Memorandum to the Home Affairs Committee

Post-Legislative Scrutiny of the Terrorism Act 2006

Cm 8186 £6.00

Memorandum to the Home Affairs Committee

Post-Legislative Scrutiny of the Terrorism Act 2006

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

September 2011

Cm 8186 £6.00

© Crown copyright 2011

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit http://www.nationalarchives.gov.uk/doc/open-government-licence/ or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at:

Counter-Terrorism Legislation Team
Office for Security and Counter-Terrorism
Home Office
2 Marsham Street
London
SW1P 4DF

This publication is also available for download at www.official-documents.gov.uk

ISBN: 9780101818629

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2455627 09/11 19585 15195

Printed on paper containing 75% recycled fibre content minimum.

MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

POST-LEGISLATIVE SCRUTINY OF THE TERRORISM ACT 2006

1. INTRODUCTION

1.1 This memorandum provides a preliminary assessment of the Terrorism Act 2006 and has been prepared by the Home Office for submission to the Home Affairs Committee. It is published as part of the process set out in the document *Post Legislative Scrutiny – the Government's Approach.*

2. OBJECTIVES OF THE TERRORISM ACT 2006

2.1 The purpose of this Act is to reform and extend previous counter-terrorist legislation to ensure that the UK law enforcement agencies have the necessary powers to counter the threat to the UK posed by terrorism. A number of changes were also required to implement different international conventions, which the UK is party to. The Act also amends previous legislation relating to investigatory powers and the intelligence services.

2.2 Previous counter-terrorism legislation provided a range of measures intended to prevent terrorism and support the investigation of terrorist crime. These were placed on a permanent footing in the Terrorism Act 2000 (TACT). These include a power for the Secretary of State to proscribe terrorist organisations, reinforced by a series of offences connected with such organisations; other specific offences connected with terrorism; and a range of police powers. Further additions to counter-terrorism legislation were made in the Anti-Terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005.

2.3 The Terrorism Act 2006 (2006 Act) created a number of new offences. These new offences include the offences of encouragement of terrorism, dissemination of terrorist publications, an offence of the preparation of terrorist acts, and further terrorist training offences. The 2006 Act also created a number of offences relating to radioactive material or devices, and nuclear facilities, and amends the penalty for certain offences relating to nuclear material.

2.4 The 2006 Act also altered the legislative framework by amending TACT in a number of ways. Firstly the Act made some changes to existing offences (for example raising the penalty for the offence in section 57 of TACT of possession for terrorist purposes). Secondly, it amended two aspects of the powers of the Secretary of State to proscribe organisations which are concerned in terrorism. TACT provides the Secretary of State may proscribe an organisation that is concerned in terrorism. A group is "concerned in terrorism" if, amongst other things, it promotes or encourages terrorism. The 2006 Act makes clear that promoting or encouraging terrorism encompasses activities which include or clearly associate an organisation with the glorification of terrorism. Secondly, the 2006 Act amends TACT so as to provide the Secretary of State with new powers to deal with proscribed organisations that change their names, including the power to the list of proscribed organisations aliases under which a proscribed group may be

shown to operate. The 2006 Act also extended police and investigatory powers in relation to terrorism (such as provisions for the extension of detention of terrorist suspects with judicial approval for up to 28 days and enabling "all premises" search warrants to be issued).

2.5 With reference to the powers of the security and intelligence services, the 2006 Act amended the Intelligence Services Act 1994 (ISA) with respect to the issue and duration of warrants and authorisations that authorise acts both in the UK and overseas. The 2006 Act also amended ISA by enabling an authorisation issued in accordance with section 7 of that Act to be relied upon for five working days in relation to property within the British Islands in certain circumstances. The 2006 Act also amended the Regulation of Investigatory Powers Act 2000 (RIPA) in two ways. Firstly, it increased the penalties for failing to comply with a decryption notice under Part 3 of that Act. Secondly, it amended the provisions concerning the duration and modification of, and safeguards attached to, interception warrants issued pursuant to Part 1 of the Act.

2.6 Finally, the 2006 Act amended the definition of terrorism as contained in TACT, by adding that any of the activity defined as terrorism, includes that which is carried out to advance a racial cause.

3. IMPLEMENTATION AND AMENDMENTS

3.1 Clause 57 of the current Protection of Freedoms Bill seeks to repeal the provisions in the 2006 Act relating to the maximum period of detention for terrorist suspects under Schedule 8 to TACT.

3.2 Section 38(3) of the Counter Terrorism Act 2008 inserted a new section 11A into the Terrorism Act 2006, allowing forfeiture of devices, material or facilities made or used in the committing of an offence under section 11 of the 2006 Act.

4. SECONDARY LEGISLATION

4.1 Section 25 of the 2006 Act provided for the maximum period of pre-charge detention for terrorist suspects to fall to 14 days one year after commencement, unless an order under section 25 has been approved by both Houses of Parliament. Orders of 12 months duration were made to maintain the maximum period of 28 days in 2007 (coming into effect on 25 July 2007), 2008 (coming into effect on 25 July 2008) and 2009 (coming into effect on 25 July 2009), and an order of 6 months duration was made in 2010 (coming into effect on 25 July 2010).

