HOUSE OF COMMONS
LIBRARY

Terrorism Prevention and Investigation Measures Bill

Bill 193 of 2010-11

RESEARCH PAPER 11/46 31 May 2011

This briefing on the *Terrorism Prevention and Investigation Measures Bill* has been prepared for the second reading debate on the Bill in the House of Commons. This is due to take place on 7 June 2011.

The Bill would abolish the system of control orders, established under the *Prevention of Terrorism Act 2005*, and replace it with a new regime designed to protect the public from terrorism, called Terrorism Prevention and Investigation Measures. The Coalition's Programme for Government had stated that the Government would "urgently review control orders as part of a wider review of counter-terrorist legislation, measures and programmes." These reforms were heralded by the Government's *Review of Counter-Terrorism and Security Powers*, published in January 2011.

Some critics of the control order regime have expressed a degree of scepticism about the new proposals, insofar as they retain the closed hearings used under the control order regime and sanctions would still be imposed on terrorist suspects outside the criminal justice system.

Alexander Horne

Recent Research Papers

11/36	Energy Bill [HL] [Bill 167 of 2010-12]	04.05.11
11/37	Education Bill: Committee Stage Report	05.05.11
11/38	Social Indicators	06.05.11
11/39	Legislation (Territorial Extent) Bill: Committee Stage Report	11.05.11
11/40	National Assembly for Wales Elections: 2011	19.05.11
11/41	Scottish Parliament Elections: 2011	24.05.11
11/42	Northern Ireland Assembly Elections: 2011	19.05.11
11/43	Local Elections: 2011	24.05.11
11/44	Alternative Vote Referendum	19.05.11
11/45	Unemployment by Constituency, May 2011	18.05.11

Research Paper 11/46

Contributing Author: Gavin Berman: Statistics

ISSN 1368-8456

Contents

Summary

The *Terrorism Prevention and Investigation Measures Bill*, introduced on 23 May 2011, contains 27 clauses and eight schedules. It is would abolish the current control order regime, commenced under the *Prevention of Terrorism Act 2005*, and replace it with new Terrorism Prevention and Investigation Measures (referred to throughout as TPIMs).

The new measures are designed to restrict the behaviour of terror suspects who, the Government argues, cannot be prosecuted or deported. They have already been dubbed "control orders lite" by some critics. This is because those individuals subject to TPIMs will still fall outside the criminal justice system and may not be presented with all the evidence against them, despite being subject to sanctions such as overnight residence requirements, travel bans and electronic tagging.

The Government has, however, been keen to point out differences between the new regime and its predecessor. In particular, it has argued that the new legislation will raise the standard of proof required to impose an order (the Secretary of State will be required to have a "reasonable belief" that the individual is or has been involved in terrorism-related activity, rather than a "reasonable suspicion" of involvement in such activity).

The severity of measures is said to have been toned down so that, for example, the 16 hour home curfew will be replaced by an "overnight residence measure" (although the term "overnight" has not been defined in the legislation). The Explanatory Notes to the Bill also indicate that it will no longer be possible to relocate individuals to another part of the country without their consent. Moreover, all the types of measures that can be imposed on individuals have been included in a list at Schedule 1 to the Bill (whereas the 2005 Act allowed the Secretary of State to impose any condition considered necessary to prevent or restrict an individual's involvement in terrorism-related activity).

While the *Prevention of Terrorism Act 2005* allowed for derogating control orders (i.e. orders which imposed obligations amounting to a deprivation of liberty within the meaning of Article 5 of the *European Convention on Human Rights*), the new measures make no allowance for derogating from the *European Convention on Human Rights.* No derogating control orders were ever issued under the 2005 Act.

Other new safeguards include the fact that there will be a two year time limit on the measures where there is no new terrorism-related activity on the part of the individual. Currently, control orders only remain in force for 12 months, but may be renewed indefinitely (although the powers are subject to annual renewal by Parliament). The Bill also requires the Secretary of State to consult the chief officer of the appropriate police force before measures are imposed on an individual, to determine whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence relating to terrorism. The chief officer would be required to report back to the Secretary of State on the ongoing investigation of the individual's conduct. In addition to this obligation, the Secretary of State would also be required to keep under review whether the relevant conditions necessary to impose the measures are met and whether the measures remain necessary.

The Secretary of State would be required to report to Parliament on a quarterly basis on the exercise of his or her powers, and to appoint a person to conduct an annual review of the operation of the Act, although unlike the relevant provisions in the *Prevention of Terrorism Act 2005*, TPIMs would not be subject to an annual renewal in Parliament.

In general terms, before imposing measures on an individual, the Secretary of State would have to seek the court's permission. However, in urgent cases, an emergency procedure

would be provided, although the Secretary of State would still have to refer the measure to the court for confirmation within seven days.

On the day the Bill was published, the Home Secretary, Theresa May, said:

> The threat from terrorism remains serious and complex, and the first duty of this government is to protect national security and public safety. Our absolute priority is to prosecute and convict suspected terrorists in open court. But there will remain a small number of people who pose a real threat to our security but who cannot be prosecuted or, in the case of foreign nationals, deported. The new regime of terrorism prevention and investigation measures will mean these individuals cannot go freely about their terrorism-related activities, and we can protect the public from the threat they pose.

She also indicated that there will be increased funding for the police and security service to enhance their investigative capabilities and enforce the new rules.

The existing control order regime will remain in place while the Bill is being scrutinised by Parliament to make sure there is no gap in public protection. The Bill would come into force as an Act the day after the day on which it is passed.

1 Introduction

1.1 Background

The *Terrorism Prevention and Investigation Measures Bill* was introduced in the House of Commons on 23 May 2011. Information on the Bill and its progress is available from the *Terrorism Prevention and Investigation Measures Bill 2010-11* page of the Parliament website. The second reading debate on the Bill is due to take place in the House of Commons on 7 June 2011.

The Bill would abolish the system of control orders, established under the *Prevention of Terrorism Act 2005* and replace it with a new regime designed to protect the public from terrorism, called Terrorism Prevention and Investigation Measures. The decision to abolish the control order system was not unexpected. In their 2010 Election Manifesto, the Liberal Democrats pledged to scrap control orders. In a policy review paper, entitled *A Resilient Nation*, published in January 2010, the Conservatives stated that they would "review the Control Order system with a view to reducing reliance on it and, consistent with security, replacing it". The Coalition's Programme for Government had stated that the Government would "urgently review control orders as part of a wider review of counter-terrorist legislation, measures and programmes." These reforms were also heralded by the Government's *Review of Counter-Terrorism and Security Powers*, published in January 2011.

The background to the enactment of the 2005 Act and the objections to the control order regime is discussed in the Library Standard Notes *Control Orders and the Prevention of Terrorism Act 2005* and *The Counter-Terrorism Review* and is also addressed in the Explanatory Notes to the Bill. Accordingly, these issues will not be extensively rehearsed here.

