REPORT ON THE OPERATION IN 2005 OF THE TERRORISM ACT 2000

BY

LORD CARLILE OF BERRIEW Q.C.

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INTRODUCTION

1 In the autumn of 2001 I was appointed as Independent Reviewer of the *Terrorism Act 2000 [TA2000]*. My reports can be found most easily online, via www.homeoffice.gov.uk and following the 'security' links.

2 Subsequently I was appointed reviewer of the detention provisions of the *Anti-Terrorism Crime and Security Act 2001*. Those provisions were repealed and replaced by the Control Orders system provided for by the Prevention of Terrorism Act 2005: I also review those provisions, and my report on the first period of operation of that Act was published in January 2006.

3 I have written two separate reports on the provisions of *Part VII of TA2000*. That part applied to Northern Ireland only. It has been replaced by continuance subject to some repeals in new primary legislation the *Terrorism (Northern Ireland) Act 2006*. Its continuance is time limited to the 31st July 2007 plus a possible one year of extension. My most recent material report was in January 2006, on the operation of *Part VII*.

4 I intend to continue my practice of reporting separately on *Part VII*/its successor around the turn of each year, but if necessary to use my main report on the Act as an additional means of scrutinising and commenting upon those parts of the Act with especial importance for Northern Ireland.

5 For consistency and ease of following, this report will follow the same structure as previous reports written by me.

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

7 *TA2000* has itself been the subject of significant amendment by the *Anti-Terrorism, Crime and Security Act 2001 [ATCSA2001]*. For example, *sections 24-31* were repealed from the 20th December 2001, and form no part of this review[1]. A consequence of the repeal of parts of the *TA2000* without substituting new sections into the same Act is that those parts are no longer subject to this form of review, whereas new sections inserted into the *TA2000* are. *The Prevention of Terrorism Act 2005* and the *Terrorism Act 2006*[2] add further elements, as do indications of possible further legislation specific to terrorism in 2007.

8 I repeat yet again my request made elsewhere that an up to date edition of the TA2000 *as currently in force* should appear on the Home Office website. Given the prevalence of new criminal justice legislation as a policy preference in most Parliamentary sessions, even those of us involved on a frequent basis in the effects of *TA2000* find it difficult to keep up with changes. This plea is especially important for the police. At least the text of the Act as passed, the Queen's Printers version, has been on the Home Office website for some time now, though the existence of numerous amendments means it must be

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

[2] Royal Assent 30th March 2006

treated with caution. I welcome the decision to place on the website the recent Terrorism Bill during its Parliamentary stages to becoming what is now the *Terrorism Act 2006.* This enabled interested persons to follow important and controversial proposed legislation. I have been assured by the Home Office that the updated *TA2000* will be on the Home Office website soon.

9 I was until their repeal the independent reviewer of the detention provisions introduced by *Part 4 of the ATCSA2001*. These proved ever topical and controversial. Separate reports have been published periodically in relation to my duties under that Act. I was appointed recently as the statutory reviewer of the *Prevention of Terrorism Act 2005*[3] and of the *Terrorism Act 2006*[4].This will require a substantial increase in the time spent on my appointments as reviewer of terrorism legislation.

10 My responsibilities in relation to *TA2000* in 2005 and throughout the past three years have confirmed the shift of emphasis (without any dilution of vigilance in a sometimes fragile political situation) towards international terrorism as, hopefully, the process of normalisation in Northern Ireland has become more evident in the evolution of the Good Friday Agreement.

11 However, the situation in Northern Ireland is the cause of increasing concern. Throughout 2005 there has been an impasse in the political process, in that the Northern Ireland Assembly has been suspended without clear signs of progress. Before the Northern Bank robbery and associated offences of the 20th December 2004 there was already plenty of evidence of the continuing existence of para-military organisations inside and outside criminal activity other than terrorism. Some of those organisations have connected to the conventional political process, others not.

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[3] Section 14 contains the requirements for the review

[4] See Section 36

12 There is ample evidence of the involvement of paramilitaries in the Northern Bank robbery, as has been confirmed by a report of the Independent Monitoring Commission[5]. Serious political parties can have no truck with organised crime or gang violence. This needs to be accepted without demur on a permanent basis by all parties in Northern Ireland. Those who oppose judge alone criminal courts there weaken their case dramatically by any involvement in the activities of ruthless criminals to whom intimidation of others is second nature. I cannot emphasise too much the importance of that observation.

13 I am grateful for the very considerable and patient help received from civil servants in the Home Office, the Northern Ireland Office, and elsewhere in government, as well as from my many consultees and correspondents from well outside government. I am conscious that there are numerous persons and organisations with much to offer my review. I have attempted during 2005 to widen my range of such contacts, and to learn as much as possible from the experience and opinions of others.

14 In terms of resources, I have operated mostly without direct assistance, though I have been able to look to various sources for research, information and opinions. My duties under the 2005 and 2006 Acts will increase the research requirements underpinning what I do. I have been assured that such resources will be made available to me.

15 My purpose and the requirement of this report are to assist the Secretary of State and Parliament in relation to the working of *TA2000*. My terms of reference may be found in the letters of appointment to my predecessors and myself. They are to be found too in the Official Report of the House of Lords debate of the 8th March 1984, which shows clearly what Parliament intended when the post of reviewer was first established: the

[5] Fourth Report of the Independent Monitoring Commission; 10th February 2005; 2005 HC 308

Reviewer should make detailed enquiries of people who use the Act, or are affected by it, and the Reviewer may see sensitive material. All this I have attempted to do.

16 The statutory foundation for this report is to be found in *section 126* of *TA2000;*

"The Secretary of State shall lay before both Houses of Parliament at least once in every 12 months a report on the working of this Act".

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

18 Once again this year I have received almost complete co-operation from all whom I have approached.There are still many whose interest in the subject I have yet to identify. However, there is a steady increase in the number of informal contacts and suggestions I receive from members of the public.They are sometimes of real value, and I welcome them all.

19 I do not offer any kind of appeal procedure for individual cases. However, I do read some documents referring to individual cases, and I do ask questions about them and can offer advice and comments. I am particularly anxious to obtain the assistance of more members of the public who have had some contact with the *TA2000*, whether as observers, witnesses, persons made subject to powers given under the Act or as terrorist suspects. It is not always as easy as one would wish to make contact with those who have had these real-life experiences.

20 Anyone wishing to provide me with information is very welcome to do so by writing to me at the House of Lords, London SW1A 0PW or sending me information via the Internet on carlileqc@aol.com.

21 I travel seeking the views of as wide a range as possible of people, offices and departments having anything to do with *TA2000*. I have also found it valuable to make some comparisons with foreign jurisdictions. During 2005 I visited France, giving particular emphasis to the investigation of terrorism offences, arrest and questioning procedures, and the work of investigating judges. In early 2006 I visited four countries in South Asia – Pakistan, India, Sri Lanka and Bangla Desh. All have major and substantial terrorism issues. My emphasis during that journey was on the quality of legislation, the definition of terrorism, the sharing of material information, and the quality of police and judicial practice.

22 I have spent approximately 50 days on this present review, including my report on *Part VII*. This working time has included visits to port units and other establishments listed in Annex A. The persons I have seen include those listed in Annex B; for reasons of requested or implicit confidentiality I have excluded some names from that list.

23 In preparing this report I have taken it once again as a basic tenet, not open to question as part of this review process, that specific anti-terrorism legislation is necessary as an adjunct to and strengthening of the ordinary criminal law. The debates in Parliament and in the media over the recently enacted *Prevention of Terrorism Act 2005* and the *Terrorism Act 2006* showed a greater degree of agreement than in some recent years to that effect at least. However, the issue remains of lively interest to me, especially as I am now tasked with reviewing the current definition of terrorism in the *TA2000*. I shall report on that in or about late 2006.

24 I seek out and receive such briefings as are needed from time to time to ensure that I have an appropriate state of knowledge. I remain of the clear opinion that there are active and present threats to the security of the nation as a result of terrorist activity.The risks of a terrorist attack on places of public aggregation are real.There is no justification for the slightest complacency.

