



House of Commons  
Home Affairs Committee

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# Terrorism Detention Powers

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**Fourth Report of Session 2005–06**

## *Volume I*

*Report, together with formal minutes and  
appendix*

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## Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Home Office and its associated public bodies; and the administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The following Members were also Members of the Committee during the inquiry:

Colin Burgon (*Labour, Elmet*)

Nick Harvey (*Liberal Democrat, North Devon*)

Nick Herbert (*Conservative, Arundel and South Downs*)

Steve McCabe (*Labour, Birmingham Hall Green*)

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom). A list of Reports of the Committee since 2001 is at the back of this volume.

### Committee staff

The current staff of the Committee are Dr Robin James (Clerk), Mr Mark Etherton (Second Clerk), Kate Akester (Adviser (Sentencing Guidelines)), Martha Goyder (Committee Specialist), Ms Arabella Thorp (Inquiry Manager), Mr Ian Thomson (Committee Assistant), Jenny Pickard (Secretary) and Alison Forrester (Senior Office Clerk).

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### Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by the page number as in 'Ev 12'. All evidence for this inquiry is printed in Volume II.



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## Summary

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In this report we consider the police case for an increase in detention powers in respect of terrorism suspects, and, in particular, the strength of the specific arguments put forward by the police in support of 90-day pre-charge detention.

We outline the provisions for pre-charge detention and how they will be changed by the Terrorism Act 2006. We examine the origins and presentation of the police and Government case for extended detention. We conclude that on such a major issue, with very significant human rights implications, we would have expected the case made by the police to have been better developed and, while we think it is reasonable for the Prime Minister and Home Secretary to rely on advice from the police on such issues, we would also expect them to have challenged critically that advice in order to assure themselves of the case that was being made. In our view the primary origin of the difficulties experienced by the Government lies in the lack of care with which the case for a maximum 90 day detention period was promoted.

We consider that the nature of the terrorist threat has changed. The police base their case on a number of specific features of modern terrorism. In concluding that an extension beyond the existing 14-day limit was justified, we assessed the issues raised by the police. We accept that some aspects of the process of detaining and interviewing suspects pose practical difficulties for the police. They contribute to the case for extended detention, but on their own they are not sufficient to justify a change. We do take the view that the individual impact of those which relate to aspects of the investigation, such as computer decryption, mobile phones and forensics, is often significant, and it is their cumulative effect on investigations that is central to the case for an extension of maximum pre-charge detention.

It is clear that the change in the nature of the terrorist threat has led to an increasing number of cases in which the arrest has come earlier than would be otherwise the case, because these arrests are primarily intended to protect the public by disrupting terrorist conspiracies. One of the key conclusions of our inquiry is that the preventative element of some arrests under the Terrorism Acts should be given clearer and more explicit recognition. Preventive detention is a significant new development, and one that was not made explicit during the passage of the Act. At present, the police have to decide both on the action needed to protect the public and on the action required to pursue ultimately a successful criminal prosecution. We do not believe that this judgement should be left to the police alone.

Lord Carlile has proposed a strengthened system of judicial oversight once a suspect has been arrested. We support the thrust of his proposals, but believe they should be extended. Firstly, we believe that supervision should provide for a continual reassessment of whether alternative methods, such as tagging and control orders, would be appropriate. Secondly, we believe that there should be appropriate judicial oversight when arrests are made under the Terrorism Act, to enable proper independent consideration to be given where an arrest is to be made for its disruptive and preventative value rather than primarily for its

investigative purpose.

Current and recent investigations have gone sufficiently close to 14 days to show that an extension of the maximum period of pre-charge detention, as agreed by Parliament, is justified. None of the evidence we have reviewed of current and recent investigations would have justified a maximum detention period longer than 28 days. But the growing number of cases and the increase in suspects monitored by the police and security services make it entirely possible, and perhaps increasingly likely, that there will be cases that do provide that justification. We believe, therefore, that the 28 day limit may well prove inadequate in the future. We have seen no evidence that a maximum of 90 days pre-charge detention is essential, rather than useful.

The process of the Terrorism Bill through Parliament was divisive and did not increase public trust in the police or the Government. If 28 days proves inadequate in due course, new primary legislation to extend the maximum pre-charge detention period is likely also to be divisive. We suggest that a committee independent of Government be created to keep the maximum detention period under annual review and to recommend the introduction of new legislation as necessary. New legislation on terrorism should be extensively examined in draft, either by this Committee or by a joint committee of both Houses.

# 1 Introduction

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## The Committee's inquiry

1. The Committee decided to inquire into the police case for an increase in detention powers in respect of terrorism suspects, and, in particular, to examine the strength of the specific arguments put forward by the police in support of 90-day pre-charge detention. These arguments were (as set out in the briefing note of 5 October 2005 attached to Assistant Commissioner Andy Hayman's letter of 6 October 2005 to the then Home Secretary, the Rt Hon Charles Clark MP)<sup>1</sup> that public safety demanded arrests earlier in the investigative process than in the past, and that more time was needed pre-charge because of:

- the international nature of terrorism
- difficulties in establishing the identity of terrorist suspects
- the need to find interpreters
- the need to decrypt computer files
- the length of time needed for scene examination and analysis
- the length of time needed to obtain and analyse data from mobile phones
- the need to allow for religious observance by detainees
- delays arising from solicitors' consultations with multiple clients.

2. The Committee also investigated the value and effectiveness of safeguards provided by judicial oversight, and considered possible alternatives to extending detention powers, including:

- providing more resources to the police and intelligence services
- bringing lesser charges to enable terrorism suspects to be held in custody while the major investigation proceeds
- use of tagging, surveillance or control orders as alternatives to custody
- giving the police power to continue questioning of terrorism suspects after charges have been brought
- permitting the use of telephone intercept evidence in the courts.

3. In the course of the inquiry we took oral evidence on four occasions and received 23 written submissions. A list of those who gave oral evidence is annexed. We also visited Paddington Green police station.

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1 See Appendix for the text of the note.

## 2 Background

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### Existing provisions for pre-charge detention

#### *Detention without charge under the general criminal law*

4. When the police arrest a person in England and Wales in connection with an offence under the general criminal law, under the Police and Criminal Evidence Act 1984 they may detain him for questioning for up to 36 hours. At the end of this time the person must either be charged or taken before a magistrate, who may authorise further detention for additional periods, provided that the total does not exceed 96 hours.<sup>2</sup>

#### *Detention without charge under anti-terrorist legislation*

5. From their original enactment in 1974 onwards the Prevention of Terrorism (Temporary Provisions) Acts contained a provision permitting the detention by the police of a person arrested on suspicion of involvement in acts of terrorism for a period of up to 48 hours following his arrest by a police constable, and for a further period of up to five days if the Secretary of State approved such an extension. This power was available to police officers anywhere in the UK. Section 11 of the Northern Ireland (Emergency Provisions) Act 1978 gave police constables in Northern Ireland the power to detain people they suspected of being terrorists for up to 72 hours. Section 14 of the same Act gave members of Her Majesty's forces the power to detain suspects for up to four hours.

6. In the report of his *Inquiry into Legislation against Terrorism*, published in October 1996, Lord Lloyd of Berwick, who was envisaging a situation in which lasting peace had been established in Northern Ireland, recommended that the police retain the power to detain terrorist suspects for a maximum of 48 hours following their arrest and that if a further period of detention was required in any case they should seek judicial authorisation to extend the period of detention for up to two days, making four days in all.<sup>3</sup> This would have brought the provisions governing detention without charge in terrorist cases into line with the equivalent provisions under the general criminal law. In its consultation paper *Legislation against Terrorism*, published in December 1998, the Government suggested that Lord Lloyd's views might have been influenced by the fact that the practice had been that extensions in international terrorist cases had not exceeded a total of four days. While recognising that this was the case, the Government added that there was no guarantee that the four day period would always be sufficient.<sup>4</sup> The consultation paper noted that:<sup>5</sup>

“The police currently apply for extensions of detention for a variety of reasons. These include the checking of fingerprints; the completion of forensic tests; finding and interviewing witnesses; searching the suspect's home address; conducting searches of garages, storage facilities and other non-residential premises which he may have used

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2 Police and Criminal Evidence Act 1984, sections 41–44

3 *Inquiry into Legislation against Terrorism*, Cm 3420, October 1996, Vol. I, p.45

4 Home Office, *Legislation against Terrorism: A consultation paper*, CM 4178, December 1998, p.36, paras 8.21–8.24

5 *Ibid*, para 8.23

to hide arms, explosives or other materials; translating documents; checking alibis; making and analysing the results of financial and other enquiries and putting the results of all the above to the suspect at interview. Enquiries of this nature can be very time-consuming particularly if more than one person has been arrested in any case or if enquiries have to be made of the police or others abroad or through a foreign Government's embassy. Terrorists, moreover, are increasingly trained to resist interrogation and often refuse to answer questions or otherwise co-operate with police enquiries. These features have been applied in international terrorist cases as well as in Irish cases".

7. Referring to an assessment earlier in the consultation paper of the terrorist threat to the UK, the Government said that terrorism in the future was likely to become more sophisticated, with terrorists working across international boundaries and time zones and communicating in encrypted forms. It took the view that, against this background, the maximum period for which a terrorist suspect could be detained, subject to new arrangements for judicial authorisation rather than ministerial consent, should be seven days.<sup>6</sup> This new time limit was duly incorporated into the Terrorism Act 2000.

8. Under section 41 of the Terrorism Act 2000, the police may detain terrorist suspects for up to 48 hours from the time of their arrest (or from the time of their detention for questioning by an examining officer at a British port under Schedule 7 of the 2000 Act). The police must keep the person's detention under review and may authorise a person's continued detention only if satisfied that it is necessary:<sup>7</sup>

- To obtain relevant evidence whether by questioning him or otherwise
- To preserve the relevant evidence
- Pending a decision whether to apply to the Home Secretary for a deportation notice to be served on the person, the making of such an application and its consideration by the Home Secretary
- Pending a decision whether or not the detained person should be charged with an offence

The police officer reviewing the person's detention must also be satisfied that the investigation in connection with which the person is being detained, or the process pending completion of which the person is being detained, is being conducted diligently and expeditiously.<sup>8</sup>

9. Within the initial 48-hour detention period, or within six hours of the end of this time, a police officer of at least the rank of superintendent may apply to a judicial authority for a

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6 *Legislation against Terrorism: A consultation paper*, para 8.24

7 Terrorism Act 2000, schedule 8, para 23

8 Terrorism Act 2000, schedule 8, para 23

warrant of further detention.<sup>9</sup> A warrant may be issued only if the judicial authority is satisfied that:<sup>10</sup>

- there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary to obtain relevant evidence whether by questioning him or otherwise or to preserve relevant evidence, and
- the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

10. Further extensions of the period specified in a warrant of further detention may be sought, again on an application to a judicial authority by a police officer of at least the rank of superintendent. Under the Terrorism Act 2000 as originally enacted, the maximum period of detention without charge was a total of seven days from the time of a suspect's arrest or detention.<sup>11</sup>

11. An amendment inserted into the 2000 Act by the Criminal Justice Act 2003 increased the total possible period of detention without charge to 14 days from the time of arrest or detention.<sup>12</sup> This amendment came into force on 20 January 2004. The amendment was introduced during the report stage in the House of Commons of the Bill that became the 2003 Act.<sup>13</sup> The then Minister of State in the Home Office, Beverley Hughes MP, gave the Government's reasons for increasing the period of maximum detention:<sup>14</sup>

“The Government new clause will allow detention for up to a maximum of 14 days. Its provisions come to us from the police and are considered essential by them, based on their experience of the practicalities of dealing with a suspected terrorist once in police custody. There are circumstances under which the current seven day maximum may be insufficient to enable the police fully to investigate the offences in respect of which the individuals are detained”.

12. Beverly Hughes noted that only a small proportion of people detained under the 2000 Act were detained for extended periods (only 16 of the 212 detained in the first three months of 2003 went into the sixth day as a result of extensions). She added that the police had conducted a review of all significant operations over recent times and had concluded that more than seven days might be needed in specific cases. She set out some of the reasons why this might be so:<sup>15</sup>

“In dealing with some of the examples that the police are encountering, in particular and increasingly frequently there may be occasions when it is necessary to examine substances that are thought to be dangerous, and which are found on or with detained individuals, to determine whether they are chemical, biological, radiological

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9 Terrorism Act 2000, schedule 8, para 30(1)

10 Terrorism Act 2000, schedule 8, para 32(1)

11 Terrorism Act 2000, schedule 8, para 36(3)

12 Terrorism Act 2000, Schedule 8, para 36(3A), inserted by the Criminal Justice Act 2003 section 306(1)(4)

13 HC Deb, 20 May 2003, cols 940–954

14 HC Deb, 20 May 2003, col 941

15 HC Deb, 20 May 2003, cols 942–3

or nuclear. This is a very time-consuming process that needs to be carried out with particular attention, and often in stages. As hon. Members will appreciate, the substances have to be retrieved in accordance with forensic procedures. Very detailed health and safety provisions exist to protect the people doing that work. I am told that the forensic retrieval itself can take up to five days. Clinical procedures then have to be applied to the analysis. This often involves a staged process, in which one stage of the analysis has to be completed and the results obtained before a decision can be taken on the further direction of the analysis, in order to determine what the substance might be. The issue of dangerous substances provides a powerful example, and I readily appreciate the arguments that the police are using as to why extended periods beyond seven days might be necessary.

Another example that the police are dealing with concerns the use of personal computers and the requisition of hard drives, after searches of premises and arrests have been made. It can take several days for material from a hard drive to be extracted, analysed and used in the questioning of a suspect. As Members will readily appreciate, in the case of a network of computers or computers that have been used to communicate with each other, the process of analysing the content of several hard drives and cross-referencing and matching communications before such information can be used in the questioning of suspects takes time”.

The new Clause extending the maximum period of detention for terrorist suspects was agreed to without a division.

13. In its Report on the Criminal Justice Bill 2002–03 the Joint Committee on Human Rights took the view that the conditions laid down in the Bill’s amendment to the Terrorism Act 2000 authorising extended detention for up to 14 days satisfied the requirements of Article 5.1 of the European Convention on Human Rights, which is concerned with the right to liberty of the person. The Committee did, however, raise concerns about whether there were adequate grounds for thinking that it was necessary to extend a time limit which had been set after careful policy and parliamentary consideration less than three years previously. The Committee quoted from a letter to it from the then Home Secretary explaining the need for the extension of the time limit on a number of grounds, including the increasing sophistication of terrorist technology since 11 September 2001, and concluded:<sup>16</sup>

“105. *Secondly*, we have considered whether there are sufficient safeguards against abuse of the power, particularly in cases where evidence said to support the application for a further warrant of detention is withheld from the detainee and his or her legal advisers. There is power to withhold such evidence in certain circumstances, going well beyond circumstances in which national security is likely to be affected by disclosure. Unlike the position in proceedings before the Special Immigration Appeal Tribunal, there is no provision to appoint a special advocate to make submissions on undisclosed material to protect the detainee’s interests in the absence of the detainee and his or her legal representative. This might make it hard to ensure that the procedure is fair enough to be ‘lawful’ within the meaning of

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16 Joint Committee on Human Rights, Eleventh Report of Session 2002-03, *Criminal Justice Bill: Further Report*, paras 100–105

ECHR Article 5.1. **We draw the potential for a lack of fairness in the decision-making system, and the risk of a violation of Article 5.1, to the attention of each House**".

14. Under the new arrangements, following the initial detention of up to 48 hours, the first warrant of further detention could extend the period of detention up to the maximum period of seven days, but could also extend it only for a shorter period. If the police considered that more time was needed, a further application could be made for a period not exceeding another seven days. Each time an application was made, the court had to be satisfied that the conditions for an extension of detention had been met. During the debate on this provision Beverley Hughes MP, then Minister of State at the Home Office, suggested that it would be "perfectly routine" if the courts granted further extensions in periods of only 24 or 48 hours.<sup>17</sup>

### Changes in the Terrorism Act 2006

15. Sections 23 and 24 of the Terrorism Act amend the provisions in Schedule 8 of the Terrorism Act 2000 concerning the extension of detention without charge for those people arrested under section 41 of the 2000 Act.

16. Hitherto only a police officer of at least the rank of superintendent could make an application under Schedule 8 of the 2000 Act for a warrant extending a person's detention under the 2000 Act. Section 23 (2) enables various officials other than police officers to make such applications. The officials are, in England and Wales, a Crown Prosecutor; in Scotland, the Lord Advocate or a procurator fiscal; and in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

17. Under paragraph 37 of Schedule 8 of the 2000 Act the police officer having custody of a person detained under a warrant of extended detention must release the person if the grounds upon which the judicial authority authorised his continued detention have ceased to apply. Section 23 (11) amends paragraph 37 of Schedule 8 to involve other people who are in charge of the detained person's case in bringing about the release of a person if it appears to them that the grounds for detention have ceased to apply.

