



House of Lords
House of Commons
Joint Committee on
Human Rights

**Counter-terrorism Policy
and Human Rights: Draft
Prevention of Terrorism
Act 2005 (Continuance in
force of sections 1 to 9)
Order 2007**

Eighth Report of Session 2006-07



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Report, together with formal minutes

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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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Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Judy Wilson (Inquiry Manager), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Suzanne Moezzi (Committee Secretary) and James Clarke (Senior Office Clerk).

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Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
Background	5
Lord Carlile’s Report	5
The Home Secretary’s response	6
Parliamentary scrutiny of the human rights compatibility of control orders	6
Our report	8
2 Deprivation of liberty	9
3 Due process	12
4 Prosecution	15
The importance of prosecution	15
Lord Carlile’s Report	16
The High Court judgment in <i>E</i>	17
The urgent need for measures to facilitate prosecution	18
Effectiveness	20
5 Conclusion	21
Conclusions and recommendations	22
Formal Minutes	25
Reports from the Joint Committee on Human Rights in this Parliament	26

Summary

On 1 February 2007 the Home Secretary laid before both Houses the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007. It provides for the continuation of the Control Order regime until 10 March 2008. The draft Order was approved by the House of Commons on 22 February. It is to be debated in the House of Lords on 5 March (paragraphs 1-6).

In his annual Report published on 19 February, Lord Carlile, the statutory reviewer of the Prevention of Terrorism Act (PTA), concludes that the control order system remains necessary, though in some cases the obligations imposed are more cautious and extensive than absolutely necessary. On the same date, the Home Secretary said that control orders remained an essential measure to deal with suspected terrorists who cannot be prosecuted or deported. The Government has indicated it will “consider carefully” the Carlile Report’s recommendations (paragraphs 7-11).

Last year the Committee criticised the lack of opportunity for meaningful parliamentary scrutiny of control orders. The Home Secretary indicated that the government intended to bring forward a terrorism consolidation bill in 2007, which would create an opportunity to amend the control order provisions. That bill has not appeared. In the Committee’s view, a debate on a motion to approve an affirmative resolution is a wholly inappropriate procedure for renewal of provisions of such significance. Last year the Committee also criticised the short time available to report to Parliament in the light of Lord Carlile’s Report on the operation of the PTA. This year there has been even less time (paragraphs 12-17).

Last year the Committee expressed a number of human rights concerns about control orders and concluded that it could not endorse a renewal of the control orders regime without a derogation. Since then the High Court and the Court of Appeal have both agreed that the control orders they have considered have amounted to deprivations of liberty. The Committee is concerned that the Home Secretary is asking Parliament to renew a power which the Courts as well as this Committee have now said is being routinely exercised in breach of the right to liberty in Article 5 ECHR. In the Committee’s view, Parliament is being asked to be complicit in a de facto derogation from Article 5, without an opportunity to debate whether such a derogation is justified (paragraphs 17-29).

Last year the Committee expressed a number of due process concerns about the control orders regime. Since then these concerns have been the subject of judicial consideration. Although the Court of Appeal has upheld the compatibility of the control order regime with the right to a fair hearing in Article 6(1) ECHR and has considered and dismissed many of the due process concerns it raised, the Committee remains of the view expressed in its Report last year. It is fortified in this view by the views recently expressed by the DPP that there should not be exceptions to the rule of law and that certain fundamental principles are non-negotiable in the interest of fairness. In the Committee’s view, due process standards should apply to control orders in view of the severity of the restrictions they contain (paragraphs 30-38).

The Committee has acknowledged the genuine dilemma of governments facing a threat from international terrorism: what to do about individuals in their country who pose a serious threat but cannot be deported or prosecuted. It has taken the view that the only

human rights compatible answer is to find ways of prosecuting such individuals. The Government recently repeated its professed commitment to prosecution. But recent significant developments, to which Lord Carlile draws attention in his Second Report on control orders, cast serious doubt on this commitment (paragraphs 39-49).

In the Committee's view, the Government could do much more to overcome the main obstacles to criminal prosecution, notably by allowing use of intercept material. The Committee also notes Lord Carlile's emphasis on the need for an exit strategy from control orders and considers that the most effective strategy would be a variety of measures to facilitate criminal prosecution. The Committee is reinforced in this view by the disappearance of three people subject to control orders, which shows their limitations as a means to protect the public. And the Government's claim that these people do not pose a threat to the public because they were not planning to commit terrorist acts in the UK raises questions about whether control orders are being used for the purposes for which Parliament was told they were necessary, namely to protect the public from the risk of harm by suspected terrorists (paragraphs 50-62).

1 Introduction

Background

1. On 1 February 2007 the Home Secretary laid before both Houses the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007,¹ along with an Explanatory Memorandum (“EM”).
2. The draft Order provides for the continuation of the control order regime contained in sections 1 to 9 of the Prevention of Terrorism Act 2005 (“the PTA 2005”) for another year from 11 March 2007 (when they would otherwise expire) until the end of 10 March 2008.
3. The EM explains that the powers are needed to ensure that a control order can continue to be made against any individual where the Secretary of State has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.
4. The Home Secretary has made a statement of compatibility in respect of the draft Order: “In my view the provisions of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order are compatible with the Convention rights.”²
5. The draft Order was debated in the House of Commons on 22 February 2007 and was approved by 322 votes to 61. It is due to be debated in the House of Lords on 5 March 2007.
6. This is the second renewal order extending the life of the control order regime. The PTA 2005 received Royal Assent on 11 March 2005 and was renewed for the period 11 March 2006 to 10 March 2007 by the Prevention of Terrorism Act 2005 (Continuance in Force of sections 1 to 9) Order 2006.