25 In so far as I have judged it necessary, I have seen and examined closed material relevant to the operation of the *TA2000*. I have not been refused access to any information requested by me. I have taken that material into account on what I hope is a proportional basis in preparing this report.

26 As I reported last year, during 2003 in particular difficult problems arose in connection with the use of *section 44* of the Act by police on duty at and near RAF Fairford in Gloucestershire and in the Metropolitan Police Area at the time of an arms sales trade exhibition in London's Docklands. I have continued in 2005 to pay close attention to *section 44*. During the past year much work has been done by and on behalf of police forces to improve the way in which *section 44* is used. Above all, it is now recognised as important that police officers on the ground (in sometimes challenging situations) must have a fuller understanding of the differences between the various stop and search powers open to them.The aim should be that in all circumstances they stop and search in appropriate circumstances only, and that they use the powers most fit for purpose. If that does not apply, the kind of inappropriate use of the *section 44* powers such as occurred at the 2005 Labour Party conference in relation to Walter Wolfgang will recur.

1 PART I OF THE ACT: DEFINITION OF TERRORISM

27 As stated above, the definition of terrorism is itself the subject of a special review that I am conducting currently. I have issued (by advertisement) a call for papers, and have written to many individuals whom I regard as potentially interested parties. I repeat my call for advice on that subject. It should be sent to me at 9-12 Bell Yard, London WC2A 2JR.

28 *Section 1* defines 'terrorism' broadly. Certainly it covers all known forms of what the lay person in the United Kingdom might consider to be terrorist activity. Some argue that the definition is too broad, to the extent that it could include those who cause damage to fields in a campaign against GM crops, or some relatively minor aspects of pro- or anti-hunting campaigns. With such a broad definition, clearly implementation is an issue of importance and calls for restraint.

29 The breadth of the UK definition should be placed in the international context. For example, most countries in South Asia define terrorism far more broadly, as well as interpreting their own definitions widely. Part of my endeavour in reviewing the definition will be to find something with prospects of international acceptability within a properly narrow framework.

30 However, I repeat as before that we are entitled to assume that in a democratically accountable system there will be a sensible use of the discretion to prosecute.

31 The availability of judicial review is an ever-present protection against the abuse of administrative action, especially since the coming into force of the *Human Rights Act 1998*.

32 The definition of terrorism has proved practical and effective. I remain entirely open-minded about change to the definition. Founded upon that definition, there has been considerable debate as to whether the creation of an additional offence along the lines of *knowingly doing an act connected with or preparatory to terrorism* might be a useful addition to the statutory framework.

33 This has been discussed recently in Parliament. The *Terrorism Act 2006 section 5* provides a new offence of preparation of terrorist acts. Last year I expressed the view that there is clear evidence that such an offence would provide for some cases a way of dealing with suspects more acceptable in perceptual terms than *control orders*[6]. It is better that sanctions should follow conviction of crime rather than mere administrative decisions.

34 I shall follow carefully the way in which the new offence is applied. I would expect cases to come before the courts during the coming year.

[6] *Control Orders* are civil orders against terrorist suspects, introduced by the *Prevention of Terrorism Act 2005*

2 PART II OF THE ACT: PROSCRIBED ORGANISATIONS AND THE PROSCRIBED ORGANISATIONS APPEALS COMMISSION.

35 I have continued to take a close interest in the operation of the regime of proscription of organisations and the appeals process. As reported last year, I have received some strong representations that proscription should form no part of the law, indeed that there should be no special criminal justice provisions targeted against politically motivated groups and crimes, with their consequence of reduced rights for participants in such activities.

36 In 2005 there were very few representations to me or comments of any kind about the proscription regime. This is probably because of changed perceptions about the nature of Al Qaeda. There seems to be general public acceptance that the proscription of dangerous organisations is proportionate and necessary. It can be difficult for the authorities to keep track of proscribed organisations and their members. On the whole members do not carry membership cards. Those connected with Usama Bin Laden and Al Qaeda are part of a shadowy international political conspiracy in which the absence of any clear structure in their organisations is capable of disguising strongly shared lethal purpose. The task of the security services in keeping up with changes within this security-aware loosely knit terrorist confraternity can be extremely difficult. There is always the risk of error, whatever the quality of operations and research.

37 On the other hand, the effectiveness of the Joint Terrorism Analysis Centre (JTAC), a multi-agency approach to information and evidence, shows considerable care and success in the obtaining, preparation and analysis of material by the public service. Taken alongside the 'Contest Strategy' pursued by the control authorities, JTAC's work provides significantly towards effective public protection.

38 The grounds of proscription have been amended by *Terrorism Act 2006 section 21*. 'Glorification' of terrorism has been added as a basis for proscription. It remains to be seen how much difference this makes in practice: I tend to think that it will make little difference. *Section 22* has the sensible effect of preventing a group of people evading proscription by simply changing the name of their group.

39 *Schedule 2 of TA2000* sets out the list of proscribed organisations. Since the beginning of 2002 there have been changes. 4 organisations were added on the 1st November 2002[7], and a note concerning one of those 4 was added on the same date[8]. A further 15 were added by Order on 14 October 2005. No organisations have been removed during the period 2002-2005. 54 organisations are scheduled, of which 14 have their origins in Northern Ireland and/or Ireland.

40 A working group exists within the government service at which all the interested parties meet and scrutinise proscriptions.

41 The group reviews all proscriptions every 6 months in the light of intelligence and other information, all of which is quality assessed. The Foreign and Commonwealth Office is involved in the process, and I am satisfied that they make efforts to and do filter out groups with no real international perspective. Nevertheless the FCO wants to send out a clear signal that the United Kingdom does not welcome terrorists, and proscription is a useful flag in that signal. They are conscious of the human rights implications of rendering unlawful membership of political organisations whose targets are well outside the UK. The prospect of further proscriptions continues, though subject to the Parliamentary affirmative resolution procedure.

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[7] SI 2002/2724, arts 1 and 2

[8] ibid. art 3

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

43 There is some concern that the UK government occasionally is inflexible in its attitude to changing situations around the world, with reference to proscription. An example of this is the Iran opposition group commonly known as the PMOI. They claim to have disarmed in 2003 to become a political organisation dedicated to the reform of government in Iran. They certainly have significant Parliamentary support across parties at Westminster. I am sure that the group referred to above will give serious examination to whether the PMOI really should remain proscribed.

44 Subject to satisfaction with the system of law provided to safeguard organisations against arbitrary proscription and mistakes, I have concluded that the retention of proscription is a necessary and proportionate response to terrorism.

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

46 The system of law governing proscription is subject to the jurisdiction of the Proscribed Organisations Appeal Commission [POAC], established under *section 5 of the TA2000*.

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

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

47 *Schedule 3 to TA2000* gives the basic requirements for the constitution, administration and procedure of POAC. One of the three members sitting on a POAC hearing must be a current or past holder of high judicial appellate office. The other members are not judges, and are appointed by the Lord Chancellor. Perceptually it is preferable for judicial members to be serving rather than retired judges.

48 Appointment procedures should follow as closely as possible the new system for the appointment of senior judges.

49 POAC sits in public in Central London, but is able to hear closed evidence in camera and with the applicant and their representatives excluded. Where an organisation's appeal to POAC has been refused, a party to that appeal may bring a further appeal to the Court of Appeal (or its Scotland and Northern Ireland counterparts) on a question of law with the permission of POAC or the Court of Appeal.[9] There may also be an appeal on a question of law in connection with proceedings brought before POAC under the *Human Rights Act 1998*, by virtue of *sections 6(1) and 9 of TA2000*. The procedural

[9] The Court of Appeal (Appeals from Proscribed Organisations Appeal Commission) Rules 2002

rules for appeals from POAC to the Court of Appeal require that the Court of Appeal must secure that information is not disclosed contrary to the interests of national security. This enables the Court of Appeal, like POAC, to exclude any party (other than the Secretary of State) and his representative from the proceedings on the appeal[10].

