THE TERRORISM ACTS IN 2012

REPORT OF THE INDEPENDENT REVIEWER ON THE
OPERATION OF THE TERRORISM ACT 2000 AND
PART 1 OF THE TERRORISM ACT 2006

by

DAVID ANDERSON Q.C.

Independent Reviewer of Terrorism Legislation

JULY 2013

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EXECUTIVE SUMMARY

Introduction and Conclusions (Chapters 1 and 12)

- The cautious liberalisation of anti-terrorism law from 2010 to 2012 (1.7(c)) is to be welcomed. In particular, the repeal of TA 2000 section 44 has removed a stop and search power which was much used and much resented, but of very limited practical assistance in the fight against terrorism.

- I have previously identified three principal areas where further liberalisation could be achieved without materially increasing the threat from terrorism:

    - proscribed organisations (chapter 5);

    - terrorist detention (chapter 8);

    - port and border controls (chapter 10).

- My recommendations on proscribed organisations and on port and border controls are being given partial effect, in the former case by administrative action in the Home Office and in the latter case by a public consultation which has resulted in a package of proposed amendments in a Bill currently before Parliament. There is also pending litigation before the English and European Courts on the subject of terrorist detention and port and border controls.

- The situation is therefore fluid in each of the areas which I have previously identified as ripe for reform. I commend the Government for the action that it is taking in each area, while retaining reservations as to, in particular:

    - the patchiness of its attempts to bring policy on deproscription into conformity with the law (5.39-5.40);

    - its failure to allow bail applications from those arrested under TA 2000 (8.44-8.45); and

    - the limited nature of the Schedule 7 consultation and proposals for reform (10.36-10.37, 10.47-10.78).

- This report makes no further recommendations, but tracks progress on recommendations already made. It also raises, for discussion, the possibility of some amendments to the definition of terrorism (chapter 4).

The nature of the threat (Chapter 2)

- The terrorist threat to the UK and its citizens is fully summarised in Chapter 2 of the Report. In summary:

    - Deaths from terrorism in the United Kingdom remain thankfully rare, though lives have been lost in Northern Ireland every year since 1969 and more than 50 bombing incidents were recorded there in 2012.

    - However, in 2012 alone, al-Qaida related plots were thwarted which might have succeeded in blowing up an aircraft in flight, and in killing and maiming hundreds of people in an English city. Simpler attacks, involving fewer people and less planning, are also becoming more common.

    - Were it not for a determined and well-resourced police and security response, it is also the case that many more people would be suffering violent deaths and injuries as a consequence of Northern Ireland-related terrorism.

- Over-reaction to the threat of terrorism risks achieving precisely the result that the terrorists seek. But the recently retired Director General of MI5 was not exaggerating when he said that "*Britain has experienced a credible terrorist attack about once a year since 9/11*". The threat from terrorism is far from negligible. The case for at least some special powers to deal with it is amply made out.

The counter-terrorism machine (Chapter 3)

- The organisation of the UK's counter-terrorism effort, and the personnel and resources devoted to it, are summarised (3.1-3.11).

- Sections are devoted to:

    - the successful defence of the Olympic and Paralympic Games from terrorism (3.12-3.16) and

    - co-operation in Europe in the context of the proposed opt-out from pre-2009 police and criminal justice measures (3.17-3.23).

The definition of terrorism (Chapter 4)

- The scope of the UK's definition of terrorism (particularly as it relates to acts in the course of armed conflict) is currently before the Supreme Court (4.9).

- Though the definition is a broad one, discretions are on the whole responsibly exercised and I have identified no urgent need for change. However:

    - Some limited changes are identified for discussion (4.23), and may form the basis of a subsequent recommendation.

    - A more fundamental review would be desirable in the longer term (4.5, 4.22).

Proscribed organisations (Chapter 5)

- 63 organisations were proscribed at the end of 2012, including two proscribed during the year (5.15).

- Some of those organisations do not satisfy the statutory threshold for proscription (5.27).

- The option of changing the statutory threshold has been rejected. The current law thus needs to be properly applied, and any group that is not concerned in terrorism needs to be deproscribed (5.28-5.33).

- I applaud the preliminary steps taken by the Home Office in this regard (though not so far by the Northern Ireland Office): they will be judged by their results (5.34-5.40).

Terrorist property (Chapter 6)

- Infrequent and declining use is being made of the power to prosecute for terrorist funding offences (6.7-6.9).

- The issue of whether a family home can be the subject of forfeiture proceedings under TA 2000 section 23A is currently before the courts (6.6).

Terrorist investigations (Chapter 7)

- No concerns have been raised with me concerning the use of powers to cordon and to obtain information (7.4-7.10).

- In Great Britain though not in Northern Ireland, people were charged in 2011/12 with the offence of failure to disclose information to the police: the existence of the offence was also used to encourage informants (7.11-7.18).

Arrest and detention (Chapter 8)

- 246 arrests in Great Britain were classed as "*terrorism-related*" in 2012. However:
    - only 49 of these were under the special power in TA 2000 section 41, and
    - only 43 resulted in charges being brought for terrorism-related offences (8.3-8.7, 8.14-8.16).
- There were 159 arrests under TA 2000 section 41 in Northern Ireland in 2011/12 (157 in 2012/13). Subsequently:
    - 39 of the 159 persons arrested in 2011/12 were charged.
    - Over 90% of the offences charged were terrorist, firearms or explosives offences (8.8, 8.17, 8.39-8.42).
- Of the persons arrested under TA 2000 section 41, 26% (Great Britain) and 95% (Northern Ireland) were held in pre-charge detention for less than 48 hours. Four in Great Britain and four in Northern Ireland were held for longer than a week (8.9-8.13).
- The new procedures for visits to terrorist suspects in detention are now operative: my impressions are summarised (8.24-8.34).
- One of my five recommendations in relation to detention has been rejected: the others have met with a satisfactory response, or await developments (8.38-8.49).
- There are legal challenges pending before the European Court of Human Rights (8.50-8.55) concerning:
    - detention prior to charge, and the absence of bail; and
    - surveillance of lawyer/client communications.

Stop and search (Chapter 9)

- The more moderate and more effective use of the reasonable suspicion power in TA 2000 section 43, at least in London, is to be welcomed (9.4-9.11, 9.16).
- The repeal of the no-suspicion power in TA 2000 section 44 was a positive development: it led to no convictions in Great Britain, and has removed an important source of resentment amongst some Muslims (9.17).

- The replacement power in TA 2000 section 47A, whose use requires reasonable suspicion that an act of terrorism will take place, was not used during 2012 (9.12-9.15).

Port and border controls (Chapter 10)

- The Schedule 7 examination power was used on 61,145 persons in 2012/13: 12% down on the previous year, and 30% down on 2009/10 (10.8).

- The majority of those examinations lasted less than 15 minutes (10.9-10.10).

- There were only 24 terrorism-related arrests at ports after Schedule 7 examinations in 2011/12 (10.18): 0.03% of those examined.

- I have seen no evidence that persons of Asian appearance are more likely to be examined under Schedule 7 than they are to be stopped under a suspicion-based power, arrested on suspicion of committing a terrorist offence or charged with terrorism (10.11-10.17)

- A number of my recommendations have been proceeded with (10.20-10.31), including most notably the public consultation accompanying a review of Schedule 7 powers (10.31-10.39), which has already resulted in a Bill.

- The delay in releasing the results of that consultation, even in summary form, is to be regretted (10.40-10.41).

- I welcome the six changes proposed in the Bill currently before Parliament (10.42-10.43), together with the proposed approach to the recording of interviews (10.44-10.47).

- It is regrettable however that the public consultation did not extend, as I had recommended, to:

    - the possibility that further elements of the Schedule 7 power might be made dependent upon reasonable suspicion (though there are general and specific justifications for a no-suspicion power to stop and examine: 10.50-10.62); and

    - the safeguards governing the practice of copying and retaining data from laptops and mobile phones (10.65-10.80).

- The Government's own very recent amendment to its Bill goes some way towards addressing the latter issue.

- A number of cases pending before the courts in London and in Strasbourg concern the lawfulness of Schedule 7 examinations, including their compatibility with Articles 5 and 8 of the ECHR (10.81-10.88).

Criminal offences (Chapter 11)

- I make no criticism of the specialist terrorism offences currently on the statute book. Although some of them are certainly widely drawn, I am mindful that:

    - the responsible exercise of its powers by the CPS, together with the resourcefulness of counsel and the courts, have combined to produce a workable code; and that

    - criminal prosecution is generally to be preferred to preventive justice of other kinds.

- In Great Britain, 43 persons were charged with terrorism-related offences in 2012 (11.9-11.10). There were 26 convictions for such offences in 2012, 24 of them following a guilty plea, and five acquittals (11.12-11.14).

- In Northern Ireland, 19 persons were charged under the Terrorism Acts in 2011/12 (11.24). There were three convictions under the Terrorism Acts during 2012 and 19 acquittals (11.26-11.27).

- The heaviest penalties in 2012 were the sentences of up to 21 years' imprisonment imposed, after Operation GUAVA, on some of the men who had plotted attacks, including on the London Stock Exchange (11.15, 11.18).

- At the end of 2012 there were 122 persons in prison in Great Britain for terrorist/extremist or terrorism-related offences, including those on remand (11.19-11.21).

1. INTRODUCTION

Purpose of this report

1.1. I am required by section 36 of the Terrorism Act 2006 **[TA 2006]** to review the operation during each calendar year of the Terrorism Act 2000 **[TA 2000]** and Part 1 of TA 2006 **[the Terrorism Acts]**.[1] This is my third annual report on the Terrorism Acts, and the eighth report I have produced since May 2011. My previous reports, together with the Government's responses to them, are freely downloadable from my website.[2]

Independent Reviewer

1.2. The independent review of terrorism legislation has a history stretching back to the 1970s, and first received statutory recognition in 2005.[3] The uniqueness of the Reviewer's post lies in its combination of two factors

(a) complete independence from Government; and

(b) access, based on a high degree of security clearance, to classified information and national security personnel.

As Independent Reviewer since 2011, I seek to inform the public and political debate on counter-terrorism not only by writing reports but by giving evidence to committees of Parliament, posting on my website and lecturing to the public, to professional audiences, to universities and to schools. I also have the opportunity, in regular private meetings with Ministers, officials, senior police officers and others, to communicate any sensitive concerns in a less formal context. Current and future activities are notified via twitter (@terrorwatchdog).

1.3. The history, role and working practices of the Independent Reviewer are fully described on my website. The post is a part-time one, for which I am paid at a daily rate. I am based in my own Chambers in central London, but also have the use of a secure room in the Home Office.

1.4. I travel widely in England, Scotland, Wales and Northern Ireland in order to observe and discuss the operation of the anti-terrorism laws both with those responsible for their content and enforcement (Ministers, MPs from all parties, officials, members of the intelligence services, prosecutors, police and judges)

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1 All acronyms used in this report are explained at Annex 1.

2 https://terrorismlegislationreviewer.independent.gov.uk. See in particular my report of June 2012, *The Terrorism Acts in 2011* **[2012 TA report]**, to which frequent reference is made in this report, and its July 2011 predecessor *Report on the operation in 2010 of TA 2000 and Part 1 of TA 2006* **[2011 TA report]**.

3 Prevention of Terrorism Act 2005, section 14(6).

and with others who come into contact with them (NGOs, lawyers, academics, journalists, port operators, community groups, those who have been subject to anti-terrorism laws). I attend conferences, and keep in contact with many useful sources via email and twitter.

1.5. During the year under review I made a trip to Washington DC and New York for conferences at Columbia and NYU, meetings with NGOs and discussions with officials and advisers at the State Department, Justice Department, Treasury, White House, National Security Council and intelligence agencies. I also travelled to Brussels for discussions with the EU Counter-Terrorism Co-ordinator, Members of the European Parliament and officials of the European Commission and Council; and to The Hague for meetings with Eurojust and Europol as well as academics, NGOs and Dutch security officials. I have had comparative discussions with persons entrusted with the enforcement of anti-terrorism laws in Canada and France. Some of these meetings have already informed my work, for example in my report on asset-freezing and in submissions to parliamentary committees on the Justice and Security Bill (now the Justice and Security Act 2013 **[JSA 2013]**) and on the proposed opt-out from Protocol 36 to the Treaty on European Union.

1.6. I am indebted to all who have gone out of their way to help with my tasks, and in particular to my Special Adviser, Professor Clive Walker of the University of Leeds, for keeping me abreast of academic writing and recent developments; to my clerks in Chambers; and to Ursula Antwi-Boasiako at the Home Office for arranging trips and meetings and for navigating the Government bureaucracy on my behalf. The Reviewer has no staff or assistants to whom substantive tasks can be delegated. Accordingly, the assessments expressed in my reports are based exclusively on my own reading and interviews.

Anti-terrorism law: overview[4]

1.7. The history of UK anti-terrorism law in the early years of the 21st century may be divided into three phases:

(a) ***2000***: the entry into force of TA 2000, an apparently complete anti-terrorist code, enacted after careful study and debate. TA 2000 was the successor to

[4] See further D. Anderson, *Shielding the compass: how to fight terrorism without defeating the law* (2013) 3 EHRLR 233-246. An earlier version, delivered in February 2013 as "The Meaning of Terrorism" (Essex University/Clifford Chance Law Lecture), is freely downloadable from my website.

a series of temporary anti-terrorism laws relevant principally to Northern Ireland. It had significant international influence in the period after 9/11.[5]

(b) ***2001-2009***: the accretion of more terrorism-specific powers, some required by international law[6] and many prompted by the 9/11 attacks of 2001 and the 7/7 London attacks of 2005. The latter included the indefinite power to detain un-deportable foreign nationals, in force from 2001-2004, followed by the replacement power to place British and foreign nationals under control orders, in force from 2005-2011, and a number of new criminal offences, notably in TA 2006.

(c) ***2010-2012***: a process of cautious liberalisation, expressed in:

- a raising of the threshold for freezing terrorist assets;
- a reduction in the maximum pre-charge detention period from 28 to 14 days;
- the replacement of control orders by the time-limited and significantly less onerous Terrorism Prevention and Investigation Measures **[TPIMs]**;
- the removal of the no-suspicion stop and search power in TA 2000 section 44; and
- enhanced safeguards for the retention of biometric data.

1.8. The third phase was accelerated by the formation in 2010 of a Coalition Government, both of whose component parts had campaigned on the basis of redressing the balance between liberty and security in the UK's anti-terrorism laws. Liberalising influence was also prompted by the courts (particularly in relation to section 44),[7] and by a growing sense of security, whether justified or not, that emanated from the passage of several years without a fatal terrorist attack in Great Britain.

1.9. The 2010-2012 liberalisation was more than cosmetic: indeed it has in some cases been of considerable practical significance. I describe it as cautious because the liberalising measures were moderate, and in some cases accompanied by contingency plans, for use in the event that the threat picture worsened: the draft Detention of Terrorist Suspects (Temporary Extension) Bills,

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5 The international context for the development of anti-terrorism laws since 2001 is explained by K. Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011).

6 See, in particular, UN Security Council Resolutions 1267 and 1373, and the Council of Europe Convention on the Prevention of Terrorism, 2005.

7 *Gillan and Quinton v UK* (2010) 50 EHRR 45.

the draft Enhanced TPIM Bill and the stop and search power now available (after due authorisation) in TA 2000 section 47A. Save for a single use of the section 47A power in Northern Ireland, none of these replacement or reserve powers has so far been activated or used.

1.10. In 2013 we stand at a crossroads, from which the future direction of travel is not clear. Thus:

(a) The theme of cautious liberalisation is being continued in relation to the port powers contained in TA 2000 Schedule 7. Following on the review and public consultation that I had recommended in my 2011 and 2012 TA reports, modest reforms were proposed in the form of Schedule 6 to the Anti-Social Behaviour, Crime and Policing Bill **[ASBCP Bill]**, announced in the Queen's Speech in May 2013.

(b) A stricter application of existing laws was however prompted by the absconding of a TPIM subject at the end of 2012, a number of high-profile convictions in the spring of April 2013 and the brutal murder of Private Lee Rigby on a Woolwich street in May 2013. Combined with significant continued violence in Northern Ireland, these events caution against complacency and have led to renewed investigations within government of possible further measures.

(c) JSA 2013, which provides for the use of closed material proceedings in civil cases, and the so far unresolved saga of the proposed Communications Data Bill, have also been criticised as introducing new types of "*secret justice*" and "*snooping*" into the fight against terrorism.[8]

1.11. It would be neither appropriate nor feasible for the legislative framework to vary constantly, depending on yearly fluctuations in the terrorism threat. History suggests, however, that a strong influence on the future direction of anti-terrorism law will be the incidence (or otherwise) of terrorist violence in the years ahead.[9]

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8 The epithets were coined by NGOs lobbying against the measures, and caught on with the media. I gave my thoughts on the Justice and Security Bill and the Green Paper that preceded it to the Joint Committee on Human Rights in two pieces of written evidence and two oral evidence sessions, which can be found on my website. As to the original Draft Communications Data Bill, see the reports of the Joint Committee on the Draft Bill (HL Paper 79, HC 479, December 2012) and of the Intelligence and Security Committee (Cm 8514, February 2013).

9 Major terrorist events, from the Birmingham bombing of 1974 to the 7/7 attacks in 2005, have been the trigger for past legislative revision.

Changes to the Terrorism Acts

1.12. The only actual or prospective changes to the Terrorism Acts during the year under review were effected by the Coroners and Justice Act 2009 **[CJA 2009]** and by the Protection of Freedoms Act 2012 **[PFA 2012]**.

1.13. PFA 2012 received Royal Assent on 1 May 2012 and made amendments relating to powers of stop and search, pre-charge detention and the retention of biometric data taken from those detained under TA 2000.

1.14. CJA 2009 section 117 enhanced the role of the Independent Reviewer and of the Independent Custody Visitors **[ICVs]** in relation to persons detained under TA 2000 section 41. The first three subsections were commenced in August 2012, and the remainder in April 2013.

1.15. Details of the amendments and of commencement dates, with links to the relevant documents, are in Annex 2 to this report.

Previous Terrorism Act reports

1.16. My statutory function as expressed in TA 2006 section 36 is to "*review the operation*" of the Terrorism Acts. As was stated in Parliament when independent review was placed on a statutory basis, the central purpose of such review is to "*look at the use made of statutory powers relating to terrorism*" and to "*consider, for example, whether any change in the pattern of their use needs to be drawn to the attention of Parliament"*.[10] Annual reports of this nature informed the annual renewal debates to which all anti-terrorism legislation was subject until 2000. The Prevention of Terrorism Act 2005, which provided for control orders, remained subject to annual renewal debates until its repeal and replacement in 2011.

1.17. The Terrorism Acts are not subject to annual parliamentary renewal. Since they contain a range of strong and exceptional powers, however, the rationale for annual independent review remains. The core function of such reviews remains as it was described in 1984: to identify and draw attention to the way that statutory powers are used, and in particular to changes in the pattern of that use. That task can be performed in part by analysing the available statistics. It also requires, however, first-hand observation – whether at the police cell, the court, the Home Office, the airport or the community hall – of how powers are used and experienced in practice.

1.18. My 2011 and 2012 TA reports sought to build on this core function by addressing the *extent* of the Terrorism Act powers and recommending certain specific

[10] Hansard HL 8 Mar 1984 vol 449, col 405.

reforms to them. In that respect, I followed a precedent set during the tenure of my predecessor, Lord Carlile. My broad position was to welcome the cautious liberalisation that had characterised the Government's Review of Counter-Terrorism Powers. At the same time, I made a total of 33 recommendations: 11 in 2011 and 22 in 2012. A few were aimed at ensuring that current good practices whose continuation seemed not to be beyond question were maintained in the future.[11] Others related to administrative matters or to the manner in which statutory powers should be exercised by the Government or the police. A third category recommended changes to primary legislation in certain defined fields: proscription, Schedule 8 detention and port powers.

1.19. Arranged by subject-matter, the recommendations in my 2011 and 2012 TA reports related to:

(a) improvements in the collection and presentation of ***statistics***;[12]

(b) the operation and reform of the ***proscription regime***;[13]

(c) use of the TA 2000 section 41 ***arrest power***;[14]

(d) amendment of the TA 2000 Schedule 8 ***detention power***, in particular so as to clarify the basis for the court to extend detention beyond 48 hours, to make provision for bail; to allow the detention clock to be suspended in the case of detainees who are admitted to hospital; and to ensure the continued expertise and independence of forensic medical examiners;[15]

(e) the code of practice for ***stop and search*** under TA 2000 section 47A;[16]

(f) a public consultation and review of ***port and border controls*** under TA 2000 Schedule 7;[17] and

(g) the scope and treatment of ***future reviews***.[18]

1.20. I made my recommendations without regard to political constraints. Whilst I knew that it was not long since the Government had determined in its own Review the extent of the changes that it thought necessary, I have taken the uncomplicated view that my task is simply to express my own conclusions, even

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11 e.g. 2012 TA report 12.6 (prompt publication of my reports), 12.7 (consideration of far-right terrorist organisations for proscription), 12.17 (qualifications for medical examiners).
12 2011 TA report, 12.1-12.2; 2012 TA report, 12.2-12.5.
13 2011 TA report, 12.3-12.4; 2012 TA report, 12.7-12.12.
14 2011 TA report, 12.5-12.6; 2012 TA report,12.13.
15 2011 TA report, 12.7-12.8; 2012 TA report, 12.14-12.17.
16 2011 TA report, 12.9.
17 2011 TA report, 12.10-12.11; 2012 TA report, 12.18 – 12.22.
18 2012 TA report 12.1, 12.6.

if these are to the effect that the Government should go further than it has earlier decided to do.

1.21. Some of my recommendations were addressed to police or to members of the public, or are not for immediate attention. Of those addressed to the Government, a fair number have been accepted: the Schedule 7 review and consultation; amendment to the section 47A code of practice; and some of those relating to the collection and presentation of statistics.[19] A few (e.g. making the option of bail available to those arrested under TA 2000) have been decisively rejected. Yet others (including the introduction of a workable regime for deproscription, the amendment of Schedule 8 and provision for the future review of other counter-terrorism Acts) are either in progress or remain under review. A number of my observations and recommendations have, in addition, been relied upon in legal cases or followed by parliamentary committees.

Content of this report

1.22. This is my third annual report on the Terrorism Acts, and the eighth of eleven reports that I expect to produce during my three-year term as Independent Reviewer.[20] I have not sought to add to the far-reaching recommendations of my 2011 and 2012 TA reports, which have in some respects been spat out but in many others continue to be digested. I have however:

(a) sketched out a fuller than usual picture of the terrorist threat to the United Kingdom and its nationals, drawing particularly on the period 2010-2012;

(b) reviewed the operation of all aspects of the Acts during 2012, as my statutory remit demands;

(c) solicited views on some possible changes to the definition of terrorism, with a view to future recommendations;

(d) recorded such progress as has been made in relation to my previous recommendations; and

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19 As have all ten of the recommendations in my first two reports on the operation of the Terrorist Asset-Freezing &c. Act 2010 **[TAFA 2010]**, and some of the recommendations in my reports on control orders (2012) and TPIMs (2013).

20 That term ends, subject to possible renewal, in February 2014. I expect my remaining reports to be annual reviews of the operation of TAFA 2010 (autumn 2013) and of the Terrorism Prevention and Investigation Measures Act 2011 (early 2014), together with the one-off report on the policy of deportation with assurances to which the Foreign Secretary referred in his response to the 3rd report of the Foreign Affairs Committee, 2012-13, Cm 8506, December 2012, para 20.

(e) identified issues deserving of attention (particularly in relation to Schedule 7, which in recent months has moved rapidly to the centre of parliamentary as well as judicial attention).

1.23. My 2012 TA report is referenced frequently in these pages. For reasons of space I do not repeat its observations, though I stand by them all. It should continue to be referred to for relevant background (including its chapter-by-chapter summary of the provisions of the Terrorism Acts).

Statistics

Sources of statistics

1.24. Statistics on the operation of the Terrorism Acts are to be found in three principal publications:

(a) The Home Office Statistical Bulletin **[HOSB]** which reports annually (with limited quarterly updates) on the operation of police powers under TA 2000 and TA 2006 in Great Britain.[21]

(b) The bulletin produced for the same purpose by the Northern Ireland Office **[NIO]**;[22] and

(c) The Police Recorded Security Situation Statistics, published by the Police Service of Northern Ireland **[PSNI]** on an annual basis, with monthly updates.[23]

1.25. The most comprehensive annual figures are published on a year-to-March basis, as is the case with Government statistics generally. My statutory remit however requires my reports to cover the calendar year. I have therefore relied on such published figures as are available for the calendar year 2012, supplemented where necessary by figures for 2011/12 or 2012/13 and by figures supplied to me by relevant departments or by the police.

Gaps in the statistics

1.26. In my last two annual reports into the operation of the Terrorism Acts, I drew attention to a number of gaps in the available statistics. The statistics prepared

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21 See most recently HOSB 11/12, *Operation of police powers under the Terrorism Act and subsequent legislation: Arrests, outcomes and stops and searches*, HOSB 11/12, 13 September 2012 and the quarterly update to 31 December 2012, no longer published as a HOSB but available since June 2013 from the www.gov.uk website (with accompanying tables) as "Operation of police powers under the Terrorism Act 2000 and subsequent legislation, quarterly update to 31st December 2000".

22 See most recently *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12* (undated).

23 *Police Recorded Security Situation Statistics*, *Annual Report covering the period 1st April 2012 – 31st March 2013,* 9 May 2013.

for Great Britain and for Northern Ireland are not always comparable. The following data, which are not currently available or may not be available in the future, would assist the Independent Reviewer in producing a more thorough report:

(a) Statistics showing the number of times that ***each criminal offence under the Terrorism Acts has been charged***. That information is relevant to my task because the starting point for any debate over the utility of having a criminal offence on the statute book is to identify how often it is used. The numbers are available for Northern Ireland (where they are very low). In Great Britain, however, charges and convictions are listed only by "*principal offence*", defined as that which carries the largest maximum sentence. Lesser offences are simply not recorded, even where they have been charged and resulted in convictions. It is therefore impossible to say with certainty how much use has been made, outside Northern Ireland, of the many specialist terrorism offences contained in TA 2000 and TA 2006.

(b) Statistics for the number of ***convictions and acquittals on terrorism charges***. Such figures might shed light on the exercise of prosecutorial discretion or on the ability to secure convictions. They are available in Great Britain, though only in respect of the "*principal offence*" charged in any case (see 1.26(a), above). Until 2013 they were not published in Northern Ireland.[24]

(c) Statistics for those ***refused access to a solicitor*** and ***held incommunicado***, under the exceptional provisions governing those possibilities, together with the success rates of applications for ***warrants for further detention***. The numbers are routinely given in Northern Ireland but not in Great Britain.

(d) Better ***ethnicity figures***, based on the 2011 Census categories and compiled on the basis of self-definition rather than officer definition. Current classification in Great Britain is on the basis of the 2001 Census: though the categories of "*White*", "*Mixed*", "*Asian*", "*Black*" and "*Chinese*" are each accompanied by a catch-all "*other*", there is no subcategory referable to persons of non-black North African or Middle Eastern ethnicity. Self-definition (generally considered preferable to officer definition) is used for the recording of statistics on stop and search, port examinations and prison population, but not as yet on arrest or charge.

[24] Though the Northern Ireland Court Service kindly supplied them to me for insertion in my 2011 and 2012 annual reports, as they have done also this year: see 11.26-11.27, below.

1.27. I made recommendations in relation to each of those points last year,[25] and the Home Secretary responded on each point.

Response to my recommendations

1.28. I have recently been briefed by those responsible for statistics at the Home Office, the NIO and the police (ACPO Counter-Terrorism Co-ordination Centre **[ACTCC]**). Taking the points in the order they were raised above:

(a) As to ***charging***, it is said not to be feasible to match established Northern Ireland practice in Great Britain by quantifying the occasions on which each offence under the Terrorism Acts is charged. The "*principal offence*" basis on which such information is currently provided is the standard measure across the field of criminal justice in England and Wales, and to replace or depart from it would, I am told, impose significant administrative and logistical burdens at a time of financial stringency and when there is pressure to reduce rather than increase the volume of statistics requested.

(b) As to ***convictions and acquittals***, my recommendation was followed by the introduction into HOSB 11/12 of Table 1b, which not only gives the Northern Ireland figures for charging outcome in the case of arrests during 2010/11 and 2011/12, but allows them to be directly compared with the figures for Great Britain. This table is useful and if repeated will become more so in future, both because it will begin to show trends and because the "*awaiting prosecution*" category will cease to exist in relation to past years, allowing greater precision as to outcomes. I hope therefore that the exercise will be repeated in future years, though I understand that this is not assured.

(c) As to ***refusal of access to a solicitor***, ***incommunicado*** and ***warrants for further detention***, there are also positive results to report:

- The Home Secretary responded positively to my recommendation that the number and success rates of warrants for further detention should be recorded, as they are in Northern Ireland, from 1 July 2012.

- In Northern Ireland, where the numbers have already been published, the length of the delays in granting access to a solicitor have additionally been provided to me by the PSNI: see 8.37, below. I hope that in future years, they will also be published in the NIO reports.

[25] 2012 TA report, 1.35-1.38; 12.2-12.5. I also noted that the numbers arrested for "*terrorism-related offences*" under provisions other than TA 2000 section 41 are not collected in Northern Ireland, as they are in Great Britain (1.31(c)), but stopped short of recommending that they should be, for the reasons given at 7.27.

(d) As to ***ethnicity data***, an issue whose scope extends well beyond the Terrorism Acts, I am told that there is an intention to move to the 2011 Census classifications and to the universal use of self-defined data, but that the change will have significant implications in terms of training and IT, and is not imminent.

1.29. I also understand that the UK Statistics Authority will soon be assessing all the statistics collected in the Terrorism Acts HOSB in order to determine whether they should be granted the status of National Statistics. National statistics accreditation is considered to be a stamp of assurance that the statistics have been produced and explained to high standards, and that they serve the public good. As a user of these statistics, I look forward to contributing to that review.

The future

1.30. I am moderately encouraged by the response to my last recommendations, and express the hope that:

(a) The data that is now being recorded regarding warrants for further detention and refusals of access to solicitor should find its way into future statistical reports.

(b) The new Table 1b in HOSB 11/12, including its information on convictions and acquittals in Northern Ireland, will be updated and repeated in future annual HOSBs.

(c) The collection of ethnicity data will move as rapidly as possible towards the 2011 Census classification.

2. THE NATURE OF THE THREAT

Introduction

2.1. As in previous years, I summarise at the start of my annual report the nature and extent of the terrorist threat in the United Kingdom. Some understanding of the threat is a necessary basis for any informed assessment of whether the anti-terrorism laws as they currently exist are sufficient, necessary and proportionate.

2.2. There is a paucity of official information about the level of threat. The best official sources are as follows:

(a) The one-word threat levels (ranging from LOW to CRITICAL), that are set for Northern Ireland-related terrorism by MI5 and for so-called "*international terrorism*" by the Joint Terrorism Analysis Centre **[JTAC]**, the UK's official centre for the analysis and assessment of international terrorism.[26]

(b) The short account of the threat from international terrorism, informed by JTAC and containing details of some key operations, incidents and arrests, that introduces the Government's periodic reports on the CONTEST strategy.[27]

(c) The brief twice-yearly written ministerial statements given to Parliament by the Secretary of State for Northern Ireland.

(d) The occasional speeches that have been given in recent years by the Director General of MI5, and placed on the MI5 website.

2.3. I have previously regretted the absence of an authoritative open account of the threat from terrorism, in the form of an annual publicly available report such as that produced for Europe by Europol.[28] That regret has been prompted in part by my own reading of JTAC's classified reports, and by the useful and informative briefings I receive regularly from JTAC. The Government has however taken the view that an additional open report is not required at this time,[29] and I am

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26 See further 2.54-2.56, below.

27 CONTEST – The United Kingdom's Strategy for Countering Terrorism, Annual Report (March 2013), Cm 8583, 1.6 – 1.15. That report covers the period from July 2011 to December 2012, and while focussed on what it describes as "*international terrorism*", it makes very brief mention of the threat from Northern Ireland-related terrorism (at 1.14) and from far-right extremism (at 1.15).

28 Europol, *TE-SAT 2013 – EU terrorism situation and trend report*, April 2013: though the quality of the report, reflecting the evidence supplied to it by national authorities, is variable.

29 Government Response to *TPIMs in 2012*, Cm 8614, May 2013, responding to *TPIMs in 2012* (March 2013) at 1.15-1.16 and Recommendation 1, both accessible through my website. Neither either the US National Counter-Terrorism Center, the Australian National Threat

conscious that the production of such a report would represent a distraction from other pressing tasks and could include little material not already in the public domain.

2.4. My own understanding of the threat, as informed by the relevant agencies and by my own reading and enquiries, is set out at 2.5-2.88, below. To give an element of perspective, I have focussed not just on the year under review but on the historical position, particularly since 2010. Though my account (like the rest of this report) has been checked by the Government for accuracy and inadvertent disclosure of sensitive material, it bears no official endorsement.

The threat from al-Qaida inspired terrorism

Terminology and categorisation

2.5. As in previous years, I use the term "*al-Qaida inspired terrorism*", defined as terrorism perpetrated or inspired by al-Qaida, its affiliates or like-minded groups or individuals.

