



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days

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**Eighteenth Report of Session  
2008–09**

*Report, together with formal minutes and  
written evidence*

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### 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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The Terrorism Act 2006 gives the police the power to detain without charge for up to 28 days people arrested on suspicion of being a terrorist. The Act provides that the maximum period of pre-charge detention reduces to 14 days after one year unless renewed by an affirmative order. The Government has asked Parliament for the third year running to approve secondary legislation to renew the extension to 28 days. People have not been detained for longer than 14 days for the last two years. This calls for extremely careful scrutiny of the justification for the renewal.

## **Better information so Parliament can decide whether to renew the power**

Open-ended departures from ordinary procedures should be avoided and the justification for them subjected to frequent review. Government should provide an independent analysis of the cases where people have been detained for longer than 14 days, paying attention to whether they could have been charged or released earlier. The Government has provided some statistical analysis which is helpful, but it is not enough to allow us to assess whether the extension beyond 14 days pre charge detention is needed.

## **Compatibility with right to a judicial hearing**

The Government should change the law to safeguard this right. People arrested on suspicion of being a terrorist have the right to a judicial hearing to determine the lawfulness of their detention. We disagree with the Government that the current law upholds this right. Currently, the prosecution can withhold key information from the suspect and their lawyer at the hearing, and they can be excluded from the hearing altogether. Rulings from both the House of Lords and the European Court of Human Rights in the last year say that a suspect must be given enough information to know what the allegations against him are, and to instruct his lawyer to represent his case.

## **Impact on suspects and communities**

The Government should obtain and make available to Parliament assessments of the impact of the extended pre-charge detention power both on individuals who have been detained for more than 14 days pre-charge and on the communities most directly affected.

## **Presumption of innocence**

The presumption of innocence requires Government ministers to refrain from commenting on a suspect's guilt before they have been convicted. To assist Government ministers we recommend that the Director of Public Prosecutions draw up draft guidance about how to avoid making comments after the arrest of terrorism suspects which might prejudice a court case.

# 1 Introduction

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## Background

1. On 18 May 2009 the Home Secretary laid before both Houses the draft Terrorism Act 2006 (Disapplication of Section 25) Order 2009,<sup>1</sup> along with an Explanatory Memorandum (“EM”). The effect of the draft Order would be to renew for a further year the extension of the maximum period for detention without charge for terrorism offences to 28 days. Without renewal the maximum detention period would revert to 14 days on 25 July 2009. The draft Order is scheduled to be debated in the House of Lords on 23 June and the House of Commons in early July.

2. The maximum period of pre-charge detention for terrorism offences was extended from 14 to 28 days by the Terrorism Act 2006.<sup>2</sup> One of the safeguards added during that Act’s passage through the Lords was a requirement that the extended period of 28 days be subject to annual renewal by Parliament. The 2006 Act therefore contains a provision which would automatically reduce the maximum period from 28 back to 14 days after a year.<sup>3</sup>

3. However, the Secretary of State has a power to disapply that provision and so, in effect, renew the 28 day period for a year at a time.<sup>4</sup> The renewal order must be laid in draft before both Houses of Parliament and approved by a resolution of each House.<sup>5</sup> The Home Secretary exercised the power to renew the 28 day period in July 2007<sup>6</sup> and again in July 2008.<sup>7</sup> The last renewal order came into force on 25 July 2008 and renewed the 28 day period until 25 July 2009. The draft order would renew the 28 day period for a further year until 25 July 2010.

4. The then Minister of State at the Home Office, Vernon Coaker MP, made a statement of human rights compatibility in respect of the draft Order: “In my view the provisions of the Terrorism Act 2006 (Disapplication of Section 25) Order 2009 are compatible with the Convention rights.”<sup>8</sup>

5. We wrote to the Home Secretary on 21 May about the imminent renewal of the 28 day period of pre-charge detention, with a view to ensuring that Parliament is as informed as possible when it comes to debate the draft renewal order.<sup>9</sup> The Home Secretary replied by letter dated 9 June.<sup>10</sup> On 17 June, Lord Carlile, the statutory reviewer of the operation of

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1 Under s. 25(6) of the Terrorism Act 2006 (hereafter “TA 2006”).

2 Section 23 TA 2006.

3 Section 25 TA 2006.

4 Section 25(2) TA 2006 which empowers the Secretary of State, by order made by statutory instrument, to disapply, for a period up to a year, the provision which provides for the expiry of the extended maximum detention period.

5 Section 25(6).

6 Terrorism Act 2006 (Disapplication of Section 25) Order 2007 (SI 2007/2181).

7 Terrorism Act 2006 (Disapplication of Section 25) Order 2008 (SI 2008/1745).

8 EM para. 6.1.

9 Written evidence, page 18.

10 Written evidence, page 21

the terrorism legislation, reported on the operation of that legislation in 2008. Lord Carlile's Report contains very little of relevance to the renewal debate because the power to detain for more than 14 days was not exercised at all during the period covered by his report.

## 2 The necessity for renewal

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### Background

6. The power to detain a terrorism suspect for more than 14 days before charge has not been used since it was last renewed in July 2008. Nor was it used at all during the currency of the previous annual renewal in July 2007. Indeed, the last time the power to detain a terrorism suspect for more than 14 days was used was 30 June 2007.<sup>11</sup> Parliament is therefore being asked to renew for a third time a temporary power which Parliament has made subject to annual renewal, but which has not been used at all during its previous two renewals.

