



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Counter-Terrorism and Security Bill

Fifth Report of Session 2014–15

Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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1 Background

1.1 The Counter-Terrorism and Security Bill¹ was introduced in the House of Commons on 26 November 2014 and received its Second Reading on 2 December.² The Bill received three days' scrutiny in Committee of the whole House on 9, 15 and 16 December. The Remaining Stages of the Bill in the Commons took place on 6 and 7 January 2015. The Bill is expected to receive its Second Reading in the Lords on 13 January. The Government hopes and intends that the Bill will receive Royal Assent "prior to the February Recess", which begins on 13 February 2015.

1.2 We took evidence on the issues expected to be in the Bill, prior to its publication, from the Independent Reviewer of Terrorism Legislation, David Anderson QC, on 26 November³ (the Bill was published later the same day). We took evidence on the Bill itself from the Home Office Minister for Immigration and Security, James Brokenshire MP, on 3 December.⁴ We are grateful to the Independent Reviewer and the Minister for making themselves available at short notice to give evidence about the Bill. We are also grateful to have received written submissions about the Bill, or specific aspects of it, from Professor Guy Goodwin-Gill of the University of Oxford, Professor Clive Walker of the University of Leeds, and Big Brother Watch, all of which we have taken into account in our scrutiny of the Bill.

1.3 The Home Affairs Committee also took evidence on the Bill on 3 December, from Deputy Assistant Commissioner Helen Ball (Counter-terrorism Senior National Co-ordinator for Terrorist Investigations), Shami Chakrabarti (Director of Liberty) and David Anderson QC, the Independent Reviewer of Terrorism Legislation.⁵

1.4 Because of the Bill's accelerated timetable, we have proceeded to a Report on the Bill in the light of the Minister's oral answers to our questions, instead of engaging in written correspondence. Our aim has been to report in time for the Bill's Second Reading in the House of Lords.

Information provided by the Government

1.5 The Government published a free-standing ECHR Memorandum on the Bill, which it provided to us on the eve of the Bill's publication. It has also published a number of impact assessments and factsheets on specific aspects of the Bill.

Fast-tracking and the opportunity for proper scrutiny

1.6 There has been widespread concern about whether there will be sufficient opportunities for scrutiny of the Bill in view of the Government's decision to fast-track it.

1 HC Bill 142 [as amended in Committee].

2 HC Deb 2 Dec 2014 cols 207–271.

3 http://www.parliament.uk/documents/joint-committees/human-rights/Daivd_Anderson_Transcript_271114.pdf

4 <http://www.parliament.uk/documents/joint-committees/human-rights/Counter-Terrorism-Bill-ev-031214.pdf>

5 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/counterterrorism-and-security-bill/oral/16038.html>

1.7 The Government's justification for fast-tracking the Bill is set out in detail in the Explanatory Notes.⁶ One of the questions which the Government has agreed to address whenever it fast-tracks legislation is "Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?" In response to this question, the Explanatory Notes state that detailed memoranda have been provided to various committees, including an ECHR Memorandum to our Committee.

1.8 We wrote to the Home Secretary on 10 September requesting a human rights memorandum on the measures announced by the Prime Minister in his Statement to the House of Commons of 1 September, but no ECHR Memorandum was provided to us until 25 November. **We do not consider that the provision of an ECHR Memorandum at the time of the introduction of a fast-tracked Bill amounts to giving us a proper opportunity to scrutinise the legislation.**

1.9 The Minister said in oral evidence that there was a degree of urgency, given the heightened threat level, but that the Government also wanted to ensure that there was sufficient opportunity for appropriate scrutiny.

1.10 **We welcome the amount of parliamentary time that has been made available for scrutiny of the Bill on the floor of the House of Commons, despite its accelerated legislative timetable, but the compressed timetable has inevitably affected our ability to scrutinise the Bill fully. The long delay between our letter of 10 September and the provision of the ECHR Memorandum on 25 November represents a great deal of lost scrutiny time. In our view, draft clauses on the key provisions and a draft human rights memorandum could have been provided to the Committee much earlier to enable it to begin its scrutiny work.**

2 Preventing travel by seizure of passports

Powers to seize travel documents

2.1 The Bill provides police officers, and Border Force officers under the direction of a police officer, with new powers to seize and temporarily retain travel documents, including passports, at the UK border, where a person is suspected of intending to leave Great Britain or the UK in connection with terrorism-related activity outside the UK.⁷

2.2 Schedule 1 to the Bill makes detailed provision for the exercise of the new power, including a number of safeguards.

2.3 A draft Code of Practice for officers exercising the proposed powers was published for consultation on 18 December 2014.⁸

2.4 The Government's ECHR Memorandum rightly acknowledges that the exercise of the new power, which would prevent the person from leaving the UK, "would likely amount to an interference with their Article 8 right to lead a private and family life in a wide range of factual circumstances."⁹ It also rightly accepts that "in the context of any judicial scrutiny of the exercise of the power, the person would be entitled under Article 6 to a fair and public hearing within a reasonable time by an independent tribunal established by law."¹⁰ The right not to be discriminated against in the enjoyment of Convention rights, in Article 14 ECHR, is also acknowledged to be engaged.¹¹

2.5 The provisions also engage the right to freedom of movement in Article 12 of the International Covenant on Civil and Political Rights (ICCPR). Article 12(2) provides:

"Everyone shall be free to leave any country, including his own."

2.6 Under Article 12(3) ICCPR, that right "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant."

2.7 We have scrutinised the provisions introducing the new power for compatibility with all of these rights.

Necessity

2.8 The Government says that this new power fills a gap in existing powers, because the Home Secretary's existing prerogative powers to cancel a British passport cannot be used to disrupt immediate travel when an individual is already at a port and about to leave the UK.

7 Clause 1 and Schedule 1.

8 <https://www.gov.uk/government/consultations/temporary-seizure-of-travel-documents>

9 ECHR Memorandum, para. 3.

10 ECHR Memorandum, para. 7.

11 ECHR memorandum, para. 8.

2.9 A number of existing powers are already available to police at the port when they suspect that a person is intending to travel abroad for the purposes of terrorism. These include the power to stop and question under Schedule 7 of the Terrorism Act 2000 (“TA 2000”), including the power to detain for up to 6 hours; the power to seize property under the same Schedule; and the power of arrest on reasonable suspicion of being a terrorist under s. 41 TA 2000.

2.10 Liberty argues that the new power is not necessary because existing powers are already sufficient, and criminal justice powers rather than administrative powers should be exercised where an individual is suspected of involvement in what amounts to criminal activity. It therefore argues that, where the police suspect a person of intending to leave the UK to become involved in terrorism abroad, they should arrest them under s. 41 TA 2000, and police bail should be made available to enable that person to be released subject to certain conditions while the police investigate further to ascertain whether criminal charges can be brought.

2.11 The Independent Reviewer, on the other hand, regards the new power as one that will be very useful to police at the border and which will fill a gap in existing powers.¹² He envisages that the new power will be used in cases where there is reason to suspect the individual’s intentions in travelling abroad, but falling short of the threshold for an arrest.

2.12 We have considered carefully whether the Government has demonstrated that the proposed new power is necessary, in light of other counter-terrorism powers which already exist and which could be used in order to prevent travel in the circumstances envisaged by the Government. In our view, the gap in existing powers is not nearly as wide as the Government has suggested, in view of the powers which already exist. We note, for example, that the Independent Reviewer did not think there is any reason why the power under Schedule 7 TA 2000, to seize property and retain it for up to seven days, should not be used to seize a passport, but it was not his impression that the power was being used for that purpose.

2.13 We have considered particularly carefully the scope of the power of arrest under s. 41 TA 2000. Under that power, a police officer may arrest without warrant a person whom he reasonably suspects to be a terrorist, and for these purposes a “terrorist” is very broadly defined to include a person “who is or has been concerned in the commission, preparation or instigation of acts of terrorism.”¹³ The breadth of that language, and in particular the potential breadth of the concept of being “concerned in” terrorism, suggests that the power of arrest may often be available to a police officer at the border who has reasonable grounds to suspect that a person is travelling abroad for the purpose of involvement in terrorism-related activity (the threshold for the new power).

2.14 However, “involvement in terrorism-related activity” is even more broadly defined in the Bill, to include conduct that facilitates or gives encouragement to the commission, preparation or instigation of acts of terrorism, or that gives support or assistance to individuals who are known or believed by the person concerned to be involved in the commission, preparation or instigation of acts of terrorism.¹⁴ We accept that this very wide

12 Evidence of David Anderson QC, 26 November 2014, Q 3.

13 Section 40(1)(b) TA 2000.

14 Para 1(10) of Schedule 1 to the Bill.

definition of involvement in terrorism-related activity is wider than even the wide concept of being “concerned in” the commission, preparation or instigation of acts of terrorism, and that there is therefore a gap where the nature of the activity in which the person is reasonably suspected of intending to become involved falls short of the higher threshold required to trigger the power of arrest in s. 41 TA 2000. While we agree with our predecessor Committee in principle that police bail should be available in relation to terrorism offences, for reasons explained by that Committee,¹⁵ we do not agree with those who argue that merely relying on the existing power of arrest and making police bail available would be a complete answer to the particular capability gap that the Government has identified.

