



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Counter–Terrorism Policy and Human Rights (Fourteenth Report): Annual Renewal of Control Orders Legislation 2009

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**Fifth Report of Session 2008-09**

*Report, together with formal minutes and  
written evidence*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Lord Dubs  
Lord Lester of Herne Hill  
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### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Emily Gregory and John Porter (Committee Assistants), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

### Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is [jchr@parliament.uk](mailto:jchr@parliament.uk)

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## Summary

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Control orders allow the Government to impose conditions, such as curfew, on people suspected of carrying out terrorist activities.

The Government is seeking to renew for the fourth time secondary legislation to give it power to use control orders. We acknowledge that the Government must take effective steps to protect the public from terrorism. However, we continue to have serious reservations about the human rights compatibility of control orders and note, once again, that without significant modifications, the control order regime will be likely to breach individuals' human rights.

Our report provides an update on issues relating to

- The annual report of the statutory reviewer of the Prevention of Terrorism Act 2005
- The priority of prosecution (that control orders should be used as a last resort)
- Intercept
- Due process (ensuring that control order hearings are fair)
- Exit strategy (ending each control order)

We draw on information from a ruling with the European Court of Human Rights and the International Court of Justice to repeat recommendations we have made in previous reports. Those recommendations are that:

1. The Secretary of State should provide to those subject to control orders a summary of materials being relied on by the Government to support its allegations in the control order proceedings; and that
2. There should be a maximum limit of the duration of a control order.

We welcome the Government meeting our recommendation that the annual report by Lord Carlile of Berriew, the statutory reviewer, should be published one month before the debate in Parliament on whether the control orders should be renewed.

# 1 Annual Renewal of Control Orders Legislation 2009

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## Background

2. On 3 February 2009 the Home Secretary laid before both Houses the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009,<sup>1</sup> along with an Explanatory Memorandum (“EM”).

3. The draft Order provides for the continuation of the control order regime contained in sections 1 to 9 of the Prevention of Terrorism Act 2005 (“the PTA 2005”) for another year from 11 March 2009 (when those provisions would otherwise expire) until the end of 10 March 2010.

4. The EM explains that the powers are “needed to ensure that a control order can continue to be made against any individual where the Secretary of State has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.”<sup>2</sup>

5. The Home Secretary has made a statement of human rights compatibility in respect of the draft Order: “In my view the provisions of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order are compatible with the Convention rights.”<sup>3</sup>

6. The draft Order is expected to be debated in the House of Commons on 3 March 2009 and in the House of Lords shortly afterwards.

7. This is the fourth renewal order extending the life of the control order regime.<sup>4</sup> Our predecessor Committee reported on the 2005 Bill which introduced the control order regime,<sup>5</sup> and we have reported on all three of the previous annual renewals.<sup>6</sup> In our reports on the Counter Terrorism Bill we recommended a number of amendments to the control

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<sup>1</sup> Under s. 13(2)(c) of the Prevention of Terrorism Act 2005 which empowers the Secretary of State, by order made by statutory instrument, to provide that sections 1 to 9 of that Act are not to expire but are to continue in force for a period up to a year.

<sup>2</sup> EM para. 2.1.

<sup>3</sup> EM para. 6.1.

<sup>4</sup> The PTA 2005 received Royal Assent on 11 March 2005 and was renewed for the period 11 March 2006 to 10 March 2007 by the Prevention of Terrorism Act 2005 (Continuance in Force of sections 1 to 9) Order 2006 (SI 2006 No. 512); for the period 11 March 2007 to 10 March 2008 by the Prevention of Terrorism Act 2005 (Continuance in Force of sections 1 to 9) Order 2007 (SI 2007 No. 706), and for the period 11 March 2008 to 10 March 2009 by the Prevention of Terrorism Act 2005 (Continuance in Force of sections 1 to 9) Order 2008 (SI 2008 No. 559).

<sup>5</sup> Ninth Report of 2004-05, *Prevention of Terrorism Bill: Preliminary Report*, HL Paper 61, HC 389 and Tenth Report of 2004-05, *Prevention of Terrorism Bill*, HL Paper 68, HC 334.