It is worth noting, however, that the control order regime was commenced under the abovementioned *Prevention of Terrorism Act 2005*: legislation that was introduced hurriedly following the decision of the House of Lords in *A v Home Office* [2004] UKHL 56 (often referred to as the 'Belmarsh case').[1]

Conservative and Liberal Democrat politicians have been critical of the control order regime for several years. When he was Shadow Home Affairs spokesman, Nick Clegg wrote in a Guardian article in 2007 that:

> It is true that the nature of modern terrorism poses huge challenges to our criminal justice system. But our response should be to reform, streamline and strengthen our system to bring terror suspects before court, rather than circumvent due process altogether. A battery of curfews and tags, imposed in a legal limbo at the behest of politicians, is no surrogate for the aggressive use of the full force of the law. Would-be terrorists are criminals, and should be treated as such.[2]

In 2009, Liberal Democrat Chris Huhne observed that "it is an affront to British justice and the freedom people have fought and died for to place people under de facto house arrest without even telling them why."[3] David Davis, a former Shadow Home Secretary, has recently argued that "control orders have been incredibly harmful to our cause and the sensible policy would have been to sweep them away completely and to replace them with something more

---

[1] For more information about these issues, see, for example: Alexander Horne. *A v Secretary of State for the Home Department - The Courts and Counter-Terrorism: Asserting the Rule of Law?* in *Cases that Changed Our Lives*, LexisNexis, October 2010

[2] "This is a fork in the road", *The Guardian*, 21 February 2007

[3] Chris Huhne, *Press Notice - Labour's discredited control orders must be scrapped – Huhne*, 18 January 2009

effective."[4] Dominic Raab, now MP for Esher and Walton, wrote in his 2009 book *Assault on Liberty*, that:

> Other measures to strengthen border controls and intelligence are likely to achieve far more in terms of public protection, at far less cost to individual liberty. The government should focus more on bolstering law enforcement through the courts – by using intercept evidence and post charge questioning – not weakening safeguards designed to protect the innocent.[5]

In February 2010, the Labour Government published its own assessment of the use of control orders. Contained in a memorandum to the Home Affairs Select Committee, entitled *Post-Legislative Assessment of the Prevention of Terrorism Act 2005* (Cm 7797) it noted that "in some cases control orders have successfully prevented involvement in terrorism-related activity. In others – the majority – they have restricted and disrupted that activity without entirely eliminating it."

The memorandum indicated that the Home Office had spent approximately £10.8 million on control orders between April 2006 and August 2009. In a more recent statement to the House of Commons, Home Office Minister James Brokenshire said that "the control orders regime cost the Home Office £12.5 million between 2006 and 2010."[6]

A series of issues arose following a string of legal challenges. These included:

- **The severity of restrictions placed on "controlees".** These included geographical relocation (sometimes dubbed internal exile); 16 hour home curfew (often referred to by critics as "house arrest"); electronic tagging; and, restrictions on telephone and internet usage. Particular concerns were expressed about the relocations and curfews; critics also argued that, taken together, measures could become oppressive. Measures applied should not infringe Article 5 of the *European Convention on Human Rights* (the right to liberty). Home curfews of 18 hours were ruled unlawful by the courts.

- **Whether the suspect should be told at least the gist of the case against him**. One of the most contentious features of the control order regime was that suspects (and their lawyers) were not told even the essence of the case against them. Instead their interests were represented by security cleared Special Advocates in closed hearings. This issue was subject to extensive litigation to the House of Lords and the European Court of Human Rights. In 2009, the House of Lords ruled that the suspect must be given the gist of the case against him (or her), or the imposition of a control order would not meet the fairness requirements of Article 6 of the *European Convention on Human Rights* (fair trial). This issue is discussed further, below, since closed hearings and the use of special advocates have been two of the main areas that critics of the control order regime have focused on.

---

[4] "David Davis: Government has 'missed a trick' on control orders", *Politics Home*, 26 January 2011

[5] Dominic Raab, *The Assault on Liberty*, Fourth Estate, 2009, p 54. For more information about the use of intercept evidence in terrorism-related cases, see Library Standard Note (SNHA 5249) The Use of Intercept Evidence in Terrorism Cases. In short, however, the Labour Government and the former Independent Reviewer of Terrorism Legislation, Lord Carlile QC, have never accepted that allowing intercept evidence would act as a "silver bullet" that would end the control order regime. On 26 January 2011, the Home Secretary, Theresa May, made a Written Ministerial Statement to the effect that the Coalition Government was committed to seeking to find a practical way to allow the use of intercept evidence in court, promising to report back on progress "during the summer"

[6] HC Deb 2 March 2011 col 424-6

- **The length of the orders**. Concerns arose as some of the suspects had been subject to control orders for several years. Once it became apparent that they could not be charged with any form of criminal conduct, it was suggested by some commentators that orders were being used as a method of "warehousing" suspects. Lord Carlile, the Government's Independent Reviewer of Terrorism Legislation until the end of 2010, expressed some concerns about indefinite use of orders in several of his reports and suggested that they should not be used for more than two years, save in exceptional cases. Professor Clive Walker, the author of *Blackstone's Guide to the Counter-Terrorism Legislation*, recommended that any replacement to control orders should only apply whilst the police or security services are actively investigating an individual (say for a period of one year).

In the first few years of the regime, concern was also expressed as to the number of suspects who absconded. There have been seven control order absconds since the *Prevention of Terrorism Act 2005* came into force in March 2005, although in one case the order was made but had never been served. Details of absconds are provided in the quarterly reports on control orders issued by the Home Office.

The statistics (see Annex 2 to this paper) demonstrate that whilst control orders were originally a method for dealing with foreign terror suspects (where it was impossible to deport them or prosecute them in the United Kingdom) they gradually began to be used against British nationals. By December 2010, all outstanding control orders applied to British nationals.

Following the completion of the counter-terrorism review, the Government announced in its accompanying report that it was proposing to end the control order system and replace it with what it described as a "less intrusive" system that would be "more clearly and tightly defined and more comparable to other restrictions imposed under other powers in the civil justice system".

In particular, the Government promised to end "forced relocation" and "lengthy curfews". It suggested that the new measures would last for no more than two years, unless there was "new material to demonstrate that a person concerned poses a continued threat" and that they have "re-engaged in terrorism-related activities".

The full control order regime will continue to operate until the replacement measures are brought into force. In a Ministerial Statement on 17 March 2011, the Home Secretary, Theresa May, said:

Control Order Statistics

As at 10 December 2010, there were 48 individuals who had been subject to a control order. A report by Lord Carlile QC broke down what had happened to the 40 individuals who had been, but were no longer, subject to a control order:

(i) 10 were served with notices of intention to deport and either held in custody or granted bail. 6 of these have now been deported.

