The Government Response to the Report by David Anderson Q.C. Seventh Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005

September 2012

CM 8443

HM Government

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Seventh Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005

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

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03 SEP 2012

Dear Mr Anderson

FINAL ANNUAL REPORT ON THE OPERATION ON THE PREVENTION OF TERRORISM ACT 2005

Thank you for your report on the operation in 2011 of the Prevention of Terrorism Act 2005.

I am grateful to you for providing a helpful and considered report – and in particular for your careful summative assessment of the control order regime, and the lessons that can be learned from it.

I am pleased to see your conclusion that the Government's use of the control order regime in 2011 was careful and responsible. The new TPIM regime provides a powerful range of disruptive measures which – alongside the significant extra resources you note in your report – strikes a better balance between managing a small number of individual terrorists, who we cannot yet prosecute or deport, and ensuring that if they re-engage in terrorism-related activity we can collect evidence that may lead to their conviction. I look forward to your consideration of the operation of the TPIM regime in its first year.

I attach the Government's formal response to the recommendations in your report. Copies of the Government's response will be made available to both Houses of Parliament and a copy will also be placed on the Home Office website.

Yours sincerely

The Rt. Hon. Theresa May, MP

1. **Every effort should be made to ensure that terrorists are tried in the criminal courts and that the use of executive measures such as TPIM notices is kept to a minimum. These efforts should include:**

    a. **Departments and agencies promptly providing the police with any material in their possession which might be relevant to any reconsideration of prosecution; and**
    b. **Continuing to seek a resolution to the complex issues surrounding the repeal or amendment of RIPA section 17, with a view to rendering intercept evidence admissible in criminal proceedings if it is feasible to do so.**

The Government agrees that prosecution and conviction will always be the best option for dealing with terrorists and that the use of TPIM notices should be kept to a minimum necessary to protect the public.

The TPIM Act 2011, in addition to maintaining all the duties on the Secretary of State and the police relating to consultation about the prospects of prosecution contained in the Prevention of Terrorism Act 2005, places the police under a new statutory duty to keep the Home Secretary informed of the outcome of their consideration of the ongoing prospects of prosecution.

In *SSHD v E* [2007] UKHL 47 the House of Lords ruled that the Secretary of State is under a duty to keep the possibility of prosecution under continuing review. The possibility of prosecution is formally reviewed on a quarterly basis by the police, Security Service and Home Office officials at TPIM Review Group meetings and on an ad hoc basis, including where departments and agencies come in to possession of material which might be relevant to any reconsideration of prosecution.

The lawful interception of communications plays a critical role in tackling serious crime and protecting the British public, including by supporting investigations that secure the successful prosecution of terrorists and of other serious criminals. The Government is committed to building on this, if it is possible to do so. We are conducting an extensive and detailed review in order to assess the benefits, costs and risks of introducing intercept as evidence in criminal proceedings and will report in due course. However, we agree with your assessment, and that of your predecessor, that the use of intercept as evidence would not be the 'quick and easy' solution some have suggested and would not remove the need for executive actions such as TPIM notices.

As you acknowledge, these issues are difficult, complex and of crucial importance to protecting the public and national security. So we must ensure that all potential options are explored thoroughly.

2. **No TPIM notice should be made or retained in force in circumstances where prosecution, deportation or less intrusive executive measures would be a feasible alternative.**

We agree. The Government is committed to ensuring that suspected terrorists are prosecuted, and foreign national terrorists deported, whenever possible. The Government only uses TPIM notices where an individual poses a terrorism-related threat to the public but it is not possible to prosecute or deport them.

However, in certain, rare circumstances, the imposition of a TPIM notice may be necessary to protect the public before prosecution of an individual has entirely been ruled out or as an interim measure while we are seeking deportation. The Government will always ensure that the statutory test is met before imposing a TPIM notice and review the possibility of prosecution, deportation or other exit strategies throughout the life of the notice.

3. No individual TPIM should be imposed unless the Secretary of State is satisfied that it is necessary for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity. In particular, the case for the necessity of measures such as

   a. a requirement to comply with terms of occupancy of a residence supplied by the Home Office; and
   b. a requirement to telephone a monitoring company on last return to the premises, in addition to the wearing of an electronic tag that will inform the authorities when return has taken place.

   may not be self-evident and should be scrutinised with particular care.

We agree. The necessity of each measure is considered by the Secretary of State, with advice from the police and Security Service, prior to the service of a TPIM notice and is regularly reviewed once the TPIM notice has been served. All TPIM notices and each of the measures imposed are subject to automatic review by the High Court under section 9 of the TPIM Act 2011.

