

**FIRST REPORT OF THE
INDEPENDENT REVIEWER
PURSUANT TO SECTION 14(3)
OF THE PREVENTION OF
TERRORISM ACT 2005**

2nd February 2006

FIRST REPORT OF THE INDEPENDENT REVIEWER PURSUANT TO SECTION 14(3) OF THE PREVENTION OF TERRORISM ACT 2005

BACKGROUND

1. Parliament repealed the powers of detention of terrorism suspects provided by the *Anti-Terrorism, Crime and Security Act 2001, Part 4*. The repeal followed the decision of the House of Lords in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*¹. The 2001 Act powers permitted the detention, subject to ensuing review and appeal, of foreign nationals who were suspected of being international terrorists. The provisions were introduced following the aircraft bombing of the World Trade Centre in New York on the 11th September 2001.
2. The *Prevention of Terrorism Act 2005 [PTA2005]* replaced the 2001 Act detention powers with a system of control orders. *PTA2005* came into force on Royal Assent, on the 11th March 2005, following very intensive Parliamentary stages concentrated between the 23rd February and 10th March. By way of comparison, the very much less controversial *International Organisations Act 2005*, which started its passage in the House of Lords, took nearly four months to pass through all its stages.
3. The enactment of *PTA2005* occurred before the London suicide bombings of the 7th July 2005 and the events of the 21st July 2005. Subsequent proposed legislation, the *Terrorism Bill 2005*, has been introduced to Parliament. At the time of the writing of this report, that Bill has yet to complete its legislative passage.

¹ [2004] UKHL 56

4. A control order may be made against a person suspected of involvement in terrorism-related activity, whether a UK national or not, and whether the terrorist activity is domestic or international. For brevity, such a person is described in this report as a controlee.
5. Pursuant to *section 14(3) and (5)* of the PTA2005 I have the duty of reviewing the operation of the Act, and certain other reviewing responsibilities.
6. As with all my reports as independent reviewer of terrorism legislation, I hope that this one is comprehensible to the general reader as well as those with a special interest. I welcome representations and comments: contact details are provided in paragraph 78 below.

Summary of the powers

7. A good summary of the powers can be found on the Home Office website². The remainder of this section is based on the information summarised there.
8. Control orders are intended to have a wide range.
9. There are 2 distinct species of control order - *derogating and non-derogating*. The available obligations of a control order range from prohibitions on access to specific items or services (such as the Internet or mobile telephones), and restrictions on association with named individuals and groups, to the imposition of restrictions on movement or curfews.

² www.homeoffice.gov.uk/security/terrorism-and-the-law/

10. The intention is that conditions imposed under a control order should be specific and tailored to the individual. The aim is to secure the safety of the State by the minimum measures needed to ensure effective disruption and prevention of terrorist activity.
11. The Home Secretary must normally apply to the courts to impose a control order based on an assessment of the available intelligence information. If the court allows the order to be made, the case automatically will be referred to the court for a judicial review of the decision.
12. In emergency cases the Home Secretary may impose a provisional order, which must then be reviewed by the court within 7 days.
13. The court may consider the case in open or closed session. Where national security requires a closed session in the absence of the controlee and his chosen legal advisers, a trained and security cleared independent lawyer described as a Special Advocate represents the interests of the controlee in the closed sessions.
14. Control orders are limited to 12 months' duration. A fresh application has to be made if it is desired that the person concerned should remain a controlee at the end of each 12 month period.
15. A control order and its conditions can be challenged.
16. Breach of any conditions without reasonable excuse is a criminal offence punishable on indictment by imprisonment of up to 5 years, or an unlimited fine.
17. Controlees have the option of anonymity.

CONTROL ORDERS TO DATE

18. Between the coming into force of the legislation and the end of 2005 18 control orders were made. By the end of the year there were 9 orders subsisting. One of those related to a UK national. Nine of the 18 controlees were served on the 11th August 2005 with notice of intention to deport. Those nine were formerly detainees under the Anti-Terrorism, Crime and Security Act 2001. Their nine control orders were revoked on the 31st August 2005 following their detention for deportation purposes. Of those nine, four have been admitted to bail under the deportation jurisdiction of the Special Immigration Appeals Commission [SIAC], subject to conditions similar to rigorous non-derogating control order obligations. Two of the former detainees remain subject to control orders but have not been served with deportation notices. The following anonymised Table provides a snapshot of the situation.