Lord Carlile’s Report

7. The annual report of the statutory reviewer of the Prevention of Terrorism Act 2005, Lord Carlile, was not laid with the draft Order but was published on Monday 19 February 2007, 3 days before the renewal order was debated in the House of Commons.³
8. Lord Carlile’s conclusion is that the control order system remains necessary given the nature of the risk of terrorist attacks and the difficulty of dealing with a small number of cases.⁴ In Lord Carlile’s view, control orders provide a proportional means of dealing with those cases, if administered correctly. He remains of the view that as a last resort the control order system as operated currently in its non-derogating form is a justified and

¹ Under s. 13(2)(c) of the Prevention of Terrorism Act 2005 which empowers the Secretary of State, by order made by statutory instrument, to provide that sections 1 to 9 of that Act are not to expire but are to continue in force for a period up to a year.

² EM para. 6.1.

³ *Second Report of the Independent Reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005* (19 February 2007) (hereafter “Lord Carlile’s Second Report on control orders”).

⁴ *Ibid.* para. 7.

proportional safety valve for the proper protection of civil society.⁵ He reports that he would have reached the same decision as the Secretary of State in each case in which a control order has been made, so far as the actual making of the order is concerned, although in some cases the extent of obligations under the order was more cautious and extensive than absolutely necessary.⁶

9. He also reports that his recommendation in his First Report on control orders, that a Home Office led procedure be established 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 on each controlee, had now been put in place (the “Control Order Review Group”, or “CORG”), with beneficial results.⁷

The Home Secretary’s response

10. On the day of the publication of Lord Carlile’s Report, the Home Secretary said that the Government is committed to having the strongest possible armoury to protect the public from terrorism. He said that control orders were never the Government’s preferred option, but they remain an essential measure to deal with suspected terrorists who cannot be prosecuted or deported. He hoped that Parliament would recognise the importance of control orders and support the renewal of the legislation for another year.

11. In the renewal debate in the Commons, the Government has indicated that it will “consider carefully” the recommendations made by Lord Carlile in his Report.

Parliamentary scrutiny of the human rights compatibility of control orders

12. In our report on the first renewal of the control orders regime, we were very critical of the lack of opportunity for meaningful parliamentary scrutiny of control orders, in light of the Government’s indication at the time of the passage of the 2005 Act that there would be further opportunity to debate amendments to the control order regime in light of its operation.⁸ We regretted that the Home Secretary had decided to exercise his power to renew the PTA rather than to bring forward a Bill, as this significantly reduced the opportunity for meaningful parliamentary scrutiny of the control orders regime, and gave no opportunity to amend the legislation. These concerns were widely echoed in the parliamentary debates on renewal. One of the reasons given by the Home Secretary for not bringing forward a Bill was that he was waiting for Lord Carlile’s report on the definition of terrorism. We note that, a year later, this report has still not been published by the Government.

13. In his response to our Report on the first renewal order the Home Secretary recognised that during the course of the debates on the 2005 Act a commitment was made to Parliament that there would be further opportunity to debate the control order regime and

⁵ *Ibid.* para. 59.

⁶ *Ibid.* para. 36.

⁷ *Ibid.* para. 43.

⁸ Twelfth Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006*, HL Paper 122/HC 915, at para. 12.

to amend the legislation.⁹ He indicated that the Government now intended to bring forward a terrorism consolidation bill in 2007, which would create an opportunity to amend the control orders provisions.

14. That bill has not appeared and it now seems, from the comments of the Minister during the renewal debate in the Commons, that there is no guarantee that this consolidation bill will appear before the next annual renewal. The unsatisfactory nature of a debate on an affirmative order was graphically illustrated in the renewal debate in the Commons when the Minister was unable to reply to an important question about whether any of the charges pending for breach of control orders related to the three individuals who had been subject to control orders for the longest time. The Minister replied: “In general terms, I have deliberately not gone down to that level of detail for a debate of a mere hour and a half. I just want to present the highlights of the arguments for the order rather than get into the specifics.”

15. In our view, a debate on a motion to approve an affirmative resolution is a wholly inappropriate procedure for renewal of provisions of such significance. To fail to provide an opportunity to amend the legislation is also, for the second year running, a serious breach of commitments made to Parliament. Parliament is being deprived once again of an opportunity to debate in detail and amend the control orders regime in the light of experience of its operation and concerns about its human rights compatibility. We draw this matter to the attention of each House.

16. We also commented critically in our Report on the first renewal order on the limited time which had been made available by the Government for us and any other interested committees to report to Parliament in light of Lord Carlile’s report on the operation of the control order provisions. Under the terms of the PTA 2005, Lord Carlile is required to carry out his annual review as soon as reasonably practicable in the last quarter of the year of the Act’s operation,¹⁰ and send it to the Secretary of State as soon as reasonably practicable after it is completed.¹¹ The Secretary of State must then lay a copy of it before Parliament on receiving it.¹² The intention is clearly to inform deliberation in Parliament in the period before the provisions lapse.

17. Last year Lord Carlile’s Report was laid with the renewal order on 2 February and the renewal debate took place in both Houses on 15 February. We pointed out in our Report that this gave us only a very limited opportunity for proper scrutiny in light of Lord Carlile’s Report. This year, the renewal order was laid on 1 February, but Lord Carlile’s Report on the operation of the control order regime, which is dated January 2007, was not published until 19 February, only 3 days before the renewal debate in the Commons. **This provided an even more limited opportunity to consider and if necessary report in the light of Lord Carlile’s Report than we received last year. We draw this matter to the attention of each House.**

⁹ Appendix 1 to our Twenty-fourth Report of Session 2005-06, *Counter-terrorism Policy and Human Rights: Prosecution and Pre-charge Detention*, HL Paper 240/HC 1576.