4.2 Sections 21 and 22 make changes to the proscription regime in TACT, including the grounds for proscription and name changes of proscribed organisations. The following orders have been made under these provisions:

- Proscribed Organisations (Name Changes) Order 2010 – No 34 (coming into effect 14 January 2010);

- Proscribed Organisations (Name Changes) Order 2009 – No 578 (coming into effect 02 April 2009); and

- Proscribed Organisations (Name Changes) Order 2006 – No 1919 (coming into effect 14 August 2006).

5. LEGAL ISSUES

5.1 Two cases (the seeking of permission for a judicial review brought in the case of *Sultan Sher and others v Chief Constable of Greater Manchester Police and Others* and the application for judicial review by *Colin Duffy and Others*[1]) challenge the lawfulness of 28 day pre-charge detention (although the suspects in those cases were not detained for longer than 14 days before release or charge, and so had not been subject directly to any provisions of the 2006 Act in this regard). Both judgments found that the procedures under Schedule 8 were in accordance with Articles 5 and 6 of the European Convention of Human Rights (ECHR). The challenge in *Sultan Sher* also included a challenge to the extent of search warrants issued under Schedule 5 of the TACT, as amended by section 26 of the 2006 Act. Again, this challenge was unsuccessful.

5.2 There have been no other legal challenges to specific provisions of the 2006 Act.

5.3 The lawfulness of, and necessity for, 28 day pre-charge detention (and extended pre-charge detention generally) has been raised in numerous Parliamentary, legal, policy, media and academic fora. For further information on pre-charge detention see paragraphs 6.1.1 and 8.7.1 to 8.7.7.

6. NON JUDICIAL REVIEWS AND REPORTS

6.1 Counter Terrorism and Security Powers Review

6.1.1 Sections 23-25 of the 2006 Act relate to the maximum period of detention for terrorist suspects under Schedule 8 to the TACT, making provision for that maximum period to be raised from 14 to 28 days by order. This has been subject to considerable debate since the Act came into force, and was reviewed as part of the Government's review of counter terrorism and security powers, which reported in January 2011.

6.1.2 The review also examined whether changes should be made to the proscription regime so that groups which espouse or incite hatred or other forms of violence associate with terrorism, were also covered by the legislation.

6.2 Review of *Prevent* Strategy

6.2.1 In June 2011 the Government published a review of the implementation of Prevent over the past three years and a revised Prevent strategy. The Terrorism Act 2006 established offences which in effect form part of Prevent. These include the offences of encouraging terrorism and disseminating publications that seek to encourage terrorism. These have

[1] *http://www.courtsni.gov.uk/NR/rdonlyres/3F663C8A-4D2C-4601-A651-3FE27DA0F4AA/0/j_j_MOR8104Final.htm*

become known as ‘glorification’ offences. The provisions were intended to curtail radicalising activity in this country by proponents and supporters of terrorism.

6.2.2 There were two main findings from the review. Firstly, that prosecuting people under this legislation has not been straightforward. Since the Act was passed, only 3 people have been convicted for these offences under sections 1 and 2 of the Act. The review acknowledged, however, that the conviction rates do not necessarily reflect the wider deterrent impact of such legislation. Secondly, the consultation for the review found that legislation about glorification and other powers has had the inadvertent effect of making some people reluctant to engage in legitimate debate and discussion about terrorism. This indicates a need to be much clearer about the purpose of the legislation.

6.2.3 Under section 3 of the Act, those served with notices who then fail to remove, without reasonable excuse, the material that is unlawful and terrorism-related within a specified period are treated as endorsing it. The serving of notices was intended to achieve the rapid and effective removal of material. The Prevent review noted that these powers had not been formally used because of the close working relationships with industry meant that domestically hosted material was voluntarily removed without resort to the issuing of a formal notice.

6.3 Independent Reviewer of Terrorism Legislation (IRTL)

6.3.1 The IRTL is tasked under section 36 of the Terrorism Act 2006 to produce annual reports on the operation of the TACT and Part 1 of the 2006 Act. The IRTL has produced the following reports relating to the 2006 Act:

- Report on the Operation in 2007 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, Lord Carlile of Berriew QC, June 2008;
- Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, Lord Carlile of Berriew QC, June 2009;
- Report on the Operation in 2009 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, Lord Carlile of Berriew QC, July 2010;and
- Report on the Operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, Mr David Anderson QC, July 2011.

6.3.2 The IRTL may of his own initiative or at the request of the Secretary of State conduct reviews and produce reports on specific issues. Ad hoc reports that have been laid before Parliament include:

- Report on the Definition of Terrorism (June 2007);
- Operation Pathway Report (October 2009); and
- Operation GIRD Report (May 2011).

7. SCRUTINY BY JOINT COMMITTEE ON HUMAN RIGHTS (JCHR)

7.1 The JCHR has produced the following reports which examine either specific provisions of the 2006 Act, or issues associated with it:

- Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention. Published 1 August 2006;

- Counter-Terrorism Policy and Human Rights: 28 Days, Intercept and Post-Charge Questioning. Published 30 July 2007;

- Counter-Terrorism Policy and Human Rights: 42 Days. Published 14 December 2007;

- Counter-Terrorism Policy and Human Rights: Annual Renewal of 28 Days 2008. Published 30 June 2008;

- Counter-Terrorism Policy and Human Rights: Annual Renewal of 28 Days 2009. Published 24 June 2009;and

- Counter-Terrorism Policy and Human Rights: Bringing Human Rights Back In. Published 25 March 2010.

