



The Government Reply to
the Report by Lord Carlile of Berriew Q.C.

Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006

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

June 2009

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Dear Alex

REVIEW OF THE OPERATION IN 2008 OF THE TERRORISM ACT 2000

Thank you for your report on the operation of the Terrorism Act 2000 in 2008. I found your review particularly helpful in identifying some important issues for my consideration. I would like to take this opportunity to respond formally to these.

As has happened in previous years, I will be placing copies of your report and the Government's response in the Vote Office and on the Home Office website.

Section 44 Stop and Search, Arrest and Detention

I welcome your comments regarding S44 authorisations and in particular, reference to the work carried out by OSCT officials into the processing of these authorisations. As you know, this work seeks to address the concerns you previously raised about the authorisation process. It ensures that authorisations are subject to an increased level of critical scrutiny, through improved internal procedures by my officials before Ministers are requested to confirm the power. I welcome your endorsement of the work my officials have undertaken in this area.

In your report into the use of the Acts in 2007, you highlighted your concern regarding the Metropolitan Police maintaining an entire force area authorisation. As you have acknowledged, the Metropolitan Police have initiated a pilot project which aims to exercise the power in a different and more restricted way. I welcome this initiative and, like you, look forward to reviewing the results of this project.

In regards to your comments over Northern Ireland's custody facilities. It is the intention of the Northern Ireland Office to continue to work with the PSNI to explore any new opportunities to develop flexible arrangements for more spacious exercise facilities for longer detentions.

Proscription

I welcome your conclusion, repeated from previous years, that the proscription regime is a "necessary and proportionate response to terrorism". I also welcome your assessment that the processes used to determine whether an organisation should be proscribed are "generally efficient and fair", and I was pleased that you support the enhanced scrutiny of proscribed organisations which we have put in place.

I agree with your assessment that the MeK case shows the POAC system of law to be sound, and that there is a suitable procedure for organisations wishing to be removed from the proscribed list to follow. I note your concern regarding the removal of MeK from the EU's list of designated terrorist organisations, and wish to emphasise that the UK acted with all haste to ensure that the relevant bodies in the EU were properly informed of the proceedings in the UK and the MeK's eventual deproscription. I would add that decisions on listing at the EU are required to be unanimous, which is one reason why delays can occur.

I also welcome the report underlying the importance of donor confidence in the charitable sector and that their money goes to support legitimate causes. The work of the Charity Commission, as the independent regulator of charities, in this area is vital to ensuring that this is the case.

Proven cases of terrorist activity involving charities are rare, but unacceptable nevertheless. Stopping any such abuse is a priority as is ensuring that proper and legitimate charitable work can continue.

We therefore have a multi stranded approach, that not only includes proscription, as the report points out, but also civil regulatory action by the Charity Commission. The government, law enforcement partners and the Charity Commission are working together to ensure those who abuse charity in this way are stopped and legitimate aid can still reach its intended destination.

Finally, I would add my own praise to yours regarding the quality of special advocates who provide an essential service to POAC.

Terrorist property

I agree with your assessment of the importance of tackling terrorist financing, fund-raising being "a necessary precursor to terrorism". I also welcome and agree with your assessments both that the financial sector takes money

laundering and terrorist finance issues very seriously, and that the various pieces of legislation in this context are recognised and efficient.

You comment that statistics on charging are likely to demonstrate a high degree of vigilance by the authorities against terrorist financing – I agree with this view and greatly support the authorities in their invaluable work in this area. You also note that statistics on the seizure of terrorist funds from around the country are not collected centrally. I recognise your concerns, which have to be balanced with the need to reduce as much as possible the bureaucratic burden which the Government places on the police.

You comment that the powers for the forfeiture of terrorist property under section 23 of the Terrorism Act 2000 only apply on conviction for terrorist finance offences, but I would note that the powers of forfeiture on conviction have now been extended, under amendments made by the Counter-Terrorism Act 2008, and are available in relation to a wider range of terrorist-related offences.

Terrorist Investigations (Cordoning)

I agree that it is surprising that there were no cordons put in place under section 33 of the Terrorism Act 2000 in the Metropolitan Police Area during 2008. Therefore, measures are being taken to monitor all cordons placed around incidents of "suspect packages" in order to better understand the decision-making process regarding the use of this legislation.

Port and Borders Control

I note your comments regarding the position of searching postal items under Schedule 7 to the Terrorism Act 2000. Staff from UKBA's Border Force are deployed at Parcel Force and courier company international handling locations and work closely with these companies, along with the police, to identify any items which they believe to be of interest and deal with them appropriately.

We are reviewing the advice that has been given to ensure that officers can effectively carry out their duties in this area.

