



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# Prevention of Terrorism Bill

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**Tenth Report of Session 2004–05**

*Report, together with formal minutes and oral  
evidence*

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## Joint Committee on Human Rights

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

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

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Baroness Falkner of Margravine	Mr Kevin McNamara MP (Labour, <i>Kingston upon Hull</i> )
Lord Judd	Mr Richard Shepherd MP
Lord Plant of Highfield	(Conservative, <i>Aldridge-Brownhills</i> )
Baroness Stern	Mr Paul Stinchcombe (Labour, <i>Wellingborough</i> )
	Mr Shaun Woodward MP (Labour, <i>St Helens South</i> )

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### Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Ed Lock (Lords Clerk), Murray Hunt (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant), Pam Morris (Committee Secretary) and Tes Stranger (Senior Office Clerk).

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# Prevention of Terrorism Bill

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## Introduction

1. In our Preliminary Report on this Bill we sought to identify the main human rights issues raised by the Bill.<sup>1</sup> We regret that the rapid progress of the Bill through Parliament has made it impossible for us to scrutinise the Bill comprehensively for human rights compatibility in time to inform debate in Parliament. This Report is therefore confined to a consideration of the human rights compatibility of the three most significant Government amendments to the Bill tabled in the House of Lords on 2 March 2005 and a comment about the absence from the Bill of any provision ensuring that control orders are not made on the basis of material which may have been obtained by torture. We also publish with this Report the Home Secretary's oral evidence to us on 9 February 2005 concerning the Government's response to the House of Lords judgment.<sup>2</sup>

## Adequacy of prior judicial involvement in deprivation of liberty cases

2. In our Preliminary Report on the Bill, we expressed serious concerns about the lack of prior judicial involvement in deprivation of liberty cases.<sup>3</sup> We considered that the Bill's provision for derogating control orders to be made by the Secretary of State subject to an *ex post* judicial procedure was unlikely to satisfy the Convention requirement that the power to deprive of liberty must be subject to safeguards against the risk of arbitrary detention. We pointed out that prior judicial authorisation of such decisions is fundamental to the rule of law and would be regarded as such by the European Court of Human Rights.

3. The Government has now brought forward amendments to the Bill which provide for *derogating* control orders to be made by the High Court rather than the Secretary of State.<sup>4</sup> The proposed procedure<sup>5</sup> for making such orders is that the Secretary of State will make an application to the High Court for an order *ex parte*, that is, without notice to the individual who is to be made the subject of the order. On such an application, which will be heard as quickly as possible (within 24–48 hours), the court will look at all the material on which the application was based and decide whether there is a *prima facie* case. If satisfied that there is, the judge will make the order, which will then be automatically referred to a full *inter partes* hearing. The *inter partes* hearing will include closed sessions, during which the interests of the subject of the order will be represented by a special advocate. In addition, the Government has tabled amendments giving the police a new and specific power of arrest and detention so that the subject of the application could be detained pending the judge's decision on whether to make the order and any order being served.<sup>6</sup>

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1 Ninth Report of Session 2004–05, *Prevention of Terrorism Bill: Preliminary Report*, HL Paper 61, HC 389

2 Ev 1–14

3 *op cit.*, paras 10–13

4 Proposed new clause 1(1B)(b). It is not proposed to introduce any prior judicial involvement in relation to non-derogating control orders, which will still be made by the Secretary of State: proposed new clause 1(1B)(a). We consider the adequacy of the Bill's provision for judicial involvement in relation to such orders below.

5 Proposed new clause "Power of court to make derogating control orders"

6 Proposed new clause "Arrest and detention pending derogating control order"

4. We welcome the considerable progress towards a greater degree of judicial involvement in the process of making control orders which deprive of liberty. We still question, however, whether the procedure contained in the Government's amendments secures a sufficient degree of prior judicial involvement to be compatible with the requirements of the Convention, for three main reasons.

5. First, the fact that the application by the Secretary of State is *ex parte* means that there will be no adversarial procedure before the making of a derogating control order.<sup>7</sup> We accept that there should be the facility to make an *ex parte* application in an appropriate case, for example where there is a legitimate fear of disappearance or in other circumstances where the purpose of the application will be defeated if it is made on notice to the person concerned. In the absence of such concern, however, we see no reason why the hearing should not be *inter partes* at this preliminary stage, particularly if there is a power to detain the person concerned pending such an application (as there will be under the Government's own proposals and as in our view there already is under the current law).<sup>8</sup>

6. Second, at such a hearing the test to be applied by the court is effectively whether there is a *prima facie* case for the making of an order.<sup>9</sup> It could be said to be equivalent to the decision by a criminal court as to whether there is a case to answer. This is a low threshold for the making of a judicial order which deprives the individual of liberty, particularly when one bears in mind the width of the definition of conduct which is capable of amounting to involvement in terrorism-related activity.<sup>10</sup> It falls far short of a requirement that the court be satisfied itself of the necessity for an individual to be deprived of their liberty.

7. Third, the procedure at the subsequent *inter partes* hearing will include closed sessions during which the interests of the subject of the order will be represented by a special advocate.

8. We note that the Home Secretary's justification for not going further and embracing prior judicial authorisation in its entirety now appears to be that the Secretary of State needs the power to act swiftly in relation to individuals who may be a threat in circumstances where there is not time to go before a judge either before the risk materialises or before the individual disappears. At Committee stage in the Commons the Home Secretary said "I believe ... that when there is a reasonable belief that an individual will commit a terrorist act and that we can prevent that from happening, we should do so".<sup>11</sup> His argument is that in such circumstances there are currently no powers available to deal with this threat. We have therefore considered whether there is a gap in the current law which means that there is no power to protect the public against an imminent threat

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7 We note that whereas the Home Secretary's letter to the Shadow Home Secretary dated 28 February 2005 suggested that preliminary hearings would be *ex parte* as a matter of course, the proposed amendment as drafted provides a discretion to hold them *ex parte*.

8 See para. 10 below

9 "if it appears to the court ... that there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity."

10 Clause 1(8)

11 HC Deb, 28 February 2005, col. 688

from a person suspected of involvement in terrorism, because there is currently no power to arrest and detain such a person.

9. We are not persuaded that any such gap exists in the present legal framework. If the security services or police are in possession of information suggesting that a person is involved in an imminent terrorist attack, there is already a power to arrest him on suspicion of involvement in an offence under the Terrorism Act 2000,<sup>12</sup> and he can then be detained for up to 14 days without charge, during which time investigations can be carried out, evidence can be gathered and the person can be brought to court to determine whether a control order should be made pending the outcome of the criminal investigation. We do not therefore consider this to be a good justification for not providing in the Bill for a procedure amounting to full prior judicial authorisation in cases concerning deprivation of liberty.

**10. We therefore question whether the degree of prior judicial involvement provided for in the Government's amendments in relation to derogating control orders is compatible with the Convention requirement that deprivations of liberty must be lawful. We question whether an *ex parte* hearing to determine whether there is a *prima facie* case for making a control order, followed by an *inter partes* hearing which is still not fully adversarial because of the use of special advocates in closed sessions, constitutes a sufficient safeguard against arbitrary detention to satisfy the basic requirement of legality.**

### Limited judicial control of non-derogating control orders

11. In our Preliminary Report we expressed our concern that the court's function on appeal against the making of a non-derogating control order would not be sufficient to satisfy the right of access to court in Article 6 and the implied procedural obligation in Article 8 where the obligations imposed in the control order determine civil rights or interfere with Convention rights.<sup>13</sup> We were concerned in particular about the restriction to a supervisory jurisdiction, applying the principles applicable on an application for judicial review.

12. The Government makes two arguments in defence of these provisions.<sup>14</sup> First, after the Human Rights Act judicial review in cases concerning Convention rights involves a much more intense level of scrutiny. We accept this. Nevertheless there remains an important difference between judicial review and a full appellate jurisdiction where the court is subject to no restrictions as to the nature of its function. Indeed this is acknowledged by the Government in its acceptance that the court charged with making a control order amounting to a deprivation of liberty must be a court of full jurisdiction rather than supervisory only. Second, the Government argues that a judicial review type approach is "entirely appropriate for scrutinising the exercise of discretionary powers of this kind." **In our view the unprecedented scope of the powers contained in the Bill, and the potentially drastic interference with Convention rights which they contemplate,**

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<sup>12</sup> s. 41 of the Terrorism Act 2000 contains a very wide power of arrest.

<sup>13</sup> Clause 7(4) and (7)

<sup>14</sup> Home Office notes on control orders: Official guidance on control orders proposed in the Prevention of Terrorism Bill, 28 February 2005.

**warrant a greater degree of judicial control than access to an *ex post* supervisory jurisdiction.**

13. The Government has now tabled an amendment to the Bill providing for such appeals to be heard within a set timescale, which the Government hopes will be in the order of 14–28 days. We welcome the Government’s recognition, in bringing forward this amendment, of the potentially very serious impact on an individual who is made the subject of a non-derogating control order. We regret, however, that having now accepted the principle of prior judicial authorisation in relation to derogating control orders, the Government does not accept that the procedure for non-derogating control orders should be the same. Apart from providing for appeals to be heard quickly the Government proposes to leave the process for making non-derogating control orders the same as currently in the Bill.

