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The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2012 by the Independent Reviewer of Terrorism Legislation

November 2013



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

November 2013

Cm 8745

£6.25

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Any enquiries regarding this publication should be sent to the Home Office at counterterrorismlegislation@homeoffice.x.gsi.gov.uk

ISBN: 9780101874526

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2601037 11/13

Printed on paper containing 75% recycled fibre content minimum.

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Dear Mr Anderson

REVIEW OF THE OPERATION IN 2012 OF THE TERRORISM ACTS

Thank you for your report on the operation in 2012 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 (the 'Terrorism Acts'). As ever, your review continues to provide the Government, Parliament and the public with an important source of independent and detailed analysis of the operation of the UK's primary anti-terrorism legislation.

Your welcome of the 'cautious liberalisation' of anti-terrorism law since 2010 is an acknowledgement of this Government's efforts to ensure our laws are both effective and proportionate. As you know, this approach reflects our commitment to ensure that we have the right powers and legislation in place to protect the people of this country and our interests overseas in a way which is consistent with British values, including transparency, human rights and the rule of law.

I noted with interest your decision this year to adopt a different approach to reviewing the Terrorism Acts, opting to report more extensively on the action we have taken in response to your previous recommendations. I welcome your acknowledgement of both the progress we have made to date and our ongoing work to address those recommendations that remain outstanding, particularly in those complex areas of the law such as proscription and the matter of border controls.

While you make no further recommendations this year, in responding to your report I have given careful consideration to the detailed observations made and sought to respond to each of these and to the broader areas which you have dealt with in some depth. I write now formally to respond on behalf of the Government.

The Nature of the Threat

Your report contained a very cogent summary of the terrorist threat facing the UK. It is clear from recent events that not only does the threat remain both serious and sustained, but that it is evolving and diversifying. A diligent and tireless police and security response is vital to our efforts to disrupt attempted attacks against this country and our interests overseas. To that end, I welcome your acknowledgement that the case for specific powers to tackle the threat is amply made out. It is clear that, in placing the development of the UK's anti-terrorism laws in context and presenting a thorough, yet accessible, summary of the nature of the threat, your report has succeeded in contributing to, and influencing the wider debate over the nature of those special powers.

The Counter-terrorism Machine

Organisation

Your report also provides a very helpful explanation of the wider counter-terrorism machine. It may therefore be helpful in this response to set out a number of the significant changes that have taken place in recent months. Over the last few months the Office for Security and Counter Terrorism (OSCT) has taken on additional responsibility for tackling other threats that affect our national security. These include integrating a new directorate into OSCT: the Strategic Centre for Organised Crime (SCOC) whose mission is to reduce substantially the level of serious and organised crime affecting the UK and its interests. This directorate also has responsibility for oversight of the new National Crime Agency (NCA). The Special Cases Unit, which was part of the former UK Border Agency, also joined OSCT this summer. It is responsible for case management of a range of CT and other sensitive and high profile immigration and nationality cases, and ensured the deportation of Abu Qatada in July and the subsequent removal of his family from the UK.

We plan to develop closer collaboration and sharing of capabilities between the police and agency networks that work on counter terrorism and organised crime. Having a common strategic framework will help. There are particular areas where greater collaboration is needed, including at borders (where much has already been achieved), in prisons, protective security, financial crime and money laundering. However, as I have previously said and reiterate here, there will be no wholesale review of counter-terrorist policing structures until after the NCA is well established.

Olympic and Paralympic Games

I welcome your assessment that the considerable organisation that went into Olympic security, and in particular the work of the intelligence services and others, was vital to ensuring a successful Games. The London 2012 Olympic and Paralympic Games provided a boost to help promote UK security exports overseas and OSCT is now the lead for a cross-Government drive to build on that legacy and increase support for and promotion of the UK security industry. This work represents a key element of the Home Office's contribution to the Government's growth agenda, as well as supporting delivery of CONTEST by helping partners to build their security capabilities and tackling threats to UK national security at source.

Co-operation in Europe

Your report comments on the importance of the UK's relationship with European partners in the area of counter terrorism. As I announced on 9 July to the UK Parliament, the Government will opt-out from all pre-Lisbon police and justice matters. The decision to exercise the opt-out was supported by both Houses of Parliament through votes on the 15 and 23 July. The announcement also included a set of 35 measures that the UK will seek to rejoin which support practical cooperation between Member States. These are set out in a Command Paper 8671: <http://www.official-documents.gov.uk/document/cm86/8671/8671.pdf>.

