

SPECIAL REPORT OF THE
INDEPENDENT REVIEWER IN
RELATION TO QUARTERLY
REPORTS TO PARLIAMENT UNDER
SECTION 14(1) OF THE
PREVENTION OF TERRORISM ACT
2005

11 December 2006

Text of Lord Carlile's report to the Home Secretary on quarterly statements

Lord Carlile of Berriew Q.C.

**9-12 Bell Yard
London
WC2A 2JR**

**carlileqc@aol.com
Tel 020 7400 1800
Fax 020 7681 1250**

17th November 2006.

The Rt Hon Dr John Reid M.P.
Home Secretary
2 Marsham Street
London SW1P 4DF

Dear Home Secretary

I write further to my letter of the 19th October.

I now enclose my separate report in connection with your quarterly reports to Parliament on control orders.

You will see that I have recommended in paragraph 27 that those quarterly reports should contain rather more information than has been the practice hitherto. I hope that you will agree that this can be achieved without risk to national security or to those who are subject to the orders.

Yours ever

Alex Carlile

Alex Carlile

Report in connection with the Home Secretary's quarterly reports to parliament on control orders

prepared by

Lord Carlile of Berriew Q.C., Independent Reviewer of Terrorism Legislation

I. The *Prevention of Terrorism Act 2005*, section 14, provides –

14 Reporting and review

- (1) *As soon as reasonably practicable after the end of every relevant 3 month period, the Secretary of State must–*
- (a) *prepare a report about his exercise of the control order powers during that period; and*
 - (b) *lay a copy of that report before Parliament.*
- (2) *The Secretary of State must also appoint a person to review the operation of this Act.*
- (3) *As soon as reasonably practicable after the end of–*
- (a) *the period of 9 months beginning with the day on which this Act is passed, and*
 - (b) *every 12 month period which ends with the first or a subsequent anniversary of the end of the period mentioned in the preceding paragraph and is a period during the whole or a part of which sections 1 to 9 of this Act were in force,*
- the person so appointed must carry out a review of the operation of this Act during that period.*
- (4) *The person who conducts a review under this section must send the Secretary of State a report on its outcome as soon as reasonably practicable after completing the review.*
- (5) *That report must also contain the opinion of the person making it on–*
- (a) *the implications for the operation of this Act of any proposal made by the Secretary of State for the amendment of the law relating to terrorism; and*
 - (b) *the extent (if any) to which the Secretary of State has made use of his power by virtue of section 3(1)(b) to make non-derogating control orders in urgent cases without the permission of the court.*
- (6) *On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.*

(7) *The Secretary of State may pay the expenses of a person appointed to carry out a review and may also pay him such allowances as the Secretary of State determines.*

(8) *In this section—*

"control order powers" means—

(a) *the powers of the Secretary of State under this Act to make, renew, modify and revoke control orders; and*

(b) *his powers to apply to the court for the making, renewal, revocation or modification of derogating control orders;*

"relevant 3 month period" means—

(a) *the period of 3 months beginning with the passing of this Act;*

(b) *a period of 3 months beginning with a time which—*

(i) *is the beginning of a period for which sections 1 to 9 are revived by an order under section 13; and*

(ii) *falls more than 3 months after the time when those sections were last in force before being revived;*

(c) *a 3 month period which begins with the end of a previous relevant 3 month period and is a period during the whole or a part of which those sections are in force.*

2. Currently I am the person appointed to carry out the statutory reviews referred to in that provision.
3. On the 18th October 2006 the Home Secretary wrote to me to ask if, in my annual review for the year 2006, I would pay particular attention to the way in which he meets his obligations under section 14(1) to produce a report for Parliament each quarter on the exercise of the powers under the Act. Copies of the Home Secretary's letter and of my reply are attached as Annex A to this report.
4. The Home Secretary's last quarterly report to parliament was laid during Recess on the 11th September. A copy is attached as Annex B. It contained accurate statistics on the number of control orders made and in force. It was in the same format as previous quarterly reports.

5. Given that the next quarterly report is due in early December, I have decided that it would be more helpful if I were to produce this early document in full response to the issues raised with me, rather than wait for the later production of my complete *section 14* report in early 2007. This document should be read as a part of my review of the operation of the control orders system in 2006.
6. All the control orders made so far are non-derogating orders. What follows should be read as only applicable to orders not involving derogation from international treaty obligations, particularly the *European Convention on Human Rights*.
7. On the 31st October 2006 there were 15 control orders in force. On an ongoing basis, I have been reviewing the making and operation of every control order. I have had access to all relevant documents, including closed material. I have reviewed the making and operation of the orders, including their progress through the High Court, and the nature and consequences of alleged breaches.
8. On the 31st October 2006, 8 of the controlled persons resided in the Metropolitan Police area. The remaining 7 lived in 5 different police areas in England, i.e. 2 within a single police force and each of the others in a separate police area. Thus there were 6 police forces in England with controlled persons living within their force areas. Some live in places where they might be identified relatively easily if their names or appearances were known publicly.
9. Each controlled person's case comes before the High Court once the Secretary of State determines that a control order should be made. In almost every case the Court makes an order for the controlled person's anonymity. This is consistent with the practice in immigration cases, in which all appeals are anonymised. Until relatively recently almost all those subject to control orders were not UK nationals, and therefore were subject to immigration controls.