<sup>6</sup> Twelfth Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006*, HL Paper 122, HC 915 (hereafter “JCHR’s First Report on Control Order Renewal”); Eighth Report of Session 2006-07, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007*, HL Paper 60, HC 365 (hereafter “JCHR’s Second Report on Control Order Renewal”); Tenth Report of Session 2007-08, *Counter-Terrorism Policy and Human Rights (Ninth Report): Annual Renewal of Control Orders Legislation 2008*, HL Paper 57, HC 356 (hereafter “JCHR’s Third Report on Control Order Renewal”).

orders regime which we considered necessary in order to render it human rights compatible.<sup>7</sup> Our recommended amendments were extensively debated when the Counter Terrorism Bill was in Committee in the Lords,<sup>8</sup> and some were voted on at Report stage and narrowly defeated. In this Report we take full account of the fact that Parliament has recently debated our proposed amendments to the control orders regime and in some cases has decided, albeit by a narrow margin, not to accept them. We do not seek to repeat those recommendations in detail here. Rather, we aim to inform Parliament of relevant recent developments and to identify the main areas of continuing concern from a human rights perspective.

8. We are also publishing with this Report the Government's reply to our Thirtieth Report of the 2007-08 session, on the Counter-Terrorism Bill.<sup>9</sup>

9. As in previous reports, we approach the question of the renewal of control orders in agreement with the Government about the importance of the positive obligation imposed on the Government by human rights law, to take effective steps to protect the public from the real threat of terrorism. In those earlier reports, we have consistently maintained that a regime of less restrictive civil restriction orders with proper due process guarantees would be capable, in principle, of being compatible with both the right to liberty and the right to due process. However, we have consistently raised a number of human rights concerns about the control orders legislation, in particular:

- The lack of opportunity for proper parliamentary scrutiny of the operation of control orders in practice;<sup>10</sup>
- The severe extent of the obligations imposed by control orders which have appeared to us to be so restrictive as to amount to a deprivation of liberty, in breach of Article 5 ECHR;<sup>11</sup>
- The deficiencies in the adequacy and practical effectiveness of the due process safeguards in the control orders regime, and in particular the lack of opportunity to challenge closed material, which fail to secure the "substantial measure of procedural justice" required by Article 6 ECHR and the common law right to a fair hearing;<sup>12</sup>
- The seriousness of the Government's commitment to prosecution as its first preference before resorting to control orders, in the light of the lack of continuing

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<sup>7</sup> Ninth Report of Session 2007-08, *Counter-Terrorism Policy and Human Rights (Eighth Report): The Counter Terrorism Bill*, paras 39-73; Twentieth Report of Session 2007-08, , *Counter-Terrorism Policy and Human Rights (Tenth Report): The Counter Terrorism Bill*, paras 67-114; Thirtieth Report of Session 2007-08, , *Counter-Terrorism Policy and Human Rights (Thirteenth Report): The Counter Terrorism Bill*, paras 128-132.

<sup>8</sup> HL Deb 21 October 2008 cols 1075-1103; HL Deb 11 November 2008 cols 607-616.

<sup>9</sup> See p 12

<sup>10</sup> JCHR's First Report on Control Order Renewal, paras 5-14; JCHR's Second Report on Control Order Renewal, paras 12-17.

<sup>11</sup> JCHR's First Report on Control Order Renewal, paras 36-42; JCHR's Second Report on Control Order Renewal, paras 21-29.

<sup>12</sup> JCHR's First Report on Control Order Renewal, paras 69-76; JCHR's Second Report on Control Order Renewal, paras 30-38.

investigation of controlled individuals with a view to prosecution, and the lack of effective systems to keep the prospects of prosecution under review.<sup>13</sup>

10. We continue to have very serious reservations about the human rights compatibility of control orders and to believe that, without certain important modifications to the regime the use of control orders will continue to give rise to breaches of individuals' rights both to liberty and due process. We also draw attention to the Concluding Observations of the UN Human Rights Committee on the UK's compliance with the International Covenant on Civil and Political Rights, which included a recommendation that the Government should ensure that the judicial procedure for challenging the imposition of a control order complies with the principle of equality of arms, and also that those subjected to control orders are promptly charged with a criminal offence.<sup>14</sup>

11. Our consistent concerns about the adequacy of the due process safeguards in the control orders regime, and in particular the lack of a meaningful opportunity to challenge the closed material, have recently been vindicated by the European Court of Human Rights. On 19 February 2009 the Grand Chamber unanimously held that there had been a violation of the right in Article 5(4) ECHR to have the lawfulness of detention decided by a court in the cases of four of those who were detained under Part IV of the Anti-Terrorism, Crime and Security Act 2001 which preceded the control orders regime.<sup>15</sup>

12. The Court held that the evidence on which the state relied to support the principal allegations made against the four individuals was largely to be found in the closed material and was therefore not disclosed to the individuals or their lawyers. It said that special advocates could not perform their function, of safeguarding the detainee's interests during closed hearings, in any useful way unless the detainee was provided with sufficient information about the allegations against him to enable him to give effective instructions to the special advocate. There was a violation of the right to a judicial determination of the legality of detention because the four detainees were not in a position effectively to challenge the allegations against them. We consider the implications of this judgment for the control orders regime in the section on Due Process below.

