

**POSSIBLE MEASURES FOR
INCLUSION IN A FUTURE
COUNTER TERRORISM BILL**

**Home Office,
25 July 2007**

Introduction

1 On 7 June 2007 the previous Home Secretary announced to Parliament the Government's intention to bring forward a new counter terrorism bill later this year. We are committed to consulting widely on any possible measures for inclusion in that bill before it is introduced. We published a short discussion document intended to initiate the consultation process. This paper builds on that and we hope that it will enable a more detailed consideration of the measures we are proposing. The consultation will be continuing over the summer and we will share further information about the measures (including any new measures that arise as a result of the consultation) over the next few months.

2 The measures we are proposing result from a review of existing counter terrorism legislation. That review has identified a number of areas where our legislation might be strengthened.

3 In particular, it has highlighted two key areas where measures might improve our response to the threat we face from terrorism. These can be broadly categorised as measures to:

- enhance **information sharing** between those agencies involved in combating terrorism and making full use of all the available information to assist investigations and secure more prosecutions, and
- measures to deal with **terrorist suspects after they have been charged**, including where they have been convicted and served their sentence. These measures will help strengthen the prosecution case and assist with public protection arrangements in the community.

4 In addition there are a number of other measures we would like to introduce which, whilst falling outside these core themes, are still considered to be operationally valuable or are desirable in terms of making the legislation clear.

5 It is essential that we keep our legislation in this important area under review to ensure that we are always able to respond effectively to the current and emerging threat. The measures that we have identified do not represent a fundamental shift in the way we counter the threat from terrorism, but we believe they will make a

significant improvement to the legislative tools that are available to deal with the current threat.

6 It is vital to ensure that we have the legislative powers necessary to counter the threat of terrorism, but it needs to be set in the wider context of what we are doing on counter terrorism more generally. This includes the establishment of the new Office for Security and Counter Terrorism, which will provide better co-ordination and focus for our counter terrorism effort across government. Also the availability of substantially increased resources for the police and others so that by 2008, annual spending on counter-terrorism, intelligence and resilience will reach £2 ¼ bn, which is double what it was prior to September 11. Legislation also needs to be seen in the context of our work to deal with extremism and the radicalisation of individuals. For example, the action plan published by the Communities Secretary in April this year which aims to work with Muslim communities to isolate, prevent and defeat violent extremism. Prevention of terrorism must always be the priority and to do this we need the support of communities. There is also further work being undertaken between the Criminal Justice Departments to speed up terrorist trials. Our police and Security and Intelligence Agencies continue to strive to ensure that we have in place the methods necessary to protect the public and our critical national infrastructure from terrorist attack.

Previous counter terrorism legislation

7 The counter terrorism legislation that has been introduced since 2000 has all been fast tracked through Parliament. While we remain firmly of the view that this action was absolutely necessary we recognise that this has resulted in criticisms. We therefore want to see this Bill go forward on a consensual basis where possible. While we are not embarking on formal pre-legislative scrutiny we are, as the previous Home Secretary announced, committed to discussing the measures widely with the Opposition parties, Parliamentarians, relevant organisations and with wider communities before the Bill is introduced in Parliament.

8 This work has already begun with Ministers holding initial meetings with the Opposition and Chairs of the Home Affairs Select Committee and Joint Committee on Human Rights to outline the key measures proposed for the Bill. We have also written to a large number of external stakeholders, including the judiciary, civil liberties groups and community groups requesting their comments and offering

meetings to discuss any of the proposals. We will continue to strive for consensus where possible and publication of this paper builds on the process and will allow those with an interest to consider the proposals in more detail.

9 Parliamentary groups such as the Home Affairs Select Committee and the Joint Committee on Human Rights will also scrutinise and report on important parts of the Bill. Lord Carlile, the Independent Reviewer of Counter Terrorism legislation will also produce a report on the Bill proposals which we expect in October.

10 When the Bill is formally introduced it will provide Parliament with an opportunity to revisit all aspects of counter terrorism legislation.

