

Home Office Consultation on Counter-Terrorism Measures

Submission from the Mayor of London

1. The Mayor welcomes the opportunity to comment on the consultation paper 'Possible Measures for inclusion in a future Counter Terrorism Bill' and the accompanying documentation. The decision to permit public engagement with the proposals before the commencement of the legislative process is welcome.
2. The Government's stated intention to allow time for pre-legislative scrutiny of the future Counter Terrorism Bill by relevant select committees is also to be welcomed. The Mayor agrees with the Government that a more consensual approach to the development of legislation in this area is highly desirable.
3. The Mayor supports a number of the proposals put forward in the published documents, but has some concerns about other aspects. Promoting community safety requires the full involvement, trust and co-operation of all our communities. It is essential therefore that any new anti-terror laws do not inadvertently serve to alienate sections of society whose support is integral to our success, and do not risk fuelling prejudice and intolerance. The emphasis must be on developing effective engagement with all communities, and developing policies and laws that not only protect, but also unite rather than divide.
4. The London bombings of July 2005 and the failed attacks of June 2007 served to demonstrate the need for a range of appropriate and rigorous measures that can be used to prevent attacks on the innocent and to bring suspects to justice. However, the Mayor believes that adequate resourcing of police counter-terrorist activities can do a great deal to protect Londoners, and stands at least as great a chance of effectiveness as the introduction of new counter-terrorism legislation.
5. The Mayor believes that it is essential that a respect for human rights principles and law underpins all counter-terrorism legislation. A human rights based approach is essential if the new measures are to succeed in attracting the widespread and diverse public support that is so important to police efforts to prevent further terrorist attacks.
6. The Mayor is disappointed that the Government has not used the opportunity presented by the proposed new legislation to make more significant amendments to the legal definition of terrorism in the light of the Carlile review. The Mayor believes that the current definition does not command broad support and has contributed to the mistrust and suspicion that many communities feel in regard to terrorism laws. This feeling is particularly acute in relation to the glorification clauses of the Terrorism Act 2006, where a lack of clarity over the definition of

terrorism has led to resentment that the law may be criminalising legitimate activities.

7. There is evidence that a number of the counter-terrorism measures introduced since 2001 have been viewed by some Black and other minority ethnic (BAME) communities, particularly the Muslim community, as being targeted disproportionately at them. There is a risk that the resulting resentment and fear may lead to an increased reluctance among these communities to provide vital co-operation and assistance to the police and security services. Such resentment can also lead to the undermining of confidence in the security services, criminal justice system and the Government amongst those communities. In formulating any new legislation, it is essential that the effects of previous measures on community relations are carefully considered and that there is a genuine willingness to listen to the experiences of different communities.
8. It is essential that a full equalities impact assessment be carried out on the proposed legislation before it is submitted to parliamentary scrutiny.
9. In consulting on this package of measures, it is essential that the Government engages with Muslim organisations that are representative and seen to be representative within the community, and which have a democratic basis. The criteria for engagement should not be the degree to which organisations may or may not agree with the Government's policies. Indeed, it is only by achieving a successful dialogue with all parts of the Muslim community, including those that do not agree with all aspects of the Government's approach, that we have any hope of success.
10. A number of the Government's proposals raise issues of civil liberties that will be of concern to all sections of society. It is important that such concerns are positively engaged with by the Government in order that the eventual package of measures can obtain the broadest possible support. The Mayor is in sympathy with many of the concerns expressed by groups such as Liberty, particularly in regards to an extension of the period of pre-charge detention, where the Mayor does not believe that the undermining of civil liberties is justified by the limited benefits arising from such a policy.

Extension of Period of Pre-Charge Detention

11. The Mayor is not convinced of the need for a further extension of the period of detention without charge. Whilst accepting the difficulties facing the police and security services in securing the evidence required to bring charges in complex terrorism-related cases, the Mayor believes that other measures proposed in the

published documents, including the admission of intercept evidence and post-charge questioning, will be of greater benefit in assisting the police in prosecuting terrorist cases.