2.6. That choice may be criticised for insufficiently acknowledging the recent degradation of al-Qaida's core organisation, and the emergence of home-grown terrorists without overt al-Qaida links. Nonetheless, it has the advantage of continuity and seems to me preferable to the alternatives of "*international terrorism*" (which ignores the fact that some terrorism of this kind is domestically planned and perpetrated), "*Islamic terrorism*" (which risks unjustly associating adherents of peaceful Islam with terrorism) or "*Islamist terrorism*" (which might wrongly imply that anyone supporting a government ordered according to the laws of Islam has terrorist sympathies, or indeed that all Muslim terrorists are political Islamists).

2.7. The following sections summarise:

(a) attacks disrupted or carried out, 2000-2009 (2.8-2.9)

(b) threats from self-organised extremist groups, 2010-2012 (2.10-2.20)

(c) threats from lone actors, 2010-2012 (2.21-2.26)

(d) the threat from foreign fighters (2.27-2.30)

(e) the threat from al-Qaida affiliates (2.31-2.38)

(f) the threat to UK interests overseas (2.39-2.53)

Assessment Center nor the Canadian Integrated Terrorism Assessment Center currently has a report on its website.

(g) setting of threat levels (2.54-2.56)

(h) comparisons with the rest of Europe (2.57-2.61)

(i) conclusions on the threat from al-Qaida related terrorism (2.62-2.65).

Attack planning 2000 - 2009

2.8. The threat from al-Qaida inspired terrorism to UK interests overseas and to the UK itself has been evident since before 2001. A number of the UK plots prior to 2010 were directly controlled or sanctioned by al-Qaida core in the Federally Administered Tribal Areas **[FATA]** of Pakistan. The instances of attacks and attack planning in the UK or on UK interests include the following:

(a) the ***Birmingham bomb plot*** of November 2000, resulting in a 20-year sentence for Moinul Abedin;

(b) the ***9/11 attacks*** of September 2001, which killed almost 3000 people including 67 UK nationals;

(c) the attempt by Richard Reid, the British ***shoe bomber***, to destroy a flight from Paris to Miami in December 2001, which failed when his matches were damp and failed to ignite;

(d) the ***Bali bombing*** of October 2002, which killed over 200 people including 28 Britons;

(e) a planned ***ricin attack*** against public transport, which was disrupted in 2003 but which led to the death of one of the arresting police officers at the hands of Kamel Bourgass, the group leader;

(f) the ***fertiliser bomb plot***, disrupted in March 2004, in which Omar Khyam and others planned to attack the Bluewater shopping centre in Kent and the Ministry of Sound nightclub in London with homemade explosives;

(g) the ***dirty bomb plot***, disrupted in August 2004, in which Dhiren Barot and others planned to detonate "*dirty bombs*" containing radioactive material on the London Underground;

(h) the ***7/7*** London tube and bus bombings in July 2005, which led to the death of 52 people and injuries to over 700 more;

(i) the London attacks of ***21/7***, two weeks later, which were not intercepted but which failed because the explosives were incorrectly mixed;

(j) the ***airline liquid bomb plot***, disrupted in August 2006 when plans to attack several passenger planes from the UK to North America had reached an advanced stage, and subsequently described by a trial judge as "*the most grave and wicked conspiracy ever proved within the jurisdiction*";[30]

(k) the Birmingham plot to kidnap and behead a ***British Muslim soldier*** and broadcast the video on the internet, disrupted in January 2007;

(l) the ***Tiger Tiger*** London nightclub bombs and the suicide attack on ***Glasgow airport***, both executed (though without loss of life, save that of the bomber Kafeel Ahmed) in June 2007;

(m) the lone actor Andrew Ibrahim, who planned to attack a shopping centre in ***Bristol*** and was arrested in April 2008;

(n) the lone actor Nicky Reilly, whose explosive device failed to detonate in an ***Exeter*** restaurant in May 2008; and

(o) the arrest of 10 Pakistani students based across ***North-West England*** in April 2009, at an early stage of what was believed to be their attack planning (the subject of Lord Carlile's report on Operation Pathway).

2.9. That list does not include activities, however serious, that did not amount to attack planning. An example are the activities between 2007 and 2010 of Rajib Karim, an IT specialist at British Airways, who was sentenced to 30 years' imprisonment in 2011 for a variety of terrorist offences, including offering his assistance in disrupting the airline's servers and bringing down a transatlantic plane to Anwar al-Awlaki, the Yemen-based cleric (and dual US national) who before his death in a drone strike in 2011 was referred to as the "*bin Laden of the internet*" for his role as a senior al-Qaida recruiter and radicaliser.[31]

2010-2012: self-organised extremist groups

2.10. The threat to the UK from a terrorist attack directed by al-Qaida in the FATA of similar scale and complexity to 9/11 or the airline liquid bomb plot has decreased since the mid-2000s. Due to the loss of personnel, territory and operational freedom, al-Qaida is less able to exert the same sort of direct command and control over terrorist cells. Its attack-planning threat has however not been

30 Enriques J, quoted in *SSHD v AY* [2012] EWHC 2054 (Admin) at §46.

31 See further at 2.35-2.36, below. As noted in my 2012 TA report (fn 43), Anwar al-Awlaki was a direct or indirect inspiration for a high proportion of the recent terrorist plots and incidents in the UK and USA. His influence appears to have survived his death: the men who were convicted of seeking to disrupt an EDL rally with IEDs and firearms, were listening to a CD of his sermons as they drove towards their target: 2.18-2.19, below.

neutralised; and it can still provide the training and motivation for extremists who are intent on carrying out attacks on their return to the UK.

2.11. Five plots are summarised below, publicly known because they have resulted in arrests, criminal charges and convictions. I have been made aware of a limited number of other plots during the period in question, which are believed to have involved attack planning but which were disrupted or otherwise dissipated without becoming publicly known.

2.12. Two common features may be highlighted:

(a) It is often said that the al-Qaida "franchise" has diversified in recent years into a variety of alternative locations such as Iraq, Yemen, Somalia, parts of North and West Africa and Syria. So indeed it has. However another fact, less widely appreciated, is that ***jihadis focussed on the West continue to train in the FATA***. Such training was a precursor to four of the five plots referred to below.

(b) A further remarkable feature of all those plots is that ***they ended not with trials but with guilty pleas*** – a testament to the thoroughness of the police and prosecutors who brought them to court.[32]

London Stock Exchange Plot (Operation GUAVA) – December 2010

2.13. Two London-based men (Mohammed Chowdhury and Abdul Miah) and two from Cardiff (Shah Rahman and Gurukanth Desai) formed a number of plans for attacks including possible attacks against the London Stock Exchange. Linked to this cell were three men from Stoke (Usman Khan, Nazam Hussain, Mohammed Shahjahan) who travelled to the FATA and planned to fund, construct and take part in a terrorist training camp in Kashmir, with a view to carrying out terrorist acts in the future. Two others were involved in discussions with the group and possessed copies of the Al-Qaida in the Arabian Peninsula **[AQAP]** produced English language extremist magazine, *Inspire.* They also considered putting multiple letter bombs in the post. Following their arrest in December 2010, all nine members of the network pleaded guilty and eight were convicted of engaging in preparation for acts of terrorism (TA 2006 section 5).

[32] As Wilkie J noted when sentencing the Operation GUAVA conspirators in February 2012 (2.13 and 11.15(a), below): "*Great praise is due to the Security Services both for the thoroughness and sophistication of their monitoring and their surveilling of these defendants, as well as their alertness to intervene at the optimum time before any harm could be done by the offenders. As a consequence these nine have pleaded guilty to very serious offences.* His sentencing remarks are at http://www.judiciary.gov.uk/media/judgments/2012/r-v-mohammed-chowdhury-and-others: see para 16.

Birmingham rucksack bomb plot – September 2011

2.14. Twelve Birmingham-based individuals were arrested in September 2011 as part of a plot to conduct a bombing campaign in the UK. Irfan Naseer, Irfan Khalid and Ashik Ali intended to carry out an attack that would be "*bigger*" than 7/7. The group intended to use a series of improvised explosive devices **[IEDs]** in up to eight separate rucksacks, against unknown targets. Naseer and Khalid had twice travelled to the FATA to undertake terrorist training, and met there with al-Qaida members. They also arranged for four other extremists to be sent to the FATA for training as a separate cell. Released recordings of the men have since shown that they believed the attack plot was approved by al-Qaida.

2.15. The group was also involved in terrorist fundraising, fraudulently collecting on behalf of the legitimate charity Muslim Aid. Searches of property associated with the group found copies of media produced by Anwar al-Awlaki. Naseer, Khalid and Ali were all found guilty of engaging in preparation for acts of terrorism (TA 2006 section 5). A further six pleaded guilty to charges under the same section, and two others pleaded guilty to terrorist funding-related offences.

Targeting Territorial Army base – April 2012

2.16. Four Luton-based men were arrested in April 2012, having started to prepare terrorist attacks in the UK. They had downloaded computer files containing practical instructions for a terrorist attack, undertaken survival training and collected funds for terrorist purposes. Zahid Iqbal, Mohammad Sharfaraz Ahmed, Umar Arshad and Syed Farhan Hussain pleaded guilty to charges of engaging in preparation for acts of terrorism (TA 2006 section 5) and were sentenced in April 2013.[33]

2.17. Iqbal and Ahmed had discussed attacking a Territorial Army base in Luton by making an IED out of a remote-controlled car. Six copies of *Inspire* magazine and other material authored by Anwar al-Awlaki were found on their computer. Following Ahmed's initial visit to Pakistan in 2011, where he had met a representative of al-Qaida, Iqbal was seeking to travel to the Waziristan area of Pakistan, though the group was disrupted before this could be achieved.

Plot to attack the English Defence League – June 2012

2.18. Six Birmingham-based men pleaded guilty to engaging in conduct for preparation of terrorist acts (TA 2006 section 5) against an English Defence League **[EDL]** demonstration in Dewsbury, West Yorkshire. They were sentenced on 9 June 2013 to lengthy periods of imprisonment.

[33] The sentencing remarks of Wilkie J are at http://www.judiciary.gov.uk/media/judgments/2013/r-v-iqbal-and-others.

2.19. Police impounded an uninsured vehicle after a routine traffic stop, and subsequently found in it a homemade IED and two sawn-off shotguns, knives and a written message claiming responsibility for an attack against the EDL. The attack against the EDL demonstration did not take place because the terrorists arrived after the demonstration had finished.

Targeting Wootton Bassett – July 2012

2.20. Richard Dart, Jahangir Alom and Imran Mahmood were arrested in July 2012, a few weeks prior to the Olympic Games. They pleaded guilty to engaging in preparation for acts of terrorism (TA 2006 section 5) and were sentenced in April 2013. Whilst they were not far advanced with attack planning at the time of their arrest, evidence recovered from a computer showed that they had considered targeting the town of Wootton Bassett due to its association with British soldiers returning from Afghanistan, as well as the "*heads of MI5 and MI6*". All three had previously attempted to train in the FATA, but only Imran Mahmood was successful in achieving this.

2010-2012: lone actors

2.21. There is a continuing threat to the UK from lone actors (a term preferred by the authorities to "*lone wolves*", because considered less glamorous), who have not received training or tasking from terrorist organisations other than, in some cases, drawing inspiration and motivation from online sermons and other extremist ideological material. These individuals develop their intent, capability and target selection independently.

2.22. Attacks of this nature have tended not to involve foreign training, and to be smaller-scale and less sophisticated than those directed by established networks of individuals. On the other hand, they tend to be unpredictable, quicker to progress and more difficult to detect.[34]

Attack on Stephen Timms MP – May 2010

2.23. Roshonara Choudhry, a student at King's College London, was sentenced to life imprisonment for attempted murder after being radicalised through extremist material found on the internet, including the sermons of Anwar al-Awlaki. She was motivated by this extremist material to stab her local MP, Stephen Timms, at a constituency surgery.

[34] These factors – together with the destructive potential of the organised lone actor, seen in the Breivik killings of 2011, and the risk of a high-profile political or symbolic assassination – may provide some justification for applying special anti-terrorism laws to the activities of individuals: compare B. Barnes, "Confronting the one-man wolf pack" (2012) 42 Boston University Law Review 1613.

2.24. She told police that her political awareness had been awakened on a school visit to the Palace of Westminster, during which a fellow-student was critical of Stephen Timms because of his support for the invasion of Iraq. Along with other real or imagined attacks on Muslims, foreign military interventions can be cynically exploited by agents of radicalisation. They cannot, of course, excuse acts of terrorism. It is idle however to pretend that foreign policy has not been an influence in radicalisation, as demonstrated by this incident and by a number of suicide videos.

Targeting of Jewish community – August 2011

2.25. Husband and wife Mohammad Sajid Khan and Shasta Khan were convicted in July 2012 of engaging in conduct for preparation of terrorist acts (TA 2006 section 5). Police found a significant quantity of bomb-making components during a search of their home.

2.26. Shasta Khan only began reading and listening to extremist material and sermons in November 2010, progressing to on-line bomb-making manuals between March and July 2011. The sentencing judge said there was "*overwhelming evidence*" that they were in the attack-planning stage of a terrorist act motivated by anti-semitic beliefs.[35] Shasta Khan herself stated that she had been radicalised by material found on the internet, including the AQAP magazine *Inspire.*

The threat from foreign fighters

2.27. The travel of UK nationals overseas to engage in jihad presents a number of potential threats to the UK, both while these fighters are overseas and on their return to the UK. The nature of these threats can differ, depending on the country in which they are fighting or the terrorist group which is hosting them, but there are a number of common themes. While overseas, these fighters can help terrorist groups develop their external attack capability by providing links with extremist networks in the UK and information about potential targets and the operating environment. In addition to English language skills which can help these groups with media outreach, some foreign fighters may also have other specialist skills (e.g. scientific, IT) that can help to strengthen the capability of these groups. The intelligence services have also seen foreign fighters attempt to direct operations against UK interests abroad.

2.28. Travelling overseas for jihad can provide individuals with combat experience, access to training and a network of foreign extremist contacts. The skills, contacts and kudos acquired overseas can increase substantially the threat that

[35] Wilkie J added, in his remarks of 20 July 2012: "*The Khans did not need to travel to training camps in Pakistan or Afghanistan – the knowledge they needed to commit a terrorist act was available at the click of a few buttons from the confines of their own home.*"

these individuals pose on return to the UK, even if they have not been tasked directly to carry out an attack on their return. Experience of fighting overseas with terrorist groups can also be a driver of radicalisation.

2.29. In recent years, UK nationals have travelled to a number of countries to engage in jihad. Previous travel to the FATA for extremist training has been a feature of a number of terrorist plots in the UK, including, as already noted, four of the five plots disrupted in 2010-2012 and referred to at 2.13-2.20, above. UK nationals have also travelled to Yemen to work with AQAP and Somalia to fight with al-Shabaab.

2.30. During 2012, Syria became a highly attractive destination for UK extremists wishing to engage in jihad. The idiosyncratic nature of the conflict in Syria, and the emergence of the al Qaida-aligned al-Nusrah front, risks turning Syria into an increasingly significant threat to the UK and UK interests overseas. The forces ranged against the Syrian Government are extremely diverse, and not all of the many UK nationals believed to have been fighting in Syria were necessarily intent on joining or fighting alongside the al-Nusrah front. The threat is however taken very seriously, to the point where it is believed that Syria may begin to rival the traditional threat from al Qaida Core and the FATA.

The threat from al-Qaida affiliates

2.31. The Arab Spring has been a key catalyst in creating a diversification and proliferation of Islamist extremist terror groups, some of which have shown the aspiration for external attack planning.

2.32. The most notable of al-Qaida's affiliates, for the purposes of the UK threat picture, however pre-dated the Arab Spring. AQAP was formed by a merger of Saudi Arabian and Yemeni Islamist extremists, with the stated goal of overthrowing the Saudi monarchy and Yemeni government and establishing an Islamic caliphate in their place. The group is highly capable, operationally active and has developed an innovative external attack methodology. AQAP has demonstrated the capability to produce sophisticated IEDs aimed at defeating aviation security, and there is a continuing risk that a successful attack against an aeroplane could happen with little or no warning. Although none of the examples below were specifically directed against the UK, all have a UK connection and are indicative of the potential threat.

2.33. AQAP also has a significant media and propaganda presence. It is responsible for the production of *Inspire*, the al-Qaida English language magazine which is frequently found in the possession of self-organised groups planning attacks in the UK. Its key messages include an emphasis on promoting attacks in the West, specifically lone actor style attacks. One of the alleged Boston bombers,

Dzhokar Tsarnaev, stated that he and his brother Tamerlan had access to a copy of *Inspire*.

Underpants bomber – December 2009

2.34. Umar Farouk Abdulmutallab, a former leader of the University College London Islamic Society, was sentenced to life imprisonment by an American court having been tasked by AQAP to board and blow up a flight from Amsterdam to Detroit on 25 December 2009. With connections to Anwar al-Awlaki, Abdulmutallab had been trained at an AQAP camp by Ibrahim al-Asiri who showed him how to use the bomb. The bomb itself was a new and sophisticated type of device, containing no metal components and capable of defeating the airport security of the time. However, the failed detonation of the "*underpants bomb*" only resulted in severe burns to Abdulmutallab himself.

British Airways employee – February 2010

2.35. Rajib Karim, an IT worker for British Airways, was arrested on suspicion of terrorist financing in February 2010. He was subsequently convicted and sentenced to 30 years' imprisonment for supplying information about airlines to al-Qaida terrorists in Yemen, offering to facilitate getting a "*package*" on to a plane bound for the USA and terrorist fund-raising.

2.36. Having been put in touch with Anwar al-Awlaki by his brother, Tehzeeb Karim, Rajib gave details of his work and how he could help. The relationship with al-Awlaki is likely to have been crucial for information-sharing and co-ordination. Karim played on his insider knowledge of the industry, highlighting for example that BA were recruiting ground staff for temporary cabin crew due to a strike.

Printer cartridge bomb – October 2010

2.37. Two printer cartridge bombs originating from AQAP in Yemen were prevented from reaching their target of mid-air detonation over the United States. One bomb was found aboard an aircraft at Dubai Airport, and the other on a cargo plane at East Midlands Airport in the UK. These bombs had already been transported on both passenger and cargo planes at the time of their discovery.

2.38. As with Abdulmutallab's failed underpants attack, Hassan al-Asiri was suspected of being behind the plot, along with Anwar al-Awlaki. The bombs were once again highly sophisticated and almost undetectable. The explosive used was one of the most powerful available; it was also crystalline, odourless, colourless and impossible to detect through a scanner. It represented another innovative plot, illustrating the continually changing nature of the threat from AQAP.

The threat to UK interests overseas

2.39. Although the threat to the UK itself has mostly been driven by al-Qaida core and AQAP, other affiliates overseas have the potential to project a threat against the UK. Their main threat however is to UK interests overseas.

2.40. A number of groups now present themselves as being part of al-Qaida, notably:

(a) North Africa (Sahel): Al-Qaida in the Islamic Maghreb **[AQIM]**

(b) West Africa: Boko Haram and Ansaru

(c) East Africa (Somalia): Al-Shabaab

(d) Yemen: AQAP

(e) Iraq: Al-Qaida in Iraq **[AQI]**, also known as the Islamic State of Iraq

(f) Syria: Al-Nusrah Front.

Other groups have less developed links to al-Qaida, but have adopted elements of the philosophy and exhortation to jihad of Usama bin Laden and his successors.

<u>North Africa (Sahel)</u>

2.41. AQIM has its origins in Algeria, where the majority of its attacks to date have been directed.

2.42. It benefited from the deterioration in the security situation in Libya to add to its arsenal of weapons and attract recruits to its cause. AQIM has constantly exploited the freedom of movement afforded to it in the largely unpoliced desert areas of the Sahel; this culminated in 2012 in direct confrontation with the Government of Mali and the imposition of AQIM control, in alliance with other groups, over the whole of Northern Mali. The French-led intervention in Mali has removed this control and pushed AQIM into more remote areas. The threat of attacks from AQIM elements is however likely to endure in the region for the foreseeable future.

2.43. Mokhtar Belmokhtar was for many years a senior AQIM commander. He formed his own splinter group in 2012 (Those Who Sign in Blood Battalion), but remains committed to a broad AQIM agenda and wider al-Qaida ideology. It was this splinter group that claimed responsibility for the January 2013 attack against the gas production facility of In Amenas, Algeria. At least 38 people died in this attack, among them five Britons.

2.44. AQIM has also mounted attacks outside Algeria: since 2009 it has attacked the French Embassy in Mauritania and carried out two suicide attacks, one in Mauritania and the other in Niger. It has also been responsible for a number of kidnaps across the region: in the past five years it has kidnapped individuals in Algeria, Tunisia, Mauritania, Mali, Niger and Nigeria. One British kidnap victim, Edwin Dyer, was murdered by the group in 2009.

2.45. Other low-level attacks against UK diplomatic personnel and premises (though not necessarily by AQIM) have taken place: in June 2012 a rocket-propelled grenade **[RPG]** attack took place on the convoy of the UK Ambassador to Libya, in which two bodyguards were wounded. A few days afterwards there was a small arms attack on the UK consulate in Benghazi which resulted in no casualties.

2.46. In Morocco, an extremist group was responsible for the bombing of a cafe in Marrakech which killed one Briton and injured 17 others from 13 countries. In Tunisia, a tourist complex under development was attacked in March 2013, though there were no casualties.

West Africa

2.47. In Nigeria the Islamist extremist group Boko Haram has carried out a violent campaign, largely in the north of the country, often aimed at Christian communities and places of worship, as well as against Nigerian governmental and official targets. It has recently claimed the kidnap of a French family from across the border in Cameroon.

2.48. Ansaru is an offshoot of this group, and has adopted a more anti-Western stance. It announced its existence in January 2012. The group was suspected of being responsible for the murders of British citizen Christopher McManus and his Italian colleague, who were kidnapped in May 2011. More recently Ansaru claimed responsibility for the kidnap of seven foreign nationals, amongst them one Briton, Brendan Vaughan, from a construction company in northern Nigeria. They were all murdered three weeks after the kidnap.

East Africa

2.49. In Somalia, al-Shabaab and its sympathisers seek to strike at the Federal Government in Mogadishu and at any African countries that support it. Outside Somalia, the threat from this conflict is most prevalent in Kenya (and to a lesser extent in Sudan, Ethiopia, Uganda and Tanzania), where British citizens run the risk of being caught up in low-level attacks or being targeted in kidnapping attempts. British citizen David Tebbutt was killed when gunmen stormed a bungalow in Lamu, Kenya, and took his wife Judith hostage.

Yemen

2.50. As previously highlighted, AQAP has a track record of attempting to carry out terrorist attacks in the West. However, its main area of activity is within Yemen where it continues with a campaign of attacks against the Yemeni Government and supportive countries.

2.51. In April 2010 a suicide bomber attacked the convoy of the British Ambassador to Yemen, wounding two security officials and a civilian. Kidnappings are commonplace, and tribal groups may attempt to sell hostages to AQAP. In December 2012, Saudi Arabian authorities arrested a number of Islamist extremists that were accused of planning attacks in Saudi Arabia and the United Arab Emirates.

Iraq

2.52. The activities of AQI have most recently been directed against Iraqi Government targets and against Shia civilian targets. Western targets in Iraq remain at high risk of attack by this group.

Syria

2.53. Al-Nusrah Front pledged allegiance to al-Qaida and al-Zawahiri in April 2013 and is thus considered likely to seek to carry out terrorist attacks against Western interests. The Front has claimed responsibility for hundreds of attacks in Syria since December 2011, including 55 suicide attacks. Most of these have been targeted at the Assad regime, though others have caused indiscriminate civilian casualties. Kidnapping is a growing threat in Syria.

Setting of threat levels

2.54. The threat level system was devised in 2006, and has five tiers as follows:

CRITICAL	An attack is expected imminently
SEVERE	An attack is highly likely
SUBSTANTIAL	An attack is a strong possibility
MODERATE	An attack is possible, but not likely
LOW	An attack is unlikely

2.55. Since its first publication on 1 August 2006, the threat level from "*international terrorism*" has varied as follows:

1 August 2006	**SEVERE**
10 August 2006	**CRITICAL**
13 August 2006	**SEVERE**
30 June 2007	**CRITICAL**
4 July 2007	**SEVERE**
20 July 2009	**SUBSTANTIAL**
22 January 2010	**SEVERE**
11 July 2011	**SUBSTANTIAL**

2.56. The following points may be noted:

(a) For three years until July 2009, the threat level was never below SEVERE; while for the majority of the four years since then, it has stood at SUBSTANTIAL. This reduction in the threat (albeit still to an uncomfortably high level) is welcome, though as may be inferred from the plots that continue to be detected, it reflects greater confidence in the intelligence coverage that is necessary to pre-empt attacks, rather than any observed reduction in willingness to commit attacks.

(b) The threat level has been raised to CRITICAL for only two periods of a few days each, immediately after the disruption of the 2006 airline liquid bomb plot and the 2007 London and Glasgow airport attacks. This is likely to have reflected the risk that some plotters had not been apprehended and could strike imminently.

Comparisons with the rest of Europe

2.57. I noted in my 2012 TA report the remarkable fact that according to Europol's annual Terrorism Situation and Trend Report **[TE-SAT]**, no al-Qaida affiliated or inspired attacks were carried out in EU Member States during 2011. The same report did however state that the al-Qaida inspired threat rose during 2011 in Scandinavia and Germany, and that France, Spain and the United Kingdom "*remained constant targets and centres for radical activities*".[36]

2.58. It remains the case that the vast majority of "*terrorist*" incidents recorded by Europol related to nationalist or separatist terrorism.[37] 2012 did however see significant incidents of al Qaida-inspired terrorism, and significant disruptions, in several countries. Among these were:

(a) the March 2012 shootings of seven people in Toulouse by Mohamed Merah (the most significant Islamist attack in France since 1995-96);

(b) the July 2012 suicide bomb attack on a bus at Burgas airport in Bulgaria, which killed the driver and five Israeli passengers and was widely attributed to Hizballah;

(c) the October 2012 grenade attack on a kosher grocery in Paris, injuring one person and prompting a fatal shooting by police and a series of arrests of French-born Muslims, most of them converts.

(d) the conviction in November 2012 of Fouad Belkacem, leader of Sharia4Belgium, for incitement to violence.

Each of the first three was principally targeted on Jews.

2.59. Arrests related to "*religiously inspired terrorism*", in Europol's phrase, increased from 122 to 159 in 2012, almost doubling in France from 46 to 91.[38] 17 people died as a result of terrorist attacks in the EU, the majority of them in the French and Bulgarian attacks referred to at 2.58, above.

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36 *The Terrorism Acts in 2011*, June 2012, 2.7(b), referring to *TE-SAT 2012* chapter 5.

37 According to Europol, 219 terrorist attacks were carried out in seven EU Member States during 2012, some 80% of them relating to separatist terrorism in France and Spain: *TE-SAT 2013 – EU terrorism situation and trend report,* April 2013, 1.1.

38 The figures are, however, scarcely reliable. No arrests (or rather charges, which are treated as the UK equivalent of arrests in other Member States) for "*religiously-inspired terrorism*" were recorded in the United Kingdom during 2012 (*TE-SAT 2013*, Figure 5). That is presumably because, unlike the other Member States (e.g. Ireland, which recorded 66 "*separatist"* terrorist arrests in 2012), the UK does not categorise its arrests into "*religiously inspired*", "*left-wing*", "*right-wing*" and "*separatist*": *ibid.*, Annex 2.

2.60. Al-Qaida related terrorism has threatened a number of European countries, including Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain and Sweden. Europe remains both a target for attack and a potential recruiting ground for Islamist extremists. The most deadly single al-Qaida inspired attack in Europe remains the Madrid train bombing of 2004.

2.61. All this said, however, the threat to the United Kingdom – as measured by the number of serious plots since 2001 and over the past three years – is unfortunately more serious than the threat to other parts of Europe. That deaths of UK nationals through terrorism have not been more numerous owes something to luck (the technical failures that afflicted the shoe bomber, the 21/7 bombers and the underpants bomber), and a great deal to the capabilities of the intelligence agencies and police.

Al-Qaida related terrorism – conclusion

2.62. Terrorists cannot be as neatly categorised as a survey such as this might suggest; and in terrorism as in other things, the direction of travel is rarely uniform. That said, the nature of the al-Qaida related threat has certainly evolved since the late 1990s. The experience of the past three years indicates that:

(a) The more complex plots directed from the FATA are less numerous than was the case 10 years ago, but al-Qaida core retains a role in providing training and sanction for UK residents to self-organise into groups and carry out attack planning.

(b) Jihadi conflicts have the potential to radicalise individuals in the UK, and for some individuals who return from fighting abroad to pose a direct threat to the UK.

(c) AQAP retains the capability to mount sophisticated attacks on airlines, and to motivate independent attacks through its media, in particular *Inspire* magazine.

(d) There is a high risk to UK citizens and interests in the jihadi conflict zones of North, West and East Africa.

2.63. The will and capacity to commit 7/7 style atrocities still exist in the United Kingdom, as demonstrated recently by the Birmingham rucksack bomb plot. However the bombers' chances of success have diminished with the marked improvement in MI5's coverage since 2005.

2.64. Simpler attacks, involving fewer people and less planning, are becoming more common – including against national security targets, as in Northern Ireland – and can be very difficult to detect.

2.65. Jonathan Evans, the recently retired Director General of MI5, was unfortunately speaking the truth when he said during 2012, in a rare public speech, that

> "In back rooms and in cars and on the streets of this country there is no shortage of individuals talking about wanting to mount terrorist attacks here."[39]

There is of course a difference between talk and action – one which prosecutors, judges and juries are sometimes called upon to explore. However, the public evidence of convictions entered in open court is enough to show that Jonathan Evans was also not exaggerating when he said in the context of al-Qaida related terrorism, in the same speech, that "*Britain has experienced a credible terrorist attack about once a year since 9/11*."

Northern Ireland related terrorism

Sources

2.66. I have had the benefit of a series of briefings during 2012 and 2013 with the NIO, MI5 and the PSNI about the security situation in Northern Ireland. The Independent Monitoring Commission **[IMC]**, which used to produce detailed open-source accounts of the security situation in Northern Ireland, was wound up in 2011. There remain however some useful sources of information, open to all. These include:

(a) The twice-yearly ***written ministerial statements*** laid before Parliament by the Secretary of State for Northern Ireland, intended as partial compensation for the demise of the IMC. Copies of the first three such statements, delivered in February 2012, August 2012 and February 2013, are at Annex 3 to this Report.

(b) The annual reports of the ***Independent Reviewer under the Justice and Security (Northern Ireland) Act 2007*** **[JS(NI)A 2007]**, covering the year to 31 July and available from www.nio.gov.uk.[40] Robert Whalley CB will

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39 "*The Olympics and Beyond*", Mansion House lecture delivered on 25 June 2012, available from www.mi5.gov.uk, para 11. For what may have been an example of such a case, see my report of May 2011 into *Operation GIRD*.

40 Whilst Mr Whalley's responsibilities do not extend to the Terrorism Acts, his reports are highly relevant because of the overlap between terrorist and public order offences – and policing – in Northern Ireland. By arrangement with successive reviewers, stop and search powers under the Terrorism Acts in Northern Ireland have traditionally been dealt with as part of Mr Whalley's review of stop and search powers under the JSA. However in 2012, the stop and search power

produce his sixth and final report under the JS(NI)A 2007 in November 2013, before handing over to a successor. His detailed and long-standing knowledge of Northern Ireland, his patient and thorough approach and the time he has been prepared to spend observing matters on the ground have brought him widespread and deserved respect. I have had the benefit of Mr Whalley's company on joint observational tours of Belfast and at joint meetings with the PSNI, MI5, the Police Ombudsman, the Parades Commission, the Lord Chief Justice of Northern Ireland and the Northern Ireland Policing Board **[NIPB]**. We also gave evidence together, in August 2012 and again in February 2013, to the Human Rights and Professional Standards Committee of the NIPB in Belfast.

(c) The ***Human Rights Annual Report 2012***, published by the NIPB in February 2013, and monitoring the performance of the PSNI in complying with the Human Rights Act 1998.

(d) The second ***Northern Ireland Peace Monitoring Report*** of the Northern Ireland Community Relations Council, written by Paul Nolan and published in February 2013. Though not exclusively focussed on terrorism and based chiefly on published statistics, this comprehensive report on all aspects of life in Northern Ireland answers many of the questions posed by newcomers, ranging from the number of "*peace walls*" that still divide communities from each other (many added in the 10 years before 2008, but none since), to perceptions of policing (a steady improvement since 2001) and levels of crime generally (decreasing, and far lower than in England and Wales).

(e) The ***statistical publications*** *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, published by the NIO in October 2012, and *Police Recorded Security Situation Statistics*, *Annual Report 2012-13*, published by the PSNI in May 2013.

Dissident republican threat in Northern Ireland

2.67. The official threat from Northern Ireland-related terrorism in Northern Ireland remained throughout 2012 at SEVERE (an attack is highly likely). The appropriateness of that classification is shown by the substantial number of dissident republican attacks that were actually launched during the year, as well as by the considerably greater number, known to the police and to MI5, that were abandoned or thwarted. Thus:

(a) There were 24 attacks on national security targets in 2012 (as against 26 in 2011 and 40 in 2010).