7. In reply to our inquiries, the Government says that “just because it has not been needed over the past 24 months does not mean that it might not be needed again in the near future.” We accept this as a general proposition and would not seek to argue that the mere fact that the power has not been used is sufficient proof that it is not needed. However, in our view the fact that for two years there have been no occasions to use a power which is a significant departure from ordinary standards, and which has been expressly granted by Parliament only for a time-limited period, is significant in this respect: it calls for extremely careful scrutiny of the justification for the renewal.

8. The recent Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights warned of the corrosive effect of open-ended departures from ordinary procedures and of the danger of special measures, introduced to deal with a temporary crisis, becoming permanent.<sup>12</sup> It recommended that “all legislation intended to deal with terrorism should be regularly reviewed to ensure that the tests initially met still prevail, and to ensure that no unintended consequences have arisen”, and that departures from ordinary procedures should be time-limited.<sup>13</sup>

9. The point appears to have been accepted in principle by the Secretary of State for Justice, who was recently reported in the press as having indicated, in a public lecture at Clifford Chance on 12 May, that UK counter-terrorism laws built up in the wake of the 9/11 attacks on New York and the 7/7 attacks on London should be reviewed and may need to be scaled back.<sup>14</sup> He is reported to have said “There is a case for going through all counterterrorism legislation and working out whether we need it. It was there for a temporary period.”

10. The Government accepts that the power to detain terrorist suspects for more than 14 days before charge is a temporary power,<sup>15</sup> because Parliament has subjected it to a requirement of annual renewal. We therefore asked the Home Secretary to explain why it is

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11 Letter from the Home Secretary, 9 June 2009.

12 *Assessing Damage, Urging Action*, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights (International Commission of Jurists, December 2008), at 40-42. The Eminent Jurists Panel is an independent Panel convened by the International Commission of Jurists, chaired by Justice Arthur Chaskalson (former Chief Justice of the South African Constitutional Court).

13 *Ibid.* at 47.

14 “Terror laws built up after 9/11 and 7/7 may be scaled back, says Jack Straw”, *The Guardian*, 13 May 2009.

15 See e.g. Tony McNulty, *HC Deb* 23 June 2008 col. 96.

necessary to renew the temporary power to detain terrorism suspects for more than 14 and up to 28 days before charge when that power has not been used for more than two years.

### The Government's case

11. The Explanatory Memorandum accompanying the draft Order recites the same justificatory reasons as were originally relied on when the limit was increased from 14 to 28 days in 2006. It says the increase “was and still is considered necessary” as a result of the:

- greater use of encrypted computers
- increasingly complex nature of terrorist networks
- increasingly international nature of terrorist networks
- difficulty of entering premises to search for evidence where it is suspected that chemical, biological, radiological or nuclear material may be present
- need to intervene early in some terrorist investigations due to the public safety consequences of a successful terrorist attack.

12. The Explanatory Memorandum points out that the threat level remains “Severe” which means an attack is “highly likely”. It also states that, since the July 2005 terrorist attacks in London, which killed 52 people, “there have been numerous plots against UK citizens, including in London and Glasgow in June 2007 and Exeter in May 2008.” It says that both the police and the DPP have made it clear that the 28 day limit is necessary, quoting former Assistant Commissioner Bob Quick’s evidence to the Counter-Terrorism Bill Committee in 2008.

13. Asked by the House of Lords Merits of Statutory Instruments Committee whether the current Counter Terrorism leadership of the police service is still supportive of the 28 day limit and, if so, is on record as supporting it, the Home Office replied that Assistant Commissioner John Yates is of the same view.<sup>16</sup> Asked whether the Director of Public Prosecutions (“DPP”) is on record as supporting the 28 day limit, however, the Home Office acknowledged that “the current DPP has not as yet gone on record stating his support”, but relied on the view of the former DPP Sir Ken Macdonald QC and Sue Hemming, the Head of the Counter Terrorism Division, in their evidence to the Public Bill Committee on the Counter Terrorism Bill in April 2008.<sup>17</sup>

14. The Explanatory Memorandum also relies on the fact that since the power came into force in July 2006, 6 people have been held for between 27 and 28 days, 3 of whom were charged (the other 3 were released without charge).

15. The Home Secretary’s response to our questions largely repeats the arguments contained in the Explanatory Memorandum, and also states that it is not possible to predict what might happen over the next 12 months.

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<sup>16</sup> House of Lords Merits of Statutory Instruments Committee, Nineteenth Report of Session 2008-09, HL 109, Appendix 3, A1.

<sup>17</sup> *Ibid.*, A2.



## The information required

16. In our previous reports about the renewal of the 28 day period of pre-charge detention we concluded that it was impossible to evaluate the Government's assertion about the necessity for the power because the information needed to make that assessment was not available.<sup>18</sup> We also identified the sort of detailed information which in our view is required in order for Parliament to reach a properly informed judgment about the necessity for the extended period, such as whether the evidence on which individuals were charged after 14 days was available before the expiry of the 14 day period.

17. We pointed out that what is required is an independent, in-depth scrutiny of each of the cases in which the power to detain for more than 14 days has been exercised. We accepted that in the cases of those who had been held for more than 14 days and then been charged it would be inappropriate to scrutinise the investigation of their cases pending the outcome of their trial. Since then, in September 2008, three of the individuals concerned have been convicted of conspiracy to murder and a retrial is currently taking place at Woolwich Crown Court of the other defendants in respect of whom the jury at the original trial could not reach a verdict.

