition) but has a list of specific offences linked to terrorism. France does however have a crime of 'association with a wrongdoer' which is used (but not exclusively) for terrorism. It is intended as a preventive measure and was introduced in the 80's and amended in the 90's, following a series of terrorist attacks in France.

57. Under the Criminal Code, a person may be prosecuted for an 'association' with a group preparing a criminal act. The definition of the offence is sufficiently wide to allow the successful prosecution of someone with only a passing interaction with a terrorist group and has been used in France for several years. The offence is much wider than the English law of conspiracy enabling a greater number of prosecutions.

58. Once someone has been arrested they can be detained by the police for an initial 96 hours without charge. Following this they must be presented to a judge who can extend the detention for a week. The case is passed to an examining magistrate (juge d'instruction) who assembles the case against the individual. The decision on whether to detain is taken by a specialised judge at the request of the examining magistrate. Once 'under instruction' the person can be detained 'indefinitely' with the regular agreement of the judge.

59. The result is that terrorist suspects are almost always successfully prosecuted, but can spend a considerable length of time in custody prior to prosecution.

60. French authorities believe that those involved in terrorism are reluctant to stay in France once they have come to the attention of the authorities. It is, however, relatively easy to lose track of an individual as they can travel relatively easily around the Schengen area.

61. France will prosecute where possible but will also deport individuals. In deportation cases decisions are taken on a case-by-case basis. They do not deport individuals to countries where they would face a death sentence, and they do take into account the destination country's record in terms of democracy, human rights and international conventions. They do not consider that Algeria, Jordan, or Egypt present problems of principle, and they have returned suspected terrorists to Algeria in a number of high profile cases.

Germany

62. Germany has recently made changes to its criminal code in the aftermath of 11 September. One change has been to remove the geographical limitation of the criminal code covering certain crimes, including notably terrorism. Previously, terrorist acts overseas would need to have targeted German citizens or interests before the suspect could be charged in Germany. Now, the nationality of the victim of the attack is no longer a limiting factor. Thus, as long as the dual criminality provisions are met, a person could be charged and prosecuted in Germany for their actions overseas.

63. In Germany there is a general offence of terrorism - it is a criminal offence to be a member of any terrorist association, including foreign terrorist associations. Anyone accused of participating in terrorist activities can be punished according to the general criminal provisions, depending on what specific crimes have been committed (murder, manslaughter, kidnapping).

64. It is also an offence to form a terrorist association, to be a member of a terrorist association and to support or recruit members or supporters of a terrorist association. Supporting a terrorist who is not a member of an officially proscribed group can be punished under the provisions on aiding and abetting.

65. The general rules of procedure of the German Code of Criminal Procedure apply and in deciding the sentence, the German courts will take the terrorist motivation of a crime into account as an aggravating factor.

66. It is possible for court hearings to be heard in camera and the court may exclude the public from the hearing if state security interests are at risk. The courts decide when to apply these provisions.

67. The procedures for granting asylum in Germany have been tightened to deal with ECHR deportation problem cases. An applicant can be restricted in their movements through the issue of a geographically restricted identity card. This restriction might be to a single area, or even a single town or city. Any breach of these restrictions themselves make it easier for the security and other services to keep asylum seekers under close observation

Other European Countries

68. Austria, Switzerland, Netherlands, Norway and Portugal have provisions to deal with asylum seekers but have had limited experience in dealing with suspected terrorists seeking asylum. Norway has enacted legislation to prevent terrorist suspects invoking asylum procedures.

69. Sweden has extradited two individuals, who were denied refugee status, to Egypt to face trial on terrorist charges. The Egyptian Government provided assurances to Sweden that the individuals would not face the death sentence or be subject to torture.

Canada

70. Canada, like the UK, does not have a specific offence of terrorism, but a list of specific terrorist offences. A more general offence relates to conduct which involves a specific motivation, the intention to intimidate, and the intention to cause some form of serious harm, such as death, serious risk to health or safety, substantial property damage or disruption of an essential service.

71. Membership of or association with a terrorist group is not an offence as the Canadian Charter of Rights and Freedoms guarantees the freedom of association.

72. Canadian judges can hear proceedings in closed court when necessary, for example to protect witnesses, but there is a strong presumption against this and closed proceedings are infrequent.

73. The 2001 Anti-Terrorism amendments permit the withholding of materials from a court based on national security concerns, but this may lead to staying of charges or other constitutional remedies if the right to make a full answer and defence to charges is compromised.

74. The Anti-Terrorism Act provides a power to arrest and detain on a preventive basis, but there are significant safeguards and limits. Warrantless arrest is permitted, but only in exigent circumstances – otherwise, arrest requires the consent of the Attorney General and an arrest warrant. Detention and recognisance proceedings are similar to those which apply to the release on bail of a criminal accused pending trial. Following arrest, the subject is brought before a judge and the State must show cause why he or she should not be released. If the decision is against release, the subject is asked to enter into a recognisance and terms and conditions are set. If the subject agrees to the recognisance, they must be released, otherwise they can be held in custody for a maximum of one year.

United States of America

75. In October 2001, America introduced the USA PATRIOT (the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act as a response to the 11 September attacks. The Act is a complex, lengthy piece of legislation which includes the following provisions relevant to the debate.

76. An offence of harbouring or concealing terrorists: if a person harbours or conceals a person he knows or has reasonable grounds to believe has committed, or is about to commit, certain terrorist offences. It is punishable by a fine or up to 10 years in prison or both. Offence of material support for terrorism: this prohibits the provision of material support or resources where it is known and intended that it be used to prepare for, or carry, out certain terrorist related crimes. The Act specifically expands the definition of support or resources to include monetary instruments and expert advice or assistance.

77. The Act also tightens grounds for refusal of entry/visa to the United States, based on terrorist activity. It also broadens the definition of “terrorist organisation” to include a group of two or more people, whether organised or not that commits or incites terrorist activity with intent to cause death or serious injury or prepares or plans terrorist activity or gathers information about potential targets.

78. The Act also extends the provisions of the Racketeer Influenced and Corrupt Organisations Law to federal terrorist crimes, enabling multiple acts of terrorism to be dealt with as a form of racketeering. This enhances range of investigative powers (and sentences) available.

79. The Act also allows the Attorney General to detain aliens if he certifies that they are deportable or inadmissible for the reasons given above, or that they pose a threat to national security. Removal or criminal charges must follow within seven days or the person released. If the person cannot be removed, the Attorney General must review his detention every six months. The detention is only permitted to last as long as the person is judged to be a threat.

80. The US also makes use of “material witness” status. This allows a person to be detained indefinitely as a witness to offences. Estimates of numbers so detained have been put at over 1000.

Conclusion

81. The Government has formed a clear view of the nature of the terrorist threat and has sought to set out in this paper what it amounts to and what form it takes. We need to make sure that our current arrangements are effective in protecting the community – the first duty of Government. The Home Secretary welcomes all contributions to this debate and intends to provide a fuller response to the issues raised later in the year. Contributions should be sent to the address given below by **31 August 2004**. It would be helpful however if major submissions could reach the department by the end of June 2004. Finally we stress that any withdrawal of the powers granted by Parliament in Autumn 2001 would be detrimental to the safety and security of the nation which is why we are not proposing to relinquish Part 4 of the Act and why we are seeking renewal separately for this purpose.

82. Contributions should be sent to:

The Home Secretary
Room 1019
50 Queen Anne's Gate
London
SW1H 9AT

83. It will be assumed that the respondents are content for their comments to be made publicly available, unless indicated to the contrary in the response. All responses may be included in statistical summaries of comments received and views expressed. They should be sent to the Home Secretary in the manner indicated below.

PART TWO:

GOVERNMENT RESPONSE TO PRIVY COUNSELLOR REVIEW OF THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

General – Newton Recommendation (para 14 – Consolidated Conclusions: Page 10-14 of the ATCS Review)

The idea of a durable body of properly considered, principled, counter-terrorist legislation – which is distinct from mainstream criminal law, addresses this particular threat to society and includes adequate safeguards of the rights of the individual – remains compelling. This was the Government’s stated objective when it introduced the Terrorism Act 2000, and it is the approach to which in our view the Government should return. [Paragraph 11ff]

Government Response

1. Terrorism is a particularly abhorrent form of crime. The lack of any moral regard shown by terrorists inflicting loss of life, the terrorists’ operations and their tight-knit associations means that it is necessary, for as long as a threat exists, to have some exceptional legislation in place. However, much existing legislation aimed at combating organised crime is also helpful in the fight against terrorists who often rely on such methods to finance their activity. This is true of legislation bearing on criminal conspiracy and legislation about money laundering. Moreover, though differently motivated, terrorism involves acts which are already criminal.
2. Against this background the Government does not believe that it would be an appropriate use of parliamentary time to re-legislate for provisions that Parliament has already passed.

PART 1 (TERRORIST PROPERTY)

Newton Recommendation (para 15)

Schedule 1 extends the power of the police to seize ‘terrorist cash’ at the borders (and pursue its eventual forfeiture through civil proceedings) throughout the United Kingdom generally. Three amendments would enhance its effectiveness and fairness.

Open hearings in an ordinary Magistrates’ Court are not the appropriate forum for handling cash seizures in terrorist cases. Such hearings are relatively infrequent and often depend on sensitive intelligence that the police may not be able to convert into open evidence within the 48 hours currently permitted between the seizure and confirmation in court. The procedure for warrant hearings in arrests under the Terrorism Act makes special provision for these difficulties. In our view, the Terrorism Act should be further amended to enable initial cash seizure hearings to be handled similarly, subject to later confirmation in open court under the normal rules of evidence.