Pre charge detention

11 Alongside this document we have separately published a paper on pre-charge detention, recognising the particular sensitivity of this issue. This can be found on the Home Office website (security.homeoffice.gov.uk).

12 As the paper shows, the scale of the threat we face from terrorism has increased and the Parliamentary decision to increase pre charge detention limits from 14 to 28 days has been justified. We have been able to bring forward prosecutions that otherwise would not have been possible. The need to intervene early to pre-empt attacks, the growing complexities of the plots, the sequential nature of the investigations, and even greater foreign links, mean that despite an increase in police resources, there is a clear risk that we will require more than the current pre-charge detention limit in future. For example, if there were multiple plots requiring simultaneous investigation, or plots involving multiple countries, or other exceptional factors. More detail on these issues is contained in the paper.

13 We have made it clear that we will consult on this issue and that we hope to achieve a consensus where possible. We have therefore identified a number of possible options. These are outlined in more detail in the paper. It may be that other suggestions are brought forward during this consultation. We are therefore genuinely committed to consulting on this issue and to developing an agreed approach on how legislation might address the need to extend the pre-charge detention limit in future.

Intercept as Evidence

14 Interception is a highly effective intelligence gathering tool that has proved vital in preventing terrorist atrocities and tackling serious crime. The Government's position has always been that we would only change the law to permit intercept as evidence **if** the necessary safeguards could be put in place to protect sensitive techniques and capabilities, and the potential benefits outweighed the risks.

15 We need to protect the current interception capability, particularly in light of the changing technology, and avoid putting additional disproportionate burdens on the security authorities in order to generate intercept material to an evidential standard.

16 The right approach is to address this carefully and fully before deciding on whether to use intercept as evidence. That is what we are and have been doing. However, we believe that we now need to reach a conclusion on this issue.

17 We have therefore commissioned a review to advise on whether a regime to allow the use of intercepted material in court can be devised that facilitates bringing cases to trial, while meeting the overriding imperative to safeguard national security.

18. It will consider:

- the benefits that might reasonably be expected to result from such use, for example, in terms of increases in the number of successful prosecutions in serious organised crime and terrorism cases);
- the risks, including from exposure of interception capabilities and techniques;
- the resource implications of any change in the law;
- the implications of new communications technology; and
- the experiences of other countries and their relevance to the UK.

19. The review will be conducted on privy counsellor terms and will have access to all relevant material including previous studies. It will report conclusions and recommendations to the Home Secretary and the Prime Minister before the start of the next Parliamentary session.

20. The Review Committee will be chaired by the Rt Hon Sir John Chilcott KCB. Other members of the Committee will be the Rt Hon Lord Archer of Sandwell QC, the Rt Hon Lord Hurd of Westwell and the Rt Hon Alan Beith MP.

POSSIBLE MEASURES FOR INCLUSION IN A BILL

INFORMATION SHARING TO ASSIST INVESTIGATIONS & SECURE MORE CONVICTIONS

Disclosure in relation to suspected terrorist financing

21 The consultation paper on “Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse” which was published jointly by the Home Office and the Treasury in May this year highlighted the concern that there was a risk that the charitable sector could be used as a vehicle for terrorist financing.

22 Currently section 19(1)(b) of the Terrorism Act 2000 requires disclosure of suspicious financial activity observed during the course of employment, trade, business or profession. We are considering whether there is a gap in relation to those carrying out unpaid or voluntary work, for example trustees or those who do voluntary work in the finance department of a charity. Should it be concluded that such workers are not covered then we plan to legislate so that they are. This is a very minor change to close a possible gap in the current provisions. It should be noted that the Charity Commission’s current advice on the subject does not differentiate between paid and unpaid workers, and encourages all those in the charitable sector to disclose suspicious financial activity.

Measures in relation to DNA of terrorist suspects

23 There are four separate measures that we would like to introduce in relation to DNA and other forensic material. They are:

- Putting the police counter terrorism DNA database on a proper statutory footing, including the necessary oversight mechanisms;
- Ensuring that DNA samples and fingerprints obtained under the Terrorism Act 2000 can be loaded on to the national DNA database and national fingerprint database;
- Allowing the security services to cross reference material they obtain with the National DNA database for purposes of national security; and
- Providing equivalent powers relating to DNA and fingerprints after a control order is served, as currently applies when arrests are made under the Terrorism Act 2000 or the Police and Criminal Evidence Act 1984.

