

**REVIEW OF COUNTER-TERRORISM AND SECURITY
POWERS**

SUMMARY OF RESPONSES TO THE CONSULTATION



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

January 2011

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This publication is also available on
<http://www.official-documents.gov.uk>

ISBN: 9780101800525

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

ID P002411346 01/11 8307 19585

Printed on paper containing 75% recycled fibre content minimum.

INTRODUCTION

This document summarises the responses to the review of counter-terrorism and security powers which was announced by the Home Secretary on 13 July 2010. It also sets out the consultation process that was followed on the review. Terms of reference for the review were published on 27 July 2010 and can be found on the Home Office website.

The aim of the review of counter-terrorism and security powers was to ensure that the powers and measures covered by the review were necessary, effective and proportionate and that they met the UK's international and domestic human rights obligations. The six key powers considered by the review were:

- The detention of terrorist suspects before charge, including how we can reduce the period of detention below 28 days.
- Section 44 stop and search powers and the use of terrorism legislation in relation to photography.
- The use of the Regulation of Investigatory Powers Act 2000 (RIPA) by local authorities and access to communications data more generally.
- Measures to deal with organisations that promote hatred or violence.
- Extending the use of deportation with assurances in a manner that is consistent with our legal and human rights obligations.
- Control orders (including alternatives).

Further copies of this report can be obtained from The Stationary Office.

This report can also be found on the Home Office website.

OVERVIEW

On 13 July 2010, the Home Secretary announced to Parliament the Government's intention to conduct a review into six key counter-terrorism and security powers. The terms of reference for the review were published on 27 July 2010. These included a commitment to conduct the review as openly and transparently as possible and to invite key organisations and individuals from across the United Kingdom to contribute to the review.

THE CONSULTATION PROCESS

The review was conducted by officials from the Office of Security and Counter-Terrorism (OSCT) in the Home Office. Separate working groups looked at each of the powers covered by the review. These working groups included representatives from other Government departments, the Crown Prosecution Service, the police and the security and intelligence agencies.

The terms of reference for the review made it clear that the review should consider a wide range of views, including those of civil liberty organisations and community groups. To meet this commitment, the Home Office wrote to key organisations (civil liberty and human rights organisations, organisations representing the legal profession, victims groups and special interest groups) making them aware of the review and providing advice on how they could contribute.

Home Office officials also met with the following non-governmental organisations and individuals to discuss the review:

Liberty

Amnesty International

Justice

Human Rights Watch

The Equality and Human Rights Commission

Lord Lloyd of Berwick QC

Lord Carlile of Berriew QC

Organisations representing photographers (The Royal Photographic Society, The National Union of Journalists, Amateur Photographer, The Bureau of Freelance Photographers, SceneThat)

Yahoo

Professor Clive Walker

Professor Conor Gearty

The Law Commission

The Local Government Association

The Interception of Communications Commissioner

The Chief Surveillance Commissioner

Rt Hon David Davis MP

Consultation meetings were also held in Edinburgh, Belfast, Manchester, Birmingham and London. Over 190 organisations were invited to the consultation meetings. This included community groups (including representatives of all the major religions and beliefs), local police forces, probation and prosecutors, local councils, academics, youth organisations, equality groups and representatives of the legal profession. The aim of the consultation meetings was to hear the views of organisations and individuals who had less opportunity to contribute to the review by other means (such as through the working groups or written submissions).

A dedicated e-mail and postal address was also provided for those who wanted further information on the review or who wanted to submit contributions to the review.

All contributions submitted to the review were passed on to Home Office officials to take them into account in developing the review's recommendations.

Lord Macdonald of River Glaven QC provided independent oversight of the review. His role was to ensure that it had been properly conducted, that all the relevant options had been considered and that the final recommendations made by the review were fair and balanced. Lord Macdonald had access to all the working and background papers used in the review and was sent copies of contributions to the review from organisations and individuals. As part of his work on the review, Lord Macdonald met with Home Office ministers and officials and a wide range of other individuals and organisations including the main civil liberty and human rights organisations, community representatives, the police, the intelligence and security agencies, ministers in other Government departments, legal experts and key parliamentarians. Lord Macdonald's report on the review will be published separately and will be placed on the Home Office website.

THE RESPONSES

The review received 67 written contributions from external organisations and individuals. This is in addition to the contributions made by law enforcement, the security and intelligence agencies and government departments as part of the review working groups. A list of those who made written contributions is provided at Annex A.