14. In our view, the fact that, as the Home Secretary accepts, non-derogating control orders are capable of depriving of liberty means that they should in principle be subjected to the same procedure of prior judicial authorisation as derogating control orders. The Government’s response is that if a non-derogating control order overstepped the mark and imposed obligations amounting in combination to deprivation of liberty the individual would have a remedy because the order would be found unlawful by the court on appeal.<sup>15</sup> This does not meet the point however, because by that time the individual’s liberty will already have been taken away. **In our view, prior judicial involvement is therefore required in order for there to be an independent safeguard against arbitrary deprivations of liberty through the exercise of the power to make non-derogating control orders.**

15. We also note that non-derogating control orders will be capable of imposing restrictions which fall short of deprivations of liberty but which nevertheless interfere with important rights in respect of which prior judicial authorisation is already required by law. For example, a non-derogating control order can impose a requirement that the subject of the order agree to specified persons having virtually unlimited powers of entry, search and seizure over their home.<sup>16</sup> Such searches generally require prior judicial authorisation under the ordinary law, in the form of warrants of authority, but this important safeguard will effectively be dispensed with in relation to those made subject to non-derogating control orders. This is why in our Report on the Review of Counter-terrorism Powers in which we recommended that the use of civil restriction orders be further explored, we also considered that such orders would have to be accompanied by sufficient procedural safeguards, such as access to an independent judicial determination of whether the underlying allegation was well-founded.<sup>17</sup>

16. Finally, in relation to the need for more judicial control in the Bill, we make a brief observation about whether members of the executive or courts are best placed to make the decision as to whether control orders should be made in individual cases. Both the Home Secretary and the Prime Minister have been very candid in saying that they are proposing legislation of this exceptional kind because they do not want it to be possible for them to be

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15 Home Secretary, HC Deb, 28 February 2005, col. 696

16 Clause 1(3)(j)–(l)

17 Eighteenth Report of Session 2003–04, *Review of Counter-terrorism Powers*, HL Paper 158, HC 713 at para. 80



accused of not doing more to protect the public in the event of a terrorist attack succeeding. Although we find this sentiment to be entirely understandable in elected representatives who are directly accountable to the public, we also consider that it demonstrates precisely the reason why independent safeguards for individual liberty are essential. A person who is determined to avoid being accused of failing to do more to protect the public is extremely unlikely to be the best person to conduct a rigorous scrutiny of the strict necessity of a particular order. That role is best performed by independent courts.

17. Although we have been appointed the parliamentary guardians of the Human Rights Act, and we regard it as our role robustly to defend the important role of Parliament in the scheme of that Act, we regard the preservation of the role of the independent judiciary as being fundamental to both the rule of law generally and the particular model of human rights protection to which Parliament committed itself in the Human Rights Act. As we commented in relation to the Government's introduction of an ouster clause in the Asylum and Immigration Bill, an effective right of access to judicial protection is fundamental to the protection of human rights.<sup>18</sup>

## Torture evidence

18. In our Report on the Review of Counter-terrorism powers, we expressed our concern about the Government's position that, where national security is at stake, it is the Government's duty to take all information into account, regardless of whether it was obtained by torture. Since then, the Court of Appeal has ruled that such material can be relied upon by the Government, including to justify detention, provided the Government was not complicit in the torture used to obtain it.<sup>19</sup> It is a matter of public record that the UK authorities are working closely with foreign intelligence and police agencies, including particularly the US. The extent of the alleged abuse of prisoners at certain US facilities, including in particular Bagram and Guantanamo, is now well known.

19. The UN Committee Against Torture, in its recent Concluding Observations, expressed its concern that UK law had been interpreted to exclude the use of evidence extracted by torture only where its officials were complicit, and recommended that the Government should give some formal effect to its expressed intention not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture.

20. We asked the Home Secretary if he could confirm that none of the material which is relied upon in relation to the current detainees has been obtained from other sources abroad, including the United States, where there have been serious allegations of torture and prisoner abuse.<sup>20</sup> The Home Secretary said that the Government did consider whether it believed that torture had been used in any particular case, and that it did not believe that torture had been used in the cases of the current detainees, but "we are in a serious difficulty here in that proving a negative in this case is a difficult thing to do." When

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18 Thirteenth Report of 2003–04, *Scrutiny of Bills: Sixth Progress Report*, HL Paper 102, HC 640, at para. 1.32

19 *A v Secretary of State for the Home Department* [2004] EWCA 1123

20 Q 46

pressed on how precisely the Government establish that torture has not been used, the Home Secretary repeated that proving a negative is a difficult thing to do.<sup>21</sup> When asked for an assurance that he will apply an absolute rule that if there is any question that evidence has been obtained by torture it must not be used, the Home Secretary said “I would need to be convinced that it had been used which ... I am not in this case.”

**21. We remain concerned about the possible use of torture evidence by UK authorities. Our concerns have not been allayed by the evidence of the Home Secretary. Indeed, we now have concerns about whether the Government has any system in place for ascertaining whether intelligence which reaches it in relation to people allegedly involved in terrorism-related activity has been obtained by torture. The Bill is silent on this question, despite the obvious concern that the material relied on by the Government to obtain control orders may well include material which has been obtained by torture. We recommend that the Government takes the opportunity presented by this Bill to implement the UNCAT recommendation that it give some formal effect to its expressed intention not to rely on or present in any proceedings evidence which it knows or believes to have been obtained by torture.**

# Formal minutes

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**Wednesday 2 March 2005**

Members present:

Jean Corston MP, in the Chair

Lord Campbell of Alloway	Mr Kevin McNamara MP
Baroness Falkner of Margravine	Mr Richard Shepherd MP
Lord Judd	Mr Paul Stinchcombe MP
Lord Plant of Highfield	Mr Shaun Woodward MP
Baroness Stern	

The Committee deliberated.

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Draft Report [Prevention of Terrorism Bill], proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 21 read and agreed to.

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

*Ordered*, That the Chairman do make the Report to the House of Commons and that Baroness Falkner do make the Report to the House of Lords.

[Adjourned till Wednesday 9 March at Four o'clock.]



# Oral evidence

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## Taken before the Joint Committee on Human Rights on Wednesday 9 February 2005

Members present:

Jean Corston, in the Chair

Bowness, L  
Campbell of Alloway, L  
Falkner of Margravine, B  
Judd, L  
Plant of Highfield, L  
Stern, B

Mr David Chidgey  
Mr Kevin McNamara  
Mr Richard Shepherd  
Mr Paul Stinchcombe

*Witness:* **Rt Hon Charles Clarke**, a Member of the House of Commons, Secretary of State for the Home Department, examined.

**Q1 Chairman:** Home Secretary, welcome to this evidence session with the Joint Committee on Human Rights. It is a pleasure to have you here before us again because I recall you were the first minister ever to appear before the Joint Committee on Human Rights on 5 March 2001, when you were Home Office Minister, when you gave evidence to us on the Criminal Justice and Police Bill of that session; so you are not a stranger. You will be aware that the purpose of this evidence session is to ask you questions which arise about the human rights compatibility of the Government's proposed response to the House of Lords' judgment on what is called the Belmarsh question. It is right to say there is a good deal of common ground between us as a Committee and you as the Home Secretary. In our recent report on your review of counter-terrorism powers, we made it clear we entirely accept that there is a difficult balance to be struck between security on the one hand and liberty on the other, but you will be well aware that there are a lot of very serious issues which arise. If I may start by recalling, and perhaps you could confirm, that you told the Home Affairs Committee yesterday you accepted that there was public scepticism following the issue of weapons of mass destruction in Iraq in the quality of intelligence on important matters, though you also said you did not accept that that scepticism was justified. However, would you accept that, in order to command that public confidence, there should be some element of independent scrutiny of the Government's assessment of the nature and level of the overall threat to the life of the nation?

**Mr Clarke:** Firstly, can I thank you for inviting me to the Committee and say that I very much hope to work closely with this Committee. I think the reason why you were established is important and, as Home Secretary, I think it is an important responsibility of mine to work with you in relation to this area and your report, particularly the one in front of us today, the review of counter-terrorism powers, I think is a very distinguished contribution to the debate and I appreciate it. In relation to your particular question, I think I would say two things. Firstly, I think it is

right that in the case of particular measures to deal with any national security threat that there can be an element of judicial review of decisions taken by myself, for example, in relation to a regime of control orders or in relation to the powers that are reviewed by SIAC at the moment. I think that is reasonable. As to the more general issue of whether there is a threat more generally and how that can be addressed, I think the ISC (Intelligence and Security Committee) plays an important role in assessing the existence of threats and the role of threats, which is, of course, independent, containing, as it does, Members from both Houses and right across the political spectrum of opinion, and it does play an active role—I have given evidence to that Committee since I have been appointed as Home Secretary—in regard to the threat which is there. By the nature of that Committee and the way it works, it has access to data and intelligence which is not in the open public domain, but I think that does offer some of the security that you refer to in your question. Beyond that, I think it is very important, and I think it is an obligation for me, to see how we can get wider awareness of the nature of the security threat which we do face, including from a wide range of different and independent sources, but I do not think I would be in favour of some constitutional structure beyond the ISC structure to second-guess those assessments.

**Q2 Chairman:** If, as I understand you correctly, the Intelligence and Security Committee itself does have some opportunity to assess the level of threat by examining some of the material which is available to you, can you think of any way in which that Committee could reassure or inform Parliament about their scrutiny work?

**Mr Clarke:** I think that is an excellent question. I discussed that particular question, as you have put it, at a meeting of the ISC to see if we could together think about ways in which that could be done, and I have not got a good answer to your question as you ask it now that here is the solution to this problem, but I am certain that that route to Parliament, which

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the ISC is accountable to, is a good route for thinking how to address this and I know that they are thinking about whether they can work with us to try and find a way to inform people more widely about the threat but without jeopardising any of our sources of intelligence that do exist. I have also thought whether there are other parliamentary channels by which this could be done, whether through your Committee, perhaps the Home Affairs Committee, or the Foreign Affairs Committee, or whatever, and I think there may be a case for looking at that in a broader way, but I am not yet, if I am being candid, in a position to say here is a solution which I can offer to the Committee as a way of dealing with this.