50 Pursuant to *TA2000 Schedule 3 paragraph 7*, special advocates are appointed by the Law Officers of the Crown *"to represent the interests of an organisation or other applicant in [the] proceedings ..."*[11]. They are selected for the purposes of this legislation from advocates with special experience of administrative and public law, as is right in this context. In my reports[12] on the working in 2003 and 2004 respectively of the detention provisions contained in *Part 4 of ATCSA2001* I made recommendations that there should be training of special advocates, and some suggestions as to how such training might be organised and how the choice of special advocates might be widened. The same applies in the POAC context. Recently these views have been accepted broadly by the government[13]. I feel that there should now be rapid progress on this, especially given the continuing role of special advocates under the Prevention of Terrorism Act 2005[14].

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

52 Thus they may face the difficult task of being asked by or on behalf of those whose interests they are instructed to serve to present facts or versions of events in relation to which there is the strongest contradictory evidence, but evidence which they are not

[10] See rule 4

[11] Paragraph 7(1)

[12] www.homeoffice.gov.uk/ [follow 'terrorism' and 'reports' links]

[13] See Lord Falconer of Thoroton L.C., House of Lords Hansard for the 3rd March 2005, Col 420

[14] See Schedule paragraph 7

permitted to reveal in any form. Those whose interests they represent can and in practice so far do have their own lawyers too, but those lawyers are excluded from closed evidence and closed sessions of POAC. Special advocates have a difficult road to follow, and as much help as possible should be given to them in organising the material with which they have to deal.

53 I have commented in the past that it would be helpful if in all cases the special advocate were able to call on a security cleared case assistant familiar with the files. This would speed the preparation of the cases, and assist in analysing disclosure and admissibility issues. This comment is very important for the involvement of special advocates in hearings concerning control orders pursuant to the *Prevention of Terrorism Act 2005*[15]. I understand that practical steps have now been taken to allay this concern.

54 Amnesty International, Liberty and others take a very straightforward view of POAC and its sister organisation the Special Immigration Appeals Commission [SIAC], which dealt amongst other things with the detention provisions now removed from *ATCSA2001*. This view is that international and European human rights law do not permit of a jurisdiction in which an individual or organisation is not told the nature of all the evidence to be deployed against them. That approach begs certain obvious questions about national security and the need for the continuing use of material gained from hard-won intelligence in relation to alleged terrorists. I do not take it as my task to determine whether there is justification for the POAC procedure, but rather to advise as to whether the procedure provided works and can be regarded as fair. The judgment of Richards J in the *Kurdistan Workers' Party Case*[16] sets out with estimable clarity the continuing foundation of legality provided by the POAC system of law.

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[15] The role of special advocates is provided for in the Schedule 3, paragraph 7.

[16] R (on the application of the Kurdistan Workers' Party and others) v Secretary of State for the Home Department, 17th April 2002, Administrative Court (Richards J) [2002] EWHC 644 (Admin)

55 For the specific purpose of POAC proceedings, I am satisfied that the special advocate system works rigorously in practice. It is viewed with interest in other jurisdictions.

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

57 Like many laws if used unwisely, absurd results could follow theoretically. As I have suggested before, a harmless but disturbed individual of a kind familiar in the outer reaches of politics could find himself guilty of an offence if he shouted in a street a profession of membership of one of the more obscure proscribed organisations even if nobody understood him and it was a delusion. Each of those wearing t-shirts at a demonstration of young people with a genuine belief that the PMOI has been proscribed wrongly could face prosecution as 'arousing reasonable suspicion that he is a supporter of a proscribed organisation'.The statistics appended as Annex C to this report show that in reality these offences were prosecuted rarely in 2005.

58 I shall continue to observe closely the application of this part of the Act.

3 PART III OF THE ACT: TERRORIST PROPERTY

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

60 In so far as the following paragraphs contain once again a repetition of previous reports, this is to provide a reasonably complete review and to obviate reference to old material.

61 The offences provided under *sections 14 to 19* impose considerable responsibilities on members of the public. They include the offence of money laundering as very broadly defined in *Section 18*. For example, an estate agent collecting rent from office premises might be totally unaware that the ultimate beneficiaries of the profits are a company operating for the benefit of a terrorist organisation. If charged, the statutory defence made available under *Section 18(2)* would place a reverse burden upon him to show "that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property". The maximum sentence on indictment for a money laundering offence is 14 years' imprisonment.

62 *ATCSA2001* inserted new *sections 21A and 21B* into the *TA2000*. These have been in force since the 20th December 2001. They deal with the regulated sector, as defined in new *Schedule 3A*. The increasing concerns in businesses in the regulated sector about difficulties of compliance, and the serious consequences that may flow from errors of judgment or even failures to notice, are evident from the many conferences organised on the subject, numerous publications, and the self-protective activities of accountancy firms and other professionals. Compliance is now a discrete and busy discipline in the

sector. Generally issues of money-laundering and similar type information are being taken extremely seriously, and the aims of the various items of legislation in this broad context are recognised and effective.

63 The statistics at Annex C to this report show some use of the offences under *Part III*. In 2005 1 person was charged in respect of funding arrangements (5 in the previous year) for terrorism purposes. In my judgment the rationale for the introduction and retention of this group remains sound.

64 The statistics on the seizure and forfeiture of terrorist cash are at Annex D. In my view these remain useful and necessary powers, and there is no evidence of defect in the working of the provisions. The amount of money seized in 2005, just £9,318-13, is small. However, it has to be borne in mind that most terrorist devices are extremely cheap to make given the necessary skills; and that large scale transfers of cash can be broken down relatively easily into smaller sums, for example as remittances to named individuals in South Asia.

4 PART IV OF THE ACT: TERRORIST INVESTIGATIONS

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

66 Cordoning may occur as a matter of urgency under the direction of any constable, but has to be recorded fully and placed under the supervision of a police officer of at least the rank of superintendent as soon as reasonably practicable. The maximum initial period for designation is 14 days, subject to extension to a total maximum of 28 days (*section 35(5)*). Police powers are provided by *section 36* to clear persons and vehicles from cordoned areas. Maximum sentences for offences in relation to offences of failure to comply have been increased from three months to 51 weeks.[17]

67 Cordoning was used for investigation and public protection in the aftermath of the London events of the 7th and 21st July 2005.

68 My conclusions are the same as for 2002-2004. I have received no representations during 2005 in relation to *sections 32 to 36*. They are proportional and necessary, and are working satisfactorily. The statistics at Annex F are self-explanatory and what one would expect, given the events of last July.

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

[17] Criminal Justice Act 2003, Schedule 26, para55

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

70 A cadre of Circuit Judges has experience of dealing with applications under this part of the Act. The judges concerned have some specific training. Problems of court building security have been addressed apparently successfully by the provision of secure storage facilities in the court building, and of secure recording of hearings. Reasons are given at the conclusion of hearings.

71 I have concluded again this year that the *Schedule 5* procedure works smoothly. I remain confident that rigorous judicial inquisition and the regular experience of presenting police officers act as quality control mechanisms.

72 I ask again for the views of police and lawyers who have been involved in the procedure. As last year, I have received no complaints on this score. The Metropolitan Police view is that the judges involved are far from acquiescent, but rather are aware of the implications of their orders and scrutinise carefully the material placed before them.

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

74 Once again I have received no representations of concern about the operation of *schedule 6*. There is now well established cooperation between the police and the financial services industry.

75 In addition, an effective system of law is needed to empower the obtaining of financial information under compulsion where necessary, subject to solid judicial protection against arbitrariness. That appears to be accomplished by *Schedule 6*. Most other countries now have similar provisions. An increasing level of international co-operation on the financial front will prove increasingly fruitful in the countering of terrorism.

76 I have concluded that *Schedule 6* as amended works well and is an essential part of the legislation.

77 *Section 38A*, together with *Schedule 6A*, deals with account monitoring orders. An account monitoring order may be made only by a Circuit Judge or District Judge (Magistrates' Courts)[18] or equivalent in Scotland and Northern Ireland. The schedule makes it clear that there must be an evidential basis for the Order if it is to be made: speculation or a 'fishing expedition' will not do. The measure and the control of its use are necessary and proportionate.

