

**REPORT ON THE OPERATION
IN 2009 OF THE
TERRORISM ACT 2000 and of
PART 1 OF THE TERRORISM ACT 2006**

BY

LORD CARLILE OF BERRIEW Q.C.

July 2010

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INTRODUCTION

1. This is my review as independent reviewer of terrorism legislation of the operation in 2009 of the *Terrorism Act 2000* and of *Part 1* of the *Terrorism Act 2006*.
2. I write this report more than eight years after my original appointment as Independent Reviewer of the *Terrorism Act 2000* [*TA2000*]. My reports can be found most easily online, via www.homeoffice.gov.uk and following the archived ‘security’ or ‘publications’ links.
3. For consistency and ease of reference, this report follows a similar sequence to those I have written previously on this subject. It is my last report in this role, having decided when my appointment was last renewed that this would be my final term. I make some comments below as to how the reviewer might best discharge his/her role in the future. I hope that my successor will feel, as I have, that it is a privilege to hold the position of independent reviewer of terrorism legislation, as it plays a real part in the difficult task of balancing, respectively, the vital interests of both civil liberties and national security. They are complementary, not rival concepts, but finding the ideal mixture of provisions is a challenging task.
4. In 2001, I was appointed also as the reviewer of the detention legislation contained in the *Anti-Terrorism Crime and Security Act 2001* [*ATCSA2001*]. That was repealed and replaced by the Control Orders system provided by the *Prevention of Terrorism Act 2005*: I review those provisions too. My report on the fourth period of operation of that Act was published in February 2010¹.
5. Until 2007 I prepared separate reports on the provisions of *Part VII* of *TA2000*. That part applied to Northern Ireland only. It was replaced by continuance (subject to some repeal) in the *Terrorism (Northern Ireland) Act 2006* [*TNIA2006*]. Its continuance was time limited to the 31st July 2007 plus a possible one year extension. The *Justice and Security (Northern Ireland) Act 2007* [*JaSNTA2007*] now in effect has replaced *TA2000 Part VII* altogether, subject to some transitional provisions: the replacement consists of public order (as opposed to counter-terrorism) legislation.
6. The remaining parts of the *TA2000* apply to Northern Ireland, as to the other parts of the United Kingdom.
7. A new reviewing mechanism, entirely domestic to Northern Ireland, replaced my role in relation to *Part VII*, with a different reviewer with responsibilities entirely particular to Northern Ireland. That reviewer is Robert Whalley C.B. I have discussed the Northern Ireland situation with Mr Whalley, and for convenience and better understanding we have conducted some joint meetings. As last year, I have also conducted some joint meetings with John Vine QPM, who is now the Chief Inspector of the UK Borders Agency [*UKBA*].

¹ www.homeoffice.gov.uk and follow ‘security’ or ‘publications’ links

8. My last separate report on the operation of *Part VII* was in January 2006. It should be noted that the statistical material in the Annexes to this report now excludes Northern Ireland unless specifically stated in the Tables.

9. This is my eighth report on the working of the TA2000 as a whole. I am the first Independent Reviewer of the TA2000 in its full range of applicability. My predecessors' reports were principally upon the operation of the *Prevention of Terrorism (Temporary Provisions) Act 1989*. That Act, and the *Northern Ireland (Emergency Provisions) Act 1996* ceased to have effect when the *TA2000* came into force on the 19th February 2001.

10. I have delayed the production of this report until after the 2010 General Election and the formation of the new, coalition government. I have done this in order to be able to reflect upon declared or likely changes of policy as a result of the change of government. In that context, although this is not a report on the control orders system, it may be helpful to say that nothing I have seen or heard during or following the election campaign has led me to change my repeatedly expressed views – that control orders are an unwelcome but appropriate means of addressing a small number of cases. No viable alternative has been suggested for this very small group of terrorism suspects.

11. *TA2000* was the subject of significant amendment by *ATCSA2001*. For example, sections 24-31 were repealed from the 20th December 2001, and form no part of this review². A consequence of the repeal of parts of the *TA2000* without substituting new sections into the same Act is that those parts are no longer subject to this form of review, whereas new sections inserted into the *TA2000* are. *The Prevention of Terrorism Act 2005* and the *Terrorism Act 2006*³ [*TA2006*] add further elements, as does the *Counter-Terrorism Act 2008* [*CTA2008*].

12. The website www.statutelaw.gov is a readily available and well-used resource for viewing legislation in its current state. Updating of the site to include recent amendments is still not immediate, but is becoming speedier.

13. My reviewing tasks continue to demand a high proportion of my professional life. I do not have a fixed number of days for the work involved, but it occupies more than half of my working time. The relationship between the independent reviewer and the new (post-election) National Security Council is an additional element, and remains to be clarified.

14. I make myself available to Ministers, officials, the political parties throughout the UK, pressure groups and other outside bodies, the media and of course members of the public (on reasonable requirements). I give many lectures and speeches on the subject of terrorism. Generally, the political parties have been ready to engage in discussion with me, it is to be hoped for the better performance of my task as well as to assist a more accurate approach to political

² Anti-Terrorism, Crime and Security Act 2001, sections 1(4), 125, Sch 8 Pt 1; and SI 2001/4019, art 2(1)(a), (d)

³ Royal Assent 30th March 2006

debate. The level of engagement with political parties has been satisfactory. On a real time basis, front bench spokespersons of the main Opposition parties should be given access to as much material as is consistent with national security: since the recent General Election new Ministers have had to absorb a great deal of material about the current terrorism threats, and may well find their previously expressed views modified or mitigated by such material and by the advice they receive. Before the General Election I expressed the hope that terrorism would not become a major election issue between the parties, and I was pleased to note that it did not in any major way.

15. I consider it important that the review of counter-terrorism legislation should be the subject of public knowledge and debate. I encourage government to make available to the public as much information as possible on terrorism and how it is countered, subject to the constraints of national security and necessary operational policing. The public need to be reassured that counter-terrorism law is used only for counter-terrorism purposes. A continuous narrative is needed from government as to the nature of current terrorist threats and how the authorities are progressing against those threats. Good counter-terrorism law is law understood by the public, as to rationale and means.

16. In almost every year I have acted as independent reviewer, I have been both supported in and criticised for my view that national security is a civil liberty of every citizen. I hold to it, and believe that it bears repetition. The government for the time being has the duty to take steps proportional in the context of our democratic system to keep citizens safe from unlawful violence, whether such violence is politically or, in the more ordinary sense, criminally motivated. Reciprocally, all citizens have a clear duty to assist their government in ensuring the security of themselves and their fellow citizens. The importance of reporting responsibly felt concerns and suspicions about terrorism is high. Members of the public of all ethnicities generally take this seriously. Nobody should feel reluctant about reporting a genuinely held concern. They will not be criticised: confidentiality will be respected. The terrorism hotline telephone number is 0800 789 321, and should be known widely.

17. My observations in relation to *TA2000* in 2009 and throughout the past eight years have confirmed the shift of emphasis towards international terrorism, as the process of normalisation in Northern Ireland has become more evident. However, 2009 and early 2010 have demonstrated that there is a paramount need for continuous vigilance in Northern Ireland, despite the progress of recent years. The number of terrorism incidents in Northern Ireland has increased, as has the evidence of the existence of determined and dangerous groups of dissident republicans with the ability to manufacture and deploy lethal explosive devices. Their main targets to date appear to be the police and armed services. Unfortunately, one cannot possibly exclude the possibility of dissident paramilitaries mounting terrorist attacks in Great Britain.

18. Given the philosophical and real policy differences between Northern Ireland political parties, we owe political leaders and their supporters a debt of gratitude for the peace and progress there. The devolution of policing and justice

issues will be enhanced by the appointment of an Attorney General for Northern Ireland, John Larkin Q.C., who commands a high level of support across the political spectrum.

19. My periodic contacts with the political parties and others in Northern Ireland leave me optimistic about the future of political and legal institutions there. The willingness of all political parties to be involved in political responsibility for the police service has been a real and important step in the normalisation process. The devolution of policing and justice has now occurred: this in itself was a very important step in normalisation, as is the absence of soldiers from the streets.

20. The material I have seen and briefings I have received, together with the large volume of publicly available material, leave me pessimistic, as in previous years, about international terrorism as promulgated by violent Islamist jihad. As the Director General of the Security Service and others have made clear, complacency founded upon the recent absence of fatal terrorist attacks would be misplaced and unwise. As before, terrorist conspiracies have been disrupted. A clear example of this was Operation Pathway, involving the arrests of 12 men in Lancashire, Greater Manchester and Merseyside in April 2009. I wrote a 'snapshot review' of those events⁴ in October 2009. As I commented in that report, a high degree of co-operation is required between the police and the Crown Prosecution Service to ensure that the disruption and the potential for prosecution are fully discussed before any arrests occur. I am pleased to note that a very high level of co-operation is now regarded as a given.

21. Recent decisions of the Special Immigration Appeals Commission [SIAC] have given support to the view that putative terrorists have been disrupted, albeit some in circumstances in which they could not be prosecuted because of the intelligence nature of the material against them; or (as in Operation Pathway) because the arrest occurred so early in the plot that specific evidence of intended targets/consequences was not yet available.

22. In *Abid Naseer v Secretary of State for the Home Department*⁵ the Special Immigration Appeals Commission held that two men arrested in Operation Pathway, could not be deported to Pakistan even though SIAC was satisfied that they posed a threat to the national security of the United Kingdom. The grounds of this decision were that there were substantial grounds for believing that there would be a real risk of ill-treatment at the hands of the Pakistan authorities sufficient to infringe their rights under Article 3 of the European Convention on Human Rights: the British courts will not allow a person to be sent to another country if there is evidence of a risk of breach of European Convention on Human Rights Articles 2-3.

23. In my view more could be done to persuade home countries of the importance of ensuring that returnees are treated in accordance with *ECHR* standards; and to ensure that case-specific, credible, realistic and verifiable

4 www.irr.org.uk/pdf2/Carliles_report_Pathway.pdf

5 www.siac.tribunals.gov.uk/outcomes2007onwards.htm

evidence to support return is placed before the Courts. It is not acceptable for large numbers of persons to remain in the UK when their presence is contrary to the national interest and national security. I believe that a more imaginative approach to these cases is required, probably based on a partnership between the Home Office, the Foreign and Commonwealth Office, and independent non-governmental agencies commanding the confidence of the other countries concerned.

24. Prosecutions currently are focused on three strands of terrorism offences – (i) extremism claimed to have its foundations in Islam, (ii) Northern Ireland based dissidents, and (iii) right-wing violent extremism. There has been significantly greater activity in the last of these categories: those tempted by it should be aware that they face the prospect of very long prison sentences.

25. More trials are pending, and in those that have occurred many convictions for extremely serious offences have been recorded. The prosecution have not always secured convictions of all offences charged. Juries appear to act in terrorism cases in a way no different from other criminal offences, in that convictions are more likely for specific offences involving defined actions rather than less specific charges founded on writings and emails.

26. Defendants in UK terrorism trials continue to show a willingness to plead guilty in the face of a solid prosecution case and a realistic approach to pleas by prosecutors and judges. Plea agreements, and the obtaining from defendants of information useful in preventing and detecting terrorism, should be encouraged – in some cases by substantial discounts from sentences that otherwise would be served. The prevention and detection of terrorism offences are more important than the length of prison sentences, though it is right that terrorists should expect very long sentences especially if they have denied what has been proved against them.

27. There is increasing evidence of terrorism being planned on a wider international front than before. Somalia and Bangladesh are worrying examples of countries in relation to which UK resident participants may be preparing acts of terrorism, and from which terrorism against the UK and UK assets may emerge.

28. Allegations of complicity by UK intelligence services in allegedly reprehensible and possibly criminal activity by foreign intelligence personnel are being investigated. The police inquiry remains incomplete, and it would be inappropriate to comment upon it in this report. The new UK government has promised a judge-led inquiry into these matters. Presumably that inquiry will follow the completion of the police investigation and any ensuing prosecution: it would be unrealistic to have police and judicial inquiries running in tandem. I am aware that the Security Services are concerned about the time this whole process is taking, and the effect on individual personnel and on the services. Hopefully the police inquiry and any charging decision by the CPS can be completed well before the end of 2010.

29. The effective level of disruption and penetration of terrorism plots by the police and other control authorities remains encouraging, despite recent events in Northern Ireland. There is a striking level of co-operation among territorial police forces, together with the British Transport Police. I have visited several regional Counter-Terrorism Units during the year. Whilst complacency is always inappropriate in anything relating to terrorism, I am optimistic that the UK police and other services are at least as likely to prevent a terrorism event as their colleagues anywhere else in the world. The partnership of the various control authorities, and an extraordinarily dedicated group of civil servants at all seniority levels, has contributed to the country being a safer place. They are well organised and as independent reviewer I would counsel against sapping their energy by major structural reorganisation.

30. I have noticed during the past year that the process and demands of legislative change have produced a very heavy workload for some of those civil servants. Ministers and other Parliamentarians should be conscious that sudden changes in Bills before Parliament, and the daily pressure of the Bills procedure in both Houses, can place considerable strain on even the best of officials. In an area such as counter-terrorism, a calm and orderly Parliamentary process, with a high degree of cross-party consultation, is likely to produce more enduring and effective legislation.

31. I remain grateful for the very considerable and patient help received from those officials in the Home Office, the Northern Ireland Office, and elsewhere in government, as well as from my many consultees and correspondents from outside government. I am conscious that there are many people and organisations with much to offer my review. I attempted during 2009 to broaden as well as consolidate my range of such contacts, and to learn as much as possible from the experience and opinions of others.

32. I was provided during 2009 with all the resources I needed to complete this and my other reports.

33. My remuneration is a matter of public record, and I am happy to answer any reasonable questions direct. My current daily fee received is £900, plus out of pocket expenses. This was not increased in 2009-2010.

34. The Home Office supplies me with some administrative facilities, with some office support, and with research support as needed.

35. I operate as independent reviewer from a private office in Central London. I am not part of the Home Office. I do have a secure room in the main Home Office building: I use this for the safe storage of documentary material that I am unable to take elsewhere, and for some meetings. This is a necessary practical situation. It is consistent with the arrangements made, for example, in relation to the functions of the Intelligence Services Commissioner and the Interception of Communications Commissioner.

36. My purpose, and the requirement of this report, is to assist the Government and Parliament in relation to the operation of *TA2000 and TA2006 Part 1*. My terms of reference may be found in the letters of appointment to my predecessors and myself. They are to be found too in the Official Report of the House of Lords debate of the 8th March 1984⁶, which shows clearly what Parliament intended when the post of reviewer was first established: the Reviewer should make detailed enquiries of people who use the Act, or are affected by it, and the Reviewer may see sensitive material. All this I have attempted to do to the extent necessary for the proper fulfilment of my function.

37. The statutory foundation for this report used to be found in *section 126 of TA2000*. This has been replaced by *TA2006 section 36*. *Section 36(1)* simply provides:

"The Secretary of State must appoint a person to review the operation of the provisions of the Terrorism Act 2000 and Part 1 of this Act".

38. It is outside my terms of reference to advise as to whether such legislation is required at all. Nevertheless I take it as part of my role to make recommendations, if it be my view that a particular section or part of the Act is otiose, redundant, unnecessary or counter-productive. I have been told that this is considered useful. Some repeals have occurred in consequence.

39. Once again this year I have received almost complete co-operation from all whom I have approached. There are still some whose interest in the subject I have yet to identify. However, once again this year there has been a significant increase in the number of informal contacts and suggestions I receive from members of the public, especially in connection with stop and search provisions. Such contacts can be of real value, and I welcome them all.

40. I have received about a hundred requests from students to make contributions to essays, dissertations etc. I apologise for not having the time to respond fully to all these requests, other than to refer to my reports.

41. The worldwide academic community has been generous in its advice to me during the past year. My knowledge of the subject has been increased by attendance at numerous seminars and workshops, and I have been a speaker at some. There are so many such events that, unfortunately, I am unable to attend them all.

42. I do not offer any kind of appeal procedure for individual cases. However, I do read some documents referring to individual cases. Where appropriate, I ask questions about them and can offer advice and comments. I am always keen to obtain the assistance of more members of the public who have had some contact or involvement with the legislation, whether as observers, witnesses, persons made subject to powers given under the Acts or as terrorist suspects. It is not

6 See HL Deb 08 March 1984 vol. 449 cc384-419 <http://hansard.millbanksystems.com/lords/1984/mar/08/prevention-of-terrorism-temporary-1>

always as easy as one would wish to make contact with those who have had these real-life experiences.

43. As in 2008, in the past year numerous members of the public have complained to me about their experiences of being searched under section 44. Where appropriate, these have been referred to the appropriate authority for formal investigation or comment. I made a point again in 2009 of witnessing some of the procedures, and spoke informally to members of the public following intervention by the authorities. Immediate reactions of that kind are revealing if unsystematic. As a general rule, the police are polite in their use of the powers, but there are many complaints of excessive and inappropriate use.

44. In the past year, as before, I have received significant co-operation from some lawyers who are instructed by persons arrested under the provisions. This was especially so in relation to my ‘snapshot report’ into Operation Pathway⁷. More feedback from lawyers who have been engaged in terrorism trials would be welcome. Anyone wishing to provide me with information is very welcome to do so by writing to me at the House of Lords, London SW1A 0PW or sending me information via the Internet on carlilea@parliament.uk. Doubtless, the details for access to my successor will appear on the Home Office website.

45. I travel from time to time seeking the views of as wide a range as possible of people, offices and departments having anything to do with TA2000. There is value in making comparisons with foreign jurisdictions, though most have very different legal systems.

46. As in previous years, my activities have included visits to port units and other establishments listed in Annex B. I find it extremely valuable to watch and speak to police officers, UKBA officers and others as they do the real everyday work of policing those who enter and leave the UK, or who import and export freight.

47. The people I have seen or with whom I have had some other contact include those listed in Annex A; for reasons of requested or implicit confidentiality I have excluded some names from that list. My email contacts are too many to list.

48. In preparing this report I have taken it once again as a basic tenet, not open to question as part of this review process, that specific anti-terrorism legislation is necessary as an adjunct to and strengthening of the ordinary criminal law.

49. I repeat yet again a hope that I fear will not be fulfilled, namely that a Consolidation Bill will be introduced, with the intention that all counter-terrorism legislation can be included in a single Act.

50. In so far as I have judged it necessary, I have seen and examined closed material relevant to the operation of the TA2000. I have not been refused access

⁷ www.rr.org.uk/pdf2/Carliles_report_Pathway.pdf

to any information requested by me. I have been briefed as fully as has been necessary, in my judgment. I receive briefings from the Security Service and the police. I have taken all that material into account on what I hope is a proportional basis, in preparing this report.

51. Yet again, as in previous reports, I highlight issues related to *TA2000 section 44*. A fundamental problem has now arisen about the section. In *Gillan and Quinton v United Kingdom*⁸, section 44 has been held by the European Court of Human Rights [ECtHR] to be contrary to the ECHR. In its judgment the Court said:

"85. In the Court's view, there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer. While the present cases do not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons is a very real consideration..... The available statistics show that black and Asian persons are disproportionately affected by the powers, although the Independent Reviewer has also noted, in his most recent report, that there has also been a practice of stopping and searching white people purely to produce greater racial balance in the statistics..... There is, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention.

86. The Government argue that safeguards against abuse are provided by the right of an individual to challenge a stop and search by way of judicial review or an action in damages. But the limitations of both actions are clearly demonstrated by the present case. In particular, in the absence of any obligation on the part of the officer to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised.