18. Section 23 (7) amends the provisions in paragraph 36 of Schedule 8 of the 2000 Act concerning the time limits for warrants of further detention. The intended effects are these:

- Each period of extension granted would have to be for seven days, not less, unless a shorter period had been applied for or there were special circumstances
- The maximum period of extension would be 28 days rather than 14 days, in steps of seven days at a time
- For all but the first 48 hours, detention would be authorized by a judicial authority

19. Section 24 amends the grounds for authorising extended detention under Schedule 8 of the 2000 Act, whether by review officers, during the first 48 hours of detention, or by the judicial authority after that point. It will enable extensions to be authorised where the

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<sup>17</sup> HC Deb, 20 May 2003, col 945

review officer or judicial authority is satisfied that further detention is necessary pending the result of an examination or analysis of any relevant evidence or an examination or analysis that may result in relevant evidence being obtained. The Explanatory Notes (paragraph 116) comment that such an examination or analysis would include a DNA test.

20. In addition, Section 23 (6) provides that an application which would extend detention beyond 14 days must be made to a senior judge, defined by Section 23 (10) as, in England, Wales and Northern Ireland, a judge of the High Court and, in Scotland, a judge of the High Court of Justiciary.

21. Section 25 is, effectively, a sunset clause, in that it stipulates that the amendments in Section 23 extending the maximum detention period beyond 14 days will cease to have effect one year after their commencement unless continued in force by an order made by the Secretary of State. In other words, if the Home Secretary does not make an order the maximum period of detention will revert to 14 days.

22. The Bill received Royal Assent on 30 March 2006. The then Home Secretary gave an undertaking to the House that the accompanying Code of Practice on extended 28-day detentions would be subject to consultation.<sup>18</sup> This consultation ran from 2 to 23 May, although the Home Office told us that submissions were also received after the closing date.<sup>19</sup> The statutory instruments amending the Police and Criminal Evidence (PACE) Codes to enable detention for up to 28 days were tabled on 14 June, and a Home Office spokesman was quoted as saying that they were confident that parliamentary time would be found to enable it to go through quickly.<sup>20</sup>

### Origins and presentation of the police and Government case

23. Assistant Commissioner Andy Hayman of the Metropolitan Police Service (MPS), responsible for Specialist Operations, sketched out to us the background to the police letter and the Government's proposals. He told us that there had been consultations on general terrorism legislation between the Government and the police and other agencies in July last year. These had become more focused in the wake of the July bombings. The Association of Chief Police Officers (ACPO) consulted its members and, as AC Hayman put it, "we felt from experience and investigations [...] that 14 days was not sufficient and we were looking for an extension".<sup>21</sup> Deputy Assistant Commissioner Peter Clarke, Head of the MPS Anti-Terrorist Branch and National Co-ordinator of Terrorist Investigations, explained that the proposal for extended detention had not been the subject of a formal working party within ACPO, but "the product of a lot of discussion and reflection by practitioners over a period of some two to three years".<sup>22</sup>

24. An ACPO press release on 21 July 2005 included the extension of pre-charge detention to a maximum of 3 months in a section headed New Police Proposals; on 5 August, the

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18 HC Deb 9 November 2005, cols 328–329

19 Home Office e-mail not printed

20 [www.epolitix.com](http://www.epolitix.com)

21 Q 186

22 Q 188

Prime Minister, setting out his 12-point plan to combat terrorism, said “We will also examine whether the necessary procedure can be brought about to give us a way of meeting the police and security service request that detention, pre-charge of terrorist suspects, be significantly extended”.<sup>23</sup> The police case was set out in the briefing note covered by AC Hayman’s letter of 6 October to the Home Secretary.<sup>24</sup> Later in October the Committee asked the Home Office for copies of all written material submitted by ACPO or the Metropolitan Police Service in support of the proposal for 90-day detention of terrorism suspects before the Government’s decision to support that proposal was taken. In addition to the letter and note, this written material consisted in its entirety of three ACPO press releases and two sides of A4 describing two operations. AC Hayman confirmed to us that the Government did not ask for evidence or justification of the case for an extension of detention additional to the press releases and two sides of A4.<sup>25</sup>

25. From what the police told us in oral evidence, it seemed clear that they were certain of the need for the maximum period of detention to go beyond 14 days, but that the question of whether the maximum period should be 90 days was much more an instinctive judgment of what felt about right. AC Hayman agreed when we put this point to him:<sup>26</sup>

“That is absolutely fair. I know that sounds pretty flaky. I expect members are sitting here thinking, “Crikey, there should be more basis for that”, but that was the question that was asked. It is a really difficult judgment call to make, but we were asked for a professional judgment and that is what we gave”.

He also said:<sup>27</sup>

“I would start to get an uncomfortable feeling if it goes beyond that [three months]”.

AC Hayman emphasised both that 90 days was thought of as a maximum, not the norm, and that ACPO envisaged judicial oversight remaining central to the process.

26. On 28 November 2005, Louise Arbour, the UN High Commissioner for Human Rights expressed “grave concern” about the how the rights guaranteed in the International Covenant on Civil and Political Rights and the ECHR would be protected given the extension of pre-charge detention to 28 days.<sup>28</sup> In a Written Ministerial Statement on 9 January 2006, the then Home Secretary said that the Government were satisfied that the safeguards in place, including regular judicial oversight, meant that an extension to the maximum pre-charge detention period to 28 days (as would an extension to 90 days) would be compatible with the UK’s international human rights obligations.<sup>29</sup>

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23 Available in June 2006 on <http://www.number-10.gov.uk/output/Page8041.asp>

24 See Appendix.

25 Q 190

26 Q 194

27 Q 246

28 Letter of 28 November 2005 to the UK Permanent Representative to the UN Office and other International Organisations in Geneva, deposited in the Library of the House of Commons on 9 January 2006

29 HC Deb, 9 January 2006, col 1WS

27. The Joint Committee on Human Rights also reported on the Terrorism Bill on 28 November last year. It concluded, *inter alia*, that: “in our view the proportionality case for any increase from the current 14 day limit has not so far been made out on the evidence”.<sup>30</sup> In its reply to the JCHR’s report, the Government said:<sup>31</sup>

“The Government accepted the advice of the police with regard to the 90 day maximum pre-charge detention limit. Andy Hayman, the UK’s most senior anti-terrorist police officer made the case for an extension of detention limits to a maximum of 90 days in his letter to the Home Secretary, dated 6 October. The Government found this case compelling”.

28. When we put to the then Home Secretary, the Rt Hon Charles Clarke MP, that the Government had described as ‘compelling’ a case which the police themselves agreed was based on an instinctive judgment, he stood by the use of the word:<sup>32</sup>

“They [the police] make a judgment; it is not a hunch; it is not a figure plucked out of the air; but it is an assessment, in their professional view, of what is the right thing to do. When pressed on that point—can 90, as opposed to 89, be stacked up—it is very difficult to do so. If you say 90 as opposed to 28, however, in contrast it is much easier to say 90 is a better time in terms of policing than 28 from the point of view of dealing with the terrorist threat that we face. I think that is what Andy Hayman was saying in the wording you have just described. You then ask why I use the word “compelling”. The reason why I use the word compelling is because the police advice is compelling; and because the narrative which they give, which is set out in Andy Hayman’s letter, is even more compelling”.

**29. It will be clear from later parts of this report that we found the case for extending the maximum detention period to 28 days was convincing, but did not find the arguments for the 90 day period compelling. On such a major issue, with very significant human rights implications, we would have expected the case made by the police to have been better developed. The police should have been able to present an evidence-based analysis of the type we have endeavoured to undertake. It is clear that this was not done, despite their reliance on their ‘professional judgement’. We think it is reasonable for the Prime Minister and Home Secretary to rely on advice from the police on such issues, but we would also expect them to have challenged critically that advice in order to assure themselves of the case that was being made. We heard no evidence that this had happened: this is unsatisfactory.**

30. In parallel to the development of the police’s proposals, the Government had sought to maintain contact with the main opposition parties. The then Home Secretary wrote to Opposition spokesmen about the Bill on 15 July, 13 and 15 September and 6 and 12

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30 Joint Committee on Human Rights, Third Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, HC 561-I, para 92

31 Joint Committee on Human Rights, Tenth Report of Session 2005-06, *Government Response to the Committee’s Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, HC 888, pp 11-12

32 Q 289

October.<sup>33</sup> We recognise the value of seeking to achieve cross-party consensus on these issues. The immediate response to the July bombings was a strong cross-party approach to new counter-terrorism powers. By the time the Terrorism Bill was debated in the House, this consensual approach had broken down.

31. The then Home Secretary argued to us that the break-down in the cross-party consensus on measures to tackle terrorism essentially arose from a lack of flexibility on the part of the Opposition parties over the period of 90 days.<sup>34</sup> We did not take evidence from the Opposition and are therefore in no position to judge the points made by the then Home Secretary. But in our view the primary origin of the difficulties experienced by the Government lies in the lack of care with which the case for a maximum 90 day detention period was promoted.

### **Access to sub judice or intelligence material**

32. An aspect of the police and government case that came in for some criticism was the assertion that the arguments in favour of extended detention could only be fully appreciated by those who had had access to material that it was not possible to publish (whether because it was intelligence-related or because it was *sub judice*).

33. Lord Carlile of Berriew QC, the Government-appointed Independent Reviewer of terrorism legislation, said in his comments on the Bill:<sup>35</sup>

“On the basis of my own enquiries and processes as independent reviewer, I am satisfied beyond doubt that there have been situations in which significant conspiracies to commit terrorist acts have gone unprosecuted as a result of the time limitations placed on the control authorities following arrest”.

Lord Carlile told us he did not think it was possible to reach a balanced judgment about the correct period of pre-charge detention without having access to information which was necessarily confidential. He also regretted that public trust in those who did have access had been ‘very damaged’ by the Iraq War.<sup>36</sup> The then Home Secretary agreed, adding:<sup>37</sup>

“I think a central task of government is to regain the trust of the country in the integrity of our assessments of this kind”.

34. Other witnesses were not convinced by Lord Carlile’s comments. For example Dr Eric Metcalfe, Director of Human Rights Policy at JUSTICE, said he was ‘very disturbed’ by them and added:<sup>38</sup>

“We are in no position to second-guess someone when we do not have access to the evidence ourselves and, much as I trust Lord Carlile to carry out his role as the

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33 Letters available in June on <http://security.homeoffice.gov.uk/news-and-publications1/publication-search/legislation-publications/>

34 Qq 290 and 296

35 *Proposals by Her Majesty’s Government for changes to the laws against terrorism*, para 61

36 Q 117

37 Q 295

38 Qq 34 - 35

independent reviewer of terrorism legislation, I do not trust him to govern for us, and essentially this is what you are asking someone to do when you make statements of that nature”.

**35. We recognise that the public is less ready to take on trust assertions by those who have seen evidence not publicly available. However, in an area where much material cannot be published (mainly because it is *sub judice*), we considered it right to take some evidence in private. It is also obvious that those with responsibility for taking decisions on these issues will have access to material that is not and cannot be in the public domain: we therefore reject JUSTICE’s argument that such material should not be taken into account. However, the nature of the issues under consideration mean that it is all the more important that the Government’s presentation of its case be as open as possible.**

### Public confidence and community relations

36. Witnesses highlighted to us the danger that counter-terrorism activity and legislation would lead to difficulties if suspect communities were created. For example Ms Peirce said:<sup>39</sup>

“having represented individuals in the Muslim community since 1997, before British young Muslims became a suspect community, a huge number of individuals in the refugee community became apprehensive that they were suspects for terrorism, and were not. That was not a happy progression of suspicion and I think led to a number of real, real difficulties in our criminal justice system”.

37. AC Hayman admitted that the Metropolitan Police had more work to do on community relations:<sup>40</sup>

“I think there is still a lot of room for improvement. It is on the right track, it has got the right ideas, but it has not got the kind of depth of contact and the confidence that is required; there is a long way to go”.

The then Home Secretary argued that the police and the courts would keep in mind the danger of a rise in community tensions as a result of bad decisions about extending detention and that if there were evidence that such tensions had risen, the authorities would respond quickly.<sup>41</sup>

**38. It is important to take into account the effect on the Muslim community of a longer period of detention. Muslims were amongst the casualties in the atrocities of 7 July, and the authorities cannot combat terrorism without the confidence and trust of Muslims. Extended pre-charge detention carries the danger, which should not be underestimated, of antagonising many who currently recognise the need for co-operating with the police, and hence the need to be very cautious before extending the period of detention beyond 28 days.**

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39 Q 74

40 Q 275

41 Q 307

## 3 The terrorist threat

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### Has the nature of the threat changed?

39. Central to the police case for increased detention powers is the argument that the nature of the terrorist threat is now completely different to the threat posed by Irish terrorism. The briefing note covered by AC Hayman's letter argues that Irish terrorists deliberately sought to restrict casualties for political reasons, but that now the threat is of "terrorist attacks designed to cause mass casualties, with no warning, sometimes involving the use of suicide, and with the threat of chemical, biological, radiological or nuclear weapons".<sup>42</sup> The police also stress the international nature of terrorist networks.

40. Similarly, the then Home Secretary argued to us that a number of aspects of terrorism had changed 'fundamentally'. He highlighted four points. The first was the nature of the terrorist organisations: he distinguished campaigns in the last century "essentially for national liberation [...], which had a clearly defined focus and clarity about what they were seeking to achieve" from al-Qaeda, "an attempt to recreate a medieval form of society". Second was the international nature of terrorism, third the wealth and sophistication of the terrorist organisations and fourth readiness of terrorists to kill themselves.<sup>43</sup>

41. Some witnesses did not believe that the nature of the threat had changed significantly. For example, Ms Gareth Peirce, a solicitor who has worked on the defence in a number of high profile terrorism cases, said:<sup>44</sup>

"I think I cannot accept the proposition that the threat has changed in degree or severity or quality or the factual basis, it is very, very similar".

Tim Owen QC took a similar line:<sup>45</sup>

"While, of course, on one view, the more people who are killed the more evil and wicked is the deed, but in terms of the threat, if you have a lorry loaded with three tonnes of home-made fertiliser being driven around London and left in a public place, with no or an inadequate warning, is it really suggested that the police would not do their utmost to arrest at the earliest point to avoid the threat?"

42. Those who doubted that the threat had changed also argued that the threat from Irish Republican terrorism had at the time been presented by the police and the security services, and perceived by the public, as exposing the citizens of London and the rest of the country to extreme danger, and that bombings carried out for political motives over 25 years were, in Ms Peirce's words, "the most exceptional danger that any country could have been exposed to on a sustained level".<sup>46</sup>

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42 See Appendix.

43 Q 306

44 Q 5

45 Q 11

46 Q 8

43. JUSTICE took the line that the arguments in favour of extended detention had been used before, both unsuccessfully before the European Court of Human Rights and in support of the extension to 14 days;<sup>47</sup> the implication is presumably that if circumstances have not changed, then the arguments are either still inadequate or should not be used again. We put to AC Hayman that the increase to 14 days had been in place for only two years; he replied:<sup>48</sup>

“what we have seen happen in the passage of those two years across the world and the complexity of the attacks and the atrocities that have occurred means that the timescale of two years becomes irrelevant. If it had been two months and there had been a massive change in circumstances, to be not flexible enough to change one’s opinion or review legislation would be remiss”.

**44. We consider that the nature of the terrorist threat has changed: while there is no sharp break in the continuum between Irish republican terrorism and terrorism today, there are a number of significant developments. The first of these is that while Irish republican terrorism was brutal, and deliberately killed or injured large numbers of people, contemporary terrorism is distinguished by the centrality of the intention to cause mass casualties indiscriminately. Secondly, suicide bombers are a new phenomenon in this country. Thirdly, contemporary terrorism has an international basis which makes conspiracies more extensive and complex and increases the likelihood that recruitment to terrorism will continue to grow. Fourthly, the nature of the current threat appears less amenable to negotiated political resolution.**

### Consequences for police work

45. The police briefing note of 5 October that the changed nature of the threat means that they have to intervene earlier:<sup>49</sup>

“During every counter-terrorist investigation a balance is struck between the maintenance of public safety, the gathering of evidence and the maintenance of community confidence in police actions. Public safety always comes first, and the result of this is that there are occasions when suspected terrorists are arrested at an earlier stage in their planning and preparation than would have been the case in the past”.

As a result, the police argue, the time available to construct a case is restricted: in particular, the period before an arrest, when otherwise evidence gathering would take place, is often now significantly shortened. This problem is compounded by the complexity of many terrorism cases, which are often extremely complex, involving a number of suspects, many of whom would have multiple identities, and which extend across a number of countries.