Powers of seizure should be extended to non-cash items where the police can show that they will have a direct role in preparing for, or carrying out, acts of terrorism.

The provision that cash is to be held in an interest-bearing account during the course of proceedings is designed to compensate the individual where a terrorist link proves unfounded. Alternative means of compensation in cash seizure cases for those Muslims with religious objections to profiting from interest should be devised. [Paragraph 124]

Government Response

3. The Government welcomes the finding by the Newton Committee that the powers set out in Part 1 of the Anti-terrorism Crime and Security Act 2001 are “a proportionate and effective extension of the framework set by the Terrorism Act 2000”.

4. The Government considers that the Committee’s recommendation that initial hearings in terrorist cash seizure cases are not suitable for ordinary Magistrates’ Court is worthy of further consideration. Early indications from the law enforcement agencies are that they would welcome the introduction of such a provision and the Government is prepared to consult more widely on this particular issue.

5. The cash seizure powers reflect those in the Proceeds of Crime Act 2002. There are already powers in Schedule 5 of the Terrorism Act 2000 which allow the police to seize items in an ongoing terrorist investigation, where a Justice of the Peace (or Sheriff in Scotland) has granted a search warrant in relation to the premises being searched and the material seized is likely to be of substantial value to a terrorist investigation. Given this the Government is not convinced that there is a need for additional powers.

6. The Committee has already discussed the issue of money held in interest bearing accounts pending the outcome of an investigation with the Forum against Islamophobia and Racism. The Government endorses in principle their view that those who feel strongly against monies accrued in this way could donate the profit to charitable and humanitarian causes. It seems appropriate to promote this approach as opposed to considering a legislative change.

7. The Government will consult with other groups on possible other approaches.

Newton Recommendation (para 16)

The Government should report to Parliament during the debates on this Committee’s Report on whether it is likely that there will be any further use of the Schedule 2 account monitoring orders – and, if it is proposed to retain the power, on the action that they propose to take to give them a realistic practical foundation. We draw this matter to the attention of the Treasury and Home Affairs Select Committees. [Paragraph 127ff]

Government Response

8. The Government believes strongly that Account Monitoring Orders remain an important tool. Prior to the implementation of the Act, the financial services industry expressed concern over the extra workload the power could bring. Given this the police have taken care to ensure that the powers are used sparingly and in only the most extreme circumstances.

Newton Recommendation (para 17)

Some mechanism for sharing more specific information on terrorist finance and reporting requirements should be developed between the law enforcement authorities and the financial services industry. We draw this to the attention of the Treasury and Home Affairs Select Committees. [Paragraph 132ff]

Government Response

9. The Government acknowledges the importance of more effective sharing of information between the law enforcement authorities and the financial services industry. The police are now working closely with the financial services industry to develop more efficient and effective channels of reporting

Newton Recommendation (para 18)

The legislation requiring the regulated sector of the financial industry to submit reports regarding their clients' activities should be amended to protect the privacy of innocent individuals and bodies corporate, by requiring the authorities to destroy reports in cases where charges are not brought or are disproved. An exception should be made only where appropriate authorisation is given that the report in question is material to an ongoing terrorist investigation. [Paragraph 134ff]

Government Response

10. The Government does not agree with this recommendation. The law enforcement agencies have indicated that historical intelligence is often the main indicator of suspicious activity and this information will be lost if reports are destroyed. The power as it stands allows the law enforcement agencies to build and develop a detailed picture of suspicious activity over a period of time. Any material will be stored in line with the provisions of the Data Protection Act.

PART 2 (FREEZING ORDERS)

Newton Recommendation (paras 19 & 20)

Freezing orders for specific use against terrorism should be addressed again in primary terrorism legislation, based on the well-tested provisions of the Terrorism (United Nations Measures) Order 2001.

Freezing orders for other emergency circumstances, and the safeguards, which should accompany them, should be reconsidered on their own merits in the context of more appropriate legislation for emergencies; the present Part 2 powers should then lapse. The forthcoming Civil Contingencies Bill would seem to be a suitable opportunity. [Paragraph 146ff]

Background

11. The Newton Committee believes that financial sanctions such as those relating to asset freezing as set out in Part 2 have more impact when they can be implemented internationally on the basis of multilateral agreement. They note that the Terrorism

(United Nations Measures) Order 2001 implements United Nations Security Council Resolution 1373 which required states to implement co-ordinated freezing of terrorist funds internationally. In addition the Al Qa'ida and Taliban (United Nations Measures) Order 2002 implemented the separate requirements of UNSCR 1390. These have allowed the freezing of assets of Al-Qa'ida and a number of other groups by the Treasury since 2001.

Government Response

12. The Government does not accept this proposal. The purpose of Part 2 is to provide a power under which rapid emergency action can be taken if and when UK interests are, or could be, threatened.

13. The fact that the power has not been deployed since the legislation came into force is not of itself an argument for setting it aside now, nor including it within wider primary anti-terrorist legislation. The “well-tested provisions of the Terrorism (United Nations Measures) Order 2001” derive from implementing relevant United Nations Security Council Resolutions under the UN Act and imply, almost by definition, degrees of multilateral action. But it is equally possible to envisage circumstances in which HMG wishes to act unilaterally, if only to give a lead to other states and partners and without awaiting a UN Resolution or EC Regulation. ‘Rogue regimes’ may be identified where, in the event of UK interests being directly threatened, HMG would wish rapid action to be taken.

PART 3 (DISCLOSURE OF INFORMATION)

Newton recommendation (para 21)

The Government should legislate to provide independent external oversight of the whole disclosure regime (e.g. by the Information or one of the other statutory Commissioners) to provide a safeguard against abuse and to ensure that rigorous procedural standards governing disclosure are applied across the range of public bodies, prosecuting authorities and intelligence and security agencies. It should also require the independent overseer to publish statistics twice a year on the use of Part 3 (both within the United Kingdom, and to overseas authorities). [Paragraph 160ff; see also paragraph 53].

Background

14. The Review observes that the effect of Part 3 is that information acquired by a public authority for one purpose may be disclosed to the police and security authorities to be used for completely different legitimate purposes (para 155). They note the importance of ensuring that individuals’ rights are maintained and that appropriate safe guards are in place.

Government Response

15. The specific powers of disclosure of personal data, as created by Part 3, already constitutes “processing”, which is subject to the Data Protection Act 1998 and the continuing oversight of the Information Commissioner. The Commissioner has the duty, under s51 of the Act, to promote good practice and the power, under s40 of the Act, to take enforcement action for the breach of the data protection principles, which include the requirement that all personal data be “processed fairly and lawfully”.

16. The disclosure of information to prevent crime, is a particular form of “processing”. But it takes place under many statutes, not just Part 3, eg under S115 Crime and Disorder Act 1998, in the context of community safety partnerships and local crime reduction strategies.

17. The latest guidance on data sharing from the Department for Constitutional Affairs notes, in relation to public authorities generally, and statutory bodies like the Revenue Departments in particular:

“Clearly, power to disclose personal information to prevent a crime may be implied if there is no express statutory power.”

18. This is consistent with the Government view, referred to by the Review at paragraph 160, that Part 3 did not break new ground in principle, whereas it does provide welcome clarity and precision.

19. The Government accepts the case that Revenue departments should include statistics on the use of Part 3 of the Act. Reports to Parliament already contain some statistics of the use of coercive measures of public interest, such as search and arrest.

Newton Recommendation (paras 22 & 23)

In our view, internal authorisation by a senior person would be adequate for the disclosure of addresses or phone numbers in terrorism cases.

While we accept that it may well be that the same regime could be justified for other types of serious crime, we would argue that prior judicial approval should be required in any case involving less serious crimes or the disclosure of more sensitive information. Parliament should be given the opportunity to decide what level of authorisation should be required, depending on the seriousness of the crime and the sensitivity of the information being disclosed. [Paragraph 167ff]

Background

20. The Committee propose that, as an additional safeguard to the external oversight proposed above, authorisation at a suitable level be obtained prior to disclosures being made. They suggest a senior person in the disclosing organisation would be appropriate for disclosures of information on telephone numbers and addresses in terrorist cases, but that a judicial authority would be more appropriate for disclosure of more sensitive information or in less serious crimes.

Government Response

21. The disclosure of confidential personal information under Part 3 amounts to an interference with Convention rights (Article 8 ECHR – respect for private and family life, home and correspondence) and must certainly be justified as such, under the terms of the Convention. With reference to s.17 of the ATCS Act 2001, the DCA guidance notes that no disclosure is to be made under Part 3 of the Anti-terrorism, Crime and Security Act 2001 unless the public authority making the disclosure is satisfied that it is proportionate to the aim that is being achieved. The Guidance also notes that:

“This imports the balancing exercise required by Article 8 of the European Convention on Human Rights... whereby an interference with the right to private life must be proportionate to the achievement of a legitimate aim. Where proportionality can be shown, this would provide sufficient grounds for overriding any duty of confidentiality owed in respect of the information.”

22. This emphasises the central role of proportionality, given that the other tests of Article 8 are already met (the disclosure is “in accordance with law”, by virtue of Part 3 itself; and is “for a legitimate purpose”, that is, “in the interests of national security” or “for the prevention of disorder or crime”).

23. The Review also states that where, in the past, a statute conferred intrusive powers on the executive (eg, search warrants), Parliament has normally made the exercise subject to the prior approval of a judge or other independent person. The Government does not accept this view. The seriousness of the intrusion, how habitual it must be to serve the legitimate purpose it addresses, and whether the decision is usefully capable of prior judicial determination, are all material considerations about the balance to be struck between prior external safeguards, those internal to the public authority in question, and also judicial and other oversight.

