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The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation

March 2015



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

March 2015

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Home Office

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Independent Reviewer of Terrorism Legislation
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Dear Mr Anderson

REVIEW OF THE OPERATION IN 2013 OF THE TERRORISM ACTS

Thank you for your most recent report on the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 (the 'Terrorism Acts'), published on 22 July 2014. You will appreciate that I wanted to wait for the provisions in the Counter-Terrorism and Security Act 2015 to receive Royal Assent before responding formally, to allow me to provide a fuller reply.

I am grateful to you for the detailed consideration you have given across a range of matters and for the comprehensive nature of your report. As you recognise, the UK, along with our international partners, faces a very real threat from international terrorism which, in August 2014 – one month after publication of your report – resulted in an increase in the national threat level assessment, by the independent Joint Terrorism Analysis Centre, from 'Substantial' to 'Severe', meaning that a terrorist attack is 'highly likely'. As I have previously stated, this threat now represents one of the greatest challenges to our peace and security since the horrific attacks on 9/11. The escalating conflicts in Syria and Iraq have evolved into a more diverse and complex international threat picture, and we have witnessed the shocking incidents in Canada, Australia and most recently in France and Denmark, which are stark reminders of the dangers that are posed to innocent citizens. What is clear from these events is that they serve to underline further the necessity of ensuring that our law enforcement agencies are equipped with the right powers they need to disrupt individuals of concern before they may cause harm to the public.

You are fully aware of the important new measures which this Government has introduced, both in the Counter-Terrorism and Security Act 2015, which received Royal Assent on 12 February, and the Serious Crime Act 2015, which received Royal Assent on 3 March. I am grateful to you for your engagement with the Home Office as these proposals have developed, including for the additional analysis you have produced and made available on your website in respect of a number of the measures. These new measures make important changes to our legislation by providing new powers to: disrupt individuals who may seek to travel abroad for terrorist purposes, enable the prosecution of individuals where there is evidence that training and terrorist preparation have been undertaken overseas, deal decisively

with those already here who pose a risk to the public, and prevent others from being radicalised in the first instance.

It is in this context that your report continues to provide the Government, Parliament and the public with a vital source of independent and detailed analysis of the operation of the UK's primary counter-terrorism legislation, and highlights the importance of striking an effective balance between protecting the public from the threat from international and home-grown terrorism and having sufficient regard to fundamental civil liberties and privacy. I therefore note with particular interest, your formal recommendations on the future role of the Independent Reviewer, and your subsequent observations on Government proposals to establish a Privacy and Civil Liberties Board, provided for in the Counter-Terrorism and Security Act 2015, and separately, the changes you have recommended on the statutory definition of terrorism which would have the effect of narrowing, in certain respects, the scope of those activities which constitute 'terrorism'.

I also note that in this report, you have adopted a different approach to reviewing the Terrorism Acts, opting to build upon your previous reports which included comprehensive discussions on each area, with a focus on the developments in each area in 2013. I will now respond to each area in turn.

The Threat Picture

Your summary of the terrorist threat facing the UK is an accurate reflection of the situation in July 2014, when your report was published. Although the change to the terrorism threat level in the UK now suggests that a terrorist attack is highly likely, there is no intelligence to suggest that an attack is imminent. Syria – and more recently Iraq – continue to be countries of significance in the fight against terrorism. During 2014 more than 160 people from the UK were arrested for alleged offences relating to their activities in Syria. Nearly 600 individuals of interest to the police and security services have travelled from this country to Syria and Iraq to fight; around half of them have returned. There are thousands of people from across Europe who have done the same. It is important therefore that the UK's counter-terrorism laws are considered and developed in the context of this threat, and I am grateful for your continued recognition that that should be the case. The police and security and intelligence agencies work tirelessly to counter this threat, and it is vital that they have the capability to do so effectively.

I welcome your acknowledgement of this Government's work to mitigate the threat posed by Far Right extremism in the UK and that we are managing that threat with a proportionate and intelligence based approach relative to that posed by AQ - and more recently ISIL-related terrorism. Your report rightly confirms that the threat posed by the Far Right still cannot "safely be ignored or downplayed" and we will continue to maintain our threat based focus on extremism of all kinds, the threat it poses and the division it creates in our communities.