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under TA 2000 section 47A, which replaced the former section 44, was not used in Northern Ireland or indeed elsewhere.

(b) A majority of those attacks involved the use of crude, but potentially lethal, pipe bombs; others incorporated more sophisticated devices.

2.68. Dissident republican activity levels fluctuated throughout the year, and each group was disrupted by security force activity at some point. In the first seven months of the year alone, as recounted in Robert Whalley's annual report, a sample of the more serious incidents included:

- two explosions in Derry-Londonderry in January, near a government office and a tourist centre;
- four pipe bombs found in a box in Portadown in January;
- a bomb found in Derry-Londonderry in April near the family home of a serving police officer;
- a bomb containing over 600lb of explosive left in a white van in Newry in April;
- bombs left in a residential road in Derry-Londonderry in May, and made safe after the evacuation of residents;
- seven pipe bombs found in Dungannon in May, leading to the arrest of two men;
- a hand-held explosive device thrown at a police vehicle in Derry-Londonderry in June, claimed by Republican Action Against Drugs **[RAAD]**; and
- shots fired at police in Ardoyne and in Belfast during July.

2.69. The last few months of 2012 saw an increase in dissident republican activity and in the lethality and sophistication of attack planning. The most significant factor in this was the establishment, announced in August, of a new grouping, formed by a merger between the Real IRA **[RIRA]**, RAAD and a network of unaffiliated dissident republicans.[41] This is the first time that dissident republican groups have merged, and it has enabled a small number of experienced former Provisional IRA **[PIRA]** members to assume key positions in a large dissident republican group with a particularly strong presence in Derry-Londonderry.

2.70. November saw the fatal shooting of prison officer David Black as he drove along the motorway outside Lisburn: one person has been charged in connection with the murder. This was the first killing of a prison officer for almost 20 years.

[41] The merger did not include two other well-known dissident republican groups: Continuity IRA and Óglaigh na hÉireann.

2.71. The numbers of bombings, shootings and deaths attributable to the security situation are far lower than they were 10 years ago,[42] let alone during the thirty years prior to the Good Friday Agreement of 1998.[43] A succession of high-profile events during 2012 (the torch relay and Olympic Games, the visit of HM the Queen and the 100th anniversary of the signing of the Ulster Covenant) passed without any serious attempt to mount attacks or cause disruption. However:

(a) The murder of David Black perpetuated the sad record that there have been deaths attributable to the security situation in Northern Ireland in every year since 1969.[44]

(b) Some attacks were unsuccessful only because of the incompetence or error of the attackers, and many others were thwarted as a result of the sterling efforts of the security forces, in particular the PSNI.

(c) The sheer number of finds and incidents involving bombs, firearms and ammunition is in vivid contrast to the situation in Great Britain. One Northern Ireland source noted that the June 2012 discovery in England of a vehicle containing firearms and a home-made IED[45] resulted in the summoning of COBRA, the Cabinet emergency committee; whereas not dissimilar incidents are still, unfortunately, relatively common in Northern Ireland and attract very little publicity outside it.

2.72. In summary, violent dissident republican activity continues to command no mainstream political support, and is greatly reduced in volume since the five years after the Good Friday Agreement of 1998. The unpalatable truth is however that bombings, shootings and killings continue to be an occasional feature of life in parts of Northern Ireland; and that many more would certainly have occurred in 2012 had it not been for good intelligence and policing work.

Loyalist threat

2.73. There was considerable discontent within loyalism during 2012, culminating in the protests and disorder which followed the decision by Belfast City Council in early 2013 to limit the number of days on which the Union flag is flown at Belfast City Hall. Loyalist groups also remained heavily engaged in organised crime.

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42 17 deaths, 358 shooting incidents and 318 bombing incidents were attributed to the security situation in 2001/02. The figures for 2011/12 were 1, 67 and 56 respectively. The trend since 1994 is helpfully illustrated in P.Nolan, *Northern Ireland Peace Monitoring Report*, March 2013, chart 65.

43 *Ibid.*, p. 57. As Paul Nolan remarks, the combined totals for deaths, bombings, shootings and assaults in 2012 could be fitted into one day in the peak year of the Troubles, 1972, when the death rate was over 500.

44 PSNI, *Police Recorded Security Situation Statistics* 2012/13, 9 May 2013. As noted in my 2011 report, 2.15-2.17, deaths were running at over 200 per year in the early 1970s, and at more than 50 per year as recently as the early 1990s.

45 2.18-2.19, above.

2.74. There is however relatively little loyalist terrorism. No killings, seven bombings and 10 shootings were attributed to loyalists during 2012, together with a number of paramilitary assaults, almost always inflicted within their own communities.

Northern Ireland-related terrorist threat to Great Britain

2.75. The threat to Great Britain from Northern Ireland-related terrorism was reduced from SUBSTANTIAL (an attack is a strong possibility) to MODERATE (an attack is possible but not likely) on 24 October 2012, presumably on the basis that no credible evidence of attack planning in Great Britain was visible. Even during the Olympic Games, there was no repetition of the hoax bomb threat that brought part of central London to a halt during the Queen's visit to Ireland in May 2011.

Extreme right wing terrorism

2.76. The extreme right wing **[XRW]** in the United Kingdom remains fragmented, with no unifying ideology or set of principles. It embraces some small groups and factions (Racial Volunteer Force), music networks (Blood & Honour), some opportunistic and racially motivated street violence (e.g. counter-demonstrations to Muslims against Crusades) and a small number of survivalists.

2.77. There are also lone actors: Martin Counsell was convicted under the Explosives Act in 2012 after constructing IEDs to defend his property; and another man was found dead in his house surrounded by firearms, poisons and viable IEDs. Racial motives were suspected, but in neither case was it established that the man was ideologically driven. Political views are often overlaid with mental health issues, personality disorder, criminality and social isolation: this should dictate caution in the use of terrorism-specific powers.

2.78. Overseas links are limited, as is co-operation between XRW organisations in the United Kingdom. No XRW groups are currently (or have ever been) proscribed.

2.79. The arrests during 2012 of six Islamists who had plotted to attack an EDL demonstration (2.18-2.19, above) did not produce a violent reaction from the EDL or other XRW groups. Nor were any other terrorist incidents or major terrorist threats in 2012 attributed to XRW groups or lone actors. There were however five arrests under terrorism legislation in relation to XRW activity and one 15-year-old, Gary Walton, was charged and convicted of two TA 2000 section 58 offences in 2012.

2.80. The 77 killings perpetrated by Anders Breivik in Norway on 22 July 2011 demonstrate that even a lone actor can, if sufficiently organised, take huge numbers of lives. As of 31 December 2012, 22 "*domestic extremists or*

separatists" were imprisoned in Great Britain for domestic terrorist offences.[46] These include the lone actor David Copeland, who perpetrated a number of nail bomb attacks in 1999, and Ian Davison, sentenced with his son Nicky in 2010 for preparing acts of terrorism and making a chemical weapon (ricin) capable of killing nine people.

2.81. Following the Breivik incident, MI5 in conjunction with the police National Domestic Extremist Unit **[NDEU]** has assessed and prioritised the XRW threat in such a way as to improve their understanding of it.

Other extremist groups

2.82. Though many other extremist groups exist in the United Kingdom, none appear to have used violence in 2012 to achieve their goals. There was therefore no cause to use the "*terrorist*" label in relation to animal rights groups, environmental protest groups, extreme left wing groups, anarchist groups or nationalist groups.

Conclusion

2.83. The terrorist enjoys not only notoriety, but in some circles glamour of a sort that mere organised crime or robbery could never confer. By spreading destruction and fear, he may hope for rewards in this world, or the next. But he is not the only person to have an interest in magnifying the threat. Terrorism swells the budgets of military, security, intelligence and police forces, universities, publishers and film studios. It provides the ideal reason – or excuse – for the introduction of repressive laws. It makes the careers of politicians, police officers, civil servants, academics, analysts, lawyers and demagogues. It sells security fences, armoured cars and CCTV cameras; and it attracts readers and viewers to the media, to the mutual benefit of the terrorist seeking publicity, the expert called upon to opine and the media seeking an audience.

2.84. When so many people have a vested interest (whether they acknowledge it or not) in the seriousness of the threat, one must remain constantly open to the possibility that the threat is being exaggerated. The number of deaths caused by terrorism, in the United Kingdom and generally in the West, is small – indeed statistically almost insignificant.[47] If perception becomes detached from reality, the consequence will be unnecessary fears, unnecessary powers and the allocation of excessive resources to the counter-terrorism machine.

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46 "Operation of police powers under the Terrorism Act 2000 and subsequent legislation, quarterly update to 31 December 2012" and accompanying tables, available from www.gov.uk since June 2013.

47 2012 TA report, 2.29.

2.85. It is for society as a whole to judge whether resources are better devoted to countering terrorism or other contemporary scourges, be they the trafficking of children, deaths through medical negligence or – in the national security space – nuclear proliferation and cyber-espionage. Where terrorism is concerned, it can be argued that the public appetite for risk has declined appreciably since the days when explosions in London were accepted as part of life.[48] Decreasing tolerance of terrorism is in many ways a positive thing: but it has inevitable consequences on how public money is spent.

2.86. The terrorist threat is far from negligible. Comforting as it may be to dismiss as mentally ill the perpetrators of religiously-inspired (or religiously-badged) violence, the evil inherent in such acts needs to be honestly recognised. In 2012 alone, al-Qaida related plots were thwarted which might have succeeded in blowing up an airliner in flight, with incalculable social and economic consequences, and in killing and maiming hundreds of people in an English city. Even the smaller-scale home-grown incidents that now seem more prevalent have the capacity to spread bigotry and hatred and to poison community relations in a way that a gangland killing or a domestic feud cannot. Northern Ireland must live with the certainty that were it not for a determined and well-resourced police and security response, many more people would be suffering violent deaths and injuries in their homes, cars and businesses, with who knows what political consequence.

2.87. Keeping one's nerve is at a premium. Over-reaction, which plays into the terrorists' hands, is an ever-present possibility. The Terrorism Acts and those who enforce them can treat only the symptoms, not the causes, of terrorist violence. The destructive and corrosive nature of those symptoms cannot however be ignored. Though there is scope for legitimate argument as to their extent, the case for at least some special powers seems to me to be amply made out.

2.88. In the remainder of this report, I examine how the resources and Terrorism Act powers assigned to counter-terrorism were used during the year under review, and comment on the extent to which this use was appropriate to meet the threat that I have described.

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[48] As Jonathan Evans of MI5 put it in a 2010 speech (available from www.mi5.gov.uk): "*While it has always been the case that the authorities made every effort to prevent terrorist attacks, it used to be accepted as part of everyday life that sometimes the terrorists would get lucky and there would be an attack. In recent years we appear increasingly to have imported from the American media the assumption that terrorism is 100% preventable and that any incident that is not prevented is seen as a culpable government failure. This is a nonsensical way to consider terrorist risk and only plays into the hands of the terrorists themselves.*"

3. THE COUNTER-TERRORISM MACHINE

The CONTEST strategy

3.1. CONTEST is the name given to the Government's strategy for protecting the United Kingdom and its overseas interests from al-Qaida inspired terrorism. The strategy was formulated in 2003 and last reviewed in July 2011. The latest annual report on CONTEST was published in March 2013.[49]

3.2. CONTEST has four strands: *Pursue* (to stop terrorist attacks); *Prevent* (to stop people from becoming terrorists or supporting terrorism); *Protect* (to strengthen protection against a terrorist attack); and *Prepare* (to mitigate the impact of a terrorist attack). That categorisation is now well-established, and inspired the EU's own Counter-Terrorist Strategy of 2005.

3.3. The *Prevent* strategy, perennially controversial, falls outside the scope of this report but is being further reviewed following the Woolwich murder of May 2013.

Organisation

3.4. The Government's counter-terrorism resources have been transformed in scale and in organisational nature, in particular since 2005 when the 7/7 bombings and the failed attacks of 21/7 made it plain that UK targets were threatened at least as much by home-grown terrorists as by those from abroad. Their principal components, described in more detail in my 2012 TA report, are:

(a) The Office for Security and Counter-Terrorism **[OSCT]**, an executive directorate of the Home Office with direct responsibility for some aspects of counter-terrorist strategy and a co-ordinating role in relation to others. OSCT was formed in 2007 to replace the Counter-Terrorism and Intelligence Directorate, and has a staff of around 500.

(b) The three civilian security and intelligence agencies: the Security Service **[MI5]**, the Secret Intelligence Service **[SIS]** and the Government Communications Headquarters **[GCHQ]**. Of those it is MI5 which is most responsible for protecting the United Kingdom from threats to national security, including terrorism.

(c) The police Counter-Terrorism Network **[the CT Network]**, which enables assets to be moved around the country in support of the highest priority operations, as directed by the Senior National Coordinator (currently Deputy Assistant Commissioner Stuart Osborne, an officer of the MPS). It comprises:

[49] Cm 8583, covering the period July 2011 to December 2012.

- the SO15 Counter Terrorism Command **[SO15]** of the Metropolitan Police Service **[MPS]**, created in 2006 and based at Scotland Yard under the leadership of Assistant Commissioner Cressida Dick, who is also the national police lead for counter-terrorism;

- four regional police counter-terrorism units **[CTUs]**, based in the North East, North West, West Midlands and South East and run by the forces in whose areas they sit. They accommodate detectives, community contact teams, financial investigators, intelligence analysts, hi-tech investigators, ports officers and officers working closely with MI5; and

- four regional police counter-terrorism intelligence units **[CTIUs]**, based in Wales, the South West, East Midlands and in the Eastern region, managed by the relevant local force and focussing on intelligence rather than the investigation of offences.

The CT Network works in full and active partnership with counter-terrorism policing structures in Scotland and Northern Ireland.

3.5. A National Crime Agency **[NCA]** has been established, and is intended to be fully operational by the end of 2013. The NCA will replace the Serious and Organised Crime Agency **[SOCA]** and will lead police work on serious, organised and complex crime including cyber crime, and border security. Its components will include a Border Policing Command. NCA powers will not apply in full in Northern Ireland.

3.6. It has not yet been decided whether or to what extent the NCA should in the future have a counter-terrorism role. A number of different views on the issue were shared with me during the period under review. I express no opinion, though I emphasised in my 2012 TA report both:

(a) the need for efficient allocation of counter-terrorism resources, geographically and in terms of the potential for officers trained in counter-terrorism to be deployed where necessary to other policing activities, and

(b) the importance of police officers involved in public-facing counter-terrorism work (whether a house raid or a port stop) understanding the implications of their actions for the communities most affected.

I understand that the issue will be addressed by Ministers once the NCA is fully operational. In the meantime, the NCA will co-operate with the CT Network on issues of common interest including financial crime, border security, work in

prisons, forensics, specialist technical capabilities and corporate support functions.

Personnel and resources

3.7. The increase in the UK's counter-terrorism capacity since 2005 has been huge, and it has been largely protected from recent cuts.

3.8. So far as policing is concerned:

(a) At the end of March 2013 there was a budgeted strength of some 8,500 personnel within the CT network, 6,500 of them police officers and 2,000 civilian members of staff. In addition, some 850 locally funded Special Branch personnel assist in protecting national security and are in some areas managed and tasked by the regional CTU.

(b) Government funding for counter-terrorism policing was around £573 million in 2012/13, slightly down on 2011/12 (£582 million).

3.9. So far as the security and intelligence agencies are concerned:

(a) The consolidated Security and Intelligence Agencies budget is currently £2.1 billion: the division of that budget between agencies is not public information.

(b) MI5 allocated 72% of its resources to "*International Counter-Terrorism*" **[ICT]** during 2011/12; a further 15% was and remains allocated to Northern Ireland.

(c) MI6 allocated 36% of its resources to ICT in 2011/12, while GCHQ devoted about one third of its overall effort to counter-terrorism.

(d) MI5 alone employed some 4,000 people in 2012 (up from below 2,000 in 2001, and 3,800 in 2011). GCHQ employed some 5,300 permanent staff in 2012, and SIS some 3,000.

Policing In Northern Ireland

3.10. Policing and justice (though not national security) were devolved to the Stormont Assembly in 2010. Regular police officers numbered 6,967 in April 2013, little more than half the 13,000 employed when the PSNI was founded in 2001. However very heavy demands are placed on the PSNI as a result of the increase in terrorist activity since 2007, the lengthening of the marching season (which now runs from March to October), the drawdown in military presence and the resources now being devoted to "*policing the past*" (in particular via the Historical Enquiries Team **[HET]**, set up in 2005 to re-examine more than 3000 murders

and now attached to the PSNI).[50] Officers involved in counter-terrorism work are not separately classified in the same way as in Great Britain.

3.11. The Patten Commission's 30% target for Catholic police officers was achieved in 2012 for the second successive year, despite the ending of the 50/50 recruitment quota in 2011. Unease was however repeatedly expressed to me about the rehiring of Protestant former RUC officers, a practice analysed by the Northern Ireland Audit Office in its report of October 2012.[51]

Olympic and Paralympic Games

3.12. The London 2012 Olympic and Paralympic Games was the largest sporting event ever hosted in the UK. It was held against the background of terrorist attacks on previous international sporting events,[52] and at a time when the UK threat level from international terrorism had stood at SUBSTANTIAL or SEVERE for a number of years. The presence of delegations from all over the world, attended by a global media hungry for a security story, were attractions to any group seeking to achieve by violence a global platform for its views. Even an attack on a soft UK target, not directly related to the Olympics, could have attracted huge coverage.

3.13. As I noted approvingly in my 2012 TA report,[53] there was no attempt in the run-up to the Games to supplement the already formidable battery of counter-terrorism powers. Nor was it necessary to invoke the full extent of existing powers (e.g. to authorise no-suspicion searches under TA 2000 section 47A, a power which remained unused during 2012).

3.14. In other respects, however, preparations were meticulous and extensive. Thus:

(a) From the intelligence services came what the Director General of MI5 and the Chief of MI6 described, respectively, as "*a large diversion of resource from other things into the Olympics*" and "*a surge on counter-terrorism work in the six to nine months running up to the Olympics*".[54] The intelligence services were well equipped to cope with the expected upturn in threat intelligence during the Olympic period.

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50 Her Majesty's Inspectorate of Constabulary **[HMIC]** inspected the HET and reported, in some respects critically, on 3 July 2013: http://www.hmic.gov.uk/publication/hmic-inspection-of-the-historical-enquiries-team/.

51 Northern Ireland Audit Office, *The Police Service of Northern Ireland: Use of Agency Staff* (Stationery Office, Belfast, 2012).

52 Notably, the Munich massacre during the 1972 Olympics, the Manchester City Centre bomb during the football tournament EURO 96 and the Atlanta bomb during the Olympics of the same year.

53 2012 TA report, 2.48.

54 Oral evidence reported in the Intelligence Services Committee Annual Report 2010-11, paras 95 and 115.

(b) There were a number of disruptions to extremist networks before the Games, including arrests, some of which attracted media attention. Together with high levels of visible protective security, this may have served as a deterrent to other extremists, as well as removing potential threats to the Games.

(c) Up to 14,500 police officers and 18,000 armed forces personnel (twice the number deployed in Afghanistan) were deployed on Games security duties.

(d) About 1 million background checks were completed for Games Family members, workers, volunteers, athletes, journalists and officials; accreditation was refused in a significant number of cases for national security reasons.

(e) Almost £1 billion was spent on venue security (including infrastructure and personnel), policing and wider Games security costs.[55]

3.15. The planning assumption was that the threat level would stand at SEVERE during the Olympic Games, and it was this that determined the calibration of the security effort. In the event, JTAC kept the threat level from international terrorism at SUBSTANTIAL over the entire period of the Diamond Jubilee, torch relay and Olympics.

3.16. The Director-General of MI5 correctly predicted, in June 2012, that the Games would be untroubled by terrorism.[56] No specific terrorist threat to the Games was ever publicly identified. As the Director-General also noted, however:

> "No doubt some terrorist groups have thought about whether they could pull off an attack."

Based on what I have seen, it is a fair (but unprovable) assumption that an al-Qaida inspired attack on the Olympics would have taken place if it had been thought to be feasible. A disruptive hoax sponsored by dissident republicans, along the lines of the hoax bomb that closed the Mall in May 2011, must also have been a possibility. It is a tribute to the considerable organisation that went into Olympic security, and to the work of the intelligence services and others, that no such incident took place.

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55 CONTEST Annual Report, Cm 8583 (March 2013), 1.17. Final figures will be published later in 2013.

56 "*The Olympics and Beyond*", Mansion House lecture delivered on 25 June 2012, available from www.mi5.gov.uk, para 9: "*A lot of hard work still lies ahead and there is no such thing as guaranteed security. But I think that we shall see a successful and memorable Games this summer in London."*

Co-operation in Europe

3.17. In written evidence given to the House of Lords European Union Committee in December 2012, after my October visit to various European institutions concerned with counter-terrorism,[57] I expressed the following views:

> "I have been struck by the extent to which – contrary to the tendency of the UK media to depict the UK as a marginalised influence in European affairs – the UK is seen within the EU as a key player in the field of police and criminal justice, specifically (though not exclusively) where anti-terrorism is concerned.
>
> For example:
>
> (a) The mandatory requirements concerning jurisdiction and terrorist offences in 2002/475/JHA, as amended by 2008/919/JHA, have the effect of requiring all Member States to introduce laws equivalent to some of those established in the UK's Terrorism Acts 2000 and 2006 (albeit that UK influence was in part diffused via the Council of Europe's 2005 Convention on the Prevention of Terrorism).
>
> (b) The EU Action Plan on combating terrorism, first drafted during the UK presidency in the second half of 2005, is closely modelled on the UK's own CONTEST strategy. An indicator of the high degree of UK influence may be seen from the fact that the four elements of the CONTEST strategy, which governs the entirety of UK counter-terrorism policy (Pursue, Prevent, Protect, Prepare) were translated into four equivalent and only slightly less alliterative EU elements: Pursue, Prevent, Protect and Respond.
>
> (c) The UK was described to me by the Commission as "*very active*" in developing EU policies for counter-radicalisation both internally and in third countries; for aviation security; and for risk and threat analysis. I was told that if the UK supports a Commission initiative, that initiative is immediately given credibility; and that other large Member States have been won over in the EU setting to the UK approach, for example as regards the assessment of risk.
>
> (d) It was explained to me at the Council that the UK has been exceptionally useful in managing the relationship between the USA and the EU. UK influence has been decisive in the negotiation of a number of specific measures, including the EU-US Agreements on Passenger Name Records **[PNR]** and Terrorist Finance Tracking Provisions **[TFTP]**. It has also enabled the EU more effectively to defend its citizens' interests on domestic US issues such as the manner in which the National Defense Authorization Act is interpreted by the US Administration.

[57] See 1.5, above.

(e) Europol, up to 10% of whose cases concern counter-terrorism, has developed under UK leadership as an effective information hub.

This degree of influence of course did not happen by chance, but because of a desire on the part of the UK to encourage other Member States to take the threat of terrorism as seriously as it is taken here. While international terrorism retains a high public profile in countries affected by it in the recent past (e.g. UK, Spain, the Netherlands, Denmark), it is almost invisible as a public concern in some other countries, for example in Eastern Europe. Bilateral contacts continue, and are useful. Equally, however, it is evident that EU mechanisms have been productive both as a method of spreading UK thinking and good practice in the field of counter-terrorism across the continent and beyond, and in defending the interests of the UK and other Member States in dealings with third countries."

3.18. The occasion for my evidence was an investigation by two sub-committees of the European Union Committee into the United Kingdom's proposed opt-out (under Protocol 36 to the Lisbon Treaty) from some 130 EU police and criminal justice measures which were adopted before 2009. Any opt-out would, it is envisaged, be accompanied by a list of measures into which the United Kingdom would seek to opt back in. That list had not however been produced, at the time this report went to press.

3.19. In its own written and oral evidence, ACPO identified 13 measures that, in the event of an opt-out, they considered it "*vital that we opt back into*". These included above all the European Arrest Warrant, but also the Schengen Information System, Europol, Eurojust and the Joint Investigation Teams that investigate crime with a cross-border dimension. Several of the examples cited by ACPO for the usefulness of these measures concerned counter-terrorism.

3.20. The Committee reported in April 2013, concluding:

"that the Government have not made a convincing case for exercising the opt-out, and that opting out would have significant, adverse negative repercussions for the internal security of the UK and the administration of criminal justice in the UK, as well as reducing its influence over this area of EU policy."

The measures from which it is proposed to opt out apply, to a large extent, across the field of criminal justice. The Committee accepted however that the fight against terrorism was one of the "*compelling reasons of national interest*" for the United Kingdom to remain a full participant in the most significant measures and agencies concerned. The point was also made that many of the measures were interconnected, and more effective when used as a package.

3.21. My concern as Independent Reviewer is limited to the operational efficacy of UK counter-terrorism law. I take very seriously the view of the police that that this is enhanced by such measures as the European Arrest Warrant (which famously resulted in the rapid return from Italy of Hussain Osman, one of the 21/7 bombers, to face trial in the United Kingdom where he was convicted and given a minimum sentence of 40 years' imprisonment) and by systems for the sharing of information across borders. Their view is not in the least surprising, for it seems axiomatic that as criminals operate with increasing ease across internal European frontiers, so law enforcement needs to improve its ability to do the same.

3.22. I have also been struck by the extent (summarised in my evidence) to which the United Kingdom is viewed within the EU as a leader in terms of how to address terrorism. Not only the Terrorism Acts but the whole CONTEST strategy have been highly influential: something which can only be of value to the United Kingdom as well as to other Member States. It might be considered unfortunate if that influence and goodwill were to be abandoned or diminished.

3.23. Further comment would be premature, given that this report goes to press before specific plans have been spelled out. Nor is it any part of my function to engage in a political debate. I shall however continue to monitor, with the help of the police, the operational implications of the proposed opt-out for counter-terrorism.

4. DEFINITION OF TERRORISM

Introduction

4.1. I have commented on the TA 2000 definition of terrorism both in previous reports[58] and in other fora.[59] Though the United Nations required all States in the days after 9/11 to "*take the necessary steps to prevent the commission of terrorist acts*",[60] there remains no agreed international concept of terrorism.[61] In those circumstances the UK's definition, based on a recommendation by Lord Lloyd who was in turn inspired by an FBI working document, has strongly influenced the formulations of others, particularly in the Commonwealth[62] but also at the level of the European Union.[63]

4.2. There are three cumulative elements to the UK's current definition:

(a) the ***actions*** (or threats of actions) that constitute terrorism, which encompass serious violence against a person; serious damage to property; and actions which endanger life, create a serious risk to health or safety, or are designed seriously to interfere with or seriously to disrupt an electronic system;[64]

(b) the ***target*** to which those acts must be directed: they must be designed to *influence* a government or international organisation, or to *intimidate* the public or a section or the public;[65] and

(c) the ***motive*** that must be present: advancing a political, religious, racial or ideological cause.[66]

The second of those elements (the target requirement) is a less effective filter than it might appear: "*the government*" means the government of any country in

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58 2011 TA report, chapter 3; 2012 TA report, chapter 3.

59 D. Anderson, *The Meaning of Terrorism*, Clifford Chance/University of Essex lecture, available from my website and published after amendment as "Shielding the compass: how to fight terrorism without defeating the law" [2013] 3 EHRLR 233-246.

60 UN Security Council Resolution No. 1373 of 28 September 2001.

61 Attempts since 1996 to draft a comprehensive Convention on Terrorism have foundered on whether to acknowledge state terrorism and whether national separatist movements should be exempted from the definition. The Special Tribunal for Lebanon identified in 2011 what it considered to be a customary international law crime of transnational terrorism, but its conclusions have been highly controversial.

62 Anti-Terrorism Act 2001, Criminal Code s 83.01(1) (Canada); Security Legislation Amendment (Terrorism) Act 2002,Criminal Division 100 (Australia); Terrorism Suppression Act 2002 (New Zealand). A useful and compendious account of these and other English-language definitions of terrorism is K. Hardy and G. Williams, "What is 'terrorism'? Assessing domestic legal definitions" (2011) 16 UCLA J. Int'l & For. Aff. 77-162.

63 Council Framework Decision on combating terrorism, 2002/475/JHA.

64 TA 2000 sections 1(1)(a), 1(2).

65 TA 2000 section 1(1)(b).

66 TA 2000 section 1(1)(c).

the world;[67] and the target requirement need not be made out at all when the use or threat of action involves the use of firearms or explosives.[68]

4.3. The TA 2000 definition is an easy target for criticism. In particular:

(a) It is longer and more complex than its predecessor.[69]

(b) Its international reach renders it remarkably broad – absurdly so in some cases.[70]

(c) The effect of that breadth is to grant unusually wide discretions to all those concerned with the application of the counter-terrorism law, from Ministers exercising their power to impose executive orders to police officers deciding whom to arrest or to stop at a port and prosecutors deciding whom to charge.

(d) Those discretions become wider still when conduct ancillary in only the broadest sense to terrorism is criminalised,[71] and when dubious expansionary phrases such as "*terrorism-related*" and "*terrorist or extremist*" are allowed on to the statute book or into the statistics.[72]

Those criticisms are only partly blunted by my own observation that the wide discretions appear for the most part to be responsibly exercised, and by the general perception, endorsed by Lord Carlile in his essential report on the subject, that the UK definition is "*useful and broadly fit for purpose*".[73]

4.4. More fundamentally, it has been questioned:

(a) whether a single definition of terrorism is even appropriate for all the various purposes to which it is currently applied; and

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67 TA 2000 section 1(4).

68 TA 2000 section 1(3).

69 Terrorism was defined in the Prevention of Terrorism (Temporary Provisions) Act 1989 as " *... the use of violence for political ends, and includes the use of violence for the purpose of putting the public or any section of the public into fear*".

70 Particularly striking is its indiscriminate criminalisation of those attacking "*countries which are governed by tyrants and dictators*" (*R v F* [2007] EWCA Crim 243, [32]) – including, subject possibly to *Gul*, below, UN-sanctioned use of force against military targets.

71 For example, "*acts preparatory to terrorism*" (TA 2006, section 5) and failing to disclose information which might be of material assistance in preventing the commission by another person of an act of terrorism (TA 2000, section 38B).

72 See, for example, sections 3(1) and 4 of the Terrorism Prevention and Investigation Measures Act 2011 **[TPIMA 2011]**. As detailed in my report *TPIMs in 2012*, March 2013, fn 38, "*terrorism-related activity*" sufficient to justify the imposition of a TPIM notice – a restrictive executive order – includes *conduct* which gives *support* to individuals who are *believed* to be *encouraging* the *preparation* of acts of terrorism. We are at many removes, here, from the man with the bomb. See also (8.6, below) the statistical concept, unique to Great Britain, of the "*terrorism-related arrest*": in 2012, 80% of such arrests were made under non-TA powers, and the majority of resultant charges were for offences unrelated to terrorism. A further example is the use of phrases such as "*terrorist or extremist*" in relation to prisoners: 11.19-11.21, below.

73 *The Definition of Terrorism* (Cm 7052, 2007) para 86(4).

(b) whether the definition might be more soundly based on a "*scheduled offence approach*" akin to that used in some other European countries and in Council of Europe Conventions.[74]

These ideas draw force from the view (which I unhesitatingly share) that terrorism is first and foremost crime; and that if special legal rules are to be devised in relation to it, they should be limited in their application, and justified on the basis of operational necessity.

4.5. One can always tinker: but to revisit from first principles the definition of terrorism would require a root-and-branch review of the entire edifice of anti-terrorism law, based on a clear-headed assessment of why and to what extent it is operationally necessary to supplement established criminal laws and procedures. I would welcome such an exercise, as I made clear in my 2011 TA report.[75] Such a formidable undertaking would, however, go well beyond the scope of an annual report such as this one into the operation of existing laws.

4.6. Accordingly, this chapter does no more than discuss the principal developments since my 2012 TA report that directly concern the current definition of terrorism, and to float a few ideas for change. The developments relate in particular to two issues: application to armed conflict, and the motive requirement.

Armed conflict

4.7. The current definition of terrorism contains no express exemption for acts carried out overseas that constitute lawful hostilities under international humanitarian law. One result (subject to the possible intervention of the Supreme Court) has been to criminalise Mohammed Gul for posting videos on YouTube showing attacks on coalition forces in Iraq and Afghanistan.[76] Other consequences are the indiscriminate characterisation as "*terrorism"* of nationalist and separatist acts of violence, even in the context of a civil war,[77] and notionally at least, the potential application of the Terrorism Acts even to UK forces engaged in conflicts overseas.[78]

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74 C. Walker, *Terrorism and the law* (OUP 2011), 1.114, 1.140-1.145 and 1.154.

75 2011 TA Report, 11.8.

76 *R v Mohammed Gul* [2012] EWCA 280: see further my 2012 TA report at 3.9-3.13, and below.

77 A result deprecated by Pill LJ in *SSHD v DD (Afghanistan)* [2010] EWCA Civ 1407, [55].

78 The issue arises only in relation to acts overseas: it is inconceivable that the law will or should accept any claim to legitimacy in international law for attacking soldiers or police within the UK, though self-defence (as was argued in *R v Kamel Bourgass* [2005] EWCA Crim 1943) remains possible.