13. We also draw to Parliament's attention the Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, published on 17 February 2009.<sup>16</sup> The Report expresses concern that, over the longer term, control orders could give rise to a "parallel legal system" and undermine the rule of law. It concluded that, if control orders are to be used, it is essential to build in appropriate safeguards and that there are many important safeguards missing in the control order system, currently in operation in the UK:

- the evidentiary standard required is ... low – that of 'reasonable suspicion';
- there is limited ability to test the underlying intelligence information;

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<sup>13</sup> JCHR's Second Report on Control Order Renewal, paras 39-62.

<sup>14</sup> UN Human Rights Committee Concluding Observations on the UK at para. 17.

<sup>15</sup> *A and others v UK*, Application No. 3455/05 [GC], judgment of 19 February 2009, at paras 193-224.

<sup>16</sup> *Assessing Damage, Urging Action*, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and human Rights, 17 February 2009 (International Commission of Jurists), at 120-121.



- there are no definite time-limits and the orders can last for long periods;
- there are limitations on effective legal representation and to legal counsel of one's own choosing;
- the right to a full fair hearing (guaranteed in both civil and criminal proceedings) is denied.

14. The Report points out that such safeguards are all the more important given that criminal sanctions often flow from the currently flawed procedures, and expresses the Panel's reservations about alternative safeguards such as the system of special advocates, which put the affected person at a grave disadvantage.

### Parliamentary scrutiny

15. The annual report of the statutory reviewer of the PTA 2005, Lord Carlile of Berriew QC, was also published on 3 February 2009, at the same time as the draft Order and Explanatory Memorandum.<sup>17</sup> On every previous renewal of the control orders legislation we have complained that publishing Lord Carlile's report only a matter of days before the renewal debate severely limits the opportunity for meaningful parliamentary scrutiny. We recommended, in the separate context of pre-charge detention, that the statutory reviewer of terrorism legislation should report at least a month before any renewal debate in order to give an opportunity for proper parliamentary scrutiny and so make parliamentary review a more meaningful safeguard.<sup>18</sup>

**16. We welcome the publication of the statutory reviewer's report a month before the debate in Parliament on whether the control order provisions should be renewed, in accordance with our recommendation. We look forward to the Government adopting this as good practice wherever legislative provisions exist for statutory reviewers to report prior to the renewal of powers which affect human rights, including in the context of the powers to extend pre-charge detention to 28 days which are subject to annual renewal by Parliament.**

### Lord Carlile's report

17. Lord Carlile's principal conclusions are identical to those in his previous reports: he considers that "control orders remain a largely effective necessity for a small number of cases, in the absence of a viable alternative for those few instances."<sup>19</sup> Having seen the information, including the intelligence, on which each control order is based, he would have reached the same decision as the Home Secretary in each case in which a control order has been made.<sup>20</sup>

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<sup>17</sup> *Fourth Report of the Independent Reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005* (3 February 2009) (hereafter "Lord Carlile's Fourth Report on Control Orders").

<sup>18</sup> Nineteenth Report of Session 2006-07, *Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning*, HL Paper 157/HC 394 (hereafter "JCHR Report on 28 days, intercept and post-charge questioning"), at para. 63.

<sup>19</sup> Lord Carlile's Fourth Report on Control Orders at para. 37.

<sup>20</sup> *Ibid* at para. 48.

18. The Report was welcomed by the Home Secretary, who cited the above conclusions and urged Parliament to renew the legislation in the light of them.<sup>21</sup>

### The priority of prosecution

19. The Government did not accept our amendments to the Counter-Terrorism Bill which were aimed at making it more likely in practice that control orders would only be used as a last resort, and that the first resort would always be prosecution. The amendments were narrowly defeated in the Lords at Report stage.