78 *Section 38B* covers information about acts of terrorism. It is widely drawn. Its clear intention is to secure the maximum possible information so as to avoid acts of terrorism that might otherwise be prevented. In my view it remains necessary and proportional, given the danger to human life and to the economy posed by terrorist acts.

[18] District Judges (Magistrates' Courts) were added by the Courts Act 2003, section 65 and Schedule 4 paragraph 11

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

5 COUNTER-TERRORIST POWERS: ARREST AND DETENTION; STOP AND SEARCH; PARKING; PORT POWERS

80 *Part V* of the Act contains counter-terrorism powers available to the police to deal with operational situations. *Section 44* in particular continued to provoke debate in 2005, as before.

81 *Section 41* provides constables with powers of arrest without warrant. These powers replace those formerly given by *Section 14 of the PTA*. The ordinary powers of arrest available to the police under the *Police and Criminal Evidence Act 1984 [PACE]* require them to have reasonable grounds for suspecting that the person concerned has committed or is about to commit an offence. In his seminal report of terrorism legislation Lord Lloyd of Berwick considered[19] that the pre-emptive power of arrest under *Section 14(b) of the PTA* was useful, because it enabled the police to intervene before a terrorist act was committed. If the police had to rely on their general powers of arrest, he argued, they would be obliged to hold back until they had sufficient information to link a particular individual with a particular offence. In some cases that would be too late to prevent the prospective crime[20]. However, Lord Lloyd expressed concern that the *Section 14(b)* power under the PTA contravened a fundamental principle that a person should be liable to arrest only when he was suspected of having committed, or being about to commit, a specific crime. He was especially mindful of *Article 5(1) (c) of the European Convention on Human Rights*, now part of our domestic law. Since then most ECHR rights have been capable of assertion in British courts.

[19] 1996 Cm 3420, Chapter 8

[20] 1996 Cm 3420 paragraph 8.5

82 *Section 41 of the TA2000* was the government's response to the concerns expressed by Lord Lloyd and others. The government at that time rejected his view that it was necessary to introduce a new offence of being involved in the preparation etc. of an act of terrorism[21]. As stated above, such an offence is included now by *Terrorism Act 2006 section 5*, and to an extent by the associated offences contained in *sections 6-8.*

83 The basis for the power of arrest, set out in *Section 41* subject to definition of 'terrorist' in *section 40*, works satisfactorily.

84 *Section 41* and the accompanying procedural system for detention set out in *Schedule 8*[22] were designed to bring the UK into compliance with *ECHR Article 5(3)-(5)* following the decision of the European Court of Human Rights in 1988 the case of *Brogan v UK*[23] that there had been a breach of *Article 5(3)* where a person had been detained for 4 days and 6 hours without judicial authorisation. In its decision on the narrow facts of that case the Court held that the power of arrest had been justified, in the light of the fact that on arrest the applicants had been questioned immediately about specific offences of which they were suspected. Substantially as a consequence of that case the UK government derogated from the relevant parts of the ECHR and of the UN International Convention on Civil and Political Rights – clearly not a desirable position. There have been various procedural changes to Schedule 8, none of substantive concern.[24]

85 Annex E shows the level of arrests under the TA2000 as a whole in 2005. Once again this year, I consider the level to be proportionate to perceived risk, especially when set against the high level of vigilance operated by the statutory services and the large number of stops at ports of entry.

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

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

[23] Brogan v United Kingdom [1988] 11EHRR193

[24] See Courts Act 2003, section 109(1), Schedule 8 paragraph 391; section 109(3), Schedule 10

86 Detention under *section 41* and under *Schedule 7* is subject to the regime set out in *Schedule 8*. Codes of Practice have been issued under *Schedule 8*. By *section 306 of the Criminal Justice Act 2003, Schedule 8 of the TA2000* was amended to allow up to 14 days' detention for the purposes of questioning and associated investigation. This has now been extended to 28 days by the *Terrorism Act 2006 sections 23-24*. I shall look with interest at the adequacy or otherwise of this extended period and the strengthened judicial controls placed upon it. It was contested hotly and repeatedly in both Houses of Parliament.

87 The *Schedule 8* powers are subject to a system of law supervised by District Judges (Criminal) with particular knowledge and experience of the system for extension of detention under *section 41* and *Part III of Schedule 8*. Currently they are led for this purpose by Judge Workman, the Chief Magistrate. These provisions apply too to persons stopped at a port and dealt with under *Schedule 7*, and subsequently arrested under *section 41*. The number of district judges carrying out this important work is small, and they sometimes have to travel at very short notice to distant parts of the country. This system works well.

88 Senior circuit judges will supervise 14-28 day detentions, pursuant to the *Terrorism Act 2006*.

89 *Section 42* permits the search of premises under a warrant issued by a justice of the peace on the application of a constable if the justice of the peace is satisfied that there are reasonable grounds for suspecting that a person "falling within *Section 40(1)(b)* is to be found there". There has been no evidence presented to me that this provision is misused. However, as in the three previous years I observe that it is something of an oddity. The justice of the peace has to apply a familiar objective test ("reasonable

grounds for suspecting") seen generally in connection with criminal offences, to confirm that a constable justifiably possesses an honest suspicion ("reasonably suspects") of the presence on premises of a person whose activity is not necessarily criminal in that it falls within *Section 40(1) (b) rather than Section 40(1) (a)*.

90 I turn next to *sections 43-45. Section 43* provides stop and search powers connected with *sections 41 and 42*. *Sections 44-47* provide stop and search powers in relation to persons and vehicles within specified geographical areas, for the purpose of seizing and detaining articles of a kind that could be used in connection with terrorism. It is an offence not to comply. Such stops and searches can occur only within an area authorised by a police officer of at least the rank of or equivalent to assistant chief constable.

91 In 2003 and 2004 I received many complaints, some from organisations and others from individuals about the operation of *sections 44 and 45*. These and some litigation have been taken seriously by the police. As a result, I have been consulted upon and have been able to contribute to work towards providing a clearer understanding throughout police forces of the utility and limitations of *sections 43-45*.

92 The crucial thing is that police officers on the ground, exercising relatively unfamiliar powers sometimes in circumstances of some stress, should have a greater degree of knowledge of the scope and limitations of those powers. Terrorism related powers should be used for terrorism related purposes; otherwise their credibility is severely damaged. An incident on the 31st March 2006 at a hospital in Staffordshire yet again highlighted this. In a diverse community the erroneous use of powers against people who are not terrorists is bound to damage community relations.

93 During 2005 I have discussed the nature and use of section 44 and section 45 with police and others wherever possible.

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

95 In contrast, *section 44* provides for the authorisation of geographical areas for the purposes of *section 45 searches*, which do not have to be founded on reasonable suspicion. Authorisations may only be given by an ACPO rank officer[25], and solely "*if the person giving it considers it expedient for the prevention of acts of terrorism*".[26] Pursuant to *section 46* the Secretary of State must be informed as soon as possible, and authorisation lapses if not confirmed by the Secretary of State within 48 hours[27]. Such authorisations have been used extensively in 2005, unsurprisingly in the immediate aftermath of the events of the 7th and 21st July.

96 Although available in Scotland, to date section *44 powers* have never been authorised by a Scottish police force. I had anticipated that they might have been deployed for the 2005 meeting of the G8 Summit in Scotland. They were not. London apart, I doubt that there is evidence that Scotland is less at risk from terrorism than other parts of the country. This perpetuates the question of why section 44 is needed in England and Wales if it is not required in Scotland. There is no other provision specific to Scots Law to explain the difference of approach. At the very least this demonstrates that other powers are on the whole perfectly adequate for most purposes.

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[25] Sections 44 (4)-(4C)

[26] Section 44(3)

[27] Section 46(4)

97 My view continues as expressed a year ago - that I find it hard to understand why *section 44* authorisations are perceived to be needed in some force areas but not others with strikingly similar risk profiles. This view has not been affected by the events of July 2005.

98 I remain sure that *section 44* could be used less and expect it to be used less. There is little or no evidence that the use of *section 44* has the potential to prevent an act of terrorism as compared with other statutory powers of stop and search.

99 The Home Office scrutinises applications critically. It is a sound approach for them to refuse unless the circumstances are absolutely clear.