4.8. Two reports addressing this anomaly (which exists also in Australian law, though not in the laws of Canada,[79] South Africa[80] or some European countries[81]) have recently been published in Australia. These are:

(a) the second annual report of the Independent National Security Legislation Monitor, Bret Walker SC **[the INSLM report]**, submitted on 20 December 2012 but published by the Government only on 14 May 2013;[82] and

(b) a report prepared for the Council of Australian Governments by a Counter-Terrorism Review Committee under the chairmanship of Hon. Anthony Whealy QC, an retired judge from New South Wales with extensive experience of anti-terrorism law **[the COAG report]**, finalised on 1 March 2013 and also published on 14 May.[83]

Both reports recommend that Australian law be changed so as to provide that the relevant parts of the Criminal Code, as in Canada, do not apply to acts committed by parties regulated by the law of armed conflict.[84] The COAG report made a further specific recommendation: that consideration be given to excluding acts done by a person in the course of service with the Australian armed forces.[85]

4.9. I have considerable sympathy for the views expressed in both expert reports, which are readily transferrable to the United Kingdom context. The issue is, however, currently before the UK courts as a matter of statutory interpretation. The Supreme Court in 2012 gave permission to Mohammed Gul to appeal on the following point of law of general public importance:

> **"***Does the definition of terrorism in section 1 of the Terrorism Act 2000 operate so as to include within its scope any or all military attacks by a non-state armed group against any or all state or inter-governmental organisation ("IGO") armed forces in the context of a non-international armed conflict?*"

The case was argued in June 2013, and judgment is currently awaited. In the circumstances, and pending clarification of the proper interpretation of the UK's

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79 The Canadian Supreme Court refused to apply the exemption for acts committed during an armed conflict in accordance with international law to the facts before it in *R v Khawaja* 2012 SCC 69, [95]-[103].

80 Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004 (no. 33), section 1(4), which contains a notably wide exemption.

81 I am indebted to Professor Clive Walker for the examples of Austria (ÖstGB s.278(c)(3)) and Belgium (Criminal Code art. 141*bis*, inserted by Loi 2003-12-19/34, Art 8).

82 http://www.dpmc.gov.au/inslm/docs/INSLM_Annual_Report_20121220.pdf

83 http://www.coagctreview.gov.au/Report/Pages/default.aspx

84 INSLM report, pp. 122-124; COAG report, paras 41-44.

definition, I have taken the view that it would be premature to make any recommendation for change.

Motive requirement

4.10. One of the classic set-piece debates over the definition of terrorism concerns the issue of whether it is desirable to require, as an ingredient of the definition, that the relevant action or threat should be made with a particular motive such as, in the words of TA 2000, "*the purpose of advancing a political, religious, racial or ideological cause*".[86] Such a motive requirement is present in the Canadian, Australian and New Zealand definitions, and survived challenge in the Canadian Supreme Court during the year under review.[87] It is absent, however, from many other definitions of terrorism, including those in the UN sectoral treaties on terrorism and in Security Council Resolution 1566/2004.

4.11. The arguments for and against the motive requirement are well-rehearsed and, to my mind at least, finely balanced. Their respective academic champions include, most prominently, Professor Ben Saul of Sydney and Professor Kent Roach of Toronto.[88]

4.12. The two Australian reviews published in May 2013 took opposite positions on the issue of whether to retain the requirement of "*intention of advancing a political, religious or ideological cause*". Thus:

(a) The COAG report (following Professor Saul) was "*firmly of the view*" that the motive requirement should be retained, citing its function in ensuring that anti-terrorism law applied only to a fairly narrow range of circumstances, and dismissing the idea that the reference to religious motivation casts an inappropriate emphasis upon proper religious beliefs or activities.[89]

(b) The INLSM report (following Professor Roach) recommended its abolition, noting the common law principle that motive is a largely irrelevant consideration for the criminality of an act, and arguing that "[t]he *requirement*

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86 The word "*racial*" was added at the suggestion of Lord Carlile, in the light of what he described as "*increasing debate in Western Europe about ethnic and religious customs (including modes of dress)*": *The Definition of Terrorism* (2007), paras 66 and 86(12).

87 *R v Khawaja* 2012 SCC 69, 14 December 2012. The appellants argued (successfully before the trial judge but unsuccessfully before the Court of Appeal and Supreme Court) that the "*motive clause*" was unconstitutional because it had the effect of chilling the exercise of freedom of expression, religion and association, and because it would legitimise law enforcement aimed at scrutinising individuals based on their religious, political or ideological beliefs.

88 See, for example, B. Saul, "The curious element of motive in definitions of terrorism" and K. Roach, "The case for defining terrorism with restraint and without reference to political or religious motives", both in A. Lynch et al., *Law and Liberty in the War on Terror* (Federation Press, Sydney, 2007).

89 COAG report, paras 30 and 32-34.

to prove religious motive in terrorism offences comes too close to pursuing a case against a religion", which could in turn lead to victimisation and even to the achievement of "*martyr status*".[90]

4.13. As to the last point, I would comment from the United Kingdom perspective that evidence of religious motivation will often emerge as a matter of course during terrorism trials (e.g. from suicide videos): but that no case has come to my attention in which a religion could be said to have been pursued, let alone a case in which a defendant has been able to turn that to his advantage by portraying himself in any credible manner as a victim of religious persecution or a martyr.[91] That is partly because the political motivation of acts tried as terrorism is generally obvious, making it unnecessary to probe the issue of religious motivation, and partly because of the scrupulous care taken by all concerned in the trial process to emphasise that terrorist acts, whatever their purported justification, have nothing to do with the peaceful practice of religion.

4.14. The INLSM's concerns about the showcasing of religion are however entirely understandable: and were they to be replicated in the United Kingdom, a possible middle course would be to retain the motive requirement but restrict it to "*political*" motives. In common with both the INLSM and my special adviser, Professor Clive Walker, I doubt whether the additional categories are necessary.[92] A more cautious view was however taken in the reports of Lord Lloyd[93] and Lord Carlile;[94] and since the INLSM's concerns do not appear so far to have been realised in the United Kingdom, I stop short at this stage of making even this limited recommendation. I propose however to keep it under review, and would welcome any comments.

4.15. Looking at the matter more generally, the strongest argument for abolishing the motive requirement may be considered to be the likely irrelevance of motive to the operational requirements which are the best and perhaps the only justification for terrorism-specific laws and procedures. As I wrote earlier this year:

> "If a mass hostage-taking is on the cards, what matters from an operational point of view is what the perpetrators plan to do, and what is necessary to stop them. Whether their motives are personal, financial or political; whether they seek to influence the government or to intimidate people whom they have not captured; are questions which may be of significance to their

90 INLSM report, pp.115-120.

91 That conclusion is reinforced by the rejection of the Charter challenges in *Khawaja*: fn 89, above.

92 INLSM Report, p. 111; C. Walker, *Terrorism and the law* (OUP, 2011) 1.121.

93 *Inquiry into Legislation against Terrorism* (1996) Cm 3420, 5.22.

94 *The Definition of Terrorism* (2007), paras 51-54.

ultimate sentence, but which scarcely seem to have much bearing on the availability of precursor offences, or of the Terrorism Act arrest power."[95]

4.16. I do not however recommend the abolition of the motive requirement, for the simple reason that in the context at least of the United Kingdom's current definition, it would substantially, unnecessarily and undesirably *broaden* the category of cases that can be characterised as terrorism. Were the motive requirement to be removed:

(a) a gangland stabbing would be terrorism, so long as it could be shown to be designed to intimidate the community from which a rival gang was drawn;[96] and

(b) the shooting of a spouse or the threatening of a burglar with a gun would be terrorism without it even being necessary to establish an intention to influence the government or intimidate the public or a section of the public, since that requirement is not applied to action involving the use of firearms or explosives.[97]

4.17. I do not of course suggest that such incidents *would* be treated as terrorism, whether by police, prosecutors or juries, all of whom are accustomed to displaying good sense in this area: but there can be no advantage in extending still further the notional reach of a legal concept which is already uncomfortably wide.

4.18. To conclude, the removal of the motive requirement could helpfully be revisited in the context of a wholesale consolidation and revision of counter-terrorism law, such as I would hope some day to see: but as a self-standing amendment to the current United Kingdom law, I consider that it would be a mistake. In the interim, there could possibly be value in the more limited amendment suggested at 4.14, above.

Other issues

4.19. A number of other features of the UK definition of terrorism may be considered controversial (though not necessarily wrong), for example:

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95 D. Anderson, "Shielding the Compass: How to Fight Terrorism Without Defeating the Law" [2013] 3 EHRLR 233-246, 243.

96 Compare *The People v Edgar Morales*, No. 186, 11 December 2012, in which the New York Court of Appeals resorted to the implicit (and potentially discriminatory) filter of "*our collective understanding of what constitutes a terrorist act*" in order to avoid characterising as terrorism a gang shooting aimed at intimidating Mexican Americans in the Bronx.

97 TA 2000 section 1(3), an exclusion that could of course itself be revisited.

(a) the relatively low threshold of "*serious violence against a person*", which could be thought insufficient to justify the invocation of special powers designed to deal with plots aimed at the mass killings of civilians;[98]

(b) the potential of "*serious damage to property*" to be a terrorist act, without requiring a likelihood that serious harm or risk to persons will result;[99]

(c) the fact that it is enough for the use or threat of action to be designed to "*influence*" the government (rather than to "*intimidate*" it, as Lord Carlile unsuccessfully recommended);[100] and

(d) the non-application of the target test to actions or threats involving the use of firearms or explosives.[101]

4.20. More broadly, it would be desirable for any list, schedule or statutory instrument identifying countries whose governments are included within or excluded from the application of the Act.[102]

Conclusion

4.21. I make no specific recommendations at this stage for the amendment of the definition of terrorism under TA 2000 section 1. That is because I have identified no urgent need for change, based on my reading and observations; because the opportunity for change will not arise at this stage of the Parliament; and because in at least one important respect, the meaning of the existing definition is currently under consideration by the Supreme Court.

4.22. An examination from first principles of the definition of terrorism would (as I have indicated) take as its starting point a root-and-branch review and consolidation of the entire sprawling edifice of anti-terrorism law, based on a firm and clear-headed assessment of why and to what extent it is necessary to supplement established criminal laws and procedures. At some stage it would be desirable for such a review (which would exceed the solitary resources of the Independent Reviewer) to take place.

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98 Though the assassination of even a single political figure or member of the Royal Family would surely have to be considered an act of terrorism; and the complexity of such an operation, and the threat it would pose to the state itself, could be strongly argued to warrant the use of special powers.

99 Contrast the UN Convention of 1999 on the Suppression of the Financing of Terrorism, which speaks only of "*an act intended to cause death or serious bodily injury*", and the laws of Canada and New Zealand.

100 *The Definition of Terrorism* (Cm 7052, 2007), para 86(11).

101 TA 2000 section 1(3): see also 4.16(b), above.

102 Described by the Court of Appeal as "*striking*": *R v F* [2007] EWCA Crim 246, [27]. Parliament had debated the possibility as the Terrorism Act 2000 became law, but was unable to find an acceptable way of achieving it.

4.23. On the assumption that such a review is not imminent, there are as it seems to me some more self-contained changes that could usefully be considered in the meantime. These are set out at 4.14 and 4.19, above. I am currently inclined to think that the changes identified at 4.19(c) and 4.19(d) would be desirable, and subject to further debate I am minded to recommend them (together, possibly, with the change identified at 4.14) in the future.

4.24. I welcome any comments relevant to the current definition of terrorism, and in particular to the specific matters that I have identified.

5. PROSCRIBED ORGANISATIONS (TA 2000 Part II)

Introduction

5.1. Part II of TA 2000 gives the Home Secretary power to proscribe organisations that she believes to be "*concerned in terrorism*".[103] Proscribed organisations are listed in Schedule 2. The objectives of proscription may be broadly summarised as:

(a) deterring terrorist organisations from operating in the United Kingdom, and disrupting their ability to do so; and

(b) supporting other countries in disrupting terrorist activity, and sending a strong signal across the world that such organisations, and their claims to legitimacy, are rejected.

5.2. Those objectives may be achieved in a number of ways. The proscription of a group is a trigger for support, membership and uniform offences under TA 2000 sections 11-13. The financial resources of the group become terrorist property for the purposes of TA 2000 Part III, and an investigation of those resources is a terrorist investigation for the purposes of Part IV. Proscription by the United Kingdom may form the basis for listing by the EU. Membership of a proscribed organisation may also be a factor relied upon when excluding persons from the United Kingdom on national security grounds.

5.3. Very large numbers of groups worldwide no doubt meet the single statutory criterion for proscription. It is however not desirable or appropriate to proscribe them, for a variety of reasons, for example:

(a) the irrelevance of the group to the UK or UK interests;

(b) the intelligence-gathering burden that would be required in order to justify a proscription;

(c) the risk that proscription may be seen by the group concerned or its adherents as a badge of honour, and thus be counterproductive; and

(d) the collateral damage that can be caused by proscription to innocent members of ethnic communities from which a group derives its support.[104]

5.4. A major exercise of discretion is thus inherent in any decision whether to proscribe. The Home Secretary exercises that discretion by reference to five

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[103] That single threshold demands up-to-date intelligence if proscription is to be justified: but there is no additional threshold of necessity, as in the equivalent tests for TPIMs and asset freezing: 2012 TA report, 4.3.

[104] For examples from the Tamil, Kurdish and Baluch communities see 2012 TA report, 4.41-4.47.

factors (though, as she emphasised in her response of March 2013 to my 2012 TA report, she is not constrained from considering "*other material or broader issues*").[105] As I have previously observed, the fifth of those factors ("*the need to support other members of the international community in the global fight against terrorism*") is of particular importance in practice, as it allows proscription to take place as "*a useful and inexpensive tool of foreign policy*".[106]

5.5. The topic of proscription was dealt with fully in each of my previous annual reports.[107] Rather than repeat that exercise, this report lists the developments in 2012, before returning to the central recommendations of my 2012 TA report – prompted by the phenomenon of so-called "*difficult cases*" – and the Government's response to those recommendations.

Proscribed organisations

5.6. 63 terrorist organisations were proscribed under TA 2000 at the end of 2012. Of those:

(a) 14 are terrorist organisations connected to Northern Ireland, whose proscription is the responsibility of the Secretary of State for Northern Ireland. Proscription was a long-standing feature of the Northern Ireland conflict, and each of the 14 groups was originally proscribed under legislation pre-dating TA 2000.

(b) The other 49 are international terrorist organisations. 39 were placed on Schedule 2 between 2000 and 2005 (together with PMOI, now deproscribed). 10 have been added since, including one in 2010, one in 2011 and two in 2012.

Consideration of proscription issues

5.7. Proscription issues falling within the responsibility of the Home Office continued to be considered during the period under review by the Proscription Review and Recommendation Group **[PRRG]** and the more senior Proscription Working Group **[PWG]**, each of them chaired by OSCT and meeting nine times annually. I outlined the composition and functions of each of those groups – a few of whose meetings I attended during the period under review – in my 2012 TA report.[108]

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105 The five factors are set out in my 2012 TA report at 4.6, and my suggested improvements to them, inspired by Professor Clive Walker, at 4.64.

106 2012 TA report, 4.38.

107 See, in particular, 4.1-4.67 of my 2012 TA report, and the recommendations at 12.7 – 12.12.

108 2012 TA report, 4.12.

5.8. In mid-2013 it was decided to streamline the process by amalgamating the PRRG (by then known as the Proscription Review Group **[PRG]**) and PWG into a single monthly meeting of the new PRG.

5.9. The functions of the new PRG are expressed as being to:

(a) review all proscribed groups annually and recommend to Ministers maintenance of proscription or deproscription;

(b) recommend to Ministers whether or not to proscribe groups brought to PRG's attention, and keep under regular review those groups that do not justify proscription until a formal decision, confirmed by Ministers, is taken to discontinue such reviews;

(c) review all groups that have been deproscribed annually until a formal decision, confirmed by Ministers, is taken to discontinue such reviews;

(d) consider and review the effectiveness of the proscription regime;

(e) agree the annual work plan and review it quarterly or on an ad hoc basis as required;

(f) flag up JTAC reports to Prevent colleagues to consider; and

(g) refer groups to Prevent where the statutory test is not met or proscription is not the best course of action.

5.10. I attended the first and second meetings of the new PRG, in June and July 2013: the operation of the new system will no doubt be reported upon in due course. I am assured by the Treasury that adequate mechanisms exist for considering the option of an asset freeze under TAFA 2010 at the same time as a possible addition or alternative to proscription, even though asset-freezing is a Treasury rather than a Home Office responsibility. It certainly seems sensible that these two options should be considered, whatever the appropriate forum, by the same people at the same time.

5.11. It is for consideration, however, whether more could be done to ensure that a new proscription automatically triggers consideration of whether to seek EU designation on the back of it, whether by an addition to the terms of reference of the PRG or otherwise.

5.12. There is no equivalent procedure in the NIO for the review of existing proscriptions;[109] nor has there been any new proscription or deproscription of an organisation related to Northern Ireland during the life of TA 2000.

New proscriptions

5.13. Groups continued during the period under review to be regularly monitored for possible proscription.

5.14. Echoing the Home Affairs Select Committee, I recommended in my 2012 TA report that the possible proscription of far-right groups should be considered on the same basis as the possible proscription of other UK-based organisations.[110] The assessment of such groups falls outside the remit of JTAC; but the National Domestic Extremism and Disorder Intelligence Unit **[NDEDIU]**, a national policing body funded by the Home Office, has been recently identified as an appropriate body to perform any assessments that may be required. Though no XRW groups are currently proscribed, I am satisfied that the necessary processes exist for the proscription of such groups to be considered on an informed and even-handed basis.

5.15. There were two new proscriptions in 2012:

(a) Indian Mujahideen, an Islamist extremist organisation that has claimed responsibility for a number of fatal attacks in India since 2007, was proscribed in July 2012.[111]

(b) Ansaru, a Boko Haram splinter group suspected of the killing of a British hostage in Nigeria in March 2012, was proscribed in December 2012.[112]

I have read the secret file presented to the Home Secretary on each case, which was full and carefully-prepared. In both cases, the advice of independent counsel had been taken on whether the statutory threshold was met and on which of the discretionary factors was satisfied; and the content of that advice was faithfully conveyed to the Home Secretary.

5.16. In each case the draft order for proscription was debated in each House of Parliament.[113] Neither proposal was controversial, though the debates cannot be said to have been fully informed. In the words of one MP:

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109 Even the IMC, which might be said to have performed some kind of review function, ceased to exist in 2011.

110 2012 TA report, 4.16(c) and 4.62.

111 Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2012.

112 Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2012.

113 Hansard HC 4 Jul vol 547, cols 1020-1027; HL 5 Jul vol 738, cols 892-896; HC 22 Nov vol 553, cols 763-769; HL 22 Nov vol 740, cols 2020-2023.

"Obviously, the Opposition are at a disadvantage in evaluating the evidence against such groups, as we do not have access to the same intelligence data as the Government."[114]

5.17. I have previously suggested that a way be found of giving some parliamentarians (perhaps members of the Intelligence and Security Committee) access to secret information in relation to organisations that it is proposed to proscribe.[115] The potentially serious consequences of proscription for individuals (including individuals who are not members of proscribed organisations), and the fact that it is in practice irreversible, make it all the more important that it should be accompanied by an informed parliamentary debate.

Deproscription

5.18. Once again, no organisation was deproscribed in 2012. The only deproscription in the history of TA 2000 remains that of the People's Mujahideen of Iran **[PMOI]**, which was removed from the list in 2008 as a consequence of the judgments of the Proscribed Organisations Appeal Commission **[POAC]** and the Court of Appeal.[116]

5.19. As the Home Secretary stated in her response of March 2013 to my 2012 TA report, no request for deproscription has been received since 2009. I believe that to be true also in Northern Ireland. In view of the uniformly negative responses to previous requests for deproscription, and the strong criticism of the relevant decision-making processes by the Court of Appeal,[117] that may not be entirely surprising.

5.20. Nonetheless, it remains open to proscribed organisations or to any "*person affected*" to apply for deproscription, without fear of legal consequences. The readiness of the Home Office to initiate deproscription in cases where the statutory test appears not to be satisfied has recently improved, in apparent response to my previous recommendations: see 5.33-5.40, below. Future applications for deproscription will no doubt be fairly considered on their merits. Any organisation that believes itself to have been wrongly proscribed, or any person affected by a proscription, has only to explain why.[118] A decision on such an application must be made within 90 days.

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114 Diana Johnson MP, HC 22 Nov vol 553, cols 763-769.

115 2012 TA Report, 4.52.

116 *SSHD v Lord Alton of Liverpool* [2008] EWCA Civ 443.

117 They were said to have "*signally fallen short of the standards which our public law sets and which those affected by public decisions have come to expect*": *SSHD v Lord Alton of Liverpool* (the PMOI case) [2008] EWCA Civ 443, [57]. I noted in my 2011 TA report (at 4.12) that these processes had improved.

118 The formal requirements are contained in the Proscribed Organisations (Applications for Deproscription) Regulations 2001, SI 2001 No. 107.

Prosecutions

5.21. TA 2000 sections 11-13 criminalise support for and membership of proscribed organisations.

5.22. It is impossible to know the full extent to which those sections are used in Great Britain, since statistics are kept only in relation to the "*principal offence*" charged. It is possible that these offences were charged as subsidiary counts on indictments chiefly concerned with other things. Home Office figures show, however, that nobody was charged under these sections as a principal offence between March 2008 and March 2012,[119] and that nobody has been convicted under one of these sections as a principal offence since March 2009.[120]

5.23. In Northern Ireland, more helpfully, the statistics capture all offences charged under the Terrorism Acts. Four persons were charged in 2011/12 under section 12 (support) and two under section 13 (uniform). Nobody was charged under section 11 (membership), which had accounted for more than 80% of the charges under sections 11-13 in the 10 years to March 2011.

5.24. There was criticism after the Woolwich murder of Private Lee Rigby in May 2013 that insufficient use has been made of existing powers to prosecute members of proscribed organisations.[121] Meetings of the new streamlined Proscription Review Group will routinely seek confirmation that sufficient attention is being paid to securing convictions for proscribed organisation offences.

Select Committee

5.25. The Home Affairs Select Committee considered the issue of proscription as part of its report of January 2012 on the roots of violent radicalisation.[122] Having taken evidence in relation to Hizb-ut-Tahrir in particular, it endorsed the Government's decision in its Review of Counter-Terrorism and Security Powers not to amend the law on proscription in a way which would allow groups currently operating within the law to be banned.[123]

5.26. As noted at fn 133 below, the Committee also endorsed the recommendation in my 2011 TA report that all proscriptions should expire (but be renewable) after a

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119 HOSB 11/12, 13 September 2012, Table 1.03(a).

120 HOSB 11/12, 13 September 2012, Table 1.11(a).

121 See, e.g. (in the context of al-Muhajiroun), *Tackling Extremism and Radicalisation*, *Henry Jackson Society Recommendations*, June 2013, pp.2-3. The authors noted that at least 33 individuals involved with al-Muhajiroun have been sentenced to imprisonment in the UK, but that there had been no convictions for proscribed organisation offences relating to al-Muhajiroun or its aliases: pp. 2, 4.

122 *Roots of violent radicalisation* HC 1446, February 2012.

123 *Ibid.*, para 87. I had expressed the same conclusion in my 2011 TA report: *Report on the operation in 2010 of TA 2000 and Part 1 of TA 2006*, July 2011, paras 4.20-4.21.

set period. Keith Vaz MP, Chair of the Committee, underlined my concerns and those of the Committee on this score in each of the proscription debates held in the House of Commons during 2012.[124]

"Difficult cases"

5.27. I observed last year that there appear to be a number of proscribed organisations which do not satisfy the statutory threshold for proscription.[125] That is because no recent evidence exists of their involvement in terrorism, and because it cannot be said of them that the capacity to carry on terrorist activities has been retained or is being sought.[126] If that is the case, then it is hard to see how the proscription of such organisations can lawfully be maintained, regardless of whether their deproscription has been requested.

5.28. Whether a particular organisation should or should not be proscribed is a judgement not for me but for Ministers to make, subject to the possibility (in theory at least) of detailed judicial review by POAC. It is however my task to examine the operation of the proscription system and assess whether it works properly. That is plainly not the case when a substantial number of organisations are proscribed despite having been assessed as not meeting the statutory test for proscription.

5.29. I do not wish to be unduly critical. I am conscious of the "*almost eccentric courage*" that has been said to be required of a Minister seeking to deproscribe an organisation that was once concerned in terrorism;[127] of the fact that deproscription does not appear to be actively sought by most of the affected organisations; and of the particular difficulties that could attend deproscription in the Northern Ireland context.

5.30. The issue of legality is however basic and non-negotiable. It is not a factor to be weighed against others, but an overriding requirement. If an organisation is found after careful review not to satisfy the current threshold, then it is not enough to label it a "*difficult case*" and leave the proscription in force.[128] Either the organisation must be deproscribed, or the threshold must be changed in such a way as to render its continued proscription lawful.

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124 See 5.16, above. Mr. Vaz also raised the specific position of the Tamil community, who he said had difficulties in booking halls and in raising money for compassionate and charitable purposes because of the ban that remained on the LTTE, an organisation which according to Mr. Vaz "*no longer exists*": Hansard HC 4 Jul vol 547, cols 1020-1027. My own contacts with London Tamils are recorded in my 2012 TA report, 4.43-4.46.

125 I did not specify those organisations, because it is no part of my function to adjudicate on individual cases, or to second-guess the decisions of those appointed to take them.

126 2012 TA report, 4.30-4.31. This draws on the definition of the phrase "*concerned in terrorism*" that was given by the Court of Appeal in the *PMOI* case: see my 2012 TA report at 4.5.

127 C. Gearty, *Civil Liberties* (OUP 2007), p. 158.

128 2012 TA Report, 4.30(d).

5.31. To deny that consequence would be to render pointless the process for annual internal review of proscriptions described in my 2012 TA report.[129] More fundamentally, it would allow the perpetuation of proscriptions, and of the associated criminal offences, in circumstances not intended by Parliament when it enacted TA 2000. To tolerate this would be an affront to the rule of law.

5.32. I suggested a number of possible solutions to this problem, which may be summarised as:

(a) ***properly applying the existing law,*** resulting in deproscription if necessary on the initiative of the Secretary of State (2012 TA report, 4.30-4.31, 4.63);

(b) providing for all proscriptions to ***expire after a set period***, allowing the Secretary of State to seek re-proscription if the statutory threshold is met (2012 TA report, 4.51-4.54, 4.66);[130] and/or

(c) moving to a ***two-stage statutory test*** modelled on those used in TAFA 2010 and TPIMA 2011, which would allow the threshold to be met by *past* involvement in terrorism, but introduce an additional requirement that proscription be *necessary* for purposes connected with the protection of the public from the threat of terrorism (2012 TA report, 4.55-4.61, 4.67).

I recommended the first two solutions, but stopped short of a recommendation in relation to the third.[131]

The response to my recommendations

5.33. In the March 2013 response to my 2012 TA report, the third solution (together with my suggested tweak to the discretionary factors, based on suggestions by Professor Clive Walker)[132] was rejected.[133] As a result, it continues to be the case that no mechanism exists for proscribing an organisation – however malevolent its past, or sinister its associations – which is not currently concerned in terrorism. The first and second solutions were addressed politely but

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129 2012 TA Report, 4.12. No such review has ever resulted in deproscription.

130 Essentially repeating a recommendation in my 2011 TA report: *Report on the operation in 2010 of TA 2000 and Part 1 of TA 2006*, July 2011, paras 4.28-4.35, specifically endorsed by the Home Affairs Select Committee on the basis that "*it is too difficult for groups who no longer pose a terrorist threat to obtain de-proscription, a move which might encourage some groups in their move away from active support for terrorism*": *Roots of violent radicalisation* HC 1446, February 2012, para 87.

131 Because it could render deproscription more rather than less difficult in the case of an organisation which had been concerned in terrorism in the past but was no longer involved: *The Terrorism Acts in 2011*, June 2012, 4.59.

132 *Terrorism Acts in 2011*, June 2012, 4.8, 4.40, 4.64.

133 "*I continue to believe that the current statutory test and discretionary factors are effective in ensuring the right groups are subject to proscription where there is an appropriate and proportionate body of evidence.*"

inconclusively.[134] On paper this was an unimpressive response, given that nine months had elapsed since my 2012 TA report, and that my second solution had been recommended also in my 2011 TA report, some 21 months earlier.[135]

5.34. Behind the scenes, however, considerable work has been going on.

5.35. My second solution (expiry after a set period) has been the subject of serious and extensive discussion across Government. I remain of the view that as demonstrated in the field of terrorist asset-freezing and in some other jurisdictions (e.g. Australia), this could provide a workable and politically relatively painless way for outdated proscriptions to be ended.[136] In view particularly of the feared consequences in Northern Ireland, however, my understanding is that it will not be proceeded with at least for the time being.

5.36. My first solution – moving to deproscribe groups failing the statutory test for proscription, if necessary on the initiative of the Secretary of State – has been more positively received, at least as regards those groups for whose proscription the Home Office is responsible. Thus:

(a) The Home Secretary has agreed to a process for deproscribing groups which no longer meet the statutory test.

(b) A preliminary analysis has indicated that 14 groups (some of them already removed from equivalent lists of terrorist organisations in allied countries) may be in this category. In relation to some of those groups, there is no evidence of terrorism-related activity since before 2000.

(c) A timetable has been set which should be capable of resulting in deproscription during the first part of 2014.

5.37. The chosen solution is not ideal, at least on its own: for even if significant numbers of groups are deproscribed over the next year, continued compliance with the law will (in the absence of a sunset clause or change to the statutory thresholds) be dependent on similar exercises being conducted in the future. Given the possible backlash both domestically and internationally, the chosen solution is likely to require continued displays of *"almost eccentric courage*".

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134 "*I and my colleague, James Brokenshire, have appreciated the discussions with you on this important issue. We continue to explore if and, if so, how the process by which groups can be de-proscribed can be improved. I welcome your continuing suggestions and we will, of course, inform Parliament of any resulting changes to the regime*."

135 2011 TA report, 4.33-4.35.

136 See, further, my 2012 TA Report at, 4.52-4.53. The designation of six Northern Ireland based entities – Continuity IRA, Loyalist Volunteer Force, Orange Volunteers, Real IRA, Red Hand Defenders and Ulster Defence Association – was allowed to lapse with effect from 31 August 2010, with little publicity or apparent fuss.

5.38. It must also be pointed out that the position is somewhat different in Northern Ireland. Proscription there has a long history, dating back at least to the banning of the Irish Volunteers and Sinn Fein in 1918. The 14 proscribed organisations connected to Northern Ireland, each one of which has been listed since before 2000, are not subject to any process of annual review equivalent to that conducted by the PRG. No assessment is therefore made of whether, as the statutory test requires, they continue to be concerned in terrorism. In the absence of such assessment, it has not been judged necessary to devise any process for their deproscription, analogous to that which has been adopted by the Home Secretary.

5.39. I do not doubt that there would be political controversy were a process of deproscription to be initiated in Northern Ireland,[137] and I express no view on the policy question of whether it is necessary or desirable for any particular group to remain proscribed. It must be clear however that under the law as it stands, an organisation may not lawfully remain proscribed if it is no longer concerned in terrorism. Were such an organisation (or an affected person) ever to apply for deproscription, matters would swiftly be brought to a head.

5.40. For all these reasons, I suspect that further change, perhaps along the lines of my second or third solutions, may yet in the future be required. In the meantime, however, I applaud the steps that have been taken by the Home Office to ensure that all current proscriptions for which it is responsible comply with the law. I shall be keeping a close eye on developments for the remainder of my mandate, on both sides of the Irish Sea.

[137] It is however noteworthy (1) that the 14 proscribed organisations connected to Northern Ireland are more numerous than the comparable list of only six organisations whose members are not eligible for early release from prison because those organisations are concerned in terrorism: see my 2012 TA report, 4.16(a); and (2) that the freezing of the assets of such controversial and in some cases historic groups as Continuity IRA, Loyalist Volunteer Force, Orange Volunteers, Real IRA, Red Hand Defenders and Ulster Defence Association were allowed to lapse with effect from 31 August 2010, without apparent controversy: see my *First report on the operation of TAFA* 2010, December 2011, 5.27(a)).

6. TERRORIST PROPERTY (TA 2000 Part III)

Introduction

6.1. TA 2000 contains a variety of offences relating to the funding of terrorism. Such offences are required by the 1999 UN Convention for the Suppression of the Financing of Terrorism as well as by the Special Recommendations on Terrorism Financing of the G8's Financial Action Task Force **[FATF]**.

6.2. Part III of TA 2000, as significantly amended in particular by SI 2007/3398[138] and by the Counter-Terrorism Act 2008 **[CTA 2008]**, gives effect to those demands and in some cases goes beyond them. Its provisions were fully summarised in my report of last year,[139] and I do not repeat that summary here.

Practice – Great Britain

6.3. As I remarked last year, limitations in the published statistics make it difficult to judge how frequently the fundraising offences are used in Great Britain, because of:

(a) the practice of publishing only statistics relating to cases in which fundraising was charged as a principal offence; and

(b) the absence of any distinction in the published statistics between the different fundraising offences.

My recommendation that fuller statistics be given (as is the case in Northern Ireland) has not been accepted, and accordingly it remains impossible accurately to access the relative utility of these provisions or the extent to which they are used.