12. The Mayor believes that any extension to the period of pre-trial detention could prove to be counter-productive by damaging community relations and leading to reduced support for the police as a result of the high likelihood of innocent people being deprived of their liberty for a long period. Of the 1126 people arrested under the Terrorism Act 2000 between September 2001 and the end of 2006, 652 have been released without charge.
13. In determining any extension to pre-charge detention, the effects on those detained, their families and communities must be carefully considered, particularly in the light of the high numbers currently being released without charge. With the prospect of 90-day detention being seriously discussed, it must be remembered that this would raise the possibility of an innocent individual being held for the equivalent of a six month custodial sentence.
14. Lengthy pre-charge detention impacts significantly on the individuals involved, their families and their communities, potentially denting public confidence in policing and the criminal justice system. Such damage would be deeply regrettable given the progress made in this area in London in recent years.
15. Whilst the Mayor does not accept that the case has been made for the introduction of a further extended period of pre-charge detention, it is to be welcomed that three of the four options set out for consideration in the document 'Options for Pre-Charge Detention in Terrorist Cases' provide for an increase in parliamentary scrutiny of such detentions. This increased scrutiny should happen whether or not the detention period is extended.
16. Effective parliamentary scrutiny, as envisaged by options 1 to 3 would require MPs to be provided with sufficient degrees of information on the individual cases concerned, which raises issues of confidentiality and security. Greater detail needs to be provided as to the level of information to be made available to parliament.
17. The fourth option, of judge-managed investigations, is worthy of further consideration as to its viability within a UK context. This option should only be considered alongside the retention of a parliament-determined upper limit on detention and effective scrutiny.

Post-charge Questioning

18. The Mayor is broadly supportive of the proposal to introduce post charge questioning for those charged with terrorist offences and shares the view of the Home Affairs Select Committee that this would be an effective measure in obtaining legitimate prosecutions, particularly in complex and evidence-heavy cases.

19. It is essential that post-charge questioning be subject to judicial oversight in all cases. The Mayor further believes that a decision to permit such questioning in terrorism cases should not mean an inevitable roll-out across non-terrorism related cases. Legislation on this issue should specifically limit its scope to charges under the Terrorism Act 2000 and require parliamentary approval for any further extension.

Use of Intercept Evidence

20. The increasingly sophisticated technology used by terrorists to plan and carry out attacks means it is essential that the police and security forces have the means to be sophisticated in how they gather and use evidence.

21. The Mayor is supportive of measures that make it easier for the police to make use of sensitive evidence, including intercept evidence, in trials of terrorism suspects. The Mayor therefore welcomes the establishment of the Privy Council review of the potential use of intercept evidence in terrorism-related trials and hopes that it will prove possible for a solution to be found to balance the use of such evidence in court and the effective conduct of security operations.

22. Lifting the ban on admitting intercept evidence would bring the UK in line with a great number of other common law jurisdictions and would provide a much needed additional tool for the police. The Mayor urges the Government to examine the experience of other jurisdictions in this area in order to inform an acceptable solution.

Enhanced Sentencing

23. The Mayor does not consider that a case has been made regarding the necessity or effectiveness of enhanced sentencing for non-terrorist offences believed to be linked to terrorist offences.
24. Given the increased scope of terrorist offences arising from recent legislation, it seems unlikely that any significant number of genuine terrorists could not be charged with an offence under such legislation. In any remaining cases, the evidence of a terrorism-linked motive is likely to be too limited to allow such an enhanced sentence to be passed. The Mayor does not therefore believe that this would represent an effective tool in terms of combating terrorism.

Terrorism motivated by racial or ethnic cause

25. The Mayor welcomes the proposal to clarify the legal definition of terrorism through the addition of a specific reference to terrorism motivated by racial or ethnic cause, as recommended by Lord Carlile. However, as explained earlier, the Mayor does not feel that proposed amendments to the definition of terrorism are sufficient.
26. The campaign of nail-bombings conducted by David Copeland against a number of specific communities, including ethnic groups, in London during 1999 demonstrates the genuine threat of terrorism motivated by race and ethnicity occurring in the UK. The Mayor believes it is important that clarity is achieved that any such acts would be covered by the Terrorism Act 2000 and later legislation.

Stop and Question

27. The Mayor is pleased to note that there is no proposal included in the papers published on 25 July for the provision of police powers to stop and question, following the trailing of such a policy in the discussion document published in June 2007.
28. The Mayor would be strongly opposed to the introduction of any such powers. The experience of London of the operation of stop and search powers without proper safeguards and the consequent damage to relations between the police

and BAME communities demonstrates the potential dangers of such sweeping powers.

29. Figures relating to existing powers in relation to stop and search show a significant bias towards BAME communities in their usage, with an individual from a BAME group twice as likely to be stopped and searched and a black person being four times more likely to be stopped and searched compared to a white individual under PACE laws in London. It is highly likely that any extension of these powers to stop and question would lead to a similar bias, with the potential for further damaging trust and cooperation between communities and the police.

30. Both the Metropolitan Police Authority and the Metropolitan Police Service have made it clear that they see no need under current circumstance for such a sweeping power and that powers invested in the police under Section 44 are considered adequate. The Metropolitan Police Authority has also raised strong concerns about the effect on community relations in London and on police accountability from any extension of stop powers.