24 DNA and other forensic material is a vital tool against the fight against crime. Such material will play a key role in identifying and helping to prosecute those who are involved in acts of terrorism. It is for this reason that the police have begun to set up a standalone Counter Terrorism DNA database. This will bring together all the relevant DNA samples in relation to terrorism. It will include DNA obtained through lawful searches, for example crime scenes and arrests, as well as samples from terrorist suspects obtained under Part III of the Police Act 1987, Part II of the Regulation of Investigatory Powers Act 2000 and under the Intelligence Services Act 1994. It will also contain samples legally obtained from international partners where agreements are in place to do so and samples legally obtained from terrorist-related investigations both in the UK and abroad. We believe there are real benefits in terms of investigating terrorist activities in having a single database which retains all of the material collected by different means and by different agencies in relation to terrorism to be stored in one place. We would like to ensure that such a database is properly covered by legislation, similar to that provided for the National DNA database under the Police and Criminal Evidence Act 1984. The database will be subject to independent oversight in the same way as the National DNA database (although this will not require legislation). Without a sound legal footing, there may be questions about whether (and how) some of the material on the database can be retained and this might lead to material not being retained that could prove essential in a terrorist investigation.

25 The proposed legislation would only cover the *retention* of material. The acquisition of the samples that the database will contain is already provided for by existing legislation and other legal agreements. We are not therefore extending the powers of any agency to collect forensic material.

26 Second, there is a difference between the purposes for which DNA samples and fingerprints can be used when taken from an individual when he or she is arrested under the Terrorism Act 2000 compared to those obtained under the Police and Criminal Evidence Act 1984 (PACE). This difference has raised some doubt as to whether samples obtained under the Terrorism Act 2000 can be loaded onto the National DNA Database and the national fingerprint database. This doubt arises because samples obtained under the Terrorism Act can only be used for a *terrorist investigation, the prevention and detection of crime* and the *prosecution of offences*. However, samples taken under PACE can be used for the *prevention and detection of crime* and the *prosecution of offences* and the *identification of a deceased*. The

difference in the two purposes for which samples can be used makes it difficult to have both sets of samples on the National DNA database. This is because before any search can be carried out, it would be necessary to identify which samples you could legally check for a particular purpose. We therefore intend to make a legislative amendment to both PACE and the Terrorism Act so that the purposes for which DNA and other samples can be used are for *national security purposes*, for *the prevention and detection of crime*, for *the prosecution of offences* and the *identification of a deceased*. This will mean that samples taken under The Terrorism Act and PACE can be placed on the National DNA database and be used for the purposes of national security. This will not negate the need for samples obtained under different circumstances to be stored on the counter terrorism DNA database.

27 We also plan to make a minor legislative amendment to allow the Security Service to cross reference any DNA samples they collect under their own existing legal powers with the National DNA database in order to identify people of interest to them. The Service will not have direct access to the National DNA database; searches will be conducted by the Metropolitan Police, Counter Terrorist Command on their behalf. Further the provisions of the Data Protection Act 1998 will apply and the Service will have to show that the request is justified in the interests of national security.

28 Finally, we plan to provide equivalent powers relating to DNA and fingerprints after a control order is served as currently applies when arrests are made under the Terrorism Act 2000 or the Police and Criminal Evidence Act 1984. While it is not the case that the police cannot currently take such biometrics under control order legislation, this proposal will provide significant advantages. The police will have the same powers as they do in other cases to retain, store and use the DNA and fingerprints of individuals on control orders. The procedures and safeguards that generally apply will also apply in control order cases. And the ability of the police to investigate whether an individual subject to a control order could be prosecuted for a criminal offence will be strengthened. Individuals subject to control orders are by definition reasonably suspected of being involved in terrorism and it is appropriate to have a routine power to take biometric details.