18. We accept that it would clearly still be inappropriate to scrutinise the investigation of their cases pending the outcome of the retrial. However, as we pointed out in last year's report, there were three people who were held for almost the entire 28 day period before being released without charge and we could see no reason why a detailed analysis of their cases could not start immediately. We therefore asked the Government what review there had been of the investigations of those individuals who had been held for more than 14 days pursuant to the power but subsequently released without charge. The Home Secretary's response is that "the Home Office does not hold this information which is an operational matter for the police in consultation with the CPS." **We are surprised and disappointed that the Home Office has not sought to find out why three people were detained for almost 28 days before being released without charge. It is likely that there are valuable lessons to be learned from such a review of these three cases which may help to avoid people being detained for so long in future before being released without charge.**

19. During last year's debates on the annual renewal of the power to detain terrorist suspects for up to 28 days without charge, the Government accepted that it should endeavour to provide detailed statistical information on the use of the 28-day limit in advance of the renewal debates. Ministers told Parliament that the Government expected to be able to provide more detailed information on the outcome of detention, including the charges brought, "once the joint Home Office/police review of pre-charge detention statistics has been completed".<sup>19</sup> The House of Lords were told that the review would come out in the autumn of 2008.

20. It appears that what the Government had in mind was the Home Office Statistical Bulletin on Terrorism Arrests and Outcomes for Great Britain, which was published on 13

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18 See e.g. Twenty-fifth Report of Session 2007-08, *Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008*, HL Paper 132/HC 825 at paras 21-23 and 27-29.

19 Lord West of Spithead, HL Deb 1 July 2008 col. 197.

May 2009, covering the period from 11 September 2001 to 31 March 2008.<sup>20</sup> The Bulletin does contain some statistics on pre-charge detention. It contains a table showing the time in days from arrest under section 41 of the Terrorism Act 2000 to charge or release without charge.<sup>21</sup> The table shows that in 2006-07 a total of 55 people were held for between 7 and 14 days before being charged or released and 10 were held for between 14 and 28 days, of whom 7 were charged and 3 released without charge on the last day of the 28 days. In 2007-08, only 10 were held for between 7 and 14 days, of whom 8 were charged, and one person was held for more than 14 days before being charged. The statistics for the period since March 2008 are not available but we know from the Home Office's response to our question that nobody has been held for more than 14 days in that time.

21. The Home Office Statistical Bulletin is purely quantitative: it provides the bare statistics about the number of people who have been detained for between 14 and 28 days up until March 2008, how long they were detained for, how many were charged and how many released. It does not purport to provide any more qualitative analysis of the cases of those who have been detained for more than 14 days. It certainly does not provide the sort of qualitative analysis of the kind we called for in our report last year.

22. In the Commons, however, during last year's renewal debate, the Minister expressly accepted the need for detailed information to be available about how the power has been used in practice when debating future renewals. He said "as and when greater collective awareness of the ins and outs of those detained beyond 14 days is possible, that will happen ... it will be right and proper to dissect that information retrospectively."<sup>22</sup> We therefore asked the Government what plans it has to carry out the necessary qualitative review when the current retrial is over, and whether it agrees that such a review would best be carried out by an independent body with the necessary expertise such as the Crown Prosecution Service Inspectorate.

23. HM Crown Prosecution Service Inspectorate ("HMCPSI") reported on the Counter Terrorism Division of the CPS in April 2009.<sup>23</sup> The Inspectors examined 50 cases and within that sample there were 12 cases in which the suspect had been detained for a period before charge, although not every one of these required an application for a warrant of further detention. The Inspectorate found that "in each case there was evidence on the file that the pre-charge detention period had been properly monitored and reviewed"<sup>24</sup> and that any application for extension was appropriate.<sup>25</sup> It found that the Counter Terrorism Division "treat the extended power of detention very carefully. Applications are only made if properly justified and careful consideration is given to the further period required to complete the enquiries."<sup>26</sup>

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20 Home Office Statistical Bulletin, *Statistics on Terrorism Arrests and Outcomes, Great Britain, 11 September 2001 to 31 March 2008* (13 May 2009). The Bulletin is available at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb0409.pdf>

21 Annex 1

22 Tony McNulty MP, HC Deb 23 June 2008 col. 95.

23 Report of the Inspection of the Counter Terrorism Division of CPS Headquarters (April 2009).

24 *Ibid.* at para. 3.23

25 *Ibid.* at p. 54.

26 *Ibid.* at para. 3.25.

24. The Government rely on the HMCPSI inspection in response to our inquiry about its plans to conduct a qualitative review of the cases of those detained for more than 14 days: in view of that inspection, it says, “does not appear to be any need for another inspection.” However, the CPS Inspectorate has not conducted the sort of qualitative exercise that we recommended in earlier reports. We recommended that there should be a careful look at each of the individual cases in which the power to detain pre-charge for more than 14 days had been exercised with a view to evaluating whether or not they could have been charged, on the threshold test, before the expiry of the 14 days. That exercise has yet to be undertaken. The CPS Inspectorate were conducting a quite different exercise for the purpose of assessing the quality of CPS decision-making. We had understood the minister in last year’s debate to agree with us about the need for a careful analysis of the cases where the power to detain for more than 14 days has been used. We are therefore disappointed to find that, not only has no such analysis been done, but it now appears that the Government has no plans to undertake any.