CONTROL ORDER TABLE

Name	Date of Control Order	Court Stages	Other Orders	Date CO revoked/Notes
Male 1 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05; Appeal on tagging obligation 29/3/05		Tagging obligation removed; remains a controlee
Male 2 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; bail granted by SIAC	Revoked 31/8/05
Male 3 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; bail granted by SIAC	Revoked 31/8/05
Male 4 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05		Remains a controlee
Male 5 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; no bail	Revoked 31/8/05
Male 6 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; no bail	Revoked 31/8/05
Male 7 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; bail granted by SIAC	Revoked 31/8/05
Male 8 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of intention to deport; bail granted by SIAC	Revoked 31/8/05
Male 9 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of deportation; detained; no bail	Revoked 31/8/05
Male 10 Non-UK	11/3/05 confirmed 16/3/05	Directions 22/3/05	11/8/05 Notice of decision to deport; no bail	Revoked 31/8/05
Male 11 Non-UK	28/4/05	Directions 5/5/05	11/8/05 Notice of deportation; detained; no bail	Revoked 31/8/05
Male 12 UK Citizen	2/9/05	Directions 3/10/05; hearing fixed w/c 3/4/06		The only UK citizen currently a controlee. No curfew or tag; can work normal hours
Male 13 Non-UK	23/11/05	Directions 28/11/05; next directions 5/5/06		
Male 14 Non-UK	23/11/05	Directions 28/11/05; next directions 5/5/06		
Male 15 Non-UK	23/11/05	Directions 28/11/05; next directions 5/5/06		
Male 16 Non-UK	23/11/05	Directions 28/11/05; next directions 5/5/06		
Male 17 Non-UK	8/12/05	Directions 13/12/05 (adjourned to 12/1/06); next directions 5/5/06		
Male 18 Non-UK	21/12/05	Directions 12/1/06; next directions 5/5/06		True identity uncertain

DEPORTATION AND RENDITION

19. It can be seen from the Table above that the control orders imposed on nine of the former 2001 Act detainees survived for 5¹/₂ months before being replaced by deportation detention.

20. The position of the former 2001 Act detainees is somewhat confusing in legal terms following the decision of the House of Lords in *A and others (Appellants) (FC) and others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)*³, the recent case concerning the use of evidence obtained following the possible use of torture in other countries. The decision is immensely valuable in setting out clearly the attitude of UK courts to evidence obtained in foreign jurisdictions where torture may have taken place - not least because their Lordships confirmed the expectation of most experienced observers of terrorism law.

21. The cases under consideration there have to be reconsidered by SIAC following the decision. This is a consequence of *section 16(4)* of the Act, which continues SIAC related appeals under the former 2001 Act. This leaves the odd situation in which SIAC apparently has to reach determinations in relation to powers no longer in existence. This has caused some perplexity, not least to the officials who have the difficult daily task of dealing with and advising Ministers on issues affecting terrorism policy and its application. Of course, the House of Lords decision is highly material to future SIAC cases, and to the status of evidence in control order hearings in the Administrative Court.

³ [2005] UKHL 71, 8th December 2005

22. The nine men referred to above have been removed from the control order system in order to effect their removal from the UK. One of them is subject to deportation to Jordan, a country with which a Memorandum of Understanding has been reached. This means that the UK government is satisfied that it has reached an agreement with the Kingdom of Jordan whereby the person to be deported will be protected from any breach of equivalent rights to those guaranteed under *European Convention on Human Rights Articles 2 and 3*, the right to life and the prohibition of torture. This has caused some protest, on the basis that despite assurances Jordan would not honour agreed guarantees of individual liberties. This is not a matter for me as reviewer, though it is perhaps worth pointing out that the person concerned, having been convicted in Jordan in his absence of serious offences, is entitled to a fresh trial if returned there. A right to a fresh trial that would not be available in any UK jurisdiction without a successful appeal, following conviction in absence.
23. In relation to the remaining eight of the nine, they are not from Jordan. There are as yet no Memoranda of Understanding to protect their position on deportation. The Foreign and Commonwealth Office and the Home Office are working hard to achieve such Memoranda. There has been frequent and intensive contact with the government(s) concerned. A small single-purpose group has been set up to progress this issue, including a former Foreign Office Minister and a recently retired senior civil servant with specialist and profound knowledge of terrorism issues. After several months of discussions the issues remain unresolved. At the time of writing, rendition cannot be achieved.
24. The general issue of rendition is all too easily over-simplified. Subject to an appropriate system of law and compliance with international obligations especially relating to human rights, every country has the right and indeed the duty to its citizens to protect