Data sharing powers for the intelligence agencies

29 We would like to legislate to place the intelligence and security agencies on to a similar statutory footing to that of the Serious and Organised Crime Agency in respect of their ability to acquire and disclose information. Sections 32 – 34 of the Serious Organised Crime and Police Act 2005 (SOCPA) gave the Serious Organised Crime Agency (SOCA) specific data sharing powers and we would like to provide something similar for the intelligence and security agencies.

30 Specifically, the provisions remove barriers to individuals and organisations sharing with the intelligence and security agencies information that is necessary for the proper discharge of the agencies' statutory functions. The provisions also remove barriers to the agencies disclosing information when this is appropriate. These provisions do not override the existing statutory provisions that govern the obtaining and disclosing of information by the intelligence and security agencies as contained in the Security Service Act 1989 and the Intelligence Services Act 1994. Given the very important role of the intelligence and security agencies we think it essential that these barriers to the agencies fully meeting their statutory functions are removed.

31 The oversight of these new provisions and, importantly, the existing statutory provisions that govern the obtaining and disclosure of information, will be undertaken by the Secretary of State (under whose authority the agency comes) the Parliamentary Intelligence and Security Committee, the Intelligence Services Commissioner and the Information Commissioner. Additionally, any individual aggrieved by what he or she believes is conduct by, or on behalf of, the intelligence and security agencies may complain to the independent Investigatory Powers Tribunal, which has full power to investigate and order such remedial action as it sees fit.

Collection of information likely to be of use to terrorists

32 Currently section 58 of the Terrorism Act 2000 makes it an offence to collect or make a record of information likely to be of use to terrorists. Section 103 of the same Act currently applies only to Northern Ireland and covers broadly the same ground but includes publishing, communicating or attempting to elicit information

(about a specified person). The Northern Ireland provision is due to be repealed on 31 July 2007.

33 A key tactic of terrorist organisations is the gathering of targeting information about individuals, particularly Service personnel that can be used in the planning of attacks. Lord Carlile has commented that the Northern Ireland provision is prudent. We would therefore like to clarify that section 58 would cover someone eliciting information about Service personnel. We would like to legislate so that gathering targeting information about key personnel is caught by section 58. We would also like to consult on whether there are other groups in addition to Service personnel who should also be covered.

MEASURES TO DEAL WITH TERRORIST SUSPECTS POST CHARGE & AFTER SENTENCE

Post-charge questioning

34 After charge, the police can only interview defendants to clarify earlier statements, where public safety is at risk or where, if the defendant agrees, new evidence comes to light. This applies to all criminal offences. The CPS state that defendants invariably decline to be interviewed. It is also possible, at present, to interview defendants for intelligence purposes, but such questioning is again voluntary and is limited to questions *unrelated* to the offence for which they have been charged.

35 We plan to legislate so that in *terrorist* cases (that is those arrested under the Terrorism Act 2000) suspects can be questioned after charge on any aspect of the offence for which they have been charged. Such questioning would not require the consent of the defendant. Any answers that are given as part of a post charge interview could be used for evidential purposes. Where a subject refuses to answer questions but then later relies on something they had the opportunity to mention previously (for example an alibi) then adverse inferences could be drawn from this where it is reasonable to do so. In effect we would be applying the caution that is given at arrest to post charge interviews.

36 We would like to legislate to allow post charge questioning of those who are charged with a specific terrorist offence, or terrorist related offence (for example, conspiracy to murder but where the facts relate to an alleged act of terrorism). We have already issued a consultation paper on the review of the Police and Criminal Act 1984, which is seeking views on whether to allow post-charge questioning for all criminal offences. We believe however that there is merit in introducing this change in relation to terrorism now, rather than awaiting the outcome of the wider consultation and any subsequent legislation that arises out of it. Consequently we are now seeking views on this issue.