## Conclusion

**25. We therefore reach the same conclusion as last year on the question of the necessity for the renewal of the power to detain terrorism suspects for more than 14 days: in the absence of the information required to make that assessment, we are unable to reach a view as to whether the Government has made out its case. We also repeat our call for a thoroughgoing review of all those cases where the power has been exercised to date, with a view to ascertaining whether those released could have been released earlier and those charged could have been charged earlier on the threshold test.**

### 3 Compatibility with the right to a judicial hearing

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26. A person who has been arrested on suspicion of being a terrorist or of being involved in the commission, preparation or instigation of a terrorist offence has a Convention right, under Article 5(4) ECHR, to “a judicial hearing to determine the lawfulness of their detention.” They have the same right to a judicial hearing under the common law principle of habeas corpus. Detention without charge beyond 14 days requires judicial authorisation and the Government says that this requirement of judicial authorisation of detention beyond 14 days means that there is no incompatibility with the right to a judicial hearing into the lawfulness of their detention.

27. In a number of previous reports both we and our predecessor Committee have expressed our concern that the current arrangements for judicial authorisation of extended pre-charge detention are not compatible with the right to a judicial hearing.<sup>27</sup> We do not repeat those concerns in detail here, but in summary they are twofold. First, we are concerned that the hearing of an application for a warrant of further detention is not a fully adversarial hearing because of the power to exclude the suspect and his representative from the hearing and to withhold from both the suspect and his lawyer information which is provided to the judge. Second, we are concerned about the adequacy of the judicial oversight at such extension hearings, because the judge is only empowered to consider the future course of the investigation and whether it is being conducted diligently and expeditiously by the police, rather than whether there is sufficient evidence to justify the suspect’s original arrest and continued detention. We recommended a number of specific amendments to the legal framework governing pre-charge detention hearings in our Report on the Counter Terrorism Bill, but these did not find favour with the Government.

28. Our disagreement with the Government on this issue is now well rehearsed and we would not seek to revisit it in this report, but for one highly significant development since the last annual renewal of the 28 days measure. Both the Grand Chamber of the European Court of Human Rights<sup>28</sup> and now the House of Lords<sup>29</sup> have held that the requirements of a fair hearing under Article 5(4) ECHR include the requirement that the detained person must be given sufficient information about the allegations against him to enable him to contest those allegations, or give effective instructions in relation to those allegations to the person representing his interests. The statutory framework for the extension of pre-charge detention expressly provides for the withholding of information from the suspect and their lawyer which is seen by the judge, and for the exclusion of the suspect and their lawyer from parts of the hearing at which the determination of whether or not to authorise further detention is made. There is neither provision for, nor a practice of, special advocates

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27 Twenty-Fourth Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention*, HL Paper 240/HC 1576 at paras 136-138; Nineteenth Report of Session 2006-07, *Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning*, HL Paper 157/HC 394 at paras 58-61; Second Report of Session 2007-08, *Counter-Terrorism Policy and Human Rights: 42 Days*, HL Paper 23/HC 156, at paras 64-100; Twentieth Report of Session 2007-08, *Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill*, HL Paper 108/HC 554 at para. 33.

28 *A and others v UK* (Application No 3455/05, 19 February 2009).

29 *Secretary of State for the Home Department v AF* [2009] UKHL 28 (10 June 2009).

representing the interests of the detained suspect for the “closed” part of extension hearings and even if there were it is now clear that the essence of the case against a detained person must be disclosed to that person to enable them to contest the allegations against them.

29. The decisions of the Grand Chamber on the Belmarsh regime and the House of Lords on the control orders regime, concerning the minimum of what is required in order for a judicial hearing to be truly “judicial” in nature, in our view makes even clearer the risk that the current statutory provisions governing extensions of pre-charge detention will give rise to breaches of Article 5(4) ECHR in practice. The risk is that those provisions may lead to a suspect’s pre-charge detention being extended on the basis of allegations the essence of which the suspect does not have an opportunity to contest. **We therefore repeat our recommendation that the legal framework governing judicial authorisation of extended detention be amended to provide stronger procedural safeguards such as those we suggested as amendments to the Counter-Terrorism Bill. Unless those amendments to the statutory framework are made, we remain of the view that the renewal of the maximum extended period of 28 days risks leading in practice to breaches of Article 5(4) ECHR.**

30. We also note with interest that our concerns about the compatibility of our pre-charge detention framework with the right to a judicial hearing following arrest are shared by the Eminent Jurists’ Panel in its recent Report. It said:<sup>30</sup>

“Whatever justification may exist in particular cases for early arrests and subsequent detention, there must be adequate safeguards against ill-treatment and arbitrary detention. One such guarantee is that an arrestee be promptly brought before a judge. ... The quality of judicial authorisation and supervision of detention is also crucial. The courts must have sufficient authority to perform their role adequately. Courts must be empowered to review the merits of the decision to detain; have sufficient information to allow for the testing of the reasons for detention; and decide, by reference to legal criteria, whether detention is justified and, if not, to order release. Instead the Panel heard of a steady trend to lower the potential for judicial scrutiny.

...