**Q3 Chairman:** As you will be aware, the Intelligence and Security Committee is not accountable to Parliament; it is appointed by, and accountable to, the Prime Minister. What the Committee is particularly interested in is the way in which that accountability could in some way be conveyed to Parliament?

*Mr Clarke:* I think that is true. I am sorry. It is certainly true that it is not accountable directly to Parliament. It is not a Select Committee in the same way that other Select Committees of Parliament are and it is accountable to the Prime Minister, but it is nevertheless a committee of distinguished and senior parliamentarians, all of whom carry authority in Parliament because of their roles, and I think the question of how a debate in Parliament could be stimulated by reports from that Committee or views of that Committee is a very good way to look at the solution.

**Q4 Mr Shepherd:** At the heart of our system and perhaps of our freedoms and liberties is due process—to know what the charge is against one, to be able to challenge the evidence on which the charge is made, it is tested—and it is not concentrated in the hands of a Secretary of State in the generality of things. This is a fundamental right that goes back deep in our own history and common law and everything. Therefore any secret process, a process that is not accessible to defendants to know the basis on which they are charged or on which they are detained, is something that clearly worries a lot of us in this country and, indeed, I do not doubt, yourself. We went to war on the basis of weapons of mass destruction. It was a huge intelligence judgment and it was found subsequently this year, when the Iraq Survey Group finished its work, no weapons were found. It undermines confidence, therefore, in intelligence just on a very simple level, and what we are trying to grasp is how can we reconcile a process that needs some form of security with traditional freedoms. Why I raise it is because it was raised with you yesterday: the case of C. You have got to tell us more about C. For three years this man was incarcerated, on Monday a week ago, in the morning, as far as we knew, his incarceration was going to be continued. By that evening he was released. In all this process he does not know the

substance of the case against him. The quality of the intelligence cannot be tested. Where do we lie in all this?

*Mr Clarke:* I think there are two related but different questions that you ask me. The first about the nature of the process to deal with particular individuals and their liberties, and, the second, the reliance we can place or not place upon intelligence and upon the security services and what they offer. They are related questions, as you related them in your question, but they are not the same question. If I take them one by one, as far as the liberty question is concerned, I thought that the wording you used in your question was entirely correct, and the adjective you used was that the situation was “worrying”. That is absolutely the case. It is worrying, very worrying—certainly to me as Home Secretary it is very worrying—and if there is any case, any case whatever, where the fundamental process by which people can protect their own rights and liberties is infringed, that is very worrying and an issue that can only be taken very gravely indeed. The question is, however, is it imaginable that there are circumstances in which, even though it is very worrying, actually it is necessary to protect the security of the country by removing an element of the liberty that, as you say, is deep in our history and culture? I answer that by saying that there are circumstances, certainly in principle and recently in practice, where it has been necessary to do that. I think those who say there are no circumstances, or the circumstances that we are talking about at the moment are not such circumstances, need to consider carefully how they would deal with the proposition that there are people and organisations which are seeking to threaten our society, indeed threaten our fundamental liberties. The phrase I use—it is a very old hackneyed phrase—“the price of liberty is eternal vigilance” I think is an important issue in relation to this. We have to defend our liberties against those who seek to destroy them. I should say that, although there is evidence which is confidential, there is a legal process, the SIAC process, which arises in each of these cases, and actually the case of C that you mention should give some reassurance in this sense. The commitment was given by my predecessor to Parliament that all these cases would be kept under review to see what the state of affairs was. He released another of those who had been detained at Belmarsh a year or so ago, and the advice I had in the case of C and the reason why I took the decision I did was that he no longer remained a threat which would justify deprivation of liberty. That is not to say he is not a threat, but he was not such a great threat that it could justify deprivation of liberty. That is why I took the decision I did. I do not know if you want to follow that up, or shall I go on to the security and intelligence point, which was the second aspect?

**Q5 Mr Shepherd:** Go on?

*Mr Clarke:* On the security and intelligence point, I agree, I concede that the issue of the security assessment of weapons of mass destruction has weakened confidence in our Security Services. There

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is no question about that whatsoever in the public mind and, indeed, in Parliament's mind and in others' minds, and it is no comfort to know that our own security services were entirely in common with other security services; and, indeed, there was no doubt in the United Nations at the time that this was addressed that there were weapons of mass destruction; but you are quite right that events after the event have led that issue to be doubted. Does one draw from that conclusion the fact that nothing that the security services says is happening is in fact happening, that there is no threat, that there are no organisations, al-Qaeda or other related organisations, seeking to destroy our democracy. I would say that is a *non sequitur*. I do not think you can say that because weapons of mass destruction were not found in Iraq that means that there is no substance to other assessments of threat from the security services. I agree that confidence is weakened.

**Q6 Mr Shepherd:** That must be right just in the terms that you put it there, but the point stays. For instance, the standard of proof is a much lower one: it is reasonable belief and suspicion. We could not incarcerate any British citizen on just that level of proof in any other area than the one in which one is dependent upon the evidence that is so covert you are not prepared to release intercepts or anything to substantiate or support the reasoning behind the detention. It is this that really is not good enough, is it? In the end we must know a charge that is levied against us, we must be able to refute it or to address it, and we cannot have a state so secret that in itself it is destroying the very liberties that we argue for and, in fact, is doing some of the work, therefore, for the enemies of this state, like al-Qaeda, who want to see us undermine our own liberties?

**Mr Clarke:** I do not accept that argument, Mr Shepherd. I understand it and I think it is an absolutely (without being patronising) respectable argument, it is honest and it is an argument that has integrity, but the conclusion of that argument is that there are no circumstances, no circumstances, in which the state could say that our concerns about national security are such that the fundamental process that you have described should be removed from anybody. As I say, I think that is a position of principle, a position I can respect, but it is not a position I can agree with if I know, as I do, that there are threats to national security which are real and which come from organisations which want to destroy the absolutely fundamental rights that you describe. There is a question of degree here. A total of 17 people have been detained at Belmarsh under the Part 4 powers. That is a significant number of people, but it is not an enormous number of people. It is not a secret state which is dominating every aspect of our lives in the sense that some portray it to be. Even were we to extend powers in this area to UK citizens, you would still be talking about an absolute handful of people that one would be discussing the situation in these terms, people who by hypothesis—and you are entitled to say, “What is a hypothesis?”, but people who by

hypothesis are determined on a course to destroy our Parliament system, our democracy, our rule of law, our freedom of religious tolerance, etcetera, etcetera. Are we entitled to protect ourselves against that in those circumstances? The purist—that sounds dismissive and I do not mean to be—the absolute principled position would say at the end of the day, “No, we are not going to go down that course”, but I do put it to you that there is an issue of degree in this and that if you are talking about the nature of the state which is somehow polluted, weakened or corrupted by what has happened, there is a massive difference between a handful of people being subject to this being the case and some kind of more systematic issue, and I think some of the rhetoric, not from you in any way, from some people about the comparisons between what I am suggesting in some of these states in history is wrong.

**Q7 Baroness Falkner of Margravine:** Secretary of State, in going back to thoughts you are giving to independent scrutiny, have you considered a place for a senior representative of the Muslim community? I say that not because I am especially pleading for Muslims, although I am from that background, but because it is pretty clear that even in the handful of cases you are talking about, and of course we cannot know because we do not know the allegations, but they seem to come from that particular community and the disillusionment and rancour in that community is extremely strong?

**Mr Clarke:** I have considered that and I am absolutely certain that the debate that I have described earlier in answer to Ms Corston that needs to take place needs to be very much with the Muslim community as well as with everybody else. I have explicitly discussed that with the Muslim Council of Britain and its leadership because they have been at great pains to say to me, and I unto them, that any identification of “terrorism” with the Muslim community is both wrong and misleading and wrong in its own terms but also intrinsically damaging to a whole series of relationships and to the structure of society, and I am at great pains to say that in my opinion—I say this publicly and I have said it directly to the Muslim communities with whom I have spoken—there is absolutely no relationship between the terrorist organisations that we are talking about here and the Muslim communities here. The Muslim communities here are, in my experience, absolutely committed to a democratic state, a position of tolerance, democracy, a range of other issues of this type, and I think it is pernicious that people should try and roll together the Muslim community and terrorist threat, and therefore I think a very important part of the debate that we have to have is with the Muslim community as a whole on these questions.

**Q8 Mr Chidgey:** Home Secretary, I would like to ask you some questions, if I may, regarding the threat posed by British nationals. In your statement to Parliament you said that the Government's understanding of the threat had changed and it was now clear that some British nationals are playing a

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more significant role in these threats. May I ask you, is your current assessment of the threat posed by British nationals based on new intelligence received since the House of Lords' hearing, when it was the Government's position that the threat from British nationals was not such as to require a power to detain?

**Mr Clarke:** No, it is not based on new intelligence since the House of Lords' judgment; it is based on new intelligence since 9/11. The immediate powers under the immigration legislation that gave rise to Part 4 arose after the 9/11 incidents where the focus of that action was to do with certain foreign nationals who we believed to be threats in that area. Over the period since then we have obviously focused very strongly—I mean “we”, the agencies of the state in this country have focused very strongly upon all the possible sources of threat to us in relation to international terrorism and al-Qaeda related organisations, and there have been a number of UK citizens with whom we have had concerns in that regard. There was not a proposal, as I understand it—it is before my time holding this office—to change the law before now for the reason that in the legal circumstances the view was—and I think it was a very rational view—that we should await the judgment of the House of Lords before finally deciding how to proceed, and I think that was the right course to follow. Following the judgment, it is necessary to see what we do, and that is why we are making the proposals that we have now; but in answer to your particular question is what I said about possible threat from UK nationals derived from intelligence or information derived only since the Law Lords' judgment, it is unequivocally, “No”, it is derived over a period of years.