37 The Joint Committee on Human Rights and the Home Affairs Select Committee have commented that this would be a useful tool in relation to terrorism. We believe that in certain circumstances post charge questioning will help to strengthen the prosecution case against terrorist suspects and that it is therefore a measure that we would like to implement quickly. As the Home Affairs Select

Committee identify, it would not negate the need for pre charge detention as a sufficient case would still need to be made before a charge could be brought; pre-charge detention is about ensuring that we have sufficient evidence to charge a suspect in the first place. The CPS also already makes full use of the 'threshold test'. The threshold test is designed for use in cases where, at the very early stages of an investigation, there is a reasonable suspicion that the persons in custody have committed a crime and there is reasonable expectation that the evidence needed for prosecution will become available, for example from abroad. Where these conditions are satisfied and the individuals detained present a threat, either to other individuals or to the public if released pending the outcome of the investigation, the CPS may bring charges against him/her. This test is available now in terrorism cases as it is for other crimes. But the conditions will not be satisfied in all terrorist cases because the police will rarely have the necessary certainty that sufficient evidence will come to light to sustain particular charges. So while the threshold test is useful in some cases, it is not the whole answer to this question. Equally, the combination of the existing threshold test and the proposed introduction of post-charge questioning could to some extent relieve the pressure on investigation teams in relation to the limit on pre-charge questioning, but again it is not the whole answer.

Enhanced sentences

38 Although nearly all terrorist suspects are arrested under the powers available in the Terrorism Act 2000, they are subsequently charged with the most appropriate offence. This may be one of the terrorist-specific offences (for example, acts preparatory to terrorism, terrorist finance offences or terrorist training offences) but it may also be a range of non-terrorist offences, including conspiracy to murder, offences under the Explosives Act 1875, fraud or forgery offences. We would like to ensure that sentences for terrorists who are convicted of non-terrorist specific offences are enhanced to reflect the additional seriousness that terrorist involvement represents. There may also be a deterrent factor in doing this in relation to some of the more minor offences. For example, someone who was involved in the forgery of travel documents might be more reluctant to do this for terrorist purposes knowing they would face a higher sentence than what they could expect under the current sentencing guidelines. There would, however, be no extension to the current statutory maximum penalty for such offences. The penalties for terrorist-specific offences already reflect that terrorism is involved and this proposal would bring general offences connected to terrorism in line with this. Examples of such offences

might be forging documents in order to assist a terrorist act or committing a string of burglaries in order to raise cash to buy weapons or explosives for terrorist purposes. We intend that it would be the courts who would determine whether or not an offence was terrorism related and that the prosecution and defence would both have the right to appeal against such a determination.

39 A further reason why we would like it to be the court that determines whether a general offence is terrorist related is because this will act as a formal trigger for the notification requirements that are set out below to be applied in such cases. We would not be able to identify so easily which individuals should be subject to the notification requirements if enhanced sentencing was done purely through a change to the sentencing guidelines.

40 Terrorist acts do not just affect individuals but also communities and beyond. Trust and understanding can be eroded by the climate of fear and anxiety which surrounds a terrorist attack. Enhanced sentencing, as a greater punishment, would reflect this and the need to take the threat of terrorism seriously.

41 The enhancing of sentences where the facts relate to terrorism is a recommendation by Lord Carlile, the Independent Reviewer of Terrorism in his report on the definition of terrorism published on 15 March this year.

Terrorist notification requirement

42 Over the past few years a number of measures have been put in place to help identify and manage the risks posed by violent and sexual offenders in the community, either following completion of their sentence or where they have been given a non custodial sentence. Some convicted terrorists will be covered by the Multi Agency Public Protection Arrangements because they will have been convicted of a violent offence such as one of the explosives or firearm act offences (the violent offences that trigger Multi Agency Public Protection Arrangements are shown in Schedule 15 of the Criminal Justice Act 2003 – it does not include any terrorism-specific offences in the Terrorism Acts of 2000 and 2006).

43 Given that terrorism by its very nature is both serious and violent and that potentially it can cause considerable harm and distress to the public, we would like to

strengthen the arrangements for managing convicted terrorists following their release from prison.