(ii) 12 individuals have had their control orders revoked (because the assessment of the necessity of the control order changed).

(iii) Four individuals have not had their orders renewed as the assessment of the necessity of the control orders changed.

(iv) Three individuals had their orders revoked and not replaced as the Government concluded that the disclosure requirements required as a result of the decision of the House of Lords in *AF & Others* could not be met because of potential damage to the public interest.

(v) One individual absconded (in August 2006) after the Court of Appeal confirmed the quashing of his order – a new order had been made to serve on the individual but he absconded before it could be served. The new order was therefore never in operation.

(vi) Two individuals had their control orders quashed by the High Court. One of these was an individual who had absconded, but subsequently handed himself in to the police.

(vii) Three individuals had their control orders revoked on direction of the Court.

(viii) Five individuals' control orders expired, following their absconding from their control orders.

> I have now renewed the powers in the 2005 Act until 31 December 2011, following the debates in the House of Commons on 2 March and in the House of Lords on 8 March.[7]

Prior to the publication of the counter-terrorism review, then Shadow Home Secretary, Ed Balls, claimed that the coalition partners were playing politics with terrorism. He said:

> The experts I have spoken to in the security services and the police are very unconvinced that it is possible to keep our country safe without some kind of successor regime in place. That is not consistent with the Lib Dem manifesto. That is Nick Clegg's political problem. And this desperate attempt to play politics with this issue is, in my view, very mistaken.[8]

1.2 Response to the Counter-Terrorism Review

Following the publication of the counter-terrorism review, some critics, such as the civil liberties NGO Liberty, branded the new Terrorism Prevention and Investigatory Measures "control orders lite".

The Shadow Home Secretary, Yvette Cooper, argued that the changes were more an "amendment" of control orders rather than a replacement. She said:

> Actually what's happened is the rhetoric we've seen in opposition has been replaced by the reality of Government and they've had to face some difficult political facts.[9]

In his separate report, *Review of Counter-Terrorism and Security Powers*, commenting on the counter-terrorism review, the former Director of Public Prosecutions, Lord Macdonald of River Glaven QC (who had independent oversight of the Home Office review), questioned some of the detail of the Government's proposals. He stated that "the evidence obtained by the Review has plainly demonstrated that the present control order regime acts as an impediment to prosecution". He went on to say that:

> 8. I have no doubt that were a regime of restrictions against terrorist suspects to be linked to a continuing criminal investigation into their activities, many of the constitutional objections to such a regime would fall away. It is precisely because the present control order system stands apart from criminal due process that it attracts such criticism.
>
> [...]
>
> 16. There can be no doubt that the absence of any mandated link between control orders and criminal investigation significantly calls into question their legitimacy. The Review should give serious consideration to pursuing this option in the interests of due process.[10]

Nonetheless, Lord Macdonald acknowledged that there were circumstances in which individuals believed to be involved in terrorist activity could not presently be prosecuted, because there was insufficient (or no admissible) evidence against them "*for the time being*." In those circumstances, Lord Macdonald accepted that the evidence also showed that:

---

[7] HC Deb 17 Mar 2011 Col 27WS

[8] "Cameron 'playing politics' with Control Orders - Ed Balls", *BBC Online*, 6 January 2011. See also: Anti-terror control orders: the coalition remain divided, *Halsbury's Law Exchange*, 6 January 2011

[9] "Yvette Cooper: TPIMS are an 'amended' control order", *Politics Home*, 26 January 2011

[10] Lord Macdonald, *Review of Counter-Terrorism and Security Powers*, Cm 8003, January 2011

> It may be appropriate for the State to apply some restrictions upon those people, so long as those restrictions are strictly proportionate and do not impede or discourage evidence gathering with a view to conventional prosecution.[11]

Dr Eric Metcalfe, Director of Human Rights at the NGO JUSTICE, contended that:

> Seven men absconded under the control order regime. It seems even less likely that any serious terrorist would be stopped by the watered-down version announced today. The Coalition government promised to reverse 'the substantial erosion of civil liberties' under Labour but this review shows that that promise has also been eroded.[12]

The President of the Law Society was critical of the proposed reforms, suggesting that:

> The new regime will still impose significant restrictions on liberty, including a nightly curfew, electronic tagging and severely restricted communication – all based on unproven allegations and evidence that the suspect is often not aware of and therefore unable to answer.[13]

Shami Chakrabarti, the Director of Liberty, argued that if the proposals from the review were adopted:

> Spin and semantics aside, control orders are retained and rebranded, if in a slightly lower-fat form [...] As before, the innocent may be punished without a fair hearing and the guilty will escape the full force of criminal law.[14]

Lord Lloyd of Berwick, a former Law Lord, picked up on this issue during the last renewal debate on control orders, stating:

> The present indications are that the Bill will contain many of the objectionable features of the existing control order regime. Indeed, Liberty describes the new regime in its briefing note as simply control orders under a different name. Whether or not that is right is not a question for discussion today; that will be a matter for great debate when we see the Bill. No doubt the Government will then argue—as the Minister has indicated already—that there is a real difference between the Home Secretary being required to believe that a person is a terrorist and the Home Secretary being required to suspect that he is. Similarly, the Government will no doubt argue that the overnight residence requirement is much less restrictive than the curfew, which is to be abolished, and no doubt they will argue that the TPIM will allow access to the internet and much greater freedom to communicate and associate with others.[15]

In contrast, Lord Carlile QC, who until the end of 2010 was the Independent Reviewer of Terrorism Legislation, was reported as having commented on Radio 4 that:

> I believe that the Government has taken a very mature view of this, they have come a long way from the manifestos, which were written when they hadn't seen the evidence,

---

[11] *Ibid*,

[12] JUSTICE, Press Release, 26 January 2011

[13] "Law Society Warns Over Control Orders", *Law Society Gazette*, 28 January 2011.