24. The supply of information about an individual by one public authority to another cannot, in the Government’s view, realistically be regarded as being as intrusive as, for example, a search of that individual’s home. The courts have also recognised that while they will hold public authorities to high standards of reasonableness in their assessments of proportionality, they will not interfere to impose their own judgement where they are satisfied that the decision is within the range of reasonable responses open to a reasonable decision taker.

25. Given these considerations, and the numerous occasions where public sector data sharing of this sort, and joined up administration, will be in the public interest in promoting legitimate aims, the Government cannot accept the Review’s proposal of prior judicial control of information disclosure.

26. Nor does the Government discount, as the Review does, as “illusory” the protection afforded by the Human Rights Act, which, enacted in 1998, gives effectual remedies in our domestic courts to anyone to challenge the consistency with Convention rights of any public authority’s actions, and particularly issues of proportionality.

27. The Department of Constitutional Affairs has recently published guidance on the legal framework which governs public sector data sharing that reflects the consensus of legal opinion in Government. It covers all those general areas of law, administrative, human rights, common law confidentiality and data protection that impact on whether and how the public sector can share data for legitimate and appropriate purposes.

PART 4 (IMMIGRATION AND ASYLUM)

Newton Recommendation (para 24)

We strongly support the Government’s stated objective of prosecuting terrorists using the normal criminal justice system as the preferred approach. [Paragraph 205]

Government Response

28. The prosecuting authorities of the UK bring criminal proceedings wherever possible. There are occasions when this cannot be done – and the Government needs to look at this again to ensure the right legislative frame work is in place to tackle all forms of terrorism.

Newton Recommendation (para 25)

We strongly recommend that the powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency. New legislation should:

- **deal with all terrorism, whatever its origin or the nationality of its suspected perpetrators; and**
- **not require a derogation from the European Convention on Human Rights. [Paragraph 185ff]**

Background

29. Part 4 of the 2001 Act (which includes the power of certification under section 21 and detention under section 23) allows the Home Secretary to certify and detain foreign nationals who are suspected of involvement in international terrorism and who are believed to present a risk to our national security but who cannot be removed from the UK.

30. The Home Secretary has undertaken to limit the use of these powers to the terrorist threat posed by Al Qaida and the network of terrorist groups associated with it. This limitation is consistent with the scope of an Order derogating from Article 5 of the ECHR which was made at the time of the Introduction of the 2001 Act to Parliament (“the Derogation Order”). The powers under Part 4 of the 2001 Act are both necessary and proportionate and have to be renewed annually by Parliament. They will only remain in place whilst the current public emergency exists.

Government Response

31. The Government believe that these powers continue to be necessary to address the current threat. The Government will consider how this threat could be changing and what else might be done.

Newton Recommendation (para 26 a)

We set out below several alternative approaches that, in our view, whether alone or in combination, merit further development by the Government as possible basis for a more acceptable and sustainable approach, while the threat remains. There may be others. [Paragraph 204ff]

It might be feasible to:

- i. **define a set of offences which are characteristic of terrorism and for which it should be possible to prosecute without relying on sensitive material, but**
- ii. **raise the potential penalty where there are links with terrorism. [Paragraph 216ff]**

Government Response

32. There are already a wide range of criminal and terrorist related offences that can be used to bring prosecutions. The Government is considering whether further offences should be introduced.

33. There are a number of problems associated with increasing the penalty where there are links for terrorism as this could produce different sentences for the same offence

34. The Courts would have to be satisfied of the links to terrorism, which could raise some issues relating to admissibility of evidence.

Newton Recommendation (para 26 b)

a. One way of making it possible to prosecute in more cases would be to remove the UK's self-imposed blanket ban on the use of intercepted communications in court. [paragraph 208ff]

Government Response

35. Under the Regulation of Investigatory Powers Act 2000, the evidential use of intercept material is currently not permitted in the UK. This is the subject of a review. It is important to ensure that any decision on whether or not to change the law is based on a rigorous assessment of the likely impact (e.g. in securing more prosecutions) and clear evidence that the benefits of doing so clearly outweigh the risks.

Newton Recommendation (para 26 c)

Another approach to the problem of confronting the suspect with specific accusations and evidence, without damaging intelligence sources and techniques, would be to make a security-cleared judge responsible for assembling a fair, answerable case, based on a full range of both sensitive and non-sensitive material. This would then be tried in a conventional way by a different judge. Despite the obvious difficulties, it would be worth working up more detailed proposals for an investigative approach for the specialised purpose of handling terrorism cases, where conventional prosecution might risk disclosing sensitive sources, or the available intelligence might not be admissible as evidence. [Paragraph 224ff]

Government Response

36. This proposal would appear to be based upon the French system of investigating magistrates. In France once someone has been arrested they can be detained by the police for an initial 96 hours without charge. Following this they must be presented to a judge who can extend the detention for a week. The case is passed to an examining magistrate who assembles the case against the individual. The decision on whether to detain is taken by a specialised judge at the request of the examining magistrate. Once 'under instruction' the person can be detained 'indefinitely' with the regular agreement of the judge.

37. Whilst the Newton Committee suggest that this system could allow intelligence material to be used, it would still have the same problems. It does not offer a solution to the need to protect sensitive information whilst enabling the defendant to know the full case that has been put against him.

Newton Recommendation (para 26 d)

Although the present public interest immunity rules already permit a certain amount of editing and summarisation there would be merit in developing a more structured disclosure process that is better designed to allow the reconciliation of the needs of national security with the rights of the accused to a fair trial. [Paragraph 236ff]

Government Response

38. For criminal trials there are already strict rules relating to PII and disclosure.

Newton Recommendation (para 26 e)

Under current arrangements in England and Wales the court is not party to plea bargains (although it is made aware of them and can volunteer disapproval) and any reduction in sentence in return for co-operation is at the discretion of the judge. There may, however, be particular merit in terrorism cases in giving the suspect greater certainty of outcome in the event of co-operation by establishing a sentencing framework within which the accused may be sure of securing a reduced sentence in return for co-operation. [Paragraph 240ff]

Government Response

39. It is customary for timely guilty pleas to receive recognition in the form of a reduction in sentence, and factors such as co-operation with the authorities may also be recognised in this way. Consideration is being given to how such arrangements, in terrorist cases and in others, could be made more transparent. The Government has already announced that it is in favour of allowing defendants to seek an indication of the sentence they would be likely to receive if they were to plead guilty at that point.

Newton Recommendation (para 27)

The Government should examine the scope for more intensive use of surveillance and we draw this view to the attention of the Intelligence and Security Committee, so that they can take account of it in their scrutiny of the intelligence and security agencies. We have in mind not simply the marking of particular individuals, but also training, the use of technology and better liaison between different agencies at ports of entry. [Paragraph 244ff]

Government Response

40. Effective surveillance is resource intensive and it is therefore targeted at those individuals against whom it is judged to be the most appropriate response. Surveillance cannot offer the same levels of protection as detention. The Government are keen to promote the use of new technology and effective liaison between the agencies involved.

41. This needs to be linked to the expansion of Special Branch resources. Special Branches, in each police force, provide executive support to the Security Service following up intelligence and translating it into police activity, including arrests. The Government has already provided £3 million to set up regional intelligence cells, following HMCIC's thematic report on future organisation of Special Branches;

42. The Government are now in discussion with ACPO about how resources can best be targeted towards expanding Special Branches to gain full benefit of the expansion of the Security Service.

43. These developments are part of a wider picture and we have already announced proposals for Serious and Organised Crime Agency. The Government is also working to develop better co-operation between HM Customs and Excise, the Police and the Immigration Service. All have a role to play in safeguarding our borders, defending us against organised crime, financial fraud and terrorism.

Newton Recommendation (para 28)

It is possible that, even adopting some or all of the measures above, it may not be possible to prosecute in every case. The alternatives listed below would allow steps to be taken against both UK and foreign terrorist suspects which are less damaging to human rights than the current process (and so remove the need for derogation from the ECHR). These measures are much less attractive than conventional prosecution but in our view they are preferable to Part 4 as it stands. [Paragraph 250]

The current Special Immigration Appeals Commission regime is used in cases which involve the detention of foreign nationals without charge. It would be less damaging to an individual's civil liberties to *impose restrictions* on:

- i. the suspect's freedom of movement (e.g., curfews, tagging, daily reporting to a police station); and**
- ii. the suspect's ability to use financial services, communicate or associate freely (e.g., requiring them to use only certain specified phones or bank or internet accounts, which might be monitored); subject to the proviso that if the terms of the order were broken, custodial detention would follow. [Paragraph 251ff]**

Government Response

44. Tagging has a role to play in dealing with those that pose a low level of threat to the general public. They are helpful in ensuring curfew conditions are met. They could be used with other measures or to help enforce orders for those on the periphery of interest.

45. The Government does not believe that tagging or the other measures suggested offer sufficient security to address the threat posed by international terrorists. Modern technology such as pay as you go mobiles, easy access to computers and other communications technology mean that tagging by itself would not prevent these individuals from involvement in terrorism and the Government can not guarantee the success of such an approach.

Newton Recommendation (para 28 b)

In cases where deportation is considered the only possible approach – and we have considerable reservations about it as a way of dealing with suspected international terrorists – we have seen no evidence that it would be illegal for the Government to detain the deportee while taking active steps in good faith to reach an understanding with the destination government to ensure that the deportee’s human rights were not violated on his return. This is what some other countries seem to have been able to do, at least in some cases.