**Q9 Mr Chidgey:** You can see, I am sure, Home Secretary, that the unfortunate timing may well lead a sceptical observer to infer that the assessment of the changed nature of a threat from British nationals might be driven not by new intelligence but by the need to resolve the dilemma that you now face following the House of Lords' judgment.

**Mr Clarke:** I find I am surrounded by sceptics, and an honest citizen struggling through the scepticism that comes from a variety of different areas is at great difficulty, but fortunately in the Liberal Democrats there are no sceptics and so I know that there will be no belief of that kind there. Joking aside, I do understand why sceptics can make that argument. I do understand why people can deal with it, but it is wrong. Lord Newton's committee, for example, made it clear that they thought we should be seeking to address terrorism regardless of the nationality of the individual, and that goes back some considerable period of time. The sceptic can be sceptical, but I say categorically that that scepticism would not be justified. The scepticism suggests that somehow intelligence has been manufactured to make a case for new laws following the House of Lords' judgment, and that is absolutely not the case.

**Q10 Mr Chidgey:** Thank you. Perhaps you would agree, though, that sudden changes in the Government's assessment of the intelligence material would lead us to see a demonstration of the need for independent scrutiny in order that we could command the confidence of the public, sceptical or otherwise. Their confidence in the integrity of a Government is the use of such material?

**Mr Clarke:** I understand why the case for independent security is made, and, as I said earlier, I am ready to look at all means by which that can be achieved. I do believe that the available organisations, the ISC probably has a good case to be the one which most looks at that in that regard, but I also set the obligation, if you are inviting me to do so, to say that it is one of my responsibilities to find ways in which we can get a wider understanding of the nature of the threat. I think it is a bad state of affairs if the whole of this debate is driven by the Government Minister, in this case myself, saying, “Here is the threat. Take it or leave it.” I do not think that is a healthy exchange in a democracy to deal with these issues. I think we have been constrained to that to some extent, and that is why I accept the obligation of trying to find a way to get a more balanced consideration of these issues. I think it is fair to say it is the reason why I briefed the opposition from the benches in the Lords and the Commons the day before I made my statement that this is not a party political issue in general and therefore it is one that we can have a reasonable exchange about without the danger of partisanship in this area, at least I hope so, but it is not easy to find the right way to do it. I would be very interested with recommendations that you make on the consideration of this as well, but I certainly accept the obligation you imply.

**Q11 Lord Campbell of Alloway:** A very short question, Home Secretary. I am with you on the point of intelligence on the matter that because it has failed, or may have failed in the past, there is no reason for taking the risk that it is going to fail again and that it is open to some question. I do not want to make a political aside, but it is open to some question as to whether the intelligence really did fail. It is a question of interpretation, and I do not want to go into it, but what is the state, sir, of our intelligence? We are led to believe from reading the papers that the current state of intelligence—and I mean Black Rod, the Serjeant at Arms and everybody else seems to think it is right too—is that we are under an immediate threat of a terrorist attack, not just in the Houses of Parliament, but wherever, Manchester anywhere, and we are led to believe that there is no guarantee that we can possibly be given that it can be avoided. I see you nod, sir. If that is right, what option have we but to rely on the intelligence and take some measures to deal with this? Whatever measures are taken, I am only asking this, sir. Is it not perhaps preferable that orders or measures should be approved by the judiciary in some form? I am going back to the Newton Report, with which you are far more familiar than I am but I have got it here, that should



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not merely be left to the Executive—that is in fact you—and that there is a perfectly satisfactory and ancient procedure by which a High Court judge deals with this matter in camera, in his room, and delivers judgment in public. I will not go into the details—this is not the time to do it. All I am asking, sir, is whether on the concession that I have made on intelligence, which I am with you on, do you think consideration could be given as to how before implementing orders are made to combat terrorism, and all sorts of types of orders can be made, but they should be only made after judicial acceptance that they should be made? Perhaps I have put it badly.

**Mr Clarke:** With respect, I do not think you have put it badly at all, Lord Campbell. I have three things I want to say. Firstly, your point about intelligence, and the interpretation of intelligence, I think, is very important. Many people believe there is certainty that we know what is happening throughout the world. Actually we do not know what is happening throughout the world. We make judgments on what is happening throughout the world based on our best efforts to try and discover what is happening throughout the world, but because there is a desperate effort to know, it is a very difficult thing to convey, the essence of risk and the point you make about interpretations and so on. Secondly, I certainly believe it is the case that we are under threat, our society is under threat. Moreover, I believe it is only through our security activity that we have prevented certain outrages taking place which might have taken place in this country. Thirdly, on your point about the judiciary and the Executive, the short answer is that I am ready to look at ways of achieving what you say, and, indeed, that is already in the proposals that I have got in one respect, which is the ability of the judiciary to judge any decision the Home Secretary makes on appeal and go through the process to establish where it is. I can even see a case possibly for different levels of judicial involvement according to the kind of order that was described.

**Q12 Lord Campbell of Alloway:** Precisely?

**Mr Clarke:** If there were to be, for example, deprivation of liberty, a different level of judicial involvement than might otherwise be the case, I can see the case for that. What I am concerned about, however, is that the Home Secretary, the Government of the day, has a responsibility to look at the security of the nation, and that is not the responsibility that any non-executive person has. The principal responsibility of the judiciary is to justice and to the liberty of the citizen properly carried through, but not to the security of the nation. I think it would be wrong for a Home Secretary to delegate that responsibility somewhere else. I do accept that there is a very strong case for judicial involvement in that process to deal with it.

**Q13 Lord Campbell of Alloway:** I think it would be wrong to have a total delegation, of course, but the judge, as I see it, would have access in his private room to all the security material on which it was proper to make the order, and he would say in open

court, and it must be a High Court judge, “I have read this material. I am satisfied.” That is all I am asking?

**Mr Clarke:** As I say, I am ready to look, indeed I am actively looking, at ways of seeing how we can achieve this in a way that would be positive.

**Q14 Chairman:** Home Secretary, when you first talked about control orders you said that they would be capable of general application irrespective of, for most of the controls, the nature of the terrorist activity, international or domestic, which raises the question whether these control orders are going to be available not only in relation to national terrorists but to people, for example, domestically whose activities could come under the heading of, say, animal rights extremists or people in Northern Ireland. Could you just clarify when you intend control orders to be available in relation to all kind of terrorism?

**Mr Clarke:** I think I have not been entirely clear about that, and so I am very glad you have given me the opportunity to be as clear as I can about it. Firstly, I intend that control orders should only be available for terrorism or suspected terrorism, full stop. Under no circumstances do I propose that control orders of whatever kind should be available for demonstrations, protests for that range of activity. We are only talking about terrorism. Secondly, I think control orders should be available in relation to all kinds of terrorism, but I do not believe that the whole range of control orders should be available for all kinds of terrorism. In particular, I believe that deprivation of liberty under the European Convention, if that were to arise, should only be available for the most dangerous forms of terrorism. In particular, what I have in mind is international terrorism of the al-Qaeda variety. In the case of animal rights, if a case were to be made (and I do emphasise the “if”) that there were terrorist activities proposed by animal rights organisations in terms of blowing up houses of organisations or whatever it may happen to be, I do not believe that deprivation of liberty should be in the control order which is available to deal with that type of terrorism. I believe that deprivation of liberty in the current framework would only be in relation to the kind of threat posed by terrorism of the international type related to al-Qaeda. So, though I think the control order regime should apply to all forms of terrorism but only terrorism, I think the upper levels of it in relation to deprivation of liberty should only apply to the most extreme threats that we face, and in that context I am thinking particularly of al-Qaeda and international terrorism.

**Q15 Chairman:** Is there going to be some Bill in relation to control orders that we can look at?

**Mr Clarke:** My hope is that there will be a Bill before Parliament that this Committee, if it wishes, will be able before too long to look in detail at how what I have just said can be enacted.

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**Q16 Mr McNamara:** Secretary of State, one of your problems, and I do not necessarily agree with the conclusions that you reach, is that people are so dangerous that we cannot put them on trial and we would like to deport them, but we cannot deport them because they may face torture, imprisonment or death. I can understand that dilemma. I do not necessarily agree with your solution to it, but I understand the dilemma that you are faced with. Therefore, you have come up with idea that we should have some sort of international undertaking from receiving countries that if somebody is deported to their country they will not be subject to imprisonment, torture, capital punishment, etcetera; and that, on the face of it, would seem to be reasonable, but we know that there are a lot of countries that in fact do indulge in torture, contrary to Article 3 of the European Convention on Human Rights. How are you going to measure which countries do or do not meet your criteria?

**Mr Clarke:** I do not think there is a kind of league table test that would apply. What I have done, in collaboration with the Foreign Secretary, is begin discussions with the governments from whom the particular individuals at Belmarsh have come, and my colleague, Lady Symons, has met the governments of those countries concerned to see what progress could be made or not made in this area. The first test, if I can put it like that, for any such country is whether they are prepared to agree with us that, if there were to be a deportation, the conditions under which that individual lived in the society in which they lived were safe in all the senses of your question. We as a government would need to be satisfied that that was the case in any case, but it is actually a higher test than we as a government would accept, because, of course, the courts too would have their judgment to make upon the nature of any assurances that were received, any memorandum of understanding and how that operated, and the courts would be entitled to make a judgment and the individual concerned would be entitled to go to the courts to test that judgment as to whether the European Convention of Human Rights had been breached in any respect. I would need to be very confident that we were able to secure agreement on that basis. What would be the test? It would be precisely those set out in the Convention, and the issue would be whether the memorandum of understanding, the assurances, the exchange of correspondence with the country concerned was convincing to the Government here and to our courts. The reason why I have gone down this course is that I think it is the right course to go down, but the reason why I have not put all my eggs in that basket is because I recognise—and this is the implication of your question—that it will be not necessarily easy, shall I say, to secure agreements and assurances which will be reliable enough to be able to guarantee this as a means of proceeding.