[14] "Control orders: home secretary tables watered-down regime", *The Guardian*, 26 January 2011. Following the Counter-Terrorism Review, Liberty conducted a survey with the pollster You Gov. They posed the question: Which of the following is a better way of dealing with people suspected of terrorism, when they have not been arrested or charged? Restricting where suspects can go and who they can meet, electronically tagging them and banning them from using telephones and the internet - 40% NOT imposing such restrictions, but instead placing them under intensive surveillance and monitoring their communication, in order to gather evidence with which to prosecute them - 46% Don't know - 14% . For further details, see: Liberty, Press Release, 26 January 2011

[15] HL Deb 8 March 2011 Col 1588-90

> I believe that ministers from both coalition parties now recognise that there is a special system of law needed for a very small number of people.[16]

In his report on the operation of the *Prevention of Terrorism Act,* he went further, stating that:

> 52. The proposed replacement system [described in the Counter-Terrorism Review] shares several characteristics with control orders (and would provide commensurate protection). There is an acceptable balance of risk against other considerations. It should be seen as adopting a new approach to public protection against terrorism. This will be emphasised by raising the threshold to *reasonable grounds to believe*.
>
> 53. I would expect the replacement system to be required for a narrower range of cases than now (though one cannot predict that there will be fewer cases: that depends on the emerging picture).
>
> 54. I have suggested before that, for the lighter touch cases [...] a system of Certificates Restricting Travel could usefully be introduced, with some elements similar to ASBOs (Anti-Social Behaviour Orders) available too. Though not contained as a separate category in the Counter-Terrorism Review, I believe this suggestion merits further consideration.
>
> 55. In the current system, and for its replacement, I remain of the opinion I have expressed before about duration. Therefore I agree with the intention expressed in the Counter-Terrorism Review that there should be a maximum duration of the intervention of two years, with a new one available after that time only if there is new evidence that the individual has continued to be engaged or has re-engaged in terrorism-related activities.
>
> 56. In addition, I suggest that the threshold for intervention after two years should be raised to the balance of probabilities.[17]

1.3 A need for additional restrictive measures?

The counter-terrorism review stated that in addition to the measures contained in the proposed *Terrorism Prevention and Investigation Measures Bill,* there might be a need for some "additional restrictive measures" in case of future emergency (including curfews and further restrictions on association, communication and movement). The Government has undertaken to discuss draft legislation on these additional measures with the Opposition but has yet to publish any measures for Parliamentary scrutiny.

1.4 Developments following the publication of the Counter-Terrorism Review

The then Security Minister, Baroness Neville-Jones, gave evidence to both the Home Affairs Select Committee[18] and the Joint Committee on Human Rights[19] in February 2011.

The Home Affairs Committee asked the Security Minister to spell out the difference between control orders and the proposed TPIMs. She responded that:

> There is a pretty clear outline there of the nature of the measures and they are clearly more helpful, more liberal, and enable the individual to lead a more normal life than

---

[16] "Nick Clegg's opposition to control orders made without evidence says Lord Carlile" *Daily Telegraph*, 26 January 2011

[17] Home Office, *Sixth report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 3 February 2011

[18] Home Affairs Select Committee*, The Government's Review of Counter-Terrorism*, 1 February 2011, HC 675-iii 2010-2011

[19] Joint Committee on Human Rights, *Counter-Terrorism Review*, 8 February 2011, HC 797-i 2010-2011

> has hitherto been the case. So there is material difference in the kind of regime we are trying to put in place so that it is not as isolating and I think some have said psychologically damaging to the individual as the current regime. So we have had attention to that.[20]

The Joint Committee on Human Rights (JCHR) pressed the Security Minister to subject any "additional restrictive measures" which could be contained in emergency legislation to pre-legislative scrutiny. While she initially suggested that there was no commitment to do this, she promised to "take the Committee's point away".[21] The JCHR also took evidence from Lord Macdonald, who expanded on his views on the control order regime. He said that:

> The fundamental objection to the control order system has been that it is divorced from criminal justice and restrictions are put on people's liberty without there having been any form of prosecution or conviction. It is appropriate to restrict people's liberties in circumstances where crime is being investigated or where there is a pending prosecution; the bail system is the most obvious example. Bail conditions can be imposed on individuals by the police either before charge or after charge and before trial. Those conditions can be stringent. They are acceptable because a due process criminal justice episode is under way.
>
> It seems to me that in circumstance where the Home Secretary is declaring to the High Court that she has reasonable grounds to believe that an individual is involved in terrorist activity, it would be utterly perverse if there were not to be a coterminous criminal investigation into that individual. Sometimes there is not, and I think that is a serious difficulty. If there was a continuing criminal investigation of that individual, then restrictions placed on them seem to me to become far more proportionate and more constitutional. They could then last for as long as the investigation lasted, or for two years.
>
> I think this is a sensible proposal that would have the support of a wide swathe of opinion. It would reflect the reality of the situation that there ought to be investigations and I think it would deal with many of the constitutional objections to control orders. It would also underline the absolute primacy of prosecution. One of the central problems with control orders is that people became warehoused out of the clutches of criminal justice. In that very real sense, people who may have been involved in serious and persistent terrorist activity escaped justice. People who are involved in serious and persistent terrorist activity should be prosecuted and put in prison. To link restrictions to a criminal investigation is more likely to achieve that effect.[22]

1.5 Territorial extent

The majority of the provisions contained in the Bill extend across the United Kingdom (save that Clause 27(4) lists a series of provisions which do not extend to Scotland). These omissions relate to certain powers of entry, search and seizure (under Schedule 5) and the taking of fingerprints and samples (under Schedule 6).

---

[20] Home Affairs Select Committee*, The Government's Review of Counter-Terrorism*, 1 February 2011, HC 675-iii 2010-11, Q189

[21] Joint Committee on Human Rights, *Counter-Terrorism Review*, 8 February 2011, HC 797-i 2010-2011, Qq51-56

[22] Joint Committee on Human Rights, *Counter-Terrorism Review*, 8 February 2011 HC 797-i 2010-2011, Q2

2 The proposed new regime

Given the legal difficulties which emerged during the operation of the control order regime, the Government has attempted to highlight the differences between control orders and the proposed TPIMs regime throughout the Explanatory Notes to the Bill. The Home Office has also published a lengthy (24 page) European Convention on Human Rights Memorandum on the Bill, providing its assessment of the compatibility of the Bill's provisions with Convention rights. This paper will not attempt to replicate all of these arguments, but will highlight some of the suggested safeguards in the proposed new legislation and how the measures are said to said to differ from control orders.

Clause 1 of the Bill would repeal the provisions of the *Prevention of Terrorism Act 2005*, which currently allows for the imposition of control orders. This would bring an end to the control order system (subject to transitional provisions set out in **Clause 25** and **Schedule 8** of the Bill).

Clauses 2-4 of the Bill and **Schedule 1** set out the "new regime to protect the public from terrorism", referred to throughout as TPIMs.

2.1 Conditions to be met before imposing a TPIMs notice

A TPIMs notice can only be imposed where a series of conditions are met. These are set out in **Clause 3** and can be summarised fairly shortly:

- **Condition A**: The Secretary of State reasonably believes that the individual is, or has been, involved in terrorism-related activity (the "relevant activity");
- **Condition B**: Some or all of the relevant activity is new terrorism-related activity;
- **Condition C**: The Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for TPIMs to be imposed on the individual;
- **Condition D**: The Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified TPIMs to be imposed on the individual;
- **Condition E**: The court gives the Secretary of State permission under clause 6 of the Bill, or the Secretary of State reasonably considers that the urgency of the case requires TPIMs to be imposed without obtaining such permission.

