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The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2014 by the Independent Reviewer of Terrorism Legislation

November 2016



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

November 2016

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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 2014 OF THE TERRORISM ACTS

Thank you for your report on the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 in 2014, which was published on 17 September 2015. Your report demonstrates that, as ever, you have undertaken an extremely thorough, professional and detailed review. Your reports continue to provide the Government, Parliament and the public with an important source of independent analysis of the operation of the UK's core terrorism legislation.

The function of the Independent Reviewer remains very important at a time when the UK and our international partners are facing an evolving and diversifying terrorist threat, in particular linked to Syria, against which our response must be, and must be seen to be, consistent with the values we are trying to protect. The complexity and scale of the threat from international terrorism has most recently been tragically highlighted by the attacks in continental Europe, and by the June 2015 Sousse attack in which 30 British citizens died, as well as many other terrorist attacks around the world during 2015 and 2016.

Faced with such terrible events it is right that we should keep our legislation under continuous review, to ensure that those tasked with protecting the public have the powers they need. It is equally important to ensure that those powers are fair and proportionate, and are operated in a way that is balanced and effective. Your ongoing support in providing a robust and challenging independent review makes a very significant contribution to this.

Your report comments that it would be helpful if the annual Home Office statistics on which you rely could be published sooner in the year. To this end, and in order to provide more timely and relevant statistics to the public, the Home Office has bought forward publication of the annual statistics by three months. Whereas the statistical bulletin for the year ending December 2014 was published in June 2015, for the year ending December 2015 it was published in March 2016.

I note that your report for 2014 is slightly shorter than those in previous years, both in order to avoid repetition of your earlier reports and in reflection of the competing demands for your time. In respect of the latter, I am pleased that the Home Office

has been able to provide you with specialist legal support, in line with your previous recommendation.

I will respond in turn to each area addressed by your report.

The Threat Picture

Your report provides an accurate and comprehensive summary of the terrorist threat facing the UK at the time it was published in September 2015. The overall UK threat level remains at Severe, meaning that an attack is highly likely.

The nature of the threat has evolved in recent years, and its greatest source is now linked to the conflict in Syria and Iraq. Daesh has exerted a powerful pull, including through its propaganda which is unprecedented in its volume and accessibility. It has drawn thousands of fighters from around the world in greater numbers, and broader demographic and age ranges, than we have seen in any other modern jihadist theatre. And while Daesh is now the most significant Islamist terrorist threat, we must also remain vigilant to the threat to the UK and its interests from AQ and its associates, other groups such as the Haqqani network, and from spontaneous violent extremists who may have no direct affiliation to any particular group.

As your report notes there also remains a very real threat in Northern Ireland linked to dissident republicans, and reflecting this the threat level to Great Britain from Northern Ireland-related terrorism was increased on 11 May 2016 from Substantial to Severe. And there remains a more disparate and fragmented threat, but nonetheless one which cannot be ignored, from other domestic extremists, in particular the extreme right-wing.

Over the last 18 months the police and the security and intelligence agencies have disrupted seven terrorist plots to attack the UK, all either linked to or inspired by Daesh and its propaganda. More than 800 individuals of interest to the security and intelligence agencies have travelled from the UK to Syria, about half of whom have since returned. And we are continuing to see high numbers of people being arrested in the UK for terrorism offences, 222 in the year to June 2016.

It is testament to the tireless work of the agencies and police that the public has been protected in these cases. But they continue to face a significant challenge in responding to the scale, pace and changing nature of the threat, and it is vital that the Government provides them with the powers and the legislative framework that they need to continue to keep us all safe. This means, amongst other things, having effective and proportionate counter-terrorism legislation, and effective investigative powers.

The Government, Law Enforcement, and Security and Intelligence Agency Response

In the Strategic Defence Spending Review the Government committed to increasing resources for counter-terrorism, including for the police and the security and intelligence agencies, by 30% in real terms over the next five years, from £11.7bn to £15.1bn. Additionally, a joint security fund of £1.5 billion a year will be created by the

end of the Parliament to pay for increased capabilities for the military and intelligence agencies, including for counter-terrorism.

As your report notes, funding for counter-terrorism policing has been protected in 2014/15 and 2015/16. The Home Office remains committed to ensuring the Counter-Terrorism Policing Network has the capabilities it needs to tackle the threat from terrorism, and the policing settlement announced on 17 December 2015 will increase funding in real terms to £670m for 2016/17. Additionally, armed policing will benefit from an uplift of up to £34m of transformation funding (from the main police funding settlement) in 2016/17 to be distributed via the counter-terrorism policing grant.

The Government is increasing funding for the security and intelligence agencies to enable £2.5 billion of additional investment in staff and capabilities, more than half of which will be for counter-terrorism. And we will recruit and train over 1,900 additional security and intelligence staff across the agencies to respond to the increasing international terrorist, cyber and other global threats.