46. Witnesses who disputed that the nature of the terrorist threat had changed also believed that existing powers were adequate; as Tim Owen QC put it:<sup>50</sup>

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47 Ev 84, paras 14 and 15

48 Q 199

49 See appendix

“I do not accept that the legal system, at the moment, is not capable of delivering a solution without going to 28 days, or even 14 days”.

Tim Owen and others also argued that existing detention periods were probably incompatible with the European Convention on Human Rights and, in any case, might well be unacceptable in court.<sup>51</sup>

“I find it difficult to see how the average English judge would regard it as fair to admit evidence obtained by interview after a person had been held for more than seven days in custody, or certainly longer than 14 days, without any charge”.

47. DAC Clarke disputed both these points. On existing detention periods, he quoted counsel’s opinion that these are not incompatible with ECHR so long as there was appropriate judicial involvement.<sup>52</sup> On whether evidence obtained after a person had been detained for longer than 14 days would be admissible in an English court, he quoted counsel’s opinion that:<sup>53</sup>

“So long as the detention is lawful and there has been no oppression or unfairness, there will be no reason to exclude evidence obtained after 14 days merely because of the time when it was obtained. The weight which is to be given to it will depend on all the circumstances of the case”.

### ***Specific features of modern terrorism***

48. The police briefing note of 5 October sets out a number of specific features of modern terrorism which in the police’s view support the case for an increase in maximum detention powers.<sup>54</sup> These are set out below:

- **The networks are invariably international, indeed global in their origins and span of operation. Enquiries have to be undertaken in many different jurisdictions, many of which are not able to operate to tight timescales.**
- **Establishing the identity of suspects often takes a considerable amount of time. The use of forged or stolen identity documents compounds this problem.**
- **There is often a need to employ interpreters to assist with the interview process. The global origins of the current terrorist threat has given rise to a requirement, in some recent cases, to secure the services of interpreters who can work in dialects from remote parts of the world. Such interpreters are difficult to find. This slows down the proceedings, restricting the time available for interview.**
- **Terrorists are now highly capable in their use of technology. In recent cases, large numbers (hundreds) of computers and hard drives were seized. Much of the data**

50 Q 14

51 Q 27

52 Q 248

53 Q 249

54 See Appendix.

was encrypted. The examination and decryption of such vast amounts of data takes time, and needs to be analysed before being incorporated into an interview strategy. This is not primarily a resourcing issue, but one of necessarily sequential activity of data capture, analysis and disclosure prior to interview.

- The forensic requirements in modern terrorist cases are far more complex and time consuming than in the past, particularly where there is the possibility of chemical, biological, radiological or nuclear hazards. Following the discovery of a ‘bomb factory’ in Yorkshire after the 7th July attacks in London, it was over 2 weeks before safe access could be gained for the examination to begin. It took a further 6 weeks to complete the examination. The Al Qaeda methodology of mounting simultaneous attacks inevitably extends the time it takes for proper scene examination and analysis.
- The use of mobile telephony by terrorists as a means of secure communication is a relatively new phenomenon. Obtaining data from service providers and subsequent analysis of the data to show linkage between suspects and their location at key times all takes time.
- There is now a need to allow time for regular religious observance by detainees that was not a feature in the past. This too causes delay in the investigative process during pre-charge detention.
- A feature of major counter-terrorist investigations has been that one firm of solicitors will frequently represent many of the suspects. This leads to delay in the process because of the requirement for consultations with multiple clients.

These features fall into two groups: those which relate to aspects of the investigation, such as computer decryption, mobile phones and forensics, and those, such as interpretation and religious observance, which are part of the process of detaining and interviewing a suspect. We now look at each of these in turn.

## ***Aspects of the investigation***

### ***International nature of terrorism***

49. The police briefing note mentions Operation Springbourne (the ‘ricin’ plot), noting that it involved 26 countries in addition to the United Kingdom.<sup>55</sup> We were also given in confidence details of a number of other investigations, some still *sub judice*, others concluded.<sup>56</sup> Of four concluded investigations since September 2003, two involved 7 countries, one 11 and one 17.

55 See Appendix.

56 Q 258 [AC Hayman]

50. No witness disputed that terrorism cases might involve gathering evidence from a significant number of countries, but some argued that the same was true of other forms of crime. Liberty, for example, commented that:<sup>57</sup>

“white collar fraud can involve huge amounts of material and any number of jurisdictions. Yet pre trial detention is limited to a maximum of four days, less than a third of the current time permitted for terrorism detention”.

**51. It is of course the case that many non-terrorist crimes involve complex international elements over a number of countries, and that pre-charge detention is significantly shorter than in terrorism cases. But the unique feature of terrorism cases is the emphasis that has to be given to the protection of the public while the investigation proceeds.**

### *Multiple identities*

52. Two of the four operations mentioned in paragraph 49 did not involve multiple identities (although in one two false passports were discovered); in one of the others 3 suspects had ten identities with four false passports and 10 false identity documents, and in the last, in which there were 7 suspects, 860 passports and identity cards were accompanied by 2,500 other forged documents.

53. Liberty could not see how difficulties in establishing identities of terrorist suspects would present any significant hindrance, since multiple identities were not a new phenomenon in criminal investigation and people could be charged under an identity they had assumed if that was a name by which they were known.<sup>58</sup>

**54. Those investigating contemporary terrorism cases not only have to identify the individuals concerned, but also to understand the roles they played in complicated conspiracies. We therefore think that it is reasonable for the police to cite multiple identities as a complicating factor in their investigations.**

### *Computers*

55. Technical experts disagreed on the length of time it takes to analyse a hard drive to discover whether there is unencrypted material of interest or encrypted material. The preliminary stage is taking a copy of the hard drive (“imaging”), which in the police’s theoretical case study is said to take a minimum of 12 hours. Peter Sommer of the LSE described this as “something of an exaggeration” and asserted that: “modern imaging products claim rates of up to 5GB per minute—so that even a comparatively large hard-disk of 120 GB would be imaged in 30 minutes. The only real problems are with some laptops where direct access to a hard-disk may be difficult”.<sup>59</sup> David Lattimore, Technical Manager of the Digital Crime Unit at LGC Ltd, told us that most of the computers he dealt with needed imaging overnight.<sup>60</sup> Similarly, Mark Morris, Head of Forensics at

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57 Ev 91, para 2

58 Ev 92, para 5

59 Ev 114, para 2

60 Q 121 [Mr Lattimore]

LogicaCMG plc, noted that in a recent non-terrorist case the forensic imaging took 30 man-days in machine time: he believed that Mr Sommer's evidence did not reflect the issues faced in a complex and serious inquiry, in which information gleaned from an interview might entail the re-examination of computer media.<sup>61</sup>

56. Witnesses did agree that it depended entirely on the circumstances of particular cases whether evidence obtained from computers was significant; as Mr Sommer put it:<sup>62</sup>

“Sometimes the computers are at the heart of it and sometimes they are entirely peripheral. That applies to any form of crime in which computers are involved as well as the terrorist cases. I currently am instructed in three terrorist cases and in one of them the computer evidence is really fairly peripheral, but there are a lot of other types of evidence in terms of what was located. The computer evidence may slightly strengthen or slightly weaken the police case but in other instances it can be absolutely at the heart of it”.

Mr Lattimore said that in 70% or 80% of the cases in which he was involved, the computer evidence was needed before a charge could be brought.<sup>63</sup>

57. We were also told that encryption was in practice less of a problem than had been feared. For example, Mr Sommer cited Operation Ore, a major paedophile inquiry, in which among 7,200 suspects there had only been 20 instances where encryption had been a serious problem.<sup>64</sup> Ross Anderson, Professor of Security Engineering at Cambridge University, told us that:<sup>65</sup>

“In the case of decryption, there are still a few products around where the act of searching for a key may take time, but this is largely a thing of the past. Encryption products nowadays tend to be either good or useless, and if they are good then you either guess the password or you give up”.

58. Witnesses also agreed that the police might not be exploiting existing capabilities fully. For example, David Lattimore told us that “often some encrypted files/volumes are found however others are missed because the investigator is not familiar with the techniques being used by the suspects”,<sup>66</sup> while Mark Morris observed that “the most common forensic tool used by Police is not very effective in even revealing encrypted data, and it is feared that many times such evidence may be overlooked”.<sup>67</sup> Professor Anderson argued that the quantities of data available in trials, both civil and criminal, were increasing much more rapidly than the capabilities of the police (or the justice system), which would need a step change.<sup>68</sup>

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61 Ev 95, paras 3.6 and 3.12

62 Q 123 [Mr Sommer]

63 Q 123 [Mr Lattimore] and Q 124

64 Q 125 [Mr Sommer]

65 Q 125 [Professor Anderson]

66 Ev 89, para 7

67 Ev 96, para 3.20

68 Ev 80, para 4, and Q 121 [Professor Anderson]

59. The National Technical Assistance Centre, a Home Office unit which provides technical support to UK law enforcement and intelligence agencies, explained how long decryption might take:<sup>69</sup>

“An initial examination will reveal the extent of the encryption and indicate the likelihood of success. This process takes less than a week. The subsequent timing of the case is wholly dependant on the type of encryption applied and the nature of the forensic information recovered from the suspect computer. For example NTAC have processed cases for over one year and have still remained optimistic of obtaining a successful result. Other cases have been completed in less than a week.

In general terms however it would be fair to say that if resolution of a case had not been possible after a reasonable period then the likelihood of a positive result diminishes significantly. An exact value for the length of this period is hard, if not impossible, to determine precisely due to the variety of factors involved. Past experience has shown that two months is usually adequate if a result is possible although this might extend to three months where a substantial amount of data or a large quantity of computers and media are involved. After these timescales the case officer will, in most cases, have secured a result; have identified indicators which pointed towards a positive outcome with considerable further work or concluded that the chances of success were limited or non-existent”.

60. Professor Anderson did not believe that technical challenges would justify an extension of maximum detention. He argued in essence that work expands to fit the time available:<sup>70</sup>

“In my experience people take as much time as they have got. Even if you have got a civil case that drags on for months and months and months, the work is always done in a rush just before the deadline to submit papers. [...] My view tends to be, based on my experience of these things, that you work for a certain amount of time on a heap of data and then you run out of ideas or you run out of puff or you run out of money”.

61. The other technical experts who gave oral evidence to us were readier to accept that 90 days might be desirable in some cases. David Lattimore told us he personally had worked on cases that had taken more than 90 days to crack.<sup>71</sup> Peter Sommer agreed that there might be “very, very rare” occasions on which the police might need up to 90 days to carry out computer decryption and analysis before charging suspects.<sup>72</sup>

62. The police agreed that analysis of material found on computers was generally more time-consuming than decryption.<sup>73</sup> They accepted that the amount of potential evidence to

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69 Ev 96

70 Q 139

71 Q 141

72 Qq 143–144

73 Q 234

be found on computers had led to changes in the approach to an investigation. As DAC Clarke explained:<sup>74</sup>

“Traditional, good detective work is that you follow the evidence wherever it takes you and that is the purity. You keep an open mind from the beginning of an investigation and follow the evidence where it takes you. However, with the weight of material we are now seeing, what we actually have to do is to set clear priorities at a very early stage and we have to make choices around which material we are going to try and access on computers or through mobile phones or overseas and hope, and it really does come down to hope, that that will yield the evidence we need prior to the end of what is now the 14-day period”.

DAC Clarke went on to point out that these early choices could have significant effects, for example, if it was decided not to investigate a computer that later turned out to contain significant material, individuals might be released who would otherwise have faced serious charges.<sup>75</sup>

**63. Encryption of data does not appear, for the time being, to be the problem in practice that had been feared. However analysis of data on computers, both unencrypted and decrypted, is time-consuming and resource-intensive. This will be an increasing problem for all types of investigations.**

### *Regulation of Investigatory Powers Act*

64. Some witnesses suggested to us that difficulties over encryption of data would be at least alleviated if the Government brought into force Part III of the Regulation of Investigatory Powers Act 2000 (RIPA), which provides that if someone has an encryption key and refuses to hand it to an authorised person, he or she will be liable to up to two years in prison.<sup>76</sup> Liberty pointed out that ACPO had also called for Part III to be brought into force.<sup>77</sup>

65. Other witnesses doubted that this would make much difference in practice. Mr Lattimore and DAC Clarke both argued that a suspect facing a long prison term for terrorism offences would be likely to refuse to surrender a key and accept a two year term as the lesser evil.<sup>78</sup> Professor Anderson believed that tax evasion or social security fraud would be more likely to provide charges on which to hold suspects.

66. The then Home Secretary told us that Part III of RIPA was not in force because the amount of data encrypted was much less than had been expected when the Act had been drafted, but added that the Home Office would conduct a public consultation on a draft code of practice, after which Parliament would be asked to approve a statutory code.<sup>79</sup> (This consultation, begun in early June, is scheduled to end on 30 August 2006.) He also

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74 Q 236 [DAC Clarke]

75 Q 236 [DAC Clarke]

76 Ev 112, paras 20-21, and Ev 82, para 4

77 Q 39

78 Qq 129 [Mr Lattimore] and 229

79 Qq 327-329

pointed out that the Terrorism Act 2006 increased the prison term for non-disclosure of an encryption key from two to five years in national security cases.<sup>80</sup>

**67. Clearly, bringing Part III of RIPA into force would not solve the problem of encrypted data; it could nonetheless provide a useful instrument in some cases. We therefore welcome the Home Office’s expressed intention, following consultation on a code of practice, to bring Part III into force. It should do so as soon as possible.**

### *Forensics*

68. No witness disputed that forensics were time-consuming in terrorism cases, but the Director of Liberty believed that this was a problem that could be solved by increased resources.<sup>81</sup> Liberty’s written submission also argued that it was quite common in criminal cases for the majority of forensic evidence to be accumulated post charge.<sup>82</sup> Although DAC Clarke told us that the focus of police work was shifting from forensics to analysis of technological data,<sup>83</sup> the police’s written submission makes the point that forensic processes involve highly skilled law enforcement and specialist agency personnel. The police also argue that only a limited number of people can ensure safety and continuity of the task at any given time.<sup>84</sup> The volume of seized material is also a factor: in many of the investigations referred to in paragraph 49 there were thousands of exhibits, and in one of them over 44,000.

**69. The police’s argument that forensics are time-consuming is not disputed, and we also accept that this is not an area in which greater resources would have an effect because of the need for continuity of the investigation, which can only be ensured by using a team of skilled personnel.**

### *Mobile phones*

70. Experts on mobile telephony who gave evidence to us agreed that obtaining data from the handset of a mobile phone can be time-consuming. For example, Vinesh Parmar, Telecoms Forensic technical manager, Digital Crime Unit, LGC Ltd, told us that “on average a complete data recovery and presentation process for one device can take between 4 to 8 hours, this is solely dependant on the device in question and in some cases this time frame may be doubled or tripled”.<sup>85</sup> But he and other witnesses also agreed that difficult cases were not common and that there had been little, if any, increase in encryption of data on mobile phones—although they did not rule out an increase in problems in this area in the future.<sup>86</sup> They further agreed that the main challenges were found not in retrieval of data from the handset, but the analysis of the records of calls made provided by the

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80 Q 329

81 Q 57 [Ms Chakrabarti]

82 Ev 92, para 7

83 Q 236

84 Ev 71, paras 5.2–5.5

85 Ev 97, para 5

86 Qq 150, 155, 156

telephone companies;<sup>87</sup> all were clear that they would welcome up to 90 days in some cases.<sup>88</sup> They also raised doubts over training for and the technical capabilities of the police: Mr Parmar, for example, said:<sup>89</sup>

“Too often we get requests which say we want everything, which in reality is not a workable request. What we find is that law enforcement agencies need to start understanding the data that is available and to start understanding what is possible evidence or what is intelligence and they need to split it and make valuable requests to us so that we can do the best job we can. At the moment a lot of work we do is fishing expeditions where we are basically requested to grab everything out of there and we do not know the case history”.