Review of Counter-Terrorism Policing

I remain committed to looking at further enhancing the capabilities needed to tackle the threat from terrorism, which will include exploring potential synergies between

organised crime and counter-terrorism policing business. However, in the light of the threat level, which increased in August 2014, I do not think that now is the right time for a review. I have made clear that collaboration between police and agencies working on counter-terrorism and organised crime remains a high priority, and an area where I expect to see substantial progress.

CT Policing Funding

In Spending Round 2013, counter-terrorism police funding was protected over 2014-15 and 2015-16, receiving a flat cash resource budget of £564m annually. Capital funding is provided in addition to this amount, based on annual assessments of investment needs. The Home Office continues to work with the police to drive efficiencies which can be reinvested to enhance CT police capabilities.

On 25 November 2014 the Prime Minister announced that an additional £130million will be made available over the next two years to strengthen counter-terrorism capabilities. This will include funding for CT police.

EU Co-operation

In July 2013, following votes in both Houses of Parliament, the UK exercised its block opt-out of all Pre-Lisbon police and criminal justice measures. On 1 December 2014 following extensive discussions with Parliament, Member States and European institutions, the UK rejoined 35 measures that were in the national interest. These measures underpin practical cooperation between Member States and help ensure the ongoing security of our citizens. This package of measures contained vital instruments including the European Arrest Warrant, the Second Generation Schengen Information System (SISII), Europol and Eurojust, and demonstrates the UK's ongoing commitment to cooperation in order to tackle cross-border criminality and terrorism.

The Definition of Terrorism

I have given careful consideration to the detail of the recommendations you have made in respect of the definition of terrorism, which build upon observations you have made in your previous annual reports.

However, the statutory definition of terrorism continues to be a complex area. The courts have more recently had cause to comment on the definition, particularly in the observations of the Supreme Court in the case of *Gul* and the Divisional court in the *Miranda* case, and your report sets out the courts' consideration of these matters. While I am mindful of the courts' general position that a narrowing of the definition is to be welcomed, the Supreme Court does, as you suggest, acknowledge that any change would need to be 'consistent with the public protection to which the legislation is directed'. You will also be aware that the UK definition is currently the material focus of ongoing litigation in the form of the *Miranda* appeal judgement which has now been stayed, pending the outcome of another relevant case, *Beghal*, which was heard in the Supreme Court on 12-13 November. As such, it would be premature to make such changes, without the benefit of the court's determination on these matters.

I remain ever mindful of the complexity and fluidity of changing political events in the terrorism context and its ability to evolve and diversify at great speed. This environment demonstrates the importance of having a flexible statutory framework - with appropriate safeguards – to ensure that our law enforcement and intelligence agencies can continue to disrupt and prosecute those who pose a threat to the public. It is for this reason that I do not think it is the right time to make changes to the statutory definition.

Separately, you will be aware that the definition of ‘terrorism-related activity’ in the Terrorism Prevention and Investigation Measure (TPIM) Act 2011 has been narrowed as part of amendments to that Act which were taken forward in the Counter-Terrorism and Security Act 2015. This is in line with a recommendation made in your Annual Report on the TPIM Act and I hope you will consider this a welcome development.

Proscription

I note your continuing concerns about the proscription regime. The reason for putting groups on the list of proscribed organisations is that they are concerned in terrorism and our priority is to protect the public. Where the activities of a group mean that the test for proscription as a terrorist organisation is met, it is appropriate to take a precautionary approach when considering removing groups from the list of proscribed organisations. I will consider any valid application for deproscription in accordance with the Terrorism Act 2000.

Arrest and Detention

I welcome the insight your report provides into the conditions of detention through your direct experience of visiting detainees and your direct engagement with Independent Custody Visitors (ICVs). I also welcome your acknowledgement that the ICV scheme has been operating successfully since its extension to terrorist detainees in August 2012 and my officials would be happy to work with you to ensure that any particular practical difficulties with these processes are remedied.

In maintaining your recommendations from previous years, I note, in particular, your suggestions for clarificatory amendments to be made to Schedule 8 to the Terrorist Act 2000 in so far as it relates to the process of Warrants of Further Detention and your recommendations relating to the provision of bail for terrorist suspects.