8. PRELIMINARY ASSESSMENT OF THE ACT

Part 1 - Offences

8.1 Encouragement of Terrorism

Background

8.1.1 Section 1 of the 2006 Act creates an offence of encouragement of acts of terrorism or Convention offences, as set out in Schedule 1. The offence has been introduced to implement the requirements of Article 5 of the Council of Europe Convention on the Prevention of Terrorism. This requires State Parties to the Convention to have an offence of 'public provocation to commit a terrorist offence'. This new offence supplements the existing common law offence of incitement to commit an offence.

8.1.2 Section 2 of the 2006 Act creates offences relating to the sale and other dissemination of books and other publications, including material on the internet, that encourage people to engage in terrorism, or provide information that could be useful to terrorists.

8.1.3 Section 3 of the 2006 Act applies sections 1 and 2 to services provided electronically, which includes internet activity. Under sections 1 and 2 a person has a defence to the offences in those sections, in certain circumstances, if he can show amongst other things that a statement or publication did not express his views and did not have his endorsement. The effect of this section is to deem a person providing or using an electronic service to have endorsed a statement if he has received a notice under Section 3 and he has failed to comply with it.

8.1.4 Section 4 sets out the procedure for giving notices under section 3.

Impact and Use

8.1.5 The offence relating to encouragement of terrorism provided by section 1 has up until August 2011 been charged in 2 prosecutions.

- In the first case, all but one of the charges were dismissed at a dismissal hearing and the Crown Prosecution Service (CPS) proceeded on alternative charges of solicitation to murder.

- In the second case, the jury could not agree and as there were convictions on other counts the CPS did not ask for a retrial.

8.1.6 In a third case a defendant charged with soliciting murder offered a plea to an offence contrary to section 1 of the 2006 Act which was accepted. The incentive to plead to this charge was that the dangerous offenders provisions did not apply.

8.1.7 The offence relating to dissemination of terrorist publications provided by section 2 has been used in a number of prosecutions. In one case, the defendant (KANMI) was arrested at Manchester International Airport. He was found with a mobile phone, a memory card and two pen drives. The memory card and one of the pen drives contained documents relating to jihad. The other pen drive contained a training video demonstrating a technique to attack airline staff from the rear of the plane using a plastic knife. He pleaded guilty to a number of terrorist offences, including four counts of dissemination of terrorist publications contrary to section 2(1)(a) of the 2006 Act. He received a total sentence of 5 years imprisonment in June 2010. An associated individual (Abbas IQBAL) was convicted for a number of offences including dissemination of terrorist publications contrary to section 2 of the 2006 Act. He received a total of 3 years imprisonment.

8.1.8 Further details of cases can be found on the CPS Counter Terrorism Division (CTD) website: www.cps.gov.uk/publications/prosecution/ctd.html

8.1.9 The offence relating to giving of notices under section 3 has not been used to date. The national police single point of contact (SPOC) in relation to notices issued under Section 3 of the 2006 Act is the Counter Terrorism Internet Referral Unit (CTIRU).

8.1.10 The CTIRU was launched in February 2010 and was created to respond to the increasing use of the internet by terrorists, specifically for radicalisation and propaganda purposes. The CPS has worked closely with this unit. Any case where such a notice is under consideration is referred initially to the CPS for an assessment of whether the content in question is caught by sections 1 or 2 of the 2006 Act. No notices have been issued under section 3 to August 2011, mainly since most Internet Service Providers agree to remove such content voluntarily once they have been made aware of it.

8.1.11 The CTIRU will make reference to 2006 legislation when it ‘flags’ a website to a hosting company. For example, YouTube has a “promoting terrorism” flag that allows the user to flag material that breaches community guidelines. The CTIRU when flagging videos on YouTube will also indicate

that the video in question may breach anti-terrorism legislation in the UK and will point out the specific sections that are involved.

8.1.12 Since the launch of the CTIRU in February 2010 the unit has removed 93 website/web pages. None of the removals have been as a consequence of the formal use of existing terrorism legislation. Each instance has, however, been highlighted as a breach of the acceptable use policy of the hosting company/website administrator together with a potential breach of UK Legislation. Both Section 1 and Section 2 of the 2006 Act have been engaged in relation to a number of the removals.

8.1.13 There have been no formal notices issued under section 3 in order to remove any material. All removals have been conducted voluntarily by the hosting company/website administrator. The existence of this formal process does however allow the CTIRU to have recourse where negotiations with industry falter.

8.1.14 Discussion is currently taking place at a European Commission level with a view to a similar 'take down' notice scheme being introduced across all Member States. The handling of illegal internet content – including incitement to terrorism – should be tackled through guidelines on cooperation, based on authorised notice and take-down procedures, which the Commission intends to develop with internet service providers, law enforcement authorities and non-profit organisations by 2011. To encourage contact and interaction between these stakeholders, the Commission will promote the use of an internet based platform called the Contact Initiative Against Cybercrime for Industry and Law Enforcement.

8.2 Preparation of terrorist acts and terrorist training

Background

8.2.1 Section 5 created an offence of the preparation of terrorist acts. This offence adds to existing common law offences of conspiracy to carry out terrorist acts, and attempting to carry out such acts. At the moment the law does not cover inchoate offences of attempt or conspiracy in respect of preparation: the offence of attempt provides that the acts done must be more than merely preparatory and the offence of conspiracy provides that an agreement to commit an offence must have occurred. In addition both offences require that a specific attempt is made or planned rather than just a general intention to carry out acts that amount to terrorism. Under the offence created by this section, acts of preparation with the relevant intention are caught, for example if a person acquires information or articles for future activity and that person has the necessary intention he will be caught by the offence.