national security, if appropriate by excluding foreign nationals who threaten that security.

25. In my own political life I have been involved in activity against torture and unjustified deprivation of liberty in countries behind the old Iron Curtain. Those countries are now bastions of democracy and freedom, and in every case without a civil war or bloody revolution. It really is a counsel of despair to suggest that no verifiable or satisfactory agreement can ever be reached with apparently recalcitrant countries. There are international organisations and mechanisms available and devisable to ensure an appropriate level of verification. The effort is certainly well worth making.
26. It follows that I reject as naïve and simplistic those over-deployed arguments to the effect that any country with a bad human rights record must be regarded as beyond the pale in perpetuity. The development of a better world in terms of rights and liberties inevitably will be founded on a subtle and variable blend of diplomacy, economics, sharing of natural resources, the environment and the hopefully ubiquitous desire for security and comity.
27. However, I have a real concern about the detention under deportation procedures (even where bail has been granted) of persons who in practice cannot be deported at present and are unlikely to be capable of legally compliant deportation within a reasonable time.
28. It would have been far preferable for Memoranda of Understanding to have been reached before the deportation detentions took place. How long the present situation for those persons can continue may be a matter for the courts to determine. Given that

there is the control order system in existence, it would be preferable for that system to be used against the persons concerned until suitable Memoranda have been achieved.

29. In this context it should be said that I have not been told of any failing in the control orders whilst applicable to the nine persons described, such as placed national security at risk. I have read a considerable body of correspondence about the practical applicability of parts of control orders, but these were all matters of detail about family and other arrangements for the controlees. In practical terms control orders have been an effective protection for national security.

CONTROL ORDER POWERS AND OBLIGATIONS

30. By *PTA2005 Section 1* the power to make a non-derogating control order is vested in the Secretary of State; and to make a derogating order in the court on the application of the Secretary of State. The obligations placed on the controlee are those

“... necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity.”

31. *Section 1(4)* contains a menu of potential obligations up to and including full-time house arrest. Such 24/7 house arrest would involve derogation.

32. *“Involvement in terrorism-related activity”* is defined by *section 1(9)* as

“any one or more of the following-

(a) the commission, preparation or instigation of acts of terrorism;

(b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;

(c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;

(d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity;

and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.”

33. Section 2 sets out the basis upon which the Secretary of State may make a non-derogating control order. Section 2(1) requires that he

“(a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity; and

(b) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to make a control order imposing obligations on that individual.”

34. Non-derogating orders are made for 12 months, and are renewable pursuant to section 2(6) if

“necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity.”

35. As part of my function as independent reviewer, I task myself to replicate exactly the position of the Home Secretary at the initiation of a control order. I call for and am given access to the same files as were placed before the Secretary of State when he was asked to determine whether a control order should be made. These files include detailed summaries of evidence and intelligence material, as well as the draft Order and obligations. The summaries describe not only the activities alleged against the individual and the sources of information, but also the context of those activities in a wider and very complex terrorism picture.