Of the written contributions, 34 (most of which were from local authorities) dealt only with the proposed changes to RIPA, 5 were specific to the issue of photography and 2 dealt only with the section 44 stop and search powers. The remaining 26 contributions commented on two or more of the powers covered by

the review or covered powers which were outside the scope of the review. There were 6 written contributions to the review from members of the public.

In addition to written contributions, a wide range of views on the powers were raised at the regional consultation meetings and in the meetings between Home Office officials and particular organisations and individuals.

In general, the review was welcomed by all those who contributed. A number of contributions thought the review should have considered all counter-terrorism powers. A number of contributions also raised issues about powers that were not part of the review.

We are very grateful for all the contributions made to the review. The meetings with organisations and individuals and the regional consultation meetings promoted constructive debate on some of the most controversial and sensitive powers used to deal with terrorism and crime. Together with the written contributions received as part of the review, they have formed an important part of the evidence considered by the review in reaching its conclusions.

This report aims to convey a summary of the responses received (either in the form of written contributions or at the consultation meetings) from external organisations and members of the public to the review. The views of security and intelligence agencies, law enforcement and other Government Departments are not reflected in this report.

DETENTION OF TERRORIST SUSPECTS

A number of those who contributed to the review felt that the current maximum period of detention for terrorist suspects before charge of 28 days was too high. Some of those consulted felt that the maximum period should be reduced to 14 days with a number arguing that 7 days was a more acceptable level.

Comparisons with the maximum periods of detention before charge in other countries were raised both in written contributions and at the consultation meetings. The fact that no suspect has been detained for more than 14 days in the last 3 years was also mentioned as 'proof' that more than 14 days was not required.

A number of contributors recommended that greater use of the threshold test by prosecutors, more intensive use of police resources and the availability of post charge questioning would reduce the need for extended periods of detention before charge. It was suggested that greater use could be made of independent custody visitors to ensure that the welfare of suspects was protected.

A number of contributors said that the exclusion of suspects and their legal representatives from parts of the court hearings that consider extension to detention was wrong and should be changed. There was also some support for making it clear that the judge considering any extension to detention should also be able to consider whether there were reasonable grounds for believing that the suspect had committed a terrorist offence.

SECTION 44

The issue of section 44 stop and search powers were raised at all the regional consultation meetings and in a number of the written contributions.

Most of the contributions referred to the recent ECtHR judgment on section 44 which had made the power unlawful in its current form. There was an expectation, therefore, that the current power would be repealed and this was welcomed by all contributors.

There was a general acceptance that a stop and search power that did not require reasonable suspicion could be necessary in limited circumstances, for example where there was intelligence that a terrorist attack was likely.

Contributors suggested that such a power could only be used where it was necessary to prevent a terrorist attack and then only for a short period of time and over a small geographic area. Even when so limited, some contributors argued that the use of the powers should require judicial authorisation. Some contributors argued that the powers should be available for particular areas or sites that were at particular risk of terrorist attack.

There was a general acceptance that section 43 of the Terrorism Act 2000, which only relates to individuals and requires the police officer to have reasonable suspicion, should be amended to include the search of vehicles.

PHOTOGRAPHY

Contributions on the issue of photography were raised by photography organisations, the National Union of Journalists and civil liberty groups. A meeting was also held with representatives from photography organisations. The main concern was the use of section 44 stop and search powers. This included the searching and deletion of digital photographs as part of a search and what was perceived as the targeting of photographers for search. There was a view that the guidance that had been issued to the police on the use of section 44 in

relation to photography had not been sufficiently effective and that police on the ground were not sufficiently aware of restrictions on how the law should be applied. The possible repeal of section 44 was welcomed though concerns were raised that the reasonable suspicion stop and search power at section 43 of the Terrorism Act 2000 could still be used to target photographers. It was suggested that explicit guidance should be issued on section 43 making it clear that taking photographs in particular areas was not, in itself, enough to constitute reasonable suspicion.

There was a concern among these groups that the terrorism offence (section 58A of the Terrorism Act 2000) concerned with eliciting information about members of the police, security services and military could have a 'chilling' effect on photographers and that it could be used to prosecute them when taking photographs of police officers. A number of contributions from photography related groups recommended the repeal of the section 58A offence.

Wider concerns (outside the scope of this review) were raised by photographers about a lack of clarity on what could and could not be photographed in public. This touched on issues such as the photographing of private property, the right to privacy, the photographing of demonstrations and concerns about the photographing of children in public places.