6.4. The published figures do however continue to indicate what I described last year as "*limited and diminishing use being made of the fundraising offences, at least as a principal charge on the indictment*".[140] Thus:

(a) Only one person was ***charged*** with a fundraising offence under TA 2000 sections 15-19 (as a principal offence) in each of the four years from April 2008 to March 2012. This compares with an average of five per year in the period 2001-2008.[141]

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138 The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007.
139 2012 TA Report, 5.2-5.9.
140 *Ibid.*, 5.11.
141 HOSB 11/12, Table 1.03(a).

(b) Only one person was ***convicted*** of a fundraising offence under the same sections (as a principal offence) in 2011/12: there were a total of three such convictions in the four years from April 2008 to March 2009.

6.5. No figures are published for charges or convictions under section 21A (***disclosure*** by those working in the regulated sector) or section 21D (***tipping off***), though these are said to be rare.

6.6. The question of whether a family home can be the subject of forfeitu***re proceedi***ngs under TA 2000 section 23A, on the basis that it was property. in the possession or control of a convicted person and used for the purposes of terrorism, has been raised by the application for forfeiture in the case of Munir Farooqi. It remained unresolved at the time of going to press.[142]

Practice – Northern Ireland

6.7. 50 offences under sections 15-19 were charged in Northern Ireland in the 10 years to 31 March 2011, 41 of them relating to fund-raising (section 15). Only one **c**harge was laid in 2011/12, for fund-raising.

6.8. The close links between terrorism and organised crime in Northern Ireland mean that most crime of this kind is prosecuted under the similar and in some respects further-reaching provisions of the Proceeds of Crime Act 2002 **[POCA 2002]**. However the TA powers will be applied where it is possible to prove a link to terrorism, for example when cash is recovered together with weapons or munitions that are clearly linked to terrorism.

Conclusions

6.9. The available figures, though incomplete, suggest once again that infrequent and declining use is being made of the power to prosecute for terrorist funding offences. This corresponds to the very modest use now being made of the asset-freezing provisions in TAFA 2010: the total quantity of assets frozen in accounts designated by the Treasury under TAFA 2010 – none of them linked to Northern Ireland-related terrorism – fell to a new low of £26,000 at the end of 2012.[143]

6.10. The possible scope for revision and simplification of the laws on terrorist financing, perhaps along the lines of POCA 2002, was referred to in my 2012 TA

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142 http://www.independent.co.uk/news/uk/home-news/familys-torture-as-they-face-losing-home-under-antiterror-law-8654524.html.

143 Written Ministerial Statement of 14 February 2013, *Operation of the UK's Counter-Terrorist Asset-Freezing Regime, 1 October 2012 to 31 December 2012* (available from Treasury website).

report.[144] As I also remarked, however, no concerns have been expressed to me about the adequacy of the existing law; and its complexity, together with its distribution through a number of separate statutes, would render its reform a substantial undertaking.

[144] 2012 TA Report, 5.18.

7. TERRORIST INVESTIGATIONS (TA 2000 Part IV)

Introduction

7.1. A terrorist investigation is broadly defined by TA 2000 section 32. It includes investigations of the commission, preparation or instigation of acts of terrorism or of other terrorist offences, and investigations of acts which appear to have been done for the purposes of terrorism. It also includes investigations of the resources of a proscribed organisation, and investigations of the possibility of making an order proscribing an organisation.

7.2. Specific powers are provided for, by TA 2000 Part IV, in respect of:

(a) ***cordoning*** (sections 33 to 36);

(b) ***the obtaining of information*** by searching premises, requiring financial information and monitoring accounts (sections 37 to 38A and Schedules 5, 6 and 6A); and

(c) offences of ***non-disclosure and tipping off*** (sections 38B and 39).

7.3. Each of those powers was more fully summarised in my 2012 TA report.[145] Section 38B, in particular, requires all persons with information which they know or believe might be of material assistance in preventing the commission by another person of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person, to disclose that information as soon as reasonably practicable to the police. There is a defence of reasonable excuse. The offence is punishable by up to five years in prison.

Practice - cordons

7.4. Cordons are typically set up to investigate a suspected package or to deal with the consequences of an explosion or series of arrests.

7.5. In ***Great Britain***, 32 cordons were imposed in 2011/12 under TA 2000. 22 of these were in London, five in Greater Manchester, three in Merseyside, one in Leicestershire and one in Avon and Somerset. The total of 32 compares to 41 in 2010/11 and 43 in 2009/10.[146]

7.6. In ***Northern Ireland***, 87 cordons were imposed in 2011/12 under TA 2000: substantially fewer than in the periods 2002-2004 and 2009-2011, but more than in 2005-2008.[147] Three people were charged and two convicted in 2012 for

145 *The Terrorism Acts in 2011*, June 2012, 6.2-6.11.
146 HOSB 11/12, Table 2.05.
147 *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Table 1.

breach of a cordon: one of the convicted persons was punished by a fine, and the other by two months' imprisonment.[148]

7.7. As I noted last year, the more extensive use of cordoning in Northern Ireland than in Great Britain reflects not only the far greater number of live incidents in Northern Ireland, but also the fact that dissident republican terrorists, unlike their al-Qaida inspired counterparts, often give warning – a habit which allows them to use the disruptive technique of the hoax call.

Practice – powers to obtain information

7.8. In ***Northern Ireland***, a total of 118 premises were searched under warrant pursuant to Schedule 5 during 2011/12. This is comparable to the figures for 2008-2011, but well below the prevailing level for the years 2002-2007.[149]

7.9. Equivalent figures for Great Britain are not collected. Figures for use of Schedules 6 and 6A are not collected in either Great Britain or Northern Ireland.

7.10. No concerns were expressed to me about the operation of Schedules 5, 6 or 6A during the year under review. It should be noted however that equivalent powers to Schedules 6 and 6A exist under the Police and Criminal Evidence Act 1984 **[PACE]** and POCA 2002, under which both customer information and account monitoring orders are available.[150] In the absence of evidence for the use of the TA powers, it is difficult to assess whether they are necessary.

Practice – offences of non-disclosure and tipping off

7.11. Section 38B has in the past been used to convict family members and associates of the 21/7 bombers and of Kafeel Ahmed, who died during the Glasgow Airport bombing of 2007. Three people were charged with offences under section 38B and 39 as a principal offence in ***Great Britain*** during 2011/12. These were the first to be charged under those provisions as a principal offence for three years.[151] No convictions under sections 38B or 39 as a principal offence were entered during 2011/12.[152]

7.12. Once again, no one was charged (or, it would appear, convicted) under these sections in ***Northern Ireland***.[153]

148 Figures provided to me by Northern Ireland Courts Service.
149 *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Table 2.
150 PACE section 363, POCA 2002 section 397 (customer information); PACE section 370, POCA 2002 section 404 (account monitoring).
151 HOSB 11/12, Table 1.03(a).
152 HOSB 11/12, Table 1.11(a).
153 *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Table 5a.

7.13. Concerns that section 38B might be used for example against journalists, lawyers or doctors, canvassed by Professor Clive Walker and referred to in my 2012 TA report,[154] have not been realised in practice.

7.14. I have however been told by members of London's Somali community of a tendency on the part of the police (for example after the abscond of Ibrahim Magag from his TPIM in December 2012) to accompany requests for information by a firm reminder – in apparent reference to section 38B – that they are legally obliged to tell what they know. This corresponds with what has been described to me by London Kurds as persistent pressure to inform,[155] and conforms to impressions I have been given by police sources.

Conclusions

7.15. The only possibly controversial feature of TA 2000 Part IV is section 38B; and recent complaints to me have centred not on its use in the courts but rather on its use as a stick to encourage informants.

7.16. There may come a point where pressure to inform is be so extreme and so persistent as to amount to unacceptable harassment. Subject to that, however, I do not criticise the police or MI5 for making vigorous attempts to recruit informants, or for reminding them in that context of the effect of section 38B. Parliament has decided that those with information about terrorism should be required to supply it to the police. Murderous terrorist acts have been prevented in the recent past by information supplied by the subject's community or family members: for example the attacks on Manchester Jews planned by Mohammad Sajid Khan and Shasta Khan, thwarted after Mr. Khan's brother-in-law told police that he was a "*home-grown terrorist*".[156]

7.17. Section 38B no doubt presents family members in particular with hard personal dilemmas. Difficult issues would arise if the police or CPS sought to apply it to lawyers or journalists. However it does not appear to be overused, and its presence on the statute book can assist not only in underlining society's refusal to tolerate connivance in terrorism, but in saving lives.

7.18. The existence on the statute book of an offence that is capable being charged against persons who themselves pose no danger to anybody does however highlight the anomaly that bail is unavailable to those charged under TA 2000: see 8.50-8.53, below.

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154 *The Terrorism Acts in 2011*, June 2012, 6.19, referring to C. Walker, *Terrorism and the Law* (OUP, 2011), 3.07-3.55.

155 *The Terrorism Acts in 2011*, June 2012, 4.46(c).

156 In addition Andrew Ibrahim, the attempted Bristol bomber of 2008, was thwarted after members of his own community (having attended *Prevent* training) told the police of their suspicions.

8. ARREST AND DETENTION (TA 2000 Part V)

Introduction

8.1. Arrest and detention prior to charge are governed for most circumstances by PACE. As so often, however, the rules applicable to terrorist suspects are different.

8.2. In particular:

(a) A special ***power of arrest*** is provided for by TA 2000 section 41, for use in relation to certain terrorist offences.[157] The arresting officer need have no specific offence in mind: it is enough, under section 40(1)(b), for there to be a reasonable suspicion that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(b) A maximum period of ***pre-charge detention***, in excess of the 96 hours allowed under PACE, applies in relation to persons arrested under section 41. That period stood at seven days until January 2004, 14 days until July 2006 and 28 days until 25 January 2011. It was then reduced to 14 days.[158] There must be 12-hourly reviews of detention for the first 48 hours; beyond 48 hours court warrants for further detention are required, which may be granted only after a full hearing and for specified purposes.[159] The requirements of Article 5 of the European Convention of Human Rights **[ECHR]** must also be respected.

(c) The ***treatment of detainees*** is governed by Part I of TA 2000 Schedule 8 and (save in Scotland) by PACE Code H. These contain detailed provisions relating to matters such as the designation of detention places and conditions of detention, identification and the taking of samples, recording of interviews, the right not to be held incommunicado, the right to consult a solicitor and extensions of detention. Some of the differences are historic, or attributable to the longer potential period of detention; others (e.g. the more thorough manual fingerprinting requirements) reflect the supposedly different nature of terrorist crime.

Practice - arrests

8.3. In ***Great Britain*** there were:

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157 Though the list of qualifying offences is somewhat arbitrary, as explained in my 2012 TA report (*The Terrorism Acts in 2011*, June 2012) at 7.4.

158 The manner by which this was achieved, and the provision made for possible future extension of the 14-day period, is explained in my 2012 TA report: *The Terrorism Acts in 2011*, June 2012, 7.12-7.16.

159 TA 2000 Schedule 8, Parts II and III.

(a) 206 "*terrorism-related arrests*" in the year to March 2012, close to the average annual figure since 2001 but appreciably higher than the total for the previous two years (178 in 2009/10 and 126 in 2010/11); and

(b) 246 "*terrorism-related arrests*" in the calendar year 2012, as against the 2011 total of 170.

8.4. These figures are significant, particularly when added to those for Northern Ireland. They seem to me however to be insufficiently robust to support the inference that terrorism is increasing in Great Britain, or even that more terrorists are being arrested. There are two reasons for that.

8.5. First, in the words of the Home Office Statistical Bulletin:

> **"**The relatively small number of terrorism arrests each year mean that proportionally large fluctuations in arrests can result from particular police operations."[160]

2012 arrests under TA 2000 section 41 peaked in the April-June pre-Olympic quarter, though "*terrorism-related arrests*" under other powers (principally PACE) were most numerous in the final quarter of the year.[161]

8.6. The second reason for caution relates to the concept of the "*terrorism arrest*" or "*terrorism-related arrest*" (defined in the statistical bulletin as "*one in which the police suspect involvement in terrorism*"), together with its close cousin the "*terrorism-related charge*". This concept is unique to Great Britain: see 8.8, below. It should be noted that:

(a) In recent years, only a small minority of "*terrorism-related arrests*" (20% in 2012 and 32% in 2011, as compared to more than 90% throughout the period 2003-2007) were made under the TA 2000 power. No doubt this reflects, in part, the fact that the section 41 power of arrest is not available in respect of some terrorist offences, including offences under TA 2006. However the increase in "*terrorism-related*" arrests since 2011 is attributable entirely to arrests under other powers (principally PACE), as may be seen from a revealing table in the most recent statistical bulletin.[162] Arrests under TA 2000 have continued at the rate of about 50 per year throughout this period.

(b) Of the charges that followed "*terrorism-related arrests*" in 2012, only 43% were for terrorism-related offences. This compares to 62% in 2011 and an

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160 HOSB 11/12, 1.2.

161 "Operation of Police Powers under TA 2000", tables complementing the quarterly update to 31 December 2012, Table A.04.

162 *Ibid.*, Table A.01.

average of 60% between 2001 and 2012. 57% of those charged after terrorism-related arrests in 2012 were thus charged with offences *unrelated to terrorism*, including (most commonly) perverting the course of justice, conspiracy to defraud, forgery, counterfeiting and theft.[163]

8.7. I have no reason to doubt the sincerity of police suspicions of involvement in terrorism at the time of the arrest, and can well believe that the Al Capone effect may be in play here.[164] Nonetheless, anyone seeking to place weight on the figures for so-called "*terrorism-related arrests*" needs to be aware that in recent years the great majority of those arrests have been made under ordinary PACE powers; and that of the 100 arrested persons who were eventually charged in 2012, the majority were charged with offences unrelated to terrorism.

8.8. In ***Northern Ireland***, the figures are compiled on the more straightforward basis of persons arrested under TA 2000 section 41.[165] The number of arrests in 2012/13 was 157, almost identical to the figure for 2011/12 (159) and near the middle of the annual 130-195 range that has applied since 2006.[166]

Practice – period of detention

8.9. Extended detention beyond the 96 hours allowed under PACE is possible only in relation to persons arrested under TA 2000 section 41 (a warrant for further detention being required after 48 hours).

8.10. In ***Great Britain***, of the 49 persons arrested under section 41 in 2012:

(a) 13 (26%%) were held in pre-charge detention for less than two days;

(b) 45 (92%) were held for less than a week; and

(c) Of the remaining four, one was held for 11-12 days and three for 13-14 days, close to the permitted maximum.[167]

8.11. Of those held longer than 48 hours, 26 were charged and 10 released. Of those held longer than a week, all four were subsequently charged.

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163 HOSB 11/12, 1.3 and 1.4.

164 When the well-known gangster Al Capone was finally brought to justice in 1931, it was possible to indict (and imprison) him only for income tax evasion.

165 Arrests under other powers for "*terrorism-related offences*" are not captured in Northern Ireland. However the difficulties in disentangling "*terrorism*" from organised crime and public order offences in the Northern Ireland context would make this a perilous exercise: *Terrorism Acts in 2011*, June 2012, 7.27.

166 PSNI, *Police Recorded Security Situation Statistics*, May 2013, Table 3.

167 *Outcome of police powers under TA 2000 and subsequent legislation: Arrests, outcomes and stops and searches, Quarterly update to 31 December 2012* (available from www.gov.uk website), Table A.06.

8.12. In ***Northern Ireland***, of the 159 people arrested under TA 2000 in 2011/12, only eight (5%) were held for longer than 48 hours. Of those, five were held for 2-3 days and three for 7-14 days. Five of the eight were charged and three released.[168]

8.13. As in previous years, therefore:

(a) the TA 2000 section 41 arrest power was much more frequently used in Northern Ireland than in Great Britain; but

(b) a far higher proportion of those held in Great Britain were detained for longer than 48 hours.

Practice – numbers charged

8.14. In ***Great Britain*** between 2001 and 2012, an average of 42 persons per year were charged with a terrorism-related offence.[169] In 2012, 43 were charged with a terrorism-related offence, in line with this average but up from 20 in 2010 and 36 in 2011.

8.15. Of those 43, 30 were charged under the Terrorism Acts,[170] six under TA 2000 Schedule 7 and seven under other legislation.

8.16. The charging rate for those subject to a "*terrorism-related arrest*" in 2012 was 37%, slightly higher than the overall rate since September 2001. However as noted at 8.6(b) above, only 43% of those charges were terrorism-related, as against 62% in 2011 and an average since 2001 of 60%.

8.17. In ***Northern Ireland***, 16 persons were charged during 2011/12 with offences under provisions of TA 2000, and three with offences under TA 2006.

8.18. Both in Great Britain and in Northern Ireland, therefore, a relatively low proportion of those arrested under TA 2000 (or in GB, those subject to a "*terrorism-related arrest*") was actually charged with a terrorist offence. In Great Britain the proportion was 17 % (36 out of 204, including Schedule 7) and in Northern Ireland, 12% (19 out of 159).

Practice – gender, age, ethnicity

8.19. The Home Office Statistical Bulletin in 2012 published detailed figures for the gender, age and ethnicity of those subject to terrorism-related arrest and charge between 2001 and 2012.[171] No such figures are kept in Northern Ireland.

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168 NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2011/*12, Table 7.

169 HOSB 11/12, Table 1.04. For "*terrorism-related offence*", see fn 7274, above.

170 Defined so as to include not only TA 2000 and 2006 but also the Anti-Terrorism Crime and Security Act 2001 and the Prevention of Terrorism Act 2005.

8.20. As to ***gender*** and ***age***:

(a) The 2,174 persons subject to terrorism-related arrest between 2001 and 2012 were ***93% male*** (2,022). The 464 subject to terrorism-related charges, were ***94% male*** (435).

(b) Of the same 2,174 arrested persons, ***3% were under 18, 50% were aged 18-29 and 47% were 30 or over***. The percentage of arrests resulting in a terrorism-related charge was similar (between 20% and 24%) for all age groups.

8.21. As to ethnic appearance, the basic information provided in the Home Office Statistical Bulletin (based on police perceptions and the old-style 4+1 classification) is captured in the following table:[172]

2005-2012	White	Black	Asian	Other	N/K
% of all terrorism-related arrests	26%	11%	41%	20%	1%
% of all terrorism-related charges	22%	21%	44%	13%	0%

8.22. The "other" category was capable of including those identified by police officers as Middle Eastern or North African, though as with any visual characterisation of ethnicity by a third party, there is abundant scope for error.

8.23. I have been struck by the fact that persons identified as white were much more strongly represented in the figures for 2001-2005 than they were in the period 2005-2012. In the earlier period, people identified as white constituted 39% of those who were arrested on suspicion of, and 48% of those charged with, terrorism-related offences. It does not follow however that there was a change in the ethnic composition of those arrested in connection with al-Qaida inspired terrorism before and after 2005. The change is likely to reflect, rather, a sharp decline in the number of (predominantly white) people arrested in Great Britain for Northern Ireland-related terrorism.[173]

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171 HOSB 11/12, Tables 1.04-1.06.

172 Source: HOSB 11/12, Table 1.06.

173 HOSB 11/12 Table 1.07 shows that an average of 30 persons per year were arrested in Great Britain on suspicion of Northern Ireland related terrorism in the four years to March 2005, as against an average of only seven per year in the seven years thereafter.

Conditions of detention

8.24. Since taking up my post in 2011 I have visited the specialist terrorist detention centres in London (Paddington Green and Southwark), Govan, Bradford, Manchester and Antrim. The facilities at Manchester and Southwark were opened during the year under review. I have described these facilities and the applicable procedures – which derive from TA 2000 Schedule 8 and from PACE Code H – in two of my previous reports.[174]

8.25. Fortunately, the level of TA 2000 arrests has remained such that with the exception of the Antrim Serious Crime Suite and the London centres, these facilities have had to be used only sparingly for the purposes for which they were designed.

8.26. I explained in my 2012 TA report[175] that TA 2006 section 36 was amended by CJA 2009 section 117(1)-(3) so as to permit the Independent Reviewer, as part of his annual review of the Terrorism Acts, to consider whether the requirements of TA Schedule 8 and of Code H have been complied with in relation to persons detained under TA 2000 section 41 pursuant to a warrant for further detention (i.e. for periods in excess of 48 hours).

8.27. In addition, section 117(4)-(8) amend section 51 of the Police Reform Act 2002 by requiring Police and Crime Commissioners to have in place independent custody visiting arrangements for visits to TA 2000 section 41 detainees. The independent custody visitors **[ICVs]** will thus have access for the first time (at least in Great Britain) to those detained under TA 2000. ICVs must submit a copy of their reports on suspected terrorist detainees to the Independent Reviewer.

8.28. The following developments have taken place since my 2012 TA report:

(a) Section 117 has been commenced in its entirety. Subsections (1)-(3) were brought into force on 7 August 2012, and subsections (4)-(8) on 22 April 2013.

(b) Protocols have been established for the purposes of:

- notifying me promptly of cases in which a warrant for further detention has been granted, thus giving me the opportunity to visit if I so choose; and

- providing for the reports of ICVs to be communicated to me.

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174 *Operation GIRD: Report following Review*, May 2011, paras 70-72; *The Terrorism Acts in 2011*, June 2012, 7.37-7.40.

175 *The Terrorism Acts in 2011*, June 2012, 7.44-7.47.

(c) A revised Code of Practice for ICVs, reflecting these changes, has been produced.[176]

(d) Training (to which I contributed a video introduction) has been developed for a number of experienced ICVs in the vicinity of each specialist terrorist detention centre, and has been made available nationally. Three training sessions were delivered in April 2013, in Manchester, Birmingham and London. A training session in Scotland is planned.

8.29. If my new power is to function effectively, it is important that I should have a good working relationship with the ICVs. Particularly where detentions are outside London, it will not always be feasible for me to visit. I shall rely therefore on the initial reports of the custody visitors, and on my ability to contact personally the ICVs who visited in order to follow up their reports. In any case where the ICVs may have raised concerns, I shall consider making my own visit when my schedule permits. I have attended and addressed each of the last two annual conferences of the Independent Custody Visiting Association **[ICVA]** (Belfast in November 2011, Bristol in October 2012) and have every confidence that the ICVs and the Independent Reviewer will work well together in future.

8.30. My task will become easier if I can obtain remote access from my own secure terminal to the custody records of detained persons. Inspection of the custody record will tell me whether it has been properly completed, and may alert me to factors that could prompt a visit. This subject remains under discussion.

8.31. Since my new power came into effect in August 2012 I have visited 10 persons detained under TA 2000 section 41 for more than 48 hours, all of them in Southwark Police Station in London. While it is an important principle of custody visiting that visits may be made at any time and without a requirement that warning be given,[177] it has been my habit to enquire as to the planned interview schedule so as not unnecessarily to disrupt interviews with detainees. Before meeting the detainees, I am given their custody records and associated documents to read. In the case of the eight detainees who were willing to see me, I used Schedule 8 and Code H as a checklist and was able to verify that their provisions (including, naturally, the right not to be held incommunicado and the right to a lawyer) had been complied with in each case. While seeking to be pleasant and understanding, I did not allow conversation about other matters. Some interviews were held in the solicitor's consulting room and some in an

[176] Home Office, *Code of Practice on Independent Custody Visiting*, March 2013, available from ICVA website.

[177] *Ibid.*, para 43.

interview room.[178] In one case, the detainee's solicitor sat with me during the interview.

8.32. Custody visiting has changed almost out of all recognition since the office of the Independent Commissioner for Detained Terrorist Suspects was established by Sir Patrick Mayhew QC, in 1993, in response to public concern in Northern Ireland at the lack of independent oversight at the Holding Centres and allegations of mistreatment of detained terrorist suspects. As the last Commissioner, Dr. Bill Norris MD FRCP FRCPsych, said in his final report:

> "... people arrested nowadays who are suspected of terrorist crimes are detained in a modern, purpose-built Serious Crime Suite fitted with sophisticated electronic safeguards and recording equipment to protect detained persons from abuse and to protect interviewing police officers from mischievous allegations of misbehaviour."[179]

Were anything to happen, however, the consequences could be serious. It is a positive development, therefore, that my own role and that of the custody visitors has been extended into the terrorism detention centres. I hope that our presence there will provide further cause for reassurance.

8.33. For the most part, the detainees spoke highly of the manner in which they were treated at Southwark. I received no serious complaints and found no evidence of any mistreatment or of any breach of the applicable rules, though I did pass on to the custody officer two minor concerns concerning broken equipment and insufficient warm clothing.

8.34. I consider that detainees should be provided with in-cell entertainment (books, sufficient DVDs to avoid endless repeat viewings) for the very long periods when they are not being interviewed; and something to occupy them (e.g. a light plastic football) when they are alone in the small, fully enclosed exercise yard. Custody officers at Southwark proved broadly responsive to these concerns. Terrorism Act detainees are human beings under stress, liable to be solitarily confined in a police cell for much longer than the norm. They may find themselves there without the police having associated them with any specific crime. Notions of punishment are irrelevant at this stage: a detainee may or may not be guilty, and the statistical probability is that he will not be charged. The better his state of mind, the smaller the risk that the forensic medical examiner may have to declare him no longer fit to be interviewed. Things that can help detainees pass the time are therefore in their own interests and those of investigating officers alike.

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178 *Ibid.*, para 58.

179 *Concluding Report (January-September 2005) of the Independent Commissioner for Detained Terrorist Suspects*, January 2006.

Right not to be held incommunicado

8.35. TA Schedule 8 paragraph 6 provides terrorist suspects with a right to have someone informed of their detention, exercisable save where a senior officer has reasonable grounds for believing that its exercise *will* lead to consequences including tampering with evidence, physical injury or the alerting of suspects. In my first report as Independent Reviewer, I described the right as:

> "of cardinal importance, serving as it does (along with the right to legal advice) to differentiate the practices of a civilised society from the unexplained 'disappearances' characteristic of a police state",

and drew attention to the fact that the MPS had not adhered as scrupulously as it should have done on that occasion to the precise requirements of the law.[180]

8.36. The importance of the right is such that it seems to me important to know how often it is withheld. The figures are not available for Great Britain, and I understand the response to my 2012 report as being that they will not be collected there. In Northern Ireland, the picture is very similar to last year: only about one third of those arrested under section 41 requested the right to have someone informed of their detention (perhaps because there were others with them when arrested); but of the requests that were made, all but one was granted immediately.[181] There was, indeed, delay in granting a total of only 14 requests in the 11 years to March 2012. The length of those delays is not published.

Right of access to a solicitor

8.37. TA Schedule 8 paragraph 7 provides terrorist suspects with a right of access to a solicitor, with tightly-drawn exceptions. Again, figures are available only in relation to Northern Ireland. All 159 requests for access to a solicitor were granted immediately, as has been the case in all but five cases since the start of 2001. Figures provided to me by the PSNI show that in all five of those cases, the delay was less than 12 hours.

Response to my recommendations

8.38. My 2012 TA report made five recommendations in relation to detention. The Home Secretary replied to four of these in her written response of March 2013.

8.39. My ***first recommendation*** was addressed to the police, and was that recourse to the TA 2000 section 41 arrest power should be avoided in cases when the

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180 *Operation GIRD – report following review*, May 2011, para 118.

181 NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Table 8. 52 of 53 requests were granted immediately.

suspect is always likely to be charged, if at all, under laws other than the Terrorism Acts.[182] That recommendation, which I had previously made in my 2011 TA report and which was echoed by the Human Rights Committee of the NIPB, was principally directed to the PSNI.

8.40. In Northern Ireland during 2011/12:

(a) There was a charging rate of 25% (39 out of 159) for those detained under TA 2000 section 41.

(b) Of the 74 charges brought against persons detained in Northern Ireland under TA 2000 section 41, 25 (34%) were for Terrorism Act offences, and a further 42 (57%) related to explosives or firearms offences, many of which in the Northern Ireland context will no doubt have been supposed with good reason to be terrorism-related.[183]

8.41. These figures are an improvement on:

(a) 2010/11, when 21% of those detained under section 41 were charged, and only 10% were charged under the Terrorism Acts; and

(b) 2009/10, when 22% of those detained under section 41 were charged, and only 5% charged under the Terrorism Acts

8.42. The temptation to overuse section 41 will always be present, particularly in Northern Ireland where the boundaries between terrorism and other forms of violent crime are often uncertain. It should never be forgotten that section 41 is an exceptional power, whose existence can be justified only by the particular operational difficulties of detecting terrorism; and that the objective in Northern Ireland as elsewhere is to achieve the highest possible degree of normalisation. The most recent figures however point to a welcome improvement.

8.43. My ***second recommendation*** concerned clarificatory amendments to Schedule 8.[184] No objections have been communicated to me, in writing or orally, but I have been informed that the outcome of the *Duffy* case in Strasbourg is awaited before decisions are made as to the primary legislation that would be necessary to give effect to it.

8.44. My ***third recommendation*** was that persons arrested under TA 2000 section 41 should be entitled to apply to a court for bail.[185] This echoed a recommendation made by my predecessor, Lord Carlile, and received equally short shrift, on the

182 2012 TA report, 7.54-7.61 and 7.75.
183 *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Tables 3 and 4.
184 2012 TA report, 7.63-7.70 and 7.76.
185 2012 TA report, 7.71-7.73 and 7.77.

basis that "*it raises too great a public safety concern".* It is hard to understand the justification for this, unless it be assumed (implausibly) that those accused of terrorist crimes, however peripheral or indirect their connection with terrorism, are inherently more dangerous than anybody else. As is well established in relation to other types of crime, bail will not be granted if there are substantial grounds for believing that the defendant would fail to surrender to custody, commit an offence while on bail or obstruct the course of justice.[186]

8.45. As I indicated to the Joint Committee of Human Rights **[JCHR]** in March 2013:

> "It may just be one of those areas where lawyers will think one thing and politicians, or most of them, will think something else."[187]

In any event, and unless the courts should intervene, the position is now clear.

8.46. My ***fourth recommendation***, the case for which I described in my 2012 TA report as "*unanswerable*", was that consideration should be given to changing the law so as to allow the detention clock to be suspended in the case of detainees who are admitted to hospital.[188] The potential utility of that change was demonstrated after the Woolwich murder in May 2013, when the suspects were shot by police and taken to hospital for several days before they could be questioned. Because they had been arrested under PACE, the detention clock was stopped. Had they been arrested under TA 2000 section 41, this would not have been possible, and the police would have had to choose between delaying the arrest (in which case the suspects would have been free to discharge themselves from hospital) and setting the clock running in the hope that it would be possible to question them before the deadline for a charging decision was reached.

8.47. In her response of March 2013, some nine months after receipt of my report, the Home Secretary indicated that she would "*give consideration*" to whether the law needed to be changed in this respect. Some police sources have indicated to me their support for this proposal. As in the case of my second recommendation, an appropriate legislative vehicle would be required for this purpose.

8.48. My ***fifth recommendation*** was intended to ensure that medical examinations of terrorist suspects continued to be conducted by professionals fully trained in mental health evaluations and in the care of TA 2000 detainees, who are

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186 Bail Act 1976, Schedule 1, para 2(1).

187 JCHR, Review of the TPIM regime, oral evidence of 13 March 2013, p. 24:http://www.parliament.uk/documents/joint-committees/human-rights/David_Anderson_transcript_190313.pdf

188 2012 TA report, 7.74 and 7.78.

qualified in forensic medicine and whose independence is guaranteed by the fact that they are not employed by the police.

8.49. The Home Secretary informed me in her response that she had asked ACPO(TAM) to consider whether there were any improvements necessary in the commissioning and training of FMEs for TA 2000 detainees. I am pleased to report that the concerns expressed to me by FMEs in 2012 about the future independence and expertise of those entrusted with medical examinations of terrorist suspects have now receded. FMEs have also told me that the reduction in the maximum detention period to 14 days has reduced the risk of solitary confinement syndrome in detainees.

Case law

Bail and detention prior to charge

8.50. As reported last year, the Supreme Court in November 2011 refused permission to appeal against a judgment of the Northern Ireland Court of Appeal in which Schedule 8 was held to conform with the requirements of Article 5 ECHR.

8.51. The unsuccessful appellant Colin Duffy, together with Gabriel Magee, however lodged an application with the European Court of Human Rights which was communicated to the Government on 24 September 2012.[189] A further application on behalf of Teresa Magee, who had also been refused permission to appeal to the Supreme Court, was communicated to the Government on 7 November 2012.[190]

8.52. The two main planks of the challenges are that:

(a) bail should be available for terrorist suspects held on pre-charge detention; and that

(b) the process for obtaining warrants for further detention does not satisfy the Article 5 requirement for a suspect to be brought promptly before a competent legal authority.

8.53. The European Court has posed the following questions to the Government in the *Duffy/Magee* case, and equivalent questions in the *Teresa Magee* case:

1. Following their initial arrest, were the applicants brought promptly before a judge or judicial officer capable of satisfying the requirements of Article 5 § 3 of the Convention?

189 Application nos. 29062/12 *Duffy v UK* and 26289/12 *Gabriel Magee v UK*.
190 Application no. 29891/12 *Teresa Magee v UK*.

2. Did the power granted to the County Court Judge and the High Court Judge under paragraphs 29 and 36 of Schedule 8 of the 2000 Act to grant warrants extending detention for a further seven days up to a maximum of twenty-eight days violate Article 5 § 3 of the Convention?