36. Much of the information is derived from intelligence. The sources and content of such intelligence in most instances demand careful protection in the public interest, given the current situation in which there is needed a concerted and strategic response to terrorism (and especially suicide bombings). The techniques of gathering intelligence, and the range of opportunities available, are wide and certainly in need of secrecy. Human resources place themselves at risk - not least by any means those who offer unsolicited information out of disapproval of conduct and events at which they may have been and could continue to be present.
37. That is not to say that there might possibly be a few cases in which it would be appropriate and useful to deploy in a criminal prosecution material derived from public system telephone interceptions and convertible into criminal evidence. Although the availability of such evidence would be rare and possibly of limited use, I remain of my previously expressed view that it should be possible for it to be used and that the Law should be amended to a limited extent to achieve that.
38. I would have reached the same decision as the Secretary of State in each case in which a control order has been made. He asks questions and certainly does not act as a mere cipher when the papers are placed before him. The process is rigorous and structured in an appropriate way, so that the decisions are very definitely those of the Home Secretary himself, not his officials. In accordance with my obligations under *section 14(5)(b)* I report that the Secretary of State has acted appropriately in relation to his powers under *section 3(1)(b)* of the Act, in relation to the use of the power to make urgent non-derogating orders.

39. The quality of preparation by officials and the control authorities concerned is extremely high, as one is entitled to expect when a Secretary of State has to make a decision diminishing the normal rights and expectations of the individual.
40. My conclusion in paragraph 38 does not mean that the Secretary of State is correct in every case. The 2005 Act contains an elaborate court procedure for the review of the decisions made by the Minister, of which more in paragraphs 46-50 below. Hopefully, errors will be corrected in those proceedings.
41. Annex 1 contains an example proforma of a control order. Nothing turns upon the contents of that document.
42. Annex 2 merits attention. It contains the proforma of the Schedule of Obligations imposed on most but not quite all of the controlees so far. On any view those obligations are extremely restrictive. They have not been found to amount to the triggering of derogation, indeed there has been no challenge so far on that basis - but the cusp is narrow.
43. The obligations include an eighteen hour curfew, limitation of visitors and meetings to those persons approved by the Home Office, submission to searches, no cellular communications or internet, and a geographical restriction on travel. They fall not very far short of house arrest, and certainly inhibit normal life considerably.
44. I have received some representations about and am alive to the potential psychological effects of control orders. In the case of controlee Male 1 in the table above, medical evidence was of importance in the removal of the tagging obligation. If provided with

specific medical evidence in relation to individual controlees (which has not been made available to me in any single case) I would certainly find such evidence relevant in my review of the operation of the Act.

45. The key to the obligations is proportionality. In each case they must be proportional to the risk to national security presented by the controlee. I would urge that in each case the individual risks are examined closely, and the minimum obligations consistent with public safety imposed.

46. To achieve that end I recommend the establishment of a Home Office led procedure whereby officials and representatives of the control authorities meet regularly to monitor each case, with a view to advising on a continuing basis as to the necessity of the obligations imposed on each controlee. The aim should be to reduce them to the minimum consistent with the safety of the Realm.

COURT SUPERVISION

47. A system of law for the supervision by the court of non-derogating control orders is provided by *section 3*. In every case there must be an application to the court for permission, in non-urgent cases to make the control order, and in urgent cases for the confirmation of the order. The language of *section 3(3)* makes it clear early in the Act that the principles are those of judicial review – namely that the order will subsist unless the decision is “*obviously flawed*”.
48. The Court has the power pursuant to *section 3(12)* to quash the order, to quash one or more obligations imposed by the order, or to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations imposed by the order.
49. *Section 3* requires directions hearings to begin no more than 7 days from the making or confirmation of a control order. I am given to understand that this has caused some practical problems, in that there is very little that can happen meaningfully in court proceedings in the High Court at such an early stage. It has been suggested to me that a more leisurely timetable might be more realistic. Given that control orders involve deprivation of much of normal life, at least until we see how the system beds down after another year I would prefer to retain the 7 day directions obligations. I expect too that the courts will gather pace with the substantive hearings of the controlees’ cases, at least some of which were delayed by agreement between the court and the controlees’ lawyers pending the decision of the House of Lords in *A and others (Appellants) (FC)*

*and others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)*⁴.