In the UK, those arrested on suspicion of terrorism offences must be brought before a judge within forty-eight hours, but can be detained without charge for up to twenty-eight days with judicial authorisation. The judicial review concerns not the merits of the case against the suspect, but whether continued detention is necessary to obtain or preserve relevant evidence, and if the investigation is being conducted diligently and expeditiously. In addition, the Panel was informed that suspected terrorists are generally told no more than that they are suspected of involvement in ‘the commission, preparation or instigation of a terrorist offence’, making it difficult to challenge their continued detention.”

31. The Eminent Jurists Panel also provide another reason for ensuring that the judicial safeguards at pre-charge detention extension hearings are compatible with the UK’s

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30 Op cit at p. 145

international human rights obligations, and that is the example which this sends to the rest of the world: “It is distressing to see how the slackening of procedural safeguards in countries like France, the UK and the USA, has been exploited by other States with less well-entrenched legal systems and human rights safeguards.”<sup>31</sup>

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31 *Ibid.* at p. 157.

## 4 Impact on suspects and communities

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32. In our report on last year's renewal we were concerned about the impact on suspects of such lengthy periods of pre-charge detention as 28 days, and we recommended that the Government seek and make available to Parliament independent advice assessing (1) in general terms, the likely impact on individuals of being detained without charge for up to 28 days and (2) the actual impact, including the psychological effect, on those individuals who have been detained for more than 14 days pre-charge. We saw this as an important part of the information Parliament needs in order to be able to reach a proper judgment about the justification for renewing such an extraordinary power as the power to detain a suspect pre-charge for up to 28 days.

33. During last year's debates about extended pre-charge detention the Government also undertook to conduct a risk-assessment on the effect of the 28-day extension on communities. Asked when this community-impact review would be complete, Lord West told the House of Lords that "we hope to have the initial findings out by the end of the year".<sup>32</sup>

34. A year later, neither type of impact assessment has been made available to Parliament to assist it in its consideration of whether or not to renew the 28 days power. We therefore asked the Government whether it would be obtaining and making available to Parliament independent expert advice about the impact, including the psychological impact, on individuals detained for more than 14 days without charge, and whether it would be publishing its assessment of the impact of the 28 day extension on communities.

35. The Government acknowledges in its reply to our queries its commitment to undertake a review of the impact of all counter-terrorism legislation on our communities, but that assessment has been delayed due to extensive scoping work. The Government envisages publishing a research report by late November 2009. However, the psychological impact of extended pre-charge detention on individuals will not be included within that review.

**36. We welcome the Government's continued commitment to assessing the impact of counter-terrorism legislation, including pre-charge detention, on the communities most directly affected and we look forward to publication of that research report. However, very little is known about the impact of extended pre-charge detention on the individuals concerned: the impact on their mental health, on their families, and on their employment for example. Such an assessment could already have taken place in the case of those who have been held for more than 14 days and then released without charge. We recommend again that the Government obtain and make available to Parliament such an impact assessment.**

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32 HL Deb 1 July 2008 col. 203.

## 5 Presumption of innocence

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37. In last year's debate on the renewal of 28 days in the Commons, the Minister was reminded that in the previous year's debate he had said that he hoped that the Crown Prosecution Service would put out a paper on the issue of how longer periods of detention without charge might allow for press speculation that made the prospect of a fair trial difficult or impossible.<sup>33</sup> The Minister replied that a special paper on the impact on the right to a fair trial had not been prepared, but it "might be worth considering."

38. Following the recent arrest of 12 students from Pakistan on suspicion of terrorism, the Prime Minister was strongly criticised by organisations representing Muslim communities for speaking of a very big terrorist bomb plot, and of his knowledge that there are links between terrorists in Pakistan and terrorists in Britain, in a way which suggested that those arrested were guilty, before they had even been charged. In the event, none were charged.

39. Strasbourg case-law is very clear that the presumption of innocence requires Government ministers to refrain from pronouncing on a suspect's guilt before they have been convicted. We therefore asked the Government if it thought it would be desirable for the Crown Prosecution Service to issue some guidance on how to avoid prejudicial comment following the arrest of terrorism suspects. The Home Secretary replied that this already happens in appropriate cases but via the Attorney General rather than the CPS or police.

40. The approach of the Attorney General outlined in the Government's letter, whereby a specific newspaper or broadcaster may have their attention drawn to the risks of a publication prejudicing a particular case, is very ad hoc and it does not address the problem of possible prejudice to fair trials caused by Government ministers commenting on cases when suspects have been arrested. **In our view, the DPP should draw up and consult on draft guidance on how to avoid prejudicial comment following the arrest of terrorism suspects.**

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33 Mr Ruffley MP, HC Deb 23 June 2008 col. 85.





	Year of Arrest																											
	2001/2002 <sup>(6)</sup>				2002/2003				2003/2004				2004/2005				2005/2006				2006/2007				2007/2008			
	Charged	Released	Other	Total	Charged	Released	Other	Total	Charged	Released	Other	Total	Charged	Released	Other	Total	Charged	Released	Other	Total	Charged	Released	Other	Total				
24 – 25 days																				0	0	0	0	0	0	0	0	
25 – 26 days																				0	0	0	0	0	0	0	0	
26 – 27 days																				0	0	0	0	0	0	0	0	
27 – 28 days																				3	3	0	6	0	0	0	0	
<b>Total</b>	<b>34</b>	<b>52</b>	<b>8</b>	<b>94</b>	<b>82</b>	<b>111</b>	<b>44</b>	<b>237</b>	<b>82</b>	<b>77</b>	<b>19</b>	<b>178</b>	<b>42</b>	<b>104</b>	<b>11</b>	<b>157</b>	<b>68</b>	<b>189</b>	<b>16</b>	<b>273</b>	<b>96</b>	<b>89</b>	<b>6</b>	<b>191</b>	<b>39</b>	<b>97</b>	<b>20</b>	<b>156</b>

Source: Office of the National Coordinator of Terrorist Investigations.

