Home Office

HOME SECRETARY
2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Rt Hon David Davis MP
House of Commons
London SW1A 0AA

Mark Oaten MP
House of Commons
London SW1A 0AA

15 September 2005

Dear David and Mark,

Further to my letters to you of 15 and 19 July, I am now in a position to outline more fully what we expect to include in the Terrorism Bill which we will be introducing when Parliament returns.

I laid out the proposed steps we wanted to take in the legislation in my letter to you of 15 July. I attach for your comment draft clauses that will give effect to these steps. The only proposal covered in that letter which has since been omitted is the power for the Security Service to carry out certain activities overseas. The Service has since confirmed to me that it does not require such a power and that its absence does not hamper operational effectiveness.

The new clauses attached are very much draft clauses and we will be working to refine them between now and when we introduce the Bill. However, I would be grateful for your comments on them.

We made it clear before recess that we would continue through the summer to have lengthy consultations with the police, CPS and intelligence agencies to ascertain what additional powers and offences might help them combat terrorism. Therefore, I am also able to outline additional proposals to those in my letter to you of 15 July and provide draft clauses.

We have looked at creating additional new offences. Sitting alongside the new offence of indirectly inciting terrorism (draft clause 1), we plan to create a power to ensure that those who glorify terrorist acts may be prosecuted. The celebration of despicable terrorist acts over the past weeks has only served to inflame already sensitive community relations in the UK. We are, of course, conscious that such an offence needs to be carefully drawn and needs to balance the proper exercise of freedom of speech, even where views that are aired are deeply objectionable, with our duty to address radicalisation and the celebration of acts which are simply unacceptable. Draft clause 2 addresses this issue.

In line with this change we are also proposing a corresponding change to the grounds for proscription, so it will become possible to proscribe organisations which glorify terrorism. The current regime concentrates on those groups that I believe are involved in or concerned in terrorism. However, there are a range of groups which whilst not involved in committing acts of terrorism, may provide succour and support to it, thus furthering radicalisation. Whilst we do not intend to penalise organisations where a stray member may on occasion glorify a terrorist act (though we would of course look to see if it were possible to prosecute that individual), we do want to demonstrate that it is not acceptable for organisations in this country systematically to foster that sort of climate. Draft clause 18 is designed for this purpose.

We propose to create an offence to tackle dissemination of radical written material by extremist bookshops. The offence will be one of publishing and possessing for sale of publications that indirect incite terrorist acts or are likely to be useful to a person committing or preparing an act of terrorism. We wish to make it clear that it shall be illegal to disseminate both material that may incite terrorism, and material that may be of use to terrorists, such as training guides. We are deeply concerned that there are people disseminating different sorts of material that is clearly designed to encourage others to terrorist acts or which is expressly providing guidance on terrorist techniques. That sort of activity is not acceptable and that is why we are taking action. Draft clause 3 is for this purpose.

As you know, attendance at terrorist training camps can often be a precursor to significant terrorist acts and to further radicalisation. We have therefore created an offence of attending a terrorist training camp. By virtue of this new offence people attending a place anywhere in the world at which they receive training or instruction, the purpose of which is the commission, preparation or instigation of acts of terrorism, will be liable to prosecution. Draft clause 6 covers this.

We are also intending to amend section 128 of Serious Organised Crime and Police Act 2005 (SOCAP) to extend the offence of criminal trespass to cover licensed civil nuclear sites. These are clearly sites where the consequence of a terrorist attack would be very serious and we need to ensure that they have the maximum possible protection. Draft clause 10 deals with this issue.

We will be extending disclosure notice powers conferred on prosecutors under Chapter 1 of Part 2 of SOCAP to investigations into the commission, preparation or instigation of acts of terrorism. We want to ensure that if people hold information that is relevant to a terrorist investigation there is every incentive for them to divulge it.

As you will see, the Bill, in clause 19, gives effect to ACPO's suggestion that we should extend the maximum period of detention prior to charge from 14 days to 3 months.

The police and the CPS have put forward a strong argument to me that the maximum period should be extended. I attach further information on this at Annex A.

I should stress that this addresses a maximum time period which we would expect to be reached only in very rare cases. Continued detention would need to be approved by a District Judge on a weekly basis and would only be permitted if the District Judge was

satisfied that the further detention was justified and that investigation was being taken forward as efficiently as possible.