20. Lord Carlile points out that the passage of both the Terrorism Act 2006 and the Counter-Terrorism Act 2008 has increased the range of possible terrorism offences which has contributed to the charging of more individuals with terrorism-related offences and “could increase the potential for the normal criminal process to be used against terrorism suspects”.<sup>22</sup>

### Intercept

21. Lord Carlile acknowledges in his report that “the use of intercept evidence in a criminal court possibly has the potential for reducing the number of control orders, though this is far from certain.”<sup>23</sup>

22. We also expect the admissibility of intercept as evidence to increase the possibility of prosecution and therefore reduce the number of control orders.<sup>24</sup>

### Due process

23. We proposed a number of amendments to the control orders regime designed to ensure that in future control order hearings are much more likely to be fair, including an obligation on the Secretary of State to provide a statement of the gist of any closed material on which fairness requires the controlled person to have an opportunity to comment. Apart from agreeing to amend the relevant rules to permit special advocates to cross examine witnesses, which we welcome, the Government opposed these amendments on the basis that the effect of the decision of the House of Lords in *MB* was to render the control orders framework compatible with the requirements of Article 6 ECHR.

24. We were disappointed by the Government’s argument that “introducing a requirement always to provide a summary is not appropriate.”<sup>25</sup> We interpreted the majority in the House of Lords in *MB* to have held that the concept of fairness imports a core irreducible minimum of procedural protection. In our view, the decision in *MB* requires the Secretary of State to provide the gist of any closed material on which she intends to rely and on which fairness demands the controlled person has an opportunity to comment.

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<sup>21</sup> Home Office press release, 3 February 2009.

<sup>22</sup> Lord Carlile’s Fourth Report on Control Orders, para. 5.

<sup>23</sup> Ibid at para. 47.

<sup>24</sup> HC Deb 12 Feb 2009 col 89WS

<sup>25</sup> HL Deb 21 Oct 2008 col. 1085.

25. We have been strongly influenced in our views on this question by the evidence we have heard from the special advocates who have described the potential unfairness which is inherent in the whole regime. As far as we are aware, the Minister responsible did not keep his promise to meet with the special advocates again to discuss our recommended amendments to the control orders framework before he moved to another role.<sup>26</sup>

26. We note that in October 2008 the Court of Appeal divided over this question.<sup>27</sup> The majority held “There is no principle that a hearing will be unfair in the absence of open disclosure to the controlee of an irreducible minimum of allegation or evidence. Alternatively, if there is, the irreducible minimum can, depending on the circumstances, be met by disclosure of as little information as was provided in [the case of AF], which is very little indeed.”<sup>28</sup> Sedley LJ, dissenting, understood *MB* differently: “As I understand it, *MB* decides ... that a complete withholding of the grounds for suspicion makes a fair hearing impossible.”<sup>29</sup>

27. In our view the recent decision of the Grand Chamber of the European Court of Human Rights in *A v UK* leaves no room for doubt that basic fairness requires that at the very least the controlled person be provided with the gist of the closed material which supports the allegations made against them. In the absence of such disclosure, the controlled person is not in a position effectively to challenge the allegations against them. **We therefore repeat our earlier recommendation that the statutory framework be amended to provide that rules of court for control order proceedings must require the Secretary of State to provide a summary of any material which fairness requires the controlled person have an opportunity to comment on. Unless the control orders framework is amended in this way, it is inevitable, in the light of the recent ruling of the European Court, that there will be cases in which individuals are denied the right to a fair hearing.**

28. We make no further comment on the issue for now, in light of the fact that the case is shortly to be heard by the House of Lords, beginning on 2 March 2009. We may return to this important issue following the House of Lords judgment.

## Exit strategy

29. Lord Carlile continues to be concerned about “the ending, or endgame, of each control order”,<sup>30</sup> an issue which he raised for the first time in his Annual Renewal report last year. He rightly points out that some of the controlees have already been the subject of their orders for a considerable time, and that their orders cannot be continued indefinitely, as this would be unlikely to be permitted by the courts.

30. We proposed an amendment to the Counter-Terrorism Bill to give effect to Lord Carlile’s recommendation last year that there should be a statutory presumption against a

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<sup>26</sup> See Twenty First Report of Session 2007-08, Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 Days and Public Emergencies, HL Paper 116, HC 635, p 46.

<sup>27</sup> *Secretary of State for the Home Department v AF, AM and AN* [2008] EWCA Civ 11148.

<sup>28</sup> *Ibid.*, para. 64(iv)

<sup>29</sup> *Ibid.* at para. 119

<sup>30</sup> Lord Carlile’s Fourth Report on Control Orders, para. 57.

control order being extended beyond two years, save in genuinely exceptional circumstances. The Government opposed the amendment on the basis that, if it is necessary and proportionate to extend a control order beyond two years to protect the public from terrorism, it is the Government's responsibility to do so.