100 In my view *section 44* and *section 45* remain necessary and proportional to the continuing and serious risk of terrorism. London is a special case, having vulnerable assets and relevant residential pockets in almost every borough, and fairly extensive use is understandable. However, I emphasise that they should be used sparingly. Evidence of misuse, especially in an arbitrary way, will not find favour with the courts and could fuel demands for repeal. It involves a substantial encroachment into the reasonable expectation of the public at large that they will only face police intervention in their lives (even when protesters) if there is reasonable suspicion that they will commit a crime.

101 A Home Office Circular[28] provides helpful further guidance in respect of the use of *section 44*. Its general emphasis is on the reduced use of the section only when necessary.

102 *Section 44* has been amended by the *Energy Act 2004 section 57* to allow authorisations by an officer of the rank of Assistant Chief Constable in the British Transport Police

[28] Circular 038/2004, 1st July 2004.

Force, the Ministry of Defence Police and the Civil Nuclear Constabulary. These are appropriate changes and are unlikely to cause any difficulty.

103 The National Centre for Policing Excellence is currently in the process of producing guidance for the Association of Chief Police Officers on all forms of stop and search. I have been interviewed in connection with this process, and have seen some drafts of what is likely to prove to be helpful material for all ranks. Interim guidance already issued by ACPO is being reviewed and will be included in the more general guidance to be issued about all stop and search powers. Readers of this report may find it helpful to refer to the judgment of the House of Lords in the case of *Gillan v Commissioner of Police for the Metropolis and another ([2006] UKHL 06)*.

104 *Sections 48-51* provide similar powers for the designation of areas by ACPO rank officers, in this instance to prohibit or restrict the parking of vehicles on roads specified in the authorisation. This is a proportionate provision in the public interest. As in past years, there is no evidence of excessive use, nor of insensitive use of prosecution for contravention. It is noted that possession of a disabled person's badge is not of itself a defence to a contravention offence.[29]

105 *Section 53* and *Schedule 7* provide for port and border controls. This remains a very important aspect of the *TA2000*. Last year I suggested that the number of random or intuitive stops could be reduced considerably. That view is entirely consistent with a policy and practical drive towards a stronger intelligence base for all counter-terrorism activity.

[29] Section 51(3)(4)

106 In my report a year ago I speculated that the trend towards some form of more unified ports, borders and counter-terrorism policing was gathering pace as part of the evolution of police organisation; and that perhaps the whole police service was approaching a period of reform and rationalisation? The Home Secretary has recently proposed considerable changes to the organisation of police forces in England and Wales. If that programme goes ahead in some form, I shall be vigilant to observe its effects on ports and borders policing.

107 Again this year I have visited several ports of entry in my capacity as reviewer; and whenever and wherever I travel privately I am sensitised and watchful of security issues.

108 My observations during visits to ports have included discussions with special branch officers and those from other control authorities. I have watched passengers being stopped and questioned under the powers, and vehicles being searched. This year too the ferry operators and others who form part of the Chamber of Shipping have been a strong and useful part of my research.

109 I have continued to take note of search arrangements developed for airports by TRANSEC, which is part of the Department of Trade and Industry and directly responsible for security policy and protocols at ports. TRANSEC is functioning successfully. Proper covert operations are enabled rather than frustrated.

110 In relation to *Schedule 7*, there is no requirement that the officer should have conceived any suspicion in the initial stages of an examination about the passengers, crew, vehicle or goods subject to the stop. This means that it is a wider power than is normally available to police, immigration or customs officers. I and past reviewers have commented before that the evident presence of port officers is a deterrent to terrorists.

This has not changed. Knowledge on their part that a port is manned efficiently and the subject of strong and well-informed vigilance is a significant inhibition against targeting that port.

111 Many examinations at ports are carried out after officers have received general or specific intelligence about a suspect, type of traveller, or characteristics of a suspected operation. Some are carried out as part of the work of gathering knowledge about individuals who have come to notice. Having watched the process, I am in no doubt that the trained and ingrained instinct of experienced officers still has real value. The 'intuitive stop' has the potential for catching a terrorist at work, though the 'strike rate' predictably is very low. That does not devalue the process. Different officers operate with their own 'feel' for what they see and hear. Most stops are of perfectly decent and innocent travellers. The intuition described is not the same as reasonable suspicion: much intuition cannot be rationalised. The continuation of the present system is a necessity in current circumstances, and can give rise to useful results, including intelligence gains, from time to time. Technology is continuing to improve, with consequent advantage to port officers and benefits of speed and unobtrusiveness to the travelling public. The ever more effective use of technology is to be encouraged.

112 In my view the terrorist traveller has at least as great a prospect of being caught at UK ports of entry as anywhere else. The sound use of intelligence means that intuitive stops are likely to play a diminishing role – though one must be ever mindful of their utility given the use by terrorist organisations wherever possible of 'clean skins', people with no past record of operational terrorist activity.

113 I remain convinced that, though they continue to have value in the hands of well-trained officers, the number of intuitive stops could be reduced significantly without any measurable increased risk of danger.

114 Despite some representations to the contrary, I am opposed to a suggested requirement to record all intuitive stops. Where a member of the travelling public is delayed for only a few moments, and is not removed from the general stream of passengers entering the country, the person concerned is almost always courteously questioned and responds without demur. The recording of momentary and very short stops would change the whole character of the procedure, and would cause delays of an unwelcome kind for the port operators. Of course, if the traveller is removed from the travelling flow and questioned at any length, records should be and are already kept.

115 Whilst the adequacy of accommodation for police at seaports and airports remains a matter of less than universal contentment, I have received fewer complaints this year than before. Nevertheless continuing attention needs to be given to the accommodation issue to ensure that the working of the Act is in no way compromised by a lack of decent facilities for law enforcement agencies. *Paragraph 14(1) (b) of Schedule 7*, whereby port managers can be required to provide at their own expense specified facilities, is always an available option.

116 I have received no complaints about the treatment of members of the public at ports in 2005. Other such complaints are made to the police and the Home Office. Most relate to being stopped at all, though I am sure from conversations at airports that there is general public acquiescence at present in the value of what might occasionally seem excessive vigilance in other circumstances.

117 Language difficulties do occur from time to time and will always be liable to cause occasional difficulties at ports of entry. Considerable sums are spent on the provision of interpreters, though the system is bound to be imperfect in some places. Passengers at some sea ports are often from large ethnic minority groups, and suitable interpreters of Arabic and other languages are not always available. The use of telephone-based interpretation facilities is now quite well developed, and a useful stop-gap. However, I have seen some evidence of less than satisfactory interpretation in situations where the authorities are under-staffed or hard-pressed. The provision of interpretation to a good standard is an important aspect of the protection of travellers against unjustified suspicion.

118 The closeness of working between police, Customs and immigration officers is excellent where the facilities and staff are adequate. However, I remain of the view that Customs officers in particular are thinly spread. On one occasion in March 2006 my own attempt to declare some gifts on arrival at Heathrow Airport from South Asia was met with a total absence of any evident Customs officers and a complete failure to operate of the telephone provided for the purpose alongside an apparently helpful notice for those wishing to declare goods. This kind of manpower weakness is no discouragement to terrorists. This is still a chorus complaint by special branch officers. The adequacy of staffing of HM Customs and Excise at and for ports of entry of all kinds is an important matter.

119 In my report a year ago I expressed concern on the subject of general aviation. It is possible to purchase, from reputable international companies, piloted flying hours in sophisticated executive jets capable of high speed travel from continent to continent. The risk of hijacking of such aircraft is not fanciful. Fractional ownership too is a subject of some concern. It is still my view these sectors should be fully subject to EU Security regulations[30] and to the UK National Aviation Security programme. Government and the aviation

industry have a high responsibility to ensure full passenger information and the effective international policing of such aircraft. The operators, wishing to retain their certifications and reputations, have a strong interest in full cooperation with the authorities.

120 Small general aviation remains a perennial cause of some concern, as it has from the beginning of my period as reviewer. The developing and high level of contact between local police forces and operators of small airfields and flying clubs is encouraging. The important thing is that there should always be a vigilant watch for the unusual and unexpected.