On international cooperation, I agree that the ability of UK law enforcement and intelligence agencies to work with their counterparts overseas provides considerable operational benefits. Modern terrorism investigations routinely have an international dimension, and working across borders is increasingly important, whether bilaterally or through associations of like-minded countries when necessary.

In addition to operational cooperation between agencies, the Government also continues to play an active role in supporting international collaborative efforts to tackle the terrorist threat. We regularly engage with international partners, bilaterally and through relevant multilateral forums, to shape the strategic approach to tackling issues including the movement of terrorists and weapons across borders.

Proscribed Organisations

I welcome your comments on proscription, and on the links between proscription decisions and other disruption regimes. I also note your continued concerns about the deproscription process. I consider it appropriate to continue to take a cautious approach when considering removing groups from the list of proscribed organisations. Notwithstanding this, it remains the case that any person affected by an organisation's proscription can submit an application to me for the deproscription of that organisation in accordance with the Terrorism Act 2000. In 2015 the then Home Secretary received one such application. On 18 March 2016 an order came into effect amending Schedule 2 to the 2000 Act by removing the International Sikh Youth Federation from the list of proscribed organisations.

Stop and Search

I welcome the useful insight your report provides into the use of the police's stop and search powers under the Terrorism Act 2000. I agree that it would be helpful if statistics for the use of these powers could be published in relation to forces outside of London and Northern Ireland, and the Home Office is working with the police to investigate whether this information can be collected and published at a national level as you recommend.

Port and Border Controls

Your report provides a helpful and detailed analysis of the operation of the Schedule 7 power. As you highlight, there has been a decline in the number of Schedule 7 examinations over the past five years. The power is used relatively sparingly, with only 0.014% of travellers entering or transiting the UK in 2014/15 being subject to a Schedule 7 examination. I welcome your comments about the continued productivity of Schedule 7, that the decline in shorter examinations can be seen as an indicator of increasing quality (as 'interesting' examinees tend to be those who are examined for longer), and that the quality of intelligence produced is much improved.

I am committed to ensuring that the operation of Schedule 7 is not discriminatory, and I therefore also welcome the reiteration of your finding from previous reports that the available ethnicity data does not constitute evidence that Schedule 7 powers are exercised in a racially discriminatory manner.

Your report highlights the Supreme Court judgment in *Beghal*, and suggests that the Government reconsider three aspects of the Schedule 7 regime (on which you have previously made recommendations) in light of *obiter dicta* remarks in the judgment, notwithstanding that the Court dismissed Mrs Beghal's appeal.

Firstly, on the fact that no suspicion is required for the exercise of most Schedule 7 powers, in particular the power to detain a person for examination beyond the first hour, my view is that introducing a requirement of suspicion would fundamentally undermine the utility of the power. In this context I note that the Supreme Court found Schedule 7 as applied in the *Beghal* case to be lawful and compatible with the European Convention on Human Rights. I also note that, as your report observes, the extent to which the Supreme Court was prepared to concern itself in *obiter* with circumstances that were not present in *Beghal* was unusual, and the Home Office did not have the opportunity to present arguments in support of Schedule 7 as a no suspicion power in the hypothetical circumstances considered by the court.

Secondly, you suggest a need for clear and proportionate rules governing the retention of data downloaded from electronic devices. The Home Office is working with the police to review whether the Digital Downloads at Ports policy for Schedule 7 currently provides sufficient guidance on this.

Finally, on clarifying the inadmissibility in criminal proceedings of answers given under compulsion in a Schedule 7 interview, I agree that such material should be inadmissible and will consider whether it is necessary to legislate to put this beyond doubt.

Since publication of your report the Home Office has also responded to the Supreme Court's *obiter* comments in one further area. Paragraph 50 of the judgment comments that selection criteria for examination in the Schedule 7 Code of Practice might be 'potentially confusing'. In a Home Office Circular, published on 15 March 2016, we replaced wording in the Code to address this concern.

Since your report was published the Court of Appeal has also issued a judgment (on 19 January 2016) in the *Miranda* litigation. The Court dismissed Mr Miranda's appeal

on the facts, finding that Schedule 7 is lawful and that it was used in a proportionate way in Mr Miranda's examination. However, the Court did find that Schedule 7 as in force at the time of Mr Miranda's examination (August 2013) was not fully compliant with Article 10 of the European Convention on Human Rights (the right to freedom of expression) for journalistic material. A change subsequently made to the Schedule 7 Code of Practice in 2015 specified that examining officers must not use Schedule 7 to examine or copy material they reasonably believe is journalistic, therefore addressing the Court's concern and ensuring that Schedule 7 as currently in operation is compliant with Article 10.