8.2.2 Section 6 implemented Article 7 of the 2005 European Convention on the Prevention of Terrorism ('the Convention'). Article 7.2 requires State Parties to the Convention to create an offence of training for terrorism. Training for terrorism is defined in Article 7.1. Article 7 is already partially implemented by section 54 of TACT, but this new offence covers matters that are not already dealt with by section 54. Section 54 relates to training in the use of making of firearms, explosives and chemical, biological and nuclear

weapons. Convention offences as referred to in this section are set out in Schedule 1 to the Act.

8.2.3 Section 7 provided for powers of forfeiture in respect of items considered by the court to be connected with the carrying out of an offence under section 6. This could, for example, include various noxious substances and equipment designed for the handling and production of such substances.

8.2.4 Section 8 created a new offence of attending a place used for terrorist training. This added to offences relating to terrorist training contained in section 54 of TACT, and section 6 of this Act. The offence applies whether the place is inside the United Kingdom or abroad.

Impact

8.2.5 The CPS advise that the offence relating to Preparation of Terrorist Acts under section 5 has been used in numerous prosecutions (details of which can be found on the CTD website www.cps.gov.uk/publications/prosecution/ctd.html). The most recent available statistics indicated that there were 17 section 5 convictions between 2006 and 2010 (where a section 5 offence was the most serious indictment).[2]

8.2.6 The CPS has brought two prosecutions for the offence of training for Terrorism under section 6. One of these resulted in convictions, the other an acquittal (details of which can be found on the CPS CTD website www.cps.gov.uk/publications/prosecution/ctd.html).

8.2.7 Section 7 provides for the powers of forfeiture in respect of offences under section 6. These powers have not been used to date.

8.2.8 The offence of attendance at a place used for terrorist training under section 8 has been used successfully in two prosecutions (details of which can be found on the CPS CTD website www.cps.gov.uk/publications/prosecution/ctd.html).

8.3 Offences involving radioactive devices and materials and nuclear facilities and sites

Background

8.3.1 The offences in Sections 9, 10, and 11 are required for the UK to ratify the UN Convention for the Suppression of Acts of Nuclear Terrorism, which the UK signed in September 2005. The new offences which these sections created relate in particular to the use, possession and making of radioactive devices, particularly radioactive material dispersal devices and radiation emitting devices, and use and possession, or the threat of use or possession, of radioactive materials or nuclear facilities for terrorist purposes.

8.3.2 Section 12 amended sections 128 and 129 of the Serious Organised Crime and Police Act 2005 (SOCAP), to extend those sections to include nuclear sites. Section 128 covers England, Wales and Northern Ireland, and

[2] Home Office Statistical Bulletin – *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches Great Britain 2009/10*

Section 129 covers Scotland. They make it an offence to enter or to be on a designated site as a trespasser. The maximum penalty for offence under these provisions is, in England and Wales, 51 weeks imprisonment, a fine up to level 5 on the standard scale, or both, in Scotland, 12 months imprisonment, a fine up to level 5 on the standard scale, or both, and in Northern Ireland, 6 months imprisonment, a fine up to level 5 on the standard scale, or both. The reference to 51 weeks in relation to England and Wales is subject to a transitional provision as set out in section 175(3) of the SOCAP, which provides that, in relation to offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference to 51 weeks is to be read as a reference to 6 months.

Impact

8.3.3 Sections 9-12 relating to offences involving radioactive devices and materials and nuclear facilities and sites have not been used to date.

8.4 Increases of penalties

Background

8.4.1 Section 13 increases the maximum sentence for the existing offence of possessing an item that may give rise to a reasonable suspicion that it is possessed for a purpose connected to the commission, preparation or instigation of an act of terrorism. This amends section 57(4)(a) of the TACT. The maximum penalty is increased from 10 to 15 years imprisonment. Subsection 2 makes it clear that this is not a retrospective amendment and that offences committed before this section comes into force will only attract the maximum penalty of 10 years imprisonment.

8.4.2 Section 14 increases the maximum sentence for the existing offences involving preparatory acts and threats set out in section 2 of the Nuclear Material (Offences) Act 1983. That section creates offences relating to receiving, holding or dealing with nuclear material, or making threats in relation to nuclear material, with intent to commit certain offences or enabling others to commit those offences. These include, among offences, those of murder, manslaughter, culpable homicide, assault to injury, malicious mischief or causing injury, certain offences against the person, theft, or extortion. The previous maximum penalty was fourteen years imprisonment, or (if lower) the maximum sentence for the carrying out of such acts.

8.4.3 Section 15 amends section 53 of the RIPA 2000. Part 3 of the RIPA 2000 provides a power to enable public authorities (including members of the law enforcement, security and intelligence agencies) to give notices requiring protected (i.e. encrypted) information which they have lawfully obtained to be put into an intelligible form. Section 53 sets out the penalties for failing to make the disclosure required by the notice.