50. *Section 4* provides the powers of the courts to make derogating control orders; *section 5* deals with issues of arrest and detention pending derogating control orders; and *section 6* provides for their duration. As no derogating control orders have been made to date, happily I am unable to report at this stage on the operation of the derogating provisions. Given the restrictive nature of the Annex 2 non-derogating orders, and the reverberations that derogation would cause, I hope that no derogating orders will be required. Plainly, the moment one was made it would require intensive review of every step in the statutory procedure and of its effect on the controlee.
51. The effectiveness of the court procedures for non-derogating orders is almost impossible to report upon at this stage. The above Table shows the early stages reached so far in all relevant cases. For my next report I shall review how the applicable system of law has operated, and (if informed) of any its effects on the detainees; and also the efficacy of the use of special advocates in those proceedings.

⁴ [2005] UKHL 71, 8th December 2005

MODIFICATION OF CONTROL ORDERS

52. *Section 7* provides for the modification, notification and proof of orders. By *section 7(1)* the controlee, on the basis of a change of circumstances affecting the order, may apply for revocation or modification of the obligations imposed by the order. If such an application is made, the Secretary of State has the statutory duty to consider it. By *section 7(2)* the Secretary of State has the power to revoke or modify the obligations of an order, save that he cannot uprate it from a non-derogating to a derogating order.
53. *Section 7* allows too for applications to be made to the court for revocation or modification of derogating orders. This and associated provisions have yet to be tested in operation.

CRIMINAL INVESTIGATIONS AND CONTROL ORDERS

54. *Section 8* arises from understandable concerns that individuals suspected of terrorism offences should be prosecuted and convicted wherever possible, rather than made subject to executive action depriving them of a significant proportion of their liberty.
55. The section applies to a carefully drawn group of cases – those where the terrorism suspect may have committed an offence relating to terrorism, and the commission of that offence is being or would fall to be investigated by a police force. This is not as all embracing as it may seem at first glance, as it may exclude cases where on public interest grounds it had been pre-determined that there should be no investigation with a view to prosecution. However, I am unaware of any cases where any such determination has been made.
56. *Section 8(2)* provides that, before a control order can be made or applied for, the Secretary of State must consult the chief officer of the police force for the material area—
“about whether there is evidence available that could realistically be used for the purposes of a prosecution of the individual for an offence relating to terrorism.”
57. If a control order is made, the chief officer of police has the obligation under *section 8(4)* to keep under review the possibility of an investigation and criminal prosecution. *Section 8(5)* contains a strangely drawn obligation (“*must*”) to consult the relevant prosecuting authority (in England and Wales the Director of Public Prosecutions) but, in relation to *section 8(4)* “*to the extent that he considers it appropriate to do so*”.

58. I have seen letters from chief officers of police in relation to each controlee certifying that there was no realistic prospect of prosecution. Little is given by way of reasons. Whilst I have no evidential basis for doubting the genuine nature of the *section 8* exercise, in my view the letters provided by chief officers should give clear reasons for the conclusion that there is not evidence available that could realistically be used for the purposes of a terrorism prosecution. Such letters should be in terms disclosable to the controlee, with an additional closed version if it is though necessary: that closed version should be disclosed to the court reviewing the control order.
59. I believe that continuing investigation into the activities of some of the current controlees could provide evidence for criminal prosecution and conviction. I encourage such investigation to continue. Information about international contacts, financial support for insurgents in Iraq, and the use of guarded language to refer to potential terrorism targets might be progressed to evidence of significant terrorism crime. It is a given that it would be far better for prosecutions to occur if they were to pass the usual threshold standards for prosecution applied by the Crown Prosecution Service.
60. However, the nature of the activities of which I have seen information is sufficiently alarming for me to re-emphasise, as I have in other reports, the real and present danger of shocking terrorism acts involving suicide bombers. Further suicide bombings in the UK must be expected, and the targets are unpredictable.
61. As a last resort (only), in my view the control order system as operated currently in its non-derogating form is a justifiable and proportional safety valve for the proper protection of civil society.

OFFENCES

62. *Section 9* sets out the offence of contravention of a control order.

63. There have been contraventions to date, but all of a relatively minor nature. None have been prosecuted. Therefore there is no operation of it for me to review as yet. However, I am satisfied that the Home Office and the prosecuting authorities would use proper discretion before instituting proceedings. Given the nature of some of the control order obligations, it might be all too easy for technical breaches to occur.

