



ACPO

Response to possible measures for
inclusion in a future CT Bill

1 INTRODUCTION

The Home Secretary has announced to Parliament the Government's intention to bring forward a new counter-terrorism bill later this year. A discussion document has been published for consultation that incorporates three main elements; strengthening capability to counter terrorism; increasing parliamentary and judicial scrutiny; and building national consensus on national security.

The Home Secretary was clear that extensive consultation would take place before any legislation was introduced. Discussions are taking place with police and the judiciary, as well as with civil liberties groups and communities.

Parliamentary pre-legislation scrutiny will also take place; draft clauses will be shared, discussions will take place in Parliament and the Home Affairs Committee and Joint Committee on Human Rights will scrutinise key areas. Additionally, Lord Carlile has been asked to undertake a report of what is proposed.

The Home Affairs Committee has announced a short inquiry into the CT proposals to be heard in October 2007.

1. Pre Charge Detention

Proposal: to extend detentions past 28 days to enable to the exploration of options (via judicial approval every seven days).

ACPO Response

There is no further evidence currently available, beyond what has already been submitted, to support an increase in the pre-charge detention period. However, the speed with which terrorist conspiracies have increased in number, the gravity of their ambition and the number of conspirators suggests that it is possible to envisage circumstances where 28 days may prove inadequate. The operational complexities and volume of material continues to be the basis for needing additional detention time beyond 28 days.

ACPO is acutely aware of the need to justify, and use responsibly, the powers with which the police service is provided. The balance between individual liberty, freedom, security and reassurance must be struck, and policing must be conducted with tolerance, fairness and respect for the traditions and faiths of others.

ACPO support the proposal with the safeguard that there is the necessary oversight to ensure that any further detention past 28 days is justified. It is realistic to assume that the increasing complexity of counter terrorism operations will lead to the requirement to extend pre charge detention to beyond 28 days.

2. Intercept as Evidence

Proposal: To commission a review of intercept as evidence on Privy Counsellor terms.

ACPO Response: ACPO welcome the Privy Council review of Intercept as evidence. There is currently ongoing discussion in relation to interception as evidence. Attached, at Appendix A is a paper prepared for ACPO Council on 19th July 2007. This paper outlines in detail the ACPO position in relation to this proposal.

3. Measures in relation to DNA of terrorist suspects

Proposal. That the police counter terrorism DNA database be put on a statutory footing and that DNA samples and fingerprints obtained under the Terrorism Act 2000 can be put onto the national DNA and fingerprint database. The Security Service will be able to cross reference material they obtain with that on the national DNA database for purposes of national security. Finally there will be powers to obtain fingerprints and DNA from those subject to a control order, equivalent to those powers which currently apply under Terrorism Act 2000 and Police and Criminal Evidence Act 1984.

ACPO Response: ACPO agree with the Home Office and Security Service that such a statutory footing would be desirable and this particular legislation will give the Security Service the confidence to contribute to the population and sharing of information on the database. There will be a need to clarify the law in relation to the retention and use of overtly and covertly obtained DNA by the Police, Security Services and other relevant law enforcement agencies in counter terrorism. Equally, there is a need to clarify the legislative implications, for example, where samples may need to be taken from outside the UK.

4. Data sharing powers for intelligence agencies

Proposal: To give specific data sharing powers to the intelligence and security agencies, similar to that given to the Serious and Organised Crime Agency (SOCA)

ACPO Response: ACPO is supportive of this proposal and believe this would increase the effectiveness of the security and intelligence agencies and will allow them to meet fully their statutory functions.

5. Collection of information likely to be of use to terrorists.

Proposal: To extend Section 58 of the Terrorist Act 2000 (offence to collect or make a record of information likely to be of use to terrorists) to include the gathering of information about individuals, particularly service personnel.

ACPO response: ACPO is supportive of this proposal and agree that consideration should be given to including other groups, in addition to service personnel. Clarity is required in relation to the definition of 'Service' personnel in order to protect all those involved in Counter Terrorism work.