I know that this is something about which you have both had some reservations and I would be interested in any preliminary reaction which you have to the police case. In particular, it may be that you are convinced by the case for some extension, but feel that 3 months is too great an extension. I would be interested in your views on this particular point.

As you know, there are a number of other measures which we are still considering including in the Bill and as and when we have draft clauses, I will send them to you.

I should tell you now, though, that there are a number of provisions that we intend to take forward through amendments to the current Immigration, Asylum & Nationality Bill. Amendments will be tabled when Parliament returns, in time for these to be considered before Commons Committee consideration of the Bill begins on 18 October.

We want to clarify the position where an immigration officer or constable may obtain a warrant issued in anticipation of arresting someone who is liable to detention upon service of a notice of intention to deport. Current legislation is ambiguous in that a warrant may be obtained to enforce entry to premises where there are reasonable grounds for suspecting someone is liable to be arrested, but this is linked to where a person is liable to detention. This provision will make it clear to JPs/district judges that the warrant may be obtained to enable the notice to be given and the person to be arrested.

In granting British citizenship, we propose to extend the statutory requirement that the Secretary of State must be satisfied that the applicant is "of good character", which presently applies only to those seeking naturalisation, to all applicants for British nationality except where we are under a duty to grant it because of our ratification of the 1961 UN Convention on the Reduction of Statelessness.

Where a person's right of abode here derives in part from his or her citizenship of another Commonwealth country, we wish to be able to prevent the exercise of that right in circumstances where it is deemed not conducive to the public good that the person should be able to do so.

We intend to legislate to take the power to deprive dual nationals of their British citizenship if they act in a way which is covered by the list of unacceptable behaviours.

We are also considering enhanced powers that might be made available to Immigration Officers operating embarkation controls, including the power of detention at the point of embarkation; and our scope to refuse asylum to those whose conduct is covered by the list of unacceptable behaviours.

As you know, the measures outlined here and in the draft clauses attached constitute only one element of our overall approach to counter-terrorism following the events of 7 and 21 July. I have also attached, for your information, the written evidence submitted by my Department to the Home Affairs Select Committee which puts this in the wider context.

You have both been particularly interested in pursuing the possibility of devising procedures which might enable more sensitive evidence to be adduced in criminal trials. This is something which the all-party Newton committee recommended a couple of years ago and which we are also interested in pursuing. We are working with the CPS and intelligence agencies to see whether a change would be possible which would allow for more sensitive evidence – perhaps including intercept evidence - to be used while safeguarding sources and methods and the rights of the defendants. We hope that this work will be complete by the end of the year and I will of course let you know our conclusions.

Finally, in case you have not seen it, I ought to draw your attention to a written PQ that I answered earlier this week. It effectively dealt with the operation of the control order regime under the Prevention of Terrorism Act 2005 for the last three months. You can find it in Hansard at cols 2529-30W.

I am copying this letter and attachments to the committee chairs of the Home Affairs Committee, John Denham, the Intelligence and Security Committee, Paul Murphy, the Joint Committee on Human Rights, Andrew Dismore, the Constitutional Affairs Committee, Alan Beith and the independent Reviewer of the Terrorism Act 2000, Lord Carlile. I am also placing a copy in the Library of the House of Commons and on the Home Office website.

CHARLES CLARKE

Pre-Charge Detention Periods

The reasons why the police and CPS believe that increased detention periods are required are as follows.

Nature of terrorist threat

The unique threat posed by terrorism means that the police have to intervene early, as soon as they become aware of a potential terrorist group and before the terrorists have the opportunity to achieve their goals. Arrests may therefore be effected on the weight of intelligence rather than admissible evidence as would normally be the case. So the police may be starting from a lower base and the evidence may need to be built up from continued investigation once the suspect is detained which takes time.

Encryption

Heavily encrypted computer data can take far longer than 14 days to decrypt yet it may contain enough information to charge a detained suspect or progress an investigation. At present, if there is no realistic likelihood of decrypting the data within 14 days, the detainee must be released. Even if placed under surveillance, this risks losing coverage of the individual and could ultimately represent a danger to the public.

