

Response by the Independent Reviewer of Terrorism Legislation

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1. This is my response to the Home Office's consultation published on 16 May 2023 on the draft Information Order Code of Practice to be made under the Terrorism Act 2000, if Parliament approves certain amendments currently before the House of Lords.
2. The Economic Crime and Corporate Transparency Bill introduces new Information Order powers intended to assist the NCA to identify terrorist financing (with identical powers to deal with money-laundering). These powers will be available, subject to judicial approval, to assist with both operational and strategic analysis and will require persons carrying out business in the regulated sector to disclose potentially large volumes of confidential customer information.
3. Clause 180 of the current version of the Bill, if enacted, amends the Terrorism Act 2000 (or in the case of money-laundering, POCA) to provide for these orders.
4. One of the criteria for their grant in terrorism cases is that the magistrates' court or (in Scotland) the sheriff is that:

"...the information would assist an authorised NCA officer to conduct...strategic analysis identifying trends or patterns in the conduct of terrorist financing, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of terrorist financing" (by inserting new subsection (6A) into section 22B Terrorism Act 2000).
5. The other criteria relate to operational analysis and foreign requests. In all circumstances it must be reasonable for the information to be provided.
6. An obvious worry over exercise of a *strategic* power is that it will amount to an unjustified fishing expedition. The probability of collateral intrusion is high and obtaining such information for strategic analysis requires careful justification. It is not dissimilar in principle to a bulk-type power.
7. The Code of Practice which is to be issued under new section 22F Terrorism Act 2000, and to which any requesting officer must have regard, ought to be a safeguard in this respect.
8. However, in the consultation version, the draft Code of Practice is somewhat incomplete by comparison, for example, with the far more thorough Disclosure Order Code of Practice issued under section 377 POCA.
9. As it presently stands paragraph 18 fails to record that any application must demonstrate that the statutory requirements in subsection (6A) are met. It risks an authorising officer presenting an application which does not enable the court (or sheriff) to be personally

satisfied (see *R (Bright) v Central Criminal Court* [2001] WLR 662) in relation to all the statutory criteria.

10. More particularly, paragraph 22, which does refer to the statutory criteria, does no more than recite the terms of subsection (6A) without giving any further assistance as to the types of circumstances in which strategic analysis may be justified.
11. It is suggested that the Code should clearly require that an authorising officer should consider *and set out in the application to the court (or sheriff)*:
  - An estimate for the number of individuals whose data may be obtained if the order is granted.
  - That consideration has been given to minimising the amount of data obtained or the number of individuals affected.
  - The importance of the strategic analysis in question to the NCA's understanding of terrorist financing.
12. It is also suggested that the Code should provide indicative examples of how an Information Order may be needed for strategic analysis. Courts are not used to granting orders for the purposes of strategic analysis, and including non-exhaustive examples within the Code would (a) provide a scenario or scenarios against which any application can be tested and (b) increase public understanding of the uses for which this power may be put.
13. There is also misplaced reference to property seizure (at paragraph 12). An Information Order requires the provision of information. Any seizure, if it is to occur subsequently, will be done under a separate power.

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