Impact

8.4.4 Section 13 provides a maximum penalty for possessing for terrorist purposes. This was used in *R v Khan, Muhammed, Munshi and Sulieman* the increase in sentencing provisions for section 57 from 10 - 15 years was used

in respect of Khan who was sentenced to 12 years on each section 57 count.

8.4.5 Sections 14-15 have not been used.

8.5 Incidental provisions about offences

Background

8.5.1 The power to hold preparatory hearings in terrorism cases is provided under section 16. Under section 29 of the Criminal Procedure and Investigations Act 1996 (the CPIA) a judge has power to order a preparatory hearing in cases of such seriousness or complexity that substantial benefits are likely to accrue from such a hearing. A similar power to order preparatory hearings in cases of serious or complex fraud is in Section 7 of the Criminal Justice Act 1987. The purpose of a preparatory hearing is to identify the material issues, assist the jury's comprehension of those issues, expedite the proceedings before a jury, deal with questions of severance and joinder, and otherwise assist the trial judge's management of the case. Section 16 amends section 29 of the CPIA to place an obligation on the judge to order a preparatory hearing where two particular circumstances occur concerning terrorism. The first is where at least one person in the case is charged with a terrorism offence. The second is where at least one person in the case is charged with an offence that carries a penalty of a maximum of at least 10 years imprisonment and it appears to the judge that the conduct in respect of that offence has a terrorist connection.

8.5.2 The commission of offences abroad is provided under section 17. Section 17 makes provisions in relation to extra-territorial jurisdiction for the UK courts for the new offences contained in Sections 1, 6, and 8 to 11 of this Act, and two offences in the TACT. The overall effect of the section is that if, for example, an individual were to commit one of these offences in a foreign country, they would be liable under UK law in the same way as if they had committed the offence in the UK.

8.5.3 The extra-territorial jurisdiction in Section 17 is needed in order to give effect to Article 14 of the Council of Europe Convention on Prevention of Terrorism and Article 9 of the International Convention for the Suppression of Acts of Nuclear Terrorism. Article 14.1 of the Council of Europe Convention on the Prevention of Terrorism requires that State Parties take jurisdiction in respect of offences committed anywhere by nationals of that State. Article 14.3 requires State Parties to take jurisdiction in respect of anyone present in their territory if they do not extradite that person to the State where the offence was committed. Paragraphs 1 and 4 of Article 9 of the Nuclear Convention set out the same requirements. Extra-territorial jurisdiction is appropriate for the offence in section 8 because the places at which terrorist training are taking place are as likely, and potentially more likely to be located abroad rather than in the UK.

8.5.4 Section 17 also amends Section 3 of the Explosive Substances Act 1883. Under section 3(1)(a) of that Act it is an offence to carry out certain acts preparatory to causing an explosion. The preparatory acts must take place in the UK or its dependencies, or in the case of a citizen of the UK or its dependencies, anywhere in the world. In order for the offence to be committed

the explosion must be intended to take place in the UK or the Republic of Ireland. This means that it was not an offence to carry out acts preparatory to an explosion in a country other than the UK or the Republic of Ireland. The Act amended Section 3 so that the explosion can be planned to take place anywhere in the world.

8.5.5 The liability of Company Directors etc. is provided under section 18. This section provides that offences under part 1 of this Act that are committed by corporate bodies will also be committed by a senior officer of that body if the offence was committed by the corporate body with his consent or connivance. For instance, a corporate body could be prosecuted for an offence under Section 2 of disseminating terrorist publications.

8.5.6 Powers of consents to prosecutions are provided for under section 19. Prosecutions for offences in Part 1 of this Act may only be carried out in England and Wales with the consent of the Director of Public Prosecutions (DPP), or in Northern Ireland, with the consent of DPP for Northern Ireland. In a case where it appears to the DPP, or DPP for Northern Ireland, that the offence has been committed for a purpose wholly or partly connected with the affairs of a foreign country, a prosecution may only be brought if the Attorney General or, in the case of Northern Ireland, the Advocate General for Northern Ireland, agrees with the DPP's, or DPP for Northern Ireland's, decision to give consent.

Impact

8.5.7 Preparatory hearings in terrorism cases under section 16 are compulsory hearings which the CPS advise have been used to good effect in order to resolve legal issues prior to commencement of the trial. The case study for Operation Gingerbread below provides a good example.

Case Study

Operation Gingerbread: R v Ahmed and others

Several legal rulings given—see below

Issue	**Ruling**
Application on behalf of Rangzieb Ahmed that Special Counsel be appointed to review the in-camera material.	Refused in Preparatory Hearing by trial Judge. CPS Comment: had the application been granted, the trial would have had to be adjourned, probably for several months.
In camera order for Crown response to Rangzieb Ahmed's allegations about torture	Granted, and approved by Court of Appeal (on appeal after conviction, not on an interlocutory basis). CPS Comment: had the application been refused, it would probably have led to an interlocutory appeal by the