APPEALS AND OTHER PROCEEDINGS

64. *Sections 10 and 11* provide the system of appeals against control orders, control order court decisions and derogation matters. I have not been made aware of any extraordinary difficulties caused or likely to be caused by these provisions since the inception of the legislation.
65. *Section 10(4)(5) and (6)* make it absolutely clear that the principles applicable in non-derogating control order appeals are those applicable on an application for judicial review.
66. This means that such appeals are not analogous to a criminal trial. They are administrative court hearings. In lay language, the decision of the Secretary of State will be upheld unless shown to be founded on a mistake of law, or on a disproportionate assessment of the facts in their legal context, or perverse.
67. Judicial review is a robust jurisdiction, as even cursory examination of its developing history shows. My observations between UK human rights law and that applied in other ECHR countries leaves me in no doubt that, despite imperfections, it stands any comparative test - both in terms of accessibility and results.
68. *The Schedule* to the Act sets out the rule making powers. These have been exercised by the enactment of *Civil Procedure Rules 1998, Part 76 Proceedings under the Prevention of Terrorism Act 2005*⁵. These rules include the appointment and

⁵ SI 2005/656: in force 11th March 2005

responsibilities of special advocates, and the difficult issue of hearings in the absence of the controlee and his own legal representatives; and disclosure. The rules appear clear and comprehensive, but still remain to be tested through proceedings in 2006, some indicated in the table above.

69. *Section 12* is a largely procedural provision dealing with appeals against convictions for breach of control orders before the quashing of the order or an obligation under it. Nothing has arisen as yet in relation to this section.

DURATION OF CONTROL ORDER PROVISIONS, AND REVIEW

70. *Section 13(1)* limits the duration of the control orders system to 12 months from the 11th March 2005, the date on which the Act was passed. Subject to certain consultation obligations set out in the section, it may be continued for a year at a time. An affirmative resolution of each House of Parliament is required before continuation can occur, save in restricted circumstances of emergency (when resolutions would be required within 40 days).
71. On the 21st December 2005 Andrew Dismore M.P., Chair of the Joint Committee on Human Rights (a Select Committee of both Houses of Parliament), wrote to the Home Secretary to inform him that the Committee intends to report to Parliament on the human rights implications of any renewal orders. I understand that the Committee will take this report into account in its deliberations. I certainly do not want to trespass into their territory outside my statutory terms of reference. It might be helpful to them if I highlight my concern expressed above about the severe nature of the obligations under most of the existing control orders, and the desirability that the orders should impose the minimum obligations compatible with national security.
72. The Committee may share my anxiety about the duration of control orders in relation to individual controlees, if the system is (as I expect) continued. This replicates concerns about the detentions under the former 2001 Act. It would not be acceptable for significant restrictions on liberty to continue for years on end for UK residents. Hopefully the passage of time will dilute the potential danger presented by individual controlees, and enable the relaxation and removal of obligations and orders.

73. As required by *section 14(1)* the Secretary of State has reported three-monthly to Parliament about the exercise of the control order powers. In my view, given the reviewer's obligations, and the existence of several Select Committees with an active interest in these matters, there would be no detriment if such reports were required of the Secretary of State every six months.
74. This report is my response to my duties under *section 14(3)*, namely to report on "*the operation of this Act*". My next report under that obligation will appear in a year's time.
75. I have the duty under *section 14(5)(b)* to report on the extent (if any) to which the Secretary of State has made use of his powers to make non-derogating orders in urgent cases without the permission of the court. That was done in relation to the former 2001 Act detainees. In my view that was inevitable because of the urgency of the situation at the time of enactment of *PTA2005* and the newness of the procedures. *Section 3(1)* of the *PTA2005* made specific provision to deal with this transitional issue. In the other cases in the Table above court permission has been obtained.
76. I have the additional duty, under *section 14(5)(a)*, to provide my opinion on the implications for the "*operation of this Act*" of any proposal made by the Secretary of State for the amendment of the law relating to terrorism. There are no proposals in existence at present that would have any impact on the operation of the *PTA2005*. Proposals in the *Terrorism Bill* currently before Parliament may well have the effect of reducing the number of control orders as a result of prosecutions for new offences provided for in the Bill. If that is an effect, it will be beneficial in that due criminal

process will apply to more terrorism suspects. I have reported separately in relation to the proposals made in that Bill and earlier draft versions⁶.