2.15 We accept that the Government has demonstrated the necessity for a power to seize travel documents, including passports, in circumstances not covered by existing powers, in order to prevent travel and to facilitate investigation by the police with a view to possible further action being taken, including the cancellation of a passport by the Secretary of State, criminal proceedings, or other counter-terrorism measures such as TPIMs. Preventive action of this sort in the interests of those who may be drawn into terrorism-related activity could prove more effective than taking action at a later date. Such a significant power to interfere with the right to leave the country, however, must be carefully targeted to fill the gap in powers that has been shown to exist, and it is therefore also necessary to scrutinise carefully the proportionality of the proposed measure, and in particular the procedural safeguards which exist to ensure that it is not exercised disproportionately.

Adequacy of judicial safeguards

2.16 Whether the power to seize passports from people suspected of travelling to become involved in terrorism is proportionate depends on the adequacy of the safeguards that surround the exercise of the power.

2.17 The new power is circumscribed by a number of important and welcome safeguards, which are summarised at para 5 of the ECHR memorandum. These include, for example, the need for reasonable grounds for suspicion; the need for authorisation of a senior officer to retain seized documents; a review by a senior officer after 72 hours; the involvement of a judicial authority after 14 days; a maximum time limit for retention of 30 days; and a requirement to comply with a mandatory Code of Practice, a draft of which was published for consultation on 18 December.

2.18 However, our evidence sessions with the Independent Reviewer and the Minister made clear that one question in particular requires very careful scrutiny: whether the Bill provides sufficient procedural safeguards to ensure that an individual who is subject to the power has practical and effective access to an independent court or tribunal to challenge the exercise of the power.¹⁶ In short: what recourse to independent review is available to an individual whose passport has been seized on the basis of a basic error such as mistaken identity?

15 See e.g. Sixteenth Report of Session 2009–10, *Counter-Terrorism Policy and Human Rights: Bringing Human Rights Back In*, HL Paper 86/HC 111, paras 84–89.

16 Evidence of David Anderson QC, 26 November 2014, Q7.

2.19 Significantly, the Government rightly accepts that the right to a fair hearing in Article 6 ECHR applies and its requirements must therefore be satisfied: “in the context of any judicial scrutiny of the exercise of the power, the person would be entitled under Article 6 to a fair and public hearing within a reasonable time by an independent tribunal established by law. Further, Article 6 requires that the person is informed, so far as possible without prejudicing national security, of the grounds on which his rights have been interfered with.”¹⁷ We have therefore considered carefully whether the opportunities available to challenge the seizure of travel documents before a court are sufficient to satisfy the requirements of Article 6 ECHR.

2.20 The Bill itself provides a role for a judicial authority: where the police have retained a seized passport, after 14 days they must apply to a judicial authority for an extension of the 14 day period, up to a maximum of 30 days.¹⁸ In addition to the provision made in the Bill for a degree of judicial oversight, the Government says that judicial review would in principle be available to challenge the lawfulness of the seizure of the passport, including emergency injunctive relief.¹⁹ The availability of judicial review alone, however, is not sufficient to satisfy the requirements of the right to a fair hearing in Article 6 ECHR. Even assuming that legal aid would in principle be available for such a challenge, the supervisory jurisdiction of the High Court on judicial review would not enable the person whose passport has been seized to challenge directly the basis on which the power has been exercised: that is, whether there really are reasonable grounds to suspect that they intend to leave the country to become involved in terrorism-related activity abroad.

2.21 We note that the relevant parts of Schedule 1 to the Bill which provide for a judicial role are modelled to some extent on the provision made for “warrants of further detention” in Schedule 8 to the Terrorism Act 2000, which governs the detention of a person arrested on reasonable suspicion of being a terrorist. However, a close comparison of the two schedules reveals that the procedural safeguards in Schedule 1 to the Bill are significantly weaker in certain respects than those in Schedule 8 to the Terrorism Act. When compared to the amendments to Schedule 8 which our predecessor Committee consistently recommended in order to make it compatible with the ECHR requirements of a fair hearing,²⁰ Schedule 1 to the Bill falls even more short of what is required in order to comply with the Convention.

2.22 In particular, the Bill as drafted contains no requirement for the person whose passport is seized to be informed of at least the gist of the reasons for the authorities suspecting that he or she intends to travel abroad to become involved in terrorism-related activity. The Bill provides for a judicial consideration only after 14 days, at which the judge is under a duty to extend the period of retention of the passport to 30 days if satisfied that the investigation into the person is being conducted diligently and expeditiously; and it also provides for a closed material procedure at that hearing but makes no provision for the

17 ECHR Memorandum, para. 7. The Government’s Memorandum points out that this raises an issue of compatibility with not only the ECHR, but EU law as well, in view of the procedural requirements in Article 30 of the EU Freedom of Movement Directive (2004/38/EC).

18 Schedule 1, para. 8.

19 ECHR Memorandum, para. 7; Evidence of James Brokenshire MP, 3 December 2014, Qs 4–5.

20 See e.g. Eighteenth Report of Session 2008–09, *Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009*, HL 119/HC 726 at paras 16–24; Sixteenth Report of Session 2009–10, *Counter-Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In*, HL Paper 86/ HC 111, at paras 69–80.

interests of the excluded party to be represented by a special advocate. The Government in its ECHR Memorandum describes the Bill as containing “a requirement to obtain a warrant from a judicial authority in order to retain the passport for longer than 14 days”,²¹ but as drafted the relevant provisions fall well short of amounting to a “judicial warrant”. As the draft Code of Practice puts it:²²

At a hearing, the court will neither examine the merits of the exercise of the power nor review the officer’s decision to exercise it. The court will instead consider whether persons responsible for considering the possibility of taking additional disruptive action (and taking steps in relation to that) have been acting diligently and expeditiously in the investigation. If the court concludes that they have been, then it must grant an extension.

2.23 In our view, the best way to ensure compatibility with the right to a fair hearing in Article 6 ECHR is to amend Schedule 1 to the Bill so that it provides a genuinely judicial system of “warrants of further retention” which is directly analogous to the system of “warrants of further detention” of terrorism suspects in Schedule 8 to the Terrorism Act 2000, read so as to be compatible with the ECHR: that is, a system for the judicial authorisation of a further period of retention of travel documents, complete with proper procedural safeguards.

2.24 This requires a number of improvements to the Bill which we explain briefly before suggesting a specific amendment to give effect to each of our recommendations. These amendments fall under six main headings: (a) the length of the period of retention before judicial authority is required; (b) the grounds which must be satisfied for a judicial warrant of further retention to be granted; (c) the provision of a summary of withheld information (“gisting”); (d) the availability of special advocates; (e) the availability of legal aid; and (f) the availability of compensation for loss caused by wrongful exercise of the power.

(a) the period of retention without judicial authority

2.25 The Bill currently provides for retention of travel documents without judicial authority for a period of up to 14 days. This is a considerably longer period before there is any opportunity for judicial scrutiny than is the case under other counter-terrorism powers. As Professor Clive Walker points out, under the powers to seize cash at a port under the Anti-Terrorism, Crime and Security Act 2001,²³ an application must be made to a court to retain the cash after just 48 hours. In Professor Walker’s view, “it is hard to explain why the property rights in a bundle of cash are more important than the interference with family and private life by the seizure of a passport”. He argues that the courts should arrive on the scene much sooner than 14 days.

2.26 Where a person has been arrested under s. 41 of the Terrorism Act 2000, on reasonable suspicion of being a terrorist, a judicial warrant of further detention must be applied for within 48 hours of the arrest. Deprivation of liberty is clearly a more serious interference than deprivation of travel documents, and we do not see the need for the

21 ECHR Memorandum, para. 5.

22 *Draft Code of Practice for Officers exercising functions under Schedule 1 of the Counter-Terrorism and Security Act 2015 in connection with seizing and retaining travel documents*

23 Schedule 1, para. 3.

period of retention without judicial authority to be as short as 48 hours. In our view, however, 14 days, without any opportunity for judicial scrutiny is too long. **We recommend that the requirement to apply for a judicial warrant of further retention should arise after 7 days rather than 14 days. We recommend that paragraph 5 of Schedule 1 be amended by substituting 7 for 14 days.**

(b) Grounds

2.27 In the Bill as drafted, the role of the judicial authority is confined to considering whether the police, CPS and Secretary of State have been acting “diligently and expeditiously” in relation to their consideration of whether the person’s passport should be cancelled, whether they should be charged with an offence, or whether some other counter-terrorism measure, such as TPIMs, should be imposed on them.²⁴ If satisfied that they have been acting diligently and expeditiously, the judicial authority is under a duty to grant an extension of the period of retention from 14 days to 30 days.²⁵

2.28 Under Schedule 8 to the Terrorism Act, by comparison, the court may only issue a warrant of further detention if satisfied, not only that the investigation is being conducted diligently and expeditiously, but also that there are reasonable grounds for believing that further detention is necessary, for example to obtain or preserve relevant evidence.²⁶ In addition, in order to make Schedule 8 of the 2000 Act compatible with the ECHR, the courts have “read in” to that statute an “evidential test” which requires the district judge, when deciding whether or not to issue a warrant of further detention, to consider whether there is sufficient evidence to justify the suspect’s original arrest and continued detention.²⁷ As our predecessor Committee explained, reading this evidential test in to the “warrant for further detention” provisions in Schedule 8 of the Terrorism Act was necessary in order to make them compatible with the requirements of the right to a fair hearing in Article 5 ECHR: otherwise, a person’s pre-charge detention could be extended on the basis of allegations which the individual had no opportunity to contest. The same issues of compatibility with the ECHR right to a fair hearing arise in Schedule 1 to the Bill.