Government Response

46. Case law is quite clear. For immigration detention to be lawful, there has to be a reasonable prospect of removal within a reasonable period.

47. Without derogation, and section 23 of the ATCS Act, we would have no option but to release if an acceptable undertaking could not be obtained within a reasonable period.

48. An undertaking might not be obtainable, for example, if the destination government declines to enter into discussions, if the negotiations are delayed, or if the terms of the undertaking given are not sufficient to safeguard his human rights. That is why the Government need the derogation and section 23.

Newton Recommendation (para 28 c)

To supplement this approach, the Government could seek to establish framework agreements in advance with some of the main countries involved, to minimise the delay in dealing with individual cases. Even if deportation was rarely used in practice in terrorism cases, it might serve to act as a deterrent to international terrorists considering the use of the UK as base for their activities. [Paragraph 254ff]

Government Response

49. The Government is continuing its efforts to deport the SIAC detainees, knowing that any prospective deportation must be secure in terms of Article 3 of the ECHR, and that SIAC will want to be satisfied this is the case. Work is underway to try to establish framework documents of the kind set out in paragraph 257 of the Newton Report.

50. Additionally, the Government is considering what further steps would be needed to improve the chances of a successful deportation. A key issue here is the anonymity of the detainees. As immigration cases their anonymity is protected unless they first disclose their identity themselves. This has long been Government policy and was given the force of law by orders from SIAC under the Contempt of Court Act 1981. In order to explore with a foreign Government the possibilities of a deportation under the terms of a signed Memorandum of Understanding, SIAC would need to give permission for their identity to be disclosed, for strictly limited purposes.

Newton Recommendation (para 29)

From the evidence we have received, we are concerned that there has not been a sufficiently proactive, focused, case management approach to determining whether any particular suspected international terrorist should continue to be detained under Part 4. Nor did it appear that alternative ways of dealing with them were under active consideration. This gap should be filled in time for the first sequence of post-appeal reviews. [Paragraph 200]

Government Response

51. The Government does not accept the criticisms made in terms of the individual management of the cases. The first tranche of individual appeals took longer to come before SIAC because of the legal challenges made by the appellants to the derogation that had to be heard first.

52. In the preparation for the individual appeals, each of the cases was reconsidered. This included the threat posed by the individual, the ability to deport as well as any other changes in circumstances.

53. The individual cases are kept actively under review. In fact one individual has subsequently been convicted on criminal charges and another is currently being prosecuted – both cases based on evidence that came to light after certification.

54. The Government is actively pursuing a broader policy of seeking removal whilst ensuring that rights of the individual, and the UK's obligations under ECHR, are not breached. The individuals are of course free to leave the country at any time should they choose to do so.

55. The reviews by SIAC will start from late April, these will be the first reviews which are conducted six month after the determination of the appeals. Reviews then have to be conducted at three monthly intervals. The reviews will reassess all of this information as well as any new information on the detainees, including a threat assessment and any changes that there may be in our ability to remove.

Newton Recommendation (para 30)

The Government should publish up-to-date anonymised information on its terrorism website on:

each Part 4 certification setting out its duration and current status, including the outcome of any appearance before the Special Immigration Appeals Commission including bail hearings or appeals (giving both the determination and a link to the full open reasons); and the number of detentions that there have been under the Terrorism Acts and their outcomes (e.g., prosecution, certification under Part 4, release). [Paragraph 258]

Government Response

56. Anonymised information is currently being prepared and will shortly be available on the Home Office website.

57. The open SIAC determinations are not currently available on the web. The Court Service have been approached and are happy, in principle, with the idea of adding the open determinations to a DCA website. However, this will require the approval of the President of SIAC.

PART 5 (RACE AND RELIGION)

Newton Recommendation (para 31)

The case for offences aggravated by religious hatred should be reconsidered in the context of broader mainstream legislation designed to protect the range of targets of hate crime. [Paragraph 267ff]

Background

58. The Crime and Disorder Act 1998 introduced nine offences of racially-aggravated violence, harassment and criminal damage.

59. These offences carry higher maximum penalties where they are found to have been motivated by race hatred/hostility . This covers hostility to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

60. The Anti-terrorism, Crime and Security Act 2001 extended the aggravated offences to include cases motivated by religious hatred.

Government Response

61. The Government will consider whether the existing system of aggravated offences could be improved, but has not identified any early opportunities for reform in the legislative programme.

62. The Government remains attracted in principle to introducing an offence of incitement to religious hatred, analogous to the existing offence of incitement to racial hatred.

63. The Government will listen carefully to all views expressed in this debate and that expected shortly on the House of Lords Select Committee Report on Religious Offences.

PART 6 (WEAPONS OF MASS DESTRUCTION)

Newton Recommendation (para 32)

No objections to this part of the Act have been brought to the Committee's attention. It seems to be an unexceptionable tidying-up of the legislation, which in part fulfils our obligations under the UN Biological and Chemical Weapons Conventions. [Paragraph 276]

Background

64. Part 6 of the Act strengthens current legislation controlling chemical, nuclear and biological weapons. The Act makes it an offence to aid or abet the overseas use or development of chemical, biological and nuclear weapons. Legislation on biological and nuclear weapons has been brought into line with existing legislation on Chemical Weapons.

Government Response

65. The new offences contained within the Act are important in the context of affirming the UK's commitment to non-proliferation. Offences relating to biological weapons are in the spirit of our commitments under the Biological and Toxic Weapons Convention. The provisions on assisting weapons-related acts overseas are similar in effect to the trafficking and brokering provisions contained within the Export Control Act.

66. The Government welcomes the Report's conclusion that Part 6 is largely a tidying up exercise and will continue to ensure the UK fulfils its international obligations in this area.

PART 7 (SECURITY OF PATHOGENS AND TOXINS)

Newton Recommendation (para 33)

Some aspects of Part 7, which was subject to only very limited consultation, need to be urgently addressed.

a. The list of relevant pathogens contained in schedule 5 (the so-called “Australia list”) does not include all those materials, which are of concern from a counter-terrorist point of view. The list in the Schedule should be amended to include all of these, as recommended by the House of Commons Select Committee on Science and Technology.

Background

67. Schedule 5 is based on the Australia Group (AG) list. It is a “common control list” detailing pathogens and toxins which are of harm to humans. However, it is not specifically designed to address the threat from terrorism but rather to harmonise national export controls amongst the 33 states that are members of the ‘Australia Group’. The aim of this Group is to try and prevent inadvertent assistance to the production of chemical or biological weapons by other countries. In the absence of any other considered criteria it was used as a familiar and logical starting point for UK counter terrorist legislation. Neither the AG list nor its recent amendments fully reflect the UK assessment of the threat from terrorism.

Government Response

68. The shortcoming of the original list has already been identified and is being addressed. The Government is in the process of renewing the “Australia” list and will lay a draft order before Parliament revising Schedule 5.

Newton Recommendation (para 33 b)

b. Evidence to the Committee highlighted security concerns surrounding the holdings of some diagnostic laboratories. They should also be covered by the Act. [Paragraph 294]

Background

69. Diagnostic laboratories were excluded from the Act’s provisions because they are only transitory holdings and do not retain substances after diagnosis has been made. Additionally because of the nature of work carried out, these laboratories hold below the minimum quantity of the substance.

Government Response

70. Moves are already afoot to include diagnostic laboratories within the provisions of the Act.

71. Detailed guidance on the security of holdings was issued to all registered premises in January 2004. This guidance was drawn up after extensive consultation with the laboratories and law enforcement agencies who are responsible for implementing the safety standards and for checking on holdings and advising holders of substances on security issues.

72. Counter-terrorist Security Advisors have already conducted systematic visits to laboratories around the country to review existing security procedures on holdings and to advise on improvements. This will be further followed up subsequent to the issuing of the guidance.

73. The impact and the efficacy of the guidance will be reviewed in autumn 2004. The result of this review, in conjunction with consultation with the industry and law enforcement agencies will inform future policy and whether the security of premises needs to be put on a statutory basis.

Newton Recommendation (para 34)

Part 7 is only now beginning to have a direct effect: its further implementation should be subject to regular reporting to the Home Affairs Select Committee. We draw this matter to their attention. [Paragraph 295]

Government Response

74. The Government is content for the provisions in Part 7 to be subject to ongoing scrutiny and regards this as an essential element of ensuring the efficacy and appropriateness of the measures.

Newton Recommendation (para 35)

The security of pathogens and toxins in the post and in transit is being addressed as part of the present inspection and consultation process by counter-terrorist security advisers; where possible, it is desirable that security should be built on the foundation of close consultation and co-operation between inspectors and laboratories. However, evidence to the Committee indicated that there are no relevant security (as opposed to health and safety) regulations for postage and transport; it would be consistent with the rationale for Part 7 of this Act if police counter-terrorist security advisers were given statutory powers to enforce security provisions for the carriage of Schedule 5 pathogens and toxins where necessary. [Paragraph 296]

Government Response

75. There is no objection to this in principle. The Government will undertake consultation with law enforcement agencies and other stakeholders to pinpoint concerns and whether statutory powers in this respect would actually bring the perceived benefit.

PART 8 (SECURITY OF NUCLEAR INDUSTRY)

Newton Recommendation (para 36)

Existing regulations for non-nuclear radioactive sources only allow for the enforcement of health and safety regulations (as with the provision for the handling of pathogens and toxins in laboratories before this Act) and are not designed to prevent intrusion by an individual seeking to use radioactive material with a view to causing deliberate harm. This gap should be filled. [Paragraph 310]

Government Response

76. The Government accepts that some further regulation of non-nuclear radioactive material is required, both domestically and internationally. Some improvements are already the subject of consultation with suppliers and users with the detail of others to be announced shortly.