10. Anonymity is a proper protection for those placed under orders for reasons including –

- (a) they are not accused of any criminal offence as a result of the order being made: publicity of names and any other details might create the contrary impression and cause further disadvantage in their daily lives;
- (b) identification of them as suspected terrorists might lead particularly to difficulties in relation to their homes and families, if the local community could identify their whereabouts;
- (c) the potential for prejudice if any future criminal proceedings were brought against the controlled person.

11. Anonymity can be of assistance to the authorities for reasons including –

- (a) local policing resources can be used with less disruption (e.g. for protection of the controlled persons and their homes) if details including addresses are not known publicly;
- (b) the detection of terrorists not subject to control orders may in some cases be assisted if others are unaware of the existence in relation to a particular person of a control order;
- (c) other operational reasons.

12. I have received direct representations concerning anonymity. All have been in favour of its retention. However, I am well aware that publicized breaches have frustrated the media, who wished to publish names of which they were aware. They could not do so, as publication would have been in breach of court orders. As a general principle, the press should be free to publish absent a clear determination that it is in the public interest that they should not.

13. I have reviewed each alleged breach of control orders, using information from the police and the Home Office. These have been numerous, though in

scale most have been minor. They have included lateness in reporting to police stations, minor tampering with tags, unauthorized meetings and visitors. There have been instances of unauthorized possession of SIM cards and, occasionally, mobile telephones.

14. Adjustments have been made on the individual merits to control order obligations, to reflect special requests and individual circumstances. These have included changes to facilitate religious observation.
15. Where there have been more significant alleged breaches of conditions, charges have been brought under the breach provisions of the 2005 Act.
16. In one instance the charge was not proceeded with on an assessment of the merits following an alteration in control order conditions as a result of High Court proceedings.
17. Another controlled person was charged with 7 breach offences. After a period in custody he was granted bail. His control order was quashed following proceedings in the High Court and Court of Appeal. A new control order was to be served, but before service he disappeared and remains at large. As it has not been served, he is not one of the 15 men currently subject to control orders. If apprehended, there cannot be a prosecution for any breaches at the present time since the previous control order was quashed by the Court of Appeal.
18. In another case failures to report to the police (as required by the Order) led to 3 breach charges. Some time after charge, the person concerned was sectioned under the *Mental Health Act 1983*. After an altercation with another patient he absconded through a window from a semi-secure hospital ward. He remains at large.
19. In another case the controlled person was arrested for breach offences after numerous alleged infractions including failures to report. The CPS will advise shortly whether he should be prosecuted.

20. There may be charges brought for breaches in other cases. These matters are considered on a continuing basis.
21. Having considered the facts in each case, I am satisfied that the two disappearances referred to above present little direct risk to public safety in the UK at the present time. The circumstances of the two cases are different, but in each case it is unlikely on the facts that active terrorists would wish their presence or involvement at the present time in any activity or planning, despite the knowledge and connections which had led to the control orders made against them.
22. In my view the grounds for continuing anonymity in the case of the two disappearances remain as good as when made, possibly better. Again on the facts of the cases, it seems to me that the authorities may well be more likely to ascertain the whereabouts of the two men without publicity. This may change, and may have to be determined eventually by the Courts. As independent reviewer I agree with the Home Secretary's decision, based on the operational advice of the National Co-ordinator of Terrorist Investigations, that anonymity should remain for the present at least.
23. However, cases might arise in the future in which the public interest might require the open circulation of the name, description and details of a controlled person – whether it be because they were suspected of dangerousness whilst at large, or for their own protection. That should be for operational judgment in each case. If the legislation needs to be amended so that these matters are clear, it might usefully be included in a forthcoming Bill.
24. As a connected observation, though strictly outside the Home Secretary's letter to me of the 18th October 2006, it may well be that *section 3* and *section 15(3)* of the 2005 Act would benefit from amendment to enable the Court to make relevant amendments to non-derogating control orders so that an obviously flawed obligation (e.g. an over-long curfew) need not be quashed but may be altered. If there remains any doubt about this, a clarifying

legislative amendment would be a matter of common sense and should be made.

25. Where litigation is continuing in the High Court and on appeal in connection with control orders, judgments will almost always be given in open court. These too are currently publicized without identification of the controlled person. I can see no difference in principle between these and breach cases. In giving this view, I have taken into account recent representations by the media before the Courts.

26. The above comments are all germane to the issue of the content of the Home Secretary's quarterly reports to Parliament. In my view there would be benefit if they were somewhat more informative than the statistical but otherwise minimal formula currently in use. Indeed, a formulaic approach is undesirable. As much information as is sensible given the nature of control orders, and national security, should be given.