The police agreed that long-term investment and training were needed to ensure that officers kept up with the pace of technology, but denied that their training was inadequate.<sup>90</sup>

71. AC Hayman said that relationships with the phone companies, who had to balance the liberty and privacy of the user with the need to investigate serious crimes, were good.<sup>91</sup> Mobile phone experts were also satisfied with the speed of response from the networks, although they did call for legislation to ensure that data should be both retained for longer periods and standardised.<sup>92</sup>

**72. It is clear from the evidence we received that the analysis of data such as records of calls made from mobile phones can be an important part of an investigation, but that the process is also lengthy and complicated. We therefore think it is reasonable for the police to support their case by pointing to the difficulties caused by the analysis of mobile phones.**

**73. We received evidence that each of the above factors complicated the investigation of terrorism offences. We also received evidence that it was the combination of the issues in individual investigations that created the real problems. Opponents of extended detention tended not to address the complexity of the issues involved and to understate the challenge faced by the police. In our view, the important point about the above elements is that recent terrorist investigations have involved all of them. Their individual impact is often significant but it is their cumulative effect on investigations that is central to the case for an extension of maximum pre-charge detention.**

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87 Qq 158 and 166

88 Qq 167, 178–180

89 Q 163

90 Qq 239–240

91 Qq 238 and 242

92 Qq 153–154 and 174

## *The process of detention and interviewing*

### *Interpretation*

74. Ms Peirce disputed that difficulties in finding an interpreter caused delays either in questioning a suspect or providing access to them for his or her solicitor, arguing that there was no shortage of Arabic interpreters.<sup>93</sup> Liberty argued that it was likely that any non-British national arrested on suspicion of terrorism would be detained since the Home Secretary would determine that their presence was non conducive to the public good, while a UK national would speak English or at least one relatively commonly spoken national language. They further commented that ‘Difficulties in obtaining interpreters demonstrate why [...] the goodwill of differing racial and religious groups within the UK is vital’.<sup>94</sup>

75. DAC Clarke responded that interpreters were not only needed for the process in the police station, but also, for example, for transcription and translation of intercept material. Such work entailed security clearances for interpreters. He also argued that some of the dialects used were rare and that in at least one case no competent interpreter could be found in this country.<sup>95</sup>

**76. We were not convinced by the evidence that provision of interpreters is a significant difficulty.**

### *Religious observance*

77. Liberty questioned whether the need to allow time for religious observance created any significant problem since Police and Criminal Evidence Act 1984 already specified the need for regular breaks.<sup>96</sup> The police did not try to suggest that “regular religious observance”—and it was not disputed that this meant Muslim prayers—adversely affected the amount of time available for interviewing suspects. DAC Clarke described this as “another issue which we have to take into account when looking at the overall time available for the investigation to be completed in a proper fashion”.<sup>97</sup>

**78. We recognise that the need to allow time for religious observance complicates the organisation of an investigation: we do not, however, accept that it justifies an extension of the maximum detention time.**

### *Solicitors*

79. British Irish Rights Watch told us that their experiences in Northern Ireland indicated that, while the number of solicitors representing suspected terrorists was relatively limited, this did not have an impact upon investigations, and they strongly cautioned against any

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93 Qq 55–56

94 Ev 92, para 6

95 Q 211

96 Ev 92, para 8

97 Q 213

restrictions on contacts between lawyers and their clients.<sup>98</sup> Ms Peirce knew of one case in which one firm had acted for the majority of detainees and commented that:<sup>99</sup>

“the only professional way in which you could represent people would be if you had the manpower, or womanpower, to do it. Certainly, speaking from my experience, in our firm, if we were asked to act for more than one person, we would only do so, and could only do so, if we were able to act responsibly for that person”.

She believed, in the example she cited, that the firm did have a very large number of people available, and was therefore ‘dubious’ about the legitimacy of the police’s example.

80. DAC Clarke disagreed:<sup>100</sup>

“I think there have been occasions when what anybody else would recognise as clear conflict of interests have arisen through multiple representations of clients by one firm, and of course that is not a matter for us as police officers to point out to those professionals—that is a matter for them to recognise themselves. I would say undoubtedly there have been occasions when the representation afforded to people has not been of the highest standard because of this multiple representation issue”.

He added:<sup>101</sup>

“It is not for me to second-guess a professional judgment of lawyers because we do see certain patterns and I do find it strange when, say, we have nine people in custody, eight of whom are represented by the same firm, and they all receive identical advice even though their circumstances are radically different as I am not sure that each individual suspect is getting the best possible advice”.

**81. We asked the police to provide us with an analysis of at least ten recent terrorist investigations showing how many suspects in each inquiry were represented by the same solicitor or the same firm. They provided this material in confidence, but it is clear that on more than one occasion a single firm with a small number of solicitors has represented more than double that number of suspects, who were the large majority of those arrested. We doubt therefore whether those suspects were represented to the highest legal standards: this of course raises questions of whether justice has been properly served. But the police are also concerned that such multiple representation may hinder effective investigation, for example by making it more difficult to schedule interviews of a number of suspects represented by the same solicitor. Be that as it may, it is not clear to us that the problem provides a strong case in itself for the extension of pre-charge detention.**

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98 Ev 75, para 3.6

99 Q 59

100 Q 212

101 Q 272

### *Solicitors' advice to the public*

82. When we visited Paddington Green Police Station, Anti-Terrorist Branch officers mentioned a leaflet distributed by a firm of solicitors, which urged members of the public not to co-operate with the police. We were later told that this referred to a leaflet distributed by Arani & Co., which contains the following advice to the public:<sup>102</sup>

**“WHAT TO DO WHEN CONTACTED BY SPECIAL BRANCH ALSO KNOWN AS ANTI-TERRORIST BRANCH**

- **Do not be misled by officers who state that they need you to assist them.**
- **Do not talk to them regarding any matter.**
- **Take the officers' names and telephone numbers.**
- **State to the officer(s) that you need to seek legal advice.**
- **State to the officer(s) that your solicitor will contact them.**
- **Do not discuss any matters with them, walk away once you have taken the officers' names and numbers.”**

We note that the leaflet conflicts with the approach taken by, for example, the Muslim Council of Britain, which although frequently critical of the police has encouraged Muslims to co-operate with them.

83. **It is disgraceful that any lawyer should encourage the public not to co-operate with the police as a matter of course. It is for the Law Society to decide whether Arani & Co.'s conduct has breached professional standards, but given the obvious terrorist threat we find that conduct particularly reprehensible.**

### *Interviewing suspects*

84. One of Ms Peirce's arguments was that the police did not use the time available to them in the most productive way. In particular, she suggested that even the most preliminary interviews were delayed for more than two days after the arrest:<sup>103</sup>

“It may be 48 hours before a person is even being asked where he was born, where his parents are living, all of that; it is frustration, from the point of view of the detainee, in terms of how it progresses”.

Ms Peirce told us that over the past 25 years 90% of cases had followed this pattern: she offered to provide us with further evidence to back up this assertion, but, despite being chased several times, did not do so.<sup>104</sup>

<sup>102</sup> Available in June 2006 at [www.stoppoliticalterror.com/media/knowyourrights1.pdf](http://www.stoppoliticalterror.com/media/knowyourrights1.pdf)

<sup>103</sup> Q 57

85. Lord Carlile, the Government-appointed independent reviewer of terrorism legislation and a practising advocate, believed that interviewing was “becoming not entirely irrelevant, but near to irrelevant”.<sup>105</sup> He argued that the defence had to strike a balance between answering questions on the basis of carefully managed disclosure by the police, on the one hand, and the adverse inference direction that would be given if questions are not answered, on the other: “most of us involved in serious cases would say that the adverse inference direction is a flea bite compared with the danger, the risk or hostage to fortune of answering questions”.<sup>106</sup>

86. DAC Clarke disputed Gareth Peirce’s assertion that interviews did not take place in the first 48 hours of detention.<sup>107</sup>

“In terms of the suggestion that we do not interview for the first 48 hours, I am afraid I do not recognise that either. There is no policy about that. Indeed, it is very often in our interests to have an interview as soon as we reasonably can so that we can get an indication of an individual’s intentions and demeanour in respect of the investigation. I simply do not recognise that”.

He also told us that the upper limit of time taken for interviewing a suspect was about 20% of the total time detained, but the average was somewhere between 10 and 15%.<sup>108</sup>

87. The police did accept that, in their words, “the detention process is not about interviewing alone as many people do not answer questions in any event” and that “in the majority of suspect interviews, terrorist suspects are advised, and exercise, their right to remain silent”.<sup>109</sup> They told us that over 60% of those detained by the Anti-Terrorism Branch chose to exercise their right to silence and that only one in ten of those who were considered to be leaders or directors of terrorism chose to speak.<sup>110</sup> But AC Hayman added that “that does not mean to say we should assume someone is not going to talk to us and we must not deprive someone of the opportunity to actually make comment when evidence is being presented to them”.<sup>111</sup>

**88. The assertion by Gareth Peirce that in the large majority of cases the police do not conduct even preliminary interviews with suspects was rejected by the police. In the absence of any supporting evidence from Ms Peirce, we cannot give any weight to her claim.**

**89. We accept that some of the aspects of the process of detaining and interviewing suspects pose practical difficulties for the police. They contribute to the case for extended detention but on their own are not sufficient to justify a change.**

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104 Q 62

105 Q 80

106 Q 80

107 Q 214

108 Q 214

109 Ev 72, paras 8.3 and 8.6

110 Q 209

111 Q 209

90. **In general it cannot be expected that interviews of suspects during extended detention will lead to significant additional information that can be used in court. While we can understand that there may be cases in which confrontation of a suspect with new evidence might lead to admissions, it appears that the case for extended detention rests on two arguments: first, the need to seek and analyse evidence from a complex range of sources and, second, the need to ensure the protection of the public. This latter point has been referred to in our evidence and the Parliamentary debates. It does not, however, form any part of the legal basis for an application for extended detention.** We consider the issue of public protection further in the next section.

## Disruption and prevention

91. The police's written submission to our inquiry was explicit that the changed nature of terrorism meant that arrests were used to disrupt conspiracies:<sup>112</sup>

“In the interests of public safety, we are now compelled to disrupt terrorist activity much earlier than before. This will normally involve arresting suspects where the necessary evidence to support charges reflecting the seriousness of the terrorist intentions is yet to be understood”.

92. Lord Carlile told us that “the purpose of the detention period in terrorism cases, first of all, is to ensure that the act is not perpetrated”.<sup>113</sup> AC Hayman agreed with Lord Carlile that there were cases in which the police intervened early to prevent an atrocity.<sup>114</sup> When we then put to him that the main case for extending the maximum detention period was to disrupt or prevent terrorist activity, rather than to gather evidence, he agreed that:<sup>115</sup>

“There are a vast amount of cases now where an early interdiction is to disrupt on the grounds of public safety”.

When he gave oral evidence to us the then Home Secretary also agreed that “it is critically important for us to disrupt any terrorist attack, and that may involve arresting some people earlier than would be ideal because we need to disrupt the terrorist cell”, but added that the purpose of the arrest was still gathering the evidence to bring a charge.<sup>116</sup>

93. **It is clear that the change in the nature of the terrorist threat has led to an increasing number of cases in which the arrest has come earlier than would be otherwise the case, because these arrests are primarily intended to protect the public by disrupting terrorist conspiracies.**

94. **One of the key conclusions of our inquiry is that the preventative element of some arrests under the Terrorism Acts should be given clearer and more explicit recognition. Arrests whose main purpose is to disrupt terrorist conspiracies are a result of the changed nature of terrorism, and, as Assistant Commissioner Andy Hayman of the**

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112 Ev 70, para 4.4

113 Q 80

114 Q 210

115 Q 225

116 Q 332

Metropolitan Police told us, there is now “a vast amount” of such cases. We believe that this form of detention could be used appropriately on occasions to disrupt conspiracies. Hence we agree with the decision to increase the period of detention. But preventive detention is a significant new development, and one that was not made explicit during the passage of the Bill, during which extended detention was primarily justified on the grounds of the time needed to collect and analyse evidence. Any legislation should recognise in terms this important new purpose of pre-charge detention.

95. We repeat that preventive detention is a major step. At present, the police have to decide on both the action needed to protect the public and on the action required to pursue ultimately a successful criminal prosecution. We do not believe that this judgment should be left to the police alone. We consider alternative authorisation procedures in paragraphs 125–132 in the next section.

### Alternatives to longer detention

96. Many of those who contested the need to extend pre-charge detention periods argued that the difficulties experienced by police and prosecutors could be better addressed by other means. We therefore consider the alternatives suggested, which are different from the use of tagging and control.

### Greater resources

97. The Home Office’s written evidence emphasised the Government’s commitment to ensuring that the police are effectively funded to meet counter-terrorist commitments. Specific counter-terrorism funding for the police service in England and Wales in 2005–06 was £96 million of revenue (of which £61 million was for the MPS and £35 million for provincial forces) and £8 million of capital funding, all for provincial forces. The equivalent figures for 2002–03 were £59 million (£47 million for the MPS, £12 million provincial). The submission also noted that in the 2004 spending review the Security Service received an average increase of 60%.<sup>117</sup> AC Hayman told us that this level of resources for the police and the security agencies was sufficient: “it is for us now to deliver outcomes which we have said we will be able to do”.<sup>118</sup>

98. Some witnesses, such as Liberty, believed that greater resources for the police would provide the most effective way of combating terrorism:<sup>119</sup> as Shami Chakrabarti, the Director of Liberty, put it:<sup>120</sup>

“[the police] say, “We have difficulty getting material from this country or that country, we have difficulty getting forensics back,” if you were to have, for example, a number of atrocities in different parts of the country you would have to—all of those points are put and surely they beg for more resources. Also, of course, they predicate the whole argument on the basis that the investigatory clock begins ticking almost

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117 Ev 100

118 Q 241

119 Ev 92, para 9

120 Q 57 [Ms Chakrabarti]

only at the moment of arrest. Clearly, that is not true and should not be true, and the investigation can only be improved, it would seem to me, by more and better qualified resources”.

99. For their part, the police argued that “all modern terrorism operations require a methodical, sequential investigative process that places the onus on the quality of the work undertaken rather than the quantity of resources deployed”.<sup>121</sup> DAC Clarke conceded that greater resources in the initial evidence-gathering stage were useful, but told us that:<sup>122</sup>

“What we have found is not good practice is to have too many people engaged in the final analysis of material before it is fed into an interview strategy, because if you have too many people they will not have an overall view of the investigation and might not recognise the significance. One example in one particular case was where we did try to bring in extra people to wade through computer material over the course of a weekend, but because they were not fully sighted on all the issues in the particular case, they actually missed a vital piece of material on a computer hard drive, which was only thankfully then recovered by one of the detectives who had been engaged in the whole case and was able to see it”.

The then Home Secretary similarly agreed that there were cases in which more resources would lead to a problem being solved more quickly, but argued that there was not a direct relationship between the amount of resources and the speed of results, and added: “I do not believe that producing infinite resources would lead to a state of affairs where the detention issues were not still necessary”.<sup>123</sup>

**100. There is no dispute that further increases in resources for counter-terrorism work by the police and security services would lead to quicker results in some cases. But we are satisfied that the nature of investigations is such that greater resources alone are not the answer.**

### ***Bringing lesser charges to hold terrorism suspects in custody while the investigation continues***

101. It has been suggested that it should be possible to charge suspects with minor offences to enable them to be held while the police continued investigations on more serious charges, such as terrorism. British Irish Rights Watch opposed this: they argued that this would contravene the right to due process and undermine the judicial system, as well as leading to suspects committing further offences when released on bail.<sup>124</sup> Lord Carlile believed that the proposal was ‘fundamentally dishonest’, on the grounds that people should be charged, and prosecuted, for what they were thought to have done.<sup>125</sup>

102. The police and the Home Office raised a number of objections in their written submissions: these included the need to ensure from the outset with the Crown

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121 Ev 71, para 5.2

122 Q 215

123 Q 316

124 Ev 76, para 4.1

125 Q 103

Prosecution Service (CPS) that the correct charges were brought; the danger that there would not be sufficient evidence for a lesser charge, or that the evidence did not emerge until after lengthy forensic and computer analysis; the diversion of resources from more serious charges; the possibility that the lesser charge might not justify a remand in custody; the danger that the accused might plead guilty and be released; and the diversion of police resources from more serious charges.<sup>126</sup> (Most of this passage of the Home Office written evidence, dated 12 December, was lifted verbatim from the Home Secretary's letter of 31 October to the then Liberal Democrat Home Affairs Spokesman, replying to points he had made at Second Reading.)