6. Establishing a Universal UK Territorial Jurisdiction in Terrorism cases.

Proposal: To allow a terrorist offence committed in any part of the UK to be prosecuted in any other part of the UK.

ACPO Response: The recent incidents in London and Glasgow highlighted the need to make provision for a reciprocal arrangement between the different parts of the UK in similar terrorist cases.

The Home Office for Security and Counter Terrorism (OSCT) are currently considering how this issue can be resolved. ACPO will work closely with the OSCT on this matter.

7. Post Charge Questioning

Proposal, In Terrorism cases suspects can be questioned after charge on any aspect of the offence for which they have been charged.

ACPO response: This is not linked to the 28 day pre charge detention issue. ACPO is supportive of this proposal, particularly to include questioning about the same offence. However, there are questions as to the value of such legislation, as there are very few occasions where terrorist suspects choose to answer any questions put to them during the interview phase. If this is the case, it is not clear whether or not allowing them to be questioned post charge would achieve anything, other than perhaps allowing a negative inference to be drawn. The introduction of a power for the purpose of allowing a further negative inference to be drawn (ie in addition to the negative inference that may be drawn from their failure to answer any questions prior to charge) could

raise the possibility that the legislature would be accused of acting in bad faith.

8. The use of plea bargaining in CT investigations

Proposal: There has been suggestion that the use of plea bargaining may assist in both intelligence gathering and investigation into terrorism cases.

ACPO Response: In principle, the proposal is a good idea, but the current judicial system does not allow for a meaningful discussion or a strong negotiating position. In the current climate where some convicted terrorists are facing 40 years imprisonment, there is little incentive for a suspect to negotiate or offer intelligence in exchange for a minimal reduction in sentence. There may be an incentive if there were flexibility to allow for a more significant reduction in sentence in return for complete and substantial co-operation.

9. Enhanced Sentences and Notification Requirements

Proposal: To ensure that where terrorist subjects are charged with non terrorism offences (such as fraud), the sentencing is enhanced to reflect the additional seriousness that terrorism involvement represents.

ACPO response: ACPO is supportive of this proposal as recommended by Lord Carlile. This would reinforce the message to those considering committing less serious offences for the purposes of supporting terrorist activity, or funding terrorists/ terrorism.

Proposal: To establish a Terrorist notification register (similar to that of the Sex Offenders Register), which would strengthen the existing monitoring arrangements for convicted Terrorists who have been released from prison.

ACPO response: ACPO is supportive of notification orders for those convicted of terrorism related offences at culmination of sentence. It would be a useful provision, provided sufficient consideration is given to the resources and finances required to ensure effective monitoring and any subsequent enforcement. ACPO believes there should be consultation with those involved with the introduction of the Violent offenders and Sex Offenders Register (VISOR) in order to gain a greater understanding of the overall cost. Public perception is also a consideration given the difficulties initially with the Sex offenders Register. Additionally this proposal may benefit the Rich Picture work and give an early indication of any emerging issues.

10. Control Orders

Proposal: Police to have self-standing powers of entry and search of premises to enforce and monitor control orders effectively.

ACPO response: At present there are operational constraints when attempting to enforce Control Orders as there is no power to enter and search premises. This leaves the police in a weak position when attempting to enforce the order. ACPO is supportive of the introduction of these additional powers, which will enhance their ability to enforce the orders. Without legislation police can only monitor those who wish to be monitored. Legislation is an important requirement for public safety and reassurance.

11. Data Sharing Powers for the Intelligence Agencies

Proposal: To legislate the provision of statutory data sharing powers for intelligence and security agencies.

ACPO response: ACPO is supportive of the proposal to legislate to allow the sharing of appropriate information between the intelligence agencies. This should include the TACT database and will allow a lawful exchange of data with our security partners thus giving the police and the security services a great deal more capability. There are, of course, financial implications to consider here in relation to the setting up and running of the IT systems associated with this proposal.

12. Police Powers to hold passports and travel documents at ports

Proposal: To enable police temporarily to hold travel documents of those suspected of travelling abroad for terrorism purposes.