	Crown, thus delaying the trial.
Abuse of process: [1] Alleged complicity of the United Kingdom authorities in unlawful detention, ill-treatment, and/or torture of Rangzieb Ahmed between 20 August 2006 and 7 September 2007, and [2] arising from involvement of the United Kingdom authorities in the unlawful deportation or return of Rangzieb Ahmed to the United Kingdom.	Refused in Preparatory Hearing by trial Judge and upheld by Court of Appeal (on appeal after conviction, not on an interlocutory basis). CPS Comment: had either ground for abuse of process been found by the trial judge, there may have been an interlocutory appeal by the Crown (depending on analysis of the evidence).
The admissibility of Professor Clarke's evidence on the structure of Al Qaeda, the reasons why the defendant may have decided to use the route out of Pakistan via China, the use of South Africa as a transit point for Al Qaeda operatives, the use by Al Qaeda operatives of email dead letter drops and invisible ink and information about the people whose names appeared on the AQ 'diaries' containing phone numbers.	Granted, and approved by Court of Appeal (on appeal after conviction, not on an interlocutory basis). CPS Comment: it was extremely helpful for the court to be able to rule on this well in advance of the witness giving evidence before the jury because it enabled the evidence to be led without interruption and without a *voir dire* in the middle of the trial which would have meant that the jury were sent home for around 1 and a half days whilst it took place
Restrictions on publicity concerning Mehreen Haji (publication of photograph, details of residence)	Granted by trial judge and not appealed.

8.5.8 Commission of offences abroad under section 17 has been applicable in a number of prosecutions.

8.5.9 The liability of company directors under section 18 has not been used to date.

8.5.10 Using the powers of consents to prosecutions under section 19, the consent of the Attorney General has been applied for in a number of these prosecutions and to date has raised no issues.

Part 2 – Miscellaneous Provisions

8.6 Proscription of terrorist organisations

Background

8.6.1 New powers on grounds of Proscription are provided at section 21. Section 3 of the TACT gives the Secretary of State power to add an organisation to the list of proscribed organisations in Schedule 2 of that Act if

they believe that the organisation is concerned in terrorism. The term 'concerned in terrorism' is defined in section 3(5), and includes that the organisation promotes or encourages terrorism (section 3(5)(c)). 'Organisation' is defined in section 121 of the TACT as including any association or combination of persons. The TACT creates a number of offences which relate to proscribed organisations. For example, section 11 makes it an offence to be a member of a proscribed organisation, and section 12 creates various offences relating to supporting a proscribed organisation. In addition, some of the powers in the TACT can be exercised on the basis that an organisation is proscribed, for example, the resources of a proscribed organisation can be seized as terrorist cash under Part 3 of the TACT.

8.6.2 Section 21 of the 2006 Act amends the TACT to make clear that the promotion or encouragement of terrorism includes acts which glorify terrorism. The amendment provides that a group may be considered to promote or encourage terrorism under section 3 (5)(c) if its activities include the unlawful glorification of terrorism or if its activities are carried out in a manner that ensures that the organisation is associated with statements containing unlawful glorification of terrorism. Glorification of conduct is unlawful if persons who may become aware of it could reasonably be expected to infer that the conduct should be emulated in existing circumstances or illustrative of conduct that should be so emulated.

8.6.3 New powers to address name changes by proscribed organisations are introduced via section 22 of the 2006 Act. Section 3 of TACT defines a proscribed organisation for the purposes of TACT as an organisation listed in Schedule 2 to that Act or an organisation that operates under the same name as a listed organisation. Various offences under TACT attach to conduct that is taken in relation to proscribed organisations. Section 22 of the 2006 Act amends section 3 of TACT to provide the Secretary of State with powers to deal with proscribed organisations which change their names. Section 3(6) now allows the Secretary of State to provide by order that an organisation name that is not listed in Schedule 2 is to be treated as another name for a proscribed organisation. The power may be exercised either where the Secretary of State believes that an organisation under Schedule 2 is operating wholly or partly under a name that is not specified in that Schedule or is for practical purposes the same as an organisation so listed. If so, the Secretary of State may by order provide that the name that is not specified in Schedule 2 is to be treated as another name for the listed organisation.

Impact

8.6.4 Section 21 amends the TACT to make clear that the promotion or encouragement of terrorism encompasses acts of glorification. This provision was used in 2006, when Al Ghurabaa and The Saved Sect were proscribed. The amendment may have also had the impact of influencing organisations to modify their behaviour so as not to breach proscription laws.

8.6.5 The new powers introduced through section 22 address name changes by proscribed organisations. There have been three name change orders since the power came into force – with the most recent in January 2010. These are:

- Proscribed Organisations (Name Changes) Order 2010 – No 34 (coming into effect 14 January 10). Designated Al-Muhajiroun, Call to Submission, Islam4UK, Islamic Path and London School of Sharia, as alternative names for the proscribed organisations Al-Ghurabaa and The Saved Sect;

- Proscribed Organisations (Name Changes) Order 2009 – No 578 (coming into effect 02 April 09). Designated Jama'at ud Da'wa as an alternative name for the proscribed organisation Lashkar e Tayyaba; and

- Proscribed Organisations (Name Changes) Order 2006 – No 1919 (coming into effect 14 August 06). Designated Kongra Gele Kurdistan and KADEK, as alternative names for the Kurdistan Workers' Party (Partiya Karkeren Kurdistan (PKK)).

8.6.6 Terrorist groups are often fluid in nature – sometimes splintering into different factions or using other names in a bid to avoid action being taken against them. The ability to add aliases for organisations already listed is therefore considered an important power in relation to proscription.