87. In conclusion, the Court considers that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, "in accordance with the law" and it follows that there has been a violation of Article 8 of the Convention."

52. As can be seen below, the section has been used a great deal, especially in the Metropolitan Police area and by the British Transport Police. If there is a single issue that can be identified as giving rise to most assertions of excessive and disproportionate police action, it is the use of *section 44*. As I have reported repeatedly, difficult problems arise in connection with the utilisation of *section 44* by police around the country. The inconsistency of approach among chief officers as to why, and if so when, *section 44* should be available was less pronounced during 2009, but remains. The section, which permits stopping and searching for

8 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860909&portal=hbkm&source=externalbydocnumber>

terrorism material without suspicion, rightly is perceived as a significant intrusion into personal liberties.

53. During 2008 there was significant progress in re-examining the use of the *section 44* powers. During 2009 this process continued, with the intention of improving and refining the use of the section. It is still deployed far too much in England and Wales (all comments below about *section 44* relate to Great Britain, not to Northern Ireland). It should not be applied where there is an acceptable alternative under other powers. As one chief constable emphasised in my presence, *section 44* is “*an exceptional power ... not a rolling power to be renewed every 28 days*”.

54. Although the UK government is seeking permission to appeal *Gillan* to the Grand Chamber of the ECtHR, preparations should be made for the potential failure of that appeal. I would go further. In my view the judgment already given has illustrated the excessive nature and use of *section 44*. Given the clearly expressed policies of the coalition partners prior to the 2010 General Election, I suggest that the time has arrived for the section to be repealed, and replaced by a more limited provision to deal with three broad sets of circumstances. These are:

- (a) counter-terrorism operations such as searches, arrests and some surveillance situations;
- (b) some iconic events where there is security services advice of heightened threat or risk;
- (c) a closed (i.e. secret), regularly reviewed and unexaggerated list of true critical national infrastructure sites.

55. So long as the current provisions remain in force, before each *section 44* geographical authorisation is made the chief officer concerned should ask him/herself very carefully if it is really necessary. Each chief officer personally should review at least quarterly the ambit and utility of *section 44* use in his/her police force area during the previous quarter. The geographical area covered by each authorisation should be as limited as possible. No chief officer can expect approval of a rolling 28 day authorisation for the whole of their police force area, save in exceptional circumstances and with the most clearly expressed and sound reasons. Above all, nobody should be stopped under the section unless its use is permitted by a valid authorisation from the Home Secretary. There have been too many errors in the authorisation process, costly in damages.

56. It is fully recognised as important that police officers on the ground (in sometimes challenging situations) must have a fuller understanding of the differences between the various stop and search powers open to them. The aim should be that in all circumstances they stop and search in appropriate circumstances only, and that they use the powers most fit for purpose.

1 PART I OF THE ACT: DEFINITION OF TERRORISM

57. In 2006, I conducted a separate review of the definition of terrorism⁹. Consistent with that, *Section 75 of the Counter-Terrorism Act 2008* amended the definition of terrorism in *TA2000 section 1* to include reference to acts done for the purpose of advancing a racial cause. This amendment was a justifiable addition to the law, in our diverse society.

58. The *TA 2006 section 5* provided a new offence of preparation of terrorist acts. This offence is, in perceptual terms, a more acceptable way of dealing with some terrorists than *control orders*¹⁰. This may account in small part for the relatively small number of control orders, 11 at the end of 2009. All are agreed that it is better that state sanctions and preventative measures should follow conviction of crime. Whenever possible, administrative sanctions and powers will always be second best to conviction and sentence.

9 www.homeoffice.gov.uk/documents/carlile-terrorism-definition

10 *Control Orders* are civil orders against terrorist suspects, introduced by the *Prevention of Terrorism Act 2005*.

2 PART II OF THE ACT: PROSCRIBED ORGANISATIONS AND THE PROSCRIBED ORGANISATIONS APPEAL COMMISSION [POAC].

59. The current list of organisations proscribed under *Schedule 2* of the Act at the end of 2009 is at Annex C. They comprise--

- 46 international terrorist organisations
- 14 organisations in Northern Ireland, proscribed under previous legislation
- 2 organisations proscribed under powers introduced in the *Terrorism Act 2006* for glorifying terrorism (included in the 46 above)

The 46 international organisations proscribed (plus the Mujaheddin e Khalq (MeK) – see paragraph 60 onwards below) were placed in the list in the following order:

- 21 in March 2001
- 4 in October 2002
- 15 in October 2005
- 4 in July 2006
- 2 in July 2007

60. There were no amendments to the scheduled list in 2009. The Government laid an Order in January 2010 which provides that Al Muhajiroun, Islam4UK, Call to Submission, Islamic Path and London School of Sharia should be treated as alternative names for the organisation which is already proscribed under the names Al Ghurabaa and The Saved Sect. The Mujaheddin e Khalq [MeK] was the last organisation to be removed¹¹, following decisions of the Proscribed Organisations Appeal Commission [POAC] and the Court of Appeal.

61. Proscription is a common measure around the world, seen as to some extent valuable by all comparable jurisdictions. The objectives of proscription are:

- To deter international terrorist organisations from coming to the UK in the first place, and to disrupt the ability of any terrorist organisations to operate here;
- To support foreign governments in disrupting terrorist activity and send out a strong signal across the world that we reject such organisations and their claims to legitimacy.

62. The value of proscription is recognised to be limited. Proscription provides little in terms of protection of the public from terrorists. However, it does inform the public, and especially sympathisers with organisations, as to what is banned and therefore should not be joined. In enforcement terms, prosecution for membership of a proscribed organisation is a useful way of dealing with lower level activity, and with early signs of involvement in terrorism. However,

¹¹ SI2008/1645, art1

terrorist organisations generally do not provide membership cards or signs of membership, and thus it can be difficult to prove.

63. I believe that there is general public acceptance that the proscription of organisations prepared to use or encourage terrorism is proportionate and necessary.

64. A working group has long existed within the government service, where relevant officials meet and scrutinise proscriptions. The Home Office currently has intensified the process of scrutiny of international organisations. The aim, which I support, is that organisations which no longer have a real existence, or scarcely so, should be removed from the list, in the absence of evidence of revived actual or intended activity. The re-examination of the list is part of the learning derived from the deproscription of the MeK. Ministers have been conscious of the human rights implications of rendering unlawful membership of political organisations whose targets are well outside the UK, though deproscription has not enjoyed a high priority in Ministerial thinking or activity. The prospect of further proscriptions continues, though subject to the Parliamentary affirmative resolution procedure.

65. I would urge the new Government to pursue an evidence-based examination of currently proscribed organisations: the utility of proscription must always be balanced against the freedoms of speech and association.

66. All proscriptions are reviewed at least every 12 months in the light of intelligence and other information, all of which is quality assessed. The Foreign and Commonwealth Office is involved in the process. It is important that the scrutiny of proscribed organisations should be such as to enable organisations to be removed from the list, particularly if they genuinely and permanently eschew violence as part of their policy.

67. In the MeK case the Home Secretary was unsuccessful in an appeal against the decision of POAC¹². In that case the Court of Appeal said:

*“.. an organisation that has no capacity to carry on terrorist activities and is taking no steps to acquire such capacity or otherwise to promote or encourage terrorist activities cannot be said to be ‘concerned in terrorism’ just because its leaders have the contingent intention to resort to terrorism in the future”.*¹³

68. As I said in previous reports, the MeK case shows the POAC system of law to be sound. Paragraph 57 of the revised open judgment is critical of the Secretary of State’s refusal to deproscribe, and certainly provides robust guidance for the future. Special advocates were used to good effect during the hearing. Other organisations wishing to be deproscribed should be mindful of the POAC system. By clearly and genuinely removing itself from any terrorism purpose, over a significant period and with unlimited future intent, deproscription

12 *Secretary of State for the Home Department v Lord Alton of Liverpool & ors* [2008] EWCA Civ 443

13 Ibid per Lord Phillips of Worth Matravers CJ at para 37

can be achieved even by a formerly terrorist group. Three organisations made unsuccessful applications for deproscription to the Home Office in 2009. These were the Baluchistan Liberation Army (BLA), the Liberation Tigers of Tamil Eelam (LTTE) and the Kurdistan Workers Party (PKK).

69. The grounds of proscription were amended by *TA2006 section 21*. ‘Glorification’ of terrorism was added as a basis for proscription.

70. *Section 22* has the sensible effect of preventing a group of people evading proscription by simply changing the name of their group. There have been consequential changes to secondary legislation¹⁴, mainly to incorporate the procedural results of *section 22*.

71. I urge those who feel that their organisation or affiliations have been treated unfairly in the system to use it, by applying for deproscription.

72. The proscription of Hizb ut-Tahrir has been the subject of political debate over several years, and there is some expectation of its being proscribed following the change of government. I doubt whether this would achieve anything that cannot be demonstrated more cogently in open debate with that organisation. Certainly we should resist strongly the temptation to proscribe organisations because we find their opinions and aspirations offensive.

73. The proscription of organisations is at best a fairly blunt instrument, especially when compared with the menace that can emerge from the internet. On the internet there are numerous sites, some highly offensive to those who enjoy our relatively peaceful national political life; some openly encourage violent Jihad; and some praise the asserted heroism of suicide bombers. International apathy has meant that it is extremely difficult to remove these sites, mainly because of jurisdictional issues, and in part because providers of the worldwide web are unwilling to judge sites with any rigour and remove them, even when they encourage what is, plainly, serious crime.

74. On the basis of the material that I have seen and the representations received, I repeat the conclusions of my previous reports. It is clear to me that there are organisations that present a significant threat to the security of the state and its citizens. There are some extremely dangerous groups, with a loose but reasonably defined membership, whose aims include activities defined in *section 1* of the *TA2000* as terrorism and which if carried out would injure UK citizens and interests at home and/or abroad. The level of danger is well demonstrated by events around the world.

75. I have concluded that the retention of proscription is a necessary and proportionate response to terrorism.

¹⁴ *Proscribed Organisations Appeal Commission (Human Rights Act 1998 Proceedings) Rules 2006 SI 2006/2290; Proscribed Organisations (Appeals for Deproscription etc) Regulations 2006 SI 2006/2299*

76. The inevitably confidential processes used to determine whether an organisation should be proscribed are generally efficient and fair. In this context at least, intelligence information appears to be cautious and reliable.

77. POAC was established under *section 5* of the *TA2000*. Procedural provisions are made under *Schedule 3*. Where proscription has taken place, the proscribed organisation or any person affected by the organisation's proscription may apply to the Secretary of State to remove the organisation from the list contained in *Schedule 2*. The Secretary of State must decide within 90 days. Where an application under *section 4* is refused, the applicant may appeal to POAC. *By section 5(3):*

"The Commission shall allow an appeal against a refusal to deproscribe an organisation or to provide for a name to cease to be treated as a name for an organisation if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review."

78. *Schedule 3* to *TA2000* gives the basic requirements for the constitution, administration and procedure of POAC. One of the three members sitting on a POAC hearing must be a current or past holder of high judicial appellate office. The other members are appointed by the Lord Chancellor. The MeK case at POAC was heard by a retired High Court Judge with considerable criminal judicial experience, sitting with two practising Queen's Counsel with full judicial qualifications.

79. POAC sits in public in Central London. It is able to hear closed evidence in camera with the applicant and his/her representatives excluded. Where an organisation's appeal to POAC has been refused, a party to that appeal may bring a further appeal to the Court of Appeal (or its Scotland and Northern Ireland counterparts) on a question of law with the permission of POAC or the Court of Appeal. There may also be an appeal on a question of law in connection with proceedings brought before POAC under the *Human Rights Act 1998*, by virtue of *sections 6(1)* and *9* of *TA2000*. The procedural rules for appeals from POAC to the Court of Appeal¹⁵ require that the Court of Appeal must secure that information is not disclosed contrary to the interests of national security. This enables the Court of Appeal, like POAC, to exclude any party (other than the Secretary of State) and his representative from the proceedings on the appeal¹⁶.

80. Pursuant to *TA2000 Schedule 3 paragraph 7*, special advocates are appointed by the Law Officers of the Crown "*to represent the interests of an organisation or other applicant in [the] proceedings ...*"¹⁷. They are selected for the purposes of this legislation from advocates with special experience of administrative and public law, and criminal law.

¹⁵ *The Court of Appeal (Appeals from Proscribed Organisations Appeal Commission) Rules 2002* and subsequent SIs amending the procedural rules

¹⁶ See rule 4

¹⁷ Paragraph 7(1)

81. The role of the special advocates is to represent the interests of an organisation or other applicant, but they are not instructed by or responsible to that organisation or person. Like the members of POAC, the special advocates see all the closed material. They are not permitted to disclose any part of that material to those whose interests they represent.

82. Thus they may face the difficult task of being asked by or on behalf of those whose interests they are instructed to serve to present facts or versions of events in relation to which there is the strongest contradictory evidence, but evidence which they are not permitted to reveal in any form. Those whose interests they represent can and in practice do have their own lawyers too, but those lawyers are excluded from closed evidence and closed sessions of POAC. A small office assists the special advocates. In each case the Security Service has lawyers and other staff (with operational experience) who can and do act as a resource for the special advocates. The former shortage of fully vetted lawyers in the government service has been addressed, and I received no complaints in this connection during 2009. Whilst there have been some complaints from special advocates about the assistance given to them by the Security Services, these have been discussed and, I believe, largely resolved.

83. The quality of those instructed as special advocates continues to be very high. I have received no criticism of them, and considerable praise. It is a mark of their quality that former special advocates include some who have subsequently achieved high judicial office. It is right that their experience as special advocates should be given some weight if they apply for judicial appointment.

84. *Sections 11-13* of the *TA2000* provide for offences in relation to membership (*section 11*), support (*section 12*) and uniform (*section 13*) in connection with proscribed organisations. In the previous seven years I have expressed concerns about the breadth of these offences.

85. There were no charges of this group of offences in 2008-9 as the principal offence for which terrorism suspects were charged under terrorism legislation, compared with two in the previous year.

86. I received complaints during 2008 and 2009 about the alleged ease with which charitable funds may be channelled to international terrorist organisations. There is a particular difficulty about funding said to be reaching Hamas, and asserted (and found in the USA) to be used for terrorist purposes. Amnesty International and others have continued to report on some alleged activities of Hamas. Allegations have been made about the charity Interpal, and the associated Union of Good, and others. The Charity Commission has limited resources for such allegations to be investigated fully, and has neither the expertise nor the responsibility to investigate terrorism. British contributors wishing to support charitable causes overseas are entitled to have confidence that their money is not being channelled in the direction of violence.

87. Calls for international efforts can evaporate into thin air. However, it is worth expressing the hope that all major international organisations and states

deplore the use of charitable funding for terrorism purposes. If so, more can be done to end what in effect is money laundering for a lethal purpose,

88. The task of the Security Services in keeping up with changes in terrorist organisational structures (in so far as any formal structures exist) is extremely difficult. The Joint Terrorism Analysis Centre (JTAC), a multi-agency approach to information and evidence, continues to offer a good resource in the context of developing understanding of terrorist organisations. Taken as part of the *CONTEST Strategy* pursued by the control authorities under central government direction, JTAC's work contributes significantly towards effective public protection.

89. JTAC analyses and assesses all intelligence relating to international terrorism, at home and overseas. It sets threat levels and issues warnings of threats and other terrorist-related subjects for customers from a wide range of government departments and agencies, as well as producing more in-depth reports on trends, terrorist networks and capabilities. JTAC brings together counter-terrorist expertise from the police, key government departments and agencies, including the military. Collaborating in this way is aimed to ensure that information is analysed and processed on a shared basis, with the involvement and consensus of all relevant departments. Existing departmental roles and responsibilities are unaffected. Within the Security Service JTAC works especially closely with the International Counter Terrorism branch, which manages investigations into terrorist activity in the UK.

3 PART III OF THE ACT: TERRORIST PROPERTY

90. *Part III, sections 14 to 31*, dealt with terrorist property, offences in relation to such property, and seizure of terrorist cash. *Sections 24-31* were repealed and replaced by provisions contained in the ATCSA2001.

91. The offences provided under *sections 14 to 19* impose considerable responsibilities on members of the public. They include the offence of providing money or other property in the knowledge, or having reasonable cause to suspect, that it will or may be used for the purposes of terrorism.

92. The effect of section 15 is that a person raising money for any cause, charitable or otherwise, who “*has reasonable cause to suspect that it may be used for the purposes of terrorism*”, is guilty of an offence. The threshold is deliberately low, given the use of ‘*suspect*’ and ‘*may*’ in the description of the offence, and given the effect of fund-raising as a necessary precursor to terrorism. By *section 15(3)* the same low threshold is applied to the donor of such funds.

93. Money laundering with a terrorism connection is very broadly defined in *Section 18*. If charged, the statutory defence made available under *Section 18(2)* places a reverse burden upon the accused to show “*that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property*”. The maximum sentence on indictment for a money laundering offence is 14 years’ imprisonment.

94. *Section 19*, to be read with *section 21A* which applies to the ‘regulated sector’ as defined in *Schedule 3A*, imposes the positive duty on a citizen to disclose to the police a suspicion of an offence connected with terrorism funds, if the suspicion comes to his/her attention in the course of a trade, profession, business or employment. This is a wide and still under-publicised duty, to which the only major statutory exception is genuine legal professional privilege. It was amended for reasons of clarification in the *CTA2008*. Also relevant are broader money-laundering and disclosure requirements, for example the *Proceeds of Crime Act 2002* sections 327-329¹⁸.

95. There were 3 convictions of funding offences in the year to 31st March 2009, and 1 in the year to 31st March 2010. Contrary to my earlier expectations, fundraising offences are not proving a fruitful area for prosecutions, despite the rigour of the legislation and the vigilance of the authorities. In this context it must be borne in mind that improvised explosive devices can be made cheaply at a cost that does not necessarily involve the transfer of noticeable sums of money. Also, remittances abroad of small sums for perfectly good reasons, through the different banking systems, are commonplace: it is a formidable task for the authorities to detect the small number of cases in which apparently innocent remittances are pooled in another country into funding for terrorist organisations.

¹⁸ A very useful summary of these provisions can be found in *Millington and Williams: The Proceeds of Crime [2nd Edition]* OUP 2007, Chapter 26

96. *Section 20* and *section 21B* provide essential whistle-blower protection to any person making such a disclosure. Like all material provisions in *TA2000*, this section has been amended to take into account the role of the Serious Organised Crime Agency [SOCA] established in 2005.

97. *Section 21ZA* was inserted from the 26th December 2007¹⁹. This permits persons to carry out what would otherwise be unlawful acts, if they have the consent of an authorised officer. This enables the easier detection of offences, with the assistance of participating informants. *Section 21ZB* protects disclosures made after entering into such arrangements. *Section 21ZC* provides a defence of reasonable excuse for failure to disclose on a reverse onus provision: the person charged must prove on the balance of probabilities their intention to make a disclosure, together with a reasonable excuse for failure to do so.

98. There have been no trials in which these very new sections have been tested.

99. *ATCSA2001* inserted new *sections 21A* and *21B* into the *TA2000*. These have been in force since the 20th December 2001, and were amended by regulation in 2007²⁰. They deal with the regulated sector, as defined in new *Schedule 3A*. These provisions have led to a terrorism based focus on compliance in financial sector firms. Generally, issues of money-laundering and similar type information are being taken extremely seriously, and the aims of the various items of legislation in this broad context are recognised and effective.