Reading Passports Electronically

You note that portable passport reading technology had been piloted by a number of police forces, it is anticipated that wider provision of these devices will be achieved during 2009. The UK Border Agency continues to monitor the development of ePassports and the associated technology to read these documents and will seek to ensure that necessary system changes are introduced to ensure that passengers are not delayed unnecessarily.

With regard to the scanning of passports on departure, with the development of e-Borders, information will be collected on passenger movements in advance of travel, including on their departure from the UK. This will allow law

enforcement to gain intelligence, as well as take other action if appropriate, against individuals of interest. The machine readable zone (MRZ) of passports will be read to show when people have left the country, and from 2010 UKBA will be able to count the majority of people in and out of the country. Our plans will ensure that this information can be checked using 21st century technology in advance of travel as well as on departure.

Counter-Terrorism Police and Coordination

I note your comments regarding the Single Border Force model and during 2008 we consulted on this issue as part of the Policing Green Paper which elicited a range of views about policing arrangements at the border.

We were not persuaded that pursuing fundamental structural change is the right place for our focus, as the operational benefits to be derived from such structural change need to outweigh the risks and costs involved.

I acknowledge that more can be done to improve current arrangements and we are having a constructive engagement with ACPO about proposals to significantly and actively enhance collaborative arrangements between police forces, and between the police and UKBA.

I note your concerns regarding the abstracting of officers from their counter-terrorism duties and the office of the National Coordinator Protect is monitoring such abstractions as part of their role connected with the allocation of funding to forces in respect of port CT policing.

Exchange and Sharing of Information

UKBA and the police are committed to continuing to develop structures and processes that will support the practical sharing of information between them. In order to achieve this, both organisations will continue to explore opportunities to embed individuals in the other's structures, in appropriate roles, in addition to the currently established joint working arrangements.

I note your comments regarding the work being progressed regarding the Police National Database by NPIA. As you are aware this programme has been developed to address the issues identified as part of the Bichard Inquiry and the initial implementation is tightly focussed on delivering the business change required to address these.

UKBA Performance Indicators

The creation of UKBA has provided us with a significant opportunity to increase the focus on counter-terrorism work, above that which existed in the previous agencies. UKBA is continuing to develop and implement counter-terrorism improvements across its business. Significant work is being taken forward to develop performance indicators for those aspects of the CT PSA which UKBA is responsible for. This work includes the continued commitment to the upskilling of Border Force staff via a structured programme of

awareness training and other initiatives to ensure that measurable performance indicators can be set and achieved.

Intuitive Stops at Ports

Your comments regarding the developments being made in the area of behavioural analysis are also welcome. It is hoped that within the next 6 months forces will have access to an accredited training course for officers applying Schedule 7 at ports that will assist them in using these techniques to focus their attention on individuals of particular interest.

The police and Security Service continue to develop their capacity to provide intelligence to front line officers, allowing them to utilise this to further develop the targeting of the powers available to them.

General Aviation

I note your comments regarding the security of General Aviation and the introduction of officers with specific responsibility for this area of work. We are committed to ensuring that any perceived vulnerabilities connected to this area are tackled with proportionate cross government cooperation and will continue to seek ways of further developing this.

Juxtaposed Controls

Your recognition that the operation of the Juxtaposed Controls, with British and French authorities working alongside each other are now operating more efficiently is appreciated. The potential to continue to improve the operation of border controls in these areas continue to be explored.

Passenger Manifests

In our response to your last report you were advised that the powers connected to the Immigration, Asylum and Nationality Act 2006 regarding the provision and sharing of manifest information came into force on 1st March 2008. These powers are now being utilised to require airlines to supply the required information to the eBorders system, the capacity of which will increase significantly over the next 12 months.

Northern Ireland Provisions

You are right to identify that there are still small but dangerous elements determined to remain rooted in the past, as graphically illustrated by the brutal murders of Sappers Quinsey and Azimkar and Constable Carroll in March and the sectarian murder of Kevin McDaid in May.

It is heartening to hear, however, that your contacts with the political parties and others in Northern Ireland leave you optimistic about the future of political and legal institutions. These small but dangerous dissident groups have little

community support. They must not be allowed to derail the peace process and unravel the excellent progress made in recent years.

Section 58A of Terrorism Act (Inserted by section 76 of CTA 2008)

It is true that since section 58A came into force in February this year there has been some controversy surrounding it; especially with concerned members of both amateur and professional photography organisations.

As you are aware counter-terrorism laws were not designed nor intended to stop people taking photographs and the Home Office is working towards providing further clarification both for the public and those involved in its enforcement.

I hope that this has responded to your main concerns. We will, as ever, continue to keep you updated on the progress that we are making and welcome the comprehensive nature of your reports.

Thank you again for your report.

A handwritten signature in black ink, appearing to read 'Yours Alan', with a large, stylized flourish at the end.

ALAN JOHNSON



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