¹⁰ PTA 2005, s. 14(3).

¹¹ PTA 2005, s. 14(4).

¹² PTA 2005 s. 14(6).

Our report

18. In our report on last year's renewal of the control orders regime we expressed a number of human rights concerns about control orders, principally that:

- 1) the regime was being operated in practice in breach of the right to liberty in Article 5 ECHR, because the control orders which had been imposed were so restrictive as to amount to a deprivation of liberty, which is unlawful in the absence of a derogation from Article 5; and
- 2) the deficiencies in the adequacy and practical effectiveness of the due process safeguards in the control orders regime, and in particular the lack of opportunity to challenge closed material, make the regime as a whole incompatible with the right in Article 6(1) ECHR to a fair trial in the determination of a criminal charge and to a fair hearing in the determination of civil rights and obligations, and with the equivalent common law right to a fair trial and a fair hearing.

19. In light of these concerns, we seriously questioned renewal without a proper opportunity for Parliament to debate whether a derogation from Articles 5 and 6 ECHR is justifiable. We concluded that we could not endorse a renewal of the control orders regime without a derogation, and called for Parliament to be given an opportunity to debate and decide that question.

20. We have considered carefully the quarterly reports and statement by the Home Secretary, the Second Report on control orders by Lord Carlile, the judgments which have so far been delivered about the human rights compatibility of the control order regime, and the relevant human rights standards. We now report our conclusions on the human rights implications of the draft Order to each House in the light of all these in the hope that it will help to inform the debates in the two Houses about the compatibility of the control orders regime with the UK's human rights obligations. As with all our work in this area, we do so while emphasising the importance of the positive obligation on States to take effective steps to protect the public from the threat of terrorism.

2 Deprivation of liberty

21. In our Report on the first renewal order, we expressed our concern that the control orders regime was being operated in breach of Article 5 ECHR, because the control orders imposed are so restrictive of liberty as to amount to deprivations of liberty. Since that Report, the High Court (on two occasions) and the Court of Appeal have both agreed that the control orders they have considered have amounted to deprivations of liberty.

22. In *JJ v Secretary of State for the Home Department*¹³ the challenge was to the lawfulness of six control orders made by the Home Secretary and purporting to be non-derogating control orders. The subjects of the control orders were all single men, five Iraqi and one of disputed nationality but either Iraqi or Iranian, who had previously been detained pending deportation on national security grounds. Each was required by their control order to remain in their one bedroom flat for 18 hours a day, being allowed out between 10am and 4pm. Visitors had to be authorised in advance by the Home Office, to which name, address, date of birth and photographic identity had to be supplied. The residences were subject to spot searches by the police. During the six hours when they were permitted to leave their residences, they were confined to restricted urban areas, the largest of which is 72 square kilometres, and which, in all but one case, deliberately did not extend to any area in which they had lived before. They were prohibited from meeting anyone by pre-arrangement who had not been given the same Home Office clearance as a visitor to the residence.

23. In the High Court Sullivan J. concluded that these control orders deprived the individuals of their liberty within the meaning of Article 5 ECHR. The judge expressed his conclusion in strong terms. Describing the individuals' situation under the control orders as "the antithesis of liberty", he said:¹⁴

"...bearing in mind the type, duration, effects and manner of implementation of the obligations in these control orders, I am left in no doubt whatsoever that the cumulative effect of the obligations has been to deprive the respondents of their liberty in breach of Article 5 of the Convention. I do not consider that this is a borderline case. The collective impact of the obligations in Annex I could not sensibly be described as a mere restriction upon the respondents' liberty of movement. In terms of the length of the curfew period (18 hours), the extent of the obligations, and their intrusive impact on the respondents' ability to lead anything resembling a normal life, whether inside their residences within the curfew period, or for the 6-hour period outside it, these control orders go far beyond the restrictions in those cases where the European Court of Human Rights has concluded that there has been a restriction upon but not a deprivation of liberty."

24. He therefore quashed the control orders on the basis that they were in effect derogating control orders which the Home Secretary has no power to make. The Court of Appeal agreed that "the facts of this case fall clearly on the wrong side of the dividing line. The

¹³ [2006] EWHC 1623 (Admin).

¹⁴ *Op. cit.* at para. 73.

orders amounted to a deprivation of liberty contrary to Article 5.¹⁵ The Court of Appeal also agreed that the control orders should be quashed. The Government is now appealing to the House of Lords.

25. In *E v Secretary of State for the Home Department*,¹⁶ the High Court considered whether a less restrictive control order amounted to a deprivation of liberty. The subject of the control order was a Tunisian national who had been in the UK since 1994. He had been convicted in his absence by a Tunisian military court for various terrorism offences under Tunisian law. His claim for asylum in the UK had been refused but he had been granted exceptional leave to remain in the UK until 2005. He is married with four young children under the age of 7. For all practical purposes the terms of his control order were the same as those contained in the pro forma annexed to Lord Carlile's First Report and commented upon by us in our report on last year's renewal order, save that he was subject to a shorter curfew: he was required to remain in his residence for 12 hours a day (7pm to 7 am) rather than 18 hours a day.

26. The High Court concluded that, although this was a more finely balanced case than the JJ cases, the cumulative effect of the restrictions deprived E of his liberty in breach of Article 5 ECHR.¹⁷ The Government is now appealing to the Court of Appeal.