100. The December 2007 amendments were made to take account of *Chapter 3* of the *Directive 2005/60/EC* of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (*The Third EU Money Laundering Directive*).

101. *Article 28.1* of the Directive prohibits the persons covered by the Directive from disclosing to the customer concerned or to other third persons the fact that information about known or suspected money laundering or terrorist financing has been transmitted in accordance with *Articles 22* and *23* or that a money laundering or terrorist financing investigation is being, or may be, carried out. The remainder of *Article 28* provides a number of exceptions. The 2007 regulations amended *TA2000* to give effect to *Article 28*. *Section 21D* contains a new offence of tipping off and *sections 21E* to *21G* set out the exceptions from *Article 28*.

102. *Article 21* of the Directive requires Member States to establish a Financial Intelligence Unit ("FIU"). The Serious Organised Crime Agency [SOCA] is the United Kingdom's FIU. This is further expanded upon in *Recital 29* of the Directive. *Recital 29* makes it clear that reports of suspicious activity may be made to persons other than the FIU so long as the information is forwarded promptly and unfiltered to the FIU. *TA2000* allows disclosures to be made to a person other than the Serious Organised Crime Agency and so new *section 21C*

19 *Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007* SI 2007/3398

20 See footnote 18

of the *TA2000* as inserted by the regulations gave effect to the requirements of Article 21 together with *Recital 29*.

103. The regulations amended *TA2000 sections 21A and 21B*, in order to give full effect to the requirements of Article 22.1 of the Directive. Article 22.1 requires those covered by the Directive to make reports of knowledge and suspicions of money laundering and terrorist financing that have been attempted as well as committed. The regulations further amended *TA2000 section 21A* to give effect to Article 23.2 of the Directive, which provides that Member States are not required to apply the reporting obligations to legal and other professionals when giving legal advice.

104. *TA2000 Schedule 3A*, which defines the regulated sector, has been amended by the *Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007*²¹ to take account of the Directive.

105. The powers for the seizure and forfeiture of terrorist cash and property remain useful and necessary powers, though there are some problems with the collection of UK wide statistics. The powers under *TA2000 section 23* arise only when there has been a conviction of a terrorist finance offence. Other powers are available where there has not been a conviction. The amount of money seized in 2008-9 under those other powers was £838,539.65 and US\$61,050 (£597,000 and US\$18,000 in 2008, £543,000 in 2007).

106. The National Terrorist Financial Investigation Unit (NTFIU) leads on the interdiction of terrorist cash couriers, and seizes such money under the *Proceeds of Crime Act 2002*. The NTFIU is based in the Metropolitan Police. During the reporting period the NTFIU conducted monthly operations at airports and seaports within the South East and provided training. The NTFIU will also target large money movements abroad.

107. Other police forces' terrorism cash seizures are not collected centrally. Thus the NTFIU seizures do not give the full picture. I suggested in each of the past 2 years that, for the future, the sums collected should be collated centrally, so that a judgment can be made as to the effectiveness of the provisions. I am very disappointed that this has not occurred as yet.

21 SI2007/3288

4 PART IV OF THE ACT: TERRORIST INVESTIGATIONS

108. *Part IV* provides for the cordonning of areas *for the purposes of a terrorist investigation*, and powers of entry, search and seizure.

109. Cordonning under the *TA2000* may occur as a matter of urgency under the direction of any constable. It must be recorded fully and placed under the supervision of a police officer of at least the rank of superintendent as soon as reasonably practicable. The maximum initial period for designation is 14 days, subject to extension to a total maximum of 28 days (*section 35(5)*). Police powers are provided by *section 36* to clear persons and vehicles from cordoned areas. Maximum sentences for offences in relation to offences of failure to comply were increased in 2003 from three months to 51 weeks.²²

110. In my report for 2007 I included as Annex E a breakdown of cordons used in London during 2007 by, respectively, the Metropolitan Police and the City of London Police. Full data was not available for the Paddington Division of the Metropolitan Police as in that area the appropriate systems for collecting the information were not in place. I said:

"This unsatisfactory position should and need not have occurred; it is currently being remedied. In the future cordons data will be collected under the Home Office's statutory Annual Data Requirement. It is to be hoped that there will be a full data set for 2008".

111. Annex D to my report for 2008 showed a modest degree of cordonning by 3 police forces, City of London, Greater Manchester and Derbyshire. No other cordons were imposed in 2008 under *section 33*.

112. In 2008 the Metropolitan Police showed no cordonning under *section 33*. It had been decided that cordons for the examinations of packages suspected of containing explosive or similar material were no longer to be regarded as having a terrorism connection. As a result of this change in practice or procedure, there was no systematic record of cordons in the Metropolitan Police area.

113. The police respond to many reports of suspect packages. In 2009 none of these were found to contain explosives. In some of these cases cordons would have been in place for a matter of minutes, under Common Law powers.

114. Annex D to this report provides the statistics given to me for the calendar year 2009. They show 43 cordons under *section 33* across 3 police forces – City of London, Merseyside and the Metropolitan Police. I have been provided with greater detail, as to dates, precise locations and durations. However, I have not been provided with reasons.

22 Criminal Justice Act 2003, Schedule 26, para 55.

115. Again I have reviewed the legal position. The issue arises from the provision that the recording of a cordon is required if the cordon was “*for the purposes of terrorist investigation*”.²³

116. A *terrorist investigation* is defined in *TA2000 section 32* as including –

- (a) *the commission, preparation or instigation of acts of terrorism,*
- (b) *an act which appears to have been done for the purposes of terrorism*

117. That definition refers back to the definition of terrorism itself in *TA2000 section 1*.

118. There is a common law power for the police to set up cordons for the safety of the public, irrespective of the cause; and that such cordons can be maintained for as long as is reasonably required in the circumstances. A person breaching such a cordon, or not complying with properly made police requests to move, may commit an offence of obstruction of the police. Common law cordons require no administrative procedures at all – a snap decision may be made by a constable according to his/her perception of circumstances.

119. The police are not obliged to go through the section 33 procedure, which is permissive (*‘may’*) rather than obligatory (*‘must’*). However, given the existence of the statutory provisions in *TA2000*, members of the public have a legitimate expectation that the police will use the statutory procedures in appropriate circumstances.

120. Cordons may cause extensive inconvenience and even loss to the public. I repeat my conclusions last year: the use of *section 33* and the consequent designation procedure and keeping of records should occur where the circumstances involve a device known or strongly believed to be explosive (e.g. in a multiple incident, or when there has been a telephone warning), or realistically suspected of being explosive on examination by officers – but not for what appears to be a forgotten suitcase, shopping bag or the like.

121. In my view, it is unacceptable that record keeping of cordoning should be as casual as described in paragraph 110 above. From now on, all forces should be required to provide to the Secretary of State and to the independent reviewer full details of *section 33* cordoning.

122. I received no representations during 2009 in relation to the operation or merits of *sections 32 to 36*. They are proportional and necessary.

123. *Section 37* and *Schedule 5*, and *section 38* and *Schedule 6* are important provisions of the *TA2000*. *Schedule 5* sets out the regime for requiring production of persons and/or material, and also for carrying out searches of premises for the purposes of a terrorist investigation. Separate provisions make appropriate arrangements for Scotland and Northern Ireland respectively. The material

²³ *TA2000 section 33(2)*

sought will often include documents, which by their very nature are likely to be confidential. Excluded and special procedure material, familiar concepts from the *Police and Criminal Evidence Act 1984*, are subject to the Order of a Judge. Paragraph 13 and corresponding Scotland and Northern Ireland provisions deal with cases of ‘great emergency’ requiring ‘immediate action’.

124. A cadre of Circuit and District Judges has experience of dealing with applications under this part of the Act. The judges concerned have specific training. Reasons are given at the conclusion of hearings.

125. I have concluded again this year that the *Schedule 5* procedure works smoothly. Genuine judicial inquiry, and the regular experience of presenting police officers, act as quality control mechanisms. The judges involved are aware of the implications of their orders and scrutinise carefully the material placed before them. Defence lawyers are less confident in their general comments about the degree of scrutiny of applications. On balance, I remain satisfied that the system is fair and functional.

126. During 2009 I received no specific complaints from lawyers or others about the operation of these provisions.

127. *Schedule 6* relates to financial information. A parallel regime is provided to the *Schedule 5* system. Most of the applications heard by Judges relate to bank and credit card accounts. *Schedule 6* ranges widely over the kind of information financial institutions hold about their customers.

128. During 2009 again, I received no representations of concern about the operation of *Schedule 6*. There is the necessary level of cooperation between the police and the financial services industry.

129. It is necessary to be able to obtain financial information under compulsion in some potentially significant cases, subject to solid judicial protection against arbitrariness. That appears to be accomplished by *Schedule 6*. Most other countries now have similar provisions. An increasing level of international co-operation on the financial front is undoubtedly proving fruitful in the countering of terrorism.

130. I have concluded once again this year that *Schedule 6* as amended works well and is an essential part of the legislation.

131. *Section 38A*, together with *Schedule 6A*, deals with account monitoring orders. An account monitoring order may be made only by a Circuit Judge or District Judge (Magistrates’ Courts)²⁴ or equivalent in Scotland and Northern Ireland. The schedule makes it clear that there must be an evidential basis for the Order if it is to be made: speculation or a ‘fishing expedition’ will not do. The measure and the control of its use are necessary and proportionate.

24 District Judges (Magistrates’ Courts) were added by the Courts Act 2003, section 65 and Schedule 4 paragraph 11

132. *Section 38B* covers information about acts of terrorism. It is widely drawn. Its clear intention is to secure the maximum possible information so as to avoid acts of terrorism that might otherwise be prevented. In my view, it remains necessary and proportional, given the danger to human life and to the economy posed by terrorist acts. It was used twice in 2009, as in 2008. There were four convictions under the section in the year to 31st March 2009 (1 in the previous year), and two under the related *Terrorism Act 2006* section 6.

133. The Court of Appeal (Criminal Division) gave a guideline judgment on sentencing for *section 38B* offences on the 21st November 2008²⁵. They said that in most cases it would be the seriousness of the terrorist activity about which a defendant had failed to give information that would determine the level of criminality, rather than the extent of information that could have been provided. There was nothing wrong in principle with consecutive sentences when both limbs of the section were charged. The message is clear: although the maximum for a single *section 38* offence is 5 years' imprisonment, both the maximum and consecutive sentences are realistic possibilities.

134. *Section 39*, which corresponds to sections 17(2)-(6) of the former *Prevention of Terrorism (Temporary Provisions) Act 1989*, makes it an offence punishable on indictment by up to 5 years' imprisonment for a person to disclose to another anything likely to prejudice a current or anticipated terrorist investigation of which he has knowledge or has reasonable cause to suspect. This is a reasonable and proportional provision, similar in effect to other offences against justice such as doing an act tending and intended to obstruct the course of justice.

25 R v Abdul Sheriff & ors [2008] EWCA Crim 2653

5 PART V OF THE ACT: COUNTER-TERRORIST POWERS: ARREST AND DETENTION; STOP AND SEARCH; PARKING; PORT POWERS

135. *Part V* of the Act contains counter-terrorism powers available to the police to deal with operational situations.

136. *Section 41* provides a constable with the power to arrest without warrant any person whom he reasonably suspects of being a terrorist. The ordinary powers of arrest available to the police under the *Police and Criminal Evidence Act 1984 [PACE]* require them to have reasonable grounds for suspecting that the person concerned has committed or is about to commit *an offence*. Terrorism *simpliciter* is not an offence. Although *section 41* provides grounds for arrest, as far as conviction of an offence is concerned being a generic “terrorist” is not a crime, any more than it is an offence to be generally dishonest.

137. In his report on terrorism legislation Lord Lloyd of Berwick considered²⁶ that the pre-emptive power of arrest under the existing *Section 14(b)* of the *PTA* was useful, because it enabled the police to intervene before a terrorist act was committed. If the police had to rely on their general powers of arrest, he argued, they would be obliged to hold back until they had sufficient information to link a particular individual with a particular offence. In some cases that would be too late to prevent the prospective crime²⁷. However, Lord Lloyd expressed concern that the *Section 14(b)* power contravened a fundamental principle that a person should be liable to arrest only when he was suspected of having committed, or being about to commit, a specific crime. He was especially mindful of the reference to “*an offence*” (meaning a specific offence) in *Article 5(1) (c) of the European Convention on Human Rights*, now part of our domestic law. Since then ECHR rights have been capable of assertion in British courts, and have been relied on extensively and successfully in cases involving terrorism and suspected terrorists.

138. *Section 41* of the *TA2000* was the government’s response to the concerns expressed by Lord Lloyd and others. The government of the time rejected his view that it was necessary to introduce a new offence of being involved in the preparation etc. of an act of terrorism²⁸. Such an offence is included now by *Terrorism Act 2006 section 5*, and has been used for the purposes of prosecution on seventeen occasions, eight of them in 2008-9.

139. The basis for the power of arrest, set out in *Section 41* subject to the definition of ‘terrorist’ in *section 40*, works satisfactorily on the whole. As was apparent from the consequences of the arrests in Operation Pathway, whilst *section 41* provides a practical and acceptable basis for arrest, it does not

26 1996 Cm 3420, Chapter 8

27 1996 Cm 3420 paragraph 8.5

28 Repeated by Lord Lloyd in House of Lords debate on the Terrorism Act 2005: see House of Lords Hansard for the 10th March 2005 (via www.parliament.uk; follow debates links).

necessarily give the foundation for extended detention (see paragraphs 151-155 below).

140. That said, I have not been presented with arguments for its amendment or repeal. It is used in most situations where there is an arrest in connection with terrorism.

141. *Section 41* and the accompanying procedural system for detention set out in *Schedule 8*²⁹ were designed to bring the UK into compliance with *ECHR Article 5(3)-(5)* following the decision of the European Court of Human Rights in 1988 in the case of *Brogan v UK*³⁰ that there had been a breach of *Article 5(3)* where a person had been detained for 4 days and 6 hours without judicial authorisation. In its decision on the narrow facts of that case the Court held that the power of arrest had been justified, given that on arrest the applicants had been questioned immediately about specific offences of which they were suspected. Substantially, as a consequence of that case, the UK government derogated from the relevant parts of the ECHR and of the UN International Convention on Civil and Political Rights – clearly not a desirable position. There have been various procedural changes to *Schedule 8*, none of substantive concern³¹.

142. Annex E Table 1.1 shows the level of arrests under the *TA2000* and associated legislation as a whole in the year to 31st December 2009. 106 persons were arrested under *TA2000 section 41* powers, and 101 under other powers but on suspicion of terrorism offences. This was an increase of about 15% on the previous year. Of that total of 207, 23 were charged with terrorism or terrorism related offences, and 33 with other criminal offences. 95 were released without charge (Annex E Table 1.2).

143. In general terms the rate of conviction for terrorism charges compares with other parts of the criminal calendar. Because trials take place over an extended period after arrest, and almost never in the same year as arrest, it is not possible to compare the arrest and conviction figures for a single year. Annex E Table 1.2 provides outcomes statistics, albeit of limited value because of the period of time that elapses between charge and trial.

144. 27 per cent of terrorism arrests in 2009 resulted in a charge (41 per cent on corrected figures for 2008). The 2009 figure is about 13 per cent below the comparable figure for general crime. However, only 11 per cent of terrorism arrests resulted in a terrorism or related charge (24 per cent in 2008). The figures are relatively small, and statistical variations can be caused by a single operation. In Operation Pathway, for example, originally 12 men were arrested but none were charged. Some of the persons arrested in 2009 were transferred to UKBA immigration authorities.

29 As amended in paragraph 4 by section 456 and Schedule 11 paras 1, 39(1) and (5) of the Proceeds of Crime Act 2002; see SI 2003/333, art 2, Schedule; and SI 2003/210, art 2(1)(b), Schedule

30 Brogan v United Kingdom [1988] 11 EHRR 193

31 See Courts Act 2003, section 109(1), Schedule 8 paragraph 391; section 109(3), Schedule 10.

145. The nature of terrorism investigations means that those associated with or accompanying a suspect may well find themselves arrested out of an abundance of caution by the authorities. This should be avoided whenever possible, but the realities of this kind of policing increase the possibility of arrests later found to be of innocent members of the public. It may be small comfort to those arrested, but in other comparable countries the same issue arises commonly. In some countries, even within the Council of Europe, innocent arrested people are held in custody for long periods after a very low level charge.

146. I am satisfied that the level of arrests is proportionate to perceived risk, especially when set alongside the high level of vigilance operated by the police, UKBA and other control authorities, and the large number of stops at ports of entry. Nevertheless, I urge the exercise of ever-improved judgement as to whether it is appropriate to arrest a person for terrorism offences: they carry an inevitable stigma, and if used inappropriately cause profound resentment by individuals and communities.

147. Arrest and detention under *section 41* and under *Schedule 7* is subject to the regime set out in *Schedule 8*. Codes of Practice have been issued under *Schedule 8*. By *section 306* of the *Criminal Justice Act 2003*, *Schedule 8* of the *TA2000* was amended to allow up to 14 days' detention for the purposes of questioning and associated investigation. This was extended further to 28 days by the *TA2006 sections 23-24*. The adequacy of this extended period remains the subject of debate, and will be part of the review of counter-terrorism legislation promised by the new Government. I make some further comments on this in paragraphs 171-2 below.

148. Senior Circuit judges supervise 14-28 day detentions, pursuant to the *Terrorism Act 2006*.

149. I remain of the view expressed in my last report that Judges scrutinising extended detention should have vested in them the power to request specific explanations or material from the prosecution side, and possibly from the suspect too, albeit the failure of the suspect to respond could not be used against him/her at any subsequent trial. A suspect has every right to complain about unjustified extended detention; but equally might be seen to have a reasonable duty not to delay police enquiries by, for example, refusing to provide the security settings needed to unlock electronically protected material. I would expect experienced defence lawyers to welcome the possibility of judicial intervention as broadly described here, at a very early stage of the post-arrest period. I am opposed to the introduction of a *juge d'instruction* model as used in, for example, France. My observation is that *judges* (investigating magistrates) in non Common Law jurisdictions are more prosecutors than judges, that there is a lack of disclosure which would not fit with our own jurisdictions, and that there is evidence that terrorism suspects who are not tried spend rather longer in custody in such jurisdictions than in our own. However, an enhancement of the role of judges supervising detention under *section 41* would undoubtedly increase the proper scrutiny of arrests and post-arrest events.

150. Annex E Table 1.3 shows the time in days from arrest under *section 41* to charge or release without charge. Of the 106 relevant people arrested in 2009, 21 were released after 8 days had passed. None were held for more than 14 days. Operation Pathway accounts for most of the longer detentions, some of which arguably were longer than merited. The need for extended detention before charge is rare; and the prediction made by many that the police would treat detention for up to 28 days as the norm is false. The Crown Prosecution Service is well aware that nobody should be detained for a moment longer than is necessary, as they demonstrated in their approach to Operation Pathway. The figures for 2009 are broadly comparable with 2008, given the limited validity of statistical comparisons with so small a cohort of people.

151. Important in this context is the established law relating to arrest. The foundation of the modern law is to be found in the speech of Lord Simonds in *Christie v Leachinsky*³²:

"the arrested man is entitled to be told what is the act for which he has been arrested." (emphasis added).

152. Article 5(2) of the *European Convention on Human Rights* provides:

"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him." (emphasis added).

153. In *Fox, Campbell and Hartley v United Kingdom*³³ the European Court of Human Rights held:

"Paragraph (2) of Article 5 contains the elementary safeguard that any person should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph (2), any person arrested must be told in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest so as to be able, if he sees fit, to apply to a court to challenge its lawfulness".