8.7 Detention of terrorist suspects

Background

8.7.1 The power to extend the period of detention for terrorist suspects is set out at section 23.This section contains amendments to Schedule 8 to TACT, which deals, among other things, with extension of detention prior to charging of those arrested under Section 41 of TACT. The amendments made to Schedule 8 include, setting out the office-holders who may apply for a warrant of further detention, and the requirement that a Senior Judge must grant any application for further extension of the maximum period of detention to 28 days. The original maximum period of detention of seven days was extended to a maximum of 14 days by Section 306 of the Criminal Justice Act 2003. Schedule 8 as amended by section 23 also sets out that a court may issue a warrant for a period of less than seven days if either the application for the warrant specifies a shorter time period or the judicial authority is satisfied that there are circumstances where extension for as long as seven days is inappropriate.

8.7.2 Section 24 further amends schedule 8 to provide for the grounds on which a review officer (during the first 48 hours of detention) and thereafter a judicial authority or senior judge may authorise continued detention. Section 24(1) amends paragraph 23 of schedule 8 TACT to provide for the grounds on which a review officer can decide to detain a person during the initial 48 hour period after arrest (or detention under that Schedule). It sets out that a review officer may extend detention if he is satisfied that it is necessary to (1) obtain relevant evidence whether by questioning or otherwise; (2) preserve relevant evidence or (3) pending the result of an examination or analysis of any relevant evidence or an examination or analysis of anything that may result in relevant evidence being obtained. An examination or analysis would include a DNA test. Section 24(3) similarly amends the grounds on which a judicial authority may issue a warrant of further detention.

8.7.3 Powers for expiry or renewal of extended maximum detention period is provided at section 25. The effect of section 25 is that, insofar as they extend the maximum period a terrorist suspect may be detained under TACT 2000 prior to charge, the amendments made by Section 23 will cease to have effect one year after their commencement unless continued in force by an order made by the Secretary of State. So, if the SofS does not make such an order, the maximum period of detention reverts to 14 days.

Impact

8.7.4 Orders under section 25 maintaining the 28 day period were made in 2007 (coming into effect on 25 July 2007), 2008 (coming into effect on 25 July 2008) and 2009 (coming into effect on 25 July 2009 for 12 months. An order was made for six months in 2010 (coming into effect on 25 July 2010).

8.7.5 11 individuals have been held for over 14 days pre-charge detention – nine were arrested in Operation Overt (the so-called 'transatlantic airline plot' in 2006), one in Operation Gingerbread (a Manchester-based arrest in 2006) and one in Operation Seagram (the London Haymarket and Glasgow airport attacks in 2007). Six of these 11 people were held for the maximum 27-28 days - three were charged, three released without charge. Terrorist suspects were last held for more than 14 days in 2007.

8.7.6 The Government conducted a review of counter terrorism and security powers, including pre-charge detention of terrorist suspects, which reported in January 2011. The review concluded that 28 day detention was not routinely required and that the limit for pre-charge detention should be set at 14 days, which should be reflected on the face of the legislation. The order made in 2010 was subsequently allowed to lapse, reducing the maximum period to 14 days. The Protection of Freedoms (PoF) Bill also includes provisions to repeal the order-making provisions of section 25 of the 2006 Act so that the maximum period of detention remains at 14 days.

8.7.7 The review also noted, however, that there may be rare cases where more than 14 days is required. This is therefore provided for by emergency legislation which has been published, and could be introduced in the event that more than 14 days is required. A separate order-making power conferred on the Secretary of State will be included in the PoF Bill to allow the maximum period to be extended beyond 14 days if required during the rare occasions when Parliament is dissolved.

8.8 Searches etc

Background

8.8.1 Amendments to the powers for all premises warrants for England, Wales, Northern Ireland and Scotland are provided under section 26 and 27. Under paragraph 1 of Schedule 5 to TACT 2000 a constable can apply to a justice of the peace for a warrant to enter and search premises for the purposes of a terrorist investigation. Before the passage of the 2006 Act, such applications and warrants had to specify the set of premises to which it relates. This section amends Schedule 5 to allow "all premises" warrants to

be issued. These provisions are based on the provisions in section 113 and 114 of the Serious Organised Crime & Police Act 2005 (SOCAP) which amend the Police and Criminal Evidence Act 1984 to allow 'all premises warrants' to be granted under that Act. 'All premises warrants' may authorise the searching not just of named premises but also any premises occupied or controlled by a specified person.

8.8.2 A power of seizure and forfeiture in relation to terrorist publications within the meaning of section 2 is created under section 28.

8.8.3 A power to search vehicles under Schedule 7 to the Terrorism Act 2000 is created under section 29. This section extends Schedule 7 to TACT to allow an examining officer (i.e. constable, an immigration officer, or a customs officer) to search a vehicle at a port which is on a ship or aircraft, or which the examining officer reasonably believes has been or is about to be on a ship or aircraft for the purposes of determining whether a person the examining officer is questioning is a terrorist within the meaning of section 40(1) of TACT.

8.8.4 Schedule 7 was not part of the Counter-Terrorism and Security Powers Review but the Government made clear at the time that the principal counter terrorism powers should be necessary, effective and proportionate and should not erode the freedoms that terrorists seek to undermine should apply to all powers. In light of this we are currently considering the extent and use of the powers in Schedule 7. The revised CONTEST Strategy published on 12 July 2011 committed to reporting on this review in late 2011.