- (1) Excludes those arrested under other legislation (i.e. not under s41 Terrorism Act 2000). Although an investigation is considered terrorist related the 28-day maximum pre-charge detention period does not apply in such cases.
- (2) The maximum period of pre-charge detention for an arrest under s41 Terrorism Act 2000 was extended to 14 days with effect from 20 January 2004.
- (3) The maximum period of pre-charge detention for an arrest under s41 Terrorism Act 2000 was extended to 28 days with effect from 25 July 2006.
- (4) Includes Schedule 7 offences.
- (5) Includes alternative action as listed in Table 2.

From 11 September 2001.

# Formal minutes

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**Tuesday 23 June 2009**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness

Dr Evan Harris MP

Lord Dubs

Mr Virendra Sharma MP

Lord Lester of Herne Hill

Lord Morris of Handsworth

Baroness Prashar

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Draft Report (Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 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 40 read and agreed to.

Annex agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Eighteenth 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.

Written evidence reported and ordered to be published on 2 and 23 June was ordered to be reported to the House for printing with the Report.

[Adjourned till tomorrow at 2.45 pm.]

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## Written evidence

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### Letter from the Chair of the Committee to the Home Secretary, dated 21 May 2009

#### **Pre-Charge Detention: 28 Days Annual Renewal**

I am writing to you concerning the annual renewal of the provisions in the Terrorism Act 2006 which extend the maximum period of pre-charge detention in terrorism cases from 14 to 28 days. That extended period will expire on 25 July 2009 unless a renewal order is passed by both Houses. The laying of the draft order to renew the extended period is therefore imminent. I am writing to request some information with a view to ensuring that Parliament is fully informed when it comes to debate the draft renewal order.

**Q1. Can you confirm that, for the second year running, the power to detain a terrorist suspect for more than 14 days has not been used since the power was renewed?**

**Q2. Can you provide the precise date on which the power was last used?**

On 13 May the Secretary of State for Justice was reported in the press as having indicated, in a public lecture at Clifford Chance, that UK counter-terrorism laws built up in the wake of the 9/11 attacks on New York and the 7/7 attacks on London should be reviewed and may need to be scaled back.<sup>1</sup> He is reported to have said “There is a case for going through all counterterrorism legislation and working out whether we need it. It was there for a temporary period.” The Government accepts that the power to detain terrorist suspects for more than 14 days before charge is a temporary power,<sup>2</sup> because Parliament has subjected it to a requirement of annual renewal.

**Q3. Why is it necessary to renew the temporary power to detain terrorist suspects for up to 28 days before charge when it has not been used for more than two years?**

During last year’s debates on the annual renewal of the power to detain terrorist suspects for up to 28 days without charge, the Government accepted that it should endeavour to provide detailed statistical information on the use of the 28-day limit in advance of the renewal debates. Ministers told Parliament that the Government expected to be able to provide more detailed information on the outcome of detention, including the charges brought, “once the joint Home Office/police review of pre-charge detention statistics has been completed”.<sup>3</sup> The House of Lords were told that the review

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<sup>1</sup> “Terror laws built up after 9/11 and 7/7 may be scaled back, says Jack Straw”, The Guardian, 13 May 2009.

<sup>2</sup> See e.g. Tony McNulty, HC Deb 23 June 2008 col. 96.

<sup>3</sup> Lord West of Spithead, HL Deb 1 July 2008 col. 197.

would come out in the autumn of 2008. The Committee staff have been unable to trace any such review.

**Q4. Has the joint Home Office/police review of pre-charge detention statistics been published? If so, please can you provide us with a copy? If not, please can you explain why not and when we can expect to see the review published?**

In our reports on the last two renewals of the 28 day power, we concluded that we were not in a position to evaluate the Government's assertion that the need for the power has been demonstrated, because the information required to make that assessment was not available. We pointed out that what was required was an independent, in-depth scrutiny of each of the cases in which the power to detain for more than 14 days has been exercised. We accepted that in the cases of those who had been held for more than 14 days and then been charged it would be inappropriate to scrutinise the investigation of their cases pending the outcome of their trial. Since then, in September 2008, three of the individuals concerned have been convicted of conspiracy to murder and a retrial is currently taking place at Woolwich Crown Court of the other defendants in respect of whom the jury at the original trial could not reach a verdict. It would clearly still be inappropriate to scrutinise the investigation of their cases pending the outcome of the retrial. However, as we pointed out in last year's report, there were people who had been held for more than 14 days and then released without charge and we could see no reason why a detailed analysis of their cases could not start immediately.

