



HM Government

# The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2011 by the Independent Reviewer of Terrorism Legislation

March 2013



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

March 2013

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*David*

## REVIEW OF THE OPERATION IN 2011 OF THE TERRORISM ACTS

Thank you for your report on the operation in 2011 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 (the 'Terrorism Acts'). Your annual review continues to provide the Government and public with a thorough and helpful independent analysis of the UK's primary counter-terrorism legislation. I have given careful consideration to the observations and recommendations in your report and we previously had a helpful discussion on the content. I write now to formally respond on behalf of the Government.

### General Observations on the Threat to the UK from Terrorism

Your report provides an overview of the threat and in many respects it highlights the excellent work by the security and intelligence agencies in disrupting or suppressing that threat. The successful completion of the first Operation EXAMINE trial last month – which was *sub judice* during your reporting period – is a sobering reminder of the threat that we face.

It is important to ensure that your observations are not taken out of context. I draw your attention, in particular, to the Director General of the Security Service's speech at the Mansion House on 25 June 2012 and the Foreign Secretary's speech to RUSI on 14 February 2013 which emphasised that the UK is facing an increasingly complex threat picture, where the threat could come from a much wider range of actors than has historically been the case.

### Scope of Independent Reviewer functions

I agree that the scope of the Independent Reviewer's responsibilities should keep pace with changes to primary legislation. I therefore accept in principle your recommendation that the Counter-Terrorism Act 2008 and the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) should be examined with a view to extending your statutory functions to include the review of relevant sections of those Acts paragraph



1.34, p16). I intend to consider this matter as part of the wider post-legislative scrutiny process for assessing the Counter-Terrorism Act 2008. In parallel, I will also examine the ATCSA.

### **Statistics**

The Home Office Statistical Bulletin on terrorism arrests, charges and outcomes was first published in 2009 and provides a single coherent record of such data that is available free to the public. While I welcome your acknowledgement that the provision of statistical information on the Terrorism Acts has improved and continues to get better, I am concerned to note that in your view '*serious deficiencies*' remain. I agree that where this is indeed so we should work to address these.

Given the complexities of achieving standardisation between the statistics for Northern Ireland and those for Great Britain (of which the rest of your recommendation in this area forms part), I believe that such harmonization should be pursued only where it is possible and proportionate to do so. In particular, I am not willing to add unnecessarily to the existing bureaucratic burdens on the police. We have already begun the process of assessing the feasibility of your specific proposals and, with regards to your recommendation at paragraph 1.37 (c)<sup>[1]</sup>, began recording this information from 1 July 2012. We will ensure that this information is routinely provided to you from now on. We will keep you informed of our progress.

### **Publication of Reports**

I agree that the reports of the Independent Reviewer should be published and laid before Parliament promptly on receipt of the final draft. I am confident that this is already the case and that it will continue.

### **Proscription**

You made six recommendations on proscription.

You recommend that any far-right terrorist organisations which meet the legal test for proscription should be considered according to the same discretionary criteria as have been applied to Al-Qaeda related groups. I am confident that the current proscription process allows for the consideration of such groups and is not targeted at any particular faith or section of society. This is reflected in the list of proscribed organisations, which currently contains groups which seek to advance a variety of religious, ethnic, political and nationalist causes.

I note your concerns over the potential for legitimate groups or wider communities to be caught up in the effects of proscription. The Government fully supports the right of community groups to debate, discuss and exercise their right to protest as long as these activities are lawful. However, it is right that those groups that are concerned in terrorism and those individuals who support them be subject to the effects of proscription.

You also recommend that a holistic view of the case for proscription should be taken and suggest revisions to the five discretionary factors I have regard to when considering whether or not to proscribe. I am confident that the current process, including the way I exercise my discretion, does not constrain me from considering other material or broader issues when making my decision.

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<sup>[1]</sup> Numbers and success rates of warrants for further detention



You suggest too that we should keep under review the format of the statutory test and the legal threshold for proscription. I continue to believe that the current statutory test and discretionary factors are effective in ensuring the right groups are subject to proscription where there is an appropriate and proportionate body of evidence. My officials keep all policy under review so it remains up to date and relevant.

You repeated your recommendation that any organisations which cannot be said to be currently concerned in terrorism should be de-proscribed. You suggest moving to a system where proscriptions expire automatically after a set period, unless renewed. I and my colleague, James Brokenshire, have appreciated the discussions with you on this important issue. We continue to explore if and, if so, how the process by which groups can be de-proscribed can be improved. I welcome your continuing suggestions and we will, of course, inform Parliament of any resulting changes to the regime.

Under the current regime any person affected by an organisation's proscription can submit an application for me to consider whether an organisation should be de-proscribed. I have not received any de-proscription applications and understand that none have been received by my predecessors since 2009.