Taken together they demonstrate the UK's continued commitment to work with our European partners to combat cross border crime and keep our countries safe. The Commission have publically said they respect the UK's choice to opt out and welcome our intention to opt back into certain measures. They appreciate that we have looked at the measures we will rejoin in a pragmatic way. Both Sir Hugh Orde (Association of Chief Police Officers) and Kier Starmer (Director of Public Prosecutions) stated in their evidence to the Home Affairs Select Committee in September that they believed the Government had proposed the right set of measures to rejoin.

On CT co-operation, we continue to engage with our European partners on both a multilateral and bilateral basis. I am particularly pleased with the progress we have made within the EU in areas such as aviation security, scientific and technical co-operation, and the security of high risk chemicals and I will continue to support the Justice and Home Affairs Council in informing and developing, where appropriate, an effective EU response to the changing terrorist threat. Looking ahead, we must consider how we can increase our efforts in ungoverned areas across all aspects of our counter terrorism strategy. This work needs to be integrated with our development programmes to assist failing states, rebuild the rule of law and address poverty.

Proscription

I welcome your comments about the proscription process, including the specific proscriptions of the Indian Mujahideen and Ansaru and our capacity to consider the proscription of extreme right wing groups.

I note your continued concerns about the lack of deproscriptions to date and appreciate your acknowledgement of the on-going work on this difficult issue. We are looking at the best way to use the existing legislative and operational framework to deproscribe groups that no longer meet the statutory threshold. I will advise Parliament of any changes and any decisions to deproscribe groups are, of course, subject to Parliamentary agreement. It remains the case that any person affected by an organisation's proscription can submit an application to me to consider whether an organisation be deproscribed. I have not received any deproscription applications.

You reiterate your suggestion that a way be found of giving some Parliamentarians access to secret information relating to the organisation proposed for proscription. This is a difficult issue due to the risks associated with widening the readership of intelligence material. Informed Parliamentary debate is always desirable but classified material could not be used in debate and so the focus would continue to be on the available open source material about the group and its activities.

I am content to accept your suggestion that further consideration be given to ensuring a new proscription automatically triggers consideration of whether to seek EU designation, possibly by an addition to the terms of reference of the Proscription Review Group. Under existing arrangements the international dimension of any proscription decision is always considered. We will make changes to the terms of reference to reflect this.

Statistics

Your report provides a detailed analysis of the available and published data in this area and outlines where progress has been made against the recommendations made in your previous two reports.

Sources of statistics

We will be publishing greater detail in the quarterly statistical releases from the next quarter onwards and I trust that from then on you will be able to source the statistical information you require for your report on calendar year figures (provided that the timescales match with our release schedules).

In respect of Northern Ireland, whilst there are currently no plans to change the year-to-March basis on which the Northern Ireland Office (NIO) publishes its statistics, figures for defined periods will continue to be available from the relevant organisations and, going forward, the NIO will coordinate requests on your behalf of to these organisations for such figures.

Response to previous recommendations

Charging – standardising the practice of quantifying the occasions on which each offence under the Terrorism Acts is charged.

You have suggested that information on the number of times each criminal offence under the terrorism acts has been charged would be useful to inform consideration of the utility of those offences. We have considered this recommendation in detail. We have no plans to change the basis of reporting data on terrorism arrests and charges in Great Britain.

The principal offence basis, whereby charges and convictions are listed only by the offence which carries the largest maximum sentence (the ‘principal offence’), is the standard counting rule used in other data collections in England and Wales including arrests and court proceedings. It also provides a simple measure of the number of ‘persons’ arrested, charged and convicted of a terrorism-related offence which is, we judge, more meaningful to policy customers, Ministers and members of the public. Additionally, as you acknowledge in your report, it remains my assessment that such a change would present significant logistical and administrative challenges to both officials and the police.

Convictions and acquittals – facilitating direct comparisons between statistics for Northern Ireland and Great Britain

I note your observation that statistics for the number of convictions and acquittals on terrorism charges would be useful to provide a clearer picture on the exercise of prosecutorial discretion or on the ability to secure convictions. In order to provide information on terrorism-related cases for inclusion in the Home Office Statistical Bulletin (HOSB) for 2011/12, the Police Service of Northern Ireland (PSNI) undertook a lengthy and manually resource intensive exercise. While noting the benefits you outline of providing this information routinely in future, we are reluctant to repeat such an exercise on an annual basis given those burdens. However, the NIO is exploring with partners ways in which to include this information in future in the statistical bulletin which they publish and in a format which will make it easily comparable with the data from Great Britain. This exercise could not, however, be completed in time for inclusion in the 2012/13 bulletin which was published on 15 October 2013.