Surveillance of lawyer/client consultations

8.54. I referred in my 2012 report to the case of *McE v Prison Service of Northern Ireland*, in which it was held by the House of Lords (Lord Phillips dissenting) that men detained at the Antrim Serious Crime Suite under TA 2000 were not entitled to the assurances sought on their behalf that no covert surveillance of their legal consultations would take place.[191]

8.55. An application lodged in Strasbourg in 2011 was communicated to the United Kingdom Government in April 2013.[192] Four questions were identified by the European Court of Human Rights, as follows:

1. In the concrete circumstances of the applicant's case, did the provisions of RIPA permitting the covert surveillance of the consultations of persons in detention interfere with the applicant's rights under Article 8 of the Convention.

2. If so, was that interference justified in accordance with the requirements of the second paragraph of Article 8?

3. In particular, having regard to the status of the PSNI Service Procedure, was the applicable 'law' governing covert surveillance of the legal consultations of persons in detention – in particular, as regards the regulation of the retention, storage, transmission, dissemination and destruction of material obtained by covert surveillance – sufficiently clear and precise to satisfy the requirement of foreseeability under Article 8(2) of the Convention?

4. In sum, did the applicable domestic 'law' permitting the covert surveillance of the consultations of vulnerable persons in detention with their appropriate adult give rise to a violation of Article 8 of the Convention in relation to the applicant?

191 [2009] UKHL 15; [2009] 1 AC 908; 2012 TA report, 7.52-7.53.
192 Application no. 62498/11 *R.E v United Kingdom.*

9. STOP AND SEARCH (TA 2000, Part V)

Introduction

9.1. TA 2000 contained two stop and search powers:

(a) an orthodox power requiring reasonable suspicion (section 43); and

(b) a further power (section 44) which could be used in areas specified by a senior police officer, without the need for suspicion of any kind.

9.2. The repeal of section 44, which at its height was used more than 250,000 times in a single year, is the most tangible consequence of the reforms that were initiated by the Counter-Terrorism and Security Powers Review.

9.3. That repeal was prompted by the decision of the European Court in Human Rights in *Gillan and Quinton v UK*, which had described the power as "*neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse*".[193]

The reasonable suspicion power

Nature of the power

9.4. TA 2000 section 43 may be used to stop and search a person who is reasonably suspected to be a terrorist to discover whether he has anything which may constitute evidence that he is a terrorist, and to seize and retain anything which he reasonably suspects may constitute such evidence.

9.5. Because it did not in the past extend to the search of vehicles, it was of greater practical use in urban areas than, for example, in rural parts of Northern Ireland where most travel is in vehicles. PFA 2012 section 60(3) however introduces a new TA 2000 section 43A, extending its use to include searches of vehicles. I have previously described this as an uncontroversial and sensible extension, given the effective dismantling of the no-suspicion stop and search power under section 44.

9.6. PFA 2012 section 60(1) repeals the requirement in TA 2000 section 43(3) that searches of persons be carried out by someone of the same sex, thus bringing it into line with other stop and search powers, the reason being that it is not always practicable to summon an officer of the appropriate gender in a reasonable time.

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193 (2010) 50 EHRR 45, para 87; cf. *Colon v Netherlands*, judgment of 5 June 2012.

9.7. Codes of Practice for sections 43 and 43A were presented to Parliament in May 2012, as I noted in my 2012 report.[194]

Use of the power

9.8. 2012 saw a 42% reduction in the use of the section 43 stop and search power by the MPS and yet a slightly higher number of arrests resulting from such stops. The figures for the last three years may be expressed as follows:

Year	Searches	Arrests
2010	998	n/a
2011	1051	32 (3%)
2012	614	35 (6%)

Figures are unfortunately not produced for use of the power in other force areas (including the PSNI) or by the British Transport Police.

9.9. This lighter and at the same time more effective use of section 43, at least in London, is to be welcomed. It coincided with a national 25% reduction (between 2010/11 and 2011/12) in use of the power to stop and search in anticipation of violence under Criminal Justice and Public Order Act 1994 section 60; and a national 7% fall in the very much larger number of stops and searches under PACE section 1 over the same period.[195]

9.10. The 6% arrest rate (though double the figure for 2011) however remains low.[196] Furthermore, I have not been able to determine what proportion of the section 43 arrests were for terrorism-related offences.

9.11. I noted last year that 2011 saw more self-defined Asian or British Asian people stopped under section 43 than self-defined white people. The reverse was the case in 2012:

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194 Code of Practice (England, Wales and Scotland) for the exercise of stop and search powers under sections 43 and 43A of TA 2000 &c, May 2012; Code of Practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to Sections 43, 43A and 47A of, and Schedule B to, TA 2000, May 2012.

195 *Police Powers and Procedures England and Wales 2011/12*, Home Office website, April 2013, 3.1.

196 The Home Secretary told Parliament in July 2013 that of the more than 1 million stop-and-search incidents recorded every year, 9% resulted in an arrest: and that the Metropolitan Police Commissioner had set a target that at least 20% of stop and searches in London should result in an arrest or drugs warning: Hansard HC 2 Jul 2013 vol,, cols 773-4.

	White	Asian	Black	Chinese/ other	Mixed/not Stated	Total
2010	43%	30%	11%	7%	9%	998
2011	35%	37%	9%	8%	8%	1052
2012	39%	31%	12%	7%	3%	614

The no-suspicion power

Nature of the power

9.12. My 2012 TA report recorded the process by which the old no-suspicion power (TA 2000 section 44) was replaced, first on an interim basis and then permanently, by the more limited power now contained in TA sections 47A-47AE and Schedule 6B. The interim replacement took effect in March 2011, and the permanent replacement was effected by PFA 2012 section 61, which came into force on 10 July 2012.

9.13. Under section 47A, an authorisation for the use of the stop and search power can only be given where a senior police officer "*reasonably suspects that an act of terrorism will take place*, and reasonably considers that the authorisation "*is necessary to prevent such an act*". The authorisation can last no longer and cover no greater an area than he reasonably considers necessary to prevent such an act.

9.14. A Code of Practice was presented to Parliament in May 2012.[197] I had commented in relation to a previous draft that the reference to "*random*" search was inappropriate: this was removed in the final version.

Use of the power

9.15. No authorisation was made under section 47A in any part of the United Kingdom during 2011 or 2012, reflecting the high threshold that must be met. The first use of the power came in Northern Ireland during 2013, outside the period under review.

Conclusion

9.16. The more moderate and more effective use of section 43, at least in London, is to be welcomed.

[197] See further *The Terrorism Acts in 2011*, June 2012, 8.13-8.19.

9.17. The repeal of section 44 appears on balance to have been a positive development. Thus:

(a) Section 44 was greatly disliked in some minority ethnic communities. I was given to understand by a representative of the London Muslim Communities Forum, during the year under review, that the effective abolition of section 44 in early 2011 had removed an important source of resentment amongst Muslims.

(b) It is difficult to point to any countervailing disadvantage, and the police have not sought to persuade me of any.[198] Nobody outside Northern Ireland was ever convicted on the basis of evidence found during a search under section 44. Similar powers continue to exist in Northern Ireland under the Justice and Security Act 2007, which are the subject of review by Robert Whalley CB.

9.18. The replacement power under section 47A, whose use requires reasonable suspicion that an act of terrorism will take place, was not used during the period under review.

9.19. Overall, the development of stop and search since 2010 has been positive. It demonstrates that in some fields at least, terrorism-specific powers can be significantly scaled back without noticeable damage to public safety. Indeed the argument can be made that the removal of a widely-used and much-resented power has reduced community tension and assisted policing by consent.

[198] The Home Secretary stated in July 2013 that the replacement of section 44 by the section 47A power, unused in Great Britain since March 2011, had had "*no effect on public safety*": Hansard HC 2 Jul col 774.

10. PORT AND BORDER CONTROLS (TA 2000 Schedule 7)

Introduction

10.1. 2012 was an important year in the history of TA 2000 Schedule 7. As I had recommended in each of my first two reports, the Government held a wide-ranging public consultation on the future of the power. It then came forward (in early 2013) with six specific proposals for reform, which were speedily given effect in a Bill announced during the Queen's Speech in May.

10.2. My 2012 TA report contained a detailed account of the Schedule 7 powers, and of their exercise as I had observed it at twelve seaports, airports and international rail terminals (collectively, "*ports*") in many parts of the country, and over the Channel at Calais and Coquelles.[199] Since last summer I have continued to visit ports to observe the operation of Schedule 7 (new additions being Glasgow Airport, where I saw many examples of good Schedule 7 practice, Bristol Airport and Holyhead).

10.3. I attended (and addressed) the 2013 National Ports Conference in Birmingham, which gave me an opportunity to meet and discuss with senior ports officers from police forces all over the country, as well as with representatives of other organisations and agencies. I have also participated in the practical part of a 2-day behavioural assessment (BASS) training session for ports officers, which gave me a valuable opportunity to talk to ports officers of all ranks. I have requested and received detailed briefing from MI5 about the utility of Schedule 7 stops for their work, and examined the product of such stops by the police.

10.4. I have also sought to maintain my links (in personal meetings, by email and via twitter) with the many individuals and organisations listed in my 2012 TA report who continue to express concern about the operation of Schedule 7.[200] These include port operators and ferry companies, who accept the protective purpose of Schedule 7 but are concerned to minimise the delay experienced by their customers, solicitors for persons detained under Schedule 7, Muslim groups, concerned citizens and NGOs. Many were among the 395 respondents to the Government's consultation. I obtained and read the most substantial responses (though regrettably in my view, they were not published generally).

10.5. A round table session at the Glasgow Central Mosque, which I attended in the absence of the police, was particularly helpful in identifying genuinely-held grievances and exploring possible solutions. Some strong feelings were expressed by the 25 or so people who attended a meeting at which I was present in the Toynbee Hall in East London as part of the Government's

199 *The Terrorism Acts in 2011*, June 2012, chapter 9.
200 *Ibid.*, 9.12.

consultation process. I also met with the Independent Police Complaints Commission **[IPCC]** to discuss its handling of such Schedule 7 complaints as it receives.

10.6. I do not repeat the comprehensive account of the operation of Schedule 7 that was given in chapter 9 of my 2012 TA report, to which the reader seeking more detail of my observations is referred. Rather, this chapter:

(a) gives the latest available statistics for use of Schedule 7;

(b) updates the litigation picture;

(c) summarises the process of the consultation and the proposals for reform that are contained in the Antisocial Behaviour, Crime and Policing Bill; and

(d) contains information on two specific elements of the Schedule 7 power which (despite my earlier recommendations) were not originally subject to proposals for reform:

- the absence of any requirement for suspicion before the power (or its various elements) can be exercised; and
- the seizing, copying and retention of computer and phone data from those examined under Schedule 7.[201]

Statistical analysis

Frequency of use

10.7. My 2012 TA report gave figures for 2010/11. The consultation document of September 2012 added figures for 2011/12, and ACPO at my request have recently provided me with figures for 2012/13. UK-wide figures for the past four years are as follows:

[201] The Government tabled an amendment to the Anti-social Behaviour, Crime and Policing Bill in late June 2013 to provide for making and retaining copies of information obtained in the course of Schedule 7 examinations: see 10.71, below.

	2009/10	2010/11	2011/12	2012/13
People examined	87,218	73,909	69,109	61,145
Examined >1 hour	2,695	2,291	2,254	2,277
Detained	486	915	681	670
Biometrics	not available	769	592	547

10.8. I would comment as follows:

(a) These figures display a sustained and welcome ***reduction in the numbers of people examined*** under Schedule 7. The 2012/13 total was 12% down on the previous year, and 30% down on 2009/10.

(b) The figures for examination have to be set against the ***number of travellers*** through UK airports, seaports and international rail terminals. I recorded in my 2012 TA report that only 0.03% of such passengers (who numbered some 245 million) were examined under Schedule 7 in 2010/11.

(c) The figures for examination do not however reflect the substantial number of people who are asked only "***screening questions***" (in what were known prior to 2009 as "*short stops*"). As I recorded last year, screening questions take between a few seconds and a few minutes. No record is made of their numbers (though several persons tend to be asked screening questions for every one who is subject to an examination), and their frequency varies from port to port.[202]

(d) Less than 4% of those examined were ***examined for over an hour.*** The number examined for over an hour fell after 2009/10 and has been stable ever since: this contrasts with the sustained year-on-year increases observed in every year from 2004 to 2009.[203]

(e) Only 1% or so of those examined were subject to ***detention*** and to the taking of ***biometric samples*** (normally fingerprints).

[202] 2012 TA report, 9.16.
[203] 2011 TA report, 9.11, citing calendar year figures of 1190 in 2004 and 2473 in 2008.

Period of examination

10.9. As already shown, the overwhelming majority of examinations were concluded within an hour. Of the remainder, the great majority were concluded within three hours. For the period April 2009 to March 2012 the figures are as follows:[204]

Period of examination	% of all examinations
Less than 1 hour	97.2%
1-3 hours	2.2%
3-6 hours	0.6%
6-9 hours	0.06%

10.10. Also of interest are the sample data, requested in my 2012 TA report, regarding the duration of sub-1 hour examinations. Six months of data from three forces and two months of data from a fourth force indicate that the majority of sub-one hour examinations are in fact sub-15 minute examinations, and that relatively few last for longer than half an hour:

Time	Number of examinations	% of <1 hour examinations
0-15 minutes	3,934	63%
16-30 minutes	1,544	25%
31-45 minutes	534	9%
46-59 minutes	257	4%
Total sample	6,269	100%

[204] These figures were given in the consultation document. No more up to date figures were available as of June 2013.

Examinations by ethnicity

10.11. The collection of ethnicity data for Schedule 7 stops has been carried out on a self-definition basis since April 2010. My 2012 TA report contained data relating to 2010/11. For the purposes of this report, ACPO has provided me with figures for each of the two following years: 2011/12 and 2012/13. The figures for all three years are UK-wide, and are set out below:

2010/11	White	Black	Asian	Other	Mixed or not stated
Examined < 1 hour	46%	8%	26%	16%	4%
Examined >1 hour	14%	15%	45%	20%	6%
Detained	8%	21%	45%	21%	5%
Biometrics	7%	21%	46%	20%	6%

2011/12	White	Black	Asian	Other	Mixed or not stated
Examined < 1 hour	46%	8%	25%	16%	5%
Examined >1 hour	12%	14%	36%	24%	14%
Detained	8%	23%	35%	23%	11%
Biometrics	6%	23%	35%	24%	12%

2012/13	White	Black	Asian	Other	Mixed or not stated
Examined < 1 hour	42%	8%	22%	17%	11%
Examined >1 hour	14%	14%	33%	25%	15%
Detained	9%	22%	31%	22%	16%
Biometrics	9%	24%	30%	22%	15%

10.12. Those figures changed relatively little over the period. The most significant variation appears to be a reduction from 45-46% to 30-33% in the proportion of those subject to examination for more than one hour, detention or biometric

sampling and who self-define as Asian, partly offset by an increase in the proportion defined as "*mixed or not stated*". The central point remains that self-defined members of minority ethnic communities continue to constitute a majority of those examined under Schedule 7, and a very large majority of those detained and fingerprinted.

10.13. A further table, reproduced at Annex A to the consultation document of September 2012, gives the ethnic breakdown for all Schedule 7 examinations in 2010/11, whether under or over one hour, as 40% white, 29% Asian, 9% black, 17% other and 4% mixed or not stated.

10.14. No ethnicity data are collected for port travellers generally, so it is not possible to relate these figures to the ethnic breakdown of the travelling population which is potentially subject to Schedule 7. However, even allowing for the probability that port travellers are ethnically more diverse than the UK population, it is overwhelmingly likely that examinations, and especially detentions, are imposed on members of some minority ethnic communities – particularly those of Asian and "*other*" (including North African) origin – to a greater extent than would be indicated by their numerical presence in the travelling population. I am in no doubt that this has contributed to ill-feeling in these communities, and to a sense that their members are being singled out for police attention at the border.

10.15. However, as I explained in my 2012 TA report, these figures in themselves provide no basis for criticism of the police.[205] Schedule 7 powers should not be exercised at random, but on the basis of intelligence or other factors that might indicate the presence of a terrorist. As the Schedule 7 Code of Practice makes clear, selection for stops should be based on the threat posed by the various terrorist groups active in and outside the United Kingdom, on the basis of informed considerations and not solely on the basis of ethnic background or religion. If the power is being properly exercised, therefore, one would expect it to correlate not to the ethnic breakdown of the travelling population, but rather to the ethnic breakdown of the *terrorist* population.

10.16. No definitive ethnic breakdown of the terrorist threat is available, and no proxy for it will be completely reliable. However two sets of figures may be offered for the purposes of comparison:

(a) Of the 3,202 persons stopped and searched between 2009 and 2012 by the MPS on suspicion of terrorist activity under TA 2000 section 43, 44% self-defined as white, 10% as black and 30% as Asian. These percentages are

[205] 2012 TA report, 9.20-9.27.

closely comparable to figures for those examined nationwide under the no-suspicion Schedule 7 power in 2010/11: 10.13, above.[206]

(b) Of the 256 persons charged with terrorist offences between 2005 and 2011 in Great Britain, 22% were white, 21% black, 44% Asian and 13% other.[207] The proportion of Schedule 7 detainees self-defining as Asian is therefore no greater than the equivalent proportion of those charged with terrorism, though white people do constitute a higher proportion of those charged than of those detained under Schedule 7.

Those figures are only the roughest of indicators: but they lend no support to the idea that persons of Asian appearance are more likely to be stopped under Schedule 7 than they are to be stopped under a suspicion-based power, arrested on suspicion of committing a terrorist offence or charged with terrorism.

10.17. This remains a very sensitive subject, and it is important that ethnicity figures should continue to be carefully monitored. Police are however entitled and indeed required to exercise their Schedule 7 power in a manner aligned to the terrorist threat. As in previous years, I have seen no evidence, either at ports or from the statistics, that Schedule 7 powers are exercised in a racially discriminatory manner.

Arrests

10.18. Information collated by ACPO indicates that, as a result of Schedule 7 examinations, there were 31 terrorism-related arrests at ports in 2010/11 and 24 terrorism-related arrests at ports in 2011/12.[208] This means that only 0.04% and 0.03% respectively of those examined under Schedule 7 were arrested: a minuscule proportion when compared with the arrest rates after exercise of stop and search powers, including under TA 2000 section 43.[209]

10.19. These striking figures underline the point that terrorists make up an infinitesimal proportion of the travelling public. It is important for police to recognise that in the absence of clear incriminating intelligence, the overwhelming likelihood is that any person stopped will not be a terrorist, regardless of their ethnicity.

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206 2012 TA report, 9.25: see also the arrest figures given there, and the caveat regarding Northern Ireland-related terrorism at fn 282.

207 HOSB 11/12, 13 September 2012, Table 2.03. These figures do however display marked change over the period 2009-2012 (in particular, a sharp fall in white people being searched over the period).

208 Written answer of Lord Taylor of Holbeach to HL6129, Hansard 20 March 2013.

209 See 9.10 and fn 196, above. Of course Schedule 7 examinations may be valuable for other reasons, including intelligence-gathering, disruption or deterrence: 2012 TA report, 9.43-9.53.

Response to my recommendations

10.20. I made five recommendations in my 2012 TA report concerning the operation of Schedule 7.

10.21. The ***first recommendation*** arose out of my earlier recommendation that:

> "There should be a careful review of the extent and conditions of exercise of the Schedule 7 power, involving the widest possible consultation with police, carriers, port users and public, with a view to ensuring that port and border controls are both necessary, sufficient to meet the threat, attended by adequate safeguards and proportionately exercised".[210]

10.22. By the time my 2012 TA report was finalised, I was aware (though unable to announce) that the Home Secretary had indeed decided to hold a review and public consultation. Accordingly, the equivalent recommendation in my 2012 TA report focussed on the data that it seemed to me important should accompany the review:

(a) UK-wide data for 2011/12,

(b) sample data indicating the average length of sub-one hour examinations, and

(c) figures for detentions in excess of three and in excess of six hours.

10.23. I am pleased to say that this recommendation was given full effect in Annex A to the public consultation document of September 2012, discussed more fully below. More importantly, the fact that the consultation was held at all, as part of a review of Schedule 7, gave effect to the earlier recommendation in my 2011 TA report.

10.24. My ***second recommendation*** was that all reasonable efforts should be made to alert those subject to Schedule 7 examinations to the availability of a complaints mechanism, including those whose examination is terminated within an hour and so without service on them of the TACT 1 form on which that information is contained.[211]

10.25. I have observed for myself at Glasgow Airport the admirable practice of giving all those examined, *at the start of their examination*, a leaflet which clearly sets out the Schedule 7 powers, the reasons for the existence of those powers and the rights of those detained.[212] An email address is given in the leaflet for

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210 2011 TA report, 9.32. At 9.33 I set out 14 specific questions that I said should be covered by the consultation and review.

211 2012 TA report, 9.30, 9.34, 9.36.

212 "Why do Police stop Passengers at ports? – Information on the use of UK Terrorism Legislation at Ports".

complaints, and the option of communicating concerns to an Independent Advisory Group is also explained. I have drawn this to the attention of ports officers both formally and informally as an example of best practice, and would hope that – in common with other good practices that have been developed at various UK ports – it will be promoted for adoption nationally through the appropriate police channels, which I understand to be the Ports Business Development Group and the Regional Ports Coordination meetings.[213]

10.26. My ***third recommendation*** was to encourage those who claim to have been adversely affected by the operation of Schedule 7 powers to lodge complaints, and to contribute detailed evidence of their experiences to any future consultation. As I have several times had the opportunity to explain to community groups and meetings, mere anecdotal evidence of misuse is of limited use. What is required is reliable evidence, which can best be obtained by a properly evaluated complaint to the Independent Police Complaints Commission **[IPCC]**.

10.27. I remarked in my 2012 TA report that in the 11 months after July 2011, when the practice was initiated of referring all Schedule 7 complaints to the IPCC, only 20 complaints were received, and that some of these had been withdrawn or found to be unsubstantiated.

10.28. In the 12 months between 1 June 2012 and 31 May 2013, I am informed by the IPCC that:

(a) Only 20 further referrals were received (including 11 from the MPS, three from Kent and two from West Midlands).

(b) Of those 20:

- three were locally resolved
- two were not upheld at the end of completed investigations;
- two were referred back to the relevant police force;
- one was withdrawn; and
- 12 are currently being investigated.

[213] As a solution to the problem, this is likely to be more useful than the "*single standard national notice to be displayed in all port examination areas*" to which reference was made in the response of March 2013 to my 2012 TA report, though I would not wish to discourage this or anything else that may be of utility in informing travellers of their rights,.

10.29. Despite the continued low level of complaints, I was encouraged to hear from Stopwatch[214] in June 2013 that it continued to welcome the role of the IPCC in investigating all complaints. It is to be hoped that complaints will be resolved more quickly now that (as I understand) the police and the IPCC have agreed the basis on which the IPCC may review police investigations of those complaints.

10.30. My ***fourth recommendation*** was to encourage those entrusted with the operation of Schedule 7, or seeking to justify its current scope, to adduce hard evidence in relation to the more controversial elements of the power, some of which I specified.[215] This invitation was repeated in the consultation, and accepted not least in the 85 responses received from police officers.

10.31. My ***fifth recommendation*** was that the Code of Practice should be amended so as to reflect properly the law as it was declared by the High Court in the case of *CC v MPC and SSHD* [2011] EWHC 3316 (Admin).[216] I am assured that this work is taking place as part of the revision of the Code of Practice that will in any event be required by the proposals currently before Parliament.

Public consultation

10.32. Surprisingly, perhaps, changes to TA Schedule 7 were not canvassed in the Coalition Government's Counter-Terrorism Review, announced in July 2010 and concluded in January 2011.[217] It was this Review that initiated the other significant liberalisations of recent years in the field of counter-terrorism.

10.33. Consideration of Schedule 7 however continued within Government, accompanied by the litigation referred to below and encouraged by my own annual reviews. Eventually, as I had recommended in my 2011 and 2012 TA reports, a public consultation was launched in September 2012 and ran for 12 weeks.

10.34. The consultation started with the words used by a High Court judge when refusing on the papers to grant permission for a Schedule 7 judicial review:

> "The ability to stop and examine would-be passengers at ports is an essential tool in the protection of the inhabitants of this country from terrorism ... the

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214 A coalition of concerned organisations including Open Society Justice Initiative, Muslim Safety Forum, Coalition for Racial Justice, Release, Turning Point, Newham Monitoring Project, academics and solicitors.

215 2012 TA report, 9.78.

216 2012 TA report, 9.40-9.42 and 9.78.

217 *Review of Counter-Terrorism and Security Powers*, Cm 8004, January 2011; 2011 TA report, 1.14-1.16.

power is necessary in a democratic society and ... the contrary is not arguable".[218]

That citation was repeated in full on the second page of the consultation. However no reference was made to another, fully-argued, case in which Schedule 7 was held by the same judge, Collins J, to have been improperly used on the facts of that case.[219] Nor was any reference made to the detailed observations on the use of Schedule 7 in my own 2012 TA report, which had been published three months earlier.[220]

10.35. The quoted comments of Collins J have to some extent been overtaken by events. Nobody disputes that the ability to stop and examine passengers at ports is an essential tool in the fight against terrorism. Whether the power is proportionate in its current form is however a legitimate subject for both public debate and judicial scrutiny: for during 2012 and 2013, courts both in England and in Strasbourg have invited argument on the precise question of whether the exercise of the Schedule 7 power is necessary in a democratic society. Those cases, which have not yet resulted in judgments, are listed at 10.81-10.86, below.

10.36. In my 2011 TA report I identified 14 issues that I said should be covered in any consultation.[221] The Government was correct to state, in the consultation document, that many of those issues were reflected in the specific options for change that were addressed in the consultation. The six potential changes identified in the consultation were:

(a) reducing the maximum legal period of examination;

(b) requiring a supervising officer to review at regular intervals whether the examination or detention needs to be continued;

(c) requiring examining officers to be trained and accredited to use Schedule 7 powers;

(d) giving individuals examined at ports the same rights to publicly funded legal advice as those transferred to police stations;

(e) amending the basis for undertaking strip searches to require suspicion and a supervising officer's authority; and

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218 *R (K) v SSHD* CO10027/2011, quoted in my 2012 TA report, 9.37.

219 *CC v MPC and SSHD* [2011] EWHC 3316 (Admin); 2012 TA report, 9.38-9.42.

220 Though my 2011 TA report was cited for the proposition that "*the utility of the power is scarcely in doubt*", and reference was made also to my observations of negative impact on "*some Muslim communities*".

221 These are set out in my 2011 TA report at 9.33.

(f) repealing the power to take intimate DNA samples from persons detained during a Schedule 7 examination.[222]

I applaud the Government not only for raising these issues in the consultation but for coming forward with concrete and sensible proposals on them which have, following consideration of the consultation responses, already found their way into a Bill.

10.37. Some fundamental issues that I recommended should be considered were however not addressed in the tightly-focussed consultation document or in the accompanying questionnaire (save to the extent that they could be brought within the catch-all Question 19: "*Do you have any other comments that you would like to make about the use of Schedule 7*"?) These included, principally, the following:

- Is there a need for a power to examine port and airport users ***without the need for reasonable suspicion*** ... and to detain them if necessary against their will?

- Should it remain a ***criminal offence to refuse to answer questions*** asked during examination?

- Should search powers extend to ***copying mobile phone records***?[223]

10.38. In neither my 2011 nor my 2012 TA reports did I express any view as to how those questions should be answered. It did seem to me however that these matters should be the subject of public and parliamentary debate, rather than simply being left to the attentions of the courts both in the United Kingdom and in Strasbourg. Apart from anything else, the fact that an informed political debate has taken place is a factor to which the courts – including particularly the European Court – will attach considerable weight when determining whether it is appropriate for them to intervene.[224]

10.39. There were 395 responses to the public consultation, 90% of them from individuals. Around half claimed some experience of the operation of Schedule 7, either as a police officer, having been examined themselves or having a friend or relative who was examined. Almost two thirds of the responses (64%) were from people who indicated a belief (in response to the first question in the

222 Consultation document, para 16.

223 2011 TA report,9.33(a), (h) and (i), The words omitted from (a) effectively duplicate (h).

224 As stated e.g. by the Grand Chamber of the European Court of Human Rights in Application 48876/08 *Animal Defenders v United Kingdom*, judgment of 22 April 2013 at [116]: "*The Court ... attaches considerable weight to these exacting and pertinent reviews, by both parliamentary and judicial bodies, of the complex regulatory regime governing political broadcasting in the United Kingdom.*" That weight is likely to have been crucial, since the Government won the case by the narrowest possible margin of 9 judges to 8.

survey) that Schedule 7 powers were unfair, too wide ranging and should be curtailed. Just 7% were from people who believed that Schedule 7 powers should be strengthened because UK border controls were not strong enough. The Government's proposals for reform were supported, in some cases overwhelmingly, by a majority of those responding to the consultation.

10.40. The JCHR wrote to request that the responses be provided to it. Regrettably in my view, that request was refused. An informed and productive public debate is best ensured if each participant in that debate knows what the others have been saying.

10.41. The Government did indicate in May 2013 that a summary of the responses was being released. When this report went to press, however, this had still not been done: I understand that it may be imminent.

Legislative proposals

10.42. In May 2013, the ASBCP Bill was introduced.[225] Clause 124 and Schedule 6 contain the proposed changes to TA 2000 Schedule 7. The ASBCP Bill was accompanied by Explanatory Notes.[226]

10.43. The proposed changes are closely aligned to the proposals set out in the consultation document. They may be summarised as follows:

(a) ***Training and designation of examining officers.*** A code of practice is to be issued concerning the training of those exercising Schedule 7 powers. Immigration officers will be permitted to exercise those powers only if designated, and the procedure for designation of immigration and customs officers is to include consultation with the relevant chief officer of police.[227]

(b) ***Time limits on examination and detention.*** In a marked change from the current position, under which a person may be examined for up to nine hours without being accorded the rights enjoyed by detained persons under TA 2000 Schedule 8 (principally, the right to have a person informed of his detention and the right to consult a solicitor):

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225 http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/cbill_2013-20140007_en_1.htm

226 http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/en/14007en.htmhttp://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/en/14007en.htm: see in particular paras 318-325.

227 ASBCP Bill, Schedule 6 para 1, inserting TA 2000 Schedule 7 para 1A; Explanatory Notes paras 319; my 2011 TA report paras 9.33(e)(f) . Officers are obliged to perform their functions in accordance with such codes of practice, which must be laid before Parliament according to the affirmative resolution procedure: TA 2000 Schedule 14 para 7.

- If it is wished to question (i.e. examine) a person for longer than *one hour*, he must be taken into detention.[228]

- All detained persons must be released after not more than *six hours* from the time when their examination commenced.[229]

(c) ***Powers to search persons.*** Intimate searches (of body orifices other than the mouth) are not believed ever to have been conducted under Schedule 7 but will now be prohibited. Strip searches (involving the removal of inner clothing) may be conducted only when a person is detained, when the examining officer has reasonable grounds to suspect that the person is concealing evidence of involvement in terrorism and when the search is authorised by a senior officer not directly involved in questioning the person.[230]

(d) ***Rights to have someone informed and to consult a solicitor.*** These rights, currently afforded only to those detained at a police station or places designated as such, will be extended to persons detained at ports.[231] They may continue to be delayed in rare cases, but only on the strict conditions set out in Schedule 8.[232]

(e) ***Biometrics.*** The power to take an intimate sample[233] from persons detained under Schedule 7 is removed.[234] Fingerprints and non-intimate samples may still be taken from persons detained, subject to existing safeguards.[235]

(f) ***Review of detention.*** A person's detention under Schedule 7 must be periodically reviewed by a review officer at such intervals as may be

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228 ASBCP Bill, Schedule 6, para 2(3), amending TA 2000 Schedule 7 para 6 and inserting para 6A; Explanatory Notes para 320; my 2011 TA report at 9.33(g) and my 2012 TA report at 9.39. Collins J said in late 2011 that if an examination were likely to continue for any substantially longer time than one hour, it would be "*a little surprising*" if detention were not deemed necessary: CC *v MPS and SSHD* [2011] EWHC 3316 Admin, per Collins J at [13]. As I pointed out in my 2012 TA report at 9.39, this "*appears to invalidate the practice in some ports of detaining a person only if he or she becomes uncooperative, thus delaying both the rights and the obligations that come with detention under Schedule 8*".

229 *Ibid.* This change was first recommended by Lord Lloyd of Berwick in his 1996 *Inquiry into legislation against terrorism* (Cm 3420); see also my 2011 TA report at 9.33(m).

230 ASBCP Bill Schedule 6, para 3, amending TA 2000 Schedule 7 para 8; Explanatory Notes para 321; my 2011 TA report 9.33(n).

231 ASBCP Bill Schedule 6, para 4, amending TA 2000 Schedule 8, paras 6,7,8,9,16 and 17; Explanatory Notes para 321; my 2011 TA report, 9.33(l).

232 TA 2000 Schedule 8 para 8, as now amended. I examined (and criticised) one use by the MPS of the power to delay in my first report: *Operation GIRD* (May 2011), paras 73-75, 118-123.

233 Intimate samples are defined by PACE 1984, section 65. They include samples of blood, semen, urine, pubic hair and dental impressions.

234 ASBCP Bill Schedule 6 para 5, amending TA 2000 Schedule 8, para 10; Explanatory Notes, para 3.22; my 2011 TA report, 9.33(n).