ACPO response: ACPO is supportive of this proposal because this represents an effective tool to limit the ability of those suspected of intending to travel abroad, where there is insufficient evidence to form a charge or to obtain a Control Order. Additionally, the seizure of documents as proposed would assist police to investigate the purpose of travel. It is well known that individuals travel abroad for terrorist related training and networking. The knowledge and/or skills acquired are brought back into the UK, where they can be used for terrorist purposes, including further training of individuals. Clearly such a power would need to be intelligence led and used sparingly.

13. Seizure of Terrorist Assets

Proposal: To extend current legislation to enable courts to seize assets from all those convicted of terrorism or for being involved in terrorist related offences if the courts deem that these assets may be used for terrorist purposes.

ACPO Response: ACPO is supportive of this provision, but understands that it could cause human rights and welfare concerns for the families of those individuals involved.

14. Increased Security at Key Gas Sites

Proposal: To legislate the arrangements for the funding of increased security at key sites.

ACPO response: ACPO is supportive of this proposal as it is a realistic scenario that as the national threat level picture has increased across the country, so too has protective security measures at key economic sites. ACPO believe it would seem eminently sensible to maintain/ increase the levels of awareness and security at these sites. Consideration should be given to include remote/rural oil installations and other sites, which are considered equally vulnerable. The need to provide appropriate security at all key sites should be a legal requirement for site owners. ACPO welcome the proposal to legislate for the funding of increased security.



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Your Ref:

Our Ref: 1010/EG/HB/07

Date: 16 October 2007

Dear,

COUNTER TERRORISM LEGISLATION

I refer to your correspondence dated 12 June 2007 in connection with the above subject, which has been considered by members of the Crime Business Area in consultation with Counter Terrorism and Crime environments in Scotland, and can now offer the following by way of comment.

ACPO and ACPOS work very closely in countering terrorism and therefore, unsurprisingly, the ACPOS position will have many similarities to the ACPO response. Notwithstanding, this response will highlight the need for any new legislation to be capable of effective integration into the Scottish Criminal Justice procedure, where appropriate.

The following comments are offered in response to the individual proposals:-

1. Extension to the period of Pre Charge Detention from the current limit of 28 days (subject to judicial approval every 7 days).

Members have no further evidence beyond what has already been submitted to support an increase in the pre-charge detention period. However, the speed with which terrorist conspiracies have increased in number, the gravity of their ambition, and the number of conspirators suggests that it is possible to envisage circumstances where 28 days may prove inadequate. The operational complexities and volume of material continues to be the reasoning behind requiring additional detention time beyond 28 days.

ACPOS is acutely aware of the need to justify, and use responsibly, the powers with which the police service is provided. The balance between individual liberty, freedom security, and reassurance must be struck and policing must be conducted with tolerance, fairness and a respect for the traditions and faiths of others.

Members support the proposal in principle, with the safeguard that there is the necessary oversight to ensure that any further detention past 28 days is justified. It is realistic to envisage that the increasing complexity of counter terrorism operations will lead to the requirement to extend pre-charge detention beyond 28 days.

ACPOS also highlight the necessity of ensuring all provisions are compatible with Scottish law and criminal justice processes.

2. Should Intercept material be used as evidence?

The proposal for the evidential use of interception material is not supported. Members have previously articulated their reasons for this conclusion to the UK Government and the UK Interception Strategy Group. It is emphasised that any change to the current position may have more far reaching consequences for Scottish Law in respect of requiring significant additional changes to disclosure rules over and above those being implemented at present.

3. The CT DNA database will be placed on a statutory footing. DNA samples and fingerprints obtained under TACT 2000 can be added to national DNA and fingerprint databases. This includes samples taken covertly.

ACPOS supports the proposal and agrees that it is both proportionate and necessary with the caveat that all legal /constitutional issues are addressed prior to publication.

4. Providing power to Intelligence Agencies to disclose appropriate information to other Organisations and Agencies as currently afforded to SOCA under the Serious Organised Crime and Police Act.