44 We believe that any such arrangements need to apply UK wide and should not place an undue burden on the police.

45 We would therefore like to put in place a new regime for managing the risks of all those who are **convicted** of a terrorist offence or terrorist related offence. This might take the form of a notification requirement on those convicted of terrorist or terrorist related offences (where they are given a sentence of 12 months or more) which would work in a similar way to the sex offender notification requirements. We would also like to take powers to ensure that those convicted of a terrorist offence overseas are made subject to the notification requirements if they come to the UK. We envisage that this would be in the form of an order made by the court following an application made by the police.

46 The purpose of the notification requirement would be for the police to have details of the identity, whereabouts and foreign travel plans of those who have been convicted of a terrorist or terrorist related offence. The offender would therefore have to notify at a police station his name, any other names he uses, where he lives, any other address he stays at for five days or more and the details of any foreign travel he intend to undertake that will last for more than three days. The notification requirements will not stop a person from doing anything – their purpose is to provide police with information which will help them manage the risks that offenders might pose in the community. The requirement will place on the offender the burden of providing information which will enable the police to know whether he or she is living with other convicted terrorists (or people of concern), or whether they move to an address that might give cause for concern (for example overlooking a sensitive site) or whether they are intending to travel to a place overseas where terrorist training is known to be available. A breach of the notification requirements would be a criminal offence punishable by up to five years in prison.

47 The notification requirements might also help with the investigation of future crimes. For example, if a terrorist incident took place the police would be able to visit all those who had previously been involved in terrorism to rule them out from their enquiries. The notification requirements will place on the offender the burden of providing police with up to date information on their whereabouts.

48 The requirement may also help deter some previously convicted terrorists from becoming re-involved in terrorist activity (or deter others from seeking to involve them). Overall we believe this requirement is proportionate given the seriousness of the offences in question.

Terrorist travel overseas

49 There are a number of proposals that relate to terrorist travel overseas that we would like to consider for inclusion in the counter terrorism bill.

50 First, paragraph 11(2) of Schedule 7 of the Terrorism Act 2000 already allows examining officers to detain property at ports and borders in certain limited circumstances. The police have identified a particular gap where an individual stopped at a port is suspected, on the basis of the examination undertaken and/or other intelligence, of wanting to travel abroad for terrorism-related purposes. On the basis of practical experience, the police have requested powers to enable the temporary seizing of travel documents from such individuals for a sufficient period to enable further investigations to be undertaken. The outcome of this investigation could include prosecution for a terrorist-related offence, a control order to prevent travel overseas, or a decision to take no further action. We believe this would offer the police an important power but we would like to consult on the detail and any necessary safeguards.

51 Second, we would like to introduce a new foreign travel order, similar to sex offender foreign travel orders, which would enable the courts to place limitations on foreign travel by convicted terrorists – such restrictions could range from a complete ban on travel overseas to stopping them travelling to particular countries or groups of countries. As part of the order the court could order the confiscation of passports. Such an order would be made by the court following an application by the police. We are also considering whether to apply these foreign travel orders to suspected terrorists.

52 Third, under the Bail Act 1976 it is already possible to place restrictions on foreign travel and to confiscate passports when a person is charged and bailed for any criminal offence. Although those charged with terrorist or terrorist-related offences are unlikely to be bailed, others charged with lesser offences might be. We would therefore like to consider whether any change in the law is necessary to

tighten up bail conditions in cases that are linked to terrorism but which do not involve specific terrorist activity.

53. Finally, the proposed notification requirements to be placed on convicted terrorists will require them to notify the police of any intention to travel overseas for three days or more.

Forfeiture of terrorist assets

54 Money underpins all terrorist activity - without it there can be no attacks and more fundamentally no training, recruitment, facilitation or welfare support for terrorist groups. Furthermore, terrorist attacks can often be mounted using relatively small amounts of money – the July 7 bombings, for example, cost around £5000. It is therefore vital that all assets which could be used for terrorist purposes are seized and forfeited as effectively as possible. Section 23 of the Terrorism Act 2000 permits a court to make a forfeiture order when someone has been convicted of a terrorist finance offence.