## **Arrest and Detention**

### *Section 41 Arrests*

I note your recommendation on the use of section 41 powers of arrests and detention in cases where the suspect was 'always likely' to be charged, if at all, under laws other than the Terrorism Acts. However, the police will, in cases where the arrest criteria of both the Police and Criminal Evidence Act 1984 (PACE) and the Terrorism Act 2000 (TACT) are met, only make an arrest under TACT where it is appropriate to do so. Where an arrest under PACE may be more suitable they will adopt that approach (and not all terrorism-related offences are offences under the Terrorism Acts – for example murder or conspiracy to cause an explosion are offences under other legislation). I believe that this remains the correct approach.

### *Bail for Terrorist suspects*

I have considered your recommendation to amend the law to allow those persons arrested under the Terrorism Act 2000 to apply to a court for bail. I recognise that there are limited circumstances when the police may consider it appropriate to use PACE rather than TACT powers to arrest a terrorist suspect. I am not, however, prepared to make terrorism bail available for suspects arrested under TACT. To do so raises too great a public safety concern. The nature of terrorism-related arrests means the risk may not be known at the early stages of an investigation; the possibility of bail in those circumstances is not therefore appropriate.

### *Suspension of the Detention clock*

I recognise that the position under the Terrorism Act 2000 differs from PACE in this regard and will give consideration to whether the law needs to be changed to allow for the suspension of the detention clock in the case of terrorist detainees who are admitted to hospital.

### *Medical Examination of Terrorist suspects*



The Government is committed to improving the quality of healthcare provided for all those in police custody (irrespective of the reasons for their detention) to ensure that patients receive a standard of healthcare equivalent to that received elsewhere in the community.

Police forces are responsible for the quality of healthcare provision for those arrested and detained under the Terrorism Acts in accordance with PACE Code H. The Code relates to the detention, treatment and questioning of detainees by police officers under the Terrorism Act and gives clear guidance on detainee welfare issues. The police continue to ensure that the welfare of those who are detained is appropriately monitored and complies with this Code.

I note the concerns that have been expressed to you and recognise that police forces may employ different local approaches. I have therefore asked ACPO (TAM) to consider whether there are any improvements necessary in the commissioning and training of Forensic Medical Examiners for TACT detainees.

### **Ports and Borders**

I welcome your recognition of the importance of the Schedule 7 powers in the report. These powers are vital to support the work of the Security Service, Police and other agencies to protect the UK, providing opportunities to secure evidence for terrorist-related prosecutions and to gain and further develop intelligence on terrorist activity.

As you will be aware, on 13 September 2012 we launched a widely accessible public consultation on the operation of Schedule 7 ahead of potential legislative changes. We sought views from those who use and are affected by the powers. The consultation also sought to address the issues you identified in your report and ultimately will help us to maintain the core benefits of the Schedule 7 powers, whilst also ensuring public confidence is retained.

We received 395 responses to the consultation which closed on 6 December 2012. The Government's response to the consultation is being prepared and will include a breakdown of the answers respondents gave to the consultation questions and a summary of the narrative responses. You have seen the longer written responses and also shared with us your own views on how to ensure that Schedule 7 operates both fairly and effectively. The consultation report will be published in the spring.

We included the range of statistics on the operation of Schedule 7 that you suggested accompany the consultation. This was also supported by the publication of the annual statistics relating to Schedule 7 in the Home Office Statistical Bulletin on 13 September 2012.

As you noted, in December 2011 the High Court upheld the principle of the port stop powers under Schedule 7 in its judgment in the case of CC, and endorsed their use for intelligence development. However, we acknowledge that the Court also identified issues with the way the powers were exercised in this case. Work to ensure this is reflected in a revised Code of Practice is being progressed.

I note your suggestion that there is limited awareness on how to raise concerns about the operation of these powers. In 2009 the police introduced a national leaflet, in a number of languages, on the use of the Schedule 7 powers. These are available at every location that the powers are used. Forces have been reminded that these

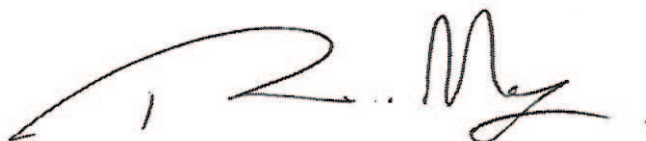


leaflets should be accessible to anyone. We are also currently exploring with the police how a single standard national notice to be displayed in all port examination areas could be introduced.

I have also noted the concerns that you have raised regarding the accessibility of advance passenger data. I am pleased to say that e-Borders are already collecting passenger information on 68% of passenger traffic on intra-EU flights to and from the UK and 100% of commercial flights from outside the EU. Work is continuing to agree arrangements with carriers and the data protection authorities within member States for the provision of more data. Furthermore, in December 2011 the UK and Irish Governments agreed to work together to prevent abuse of the Common Travel Area (CTA), while protecting its long-established benefits of trade and tourism.

We will continue to keep you informed and to engage constructively with you concerning our work to ensure the effectiveness of the Terrorism Acts. I will be publishing the Government's response on the Home Office website and placing copies in the Vote Office.

Thank you once again for your report.

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

**The Rt Hon Theresa May MP**





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