154. Thus *section 41* may provide the reasons, or the essential legal grounds, for an arrest; but not the factual grounds or any possible charge. It follows that at some point between arrest and the end of his detention period the suspect must be told the offence or offences of which he is suspected. The grounds of arrest pursuant to *section 41*, namely being a terrorist, is no more adequate for these purpose than is the general description of being dishonest in a case falling under the *Theft Act 1968*. This places *section 41*, and the period of detention under that section, in tension with the general law.

32 [1947] AC 573 at p.593

33 [1991] 13 EHRR 157 at para 40

155. The point at which the suspect has to be given this information varies according to the facts and circumstances of the case, and was the subject of discussion between the police and the CPS in the context of Operation Pathway.

156. A Code of Practice [known as *PACE Code H*] has been issued to assist all involved in such detentions.

157. *PACE Code H* is consistent with the case law and *ECHR Paragraph 5(2)*. Paragraph 10.2 of the Code provides:

“A person who is arrested, or further arrested, must be informed at the time, or as soon as is practicable thereafter, that they are under arrest and the grounds for their arrest, ...”

158. *Section 41(3)* allows for detention of up to 48 hours from the time of arrest. The detention period may then be extended in accordance with the forms of review and authorisation set out in *Schedule 8*.

159. *Schedule 8 Paragraphs 29-37* provide for warrants of further detention [WFD]. These have to be considered and adjudicated upon by a judicial authority, rather than by the police (who have to conduct statutory reviews during the initial 48 hour period).

160. The initial statutory reviews by the police are provided for under *Schedule 8 para 23*. The officer concerned may authorise detention if he is satisfied that it is necessary to do so for one or more of the statutorily specified reasons. In order to be satisfied, he must know enough about the suspect and the case to reach a reasoned decision.

161. In Operation Pathway, the custody records contained insufficient detail to inform a review as to whether the custody officers went through the correct thought process. This was unacceptable. Hence, I recommended that there be better recording of the custody officer reviews and their decisions.

162. *Schedule 8 para 24* provides that police reviewing officers for this purpose must be of at least inspector rank, and should be unconnected with the investigation. In relation to some of the suspects in Operation Pathway, it appeared that at least the first reviews were carried out by officers of lower rank. This should not occur again. However, there was no basis for saying that a more senior officer would not have authorised further detention: indeed this is what occurred at subsequent reviews.

163. The judicial authority for the period from 48 hours to 14 days after arrest is a District Judge (Magistrates Courts) [DJM]. The application before the DJM is on notice, with defence representation present. No special advocate is involved at any stage of the *Schedule 8* processes, which means that nobody representing the interests of the suspect can see material kept closed on grounds of national security. The DJM must be satisfied that the investigation is being conducted both diligently and expeditiously. The extension must be necessary, for certain

limited purposes: to obtain relevant evidence, to preserve relevant evidence, or pending the result of the examination of relevant evidence. After 14 days the judicial authority is transferred to a senior judge, normally a High Court Judge [HCJ], who applies the same criteria. The HCJ has the power to extend the detention by 7 additional days, or until 28 days after arrest (whichever is the earlier).

164. In Operation Pathway, during the days following the arrests some progress was made in obtaining evidence. However, following advice from the CPS it was decided that there were no reasonable grounds for believing that further detention was necessary to obtain relevant evidence; and that there was at that time insufficient evidence to provide a realistic prospect of any of the suspects being convicted of a criminal offence arising out of the investigation. Accordingly, they were all released from police custody, some having been detained for 13-14 days.

165. Neither the DJM nor the HCJ ruled that the original arrests were unlawful; but they made it clear that continued detention would be likely to become unlawful if the suspects were not told clearly the offences they were suspected of committing and the reasons for the suspicions leading to their arrests. Importantly, the HCJ affirmed the need for an evidential test to be applied to extended detention.

166. In my report on Operation Pathway I said:

"Given the long history of arrest law as described above, and the provisions of the ECHR, I am surprised that the police did not anticipate that they would be required to clarify the evidential basis for the arrests before a judge during the period of detention. In relation to arrest and charge, it is a matter for the Courts as to what can properly be characterised as 'promptly' in a particular context: it is likely to be case specific and therefore elastic, but in every case there must be a point at which continued and (particularly) extended detention, far beyond the normal periods for non-terrorism cases, will be subjected to a requirement to set out the evidential basis. In relation to evidence, I doubt that it could seriously be argued that continued detention is proportionate where there is no reasonable basis for expecting material evidence to emerge during the extended period of custody applied for."

"There are two lessons to be drawn in this context: I recommend that the police and the CPS take immediate steps to revise their procedures to reflect them. The first is that all police officers involved in counter-terrorism policing should be trained in the law relating to arrests and its potential effect on detention under TA2000 Schedule 8. The second is that CPS expert and directly vetted lawyers should be informed of ongoing inquiries likely to result in arrests, well before any such arrests take place, and they should be asked to advise on the state of the intelligence, information and evidence as the inquiry in question progresses. I am informed that this was regarded as usual practice, but

was not followed in Operation Pathway. Clear steps have now been taken by the CPS and the Police Senior National Co-ordinator to clarify this practice and implement it country wide. Having said that, I acknowledge that, for reasons inappropriate for recitation in a published report like this, the authorities were working to compressed time frames in the days prior to the arrests”.

167. If the lessons of Operation Pathway are followed, I would expect problems to be diminished in relation to post-arrest detention, and a reduction in detentions beyond a very few days.

168. Those arrested are detained in reserved custody suites. There have been significant developments in the past year of the custody suites in England and Northern Ireland. Scotland had already made necessary modifications. I have been consulted extensively on proposed construction and refurbishments. I am satisfied that every effort is being made to provide, around the country, custody facilities that would be appropriate for at least 28 days. This includes the construction of a facility in refurbished buildings in Central London, to supplement the existing provision at Paddington Green Police Station: the new custody suite will be for first use, with Paddington Green as second choice.

169. The above is based on my view that it is only acceptable for prisoners detained after 14 days to be held overnight in conditions equivalent in levels of comfort, food and exercise to proper prison conditions.

170. The role of DJMs with particular knowledge and experience of the system for extension of detention under *section 41* and *Part III of Schedule 8* includes dealing with the detention of persons stopped at a port and dealt with under *Schedule 7*, and subsequently arrested under *section 41*. The DJMs have real expertise and fulfil their role with great credit.

171. In the course of time there may well be complex cases in which the current maximum of 28 days will prove inadequate. They will be very rare, but inevitably extremely serious. It is a matter for political decision whether this possibility is covered by legislation.

172. It has been suggested that the 28 days provision should not be renewed, and the limit returned to 14 days. I do not favour this: in my view it could place national security in jeopardy. However, I would have no reservations about strengthening judicial scrutiny of post-arrest detention – though I must emphasise that there is absolutely no evidence that current scrutiny lacks quality or rigour, as is demonstrated above by the references to Operation Pathway. I would be wholly opposed to a provision, suggested by some, that would require Parliamentary debate in relation to a particular case before detention beyond 14 days occurred. The responsible police and judicial approach to this issue shows that elaborate new provisions are not needed.

173. *Section 42* permits the search of premises under a warrant issued by a justice of the peace on the application of a constable if the justice of the peace is

satisfied that there are reasonable grounds for suspecting that a person “falling within *Section 40(1)(b)* is to be found there”. Once again, there has been no evidence presented to me during the past year that this provision is misused or presents any problems. It is not a rubber-stamping process by the magistrate: the evidence must be given on oath, and must establish reasonable suspicion.

174. I turn next to deal specifically with *sections 43-45*. *Section 43* provides stop and search powers connected with *sections 41* and *42*. *Sections 44-45* provide stop and search powers in relation to persons and vehicles within specified geographical areas, for the purpose of seizing and detaining articles of a kind that could be used in connection with terrorism. It is an offence not to comply. Such stops and searches can occur only within an area authorised by a police officer of at least the rank of or equivalent to assistant chief constable.

175. Every year since I became independent reviewer there have been severe criticisms of the provisions of *sections 44* and *45*, and of their operation. 2009 has highlighted these concerns, especially in the light of the case of *Gillan* referred to above.

176. I repeat my mantra that *terrorism related powers should be used only for terrorism-related purposes*; otherwise their credibility is severely damaged. The damage to community relations if they are used incorrectly can be considerable. The use of *section 44* has attracted particular criticism as having a negative effect on good community relations. Its purpose and deployment are poorly understood.

177. Examples of poor or unnecessary use of *section 44* abound. I have evidence of cases where the person stopped is so obviously far from any known terrorism profile that, realistically, there is not the slightest possibility of him/her being a terrorist, and no other feature to justify the stop. *Section 44* stops and searches in the past year have included a senior retired Cabinet Minister and a 64 year old Q.C., both so obviously not possible terrorists as to make the procedure laughable, were it not for the intrusion into their civil liberties. In another case the subject was a lawyer of whom the only possible factor giving rise to the stop is that he is British Asian: in no way other than on a crude racial basis could an intelligent decision have been made to stop him. Chief officers must bear in mind that a *section 44* stop, without suspicion, is an invasion of the stopped person’s freedom of movement. I believe that it is totally wrong for any person to be stopped in order to produce a racial balance in the *section 44* statistics. There is still anecdotal evidence that this is happening. I can well understand the concerns of the police that they should be free from allegations of prejudice; but it is not a good use of precious resources if they waste them on self-evidently unmerited searches. It is also an invasion of the civil liberties of the person who has been stopped, simply to ‘balance’ the statistics. So long as they continue, the criteria for *section 44* stops should be objectively based, irrespective of racial considerations: if an objective basis happens to produce an ethnic imbalance, that may have to be regarded as a proportional consequence of operational policing.

178. Useful practice guidance on stop and search in relation to terrorism was produced during 2008 by the National Policing Improvement Agency [NPIA] on behalf of the Association of Chief Police Officers [ACPO]. This guidance emphasises crucial requirements, which include that –

- These powers are exceptional
- The geographical extent of section 44 authorisations must be clearly defined
- The legal test is expediency for the purposes of preventing acts of terrorism
- Community impact assessments are a vital part of the authorisation process
- The Home Secretary should be provided with a *detailed* justification for a *section 44* authorisation
- Chief officers must expect the Home Office to apply detailed and rigorous scrutiny in considering whether to confirm authorisations
- Leaflets should be made available to the public in an area where the power is being deployed
- Officers must keep careful records

179. As Table 2.1 of Annex E shows, in the calendar year 2009 148,798 stops and searches were made in Great Britain under *section 44*. This is a reduction of 40.5 per cent on the previous year. Of the 43 territorial police forces in England and Wales, only a minority ever use *section 44*. Only a single territorial force in Scotland used it, in special circumstances which I have examined. The Metropolitan Police and the British Transport Police accounted for 96.4 per cent of all *section 44* stops and searches during the year. The 2009 figures reveal a considerable and welcome reduction in the use of the provision. Were *section 44* to continue, I would expect the quarterly reduction in use to continue, as reflected in the figures on Table 2.1. The figures set out in Annex E Table 2.2 of stops and searches under *section 44* by self-defined ethnicity show 16 per cent of those stopped in 2009 to have been Asian or Asian British. Much debate can be held about this percentage: perhaps the most constructive comment is that one can understand why that group feels disproportionately targeted.

180. However, as stated in paragraph 54 above, in my judgement the time has come for *section 44* to be replaced with a much more limited provision.

181. *Section 43* is relatively straightforward. It allows a constable to stop and search “*a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist*”. The familiar thread of reasonable suspicion flows throughout this stop and search procedure, and that for the seizure and retention of material discovered during the *section 43* search.

182. In contrast, *section 44* provides for the authorisation of geographical areas for the purposes of *section 45* searches, which do not have to be founded on reasonable suspicion. Authorisations may be given only by an ACPO

rank officer³⁴, and solely “if the person giving it considers it expedient for the prevention of acts of terrorism”³⁵. Pursuant to section 46 the Secretary of State must be informed as soon as possible, and authorisation lapses if not confirmed by the Secretary of State within 48 hours³⁶.

183. I have examined every authorisation issued during 2009 in England and Wales, and have been critical of several. The Home Secretary deals with all section 44 authorisation applications in England and Wales. The incoming Home Secretary and her Ministers have already observed the inconsistency of approach between different chief officers.

184. My view remains as expressed in the past five years. I find it hard to understand why section 44 authorisations are perceived to be needed in some force areas, and in relation to some sites, but not others with strikingly similar risk profiles. Where other stop and search powers are adequate to meet need, there is no need to apply for or to approve the use of the section. Its primary purpose is to deal with operationally difficult places at times of stress, when there is a heightened likelihood of terrorists gaining access to a significant location.

185. There is little or no evidence that the use of section 44 has the potential to prevent an act of terrorism as compared with other statutory powers of stop and search. Whilst arrests for other crime have followed searches under the section, none of the many thousands of searches has ever resulted in conviction of a terrorism offence.

186. It should not be taken that the lesser usage of section 44 in places other than London means that such places are less safe, or more prone to terrorism. There are different ways of achieving the same end. The effect on community relations of the extensive use of the section is undoubtedly negative. Search on reasonable and stated suspicion, though not in itself a high test, is more understandable and reassuring to the public.

187. Section 44 was amended by the *Energy Act 2004* section 57 to allow authorisations by an officer of the rank of Assistant Chief Constable in the British Transport Police Force, the Ministry of Defence Police and the Civil Nuclear Constabulary. These were appropriate changes and are causing no difficulty. It was amended too by section 30 of the *TA2006*. This amendment extended its scope to internal waters: this was a sensible and necessary change in the law, and is being used by relevant police forces. The Mumbai attack demonstrated the use that can be made of waterways: in that case a small vessel seized at sea was used to transport the terrorists and their materiel to the city’s port.

188. Sections 48-51 provide similar powers for the designation of areas by ACPO rank officers, in this instance to prohibit or restrict the parking of vehicles on roads specified in the authorisation. This remains a proportionate provision in the public interest. As in past years, there is no evidence of excessive use, nor of

34 Sections 44 (4)-(4C)

35 Section 44(3)

36 Section 46(4)

insensitive use of prosecution for contravention. It is noted that possession of a disabled person's badge is not of itself a defence to a contravention offence.³⁷

189. As against the decline in the use of *section 44*, the utilisation of *section 43* increased in 2009, to 1450 compared with 1247 in the previous year. Of those, 786 were white (648 in 2008), 34 mixed race (18), 147 Black or Black British (184), 323 Asian or Asian British (229), 61 Chinese or other (46), and 99 not stated (122). The figures for both 2008 and 2009 are greater than for 2007.

190. I am not surprised by the increase in the use of *section 43*: indeed, I am encouraged by the switch from non-suspicion stops to those requiring suspicion. In the light of the withering of *section 44*, it is encouraging to see that the use of *section 43* is in numbers one can regard as proportionate and reasonable.

191. Ethnicity is an issue in the use of *section 43*, as with *section 44*. I am sure that police forces are conscious of potential serious criticism if there is a racial element to the way they conduct such stops and searches. They must not forget that the decisions they make under the section are subjective in respect of every individual affected, and as such potentially accountable through civil proceedings for damages.

192. *Section 53* and *Schedule 7* provide for port and border controls. This remains a very important aspect of the *TA2000*. In the past I have suggested repeatedly that the number of random or intuitive stops could be reduced considerably. As before, during 2009 there has been much discussion as to how to improve the way in which *Schedule 7* has been and can be used. I have attended and participated in training in Behavioural Analysis. This so-called BASS training is being developed throughout the country. It is intended to formalise best practice, so that fewer and better targeted individuals are stopped. Whilst BASS is in its early stages, the anecdotal evidence so far confirms my own experience and observation, that it will achieve improvements and lead to less disruption for the public at large.

193. I suggest that *Schedule 7* powers should no longer be available to all ports officers. Only those who have passed BASS training and been adjudged suitable by their trainers should be permitted to use these powers.

194. I hold to my previously expressed strong view that stops at ports can still be reduced in number without risk to national security.

195. Last year in my corresponding report I raised an issue in relation to *Schedule 7* concerning the examination of mail, whether sent through the Royal Mail or via one of the several private mail services. As it remains unresolved, I repeat it.

196. By *Regulation of Investigatory Powers Act 2000 [RIPA]* section 1 it is a criminal offence to intercept in the UK any mail between despatch and destination. *TA2000 Schedule 7 Paragraph 9* allows an examining officer to

³⁷ Section 51(3)(4)

'examine goods'. Whether this trumps *RIPA* has not been decided by any court so far as I am aware. However, the advice generally given to ports staff is that they cannot intercept post under *schedule 7* during its postal transit. This is an inhibition on ports officers in their dealings with freight (as opposed to articles in the possession of a passenger). In my view, post should be treated like all other freight and, if necessary, the law should be amended to provide certainty.

197. I note that the new Government has expressed the intention of monitoring all departures from the UK. I regard this as wise. Much information about terrorist activity can be gleaned from the travel patterns of individuals. If all passports were read electronically on departure from the United Kingdom, the prevention and detection of terrorist plans and offences would be assisted greatly. Whilst this suggestion may give rise to some civil liberties concerns, these could be met by clear protocols limiting the period for which such information could be retained, in what form and by whom. To achieve this would require the best possible of the several passport-reading technologies on the market, and its reliable co-ordination with the e-borders information processing facility.

198. The development and improvement of ports procedures will be essential if there are not to be unacceptable delays in processing passengers entering the UK for the 2012 Olympic Games.

199. I continue to be impressed by the level of co-operation regionally and nationally between police forces, supervised by ACPO and its Scottish equivalent ACPOS, and the PSNI, together with the chief officers of the other, non-territorial police forces. Cooperation between police and Security Service appears to be very high in frequency and quality. Real-time and other exercises continue to occur regularly, and lessons are learned from them.

200. It is becoming rarer for police officers to be abstracted from counter-terrorism work to other police duties, but it still happens. This is rarely acceptable, especially where the special branch is small. There should be an assumption that such abstractions will only take place in exceptional circumstances.

201. UKBA includes in its coverage issues concerning visas, overseas students, overseas citizens working in the UK, residency, citizenship and asylum. On the 3rd April 2008 it assumed responsibility for border, immigration, customs and visa checks at all UK ports. The process of absorption and spreading expertise across its many tasks is showing signs of success. It is bound to take at least another year for the aspirations of the organisation to be met, but there are clear signs of determination and success. The office of the Chief Inspector of UKBA is providing a strong element of quality control, especially in the context of counter-terrorism.

202. I have continued to take note of search arrangements developed for airports and seaports. These have continued to improve. Various technologies are being tested and piloted around the country. The trend, envisaged by some airlines, away from traditional check-in procedures at airports will present a challenge.

203. In relation to *Schedule 7*, there is no requirement that the officer should have conceived any suspicion in the initial stages of an examination about the passengers, crew, vehicle or goods subject to the stop. This means that it is a wider power than is normally available to police, immigration or customs officers. I and past reviewers have commented before that the obvious presence of port officers is a deterrent to terrorists. This has not changed. Knowledge on their part that a port is manned efficiently and the subject of strong and well-informed vigilance is a significant inhibition against targeting that port. The presence of officers in uniform between disembarkation and passport control provides reassurance to the public.

204. I have no doubt that the terrorist traveller has at least as great a prospect of being caught at UK ports of entry as anywhere else.