2.29 We recommend that Schedule 1 to the Bill be amended so as to make explicit that the district judge can only issue a warrant of further retention of travel documents if satisfied not only that matters are being pursued diligently and expeditiously but that there are reasonable grounds to suspect that the person is intending to leave the country to become involved in terrorist-related activity abroad, and that it is necessary to extend the period of retention to enable steps to be taken towards deciding what should happen next.

(c) “Gisting”

2.30 As pointed out above, the Bill makes no provision for the person whose passport is seized to be informed of at least the gist of the reasons for suspecting that they intend to

24 Schedule 1, para 8(4).

25 Schedule 1, para 8(4)(a).

26 Schedule 8 Terrorism Act 2000, para. 32(1)(a).

27 See e.g. Eighteenth Report of Session 2008–09, *Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009*, HL 119/HC 726 at paras 16–24; Sixteenth Report of Session 2009–10, *Counter-Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In*, HL Paper 86/ HC 111, at paras 69–80.

travel abroad to be involved in terrorism-related activity. The Minister accepted that there would be a need to inform the person but it was not clear that what is intended goes beyond merely reciting the statutory ground for the exercise of the power—that there are reasonable grounds to suspect that they intend leaving the UK for the purpose of involvement in terrorism-related activity. The Code of Practice must deal with the information to be given to a person against whom the power is exercised, including how and when that information is to be given.²⁸

2.31 The draft Code of Practice does include some notification requirements. A person who is subject to the exercise of the power to search for and seize travel documents must be informed by the officer exercising the power that they are suspected of intending to leave the country for the purpose of involvement in terrorism-related activity.²⁹ There is no requirement at that stage, however, that the person be told anything about the reasons underlying the suspicion. The draft Code also provides that where a senior police officer authorises retention of travel documents the individual must be given a written notice which should, amongst other things, “inform the person that they may write to the police at a given address to request reasons for the retention of their travel documents and the police must provide a response within 42 days”.³⁰ The suggested pro-forma written notice annexed to the draft Code does not, however, include any such provision. Elsewhere, the draft Code provides that a police constable exercising the power to retain documents must issue the person with reasons for its exercise in their case “if requested”,³¹ and if travel documents are returned within the 14 day period they are to be accompanied by a notice reminding the individual that they may formally request reasons as to why their travel documents were seized and retained.³² **We recommend that the Code should provide that a person subject to the exercise of the power should be informed of the reasons for its exercise at the earliest opportunity in every case, and not merely where the individual makes a request for such reasons.**

2.32 Finally, the draft Code provides that the written notice of an application to a judicial authority to extend the retention period beyond 14 days “should inform the individual of the reasons why their travel documents were seized and retained as fully as possible without prejudicing national security (and consistent with other data protection considerations).³³ This is reflected in the pro forma written notice annexed to the draft Code.

2.33 **We welcome the express provision in the Code for a summary of the reasons for retaining travel documents to be provided to the person concerned before an application is made for an extension of the retention period. In our view, however, such provision is so fundamental to meeting the requirements of a fair hearing that it should be made on the face of the Bill itself. We recommend that the Bill should be amended to require that the person be informed of at least the gist of the reasons for suspecting that they intend to travel abroad to be involved in terrorism-related activity, in advance of the hearing before a judicial authority.**

28 Schedule 1, para. 18(2)(d) and (e)

29 *Draft Code of Practice*, para. 66.

30 *Draft Code of Practice*, para. 70(xii)

31 *Draft Code of Practice*, para. 73.

32 *Draft Code of Practice*, para. 71.

33 *Draft Code of Practice*, para. 72.

(d) Special advocates

2.34 The Bill provides for a closed material procedure at the extension hearing before a judicial authority, but makes no provision for special advocates to represent the interests of the excluded party.

2.35 We recommend that the Bill should be amended to ensure that the interests of the excluded party are represented by a special advocate in any closed material procedure.

(e) Legal aid

2.36 The Minister wrote to us to confirm that the Government is considering making express provision for legal aid to be available at extension hearings.

2.37 We recommend that the bill should be amended to ensure that there is a right to legal aid at such a hearing.

(f) Compensation

2.38 Compensation would not be available for any loss suffered as a result of the exercise of the power which turns out to be unfounded.

2.39 We recommend that consideration should be given to the circumstances in which compensation should be payable where travel documents are seized under this power and returned with no further action taken, to cover financial loss suffered as a result of any unreasonable exercise of the power (e.g. the cost of missed flights, cancelled accommodation, etc.).

Non-discrimination

2.40 The Government has accepted that broadly drafted stop and search powers have given rise in practice to a problem of discrimination because they have been used disproportionately against members of minority communities. The new power in the Bill to seize passports gives rise to the same risk of discriminatory application.

2.41 Both the police (in their evidence to the Home Affairs Committee³⁴) and the Minister rely on the proposed Code of Practice to provide the necessary safeguards against such discriminatory application, and envisage that the use of the power will be carefully monitored. The draft Code of Practice makes clear that reasonable suspicion cannot be formed on the basis of assumptions about the attitudes, beliefs or behaviour of persons who belong to particular groups or categories of people, and that to exercise the powers on this basis would be discriminatory.³⁵ It also refers to the relevant obligations in the Equality Act 2010 and emphasises the importance of the powers being exercised fairly, proportionately, in accordance with the prescribed procedures and without

34 Evidence of DAC Helen Ball, 3 December 2014, Q42

35 *Draft Code of Practice*, para. 20.

discrimination.³⁶ The draft Code also requires the police to monitor the use of the power, to keep monitoring records including in relation to race and religion/belief, and to consider in particular whether there is any evidence that it is being exercised on the basis of stereotyped images or inappropriate generalisations.³⁷

2.42 We welcome the inclusion in the draft Code of requirements to ensure that the power is not exercised in a discriminatory way. We recommend that in addition to self-monitoring by the police, the use of the power should be carefully monitored by other independent oversight mechanisms, such as the Equality and Human Rights Commission and the Independent Reviewer of Terrorism Legislation, to guard against the risk that the new powers will heighten the perception that certain minority communities are treated differently in the exercise of counter-terrorism powers.

³⁶ *Draft Code of Practice*, paras 23–24.

³⁷ *Draft Code of Practice*, para. 74.

3 Temporary exclusion orders

The proposed new powers

3.1 The Bill provides for “temporary exclusion orders” which prevent the individual from returning to the UK unless their return is either in accordance with a “permit to return” issued by the Secretary of State or they are deported to the UK by the state they are in.³⁸ Such an order may be imposed if the Secretary of State reasonably suspects that the individual is, or has been involved in terrorism-related activity outside the UK, and reasonably considers that it is necessary to impose such an order for purposes connected with protecting members of the public in the UK from a risk of terrorism.³⁹

3.2 One of the effects of a temporary exclusion order is that the individual’s British passport is invalidated.⁴⁰ A permit to return can be made subject to a requirement that the individual comply with conditions specified in the permit to return.⁴¹ The permit to return is invalidated if the individual fails to comply with the conditions imposed by the Secretary of State.⁴²

3.3 The Secretary of State may also, by notice, impose certain obligations on the individual after return, including obligations to report to a police station and attend certain appointments, and obligations to notify the police of their place of residence and in any changes to it.⁴³ Return in contravention of a temporary exclusion order, and breach of an obligation after return, without reasonable excuse, are criminal offences.⁴⁴

3.4 The proposed temporary exclusion orders are the most controversial provision in the Bill. Excluding UK nationals from their own country, even temporarily, may be incompatible with an individual’s rights under the ECHR which a UK national does not forfeit by travelling abroad, and with the right under Article 12(4) of the International Covenant on Civil and Political Rights not to be arbitrarily deprived of the right to enter one’s own country. Professor Goodwin-Gill has provided us with a legal opinion in which he states that such temporary exclusion of a country’s own nationals may also put the excluding State in breach of its international law obligations to other States, and possibly also in breach of the positive obligations imposed on States by UN Security Council Resolutions to take steps to facilitate the prosecution of their nationals for involvement in terrorism abroad.⁴⁵

3.5 Professor Goodwin-Gill argues that a State which excludes its own nationals is resorting to a unilateralism which is at odds with the collective endeavour of international rights protection as well as internationally agreed efforts to counter terrorism. The Minister, when he gave evidence, did not answer the question about what the UK would do

38 Clauses 2–11.

39 Clause 2(2) to (4).

40 Clause 3(9).

41 Clause 4(2).

42 Clause 4(3).

43 Clause 8.

44 Clause 9.

45 UN Security Council Resolution 688 of 2014 (S/2014/688) (September 2014)

if another State revoked the passport of a foreign national who is present in the UK on the ground that there are suspected of involvement in terrorism-related activity.

3.6 The Independent Reviewer in his evidence to us considered this Part of the Bill to be more about introducing a regime of managed return than a power to exclude UK nationals. However, the Minister in his evidence said that the power does exclude, as well as managing and controlling return.⁴⁶

3.7 The Government accepts that it cannot permanently exclude UK nationals from returning to the UK because that would amount to a deprivation of their right to return and to live in the country of their nationality, which is arguably the most important facet of citizenship. The Government also accepts that it is under an obligation to accept UK nationals who are deported back to the UK by other States.

3.8 We welcome the Government’s preparedness to make significant modifications to the proposal announced by the Prime Minister on 1 September, to exclude UK nationals from their country of nationality. That proposal would have put the UK in breach of a number of its international legal obligations, including the human right not to be made stateless and not to be deprived of the right to return to one’s country of nationality, and we are pleased that the Government is not pursuing it.