27. The significance of these judicial decisions for the matter before Parliament should not be underestimated. In the case of 7 out of the 19 control orders made or renewed this year, the control orders in question have been quashed on the basis that they were so restrictive of liberty as to amount to a deprivation of liberty. This means that, while purporting to be non-derogating control orders, they were in fact derogating control orders, which there is no power to make in the absence of a derogation from Article 5. A derogating control order can only be made by a court, and following a derogation by Parliament from Article 5. Such a derogation would be politically controversial and likely to attract international opprobrium. In our view these decisions confirm the concern we expressed a year ago that the power to make control orders is being operated in practice in a way which is incompatible with the right to liberty in Article 5(1) ECHR. Parliament is now being asked to renew those powers without any indication from the Government that it intends to modify its use of the power.

28. We acknowledge that the litigation concerning the compatibility of a significant number of current control orders with Article 5 has yet to run its course. However, we are concerned that the Home Secretary is asking Parliament to renew a power which not only this Committee but now the High Court and the Court of Appeal have said is being routinely exercised in breach of one of the most fundamental of all human rights, the right to liberty in Article 5 ECHR.

29. In our view, if the House of Lords or the European Court of Human Rights eventually decides that the control orders which have been challenged are unlawful in the absence of a derogation, the Government will effectively have been operating a de facto derogation from Article 5. Knowing how the power is currently being exercised by

¹⁵ [2006] EWCA Civ 1141 at para. 23.

¹⁶ [2007] EWHC 233 (Admin).

¹⁷ *Ibid.* at para. 242.

the Government, Parliament in our view is being asked to be complicit in such a de facto derogation, without an opportunity to debate whether such a derogation is justified. We draw this matter to the attention of each House.

3 Due process

30. In our report on last year's renewal order, we expressed a number of due process concerns about the control orders regime which led us to doubt whether the regime as a whole was compatible with the right to a fair trial and a fair hearing in Article 6(1) ECHR and the equivalent common law rights.¹⁸ We thought that the criminal limb of Article 6(1) ECHR would apply to the non-derogating control orders which were being used in most cases, in view of the severity of the restrictions they contain. Even if properly classified as "civil" rather than "criminal" for the purposes of Article 6(1), we thought it likely that proceedings for non-derogating control orders would attract the protection of criminal procedural protections such as the criminal standard of proof.¹⁹

31. We also considered the standard of proof to be set at too low a level in the Act for both types of order; that non-derogating control orders should be made by the judiciary not the executive; and that a procedure in which a person could be deprived of their liberty without having an opportunity to rebut the basis of the allegations against them was likely to be incompatible with a number of rights, including the right to a fair trial, the equality of arms, the presumption of innocence, the right to examine witnesses and the right of access to a court to challenge the lawfulness of detention.

32. These due process concerns have also been the subject of judicial consideration since last year's renewal order. A challenge to the control order regime on due process grounds was brought in *MB v Secretary of State for the Home Department*.²⁰ The case concerned a non-derogating control order against a single male, requiring him, amongst other things, to reside at a specified address, report in person to his local police station, surrender his passport, not leave the UK, and to permit entry to his home to enable monitoring of his compliance with the obligations in the control order. The open statement explained that the object of the obligations in the control order was to prevent him from travelling to Iraq to fight against the coalition forces. It asserted that he was an Islamic extremist and that the Security Services considered that he was involved in terrorism-related activities. No details were given of this assertion. No summary of the closed evidence was served on him. He denied that he had any intention of going to Iraq.

33. In the High Court Sullivan J. considered whether the procedures for judicial supervision of non-derogating control orders in s. 3 PTA 2005 are compatible with the right to a fair hearing in Article 6(1) ECHR. Had the matter been free from authority, he would have had considerable sympathy for our view that the criminal limb of Article 6(1) applies to at least some of the non-derogating control orders because of the severity of the restrictions imposed.²¹ However, he considered himself bound by Court of Appeal authority²² to the contrary.

¹⁸ Twelfth Report of Session 2005-06, *op. cit.* at paras 45-78.

¹⁹ As the House of Lords held in relation to ASBOs in *R (McCann) v Manchester Crown Court [2003] 1 AC 787 at paras 37 and 83*.

²⁰ [2006] EWHC 1000 (Admin) (High Court).

²¹ *Ibid.* at para. 37.

²² *A v Secretary of State for the Home Department [2004] QB 335*. The House of Lords in *A* did not consider the Article 6(1) point and the Court of Appeal's decision on this aspect therefore survives.

34. In deciding whether the procedures for review of a non-derogating control order were compatible with the right to a fair hearing in the determination of a civil right, Sullivan J. was concerned by a number of the features of the process which also concerned us in our first renewal report. These included the fact that the court was required to apply a particularly low standard of proof, and the fact that the court reached its decision on the basis of evidence of which MB was unaware and which he was therefore not in a position to controvert. He expressed his conclusion in strong terms:²³

“...looking at the overall picture, there can be only one conclusion. To say that the Act does not give the respondent in this case ... a fair hearing in the determination of his rights under Article 8 of the Convention would be an understatement. ... The thin veneer of legality which is sought to be applied by section 3 of the Act cannot disguise the reality. That controlees’ rights under the Convention are being determined not by an independent court in compliance with Article 6(1), but by executive decision-making untrammelled by any prospect of effective judicial supervision.”

35. He therefore made a declaration of incompatibility that the procedures in s. 3 PTA 2005 are incompatible with the right to a fair hearing under Article 6(1) ECHR.

36. The Court of Appeal, however, disagreed.²⁴ It was concerned about the use of closed material, recognising that to deny to a party to legal proceedings the right to know the details of the case against him is, on the face of it, fundamentally at odds with the requirement of a fair trial.²⁵ But it held that reliance on closed material is nevertheless permissible under the ECHR and that the provisions for the use of a special advocate, along with the rules of court, constitute appropriate safeguards.²⁶ This decision is also being appealed to the House of Lords.