55 The current legislation makes the forfeiture of terrorist money or other property a relatively straightforward matter for a court which convicts a person for terrorist financing offences. The courts do not have this ability however for people convicted of any other terrorist-related offence. It is not just those whose primary offence is one of financing terrorism who may have assets which they intend to be used for terrorist purposes, and it is important that any such assets are removed from circulation.

56 We are therefore considering extending the power of the courts to make forfeiture orders to anyone convicted of a serious terrorist offence, if the court believes that their assets might be used for future terrorist purposes. We would also like to make it easier for the court to order the forfeiture of complex assets, such as houses and flats, which were used in the commission of the offence for which the person is convicted.

OTHER MEASURES

Additional measures for the control orders system

57 We propose making changes to the control orders system in relation to powers of entry, search and seizure. The Prevention of Terrorism Act 2005 enables the Secretary of State to require a person under a control order to give access to the police to his residence and to allow them to search it. The police are also able to rely upon more general police powers of entry, search and seizure when investigating a breach of a control order (which is a criminal offence). However, the police believe that they have identified some circumstances (in particular where it is not possible to require the co-operation of the controlled person) in which it is necessary for them to have a self-standing power of entry and search of premises and seizure of items to enforce and monitor the control order effectively. This will provide the police with further tools to assist in effectively monitoring the control order system.

58 We will consider whether any further changes to the control order system are necessary in light of the forthcoming House of Lords judgment in relation to control order issues. We do not want to propose any amendments at this stage that might pre-empt that judgment.

Power to remove a vehicle & power to examine documents

59 Part VII of the Terrorism Act 2000 provides specific powers to the police in Northern Ireland. In line with the security normalisation programme announced by the Secretary of State for Northern Ireland on 1 August 2005 all counter-terrorist legislation particular to Northern Ireland is due to be repealed by 31st July 2007. We have been asked by the Northern Ireland Office to consider the implementation of the two powers described below on a UK wide basis. Northern Ireland has over 30 years of experience in dealing with terrorism. Given the nature of the threat we face it is prudent to look at whether any of those powers would be useful UK wide. The provisions have worked well in Northern Ireland and have been proven to be useful in tackling terrorism. Lord Carlile has commented that these powers have been administered and supervised to a high standard in Northern Ireland. The powers are set out below.

60 Section 95 of the Terrorism Act 2000 (in Part VII) provides a power to take a vehicle (or cause it to be taken), where necessary or expedient, to any place for the purpose of carrying out a search under a relevant provision in Part VII of the Terrorism Act 2000.

61 We wish to consult on whether an equivalent power on a UK-wide basis would be useful and proportionate. It could be used to counter sophisticated terrorist tactics, for example where materials of use to terrorists could be hidden or concealed within the body work of cars. Finding materials that are well hidden can be a time consuming specialist task that may necessitate specialist equipment. It may therefore be necessary to take the vehicle to an area where this specialist work can be undertaken.

62 Section 87 of the 2000 Act provides that a member of the police or armed forces who performs a search under Part VII of that Act may examine any document or record found in order to ascertain whether it contains information of the kind likely to be of use to terrorists. We wish to consult on whether an equivalent UK-wide power would be useful and proportionate.

63 Documents would only be examined during a lawful search. In most cases this would be on the footing of a search warrant obtained through the normal channels or in conjunction with an arrest of a person. This power, of itself, would not enable a police officer to conduct any new searches. However, it would allow an officer to take a document away to establish whether it has evidential value. Appropriate safeguards would be put in place to protect items subject to legal privilege, put a time limit on how long documents could be kept and to ensure proper records are kept.

64 Currently a document or record may not be able to be seized because the constable may not at that stage be able to form the necessary 'reasonable belief' that the item has been obtained in consequence of the commission of an offence or is evidence in relation to an offence. It is the examination of the document or record that will enable a constable to decide whether or not the document or record has evidential value. For example, a document may be in a foreign language (which would need to be translated) or may need to be studied further and compared with other information (eg an annotated map). Terrorists are using increasingly

sophisticated tactics and information of this nature is often concealed rather than held in plain sight.