235 TA 2000 Schedule 8, paras10-11. Non-intimate samples are typically taken from head hair, saliva, cheek swabs or fingernails.

specified in a code of practice to be issued and laid before Parliament. Continued detention may be authorised only if that officer is satisfied that it is necessary for the purpose of exercising the power to question a person for the purpose of determining whether he is or has been concerned in the commission, preparation or instigation of acts of terrorism, or has committed a terrorist offence specified in TA 2000 section 41(1)(a).[236]

Recording of interviews

10.44. One further specific issue, canvassed in the consultation[237] but not reflected in the Bill, is the recording of interviews. I noted in my 2012 TA report that such recording is currently required only in the case of those who are detained at a police station,[238] and referred to the argument that recording should be extended more widely, *inter alia*, because:

> "the notes taken by the officers conducting the interview will sometimes find their way into intelligence reports and, from there, to the assessments upon which the Secretary of State relies in deciding to impose or maintain an executive order such as a TPIM or asset freeze. Were recordings available, they would represent a definitive account of the interview, disclosable to the interview subject and capable of examination by a court."[239]

As stated at 10.88, below, the issue of whether evidence obtained from such interviews is in principle capable of being deployed in TPIM proceedings is currently an open one.

10.45. I took the opportunity during 2012 to discuss the pros and cons of recording interviews at airports with police and affected communities alike. Views in both camps are varied and nuanced. The police mostly have no objection in principle, but point to logistical difficulties of providing for recording in the sometimes rather cramped interview facilities provided for them at ports. Some also expressed to me a fear that when a microphone was switched on, interviews would take on an undesirable air of formality and could become less productive as a result. The meeting at Glasgow Central Mosque threw up a difference of opinion between those who saw recording as a protection for their rights and those who viewed it as something more sinister, "*like going into the Big Brother house*".

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236 ASBCP Bill Schedule 6 para 6, amending TA 2000 Schedule 7, para 6 and inserting TA 2000 Schedule 8, para 20K; Explanatory Notes, para 3.23; 2011 TA report, 9.33(j).

237 Consultation document, Questions 10 and 11.

238 Governed by the Code of Practice for the video recording with sound of interviews of persons detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 and post-charge questioning of persons authorised under sections 22 or 23 of the Counter-Terrorism Act 2008, July 2012.

239 2012 TA report, 9.68.

10.46. The solution decided upon by the Government is to explore with police as a first priority the introduction of audio recording at the major ports, accounting for most passenger traffic.

10.47. This appears to me a practical and broadly sensible approach to the issue. The use (if any) to which police notes of non-recorded interviews can be put in subsequent legal proceedings is of course a legal matter, for decision by the courts.

Major issues not covered by the consultation

10.48. As indicated at 10.37 above, my 2011 TA report identified three issues of major significance upon which it was subsequently decided not to canvass opinion in the consultation document of September 2012, and which are not reflected in the proposals for legislative change. All, in their different ways, go to the heart of the exercise of the Schedule 7 power.

10.49. I comment on each of these issues below.

Power to stop without reasonable suspicion

10.50. Argument in the case of *Gillan and Quinton v UK* centred in part upon the fact that the TA 2000 section 44 stop and search power there in issue could be exercised "*whether or not the constable has grounds for suspecting the presence of articles [of a kind which could be used in connection with terrorism]*" (TA 2000, section 45).

10.51. The House of Lords found no unlawfulness in the absence of any requirement for reasonable suspicion, but did so on a narrow reading of what the power allowed. Lord Brown thought it important that section 44 was "*targeted as the police officer's intuition dictates rather than used in the true sense randomly for all the world as if there were some particular merit in stopping and searching people whom the officers regard as constituting no threat whatsoever*". Lord Bingham went further, suggesting that the purpose of the power was "*to ensure that a constable is not deterred from stopping and searching a person whom he does suspect as a potential terrorist by the fear that he could not show reasonable grounds for his suspicion*", and thus coming close to characterising it as a power to be used only in cases of subjective suspicion by the officer.[240]

10.52. The European Court of Human Rights appeared to endorse that judicial distaste for stopping a person "*so obviously far from any known terrorism profile that, realistically, there was not the slightest possibility of him/her being a terrorist*" – which would be the inevitable consequence of any random search. Neither did it

[240] [2006] UKHL 12 at [35] and [79].

express any greater enthusiasm for decisions "*based exclusively on the 'hunch' or 'intuition' of the officer concerned*".[241]

10.53. I do not go so far as the distinguished commentators who have read the European Court's judgment in *Gillan* as declaring that nothing short of a requirement of reasonable suspicion on the part of the officer selecting for stop and search can provide a sufficient legal basis for interferences with the right to respect for private life.[242] The need for a no-suspicion power must however be made out; and at the very least, it is necessary that officers should have clear guidance as to how to exercise their discretion, so as to place them as close as possible to the latter end of the spectrum that stretches from "*random*" at one end to "*reasonable suspicion*" at the other.

10.54. It may well be that similar considerations will apply under Schedule 7, even after allowance is made for the different nature of the power and for the fact that it is exercisable only at ports.[243] The applicable guidance is currently contained in the 2009 Code of Practice, in accordance with which examining officers are obliged to act.[244] This states in essence that the selection of persons for stops should be based on the threat posed by the various terrorist groups active in and outside the United Kingdom, on the basis of informed considerations and not just perceived ethnic background or religion.

10.55. In order to assist any decision-maker who needs to assess the strength of the justification for the police power to examine and detain without reasonable suspicion, I have sought recently to explore with police and intelligence services the extent to which stops which are not intelligence-led or otherwise based on suspicion are nonetheless useful.

10.56. It appears to be generally the case that, as I remarked in my 2012 TA report, "*the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the 'copper's nose'*. I have to say, as I did last year, that:

> ".. despite having made the necessary enquiries, I have not been able to identify from the police any case of a Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind".

10.57. Both general and specific arguments for the necessity of *non*-suspicion based stops have however been explained to me.

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241 (2010) 50 EHRR 45, [83]-[84].

242 In that respect, I agree with the Joint Committee on Human Rights in its 14th report of 2010-12, 15 June 2011, para 50: see my 2011 TA report, 6.35-6.36.

243 2011 TA report, 9.28-9.30.

244 TA 2000, Schedule 14, para 5.

10.58. General arguments for a no-suspicion power include the following. Were reasonable suspicion (or even just subjective suspicion) to be required for all stops:

(a) The substantial deterrent threat of Schedule 7 in its current form could be avoided altogether by ***using "clean skins"*** to transport the tools of the terrorist's trade.[245]

(b) Anybody who was stopped would know that the police had evidence on which to suspect them: the mere fact of a stop could thus ***alert the traveller to the existence of surveillance***, whether human or technical, with consequences that could include the ending of effective surveillance and the endangering of a human source.

(c) The authorities would be unable to stop and question ***the travelling companion(s)*** of a person whom they suspect of involvement in terrorism: the mere fact of travelling with a suspected person will not be enough to constitute a reasonable suspicion of involvement in terrorism.

10.59. So far as specific evidence concerned, I have been briefed by MI5 and by the police on a number of no-suspicion stops in recent months which have brought significant benefits in terms of disrupting potential terrorists. These include the following ***untargeted examinations***:

(a) The stopping of two men intending to travel together through Heathrow Airport to Turkey, each of whom was assessed following interview to be planning to cross into Syria.

(b) A man who was referred for Schedule 7 interview following concerns (not necessarily arising to reasonable suspicion) that had arisen during an asylum interview at Birmingham Airport. He was subsequently arrested on suspicion of a TA 2000 section 58 offence, though after his asylum application was rejected, charges were dropped and he accepted voluntary deportation.

(c) An examination prompted by behavioural assessment, coupled with an examination of property, revealed that a man had historic connections to individuals of concern, and that he aspired to travel to Somalia to fight with al-Shabaab.

[245] Clean skins are persons not already known to the police. The classic example is Anne-Marie Murphy, the pregnant fiancée of Nezar Hindawi who intended her unwittingly to carry explosives and a triggering device on to a 375-passenger plane in 1986. She was detected by El Al security staff at Heathrow.

(d) Behavioural assessment caused a man to be interviewed and found to be in possession of about £5000. Intelligence checks demonstrated that he was linked to a terrorist group. The cash was seized under POCA 2002.

(e) An examination was carried out on an individual, selected because he was travelling with a known individual of interest. A phone download linked him to a third individual whom intelligence indicated had been facilitating the travel of individuals for radicalisation and jihad training, and to a fourth individual suspected of involvement in terrorist fund-raising.

(f) An examination at Dover resulted in a phone examination revealing links to around 20 individuals of current or historical interest.

10.60. The power to stop persons without being able to show reasonable suspicion is of value also for ***targeted examinations***: for there may be intelligence on somebody sufficient to merit a stop without the threshold of reasonable suspicion being reached. I have been introduced to a number of targeted examinations, in which there was no reasonable suspicion of involvement in terrorism but from which prosecutions, disruptions or other favourable outcomes emerged. The following are examples:

(a) A Schedule 7 examination at Heathrow of an individual returning from East Africa was accompanied by a download, which showed a large number of extremist documents and photographs. These did not meet the threshold for reasonable suspicion, but did justify the obtaining of a warrant to search the individual's premises. That search turned up material that was deemed to meet the section 58 threshold, and the man was arrested and charged.

(b) A man who was being watched because of his association with individuals linked with an al-Qaida affiliate was stopped on his return to Heathrow in order to establish whether he was involved in terrorism. During interview, officers were able to establish that he did not pose a threat to the UK, and the case was subsequently resolved.

(c) Uncorroborated intelligence in the form of an anonymous call to the anti-terrorist hotline suggested that a man was preparing to travel overseas for terrorist training. During an outbound Schedule 7 stop he displayed an extremist mindset and spoke of his intention to travel. It was suspected that he might be considered an attractive candidate for recruitment by terrorist groups, given his extremist mindset. Consequently, measures have been put in place to guard against the threat he is believed to pose.

10.61. I cannot of course seek to place a precise value on any of those examinations and disruptions. It is evident however, as is only to be expected, that a number

of such stops have been of real value in protecting national security. Many others of course have not: although they may still have contributed towards the general advantages identified at 10.58, above.

10.62. The fact that such powers are useful does not automatically mean that they are proportionate. It is ultimately for Parliament, prompted if necessary by the courts, to strike the appropriate balance. Even if a no-suspicion power to stop and examine is thought acceptable, it might for example be possible to require some level of suspicion before a phone can be downloaded or a person can be taken into detention.[246] Such requirements would of course reduce the potential efficacy of Schedule 7. Equally, however, they would give a measure of protection to persons who may currently be selected for these attentions without even being suspected of any crime.

Compulsion to answer questions

10.63. Compulsion to answer questions under Schedule 7 is of the essence of the power, its utility beyond question when it comes not only to identifying people as terrorists but to gathering intelligence – an important by-product of the Schedule 7 examination, albeit one that can never serve as the prime motive for a stop.

10.64. Such a strong power requires strong safeguards on the use to which answers can be put. At the least, it is essential that answers are not used in proceedings where they could incriminate the person who gave them. I believe it to be generally accepted that answers given under compulsion in Schedule 7 interviews could never be used in a criminal trial, and the position in relation to control order and TPIM proceedings was left open in the case of *CC and CF* (10.88, below).

Copying and retention of electronic data

10.65. The third issue concerns the copying and retention of data from mobile phones, laptops and other similar devices.

10.66. This has recently been raised as an issue before the Joint Bill Committee on the draft Communications Data Bill, in the context of arrest (on the basis of reasonable suspicion) under PACE 1984. Christopher Graham, the Information Commissioner, referred in his written evidence to the Joint Bill Committee on the Draft Communications Data Bill to an alleged police practice of downloading mobile phone data and retaining it even in the case of persons not subsequently

[246] By analogy with the proposal that reasonable suspicion should be required before a strip search is conducted: 10.43(c), above.

charged. [247] In oral evidence he said his office was working on the issue and could keep the Committee informed of any conclusions.[248] I pursued the matter with his office and ascertained that as of June 2013, no such conclusions had yet been reached.[249]

10.67. My 2011 TA report (at 9.33(i)) identified the copying of mobile phone records in the course of Schedule 7 examinations as an issue for discussion.

10.68. In addition, my 2012 TA report (at 9.44) noted that the Schedule 7 evidence which has assisted in the conviction of terrorists:

> "does not take the form of answers given in interview (which because of the compulsion to answer would almost certainly be inadmissible in any criminal trial) but rather consists of physical possessions or *the contents of mobile phones, laptops and pen drives*"

(emphasis added).

10.69. As is shown by these citations from my 2011 and 2012 TA reports, there was no question of the police or the Home Office seeking to conceal this practice from me, or to minimise its utility to them. On the contrary, I had been made well aware of it on my visits to some ports in 2011 and 2012. The utility of downloaded data is evident from a number of the examples cited at 10.59-10.60, above. I have seen how useful it can be in piecing together terrorist networks.

10.70. Disappointed that the practice of copying mobile phone records had not been consulted upon (as I had recommended) as part of the Schedule 7 review, and uncertain of the extent of the practice, its legal basis or the safeguards applicable to it, I formally addressed a number of questions to OSCT in late May 2013:

1. Is it the practice of ports officers conducting Schedule 7 examinations (or detentions) to download the contents of laptops, smartphones and other such personal devices?

2. Are records kept of downloads performed? If so, how many were performed in the last year for which figures are available? If not, can an estimate be given?

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247 http://www.parliament.uk/documents/joint-committees/communications-data/written%20evidence%20Volume.pdf, p. 268: "*... we are aware that some police forces are now routinely accessing individuals' mobile phones on arrest to gain access to call logs and other information held on the device. This may not only circumvent existing safeguards but also put the personal information of third parties who are not suspected of any wrongdoing into the hands of the police.*"

248 http://www.parliament.uk/documents/joint-committees/communications-data/Oral%20Evidence%20Volume.pdf, Q709.

249 Lord Faulks and Lord Armstrong also raised the subject with Keir Starmer, the Director of Public Prosecutions, in his own oral evidence (QQ 823-826).

3. Is the technical equipment used for that purpose kept at major ports and airports, and how long does a download take?

4. Does a download harvest all the material on a smartphone e.g. emails, texts, photos, diary, address list?

5. Where is the legal power to download under Schedule 7?

6. What legal protections govern the protection of downloaded data: in particular, how long is it retained and for what purposes may it be used?

10.71. OSCT, with the help of the police, provided frank and helpful answers on these points, which it is not open to me to repeat in an open document. What I can disclose of their answers to my first four questions is that:

(a) Downloads are not conducted routinely, but at the examining officer's discretion on a case-by-case basis. The quantity and type of equipment available varies around the country.

(b) The time needed for a download varies according to the technical equipment used, the memory size of the device to be downloaded, the level of information that is downloaded and the skill of the downloading officer.

(c) There are no national records of downloads taken, though ACPO aspires to create accurate national reporting, standard equipment and common training. Downloads are however effected in a substantial number of cases.

10.72. As to the legal powers relied upon (my fifth question), reference was made to:

(a) paragraphs 5(a) and (d) of TA 2000 Schedule 7, which respectively require a person under examination to give the examining officer any document in his possession which the officer requests;

(b) paragraphs 8(1)(b) and (c) of Schedule 7, which provide for the examining officer to search anything the person has with him that is on, has been or is likely to be on an aircraft or ship;

(c) paragraph 9 of Schedule 7, which provides that the examining officer may examine "goods", defined as property of any description; and

(d) paragraph 4(1) of TA Schedule 14, which provides that an officer may supply information acquired by him to a constable (including a constable within the NPAC) or to SOCA.

Paragraph 11 of Schedule 7 appears to be relevant to the detention of property: see also paragraph 25 of the 2009 Code of Practice, which interprets paragraph

5 of Schedule 7 as requiring persons to hand over the passwords to their electronic devices on request.

10.73. Since my questions were answered, the Government (perhaps recognising at least a doubt as to whether sufficient legal authority is provided for by the existing text of Schedule 7) has proposed an amendment to its own Bill. This would inset a new paragraph 11A into Schedule 7, headed "*Power to make and retain copies*". Under this amendment, copies may be made of "*anything*" obtained pursuant to paragraphs 5, 8 or 9. Those copies may be retained for so long as is necessary for the purpose of determining whether a person falls within section 40(1)(b); or while the examining officer believes that it may be needed for use as evidence in criminal proceedings; or in connection with a deportation decision.

10.74. In relation to legal protections (my sixth question), I was told:

> "Electronic data is stored, retained and destroyed in accordance with the statutory Code of Practice on the Management of Police Information (MOPI) [issued under Sections 39 and 39A of the Police Act 1996] and the Data Protection Act 1998 (DPA).
>
> The Home Office is currently involved in the early stages of a police-led review of the MOPI Code. The review follows the judgment in the case of *R (RMC & FJ) v the Commissioner of the Metropolitan Police and SSHD* (2012) EWHC 1681."

That case concerned the refusal of the police to destroy the photographs which they had taken of men who had been arrested but not charged. The MOPI guidance provided for records relating to arrested persons to be retained for at least six years, and in some cases until the person's 100th birthday. The Divisional Court found that the retention of their photographs was disproportionate and a breach of Article 8 ECHR.[250]

10.75. This information was provided to me only very shortly before this report was submitted, and I do not comment on it in any detail. I would however make two points.

10.76. First, I believe the police to have been acting in good faith, and in the interests of national security, in exercising the power to copy and retain data from mobile phones and similar devices – data which they have found to be extremely useful. I do not believe there to have been concealment of a practice known to be

[250] The case is reported as *Regina (C) v Commissioner of the Police of the Metropolis* [2012] 1 WLR 3007. See, further, the critical comments of the European Court of Human Rights regarding MOPI in Application no. 24029/07 *MM v UK*, judgment of 13 November 2012, para 202. In that case, Article 8 was held to have been violated by the insufficient safeguards in the system for retention and disclosure of data on criminal cautions.

unlawful; it appears to be a question, rather, of existing systems requiring adaptation to the demands of relatively new case law.[251]

10.77. Secondly, however, it is of vital importance that the copying and retention of data from mobile phones and other devices should be provided for by a law that is clear, accessible and foreseeable, and that there should be sufficient safeguards and sufficient guidance to ensure that it is practised only when this is necessary in a democratic society.[252] These would appear to include, at a minimum, a clearly-defined and reasonable set of criteria, to which reference should be made not only in the Code of Practice but in any notice concerning the scope of the Schedule 7 power that is handed to a person who is examined.

10.78. The need for clear, accessible and proportionate rules governing the retention of personal data has been emphasised by the courts in the context of powers which are liable to be exercised on arrest or upon conviction. As the Information Commissioner indicated in his evidence to the Communications Data Bill Committee, the issue goes well beyond Schedule 7. The need for a clear and proportionate set of rules is particularly pressing, however, in relation to a power is capable of being exercised in relation to:

(a) any person whom the police think fit to stop at a port, regardless if they have any ground to suspect them of terrorism, and

(b) the abundant personal information which is liable to be found on that person's phone.

10.79. I take comfort from the fact that the Home Office is aware of the issues, has co-operated willingly with my enquires and, as its answer to my sixth question indicates, is actively seeking a solution.

10.80. If public confidence in Schedule 7 is to be maintained, it seems to me essential that the rules governing data taken from electronic devices should be clear, proportionate and fair. Against the background of pending litigation (10.81-10.87, below), the passage of the ASBCP Bill, and the proposed revision to the Schedule 7 Code of Practice, present a valuable opportunity for this to be achieved.

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251 Including, as well as the cases cited above, *S and Marper v UK* (2009) 48 EHRR 50 (in which 17 Strasbourg judges unanimously reversed the result reached by 10 equally unanimous judges in the UK) and *R (Catt) v ACPO* [2013] EWCA Civ 192.

252 As indeed it is intended should be the case for biometric data taken under Schedule 7, once PFA 2012, Part 1, Chapter 1 has been commenced.

Litigation update

10.81. At the time of my 2012 TA report, the litigation landscape around Schedule 7 was fairly quiet. The only challenges to have been adjudicated upon were the two applications for judicial review decided by the High Court in late 2011. Of those, one was dismissed at the permission stage; and the judgment in the other, while concluding that the Schedule 7 power had been wrongly used on the unusual facts of the case, was on balance helpful to the Government and police and so was not appealed.[253] In neither case was there any scrutiny of the Schedule 7 power against the benchmarks of Article 8 (private life) and Article 5 (right to liberty) of the ECHR. That is so notwithstanding the evident similarities between the Schedule 7 power and the section 44 no-suspicion stop and search power that was held in 2010 to have violated Article 8 and perhaps also Article 5.[254]

10.82. Over the past year, litigation has picked up both in England and before the European Court of Human Rights in Strasbourg.

10.83. ***Beghal v Crown Prosecution Service***[255] was brought by a French national resident in the UK, the wife of a man in custody in France for terrorist offences. She was stopped at East Midlands Airport in January 2011 on her return from a visit to her husband, and refused to answer questions until a solicitor was present. She was charged and with and pleaded guilty to an offence of wilfully failing to answer questions under Schedule 7; but the District Judge stated two questions of law for the Divisional Court:

> "1. Did I err in law in refusing to stay the proceedings against the Appellant on the basis that her prosecution for failure to comply with a duty under Schedule 7 of TACT amounted to a breach of her rights under Articles 5, 6 and 8 of the ECHR (including her rights of access to a lawyer, the privilege against self-incrimination and right to privacy and family life)?
>
> 2. Did I err in law in refusing to stay the proceedings against the Appellant on the basis that her prosecution for failure to comply with a duty under Schedule 7 of TACT amounted to an unjustifiable interference with her rights to free movement within the territory of the European Union as EU national?"

Full argument was heard in the Divisional Court in March 2013, and judgment was still awaited at the time this report went to press.

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253 2012 TA report, 9.36-9.42.

254 *Gillan and Quinton v UK*, (2010) 50 EHRR 45 (European Court of Human Rights): see my 2011 TA report at 8.4, 8.33-8.37 and 9.28-9.30. There are of course differences as well as similarities, there discussed.

255 CO/3047/2012.

10.84. ***Fiaz v Greater Manchester Police and SSHD***[256] is a civil damages claim, in which it is argued that Schedule 7 is incompatible with Articles 5 and 8 of the ECHR, and that it is operated in a manner incompatible with Article 14 of the ECHR.

10.85. ***Elosta v Commissioner of Police for the Metropolis*** was brought by a British national of Libyan origin who had from 2008 until his delisting in 2010 been designated by the United Nations as a person "*associated with Al-Qaida*", on the basis of his alleged links with the Libyan Islamic Fighting Group. His challenge is narrower in its compass than *Beghal*, focussing on the refusal of examining officers at Heathrow Airport to wait for the his solicitor to arrive before commencing questioning. Permission was granted to apply for judicial review in May 2013.

10.86. Both parties to all these cases seek to rely upon my 2011 and 2012 TA reports, including my comments regarding the potential role of a solicitor in a Schedule examination and the practice of proceeding with questioning when a solicitor has not yet arrived.[257]

10.87. ***Sabure Malik v UK*** is a case brought by Liberty on behalf of a British national who was examined and detained at Heathrow police station for several hours on his return from a pilgrimage to Mecca. His claim to have suffered violations of his rights under Article 5(1) and 8 of the ECHR was declared admissible by a unanimous fourth section of the European Court in May 2013, despite Mr Malik not having previously brought any proceedings in the domestic courts.[258] The case will therefore proceed to a substantive resolution.

10.88. A final case of relevance to Schedule 7 is ***CC and CF v Secretary of State for the Home Department***, decided by Lloyd Jones J in October 2012 and currently on appeal.[259] Whether or not answers given in Schedule 7 interviews are admissible in TPIM proceedings (a possibility to which I referred in my 2012 TA report, as a possible justification for requiring recording and/or the involvement of solicitors throughout the interview process)[260] was not decided. As I said last year, it remains practically inconceivable that anything said in such an interview, under threat of compulsion, would be admissible as evidence in a criminal trial.

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256 HO12X02311.

257 2012 TA report, 9.65-9.66.

258 Application no. 32968/11, admissibility decision of 28 May 2013. The Government's argument that the case should be declared inadmissible for failure to exhaust domestic remedies was rejected, since the Mr Malik's complaints were focussed on "*the general compatibility of Schedule 7 of the Terrorism Act 2000 with the provisions of the Convention*" ([25]), and since it had not been suggested that a declaration of incompatibility under the Human Rights Act would have been an effective remedy. The case was referred to in my 2011 TA report at 9.29.

259 [2012] EWHC 2837 (Admin); see my report *TPIMs in 2012* (March 2013), 9.20

260 2012 TA report, 9.65(b) and 9.68.

Conclusion

10.89. Port powers akin to those currently contained in TA 2000 Schedule 7 have been on the statute book in one form or another since 1974, without attracting sustained attention from courts or legislators.

10.90. The spotlight is now however trained firmly upon Schedule 7. A review and public consultation have given rise to a Bill currently making its way through Parliament; and the compatibility of Schedule 7 powers with ECHR rights stands to be determined for the first time, by courts both in England and in Strasbourg. To the issues already before the courts I would add only those that arise out of the copying and retention of electronic data from mobile phones and computers.

10.91. The power remains of unquestioned utility; and as I have recorded in previous years, examinations are for the most part exercised with good humour, good judgement and restraint. The decreasing use of Schedule 7 in recent years contrasts markedly with the explosion in the use of section 44 during the second half of the last decade. Senior ports officers are well aware not only of the value of the power, but of the fact that like all valuable things, it needs careful handling.[261]

10.92. Undeniably, however, its exercise has given rise to resentment, particularly among Muslims who feel themselves singled out for attention. In the circumstances, it is right that the necessity and proportionality of its various features should be closely examined by Parliament and by the courts. It is desirable that the conclusions of Parliament should be sufficiently robust and far-reaching to survive anything that the courts can throw at them.

[261] Lord Carlile used to refer to the power in this respect as a Ming vase – an apt metaphor which I have borrowed in my own discussions of Schedule 7 with police.

11. TERRORIST OFFENCES (TA 2000, Part VI; TA 2006, Part 1)

Introduction

11.1. The main perpetrators of the most serious acts of terrorism are almost always charged with offences under the ordinary criminal law. Thus James McArdle, the 1996 Canary Wharf bomber, was charged with murder and convicted of conspiring to cause explosions; and the 21/7 London bombers and airline liquid bomb plotters of 2005-6, like Nezar Hindawi before them, were convicted of conspiracy to murder. No more grave offence exists, or is necessary, for the purpose of expressing the revulsion felt by the public for acts of terrorism.[262]

11.2. Both TA 2000 and TA 2006 contain a number of specific terrorism offences. Some of them are punishable by long sentences, notably TA 2006 section 5 (conduct preparatory to terrorism) for which the maximum penalty is life imprisonment. Their function however is not to punish acts of terrorism, or to replicate the inchoate offences such as conspiracy and attempt. Rather, it is

(a) to widen the net by extending the reach of the law to prior acts (e.g. encouragement, dissemination, training, possession for terrorist purposes, preparation),[263] and

(b) to criminalise those who may be only peripherally involved (e.g. by being present during training, or by non-disclosure to the police).[264]

Their purpose is therefore to *prevent* acts of terrorism, and even the radicalisation that can lead to acts of terrorism.[265]

11.3. Preventative offences of this kind will always be controversial, because – particularly when further widened by application of the inchoate offences of conspiracy, attempt and incitement – they are capable of penalising behaviour at several removes from an act that can harm others. As the point was put by John Stuart Mill:

> The preventive function of government ... is far more liable to be abused, to the prejudice of liberty, than the punitory function; for there is hardly any part of the legitimate freedom of action of a human being which would not admit of

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262 Enhanced sentences may be imposed for certain ordinary criminal offences when there is a terrorist connection: CTA 2008, sections 30-33.

263 TA 2006 sections 1,2 and 6; TA 2000 sections 57-58; TA 2006 section 5.

264 TA 2006 section 8; TA 2000 sections 19 and 38B.

265 As explained in *R v Ahmed Faraz*, ruling of 27 May 2011, Calvert Smith J at transcript p. 14: see further 2012 TA report, 10.4.

being represented, and fairly too, as increasing the facilities for some form or other of delinquency.[266]

Preventive offences are easier to justify when the harm potentially prevented is very grave (as is certainly the case with some terrorist acts), when an intention to harm exists and when the prohibited action is not too at too many removes from the harmful act. Where these conditions are not satisfied, the intervention of the criminal law risks "*chilling*" the exercise of perfectly lawful expressive, associational and research activity.[267]

11.4. I have previously identified TA 2000 sections 58 and 58A, and TA 2006 sections 1 and 2, as particularly deserving of scrutiny.[268] It has been suggested to me by one academic that TA 2006 section 5 also falls into that category.[269]

11.5. It is fair to point out, however, that intense judicial scrutiny has generally determined that these sections, as interpreted by the courts, are fit for purpose. For example, the European Court of Human Rights in 2011, following the House of Lords, decisively rejected the suggestion that section 58, which criminalises the collection or possession without reasonable excuse of a record of information likely to be useful to a terrorist, contravened the ECHR guarantee of freedom of expression (Article 10), commenting that any interference with that freedom was "*clearly justified by the legitimate aims of the interests of national security and the prevention of crime and disorder*", and that by criminalising material only when there was no reasonable excuse to do so, it struck "*an entirely fair balance*".[270]

11.6. After summarising each of the terrorist offences and the principal case law relating to it,[271] I decided last year not to recommend change, in particular because

(a) the responsible exercise of its powers by the CPS, coupled with the resourcefulness of counsel and the courts, particularly when armed with the strong interpretative duty in HRA 1998 section 3, have combined to produce

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266 J.S. Mill, *On Liberty*, chapter 5. I am grateful to Professor Andrew Ashworth of All Souls College Oxford who, with his colleague Professor Lucia Zedner, led a most valuable discussion for policy-makers and practitioners on Implementing Preventive Justice at the British Academy in June 2013.

267 Such as the downloading of a freely available document for research purposes, in the alarming (though fortunately not typical) case of Rizwaan Sabir: 2012 TA report, 10.38.

268 2011 TA report, 10.6-10.8 and 10.12-10.14.

269 Because some of the conduct relied upon may be so inoffensive as to render section 5 in effect a vehicle for the punishment of intentions – something which the law should not readily contemplate, since a mere intention can always change.

270 Application no. 48278/09 *Jobe v UK*, 14 June 2011, (2011) 53 EHRR SE17. A challenge under Article 7, based on the supposed vagueness of the section, was also dismissed as manifestly ill-founded.

271 2012 TA report, paras 10.7-10.21; for a more detailed and learned analysis, see C. Walker, *Terrorism and the Law* (OUP, 2011).

a workable code of terrorist offences, albeit with some rough edges; and because

(b) any inclination to criticise that code for over-breadth needs to be balanced by a realisation that criminal prosecution will always be preferable to "*preventive justice*" of other kinds: the application of executive sanctions such as TPIM notices;[272] or more informal disruptive activity from which courts and safeguards (other than those contained in the general law) are entirely absent. The inability to prosecute some cases, and the consequent recourse to other means of disruption, is arguably a much greater problem than the possible overbreadth of some criminal offences.

11.7. This year, I neither repeat my summaries of the terrorist offences nor engage in a full-scale analysis of their historical application. Rather, I confine myself to presenting the relevant statistics for the period under review, leavened by reference to some of the highlights of the year in and around the criminal courts.

11.8. Were my appointment as Independent Reviewer to be renewed beyond February 2014, I would not rule out returning in more detail to the application of particular sections. Accordingly, I continue to encourage representations from lawyers or others who are able to identify and share with me any unsatisfactory aspects of their operation in practice.

Practice – Great Britain[273]

Outcome of arrests in 2012

11.9. Of the 246 persons arrested for "*terrorism-related offences*" during 2012:

(a) 43 were charged with a terrorism-related offence, a lower percentage than has been usual but in line with the annual average of 42 between 2001 and 2012;[274]

(b) 107 were released without charge, 57 were charged with non-terrorism related offences and 39 were subject to alternative action.

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272 See D. Anderson, *TPIMs in 2012*, March 2013.

273 Save where otherwise stated, the source for the figures in this section is the online set of tables accompanying "Operation of police powers under the Terrorism Act 2000 and subsequent legislation, quarterly update to 31st December 2000", itself available from the gov.uk website: https://www.gov.uk/government/publications/tables-for-operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-quarterly-update-to-december-2012. Quarterly updates are no longer published as Home Office Statistical Bulletins.

274 The figure is however an increase on the 20 charged in 2010 and the 36 charged in 2011.

11.10. Of the 43 charged with terrorism-related offences, as noted at 8.15, above, 30 were charged under the Terrorism Acts,[275] six under TA 2000 Schedule 7 and seven under other legislation.

11.11. As of 25 April 2013, of the 43 persons charged:

(a) 18 had been prosecuted, of whom 16 were convicted[276] and two acquitted;

(b) 24 were awaiting prosecution; and

(c) one had not been proceeded against.

Outcome of trials in 2012

11.12. Of the 31 people put on trial in 2012 for an offence which was terrorism-related, 26 (84%) were convicted and five acquitted.

11.13. This compares to only 12 persons tried (eight of whom were convicted) in 2011, and approaches the annual average of 30 convictions over the period 2005-09.