**103. The use of lesser charges was opposed by a wide range of witnesses, who raised serious practical and moral objections. We do not think it would be an appropriate response to the challenges of counter-terrorism investigations.**

### ***Giving the power to continue questioning suspects after charge***

104. Normally, once a suspect has been charged, the police do not re-interview him or her. But Section 16.5 of Code C of the Police and Criminal Evidence Act 1984 contains provisions allowing the questioning of suspects once they have been charged, under certain circumstances:<sup>127</sup>

**“A detainee may not be interviewed about an offence after they have been charged with, or informed they may be prosecuted for it, unless the interview is necessary:**

- to prevent or minimise harm or loss to some other person, or the public**
- to clear up an ambiguity in a previous answer or statement**
- in the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged or informed they might be prosecuted”.**

105. Both JUSTICE and Liberty argued that these provisions should make it unnecessary to extend pre-charge detention; Liberty also suggested that if necessary the list could be extended or amended, for example to permit re-interviewing “in cases in which the Secretary of State considers it to be in the interests of national security or if the person is arrested in connection with terrorism”.<sup>128</sup> Tim Owen QC told us that there was no fundamental primary legislation or human rights principle which prevented an amendment to the Code in a way that Liberty and JUSTICE had suggested.<sup>129</sup>

<sup>126</sup> Ev 100–101 and 71–72, paras 61–6.8

<sup>127</sup> Available at <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-codes.html>

<sup>128</sup> Ev 85, para 24, and Ev 93, para 11

<sup>129</sup> Q 43 [Mr Owen]

106. The Home Office written submission recalled that the Government was willing to look again at the issue and would publish a consultation paper.<sup>130</sup> In March the then Home Secretary told us that this would be “in the next two or three months”.<sup>131</sup> The Home Office told us in June that it was hoped that a consultation paper would be published “later this summer”.<sup>132</sup>

107. The police were generally supportive of post-charge questioning, but noted that many suspects did not answer questions and that to be effective interviewing should be on the basis of assimilated evidence, “for maximum effect and maximum inference if the suspect fails to answer”.<sup>133</sup> The then Home Secretary told us he believed that the percentage of cases in which post-charge questioning would lead to new criminal charges would be ‘quite low’. He also argued that it did not solve the problem if it had not been possible to bring charges in the first place.<sup>134</sup>

108. British Irish Rights Watch opposed this suggestion, since they believed that it could lead to the harassment of detainees, adding that “the vulnerability of detainees should not be used to build further cases against them”.<sup>135</sup>

**109. Post-charge questioning alone would not be sufficient to replace extended pre-charge detention, but it could be a useful addition. We therefore urge the Home Office not to allow its consultation to slip any further.**

### ***Threshold Test for prosecutors***

110. JUSTICE argued that section 6 of the Code for Crown Prosecutors provided a ‘Threshold Test’, which meant that charges could be brought on ‘reasonable suspicion’, the standard used by the police to arrest a suspect.<sup>136</sup> JUSTICE’s Human Rights Policy Director, Dr Eric Metcalfe, told us:<sup>137</sup>

“In essence, what the Threshold Test is saying is, if you have a complicated, ongoing criminal investigation and you do not have all the evidence back, it is perfectly appropriate to apply the Threshold Test, where it is in the public interest, to ensure that a person is brought up on charges”.

111. The Police responded that the Threshold Test was not applicable in terrorism cases. AC Hayman gave the example of a shoplifting case where statements would be needed to support the prosecution but had not yet been taken, while DAC Clarke told us:<sup>138</sup>

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130 Ev 101

131 Q 324

132 Home Office e-mail not printed

133 Ev 72, paras 8.1–8.6

134 Q 322

135 Ev 76, para 4.2

136 Ev 84–85, paras 20–24

137 Q 39

138 Q 227

“the CPS still has to have evidence in order for a charge to be preferred. It is totally different from the grounds for arrest. The CPS is not allowed to speculate as to what evidence may become available in the future. The Threshold Test is there for them to be able to prefer a charge where bail is not suitable, but where the standard for the final test (the realistic prospect of conviction) has not yet been reached; but they are allowed to take into account that evidence which they can reasonably anticipate will become available during the course of the investigation. So I think there is something of a red herring about this, because I do not think the Threshold Test is at all applicable in these sorts of cases. It is not that we are saying to the CPS, “This is what we’ve got, and this is what we think we’ll get”; this is in cases where we have not got sufficient to charge and require more time, or are asking for more time to actually go and find the evidence which is not yet available and we do not know is there. It is an entirely different concept, and I do not think the Threshold Test is something which really plays into this debate at all”.

**112. The Threshold Test does not enable charges to be brought without the knowledge that further evidence will certainly become available. In the large majority of counter-terrorism investigations this will not be the case. Nonetheless, the Threshold Test should be used where possible.**

### *Intercept evidence*

113. A large number of witnesses argued in favour of allowing the use of telephone intercept evidence in courts, saying there were no human rights difficulties.<sup>139</sup> Lord Carlile said that the use of intercept evidence in British courts would be ‘very useful’.<sup>140</sup> The police written evidence said that they welcomed any development which would allow them to put more evidence before the courts.<sup>141</sup> AC Hayman told us:<sup>142</sup>

“I have personally moved my position. I originally started off by being fairly unsupportive of the notion of using the material, mainly on the basis that it was starting to disclose methodology to the other side. I think that is now well and truly worn-out because I think most people are aware of that. It does not stop them still talking but they are aware of the methodology so that is a lightweight argument. The next point which I had reservations about was the true logistics about transcribing the material, where you could go into reams of material. Again, that is a fairly moot point now, given that you can be very selective about the things you are going to transcribe if you are very precise on your investigation and focused. I think I am moving, as I know ACPO is, to a conclusion that in a selected number of cases, not just for terrorism but also for serious crime, it would be useful. I think also it does make us look a little bit foolish that everywhere else in the world is using it to good effect”.

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139 Ev 82, para 4, Ev 93–94, paras 15–17, Ev 113–114, paras 25–30, and Qq 40–41

140 Q 100

141 Ev 72–73, paras 9.1–9.6

142 Q 224

114. In his letter of 31 October to the then Liberal Democrat Home Affairs spokesman, replying to points he had made at Second Reading, the then Home Secretary said that the use of intercept evidence in court “is under review and we are looking to see whether it will be possible to adduce such material in evidence without compromising our intelligence capabilities, or leading to unacceptably burdensome levels of disclosure”. But the Home Office’s written evidence to the Committee, dated 12 December 2005, was less positive about the use of intercept evidence:<sup>143</sup>

“My Written Ministerial Statement on 26 January 2005 on the outcome of the review of the use of intercept as evidence made clear that the use of intercept as evidence is not a “silver bullet”. The review showed that there may be a modest increase in convictions of some serious criminals but not terrorists. [...]

In the light of the review of the use of intercept as evidence, we concluded that the risks of changing the law to allow it outweighed the benefits of doing so. The review noted in particular that new technologies would revolutionise communications in the UK over the next few years and that now was not the right time to move to an evidential regime. A current study into the impact of these technologies on interception will report to Ministers shortly”.

115. The then Home Secretary agreed in principle that the use of intercept evidence would be helpful, but identified two problems:<sup>144</sup>

“the first problem we have not solved is how we make that available without making the defendants aware of the way in which we have collected that intelligence which could be damaging to our overall intelligence interests; and the second is how we deal with the issue of disclosure, and the fact that the defence would always say, if there was one particular intercept which was given in evidence, “Can we see the records of every other part of intercept that you have”, which means you have a massive, massive data collection issue around it in a particular way. Do we think these two problems are soluble? They may be, particularly as technology is changing so rapidly in this area. That is why I committed to the House to conduct the review we are having at the moment and to report by the end of this year, in the hope that we can get agreement on this”.

He accepted that foreign intercept evidence was admissible in British courts, but added that the Home Office were aware “of only very rare instances of other jurisdictions using the product of their intelligence agency (as opposed to law enforcement) interception as evidence in courts”.<sup>145</sup>

**116. Outside the Government there is universal support for the use of intercept evidence in the courts. The Home Office has not produced convincing evidence that the difficulties are insuperable: they have presumably been tackled in other jurisdictions. We therefore urge the Government to conclude its review of the issue, with the aim of**

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143 Ev 101

144 Q 310

145 Ev 102

reporting as soon as possible. In the absence of any new information, we assume that it will recommend the use of intercept evidence.

### *Tagging and control orders*

117. The police were not enthusiastic about other means of disrupting conspiracies, such as the use of tagging, surveillance or control orders. In their written evidence, ACPO and the Metropolitan Police Service argued that tagging, which allowed the police to monitor suspects, could not prevent a suspect from committing an act of terrorism or leaving the country. Similarly, surveillance was highly resource intensive, and even if carried out twenty-four hours a day, every day, would not prevent the planning or execution of a terrorist attack. The police also argued that while control orders might be effective against those suspects on the periphery of terrorism, they would not provide an alternative for those suspects that have been arrested for serious terrorist offences.<sup>146</sup> DAC Clarke also pointed out that the control orders were designed for a different purpose and did not, he believed, provide sufficient reassurance to the public.<sup>147</sup> The Home Office made the additional point that a suspect might know that it was only a matter of time before evidence implicating him in terrorism came to light so that if released into the community he might feel he had nothing to lose by carrying out a terrorist act.<sup>148</sup>

118. Other witnesses opposed the use of control orders and related measures on different grounds. The Director of Liberty said that control orders were ‘a nonsense’ and ‘indefinite punishment without trial’; she also commented that:<sup>149</sup>

“the people who wear plastic tags in their homes, if they are so dangerous they should not be there, they should be charged and they should be detained pending trial. They are the cruelty without the benefits of security which come with incarceration”.

The Campaign against Criminalising Communities argued similarly that control orders were punishments without charge and therefore inherently unjust.<sup>150</sup>

**119. We accept the police’s argument that measures such as tagging and control orders cannot protect the public from the threat of terrorism to the same extent as do arrests and detention. But we believe that such measures can be used to disrupt terrorist conspiracies. We therefore reject as entirely wrong the arguments of those who oppose any use of control orders against terrorism suspects. It is clear to us that there are circumstances in which it is not possible to charge individuals yet an arrest or other preventative measures are necessary to protect the public and ensure the successful investigation of terrorism. We believe that the use of control orders, tagging and bail should be considered at each stage of the process of judicial oversight of arrest and detention.**

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146 Ev 72, paras 7.1–7.5

147 Q 219

148 Ev 101

149 Q 47

150 Ev 77

## 4 Judicial oversight and detention periods

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### Existing provisions

120. Lord Carlile, in his report on the Terrorism Bill, expressed concern over the effectiveness of judicial oversight of applications for extended pre-charge detention:<sup>151</sup>

“A cadre of district judges with great experience deals with all such applications now. I believe that they do so carefully and fairly, thoroughly scrutinising what is placed before them. They do an excellent job. Nevertheless the system of law they apply was designed to deal with short periods of detention up to seven days, now extended to fourteen. Inevitably the material they see is likely to be one-sided, and they have only modest opportunity for in-depth scrutiny. Though they can ask questions and do seek further information, they have no role in the inquiry under way and they have no independent advice or counsel before them. The procedure before district judges in my view has characteristics suited to short interference with liberty, and I should regret seeing it extended further. A more searching system is required to reflect the seriousness of the State holding someone in high-security custody without charge for as long as three months. I question whether what is proposed in the Bill would be proof to challenge under the Human Rights Act given the length of extended detention envisaged”.

121. Tim Owen QC went further and described the current system as “effectively [...] a rubber stamp”.<sup>152</sup> The Director of Liberty agreed, adding:<sup>153</sup>

“What makes the process fair in our system is that adversarial aspect, which cannot even begin until someone has been charged”.

122. The then Home Secretary and the police contested this characterisation of the existing system. AC Hayman described the process of application for warrants of further detention as “very meticulous and detailed”. He admitted that he could not recall any application by the police for extended detention being turned down, but added that on “many occasions” a shorter extension was granted than had been applied for. He argued that the fact that no application had been refused was an indication of the care with which applications were drafted by the police in concert with the Crown Prosecution Service.<sup>154</sup> The then Home Secretary concurred.<sup>155</sup>

“the judiciary take it seriously, the police work on the basis that the judiciary takes it seriously and so I simply do not accept the proposition that some have made that the judges are essentially rubber stamps for the police”.

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151 *Proposals by Her Majesty’s Government for changes to the laws against terrorism*, para 64

152 Q 51 [Mr Owen]

153 Q 51 [Ms Chakrabarti]

154 Q 247

155 Q 336

123. A Government amendment to the Bill replaced district judges by High Court judges in the oversight role. We asked the then Home Secretary whether this would make the system fairer. He said that he himself had been reluctant to accept the amendment because he had felt it implied a lack of confidence in district judges, but had done so because it would give others more confidence in the system.<sup>156</sup>

**124. We do not doubt that district judges perform their duties impartially and to a high standard and that the police have to take the utmost care in preparing applications for extensions to periods of pre-charge detention. However we share the wide-spread unease at the prospect of the existing system being used to provide judicial oversight of even longer pre-charge detention.**

### **New circumstances**

125. The combination of pre-charge detention for up to four weeks with ‘a vast amount’ of arrests leading to detention intended to disrupt or prevent terrorist activity means that new forms of judicial oversight are needed. In particular, there is no tradition in the United Kingdom of preventive detention at such an early stage. A new and different legal framework, in addition to existing post-arrest oversight, would therefore be needed to provide judicial oversight of such cases and of the police’s exercise of the powers set out in paragraphs 5 to 20.

126. As noted in paragraph 120, in his response to the Terrorism Bill Lord Carlile took the view that a more searching system of judicial oversight was required for detention longer than fourteen days. He built on a recommendation of the Privy Counsellor Review Committee into the Anti-Terrorism, Crime and Security Act 2001, which was chaired by Lord Newton of Braintree and reported in December 2003, to propose the following system:<sup>157</sup>

- **Where detention beyond 14 days is to be applied for, the introduction of one of a small group of security-cleared, designated senior circuit judges as examining judge and “judicial authority” under the legislation**
- **That judge to be provided with a full and continuing account of all matters involved in the investigation in question**
- **The introduction of a security-cleared special advocate, also fully briefed as to the investigation, to make representations on the interests of the detained persons and to advise the judge**
- **The judge to have the power to require specific investigations to be pursued if reasonably necessary for the proper exercise of his/her jurisdiction**
- **Suitable opportunity for written and oral defence representations against extended detention, with oral hearings at the discretion of the judge**

<sup>156</sup> Q 337

<sup>157</sup> *Proposals by Her Majesty’s Government for changes to the laws against terrorism*, paras 65–67

- **Weekly decisions with reasons if extended detention granted**
- **The keeping of a written record (if necessary protected from disclosure for the purposes of any subsequent trial) of the judge’s activities in a case**
- **Appeal with permission to the High Court.**

Lord Carlile concluded that “a structured system along these lines would gain sufficient confidence, and would be appropriately robust, to meet all exigencies. It would be compatible with Human Rights legislation”.<sup>158</sup>

127. The then Home Secretary told us that he was personally sympathetic to Lord Carlile’s ideas and, emphasising that he was speaking personally, said that he thought that “a supervisory system and investigating magistrates regime is very superior to the system that we have in this country”.<sup>159</sup>

128. David Lattimore, one of the technical experts who gave oral evidence, was of the view that the judge in the system suggested by Lord Carlile should have a team of IT specialists to advise on the technical aspects of investigations.<sup>160</sup>

**129. Lord Carlile proposes a strengthened system of judicial oversight once a suspect has been arrested. We support the thrust of his proposals, but believe they should be extended. Firstly, we believe that supervision should provide for a continual reassessment of whether alternative methods, such as tagging and control orders, would be appropriate. Secondly, as we have argued in the section on disruption and prevention, we believe that there should be appropriate judicial oversight when arrests are made under the Terrorism Act. This would enable proper independent consideration to be given where an arrest is to be made for its disruptive and preventative value rather than primarily for its investigative purpose. It would also enable consideration from the outside of alternatives to arrest and detention. We recognise that this would bring some procedures more common in other jurisdictions into our criminal justice system. We received evidence critical of this idea.**

130. JUSTICE, for example, while agreeing that district judges would not be suitable for considering applications for detention beyond fourteen days, argued that civil law jurisdictions such as France that use examining magistrates and inquisitorial methods provided “far more specific and intensive training” for the task of supervising (and, indeed, directing) criminal investigations than does the common law system.<sup>161</sup> JUSTICE also argued that the use of special advocates would be incompatible with the European

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158 *Proposals by Her Majesty’s Government for changes to the laws against terrorism*, para 68

159 Q 333

160 Q 140

161 Ev 86, para 31

Convention on Human Rights; as their Director of Human Rights Policy, Dr Eric Metcalfe put it:<sup>162</sup>

“One of the essential guarantees that you have under the European Convention on Human Rights is that someone who is subject to detention has the right of access to a court, and the right of access to a court means being able to know all the evidence that is tendered against you. With the system of special advocates, by contrast, you will be in a position whereby you are detained, someone is appointed to represent you, that person is not able to discuss with you the evidence against you, and a court proceeding takes place in your absence. That is to say, you may never know the basis of the evidence against you and you will be in no real position to be able to challenge that”.