77. *Sections 15 and 16* require no further comment.

⁶ See www.homeoffice.gov.uk/news-and-publications1/publication-search/independent-reviews/carlile-review-121005

ADDRESSES FOR COMMENTS AND REPRESENTATIONS

78. Any comments or representations about this report or the review process should be sent by email to carlileqc@aol.com, or in hard copy to Lord Carlile Q.C., House of Lords, London SW1A 0PW.

Alex Carlile

Lord Carlile of Berriew Q.C.

January 2006.

ANNEX 1: EXAMPLE CONTROL ORDER PROFORMA

(Prevention of Terrorism Act 2005, section 2)

CONTROL ORDER

This Order is effective from: **[date]**

Name of Controlled Person: **[name]**

Date of Birth: **[date of birth]**

Nationality: **[nationality]**

Place of Residence: **[address]**

Under the powers conferred on the Secretary of State by sections 2 and 3(1)(a) of the Prevention of Terrorism Act 2005 (referred to below as ‘the Act’), this Order has been made against you because:

- (a) he has reasonable grounds for suspecting that you are or you have been involved in terrorism-related activity; and

- (b) he considers it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to impose certain obligations upon you in order to prevent or restrict your further involvement in terrorism-related activity.

The basis for this decision is:

[reason]

The obligations imposed on you under section 1(3) of the Act are set out in the Schedule to the Order - **see attached**.

You are required to meet the obligations set out in the Schedule to the Order. **By virtue of section 9(1) and (2) of the Act if, without reasonable excuse, you contravene any of these obligations, you shall be liable on conviction to a term of imprisonment or to a fine or to both.**

If while you are subject to this Order, you consider there has been a change of circumstances affecting it, you may apply under section 7(1) of the Act, for a revocation of the Order or for the modification of an obligation imposed by the Order.

This Order is effective until the end of [day / month / year] (Order made for 12 months).

The Secretary of State applied to the court for permission to make this order and has been granted that permission on [insert date].

Secretary of State

ANNEX 2: SCHEDULE OF OBLIGATIONS

The following obligations form part of the Control Order and are imposed on you by virtue of section 1(3) of the Prevention of Terrorism Act 2005:

Upon service of the control order and thereafter for the duration of this control order:-

- (1) You shall permit yourself to be fitted with and shall thereafter at all times wear an electronic monitoring tag (“the tag”).
- (2) You shall remain or permit yourself to be taken and thereafter reside at **[address]** (“the residence”), and shall remain in the residence at all times save for a period of 6 hours between 10am and 4pm or as specified in the directions given in writing referred to at (8) below. “Residence”, in the case of a flat, encompasses only that flat and, in particular, does not include any communal area either inside or outside to which any person not within the residence would have unrestricted access. “Residence”, in the case of a house, encompasses only the house and does not include any outside space associated with it.
- (3) Each day, you must report to the monitoring company (as identified in the Notes to the Order) by telephone on the first occasion you leave the residence after a curfew period has ended and on the last occasion you return to it before a curfew period begins.
- (4) You shall not permit any person to enter the residence, save for:
 - (a) your nominated legal representative as notified to the Home Office;

(b) in an emergency, members of the emergency services or healthcare or social work professionals;

(c) any person required to be given access under the tenancy agreement for the residence, a copy of which shall be supplied to the Home Office.

You shall not permit any other individual to enter the residence except with the prior agreement of the Home Office. In relation to those other individuals, you must supply the name, address, date of birth and photographic identity of the individual. The prior agreement of the Home Office shall not be required for subsequent visits by an agreed individual, but this does not prevent the Home Office withdrawing that agreement at any time.

(5) You shall not, outside of the residence:

(a) meet any person by prior arrangement, other than:

(i) that person referred to in (4)(a) above, or

(ii) for health or welfare purposes at an establishment on a list provided to and agreed by the Home Office before your first visit; or

(b) attend any pre-arranged meetings or gatherings (other than attending, but not leading, group prayers at a mosque),

save with the prior agreement of the Home Office. For the avoidance of doubt, a meeting shall be deemed to take place outside of the residence if one or more parties to it are outside of the residence.