31. As Lord Carlile has pointed out, however, being subjected to control orders not merely for long periods but indefinitely is unlikely to be tolerated by the courts. Several of the 15 individuals who are the subject of control orders have been on control orders for three or four years, and in some cases before that they were detained for more than three years in Belmarsh under the Anti-Terrorism, Crime and Security Act 2001.

32. We agree with the observation of the ICJ's Eminent Jurists Panel: "if secret intelligence cannot be transformed into evidence over time, or if the State fails to obtain new evidence, the preventive measures should cease."<sup>31</sup> **We therefore repeat our earlier recommendation that there ought to be a maximum limit on the duration of a control order, and that Parliament ought to debate what that limit should be.**"

## Conclusion

33. **We continue to have very serious concerns about the human rights compatibility of both the control orders regime itself and its operation in practice. We remain concerned that it will continue to result in breaches of both the right to liberty and the right to a fair hearing. Moreover, with every annual renewal, we grow more concerned about the length of time for which a number of individuals have been the subject of control orders. Subjecting individuals to indefinite preventive measures is not acceptable and, as Lord Carlile predicts, will at some point inevitably lead to a violation of their human rights.**

34. **As in previous years, we therefore have very serious reservations about the renewal of the control order regime unless the Government is prepared to introduce the safeguards we have identified as necessary to render it human rights compatible. Without those safeguards, the use of control orders will continue to give rise to unnecessary breaches of individuals' rights to liberty and due process.**

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<sup>31</sup> Report of Eminent Jurists Panel, above, at p. 122.

# Formal Minutes

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Tuesday 24 February 2009

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	John Austin MP
Lord Dubs	Dr Evan Harris MP
Lord Lester of Herne Hill	Mr Edward Timpson MP
The Earl of Onslow	Mr Virendra Sharma MP
Baroness Prashar	

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Draft Report (*Counter-Terrorism Policy and Human Rights (Fourteenth Report): Annual Renewal of Control Orders Legislation 2009*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 33 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Fifth Report of the Committee to each House.

*Ordered*, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

A Paper was ordered to be reported to the House for printing with the Report.

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[Adjourned till Tuesday 3 March at 1.30pm.]

## Written Evidence

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### **Letter from Vernon Coaker MP, Minister of State at the Home Office to the Chairman and Government Response to the Committee's Thirtieth Report of Session 2007-08, Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill, dated 3 February 2009**

Thank you for your report *Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill* published on 8 October 2008. I apologise for the delay in responding formally to the report but many of the issues raised were debated during consideration of the legislation by the House of Lords in October and November last year. As you know, the Counter-Terrorism Act received Royal Assent on 26 November 2008. The Home Secretary also gave evidence to your Committee on 28 October 2008 which covered some of the issues raised in your report. I am, however, very grateful for the continued interest of your committee on this subject and for the detailed recommendations that you have made. This letter therefore deals with the remaining issues where these continue to be relevant.

#### **Pre-charge detention**

As the Committee is aware, the Act no longer contains any provisions relating to the extension of the pre-charge detention period. I will not therefore comment upon the passages in the report which deal with the adequacy of the safeguards (pages 11-24 inclusive). However, I would like to deal with the other points raised in this section.

#### *Parliamentary Assembly of the Council of Europe Report on 42 days*

The Government believes that the existing pre-charge detention regime under Schedule 8 to the Terrorism Act 2000 and any extension to this under the Counter-Terrorism (Temporary Provisions) Bill is compatible with all aspects of the European Convention of Human Rights. In particular, we consider an arrest under section 41 of the 2000 Act meets the requirement under Article 5(1)(c) that a person must be reasonably suspected of having committed an offence. Section 40 of the 2000 Act defines "terrorist" for the purposes of arrest and detention and we believe that this definition is well within the idea of an "offence" for the purposes of the Convention. Further, the requirements in PACE Code H ensure that the detained person is informed of the grounds for their arrest. Even in cases involving sensitive material which cannot be disclosed to the suspect, sufficient information is provided to comply with Article 5(2).

Under Schedule 8 to the 2000 Act a detainee is brought before a court within hours of arrest. Judicial hearings for warrants of further detention are adversarial and suspects are legally represented and may make representations and challenge the case for further detention. We believe this procedure complies with the requirements of Article 5(3) and (4). We do not believe that the existing regime or the proposed extension to the limit for pre-charge detention increase the risk of a breach of Article 3. The provisions in Schedule 8 to the 2000 Act and in PACE Code H govern the treatment of detainee and this framework

provides sufficient safeguards against inhumane or degrading treatment falling within Article 3.