**Q17 Mr McNamara:** We know that the United Nations rapporteur in his report in 2004 drew attention to the fact that countries had given assurances and had not honoured them, and,

secondly, that countries accepting assurances have no means of monitoring what has, in fact, been happening to people they have deported. The European Commission on Human Rights drew particular attention to the Swedish case of people being deported to Egypt. Through understandings with the Egyptian Government the Swedish Government officials monitored the prisons, but that did not stop the individuals who had been transported in fact been subject to inhuman and degrading treatment. How are you going to be able to monitor? I have a reply from Mr Brown when I raised this question on some of the issues in October of this year asking him what monitoring system is set, and the reply that I got from him was, “We do not consider it necessary to research the treatment of failed asylum seekers who have been removed in accordance with the proper procedures.” That is not a very happy reply given what we know has happened at other places?

**Mr Clarke:** There are a number of points. Firstly, we are not talking about failed asylum seekers, we are talking about people concerned with terrorism activity. The second point is that I have looked in the case of the countries we are concerned about at the State Department analyses of those countries public and the Amnesty International reports on those countries public and indeed our own Government’s assessments, and it is obvious from anybody reading those analyses that there are a series of quite important and difficult questions that have to be answered. Thirdly, I agree with the implication of the question that any assurance, memorandum of understanding, or whatever, would have to include within it the monitoring process which guaranteed that the conditions that had been agreed to were being carried through and implemented. Indeed, that is explicit in the conversations that we have been having for all the reasons that you imply. As far as the Swedish case to Egypt is concerned, which I have not studied in detail but with which I am familiar, I am not absolutely certain, but I put it no higher than that, that the facts are as reported. I know that they have been reported in that way, and I am not in any sense criticising the point from which you asked the question, but I have talked to one or two people in the Swedish Government about this and I am not certain the facts are absolutely as they are widely reported, but I am not in a position to say that they are wrong because I have not come back to it in detail but I am looking at that particular case. Leaving aside the particular case, the point of principle that you advance I accept. No agreement could be made unless it included proper procedures for monitoring the situation.

**Q18 Mr McNamara:** Is not the difficulty over this the fact that, in fact, once the prisoner has been transported, you cannot effectively monitor in the sense that, yes, you can see what has happened to them but you cannot prevent it happening and you cannot bring back the individual into your jurisdiction?

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**Mr Clarke:** I think there are two things here. Firstly, of course I understand the question, and you must in practice be right in certain important respects, but for each of the countries concerned there is a set of relationships with this country which mean there is an issue in the relationships which is important. Secondly, I think it is also important to say that it is an important goal in our policy, as other countries' policies, to encourage all countries to move away from abuse, torture and the various other issues which are set out, and in fact in a number of the countries we are talking about there have been significant improvements in recent years which I hope people will take into account. I do not want to imply, because this solution is not a panacea for this problem, we cannot solve this problem simply by deporting people to countries which are unsafe and I acknowledge that openly and publicly. I do, nevertheless, think it is worth exploring to see what the possibilities are of seeking agreement. I do not hold out any expectation, but that would be a solution to the issue, which is why I made the proposals on control orders that I did, because it may well be that in certain cases we cannot find solutions in respect of this.

**Q19 Mr McNamara:** Will you be able to produce for this Committee the sort of pro forma or type of agreement which you are making with countries whom you hope will receive these people to show what sort of undertakings have been given, the proposals that you may have to be able to monitor, and so on, so we are able to make a judgment?

**Mr Clarke:** I think I have to be slightly guarded in my response. I possibly will need to take advice on the precise status of any memorandum of understanding between this country and another country in terms of this issue, but what I can do is give the assurance that I would be very happy, if we do get to a position of agreement of any kind, to write to the Committee setting out the essential framework and how we are approaching it, and of course I would be happy, if you wish to do so, to answer questions that you might want to put to me; but I will reflect in particular on the idea of a pro forma or something of that kind.

**Q20 Lord Judd:** Following on, Secretary of State, from Kevin McNamara's question, can you confirm that it is still the Government's preferred option that non-nationals suspected of terrorism in the way you have described should be deported?

**Mr Clarke:** That is a very hard question to answer. It implies a generality that we would always say that we would prefer to deport than to deal with it here. I think I would be slightly more qualified than that. I think I would say generally that would be the case, that would be our preferred option, but I would not absolutely say that in all circumstances. Maybe it would be always, but I would like to look at a case by case basis that one is describing. I think in principle it is better if they are deported if they are in this position, and that is the general orientation that I would follow, but the wording of the question

implies an absolute answer that it would always be preferred and I would not be quite as absolute as that.

**Q21 Lord Judd:** Your qualification does suggest a change of emphasis at least in Government policy because, as I understand it, it has been very strongly repeatedly said in the past that anybody is free to go if they wish to go back to their home country?

**Mr Clarke:** That is true, and that remains the case. Irrespective of anything else, that will always be the case. The only reason I qualified my answer, however, to you was because I could imagine circumstances where that might not be the case, but I say right now, I hope today that those people now in Belmarsh would return to the countries from which they come, but in that sense I was taking your question in a theoretical sense rather than in the immediate practical sense of who we are talking about.

**Q22 Lord Judd:** I am certain you have thought about the contradictions that there may be when some non-national is deported and then is free to some extent in the country to which they are deported, by contrast, if it is a British subject, that British subject may still be subject to indefinite house arrest. How can we take seriously the nature of the threat which means that it is quite all right for somebody to go home and be free and active in collaboration with God knows who, whereas if it happens to be a British subject, the British subject must stay indefinitely under house arrest because the situation is so bad that this action is required?

**Mr Clarke:** There are two issues. Firstly, the reason why we are in this position is because of the view, which I accept and was expressed very strongly by the Law Lords, that we should not in our law discriminate between UK and non UK nationals, which does lead to the kind of issues that you have described. Secondly, and it comes back to Mr McNamara's question from the other side, as it were, in fact the reason why these individuals do not wish to go back to the countries from which they come is because actually their approach has been to attack the regimes of the countries from which they come, they feel at risk in those countries, and, therefore, that is why the assurances that Mr McNamara asked me for come into play because that is exactly the position. You are asking, as it were, from two opposite directions, but in theory I agree with you that it would even be imaginable that an individual concerned could be deported to a country from which he was free to export his terrorist approaches and styles, but that is not the actual case that we are facing at this moment.

**Q23 Lord Judd:** Secretary of State, I am sure you agree this is not altogether convincing, because if the situation is so grave that when one is dealing with a British subject it is necessary to contemplate indefinite house arrest, how can you be confident that there will be the same degree of control of the foreign national's activity if he chooses to be deported? I am sure you will understand that a

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genuine perplexity exists as to the nature of the objective validity surrounding the description of a situation which requires only partial Draconian action?

**Mr Clarke:** I certainly understand the point that is being made, but let me see if I can answer it in this way. Firstly, to make it clear, all the control orders that we are considering are time limited and would need to be renewed, so one is not talking about indefinite abuse of a control order of any kind (and in this, by the way, I have not used the phrase “house arrest” at any point in the discussions, so there is no indefinite control order in any of the circumstances we are talking about and any control order at whatever level would be kept consistently under review). Secondly, we are principally concerned with the threat to this country, and that has to be our number one concern. Obviously we are concerned if there is a Madrid train explosion, or if there is a bombing of an embassy elsewhere, or whatever, but our principal concern has to be this country’s security and so our principal concern therefore has to be how do we protect our country in these circumstances? The fact is that deportation of somebody to another country makes it more difficult, not impossible, but more difficult for them to damage this country than if they are based and at liberty in this country, and that is the state of affairs.

**Q24 Lord Judd:** You are suggesting that in this area we are talking about matters of degree rather than absolutes?

**Mr Clarke:** Matters of degree in terms of the nature of control.

**Q25 Lord Judd:** Of the degree of danger?

**Mr Clarke:** Of course, and I agree with that completely, but, indeed, I thought one of the powerful points of the Law Lord’s judgment when I read it was not only the discrimination point but their criticism that there was not a proportionate means of response.

**Q26 Lord Judd:** If the Chair will permit me, I just want to put my last point to you, which is that it does suggest to me that you might be gaining a tactical advantage in terms of the dangerous person being removed from the immediate situation, but if that person continues to follow their activities overseas you may be increasing the strategic danger with which you are confronted?

**Mr Clarke:** In theory I certainly knowledge the point, but I do say “in theory”. In the cases that we are talking about that is not the situation that we are in.

**Q27 Lord Plant of Highfield:** Home Secretary, I think I am quoting you correctly when you said in your statement on the Belmarsh judgment that “prosecution is and will remain our preferred way forward when dealing with all terrorists and all agencies do and will continue to operate on that basis”. I think this Committee has said “Amen” to that, as did the Newton Committee previously. Obviously, crucial to going down that road is this

issue of the admission of interceptor material and so forth. As I understand it, the UK is the only country in the world, apart from Ireland, which does not permit the use of intercept evidence in court. Could you tell us precisely what it is about the UK’s intelligence services or its techniques which justifies maintaining this sort of absolute ban when nearly all other democracies have a more flexible approach. The case for this has been bolstered just this week by the new Commissioner of the Metropolitan Police arguing in favour of the admission of this sort of material. I think most people do find it puzzling, because it is at least one element of the framework that would have to be in place for you to achieve your own aim, which is going down the proper transparent legal route?