121 In addition, the Maritime and Coastguard Agency has a significant part to play in the policing of small ports and general aviation issues. The Agency should always be seen as a full participant in the stemming of the threat of terrorism.

122 Joint UK and French operations are now in being on both sides of the English Channel. These are designed to secure better quality of information sharing between the two countries, a freer flow of legitimate passengers, and the stemming of the tide of asylum seekers with little or no hope of success. This last aspiration is undoubtedly being achieved, with a large reduction in the number of illegal entrants through Dover and Folkestone, and the Channel Tunnel.

123 It is almost part of my litany to repeat in connection with aircraft and passenger shipping that manifests are a cause for concern. As has been said by me and previous reviewers again and again, the information provided by shippers and carriers is of great value to port officers. If police know who is on board an aircraft or vessel, or what is being carried, their knowledge is increased, and they may be able to further important

[30] EU Security regulation 2320 is the most obvious reference point.

enquiries. If the manifest information is inaccurate, inadequate and given a low level of importance by transport operators, a vital clue may be missed. Good manifest information can save lives.

124 For manifests to be given to the control authorities when the vessel arrives in the UK is not sufficient for even routine checks on the passengers to be made adequately. This is not a national problem. The sloppiness of the international rules on manifests is not justifiable in the present global terrorism climate. This problem was well illustrated by a recent BBC *File on Four*[31] programme, to which I was able to contribute.

125 As in previous years, given the fluidity of terrorist organisations, I trust that attention to crew-related terrorism issues is kept under continuing review and the advice of the police and security services heeded. TRANSEC procedures have contributed to some diminution of concerns about aircraft crews.

126 *Schedule 7* of the *TA2000* sets out the powers of officers performing port and border controls. The powers under the Act are circumscribed in purpose by *paragraph 2(1)* of the Schedule, to determining if the person stopped *"appears to be a person falling within section 40(1)(b)"* [i.e. a 'terrorist'] whether there are grounds for suspicion or not.

127 Overall I am satisfied that in 2005 the port powers and the checks and balances on those powers worked well and remained necessary. Recording systems are sound and accountable. Each port examination (as opposed to short stop) is recorded in written form, and superior officers examine written records routinely. Special Branch officers generally function to a very high professional standard.

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[31] Radio 4; 14th March 2006

6 PART VI OF THE ACT: ADDITIONAL TERRORIST OFFENCES

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

129 There have been no prosecutions under the section since its enactment. Lord Lloyd reported that the precedent for this offence applicable only in Northern Ireland had never been used, and presented real evidential difficulties[32] . The government responded in its consultation paper prior to the *TA2000*[33] with reference to international terrorism and its recruitment methods.

130 In my reports for the previous three years I expressed the view that the events of September 11th 2001 and evidence available since then demonstrate that international terrorists have recruited young people in the UK, with the potential for use against the UK and around the world. The demonstrable evidence previously was that two British nationals born and educated in the UK were recruited and responsible for a suicide bombing in Israel in 2003. The events of July 2005 in London have demonstrated that it is not only recruitment that is the problem. Misplaced idealism, or fanaticism as one might call it, appear to have led some young British men to seek out training in terrorism techniques. This is of extreme concern, perhaps the greatest challenge facing our civil society at present.

131 Any person who invites, incites or encourages young people to receive instruction or training in terrorist violence (wherever in the World such instruction or training was to be given) is guilty of an offence[34] . In the present international climate of general terrorist

[32] CM3420 Volume 1 paras 14.26-14.28

[33] CM4178 para 12.12

[34] Section 54(3)

threat this provision is proportionate and necessary. The threat of terrorist use of weapons capable of injuring whole communities is serious enough to warrant the measures of which sections 54-55 are part. New offences in relation to preparation for terrorism, training and training camps are included in the *Terrorism Act 2006 sections 5-9*. Those will be the subject of review at the end of 2006.

132 I remain satisfied that the existing provisions are potentially very useful and effective for dealing with aspects of international terrorism, and are likely to result in prosecutions in the years ahead.

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

134 It is not part of my terms of reference to debate the merits or otherwise of reverse onus provisions of the type contained in sections 57 and 58, unless they do not work satisfactorily. They were considered by the House of Lords in *R v DPP ex p Kebilene*.[35] The working of sections *56-58* is satisfactory, and they remain a necessary and proportionate part of the legislation.

135 *Sections 59-62* provide for offences of inciting terrorism overseas. These provisions incorporate the substance of what was formerly *Sections 5-7* of the *Criminal Justice (Terrorism and Conspiracy) Act 1998*. Whilst the provisions are wide, the consent of the DPP is required before a prosecution can be brought. With the protection of the requirement of such consent, the existence of an offence to criminalize, for example, incitement by a person within the UK to murder a British ambassador abroad is a

[35] [2000] 2 AC 326

proportionate response. As I observed in my two previous reports, the death of a senior British diplomat and others in Istanbul in 2003 has demonstrated the reality of our worst fears that such events may occur.

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

137 *Section 64* has been repealed.

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

138 I reported earlier in 2006 on the working of Part VII in 2005, so that my report could be available prior to the parliamentary debates on the *Terrorism (Northern Ireland) Act 2006.*

139 That report is very recent, and I cannot usefully add anything of substance to it here. Although I produced the *Part VII* report separately for legislative convenience and clarity, it should be read too as part of this review.

140 At the request of Ministers, I have provided a separate opinion on the future/replacement of the Diplock courts after July 2007.

141 There is no doubt that the public in Northern Ireland want no return to the violence of the past, and as normal a criminal justice settlement as is consistent with good government and civil order.

8 PART VIII OF THE ACT: GENERAL PROVISIONS

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

143 Again this year *sections 114-116* have provoked no complaints of which I am aware, either as inadequate or as providing too much power to police officers.They seem to me to be a necessary part of counter-terrorism police powers.

144 *Section 117* requires the consent of the DPP or the Attorney General to prosecutions in respect of most offences under *TA2000*. This is an important safeguard against the arbitrary use of wide powers that could be misused in the wrong hands. The effectiveness of consent to prosecute as a protection against arbitrariness depends on far more than the astuteness and level of knowledge held by the DPP or Attorney General concerned. It depends too on the accuracy and integrity of the information provided for the purpose of the exercise of consent.

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

146 *Sections 119 to 125* are largely formal or definitions consequent upon the Act as a whole. I have reviewed them fully, and have no basis for suggesting that they do not work to meet purpose.

147 *Section 126* establishes the mechanism leading to this report. It provides that the Secretary of State shall lay before both Houses of Parliament at least once in every 12 months *'a report on the working of this Act'*. In addition to producing separate Northern Ireland reports as described above, I intend to keep under review whether there may arise the need to produce any supplementary reports either on the Act as a whole or on issues arising under it.

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

9 SCHEDULES TO THE ACT

149 All the schedules have been the subject of amendment and partial repeal.

150 Schedule 1 deals with transitional matters, and has served its purpose.

151 Annex G lists those organisations currently proscribed under *Schedule 2,* pursuant to *section 3.*

152 *Schedule 3* provides for the constitution, administration and procedure of POAC.

153 *Schedule 3A* defines the regulated sector and supervisory authorities, and is discussed above.

154 *Schedule 4* was amended by *ATCSA2001*. The schedule covers forfeiture, restraint and connected compensation orders. It remains a necessary part of the Act, and works.

155 *Schedules 5 and 6* were amended by ATCSA2001. The effect of those amendments has not led to any representations to me since my last report. If there have been any particular difficulties I should be pleased to hear of them and give them full attention in the coming year.

156 *Schedule 6A* introduced the system of account monitoring orders. They can be obtained only by order of a circuit judge or equivalent, and on grounds set out in reasonably clear terms in paragraph 2. Their potential as a route towards useful evidence is self-evident.

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[36] See Schedule 8 paragraphs 10-15, 20

157 *Schedule 7* (port powers) is discussed above. It too was amended, albeit not extensively, by *ATCSA2001*.