#### *Derogation from the Convention*

Although the Counter-Terrorism Act does not contain any provisions extending the current limit of pre-charge detention, the draft Counter-Terrorism (Temporary Provisions) Bill does. Should circumstances arise which necessitate the extension of the pre-charge detention limit, the Government believes that it is lawful and appropriate to extend the limit in the manner provided for in that Bill. Derogation does not make sense for the following reasons:

It is not possible or appropriate to derogate unless there is a measure that conflicts with a convention right. As I have explained above, we believe the pre-charge detention proposals are fully compatible with Convention rights including Article 5 (deprivation of liberty). To derogate from the ECHR, there needs to be more than just a public emergency threatening the life of the nation. Article 15 of the ECHR requires there to be such an emergency and that the State needs put in place measures to deal with that emergency that are otherwise inconsistent with the Convention right. We can only derogate if “strictly required”. Given that our pre-charge detention proposal in the Counter Terrorism (Temporary Provisions) Bill, containing as it does the crucial safeguard of judicial oversight, is fully compatible with the Convention, derogation is not strictly required – or indeed required at all. Accordingly, we believe it would be inappropriate to seek to derogate when pre-charge detention measures can be put in place entirely compatibly with the ECHR.

#### **Coroners’ inquests**

As you will be aware, the Government removed the coroners’ inquests proposals from the Counter Terrorism Bill at Lords Committee stage and these are now being taken forward as part of the Coroners and Justice Bill.

#### **Other recommendations**

A number of the recommendations in the report have been fully debated by Parliament. During those debates the Government set out its position and I do not propose to go over those arguments again at length here.

#### *The charging threshold*

There is already a statutory requirement for the Director of Public Prosecutions to issue formal published guidance on charging under the Prosecution of Offences Act 1985 and the Criminal Justice Act 2003. This statutory framework emphasises the independence of the Crown Prosecution Service and recognises the need for regular revision by the Director of Public Prosecutions to take into account changes to the law or circumstances. Both these factors make the charging test unsuitable for primary legislation. It would be particularly inappropriate to enshrine only one of the charging standards in statute and only in relation to terrorism offences, when the threshold test is available for other offences.

The current version of the Code for Crown Prosecutors was issued in 2004 and is the fifth edition. The Code is laid before Parliament whenever it is revised. The contents of the

Code are not statutory, although it is binding on prosecutors. The Code was the subject of public consultation when it was last revised in 2004.

#### *Bail for terrorism suspects*

We did consider the option of police bail for terrorism suspects as part of the Counter-Terrorism Bill and consulted with the police and the CPS who recommended against making police bail available for terrorist suspects because of the risks to public safety that it would involve. There is also a risk that releasing terrorist suspects on bail would present an opportunity for evidence to be tampered with or destroyed. The issue of bail for terrorism suspects was fully debated in Lords Committee and no amendment was made.

#### *Post-charge questioning*

The Government accepted the recommendation that additional safeguards for post charge questioning should be introduced and the legislation was amended at Lords Report by government amendment to introduce such additional safeguards. All post-charge questioning will now require judicial authorisation, will be time-limited to periods of no longer than 48 hours before further judicial authorisation must be sought and will be video recorded. The PACE code of practice will make clear that the suspect subject to questioning should have access to legal representation during questioning.

#### *Control Orders*

We continue to disagree with the Committee's recommendations in relation to control orders. As we have stated in response to previous JCHR reports, including the JCHR's report of 14 May 2008, as a result of the House of Lords judgments of October 2007 the Prevention of Terrorism Act 2005 is fully compatible with human rights and no amendments to the legislation are necessary. The issues raised by amendments were debated fully during the passage of the Act through Parliament. The majority of the JCHR's proposed amendments were not put to a vote; those that were put to a vote were not accepted by Parliament.

#### *Disclosure of information involving the intelligence agencies*

The amendment proposed in the report was fully debated during Lords Committee; it was not taken to a vote and was not brought back at report stage.



# List of Reports from the Committee during the current Parliament

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## The following reports have been produced

### Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378

Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079

**Session 2006–07**

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
Nineteenth Report	Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning	HL Paper 157/HC 394
Twentieth Report	Highly Skilled Migrants: Changes to the Immigration Rules	HL Paper 173/HC 993
Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056