**Mr Clarke:** Firstly, you did quote me correctly. It is my strong view that prosecution followed by conviction is far and away by a long way the best of way of achieving what we want to do, and I am actively looking at a range of measures to strengthen the capacity to do that. Secondly, as far as interceptor’s evidence is concerned, two considerations of difference for other countries and then a couple of remarks about why I took the decision I did. I think there are two very important ways in which we are different from other countries looking at this. The first is that we have an adversarial system which is different from many other countries, not, I admit, from other Anglo Saxon countries, nevertheless it is an adversarial system which is different in character to some of the inquisitorial regimes which operate in this area and sometimes especially operate in these particular areas that we are describing; and so the regime is of itself different in that nature. Secondly, the fact is that in our country we have built up particularly close relations, much more so than most other countries, between law enforcement and the criminal justice systems in dealing with this kind of cooperation; and I think there is a particularly close relationship which it is important to protect. The reasons why I decided to take the course I did were two principal reasons. The first was that the review that was conducted in the Home Office suggested that at the end the ability to get a greater number of convictions through use of interceptor’s evidence was much less than was widely believed. There are a number of reasons for this. Some are about resources, but more important ones are about the fact that intelligence and surveillance and the data we get from that, particularly in relation to terrorism, relies often on individuals and agents, more so than intercept, and it is the putting of that source of intelligence at risk which is an absolutely major issue about the whole position. The second reason that weighed on me was the view that technology is moving very quickly in these areas and that any regime that we put in place now might very well be outdated in the very near future, and that was a consideration that came from a wide range of different sources. I should, however, in conclusion, Lord Plant, simply say on this that I have taken the decision I have, I do understand the concerns from a number of people that have been expressed on this

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and I will continue to you keep this particular aspect under review, and, were I to come to the view that use of intercept would assist in the prospect of getting prosecutions, I would be prepared to consider doing that.

**Q28 Lord Plant of Highfield:** Could I ask a supplementary about the point about the adversarial nature of the court system and how this impacts on the decision that you have made? Is it not possible to think, being a bit more creative here, that one might have a new set of rules for court procedures if intercept evidence were to be used, that perhaps the origin of the intercept material could be authenticated by the judge so that it might prevent a defence barrister questioning the origins of the materials, or something of that sort? I do not know, I am not a lawyer in that sense, so I run out fairly quickly in terms of what might be done, but it does seem to me that there ought to be mechanisms that could be put in place that might actually slightly limit the adversarial nature of the situation and make it easier for proper evidence to be adduced?

**Mr Clarke:** Unfortunately, I am not a lawyer either, so I cannot go into detail on it, but I do actually agree with you and I think there is a case for looking at other systems to deal with this particularly narrow set of cases. My mind is not closed to that, but I will say to you what I said to the Home Affairs Committee yesterday, which was that nobody should under-estimate the seismic nature of changes of the regime in this area. There is a very great attachment to the existing adversarial system and the changes that would follow by some others in a more inquisitorial system even in this narrow area would not necessarily command wide consent, but for my part I am certainly ready to look at it.

**Q29 Lord Bowness:** Home Secretary, very quickly on this point, the review which was commissioned by the Prime Minister is, I understand, a classified document, so you will understand it is difficult for us to get to grips with the reasons for why this cannot be done. You summarised, I think, in your statement one of the conclusions, "A legal model providing for three types of interception warrant, intelligence only, non evidential and evidential, appears to offer the basis for evidential use of intercept. Substantial further work would be needed on the details before it could be introduced." It goes on to talk about the changes in technology. Are we doing the work on the legal model, because if we are going to wait for technological changes we will never start that work?

**Mr Clarke:** Yes, we are. The desirability of getting evidence into open court that would enable more convictions to take place is absolutely shared, I am sure, by this Committee but also by myself and by the Government as a whole, and so we are absolutely actively working to see how we could do that and bring that about, and I will continue to do that, including legal models that could address this, but I do come back to the same point that I made to Lord Plant, that to create a totally different legal in relation to these areas is not an absolutely straightforward thing.

**Q30 Lord Bowness:** We are creating a totally new legal regime in terms of what is proposed?

**Mr Clarke:** I do not think so. I think that we are providing a classic system whereby the decision of the Executive is reviewed by judges if the individual concerned wishes it to be the case, and there is a whole process that operates in that way.

**Q31 Mr Chidgey:** Home Secretary, can I now take you back to control orders which you have mentioned a couple of times in your evidence so far. Obviously we understand that bringing in controls is part of the Government's approach to replacing Part 4 of the powers under the Act, but it does in fact raise some concerns for us whether or not the powers under control orders are in fact proportional to the threat posed by the individuals concerned. If I can draw your mind back to the Home Office consultation paper last year (2004) seeking powers to detain British citizens who may be involved in international terrorism will be a very grave step and that such Draconian powers will be difficult to justify. Now it would appear that you are going to introduce a power to put British citizens under house arrest. What has changed since February last year to justify what was then thought to be the unjustifiable?

**Mr Clarke:** I think the language used in the consultation document is not dissimilar to the language I used in my statement to the House. I certainly think it would be a grave step and it would be difficult to justify in the sense that a justification has to be made which would persuade Parliament, in the first instance, but also then others, that derogation had been necessary. I have been very careful, as I said earlier to Lord Judd, not to use the phrase "house arrest" in all this because I think it is a loosely used phrase of which I do not make any criticism in terms of the question because it is so widely used, but the question of what would constitute a deprivation of liberty on the whole range of control orders from removal of communications devices to people not being able to be visited by friends, and so on and so forth, what would be a deprivation of liberty is a matter for very close legal assessment, and we are precisely closely legally assessing it. What has changed since February 2004 is the fact that we have had a very strong judgment by the Law Lords that says we need a proportionate set of measures to deal with these threats that we have, and, moreover, that same judgment says that we cannot maintain simply under immigration law the powers that we have deal with non UK nationals, we have to have a non discriminatory regime which implies a similar regime for both UK and non UK nationals. That is a significant change but I do acknowledge that the language of the consultation document was right and that is why I said that so strongly in my statement to the House on these matters.

**Q32 Mr Chidgey:** Can I just test you a little further on the question of proportionality to the threat. Under the current Act, I think it is section 21(1) (a), (b) and (c)—those are the three areas in which you can issue a certificate for detention and they are

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regarding the preparation or the commission or the instigation of an act of terror, membership of a group and support of a group. You are familiar with this I am sure, Home Secretary, but it would help me in understanding the proportionality issues if you were able to tell the Committee of the 17 people who are currently detained under which area they are mainly detained? Is it (a), is it (b), is it (c)?

**Mr Clarke:** I am not going to go into the cases of individuals. I do not think it is appropriate to do so. What I will say—and it is a very relevant question and it relates absolutely to the proportionality point—is at the moment the only options available to a Home Secretary are either to detain in Belmarsh or somewhere else, on the basis of the legislation which you describe, or to seek a warrant for phone tapping or whatever it may happen to be. There is absolutely nothing in between, so for anybody who may be thought to be a threat but it is not seen to be appropriate for them to be detained you have got very little option other than to go down the detention route at the moment. That was the criticism made by the Law Lords. I think the idea of having a whole range of options which is available was the right way to respond and that means that in the case of people who are currently or who have been detained in Belmarsh or elsewhere, if we had a control order regime in place, a specific judgment would be made for each of them. Do we need to detain in this way? Do we need a different form of control order? What would it be? That would deal with the point raised by Lord Judd. What would be the degree of risk and the danger in relation to the particular individual? I think that is quite an appropriate way to go about dealing with it.

**Q33 Mr Chidgey:** Thank you, Home Secretary. I do not believe it is asking you to identify an individual to ask you to tell the Committee whether anybody is detained under Section 21(1)(a) being accused of preparing or commissioning or instigating an act of terror.

**Mr Clarke:** Perhaps what I could do is commit myself to the Committee, Chairman, to looking at the question that Mr Chidgey has raised and to consider whether I will write to answer the question he has asked.

**Q34 Mr Chidgey:** Thank you very much. My final question is given your very interesting questions about proportionality and the range of measures that can be taken, do you accept that you are getting to an area now where you may be producing a measure (we will not call it house arrest but detention in some form) in your range of measures within the control orders that will require a fresh derogation from Article 5 of ECHR?

**Mr Clarke:** Were we to propose a control order which had the power to deprive a citizen of liberty that would require a derogation.

**Mr Chidgey:** Thank you very much.

**Q35 Baroness Falkner of Margravine:** Home Secretary, given the reasoning in the House of Lords' judgment that it is very likely that a

derogation to allow indefinite house arrest without charge or trial would probably be disproportionate, would you consider that a power of indefinite house arrest, alongside the threat faced by the UK, will be regarded as more proportionate than the power of indefinite imprisonment?

**Mr Clarke:** I have been slightly surprised by the discussion round these questions since I made my statement. It is obvious that some people consider that house arrest, somehow defined (but, as I say, I do not think this is at all easy to define) is a worse situation than detention in a detention centre such as Belmarsh. I have been rather surprised that people have made that judgment but it is obvious some people have made that judgment. I think the issue that I would have to address in looking at a control order which deprived of liberty, whether it was deprivation of liberty in a detention centre or deprivation of liberty in the place where you reside, by some definition (and I do not think they are necessarily hierarchical) would be a question of what is most appropriate to deal with that particular individual and the threat that they posed.

**Q36 Baroness Falkner of Margravine:** I have to say I somewhat agree with you that “house arrest” is probably not the appropriate expression but not for the same reasons you give but because, as I understand it, in many cases these people do not even have houses. It rather implies General Pinochet in salubrious Surrey. Thank you.