3.9 However, as the Minister confirmed in his evidence to us, the provisions in the Bill still have the effect of invalidating a UK national’s passport while they are abroad, and of preventing their return unless they comply with conditions imposed by the Secretary of State, without any judicial process apart from ex post facto judicial review which, by definition, will have to be pursued from abroad. In our view this gives rise to a very real risk that the human rights of UK nationals will be violated as a result of the imposition of Temporary Exclusion Orders. We are opposed in principle to any exclusion of UK nationals from the UK, even on a temporary basis.

Necessity/least restrictive means

3.10 The Minister in his evidence to us suggested that the Government’s main aim in bringing forward temporary exclusion orders is not to exclude UK nationals from the UK, but rather to ensure that procedures are in place to manage the return to the UK of those who have gone abroad to fight which may have resulted in them becoming involved in terrorism: “this is about having clarity of our control and mechanisms”.⁴⁷

3.11 In our view, if the Government’s objective in this Part of the Bill is to introduce a system of “managed return”, and to minimise the risk of people who may pose a danger to the public returning to the UK without the authorities being aware of their return, there is a less restrictive way of achieving it which would not involve excluding UK nationals from their own country or cancelling their passports while they are abroad, leaving their legal status and recourse to consular protection uncertain. It seems to us that the real rationale for the temporary exclusion order regime, as explained by the Government, is to ensure that the law enforcement authorities are made aware of the return to the UK of a national who is suspected to have become involved in terrorism while abroad.

⁴⁶ James Brokenshire MP, 3 December 2014, Q17.

⁴⁷ James Brokenshire MP, 3 December 2014, Q25.

3.12 In our view, the Government’s objective of managed return could be achieved by a much simpler system requiring UK nationals who are suspects to provide advance notification of their return to the UK on pain of criminal penalty if they fail to do so. “Notification of return” orders, which could be substituted for temporary exclusion orders without too much drastic surgery to this Part of the Bill, would constitute a more proportionate interference with the right of a UK national to return to the UK, as they would not involve any cancellation of a citizen’s passport or prohibition of their return, nor make that return conditional on the individual accepting conditions imposed by the Secretary of State. We recommend that the Bill be amended to replace temporary exclusion orders with notification of return orders in order to achieve the Government’s objective of safe and managed return in a way compatible with the UK’s human rights obligations.

Judicial safeguards

3.13 The Independent Reviewer’s main concern about the proposed new power to impose temporary exclusion orders was the absence of the courts from the safeguards surrounding its exercise. He contrasted the central role played by the courts when TPIMs are imposed on an individual, and suggested that a comparable court process might be appropriate before the imposition of temporary exclusion orders. During the Bill’s Committee stage in the Commons, amendments were proposed to meet the Independent Reviewer’s concerns about the lack of judicial oversight of temporary exclusion orders, by requiring the Secretary of State to go through the same process as currently applies to TPIMs when making a temporary exclusion order, which would ensure judicial involvement.⁴⁸

3.14 We have considered whether there should be a court procedure, analogous to the provision in the TPIMs legislation, prior to the imposition of either temporary exclusion orders (as provided for in the Bill) or “notification of return orders” such as we have recommended above. We agree with the Independent Reviewer that, if temporary exclusion orders remain in the Bill as drafted, there should be a TPIMs-style procedure for making them which guarantees judicial scrutiny of the exercise of a very intrusive executive power.

3.15 If temporary exclusion orders were to be replaced by notification of return orders, however, as we have recommended, the argument for a TPIMs-style process is less strong, since the impact of a notification of return order is much less onerous. We note, however, that notification requirements about proposed travel which are imposed in other contexts (for example on sex offenders following conviction or individuals subject to preventive measures such as sexual harm prevention orders) are imposed following a court procedure, which provides important procedural protection against the arbitrary exercise of a power which, while not a substantive restriction on movement, is nevertheless an intrusive requirement. We are also influenced by the evidence of the Independent Reviewer who said, in relation to temporary exclusion orders, that, while judicial review is notionally available, “if you are abroad when this order is served on you, it is a little difficult to see in practical terms how a right to judicial review could be exercised.” This would apply with the same force to notification of return orders as it applies to temporary exclusion orders, since the order is still made and served while the person is abroad. **We welcome the**

48 David Anderson QC, 26 November 2014, Q9.

Minister's indication that the Government will return to the issue of judicial oversight in the House of Lords.⁴⁹ We therefore recommend that the Bill be amended to provide expressly for a judicial role prior to the making of a notification of return order, which is currently lacking in this part of the Bill.

Independent review

3.16 Neither of the new powers in Part 1 of the Bill, concerning the seizure of passports and managed return, are made subject to independent review. This omission was remarked upon by the Independent Reviewer of Terrorism Legislation himself, who said that if the powers we already have under the Terrorism Acts need independent review, surely these new powers also need independent review.⁵⁰ We asked the Minister about whether this lack of provision for independent review of the extensive new powers to restrict travel in Part 1 of the Bill was an oversight which had arisen due to the Bill's hurried preparation. He said that the question of independent review was something which the Government had considered.⁵¹ When we pressed the minister on this question, he accepted that review of these powers in Part 1 of the Bill will be that carried out by parliamentary select committees.⁵²

3.17 Like the Independent Reviewer of Terrorism Legislation, we believe in principle that the operation in practice of the new powers to impose restrictions on travel of terrorism suspects should be subject to independent review and therefore we recommend that the powers in Part 1 of the Bill, concerning both passports and managed return, be subject to review by the Independent Reviewer.

Renewal requirement

3.18 At Committee stage in the Commons an amendment was debated which would have required the powers to seize passports to be renewed by a resolution of each House if they are to continue beyond 31 December 2016.

3.19 We consider such a requirement to be appropriate in relation to the whole of Part 1 given the significance of the powers to interfere with freedom of movement and the accelerated legislative timetable of the Bill.

3.20 We recommend that Part 1 of the Bill be made subject to a renewal requirement to enable Parliament to consider the case for continuing these powers in the light of the Independent Reviewer's report on their operation in practice.

49 James Brokenshire MP, HC Deb 6 Jan 2015 c208.

50 Evidence of David Anderson QC, 26 November 2014, Q7,

51 Evidence of James Brokenshire MP, 3 December 2014, Q45.

52 Evidence of James Brokenshire MP, 3 December 2014, Q48.

4 TPIMs

Background

4.1 Part 2 of the Bill amends the Terrorism Prevention and Investigation Measures Act 2011 (“the TPIMs Act”) in a variety of ways.⁵³

4.2 We welcome the fact that the Government has accepted and given effect to nearly all of the Independent Reviewer’s 10 recommendations about TPIMs in his last annual report on the operation in practice of the TPIM regime. We particularly welcome the raising of the threshold for the imposition of a TPIM, and the slight narrowing of the scope of the definition of terrorism-related activity. As the Government’s ECHR Memorandum rightly claims, these changes represent an increase in the level of safeguards against TPIMs resulting in the unjustified interference with ECHR rights.

4.3 However, there are three issues concerning TPIMs on which we wish to report.

Relocation

4.4 The Bill amends the TPIMs Act to strengthen the current powers for monitoring and controlling individuals involved in terrorism-related activity in the UK, primarily by reintroducing the power of relocation. The Secretary of State will be able to include in a TPIM a requirement that the subject of the TPIM reside in premises in any locality in the UK that the Secretary of State considers appropriate, subject to the agreement of the person if the premises are more than 200 miles away from their residence.⁵⁴ Measures can also be imposed on TPIM subjects restricting their ability to travel outside of the areas in which they may be required to live.

4.5 In our scrutiny Reports on the TPIMs Bill we welcomed the Government’s disavowal of the power to require relocation as a significant human rights enhancing measure, noting that internal exile imposed by executive order was an oppressive measure associated only with the most authoritarian regimes. However, the Government has remained under constant pressure to reintroduce the power of relocation, particularly following the absconding of two TPIMs subjects. We therefore considered the reintroduction of the power of relocation into the TPIMs regime in our post-legislative review report on the TPIMs Act published in January this year.⁵⁵ We concluded:

We accept that, in principle, the risk of absconding is likely to be higher when a TPIM subject remains in the midst of their local community and network, and we acknowledge the fact that, under the control order regime, no relocated individuals absconded. However, we do not consider this to be sufficient to demonstrate that the lack of a power to relocate terrorism suspects leads to such a threat to public safety as to justify re-introduction of the power. Nor have we seen any direct evidence that the absence of a power to relocate TPIM subjects appears to have significantly limited their effectiveness in practice. We remain of the view that a power to relocate an

53 Clauses 12–16.

54 Clause 12, amending paragraph 1 of Schedule 1 to the TPIMs Act 2011.

55 Tenth Report of Session 2013–14, *Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011*, HL Paper 113/HC 1014, paras 50–55.

individual away from their community and their family by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable, and we note that this also appears to be the view of the Independent Reviewer.

4.6 The Independent Reviewer, however, in his evidence to us in November, explained that he had conducted a review for the Government in September in which he concluded that relocation remains extremely useful and is more effective than the power merely to exclude TPIMs subjects from particular locations, and he therefore recommended that TPIMs would be more effective if relocation were reintroduced.⁵⁶ He said that he did so with a heavy heart, because he knows how disruptive relocation is to family life and how much it is resented by families, but it was ultimately a question of effectiveness.