205. I have received a small number of complaints about the treatment of members of the public at ports in 2009, in particular that complainants had been selected for stop and question because of their ethnicity. Bass training, referred to in paragraphs 192-3 above, should improve this situation. I commend the efforts being made to engage with community leaders whenever and wherever possible to explain how the law works, and why it is used.

206. The use of specially trained dogs is increasing, and has the potential to reduce the number of stops. However, it is important to respect the views of some Muslims, who object to intrusive nature of dog searches. Objection is perfectly legitimate, but may lead to unobjectionable and greater human intrusion in the search for explosives and other materiel.

207. Language difficulties do occur from time to time and will be liable to cause occasional problems at ports of entry. Considerable sums are spent on the provision of interpreters, though the system is bound to be imperfect in some places. Suitable interpreters of Arabic and other languages are not always available. The use of telephone-based interpretation facilities is now well developed, and a useful stop-gap. However, inevitably problems arise where the authorities are under-staffed or hard-pressed. I repeat as before that the provision of interpretation to a good standard is an increasingly important aspect of the protection of travellers against unjustified suspicion.

208. In my previous reports I have expressed concern on the subject of business and general aviation.

209. I continued to give attention this year to the organisation, supply and security of business and general aviation. Once again, I have received very good cooperation from the industry, through both industry representatives and individual companies.

210. I sense progress in this general area. Business aviation providers are conscious of the damage that would be caused to their industry if they were the conduit for a serious terrorism event. The industry is a valuable part of the economy, and restrictions placed upon operators must be proportional to risk.

The British Business and General Aviation Association [BBGA] is a very active and well-organised trade association, and active in extending good practice and the delivery of training.

211. Small general aviation presents a level of risk, because of its large scale and spread. There are many small airstrips in every part of the country, ranging from regional small airfields to strips used by a single privately owned aircraft. The potential use of small aircraft as vehicle bombs against places of public aggregation is a risk that must be guarded against. This is not founded on any particular intelligence or on any operation as such. However, knowledgeable police officers and officials have ongoing concerns about the relative simplicity of terrorism conducted in this way.

212. This has led to developed local policing plans, involving special branch and other police officers working together and with local communities. There is real co-operation from pilots of all kinds of aircraft and owners/operators of air fields of all sizes. In every police area now there are designated officers and others engaged on policing smaller aviation, with the capacity to share information and keep each other informed of concerns. Specific training courses are organised methodically. These are encouraging developments, which are making the country safer.

213. The Maritime and Coastguard Agency continues to play an important role in the policing of small ports and general aviation issues. The Agency should always be seen as a full participant in the stemming of the threat of terrorism.

214. Joint UK and French operations are now well established on both sides of the English Channel. These are designed to secure better quality of information sharing between the two countries, a freer flow of legitimate passengers, and the stemming of the tide of hopeless asylum seekers. The juxtaposed controls (British and French alongside each other) on each side of the Channel are functioning well.

215. It is part of my annual litany to repeat in connection with aircraft and passenger shipping that manifests are a cause for concern. As has been said by me and previous reviewers again and again, the information provided by shippers and carriers is of great value to port officers. If police know who is on board an aircraft or vessel, or what is being carried, their knowledge is increased, and they may be able to further important enquiries. If the manifest information is inaccurate, inadequate and given a low level of importance by transport operators, a vital clue may be missed. Good manifest information can save lives, and minimise delays.

216. As in previous years, given the fluidity of terrorist organisations, I trust that attention to crew-related terrorism issues is kept under continuing review and the advice of the police and Security Services heeded.

217. *Schedule 7* of the TA2000 sets out the powers of officers performing port and border controls. The powers under the Act are circumscribed in purpose by

paragraph 2(1) of the Schedule, to determining if the person stopped “appears to be a person falling within section 40(1)(b)” [i.e. a ‘terrorist’] whether there are grounds for suspicion or not.

218. Whilst I am not able to scrutinise every port stop, I have observed many. I am satisfied that in 2009 the port powers and the checks and balances on those powers worked and, subject to my comments about reducing the numbers, remain necessary. Recording systems are sound and accountable. Each port examination (as opposed to short stop) is recorded in written form, and senior officers examine written records routinely. Special Branch officers generally function to a very high professional standard.

6 PART VI OF THE ACT: ADDITIONAL TERRORIST OFFENCES

219. Sections 54 and 55 provide for an offence of instructing and training another, or receiving instruction or training, in the making or use of firearms, explosives or chemical, biological or nuclear weapons. The offence includes recruitment for training that is to take place outside the UK.

220. Lord Lloyd reported that the precedent for this offence applicable only in Northern Ireland had never been used, and presented real evidential difficulties³⁸. The government responded in its consultation paper prior to the *TA2000*³⁹ with references to international terrorism and its recruitment methods.

221. In my reports for the previous five years I have expressed the view that the events of September 11th 2001, and of July 2005 in the UK, and evidence available since then demonstrate that international terrorists have recruited young people in the UK, with the potential for use against the UK and around the world. This remains of extreme concern.

222. Any person who invites, incites or encourages young people to receive instruction or training in terrorist violence (wherever in the world such instruction or training was to be given) is guilty of an offence⁴⁰. In the present international climate of general terrorist threat this provision is proportionate and necessary. The threat of terrorist use of weapons capable of injuring whole communities is serious enough to warrant the measures of which sections 54-55 are part. New offences in relation to preparation for terrorism, training and training camps were included in the *TA2006* sections 5-9. I have seen more material in 2009 to convince me that terrorism training camps provide a dangerous allure for headstrong young men. Their attendance at the camps presents a real risk of harm to the United Kingdom and its assets, including the men and women of the armed services.

223. I remain satisfied that the existing provisions are potentially very useful and effective for dealing with aspects of international terrorism. They have been used for the purposes of prosecutions, though not in 2008-9. Six persons were charged under sections 54-58 during the year to 31st March 2009, half the number in the previous year.

224. Sections 56-58 deal, respectively, with directing terrorist organisations, possession of articles giving rise to a reasonable suspicion of a terrorist purpose, and possession or collection of information likely to be useful for terrorism.

225. It is not part of my terms of reference to debate the merits or otherwise of reverse onus provisions of the type contained in sections 57 and 58, unless they do not work satisfactorily. They were considered by the House of Lords in

38 CM 3420 Volume 1 Paras 14.26-14.28

39 CM4178 Para 12.12

40 Section 54(3)

*R v DPP ex p Kebilene*⁴¹. The working of sections 56-58 is satisfactory, and they remain a necessary and proportionate part of the legislation.

226. Section 58A has been added by CTA2008 section 76(1), and has been in force since the 16th February 2009. It has proved controversial. It provides:

(1) *A person commits an offence who—*

(a) elicits or attempts to elicit information about an individual who is or has been—

(i) a member of Her Majesty's forces,

(ii) a member of any of the intelligence services, or

(iii) a constable,

which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) publishes or communicates any such information.

(2) *It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action.*

227. In my report for 2008 I reported that a number of professional and amateur photographers had approached me to complain that this provision was being used to threaten them with prosecution if they take photographs of police officers on duty. I am pleased to be able to say that senior officers in the Metropolitan Police and the City of London Police have made it clear that these provisions should be used with care, and should not be seen as oppressive by tourists and general photographers. Most of the iconic buildings photographed are featured in detail and from most angles in easily available postcards and books.

228. Photography of the police by the media or amateurs remains as legitimate as before, unless the photograph is *likely* to be of use to a terrorist. This is a high bar. It is inexcusable for police officers ever to use this provision to interfere with the rights of individuals to take photographs. The police must adjust to the undoubted fact that the scrutiny of them by members of the public is at least proportional to any increase in police powers – given the ubiquity of mobile phones with cameras. Police officers who use force or threaten force in this context run the real risk of being prosecuted themselves for one or more of several possible criminal and disciplinary offences. Sometimes the best evidence may be provided by photographs and film taken by members of the public.

229. Sections 59-62 provide for offences of inciting terrorism overseas. These provisions incorporate the substance of what was formerly Sections 5-7 of the

41 [2000] 2 AC 326

Criminal Justice (Terrorism and Conspiracy) Act 1998. Whilst the provisions are wide, the consent of the DPP is required before a prosecution can be brought. With the protection of the requirement of such consent, the existence of an offence to criminalise, for example, incitement by a person within the UK to murder a British ambassador abroad is a proportionate response. As I observed in my previous reports, the deaths of a senior British diplomat and others in Istanbul in 2003 demonstrated the reality of the worst fears that such events may occur. These provisions gave rise to no charges in 2008-9, as compared with three convictions in 2007-8.

230. *Section 63* extended jurisdiction so that if a person does anything outside the UK that would have constituted a terrorist finance offence contrary to sections 15-18, he shall be guilty of the offence as if it had been done in the UK. It is my continuing view that this provision remains useful and necessary.

231. *Sections 63A-63E* made further provision for extra-judicial jurisdiction for terrorist offences, in accordance with the *Crime (International Co-operation) Act 2003, section 52.* These provisions extend domestic law to take into account various treaty obligations, which in broad terms apply 'zero tolerance' to terrorism acts wherever they are committed and whatever their purpose or political or other target. Criminal liability in our own jurisdictions is extended to any UK national or resident who commits outside the UK any act which would be a terrorism offence within the UK. The extension of UK jurisdiction applies too to terrorism acts by any person (whatever their nationality or residence) wherever committed, against UK nationals, residents and diplomatic staff. *Section 63D* makes a similar provision in relation to terrorist attacks or threats abroad in connection with UK diplomatic premises and vehicles. All such prosecutions are subject to the consent of the Attorney General.

232. *Section 64* has been repealed.

7 PART VII OF THE ACT: ANNUALLY RENEWABLE NORTHERN IRELAND PROVISIONS

233. As before, in Northern Ireland I have been greatly assisted by the patient and purposeful support which I have been given by officials of the Northern Ireland Office, the Police Service of Northern Ireland and other law enforcement bodies, those involved in administering justice and running the courts, the regional political parties, human rights organisations, and many, many other organisations and individuals who have contacted, advised and helped me. I have drawn extensively upon their generously given time and documentation. I have been impressed by the way in which all, especially civil servants, have adapted to changes of roles, responsibilities and accountability as a result of the devolution of policing and justice in early 2010.

234. *Part VII* of the Act was replaced from the 16th February 2006 by the *Terrorism (Northern Ireland) Act 2006 [TNIA2006]*. The main (and temporary) purpose of that Act was to extend the life of *Part VII* for a limited period⁴².

235. The *Justice and Security (Northern Ireland) Act 2007 [JaSNTA2007]*, in force since the 31st July 2007⁴³, provided from the 1st August 2007 for a considerably revised system of non-jury trial, to be used in restricted circumstances.

236. That system is now subject to separate review. *JaSNTA2007* introduced other important changes to the law concerning the Northern Ireland Human Rights Commission, powers of the military and the police to stop and search, road closures, compensation and connected criminal justice matters, and the private security industry. In effect, *Part VII* has now been replaced by *JaSNTA2007*, and former counter-terrorism laws have been succeeded by new public order legislation.

237. The Independent Reviewer of the new provisions for Northern Ireland is Robert Whalley CB. Mr Whalley and I have co-operated closely, and will continue to work together and share experience where appropriate.

238. Of course, my role as independent reviewer has continued in relation to Northern Ireland, as part of the United Kingdom. In addition, I act in a non-statutory role as the independent reviewer of the new national security arrangements for Northern Ireland. I am too the chair of the Northern Ireland Committee on Protection [NICOP]. NICOP has been established to determine the policy in relation to the provision of close armed protection to individuals living in Northern Ireland, having regard to the State's obligations under Article 2 of the *European Convention on Human Rights*; and to consider applications for

42 See the explanatory notes to the Act at www.opsi.gov.uk/acts/en2006/2006en04.htm

43 See section 53 for commencement provisions; and *The Justice and Security (Northern Ireland) Act 2007 (Commencement No. 1 and Transitional Provisions) Order 2007 [2007] No. 2045*; and *The Justice and Security (Northern Ireland) Act 2007 (Commencement No. 2) Order 2007 [2007] No. 3069*

the provision of armed close protection to any individual and decide what level of protection, if any, is required. It is a busy committee.

239. I have been briefed by the Police Service of Northern Ireland [PSNI], the Security Service and the military.

240. I have discussed the legal checks and balances in the Northern Ireland situation, having spent time in discussions with (amongst others) the Lord Chief Justice of Northern Ireland and other senior judges, the Public Prosecution Service for Northern Ireland, senior management of the PSNI, and others.

241. *Schedule 9* set out in three parts offences subject to special provisions in *Sections 65 to 80* and *Section 82* of the Act. *Schedule 9* was repealed and ceased to have effect on the 31st July 2007, as a result of the *Terrorism (Northern Ireland) Act 2006 section 1*.

242. The same applies to the remainder of *Part VII*. In the circumstances, I have removed from this aspect of my reporting cycle any separate consideration of Northern Ireland statutes or statistics, which will be covered by the Northern Ireland Reviewer Mr Whalley and his successors.

8 PART VIII OF THE ACT: GENERAL PROVISIONS

243. *Part VIII* contains general powers necessary to give the Act full effectiveness, definitions and regulation-making powers.

244. *Sections 114-116* have provoked some complaints in the past year concerning the taking of photographs, and the exercise of *section 44* powers. These issues are dealt with in detail above. In general, the power to use reasonable force to exercise the provisions of the Act is a reasonable provision, but must be used sparingly by police officers. The nature of the experience of a member of the public encountering the Act should be as positive as the circumstances allow.

245. *Section 117* requires the consent of the DPP or the Attorney General to prosecutions in respect of most offences under *TA2000*. *Section 117 (2A)* and *(2B)* provides added protection in relation to offences committed outside the United Kingdom. These are important safeguards against the arbitrary use of wide powers that could be misused in the wrong hands. The effectiveness of consent to prosecute as a protection against arbitrariness depends on far more than the astuteness and level of knowledge held by the DPP or Attorney General concerned. It depends too on the accuracy and integrity of the information provided for the purpose of the exercise of consent. The importance of this level of consent as part of our unwritten constitutional settlement should not be underestimated.

246. *Section 118*, which in my previous reports I described as an interesting and apparently effective example of a double-reverse-onus provision, deals with the prosecution's burden of disproving a statutory defence once the defence has complied with the evidential burden of raising it. No problems have been identified about its fitness for purpose.

247. *Sections 119 to 125*, as amended to reflect other legislative changes, are largely formal or definitions consequent upon the Act as a whole. *Section 120A* has been added by the *CTA2008*, and came into force on the 18th June 2009⁴⁴. It supplements court powers of forfeiture following convictions. The new section provides a balanced procedure, and specifies the right of third parties to be heard if they wish to claim an interest in the property proposed for forfeiture.

248. I have reviewed the *Part VIII* provisions fully, and have no basis for suggesting that they do not work to meet purpose.

249. The transitional provisions contained in *section 129* worked satisfactorily, and now are historic.

44 SI 2009/1256, art 2(c).

9 SCHEDULES TO THE ACT

250. Since enactment, all the schedules have been the subject of amendment and partial repeal.

251. *Schedule 1* dealt with transitional matters, and has served its purpose.

252. *Schedule 3* provides for the constitution, administration and procedure of POAC. New procedural rules were introduced during 2007, and remain appropriate and durable⁴⁵.

253. *Schedule 3A* defines the regulated sector and supervisory authorities. It was amended substantially to take account of post-2000 legislation. Nothing has been drawn to my attention in 2009 to indicate any real concern. Although I have looked for any effect of the Act on the regulated sector during the past year, nothing of significance has been drawn to my attention.

254. *Schedule 4* was amended by ATCSA2001 and subsequently. The schedule covers forfeiture, restraint and connected compensation orders. It remains a necessary part of the Act, and its mechanisms work. The enforceability of UN based freezing orders was considered during 2008 by the Court of Appeal and by the Supreme Court in 2009.

255. In *Her Majesty's Treasury (Respondent) v Mohammed Jabar Ahmed and others* (FC) [2010] UKSC 2 the Supreme Court considered United Nations Security Council [UNSC] resolutions requiring member states to take steps to freeze the assets of: (i) Usama Bin-Laden, the Taliban and their associates; and (ii) those involved in international terrorism. The UNSC established a list of persons whose assets member states were obliged to freeze ("the Consolidated List"). Those included in the Consolidated List are not informed of the basis for their inclusion or afforded the right to challenge the decision before an independent and impartial judge. The Appeals concerned the legality of the Terrorism (United Nations Measures) Order 2006 ("the TO") and the Al-Qaida and Taliban (United Nations Measures) Order 2006 ("the AQO"). The Order goes beyond the requirements imposed by the relevant UN resolutions by providing that a person's assets can be frozen on the basis of a '*reasonable suspicion*'. A person whose name is on the relevant consolidated list has no right to challenge his listing before a court. These freezing measures are not subject to any time limit, and place very severe limitations on the ability of persons who have been designated to deal with their property. They have a grave effect upon their freedom of movement, their liberty and private and family lives. The Supreme Court held that the TO should be quashed as *ultra vires*. It also held that Article 3(1)(b) of the AQO must also be quashed as *ultra vires*.

256. The effect of that decision on *Schedule 4* may require further legislation, and should be reviewed by Ministers as to whether legal certainty exists. The current view of Ministers is that *Schedule 4* creates a separate and distinct

45 *Proscribed Organisations Appeal Commission (Procedure) Rules 2007, SI 2007/1286*
Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules 2007, SI 2007/3377

statutory regime and is not affected by *Ahmed*. Not all interested lawyers share that view.

257. *Schedule 5* deals with procedures for search warrants. The Schedule was amended by *ATCSA2001*, *TA2006*, and by the amending Northern Ireland legislation referred to above. Again, I have received no representations from the police or elsewhere during the past year concerning the working of these provisions. They appear to be fit for purpose.

258. *Schedule 6* concerns the obtaining by the police of financial information relating to a terrorist investigation. Again, this year I have received no suggestions of concern about the operation of this provision.

259. *Schedule 6A* introduced the system of account monitoring orders. They can be obtained only by order of a circuit judge or equivalent, and on grounds set out in reasonably clear terms in paragraph 2. Their potential as a route towards useful evidence is self-evident. There has been no complaint about their use.

260. *Schedule 7* (port powers) is discussed above. It too was amended, albeit not extensively, by *ATCSA2001* and *TA2006*. It allows police, and officers of the new UK Borders Agency, to stop and question, and detain, a person for the purpose of determining whether he appears to be a terrorist. The power is available on ships, in aircraft, and in premises at ports and in the Northern Ireland border area. There are requirements that the questioned person must fulfil, relating to identification and documents. Powers extend to vehicles. The maximum period of detention of a person under the provision is 9 hours, and 7 days of a thing. I have watched the powers being exercised at many ports in recent years, and continued to do so in 2009. Generally, they are exercised politely and with restraint – but still more frequently than is necessary in the protection of national security. These powers have produced significant material of assistance to the authorities in preventing and detecting terrorism.

261. *Schedule 8* contains the procedures concerning the detention of terrorist suspects under *section 41* or *Schedule 7*, as discussed above. A significant amendment introduced by *ATCSA2001* allowed authorisation for the obtaining from a detained person of fingerprints, restricted to cases of refusal of identity or where there are reasonable grounds to doubt the claimed identity⁴⁶. Used fairly, this is a proportional and reasonable provision, and should work adequately. Five years ago I recommended that statistics should be kept by the Home Office of the use of this power. Despite this often repeated request, frustratingly I have yet to see them.