**Q5. What review has there been of the investigations of those individuals who have been held for more than 14 days pursuant to the power, but have subsequently been released without charge?**

In last year's debate on the renewal order in the Commons, the Minister accepted the need for detailed information to be available about how the power has been used in practice when debating future renewals. He said "as and when greater collective awareness of the ins and outs of those detained beyond 14 days is possible, that will happen ... it will be right and proper to dissect that information retrospectively."<sup>4</sup>

**Q6. What plans does the Government have to carry out the necessary qualitative review when the current retrial is over? Does the Government agree that this review would be best carried out by an independent body with the necessary expertise, such as the Crown Prosecution Service Inspectorate?**

We have no information about the impact of extended pre-charge detention on the individuals concerned: the impact on their mental health, on their families, and on their employment for example. There would seem to be no reason why such an assessment could not take place now in the case of those who have been held for more than 14 days and then released without charge.

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<sup>4</sup> Tony McNulty MP, HC Deb 23 June 2008 col. 95.

**Q7. Will the Government obtain and make available to Parliament independent expert advice about the impact, including the psychological impact, on individuals detained for more than 14 days without charge? If not, why not?**

During last year's debates about extended pre-charge detention the Government also undertook to conduct a risk-assessment on the effect of the 28-day extension on communities. Asked when this community-impact review would be complete, Lord West told the House of Lords that "we hope to have the initial findings out by the end of the year".<sup>5</sup> The Committee staff have also been unable to track this down.

**Q8. Has the Government published its assessment of the impact of the 28-day extension on communities? If so, please can you provide us with a copy? If not, please can you explain why not and when we can expect to see the review published?**

Last month 12 students from Pakistan were arrested in a very high profile counter-terrorism operation. They were arrested on 8 April, their period of pre-charge detention was extended on 16 April and they were transferred, without charge, to immigration detention on 22 April, just before the expiry of the 14 day period. They now await deportation.

**Q9. We do not expect you to reveal intelligence information, but what, in outline, was the basis of the application to extend their pre-charge detention beyond 7 days?**

**Q10. Will there be an independent review of their pre-charge detention, including of the basis on which they were detained without charge for 14 days, and will the results of that review be made public?**

**Q11. Were they granted full consular access during their period of pre-charge detention?**

In last year's debate on renewal in the Commons, the Minister was reminded that in the previous year's debate he had said that he hoped that the Crown Prosecution Service would put out a paper on the issue of how longer periods of detention without charge might allow for press speculation that made the prospect of a fair trial difficult or impossible.<sup>6</sup> The Minister replied that a special paper on the impact on the right to a fair trial had not been prepared, but it "might be worth considering." Following the recent arrest of 12 students from Pakistan on suspicion of terrorism, the Prime Minister was strongly criticised for speaking of "a very big terrorist bomb plot" in a way which suggested that those arrested were guilty, before they had even been charged. In the event, all were released without charge. Strasbourg case-law is very clear that the

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<sup>5</sup> HL Deb 1 July 2008 col. 203.

<sup>6</sup> Mr Ruffley MP, HC Deb 23 June 2008 col. 85.

presumption of innocence requires Government ministers to refrain from pronouncing on a suspect's guilt before they have been convicted.

**Q12. Does the Government think it would be desirable for the Crown Prosecution Service to issue some guidance on how to avoid prejudicial comment following the arrest of terrorism suspects?**

In view of the imminence of the laying of the draft renewal order, I would be grateful for your response to these questions by **Friday 29 May 2009**.

## **Response from the Home Secretary to the Chair, dated 9 June 2009**

### **Pre Charge Detention: 28 Days Annual Renewal**

Thank you for your letter dated 21 May. The Order for the annual renewal to extend the maximum period of pre-charge detention in terrorism cases from 14 to 28 days was laid on the 18 May, and will be debated in the House of Commons on the 1 July. In response to the questions you have raised:

**Q1. Can you confirm that, for the second year running, the power to detain a terrorist suspect for more than 14 days has not been used since the power was renewed?**

The power to detain a terrorist suspect for more than 14 days has not been used since the last renewal.

**Q2. Can you provide the precise date on which the power was last used?**

The date on which the final application for further detention was made in a case where detention was for more than 14 days, was 30 June 2007. (The detention lasted for 18 Days, 17 Hours, 48 Minutes).

**Q3. Why is it necessary to renew the temporary power to detain terrorist suspects for up to 28 days before charge when it has not been used for more than two years?**

The current threat level remains at Severe where an attack is highly likely. Since July 2005 when British terrorists attacked the London transport system, murdering 52, there have been numerous plots against UK citizen, including in London and Glasgow in June 2007 and Exeter in May 2008. It is not possible to predict what might happen over the next 12 months. The 28 day limit has been used and the CPS have said that they have needed the full 28 days – just because it has not been needed over the past 24 months does not mean that it might not be needed again in the near future.

Both the police and the Director of Public Prosecutions (DPP) have made it clear that the 28 day limit is necessary. Providing evidence to the Counter-Terrorism Bill

Committee, the former Assistant Commissioner Bob Quick said: “In some investigations, we have seen [intelligence activity] materials so quickly that on public safety grounds we have had to act pre-emptively before we have had the opportunity to exploit pre-arrest evidential opportunities. That places a huge burden on the investigating officer”.

In other scenarios, where an attack has already taken place, there may be other reasons why terrorist investigations take longer than other investigations. For example following the discovery of a ‘bomb factory’ on Yorkshire after the July 7 attacks on London, it was over 2 weeks before safe access could be gained for the examination to begin.