37. We acknowledge that the Court of Appeal in MB has upheld the compatibility of the control order regime with the right to a fair hearing in Article 6(1) ECHR and has considered and dismissed many of the due process concerns raised in our first renewal report. However, we remain of the view expressed in our earlier report. For the reasons given in that Report we are doubtful whether the procedures for judicial supervision of control orders in PTA 2005 in fact secure the substantial measure of procedural justice that is claimed for them.

38. We are fortified to some extent in that view by the views expressed by the DPP in his recent public lecture.²⁷ He stated his belief that an abandonment of Article 6 fair trial protections in the face of terrorism would represent “an abject surrender to nihilism.” He stressed that our criminal justice response to terrorism “must be proportionate and grounded in due process and the rule of law.” This means that in fighting terrorism, “we shouldn’t make exceptions to the rule of law; we should use the strength inherent within it.” It means that certain fundamental principles are absolutely non-negotiable, because

²³ [2006] EWHC 1000 (Admin) at para. 96.

²⁴ [2006] EWCA Civ 1140.

²⁵ *Ibid.* para. 70

²⁶ *Ibid.* para. 86.

²⁷ *Security and Rights*, public lecture to the Criminal Law Bar Association by Sir Ken Macdonald Q.C., DPP (23 January 2007).

they contain the irreducible essence of fairness. Such principles include the principle that trials should be routinely open and reported before independent and impartial judges, which means we cannot have secret courts or secret justice. They include equality of arms: the right to call and cross-examine witnesses under equal conditions. Defendants are entitled to know the case against them, and must have full access to the State's case in all circumstances. And finally, they include the presumption of innocence and the criminal standard of proof beyond reasonable doubt. **In our view, these due process standards should apply to the more restrictive non-derogating control orders in view of the severity of the restrictions they contain.**

4 Prosecution

The importance of prosecution

39. In our recent report in our ongoing inquiry into Counter-Terrorism Policy and Human Rights, Prosecution and Pre-Charge Detention, we acknowledged the genuine dilemma faced by our and other Governments facing a threat from international terrorism: what to do about individuals in their country who, according to intelligence, pose a serious threat to national security, cannot be deported because they face a real risk of torture or death in their own country, and cannot, at least on current understandings of the criminal process, be prosecuted because the nature of the information against them would not be admissible in a criminal prosecution.

40. We recognised that control orders are part of the Government's response to this dilemma, but we said that in our view the only human rights compatible answer to this dilemma in the long run is to find ways of prosecuting such individuals. We reaffirmed the importance of using the ordinary criminal process and of liberty being deprived only on the basis of evidence which can be fairly contested in a proper process before the courts. We also expressed the view that States are now under a positive duty under international human rights law to prosecute those whom it suspects of being involved in terrorist activity in order to protect the public from future loss of life.

41. We are heartened by similar comments recently made by the Director of Public Prosecutions. He said that we should hold it as an article of faith that crimes of terrorism are dealt with by criminal justice. He regretted that, in the wake of 9/11, some of the values enshrined in both the ECHR and the common law seem to be losing their status, so that some seem to think that such fundamental rights as the right to a fair trial and the right to liberty can be compromised, even when the life of the nation may not be at stake. One of the worst manifestations of this approach, in the DPP's view, has been the increasing resort to parallel jurisdictions, where standard protections, quite deliberately, are no longer available, and suspects are removed from the protections of criminal justice and placed, instead, in quasi-judicial or even non-judicial fora deliberately hostile to due process. In our view these remarks, from such a significant source, lend support for the central message of our report on Prosecution and Pre-Charge Detention, that the Government should now urgently address the obstacles to prosecuting for terrorism offences, adapting ordinary criminal procedures where necessary, but always preserving the essence of the suspect's right to judicial review of detention and to a fair trial before a court which is truly "judicial."

42. In our report, we welcomed the Government's often repeated commitment to criminal prosecution of suspected terrorists as its first preference, but we expressed our concern as to whether the possible use of criminal prosecutions is being pursued with sufficient vigour. This was based on a number of factors, including the account of a number of those first detained at Belmarsh and then made subject to control orders that they had never been interviewed by the police during all that time, and Lord Carlile's concern in his first report on control orders about the lack of justification given by the police for their assertion that prosecution was not an option.

43. In the debate in the Commons on the current renewal order, the Government repeated its professed commitment to prosecution as its first preference: “prosecution remains our preferred option for tackling individuals involved in terrorism.”²⁸ Two significant developments since the last annual renewal, however, now cast even more serious doubt on the seriousness of the Government’s commitment to prosecution as its first preference.

Lord Carlile’s Report

44. First, Lord Carlile in his Second Report on control orders makes a number of observations which in our view call into question the seriousness of the Government’s professed commitment to criminal prosecution as its first resort.

45. The PTA contains provision concerning criminal investigations after the making of a control order. These were inserted into the Bill during its passage in response to strong concerns in Parliament that individuals suspected of terrorism should be prosecuted and convicted wherever possible. Before making (or applying for) a control order, the Home Secretary is under a duty to consult the relevant chief officer of police 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.²⁹ Once the control order is made the chief officer of police is under a duty to secure that the investigation of the individual’s conduct with a view to his prosecution for an offence relating to terrorism is kept under review throughout the period during which the control order is in effect.³⁰ The chief officer is also under a duty to consult the relevant prosecuting authority, though only, in relation to his duty to keep criminal investigation under review, “to the extent that he considers it appropriate to do so.”³¹

46. In his First Report on control orders, Lord Carlile recommended that the letters provided by chief officers of police, in response to the Home Secretary’s inquiry about whether there is evidence on which to prosecute before a control order is made, should give clear reasons for their conclusions that there is not such evidence available.³² He also recommended that such letters should be in terms disclosable to the controlled person, with an additional closed version if necessary which should be disclosed to the court reviewing the control order. In our Report on the first renewal order, we endorsed this recommendation.³³ We regard it as the introduction of an important procedural step, fleshing out this part of the statutory framework, and making it more likely in practice that the possibility of prosecution will be properly considered, and any decision not to prosecute justified, before a control order is imposed.