4.7 The Minister similarly explained the Government's change of position on relocation by reference to the changing nature of the threat picture, and in particular the increased risk posed by those returning from Syria.⁵⁷ He pointed to the other changes to the TPIMs regime, such as the increase in the threshold from reasonable belief to balance of probabilities, and the fact that TPIMs, unlike their predecessor control orders, only last for two years, in mitigation of the decision to reintroduce relocation.

4.8 We have not found the question of relocation easy. We have been consistently opposed to the use of relocation in TPIMs on the basis that a power to relocate an individual away from their community and their family by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable. We have been particularly influenced in that view by the harshness of the impact on family life, on women and children in particular, and the extent to which the use of the power in control orders led to extreme resentment in certain minority communities who felt victimised by its use against members of those communities.

4.9 Nor do we find it particularly surprising that the review conducted by the Independent Reviewer of the usefulness of relocation reached the conclusion that it did, since those surveyed have, we understand, always been in favour of relocation and opposed to relinquishing the power in the first place. We also note that, during the Bill's Committee stage in the Commons, the Rt Hon Kenneth Clarke MP was sceptical about whether there was any link between the absconding of two TPIMs subjects and the lack of a power to relocate, and asked "what exactly has happened to give rise to the need to bring back what I thought were fairly useless relocation orders?"⁵⁸ The Minister, in reply, again invoked "the changing nature of the threat picture" to justify the reintroduction of relocation. Although the Independent Reviewer and the Minister in their evidence to us both related the reintroduction of the power to the current situation involving returnees from Syria, we are not completely clear about the link between the specific power of relocation and this change in the nature of the threat, other than that there has been an overall increase in the threat level and wider powers are always useful to deal with the challenges a growing threat might throw up.

56 Evidence of David Anderson, Q20.

57 Evidence of James Brokenshire, Q30.

58 HC Deb 9 December 2014 c 800.

4.10 However, just as in our recent Report on TPIMs we said that we do not feel sufficiently informed about the threat picture to be able to conclude that the power to impose TPIMs is no longer required, so we do not feel in a position to gainsay the judgment of the Independent Reviewer on a question of this nature. We therefore reluctantly accept his judgment that the changing nature of the threat justifies the reintroduction of relocation. We look to the Government to be proactive in bringing forward ideas about how to mitigate the alienation and resentment likely to be caused in some minority communities.

The threshold for imposition of a TPIM

4.11 One of the significant changes made by the Bill in response to one of the recommendations of the Independent Reviewer of Terrorism Legislation is the raising of the threshold for the imposition of TPIMs.⁵⁹

4.12 The current test for imposition of a TPIM is that the Secretary of State must “reasonably believe” that the individual is, or has been, involved in terrorism-related activity. The Independent Reviewer, in his Report on the operation in 2013 of the TPIM Act 2011, recommended that the Government consider the possibility of requiring the Home Secretary to satisfy a court that a TPIM subject has been involved in terrorism (rather than, as now, that her own belief in that involvement is reasonable).⁶⁰

4.13 The Government, in its Response to the Independent Reviewer’s Report, accepted that the legal test for a TPIM notice should be kept under review to ensure that it provides an adequate safeguard.⁶¹ The Bill amends the TPIM Act so that the Secretary of State must be “satisfied on the balance of probabilities” that an individual is or has been so involved. The Independent Reviewer, in his evidence to the Home Affairs Committee, identified this as one of his recommendations in response to which the Government did not quite go so far as he had hoped.⁶² The change in the Bill only requires the Home Secretary to be satisfied on the balance of probabilities, not the courts, which are still only required to review the Home Secretary’s decision on a judicial review standard.⁶³

4.14 **We welcome the Government’s preparedness to raise the threshold for imposition of TPIMs to “balance of probabilities”, which potentially strengthens the safeguards against disproportionate use of the power. However, in order for this change to make a real practical difference, we recommend that the TPIM Act be amended to require the court also to consider whether the balance of probabilities standard was satisfied, in place of the current, lighter-touch judicial review standard. Such an amendment would give effect to the unimplemented part of the Independent Reviewer’s recommendation.**

59 Clause 16(1), amending s. 3(1) TPIM Act 2011,

60 Recommendation 3 in the Independent Reviewer’s Report on TPIMs in 2013: *Second Report of the Independent Reviewer on the operation of the Terrorism, Prevention and Investigation Measures Act 2011*.

61 The Government Response to the Report by David Anderson QC on Terrorism Prevention and Investigation Measures in 2013 (26 November 2014).

62 Evidence of David Anderson QC to the Home Affairs Committee, 3 December 2014, Q132.

63 *Ibid.*, Q 133.

“Appointments measures” and the privilege against self-incrimination

4.15 The Bill also implements the Independent Reviewer’s recommendation⁶⁴ that TPIMs include a requirement that their subjects attend appointments with specified people or bodies, which it is intended to use to require their engagement with de-radicalisation programmes.⁶⁵ The specified bodies could include, for example, probation, Prevent officers, Job Centre Plus staff or others with a role in managing a TPIM subject.

4.16 The Independent Reviewer welcomed this injection of an element of de-radicalisation into the TPIMs regime as an important development, because the two year time limit on TPIMs means that an exit strategy is required before the TPIM expires. However, he did not think that the Bill goes far enough in this respect, because “if you are going to get sensible conversations out of people, you need to give them some assurance that what they say to you won’t be used as evidence against them in a criminal trial.”⁶⁶

4.17 The Government, in its response to the Independent Reviewer’s Report, however, did not consider it appropriate to have a blanket approach to providing reassurance about meetings with a wide range of different actors.⁶⁷

4.18 We agree with the Independent Reviewer that the power to require TPIM subjects to engage with de-radicalisation programmes should be accompanied by complete clarity as to the use to which their answers to questions could be put, and in particular whether they could be used as evidence against them in a criminal trial. We recommend that the Bill be amended to make express provision to protect the privilege against self-incrimination when TPIMs subjects are required to attend appointments with specified people.

64 Recommendation 6 in the Independent Reviewer’s Report on TPIMs in 2013.

65 Clause 15, inserting “appointments measure” into Schedule 1 to the TPIMs Act 2011.

66 Independent Reviewer evidence to Home Affairs Committee, 3 December 2014, Q156.

67 Government Response to Recommendation 7 in the Independent Reviewer’s Report on TPIMs in 2013

5 Data retention

5.1 Part 3 of the Bill amends the Data Retention and Investigatory Powers Act 2014 (“the DRIP Act”) to enable the Secretary of State to require communications service providers to retain the data that would allow relevant authorities to identify the individual or the device that was using a particular IP (internet protocol) address at any given time.⁶⁸

5.2 This Part of the Bill has been controversial with NGOs in particular, some of which argue that these provisions pre-empt the various reviews currently being conducted into the adequacy of the current legal framework governing surveillance and data retention, including the Regulation of Investigatory Powers Act 2001. We have received submissions on this Part of the Bill from Big Brother Watch, expressing concerns about the timing of the Bill in light of the current reviews of surveillance powers being undertaken, and about the adequacy of oversight and safeguards.

5.3 The Independent Reviewer, however, considered this part of the Bill as dealing with the easiest and least controversial part of the draft Communications Data Bill that was published in 2012, and being “in principle, a desirable power that is needed”.⁶⁹ He regarded scrutiny of the clause as essentially a technical matter for relevant experts to ensure that the wording of the new power is limited to what is strictly required to provide the power that is said to be missing. The Minister pointed out that these provisions are time-limited, being subject to the same sunset clause as the DRIP Act (that is, December 2016).⁷⁰

5.4 A draft Code of Practice was published by the Government for public consultation on 9 December 2014.⁷¹ In the limited time available to us to scrutinise the Bill, we have not been able to scrutinise the draft Code and we do not therefore comment in this Report on the adequacy of the safeguards it contains against disproportionate interference with the right to respect for privacy and for personal data. We draw to Parliament’s attention, however, our concern as to whether UK law as a whole, including the Regulation of Investigatory Powers Act, the DRIP Act, and all relevant Codes of Practice, satisfy all of the requirements set out in the judgment of the Court of Justice of the European Union (“CJEU”) in the Digital Rights Ireland case. The CJEU in that case held that indiscriminate or “blanket” retention of communications data is incompatible with the right to respect for privacy and the right to protection of personal data, and compatibility with those rights depends on the adequacy of all the relevant safeguards taken in the round.

5.5 The DRIP Act was enacted on a legislative timetable which made it impossible for us to report on the Bill before it had completed all of its stages in both Houses, but we wrote to the Home Secretary on 16 July asking for a detailed memorandum setting out in full the Government’s analysis of precisely how UK law satisfies, or will satisfy, each of the requirements set out in the relevant parts of the CJEU’s judgment.⁷² The Home Secretary replied on 31 July with a “summary” of the safeguards governing retention of and access to

68 Clause 17.

69 Evidence of David Anderson QC, 26 November 2014, Q24

70 James Brokenshire MP, 3 December 2014, Q33.

71 Retention of Communications Data Code of Practice—Addendum in relation to the provisions contained in the Counter Terrorism and Security Bill (9 December 2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383403/Draft_Data_Retention_Code_of_Practice_-_IP_resolution_addendum_-_for_pub....pdf

72 C-293/12 (8 April 2014), paragraphs 54 to 68 of the judgment.

communications data. The exchange of correspondence is available on our website.⁷³ We are grateful to the Home Secretary for her response, but we note that her letter did not identify, as we had requested, in relation to each of the requirements set out in the CJEU's judgment, the precise provisions of RIPA, the DRIP Act, or the draft Data Retention Regulations 2014 which satisfy the particular requirement.