158 *Schedule 8,* concerning the detention of terrorist suspects under *section 41 or Schedule 7*, is discussed above. A significant amendment introduced by *ATCSA2001* allowed authorisation for the obtaining from a detained person of fingerprints, restricted to cases of refusal of identity or where there are reasonable grounds to doubt the claimed identity[36]. Used fairly, this is a proportional and reasonable provision, and should work adequately. Three years ago I recommended that statistics should be kept by the Home Office of the use of this power. Frustratingly, I have yet to be provided with them: they should now be made available.

159 The period of maximum and judicially supervised detention has been extended to 28 days, as described above. I should welcome information about the effect on individual cases, if the 28 day detention provision is used.

160 *Schedules 9-13* relate to Northern Ireland. They are covered within the ambit of my separate report referred to above.

161 The remaining schedules, *14 and 15*, have not given any cause for comment.

10 SCOTLAND

162 My travels as reviewer take me reasonably frequently to Scotland. I have been there again in the past year. Scottish special branches have close working relationships together, and I am impressed by their commitment to sharing information. They operate well at both the macro and micro level. There is a very impressive level of partnership between police and coastal communities in parts of Scotland, with reference to any terrorism threat from incoming boats.

163 The frequent presence in Scotland of members of the Royal Family has given Scottish forces a long-standing expertise in anticipating and analysing any terrorist threat, as well as of the necessary close protection issues. Their ability to operate without *section 44* has been noted above.

11 CONCLUSION

164 My conclusions in general are as before. As always, throughout my travels, reading and discussions in connection with the *TA2000* I have been fully conscious of the delicate nature of the balance between political freedoms and the protection of the public from politically driven violence and disorder. This balance has been highlighted further by the heated and much repeated Parliamentary debates on the *Terrorism Act 2006.*

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

ANNEX A

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

Walter J Ablett

Lord Adebowale

Dr Samina Ahmed, International Crisis group, Pakistan

Amnesty International EU, Brussels

Amnesty International UK

Dr A S Bakarr

Bangla Desh Bank, Dhaka

Birnberg Peirce Solicitors

Dr Andrew Blick, University of Essex Human Rights Centre

Mr T Boyle

Juge de Bruguiere, Paris

Robert Budd

Canadian Parliament, Standing Committee on Justice

Les Carter

Centre for policy Alternatives, Sri Lanka

CENTREX (National Centre for Policing Excellence)

Chamber of Shipping

M. Comet, Paris

Ian Connolly

Conservative Party

Eden Intelligence

European Committee for the Prevention of Torture (Council of Europe)

David Fitzpatrick (Hong Kong)Stephen J Franklin

Dr Neil Frazer

University of Glamorgan

Mr N Hayes

Richard Heller

The Hindu newspaper, India

The Hindustan Times

Hizb ut-Tahrir Britain

Home Affairs Committee, House of Commons

Home Office Ministers and officials

Human Rights Commission, Sri Lanka

Howard League

Desiree Howells

M. Huet, Paris

Human Rights Watch

Independent Monitoring Commission

Islamic Forum Europe

Joint Committee on Human Rights

Joint Terrorism Analysis Centre (JTAC)

JUSTICE

Douglas Kedge

Liberal Democrat Party

Liberal Institute (Councillor Rob Wheway)

Liberty

Lydd Airport Action Group

James A Malcolm

Mrs Karen Maloney

Mrs D Matra

Graham Stewart McBain

Kevin McNamara

Kings College London, the International Policy institute

David Mery

Metropolitan Police

National Terrorism Finance Investigation Unit

Jim Nicholson

Northern Ireland Office Ministers and Officials

Northern Ireland Public Prosecution Service

The Bishop of Oxford

Pakistan, Ministers and senior officials, Islamabad

Dr John Pearse

PICTU (Police International Counter Terrorism Unit)

His Honour Judge Playford Q.C.

Police Service of Northern Ireland

Pysdens Solicitors (Samuel Perez-Goldzveig)

Royal College of Defence Studies

Royal College of Psychiatrists

Dr Ajai Sahni, Institute for Conflict Management, India

Security Service

South Wales Police

Andrew Stobart

Strathclyde Police

Sussex Police

The Times of India

Glenmore Trenear-Harvey

Maitre Tubiana, Paris

Tyndallwoods Solicitors

UK High Commission, Dakha, Bangla Desh

UK High Commission, Delhi, India

UK High Commission Islamabad, Pakistan

UK High Commission, Colombo, Sri Lanka

Professor Clive Walker

Jill Watt

Clive Webber

Mrs N F Zaidi

ANNEX B

PORTS VISITED

Belfast City Airport

London City Airport

London Gatwick Airport

London Heathrow Airport

London Jet Centre

London Stansted Airport

Manchester Airport

ANNEX C

Persons detained in Great Britain under any legislation and charged with offences contained specifically in the Terrorism Act (Section 41)

	Jan-June 2005	July-Dec 2005	Total
Section 11 (Membership)	1	1	2
Section 12 (Support)	0	0	0
Section 13 (Uniform)	0	1	1
Section 15 (Fund raising)	0	4	4
Section 16 (Use and possession)	0	6	6
Section 17 (Funding arrangements)	0	1	1
Section 18 (Money laundering)	0	0	0
Section 19 (Disclosure of information: duty)	0	0	0
Section 38B (Information about acts of terrorism)	0	10	10
Section 54 (Weapons training)	0	0	0
Section 56 (Directing Terrorist Organisation)	1	1	2
Section 57 (Possession for Terrorist purposes)	0	13	13
Section 58 (Collection of information)	1	7	8
Schedule 7 para 18 Sec 1(a) Fail to comply when examined.	0	2	2
TOTAL NUMBER OF CHARGES	**3**	**43**	**46**
TOTAL NUMBER OF PERSONS CHARGED	**2**	**24**	**26**

Source: Metropolitan Police Service

ANNEX D

SEIZURE AND FORFEITURE OF TERRORIST CASH IN GREAT BRITAIN

PERIOD	No. OF SEIZURES	RESULT
1st Quarter 2005	0 seizures	
2nd Quarter 2005	0 seizures	
3rd Quarter 2005	1 seizure	£9,318.13
4th Quarter 2005	0 seizures	

ANNEX E

ARRESTS UNDER THE TERRORISM ACT 2000

1 January 2005 ñ 31 December 2005

	Total Arrests	Arrests after Examination	Charged	Terrorism Act	Other Legislation	HM Immigration Service	Irish Terrorism	International Terrorism	Domestic Terrorism
January	9	0	0	0	0	0	0	8	1
February	11	3	2	0	2	0	1	10	0
March	11	1	4	2	2	0	1	10	0
April	7	0	2	0	2	0	0	3	4
May	5	0	0	0	2	0	3	2	0
June	11	0	3	0	3	1	2	9	0
July	94	5	20	10	12	2	4	90	0
August	35	4	4	3	1	2	4	30	1
September	10	1	2	1	1	0	0	9	1
October	30	0	7	4	6	5	0	30	0
November	20	0	5	5	4	0	6	14	0
December	23	2	6	2	5	0	0	22	1
TOTAL	**266**	**16**	**35**	**27**	**40**	**10**	**21**	**237**	**8**