As you will appreciate, terrorism investigations are unique and complex in their nature and risks may not be well understood at the early stages of an investigation. As regards applications for Warrants of Further Detention, the purpose of these hearings is to enable the judge to assess the lawfulness of the arrest, whether it is necessary for the subject to remain in custody for the purpose of the investigation and to ensure that those investigations are being conducted diligently and expeditiously. Section 41 of the Terrorism Act 2000 and its associated detention framework is specifically designed to allow the police time to explore and identify whether specific offences have been committed. To notify a person of the specific offences he was suspected of committing may, in certain instances, undermine the investigative nature of the arrest power, which is essential in the context of

counter-terrorism, and may jeopardise the investigation or compromise the safety of sources and or methods, a point which is currently being considered by the European Court of Human Rights in the case of *Sher and Others*.

Regarding your suggestion that there should be a real prospect of evidence emerging during the period for which further detention is sought, most modern terrorist investigations rely almost exclusively on examination of digital media, which can be time consuming to investigate. The police may often suspect that relevant material may be present but it may not be possible to meet a threshold to demonstrate a 'real prospect' of that evidence emerging, at the point at which a warrant of further determination is sought. In instances where this suspicion is based on intelligence, to disclose this may compromise secret intelligence or sensitive police tactics.

Furthermore, to grant bail to terrorist suspects would increase the risk of potentially dangerous individuals being released before they have been sufficiently investigated and present an increased risk to public safety. I therefore remain of the view I set out in the Government's response in March 2013 to your July 2012 report.

You have previously recommended a change which would provide for the detention clock to be suspended in the case of terrorist detainees who are admitted to hospital, which would bring the legislation in line with provisions relating to those arrested under PACE. I am sympathetic to your recommendation but am mindful of the ongoing litigation considering matters related to Schedule 8 more broadly. As such, I do not think it is the right time to make changes which would impact upon this area. I will, however, give further consideration to this matter once this litigation is resolved.

Medical examination of terrorist suspects

As regards your recommendation concerning medical examinations of terrorist suspects, we remain committed to ensuring that the quality of healthcare provided to those in police custody does not fall below acceptable standards, and that it is consistent with healthcare provided elsewhere. We will continue to focus on and keep these matters under review and I welcome your continued observations in these areas.

You rightly point out that a number of these matters remain subject to ongoing litigation, including in the cases of *Duffy* and *Sultan Sher*, which are due to be heard in Strasbourg. Since publication of your report last July, the European Court of Human Rights has handed down judgment in the case of *Ibrahim and Others*, the failed 21/7 bombers who sought to challenge the lawfulness of their convictions. I welcome the Court's very clear rejection of the applications in this case.

Schedule 7

I welcome your continued support for Schedule 7 to the Terrorism Act 2000 ('Schedule 7'). Schedule 7 is an important part of the UK's port and border security arrangements and contributes daily to keeping the public safe, particularly given the current threat from Syria and Iraq. Individuals engaged in terrorist-related activity travel in order to plan, finance, train for, and commit their attacks.

In your report, you draw attention to the reduction in Schedule 7 examinations, and acknowledge fewer than 4% of examinations last longer than an hour. I am also very grateful to you for highlighting the gaps in the report by the Equality and Human Rights Commission concerning examinations by ethnicity, and furthermore for reiterating that you have no reason to believe that Schedule 7 powers are exercised in a racially discriminatory manner.

In light of your previous recommendations, the Anti-social Behaviour, Crime and Policing Act 2014 (“ASBCP”) made amendments to Schedule 7 to reduce the potential for the power to be operated in a way that might interfere with individuals’ rights unnecessarily or disproportionately, whilst still retaining the operational effectiveness of the provisions to protect the public from terrorism. In conjunction with the ASBCP Act, we revised the Schedule 7 Code of Practice to reflect the changes that were brought in. I will also consider any feedback you have on the changes to Schedule 7 that were recently commenced, and the revised Code of Practice.

We have now responded to the two issues surrounding Schedule 7 examinations of goods, which you raised in your report and in previous reports. The Counter-Terrorism and Security Act 2015 clarifies the law relating to where goods may be examined and the examination of goods comprising postal items.

Non-Governmental Organisations (NGOs) and Counter-Terrorism Legislation

I understand that you will already be aware that my officials have commenced a dialogue with international NGOs about their operations overseas and the parameters within which they work. We must support the critical work of international charities in crisis areas. Equally, it is vital that terrorist groups do not materially gain, however indirectly, as a result of interaction with NGOs.