**Mr Clarke:** I do not think General Pinochet was quite in mind.

**Chairman:** Baroness Stern?

**Q37 Baroness Stern:** Home Secretary, my question was going to be about house arrest but I am now going to ask you about a “requirement for people to remain at their premises”, which is how you described it on 26 January, and perhaps that removes the connotations. I want to ask you about the practicalities of it, if I may. Certainly, it can sound better than being in Belmarsh. It is not something we have a great deal of experience of here and I suppose most people think of Aung San Suu Kyi in Burma and she probably lives in quite a nice house with a garden and that is the image we have. When thinking about it here I wonder if I could ask you if I am looking at it correctly. Presumably there will be police measures required to enforce it. I imagine a police person at the door or the windows. I do not know but that is how I imagine it. And then the family when they go out, will they be followed or will they have to hand in their mobile phones? Will they be strip-searched when they come back or how will that work? When other people in the neighbourhood find out (because they are bound to find out because there will be a police person outside) will they get hostile and start throwing stones? I do not know what they will do. I do not think they will feel it is going to be a very good thing for their house prices. I imagine they will be unhappy. I wonder whether that has been thought of. For those who are single or do not have a family, presumably the only company they would have

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would be the policeman or policewoman outside or nobody? It is really the practicalities of it. It sounds like a better solution because prison is not a good place and staying at home might be better but is it, when the practicalities are thought of, such a good idea? Can you enlighten us?

**Mr Clarke:** With the exception of the house prices point, which I must concede I had not given any detailed consideration to until you raised it, I think all the points you have raised are entirely pertinent and real and all the points that have been raised would need to be taken into account when looking at a particular form of control order of that type. It is not necessarily the case that there would need to be a police presence outside. It is not necessarily the case that if there were a requirement to remain in the premises it would apply for 24 hours. It could apply for other periods. It might be the case you would say no mobile phones. It might be there are certain conditions under which friends visit or do not visit. There is a whole set of ways in which these issues can be addressed. I would maintain that the virtue of a control order regime is that it does allow precisely that flexibility to try and get the best state of affairs from the point of view of the security side but also from the point of view of the individual concerned. Judgments, for example on whether it would be wise to have a person required to remain at their premises in a community where people were feeling about angry about that state of affairs, again is an absolutely legitimate question to raise and when the Home Secretary of the day is making a judgment on that matter it would be necessary to take that into consideration when deciding what to do. The point I make is that this whole range of different possible responses to the policing conditions which you describe and the whole range of attacking them is the virtue of a regime of control orders. The legal question is at what point does the range of measures of the type you have suggested add up to a deprivation of liberty and therefore a need to derogate from the European Convention, and that is a very important matter for the law. I think it is important to say that the technological solutions which exist now—for example with satellite tagging and the ability to interfere with mobile phones, the internet and so on and so forth—mean that some of the non-communication aspects which were tackled in a particular way in other countries with people in their own homes can be tackled in a different way in the modern circumstance now. I certainly believe there is absolutely no merit in holding people in conditions which are inimical to their health and circumstances, and finding a way to do that while retaining security would be an important advantage, I believe, of a control order regime.

**Q38 Mr Stinchcombe:** Home Secretary, do I rightly understand your ambition to be this: to create a regime of control which enables our citizens to be secured and to do so, if at all possible, in ways which are entirely human rights compliant?

**Mr Clarke:** Yes.

**Q39 Mr Stinchcombe:** I take it from that if you could avoid a further need for derogation you would hope to follow such a course?

**Mr Clarke:** Yes. I would be advised by the security services on that because it would be a very important requirement for me to be confident that the national security issues about which I am principally concerned here are being met here, so I would look to their advice on those matters.

**Q40 Mr Stinchcombe:** I understand that. The current regime has been declared to be non-compliant for two reasons: firstly that it is discriminatory and secondly that it is said that detention without trial is disproportionate to the threat. As far as the second aspect is concerned, there are two human rights limbs. There is the detention, the deprivation of liberty, and then there is the “without trial” bit, the denial of due process. On the first issue, the deprivation of liberty, do I understand from the answers you have just given that what you are seeking to do is to craft control orders which would not amount to the deprivation of liberty such that a further derogation would be needed?

**Mr Clarke:** That is not quite right, Mr Stinchcombe. I do not say that in any sense of criticism. I am trying to craft a set of control orders which can guarantee national security while at the same time doing the least damage to the liberty of individuals that would need to be detained or have their liberty deprived in any respect in these orders. In so doing, I am guided substantially by the professional advice I receive from the security services and others. If we could achieve this in a way that did not require a derogation, ie did not add up to a deprivation of liberty under the Convention, then I would be a happier man than doing it in a way that did require a derogation. I come back to my same point that my first consideration is the security issue and it is that which I am seeking advice on in these matters from the security services.

**Q41 Mr Stinchcombe:** I understand. If you get advice for which you may be hoping that you can guarantee the security of the citizens but without absolutely depriving the people who pose a threat of their liberty so there is no need for further derogation, that would then leave just the due process issue to be addressed in order for your regime to be human rights compliant?

**Mr Clarke:** Yes. I have to be candid; I have been focusing on the deprivation of liberty aspect as the central issue about which I have to be concerned. I completely understand the due process issues and that is why in answer to Lord Campbell I was saying I am considering ways of involving the judiciary at various stages of the process to see if there is any way in which we could address that in a better way.

**Q42 Mr Stinchcombe:** What is the objection in principle to there being a need for prior judicial authorisation?

**Mr Clarke:** The objection in principle—and there may be practical ways around this—is that the Home Secretary, the executive, has the responsibility

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for the national security of the country in a way that no judge can have, and a judge's principal responsibility at the end of the day is to the process which he is supervising and making his judgments in and to the liberty of individuals within the court, and that means there is a different set of criteria that apply. I do think that for any Home Secretary at any time to say that he would delegate responsibility for the national security issues to someone else would be a serious derogation of responsibility. The fact is that any Home Secretary is accountable to Parliament, and rightly so, in a way that nobody else can be. I do acknowledge, and this is where I am with the thrust of your question and was trying to respond to what Lord Campbell had to say, that there is a strong case for establishing some judicial involvement in the process if it would make it better, but at the end of the day the bottom line, in my opinion, in answer to your point about principle, is that there has to be an individual who makes a judgment about the security of the country and that individual should be accountable to Parliament.

**Q43 Mr Stinchcombe:** We have already had various regimes of control which do have judicial involvement and which do deprive citizens of certain of their civil liberties and which do not necessarily need to be proven to the criminal standard of proof and which do not need to have direct personal testimony publicly given in court. We have that for example in anti-social behaviour orders at the very lowest level of sub-criminal harassment. If we can resolve those particular dilemmas at that level of harassment and disturbance, one would have thought that it must be possible, especially with the special advocate procedures that we have developed in other areas of the law, to develop processes whereby we can keep secure the evidence we need to keep secure, can provide fairness to the accused, but can also through judicial authorisation, albeit at the instigation perhaps of the executive or yourself, provide the level of scrutiny and the level of supervision that we need.

**Mr Clarke:** Of course that is certainly the ambition but it is not as easy to achieve. The difference in an anti-social behaviour order is if a decision is got wrong on an anti-social behaviour order then there is a bit more anti-social behaviour, which is bad news but it is not a disaster for the country. If a decision is got wrong on a national security issue of this type, the level of getting it wrong is of an entirely different order in terms of what we have to deal with. I know that is a question of degree, going back to Lord Judd's words, but it is an important definition of degree.

**Q44 Mr Stinchcombe:** Of course. It would presumably find its appropriate answer in a higher degree of judicial authority who would require to be involved in cases of such national importance?

**Mr Clarke:** I think there is a case for saying that the degree of the formal nature of judicial involvement in the process could vary according to the nature of the order that you are talking about in particular. The nature of judicial involvement might be

different in cases where deprivation of liberty was involved to cases where deprivation of liberty was not involved. I can see an argument of that type. I do not think it is desirable to have a very complex system but I think there is a key dividing line (which is the dividing line established by the European Convention) between deprivation of liberty on the one hand and not to deprive people of their liberty on the other, and at that dividing line I can see a case for different regimes. There is also a case for having one regime throughout the whole system. I do not think it is an absolutely clear-cut issue. It is an issue that I am considering actively at the moment.

**Q45 Mr McNamara:** You have in fact, Home Secretary, answered some of the question that I was going to put to you so I might cheat at the end of it, but you did say that control orders were likely to be time-limited. Can you indicate the nature of how you see them being time-limited and if they are going to be renewed, will the onus be on you to justify renewal or do you seek to get third party or judicial support for renewal? The other point was when you were talking about the inquisitorial nature of some of the systems using intercepted evidence why will you not look at the United States, Canada and Australia who do not have that system?

**Mr Clarke:** On the first point I do envisage the control orders being time-limited. I do envisage them being consistently reviewed to see if circumstances change, as they may do. I do also envisage that it would be for the Secretary of State to justify renewal, again with whatever appellate structure you had for judicial authority to check the Secretary of State's intentions in a matter, and I think that is the right way to go. I do think the other adversarial systems that you mentioned are interesting from that point of view and they are obviously different from the Continental European systems that we are talking about but the level of co-operation (and that is the second aspect of the difference I mentioned to Lord Plant) between our law enforcement and prosecuting authorities is of a different order in relation to that of this country than other countries, even the United States or Canada, but the main considerations on intercepted evidence are the ones I gave to Lord Plant.