262. The *Crime and Security Act 2010* has added a number of paragraphs to *Schedule 8*: these apply to the period and conditions of retention and destruction of fingerprints, and DNA samples derived therefrom, following arrest/detention under *section 41* or *Schedule 7*. These new provisions were not in force at the time of writing. Their operation will be a matter of importance and interest, in balancing civil liberties against the interests of national security.

46 See Schedule 8 paragraphs 10-15, 20

263. *Schedule 8A* was inserted by CTA2008 Section 76. It provides supplementary provisions relating to the offence in *section 58A* (eliciting, publishing or communicating information about members of the armed forces etc). This is a proportionate addition to the Act. No noticeable effects of the addition occurred in 2009.

264. *Schedules 9-13* related to Northern Ireland. Subject to transitional provisions, they ceased to have effect on the 31st July 2007. The new Northern Ireland legislation (not subject of this review) incorporates some aspects of the *Schedules*.

265. The remaining *Schedules*, 14-15, have not given any cause for comment.

10 SCOTLAND

266. As in previous years, I have visited Scotland. Scottish special branches have close working relationships together, and I am impressed by their commitment to sharing information. They continue to operate well. As I have said in previous reports, there exists in Scottish police forces a very high level of expertise on terrorism matters, and a real sense of purpose. The Scottish forces work well in liaison with their colleagues elsewhere in the United Kingdom. There remains a very impressive level of partnership between police and coastal communities in parts of Scotland, with reference to any terrorism threat from incoming boats. I have received no complaints in relation to Scotland, from either the authorities or the public.

267. *Section 44* has continued to be used very sparingly in Scotland.

11 CONCLUSIONS ON THE TA2000

268. My conclusions in general are as before, save importantly that I am now of the view that *section 44* in its present form should be replaced in the light of the ECtHR decision in *Gillan*.

269. As always, throughout my travels, reading and discussions in connection with the *TA2000* I have been fully conscious of the delicate nature of the balance between political freedoms and the protection of the public from politically driven violence and disorder. This is not a constant and unchanging picture. I always have in mind and repeat that national security is a civil liberty, to which every citizen is entitled.

270. Overall, and subject to some detailed comment above, I regard the *Terrorism Act 2000* as continuing to be fit for purpose.

12 THE TERRORISM ACT 2006, PART 1

271. This is the third time I have prepared a report on the operation of *TA2006 Part 1* in conjunction with my responsibilities in respect of the *TA2000*.

272. In 2007 and 2008 the absence of meaningful statistics to date in relation to *TA2006* made this a task that could only be incomplete. A full statistical bulleting has now been devised and became available in early 2009.

273. *Section 1* contains the offence of *encouragement of terrorism* by statements. Although the section contains the word '*glorifies*'⁴⁷, subsection (1) makes it clear that the section has limited applicability, to—

- (a) "*a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences*".

274. *Section 1(3)* provides—

- (3) *For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which—*

- (b) *glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and*
- (c) *is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances*".

275. *Section 2* renders it an offence to disseminate terrorist publications, in circumstances parallel to those criminalised in *section 1*.

276. Three suspects were charged in 2008-9 (three in 2007-8) with a *section 1-2* offence of encouragement of terrorism as principal offence, with two convictions⁴⁸. I remain un-attracted by the use (uniquely in this legislation) of the word '*glorifies*', it is linked so closely to the more conventional inchoate concept of incitement that the criminalisation of the conduct described is proportionate. I think I reflect judicial opinion that it is desirable that as many prosecutions as possible should be linked to specific terrorism acts and conspiracies. Juries are less likely to convict of less specific offences like these.

277. Prosecution is an instrument of last resort against radicalisation. The '*Prevent*' strand of counter-terrorism strategy recognises this. It is better by far to

47 *Section 1(3)(a)*

48 Table 1.3(a), p16 of Home Office Statistical Bulletin 18/09 (Nov 2009): <http://rds.homeoffice.gov.uk/rds/pdfs09/hosb1809.pdf>

discuss and persuade at community level, so that those minded to radicalise or to be radicalised have the opportunity to consider and reflect upon their own and their community or group's interests before charging offences under *section 1*.

278. A statutory defence is provided under *section 1(6)*. This should protect academics, journalists, commentators and others who quote from material for legitimate reasons and in an appropriately detached way. It has not arisen as a difficulty.

279. *Sections 3 and 4* apply to statements and publications appearing electronically. They provide for a system of notices to lead to the removal from the internet of terrorism-related unlawful material. Total removal of material from the internet is a difficult task.

280. I have received no complaints from any source about these provisions. It is important to be reassured that they are working fairly and are used only when appropriate. I am unaware of any use of these provisions in 2009.

281. *Section 5* makes the preparation of terrorist acts an offence if done with the intention of committing acts of terrorism, or assisting another to commit such acts. This section is consistent with recommendations made by Lord Lloyd of Berwick prior to the introduction of the *TA2000*, and by me since 2001. It has been used, with eight persons charged and six convicted of it as principal offence in 2008-9. It is a sensible and practical provision. It applies to a broad range of potential actions, whether a particular act or target of terrorism has yet been identified by the offender or not.

282. *Section 6* makes it an offence to provide training for terrorism, and to receive such training. The section has been used successfully in prosecutions. There were no convictions of the offence in 2007-8 or 2008-9. The offence is tightly defined, and is proportionate. It is now beyond doubt that terrorism training has occurred within Great Britain, sometimes using the facilities of regular businesses providing outdoor and combat-themed activities. I have little doubt that such businesses are aware of the need to scrutinise their customer base and to inform the authorities of any suspicions. I am aware that the police are actively vigilant about such training. The very existence of the offence appears to have reduced its incidence.

283. *Section 7* reasonably provides for the forfeiture of anything found in a convicted offender's possession for purposes connected with an offence under *section 6*.

284. *Section 8* has caused me some concern since it was first proposed. Reasonably, it makes it an offence to attend any place, worldwide, used for terrorism training. However, as I have said before, it has the effect of also criminalising a journalist who enters a terrorist training camp for the purposes of reporting on the activities there. He or she would not commit an offence if they stood outside the perimeter reporting upon activities inside; but an investigative journalist who went inside the perimeter could be prosecuted. I would feel

more comfortable with the section if there was a statutory defence for bona fide journalists acting in a legitimate professional fashion. Nevertheless, it is right that I should say that I have received no representations on this matter from the media during the past 2 years, and they seem able to live with the restraint it imposes.

285. *Section 9* provides that it is an offence to make or possess a radioactive device, or to possess radioactive material with a terrorist intention. This is an extremely serious offence, with a maximum sentence of life imprisonment. This is a necessary and proportionate provision. Fortunately, it has not been tested in the courts.

286. *Sections 10 and 11* provide for other offences concerning the misuse of radioactive devices or material, and the damage of a nuclear facility; and terrorist threats relating to devices, materials or facilities. These too attract maximum sentences of life imprisonment, and are proportionate to the risk involved. *Section 11A*, added in 2008, provides corresponding forfeiture provisions in force since the 18th June 2009.

287. *Section 12* amends the *Serious Organised Crime and Police Act 2005*, in relation particularly to trespass on nuclear sites. It is an offence to trespass within the outer perimeter boundary of a nuclear site. Whilst this inhibits the ambition of some anti-nuclear protesters, effective protest can be and is mounted at or near to the perimeters of such sites. The risk of infiltration of legitimate protests by terrorists is real, and the amended law is proportionate. Peaceful protest groups have expressed serious misgivings about this provision: whilst the provision itself is proportionate, I hope that its application will be equally so.

288. *Sections 13 and 15* provide for increased penalties for certain offences. These are uncontroversial provisions. *Section 14* has been repealed and replaced⁴⁹.

289. *Section 16* provides revised arrangements for preparatory hearings in the Crown Court in terrorism cases. Preparatory hearings sometimes have the effect of shortening trials considerably. They appear to be working satisfactorily.

290. *Section 17* makes it an offence in the UK to do anything outside the UK which, if done in a part of the UK, would constitute a terrorism offence under the Act. The provision applies to attempts and other inchoate offences. Thus, for example, the dissemination of a publication designed to encourage terrorist action against the despotic ruler of a foreign State is rendered a criminal offence in the UK.

291. Predictably, this provision has resulted in expressions of concern about the legitimacy of support for freedom fighters, as they are often described. Whilst I well understand that concern, one must not forget that under various treaty obligations reached through the United Nations and the Council of Europe, *section 17* puts into effect an obligation on all member States of the UN and the

⁴⁹ *Criminal Justice and Immigration Act 2008* section 148, and Sch. 27 para.26

Council. In international law there is zero tolerance of terrorism, whatever the nature of the regime proposed for attack.

292. In a great many cases there is no criticism of the extra-territorial provision made in *section 17*. Where there is potential controversy, an important protection is the discretion that is exercised whether or not to prosecute. Whilst informal in its process, the exercise of that discretion and the involvement of the Director of Public Prosecutions, the Attorney General, and their equivalents in Northern Ireland should provide reassurance. The discretion is enshrined in *section 19*: the Attorney General's consent is required for all extra-territorial matters. I have seen no evidence of inappropriate use of the section.

293. *Section 18* provides that where a body corporate or a Scottish firm commits an offence under *Part 1*, a director, manager, partner or person purporting to act as such is also liable to be proceeded against personally for the offence. This has not given rise to any difficulties in the operation of the Act.

294. *Section 20* is an interpretation and definition provision. This section has caused no problems to date.

13 COUNTER-TERRORISM ACT 2008

295. The CTA2008 does not require a reviewer's report, save in so far as its provisions amend the legislation reviewed above. However, in my judgment it would be unsatisfactory and inconsistent to exclude the new Act's provisions from the process of review.

296. *Sections 1-18, 22-27, and Schedule 9 Part 1* are not yet in force, and parts of those have already been amended by the *Crime and Security Act 2010*.

297. *Sections 19-21* are sensible and practical provisions dealing with disclosure and the Security Service. No adverse effects have been observed in 2009.

298. *Sections 28-39* make practical changes in the law to facilitate smooth flow between the jurisdictions of the UK, and deal too with forfeiture. No adverse effects have been observed thus far.

299. *Sections 40-61* provide for notification requirements and travel restrictions for persons convicted in the UK and, in certain circumstances, elsewhere of designated offences connected with terrorism. The provisions seem proportional, but it is too early to gauge its effects upon individuals: they came into force as recently as the 1st October 2009.

300. *Section 62* and *Schedule 7* provide for country-specific terrorist financing and money laundering restrictions and directions. Potentially this has dramatic implications for relations between the UK and rogue States. However, subject to the strength of the evidence available and compliance with disclosure standards imposed by the Courts, these provisions may have important beneficial implications for UK national security.

301. *Sections 63-73* provide further in relation to financial restrictions, including the issue of disclosure in relation to UN resolutions. It is too early to judge whether these provisions will achieve their purposes and operate fairly. The picture may be clearer in a year's time.

302. *Section 74* permits disclosure of intercept evidence to an Inquiry and inquiry counsel, where the Inquiry is appointed under the *Inquiries Act 2005*. This will ensure that such proceedings have full evidence before them.

303. *Section 75* adds a racial cause to activities within the definition of terrorism in *section 1* of the *Terrorism Act 2000*. This is consistent with views I have expressed as reviewer in previous years.

304. *Sections 76-102* are all necessary clarificatory, funding or other ancillary provisions. At this early stage at least, they do not give rise to comment.

305. There has been no noticeable effect to date of the *Schedules* to the Act. These will be the subject of review as issues arise.

14. PROCESS OF REVIEW

306. After nearly 9 years, I have concluded that the position of independent reviewer of terrorism legislation should be made full-time, with a small permanent staff and a group of advisors. In my view the reviewer should be permitted to form an advisory group of experts, all to be developed vetted, upon whom he/she may call for up to 2 days per month.

307. I suggest that the reviewer should be provided with 3 full-time, vetted staff, consisting of (1) a manager of reasonable seniority and expertise, preferably with recent material experience; (2) a researcher; and (3) a diary secretary/personal assistant.

308. The reorganisation suggested in this section would make the reviewer better organised and more effective.

**Lord Carlile of Berriew Q.C.
9-12 Bell Yard, London WC2A 2JR
July 2010.**

ANNEX A: PERSONS AND ORGANISATIONS SEEN AND/ OR INVOLVED IN CONSULTATIONS AND ACTIVITIES AND CORRESPONDENCE INCLUDED:

- Aberystwyth University
- ACPO
- ACPO TAM
- ACPOS and Scottish Terrorist Detention Centre
- Aedeas Architects Manchester
- Amnesty International UK
- Dr Abdullah Ansari
- The Army, HQ Northern Ireland
- Australian High Commission
- Umar Azmeh
- BBC and many other broadcasters and columnists
- Bindmans LLP
- The Hon Pierre Blais, Federal Appeals Judge, Canada
- British Business and General Aviation Association
- British Irish Rights Watch
- British Library
- British Muslim Federation
- British Transport Police
- Cage Prisoners
- Government of Canada (including expert evidence)
- Chamber of Shipping
- Charity Commission
- Chatham House
- Civitas
- City Forum
- City of London Police
- Civil Nuclear Police Authority
- Civitas
- Clove Systems
- Dr David Cole (Georgetown University)
- Columbia University
- Committee for the Administration of Justice, Northern Ireland
- Council of Europe
- Alan J Crocket
- Mr Tim Crowther
- Doughty Street Chambers
- DUP
- Dyfed-Powys Police
- Eden Intelligence
- Oliver Edwards

- **Phil Edwards**
- **Jacqueline Eginton**
- **Equality and Human Rights Commission**
- **Christine Evans-Pughe**
- **Faith Matters**
- **Fatima Women's Network**
- **Fife Constabulary**
- **Foreign and Commonwealth Office (home and abroad)**
- **Gangmasters Licensing Authority**
- **Joyce Garner**
- **Professor Conor Gearty**
- **Parliamentarians from Germany**
- **University of Glamorgan**
- **Shaista Gohir**
- **Neil Graffin**
- **The Hon Society of Gray's Inn (Barnard's Inn Reading 2008)**
- **Greater Manchester Police**
- **Dr Peter Green and other forensic examiners**
- **Peter Gristwood**
- **Djamel Guesmia**
- **Hampshire Constabulary**
- **University of Hertfordshire**
- **Her Majesty's Inspectorate of Constabulary**
- **Home Affairs Committee, House of Commons**
- **Home Office Ministers and officials**
- **Many House of Lords members**
- **Howard League**
- **Human Rights Lawyers' Association**
- **Human Rights Watch**
- **Azeem Ibrahim**
- **Independent Monitoring Commission**
- **Independent Police Complaints Commission**
- **Intelligence and Security Committee**
- **International Commission of Jurists**
- **Islamic Human Rights Commission**
- **Embassy and Government of Israel**
- **ITT Tourism**
- **Michael Jacobson (Washington DC)**
- **Joint Border Operations Centre**
- **Joint Committee on Human Rights**
- **Joint Terrorism Analysis Centre (JTAC)**
- **Lord Judd**
- **Judges (various)**
- **JUSTICE**

- **Mr Tim Kavanagh**
- **Kent Police; and juxtaposed controls at Coquelles**
- **King's College London**
- **Yousif al-Khoei**
- **The Labour Party**
- **Liberal Democrat Party**
- **Liberty**
- **London School of Economics, Centre for the Study of Human Rights**
- **Lord Advocate**
- **Lord Chief Justice of Northern Ireland**
- **Manchester University**
- **Ian MacDonald**
- **Mrs MI McLaughlin**
- **James Mallinson**
- **Paul Martin**
- **Patrick Mercer MP**
- **Metropolitan Police**
- **John K Milner**
- **Ministry of Justice**
- **WJ Moore**
- **Fiyaz Mughal**
- **Paddy Murray**
- **Muslim Council of Great Britain**
- **Muslim and other Communities representatives, Glasgow**
- **Gabe Mythen**
- **NaCTS0**
- **National Coordinator of Ports Policing**
- **National Coordinator of Special Branches**
- **National Joint Unit**
- **National Council of Resistance of Iran**
- **NPAC**
- **National Policing Improvement Agency**
- **Netjets**
- **Rebecca Newton**
- **John B Nicholles**
- **Northern Ireland Human Rights Commission**
- **Northern Ireland Office**
- **Northern Ireland Policing Board**
- **Northern Ireland Office Ministers and Officials**
- **Northern Ireland Policing Board**
- **Northern Ireland Public Prosecution Service**
- **National Ports Analysis Centre**
- **Mr Saif Osmani**
- **Palestinian Authority**

- Parliamentary Intelligence and Security Committee
- PICTU (Police International Counter Terrorism Unit)
- Police Service of Northern Ireland
- Police Ombudsman of Northern Ireland
- Policy Exchange
- Privy Council Review of Intercept Evidence
- PUP
- Pysdens Solicitors (Samuel Perez-Goldzveig)
- Haras Rafiq
- Raj Law Solicitors
- Mrs Rajavi, NCRI, Paris
- Ramadhan Foundation
- Aasim Rashid
- Nathan Rasiah
- Refugee Council
- Royal College of Defence Studies
- Royal United Services Institute
- Professor Martin Rudner
- St Johns College Southsea Political Society
- Professor Philippe Sands Q.C.
- Scottish Parliament and Government
- Scottish Police College, Tullyallan
- SDLP
- Joseph Sebastian
- Secret Intelligence Service
- The Security Institute
- Security Service
- Sinn Fein
- Smiths Detection
- South Wales Police
- Statute Law Society
- Stena Line
- Strathclyde Police
- Sufi Muslim Council
- Sussex Police
- Chambers of Rock Tansey QC
- Tayside Police
- The Rt Hon Lord Tebbitt
- Travellers Club
- Glenmore Trenear-Harvey
- Parliamentarians from Turkey
- Mrs MJA Turner
- UKBA
- Ultrasys

- **Unisys**
- **University College London**
- **UUP**
- **John Vine QPM (UKBA Chief Inspector)**
- **Vodafone**
- **Professor Clive Walker**
- **WECTU Wales Special Branches Conference**
- **Robert Whalley CB**
- **Roger Whittaker**
- **Professor Paul Wilkinson**
- **Adam Wilson**
- **World Muslim Sikh Federation**
- **South Yorkshire Police**
- **West Yorkshire Police**
- **Daniel Youkee**
- **Masoud Zabeti**
- **Yossi Zur**

ANNEX B: PORTS etc. VISITED

- Belfast City Airport
- Belfast International Airport
- Belfast Port
- Birmingham Airport
- Channel Tunnel Folkestone
- Edinburgh Airport
- Port of Felixstowe
- Glasgow Airport and Port
- Port of Larne
- London City Airport
- London Gatwick Airport
- London Heathrow Airport
- London Stansted Airport
- Luton Airport
- Manchester Airport
- Prestwick Airport
- St Pancras International
- Port of Stranraer
- Wapping
- Numerous UK railway stations

ANNEX C: PROSCRIBED ORGANISATIONS⁵⁰

PROSCRIBED TERRORIST GROUPS

SCHEDULE 2

- The Irish Republican Army.
- Cumann na mBan.
- Fianna na hEireann.
- The Red Hand Commando.
- Saor Eire.
- The Ulster Freedom Fighters.
- The Ulster Volunteer Force.
- The Irish National Liberation Army.
- The Irish People's Liberation Organisation.
- The Ulster Defence Association.
- The Loyalist Volunteer Force.
- The Continuity Army Council.
- The Orange Volunteers.
- The Red Hand Defenders.
- [Al-Qa'ida
- Egyptian Islamic Jihad
- Al-Gama'at al-Islamiya
- Armed Islamic Group (Groupe Islamique Armée) (GIA)
- Salafist Group for Call and Combat (Groupe Salafiste pour la Prédication et le Combat) (GSPC)
- Babbar Khalsa
- International Sikh Youth Federation
- Harakat Mujahideen
- Jaish e Mohammed
- Lashkar e Tayyaba
- Liberation Tigers of Tamil Eelam (LTTE)
- [The military wing of Hizballah, including the Jihad Council and all units reporting to it (including the Hizballah External Security Organisation).]
- Hamas-Izz al-Din al-Qassem Brigades
- Palestinian Islamic Jihad—Shaqaqi
- Abu Nidal Organisation
- Islamic Army of Aden
- Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK)
- Revolutionary Peoples' Liberation Party—Front (Devrimci Halk Kurtulus Partisi-Cephesi) (DHKP-C)
- Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA)
- 17 November Revolutionary Organisation (N17)]
- [Abu Sayyaf Group
- Asbat Al-Ansar

50 <http://security.homeoffice.gov.uk/legislation/current-legislation/terrorism-act-2000/proscribed-terrorist-groups>

- Islamic Movement of Uzbekistan
- Jemaah Islamiyah]
- [Al Ittihad Al Islamia
- Ansar Al Islam
- Ansar Al Sunna
- Groupe Islamique Combattant Marocain
- Harakat-ul-Jihad-ul-Islami
- Harakat-ul-Jihad-ul-Islami (Bangladesh)
- Harakat-ul-Mujahideen/Alami
- Hezb-e Islami Gulbuddin
- Islamic Jihad Union
- Jamaat ul-Furquan
- Jundallah
- Khuddam ul-Islam
- Lashkar-e Jhangvi
- Libyan Islamic Fighting Group
- Sipah-e Sahaba Pakistan]
- [Al-Ghurabaa
- The Saved Sect
- Baluchistan Liberation Army
- Teyrebaz Azadiye Kurdistan]
- [Jammat-ul Mujahideen Bangladesh
- Tehrik Nefaz-e Shari'at Muhammadi]
- [Al Shabaab]

Note

The entry for The Orange Volunteers refers to the organisation which uses that name and in the name of which a statement described as a press release was published on 14th October 1998.