Volume of information

The volume, location and format of evidence in many terrorist cases may delay an effective line of questioning until some time after an arrest has been made. Evidence in terrorist cases may, for example, have to be collected from numerous properties and sites, many of which would have to be investigated during the detention time because of the need for early, preventative arrests. An extended detention time would allow for the proper collection and analysis of evidence. This would ensure that questioning could be as effective as possible.

The volume of evidence may also make it almost impossible for the police and CPS to establish suitable charges within 14 days of making an early, preventative arrest. An extended detention time would help the police and CPS to establish the correct charges. This in turn would reduce post-charge custody times and may make it easier for both the prosecution and the defence to conduct their cases fairly.

In order to illustrate the scale of evidence that can be involved in terrorist cases, a representative of the Metropolitan Police Service at the Home Affairs Committee hearing on 14 September, said that the investigations into the events of 7 and 21 July has yielded 38,000 exhibits which filled two warehouses, all of which need to be scrutinised. The same investigations have required 80,000 videos of CCTV footage to be studied and 1,400 fingerprints across 160 crime scenes.

The interrogation of computer hard drives (encrypted or not), phone records and other documents must be conducted in painstaking detail and cross-referenced against details of other individuals to establish patterns of communication. It can therefore be several days before detainees can be questioned about any information recovered from such analysis. By way of example, the police estimate that it can take 12 hours properly to interrogate and obtain all the information from a single computer hard drive (quite apart from then

assessing the relevance of that material to the investigation) One recent case involved 268 computers, 274 hard drives, 591 floppy discs, 920 CD DVDs and 47 zip discs.

In another case over 7,000 telephone records had to be checked and numerous consequential leads followed up.

Complexity of terrorist networks

The peripatetic nature of international terrorist networks and the use of multiple identities exacerbates this further. There may be many intertwined and interlocking strands and it may not be possible to establish all the necessary linkages within 14 days.

International nature of terrorism

Increasingly, the terrorist threat that we face is international. Often leads will need to be followed up from abroad and our law enforcement agencies have no control over how quickly requests for assistance will be processed. The need to provide, and conduct interviews through interpreters can also delay progress.

CBRN and other hazardous substances

The possibility of terrorists using CBRN materials means forensic recovery must be undertaken with regard to the associated danger. This can delay recovery of CBRN material and also necessitate laboratory analysis. Meanwhile, if a suspect is in detention, the window for questioning diminishes.

Similarly, entry into premises where dangerous substances (e.g. explosives) are believed to be present must be delayed until police are satisfied there is no danger to the public or the officers. Sir Ian Blair has stated that one property connected to the recent investigations in Leeds could not be entered for six days due to concern about the volatile nature of certain types of explosives. Once inside, officers may be faced with a further delay while any substances or devices are rendered safe and recovered.

Recovery of evidence from a crime scene

The 7 July attacks in London demonstrated how difficult it can be to recover forensic evidence from the scene of a terrorist incident. The devastation caused by a large explosion means it can take a considerable amount of time to determine the terrorists methodologies. Working conditions at the crime scenes will enforce limited shifts for forensic teams retrieving evidence, large amounts of fragmented evidence will need to be retrieved, sifted and analysed and in some cases, access to the scene itself may be severely restricted (as at Russell Square). If a suspect is in custody in association with such attacks, it may be a considerable amount of time before there is a comprehensive picture which will enable specific questioning to begin.

Other factors

The need to allow those detained time for religious observance – often several times a day - limits the amount of progress with interviewing suspects. Similarly, the fact that when a group of people is arrested, they will often tend all to employ the same solicitor means that only one of them can be interviewed at any given time. Again the window of opportunity for questioning is diminished.

Conclusion

All of the above sets out why it may not be possible to gather all the evidence in the time currently available in terrorist cases. It is important to understand what the effect of this can be.

The aim must always be to ensure that a person is charged with an appropriate offence. If it has not been possible, by the deadline that is in place, to establish all the necessary decision, the risks are:

- A suspect is released without charge when, had the true extent of the evidence been available, he should have been charged with a serious terrorist crime and kept in custody. His release poses a risk to the public and undermines the fight to bring terrorists to justice.
- A suspect is charged with a lesser offence than the full evidence, had it been available, would warrant. This in turn creates a greater likelihood that he will be granted bail which again poses a threat to the public.
- A suspect is charged with a more serious offence than should be the case and the charge has to be reduced as more information comes to light, undermining the robustness of the prosecution..