Definition of Terrorism

65 On 9 November 2005, the then Home Secretary announced that he had agreed to a request from the Chairman of the Home Affairs Select Committee that Lord Carlile should undertake a review of the definition of terrorism, which is at Section 1 of the Terrorism Act 2000, in his capacity as independent reviewer of terrorist legislation.

66 Lord Carlile's report on the definition of terrorism was published on 15 March 2007. One of his recommendations was that the existing definition should be amended to ensure that it is clear that terrorism motivated by a racial or ethnic cause is included. The current definition includes acts or threats which are done for religious, ideological or political purposes. Although racial causes are probably covered by the existing definition there may be a case for making this explicit. We are therefore minded to accept this proposal subject to further consideration with Parliamentary Counsel.

Increased security at key gas sites

67 There is an ongoing operational requirement to provide appropriate security measures at key gas supply sites, including the deployment of additional police services, in order to counter the potential risks of disruption to the national gas supply. Secure gas supplies are essential for heating our homes, for business and public life, and for electricity generation. It is vital that the key infrastructure to deliver gas supplies is appropriately protected.

68 We have deployed armed police to guard key gas supply sites because we take protection of critical national infrastructure very seriously. The Bill will put funding of this dedicated extra policing onto a clear legal footing. We are confident deployment of this additional policing is a proportionate measure.

Transfer of functions to the Advocate General (Northern Ireland)

69 With the devolution of policing and justice to the Northern Ireland Assembly, there will be a new, locally appointed Attorney General for Northern Ireland responsible for transferred law officer functions. However, certain Attorney General functions in the reserved and excepted fields will stay with the Attorney General for England and Wales who will be the Advocate General for Northern Ireland. Most of these functions are covered in the Justice (Northern Ireland) Act 2002. We plan to legislate so that the appointment of Special Advocates in Proscribed Organisation Appeals is carried out by the Advocate General (Attorney General in England and Wales) rather than the Attorney General for Northern Ireland.

Minor technical amendments to Anti Terrorism, Crime and Security Act (ATCS) 2001

70 To ensure consistency with other legislation we plan to make three minor technical amendments to the Anti Terrorism, Crime and Security Act 2001. These relate to:

- Ensuring paragraph 3(1) of Schedule 1 to the ATCS 2001 (initial detention period of terrorist cash) corresponds to the amended section 295(1) of the Proceeds of Crime Act 2002;
- Making reference to refusal to make an Order in paragraphs 7(2)(b) and (6)(b) and (c) of Schedule 1 of ATCS 2001 (removing a listed proscribed group) following a successful appeal at the Proscribed Organisation Appeals Commission; and
- Ensuring paragraph 7 of Schedule 1 of the ATCS (forfeiture appeals) corresponds to the amended section 299 of the Proceeds of Crime Act 2002.

Conclusion

71 It is the first duty of government to protect its citizens and communities and there remains a serious and current threat to the UK from terrorism. In order to protect the public it is vital that our legislation is kept under constant review to ensure that it remains adequate and proportionate to that threat. The government is always mindful of not seeking additional powers for the sake of them. It is important to achieve the appropriate balance between measures necessary to counter threats to national security and preserving the civil and human rights of the population.

72 The proposals outlined above are not exhaustive and are subject to discussion. In particular we would like to hear of any other proposals that people might have in relation to counter terrorism legislation. It is hoped that the consultation exercise will bring in views from a wide range of sources and that we will be able to shape future legislation on a consensual basis wherever possible.

73 Anyone who is interested in the legislation is encouraged to become involved in this consultation exercise. There are a number of ways to do this. First, we have set up a web page dedicated to the Bill. This can be accessed at <http://security.homeoffice.gov.uk>. This site will contain documents relevant to the Bill and related issues such as pre-charge detention. Regular updates on the Bill and consultation process will also be available here. Any queries or concerns about the Bill, measures for inclusion in the Bill or pre-charge detention can email those queries to CTBill2007@homeoffice.gsi.gov.uk. We would welcome comments on the issues raised in this document by the 16 October and, where appropriate, we will respond to any questions raised.