ANNEX F

CORDONS UNDER SECTIONS 32-36 GREAT BRITAIN IN 2005

Date	Region	Duration
29 January	Austin Friars, City of London	5 mins
1 February	Hammersmith and Fulham	38 mins
24 February	London Bridge, City of London	44 mins
4 March	Green Lane, N4	1 hour 1 min
22 March	Cullum Street, City of London	49 mins
23 March	Sutton Hospital	N/K
12 April	Fenchurch Street, City of London	33 mins
23 April	Hammersmith and Fulham	1 hour 41 mins
27 April	Fleet Street, City of London	33 mins
28 April	Lower Thames Street, City of London	41 mins
20 May	Leghorn Road, Brent	5 mins
23 May	Wembley Police Station	2 hours 53 mins
23 May	Elm Grove Road, W5	1 hour 35 mins
31 May	Hammersmith and Fulham	1 hour 11 mins
13 June	Queens Walk, Kingsbury	1 hour 17 mins
16 June	Richmond Terrace, Westminster	38 mins
19 June	Spur Road, Westminster	11 mins
23 June	Savoy Court, Westminster	53 mins
23 June	Horseguards Ave, Westminster	19 mins
30 June	Hammersmith and Fulham	1 hour 13 mins
4 July	Kingston	N/K
7 July	Aldgate, City of London	9 days 15 hours
7 July	Dock St/Highway/Commercial St/ Whitechapel Rd, Tower Hamlets	10 hours
7 July	Chevening Road, Brent	4 hours 19 mins
7 July	Mansell Street, City of London	1 Hour 50 mins
7 July	Fenchurch Street, City of London	40 mins
8 July	Holly Road, Twickenham	1 hour 14 mins
8 July	Liverpool Street, City of London	42 mins
8 July	Bishopsgate, City of London	49 mins
8 July	Cannon Street, City of London	35 mins
8 July	Bishopsgate, City of London	36 mins
8 July	Whitehall Place, Westminster	31 mins
8 July	Richmond Fire Station	28 mins
8 July	Broad Lane/Ferry Lane, N15	22 mins
9 July	High Road, N22	25 mins
11 July	Whitehall, Westminster	1 hour 2 mins
11 July	Whitehall Court, Westminster	13 mins

Date	Region	Duration
11 July	Buller Rd/Gladstone Rd, N22	54 mins
11 July	Tottenham Lane/Elmfield Ave, N8	48 mins
11 July	Alfoxton/Green Lane, N4	30 mins
11 July	Kingston	N/K
12 July	Hammersmith and Fulham	40 mins
12 July	Bedford Street, Westminster	34 mins
13 July	North Road, Richmond	1 hour 16 mins
13 July	Seven Sisters/High Rd, N15	58 mins
14 July	West Street, Westminster	9 mins
18 July	T/ham Hale Underground Station	3 hours 6 mins
18 July	Garrat Lane/Gilbey Road, SW17	30 mins
18 July	Parliament Street, Westminster	25 mins
19 July	Kingsway, Westminster	19 mins
19 July	Barking Underground Station	8 mins
19 July	Embankment	13 mins
19 July	Lodge Avenue, Dagenham	N/K
21 July	Hammersmith and Fulham	6 hours 20 mins
21 July	Hacknet Road, E2	6 hours
21 July	Hammersmith and Fulham	2 hours 33 mins
21 July	Fore Street, N18	1 hour 27 mins
21 July	Hammersmith and Fulham	1 hour
21 July	St Johns Ave/Burston Road, SW15	1 hour 27 mins
21 July	Falcon Road/Grant Road	9 mins
21 July	Whitehall Place, Westminster	19 mins
21 July	Kilburn High Road	5 mins
22 July	Tower Hamlets	2 hours 23 mins
22 July	Edgington Way, Orpington	N/K
23 July	Hammersmith and Fulham	1 hour 23mins
23 July	Cannon Street, City of London	60 mins
23 July	Sutton BR Station	5 mins
24 July	Carriage Drive, Battersea Park SW11	1 hour 4 mins
25 July	Curtis House, New Southgate, N11	14 days
25 July	Ashfield Rd/Totterdown Rd, SW17	52 mins
25 July	Greenhill Park Road, Brent	6 mins
26 July	Sheen Lane, Richmond	30 mins
27 July	Waterloo Bridge, Westminster	19 mins
28 July	Northumberland Ave, Westminster	31 mins
28 July	Neasden Lane Circle	14 mins
29 July	Kensington and Chelsea	10 hours
29 July	Kensington and Chelsea	10 hours
29 July	Kensington and Chelsea	10 hours
29 July	Liverpool Street, City of London	76 mins
1 August	Chichele Road/Walm Lane	54 mins

Date	Region	Duration
4 August	Aldgate, City of London	22 mins
7 August	Angel Street, City of London	29 mins
5 August	Empire Way/Bolton Road, Brent	39 mins
6 August	Kew Road, Richmond	5 mins
8 August	Charing Cross BR Station	2 hours 8 mins
8 August	Empire Way/Harrow Rd, Brent	40 mins
9 August	Duncannon Street, Westminster	1 hour 18 mins
9 August	Manor Park Road, Brent	29 mins
12 August	Royal Court of Justice, Westminster	1 hour 48 mins
18 August	Savoy Pier, Westminster	2 hours 26 mins
20 August	Whitehall, Westminster	6 mins
21 August	Brook Road, Twickenham	45 mins
22 August	High Road/Park Lane, Wembley	41 mins
23 August	New Broad Street, City of London	34 mins
24 August	Harrow Police Station	36 mins
31 August	Bishopsgate, City of London	15 mins
2 September	Church Rd, Brent	15 mins
6 September	Stadium Way, Wembley	10 mins
9 September	Stonecutter Street, City of London	17 mins
12 September	Fore Street, N9	1 hour 18 mins
17 September	Cowley Street, Westminster	27 mins
21 September	Moorgate, City of London	39 mins
27 September	Strand	36 mins
28 September	Throgmorton Street, City of London	43 mins
12 October	Hammersmith and Fulham	1 hour 30 mins
22 October	Northumberland Ave, Westminster	15 mins
23 October	Aldwych	29 mins
25 October	St Martins Lane, Westminster	1 hour 3 mins 25
October	Leadenhall Street, City of London	44 mins
29 October	Monument Street, City of London	58 mins
31 October	Kingston	N/K
6 November	Fonthill Road, N15	1 hour 13 mins
9 November	St Johns Road, SW11	1 hour 29 mins
15 November	Alexandra Palace, N22	1 hour 2 mins
13 December	Battersea Bridge Road, SW11	22mins
23 December	Boxoll Road, Dagenham	8 hours

ANNEX G

PROSCRIBED ORGANISATIONS

The Irish Republican Army.
Cumann na mBan.
Fianna na hEireann.
The Red Hand Commando.
Saor Eire.
The Ulster Freedom Fighters.
The Ulster Volunteer Force.
The Irish National Liberation Army.
The Irish People's Liberation Organisation.
The Ulster Defence Association.
The Loyalist Volunteer Force.
The Continuity Army Council.
The Orange Volunteers.
(The entry for The Orange Volunteers refers to the organization which uses that name and in the name of which a statement described as a press release was published on 14th October 1998.)
The Red Hand Defenders.
Al-Qa'ida
Egyptian Islamic Jihad
Al-Gama'at al-Islamiya
Armed Islamic Group (Groupe Islamique ArmÈe) (GIA)
Salafist Group for Call and Combat (Groupe Salafiste pour la PrÈdication et le Combat) (GSPC)
Babbar Khalsa
International Sikh Youth Federation
Harakat Mujahideen
Jaish e Mohammed
Lashkar e Tayyaba
Liberation Tigers of Tamil Eelam (LTTE)
Hizballah External Security Organisation
Hamas-Izz al-Din al-Qassem Brigades
Palestinian Islamic Jihad ñ Shaqaqi
Abu Nidal Organisation
Islamic Army of Aden
Mujaheddin e Khalq
Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK)
Revolutionary Peoples' Liberation Party-Front (Devrimci Halk Kurtulus Partisi-Cephesi) (DHKP-C)
Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA)
17 November Revolutionary Organisation (N17)

Abu Sayyaf Group
Asbat Al-Ansar
Islamic Movement of Uzbekistan
Jemaah Islamiyah.
(The entry for Jemaah Islamiyah refers to the organisation using that name that is based in south-east Asia, members of which were arrested by the Singapore authorities in December 2001 in connection with a plot to attack US and other Western targets in Singapore.)
Al Ittihad Al Islamia
Ansar Al Islam
Ansar Al Sunna
Groupe Islamique Combattant Marocain
Harakat-ul-Jihad-ul-Islami
Harakat-ul-Jihad-ul-Islami (Bangladesh)
Harakat-ul-Mujahideen/Alami
Hezb-e Islami Gulbuddin
Islamic Jihad Union
Jamaat ul-Furquan
Jundallah
Khuddam ul-Islam
Lashkar-e Jhangvi
Libyan Islamic Fighting Group
Sipah-e Sahaba Pakistan.