Warrants for further detention – the number and success rates

The ACPO Counter-Terrorism Coordination Centre (ACTCC) has been commissioned with providing this information with a view to publication in the Home Office Statistical Bulletin. In Northern Ireland these figures were published in the 2012/13 NI Bulletin, and will be included in future bulletins.

Ethnicity

It remains our intention to move to the 2011 Census classifications and to the universal use of self-defined data, but as you acknowledge in your report, since this change will have significant implications in terms of training and information technology, it is not imminent. Home Office officials will continue to work with the ACTCC, police forces and other criminal justice bodies to ensure this intention is realised as soon as practicable.

The future

The statistical data that is now being recorded regarding warrants for further detention and refusals of access to solicitor will be included in future statistical reports for Great Britain. In Northern Ireland, data relating to the number of requests to see a solicitor that were delayed was published in the 2012/13 NI Bulletin, and will be included in future bulletins.

Definition of Terrorism

Your report offers a number of interesting observations about the UK definition of terrorism. As you know, the definition that is included in section 1 of the Terrorism Act 2000 has been the subject of extensive debate in Parliament and has given rise to considerable review over the years, including the one conducted by Lord Carlile in 2007 as the then Independent Reviewer of Terrorism Legislation.

This is clearly a complex area. There is no universally agreed definition. Indeed, as you point out, the UK approach has influenced formulations adopted in other jurisdictions. The UK definition is necessarily broad to tackle the ever changing nature of the terrorist threat, both in the UK and overseas. However, we are committed to ensuring that it is not used disproportionately. Safeguards are built in to our legislation and we rely on the police and Crown Prosecution Service to make sure that prosecutions are only pursued in appropriate cases. Whether any specific act falls within the definition of terrorism and whether any individuals or groups have committed an offence will of course depend on all facts and circumstances of the case. I therefore welcome the acknowledgement in your report that the discretion afforded to those concerned in the application of the definition is responsibly exercised.

No doubt debate on this issue will continue, particularly as relevant cases arise. For example, your report refers to the consideration by the Supreme Court of the criminal appeal brought by Mohammed Gul, against his conviction for terrorism offences. The Court handed down judgment in this case on 23 October and upheld the earlier Court of Appeal judgment, dismissing the appeal in this case. You make no specific recommendations for the amendment of the definition of terrorism at this time and confirm that you have not identified any urgent need for change. I very much welcome your continued focus on this important issue.

Arrest and Detention

There have been a number of important developments relating to the arrest and detention of individuals under terrorism powers since your last annual report. In particular, in response to your previous recommendation, section 117 of the Coroners and Justice Act 2009 has been fully commenced. As you set out within your report, this provides for additional independent oversight of terrorist detention. It strengthens the role of the Independent Reviewer of Terrorism Legislation in reporting on the treatment of those held pre-charge and extends the statutory Independent Custody Visiting (ICV) scheme to terrorist detainees held under the Terrorism Act 2000.

In previous reports you have considered in some detail the matter of pre-charge detention and the changes to the legislation to reduce the maximum period of pre-charge detention from 28 to 14 days. It is perhaps worth briefly noting that these changes, introduced in the Protection of Freedoms Act 2012, came into force during this reporting period, on 10 July 2012.

On each of five recommendations made in your 2012 annual report which relate to detention, the position remains as set out in the Government response to your last annual report on the

Operation of the Terrorism Acts, published in March 2013. We continue to keep these matters under review and welcome your continued engagement on this.

Charging and Sentencing Outcomes

In response to your comments regarding perceptions of discrimination in charging and sentencing, OSCT Counter Terrorism Research and Analysis (CTRA) was tasked with conducting analysis to explore whether any link exists between religion and sentence length for those convicted of a terrorism-related offence. This work is now complete and was published on 12 September as a one off statistical release, alongside the latest Home Office Statistical release on the Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches, Quarterly update to March 2013. The additional statistical release is available online at <https://www.gov.uk/government/publications/terrorism-arrests-analysis-of-charging-and-sentencing-outcomes-by-religion>.