77. The UK has been prominent in negotiations to revise the International Atomic Energy Authority's Code of Conduct on the Safety and Security of Radioactive Sources which was agreed in September 2003. The UK was amongst the first to express an intention to implement the Code and encourage all other countries to do the same. The UK was also prominent in negotiating action plans within G8 and the EU, and in December 2003 the EU Council Directive on High Activity Sealed Sources and Orphan Sources (HASS) was adopted. The UK is now in the process of implementation.

78. The UK also took the lead in introducing a new security chapter into the UN Model Regulations for the carriage of dangerous goods to ensure that non-nuclear radioactive material (amongst other dangerous goods) is properly protected from theft during transport.

Newton Recommendation (para 37)

We believe that the security of radioactive sources should also be the subject of an annual report to Parliament, including information on any losses, and subject to further scrutiny by a Select Committee. Responsibility for this area is shared between a number of Departments, and we believe that the House of Commons Science and Technology Committee would probably be the most appropriate. [Paragraph 311]

Government Response

79. The Government has no objection to the principle of providing information on issues of health and safety, environmental protection and public safety, including countering terrorism, arising from the management of non-nuclear radioactive materials. The Government's proposal for enhancing regulation in this area will provide Parliament with an opportunity to decide on the exact nature and frequency of information required. It is not, of course, for Government to determine the business of select committees.

PART 9 (AVIATION SECURITY)

Newton Recommendation (para 38)

Part 9 provides useful powers for tightening security at airports. They address certain threats to aviation from organised and other crime, including terrorism. They should, therefore, be revisited in the context of wider mainstream transport security legislation when a suitable legislative opportunity arises. [Paragraph 314]

Background

80. The Anti-terrorism, Crime and Security Act 2001 introduced:

- Increased powers of arrest for police in restricted zones;
- A power of aircraft detention for Department for Transport inspectors where they have security concerns;

- Making it an offence to falsely claim to be a secure cargo agent; and
- Enabled a list of approved security providers to be established.

Government Response

81. The Government welcomes the Committee's positive view on the powers in the Act about the present primary legislation covering Aviation Security but is content that the current powers are adequate and that the current aviation security system works well.

Newton Recommendation (para 39)

Urgent consultation with air and ferry operators is required regarding the provision of advance passenger information under Section 119 of the Act. The Government should report during debates on this Committee's report on the steps that it has taken to increase compliance with the legislation. [Paragraph 327 ff]

Background

82. Section 119 amended Schedule 7 Terrorism Act 2000 (Passenger information-existing powers to require carriers to provide information about passengers, vehicles and crew on air and ship journeys within the Common Travel Area to cover internal and international journey and to incorporate information about goods). Specific information that carriers are required to provide was specified in secondary legislation which came into force on 22 August 2002.

Government Response

83. The Government has already carried out extensive consultation with representatives of the air and sea carrier industries and law enforcement agencies on this matter. As a result of this Schedule 7 to the Terrorism Act 2000 (Information) Order 2002 was brought into force in August 2002. Care has been taken to ensure an appropriate balance has been achieved between the need to obtain advance information on passengers travelling to and from the UK, and keeping resource implications on the carriers to a minimum.

84. An example of this approach is that for internal journeys in the UK, carriers have been advised that they only have to provide information on passengers when requested as part of an ongoing Police investigation.

85. The law enforcement agencies are working together to ensure that various information requirements are co-ordinated.

86. The Government regards this as a key power in tracking the movement of terrorists.

Newton Recommendation (para 40)

No fundamental concerns with the present primary legislation for aviation security generally were brought to our attention, but some specific security issues were raised with us. [Paragraph 330]

a. In the light of the attacks of 11th September 2001, extensive attention has been given to controlling the entry of individuals and their hand luggage at points of access to the restricted zone of airports. Less attention has been given to access by cargo and other goods at other points of entry to the zone: for instance, to the checking of security seals placed on vehicles off-site. It is important that the

extensive efforts that have been made to enforce security at points of access within the main airport buildings should not be undermined in this way.

Background

87. The Department for Transport issues security requirements as secondary legislation (“Directions”) under the Aviation Security Act 1982. They require the aviation industry – principally airport managers, aircraft operators, cargo agents and in-flight caterers – to undertake specific security duties. Cargo must either arrive in a secure state from a known source that has been independently inspected, or must be screened or searched before going on the aircraft.

Government Response

88. The UK has a mature and robust aviation security regime that has been built up since Lockerbie. This mandates searching and screening requirements for everybody – passengers and staff – and everything (baggage, cargo, catering, goods for retail and vehicles) entering an RZ.

89. Compliance is monitored and enforced by dedicated DfT Security Inspectors and all areas are addressed equally.

90. In addition, Sir John Wheeler JP DL published a report on airport security in October 2002. One of the key recommendations was that multi-agency threat and risk assessments (MATRAs) should be conducted at airports. Thus joint control authority and industry evaluation will identify all criminal threats to the airports, examine them in the light of current controls and draw up action plans to mitigate any residual risks.

91. MATRA groups are being established at the 50 largest airports in the UK to look at the totality of threats to airports. Cargo interests – often the victims of serious and organised crime – are represented on these groups.

Newton Recommendation (para 40 b)

b. Lord Carlile commented in his report on the Terrorism Act 2000 on the inadequacies of Special Branch accommodation at some air and ferry ports, resulting in practical difficulties for the interrogation of suspects. We were told that steps were in hand to remedy the space restrictions, but the Committee’s visit to Heathrow confirmed that better facilities are still required. This is a matter for the Home Office and airport operators.

Government Response

92. The Government recognises that it is vital to our national security that Special Branch officers at ports have the facilities to carry out their roles effectively.

93. The Government has been working closely with the police and port operators (British Ports Association, Airport Operators Association, British Air Transport Association, Chamber of British Shipping and Eurostar) on a Memorandum of Understanding setting out the level of facilities to be provided. These negotiations have been conducted in a positive atmosphere and we are confident of finding a way forward.

94. Lord Carlile drew the Government's attention to the lack of suitable Special Branch accommodation at Heathrow in his 2002/03 report on the operation of the Terrorism Act 2000 and there has been considerable progress at Heathrow since Lord Carlile's report. Special Branch (SB) has acquired an interview room in Terminal 4 arrivals and another in Terminal 1. Two interview rooms are being built within new SB accommodation in Terminal 3, which is due to be completed at the end of February.

95. The Government will continue to ensure that Special Branch accommodation is improved.

Newton Recommendation (para 40 c)

c. Police specialising in terrorist and national security operations have experienced difficulties with the new personal search regime which applies to all people with access to the restricted zone, including airline and control staff. It has endangered a number of sensitive operations being conducted by Special Branch officers. It is desirable that all staff should be subject to the regime, but some means of relaxing controls in this very specific category of operations should be devised.

Government Response

96. Sir John Wheeler recommended this measure in his 2002 review of Aviation Security. Ministers accepted all of his recommendations.

97. This regime was introduced on 6th May 2003 after extensive consultation with all parties concerned including the Police. Care was taken to ensure that other activities need not be compromised.

98. It was reviewed, again with all parties, in October 2003. It was concluded that no revisions were necessary

99. Very occasionally, local difficulties have emerged and have been solved at the local level. DfT officials continue to liaise with police officers and aerodrome managers as necessary to solve any problems that may emerge, including covert operations.

Newton Recommendation (para 41)

We draw these matters to the attention of the Transport Select Committee.

Government Response

100. The Government is grateful for the Newton Committee's work in this area and look forward to future Transport Select Committee Reports. The Government will continue to keep these provisions under close review.

PART 10 (POLICE POWERS)

Newton Recommendation (paras 42)

Most of the reported uses of the Part 10 powers have not been related to counter-terrorism. While some of the measures have intrinsic merit, they should be submitted again when the underlying legislation is next revised. Other provisions present an intrusion into individual rights, which are not justified by any counter-terrorist benefits and should either be repealed or significantly amended. [Paragraph 333 ff]

Background

101. Part 10 amends police powers to search, examine, photograph and fingerprint persons detained at police stations in England and Wales. These powers extend existing provisions under Police & Criminal Evidence (PACE) Act 1984 and the Terrorism Act 2000.

Government Response

102. In exercising the powers where the identity of a person is unknown, the police may not establish until investigations are underway whether or not the person has links with terrorism. There has, thankfully been a low level of terrorist incidents, so the majority of uses have been in cases where the police have sought to ascertain identity for non-terrorism offences, as these powers amend PACE identification provisions generally. However, where used in terrorist situations the powers have proven important and justified by their counter-terrorism benefits.

103. The majority of reported uses have been in relation to non-terrorism offences. Nevertheless, the police have welcomed the new powers and the level and scope of their use to date suggests they have proved appropriate and useable. The Criminal Justice Act 2003 has further extended the circumstances in which the police may take a person's fingerprints without consent to include taking fingerprints from a person arrested for a recordable offence and detained in a police station. By taking a person's fingerprints at the start of their detention period, the police can run a speculative search and reveal a person's real identity while they are still in detention. This will further prevent persons who are in police custody and wanted on a warrant or for questioning for other matters (including terrorism), from avoiding detection by giving a false name and address.

104. Speedy identification of persons in police custody will represent increased effectiveness and a large saving in resources because it will avoid further inquiries, in some cases involving armed operations potentially putting lives at risk, having to be made to locate and apprehend the person.

105. Law abiding citizens have nothing to fear from having this information retained. Retention of fingerprints in these circumstances is considered to be proportionate and of benefit to the interests of society for the purposes of prevention and detection of crime.