47. It appears from Lord Carlile’s Second Report on control orders, however, that little if anything has been done to implement this important recommendation.³⁴ He reports that in the letters from the chief officers of police certifying that there was no realistic prospect of

²⁸ Tony McNulty MP, Minister of State at the Home Office, HC Deb 22 Feb 2007, col. 434.

²⁹ PTA 2005, s. 8(2).

³⁰ *Ibid.* s. 8(4).

³¹ *Ibid.* s. 8(5).

³² Lord Carlile’s First Report on control orders, *op. cit.* at paras 45-46.

³³ Twelfth Report of Session 2005-06, *op. cit.*, at para. 21.

³⁴ Lord Carlile’s Second Report on control orders, *op. cit.* at para. 57.

prosecution, little is given by way of reasons. They do give slight reasons for the conclusion that there is not evidence available that could realistically be used for the purposes of a terrorism prosecution, but the letters remain very short. He would like to see still more detail in the letters, including, for example, an explanation (in a closed version if necessary) of the sensitivity of material that could not be placed before a court. Significantly, he comments “If there is a thorough and continuing examination of whether a prosecution could be brought, the evidence of that examination remains unconvincing in some cases.”

48. In Lord Carlile’s view, the decision whether to prosecute should be taken following detailed and documented consultation in every case between the CPS, the police, the Security Service and the Home Office, on the basis of full consideration of the evidence and intelligence. **In our view, this important observation by Lord Carlile confirms our concerns in our report on Prosecution and Pre-Charge Detention that the Government is not as committed to prosecution as a last resort as it professes to be. This part of Lord Carlile’s Report provides important evidence in support of those who fear that once a control order is imposed it relieves the pressure on the police and the Home Office to bring a criminal prosecution.**

49. To the same effect in Lord Carlile’s Second Report on control orders is his statement that he believes that continuing investigation into the activities of some of the current controlees could provide evidence for criminal prosecution and conviction. To the best of our knowledge, no person who has been made the subject of a control order has so far been subsequently prosecuted for a terrorism offence, other than for breach of the control order. **Lord Carlile’s belief that continued investigation could yield such prosecutions, and the fact that he considers it necessary in his report to encourage such investigation to continue, suggests to us that at present there is insufficient continuing investigation with a view to prosecution.**

The High Court judgment in *E*

50. The second development casting fresh doubt on the Government’s commitment to prosecution is the High Court’s recent judgment in *E v Secretary of State for the Home Department*. It is a significant feature of that case that, even if the court had not found there to be a deprivation of liberty and a breach of Article 5 ECHR, it would have quashed the control order in question because of a failure by the Government to keep the possibility of prosecution under review after the control order was made.³⁵ The Home Secretary is under a continuing duty to keep the decision to impose and maintain a control order under review.³⁶ The High Court in *E*, significantly, held that this includes keeping the matter of prosecution under review.

51. On the facts, the court found that significant new material had become available since the making of the control order, in the form of two Belgian court judgments in cases in which associates of *E* were successfully prosecuted for terrorism offences, and in which there were references to their association with *E* and to his activities. In those Belgian proceedings, intercept evidence from Spain and the Netherlands had been admitted, and that evidence would in principle be admissible in England, notwithstanding the

³⁵ *Op. cit.* at para. 293.

³⁶ *MB* [2006] EWCA Civ 1140 at para. 44.

prohibition in the Regulation of Investigatory Powers Act, because it originated from abroad.³⁷ The High Court therefore found that the possibility of prosecuting E in the light of the material about him identified in the Belgian judgments needed to be considered by the Home Secretary.

52. The court therefore looked very carefully at the evidence to ascertain whether the impact of the Belgian judgments, and the material referred to in them, on the prospects of prosecuting E had been reconsidered.³⁸ Neither the police nor the Home Office could produce any evidence to show that a review of the prospects of prosecution had been carried out between the control order being made and its renewal one year later. There was no evidence that the Belgian judgments had been sent to the police or the CPS for the prospects of prosecution to be reviewed in light of them. There had been two quarterly meetings of “CORG”, the body which the Government says ensures that the possibility of prosecution is kept under frequent review, but at neither meeting was there any evidence that the question of the Belgian material had been raised.

53. The Court therefore found as a fact that at no point was the question of prosecution reviewed in the light of the Belgian judgments. This failure to consider the impact of significant new material on the prospects of prosecuting E meant that the Home Secretary’s continuing decision to maintain E’s control order was flawed, and would have been quashed on this basis had the court not already found that the control order amounted to a deprivation of liberty and was therefore in breach of Article 5.

54. We acknowledge of course that the decision of the High Court in *E* is the subject of an appeal by the Government to the Court of Appeal. In our view, however, the court’s careful analysis of the evidence of whether prosecution had been reconsidered at any point reveals a fundamental lack of any systematic approach to keeping the possibility of prosecution under review in control order cases. Although the case of *E* is the third supervisory hearing by the High Court under s. 3 PTA 2005,³⁹ it is the first full hearing with evidence about the relevant factual issues. Subjected to close inspection for the first time, the Government’s systems for keeping the prospects of review have been found seriously wanting. The court found that the general picture was one of ad hoc oral communications between the police and the Security Service. It was not enough for the Home Office merely to ask the police about prosecution at meetings of the CORG, or passively to rely on the police at the CORG meeting to bring matters forward. **In our view, the judgment therefore provides further powerful evidence confirming our concerns about the seriousness of the Government’s commitment to prosecuting as its first preference. The lack of effective systems to keep the prospects of prosecution under review, revealed by this case, belies the Government’s professed commitment to do so.**

The urgent need for measures to facilitate prosecution

55. Both Lord Carlile’s report and the High Court judgment in *E* raise significant questions as to whether the Government has demonstrated in practice that prosecution is always its first preference as it claims. In our view, the developments we have considered above

³⁷ *R v P* [2002] 1 AC 146.