27. Without prescribing a formula, I suggest that the quarterly reports should include –

- (i) the number of control orders in existence at the time of the report;
- (ii) how many of the controlled persons are UK/non-UK nationals;
- (iii) the number of control orders that have ceased to have effect since the last report;
- (iv) the number of new orders since the last report;
- (v) how many apply to males and females respectively;
- (vi) how many are resident in the Metropolitan Police area and other police areas (taken as a whole) respectively;
- (vii) how many have been charged for breach of control order obligations;

- (viii) a general description of the level of compliance with conditions, including some description of the nature of breaches, perhaps along the lines of the information given in paragraphs 13 and 16-20 above;
- (ix) any material decisions about anonymity;
- (x) a short assessment of the continuing value or otherwise of control orders;
- (xi) reassurance that each control order is reviewed on a continuous and routine basis by officials and (when appropriate) Ministers, to ensure that their continuance and conditions remain necessary in the public interest.

28. I trust that the above answers the questions raised with me.

Alex Carlile

Lord Carlile of Berriew Q.C.

9-12 Bell Yard, London WC2A 2JR

carlileqc@aol.com

November 2006

ANNEX A:

**TEXT OF THE EXCHANGE OF CORRESPONDENCE
BETWEEN THE HOME SECRETARY AND LORD CARLILE**



HOME SECRETARY

2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Lord Carlile of Berriew Q.C.
9-12 Bell Yard
London
WC2A 2JR

18 October 2006

**PREVENTION OF TERRORISM ACT 2005: OBLIGATIONS FOR THE
QUARTERLY REPORT TO PARLIAMENT UNDER SECTION 14(1)**

I am writing to ask if, in your annual review of the operation of the Prevention of Terrorism Act 2005, you could pay particular attention to the way in which I meet my obligations under Section 14(1) of the 2005 Act to produce a report for Parliament each quarter on the exercise of the powers under the Act.

We have so far produced a short Ministerial Statement every quarter in a standard format to meet this requirement. This contains statistics on the number of control orders made, modified, renewed and in operation. The most recent Ministerial Statement was laid during Recess on 11 September and was in the same format as previously. This contained accurate statistics on the number of orders made and in force.

However, as you will be aware, there has been some concern that the Ministerial Statement did not highlight sufficiently the situation as regards one of the individuals whose case was dealt with in the Court of Appeal judgement on 1 August. The second case referred to in the media today occurred after the Ministerial Statement on 11 September and therefore falls outside the period covered by the report in question.

I attach great importance to making sure that we strike the right balance between being transparent with Parliament and police operational priorities. I would therefore be grateful if you could consider whether the current approach is appropriate or could be improved.

Your annual report also addresses the issue of breaches of control orders. I assume therefore that you will be reporting on both cases currently in the media as well as other breaches.

In view of the interest in Parliament about this issue I am copying this letter to the Speaker and placing a copy in the libraries of both Houses.

Finally, I look forward to meeting you soon to discuss your role as the Independent Reviewer of counter terrorism legislation, including the 2005 Act.

JOHN REID

Lord Carlile of Berriew Q.C.

**9-12 Bell Yard
London
WC2A 2JR**

carlileqc@aol.com
Tel 020 7400 1800
Fax 020 7681 1250

19th October 2006.

The Rt Hon Dr John Reid M.P.
Home Secretary
2 Marsham Street
London SW1P 4DF

Dear Home Secretary

Thank you for your letter of the 18th October.

I shall be happy to pay particular attention, in my forthcoming review of the operation of the Prevention of Terrorism Act 2005, to the way in which you meet your obligations under section 14(1) of that Act in relation to reports to Parliament.

It might be helpful if I were to provide a preliminary view separate from the report well before the next section 14(1) report is due in mid December. I shall endeavour to do this by letter.

My next report will address the issue of breaches of control orders, and I shall deal with both of the cases publicised recently. Of course, I was already aware of the earlier case prior to that publicity.

Yours ever

Alex Carlile

Alex Carlile

Annex B

Written Ministerial Statement of 11 September 2006

HOME DEPARTMENT

Control Order Powers

The Minister for Policing, Security and Community Safety (Mr. Tony McNulty):

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 the control order powers during that period.

During the period 11 June to 10 September 2006, nine orders were made with the permission of the court under section 3(1)(a) of the 2005 Act—one in respect of a British citizen on 19 June 2006, one in respect of a foreign national on 31 July 2006, six in respect of foreign nationals on 1 August 2006 and one in respect of a British citizen on 5 September 2006.

The Secretary of State has also renewed one control order in accordance with Section 2 (4) (b) of the 2005 Act on 30 August 2006.

There are 15 control orders currently in force, six of which are in respect of British citizens.

During the period two requests to modify a control order obligation were agreed, and seven requests to modify a control order obligation were refused. A right of appeal exists in section 10(3) of the 2005 Act against a decision by the Secretary of State not to modify an obligation contained in a control order.