Arrest and Detention

In relation to Forensic Medical Examiners (FMEs), I note the concerns you report having been raised with you about the commissioning process for custody healthcare, and your recommendation that the necessary steps be taken to retain the current high quality of FME provision throughout the UK. I agree that the FME role is vitally important, and that it is important to maintain the existing high standard of FME provision nationally.

Procurement decisions in this area are a matter for the police, supported by NHS England Commissioners, and must be taken in line with service specifications set by the College of Policing and NHS England. A detailed specification for the provision of healthcare to individuals detained under terrorism legislation is provided by an appendix to the National Service Specification for Police Custodial Healthcare. This was recently developed by the police and NHS England working in partnership, and in consultation with a national clinical expert panel including representation from the Faculty of Forensic and Legal Medicine, British Medical Association and experienced Terrorism FMEs from around the country. It sets out the enhanced skills, qualifications and experience required by Forensic Practitioners working in this challenging environment, as well as giving a detailed specification for the service they must provide and setting robust standards for how they should do so.

On litigation, there has been one further case since publication of your report (in addition to the two your report highlights) in which the UK was successful at the European Court of Human Rights (ECtHR). On 14 March 2016, a panel of the Grand Chamber of the ECtHR decided to refuse the claimants' request in *Sher & Others v United Kingdom* that their case be transferred to the Grand Chamber. The ECtHR judgment of 20 October 2015 therefore became final on that date. This found that there had been no violation of the claimants' human rights in relation to the procedure for obtaining warrants for further detention under Schedule 8 to the Terrorism Act 2000, or in relation to the scope of warrants authorising searches of their homes.

Your report suggested that the Government might wish to await determination of this case, which considered the detention of individuals arrested under section 41 of the Terrorism Act 2000, before returning to your previous recommendation that the detention clock be suspended when such detainees are admitted to hospital. The then Home Secretary set out in her response to your annual report covering 2013 that she was sympathetic to this recommendation. I share this view and, following

the recent conclusion of this case I will consider taking it forward when an opportunity to legislate arises.

Following the *Sher* judgment I also maintain the position of the then Home Secretary, as set out in her responses to your previous reports, on the other recommendations which your report maintains in this area.

Criminal Proceedings

Your report highlights concerns about differing sentencing practices in respect of terrorist offences, and suggests that a sentencing guideline could clarify sentencing practice. The Sentencing Council is an independent non-departmental public body with responsibility for developing sentencing guidelines and monitoring their use in England and Wales. The Council determines its own work plan, however its current plan includes a consultation process on terrorism offence guidelines beginning in May 2017. The Sentencing Council will undertake research, policy and legal investigations as part of the process of developing a guideline. Sentencing guidelines within Northern Ireland are the responsibility of that jurisdiction, and local sentencing practice may differ for a range of reasons.

Definition of Terrorism

Your 2014 report maintains three recommendations relating to the statutory definition of terrorism which you made in your 2013 report, noting that they could usefully be revisited once the *Miranda* litigation has been determined. The then Home Secretary's response to your 2013 report explained that she had carefully considered these recommendations, noting the comments of the Supreme Court in *Gul* and that this area remained before the courts in *Miranda*. Notwithstanding that, she considered that it was not the right time to make changes to the statutory definition, beyond the amendments to narrow the definition of 'terrorism related activity' in the Terrorism Prevention and Investigation Measures Act 2011 which were taken forward in the Counter-Terrorism and Security Act 2015.

Having given this matter consideration in the light of developments over the last year, and of the judgment handed down by the Court of Appeal on 19 January 2016 in *Miranda*, I maintain the view that it would not be appropriate to make changes to the statutory definition at this stage. The complexity and fluidity of the terrorist threat, and its ability to evolve and diversify at great speed, demonstrate the importance of having a flexible statutory framework – with appropriate safeguards – to ensure that the law enforcement and intelligence agencies can continue to protect the public.

The Future of Independent Review

As your report notes, significant changes have been made to the role of the Independent Reviewer in line with your previous recommendations. These broaden the overall range of statutes within the remit of the Independent Reviewer; remove the requirement to review certain statutes on an annual basis; and introduce greater flexibility to carry out *ad hoc* or thematic reviews focusing on the areas that you judge to merit greater scrutiny, or which you are asked by the Government to consider. I hope that this has been a welcome change. I am also pleased, as noted

above, that the Home Office has been able to allocate additional funding to provide you with specialist legal assistance to support you in your duties.

Conclusion

Thank you once again for your thorough report. As you approach the end of your tenure as Independent Reviewer, I would also like to take this opportunity to place on record my thanks for the constructive engagement, thoughtful and robust review, and the great contribution to the wider debate on counter-terrorism that you have provided during your appointment.

I will, as usual, be publishing this response on the Government's website and placing copies in the Vote Office.

A handwritten signature in black ink, appearing to read 'Amber Rudd', is centered on the page. The signature is fluid and cursive.

The Rt Hon Amber Rudd MP

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