"New terrorism-related activity" is defined at **Clause 3(6)** and "terrorism-related activity" is defined at **Clause 4**. The definition of "terrorism-related activity" includes activities which took place before the coming into force of the Bill.

Clause 10 of the Bill would require the Secretary of State to consult the chief officer of the appropriate police force before measures are imposed on an individual, to determine whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence relating to terrorism. A chief officer would be under a duty to consult the relevant prosecuting authority and would also be required to report back to the Secretary of State on the ongoing investigation of the individual's conduct.

2.2 Duration of measures

Subject to a number of exceptions, set out at **Clauses 13** (revocation and revival of TPIMs notices) and **Clause 14** (replacement of quashed TPIMs notices**)**, the new TPIMs regime

would be subject to certain time limitations. **Clause 5** indicates that notices are subject to a two year limit and are initially only in force for a period of one year, **Clause 5(2)** provides that the Secretary of State can, by notice, extend a TPIM for a period of one year, but only where conditions A, C and D are met, and only once.

The Home Office's European Convention on Human Rights Memorandum notes that following this two year period, no new TPIM could be imposed on an individual "unless the Secretary of State reasonably believes that the individual has engaged in further terrorism-related activity since the imposition of the notice (clause 3(2) and 6) and clause (5)." **Clause 26 (2)** provides that while there would have to be some new terrorism-related activity, the Secretary of State would also be able to take into account evidence he or she relied on in relation to the earlier TPIMs notice.

Commentary in Explanatory Notes (on **Clause 14**) make evident that "the policy throughout the Bill is that terrorism-related activity which occurs since the imposition of measures on an individual allows the Secretary of State to impose measures on that individual beyond the two year limit."

The Explanatory Notes highlight two substantive changes from the control order regime. First, a somewhat higher threshold in respect of the standard of proof required has been introduced for the imposition of a TPIMs notice (reasonable belief that the individual is or has been involved in terrorism-related activity, rather than reasonable suspicion of involvement in such activity). Lord Macdonald QC spoke about this amendment in his evidence to the JCHR, stating that:

> In the past, the test was reasonable suspicion. It is said that reasonable belief is a higher hurdle to pass. I have heard lawyers in the House of Lords argue about whether it really is a higher hurdle. I think it probably is, but only marginally so.[23]

In his most recent report reviewing the operation of the *Prevention of Terrorism Act 2005*, Lord Carlile QC observed that:

> 29. In my view every one of the control orders confirmed by the Courts since the system was introduced has at least satisfied the standard of *reasonable grounds for belief*, and in most cases by some distance the full civil standard of *balance of probabilities*.
>
> 30. The Counter-Terrorism Review proposes the raising of the standard of proof to *reasonable grounds for belief*. As will be clear from the above, I support this change. In my judgment it will make no material difference to the existing controlees.[24]

Second, Schedule 1 sets out the types of measures that might be imposed. The Explanatory Notes indicate that "this gives the Secretary of State more tightly prescribed powers than under the 2005 Act" which contained a non-exhaustive list of measures that might be imposed.

Clause 11 of the Bill would require the Secretary of State to "keep under review" the ongoing necessity of the measures and whether conditions C and D continued to be met.

2.3 Measures which could be imposed under the TPIMs legislation

The measures included in Schedule 1 of the Bill include:

---

[23] Joint Committee on Human Rights, *Counter-Terrorism Review*, HC 797-i, 8 February 2011, Q4

[24] Home Office, *Sixth report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 3 February 2011

- **Overnight residence measures.** Assuming the individual has his own residence, that would usually be the residence specified in the measure. Where he or she did not, then the premises would be situated in an "appropriate locality", or an "agreed locality". The former term is defined as a locality in which the individual has a residence, or one where the individual has "a connection". However, if the individual has neither such residence nor such a connection then it could be defined as "any locality that appears to the Secretary of State to be appropriate". A TPIMs notice could require an individual to live in accommodation provided by the Secretary of State. The Explanatory Notes state that these provisions implement the promise in the counter-terrorism review that it should not be possible to relocate an individual to another part of the country without that individual's consent (sometimes referred to as internal exile). The Schedule notes that the Secretary of State must specify the time at which such a requirement is applicable. The Explanatory Notes state that while the term "overnight" is not defined, as a matter of public law, the period would need to fall between the hours which a reasonable person would consider "overnight"[25] and contrast this with the current position, where 16 hour curfews have been permitted.[26] Without a definition, if there was a dispute, the precise bounds of the term would have to be tested in the courts. The Schedule states that in imposing such a requirement, the Secretary of State "must include provision allowing the individual to stay at premises other than the specified residence for the whole or part of any overnight period if the Secretary of State grants permission to do so". Such permission may be the subject of unspecified conditions "as the Secretary of State may by notice specify" (Schedule 1, paragraph 13(7)).

- **Travel measures.** The Secretary of State could impose restrictions on the individual leaving a specified area, which may be one of the following: (a) the United Kingdom; (b) Great Britain (if the individual's place of residence is in Great Britain); (c) Northern Ireland, if that is the individual's place of residence. Travel measures could also require an to individual surrender travel documents and passports (including passports issued by or on behalf of authorities outside the United Kingdom).

- **Exclusion measures.** The Secretary of State would be able to impose restrictions on individuals entering specified areas or places, or places or areas of a specified description. Such measures may require individuals not to enter such areas without the permission of the Secretary of State or to give notice of their intention to enter such areas. Measures could also include a requirement not to enter areas unless other specified conditions are met. The Home Office ECHR Memorandum states that "an excluded place may include a mosque". The Explanatory Notes indicate that these more limited measures can be contrasted with "the position under the 2005 Act, where it is possible to impose geographical boundaries on individuals, limiting their movement within a defined area."

- **Movement direction measures.** The Secretary of State would be allowed to provide that an individual has to comply with directions in relation to his or her movements given by a constable. These directions would have to be for specified purposes (such as securing

---

[25] The Home Office ECHR Memorandum states that: "Under a TPIM notice, an overnight residence requirement will fall well short of the 'grey area' that has been identified in the control order context – a confinement of between 14 and 16 hours - where consideration of the other restrictions imposed on the individual are to be taken into account in (and indeed will be key to) assessing whether there is a deprivation of liberty. [...] The House of Lords has found that a 12 hour curfew does not constitute a deprivation of liberty." The Home Office Human Rights Memorandum notes that in its view, the limitation on this residence requirement means that it is unlikely to engage article 5 of the ECHR in view of the case law in relation to control order curfews.