5.6 We draw this correspondence to the attention of both Houses as it is relevant to Parliament's consideration of whether the UK's legal regime for the retention of communications data, viewed in the round, and including the provisions of Part 3 of the Bill and the draft Codes of Practice, contains adequate safeguards to prevent disproportionate interference with the right to respect for privacy and personal data.

73 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/legislative-scrutiny-2014-15/data-retention-and-investigatory-powers-bill/>

6 Prevent

A new statutory duty

6.1 Part 5 of the Bill makes provision which is intended to address the risk of being drawn into terrorism. It puts the existing “Prevent” programme on a statutory footing, as recommended by the post-Woolwich task force, by placing a new statutory duty on specified authorities to have due regard, in the exercise of their functions, to the need to prevent people from being drawn into terrorism.⁷⁴

6.2 The new duty applies to a range of bodies, including local authorities; certain criminal justice agencies such as prison governors and providers of probation services; educational institutions such as schools, colleges and universities; health and social care authorities; and the police.⁷⁵ Certain exceptions from the duty are made in relation to the exercise of a judicial or a legislative function.⁷⁶

6.3 The Secretary of State has the power to issue guidance to specified authorities about the exercise of the new duty.⁷⁷ Authorities are under a duty to have regard to the Secretary of State’s guidance in carrying out the duty.⁷⁸ The Secretary of State’s guidance is not made subject to any parliamentary procedure. The Government intends to publish one set of guidance for all the authorities which will be subject to the duty. A draft of the guidance was published for consultation on 18 December.⁷⁹

6.4 The Bill also gives the Secretary of State the power to give directions to a specified authority for the purpose of enforcing the performance of the duty if satisfied that the authority has failed to discharge the duty.⁸⁰ Such directions can be enforced by a mandatory court order on application by the Secretary of State.⁸¹

Freedom of speech and academic freedom

6.5 Universities are included in the specified authorities to which the new statutory duty will apply. The Government envisages that universities will be required to have policies on “extremist speakers”, and that the Secretary of State’s powers of direction would be exercisable where the Secretary of State considers that the university is failing to perform its new statutory duty.

6.6 Universities are already under a statutory duty to “take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers”.⁸² That duty includes the duty “to ensure, so far as is reasonably practicable, that the use of any premises

74 Clause 21.

75 Schedule 3.

76 Clause 21(4).

77 Clause 24(1).

78 Clause 24(2).

79 <https://www.gov.uk/government/consultations/prevent-duty>

80 Clause 25(1).

81 Clause 25(2).

82 Section 43(1) Education (No. 2) Act 1986.

of the establishment is not denied to any individual or body of persons on any ground connected with the beliefs or views of that individual or any member of that body, or the policy or objectives of the body”,⁸³ and universities are required to have a code of practice to facilitate the discharge of these duties.⁸⁴

6.7 The Government does not appear to have considered how the proposed new duty, as it applies to universities, will relate to these existing duties concerning freedom of speech, nor the precise implications of the new duty for the codes of practice which universities are already required to have. We asked the Minister, when he gave evidence to us, a number of questions about this subject, including what evidence demonstrates the necessity for a power in the Secretary of State to direct universities about the content of their policies on extremist speakers,⁸⁵ and how the Government intends to ensure that such a power is used compatibly with the right to academic freedom in universities.⁸⁶

6.8 Our concerns about this provision were not assuaged by the Minister’s response that universities “must take steps to recognise their duty to combat terrorism”,⁸⁷ nor by his assertion during the debate at Committee stage in the Commons that “the duty is not about restricting freedom of speech”.⁸⁸ The Minister’s statement in evidence to us that “some extremist preachers have sought to use higher education institutions as a platform for spreading their twisted messages that are linked to the underpinning of terrorism” comes close to a restatement of the “no platform” policies of some institutions in the 1980s which gave rise to Parliament’s clarification in the 1986 Act about the duties of universities to promote freedom of speech. The Secretary of State’s guidance will clearly be of great importance in providing the requisite legal certainty. The draft statutory guidance, however, only exacerbates our concerns.

6.9 The draft guidance states that universities must take seriously their responsibility to exclude those promoting extremist views that support or are conducive to terrorism.⁸⁹ “Extremism” is defined as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.” Universities will be expected to carry out a risk assessment of where and how their students might be at risk of being drawn into terrorism, which “includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit.”⁹⁰ They will be expected to train staff to “challenge extremist ideas which can be used to legitimise terrorism and are shared by terrorist groups.”⁹¹ To comply with the duty, universities should have policies and procedures in place for the management of events on university premises which apply to all staff, students and visitors, which provide for at least 14 days’ notice of booking speakers and events “to allow for checks to be made”, and require “advance notice of the content of the event, including an outline of the topics to be

83 Section 43(2).

84 Section 43(3).

85 Evidence of James Brokenshire MP, 3 December 2014, Q34.

86 Qs 35–40.

87 Q34.

88 James Brokenshire MP, HC Deb 16 December 2014 c 1344.

89 *Draft guidance*, para. 50.

90 *Draft guidance*, para. 57.

91 *Draft guidance*, para. 60.

discussed and sight of any presentations, footage to be broadcast, etc.” and monitoring of the event.⁹² Universities will be “centrally monitored” for compliance with the duty by the Home Office, and the Government also proposes expanding the powers of the Higher Education Funding Council for England (HEFCE) to enable it to become the body which monitors for compliance with the duty.⁹³

6.10 We welcome the important recognition in the draft Guidance that the terrorist threat to the UK comes from a variety of groups, including the extreme right, and that the Prevent strategy must be aimed at all kinds of terrorist threat. However, we are concerned about the implications for both freedom of expression and academic freedom as a result of the applicability of the proposed new duty to universities. The Chief Constable of Greater Manchester Police, Sir Peter Fahy, has been reported in the press as having concerns that the lack of legal certainty over terms such as “extremism” leaves too much discretion to the police to decide, in the heat of the moment, what counts as “extremism”.⁹⁴ We have similar concerns. In our view, universities are precisely the places where there should be open and inclusive discussion of ideas. Broad terms such as “extremist” or “radical” are not capable of being defined with sufficient precision to enable universities to know with sufficient certainty whether they risk being found to be in breach of the new duty and therefore subject to direction by the Secretary of State and, ultimately, a mandatory court order backed by criminal sanctions for contempt of court.⁹⁵ This legal uncertainty will have a seriously inhibiting effect on bona fide academic debate in universities, and on freedom of association, as lecturers and students worry about whether critical discussion of fundamentalist arguments, or of the circumstances in which resort to political violence might be justified, could fall foul of the new duty.

6.11 In our view, because of the importance of freedom of speech and academic freedom in the context of university education, the entire legal framework which rests on the new “prevent” duty is not appropriate for application to universities. We recommend that the Bill be amended to remove universities from the list of specified authorities to which the new duty applies. Alternatively, we recommend that the Bill be amended to add the exercise of an academic function to the list of functions which are excepted from the application of the duty.

6.12 We also remind Parliament that it has previously given statutory recognition to academic freedom in s. 202 of the Education Reform Act 1988 which provides that University Commissioners “shall have regard to the need to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions”.

6.13 Finally, as the Bill is currently drafted the guidance will not be subject to any parliamentary procedure and will therefore not be scrutinised by Parliament. We therefore also recommend that the Bill be amended to require the guidance to be approved by affirmative resolution of each House.

⁹² *Draft guidance*, paras 64–66.

⁹³ *Draft guidance*, para. 74.

⁹⁴ <http://www.theguardian.com/uk-news/2014/dec/05/peter-fahy-police-state-warning>

⁹⁵ Evidence of James Brokenshire MP, 3 December 2014, Q47.

7 Privacy and Civil Liberties Board

The effect of the Bill

7.1 The Bill empowers the Secretary of State to establish, by regulations, a Privacy and Civil Liberties Board to provide “advice and assistance” to the Independent Reviewer of Terrorism Legislation in the discharge of his functions.⁹⁶ The regulations “must” provide for the Board to be chaired by the Independent Reviewer.⁹⁷

Relationship with the Independent Reviewer of Terrorism Legislation

7.2 When the proposed Board was announced in July 2014 at the time of the passage of the emergency Data Retention and Investigatory Powers Act, the Government’s intention was that it would replace the Independent Reviewer of Terrorism Legislation. The draft Terms of Reference described the proposed Board as

“A Board which will replace the current Independent Reviewer of Terrorism Legislation and consider the balance between the threat and civil liberties concerns in the UK where they are affected by policies, procedures and legislation relating to the prevention of terrorism.”

7.3 We were concerned to see that such a drastic proposal had been made without any prior consultation, and we wrote to the Home Secretary on 16 July asking if she would agree to hold a public consultation on the proposed abolition of the post of Independent Reviewer of Terrorism Legislation and its replacement by a Privacy and Civil Liberties Board before bringing forward legislation.⁹⁸ We also asked whether it was proposed that members of the new Board would have the same access to sensitive material as has been accorded to the Independent Reviewer.