Where it is considered necessary for a TPIM subject to reside in Home Office provided accommodation, a requirement for that individual to comply with terms of occupancy relating to that accommodation may be imposed where it is considered necessary to ensure the practical and effective delivery of that measure. The terms of occupancy imposed are reasonable and reflect the sort of conditions with which many other people living in rented accommodation are required to comply. They are used to protect the accommodation from damage or misuse. Nevertheless, the Home Office takes care to consider any representations from TPIM subjects about their accommodation and endeavours to ensure that any issues relating to accommodation are resolved in a proportionate manner.

The Government notes your concern for the necessity of a requirement to telephone a monitoring company on a TPIM subject's last return to their residence in addition to the wearing of an electronic tag that informs the authorities when return has taken place. Since the publication of your report the Home Office has introduced a system to monitor TPIM subjects' movements on an ongoing basis through a new kind of electronic tag using the GPS location monitoring system. Accordingly, we have removed the requirement for all individuals currently subject to a TPIM notice to telephone the monitoring company each day on last return to their residence.

4. It should be recognised that a fair trial requires the subject of a TPIM to be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations.

The Government is committed to ensuring that TPIM proceedings operate compatibly with Article 6 of the ECHR (Right to a Fair Trial). Paragraph 5 of Schedule 4 to the TPIM Act expressly provides that that the courts are to ensure that TPIM proceedings operate compatibly with Article 6. How Article 6 applies, including the requirement to disclose closed evidence, will be defined by the courts in the circumstances of each case, in line with current case law.

5. A forum should be established, preferably (and if the Lord Chief Justice consents) under the chairmanship of a High Court judge experienced in control order and TPIM litigation, in which the long-standing concerns expressed by Special Advocates (relating in particular to communication with open advocates, practical ability to call evidence and challenge non-disclosure, consultation of closed judgments and issues relating to the adequacy and timing of disclosure in closed material proceedings) are considered in a constructive spirit by all interested parties. With specific reference to TPIMs, the objectives of such a process should include shortening the delays criticised in 2011 by the Court of Appeal and recommending change to rules or practices if it is considered that such changes are necessary.

The Government is considering this proposal for a forum for Special Advocate concerns.

We are committed to ensuring that the Special Advocate system operates as effectively as possible. A database of closed judgments is being set up, assisting special advocates in accessing relevant judgments. The Government has made undertakings that, once restrictions on communications between the special advocate and claimant are in place in individual cases it will continue to assist in rephrasing questions to be put to the claimant wherever possible. There will be support for increased training and budget for the Special Advocate Support Office.

As regards timing of disclosure, the Government is committed to avoiding unnecessary delays. However, in all litigation there is occasionally late disclosure of some material. This can arise for a number of reasons, including the late service of material on behalf of the individual subject to executive action, the unavoidable disclosure of information shortly before hearings as a result of ongoing developments in the cases and the extensive exculpatory reviews conducted by the Secretary of State.

6. The quarterly reports provided for by TPIMA 2011 section 19 should be at least as detailed as the equivalent reports under PTA 2005. In particular:

    a. References should routinely be given to all open judgments handed down during the period under review.
    b. In the case of each judgment of the High Court on a review under TPIMA section 9, the number of months should be stated between the making of the TPIM and the handing down of the judgment.
    c. Information regarding the location of TPIM subjects, broken down by region, should be supplied in future TPIM reports.

The Government agrees that quarterly reports on the exercise of powers under the TPIM Act 2011, as required under section 19, are an important means of providing Parliament and the public with information about the TPIM system. To date all quarterly reports on the exercise of powers under the TPIM Act 2011 have included references to all open judgments handed down during the period under review.

At present all individuals subject to a TPIM notice are also subject to a court-imposed anonymity order which prohibits the publication of anything that would or might to tend to identify the individual as being subject to a TPIM notice or identify the address at which they are residing. Due to the small number of individuals subject to a TPIM notice the inclusion of information on the number of months between the imposition of the TPIM notice and the court judgment, when combined with other information in the public domain, could compromise a subject's anonymity. Many court judgments include details of the chronology of the TPIM notice, which is then in the public domain; the level of information included is decided by the court on a case by case basis, allowing anonymity to be preserved.

The Government notes your recommendation that all quarterly reports should include information regarding the location of TPIM subjects, broken down by region. We will keep inclusion of this information under review.

7. The Joint Committee on Human Rights (and if they so wish, other Parliamentary Committees) are invited to consider with the Independent Reviewer how best, in the absence of a requirement for annual renewal debates, he could inform or assist them in keeping the necessity for and the operation of TPIMA 2011 under parliamentary review.

The Government notes this recommendation.

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