[26] *Secretary of State for the Home Department v JJ and Others* [2007] UKHL 45 and *Secretary of State for the Home Department v AP* [2010] UKSC 24. It is worth noting that In *Secretary of State for the Home Department v JJ & Others* [2007] UKHL 45, the House of Lords found that curfews of 18 hours (or more) amounted to a deprivation of liberty for the purposes of Article 5 of the European Convention on Human Rights.

the individual's compliance with other specified measures) or where an individual was being escorted by a constable as part of another condition imposed under the provisions of the Bill. Such directions could last up to a maximum of 24 hours.

- **Financial services measures.** The Secretary of State would be permitted to impose restrictions on the individual's use of, or access to, specified financial services. The Secretary of State, would be obliged to allow an individual to hold at least one nominated account, provided it were held with a bank or building society (as defined at paragraph 5(4) of Schedule 1), and the requisite notice was given to the Secretary of State.

- **Property measures.** The Secretary of State would be able to impose restrictions on the individual in relation to the transfer of property and "requirements on the individual in relation to the disclosure of property". Such restrictions could include, for example, restrictions on transferring money outside the United Kingdom.

- **Electronic communications device measures.** The Secretary of State would be allowed to impose restrictions on the individual's possession or use of electronic devices and requirements on the individual in relation to the possession or use of electronic communications devices by other persons in the individual's residence. Paragraph 7(3) of Schedule 1 would require the Secretary of State to allow the individual to possess and use (subject to conditions) a fixed line telephone; a computer providing access to the internet by connection to a fixed line; and, a mobile phone that does not provide access to the internet. Relevant conditions may include monitoring the use of the equipment and restrictions on the manner and times which the equipment is used.

- **Association measures.** The Secretary of State could impose restrictions on the individual's association or communication with specified persons or specified descriptions of persons (whether such communication is direct or indirect).

- **Work or studies measures.** The Secretary of State would be allowed to impose restrictions on the individual's work or studies.

- **Reporting measures.** The Secretary of State could require an individual to report to such a police station as the Secretary of State may by notice require at the times and in the manner so required.

- **Photograph measures.** The Secretary of State could require an individual to allow their photograph to be taken at such times and locations as he or she might require.

- **Monitoring Measures.** The Secretary of State would be able to require an individual to submit to monitoring requirements, which could include directions to wear or otherwise use an electronic tag and associated apparatus.

An individual would be entitled to request the court to vary the terms of a TPIMs notice.

2.4 Breaching a TPIMs notice would be a criminal offence

Clause 21 of the Bill makes it an offence to contravene a TPIMs notice "without reasonable excuse". An individual guilty of such an offence could be imprisoned for a term not exceeding 5 years (on indictment) or 6 months (on summary conviction). **Clause 21(3)** precludes a court from ordering a conditional discharge under s 12(1)(b) of the *Powers of Criminal Courts (Sentencing) Act 2000*, or the *Criminal Justice (Northern Ireland) Order 1996* (in England, Wales and Northern Ireland) or a community payback order under the *Criminal Procedure (Scotland) Act 1995.*

3 Court scrutiny

The Bill provides that before imposing measures on an individual, the Secretary of State would have to seek the permission of the court, unless it was considered a "case of urgency". Even in those circumstances, the notice would have to be referred to the court for confirmation within seven days.

Clauses 6-9 and **Schedule 2** to the Bill provide detail about court scrutiny of the imposition of TPIMs, including the details of the review hearing which would be carried out.

As the Home Office's European Convention on Human Rights Memorandum makes plain, under **Clause 9** of the Bill, the High Court (or in Scotland, the Court of Session) would automatically review the TPIMs notice following the service of such a notice. The court would have to review whether the conditions A to D were met when the TPIMs notice was imposed – and whether they continued to be met at the time of the hearing.

Clause 9(2) provides that the court would be obliged to "apply the principles applicable on application for judicial review."[27] The Explanatory Notes go on to contend that the courts take the view that "judicial review is a flexible tool that allows differing degrees of intensity of scrutiny", arguing that the "control order case law provides for a particularly high level of scrutiny." In any event, as is recognised in the Human Rights Memorandum, the courts have made clear that they will consider the proportionality of measures imposed on suspect where they potentially interfere with rights under the *European Convention on Human Rights.*

The Bill seeks to circumscribe the power of the court at **Clause 9(5)**, so that on a review hearing the court would only be entitled to quash a notice, quash measures specified in a notice, or give directions to the Secretary of State for the revocation of a notice or the variation of a measure specified in a notice.

Article 6(1) of the European Convention on Human Rights provides:

Right to a fair trial
In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

3.1 Closed hearings

Schedule 4 to the Bill sets out various provisions for making rules of court relating to TPIMs proceedings. As mentioned above, an issue that has previously proved controversial under the control order regime has been the use of closed hearings, where a suspect's interests are represented by special advocates[28] (rather than their own lawyers). The role of special advocate was created in 1997, following the ruling of the European Court of Human Rights in the case *Chahal v UK* (a case about deportation). The original function of the advocates was

[27] Judicial review is a High Court procedure for challenging administrative actions. It allows, amongst other things, for individuals to challenge the lawfulness of decisions made by Ministers. The main grounds of review are that the decision maker has acted outside the scope of its statutory powers, that the decision was made using an unfair procedure, or that the decision was an objectively unreasonable one. *The Human Rights Act 1998* made it unlawful for public bodies to act in a way incompatible with Convention rights. Additional information about Judicial Review can be found a 2006 publication by the Treasury Solicitor entitled *The Judge Over Your Shoulder*

[28] For more on the special advocate procedure, see for example: Martin Chamberlain, *Special Advocates and Fairness in Closed Proceedings*, [2009] Civil Justice Quarterly 28(3), pp 314-326

to act in the interest of appellants in deportation cases, where the Government wished to rely on material about the appellant which was withheld from him or her on national security grounds.[29]

The procedure was extended into other areas (including the control order regime) and its use in control order hearings has been described in some detail by Mr Justice Silber, in a speech to the Bar Council in November 2010.[30] In an earlier speech, Lord Justice Sullivan, a Court of Appeal judge, indirectly compared the process to Kafka's *The Trial.*[31] The former senior Law Lord, Lord Bingham, made some observations about the process in his book, *The Rule of Law.* He noted that special advocates do not owe the usual duties to the person whose interests they are intended to protect and that "if the effect of non-disclosure is to render a hearing unfair, the rule of law is violated."[32]

Schedule 4 clearly indicates that the Government intends to retain the use of "closed" proceedings for the imposition of TPIMs notices. This is spelled out in the Home Office's European Convention on Human Rights Memorandum, which states that:

> The Secretary of State, when making her decisions, and the High Court, in conducting its review of those decisions during the automatic review hearing or on an appeal, may make use of closed evidence (that is, evidence which is withheld from the individual and their legal adviser because its disclosure would be contrary to the public interest). The procedure for the use of closed evidence, including the appointment of a special advocate to act in the individual's interests in relation to such proceedings will be contained in Rules of Court made under Schedule 4 to the Bill. This system will be the same as that currently used in control order and Special Immigration Appeals Commission proceedings.