RIPA

The majority of written contributions received on the review dealt with the use of RIPA by local authorities. The issue was of less concern to those who attended the regional consultation meetings in Birmingham and London but did generate quite an amount of discussion in Manchester.

Organisations representing local government did not oppose the introduction of magistrates into the RIPA approval procedure providing:

- This did not substantially delay councils' ability to apply for the use of RIPA techniques.
- It was possible to get an immediate response in urgent cases.
- Where appropriate, applications could be heard in camera.

They also questioned whether local authorities should continue to have to meet the monitoring requirements on the use of RIPA which are provided for in the Home Office Code of Practice arguing that judicial approval would be sufficient.

In terms of limiting the use of RIPA to serious offences, the responses from local government argued that if this was set too high it would prevent investigation of matters such as benefit fraud, rogue traders and loan sharks. If the use of RIPA was limited to offences that attracted a custodial sentence of six months or more this would still exclude the use of covert techniques in the investigation of anti-social behaviour and underage sales.

The contributions from the Office of the Surveillance Commissioners and the Interception of Communications Commissioners Office raised issues about their supervisory roles should a magistrate's approval system be put in place and pointed out that there had been very few instances of local authorities using RIPA techniques for trivial purposes. They raised questions about the resources that would be needed to train magistrates and the possible conflict of interest if a

magistrate had approved RIPA techniques and was then required to hear the subsequent case arising from the investigation.

A number of contributions received from organisations outside of local government argued that local authorities should not use the investigatory techniques covered by RIPA at all and that their use should be limited to tackling terrorism and serious organised crime. Amongst this group, there was a view that if local authorities were to retain the power to use RIPA, then its limitation to serious crime and the requirement for magistrate's approval were positive steps.

A number of these contributions also said that access to communications data by public authorities more generally (not just by local councils) should require the approval of a judge. A couple of contributions argued that access to communications data was currently possible under a wide range of legislation and that this should be rationalised so that acquisition and use of communications data was governed by RIPA alone.

A number of contributors also questioned whether RIPA remained 'fit for purpose' and mentioned the complexity and breadth of the legislation. They argued that there was a need for a comprehensive review of the legislation and privacy protections more generally.

MEASURES TO DEAL WITH ORGANISATIONS THAT PROMOTE HATRED OR VIOLENCE

All of the contributions received on this area of the review argued that extending the terrorism proscription regime to cover groups that promote hatred and violence was unnecessary – that incitement to hatred and violence were already criminal offences and should be used to prosecute any individuals involved. There was a strong feeling that banning organisations that said things which might cause offence to some sections of society would be counter-productive. There was a view that proscription of some existing organisations had given them credibility and made them more attractive to those who were at risk of being radicalised.

A number of contributors believed that the existing law on proscription of terrorist organisations was too broad (particularly in relation to organisations which glorify terrorism) and should be reviewed. Many contributors felt that proscription was an ineffective power – that banned organisations would simply change their name or appear in a different form. There was a view that the police did not have the resources to uphold the law on proscription and that it was a low priority.

One particular contribution raised concerns that lack of clarity over proscription made it difficult for charities to operate overseas (for example following a natural disaster) in terms of who they could work with on the provision of aid.

The issue of the English Defence League was raised at the consultation meetings in Birmingham and Manchester where there was concern that not enough was being done to tackle the organisation. However, no one felt that banning them was the solution rather that there should be some way to restrict where they could march or to make organisations pay for the additional security that arose because of their demonstrations.

DEPORTATION WITH ASSURANCES

Written contributions were received from civil liberty and human rights groups and legal organisations on deportations with assurances. The issue also came up at the regional consultation meetings.

Most of the contributions on this issue argued that the policy was incompatible with the UK's human rights obligations. The key arguments made in these contributions were that the UK should never seek to deport individuals to countries that are known to use torture and that by negotiating assurances from such countries the UK condones the use of torture against those who are not covered by the assurances and that any assurances given cannot be relied upon. There was a particular concern that assurances are unenforceable and that the UK would be unable to take action against non-compliance. Concern was raised that the families and associates of those deported could be at risk and that the fear of reprisals or the threat of further torture would mean that any breaches would not be reported.

In the regional consultation meetings there was an acceptance that foreign nationals who pose a threat to the UK should be deported but concerns were raised about how reliable any assurances would be. It was felt that more could be done to explain the robustness of the assurances at community level.

CONTROL ORDERS

A number of written contributions dealt with control orders and the issue was also discussed at all of the regional consultation meetings. The reasons for control orders were widely understood and it was accepted that the government needed to take action to deal with the small number of terrorist suspects who cannot be prosecuted because the information about them could not be used in evidence in court for security and legal reasons.