Newton Recommendation (para 43)

We were struck by the extent to which terrorists use crimes of “identity theft”, involving the use of false personal documentation, as a basis for their operations. The falsification of identity documents enables them to evade detection, circumvent immigration controls, and raise funds illegally. This is a serious issue; however, we are not convinced that all the relevant measures in Part 10 address it effectively. [Paragraph 336]

Background

106. The new powers enable the police to ascertain the identity of persons who do not co-operate with investigations, refuse to give their name/identification details or are suspected of using a false identity.

Government Response

107. The Government are assured that these powers are effective and proportionate tool in helping the Police counter all forms of terrorist threat to the United Kingdom, but will not hesitate to propose reasonable extension if they are considered ineffective.

108. Terrorists use false and multiple identities to help undertake and finance their activities in the UK and abroad. False and multiple identities are also essential 'tools of the trade' for organised criminals to facilitate money laundering and other serious crimes. The development of unique identifiers verifiable through the National Identity Register will help tackle these problems.

109. Nevertheless, the Government recognises that 'identity theft' poses complex difficulties, which are acknowledged and addressed by the Government's policy regarding the introduction of Identity Cards in the UK, and the use of biometric technologies. The Identity Cards Programme will create a form of personal identification for UK residents, which gives them a secure but easy way of demonstrating their right to be resident and their entitlement to public services. This form of personal identification will safeguard privacy, while providing better protection from terrorists and organised criminals, and from those who seek to abuse immigration rules and public services.

Newton Recommendation (para 44)

The privacy of innocent citizens who are subject to the Part 10 procedures should be protected. Those subsections enabling the police to retain fingerprints and photographs should be amended, permitting retention only in circumstances where the subject is charged with an offence, or where appropriate authorisation is given that that they are of ongoing importance in a terrorist investigation. [Paragraph 341ff]

Government Response

110. There is a fine balance to be struck between enabling the police to ascertain the identity of persons who do not co-operate effectively and preserving the safeguards to the liberties of the individual. The extent of the extension to police powers under ATCSA is commensurate with the very real threat of terrorism activities against the United Kingdom.

111. The Criminal Justice Act (CJA) 2003 has further extended the circumstances in which the police may take a person's fingerprints without consent to include taking fingerprints from a person arrested for a recordable offence and detained in a police station. This will further prevent persons in police custody and wanted on a warrant or for questioning for other matters from avoiding detection by giving a false name/address. Amendments under the CJA enable the police to retain fingerprints/DNA taken after arrest even if the suspect is not charged or convicted. Accordingly, it would not make sense to restrict the powers for counter-terrorism when greater powers now exist for routine investigations.

Newton Recommendation (para 45)

The Terrorism Act 2000 provided no powers to fingerprint in circumstances where there was a reasonable suspicion of involvement in terrorism, but not of involvement in a specific offence. Section 89 fills that gap. This is an important amendment in view of the role of identity theft in terrorism. The power should however be subject to the same retention safeguards as the parallel powers contained in the Police and Criminal Evidence Act 1984. [Paragraph 346]

Background

112. Section 89 amends the provisions in Schedule 8 to the Terrorism Act 2000, by providing that in addition to the grounds already specified, fingerprints can be taken from those detained under that Act in order to ascertain their identity. Previously fingerprints could only be taken from a person detained under the Act to establish if they had been involved in certain offences under the Act or to establish if they had been concerned in the commission, preparation, or instigation of acts of terrorism.

Government Response

113. These powers are deemed effective and proportionate in enabling the police to counter all forms of terrorist threat to the United Kingdom effectively.

114. As said earlier amendments under the CJA 2003 enable the police to retain fingerprints/DNA taken after arrest even if the suspect is not charged or convicted. It would not be appropriate to have lesser powers for counter terrorism than those already in place for routine criminal investigation.

Newton Recommendation (para 46)

The Section 36 provision that fingerprints taken under immigration powers can be retained for 10 years under all circumstances also gives rise to privacy concerns, and its justification on counter-terrorist grounds is not clear. The previous position on retention of fingerprints should be restored, except where appropriate authorisation is given that the fingerprints are of significance in an ongoing terrorist investigation. [Paragraph 347 ff]

Background

115. The Immigration and Asylum Act 1999 required fingerprints taken from asylum seekers to be destroyed if they were granted settlement in the UK and in certain other Immigration cases they were destroyed when the application was resolved.

116. As a consequence it was possible for a person granted asylum, or in immigration cases those who have had their case resolved, to re-apply in a different identity. This was an abuse of the asylum process and multiple identities gained in this could be used in the perpetration of serious crime, including terrorism.

117. Section 36 effectively addressed this by permitting fingerprints to be retained for 10 years after case resolution. This power has led to the identification of people making follow on applications and therefore prevented them from acquiring a second identity.

Government Response

118. This recommendation overlooks the key elements of section 36, which is that it is a preventative measure to obstruct people from obtaining a second identity and that its benefits to the UK go beyond anti terrorism.

119. The purpose of section 36 is to help prevent those engaged in criminal activities including terrorism from establishing multiple identities. It achieves this by allowing for the retention for 10 years of certain fingerprints taken in asylum and immigration cases, which were previously destroyed once the case was decided.

120. The ability to accurately identify a person is a key factor in the fight against crime including terrorism. Fingerprints are the only established way beyond doubt of linking a person to a previous identity. The retention of fingerprints makes it harder to create a false identity for example making a further asylum application.

121. Retention of fingerprints also prevents other crimes, and has in particular prevented abuse of the asylum process by preventing those granted asylum reapplying for asylum in another identity.

Newton Recommendation (para 47)

The previous limits on the general circumstances where the police are entitled to demand the removal of disguises should be restored. We are however satisfied that a more strictly defined power should be retained for those cases where a senior police officer believes that this measure is necessary in response to a specific terrorist threat. [Paragraph 353ff]

Background

122. Under section 60 of the Criminal Justice and Public Order Act 1994 (as amended by the Crime and Disorder Act 1998) an Inspector could authorise the removal of face coverings in a defined area for up to 24 hours if he reasonably believed that serious violence may take place in an area.

123. The power was amended by the ATCS Act so that an Inspector can authorise the removal of face coverings, being worn wholly or mainly to conceal identity in a defined area for up to 24 hours if he reasonably believed that offences may be committed. It is an offence to fail to remove a face covering when asked to do so by a constable.

Government Response

124. The tactic of wearing face coverings during outbreaks of public disorder has become increasingly widespread. Demonstrators involved in intimidatory or violent protests often wear masks or balaclavas, which hide most of the face. This can serve a double purpose both of disguising identity and heightening intimidation.

125. The police have found these new powers helpful to deal with protestors when they have intelligence to suggest face coverings will be worn to conceal identity.

126. There may be links between demonstrations where face coverings are worn and terrorist activity. These may not always be obvious or necessarily based on the declared objectives of the protest. However, in strictly defined circumstances the police should be able to require the removal of disguises and thus prevent people moving around in public places with their identity concealed.

127. The Government believes that restricting this power would constrain the police's ability to identify those who seek to hide their identity for terrorism and other criminal purposes.

Newton Recommendation (para 48)

It is desirable in the limited circumstances set out in Sections 98 to 101 that constables of the British Transport and Ministry of Defence Police should be able to act with all the authority of "Home Department" constables. We support the extension of the jurisdiction of both forces, but believe that it should be revisited when the underlying legislation is next revised. [Paragraph 362]

Background

128. Section 100 of the ATCS Act allows the BTP/MOD Police to act outside their normal jurisdiction when asked to assist by a constable from the local police force. The BTP/MOD Police can also act in an emergency provided the officer is in uniform or carrying his warrant card.

129. This enables an officer to intervene outside the railway/MOD land if he believes an offence has been, is or is about to be committed or to prevent injury or save life. The BTP/MOD police officer's involvement is constrained to a single incident and it is not intended that he should provide ongoing assistance to the local force under these provisions.

Government Response

130. The Government welcomes the Committee's endorsement of the provisions that extend the Ministry of Defence (MDP) and British Transport Police's (BTP) jurisdiction in limited circumstances.

131. The extended jurisdiction has been used on 2,900 occasions by the BTP over two years. This is equivalent to some 121 occasions a month, or around 1% of BTP's reported crime activity. The MDP reported an average of 160 occasions a month and has recorded a total of 3918 incidents from December 2001 to December 2003.

132. The Government is satisfied that the BTP and MDP police provisions in the ATCS Act are appropriate.

Newton Recommendation (para 49)

Given the special character of the Ministry of Defence Police it is important that the details of any mutual aid operations should be recorded and reported to Parliament. We welcome the Chief Constable's undertaking to provide an annual operational report in addition to the report and accounts required of him as Chief Executive of the Agency. The report should include detailed information regarding operations undertaken under Section 99. [Paragraph 363ff]

Background

133. Section 99 allows the Chief Constable of the MDP to provide assistance to other police forces, through Mutual Aid, at the request of the respective chief officer. In such circumstances members of the MDP are under the direction and control of the chief officer of the requesting force and have the same powers and privileges as a member of that force.

Government Response

134. Mutual Aid to other police forces is considered on a case by case basis, examples include support provided to the Soham murder investigation (Operation Fincham) in the vicinity of RAF Lakenheath, and the request from Wiltshire Constabulary for MDP firearms support teams to assist when a soldier was reported missing with an SA80. It is considered to be an effective use of resources in meeting special demands that arise. Information on MDP Mutual Aid is available and will be included in future annual MDP Operational Reports.