[The entry for Jemaah Islamiyah refers to the organisation using that name that is based in south-east Asia, members of which were arrested by the Singapore authorities in December 2001 in connection with a plot to attack US and other Western targets in Singapore.]

Entries from “Al-Qa’ida” to “17 November Revolutionary Organisation (N17)” in square brackets inserted by SI 2001/1261, art 2.

Entry beginning “The military wing of Hizballah” substituted, for entry “Hizballah External Security Organisation” as originally enacted, by SI 2008/1931, art 2.

Entry “Mujaheddin e Khalq” (omitted) repealed by SI 2008/1645, art 2.

Entries “Abu Sayyaf Group”, “Asbat Al-Ansar”, “Islamic Movement of Uzbekistan”, and “Jemaah Islamiyah” inserted by SI 2002/2724, art 2.

Entries from “Al Ittihad Al Islamia” to “Sipah-e Sahaba Pakistan” inserted by SI 2005/2892, art 2.

Entries “Al-Ghurabaa”, “The Saved Sect”, “Baluchistan Liberation Army” and “Teyrebaz Azadiye Kurdistan” inserted by SI 2006/2016, art 2.

Entries “Jammat-ul Mujahideen Bangladesh” and “Tehrik Nefaz-e Shari’at Muhammadi” inserted by SI 2007/2184, art 2.

Entry “Al Shabaab” inserted by SI 2010/611, art 2.

Note relating to “Jemaah Islamiyah” inserted by SI 2002/2724, art 3.

ANNEX D: CORDONS UNDER S33 OF TACT 2000

CITY OF LONDON POLICE FORCE

| DATE | LOCATION | DURATION |
|-------------|---|-----------------|
| 04/01/2009 | Moorgate/London Wall, Moorgate/South Place-Ropemaker Street. | 16 minutes |
| 17/02/2009 | Great St Thomas Apostle, Queen Street. | 20 minutes |
| 31/03/2009 | 1435-1532hrs; Bank Junction/Princes St, Old Broad St, Threadneedle St, Cornhill, King William St, Poultry, Wallbrook, then 1532-1614hrs; reduced to pavement and garden frontage of Exchange Buildings. | 57 + 42 minutes |
| 23/05/2009 | London Wall/Wood St, Camomile St/Bishopsgate, Moorgate/ Princes St, Moorgate/Eldon St. | 45 minutes |
| 30/07/2009 | CP: Security Office, Level 1, City Point Bldg, Ropemaker St. | 36 minutes |
| 09/09/2009 | Bishopsgate/Middlesex St, Bishopsgate/Liverpool St. | 42 minutes |
| 16/09/2009 | Points between Newbury St and Bartholomew Close. | 19 minutes |
| 04/01/2009 | Moorgate/London Wall, Moorgate/South Place-Ropemaker Street. | 16 minutes |

MERSEYSIDE

| DATE | LOCATION | DURATION |
|-------------|-----------------------|-----------------|
| 08/04/2009 | Liverpool South/North | 2-5 Days |

METROPOLITAN POLICE SERVICE

| DATE | LOCATION | DURATION |
|-------------------------------|-------------------------------|-----------------|
| Kensington and Chelsea | | |
| 16/01/2009 | Smith Terrace, SW3 | 27 minutes |
| 30/01/2009 | Cromwell Place, SW7 | 63 minutes |
| 23/06/2009 | Palace Avenue, W8 | 36 minutes |
| City of Westminster | | |
| 10/02/2009 | Pall Mall | 45 minutes |
| 13/03/2009 | King Street | 15 minutes |
| 25/03/2009 | Marleybone Road | 50 minutes |
| 24/08/2009 | Tiltyard, Horseguards | 1hr, 15 minutes |
| 27/08/2009 | Thames House | 15 minutes |
| 15/10/2009 | Catherine Street | 18 minutes |
| 07/11/2009 | Victoria Embankment | 25 minutes |
| 18/12/2009 | Dover House, Whitehall | 40 minutes |
| Camden | | |
| 04/03/2009 | Royal College Street | 30 minutes |
| 02/06/2009 | 10 Drury Lane, WC2 | 40 minutes |
| 21/09/2009 | 138 – 142 Holborn Bars, EC1 | 25 minutes |
| 14/12/2009 | Barnby Street, NW1 | 60 minutes |
| Tower Hamlets | | |
| 05/01/2009 | Cambridge Heath Road | 1hr, 45 minutes |
| 07/04/2009 | Bank of America, Canary Wharf | 1hr, 26 minutes |
| 22/06/2009 | North Colonnade, Canary Wharf | 33 minutes |
| 18/07/2009 | Tower of London Foreshore | 41 minutes |

| DATE | LOCATION | DURATION |
|-------------------|---|------------------|
| 10/08/2009 | Corriander Avenue, E14 | 1hr, 43 minutes |
| 22/08/2009 | Watney Market, E14 | 42 minutes |
| 15/10/2009 | Brady Street | 3hrs, 10 minutes |
| 04/12/2009 | Barnsley Street, E1 | 30 minutes |
| Islington | | |
| 09/02/2009 | 65 Beasant Court, N7 | 4hrs |
| 19/02/2009 | Rawsthorne Street, EC1 | 40 minutes |
| 03/10/2009 | Essex Road, N1 | 34 minutes |
| 28/10/2009 | Finsbury Pavement, EC2 | 39 minutes |
| Harrow | | |
| 10/04/2009 | Beesborough Road | 1hr, 14 minutes |
| Bexley | | |
| 04/02/2009 | Station Road, Sidcup | 8 minutes |
| 13/03/2009 | Vicarage Road, Bexley | 58 minutes |
| Wandsworth | | |
| 13/05/2009 | Queenstown Road, J/W Battersea Park Road, Nine Elms Lane, J/W Wandsworth Road | 1hr, 21 minutes |
| Hillingdon | | |
| 28/02/2009 | Station Road, Hayes | 57 minutes |
| 08/06/2009 | A40 J/W West End Road | 1hr, 7 minutes |
| 08/06/2009 | Station Road, Hayes | 1hr, 17 minutes |

ANNEX E: USE OF POWERS – HOME OFFICE STATISTICS



Operation of police powers under the Terrorism Act 2000 and subsequent legislation:

Arrests, outcomes and stops & searches

Quarterly update to December 2009

Great Britain

October – December 2009

10th June 2010

Related Publications

1. The first publication in the current series of bulletins covering 11 September 2001 and 31 March 2009 under current terrorist legislation is available online at the following address:
 - <http://www.homeoffice.gov.uk/rds/pdfs09/hosb1809.pdf>Statistics covering the previous quarter, up to 30 September 2009 is available online at the following address:
 - <http://www.homeoffice.gov.uk/rds/pdfs10/hosb0410.pdf>
2. Statistics covering persons held under the previous terrorist legislation, the Prevention of Terrorism Act 1984 & 1989, were routinely published by the Home Office until 2001. The final bulletin (Home Office Statistical Bulletin, 16/01) covered the period up to February 2001 and preceded the introduction of the Terrorism Act 2000, it can be found here:
 - <http://www.homeoffice.gov.uk/rds/pdfs/hosb1601.pdf>.
3. Information on stops and searches under the Terrorism Act 2000 in England and Wales are published annually in the Home Office Statistical Bulletin 'Police Powers and Procedures, England and Wales' and the Ministry of Justice report 'Statistics on Race and the Criminal Justice System England and Wales'. Final validated information on all stops and searches will be published in these reports which will also include breakdowns by police force area.
 - <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0610.pdf>
 - <http://www.justice.gov.uk/publications/docs/stats-race-criminal-justice-system-07-08-revised.pdf>

Requests for further information

4. Enquires about the figures in this report should be made by writing to:

Office of Security and Counter-Terrorism,
Home Office,
2 Marsham Street,
London,
SW1P 4DF.

Press Office,
Home Office,
2 Marsham Street,
London,
SW1P 4DF.

This Statistical Bulletin has been produced by statisticians working in the Home Office Statistics Unit. Although this output is not currently given National Statistics accreditation, the protocols for such statistics have been mirrored as closely as possible.

The governance arrangements in the Home Office for statistics were strengthened on 1 April 2008 to place the statistical teams under the direct management of a Chief Statistician who reports to the National Statistician with respect to all professional statistical matters.

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Introduction

1. The Home Office published for the first time in May 2009 a Statistical Bulletin covering arrests and outcomes data under current terrorism legislation for the period 11 September 2001 to 31 March 2008 (Home Office Statistical Bulletin 04/09). A further report included for the first time statistics covering powers under terrorism legislation including arrests, outcomes and stops and searches up to 31 March 2009 (Home Office Statistical Bulletin 18/09). The current report provides a quarterly update of this data for the period up to 31 December 2009. The report also includes provisional data on the use of s43 & s44 powers in the third quarter 2009/10.

2. This report brings together a wide range of statistical material from police and other agencies in Great Britain (i.e. England & Wales and Scotland). Although similar statistical data is collected in Northern Ireland this is published separately (the latest report 'Northern Ireland Statistics on the Operation of the Terrorism Act 2000: Annual Statistics 2008' was published in October 2009).

It can be found at the following address:

- http://www.nio.gov.uk/2009_northern_ireland_statistics_on_the_operation_of_the_terrorism_act_2000_annual_statistics_2008.pdf

3. Searches made using powers under the Terrorism Act 2000 are carried out to prevent acts of terrorism and do not assume that a criminal offence has been committed. Only a small proportion of those stopped and searched will be arrested.

4. The final validated statistics on stops and searches are designated 'National Statistics' implying they are to be granted accreditation by the UK Statistics Authority. These will be published by both the Home Office and the Ministry of Justice. There is no indication of lower standards for the data on terrorism arrests and outcomes with National Statistics protocols followed closely to ensure best practice. However since the terrorism arrest data series is only under-development no such accreditation has currently been sought.

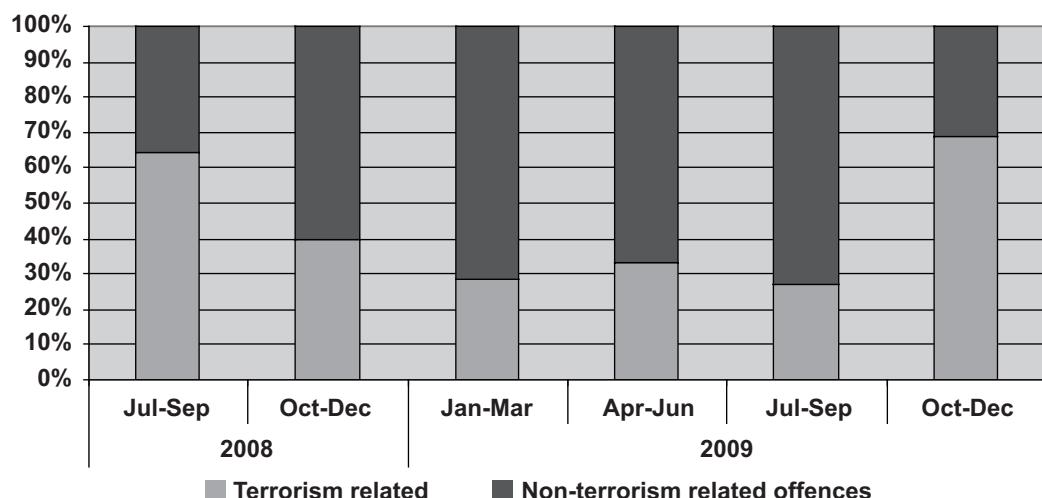
Chapter 1

Statistics on terrorism arrests and outcomes

MAIN POINTS

- There were 207 terrorism arrests in the year ending 31 December 2009 compared with 174 in the previous year. Thirty-one persons were arrested in the second quarter of 2009/10 and 54 in the third. In total there have been 1,817 terrorism arrests since 11 September 2001.
- Twenty-seven per cent of terrorism arrests in the year ending 31 December 2009 resulted in a charge, compared with 28% of those aged 18 and over arrested for indictable offences and prosecuted in 2008/9. This arrest rate was down on annual rates seen for the previous year of 41%.
- Forty-one per cent of charges resulting from terrorism arrests made for the year ending 31 December 2009 were terrorism related as compared with 64% since 11 September 2001 (including charges under Schedule 7 Terrorism Act 2000). For the latest quarter October – December 2009, 69% of charges were for terrorism related offences.
- No suspects arrested in the year ending 31 December 2009 were held in pre-charge detention for more than 14 days, with 43% of those dealt with within 48 hours.

Figure 1 Offence classification at charge as a proportion of total charges



- Eight persons have currently been convicted for terrorism related offences of the 23 persons charged in the year ending 31 December 2009. A total of 235 persons have been convicted of terrorism related offences since 11 September 2001 with a further 22 persons currently awaiting prosecution.
- Twenty-eight defendant trials for terrorism related offences were completed during the year ending 31 December 2009, 93% (26) of defendants were convicted.

- For the 26 offenders convicted during the twelve months ending 31 December 2009, 17 persons (65%) received determinate prison sentences and 8 persons received indeterminate sentences, including 6 life sentences. Just over half pleaded guilty.
- At 31 December 2009, 131 persons were in prison for terrorist/extremist or related offences, or charges, in Great Britain of which 21 were classified as domestic extremists/separatists.

Table 1.1 Terrorism arrests under s41 of the Terrorism Act 2000 or under other legislation

| | Year of arrest | | | | | | Total | | |
|--|----------------|---------|---------|---------|---------|---------|-------------|-------------|-------------|
| | 2008 | | 2009 | | | | Year ending | Since | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | | | |
| s41 Terrorism Act 2000 | 24 | 27 | 38 | 29 | 13 | 26 | 31 Dec 2008 | 31 Dec 2009 | 11 Sep 2001 |
| % of all arrests | 60 | 54 | 72 | 42 | 42 | 48 | 103 | 106 | 1,477 |
| Other legislation⁽¹⁾ | 16 | 23 | 15 | 40 | 18 | 28 | 59 | 51 | 81 |
| % of all arrests | 40 | 46 | 28 | 58 | 58 | 52 | 71 | 101 | 340 |
| Total | 40 | 50 | 53 | 69 | 31 | 54 | 41 | 49 | 19 |
| | | | | | | | 174 | 207 | 1,817 |

Source: ACPO Counter Terrorism Coordination Centre (ACTCC)

⁽¹⁾ Mainly s1 Police and Criminal Evidence Act 1984.

Table 1.2 Outcome of terrorism arrests⁽¹⁾

| | Year of arrest | | | | | | Total | | |
|--|----------------|---------|---------|---------|---------|---------|-------------|-------------|-------------|
| | 2008 | | 2009 | | | | Year ending | Since | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | | | |
| Arrests | 40 | 50 | 53 | 69 | 31 | 54 | 31 Dec 2008 | 31 Dec 2009 | 11 Sep 2001 |
| Charged: | 14 | 25 | 14 | 15 | 11 | 16 | 174 | 207 | 1,817 |
| Terrorism legislation ⁽²⁾ | 4 | 8 | 3 | 2 | 2 | 5 | 71 | 56 | 633 |
| Other terrorism related criminal offences ⁽³⁾ | 5 | 2 | 1 | 3 | 1 | 6 | 29 | 12 | 266 |
| Other non-terrorism related criminal offences ⁽⁴⁾ | 5 | 15 | 10 | 10 | 8 | 5 | 13 | 11 | 136 |
| Released without charge | 20 | 23 | 33 | 30 | 16 | 16 | 29 | 33 | 231 |
| Alternative action⁽⁵⁾ | 6 | 2 | 6 | 24 | 4 | 22 | 90 | 95 | 993 |
| | | | | | | | 13 | 56 | 191 |

Source: ACPO Counter Terrorism Coordination Centre (ACTCC)

⁽¹⁾ Excludes 119 port stops carried out in Scotland over this period.

⁽²⁾ Includes Terrorism Act 2000, Anti-Terrorism Crime and Security Act 2001, Prevention of Terrorism Act 2005, and Terrorism Act 2006.

⁽³⁾ Based upon assessment by the ACTCC.

⁽⁴⁾ Based upon assessment by the ACTCC.

⁽⁵⁾ Includes cautions for non-terrorism offences, transfers to immigration authorities, transfers to the PSNI, summonses and those dealt with under mental health legislation.