The ECHR Memorandum also directly assesses the way in which the closed procedure would operate:

> 29. Paragraphs 1 to 5 of Schedule 4 to the Bill (given effect to by clause 18) makes provision for the making of Rules of Court which may provide for the withholding of evidence from the individual and their legal representative where disclosure of that evidence would be contrary to the public interest (including because it would be contrary to the interests of national security). The Rule-making authority is to have regard to the need to ensure that decisions are properly reviewed, but also that disclosures of information are not made where they would be contrary to the public interest. The Secretary of State is to be required to disclose all relevant material, but may apply to the court (on an ex parte basis) for permission not to do so – and the court must give permission where it considers that the disclosure would be contrary to the public interest, but must consider requiring the Secretary of State to provide a gist of such material to the individual. If the Secretary of State elects not to disclose material he does not have permission to withhold or not to disclose a gist where required to do so, the court may give directions withdrawing from its consideration the matter to which the material was relevant, or otherwise secure that the Secretary of State does not rely on that material. Paragraph 10 of Schedule 4 makes provision for the appointment of a special advocate to act in the interests of the individual in relation to the closed proceedings.

---

[29] For more on this, and how the process came to be transferred, see: Constitutional Affairs Committee, *The Operation of the Special Immigration Appeals Commission and the use of Special Advocates*, HC 323-I, 3 April 2005

[30] Mr Justice Silber, *Address to the Bar Council Conference: Control Orders*, 6 November 2010

[31] Joshua Rozenberg, "Judge Speaks up for Human Rights", *Standpoint Magazine*, 22 October 2009

[32] Tom Bingham, *The Rule of Law*, Allen Lane, 2010, pp 108-109

The need to provide an individual with the gist of the case against him was considered by the House of Lords in the case of *Secretary of State for the Home Department v AF and another* [2009] UKHL 28. This case had followed on shortly from the judgment of the European Court of Human Rights in *A and Others v United Kingdom* [2009] ECHR 301.

In the case of *AF*, having regard to the abovementioned judgment of the Strasbourg Court, the House of Lords ruled that:

> [T]he controlee must be given sufficient information about the allegations against him to enable 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 controlee 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 controlee 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.[33]

As the ECHR Memorandum notes, there is still ongoing litigation as to the precise meaning of this ruling and whether the disclosure requirements apply in what are sometime referred to as "light touch" control order cases (where the orders impose only restrictions on travel and reporting obligations).

The Home Office has suggested that under the new TPIM system, the individual will "be given sufficient information about the allegations against them to enable them to give effective instructions in relation to those allegations." They also claim that a "TPIM notice will not be able to be sustained on the basis of a case which is solely or decisively 'closed'".[34]

4 Other Issues

4.1 Fingerprints and non-intimate samples

The *Counter-Terrorism Act 2008* included a number of provisions relating to fingerprints and non-intimate samples. The Explanatory Notes indicate that "in broad terms, these sections provide equivalent powers, procedures and safeguards as apply generally to fingerprints and samples taken from individuals on arrest". The powers in the 2008 Act were not commenced, due to the judgment of the European Court of Human Rights in the case of *S and Marper v United Kingdom* [2008] ECHR 1581. Following the general election, the Coalition Government decided to adopt "the protections of the Scottish model" in relation to the general rules on the destruction and retention of DNA material and fingerprints. The *Protection of Freedoms Bill* contains provisions for the retention of material generally and for the purposes of national security, but not in relation to individuals subject to control orders (or the proposed TPIMs). Information about *S and Marper* and the Coalition Government's response can be found in the Library Research Paper 11/20, on the *Protection of Freedoms Bill.*

Clause 23 and **Schedule 6** of the Bill make specific provision for the taking and retention of fingerprints and samples from individuals subject to TPIMs. The Explanatory Notes suggest that the provisions broadly reflect the uncommenced provisions from the *Counter-Terrorism Act 2008* and the *Crime and Security Act 2010,* but with a shorter retention period.

The ECHR Memorandum argues that these provisions are proportionate on the grounds, *inter alia*, that:

---

[33] [2009] UKHL 28, at Paragraph 59
[34] Home Office, European Convention on Human Rights Memorandum, paras 38-39

> Prints, samples and DNA profiles may only be retained and used for limited purposes. In England, Wales and Northern Ireland, material may not be used other than in the interests of national security, for the purposes of a terrorist investigation, for purposes related to the prevention, detection, investigation or prosecution of crime or for identification of a deceased person or the individual subject to the TPIM notice. In Scotland, prints, samples and DNA profiles which are taken by a constable under the powers in Schedule 6 may only be used in the interests of national security or for the purposes of a terrorist investigation.
>
> The material must be destroyed if it appears to the chief officer of police that it was taken unlawfully (paragraph 6 of Schedule 6).
>
> The material may only be retained for a period of 6 months from the date the TPIM notice ceases to be in force (or if a further TPIM notice is imposed during that period, for 6 months from the date that further notice ceases to be in force). If the TPIM notice is quashed, subject to a new notice being made, the material may only be retained until there is no further possibility of an appeal against the quashing (paragraph 8 of Schedule 6). The Government considers this limited retention period strikes an appropriate balance between respecting the right to privacy of the individual and preventing and detecting crime and protecting national security (including counter-terrorism). The retention period also compares favourably with the retention period under the "Scottish model" for retention which was commented on with approval in paragraphs 109 and 110 of Marper and by the Parliamentary Joint Committee on Human Rights in its 12th report of the 2009-10 session and which is largely being adopted by the Government in this session's Protection of Freedoms Bill.

However, Paragraph 11 of Schedule 6 provides that, notwithstanding the retention periods set out above, material taken from a person subject to a TPIMs notice may be retained for as long as a national security determination is made in relation to it by a chief officer of police. This is a determination, which may last for a renewable period of 2 years, that retention of the material is necessary for the purposes of national security.

The ECHR Memorandum justifies this provision on the grounds that the Government "considers it is essential that there should be a mechanism for retaining material beyond 6 months after the TPIM notice ceases to have effect, where this is necessary in the interests of national security."

The *Protection of Freedoms Bill* would introduce a similar regime permitting the retention of biometric data from an arrested or convicted person for a renewable two year period on the grounds of a national security determination made by a chief constable. National security determinations under that Bill would be subject to oversight by a new Commissioner for the Retention and Use of Biometric Material (a position that would be established by clause 20 of the *Protection of Freedoms Bill*).[35] The provisions in this Bill relating to the retention of biometric data from individuals subject to TPIMs notices do not specifically include any reference to the proposed new Commissioner; however, the ECHR Memorandum indicates that an amendment will be made to the *Protection of Freedoms Bill*, to extend the Commissioner's role to national security determinations made under this Bill.