The majority of contributions argued that the control order legislation should be repealed on the basis that it was ineffective and against open and fair justice. The concerns raised were both about the use of 'secret evidence' in the making of control orders and the nature of the obligations that could be imposed. Some contributors believed that the person subject to an order could not see all of the evidence that was being used to justify the order and that the regime was therefore incompatible with the right to a fair trial.

A number of contributors raised concerns about the impact the obligations could have on the well being of the person and their family. Some contributors also believed that control orders could be potentially indefinite and that this was disproportionate.

Some contributors considered that control orders were not effective because individuals had in the past been able to abscond from orders. A number of contributors also believed that individuals had been released from control orders as a result of court judgment with seemingly no detrimental effect on national security.

Alternatives to control orders which were suggested included the use of intercept material as evidence in prosecutions and the increased use of surveillance of suspects. The use of Multi Agency Public Protection Arrangement to manage the risks posed by the suspects was also suggested.

Community groups felt that more could be done to deradicalise the individuals involved and there should be some independent figure that could represent the suspect and look after their welfare. There was a concern about obligations which would cut the suspect off from their communities. These groups did not consider surveillance as an alternative because of its possible impact on Muslim communities.

OTHER ISSUES

A number of contributions to the review raised issues which were not part of the review.

Several contributors said that the review should have been wider, that it should have looked at all counter-terrorism powers and that a more comprehensive review over a longer timescale was needed to consider the impact of counter-terrorism powers as a whole. It was felt that the current body of legislation was too complex and included overlapping powers and that there should be a consolidation of all terrorism legislation into one piece of legislation. Community groups suggested that more could be done to raise awareness of counter-terrorism legislation (in particular the safeguards it contains) at local level.

A number of contributions suggested that the current definition of terrorism in the Terrorism Act 2000 was too broad and should be reviewed. There were also suggestions that the terrorism offences of encouragement of terrorism and the dissemination of terrorist publications should be repealed.

Several contributions saw the admissibility of intercept material as evidence as important to being able scale back other counter-terrorism powers and believed that this should have been considered as part of the review.

Contributions to the review also raised concern about terrorist asset freezing powers including the impact that these have on families.

One issue which was raised by a number of organisations and which arose during the regional consultation meetings was the use of counter-terrorism ports and border powers, in particular the stop and search powers at Schedule 7 of the Terrorism Act 2000.

Annex A

WRITTEN CONTRIBUTIONS TO THE REVIEW

The organisations and individuals below submitted written contributions to the review. Contributions to the review were also made by the police, the National Policing Improvement Agency, the Crown Prosecution Service, the Security and Intelligence Agencies and government departments.

Allerdale Borough Council

Amnesty International

The Association of Chief Trading Standards Officers

Blaenau Gwent County Borough Council

Dr Marie Breen-Smyth

Brent Borough Council

British Irish Rights Watch

Broxtowe Borough Council

Campaign Against Criminalising Communities

The Chamber of Shipping

Cheshire West and Chester Council

Committee on the Administration of Justice

Cumbria County Council

Demos

Devon County Council

Disaster Action

Durham County Council

Ealing Borough Council

Engage

The Equality and Human Rights Commission

Professor Conor Gearty

Havering Borough Council

Hertfordshire County Council

Humanitarian Forum

Human Rights Watch

The Interception of Communications Commissioners Office

Justice

Knowsley Metropolitan Borough Council

The Law Society

Genevieve Lennon

Liberty

Dr Michael Lister and Dr Lee Jarvis

Liverpool City Council

Lord Carlile of Berriew QC

Lord Lloyd of Berwick QC

Local Government Association

The Local Government Group

National Union of Journalists

North East Trading Standards Association

Norfolk County Council

Northamptonshire County Council

Northumberland County Council

North Yorkshire County Council

NUJ Parliamentary Group

Plymouth City Council

Dominic Raab MP

Rhondda Cyron Taff County Borough Council

Royal Borough of Windsor and Maidenhead

Royal Photographic Society

SceneThat

Scotland Against Criminalising Communities

The Social Landlords Crime and Nuisance Group

Suffolk County Council

Surrey County Council

The Trading Standards Institute

Trading Standards North West

Professor Clive Walker

Westminster City Council

West Yorkshire Police Authority

Winchester City Council

Wolverhampton City Council

There were also 6 written contributions from members of the public.



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ISBN 978-0-10-180052-5



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