Table 1.3

Time in days from arrest under s41 of the Terrorism Act 2000^(1,2) to charge, release or other action taken⁽³⁾

| Detention period | Year of Arrest | | Total | | Year Ending | | 31 Dec 2008 | | 31 Dec 2009 | | Since 11 September 2001 | | |
|------------------|----------------|----------|-----------|-----------|-------------|-----------|-------------|-----------|-------------|-----------|-------------------------|-----------|--------------|
| | 2009 | | Jul – Sep | | Oct – Dec | | Charged | | Released | | Other | | |
| | Released | Charged | Total | Other | Total | Other | Released | Charged | Total | Other | Total | Charged | Total |
| Under 1 day | 2 | 4 | 0 | 6 | 1 | 6 | 0 | 7 | 6 | 43 | 6 | 55 | 4 |
| 1 – 2 days | 1 | 2 | 0 | 3 | 0 | 4 | 0 | 4 | 3 | 4 | 0 | 7 | 2 |
| 2 – 3 days | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 1 | 0 |
| 3 – 4 days | 0 | 1 | 0 | 1 | 0 | 0 | 3 | 3 | 0 | 2 | 1 | 3 | 0 |
| 4 – 5 days | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 1 | 1 | 4 | 0 | 5 | 1 |
| 5 – 6 days | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 | 4 | 1 | 0 | 5 | 1 |
| 6 – 7 days | 1 | 0 | 0 | 1 | 6 | 1 | 0 | 7 | 5 | 6 | 0 | 11 | 7 |
| 7 – 8 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 |
| 8 – 9 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9 – 10 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 | 0 |
| 10 – 11 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 11 – 12 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 | 1 |
| 12 – 13 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 | 0 |
| 13 – 14 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 | 1 |
| 14 – 15 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 15 – 16 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 16 – 17 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 17 – 18 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 18 – 19 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 19 – 20 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 20 – 21 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 21 – 22 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 22 – 23 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 23 – 24 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 24 – 25 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 25 – 26 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 26 – 27 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 27 – 28 days | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 4 | 7 | 0 | 11 | 9 | 13 | 4 | 26 | 33 | 63 | 22 | 63 | 21 |
| | | | | | | | | | | | | | 106 |
| | | | | | | | | | | | | | 501 |
| | | | | | | | | | | | | | 846 |
| | | | | | | | | | | | | | 130 |
| | | | | | | | | | | | | | 1,477 |

Source: ACPO Counter-Terrorism Coordination Centre (ACTCC)

⁽¹⁾ Excludes those arrested under other legislation (i.e. not under s41 Terrorism Act 2000). Although an investigation is considered terrorist related the 28-day maximum pre-charged detention period does not apply in such cases.

⁽²⁾ Includes Schedule 7 offences⁽³⁾ Includes alternative action as listed in Table 1.2

Table 1.4 Outcome for those charged (1) and prosecuted (2) under all legislation but where considered terrorism related (3)

| | Year of arrest | | | | | | Total | | |
|------------------------------|----------------|---------|---------|---------|---------|---------|-------------|-------------|-------------|
| | 2008 | | 2009 | | | | Year ending | Since | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | | | |
| Charged | 9 | 10 | 4 | 5 | 3 | 11 | 31 Dec 2008 | 31 Dec 2009 | 11 Sep 2001 |
| Prosecuted | 5 | 8 | 2 | 3 | 2 | 4 | 41 | 23 | 402 |
| Convicted | 5 | 8 | 2 | 2 | 1 | 3 | 31 | 11 | 324 |
| Terrorism legislation | 2 | 6 | 1 | 0 | 1 | 0 | 21 | 8 | 235 |
| Non-terrorism legislation | 3 | 2 | 1 | 2 | 0 | 3 | 12 | 2 | 122 |
| Found not guilty | 0 | 0 | 0 | 0 | 1 | 0 | 9 | 6 | 113 |
| Other | 0 | 0 | 0 | 1 | 0 | 1 | 9 | 1 | 87 |
| Not proceeded against | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 2 | 6 |
| Awaiting prosecution | 4 | 1 | 1 | 2 | 1 | 7 | 5 | 1 | 56 |
| | | | | | | | 5 | 11 | 22 |

Source: ACPO Counter Terrorism Coordination Centre (ACTCC)

- (1) Charge here relates to the substantive charge at indictment recorded by the Crown Prosecution Service.
- (2) Prosecution leads here to a single principal conviction, e.g. the most serious offence.
- (3) Based upon assessment by the ACTCC.

Table 1.5 Defendant trials ⁽¹⁾ dealt with by the Crown Prosecution Service for offences under all legislation but where considered terrorism related

| | Year trial completed | | | | | | Total | | |
|-----------------------------------|----------------------|-----------|------------|-----------|-----------|------------|-------------|-------------|--|
| | 2008 | | 2009 | | | | Year ending | Since | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | | | |
| Trials | 9 | 12 | 7 | 6 | 8 | 7 | 31 Dec 2008 | 31 Dec 2009 | |
| Acquittals | 3 | 4 | 0 | 1 | 1 | 0 | 65 | 28 | |
| Convictions | 6 | 8 | 7 | 5 | 7 | 7 | 13 | 2 | |
| % of those tried convicted | 67 | 67 | 100 | 83 | 88 | 100 | 52 | 26 | |
| | | | | | | | 80 | 93 | |

Source: Crown Prosecution Service Counter-Terrorism Division (CPS CTD)

- (1) Trials relating to principal conviction.

Table 1.6 Sentencing for trials where offender convicted ⁽¹⁾ under all legislation but where considered terrorism related

| | Year trial completed | | | | | | Total | |
|--------------------------------|----------------------|----------|----------|----------|----------|----------|-------------|-------------|
| | 2008 | | 2009 | | | | Year ending | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | 31 Dec 2008 | 31 Dec 2009 |
| Determinate sentences | | | | | | | | |
| Under 1 year | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| 1 year and under 4 years | 2 | 1 | 5 | 3 | 0 | 2 | 16 | 10 |
| 4 years and under 10 years | 2 | 2 | 0 | 2 | 1 | 3 | 19 | 6 |
| 10 years and under 20 years | 2 | 2 | 0 | 0 | 0 | 1 | 12 | 1 |
| 20 years and under 30 years | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 30 years and over | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indeterminate sentence: | | | | | | | | |
| Life | 0 | 2 | 1 | 0 | 4 | 1 | 3 | 6 |
| IPP | 0 | 0 | 0 | 0 | 2 | 0 | 1 | 2 |
| Non-custodial | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Plea: | | | | | | | | |
| Guilty | 1 | 2 | 7 | 2 | 2 | 3 | 21 | 14 |
| Not guilty | 5 | 6 | 0 | 3 | 5 | 4 | 31 | 12 |
| Total | 6 | 8 | 7 | 5 | 7 | 7 | 52 | 26 |

Source: Crown Prosecution Service Counter-Terrorism Division (CPS CTD)

⁽¹⁾ Refers to those cases dealt with by the Crown Prosecution Service Counter-Terrorism Division only.

Table 1.7 Overall terrorist/extremist prisoners in Great Britain

| | 31 March 2008 | 31 March 2009 | 30 September 2009 | 31 December 2009 ⁽¹⁾ |
|--|---------------|---------------|-------------------|---------------------------------|
| Terrorism legislation or terrorism related | 117 | 113 | 111 | 105 |
| Domestic Extremist/Separatist ⁽²⁾ | 17 | 22 | 17 | 21 |
| Historic cases ⁽³⁾ | 8 | 8 | 5 | 5 |
| Grand total | 142 | 143 | 133 | 131 |

Source: National Offender Management Service and Scottish Prison Service

⁽¹⁾ Includes 1 prisoner in Scottish prisons.

⁽²⁾ See Notes

⁽³⁾ See Notes

NOTES - Terrorism arrests

1. The ACPO Counter Terrorism Coordination Centre (ACTCC) maintains a database covering all terrorism arrests in Great Britain (i.e. excluding Northern Ireland) and their subsequent outcomes. This information relates to data collected from 11 September 2001, although the total number of arrests between February and 11 September 2001 is known no further breakdown is possible. The ACTCC reviews all cases on its database to identify those that are currently identified as being terrorist related. This decision is based upon the information available centrally on these cases.
2. Comparison with the data held by the Crown Prosecution Service Counter-Terrorism Division (CPS CTD) enables quality assurance of the court/sentencing data held on the terrorism database. In addition information held by the CPS CTD covers the outcome of all defendant trials, including sentences.
3. The National Offender Management Service maintains a list of known terrorists/extremists held in prisons in England and Wales (e.g. those on remand or convicted). This list also includes those who entered prison before 11 September 2001, and are therefore excluded from the police database. Information for Scotland has been provided separately by the Scottish Prison Service.
4. Detailed notes on the definitions and methodology used in the bulletin were included in the Home Office Statistical Bulletin 18/09:

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb1809.pdf>

Chapter 2

Statistics on stops and searches under the Terrorism Act 2000

MAIN POINTS

This data should be considered as provisional. Fully verified data will be published by the Home Office in the next annual statistical report 'Police Powers and Procedures.'

- A total of 148,798 stops and searches were made in Great Britain under s44 of the Terrorism Act 2000 in the year ending 31 December 2009, a 40% fall on the previous year.
- The Metropolitan Police Service and the British Transport Police accounted for 96% of all s44 uses in Great Britain in the year ending 31 December 2009. The proportion of those stopped and searched under these powers who classified themselves as Asian or Asian British has remained roughly at 15% in each quarter over the previous twelve months and those Black or Black British at 10%.
- A total of 1,450 persons were stopped and searched by the Metropolitan Police Service in the year ending 31 December 2009 under s43 of the Terrorism Act 2000. Some 22% of persons stopped and searched classified themselves as Asian or Asian British and 10% Black or Black British.
- For the year ending 31 December 2009 there were 688 arrests resulted from s44 stops and searches in Great Britain, an arrest rate of 0.5%. A further 28 arrests were made by the Metropolitan Police following stops and searches under s43 Terrorism Act 2000. Recent data now being collected suggests that very few arrests result for terrorist related offences.

Figure 2 Stops and searches made under s44 (1) and (2) of the Terrorism Act 2000, Great Britain

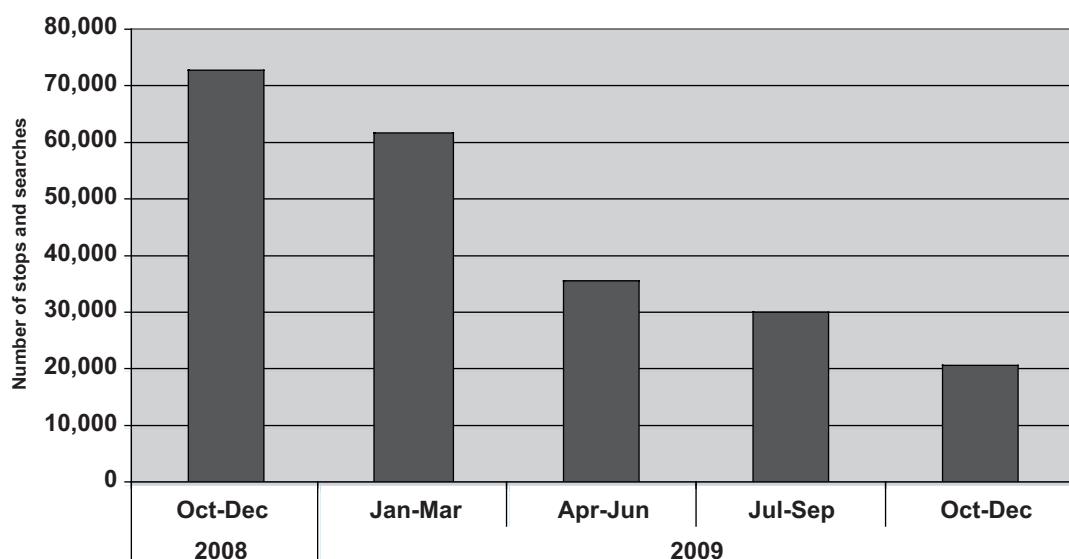


Table 2.1 Stops and Searches made under s44 (1) and (2) of the Terrorism Act 2000⁽¹⁾

| | Year of stop and search | | | | | | Total | |
|-------------------------------|-------------------------|---------------|---------------|---------------|---------------|---------------|-----------------------|----------------|
| | 2008 | | | 2009 | | | 31 Dec 2008 | 31 Dec 2009 |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | Percentage change (%) | |
| Cumbria | 20 | 62 | 59 | 58 | 7 | 0 | 162 | 124 |
| Essex ⁽²⁾ | 468 | 496 | 536 | 301 | 33 | 0 | 2,276 | 870 |
| Greater Manchester | 823 | 249 | 92 | 46 | 32 | 23 | 1,072 | 193 |
| Hampshire ⁽³⁾ | 416 | 441 | 95 | 49 | 0 | 0 | 1,925 | 144 |
| London, City of | 607 | 834 | 676 | 319 | 426 | 313 | 2,322 | 1,734 |
| Metropolitan | 43,736 | 54,631 | 47,670 | 27,246 | 22,831 | 17,202 | 173,997 | 114,949 |
| North Yorkshire | 39 | 34 | 38 | 36 | 45 | 40 | 166 | 159 |
| South Wales | 539 | 222 | 271 | 187 | 0 | 0 | 1,628 | 458 |
| Surrey | 287 | 53 | 49 | 0 | 0 | 0 | 1,243 | 49 |
| Sussex ⁽⁴⁾ | 320 | 429 | 274 | 423 | 309 | 303 | 1,948 | 1,309 |
| Other forces ⁽⁵⁾ | 62 | 15 | 46 | 75 | 81 | 45 | 275 | 247 |
| | | | | | | | | |
| England and Wales | 47,317 | 57,466 | 49,806 | 28,740 | 23,764 | 17,930 | 187,014 | 120,240 |
| | | | | | | | | |
| BTP⁽⁶⁾ | 15,983 | 15,378 | 11,905 | 7,312 | 6,293 | 2,973 | 62,802 | 28,483 |
| | | | | | | | | |
| Scotland⁽⁷⁾ | 56 | 52 | 22 | 24 | 26 | 7 | 145 | 79 |
| | | | | | | | | |
| Great Britain | 63,356 | 72,896 | 61,733 | 36,076 | 30,083 | 20,906 | 249,961 | 148,798 |
| | | | | | | | | |

Source: Home Office, British Transport Police, and Scottish Police Forces.

- (1) Does not include 'Vehicle Only' searches.
- (2) Due to data quality concerns 3 cases have been excluded for the latest quarter.
- (3) Due to data quality concerns 4 cases have been excluded for the latest quarter.
- (4) Sussex police currently are unable to separate vehicle searches from passenger searches; as a consequence data here refers only to searches of pedestrians.
- (5) Forces have been ranked in their s44 use, and the top ten forces have been detailed individually with all remaining England and Wales forces grouped into 'Other forces'. Discontinuance of s44 authorisation has meant some forces are not included here as they report zero values.
- (6) British Transport Police figures include both England & Wales, and Scotland.
- (7) Figures provided refer only to searches and detail a limited number of actual uses. Further data is available for the small numbers of individuals stopped.

Table 2.2 Stops and searches under s44 (1) and (2) of the Terrorism Act 2000 by self-defined ethnicity⁽¹⁾

| | | s44 (1) and (2) by self-defined ethnicity | | | | | | |
|-------------------------|----------------|---|-------|------------------------|------------------------|------------------|------------|----------------------|
| | | White | Mixed | Black or Black British | Asian or Asian British | Chinese or other | Not stated | Total ⁽¹⁾ |
| England & Wales | Jul – Sep 2008 | 27,640 | 1,112 | 5,686 | 7,292 | 2,102 | 3,485 | 47,317 |
| | Oct - Dec 2008 | 34,675 | 1,300 | 6,397 | 9,100 | 2,572 | 3,422 | 57,466 |
| | Jan - Mar 2009 | 30,260 | 1,134 | 5,227 | 8,029 | 2,244 | 2,912 | 49,806 |
| | Apr - Jun 2009 | 17,376 | 628 | 3,169 | 4,749 | 1,171 | 1,647 | 28,740 |
| | Jul - Sep 2009 | 14,628 | 524 | 2,688 | 3,622 | 1,165 | 1,137 | 23,764 |
| | Oct – Dec 2009 | 10,634 | 358 | 1,811 | 3,526 | 746 | 855 | 17,930 |
| BTP ⁽²⁾ | Jul – Sep 2008 | 10,649 | 426 | 731 | 1,791 | 600 | 1,786 | 15,983 |
| | Oct - Dec 2008 | 10,021 | 343 | 651 | 1,996 | 548 | 1,819 | 15,378 |
| | Jan - Mar 2009 | 7,803 | 306 | 507 | 1,568 | 490 | 1,231 | 11,905 |
| | Apr - Jun 2009 | 4,300 | 199 | 404 | 1,032 | 294 | 1,083 | 7,312 |
| | Jul - Sep 2009 | 3,347 | 156 | 364 | 864 | 283 | 1,279 | 6,293 |
| | Oct – Dec 2009 | 1,530 | 68 | 115 | 436 | 128 | 696 | 2,973 |
| Scotland ⁽³⁾ | Jul – Sep 2008 | 50 | 0 | 0 | 2 | 0 | 4 | 56 |
| | Oct - Dec 2008 | 44 | 0 | 0 | 6 | 0 | 2 | 52 |
| | Jan - Mar 2009 | 18 | 0 | 0 | 4 | 0 | 0 | 22 |
| | Apr - Jun 2009 | 17 | 0 | 1 | 6 | 0 | 0 | 24 |
| | Jul - Sep 2009 | 24 | 0 | 0 | 0 | 2 | 0 | 26 |
| | Oct – Dec 2009 | 7 | 0 | 0 | 0 | 0 | 0 | 7 |
| Great Britain | Jul – Sep 2008 | 38,339 | 1,538 | 6,417 | 9,085 | 2,702 | 5,275 | 63,356 |
| | Oct - Dec 2008 | 44,740 | 1,643 | 7,048 | 11,102 | 3,120 | 5,243 | 72,896 |
| | Jan - Mar 2009 | 38,081 | 1,440 | 5,734 | 9,601 | 2,734 | 4,143 | 61,733 |
| | Apr - Jun 2009 | 21,693 | 827 | 3,574 | 5,787 | 1,465 | 2,730 | 36,076 |
| | Jul - Sep 2009 | 17,999 | 680 | 3,052 | 4,486 | 1,450 | 2,416 | 30,083 |
| | Oct – Dec 2009 | 12,167 | 426 | 1,926 | 3,962 | 874 | 1,551 | 20,906 |

Source: Home Office, British Transport Police, and Scottish Police Forces

- (1) Does not include 'Vehicle Only' searches.
- (2) British Transport Police figures include both England & Wales, and Scotland.
- (3) Figures provided refer only to searches and detail a limited number of actual uses. Further data is available for the small numbers of individuals stopped.

Table 2.3 Stops and searches made by the Metropolitan Police under s43 of the Terrorism Act 2000 by self-defined ethnicity⁽¹⁾

| | Year of stop and search | | | | | | Total ⁽¹⁾ | |
|------------------------|-------------------------|------------|------------|------------|------------|------------|----------------------|--------------|
| | 2008 | | 2009 | | | | Year ending | |
| | Jul-Sep | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | 31 Dec 2008 | 31 Dec 2009 |
| White | 141 | 380 | 241 | 196 | 210 | 139 | 648 | 786 |
| Mixed | 3 | 11 | 7 | 11 | 9 | 7 | 18 | 34 |
| Black or Black British | 47 | 109 | 53 | 45 | 33 | 16 | 184 | 147 |
| Asian or Asian British | 62 | 126 | 110 | 64 | 80 | 69 | 229 | 323 |
| Chinese or other | 14 | 23 | 28 | 4 | 14 | 15 | 46 | 61 |
| Not stated | 17 | 69 | 34 | 22 | 28 | 15 | 122 | 99 |
| Total (1) | 284 | 718 | 473 | 342 | 374 | 261 | 1,247 | 1,450 |

Source: Metropolitan Police Service, PIB Criminal Justice & Operations

(1) Does not include 'Vehicle Only' searches

NOTES - Stops and searches

1. Information on stops and searches under s44 has been provided by police forces (including British Transport Police). Information for Scottish Police forces and on s43 powers in the Metropolitan Police Service have been supplied for this specific report.
2. Persons stopped and searched are asked to self-classify their own ethnicity using 2001 Census categories.
3. In March 2010 ACTCC introduced a new system of verifying the accuracy of data indicating the number of arrests under s44/s43 which were terrorism related.
4. Detailed notes on the definitions and methodology used in the bulletin were included in the Home Office Statistical Bulletin 18/09:

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb1809.pdf>



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