**Chairman:** Lord Judd?

**Q46 Lord Judd:** Secretary of State, you have said very strongly to this Committee that the bottom line for you is your responsibility as Home Secretary to protect the British people. I speak for myself and I am sure other members of the Committee when I say that we respect that you put that in as forthright terms as you have. Winning this battle, if I may use that terminology, is very much about hearts and minds as well as the detailed control arrangements, and I think therefore that the reason that many of us are anxious about the points on which you have already been questioned is that we do not want to see any ammunition given to manipulative extremists. We do not want to see the grey area of ambivalence in which they like to operate in any way enhanced. So there is a tough-nosed and not just a human



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rights lobby angle to this. It is about how one can be effective. This very much operates in the area of torture. We in our 18th report were unequivocal. We spelt out that the UK's obligation under the Convention against Torture to ensure that evidence obtained as a result of torture is not admissible in any legal proceedings is unequivocal. We went on: "This is not a question of general principle subject to justifiable exceptions. There is a significant risk of the UK being in breach of its international human rights obligations if SIAC or any other court were to admit evidence which has been obtained by torture." Can you confirm that none of the material which is relied upon in relation to the current detainees has been obtained from other sources abroad, including the United States, where there have been serious allegations of torture and prisoner abuse?

**Mr Clarke:** The evidence in front of SIAC in every particular case is the evidence which is confidential for the reason established. I agree completely with the language that the Committee came to which you read out about torture. This Government and country unreservedly condemn the use of torture and we have worked very, very hard with our international partners to eradicate it. We never use torture for any purpose nor do we instigate others to commit torture for that or any other purpose. We do consider whether we believe torture has been used in any particular case. I can say we do not believe that torture has been used in the cases that we are talking about but we are in a serious difficulty here in that proving a negative in this case is a difficult thing to do.

**Q47 Lord Judd:** How do you establish that torture has not been used?

**Mr Clarke:** That is exactly what I said; proving a negative in this case is a very difficult thing to do.

**Q48 Lord Judd:** Can you give us an assurance that while you are Home Secretary there will be an absolute rule that if there is any question that evidence has been obtained by torture it must not be used?

**Mr Clarke:** I think precision of language is important here. You said if there is "any question". Well, the fact is many people raise questions about what is going on in a wide variety of different ways.

**Q49 Lord Judd:** Any question in your mind, Home Secretary?

**Mr Clarke:** That is a different question. I can give the assurance on there being any question in my mind. I cannot give the assurance in the general context because questions are being raised the whole time. We read about this in the newspapers every day. If I thought that torture was being used then I would not be in favour of using that evidence in that way, but I would need to be convinced that it had been used which, as I say, I am not in this case.

**Q50 Lord Judd:** Because it would seem to me that the first principle as we spelt it out is that such evidence should never be used and you seem to be sympathetic to that position. If it were used however

and there were any doubts about this it seems to me absolutely imperative that those making decisions are informed that there is a doubt as to whether it should be used because the reliability of the information gained under torture must be questioned.

**Mr Clarke:** Of course that is true, but I put a point to you, the phrase you used was "any questions" or "any doubts". This is an area where there is massive speculation, often ill-informed speculation across the media in a wide variety of different ways and where people make allegations which may or may not have substance, including for political reasons, into what happens and making an accurate evaluation, shall I put it like this, of such allegations is not a straightforward thing to do.

**Q51 Lord Judd:** You would agree that that examination must be rigorous because we are dealing with very fundamental issues?

**Mr Clarke:** Yes of course and I think that the issues are indeed very fundamental. I do not quite know how to say this—I just caution against the idea that anybody has 100% knowledge about what is going on all the time in every circumstance; we do not.

**Q52 Lord Judd:** But that must mean, Home Secretary, that you have questions in your mind sometimes about the validity of the information on which you are making your decisions because if you are not certain about the conditions in which that information has been obtained you cannot be certain about its reliability?

**Mr Clarke:** I have questions, Lord Judd, about everything I do. It is one of the attractions of being a politician. I spend a lot of time questioning people who advise me on a whole range of different issues, and that is as it should be. That is what ought to be the case. I do not think I often have certainty about anything actually. I think it is very, very important to be as rigorous as you can be, as you are saying, in terms of evaluating all of those matters, but I come back again to the same point, which is a self-evident point and not novel in any way, that the issue is the security of the country and that is what I shall focus on.

**Q53 Chairman:** Home Secretary, just to clarify one point returning to control orders, could you tell us whether there is any reason in principle for not requiring at least the standard of proof for control orders to be the civil standard of the balance of probabilities?

**Mr Clarke:** I do not think there is a reason in principle but I think again we are in the same area that we have talked about before where it is important to have a very substantial discussion and to make a judgment about what is the appropriate test in this case. There are various different tests which can be applied. There are arguments for and against each of them in terms of dealing with these issues. I would not say it is a reason in principle but there are quite serious practical arguments on both sides of the equation for each particular possible standard that one might apply in these cases.

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**Q54 Chairman:** Finally with regard to the renewal of Part 4 of the Act your acceptance of the House of Lords' judgment obviously leads to the inevitable conclusion that Section 23 of the 2001 Act is incompatible with the European Convention on Human Rights but you propose to renew it and to that end you laid a draft Order before Parliament on 27 January. How could it be said that you were acting in accordance with your duty under the Human Rights Act to act compatibly with the Convention rights when you are asking Parliament to renew a piece of legislation which you have accepted is incompatible?

**Mr Clarke:** The Human Rights Act makes it absolutely clear that it is for Parliament to enact what legislation it feels is right in these areas, including renewal of Part 4 powers if necessary. Of course I have taken very serious account of the Law Lords' judgment and I would wish to be in a state of affairs where a new regime was in place prior to the need to renew those powers, but that depends on Parliament of course and I would not want to be in a situation where we did not have the powers that I have set out under the control order regime which I propose, and so in those circumstances it would be necessary to renew, albeit possibly for a very short period, the powers under Part 4 until such time as we had a new regime in place. I consider that to be my responsibility in terms of national security. My responsibility in terms of the European Convention on Human Rights and the remit of this Committee is to seek to bring in a regime following the Law Lords' judgment which is compatible in the way that we have said, and that is what I am seeking to do.

**Q55 Chairman:** And is that the kind of response you would give to the Council of Europe in explaining that we are acting compatibly with our obligations?

**Mr Clarke:** It is actually, yes. I am a strong supporter of the incorporation of the European Convention on Human Rights into UK law by the passage of the Human Rights Act. I think it was the

right thing to do. I think it is improving our life in a variety of different ways. I also think that when we legislated on the Human Rights Act it was important to acknowledge there can be national security issues which require behaving in a different way, which is what we have done. My defence to the Council of Europe is that I have responded rapidly, openly and candidly in response to the Law Lords' judgment in trying to find a regime that meets these different ways directly. Whether it is a regime which will find favour with Parliament, time will tell, but I think that is the right way for me to proceed.

**Chairman:** Thank you very much, Home Secretary. When you appeared before us in March 2001 as the first Minister to do so you said that the Government very much welcomed the establishment of this Committee. You yourself agreed that the meeting was historic and you said you believed this Committee would enable Parliament better to address the Human Rights Act implications of legislation, which we have tried consistently to do, and I hope that today's exchange helps to reinforce that view.

**Q56 Mr Shephard:** We were going to ask one more question which is to ask the Home Secretary to provide us with the legal advice that he gets on legislation and matters as to its compatibility with the Human Rights Act.

**Mr Clarke:** No, I will not. The convention is very well established, as I think, Mr Shephard, you know perhaps better than anybody in the room, with courtesy to the chair, and I will maintain the government convention that operates. Could I say, Chairman, I have enjoyed this session. I do mean what I said about the role of this Committee; I think it is very important and I think it is right that people in my position are scrutinised by you on these questions. I hope that we can have a very strong and solid discussion about them even though I am sure from time to time we will disagree.

**Chairman:** Thank you very much, Home Secretary.

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# Public Bills Reported on by the Committee (Session 2004–05)

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\* indicates a Government Bill

**Bills which engage human rights and on which the Committee has commented substantively are in bold**

<i>BILL TITLE</i>	<i>REPORT NO</i>
Charities [ <i>Lords</i> ]*	6 <sup>th</sup>
Child Benefit*	8 <sup>th</sup>
<b>Clean Neighbourhoods and Environment Bill *</b>	7 <sup>th</sup>
Commissioners for Revenue and Customs*	6 <sup>th</sup>
Constitutional Reform [ <i>Lords</i> ]* <sup>1</sup>	7 <sup>th</sup>
Criminal Defence Service*	6 <sup>th</sup>
Disability Discrimination [ <i>Lords</i> ]*	6 <sup>th</sup>
Drugs *	7 <sup>th</sup>
Electoral Registration (Northern Ireland) [ <i>Lords</i> ]*	8 <sup>th</sup>
Gambling * <sup>2</sup>	7 <sup>th</sup>
Identity Cards*	5 <sup>th</sup> & 8 <sup>th</sup>
Inquiries [ <i>Lords</i> ] *	4 <sup>th</sup> & 8 <sup>th</sup>
International Organisations [ <i>Lords</i> ] *	4 <sup>th</sup> & 7 <sup>th</sup>
Mental Capacity * <sup>3</sup>	4 <sup>th</sup>
<b>Prevention of Terrorism*</b>	9 <sup>th</sup> & 10 <sup>th</sup>
Railways	8 <sup>th</sup>
<b>Road Safety*</b>	8 <sup>th</sup>
School Transport * <sup>4</sup>	4 <sup>th</sup>
<b>Serious Organised Crime and Police *</b>	4 <sup>th</sup> & 8 <sup>th</sup>

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1 Bill carried over from previous Session. Previously reported in 23rd Report of 2003–04

2 Bill carried over from previous Session

3 Bill carried over from previous Session. Previously reported in 15th Report of Session 2002–03 (on the draft bill) and 23rd Report of Session 2003–04

4 Bill carried over from previous Session. Previously reported in 17th and 20th Reports of Session 2003–04 on the draft Bill