- (6) You shall not associate or communicate, directly or indirectly at any time or in any way with the following individuals

[names]

- (7) You must permit entry to police officers and persons authorised by the Secretary of State or by the monitoring company, on production of identification, at any time to verify your presence at the residence and/or to ensure that you can comply and are complying with the obligations imposed by this control order. Such monitoring may include but is not limited to:-

- (a) a search of the residence;
- (b) removal of any item;
- (c) inspection/modification or removal for inspection/modification of any article to ensure that it does not breach the obligations imposed by this control order;
- (d) permitting the installation of such equipment as may be considered necessary to ensure compliance with the obligations imposed by this control order;
- (e) the taking of your photograph.

(8) In order to secure compliance with the obligations imposed by the control order, you shall comply with such other prohibitions or restrictions on your movement as may be required by directions given in writing at the time of service of the control order by a police officer or other person authorised by the Secretary of State. Such prohibitions or restrictions shall cease to be effective 24 hours after service of the giving of the directions, or an earlier direction.

(9) You shall not:-

(a) bring or permit into the residence, or

(b) use, or keep (whether in or outside the residence, whether directly or indirectly)

any communications equipment or equipment capable of connecting to the Internet or components thereof (including but not limited to mobile telephones, fax machines, pagers, computers, public telephone and/or internet facilities).

Furthermore, you may maintain and use no more than one fixed telephone line in the residence (other than the dedicated line maintained by the monitoring company).

The telephone must on request be delivered up to a person authorised by the Secretary of State for inspection and approval prior to it being permitted into or to remain in the residence.

It shall not be a breach of this obligation to permit any person specified in (4)(a) to (c) above to bring into the residence a mobile phone, provided that any such mobile phone shall remain switched off at all times whilst you are in the residence.

For the avoidance of doubt:-

- (i) you may not use or keep, nor may you permit whilst you are in the residence any other person to use, any mobile phone in the residence; and
 - (ii) you may not connect to or use by any means, directly or indirectly, the internet at any time.

- (10) You shall only attend one mosque of your choosing, subject to prior approval from the Home Office before your first visit.

- (11) You may not at any time leave the area marked on the attached map at Annex A (the width of the line itself is within the permitted area) without the consent of the Home Office. This area is bordered by **[area]**

- (12) You must notify the Home Office of any intended departure from the UK and notify it of the port of embarkation. You must also notify the Home Office if and when you intend to return to the UK and to report to the Home Office immediately upon arrival that you are or were subject to this control order. The requirement to report on arrival shall continue to apply whether or not this control order remains in force at the time of your return to the UK.

- (13) You shall not maintain more than one account. Such account must be held with a bank or other approved financial institution within the UK. The following information must be provided to a person authorised by the Secretary of State:

- (a) details of all accounts held at the time of service of this control order, within 2 days of such service;
 - (b) closing statements relating to any accounts additional to the one permitted account, within 14 days of service of this control order;
 - (c) if no account is held at the time of service of this control order but one is opened subsequently, details of that account, within 2 days of its opening;
 - (d) statements of the permitted account on a monthly basis, to be provided within 7 days of their receipt.
- (14) You shall not transfer any money, or send any documents or goods to a destination outside the UK (whether yourself or through an intermediary) without the prior agreement of the Home Office.
- (15) Within 24 hours of service of this order, you must:
- (a) surrender any passport, identity card or any other travel document (other than any genuine passport issued by the **[other nationality]** authorities) to a police officer or person authorised by the Secretary of State, and
 - (b) notify the Home Office of any **[other nationality]** passport you have in your possession or which is available for your use.

Furthermore, prior notification must be given to the Home Office before you may apply for or have in your possession any passport, identity card, travel document(s) or travel ticket which would enable you to travel outside the UK.

(16) You are prohibited from entering or being present at any of the following:-

(a) any airport or sea port; or

(b) any part of a railway station that provides access to an international rail service

without prior permission from the Home Office.