JUSTICE were also concerned by the longer-term consequences of introducing inquisitorial elements into the adversarial processes of the common law system.<sup>163</sup>

**131. We acknowledge that we cannot simply import elements from abroad that would not work in the common law system. But there should be no bar to adapting such approaches to our needs. The principle of independent judicial oversight from the time that arrest is first considered should be adopted. This would also ensure that the police alone do not have to bear responsibility for arrests intended to protect the public. For judicial oversight to be effective, there must be adequate support for the judge, including through the provision of appropriate technical expertise.**

**132. The recent police raid in Forest Gate and subsequent release without charge of those arrested did not involve extended pre-charge detention, but it clearly would have been of benefit to police and public alike if there had been independent oversight of the decision to intervene.**

## Detention periods

### *Are 14 days sufficient?*

133. The most recent figures for those held under the Terrorism Act 2000 for a period in excess of seven days in 2004 and 2005 were given in a written answer from Hazel Blears MP, then Minister of State in the Home Office, on 16 January 2006.<sup>164</sup> Ms Blears noted that the maximum period of detention pre-charge following an arrest under the Terrorism Act 2000 was extended to 14 days with effect from 20 January 2004. Between that date and 4 September 2005, 357 people were arrested of whom 36 were held for in excess of seven days. The following tables give a breakdown of these cases:

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162 Q 52

163 Ev 86, para 33

164 HC Deb, 16 January 2006, col 1144W

## 2004

Period	Number held	Charged	Released w/o charge
7–8 days	3	1	2
8–9 days	0	0	0
9–10 days	11	6	5
10–11 days	1	0	1
11–12 days	0	0	0
12–13 days	0	0	0
13–14 days	9	9	0

## 2005

Period	Number held	Charged	Released w/o charge
7–8 days	1	1	0
8–9 days	0	0	0
9–10 days	5	4	1
10–11 days	1	1	0
11–12 days	1	1	0
12–13 days	2	1	1
13–14 days	2	2	0

134. The police’s written submission argued that “extensions past seven days are used very infrequently”.<sup>165</sup> But the above figures show that more than one in ten of those arrested under the Terrorism Act 2000 has been held for longer than 7 days pre-charge, and between a quarter and a third of those suspects were released without charge.

135. The police confirmed that no-one who had been held in detention and then released had later been charged with terrorist offences.<sup>166</sup> They were unable to say how many of those released without charge the police might have been able to charge had they been permitted to hold the suspects longer; DAC Clarke told us:<sup>167</sup>

“It is a statement of the blindingly obvious: we do not know what we do not know and we cannot guess at what might have occurred had we been able to keep people longer. I am in no doubt whatsoever that in several cases there have been instances where the evidence would have developed to a stage where charges would probably

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165 Ev 70, para 2.1

166 Qq 200–201

167 Q 205

have been more likely, certainly where intelligence would have flowed, and I can only speculate but a lot of this is speculation, where there could well have been instances where public safety could have been well served by some of the information that could have come from a longer period of detention”.

136. JUSTICE argued that:<sup>168</sup>

“Investigative difficulties notwithstanding, the government and police have been unable to point to a single case in which a suspect was held for the existing maximum period of 14 days and then released without charge. Were the existing limit as inadequate as has been claimed, one would expect to find several cases in which suspects had been held for 14 days and then released. The absence of such cases supports our view that the existing 14-day limit provides police and prosecutors with sufficient time in which to charge terrorism suspects”.

137. The police gave us examples of the pressure entailed in finding evidence in complicated terrorism cases in order to bring charges in 14 days. DAC Clarke referred to a case in which there had been no admissible evidence at the moment of arrest:<sup>169</sup>

“We started recovering all these computers and in the subsequent 14 days I had officers sleeping on the floor, not going home at all, just to try to get into this huge amount of material. It was on the very last day that the DPP authorised charges and now there are eight people charged with conspiracy to murder, conspiracy to cause explosions, conspiracy to cause a public nuisance in terms of irradiation and the like”.

AC Hayman added:<sup>170</sup>

“Also, making this point for the sympathy vote, it must not be overlooked, and Peter actually described it, when you are trying to get your case together within the 14 days, the impact on our people is horrendous. Peter has described people sleeping on office floors and they are doing that. As for the people who are looking at CCTV footage, I saw one colleague go home and he had lost the whites of his eyes, they were completely bloodshot from where he was continually watching TV screens. Now, that is not a way of managing people in your investigations because you have to pull all the stops out to get within those timescales and the consequence of not doing that is heaven knows”.

138. As noted in paragraph 49, the police gave us in confidence details of a number of current and recently concluded investigations, which demonstrated the scale and complexity of such cases. We were also briefed in confidence on the case to which Lord Carlile referred when he gave oral evidence: this involved the execution of 100 warrants, 6,500 exhibits and enquiries in 23 foreign countries. This was also a case in which the police intervened earlier than they would have otherwise done in order to disrupt what appeared to be an advanced terrorist conspiracy; as a result of this early intervention, we

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168 Ev 84, para 17

169 Q 259

170 Q 264

were told, there was not enough time to gather evidence that would have led to a conviction.

**139. Current and recent investigations have gone sufficiently close to 14 days to show that an extension of the maximum period of pre-charge detention, as agreed by Parliament, is justified. We repeat, however, that effective judicial oversight of detention is essential.**

### **Are 28 days sufficient?**

140. The then Home Secretary said during the Third Reading Debate on the Terrorism Bill that the Government accepted the decision taken by the House of Commons on 28 days.<sup>171</sup> He went on to say that when the new terrorism legislation was considered, perhaps in 2007, the Government would need to look at all the issues.<sup>172</sup> He emphasised that he did not think these should be pre-judged.<sup>173</sup>

“I am not committing myself to saying we will back 28 come-what-may when that comes around; but I am also not advertising any view to seek to change that. I am saying that we should come to a view as to whether we should seek to change it when we get to that point; but I have not got some back-of-my-mind view that this or that is the way to deal with it”.

141. As noted in paragraph 25, the police pressed harder for an extension of maximum pre-charge detention beyond 14 days than they did for the limit of 90 days. DAC Clarke, for example, said:<sup>174</sup>

“on the trends which we have seen develop in these investigations over the past three to four years there is, to my mind, no doubt whatsoever that the changed nature of the threat, the global nature of the threat, and all the other characteristics which we now see which we did not see in the past mean that on any calculation we need more than 14 days to be in a position to have sensible constructive interviews, to fully understand the nature of the conspiracies that we are looking at, which are global and complex. As Mr Hayman has said, I do not think there is any magic about 90 days. What we are asking for is a longer period beyond 14 days”.

142. In addition to the complexity of recent terrorist investigations by the police, mentioned, for example, in paragraphs 49, 52 and 68, the number of suspects under surveillance by Security Service continues to grow. According to the Intelligence and Security Committee’s report on the London bombings, in 2001, at around the time of 9/11, the Security Service knew of approximately 250 primary investigative targets in the UK relating to international terrorism; by July 2004 this had risen to over 500, and a year later it was around 800.<sup>175</sup> Recent media reports put the current figure at 1,200.<sup>176</sup>

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171 HC Deb, 10 November 2005, col 493

172 Q 299

173 Q 300

174 Q 206

175 Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005*, Cm 6785, May 2006, para 22

143. **None of the evidence we have reviewed of current and recent investigations would have justified a maximum detention period longer than 28 days. But the growing number of cases and the increase in suspects monitored by the police and security services make it entirely possible, and perhaps increasingly likely, that there will be cases that do provide that justification. We believe, therefore, that the 28 day limit may well prove inadequate in the future.**

### ***Are 90 days necessary?***

144. None of our official witnesses argued strongly that 90 days was a significant period or that it would be impossible to live with 28 days. As noted in paragraph 25, for example, AC Hayman agreed that while the police were certain of the need for the maximum period of detention to go beyond 14 days, that the question of whether the maximum period should be 90 days was much more a sense of instinctive professional judgment about what feels about right. DAC Clarke told us:<sup>177</sup> “I cannot say that 90 days would definitely have stopped 7 July, but neither can I exclude it as a possibility, however remote” but also, as noted in paragraph 141, said: “I do not think there is any magic about 90 days. What we are asking for is a longer period than 14 days”.<sup>178</sup> In addition, technical experts accepted that their arguments could also be used to justify an extension to even longer than 90 days;<sup>179</sup> by implication, therefore, this period is not in itself significant. We also note that during the Terrorism Bill’s Report Stage in the House of Lords an amendment designed to increase the maximum period of detention to 60 days was defeated by 108 to 210.<sup>180</sup>

145. **We have seen no evidence that a maximum of 90 days pre-charge detention is essential, rather than useful. The police did not press strongly for this maximum, while technical witnesses, generally in favour of as long a time as possible, did not seek to argue that 90 days was in itself a significant period.**

### ***Changes to the detention period***

146. As noted in paragraph 140, the then Home Secretary clearly signalled the Government’s readiness to look again at the maximum detention period. He was not alone in this: the Chancellor of the Exchequer made much the same point in a speech to the Royal United Services Institute on 13 February, when he said “it may be possible that in subsequent legislation Parliament may be prepared to consider going beyond 28 days in circumstances where oversight is proven to work”.<sup>181</sup>

147. AC Hayman expressed concern to us that it would be difficult to review detention periods.<sup>182</sup>

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176 *Sunday Telegraph*, 4 June 2006, p4

177 Q 269

178 Q 206

179 Qq 181–182

180 HL Deb, 25 January 2006 cols 1208–1239

181 [http://www.hm-treasury.gov.uk/newsroom\\_and\\_speeches](http://www.hm-treasury.gov.uk/newsroom_and_speeches)

182 Q 270

“Regardless of the pros and cons of whether it is 90 days or not, what I think we are starting to paint here is a picture which is getting worse, getting more complex. With the technology that is starting to advance, it is a fair opinion, I think you could say, that in the next two or three years it can only get more complex and more difficult. I am just worried that the consequence of the debate we have had both in Parliament and in the public domain creates a difficult environment where, because of the things we are now starting to see, we need to go back in two or three years’ time to review our position on levels of detention, and that this whole process and what went on in the autumn starts to make it so difficult to have that debate when actually we should be having the debate”.

**148. The process of the Terrorism Bill through Parliament was divisive and did not increase public trust in the police or the Government. If 28 days proves inadequate in due course, new primary legislation to extend the maximum pre-charge detention period is likely also to be very divisive. But it would be unacceptable for the Government to use secondary legislation. We suggest that a committee independent of Government be created to keep the maximum detention period under annual review and to recommend the introduction of new legislation as necessary. The committee might follow the model of the Newton Committee of Privy Counsellors, appointed in April 2002 to review the operation of the Anti-Terrorism, Crime and Security Act 2001.**

## 5 Future legislation

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149. In November 2001, the Home Affairs Committee produced a short report on the Anti-Terrorism Crime and Security Bill 2001; this described the speed with which that Bill was processed through Parliament as “far from satisfactory” and expressed the hope that all Government departments would acquire the habit of making Bills available in draft to allow pre-legislative scrutiny.<sup>183</sup>

150. At the beginning of February 2006, the then Home Secretary noted that terrorism legislation was split between several different Acts of Parliament, and that the principal Act, the Terrorism Act 2000, had been subject to multiple amendments; this was confusing: he was therefore keen to find a way of consolidating all counter-terrorism legislation in a single, permanent Act. He planned to publish a draft Bill in the first half of 2007 for pre-legislative scrutiny; depending on the outcome of the scrutiny legislation would be introduced later that year.<sup>184</sup>

**151. Many of the difficulties the Government experienced in the passage of the Terrorism Bill arose from the speed with which it was drafted and presented to Parliament: this inquiry did the job of examining the police arguments for extended detention which the Home Office should have done before introducing the Terrorism Bill. Any new legislation on terrorism should not in our view propose a longer period of detention than 28 days unless there is such compelling evidence as we have already referred to earlier. The new legislation on terrorism, including the promised**

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<sup>183</sup> Home Affairs Committee, First Report of Session 2001–2002, *The Anti-Terrorism, Crime and Security Bill 2001*, para 3

<sup>184</sup> HC Deb, 2 February 2006, col 479

**consolidation of existing measures, should be extensively examined in draft, either by this Committee or by a joint committee of both Houses. The Government should ensure that it meets the commitment to build this into the timetable.**

## Conclusions and recommendations

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### Origins and presentation of the police and Government case

1. It will be clear from later parts of this report that we found the case for extending the maximum detention period to 28 days was convincing, but did not find the arguments for the 90 day period compelling. On such a major issue, with very significant human rights implications, we would have expected the case made by the police to have been better developed. The police should have been able to present an evidence-based analysis of the type we have endeavoured to undertake. It is clear that this was not done, despite their reliance on their ‘professional judgement’. We think it is reasonable for the Prime Minister and Home Secretary to rely on advice from the police on such issues, but we would also expect them to have challenged critically that advice in order to assure themselves of the case that was being made. We heard no evidence that this had happened: this is unsatisfactory. (Paragraph 29)
2. We recognise the value of seeking to achieve cross-party consensus on these issues. The immediate response to the July bombings was a strong cross-party approach to new counter-terrorism powers. By the time the Terrorism Bill was debated in the House, this consensual approach had broken down. (Paragraph 30)
3. The then Home Secretary argued to us that the break-down in the cross-party consensus on measures to tackle terrorism essentially arose from a lack of flexibility on the part of the Opposition parties over the period of 90 days. We did not take evidence from the Opposition and are therefore in no position to judge the points made by the then Home Secretary. But in our view the primary origin of the difficulties experienced by the Government lies in the lack of care with which the case for a maximum 90 day detention period was promoted. (Paragraph 31)
4. We recognise that the public is less ready to take on trust assertions by those who have seen evidence not publicly available. However, in an area where much material cannot be published (mainly because it is *sub judice*), we considered it right to take some evidence in private. It is also obvious that those with responsibility for taking decisions on these issues will have access to material that is not and cannot be in the public domain: we therefore reject JUSTICE’s argument that such material should not be taken into account. However, the nature of the issues under consideration mean that it is all the more important that the Government’s presentation of its case be as open as possible. (Paragraph 35)

### Public confidence and community relations

5. It is important to take into account the effect on the Muslim community of a longer period of detention. Muslims were amongst the casualties in the atrocities of 7 July, and the authorities cannot combat terrorism without the confidence and trust of Muslims. Extended pre-charge detention carries the danger, which should not be underestimated, of antagonising many who currently recognise the need for co-operating with the police, and hence the need to be very cautious before extending the period of detention beyond 28 days. (Paragraph 38)

## Has the nature of the threat changed?

6. We consider that the nature of the terrorist threat has changed: while there is no sharp break in the continuum between Irish republican terrorism and terrorism today, there are a number of significant developments. The first of these is that while Irish republican terrorism was brutal, and deliberately killed or injured large numbers of people, contemporary terrorism is distinguished by the centrality of the intention to cause mass casualties indiscriminately. Secondly, suicide bombers are a new phenomenon in this country. Thirdly, contemporary terrorism has an international basis which makes conspiracies more extensive and complex and increases the likelihood that recruitment to terrorism will continue to grow. Fourthly, the nature of the current threat appears less amenable to negotiated political resolution. (Paragraph 44)

## Consequences for police work

7. It is of course the case that many non-terrorist crimes involve complex international elements over a number of countries, and that pre-charge detention is significantly shorter than in terrorism cases. But the unique feature of terrorism cases is the emphasis that has to be given to the protection of the public while the investigation proceeds. (Paragraph 51)
8. Those investigating contemporary terrorism cases not only have to identify the individuals concerned, but also to understand the roles they played in complicated conspiracies. We therefore think that it is reasonable for the police to cite multiple identities as a complicating factor in their investigations. (Paragraph 54)
9. Encryption of data does not appear, for the time being, to be the problem in practice that had been feared. However analysis of data on computers, both unencrypted and decrypted, is time-consuming and resource-intensive. This will be an increasing problem for all types of investigations. (Paragraph 63)
10. Clearly, bringing Part III of RIPA into force would not solve the problem of encrypted data; it could nonetheless provide a useful instrument in some cases. We therefore welcome the Home Office's expressed intention, following consultation on a code of practice, to bring Part III into force. It should do so as soon as possible. (Paragraph 67)
11. The police's argument that forensics are time-consuming is not disputed, and we also accept that this is not an area in which greater resources would have an effect because of the need for continuity of the investigation, which can only be ensured by using a team of skilled personnel. (Paragraph 69)
12. It is clear from the evidence we received that the analysis of data such as records of calls made from mobile phones can be an important part of an investigation, but that the process is also lengthy and complicated. We therefore think it is reasonable for the police to support their case by pointing to the difficulties caused by the analysis of mobile phones. (Paragraph 72)

