

Submission

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Response to the Home Office Discussion Paper on Options for Pre-Charge Detention in Terrorist Cases

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Our Mission:
to work for fair trials based on
international standards of justice
and defend the rights of those
facing charges in a country other
than their own.

Registered Charity No. 1079079

About Fair Trials International

1. Fair Trials International (FTI) is a UK-based NGO that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own.
2. FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and network activities.
3. Although FTI usually works on behalf of people facing criminal trial outside of their own country, we have a keen interest in criminal justice and fair trial rights issues more generally. We are active in the field EU Justice and Home Affairs policy, and, in October 2007 launched an ongoing campaign on protecting and promoting fundamental rights throughout the EU.
4. FTI condemns acts of terrorism, and remains supportive of appropriate, proportionate and evidence-based measures taken to protect the public and national security from acts of terrorism. We believe that suspects in terrorist cases, as in any other case, should be informed of the charges against them without undue delay, should stand trial, and be imprisoned if found guilty.

Options for Pre-Charge Detention in Terrorist Cases

5. In July 2007, the Home Office published consultation documents on possible measures for inclusion in a future counter-terrorism bill, accompanied by a more detailed discussion

paper on options for pre-charge detention in terrorist cases¹. These were published in advance of an anticipated new Counter-Terrorism Bill in November 2007. This paper responds to the discussion paper on options for pre-charge detention.

6. Fair Trials International strongly supports the submissions by Liberty² and Justice³ to the Home Affairs Committee, in response to their call for evidence on the government's counter-terrorism proposals. Due to the detailed nature of the afore-mentioned submissions we do not intend to submit a point-by-point response to the discussion paper. However, we feel compelled to reiterate the following arguments.

The case for further extension of pre-charge detention

7. FTI believes that the government has failed to make the case for the need for further extension of pre-charge detention. Indeed, in its July 2007 report, *Counter Terrorism Policy and Human Rights*⁴, the Joint Committee on Human Rights noted that the government had "queried whether it is "useful" to look for "evidence" of the need to extend the period of pre-charge detention", and argued that the purpose of the proposed consultation is to arrive at "a view that is part evidence-based, part speculation and partly based on making some assumptions, to the extent that we can, about the nature of the threat that is to come".⁵
8. Like the Human Rights Committee we are deeply worried at the suggestion that the case for extending pre-charge detention does not need to be justified by clear evidence about the inadequacy of current arrangements. We agree that the case for extending pre-charge detention is a significant deprivation of the right to liberty, and that it must therefore be justified by a compelling, evidence-based case.
9. The Joint Committee on Human Rights argues that the evidence needed to make a case for any extension of pre-charge detention periods would be "firm statistical evidence demonstrating the number of actual cases in which the current limit had either prevented charges from being brought at all, or required the police to bring the wrong or inappropriate charges"⁶.
10. FTI is therefore deeply concerned at the government's own admission in the discussion paper that since the 2006 legislation came into effect, "there has been no case in which a suspect was released but a higher limit than 28 days would definitely have led to a charge".⁷

¹ Options for Pre-Charge Detention in Terrorist Cases, Home Office, 25 July 2007
<http://security.homeoffice.gov.uk/news-publications/publication-search/counter-terrorism-bill-2007/pre-charge-detention.pdf?view=Binary>

² Liberty Submission to Home Affairs Committee, July 2007
<http://www.liberty-human-rights.org.uk/pdfs/policy07/home-affairs-ctte-counter-terrorism.pdf> Liberty Submission to Home Affairs Committee, September 2007
<http://www.liberty-human-rights.org.uk/pdfs/policy07/home-affairs-ctte-counter-terrorism-further-evidence.pdf>

³ JUSTICE submission to Home Affairs Committee, July 2007
<http://www.justice.org.uk/images/pdfs/HAC%20counter%20terrorism%20proposals%20submn%20july%2007.pdf>

JUSTICE submission to Home Affairs Committee, September 2007
<http://www.justice.org.uk/images/pdfs/HACcounterterrorismproposalssubmnsept07.pdf>

⁴ Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning (30 July 2007: HL 157/HC 394)

<http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/157/157.pdf>

⁵ *Ibid*, paragraph 42

⁶ *Ibid*

⁷ Options For Pre-Charge Detention In Terrorism Cases (Home Office: 25 July 2007), page 8
<http://security.homeoffice.gov.uk/news-publications/publication-search/counter-terrorism-bill-2007/pre-charge-detention.pdf?view=Binary>

11. The discussion paper on options for pre-charge detention attempts to justify an extension on the grounds that there is “further, clear evidence that the threat is increasing, and that cases are becoming more complex... thereby increasing the pressure on investigation teams to put together charges within a given time limit,” and on the belief that “there will be cases in the future, possibly quite soon, in which more than 28 days will be needed for charges to be brought”.⁸
12. This argument makes it clear that the case for extending pre-charge detention is precautionary in nature, and not based on the kind of rigorous evaluation of the current limit that would be needed to make good evidence-based policy.
13. Furthermore, we are deeply concerned that this argument seems to bypass the presumption of innocence that is a fundamental part of a suspect’s fair trial rights. The complexity of cases and the volume of information have little bearing on whether a suspect is guilty or innocent. Holding people without charge for lengthy periods, based on the assumption that evidence will be found to prove their guilt, is a disproportionate violation of the right to liberty and presumption of innocence, and undermines the fundamental values of our justice system.
14. In summary, FTI believes that the case for further extension of pre-charge detention has not been successfully made, and that a blanket extension of pre-charge detention without such a sufficient evidence base is a violation of the right to liberty and the presumption of innocence.
15. As such, FTI opposes any blanket extension to the current 28-day limit on pre-charge detention, and therefore opposes options 1 and 2 in the discussion paper.

Use of the Civil Contingencies Act 2004

16. FTI recognises that the Police and Security Services have legitimate concerns over the current limit on pre-charge detention in certain cases. In times of national emergency, additional restrictions to liberty may be justified if they are appropriate and proportionate. However, we believe that new legislation allowing extension of pre-charge detention in all cases is unnecessary and unjustified, and that a more proportionate solution is required.
17. FTI supports Liberty and Justice’s view that the Civil Contingencies Act already provides the government with the power to extend pre-charge detention in a targeted and temporary way for terrorist suspects in emergency situations, and that it has the benefits of being “strictly time-limited, subject to parliamentary supervision, and otherwise compatible with the requirements of the Human Rights Act and Article 15 of the European Convention on Human Rights.”⁹
18. FTI believes that the government should use the powers that it already has before considering additional legislation that imposes a precautionary blanket extension of pre-charge detention, when there is no evidence-base for doing so, and when it has already enacted specific legislation for this very purpose.

Alternative options

19. FTI supports Liberty and Justice’s proposals to adopt realistic alternatives to extending pre-charge detention in terrorist cases, including removing the bar to the use of intercept evidence in court, and allowing post-charge questioning with appropriate judicial oversight, providing that the initial charge is legitimate.

⁸ *Ibid*

⁹ JUSTICE submission to the Home Affairs Committee, September 2007, page 6
<http://www.justice.org.uk/images/pdfs/HACcounterterrorismproposalssubmnsept07.pdf>

20. Both Liberty and Justice have commented in detail on both of these proposals so we do not intend to reiterate their arguments, other than to be clear that FTI agrees these measures should be adopted as *alternatives* and not *additions* to an extension on pre-charge detention.

Head of Research and Campaigns
October 30th 2007