

E.R

Monday, 15 June 2009

HOME OFFICE

CONTROL ORDER POWERS (11 MARCH 2009 – 10 JUNE 2009)

The Minister of State for Policing, Crime & Security, David Hanson:

Section 14(1) of the Prevention of Terrorism Act 2005 (the 2005 Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of control order powers during that period.

The level of information provided will always be subject to slight variations based on operational advice.

Control orders continue to be an essential tool to protect the public from terrorism, particularly where it is not possible to prosecute individuals for terrorism-related activity and, in the case of foreign nationals, where they cannot be removed from the UK.

As stated in previous quarterly statements on control orders, control order obligations are tailored to the individual concerned and are based on the terrorism-related risk that each individual poses. Each control order is kept under regular review to ensure that obligations remain necessary and proportionate. The Home Office continues to hold Control Order Review Groups (CORGs) every quarter, with representation from law enforcement and intelligence agencies, to keep the obligations in every control order under regular and formal review and to facilitate a review of appropriate exit strategies. During this reporting period, three CORGs were held in relation to the orders currently in force. In addition, further meetings were held on an ad-hoc basis as specific issues arose.

During the period 11 March 2009 to 10 June 2009, five non-derogating control orders were made and served. Six control orders have been renewed in accordance with section 2(6) of the 2005 Act. One control order against an individual was revoked prior to being quashed by the court. One further control order has been revoked on direction from the court. Two non-derogating control orders made but not served in the previous quarter have also been revoked and one control order made but not served in a previous quarter has expired.

In total, twenty control orders are currently in force, ten of which are in respect of British citizens. Six individuals subject to a control order live in the Metropolitan Police Service area; the remaining individuals live in other police force areas. All of these control orders are non-derogating. No prosecutions for breaching a control order were completed during this reporting period.

During this reporting period, 108 modifications of control order obligations were made. 24 requests to modify control order obligations were refused. A right of appeal is provided for by section 10(1) of the 2005 Act against a decision by the Secretary of State to renew a non-derogating control order or to modify an obligation imposed by a non-derogating control order without consent. Six appeals have been lodged with the High Court by controlled persons in relation to the renewal of control orders during this reporting period. Three appeals have been lodged against decisions by the Secretary of State to modify obligations imposed by non-derogating control orders without consent. A right of appeal is also provided for by section 10(3) of the 2005 Act against decisions by the Secretary of State to refuse a request by a controlled person to revoke their order and/or to modify any obligation under the order. Two appeals have been lodged with the High Court by controlled persons relating to refusal to modify a control order.

Two judgments have been handed down by the High Court in control order cases during this reporting period in relation to substantive reviews of the individual control orders under section 3(10) of the 2005 Act. In *Secretary of State for the Home Department v. AT and AW* a judgment was handed down on 20 March 2009. The court ruled that the control order imposed on *AT* remains necessary and proportionate but quashed one obligation and directed the Secretary of State to amend another. In the case of *AW*, the court quashed the control order on the grounds that the decision to make the control order was made on a materially erroneous basis. A judgment was handed down in the case of *Secretary of State for the Home Department v. AV* on 30 April 2009. The court directed the Secretary of State to revoke the order on the basis that recent events pertinent to the case meant the order was no longer necessary, although the High Court was satisfied that the decisions to make the original control order and the renewed control order were necessary and not flawed.

One judgment was handed down by the High Court during this reporting period in relation to a modification appeal under section 10(3) of the 2005 Act. In *Secretary of State for the Home Department v. AM*, judgment was handed down on 23 March 2009. The court dismissed the appeal and upheld all obligations as necessary and proportionate.

One judgment was handed down by the High Court during this reporting period in relation to an application for interim relief pursuant to an application for judicial review, the purpose of which was to prevent the Secretary of State from acting on a modification to a control order. In *Secretary of State for the Home Department v. BM*, the judgment handed down on 22 May 2009 refused injunctive relief and gave directions for the section 10(1) appeal against the modification.

Two controlled persons have applied for, and been granted permission, to appeal to the Court of Appeal against High Court judgments in this reporting period. The Secretary of State has also applied for, and been granted permission, to appeal to the Court of Appeal in relation to two control order cases.

As reported in the last written ministerial statement, the House of Lords heard the appeals in the cases of *AE*, *AF* and *AN* between 3 and 9 March 2009. The judgments, handed down on 10 June 2009, held that for control order proceedings to be compatible with Article 6 of the ECHR, a controlled person must be given sufficient information about the allegations against him to allow him to give effective instructions in relation to those allegations. Provided that this requirement is satisfied there can be a fair trial notwithstanding that the controlled person is not provided with the detail or the sources of the evidence forming the basis of the allegations. Where, however, the open material consists purely of general assertions and the case against the individual is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be. All three appeals were allowed and the cases will now be remitted to the High Court for this disclosure test to be applied.

Full judgments are available at <http://www.bailii.org/>.