

INDEPENDENT REPORT ON CONTROL ORDERS IS PUBLISHED

PRESS RELEASE

The Independent Reviewer of Terrorism Legislation, David Anderson Q.C., publishes his annual report today into the operation of the control order system under the Prevention of Terrorism Act 2005. The report has been submitted to the Home Secretary and laid before Parliament.

The control order system was in place between 2005 and 2011. The last control orders were replaced early in 2012 by Terrorism Prevention and Investigation Measures (TPIMs) under the TPIM Act 2011. Control orders were preventative measures, intended to protect members of the public from the risk of terrorism by imposing restraints on those suspected of involvement in terrorism-related activity. They contained restrictions including a curfew of up to 16 hours, confinement within a geographical boundary, tagging, financial reporting requirements and restrictions on association and communication. A significant minority of controlled persons were also “relocated” to a different town or city in the UK.

The Report focuses in particular on the last year of control orders. It is the first time Mr. Anderson has reported on the system since he took over the role of Independent Reviewer from his predecessor, Lord Carlile of Berriew CBE Q.C., in February 2011.

Findings and Recommendations

The control order system generally

- Control orders were made against 52 people in total between 2005 and 2011. All were men, suspected of involvement in Islamist terrorism. At the start of the control order system, all controlled persons were foreign nationals. By the end, all were British citizens.
- The duration of control orders ranged from a few months to more than four-and-a-half years.
- The majority of control orders were imposed on the basis of the Home Secretary’s suspicion that the subject was a hardened terrorist, actively involved in terrorist plots in the UK or abroad, or in recruiting for terrorism, terrorism facilitation or terrorism training. A smaller number, particularly in the early years, were imposed chiefly on suspicion of the subject wishing to travel abroad for terrorist purposes.
- 23 of the 52 controlled persons over the lifetime of the control order system (2005-2011) were subject to involuntary relocation to a different town or city in the UK.
- Control orders could be distressing for controlled persons and their families. In the words of the wife of one controlled person, assessed as a reliable witness by

- Though imposed by the Home Secretary, control orders were the subject of thorough and careful judicial scrutiny. The controlled person was not entitled to see all the evidence against him, for national security reasons. However after a judgment of the House of Lords in 2009 (*AF No. 3*), itself prompted by the European Court of Human Rights, each controlled person was entitled to sufficient information about the allegations against him to give effective instructions in relation to those allegations to a Special Advocate instructed on his behalf.
- There was nothing unique in international terms about the existence of a regime that imposed significant constraints on the liberty of those suspected, but not convicted, of terrorist activity. However the purely preventative aim of the control order system, its separation from the criminal justice process, its application to home citizens and the length of time for which a individual could be subject to it placed it towards the more repressive end of the spectrum of measures operated by comparable western democracies.

Control orders in 2011

- Five new control orders were served in 2011, eight renewed and four revoked. Five controlled persons were charged with breach of their control orders, three of whom await trial. As in the previous three years, no controlled person absconded.
- All nine controlled persons at the end of 2011 were British citizens suspected of Islamist terrorism. Each control order featured a wide range of restrictions, including in six cases relocation. Relocation requirements were upheld as necessary and proportionate by the High Court in two cases during 2011.
- Each of the nine persons who was under a control order at the end of 2011 has now been placed under a TPIM.

Were they effective and fair?

- There are good reasons to believe that control orders fulfilled their primary function of ***disrupting terrorist activity***. Control orders are likely also to have *released intelligence resources* for use in relation to other targets. It is less clear that they assisted controlled persons in *disengaging from terrorism*. They did not prove a useful source of evidence for *criminal prosecutions*.
- The administrative procedure for making and reviewing control orders was evidence-based and thorough. Despite the constraints of a closed material procedure, the courts did manage in the period under review to provide a

Terrorism Prevention and Investigation Measures

- The TPIM is not a rebadged control order, but a new model. Significant differences include:
 - A requirement of reasonable belief of involvement in terrorism-related activity (rather than reasonable suspicion) before a TPIM can be made
 - A two-year limit on the duration of a TPIM
 - No power of relocation or confinement to a particular area
 - Less restrictive powers relating to curfew, communications and police searches.
- Those changes were motivated by civil liberties concerns. They are unlikely to further the requirements of national security – rather the reverse. However, by making significant extra resources available for covert investigative techniques, the Government has sought to ensure (and MI5, which is best placed to judge, has accepted) that there should be no substantial increase in overall risk.

Recommendations

- Based on experience with control orders, the Independent Reviewer made seven recommendations for the operation of TPIMs. They relate, in particular, to:
 - Ensuring that TPIMs are ***used only as a last resort***, when prosecution, deportation or less intrusive executive measures are not a feasible alternative
 - Ensuring that no individual measure is imposed unless the Secretary of State is satisfied that it is ***necessary*** for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity
 - Ensuring the ***highest possible degree of fairness*** in the closed material procedure, by giving sufficient information in all TPIM cases to enable the subject to give effective instructions and by addressing the consistent concerns expressed by Special Advocates

- Improving **transparency**, in the form of the quarterly reports issued under TPIMA 2011
- Inviting Parliamentary Committees to consider how best the Independent Reviewer can assist them in future with the task of keeping the necessity for and operation of TPIMA 2011 under **parliamentary review**

Quote

David Anderson said:

“Control orders were designed to protect the public from the small number of suspected terrorists who present a substantial risk to national security, but whom it is not feasible to prosecute. They performed that function effectively over the six years the system operated. But there is something unsettling about any system which allows the executive to impose intrusive measures on the individual, without showing him all the evidence on which the decision was based. We have the courts to thank – both in England and in Strasbourg – for refining the system to the point where it offered a substantial degree of fairness to the subject.

The replacement TPIM system is a lighter-touch regime. It remains essential however that the use of executive powers of this nature should be kept to a minimum. My recommendations are aimed at ensuring that TPIMs are no more intrusive than is absolutely necessary and that, like control orders before them, they will be used only in relation to the small category of highly dangerous people whom it is not feasible to prosecute or to deport.”

Background

David Anderson Q.C. is a barrister practising from Brick Court Chambers in London. He was appointed to the post of Independent Reviewer by the Home Secretary with effect from 21 February 2011, in succession to Lord Carlile of Berriew Q.C. who performed the role for more than nine years.

The Independent Reviewer combines complete independence from Government with unrestricted access, based on a very high degree of security clearance, to documents and to personnel within Government, the police and the security services. He travels widely to all parts of the United Kingdom, listening to those who devise, enforce, apply, oppose or are otherwise affected by the UK's terrorism laws.

He can be contacted through his clerks on 020 7379 3550 or by email on independentreviewer@brickcourt.co.uk. His website, where further background and all the reports of the Independent Reviewer can be found, is <http://terrorism-legislation-reviewer.independent.gov.uk>