The data on charges and convictions following terrorism-related arrest show that, statistically, there are no significant differences in the proportions charged, sentence length, or seriousness of offence between Muslim offenders and offenders of other or no religion.

I note your comment about the perception of longer sentences for terrorism related offences in Great Britain compared to Northern Ireland. We will aim to work with Northern Ireland Office to explore this further by looking into the comparability of data available for the two areas.

Stop and Search

Your comments relating to the positive development of terrorism stop and search powers since 2010 are a welcome recognition of the significant changes that have been made to the legislation in this area. These changes follow the Government's CT and Security Powers review and the judgment of the European Court of Human Rights in the case of Gillan and Quinton v UK. We concluded that stop-and-search powers under Section 44 of the Terrorism Act 2000 must be repealed, and delivered on our commitment to replace them with a more limited power which enables the police to stop and search people and vehicles without reasonable suspicion only in exceptional circumstances, where there is a real threat of terrorist attack.

These new powers, put on a statutory footing by the Protection of Freedoms Act 2012, and the associated Code of Practice, came into force on 10 July 2012. This power has not been used outside Northern Ireland since it was introduced, and there has been no effect on public safety. I am satisfied that the changes made ensure the police have the powers that they need to protect the public, whilst ensuring that there are robust safeguards in place to prevent their misuse.

Terrorist Property

You made no specific recommendations in respect of terrorist property powers. However, I note your concerns that available statistics make it difficult to assess the degree to which fundraising offences are used (they may for example form part of the conduct in preparation for acts of terrorism for offences contrary to section 5 of the Terrorism Act 2000 rather than be the principal offence charged) but I am satisfied that the Crown Prosecution Service will bring charges under these provisions when it appropriate to do so. Whilst outside of the period covered by your report, this has most recently been demonstrated by the conviction of three individuals in February 2013 for offences in respect of raising money for terrorist purposes.

You reference the particular case of Munir Farooqi who is the subject of forfeiture proceedings under section 23A of the Terrorism Act 2000. On 30 September 2013, an appeal made by Farooqi in relation to his conviction and sentence was dismissed at the Court of Appeal. Forfeiture proceedings are ongoing.

Port and Border Controls

I welcome your continued recognition of the importance and utility of the port and borders controls in Schedule 7 to the Terrorism Act 2000. These powers are an essential part of the UK's security arrangements and support the work of the Security Service, Police and other agencies to protect the public, providing opportunities to secure evidence for terrorist-related prosecutions and to gain and further develop intelligence on terrorist activity.

You point to the continuing interest in the operation of Schedule 7, following the public consultation and the ongoing legislative debate in Parliament and in litigation before the Courts. You wrote to me on 22 August indicating your intention to complete an ad hoc report into the use of the power in the stop of David Miranda. I look forward to receiving your report in due course.

As you are aware on 9 May 2013 we presented the Anti-social Behaviour, Crime and Policing Bill to Parliament. On introduction the Bill included a number of amendments to Schedule 7 in line with the Government's commitment to ensure the right balance between security and individual freedoms. You summarised these in your report. Also, as you noted, we have laid an amendment to the Bill which will make express provision for the copying and retention of information from examined property. This amendment will provide necessary clarity to the exercise of this important power.

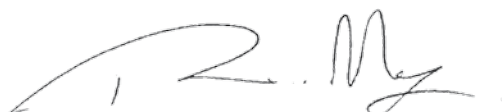
I welcome your endorsement of the approach we are taking to encouraging the audio recording of Schedule 7 examinations at major ports. I also appreciate your contribution to the debate about the power in Schedule 7 to examine an individual without requiring the examining officer to have grounds for suspecting that person involved in the commission, preparation or instigation of acts of terrorism.

I note your view about the need for safeguards on the use which may be made of answers to questions that a person examined under Schedule 7 is compelled to answer. The same issue was identified by the High Court, in the case of *Sylvie Beghal v The Director of Public Prosecutions*, [2013] EWHC 2573 (Admin), which has urged consideration of a legislative amendment for a statutory bar to the introduction of admissions made in a Schedule 7 examination in a subsequent criminal trial. We are now considering this.

Conclusion

I look forward to continued constructive engagement with you on these issues and welcome the valuable contribution and insight you continue to offer to the wider debate on counter-terrorism. I will, as usual, be publishing the Government's response on the government website and placing copies in the Vote Office.

Thank you once again for your thorough report.



The Rt Hon Theresa May MP



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ISBN 978-0-10-187452-6



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