7.4 The Home Secretary, in her response dated 31 July, said that the current Independent Reviewer, David Anderson, had been consulted on the proposal to create the new Board, and that since primary legislation would be required, Parliament would have the opportunity to determine the details of the Board, including its composition and powers.⁹⁹ She did not answer our specific question about whether members of the Board would have the same access to sensitive material as the Independent Reviewer has enjoyed. The Government subsequently gave a commitment to holding a public consultation, but this was not conducted before the Bill was introduced. The consultation that we requested in our letter of 16 July was finally launched by the Government on 18 December, by which time the Bill had already completed its Committee stage in the House of Commons.¹⁰⁰

7.5 We were concerned about certain aspects of the draft Terms of Reference when they were published in July and these concerns have not been dispelled by either the Bill itself or

96 Clause 36.

97 Clause 36(4).

98 http://www.parliament.uk/documents/joint-committees/human-rights/Letter_to_Rt_Hon_Theresa_May_MP_160714.pdf

99 http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_Rt_Hon_Theresa_May_MP_310714.pdf

100 *Consultation on establishing a UK Privacy and Civil Liberties Board*
<https://www.gov.uk/government/consultations/privacy-and-civil-liberties-board>

the consultation document. For example, one of the purposes of the Board is said to be to carry out particular inquiries into the impact of particular issues or legislation relating to the prevention of terrorism, “including at the direction of relevant Ministers.”¹⁰¹ Such a power of ministerial direction would not be compatible with the independent scrutiny and oversight which the Government says is the purpose of this proposed reform.

7.6 The intended relationship between the Independent Reviewer and the proposed Board also remains unclear. According to the Government’s consultation paper, the purpose of the Board would be “to provide support and advice to the Independent Reviewer in discharging his statutory duties and in undertaking any reviews or inquiries into other aspects of counter-terrorism legislation or policy which impact on privacy or civil liberties issues”, and it is envisaged that the Board “could be tasked by the Reviewer to provide specific advice to him or to undertake reviews of particular areas.”¹⁰² The Independent Reviewer, in his evidence to us, found the concept of “advice and assistance” difficult to understand.¹⁰³ He said that he was already at liberty to seek advice from a wide range of people, which was freely given, and the sort of assistance that he would prefer would be a “junior” who would work directly for him. He was concerned that the proposed Board has “rather a bureaucratic smell” and might just add procedural complexity to the work that he does.¹⁰⁴ According to the Minister, it may be necessary for the members of the Board to enjoy the same degree of access to sensitive material as the Independent Reviewer, but this is a question which has yet to be decided.¹⁰⁵ The Government’s consultation paper acknowledges that the Independent Reviewer has been provided with substantial access to sensitive information and discussions under the flexible and pragmatic approach which has been established by the individuals who have performed the role, but “whether a similarly flexible approach could operate successfully in respect of a Board is less clear.”¹⁰⁶ In our view it is crucial to the question of the proper relationship between the Independent Reviewer and the Board: a Board of which the Chair has more privileged access to sensitive material than the other members is unlikely to be a happy working arrangement.

7.7 We welcome the fact that the proposed Privacy and Civil Liberties Board is no longer to replace the Independent Reviewer of Terrorism Legislation and the Government’s recognition, in its consultation paper, of the importance of ensuring that in making any changes to the current oversight arrangements, the key elements of the Independent Reviewer role are reflected and incorporated into the new approach. However, we are concerned by the proposed function of the Privacy and Civil Liberties Board and its relationship with the Independent Reviewer. In our view, the purpose of the proposed Privacy and Civil Liberties Board should not be to provide “advice and assistance” to the Independent Reviewer in the discharge of the Reviewer’s functions, but to publish reports about matters which are within the Reviewer’s remit. We also consider that the Independent Reviewer should not chair the new Board, particularly if there is to be differential access to sensitive material. We recommend that the Bill be amended to give effect to our recommendations that the proposed Privacy and Civil

101 *Consultation on establishing a UK Privacy and Civil Liberties Board*, para. 5.1.

102 *Consultation on establishing a UK Privacy and Civil Liberties Board*, paras 4.5–4.6.

103 Evidence of David Anderson QC, 26 November 2014, Q25.

104 *Ibid.*, Q23.

105 Evidence of James Brokenshire MP, 3 December 2014, Q44.

106 *Consultation on establishing a UK Privacy and Civil Liberties Board*, para. 5.5.

Liberties Board should exist separately from the Independent Reviewer and issue reports which may be of use to the Independent Reviewer in his work.

7.8 We also recommend that the opportunity should be taken in this Bill to give effect to the Independent Reviewer's recommendation that the major gaps in his functions should be filled by extending his remit beyond the four specific statutes that he currently reviews, to cover all terrorism legislation and other areas of law to the extent that they are applied for counter-terrorist purposes, such as immigration law and the prerogative power in relation to passports. The Government should also make available the resources necessary to provide the Independent Reviewer with the additional assistance of the kind he says he needs to help him to carry out his functions effectively.

Conclusions and recommendations

Background

1. We do not consider that the provision of an ECHR Memorandum at the time of the introduction of a fast-tracked Bill amounts to giving us a proper opportunity to scrutinise the legislation. (Paragraph 1.8)
2. We welcome the amount of parliamentary time that has been made available for scrutiny of the Bill on the floor of the House of Commons, despite its accelerated legislative timetable, but the compressed timetable has inevitably affected our ability to scrutinise the Bill fully. The long delay between our letter of 10 September and the provision of the ECHR Memorandum on 25 November represents a great deal of lost scrutiny time. In our view, draft clauses on the key provisions and a draft human rights memorandum could have been provided to the Committee much earlier to enable it to begin its scrutiny work. (Paragraph 1.10)

Preventing travel by seizure of passports

3. We accept that the Government has demonstrated the necessity for a power to seize travel documents, including passports, in circumstances not covered by existing powers, in order to prevent travel and to facilitate investigation by the police with a view to possible further action being taken, including the cancellation of a passport by the Secretary of State, criminal proceedings, or other counter-terrorism measures such as TPIMs. Preventive action of this sort in the interests of those who may be drawn into terrorism-related activity could prove more effective than taking action at a later date. Such a significant power to interfere with the right to leave the country, however, must be carefully targeted to fill the gap in powers that has been shown to exist, and it is therefore also necessary to scrutinise carefully the proportionality of the proposed measure, and in particular the procedural safeguards which exist to ensure that it is not exercised disproportionately. (Paragraph 2.15)
4. In our view, the best way to ensure compatibility with the right to a fair hearing in Article 6 ECHR is to amend Schedule 1 to the Bill so that it provides a genuinely judicial system of “warrants of further retention” which is directly analogous to the system of “warrants of further detention” of terrorism suspects in Schedule 8 to the Terrorism Act 2000, read so as to be compatible with the ECHR: that is, a system for the judicial authorisation of a further period of retention of travel documents, complete with proper procedural safeguards. (Paragraph 2.23)
5. We recommend that the requirement to apply for a judicial warrant of further retention should arise after 7 days rather than 14 days. We recommend that paragraph 5 of Schedule 1 be amended by substituting 7 for 14 days. (Paragraph 2.26)
6. We recommend that Schedule 1 to the Bill be amended so as to make explicit that the district judge can only issue a warrant of further retention of travel documents if satisfied not only that matters are being pursued diligently and expeditiously but that

there are reasonable grounds to suspect that the person is intending to leave the country to become involved in terrorist-related activity abroad, and that it is necessary to extend the period of retention to enable steps to be taken towards deciding what should happen next. (Paragraph 2.29)

7. We recommend that the Code should provide that a person subject to the exercise of the power should be informed of the reasons for its exercise at the earliest opportunity in every case, and not merely where the individual makes a request for such reasons. (Paragraph 2.31)
8. We welcome the express provision in the Code for a summary of the reasons for retaining travel documents to be provided to the person concerned before an application is made for an extension of the retention period. In our view, however, such provision is so fundamental to meeting the requirements of a fair hearing that it should be made on the face of the Bill itself. We recommend that the Bill should be amended to require that the person be informed of at least the gist of the reasons for suspecting that they intend to travel abroad to be involved in terrorism-related activity, in advance of the hearing before a judicial authority. (Paragraph 2.33)
9. We recommend that the Bill should be amended to ensure that the interests of the excluded party are represented by a special advocate in any closed material procedure. (Paragraph 2.35)
10. We recommend that the bill should be amended to ensure that there is a right to legal aid at such a hearing. (Paragraph 2.37)
11. We recommend that consideration should be given to the circumstances in which compensation should be payable where travel documents are seized under this power and returned with no further action taken, to cover financial loss suffered as a result of any unreasonable exercise of the power (e.g. the cost of missed flights, cancelled accommodation, etc.). (Paragraph 2.39)
12. We welcome the inclusion in the draft Code of requirements to ensure that the power is not exercised in a discriminatory way. We recommend that in addition to self-monitoring by the police, the use of the power should be carefully monitored by other independent oversight mechanisms, such as the Equality and Human Rights Commission and the Independent Reviewer of Terrorism Legislation, to guard against the risk that the new powers will heighten the perception that certain minority communities are treated differently in the exercise of counter-terrorism powers. (Paragraph 2.42)

Temporary exclusion orders

13. We welcome the Government's preparedness to make significant modifications to the proposal announced by the Prime Minister on 1 September, to exclude UK nationals from their country of nationality. That proposal would have put the UK in breach of a number of its international legal obligations, including the human right not to be made stateless and not to be deprived of the right to return to one's country of nationality, and we are pleased that the Government is not pursuing it. (Paragraph 3.8)