Newton Recommendation (para 50)

Future appointments of independent members to the MoD Police Committee (including the representatives of the appropriate trade unions and forces' family associations) should be subject to the Code of Practice of the Commissioner for Public Appointments, including public advertisements of the vacancies. We also take the view that, in the interests of independence, the Chairman of the

Committee should also be drawn from outside the armed services and the Ministry of Defence, and the appointment should be subject to the same procedure. [Paragraph 371 ff]

Background

135. The MoD Police Committee is not a Police Authority. It does, however, seek to mirror best practice from Police Authorities where possible. It works with the Force to drive forward performance, gives strategic direction to the Force (subject to the operational independence of the Chief Constable) and holds the Force to account on a range of issues.

136. The Committee has evolved significantly in the last two years. Three sub-committees have been created to look at customer/stakeholder issues, plans, targets & performance, and complaints & discipline. An additional independent member and a full-time Clerk were appointed.

137. The Review team's recommendation that MOD appoint an independent Chair has been prompted by concerns over accountability and openness. However, it is worth bearing in mind that the MDP does not come into contact with the public to the same extent as Home Department Police Forces. The community and property protected and policed by the MDP is generally defence related, and is within the responsibility of the Secretary of State for Defence. The chair of the Police Committee is appointed to act on his behalf to have oversight of the policing carried out within and on behalf of the Defence Community. It should also be noted that most Police Authorities are chaired not by independent members but by councillors or magistrates.

Government Response

138. The Government agrees that all new Independent Members of the MOD Police Committee will be appointed in line with the Code of Practice of the Commissioner for Public Appointments.

139. The Privy Counsel review also took the view that, in the interests of independence, the Chairman of the MOD Police Committee should be drawn from outside the armed services and the Ministry of Defence, and the appointment should be subject to the Code of Practice of the Commissioner for Public Appointments. The MOD Police Committee will consider carefully this recommendation.

140. The MOD Police Committee attaches great importance to accountability and openness of its processes.

PART 11 (RETENTION OF COMMUNICATIONS DATA)

Newton Recommendations (para 51)

We can see the case in principle for requiring communications data to be retained for a minimum period (which would vary with the type of data) for a defined range of public interest purposes such as helping in the prevention and detection of terrorism and other serious crime. These provisions should, therefore, be part of mainstream legislation and not special terrorism legislation. [Paragraph 396]

Background

141. Data retention ought to be dealt with in mainstream legislation rather than being in Anti-terrorist legislation. The Newton Committee feel this would be more appropriate especially since the purpose for retention ought to be expanded to cover general crime. The Government tend to agree with this recommendation and is considering putting part 11 in an additional section to RIPA. The Government would also like to see data retained for the purpose of fighting crime generally. The current position creates a disparity, which needs to be addressed. At the moment data is held for the purpose of safeguarding national security but can be accessed for many reasons including national security. Expanding the purpose for which data is held to include crime generally would eliminate this problem.

142. The Newton Committee recommend that the retention periods ought to be set out clearly in primary legislation. The current situation is that data retention periods are detailed in the Code of Practice. The Government is not keen for the retention periods to be set out in primary legislation. The Government wants to retain flexibility in this area.

Government response

143. The Government agrees with the Committee that there is a need for data retention for the purposes of fighting crime in addition to the purpose of safeguarding national security. This view is echoed by the police and other law enforcement agencies that use this data with increasing frequency and for whom this data provides an invaluable tool.

144. The Government is considering whether data retention (for the purpose of safeguarding national security and fighting crime) would be best dealt within mainstream legislation rather than special terrorism legislation.

145. The Government is also looking at possible mainstream pieces of legislation in which data retention could be incorporated. The Regulation of Investigatory Powers Act 2000 is being considered.

Newton recommendation (para 52)

The Government should accept the logic of the results of its consultation and replace Part 11 with a mainstream communications data retention regime, which limits in primary legislation the longest retention period, which the Government can impose to one year. This approach seems to have been adopted in several other European countries. It would permit data, which is of potential use in safeguarding national security to be retained. Access to the data must, however, be subject to strict regulation, and that regulation must be properly enforced. [Paragraph 398 ff]

Government response

146. The Government is looking at possible mainstream pieces of legislation in which data retention could be incorporated. The Regulation of Investigatory Powers Act 2000 is being considered.

147. The Government does not particularly see the necessity for putting data retention periods in primary legislation rather than secondary legislation.

148. Technical developments within the Telecommunications Industry take place very quickly. The Government therefore requires a relatively speedy process in order to make additions to the types of data to be retained and the periods of time for which they are retained as and when it is deemed necessary.

149. Although some European countries may have introduced maximum time periods into their primary legislation most have chosen the same route as the UK and introduced the precise time periods in secondary legislation.

150. The Government agrees with the Committee that access to data must be strictly regulated and overseen. The Government is satisfied that The Regulation of Investigatory Powers Act 2000 provides that necessary strict regulation and oversight.

151. The Committee suggests a maximum period of data retention of one year. The government agrees that this time period is adequate for safeguarding national security and fighting terrorism. However, the length of time data ought to be retained for the purpose of fighting crime has not yet been assessed. It is currently thought that the retention periods for both fighting crime and safeguarding national security will be of the same order.

Newton Recommendation (para 53)

The whole retention and access regime, including for those access routes not governed by the Regulation of Investigatory Powers Act 2000, should be subject to unified oversight by the Information Commissioner.

[Paragraph 405]

Background

152. Oversight ought to be streamlined and dealt with by the Information Commissioner. The government does not agree with this. The Information Commissioner does not have the power to initiate investigations. Nor does the government agree that all three commissioners' offices ought to be amalgamated.

Government Response

153. The Government does not believe that the Information Commissioner ought to oversee all access procedures including those governed by RIPA.

154. The Information Commissioner investigates complaints related to personal access requests for data and access requests made under the Social Security Fraud Act 2001. The Information Commissioner also investigates complaints into the retention of data including the length of time it is held.

155. The Interception Commissioner oversees access requests made under the Regulation of Powers Act 2000.

156. The Government is satisfied that the oversight procedures set out in current legislation, for both the retention of and access to data are sufficiently robust.

157. The powers available to the Interception Commissioner, the Rt. Hon. Sir Swinton Thomas, allow him and his team to pro-actively inspect and audit all processes and safeguards used by authorities accessing data. Any errors must be reported to his office, which will in turn be subject to scrutiny by the Prime Minister.

158. The Information Commissioner on the other hand has no such powers. Instead his role is primarily responsive; the Commissioner will take action when a complaint is received, rather than initiating action himself.

159. By transposing the data retention provisions to a new Part of RIPA, both regimes would come under the collective oversight of the Interception Commissioner. Such a revision of the legislation may provide a more unified approach.

Newton recommendation (para 54)

The need to retain communications data for terrorism and other serious crimes creates the potential for other use or abuse of that data. The protection provided by the Regulation of Investigatory Powers Act is a step in the right direction where it applies, but a coherent legislative framework governing both retention of, and access to, communications data seems to be the only way of providing a comprehensive solution to this issue. [Paragraph 406]

Background

160. Retention and access ought to be dealt with in the same piece of legislation. The Government agrees that this would make sense and is considering the possibility of incorporating Part 11 of ATCSA within a possible addition to RIPA.

Government response

161. The Government has not dismissed the need to combine the retention of data and the access to that retained data in a single coherent legislative framework.

162. The Government is currently considering whether or not data retention could be incorporated within The Regulation of Investigatory Powers 2000. By transposing the data retention provisions to a new Part of RIPA, both regimes could come under the collective oversight of the Interception Commissioner. Such a revision of the legislation may provide a more unified approach.

163. The stringent safeguards and oversight mechanisms contained in RIPA provide a strong clear framework for authorities accessing data, and protect against abuse of the system. For this reason the Government would like to see RIPA used exclusively by authorities. Certain legacy powers exist allowing lawful access to data by means other than RIPA, and the Government is working to reduce the number of times these powers are used to a minimum.

Newton recommendation (para 55)

Data preservation (preventing the anonymisation of a specified set of communication data such as that relating to a particular subscriber) is a useful supplement to data retention, and it should be properly provided for and regulated. [Paragraph 407ff]

Background

164. The Newton Committee has recommended data preservation as a supplement to data retention. The Government agrees but is keen to make the point that data preservation can never be a substitute for data retention. The Government has no plans to put data preservation on a formal footing in the same piece of legislation as data retention.

Government response

165. The Government agrees with the Committee that data preservation is a useful supplement to data retention but the Government is quite clear that data preservation is not a substitute for data retention.

166. Data preservation is seen as a useful tool in a limited number of situations. For example, it is sometimes extremely useful to be able to request the preservation of communications data which are not routinely retained by communications service providers. Preservation can also be a useful tool in an investigation after the retention periods set out in the Code of Practice on Data Retention [Statutory Instrument No. 3175 The Retention of Communications Data (Code of Practice) Order 2003] has expired. No formal mechanism exists for requesting the preservation of data.

167. The Government does not feel it necessary at this time to bring the preservation of data and retention of data under a single legislative regime.

PART 12 (BRIBERY AND CORRUPTION)

Newton Recommendation (para 56)

We endorse the view of the Joint Committee on the Draft Corruption Bill that a radical simplification of the bribery and corruption law in the forthcoming Corruption Bill would enhance its impact; it would serve as a better basis for prosecution, and send a clearer practical message to those professionals who are most affected by it. [Paragraph 421]

Background

168. The Committee Report is not critical of the part 12 provisions themselves, although it questions the justification for the inclusion of the provisions in the Act as they have little bearing on terrorism. It puts the lack of prosecutions down partly to a lack of clarity in the law and alludes to the draft Corruption Bill, published in March 2003, and the Report of the Joint Committee on the Draft Corruption Bill, published in July 2003.