Information sharing powers between key organisations and agencies is fully supported with the caveat that all legal / constitutional issues are addressed prior to publication.

5. Extension of Sect 58 TACT (offence to collect or make record of information likely to be of use to terrorists) to include gathering of targeting information about individuals. Specifically, this would be for Armed Services Personnel, although, HMG may extend this.

Members support the extension of Sect 58 TACT, not only to the Armed Services, but also to others such as Police and other Law Enforcement Personnel. This is again supported with the caveat that all legal / constitutional issues are addressed prior to publication.

6. Universal UK territorial jurisdiction in the prosecution of terrorist offences.

The introduction of legislation which simplifies the mechanics of prosecuting a terrorist case anywhere in the United Kingdom is welcomed.

7. **Provision to the Police of the power to question a suspect after charge on any aspect of the offence for which they have been charged. The proposal extends to allowing adverse inference to be drawn where a suspect initially refuses to answer questions after charge but later relies on something he had the opportunity to mention during post-charge questioning.**

Whilst members support this concept, there are obvious legal issues that would have to be resolved for this proposal to be conducive to inclusion within the Scottish legal system.

8. **To ensure that where terrorist subjects are charged with non terrorist offences (such as offences under the Explosives Act 1883 and Fraud etc) that sentencing is enhanced to reflect the seriousness that involvement in terrorism represents.**

This proposal is supported in principle, however, unlike the legal system in England and Wales, there are no sentencing guidelines in Scotland. Again, the necessary amendments to Scottish Law would have to be in place before this proposal could be applicable in Scotland.

9. **Strengthening arrangements for managing persons convicted of a terrorist related offence where the sentence is for 12 months or more. This would be similar to the current situation in relation to sex offenders (SOR) and would strengthen the existing monitoring arrangements.**

Members support this proposal but consider it would only be fully effective if appropriate levels of policing resources were provided. This proposal is again supported on the basis that all legal/ constitutional issues are addressed prior to publication.

10. **Providing police with additional powers of entry, search and seizure in relation to persons breaching control orders.**

This proposal is supported and will ensure the policing of those subject to control orders is more effective. This proposal is again supported on the basis that all legal / constitutional issues are addressed prior to publication.

11. **The introduction of measures to prevent overseas travel by introducing legislation to temporarily seize travel documents of those suspected of travelling abroad for terrorist purposes such as training. It also includes limitations on foreign travel via court order for convicted terrorists.**

ACPOS supports such measures again considering them to be proportionate and necessary to the current threat, provided that that all legal / constitutional issues are addressed prior to publication.

12. **Current TACT legislation only allows for the forfeiture of money or property from those convicted of terrorist financing offences. The**

proposal is to extend this to cover anyone convicted of any terrorist offence.

ACPOS supports this proposal which is conducive to the general principle of penalising criminals financially. It is supported on the basis that all legal / constitutional issues are addressed prior to publication.

13. The imposition of financial charge on private companies for police providing additional security at key gas installations.

Members support this proposal which will ensure that police forces are not burdened with the cost of policing such installations. ACPOS would like to see the proposal extended to other critical national infrastructure.

14. Extension of legislation currently used successfully in Northern Ireland in relation to the seizure and search of vehicles and documents and the subsequent period of retention for the property seized.

ACPOS supports this proposal. Such powers are extremely useful, particularly where, for example, documents are seized which are written in a foreign language. It is supported on the basis that all legal/constitutional issues are addressed prior to publication.

15. A re-definition of “terrorism” to ensure terrorism motivated by a racial or ethnic cause is included.

Members fully support the wholly appropriate clarity this change would bring.

I trust that the foregoing is of assistance to you however, should you wish to discuss any matters raised herein, Assistant Chief Constable John Corrigan would be more than happy to oblige. He can be contacted through his staff officer, Detective Sergeant Andrew Mavin, on Tel 0141-532-6847 or email Andrew.mavin@strathclyde.pnn.police.uk

Yours sincerely



Harry Bunch
General Secretary