4.2 Powers of entry, search and seizure

Clause 22 and **Schedule 5** make provision for powers of entry search and seizure (with and without a warrant) where individuals have been issued with TPIMs, or to locate an individual for the purpose of serving a TPIMs notice or other specified notice.

---

[35] See page 11 of Library Research Paper 11/20 *Protection of Freedoms Bill* for further details.

4.3 Other proposed safeguards

Clause 19 would require the Secretary of State to prepare reports about the exercise of powers under the legislation on a quarterly basis. These reports would have to be laid before Parliament. This currently occurs in respect of control orders. Examples of these reports can be found on the Home Office website.

Clause 20 would place a duty on the Secretary of State to appoint an "independent reviewer" to prepare an annual report on the operation of the Bill and to lay that report before Parliament. Previously, the Government's Independent Reviewer of Terrorism Legislation, Lord Carlile QC, met this obligation. Copies of his annual reports on the operation of the control order regime are available from the House of Commons Library's Select Bibliography of Terrorism Resources. These provide extensive detail about the use of control orders, the type of conditions imposed on suspects and the duration of orders.

Lord Carlile was succeeded as Independent Reviewer by David Anderson QC in February 2011. Under the control order regime, the Independent Reviewer's annual report was usually presented to Parliament shortly before the annual renewal debate on the legislation. As mentioned above, the new TPIMs regime would not be subject to annual renewal.

5 Annex 1: Further reading on control orders

- Constitutional Affairs Committee, *The Operation of the Special Immigration Appeals Commission and the use of Special Advocates*, HC 323-I, 3 April 2005;
- Martin Chamberlain, *Special Advocates and Fairness in Closed Proceedings* [2009] *Civil Justice Quarterly* 28(3), pp 314-326;
- John Cooper QC, *Control Orders by any Other Name,* Criminal Law and Justice Weekly, 12 February 2011;
- K.D Ewing and Joo-Cheong Tham, *The continuing futility of the Human Rights Act,* Public Law (2008) Winter pp 668-693;
- *The Guardian*, Archived News Articles on Control Orders;
- Horne, A, *Counter-Terrorism*, *Some Legal Conundrums in the United Kingdom,* World Defence Systems, Issue 2 of 2008, Sovereign Publications pp 43-49;
- Horne, A *Control Orders – Where Do We Go From Here?,* World Defence Systems, Issue 2 of 2009, Sovereign Publications, pp 172-176;
- Horne, A. *The Courts and Counter-Terrorism: Asserting the Rule of Law?* in *Cases that Changed Our Lives* (Lexis Nexis, 2010);
- House of Commons Library Standard Note *Control Orders and the Prevention of Terrorism Act 2005*;
- House of Commons Library Standard Note *The Counter-Terrorism Review*;
- House of Commons Library *Select Bibliography of Terrorism Resources*;
- Joint Committee on Human Rights, *Renewal of Control Order Legislation 2011*, HL 106/HC 838, 2 March 2011;
- Joint Committee on Human Rights, *Evidence on Counter-Terrorism Review*, HC 797-i, 8 February 2011;
- Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights - Bringing Human Rights Back In,* HL 86/HC 111, 25 March 2011;
- JUSTICE, *Secret Evidence*, June 2009;
- Liberty, *Cerie Bullivant's Story – Life Under a Control Order*, February 2010;
- Liberty, *Liberty's briefing for the House of Lords on The Prevention of Terrorism Draft Order 2011*, March 2011;
- Walker, C. *Keeping control of terrorists without losing control of constitutionalism* (2007) 59 Stanford Law Review pp 1395-1463;
- Walker, C. *The threat of terrorism and the fate of control orders*, Public Law, January 2010, pp 4-18.

6 Annex 2: Control order statistics

Control order statistics

	Orders made and served			Revoked by Home Secretary		Quashed by court				Modifications		In force at end of period		
	Total	GB national	Foreign national	Not remade	Remade	Not remade	Remade	Renewed	Expired	Made	Refused	Total	GB citizen	Met area residents
3 months from														
11-Mar-05	11	0	11							3	0	11	n/a	n/a
11-Jun-05	1	1	0	9						0	3	3	n/a	n/a
11-Sep-05	5	n/a	n/a							0	2	8	n/a	n/a
11-Dec-05	3	2	1					2		0	0	11	3	n/a
11-Mar-06	3	2	1							0	1	14	5	n/a
11-Jun-06 [1]	9	2	7	n/a	n/a	n/a	n/a	1	n/a	2	7	15	6	n/a
11-Sep-06 [2]	1	1	0		2					15	4	16	7	8
11-Dec-06	2	2	0		2					1	13	18	9	8
11-Mar-07	0	0	0				1		1	16	14	17	8	7
11-Jun-07	2	2	0	1				5	4	25	23	14	8	4
11-Sep-07	0	n/a	n/a							47	15	14	8	4
11-Dec-07	2	n/a	n/a	1		1		3	3	35	12	11	4	3
11-Mar-08 [3]	6	n/a	n/a	2				1		70	31	15	3	2
11-Jun-08	1	n/a	n/a					6		120	61	16	4	3
11-Sep-08	0	n/a	n/a			1				96	23	15	4	3
11-Dec-08 [4]	2	n/a	n/a					2		62	2	17	6	5
11-Mar-09 [5]	5	n/a	n/a	1		1		6		108	24	20	10	6
11-Jun-09	0	n/a	n/a	5				5		125	49	15	9	7
11-Sep-09 [6]	3	n/a	n/a	6						77	29	12	9	7
11-Dec-09	1	n/a	n/a	2						44	13	11	10	6
11-Mar-10	2	n/a	n/a	1				3		43	10	12	9	4
11-Jun-10 [7]	0	n/a	n/a	3				2		56	14	9	9	4
11-Sep-10 [8]	1	n/a	n/a					1	2	34	12	8	8	3
11-Dec-10 [9]	2	n/a	n/a					2		53	21	10	10	3

Notes:

1 - Complete information for the number of orders revoked, quashed or expired was not provided in the quarterly report to Parliament for this reporting period.

2 - In addition 3 further control orders made but not served against one foreign and two British nationals

3 - In addition an order was made but not served

4 - In addition three orders were made but not served

5 - Two 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.

6 - One control order previously made but not served has been revoked in this quarter.

7 - One order was made but not served

8 - One control order made but not served in a previous quarter has expired.

9 - One control order was made and revoked without ever being served. A further control order was made in respect of the same individual but was not served during the reporting period.

Source: All information is taken from the relevant quarterly WMS - Report to Parliament on control order powers