169. It endorses the view of the Joint Committee that the law should be simplified, but states that the draft Bill borrowed extensively from existing bribery legislation. This last point is not quite right, because although the Government is not seeking to challenge the existing model of the concept of corruption (the suborning of an agent against his principal), the draft Bill was based on a Law Commission report which set out to clarify through a series of tests, what makes a transaction corrupt. As such it is a new approach and very different from existing law, which does not include a definition of “corruptly”.

Government Response

170. Although we are pleased that the Newton Committee in paragraph 415 of its report welcomes the proposed repeal of the part 12 provisions on bribery of the ATCS Act and their replacement within the proper context of the Corruption Bill, we do not concur with its endorsement of the view of the Joint Committee on the Draft Corruption Bill (Slynn Committee) that a radical simplification of the definition of corruption is needed. The issue of the wider reform of the law on corruption goes beyond parliamentary oversight of the operation of the ATCS Act, which is specifically concerned with bribery overseas.

171. The Government set out its position in its Response to the Joint Committee on the Draft Corruption Bill, published on 18 December 2003. In brief, we do not believe that the definition put forward by the Joint Committee which relies upon an undefined adjective “improper” would clarify the offence or make it easier to apply.

PART 13 (MISCELLANEOUS)

Newton Recommendation (para 57)

It is preferable for prosecution to take place on the grounds of direct involvement in terrorism where possible, but we understand that use of the offence of withholding information may be the only way forward in some serious cases. We invite Lord Carlile to keep the operation of Section 117 under particularly careful review. [Paragraph 434]

Background

172. The offence of withholding information about acts of terrorism was inserted into the Terrorism Act by the ATCS Act. This section of the Act made it a criminal offence to fail to disclose information relating to acts of terrorism to the relevant authorities.

Government Response

173. The Government believes that careful monitoring of the operation of the legislation will provide valuable information for us in evaluating the operation of the power and it would welcome Lord Carlile’s observations in that respect.

PART 14 (SUPPLEMENTAL)

Newton Recommendation

The powers of amendment set out in Section 124 are particularly unwelcome in emergency legislation of this kind, and they should be repealed. [Paragraph 442]

Background

174. A Minister may make amendments to the legislation contained in the ATCS Act by statutory instrument (SI). This SI is subject to annulment in pursuance of a resolution in either House of Parliament.

Government Response

175. Disagree. The Government believes that this power allows the Government to react quickly to changing circumstances that are a feature of many of the areas covered in the Act.

176. It is correct that terrorism legislation is placed on a permanent footing and that powers contained within it allow us to respond flexibly to any changes in threat.

Table 1

ACTS ACT PART 4 DETAINEES

Anti-Terrorism, Crime & Security Act 2001 – Detainees under Part 4

- The ATCSA Part 4 powers are special immigration powers that allow the Home Secretary to certify and detain, pending deportation, foreign nationals who are suspected of involvement in international terrorism but whom he cannot remove from the United Kingdom.
- Normal immigration powers allow detention pending deportation only if there is a realistic prospect of removal.
- This may not be possible for a number of reasons, but in most cases it derives from a fear that deportation might result in those deported being subject, within their countries of origin, to torture or inhuman or degrading treatment or punishment, which is subject to an absolute prohibition under Article 3 of the European Commission on Human Rights (ECHR).
- Anyone detained under the Act is free to leave the UK at any time, and has a full right of appeal to the Special Immigration Appeals Commission (SIAC). (See [“Frequently asked questions”](#).) After hearing the case, SIAC issues a determination recording their findings.

The table on next page sets out the number of people who have been certified and detained under the Act and provides an update on their current position.

The identities of the individual detainees are protected by a court order issued by SIAC and as a result, their names and other identifying features are not included unless the individual in question has chosen to release his details into the public domain.

Detainee	Date of certification	Date of appeal	Date of determination	Result
Ajouaou Note: Ajouaou has chosen to place his name in the public domain Ajouaou has made a voluntary departure from the United Kingdom	17/12/01	19/05/03 (with A and B)	29/10/03	Certification upheld
A	17/12/01	19/05/03 (with Ajouaou and B)	29/10/03	Certification upheld
B	05/02/02	19/05/03 (with Ajouaou and A)	29/10/03	Certification upheld
C	17/12/01	09/06/03	29/10/03	Certification upheld
D	17/12/01	16/07/03	29/10/03	Certification upheld
E	17/12/01	14/07/03	29/10/03	Certification upheld
F F has made a voluntary departure from the United Kingdom	17/12/01	21/07/03 (with G and H)	29/10/03	Certification upheld
G	17/12/01	21/07/03 (with F and H)	29/10/03	Certification upheld
H	22/04/02	21/07/03 (with F and G)	29/10/03	Certification upheld
Rideh Note: Rideh has chosen to place his name in the public domain and has been identified in the open determination issued by SIAC on 29/10/03	17/12/01	23/06/03	29/10/03	Certification upheld
M	15/01/03	15/12/03	27/01/04	Certification upheld
Abu Qatada Note: Abu Qatada has chosen to place his name in the public domain		23/10/02	19/11/03	Not yet determined
K	23/11/02	26/01/04	Not yet determined	
1	22/04/02	To be confirmed		
2	02/10/03	To be confirmed		
3 Note: Individual has been certified but not detained under the ATCS Act (as he is currently detained under other powers)	07/08/03	To be confirmed		
4	15/01/03	To be confirmed		

Table 2**Terrorism Act 2000 – Arrest and charge statistics**

Between 11 September 2001 and 31 January 2004:

- 544 individuals were arrested under the Terrorism Act 2000

Of those:

- 98 were charged with offences under the Terrorism Act (see below)

These figures apply to England, Scotland and Wales only. Figures on Terrorism Act arrests in Northern Ireland are handled by the Northern Ireland Office.

Individuals charged under the Terrorism Act 2000

According to police records, the 98 individuals charged under the Terrorism Act were charged for the following 155 offences:

Number of offences	Specific offence	Relevant part of the Act
59	<ul style="list-style-type: none"> ● Possessing an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism 	s57(1)
28	<ul style="list-style-type: none"> ● Belonging or professing to belong to a proscribed organisation 	s11
12	<ul style="list-style-type: none"> ● Collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism ● Possessing a document or record containing information of that kind 	s58(1a & 1b)
7	<ul style="list-style-type: none"> ● Receiving money or other property intending that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism 	s15(2)
6	<ul style="list-style-type: none"> ● Entering into or becoming concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property 	s18
6	Failing to disclose information as soon as reasonably practicable that may be of material assistance <ul style="list-style-type: none"> ● in preventing the commission by another person of an act of terrorism ● in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism 	s38(b)
6	<ul style="list-style-type: none"> ● Receiving instruction in the making or use of firearms, explosives or chemical, biological or nuclear weapons 	s54(2)
4	<ul style="list-style-type: none"> ● Receiving instruction in the making or use of firearms, explosives or chemical, biological or nuclear weapons 	s54(2)
3	<ul style="list-style-type: none"> ● Providing instruction or training in the making or use of firearms, explosives or chemical, biological or nuclear weapons 	s54(1)
3	<ul style="list-style-type: none"> ● Providing instruction or training in the making or use of firearms, explosives or chemical, biological or nuclear weapons 	s54(1)
2	<ul style="list-style-type: none"> ● Wilfully failing to comply with a duty imposed under or by virtue of this schedule (Port and Border Controls) 	Schedule 7 Para 18(1)

Number of offences	Specific offence	Relevant part of the Act
2	<ul style="list-style-type: none"> ● Possessing money or other property intending that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism 	s16(2)
2	<ul style="list-style-type: none"> ● Entering into or becoming concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and 'he' knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism 	s17
2	<ul style="list-style-type: none"> ● Interfering with material which is likely to be relevant to the [terrorist] investigation 	s39(2)(b)
2	<ul style="list-style-type: none"> ● Belonging or professing to belong to a proscribed organisation 	s11
2	<p>Failing to disclose information as soon as reasonably practicable that may be of material assistance</p> <ul style="list-style-type: none"> ● in preventing the commission by another person of an act of terrorism ● in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism 	s38(b)
2	<ul style="list-style-type: none"> ● Possessing an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism 	s57(1)
2	<ul style="list-style-type: none"> ● Collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism ● Possessing a document or record containing information of that kind 	s58(1a & 1b)
1	<p>A person shall be guilty if he does anything outside the UK as an act of terrorism or for the purposes of terrorism and his action would have constituted the commission of one of the following offences if it had been done in the UK:</p> <ul style="list-style-type: none"> ● Sec 2, 3 or 5 of the Explosive Substances Act 1883 (causing explosions, etc.) ● Sec 1 of the Biological Weapons Act 1974 (biological weapons) ● Sec 2 of the Chemical Weapons Act 1996 (chemical weapons) 	s62(1)
1	<ul style="list-style-type: none"> ● An offence under section 2, 3 or 5 of the Explosive Substances Act 1883 (causing explosions, etc.) 	s62(2)(a)
1	<p>Possessing an article in such circumstances as to constitute an offence under</p> <ul style="list-style-type: none"> ● The Explosive Substances Act 1883 ● The Protection of the Person and Property Act (Northern Ireland) Act 1969 ● The Firearms (Northern Ireland) Order 1981 	s77(1)
1	<p>Receiving money or other property intending that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism</p>	s15(2)
1	<p>Entering into or becoming concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and 'he' knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism</p>	s17



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