Independent Review

Your report makes a number of recommendations in respect of the future of the office of Independent Reviewer. In particular, you have recommended that the remit of the Independent Reviewer be extended to cover areas of counter-terrorism law which are currently not subject to oversight and that the Independent Reviewer should be able to report on a more flexible schedule.

As you are aware, the Government has accepted these recommendations and has given effect to them by virtue of measures contained in the Counter-Terrorism and Security Act 2015. This Act extends the scope of your role to include: Part 1 of the Anti-Terrorism, Crime and Security Act 2001, Part 2 of that Act in so far as it relates to counter-terrorism, the Counter-Terrorism Act 2008 and Part 1 of the Counter-Terrorism and Security Act 2015. The latter will therefore include the new powers I have legislated for to provide the police with a power to seize passports where an individual is suspected of travelling for the purposes of engaging in terrorism, and the power to control, through Temporary Exclusion Orders, the return of British individuals who have been engaging in terrorism overseas. In making these changes, the Government has given careful consideration to the areas of legislation

which should fall to be included within the Independent Reviewer's statutory remit and has sought to ensure both that we do not dilute the core role of the Independent Reviewer by extending its remit to a much wider and less well-defined list of statutes, and that we do not include matters which might properly fall within the remit of other independent oversight bodies.

The Counter-Terrorism and Security Act 2015 also provides for a more flexible reporting mechanism, by removing the current requirement to report annually on four specific Acts and requiring the Independent Reviewer to set out an annual work programme at the start of each year. I hope that these changes address your concerns and that it will allow you, and future post holders, to determine, in line with the independence of your office, those Acts which you consider are more deserving of closer scrutiny in a particular period and provide the scope to carry out thematic reviews, if appropriate. The Terrorism Act 2000 will continue to remain subject to annual review.

While I also acknowledge your comments relating to the Independent Reviewer's access to sensitive material, I am satisfied that it is not necessary to provide for this in statute given, in practice, such information has always been provided to the Independent Reviewer, when requested. I hope therefore that the sensible and co-operative arrangements that have existed to date will continue to be sufficient but would invite you to draw to my attention any occasions where this is not the case.

Finally, I turn to recent developments relating to the Privacy and Civil Liberties Board which is touched upon in your report and considered in more detail in subsequent publications on your website during the passage of the Counter-Terrorism and Security Act 2015. As you are aware, the measures contained in the Counter-Terrorism and Security Act 2015, which allow for the creation of a Privacy and Civil Liberties Board to support the Independent Reviewer of Terrorism Legislation, reflect the Government's commitment of last July, to establish a board which will provide further assurance to the public about the current UK counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns.

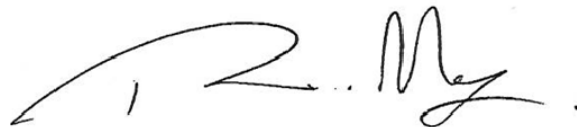
I have carefully considered the recommendations you have made in respect of the Board. I share your view that it is essential that there is clarity as to how the Board will operate alongside the Independent Reviewer. I am satisfied that changes introduced during the Bill's passage which make clear that the Board will operate under the Independent Reviewer's direction and control and that the Independent Reviewer, who will chair the Board, will have a key role in the appointment of its members, achieves this clarity. I welcome your acknowledgement that this is the case in your recent website blog, dated 31 January.

I fully accept that the proposals for this Board, which will impact directly on the Independent Reviewer's role, represent a significant change to existing oversight arrangements. That is why on 18 December, I accepted your recommendation to launch a public consultation on the Board. This invited comments on key matters relating to the Board's composition and membership, functions and powers, and other matters. The consultation closed on 30 January and we received a total of 27 responses. I am clear that it is important that we now consider carefully the range of

views expressed in that process before bringing forward regulations which will establish the Board, which will be subject to the affirmative procedure.

Conclusion

Thank you again for your considered report. I value your continued engagement in reviewing these important matters which ensure that our counter-terrorism legislation remains fair, effective and proportionate, and I look forward to receiving your future reports.

A handwritten signature in black ink, appearing to read 'T. May', with a large, sweeping flourish at the beginning.

The Rt Hon Theresa May MP

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