11.14. Of the 26 convictions during 2012, no fewer than 24 followed a guilty plea.

11.15. No statistics are available for the calendar year as regards the specific provisions of TA 2000 and TA 2006 which resulted in convictions. Some of the highlights were however as follows.

(a) The most serious case of 2012 (Operation GUAVA) involved guilty pleas in January by eight men in their 20s to offences under TA 2000 section 5 and by one more to an offence of possession under TA 2000 section 57. Four of the men were from Stoke, three from Cardiff and two from London: some had formed a plan to create and detonate a bomb in the London Stock Exchange, while others had decided on a longer-term plan to fund and take part in terrorist training abroad with a view to carrying out terrorist acts in the future. Sentences ranged from 5 years to the 21 years' imprisonment handed down to Abdul Miah.[277]

(b) Shabaaz Hussain was sentenced to five years and three months' imprisonment in January for terrorist fund-raising in support of three associates in Somalia. Mohammed Shabir Ali and Mohammed Shafik Ali,

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275 Defined so as to include not only TA 2000 and 2006 but also the Anti-Terrorism Crime and Security Act 2001 and the Prevention of Terrorism Act 2005.

276 Five under the Terrorism Acts, five under Schedule 7 and six under other legislation.

277 See 2.13, above. The sentencing remarks of Wilkie J (9 February 2012) are available on the website of the Judiciary: http://www.judiciary.gov.uk/media/judgments/2012/r-v-mohammed-chowdhury-and-others

the twin brothers of one of those associates, were sentenced in July to three years' imprisonment, also for fund-raising offences.

(c) Mohamed Hasnath, a 19-year old from East London, was sentenced in May to 14 months' imprisonment under TA 2000 section 58 after being arrested in possession of a USB memory device that contained six editions of the AQAP publication Inspire Magazine and other material.

(d) Asim Kausar was sentenced in June to two years' imprisonment under TA 2000 section 58 after his father mistakenly handed the police a pen drive that turned out to contain documents relating to firearms, explosives, poisons, survival techniques and jihad ideology.

(e) Mohammed Sajid Khan pleaded guilty to conduct in preparation for acts of terrorism and was given an indefinite sentence of 15 years. His wife Shasta Khan was convicted after a trial under TA 2000 section 58 and TA 2006 section 5, and sentenced to eight years. They had been assembling an explosive device and driving around Jewish communities in the Manchester area looking for possible targets.[278]

(f) Bilal Ahmad was given an extended prison sentence of 17 years in July 2012 for soliciting murder, stirring up religious hatred and collecting material likely to be of use to a person preparing or committing an act of terrorism, contrary to TA 2000 section 58. Ahmad was a computer science graduate from Nottingham who had praised as a heroine Roshonara Choudhry, the would-be assassin of Stephen Timms MP, and whose computer was found to contain Inspire Magazine and a book containing instructions on the use of computers in jihad.

(g) Christian Emde and Robert Baum, two German nationals who had been stopped and examined when entering the Port of Dover, were sentenced to 16 months' and 12 months' imprisonment respectively, after pleading guilty to possession of information contrary to TA 2000 section 58.

11.16. As will be apparent, the year was characterised by a high degree of reliance on section 58 – though most cases culminated in guilty pleas and there was little opportunity for the courts to consider its limits. A series of authorities[279] have already established that the possession of propaganda material will not be enough to contravene section 58: the material must be likely to be of practical

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278 See 2.25-2.26, above.

279 *R v K* [2008] EWCA Crim 185; *R v G and R v J* [2009] UKHL 13; *R v Sultan Mohammed* [2010] EWCA Crim 227; *R v Brown* [2011] EWCA Crim 2751. As noted at 11.5 above, a submission that section 58 offended Articles 7 and 10 of the ECHR was dismissed as manifestly ill-founded by the European Court of Human Rights: Application no. 48278/09 *Jobe v United Kingdom*, 14 June 2011, (2011) 53 EHRR SE17.

assistance in the commission, preparation or instigation of acts of terrorism. It is on that basis that possession of Inspire Magazine (which has, notoriously, featured articles such as "*Make a bomb in the kitchen of your mom*") can be brought within the scope of section 58.

Sentences

11.17. The great majority of the sentences handed down in 2012 followed guilty pleas, and were thus discounted (usually by between 10% and one third, depending on the circumstances of the plea).

11.18. Sentence lengths were as follows:

Non-custodial sentence	0
Imprisonment < 1 year	1
Imprisonment 1-4 years	10
Imprisonment 4-10 years	6
Imprisonment 10-20 years	5
Imprisonment 20-30 years	1
Imprisonment for public protection	3
Life imprisonment	0
Total	**26**

Prison

11.19. As of 31 December there were 122 persons in prison for terrorist/extremist or terrorism-related offences in Great Britain, including those on remand awaiting trial.[280] Of those, 22 were classified as "domestic extremist/separatist", the majority belonging to *"extremist animal rights groups*" or being *"members or associates of far-right groups*".[281]

11.20. 33 terrorist or extremist prisoners were released in 2011/12, including one who had been serving a life sentence and 21 who had been serving sentences of four years or more.[282]

11.21. Of the 118 terrorist or extremist prisoners at 31 March 2012:

(a) 89 were British citizens, 12 African, 8 Asian, 5 European and 4 Middle Eastern[283]

(b) 52 described themselves as of Asian ethnicity, 18 as black, 12 as white, six as mixed and four as Chinese or other.[284]

280 The figure for the end of both 2010 and 2011 was 123.
281 HOSB 11/12, 13 September 2012, Tables 1.15-1.18 and Annex A para 8.
282 *Ibid.*, Table 1.16.
283 *Ibid.*,, Table 1.17.

(c) 89 were Muslims, nine Christians and 13 of no religion.

SOCPA agreement

11.22. The CPS revealed in April 2012 that a convicted terrorist had, for the first time, entered into an agreement with the CPS to give evidence in a trial against other alleged terrorists. The man, Saajid Muhammad Badat, had been sentenced in 2005 to 13 years' imprisonment for his conspiracy with Richard Reid, the shoe bomber, to destroy a passenger airline while in flight.

11.23. Badat while in prison had co-operated fully with investigators from the MPS and FBI, providing information of "*overwhelming importance*" in relation to their investigations.[285] In 2009, the CPS entered into an agreement with him under section 74 of the Serious and Organised Crime and Police Act 2005 **[SOCPA]**. Taking into account the assistance he had provided, the judge reduced is sentence to 11 years' imprisonment. An order for secrecy in relation to the agreement was lifted prior to Badat giving evidence in the trial of Adis Medunjanin in New York.

Practice - Northern Ireland

Charges under TA 2000 and TA 2006

11.24. In ***Northern Ireland***, 16 persons were charged during 2011/12 with offences under provisions of TA 2000, and three with offences under TA 2006.

11.25. Half of the 22 separate charges in Northern Ireland (12 out of 25) related to TA section 57 (possession for terrorist purposes). Other provisions charged were TA 2000 section 12 (support for a proscribed organisation), TA 2000 section 15 (fund-raising), TA 2000 section 58 (collection of information), TA section 103 (terrorist information), TA 2006 section 1 (encouragement of terrorism) and TA 2006 section 5 (acts preparatory).[286] TA 2006 (and in particular section 5), little used until recently in Northern Ireland, is becoming better known and appreciated by the PSNI, and is routinely discussed with the Public Prosecution Service **[PPS]**.

Outcome of trials in 2012

11.26. 11 defendants were charged with at least one offence under TA 2000 in the Crown Court during 2012. Three were convicted and eight acquitted.

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284 *Ibid.*, Table 1.15.

285 http://www.cps.gov.uk/news/latest_news/108_12/index.html

286 NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2011/12*, Tables 5a and 5b.

11.27. A further 11 defendants were charged with at least one offence under TA 2006 in the Magistrates Court during 2012. All were acquitted.

Discrimination in charging and sentencing?

11.28. I commented in my 2012 TA report:

> "Some Muslims believe that there is a greater readiness on the part of press, politicians, police and law enforcement officers to characterise attacks by Muslims as '*terrorism*' than attacks by far-right extremists. This, they say, ***results in discriminatory sentencing*** and cements popular perceptions of terrorism, at least in Great Britain, as crime perpetrated overwhelmingly by Muslims."[287]

(emphasis added).

11.29. I went on to say that I had not found evidence of such discrimination, and that it would not be easy to devise a methodology to detect it; but that the issue deserved to be kept under review.

11.30. In response to my report, OSCT Counter Terrorism Research and Analysis **[CTRA]** was tasked with conducting an analysis of whether, since 2001, there has been systematic bias against Muslims at the stage either of charge or of sentencing. CTRA looked at all those who had been arrested on suspicion of terrorism-related offences between September 2001 and August 2012, and asked:

(a) as to ***charging***, whether a higher proportion of Muslims than of non-Muslims was charged with terrorism-related offences; and

(b) as to ***sentence***, whether Muslims convicted of terrorism-related offences received longer average sentence lengths than non-Muslims (before and after taking account of the severity of offence).

I have been kept in touch with the progress of this analysis, which is ongoing and should be completed shortly.

11.31. It has been suggested to me that terrorist offences in Great Britain are more heavily sentenced than equivalent offences in Northern Ireland. This is a subject that would repay further study, and I welcome any comments.

[287] 2012 TA report, 2.26.

12. CONCLUSION

12.1. The start of my work as Independent Reviewer, in February 2011, coincided with the publication of the Government's Counter-Terrorism Review and the initiation of a programme of cautious and selective liberalisation of the United Kingdom's laws for dealing with terrorism.

12.2. The fruits of that programme are now being seen, most dramatically in:

(a) the abolition of the old no-suspicion stop and search power (which stands to improve community relations without materially increasing the risk from terrorism);

(b) the halving of the maximum period of detention without charge;

(c) the enhanced safeguards on the retention of biometric data under PFA 2012; and, for a very few,

(d) the transition from control orders to the less harsh and less durable TPIM regime.

12.3. I consider each of those changes to be essentially positive ones, while remaining of the view – for reasons set out in some detail in chapter 2 – that the threat from terrorism remains a substantial one, amply justifying the existence of some terrorism-specific laws.

12.4. I have sought in previous reports to identify the limited number of other areas where, in my opinion, modest changes should be made if the Terrorism Acts are to operate in an effective and proportionate manner. I have had little to say about terrorist property, terrorist investigations or terrorist offences. I have however made recommendations relating, in particular, to:

(a) the rules relating to proscription (and in particular deproscription);

(b) some aspects of Schedule 8 detention; and

(c) the operation of the Schedule 7 power to stop and examine those travelling through ports.

In this report, I also propose (with a view to later recommendation, subject to further discussion) some possible changes to the definition of terrorism, and – as a longer-term project – a future examination from first principles of the extent to which the ordinary criminal law needs to be supplemented by special rules in the field of terrorism (or indeed allied fields).

12.5. Many of my 33 Terrorism Act recommendations to date are still in the digestive process; and there are further complications, this year, in the form of:

(a) a recently initiated process, within the Home Office, to achieve the deproscription of groups that do not meet the statutory threshold for proscription;[288]

(b) a Bill before Parliament, containing a number of proposed amendments to TA 2000 Schedule 7;[289] and

(c) a number of cases, pending before the English courts and in Strasbourg, which raise fundamental points in relation to the definition of terrorism (*Gul*),[290] Schedule 7 (*Beghal*, *Fiaz*, *Elosta*, *Malik*)[291] and Schedule 8 (*Duffy/Magee*, *Magee*, *R.E.*).[292]

12.6. In each of the areas I have identified as suitable for change, therefore, the situation is fluid. I commend the Government for the action that it is taking, while retaining reservations as to, in particular:

(a) the patchiness of its attempts to bring policy on deproscription into conformity with the law (5.39-5.40);

(b) its failure to allow bail applications from those arrested under TA 2000 (8.44); and

(c) the limits placed on its Schedule 7 consultation and proposals for reform (10.36-10.37, 10.47-10.78).

12.7. Having expressed clear views as to how the law might be changed in all these areas, I have decided this year not to make any further formal recommendations, but rather to take stock.

12.8. In doing so, I have sought to review and report upon each aspect of the operation of the Terrorism Acts, as statute requires me to do. I hope that my findings and observations may be of value in informing what continues – to the credit of our democracy – to be a vigorous political, legal and public debate.

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288 5.27-5.40, above.
289 10.42-10.47, above.
290 4.9, above,
291 10.83-10.87, above.
292 8.50-8.55, above.

ANNEX I

ACRONYMS USED IN THE REPORT

Legislation

ASBCP Bill	Anti-Social Behaviour, Crime and Policing Bill 2013
ATCSA 2001	Anti-Terrorism, Crime and Security Act 2001
CJA 2009	Coroners and Justice Act 2009
CTA 2008	Counter-Terrorism Act 2008
CSA 2010	Crime and Security Act 2010
HRA 1998	Human Rights Act 1998
JSA 2013	Justice and Security Act 2013
JS(NI)A 2007	Justice and Security (Northern Ireland) Act 2007
PACE	Police and Criminal Evidence Act 1984
PFA 2012	Protection of Freedoms Act 2012
POCA 2002	Proceeds of Crime Act 2002
PTA 2005	Prevention of Terrorism Act 2005
RIPA	Regulation of Investigatory Powers Act 2000
SOCPA 2005	Serious and Organised Crime and Police Act 2005
TA 2000	Terrorism Act 2000
TA 2006	Terrorism Act 2006
TAFA 2010	Terrorist Asset-Freezing &c. Act 2010
TPIMA 2011	Terrorism Prevention and Investigation Measures Act 2010

Other

ACPO	Association of Chief Police Officers
ACTCC	ACPO Counter-Terrorism Co-ordination Centre
AQAP	Al-Qaida in the Arabian Peninsula
AQI	Al-Qaida in Iraq
AQIM	Al-Qaida in the Maghreb
CIRA	Continuity Irish Republican Army
COAG	Council of Australian Governments
CPS	Crown Prosecution Service
CTIRU	Counter-Terrorism Internet Referral Unit
CT Network	Police Counter-Terrorism Network
CTU	Counter-Terrorism Unit
CTIU	Counter-Terrorism Intelligence Unit
CTRA	Counter-Terrorism Research and Analysis (OSCT)
ECHR	European Convention of Human Rights
EDL	English Defence League
FATA	Federally Administered Tribal Areas

FATF	Financial Action Task Force (G8)
FOSIS	Federation of Student Islamic Societies
FME	Forensic Medical Examiner
GCHQ	Government Communications Headquarters
HET	Historical Enquiries Team (Northern Ireland)
HMIC	Her Majesty's Inspectorate of Constabulary
HOSB	Home Office Statistical Bulletin
ICT	International Counter-Terrorism
ICVs	Independent Custody Visitors
ICVA	Independent Custody Visiting Association
IED	Improvised explosive device
IMC	Independent Monitoring Commission (Northern Ireland)
INSLM	Independent National Security Legislation Monitor (Australia)
IPCC	Independent Police Complaints Commission
JCHR	Joint Committee on Human Rights
JTAC	Joint Terrorism Analysis Centre
MI5	Security Service
MI6	Secret Intelligence Service
MPS	Metropolitan Police Service
NCA	National Crime Agency
NCTC	National Counter-Terrorism Center (USA)
NDEDIU	National Domestic Extremism and Disorder Intelligence Unit
NDEU	National Domestic Extremist Unit
NIPB	Northern Ireland Policing Board
NIO	Northern Ireland Office
ONH	Óglaigh na hÉireann (Soldiers of Ireland)
OSCT	Office for Security and Counter-Terrorism
PIRA	Provisional Irish Republican Army
PNR	Passenger Name Records
POAC	Proscribed Organisations Appeal Commission
PMOI	People's Mujahideen of Iran
PRG	Proscription Review Group
PRRG	Proscription Review and Recommendation Group
PPS	Public Prosecution Service (Northern Ireland)
PWG	Proscription Working Group
PSNI	Police Service of Northern Ireland
RAAD	Republican Action Against Drugs
RIRA	Real Irish Republican Army
RPG	Rocket-Propelled Grenade
SIAC	Special Immigration Appeals Commission
SO15	Counter-Terrorism Command, Scotland Yard
SOCA	Serious Organised Crime Agency

TE-SAT	Terrorism Situation and Trend Report (Europol)
TFTP	Terrorist Finance Tracking Provisions
TPIMs	Terrorism Prevention and Investigation Measures
XRW	Extreme Right Wing

ANNEX II

AMENDMENTS TO THE TERRORISM ACT 2000

Statute	Subject	Provision	Date brought into force	Statutory Instrument
Coroners and Justice Act 2009	**Independent Custody Visitors**	S117(1),(2),(3)	**7 August 2012**	SI 2012/705, Coroners and Justice Act 2009 (Commencement No.9) Order 2012 (http://www.legislation.gov.uk/uksi/2012/1810/made).
		S117(4),(5),(6),(7),(8)	**22 April 2012**	SI 2013/705, Coroners and Justice Act 2009 (Commencement No.12) Order 2013 (http://www.legislatioon.gov.uk/uksi/2013/705/made).
Protection of Freedoms Act 2012	**Stop and Search;**	S62 (code of practice)	**9 May 2012**	SI 2012/1205, Protection of Freedoms Act 2012 (Commencement No.1) Order 2012 (http://www.legislation.gov.uk/uksi/2012/1205/made).
	Pre-charge detention; review of terrorism legislation;	Ss57-61,63, Sch. 5, Sch. 6, Sch.9 Para 32(a)-(d) –	**10 July 2012**	SI 2012/1205, Protection of Freedoms Act 2012 (Commencement No.1) Order 2012 (http://www.legislation.gov.uk/uksi/2012/1205/made).
	Retention of biometric data (incl. appointment of Biometrics Commissioner)*	S20(1),(10),(11) and s22	**1 October 2012**	SI 2012/2234, Protection of Freedoms Act 2012 (Commencement No.3) Order 2012 (http://www.legislation.gov.uk/uksi/2012/2234/made).
Terrorism Act 2000	**Proscription**	**Schedule 2**	**6 July 2012**	SI 2012/1771, Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2012 (http://www.legislation.gov.uk/uksi/2012/1771/made).
		Schedule 2	**23 November 2012**	SI 2012/2937, Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No.2) Order 2012 (http://www.legislation.gov.uk/uksi/2012/2937/made).

* Although these specific provisions do not in themselves amend the Terrorism Act 2000, the changes to the Terrorism Act 2000 made by Chapter 1, Part 1 of Protection of Freedoms Act 2012 will be commenced in October 2013 (see: Written Ministerial Statement – Hansard, 13 Dec 2012: Column WS160-161, (http://www.publications.parliament.uk.pa/ld201213/ldhansrd/text/121213-wms0001.htm#12121340000203)).

ANNEX III

MINISTERIAL STATEMENTS ON NORTHERN IRELAND

Statement made on 27 February 2012 [293]

Northern Ireland Security Situation

The Secretary of State for Northern Ireland (Mr Owen Paterson): In July 2011, when I laid the final report of the IMC before the House, I made a commitment to provide twice yearly updates summarising the threat. This statement is the first such update and represents our assessment of the current position.

During the past six months all the dissident republican groups have remained active in Northern Ireland, and the threat level in Northern Ireland remains at severe meaning an attack is highly likely.

The threat level in Great Britain is substantial, meaning that an attack is a strong possibility.

There have been 13 attacks against national security targets in Northern Ireland since 1 August 2011. These have included attacks on police officers as well as small bombs deployed against a bank in Newry and the city of culture offices in Londonderry. The most recent attacks have included the attempted murder of a soldier on 5 January 2012, a pipe bomb recovered at the scene of a fire in West Belfast on 17 January 2012 and two pipe bombs set off in Londonderry on 19 January 2012.

Many other potential attacks have been prevented by the actions of security and law enforcement agencies on both sides of the border.

While there were fewer attacks in 2011 than in 2010, the intent and capability of dissident republican terrorists remains high. At present, the threat appears to have stabilised as a result of the activities of security and law enforcement agencies. However, there remains a high level of underlying terrorist activity and planning.

The most active groups at present are:

- The Real IRA (RIRA);
- The Continuity IRA (CIRA);
- Óglaigh na hÉireann (ONH).

In addition, there are a number of unaffiliated terrorists who are also active. All of these groups are dangerous and pose a real threat—primarily to police officers but also, through their actions, to the wider public.

The UDA and UVF leaderships remain committed to their ceasefires, although there has been unsanctioned violent activity by members of both groups.

Both loyalist and republican groups continue to be involved in a wide range of acts of criminality. Both also continue to carry out paramilitary style assaults and shootings.

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[293] See Hansard: 27 Feb 2012: Column 16WS – 17WS at http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120227/wmstext/120227m0001.htm#1202271000008

I am grateful to the Police Service of Northern Ireland, An Garda Síochána and the Security Service for their tireless efforts to address the real and severe threat posed by terrorists in Northern Ireland.

I am confident that the national security arrangements are operating in line with the principles set out in annex E to the St Andrew's Agreement. As I informed the House on 19 December 2011, Official Report, column l45WS, Lord Carlile's recent report on the operation of arrangements for handling national security matters in Northern Ireland expressed satisfaction that there are no difficulties of any significance in the inter-operability between the PSNI and the Security Service. He concluded that their sound working partnership should be commended. Lord Carlile said that he believed that, compared with 2010, 2011 saw more success in containing and stabilising the threat and noted that there were fewer incidents and fewer major attacks.

As this House is well aware, tackling terrorism in all its forms and within the rule of law remains the highest priority for this Government. We will continue to work as closely as possible with our strategic partners in the PSNI, Northern Ireland Executive and the Irish Government to counter this threat.

Statement made on 16 July 2012[294]

Northern Ireland Security (Update)

The Secretary of State for Northern Ireland (Mr Owen Paterson): The Government are committed to putting greater information in the public domain about security threats to the United Kingdom generally. At the time of announcing the winding-up of the Independent Monitoring Commission, I made a commitment to provide bi-annual updates to this House on the security situation in Northern Ireland. I made the first of these statements in February and this is my second such update.

Shortly after coming to office the Government reviewed the security situation and developed a new strategic approach to tackling Northern Ireland related terrorism. We agreed in 2011 an exceptional additional £200 million of investment for the Police Service of Northern Ireland (PSNI) over four years. This is producing results.

There are still a small number who favour violence and reject democracy. They have no respect for life, no respect for human rights and no respect for the will of the people in both Northern Ireland and the Republic of Ireland.

As a result of their activities, the threat level in Northern Ireland remains at "Severe", meaning that an attack is highly likely.

The threat level in Great Britain is "Substantial", meaning that an attack is a strong possibility.

While the overall threat levels remain the same, however, progress has been made. The excellent work of the PSNI and other partners tackling the current threat has led to some considerable successes in recent months, with some significant arrests, charges and convictions.

There have been a total of 76 arrests so far this year, including arrests by An Garda Síochána in the Republic of Ireland. There have also been 37 charges against those involved in national security attacks brought since January 2012, including a number of charges for serious terrorism related offences. A number of weapons and improvised explosive devices have been seized. These combined efforts have had a positive impact. Despite this, however, attacks continue and the intent of groups engaged in Northern Ireland related terrorism remains high.

The Real IRA (RIRA), the Continuity IRA (CIRA), and the group that refers to itself as Óglaigh na hÉireann (ONH) all continue to be very active, as do a number of "unaffiliated", but no less dangerous, individuals. In June, the paramilitary organisation Republican Action Against Drugs (RAAD), which regularly conducts brutal shootings against people in Londonderry, attacked the PSNI with a pipe bomb. The PSNI is pursuing a strategy to tackle the actions of both this group and other reckless vigilante organisations, which command little support from the wider community.

Terrorists continue to seek access to funding and weaponry. They have been undertaking training as well as targeting. Paramilitary groups also continue to be involved in a range of

[294] See Hansard: 16 July 2012: Column 109WS-111WS at http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120716/wmstext/120716m0001.htm#12071618000012

criminal activity, often at the expense of their own communities—both to fund their activities and their individual lifestyles.

Since my last statement on 27 February 2012, Official Report, column 16WS, there have been nine confirmed national security attacks (bringing the total to 14 confirmed attacks so far this year). All but one have been pipe bombs, which have primarily been used to attack PSNI officers or their families. These included a device thrown at a property where PSNI were attending a call out and a number of pipe bombs, which were thrown at PSNI officers while carrying out a clearance operation of a suspicious object. In the most recent confirmed national security attack, a pipe bomb was thrown at a PSNI vehicle patrol; the device functioned but did not cause any injuries or damage to the vehicle. The other attack was a large improvised explosive device containing over 600 lb of home made explosive which was abandoned near the Irish border at Newry. This was successfully defused by ammunition technical officers. It was destined to be an attack on the community in Northern Ireland and would certainly have endangered lives.

In addition to the attacks outlined above, during rioting in North Belfast on 12 July a number of shots were fired at police officers who were there to ensure compliance with the legal determination of the Parades Commission and to facilitate the rights of both loyalist and nationalist members of the community. This should be considered nothing less than the attempted murder of police officers.

There have been no serious injuries as a result of national security attacks this year. We cannot, however, be complacent. The devices used have all had the potential to cause death or serious injury. The community in Northern Ireland have had their daily lives disrupted as a result of terrorist activities.

In addition to direct attacks, terrorist groups seeking to attack the police in Northern Ireland have continued to use hoax devices, acts of criminal damage or orchestrated disorder to create fear in the community and draw police into areas in order to attack them. This tactic is designed to make it harder for the PSNI to provide a good community policing service and should be roundly condemned by all. Despite that, confidence levels in policing across Northern Ireland have continued to rise. The chief constable continues to place community policing at the heart of his policing plan.

As I noted in my last written ministerial statement on the current threat in Northern Ireland, the UDA and UVF leaderships remain committed to their ceasefires, although individuals associated with these groups continue to be engaged in criminal activity.

Both republican and loyalist paramilitary groups continue to carry out paramilitary style assaults. Republican paramilitary groups also continue to carry out shootings on members of their own community. These attacks are both cowardly and sickening. They show a complete disregard for the human rights of their victims and for their families.

The overwhelming majority of people in Northern Ireland stand by the principle that Northern Ireland's future will only ever be determined by democracy and consent, as established by the Belfast agreement. This is a settlement that requires all those involved in the political process to pursue legitimate goals through exclusively peaceful and democratic means.

Cross-border co-operation in the area of security is vital. I keep in very close contact with the Northern Ireland Justice Minister, David Ford, and the Irish Minister for Justice and Equality, Alan Shatter TD. The levels of co-operation between the PSNI and An Garda Síochána to tackle the threat is unprecedented and has almost certainly saved lives.

In conclusion this Government remain committed to tackling the terrorist threat in Northern

Ireland. It is vital that we continue to do this in pursuit of our objectives of a peaceful, stable and prosperous Northern Ireland in which everyone has a genuinely shared future.

Statement made on 28 Feb 2013[295]

Northern Ireland Security Situation

The Secretary of State for Northern Ireland (Mrs Theresa Villiers): Following the joint decision by the UK and Irish Governments to wind up the Independent Monitoring Commission in 2011, my predecessor made a commitment to provide bi-annual updates to the House on the security situation in Northern Ireland. This is my first such statement as Secretary of State for Northern Ireland.

Overall threat in Northern Ireland

Since the statement in July 2012, the threat level in Northern Ireland has remained at "severe". This means that an attack remains highly likely. There were 24 national security attacks during 2012, compared with 26 attacks in 2011. So far, there have been three national security attacks in 2013. A majority of attacks have involved the use of crude, but potentially lethal, pipe-bomb devices; there were also a number of more sophisticated and serious attacks.

The cowardly murder of prison officer David Black, in November 2012, by a group referred to as the "new IRA" was a brutal reminder of the continuing threat posed by dissident republican terrorists. They continue to target police officers, soldiers and prison officers. Yet these are also attacks on the wider community causing disruption and discomfort to the daily lives of many people.

The Police Service of Northern Ireland (PSNI) and the Security Service, along with An Garda Síochána (AGS), continue to demonstrate a robust commitment to bringing to justice those who carry out attacks. Across the island of Ireland 173 arrests and 64 charges were made during 2012. There were also 18 convictions of individuals involved in planning and participating in attacks. Many more attacks were prevented and disrupted.

During 2013, Northern Ireland has a great opportunity to showcase itself through events such as the G8 summit, world police and fire games, and Derry-Londonderry city of culture. The PSNI, the Security Service, and AGS will continue working together to ensure these events happen safely and successfully. PSNI has a wealth of experience at managing large events and will also be able to call for assistance from police services in Great Britain where necessary, particularly with regard to the G8 summit.

Threat to GB from Northern Ireland-related terrorism

In October 2012, the threat level from Northern Ireland related terrorism in GB was reduced from "substantial" to "moderate". The Security Service reached this assessment on the basis of current intelligence, although it recognises that dissident republican terrorists continue to aspire to conduct attacks in GB. All threat levels are, of course, kept under review.

Activity of republican paramilitary groups

New IRA—In July 2012, a number of disparate groups came together to form an organisation generally referred to as the "new IRA". This new grouping primarily consists of members of the Real IRA, Republican Action Against Drugs (which conducts brutal

[295] See Hansard: 28 Feb 2013: Column 35WS – 38WS at http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130228/wmstext/130228m0001.htm#13022844000006

shootings against nationalist members of the community) and a number of unaffiliated individuals who we believe have connections to the fatal attack against Massereene barracks in 2009. This group has already demonstrated its lethal intent, claiming responsibility for the murder of David Black last November. The group also conducted an unsuccessful attack in September 2012, in which it attached a bomb to a bicycle as part of a trap to kill police in Londonderry. It has, however, also suffered setbacks. For example, on 6 December 2012 a number of individuals were arrested and charged after being found in possession of an explosively formed projectile capable of penetrating armoured vehicles.

Continuity IRA—This group is dangerous and continues to conduct attack planning. In late January, Continuity IRA (CIRA) claimed responsibility for a shooting attack against police officers in Lurgan, though nobody was injured.

Óglaigh na hÉireann (ONH) has also continued to be active over the past six months. We judge that this group is responsible for two attempted under vehicle car-bomb attacks since December 2012. Fortunately none of these were successful. Had they exploded they would almost certainly have been fatal for anyone in the vicinity, potentially including families and young children. Most recently, we believe that ONH were responsible for throwing a pipe bomb which struck a PSNI vehicle in north Belfast on 30 January.

All of these groups remain heavily involved in criminality, in particular fuel laundering and smuggling, but also drugs, robbery and extortion.

Activity of loyalist paramilitary groups

The leaderships of the main loyalist paramilitary organisations, the Ulster Defence Association (UDA) and Ulster Volunteer Force (UVF), remain committed to their ceasefires. While individuals associated with the UVF were involved in recent loyalist public disorder, the PSNI do not believe that this was sanctioned by the UVF leadership. Both the UDA and the UVF have endorsed calls for an end to the public disorder. Both groups do, however, remain involved in organised crime, including smuggling and other criminal activity.

During the public disorder over 140 police officers were injured. To date there have been more than 170 arrests and over 125 charges. We shall continue to do all we can to support the PSNI in policing the protests and bringing those involved in public disorder and other illegal activities to justice.

Paramilitary style shootings and assaults

Both republican and loyalist paramilitary groups continue to carry out paramilitary style assaults—so-called “punishment attacks”—by which they seek to intimidate whole communities. Within the communities affected there is, rightly, widespread revulsion against such activities.

Co-operation

I meet regularly the Northern Ireland Minister of Justice, David Ford, and the chief constable, Matt Baggott, to discuss the terrorist threat. The Government continue to offer its full support to the PSNI. We are currently examining future funding needs when the current £200 million security package that the Government agreed in 2011 expires in March 2015.

I will also be working with the Minister of Justice, the chief constable and colleagues in Whitehall to ensure the people of Northern Ireland receive the best possible protection against international crime. These include activities such as child abuse and human

trafficking. The Government were extremely disappointed at the decision by the Northern Ireland Executive not to pursue a legislative consent motion for the operation of the National Crime Agency in Northern Ireland. We do, however, remain willing to consider proposals by the Executive which would amend the arrangements for the National Crime Agency to reflect Northern Ireland's specific circumstances.

Cross-border co-operation with our colleagues in the Republic of Ireland remains excellent. AGS has made a significant number of arrests in recent months as a result of its own investigations into republican paramilitary activity. This has undoubtedly saved lives. AGS continues to work tirelessly to bring those involved in criminality and terrorism to justice. I speak frequently to the Irish Justice Minister, Alan Shatter.

I would like to take this opportunity to pay tribute to PSNI Constable Philippa Reynolds, who died in the service of her community on 8 February, and offer my condolences to her family. I would also like to place on record my condolence to the family of Garda Adrian Donohoe who was murdered by criminals operating across the border on 25 January. Both Constable Reynolds and Garda Donohoe died as they worked, to keep people safe in the communities they served.

Conclusion

It is clear from the violence carried out by both republican and loyalist groups that there are still people in Northern Ireland who demonstrate contempt for democracy and the rule of law. Their numbers remain small, but the threat they pose continues to be very real. While these groupings enjoy virtually no public support, sectarianism and division can fuel grievances on which they will seek to capitalise. There is a responsibility on local politicians and community leaders to work together to address sectarianism and build a shared future for everyone in Northern Ireland. For our part, this Government remain fully committed to tackling the threat from terrorism and keeping the people of Northern Ireland safe and secure.

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