13. We received evidence that each of the above factors complicated the investigation of terrorism offences. We also received evidence that it was the combination of the issues in individual investigations that created the real problems. Opponents of extended detention tended not to address the complexity of the issues involved and to understate the challenge faced by the police. In our view, the important point about the above elements is that recent terrorist investigations have involved all of them. Their individual impact is often significant but it is their cumulative effect on investigations that is central to the case for an extension of maximum pre-charge detention. (Paragraph 73)
14. We were not convinced by the evidence that provision of interpreters is a significant difficulty. (Paragraph 76)
15. We recognise that the need to allow time for religious observance complicates the organisation of an investigation: we do not, however, accept that it justifies an extension of the maximum detention time. (Paragraph 78)
16. We asked the police to provide us with an analysis of at least ten recent terrorist investigations showing how many suspects in each inquiry were represented by the same solicitor or the same firm. They provided this material in confidence, but it is clear that on more than one occasion a single firm with a small number of solicitors has represented more than double that number of suspects, who were the large majority of those arrested. We doubt therefore whether those suspects were represented to the highest legal standards: this of course raises questions of whether justice has been properly served. But the police are also concerned that such multiple representation may hinder effective investigation, for example by making it more difficult to schedule interviews of a number of suspects represented by the same solicitor. Be that as it may, it is not clear to us that the problem provides a strong case in itself for the extension of pre-charge detention. (Paragraph 81)
17. It is disgraceful that any lawyer should encourage the public not to co-operate with the police as a matter of course. It is for the Law Society to decide whether Arani & Co.'s conduct has breached professional standards, but given the obvious terrorist threat we find that conduct particularly reprehensible. (Paragraph 83)
18. The assertion by Gareth Peirce that in the large majority of cases the police do not conduct even preliminary interviews with suspects was rejected by the police. In the absence of any supporting evidence from Ms Peirce, we cannot give any weight to her claim. (Paragraph 88)
19. We accept that some of the aspects of the process of detaining and interviewing suspects pose practical difficulties for the police. They contribute to the case for extended detention but on their own are not sufficient to justify a change. (Paragraph 89)
20. In general it cannot be expected that interviews of suspects during extended detention will lead to significant additional information that can be used in court. While we can understand that there may be cases in which confrontation of a suspect with new evidence might lead to admissions, it appears that the case for extended detention rests on two arguments: first, the need to seek and analyse evidence from a

complex range of sources and, second, the need to ensure the protection of the public. This latter point has been referred to in our evidence and the Parliamentary debates. It does not, however, form any part of the legal basis for an application for extended detention. (Paragraph 90)

### Disruption and prevention

21. It is clear that the change in the nature of the terrorist threat has led to an increasing number of cases in which the arrest has come earlier than would be otherwise the case, because these arrests are primarily intended to protect the public by disrupting terrorist conspiracies. (Paragraph 93)
22. One of the key conclusions of our inquiry is that the preventative element of some arrests under the Terrorism Acts should be given clearer and more explicit recognition. Arrests whose main purpose is to disrupt terrorist conspiracies are a result of the changed nature of terrorism, and, as Assistant Commissioner Andy Hayman of the Metropolitan Police told us, there is now “a vast amount” of such cases. We believe that this form of detention could be used appropriately on occasions to disrupt conspiracies. Hence we agree with the decision to increase the period of detention. But preventive detention is a significant new development, and one that was not made explicit during the passage of the Bill, during which extended detention was primarily justified on the grounds of the time needed to collect and analyse evidence. Any legislation should recognise in terms this important new purpose of pre-charge detention. (Paragraph 94)
23. We repeat that preventive detention is a major step. At present, the police have to decide on both the action needed to protect the public and on the action required to pursue ultimately a successful criminal prosecution. We do not believe that this judgment should be left to the police alone. (Paragraph 95)

### Alternatives to longer detention

24. There is no dispute that further increases in resources for counter-terrorism work by the police and security services would lead to quicker results in some cases. But we are satisfied that the nature of investigations is such that greater resources alone are not the answer. (Paragraph 100)
25. The use of lesser charges was opposed by a wide range of witnesses, who raised serious practical and moral objections. We do not think it would be an appropriate response to the challenges of counter-terrorism investigations. (Paragraph 103)
26. Post-charge questioning alone would not be sufficient to replace extended pre-charge detention, but it could be a useful addition. We therefore urge the Home Office not to allow its consultation to slip any further. (Paragraph 109)
27. The Threshold Test does not enable charges to be brought without the knowledge that further evidence will certainly become available. In the large majority of counter-terrorism investigations this will not be the case. Nonetheless, the Threshold Test should be used where possible. (Paragraph 112)

28. Outside the Government there is universal support for the use of intercept evidence in the courts. The Home Office has not produced convincing evidence that the difficulties are insuperable: they have presumably been tackled in other jurisdictions. We therefore urge the Government to conclude its review of the issue, with the aim of reporting as soon as possible. In the absence of any new information, we assume that it will recommend the use of intercept evidence. (Paragraph 116)
29. We accept the police's argument that measures such as tagging and control orders cannot protect the public from the threat of terrorism to the same extent as do arrests and detention. But we believe that such measures can be used to disrupt terrorist conspiracies. We therefore reject as entirely wrong the arguments of those who oppose any use of control orders against terrorism suspects. It is clear to us that there are circumstances in which it is not possible to charge individuals yet an arrest or other preventative measures are necessary to protect the public and ensure the successful investigation of terrorism. We believe that the use of control orders, tagging and bail should be considered at each stage of the process of judicial oversight of arrest and detention. (Paragraph 119)

### Existing provisions

30. We do not doubt that district judges perform their duties impartially and to a high standard and that the police have to take the utmost care in preparing applications for extensions to periods of pre-charge detention. However we share the wide-spread unease at the prospect of the existing system being used to provide judicial oversight of even longer pre-charge detention. (Paragraph 124)

### New circumstances

31. Lord Carlile proposes a strengthened system of judicial oversight once a suspect has been arrested. We support the thrust of his proposals, but believe they should be extended. Firstly, we believe that supervision should provide for a continual reassessment of whether alternative methods, such as tagging and control orders, would be appropriate. Secondly, as we have argued in the section on disruption and prevention, we believe that there should be appropriate judicial oversight when arrests are made under the Terrorism Act. This would enable proper independent consideration to be given where an arrest is to be made for its disruptive and preventative value rather than primarily for its investigative purpose. It would also enable consideration from the outside of alternatives to arrest and detention. We recognise that this would bring some procedures more common in other jurisdictions into our criminal justice system. (Paragraph 129)
32. We acknowledge that we cannot simply import elements from abroad that would not work in the common law system. But there should be no bar to adapting such approaches to our needs. The principle of independent judicial oversight from the time that arrest is first considered should be adopted. This would also ensure that the police alone do not have to bear responsibility for arrests intended to protect the public. For judicial oversight to be effective, there must be adequate support for the judge, including through the provision of appropriate technical expertise. (Paragraph 131)

33. The recent police raid in Forest Gate and subsequent release without charge of those arrested did not involve extended pre-charge detention, but it clearly would have been of benefit to police and public alike if there had been independent oversight of the decision to intervene. (Paragraph 132)

### Detention periods

34. Current and recent investigations have gone sufficiently close to 14 days to show that an extension of the maximum period of pre-charge detention, as agreed by Parliament, is justified. We repeat, however, that effective judicial oversight of detention is essential. (Paragraph 139)
35. None of the evidence we have reviewed of current and recent investigations would have justified a maximum detention period longer than 28 days. But the growing number of cases and the increase in suspects monitored by the police and security services make it entirely possible, and perhaps increasingly likely, that there will be cases that do provide that justification. We believe, therefore, that the 28 day limit may well prove inadequate in the future. (Paragraph 143)
36. We have seen no evidence that a maximum of 90 days pre-charge detention is essential, rather than useful. The police did not press strongly for this maximum, while technical witnesses, generally in favour of as long a time as possible, did not seek to argue that 90 days was in itself a significant period. (Paragraph 145)
37. The process of the Terrorism Bill through Parliament was divisive and did not increase public trust in the police or the Government. If 28 days proves inadequate in due course, new primary legislation to extend the maximum pre-charge detention period is likely also to be very divisive. But it would be unacceptable for the Government to use secondary legislation. We suggest that a committee independent of Government be created to keep the maximum detention period under annual review and to recommend the introduction of new legislation as necessary. The committee might follow the model of the Newton Committee of Privy Counsellors, appointed in April 2002 to review the operation of the Anti-Terrorism, Crime and Security Act 2001. (Paragraph 148)

### Future legislation

38. Many of the difficulties the Government experienced in the passage of the Terrorism Bill arose from the speed with which it was drafted and presented to Parliament: this inquiry did the job of examining the police arguments for extended detention which the Home Office should have done before introducing the Terrorism Bill. Any new legislation on terrorism should not in our view propose a longer period of detention than 28 days unless there is such compelling evidence as we have already referred to earlier. The new legislation on terrorism, including the promised consolidation of existing measures, should be extensively examined in draft, either by this Committee or by a joint committee of both Houses. The Government should ensure that it meets the commitment to build this into the timetable. (Paragraph 151)

## Appendix: Police briefing note

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5th October '05

Anti Terrorist Branch (SO13)

### Three month pre-charge detention

This paper will set out the issues from a police perspective which are driving the need for a pre-charge period of detention in terrorist cases which, subject to regular judicial oversight, might extend for a period of up to three months. The paper will be divided into three sections as follows:

- The overall case for change from current arrangements
- Actual case studies derived from recent investigations
- A theoretical case study drawing together many of the issues into one 'storyline'.

### *The Case For Change*

Throughout the campaign waged by Irish terrorists, the concept of counter-terrorist investigation focussed on interdicting the terrorist at or near the point of attack. This enabled the best evidence to be obtained, in terms of catching the suspect in possession of terrorist material, or at a point where the evidence as to his intentions was unequivocal. In the times when the requirements of disclosure were not so stringent, this approach enabled the intelligence agencies, their techniques and investigations to be shielded from exposure in judicial proceedings.

The threat from international terrorism is so completely different that it has been necessary to adopt new ways of working. Irish terrorists deliberately sought to restrict casualties for political reasons. This is not the case with international terrorists. The advent of terrorist attacks designed to cause mass casualties, with no warning, sometimes involving the use of suicide, and with the threat of chemical, biological, radiological or nuclear weapons means that we can no longer wait until the point of attack before intervening. The threat to the public is simply too great to run that risk. During every counter-terrorist investigation a balance is struck between the maintenance of public safety, the gathering of evidence and the maintenance of community confidence in police actions. Public safety always comes first, and the result of this is that there are occasions when suspected terrorists are arrested at an earlier stage in their planning and preparation than would have been the case in the past. In one recent case it was not possible to be sure that the terrorists were not about to mount an attack, and so the decision was taken to arrest. At that point there were more than ample grounds to make the arrests, but there was little or no admissible evidence. That had to be gathered during the following 14 days, with key parts of the evidence emerging by chance from a mass of material at the very end of that period.

The heart of the issue is this. Public safety demands earlier intervention, and so the period of evidence gathering that used to take place pre-arrest is often now denied to the investigators. This means that in some extremely complex cases, evidence gathering effectively begins post-arrest, giving rise to the requirement for a longer period of pre-charge detention to enable that evidence gathering to take place, and for high quality charging decisions to be made.

Aside from the changed concept of operation described above, there are a number of specific features of modern terrorism that drive the need for an increased period of time to be available before the decision to charge or release can properly be made. These can be summarised as follows:-

- The networks are invariable international, indeed global in their origins and span of operation. Enquiries have to be undertaken in many different jurisdictions, many of which are not able to operate to tight timescales.
- Establishing the identity of suspects often takes a considerable amount of time. The use of forged or stolen identity documents compounds this problem.
- There is often a need to employ interpreters to assist with the interview process. The global origins of the current terrorist threat has given rise to a requirement, in some recent cases, to secure the services of interpreters who can work in dialects from remote parts of the world. Such interpreters are difficult to find. This slows down the proceedings, restricting the time available for interview.
- Terrorists are now highly capable in their use of technology. In recent cases, large numbers (hundreds) of computers and hard drives were seized. Much of the data was encrypted. The examination and decryption of such vast amounts of data takes time, and needs to be analysed before being incorporated into an interview strategy. This is not primarily a resourcing issue, but one of necessarily sequential activity of data capture, analysis and disclosure prior to interview.
- The forensic requirements in modern terrorist cases are far more complex and time consuming than in the past, particularly where there is the possibility of chemical, biological, radiological or nuclear hazards. Following the discovery of a ‘bomb factory’ in Yorkshire after the 7th July attacks in London, it was over 2 weeks before safe access could be gained for the examination to begin. It took a further 6 weeks to complete the examination. The Al Qaeda methodology of mounting simultaneous attacks inevitably extends the time it takes for proper scene examination and analysis.
- The use of mobile telephony by terrorists as a means of secure communication is a relatively new phenomenon. Obtaining data from service providers and subsequent analysis of the data to show linkage between suspects and their location at key times all takes time.
- There is now a need to allow time for regular religious observance by detainees that was not a feature in the past. This too causes delay in the investigative process during pre-charge detention.
- A feature of major counter-terrorist investigations has been that one firm of solicitors will frequently represent many of the suspects. This leads to delay in the process because of the requirement for consultations with multiple clients.

All of the above factors have contributed to the requirement, in the most serious and complex cases, for there to be the possibility of extended detention for the purposes of investigation prior to point of decision about charging or release. It is not an issue that can be resolved simply by putting more resources into the investigation. Certainly this can help, in turns of ensuring that as much material as possible is available to investigators and to prosecutors. However, the process of staged disclosure to the defence, consultation with clients to take instructions, interview and assessment is essentially sequential, which the application of extra resources will not materially shorten.

### Case Studies

Operation Springbourne 2002–2005—the so-called ‘ricin’ plot. This was a wide ranging investigation into a network of Algerian extremists who were engaged in terrorist activity. Some of this activity was clearly terrorist in nature, but at the same time there was a great deal of peripheral supporting activity involving the use of forged documents, cheque and credit card fraud and the like. The investigation ran over several months and spanned not only the UK but some 26 other jurisdictions as well. Many of those jurisdictions (especially those with an inquisitorial system) work to extended timescales in such cases, and cannot respond to our enquiries within the timeframes demanded by our pre-charge time limits. The challenge was to analyse a huge amount of material, to identify the prime conspirators (and what it was they were plotting to do), and to clarify the roles played by each of the suspects. This proved impossible in the time available, and the result was that several suspects were originally charged with terrorist offences who were eventually proceeded against for crimes such as fraud or forgery. This is symptomatic of the current situation where investigations have to be shaped to fit the procedural requirements of the time-limited charging procedure, rather than simply following the evidence in an objective search for the truth. Had there been the opportunity to understand the complexities of the conspiracy before the decision was required to charge or release, the right charges against the right people could have been determined from the outset. The quality of the original charging decisions would also have been higher, and it is probable that the suspect who fled the country while on bail and who eventually proved to have been a prime conspirator, would have stood trial in this country. If that had happened, the outcome of the trial process might have been very different.

#### *Operation 2004 (this case is sub-judice and it would therefore be inappropriate to release further details)*

This case was concerned with a group of British men who, it will be alleged at trial, were planning to construct and detonate a bomb in the UK. A long-term surveillance operation led to the arrest and charging of 8 men with offences of conspiring to cause explosions. The investigators are of the opinion that if the decision to charge could have been delayed while the investigation developed and the precise role of individuals became clearer, then the outcome in terms of admissions, intelligence and evidence against key individuals might have been different. It can reasonably be argued that in this case the current system worked contrary to the overall objective of preserving public safety. The silence of the suspects, encouraged by current custody time limits, shed no light on the intentions or capabilities of the terrorist network. The case will be heard in January 2006.

#### *Operation 2004—(this case is sub-judice and it would therefore be inappropriate to release further details)*

This investigation focussed on a group of British men who, it will be alleged at trial, were engaged in terrorist reconnaissance and planning in the US and the UK. After their arrest in August 2004, a vast amount of material was recovered in searches, including some 90 hard drives, much of the content of which was encrypted. The sheer weight of material to be analysed and the number of suspects in custody meant that it was impossible, within the 14 days, to complete a fuller investigation. There were many key pieces of evidence which police were unable to put to the suspects in interview because they were not discovered until after the detention period had elapsed.

#### *Operation 2005—(this case is sub-judice and it would therefore be inappropriate to release further details)*

This is the investigation into the attacks in London on 21st July 2005. One of the suspects has already raised the defence that he intended to do no more than cause a demonstration of some sort,

but not to kill anyone. It is possible that this defence will be followed by others. If there had been the opportunity to delay charging, this would have been taken. A definitive analysis of the explosive devices would have enabled an interview strategy to be constructed that would be based on firm knowledge of the nature of the devices, rather than a very limited assessment. The point in this case, as with those quoted above, is that an extended period of detention would enable the quality of material disclosed to the defence in advance of interviews, to be immeasurably improved.

### *Theoretical Case Study*

This case study has been constructed with the assistance of the Crown Prosecution Service and draws upon issues that have arisen in many real cases. The statistics used are entirely typical of the scale of events that have been seen in terrorist investigations in recent years.

The Security Service are told by an agent that a group of men in various parts of the country are planning terrorist attacks on the Houses of Parliament and the British Embassies in Pakistan, Istanbul and Morocco. They have been exploring conventional and homemade explosives as well as CBRN possibilities. It is believed that this will be carried out in 3 months time. The agent is reliable and his information must be acted on for public safety reasons.

Surveillance is started on 2 of the men identified and over a period of 2 months they are seen with numerous other people. All of the people seen are unknown to intelligence services and cannot be identified. 5 key addresses were identified and probes put into each over the period.