8.8.5 Section 30 extends the powers of authorisation to stop and search under section 44 and 45 of TACT 2000, to internal waters. It adds a new subsection to section 44 to enable an authorisation under section 44 to include internal waters adjacent to any area or place specified under section 44 or part of such internal waters. Internal waters are waters within the United Kingdom which do not fall within a police area. Previously, an authorisation could only be given within a police area, meaning that the powers under section 44 were not available beyond the low water line e.g. in various estuaries, bays and coves off the UK coast. Sections 44-47 of the Terrorism Act 2000 have since been replaced with a significantly circumscribed power which can be used in more restricted circumstances, which means that the internal waters provisions will be used less.

Impact

8.8.6 Statistics are not collated on the number of time all premises warrants have been used, under sections 26-27, but the police have advised that the powers are used sparingly. This reflects the need to ensure that the extent of searches carried out is proportionate and only what is required for a particular investigation. It also reflects the extensive investigation carried out before search warrants are sought and executed. In the majority of cases therefore, warrants are only sought for identified premises. On the occasions where all premises warrants have been used, they have allowed the police to move swiftly to search additional premises and maintain the momentum and integrity of an operation.

8.8.7 Section 28 provides the power of seizure and forfeiture in relation to terrorist publications within the meaning of section 2.

8.8.8 Section 29 creates a power to search vehicles under Schedule 7 to TACT. Prior to amendment the TACT Schedule 7 legislation allowed an examining officer to conduct a search of a person and their belongings, but did not specifically allow for the searching of a vehicle. The amendment made in the Terrorism Act 2006, recognised that the carriage of items that may provide evidence of involvement in terrorist activity are equally likely to be within vehicles for those travelling through maritime ports and the Eurotunnel "shuttle". These powers are applied on a daily basis by the police and have lead to a number of significant detections of items indicative of terrorist related activity. Such detections have included explosive trace detected on arriving vehicles, the finding of electronic devices containing video footage deemed to be probable hostile reconnaissance and the seizure of prohibited offensive weapons from individuals with terrorist traces. In addition, large amounts of cash have been found and seized under the Proceeds of Crime Act using these powers, which is believed to be connected both to the financing of terrorist activity and serious organised crime.

8.8.9 Statistics are not collated on the number of vessels that have been searched in internal waters under section 30[3], although police report that the power was used up to July 2010. This provision in the legislation mitigated the risk that existed before its introduction, i.e. the police being unable to conduct searches of vessels in internal waters for articles of a kind which could be used in connection with terrorism.

8.9 Other investigatory powers

Background

8.9.1 Section 31 amends the Intelligence Services Act 1994 (ISA) in relation to the powers of the security and intelligence services in respect of warrants and authorisations that authorise acts both in the UK and overseas. The amendments provide the Secretary of State with a power to nominate specified senior officials who, in urgent cases, are authorised to issue warrants under section 5 of the ISA (warrants authorising certain actions of the security and intelligence services). Section 31 also extends the duration for which warrants issued by senior officials may last from two to five working days. Section 31 of the 2006 Act further amends the ISA by enabling an authorisation issued in accordance with section 7 of that Act to be relied upon for five working days in relation to property within the British Islands in certain circumstances.

8.9.2 Section 32 makes amendments to the provisions concerning the duration and modification of, and safeguards attached to, interception warrants issued pursuant to Part 1 of the Regulation of Investigatory Powers Act 2000 (RIPA). The amendments:

- Provide that both initial and renewed warrants issued on national security or economic well-being grounds will last for 6 months;

[3] Statistics in the Home Office Statistical Bulletin relate to the total number of vehicles stopped under the powers, which includes vessels.

- Allow modifications of the schedules of an intercept warrant, issued in the interests of national security, to be made by a senior official who is either the person to whom it is addressed or one of their subordinates. These modifications cease to have effect at the end of the fifth working day; and

- Extend the period for which material may be examined or selected for examination in the case of warrants to which RIPA s8(4) certificates apply.

8.9.3 Section 33 extends the regime for disclosure notices for the purposes of terrorist investigations. It extends the regime contained in Part 2, Chapter 1 of the Serious Organised Crime & Police Act 2005 (SOCAP) under which a disclosure notice may be issued by the Investigating Authority, requiring those on whom such a notice is served to provide specific information as set out in the notice. Refusal to provide information is an offence, punishable by imprisonment for up to 51 weeks, or a fine. Providing false or misleading information is an offence, punishable by imprisonment for up to two years, or a fine, or both. The Investigating Authority is defined as the DPP, the Director of Revenue and Customs Prosecutions, or the Lord Advocate. It:

- Extends the powers of the Investigating Authority to enable issuing of disclosure notices in terrorist investigations;

- Provides that a disclosure notice may be given where the Investigating Authority believes a person has information that relates to a terrorist investigation; and

- Inserts definitions of 'act of terrorism', 'terrorism', and 'terrorist investigation', into SOCAP for the purposes of the disclosure notice provisions.

Impact

8.9.4 Section 31 and 32 powers have been used by the intelligence agencies on occasion in genuinely urgent and fast-moving operational situations. The use of powers under the Intelligence Services Act 1994 and the functions of the Intelligence Services are overseen by the Intelligence Services Commissioner and the Parliamentary Intelligence and Security Committee.

8.9.5 No disclosure notices have been authorised by the CPS under Section 33.

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline Lo-Call 0845 7 023474
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

The Parliamentary Bookshop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders/General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: bookshop@parliament.uk
Internet: http://www.bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-181862-9