³⁸ *E*, *op. cit.* at paras 288-293.

³⁹ The first two were *MB* and *JJ*, *op. cit.*

confirm one of the principal conclusions in our Report on Prosecution and Pre-Charge Detention, that a great deal more could in fact be done by the Government to overcome what are commonly understood to be the main obstacles to criminal prosecution. In that Report we identified a number of examples of the sorts of steps which the Government could take to achieve this. We do not go into those again in detail here, but we do record our disappointment at the Government's failure to accept a number of recommendations in that Report and its apparent failure so far to make progress in relation to those which it did accept.⁴⁰

56. In particular we regret the continued lack of progress towards detailed proposals for relaxing the ban on the use of intercept material. We do not of course regard this as a universal panacea. We recognise that Lord Carlile, for example, although in favour of a limited amendment to the law to allow the use of telephone intercept in criminal trials, is of the view that "the availability of such evidence would be rare and possibly of limited use."⁴¹ We are well aware of other expressions of a similar view, including by the present Home Secretary and his predecessors.

57. However, this is a matter on which views diverge considerably. We note, for example, that the DPP in his recent lecture to the Criminal Law Bar Association, said not only that we need to find ways to remove the bar on the admissibility of intercept evidence, but that this "would overcome one of the main obstacles to prosecuting terrorist suspects."⁴² Coming from the chief prosecutor, we think that this is a view which must be accorded very considerable weight. We intend to return to the question of how to relax the intercept ban in a future report in our ongoing inquiry.

58. We note that Lord Carlile in his Second Report on control orders sounds an important warning of the urgent need for an "exit strategy": that is, a strategy for ending the control orders in relation to each controlee. He warns, rightly in our view, that control orders cannot be regarded as an indefinite solution to the Government's dilemma. Some of the controlees have already been the subject of control orders for a considerable time, and some of those were imprisoned before that under the powers in Part IV of the Anti-terrorism Crime and Security Act 2001 which were found to be incompatible with the Convention by the House of Lords. In Lord Carlile's view, their orders cannot be continued indefinitely.

59. We agree. As we pointed out in our earlier report on the first renewal order, the combination of the degree of restriction imposed by control orders, their indefinite duration, and the limited opportunity to challenge the basis on which they are made, carries a very high risk of subjecting those who are placed under control orders to inhuman and degrading treatment contrary to Article 3 ECHR.⁴³ This risk is obviously now considerably greater than a year ago in relation to those who have been on control orders since their inception. Lord Carlile warns that failure to prepare for the ending of the orders in all cases would be short-sighted. In our view, the most effective exit strategy, as we have previously made clear, is to bring forward a variety of measures to facilitate criminal

⁴⁰ See the Government's response, Cm. 6920.

⁴¹ Carlile Report, *op. cit.* at para. 35.

⁴² *Op. cit.*

⁴³ Twelfth Report of Session 2005-06, *op. cit.*, at para. 84.

prosecution. This should enable the Government either to allow the control order regime to lapse, or at the very least to amend it to provide for a regime of less restrictive civil restriction orders with proper due process guarantees which, as we have suggested before, would in our view be capable of being compatible with both Articles 5 and 6 ECHR and the common law's guarantees of a fair trial and a fair hearing.

Effectiveness

60. The effectiveness of the control orders regime in protecting the public has also been brought into question by the fact that two individuals on control orders have absconded and one disappeared before he could be served with a fresh control order after his original order had been quashed by the court.

61. The Government says that these individuals do not pose a threat to the public because they were not planning to commit terrorist acts in the UK. Lord Carlile in his Report appears to accept this, saying that it is plainly doubtful that any well-organised terrorism cell would wish to rely in a significant way on someone who is being sought by police internationally, so the absconders probably present little risk provided that they are sought diligently.⁴⁴ **In our view, however, this explanation raises questions about whether control orders are being used for the purposes for which Parliament was told they were necessary during the passage of the 2005 Act, namely to protect the public from the risk of harm by suspected terrorists.**

62. **The main significance, however, of the fact that the subjects of three control orders have either absconded or disappeared is that it shows the limitations of control orders as a means of protecting the public. In our view, this again demonstrates the urgency of bringing forward measures to facilitate prosecution, which will provide much more effective protection for the public.**

⁴⁴ Lord Carlile's Second Report on control orders at para. 59.

5 Conclusion

63. In light of the concerns expressed in this report, we have reached the same conclusion as in last year's report on renewal of control orders: we seriously question renewal without a proper opportunity for a parliamentary debate on whether derogations from Articles 5(1) and 6(1) ECHR are justifiable, that is, whether the extraordinary measures in the Prevention of Terrorism Act 2005, which the Government seeks to continue in force, are strictly required by the exigencies of the situation. In our view, Parliament should therefore be given an opportunity to debate and decide that question.

64. We also draw to Parliament's attention our serious concerns about the vigour with which the Government is pursuing prosecution as its preferred counter-terrorism measure, and what we now consider to be the urgency of the need to bring forward measures to facilitate prosecution.