The agent does not know where the dangerous materials are being stored or where they have been obtained from although he believes that some might have been brought in from abroad. The men are believed to be all illegal entrants to this country and are each living on at least 2 false identities.

Police arrest 15 people following the execution of Terrorism Act warrants in 4 different areas of the country on day 1. Each arrest requires time-consuming custody procedures; sterile arrest, transportation to the secure suite at Paddington Green, the forensic examination of prisoners and taking of evidential samples. The samples are particularly important as it is thought that the men are not who they purport to be and/or not from the countries they claim to come from. Each has at least one false passport.

These procedures have to be completed before any detained person can consult with their legal representatives. On this occasion they took about 8 hours for each person. Some could be conducted simultaneously, but some (like booking in with the Custody Sergeant) had to be done individually.

The fingerprints are sent to 5 different countries to see if the men can be properly identified.

With 15 people under arrest, a disclosure strategy was required so as to achieve the best evidence from the interviews and test the accounts given. This was done whilst the defendants were being examined and other procedures carried out, and whilst the police were waiting for the solicitors to arrive. Each disclosure package given to the respective legal representative required lengthy consultations with the detainees.

2 firms of solicitors represented all the detained men. Their representatives were not available immediately; the police had to wait 4 hours for one and 5 for another. Each firm only provided 2 representatives. The initial consultations with each client lasted on average 4-5 hours. This time took up some of the time available to the officers to conduct their detailed interviews and enquiries, the clock did not stop running whilst the detainees were taking legal advice.

In addition all 15 men need to be allowed to observe prayer 5 times a day and all say that they need an interpreter.

In the first 14 days a total of 165 interviews were conducted. Most of the suspects are saying nothing, but as more evidence is put to them by the 14th day, 2 appear to be getting concerned and might talk.

Within the first 4 days of detention, 55 forensic searches were conducted around the country involving residential and non-residential properties and vehicles, again involving an enormous amount of work by officers to speedily assess the relevance of exhibits within the time limits imposed.

Each of these required a separate warrant and information received led the police to believe that there could be CBRN material on the premises as well as possibly conventional and homemade explosives. This meant that specialist teams had to be deployed and some of the premises were unsafe to enter until various forms of risk assessments had been done and procedures carried out. There are only a limited number of specialists available to do this work and it was only possible to do one premise at a time. 10 of the premises require this procedure and were in three of the different parts of the country, some about 5 hours drive away from the other.

During this period of time a vast amount of exhibits were seized during the searches. This had to be examined, prioritised, sifted for relevance, an assessment made of which individual should be questioned about which exhibit and a decision made on which should be sent to experts in chemical weapons, which on biological, which to FEL and which to the AWE.

There were about 4,000 exhibits labelled in the first week with many more outstanding for examination. At least half of the documentary exhibits (about 600) are in Arabic. Most of the available interpreters are being used for the interviews and after trawling the country police manage to locate another 3 who can begin on the documents. There are also several boxes of videos tapes the contents of which the police do not know until they have been viewed. There are no labels on them. A cursory viewing of a handful shows that they are extremist in nature and mostly with Arabic voiceovers or individuals speaking in Arabic on. There is little point in the officers viewing these further as they cannot understand them.

A decision had to be taken about where each of the exhibits should go first. It is decided to fingerprint 300 documents first. Half of these are handwritten and will also need to be examined for handwriting analysis. All the identification documents found (at least 100) need to go for expert analysis to see if they are false. 15 of these are French, 10 each are Spanish Italian and Turkish, but the majority appear to be of Eastern European extraction, maybe Bosnian, and all have to be submitted to their country of origin to check whether they are genuine.

There have been over 268 computers seized together with 274 hard drives, 591 floppy discs, 920 CD DVDS and 47 zip discs. The High Tech Crime Unit say that every computer hard drive seized during that period of time takes a minimum of 12 hours to image for the assessment teams at Paddington to then provide to the interviewing officers. The preliminary assessments carried out, due to the time constraints imposed, cannot be considered as thorough and have to be revisited as other factors emerge and different matters become relevant. About a quarter of the computers and hard drives have encrypted material on them and the suspects are refusing to give the keys saying that the computers, even those found in identifiable homes, are nothing to do with them. Assistance is required from a number of agencies here and abroad with regard to this and an assessment has to be made about which computers to prioritise.

It is not clear which of these computers was used the most as the man believed to be the leader and 2 others have been itinerant, using at least 20 of the known addresses over the last 6 month period.

The main suspect was of no fixed abode. He had items of personal property at a number of addresses. Some in false; fingerprint and DNA work done in the first 4 weeks enabled police to establish this.

During the first two weeks 60 seized mobile telephones, mostly pay as you go, were forensically examined. The sheer volume of material to be gathered from these examinations meant that much of it was not available until the 6th week of investigation. This evidence is crucial as it is needed to corroborate associations and prove movements. DNA analysis is required to discover which telephones have been used by which suspects, again because they have used or visited many addresses.

Some 25,000 man hours were spent examining CCTV footage. Some 3674 man hours are used to assess the eavesdropping material gathered by probes operating 24 hours each day over an 8 week period. There are 850 surveillance and observation point logs that must be assessed for their evidential value. This evidence will be crucial to establish who was present at which meetings and what was said.

In the first 4 weeks the police identified 6000 actions in the investigation. 10,000 documents, 2300 statements and 7000 exhibits have been seized or created by week 8 of the investigation. Crucial evidence is still awaited from DNA, other scientific work and from various foreign enquiries coming in gradually over the period of detention.

Letters of request for legal assistance in gathering evidence abroad have been written by prosecutors and sent through emergency channels to 17 countries.

As the enquiries progress more addresses are being identified, more searches done and more exhibits, computers and false documentation with photographs of the suspects and others are being discovered. In amongst the documents are some bearing the picture of a well known international terrorist being held in custody in another country where it is not easy for the police to obtain access or information. This might be a crucial link with some of the suspects being held and an approach needs to be made through diplomatic channels.

Throughout the detention period it is becoming abundantly clear that there were plans to use a dirty bomb in the Houses of Parliament, conventional explosives for an attack on 2 of the Embassies and a possible chemical attack on the third. Each suspect has several identities. We are waiting to hear if the requested countries can establish the true identity of the men. Fingerprints of each man are being found on some documents of a suspicious nature. It is unclear however which role each man took and whether they can be linked to any or all of the planned attacks.

The case is largely circumstantial as no chemicals or explosives or anything else of that nature has been found despite the fact that the targeting document (found on the 50th computer to be examined in the 7th week) shows that the attack on Parliament was due to take place 2 days after the arrests.

2 prosecutors are working full time with the Anti Terrorist Branch making applications to extend pre-charge detention, drafting initial and supplementary letters of request and reviewing the evidence as the investigation progresses. Experts from 10 different disciplines are working on exhibits and documents seized as well as scouring addresses and cars for explosive and other traces

and  $\frac{3}{4}$  of the police capacity has been involved in various actions including examination of exhibits, computers, interviewing, etc.

# Formal minutes

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**Tuesday 20 June 2006**

Members present:

Mr John Denham, in the Chair

Mr Richard Benyon	Bob Russell
Mr Jeremy Browne	Martin Salter
Mrs Janet Dean	Mr Richard Spring
Mr Shahid Malik	Mr Gary Streeter
Margaret Moran	Mr David Winnick
Gwyn Prosser	

[Business transacted at this meeting included the following item:]

*Consideration of draft Report*

Draft Report (*Terrorism Detention Powers*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 142 read and agreed to.

Paragraph 143 read, as follows:

**None of the evidence we have reviewed of current and recent investigations would have justified a maximum detention period longer than 28 days. But the growing number of cases and the increase in suspects monitored by the police and security services make it entirely possible, and perhaps increasingly likely, that there will be cases that do provide that justification. We believe, therefore, that the 28 day limit may well prove inadequate in the future.**

Amendment proposed, in line 2, to leave out from "28 days" to the end of the paragraph and add "It could be the position that the 28 days limit will prove inadequate in the future. However, we have already referred in paragraph 38 to the antagonising effect on the Muslim community of a longer period of detention. Nevertheless, it is always up to the Government to propose to Parliament a longer period than 28 days, but in our view there would need to be compelling evidence that this was necessary."—(*Mr David Winnick.*)

Question put, that the Amendment be made.

The Committee divided.

Ayes, 3

Mr Jeremy Browne  
Bob Russell  
Mr David Winnick

Noes, 7

Mrs Janet Dean  
Mr Shahid Malik  
Margaret Moran  
Gwyn Prosser  
Martin Salter  
Mr Richard Spring  
Mr Gary Streeter

Paragraph agreed to.

Paragraphs 144 to 147 read and agreed to.

Paragraph 148 read, as follows:

**The process of the Terrorism Bill through Parliament was divisive and did not increase public trust in the police or the Government. If 28 days proves inadequate in due course, new primary legislation to extend the maximum pre-charge detention period is likely also to be very divisive. But it would be unacceptable for the Government to use secondary legislation. We suggest that a committee independent of Government be created to keep the maximum detention period under annual review and to recommend the introduction of new legislation as necessary. The committee might follow the model of the Newton Committee of Privy Counsellors, appointed in April 2002 to review the operation of the Anti-Terrorism, Crime and Security Act 2001.**

Amendment proposed, in line 2, after “Government.” to insert “The main reason was that the Government was not able to show convincingly that increasing the maximum period of detention from 14 to 90 days was needed. The increase from 7 to 14 days had only been law for less than two years at the time of November debate. There was, moreover, a feeling of distaste that the police were being encouraged to lobby Members to vote for the 90 days.”.—(*Mr David Winnick.*)

Question put, that the Amendment be made.

The Committee divided.

Ayes, 5

Mr Jeremy Browne  
Bob Russell  
Mr Richard Spring  
Mr Gary Streeter  
Mr David Winnick

Noes, 5

Mrs Janet Dean  
Mr Shahid Malik  
Margaret Moran  
Gwyn Prosser  
Martin Salter

Whereupon the Chairman declared himself with the Noes.

Another Amendment proposed, in line 5, to leave out from “legislation” to the end of the paragraph.—(*Mr David Winnick.*)

Question put, that the Amendment be made.

The Committee divided.

Ayes, 3

Mr Jeremy Browne  
Bob Russell  
Mr David Winnick

Noes, 7

Mrs Janet Dean  
Mr Shahid Malik  
Margaret Moran  
Gwyn Prosser  
Martin Salter  
Mr Richard Spring  
Mr Gary Streeter

Paragraph agreed to.

Paragraphs 149 to 151 agreed to.

Draft Summary, proposed by the Chairman, brought up and read.

*Ordered*, That the draft Summary be read a second time, paragraph by paragraph.

The first five paragraphs were agreed to.

The sixth paragraph read as follows:

Current and recent investigations have gone sufficiently close to 14 days to show that an extension of the maximum period of pre-charge detention, as agreed by Parliament, is justified. None of the evidence we have reviewed of current and recent investigations would have justified a maximum detention period longer than 28 days. But the growing number of cases and the increase in suspects monitored by the police and security services make it entirely possible, and perhaps increasingly likely, that there will be cases that do provide that justification. We believe, therefore, that the 28 day limit may well prove inadequate in the future. We have seen no evidence that a maximum of 90 days pre-charge detention is essential, rather than useful.

Amendment proposed, in line 4, to leave out from “28 days” to the end of the paragraph and add “It could be that 28 days will prove inadequate in the future, but we have seen no evidence that a maximum of 90 days pre-charge detention is essential rather than perhaps useful.”.—(*Mr David Winnick.*)

Question put, that the Amendment be made.

The Committee divided.

Ayes, 3

Mr Jeremy Browne  
Bob Russell  
Mr David Winnick

Noes, 7

Mrs Janet Dean  
Mr Shahid Malik  
Margaret Moran  
Gwyn Prosser  
Martin Salter  
Mr Richard Spring  
Mr Gary Streeter

Paragraph agreed to.

The seventh paragraph agreed to.

Motion made, and Question put, That the Report be the Fourth Report of the Committee to the House.

The Committee divided.

Ayes, 9

Mr Jeremy Browne  
Mrs Janet Dean  
Mr Shahid Malik  
Margaret Moran  
Gwyn Prosser  
Bob Russell  
Martin Salter  
Mr Richard Spring  
Mr Gary Streeter

Noes, 1

Mr David Winnick

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134 (Select committees (reports)).

A Paper was ordered to be appended to the Report.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 27 June at Ten o'clock.

## List of witnesses (page numbers refer to Volume II)

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### Tuesday 7 February 2006

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**Dr Eric Metcalfe**, Human Rights Policy Director, JUSTICE, **Ms Shami Chakrabarti**, Director, Liberty, **Ms Gareth Peirce**, Birnberg Peirce Solicitors and **Mr Tim Owen QC**, Matrix Chambers

Ev 1

### Tuesday 14 February 2006

**Lord Carlile of Berriew QC**

Ev 16

**Professor Ross Anderson**, Foundation for Information Policy Research, **Mr David Lattimore**, Technical Manager, Digital Crime Unit, LGC Ltd and **Mr Peter Sommer**, London School of Economics

Ev 25

**Mr Daren Greener**, Systems Technology Consultants Ltd, **Mr Vinesh Parmar**, Telecoms Forensic Technical Manager, Digital Crime Unit, LGC Ltd and **Mr Gregory Smith**, Principal, Trew & Co

Ev 30

### Tuesday 28 February 2006

**Andy Hayman QPM**, Assistant Commissioner and **Peter Clarke CVO OBE QPM**, Deputy Assistant Commissioner, Head of the Anti-Terrorist Branch and National Co-ordinator of Terrorist Investigations, Metropolitan Police Service

Ev 35

### Tuesday 21 March 2006

**Rt Hon Charles Clarke MP**, Secretary of State for the Home Department

Ev 56

## List of written evidence (page numbers refer to Volume II)

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12 Evan Price	Ev 98
13 Secretary of State for the Home Department	Ev 100 : Ev 102
14 Gregory Smith	Ev 102 : Ev 109
15 Peter Sommer	Ev 110 : Ev 114
16 Chris Sundt	Ev 115
17 UKERNA	Ev 118
18 Professor Brian Collins	Ev 119
19 Daren Greener	Ev 121
20 Metropolitan Police Service	Ev 125

# Reports from the Home Affairs Committee since 2001

The following reports have been produced by the Committee since the start of the 2001 Parliament. Government Responses to the Committee's reports are published as Special Reports from the Committee or as Command Papers by the Government. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2005–06

First Report	Draft Corporate Manslaughter Bill (First Joint Report with Work and Pensions Committee)	HC 540 ( <i>Cm 6755</i> )
Second Report	Draft Sentencing Guideline: Robbery	HC 947
First Special Report	Memorandum from the Home Office: Progress in implementing accepted Committee recommendations 2001–05	HC 1007
Third Report	Draft Sentencing Guidelines— <i>Overarching Principles: Domestic Violence and Breach of a Protective Order</i>	HC 1231

The following reports were produced by the Committee in the 2001–05 Parliament.

## Session 2004–05

First Report	Rehabilitation of Prisoners	HC 193 ( <i>Cm 6486</i> )
Second Report	Work of the Committee in 2004	HC 280
Third Report	Home Office Target-Setting 2004	HC 320 ( <i>Cm 6592</i> )
Fourth Report	Police Reform	HC 370 ( <i>Cm 6600</i> )
Fifth Report	Anti-Social Behaviour	HC 80 ( <i>Cm 6588</i> )
Sixth Report	Terrorism and Community Relations	HC 165 ( <i>Cm 6593</i> )

## Session 2003–04

First Report	Asylum and Immigration (Treatment of Claimants, etc.) Bill	HC 109 ( <i>Cm 6132</i> )
Second Report	Asylum Applications	HC 218 ( <i>Cm 6166</i> )
Third Report	The Work of the Home Affairs Committee in 2003	HC 345
Fourth Report	Identity Cards	HC 130 ( <i>Cm 6359</i> )
Fifth Report	Draft Sentencing Guidelines 1 and 2	HC 1207 ( <i>HC 371</i> )

## Session 2002–03

First Report	Extradition Bill	HC 138 ( <i>HC 475</i> )
Second Report	Criminal Justice Bill	HC 83 ( <i>Cm 5787</i> )
Third Report	The Work of the Home Affairs Committee in 2002	HC 336
Fourth Report	Asylum Removals	HC 654 ( <i>HC 1006</i> )
Fifth Report	Sexual Offences Bill	HC 639 ( <i>Cm 5986</i> )

## Session 2001–02

First Report	The Anti-Terrorism, Crime and Security Bill 2001	HC 351
Second Report	Police Reform Bill	HC 612 ( <i>HC 1052</i> )
Third Report	The Government's Drugs Policy, Is it Working?	HC 318 ( <i>Cm 5573</i> )
Fourth Report	The Conduct of Investigations into Past Cases of Abuse in Children's Homes	HC 836 ( <i>Cm 5799</i> )