**Q4. Has the joint Home Office/police review of pre-charge detention statistics been published? If so, please can you provide us with a copy? If not, please can you explain why not and when we can expect to see the review published?**

The Home Office can confirm that the Home Office Statistical Bulletin on Terrorism Arrests and Outcomes for Great Britain was published on 13 May 2009. The bulletin covers the period from 11 September 2001 to 31 March 2008, and includes details on pre-charge detention statistics. There will be a further annual report in the autumn of 2009 followed by quarterly reports with rolling data. A hard copy can be provided as requested. Alternatively the bulletin can be viewed online on the Home Office website – see: <http://www.homeoffice.gov.uk/rds/pdfs09/hosb0409.pdf>

**Q5. What review has there been of the investigations of those individuals who have been held for more than 14 days pursuant to the power, but have subsequently been released without charge?**

The Home Office does not hold this information which is an operational matter for the police in consultation with the CPS.

**Q6. What plans does the Government have to carry out the necessary qualitative review when the current retrial is over? Does the Government agree that this review would be best carried out by an independent body with the necessary expertise, such as the Crown Prosecution Service Inspectorate?**

HMCPPI have already carried out a detailed inspection of the Counter Terrorism Division of CPS Headquarters, with their report being published 16 April 2009. The Report examined 12 cases (in HMCPPI’s sample of 50 in total) where there had been pre charge detention. In all cases there was evidence on the file that pre charge detention had been properly monitored and reviewed. This is an important independent assessment undertaken by the CPS with the final decision regarding detention resting with an independent judge. Paragraph 3.25 of the report states that ‘CTD treat the extended power of detention very carefully. Applications are only made if properly justified and careful consideration is given to the further period required to complete



the enquiries.’ On this basis there does not appear to be any need for another inspection. A copy of the full HMCPSI Inspection report can be found at <http://www.hmcp.si.gov.uk/index.php?id=47&docID=892> with the executive summary at: <http://www.hmcp.si.gov.uk/index.php?id=47&docID=892>

**Q7. Will the Government obtain and make available to Parliament independent expert advice about the impact, including the psychological impact, on individuals detained for more than 14 days without charge? If not, why not?**

During the 42 days pre-charge detention debate a commitment was made to undertake a review of the impact of all counter-terrorism legislation on our communities. Work on the scope of that review has been on going, and whilst the review will not be specifically about pre-charge detention, it will encompass it. On the subject of whether the psychological impact of detention will be included within the review, we have never suggested that such an assessment would be within its remit.

**Q8. Has the Government published its assessment of the impact of the 28-day extension on communities? If so, please can you provide us with a copy? If not, please can you explain why not and when we can expect to see the review published?**

Extensive scoping work has meant that this assessment has been delayed. However, a broad research project on the community impact of CT legislation is being progressed and the Government remains committed to deliver a research report by late November 2009.

**Q9. We do not expect you to reveal intelligence information, but what, in outline, was the basis of the application to extend their pre-charge detention beyond 7 days?**

The decision to seek an extension of pre-charge detention beyond 7 days was an operational one for the police. Nor would it be appropriate to comment on what is still an active investigation. What we can say is that this is a major counter terrorist investigation which the police had to conduct with a specific focus of protecting the public.

**Q10. Will there be an independent review of their pre-charge detention, including of the basis on which they were detained without charge for 14 days, and will the results of that review be made public?**

On 22 April 2009 Lord Carlile of Berriew Q.C, the Independent Reviewer of the Terrorism Act 2000 announced that he would be conducting a review in to the Operational Pathway arrests made in the North West of England. As part of this review Lord Carlile will look at the circumstances surrounding the detention of the individuals involved. Until this review is complete a decision can not be made as to which parts, if any, will be made public.

**Q11. Were they granted full consular access during their period of pre-charge detention?**

HMG has complied with our domestic and international legal obligations throughout. The detained men are in contact with the Pakistani authorities either directly or through their legal representatives.

**Q12. Does the Government think it would be desirable for the Crown Prosecution Service to issue some guidance on how to avoid prejudicial comment following the arrest of terrorism suspects?**

This already happens in appropriate cases but via the Attorney General rather than the Crown Prosecution Service (CPS) or police, although both the CPS and police do take action on their own behalf.

The Contempt of Court Act 1981, which balances the right to freedom of speech with the need to avoid real prejudice to legal proceedings, makes it a contempt of court to publish material that creates a substantial risk of serious prejudice to the course of justice in legal proceedings. It is the responsibility of the media to comply with the law. However, where reporting is thought to be in danger of interfering with a criminal investigation or creating a substantial risk of prejudice the Attorney General can and does issue guidance to the media, usually drawing attention to the issues that may not otherwise be obvious and warning of the risk of prejudice. Alternatively the Attorney may draw a specific newspaper's or broadcaster's attention to the risks to a case if a possible prejudicial publication is known about in advance, if necessary and justified seeking an injunction.

The police and CPS often also take informal action to warn media organisations in the normal course of dealing with press inquiries.

## Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

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
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	Prisoner Transfer Treaty with Libya	HL Paper 71/HC 398
Fourteenth Report	Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill	HL Paper 78/HC 414
Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2 <sup>nd</sup> , 4 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> and 12 <sup>th</sup> reports of Session 2008-09	HL Paper /HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726

### 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