14. However, as the Minister confirmed in his evidence to us, the provisions in the Bill still have the effect of invalidating a UK national's passport while they are abroad, and of preventing their return unless they comply with conditions imposed by the Secretary of State, without any judicial process apart from ex post facto judicial review which, by definition, will have to be pursued from abroad. In our view this gives rise to a very real risk that the human rights of UK nationals will be violated as a result of the imposition of Temporary Exclusion Orders. We are opposed in principle to any exclusion of UK nationals from the UK, even on a temporary basis. (Paragraph 3.9)
15. In our view, the Government's objective of managed return could be achieved by a much simpler system requiring UK nationals who are suspects to provide advance notification of their return to the UK on pain of criminal penalty if they fail to do so. "Notification of return" orders, which could be substituted for temporary exclusion orders without too much drastic surgery to this Part of the Bill, would constitute a more proportionate interference with the right of a UK national to return to the UK, as they would not involve any cancellation of a citizen's passport or prohibition of their return, nor make that return conditional on the individual accepting conditions imposed by the Secretary of State. We recommend that the Bill be amended to replace temporary exclusion orders with notification of return orders in order to achieve the Government's objective of safe and managed return in a way compatible with the UK's human rights obligations. (Paragraph 3.12)
16. We welcome the Minister's indication that the Government will return to the issue of judicial oversight in the House of Lords. (Paragraph 3.15)
17. We therefore recommend that the Bill be amended to provide expressly for a judicial role prior to the making of a notification of return order, which is currently lacking in this part of the Bill. (Paragraph 3.15)
18. Like the Independent Reviewer of Terrorism Legislation, we believe in principle that the operation in practice of the new powers to impose restrictions on travel of terrorism suspects should be subject to independent review and therefore we recommend that the powers in Part 1 of the Bill, concerning both passports and managed return, be subject to review by the Independent Reviewer. (Paragraph 3.17)
19. We recommend that Part 1 of the Bill be made subject to a renewal requirement to enable Parliament to consider the case for continuing these powers in the light of the Independent Reviewer's report on their operation in practice. (Paragraph 3.20)

TPIMs

20. We welcome the fact that the Government has accepted and given effect to nearly all of the Independent Reviewer's 10 recommendations about TPIMs in his last annual report on the operation in practice of the TPIM regime. We particularly welcome the raising of the threshold for the imposition of a TPIM, and the slight narrowing of the scope of the definition of terrorism-related activity. As the Government's ECHR Memorandum rightly claims, these changes represent an increase in the level of

safeguards against TPIMs resulting in the unjustified interference with ECHR rights. (Paragraph 4.2)

21. Just as in our recent Report on TPIMs we said that we do not feel sufficiently informed about the threat picture to be able to conclude that the power to impose TPIMs is no longer required, so we do not feel in a position to gainsay the judgment of the Independent Reviewer on a question of this nature. We therefore reluctantly accept his judgment that the changing nature of the threat justifies the reintroduction of relocation. We look to the Government to be proactive in bringing forward ideas about how to mitigate the alienation and resentment likely to be caused in some minority communities. (Paragraph 4.10)
22. We welcome the Government's preparedness to raise the threshold for imposition of TPIMs to "balance of probabilities", which potentially strengthens the safeguards against disproportionate use of the power. However, in order for this change to make a real practical difference, we recommend that the TPIM Act be amended to require the court also to consider whether the balance of probabilities standard was satisfied, in place of the current, lighter-touch judicial review standard. Such an amendment would give effect to the unimplemented part of the Independent Reviewer's recommendation. (Paragraph 4.14)
23. We agree with the Independent Reviewer that the power to require TPIM subjects to engage with de-radicalisation programmes should be accompanied by complete clarity as to the use to which their answers to questions could be put, and in particular whether they could be used as evidence against them in a criminal trial. We recommend that the Bill be amended to make express provision to protect the privilege against self-incrimination when TPIMs subjects are required to attend appointments with specified people. (Paragraph 4.18)

Data retention

24. We draw this correspondence to the attention of both Houses as it is relevant to Parliament's consideration of whether the UK's legal regime for the retention of communications data, viewed in the round, and including the provisions of Part 3 of the Bill and the draft Codes of Practice, contains adequate safeguards to prevent disproportionate interference with the right to respect for privacy and personal data. (Paragraph 5.6)

Prevent

25. We welcome the important recognition in the draft Guidance that the terrorist threat to the UK comes from a variety of groups, including the extreme right, and that the Prevent strategy must be aimed at all kinds of terrorist threat. However, we are concerned about the implications for both freedom of expression and academic freedom as a result of the applicability of the proposed new duty to universities. The Chief Constable of Greater Manchester Police, Sir Peter Fahy, has been reported in the press as having concerns that the lack of legal certainty over terms such as "extremism" leaves too much discretion to the police to decide, in the heat of the moment, what counts as "extremism". We have similar concerns. In our view,

universities are precisely the places where there should be open and inclusive discussion of ideas. Broad terms such as “extremist” or “radical” are not capable of being defined with sufficient precision to enable universities to know with sufficient certainty whether they risk being found to be in breach of the new duty and therefore subject to direction by the Secretary of State and, ultimately, a mandatory court order backed by criminal sanctions for contempt of court. (Paragraph 6.10)

26. This legal uncertainty will have a seriously inhibiting effect on bona fide academic debate in universities, and on freedom of association, as lecturers and students worry about whether critical discussion of fundamentalist arguments, or of the circumstances in which resort to political violence might be justified, could fall foul of the new duty. (Paragraph 6.10)
27. In our view, because of the importance of freedom of speech and academic freedom in the context of university education, the entire legal framework which rests on the new “prevent” duty is not appropriate for application to universities. We recommend that the Bill be amended to remove universities from the list of specified authorities to which the new duty applies. Alternatively, we recommend that the Bill be amended to add the exercise of an academic function to the list of functions which are excepted from the application of the duty. (Paragraph 6.11)
28. We also remind Parliament that it has previously given statutory recognition to academic freedom in s. 202 of the Education Reform Act 1988 which provides that University Commissioners “shall have regard to the need to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions”. (Paragraph 6.12)
29. We therefore also recommend that the Bill be amended to require the guidance to be approved by affirmative resolution of each House. (Paragraph 6.13)

Privacy and Civil Liberties Board

30. We welcome the fact that the proposed Privacy and Civil Liberties Board is no longer to replace the Independent Reviewer of Terrorism Legislation and the Government’s recognition, in its consultation paper, of the importance of ensuring that in making any changes to the current oversight arrangements, the key elements of the Independent Reviewer role are reflected and incorporated into the new approach. However, we are concerned by the proposed function of the Privacy and Civil Liberties Board and its relationship with the Independent Reviewer. In our view, the purpose of the proposed Privacy and Civil Liberties Board should not be to provide “advice and assistance” to the Independent Reviewer in the discharge of the Reviewer’s functions, but to publish reports about matters which are within the Reviewer’s remit. We also consider that the Independent Reviewer should not chair the new Board, particularly if there is to be differential access to sensitive material. We recommend that the Bill be amended to give effect to our recommendations that the proposed Privacy and Civil Liberties Board should exist separately from the

Independent Reviewer and issue reports which may be of use to the Independent Reviewer in his work. (Paragraph 7.7)

31. We also recommend that the opportunity should be taken in this Bill to give effect to the Independent Reviewer's recommendation that the major gaps in his functions should be filled by extending his remit beyond the four specific statutes that he currently reviews, to cover all terrorism legislation and other areas of law to the extent that they are applied for counter-terrorist purposes, such as immigration law and the prerogative power in relation to passports. The Government should also make available the resources necessary to provide the Independent Reviewer with the additional assistance of the kind he says he needs to help him to carry out his functions effectively. (Paragraph 7.8)

Declaration of Lords' Interests

Baroness Berridge

Member, London Police Ethics Panel

Baroness Kennedy of the Shaws

A practising barrister who is occasionally briefed in cases alleging terrorism and raising security issues

Baroness Lister of Burtersett

Emeritus Professor of Social Policy at Loughborough University

Baroness O'Loan

Chair, Daniel Morgan Independent Panel

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Formal Minutes

Wednesday 7 January 2015

Members present:

Dr Hywel Francis, in the Chair

Mr Virendra Sharma
Sarah Teather

Baroness Berridge
Baroness Buscombe
Baroness Kennedy of the Shaws
Baroness Lister of Burtersett
Baroness O'Loan

Draft Report (Legislative Scrutiny: Counter-Terrorism and Security Bill), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be now considered.

Paragraphs 1.1 to 7.8 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 14 January at 9.30 am]

List of Reports from the Committee during the current Parliament

Session 2014–15

First Report	Legal aid: children and the residence test	HL Paper 14/HC 234
Second Report	Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill	HL Paper 49/HC 746
Third Report	Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill	HL Paper 62/HC 779
Fourth Report	Protocol 15 to the European Convention on Human Rights	HL Paper 71/HC 837
Fifth Report	Legislative Scrutiny: Counter-Terrorism and Security Bill	HL Paper 86/HC 859

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014
Eleventh Report	Legislative Scrutiny: Care Bill	HL Paper 121/HC 1027
Twelfth Report	Legislative Scrutiny: Immigration Bill (second Report)	HL Paper 142/HC 1120
Thirteenth Report	The implications for access to justice of the Government's proposals to reform judicial review	HL Paper 174/ HC 868
Fourteenth Report	Legislative Scrutiny: (1) Serious Crime Bill and (2) Deregulation Bill	HL Paper 189/HC 1293

Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty-third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and	HL Paper 180/HC 1432

	Investigation Measures Bill	
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777