Conclusions and recommendations

Parliamentary scrutiny of the human rights compatibility of control orders

1. In our view, a debate on a motion to approve an affirmative resolution is a wholly inappropriate procedure for renewal of provisions of such significance. To fail to provide an opportunity to amend the legislation is also, for the second year running, a serious breach of commitments made to Parliament. Parliament is being deprived once again of an opportunity to debate in detail and amend the control orders regime in the light of experience of its operation and concerns about its human rights compatibility. We draw this matter to the attention of each House. (Paragraph 15)
2. The fact that Lord Carlile's Report on the operation of the control order regime was not published until 19 February, only three days before the renewal debate in the Commons, provided an even more limited opportunity to consider and if necessary report in the light of Lord Carlile's Report than we received last year. We draw this matter to the attention of each House. (Paragraph 17)

Deprivation of liberty

3. We acknowledge that the litigation concerning the compatibility of a significant number of current control orders with Article 5 has yet to run its course. However, we are concerned that the Home Secretary is asking Parliament to renew a power which not only this Committee but now the High Court and the Court of Appeal have said is being routinely exercised in breach of one of the most fundamental of all human rights, the right to liberty in Article 5 ECHR. (Paragraph 28)
4. In our view, if the House of Lords or the European Court of Human Rights eventually decides that the control orders which have been challenged are unlawful in the absence of a derogation, the Government will effectively have been operating a de facto derogation from Article 5. Knowing how the power is currently being exercised by the Government, Parliament in our view is being asked to be complicit in such a de facto derogation, without an opportunity to debate whether such a derogation is justified. We draw this matter to the attention of each House. (Paragraph 29)

Due process

5. We acknowledge that the Court of Appeal in MB has upheld the compatibility of the control order regime with the right to a fair hearing in Article 6(1) ECHR and has considered and dismissed many of the due process concerns raised in our first renewal report. However, we remain of the view expressed in our earlier report. For the reasons given in that Report we are doubtful whether the procedures for judicial supervision of control orders in PTA 2005 in fact secure the substantial measure of procedural justice that is claimed for them. (Paragraph 37)

6. In our view, due process standards should apply to the more restrictive non-derogating control orders in view of the severity of the restrictions they contain. (Paragraph 38)

Prosecution

7. In our view, the important observation by Lord Carlile that the decision whether to prosecute should be taken following detailed and documented consultation and on the basis of full consideration of the evidence and intelligence confirms our concerns in our report on Prosecution and Pre-Charge Detention that the Government is not as committed to prosecution as a last resort as it professes to be. This part of Lord Carlile's Report provides important evidence in support of those who fear that once a control order is imposed it relieves the pressure on the police and the Home Office to bring a criminal prosecution. (Paragraph 48)
8. Lord Carlile's belief that continued investigation could yield prosecutions of individuals subject to control orders, and the fact that he considers it necessary in his report to encourage such investigation to continue, suggests to us that at present there is insufficient continuing investigation with a view to prosecution. (Paragraph 49)
9. In our view, the judgment of the High Court in *E v Secretary of State for the Home Department* provides further powerful evidence confirming our concerns about the seriousness of the Government's commitment to prosecuting as its first preference. The lack of effective systems to keep the prospects of prosecution under review, revealed by this case, belies the Government's professed commitment to do so. (Paragraph 54)

Effectiveness of the control orders regime

10. In our view, the Government's explanation that individuals who have absconded from control orders or disappeared do not pose a threat to the public raises questions about whether control orders are being used for the purposes for which Parliament was told they were necessary during the passage of the 2005 Act, namely to protect the public from the risk of harm by suspected terrorists. (Paragraph 61)
11. The main significance of the fact that the subjects of three control orders have either absconded or disappeared is that it shows the limitations of control orders as a means of protecting the public. In our view, this again demonstrates the urgency of bringing forward measures to facilitate prosecution, which will provide much more effective protection for the public. (Paragraph 62)

Conclusion

12. In light of the concerns expressed in this report, we have reached the same conclusion as in last year's report on renewal of control orders: we seriously question renewal without a proper opportunity for a parliamentary debate on whether derogations from Articles 5(1) and 6(1) ECHR are justifiable, that is, whether the extraordinary measures in the Prevention of Terrorism Act 2005, which the

Government seeks to continue in force, are strictly required by the exigencies of the situation. In our view, Parliament should therefore be given an opportunity to debate and decide that question. (Paragraph 63)

13. We also draw to Parliament's attention our serious concerns about the vigour with which the Government is pursuing prosecution as its preferred counter-terrorism measure, and what we now consider to be the urgency of the need to bring forward measures to facilitate prosecution. (Paragraph 64)

Formal Minutes

Wednesday 28 February 2007

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Judd

Lord Lester of Herne Hill

Lord Plant of Highfield

Baroness Stern

Nia Griffith MP

Dr Evan Harris MP

Draft Report [Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007], proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 64 read and agreed to.

Summary read and agreed to.

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

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

Ordered, That the provisions of House of Commons Standing Order No. 134 (Select committees (reports)) be applied to the Report.

[Adjourned till Monday 5 March at 4.00pm.]

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2006–07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007	HL Paper 60/HC 365

Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787

Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888
Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/ HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/ HC 701-I
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577

Twenty-sixth Report	Human trafficking	HL Paper 245-I/HC 1127-I
Twenty-seventh Report	Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill	HL Paper 246/HC 1625
Twenty-eighth Report	Legislative Scrutiny: Fourteenth Progress Report	HL Paper 247/HC 1626
Twenty-ninth Report	Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 248/HC 1627
Thirtieth Report	Government Response to the Committee's Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)	HL Paper 276/HC 1714
Thirty-first Report	Legislative Scrutiny: Final Progress Report	HL Paper 277/HC 1715
Thirty-second Report	The Human Rights Act: the DCA and Home Office Reviews	HL Paper 278/HC 1716