



THE GOVERNMENT REPLY TO  
THE TENTH REPORT FROM THE  
JOINT COMMITTEE ON HUMAN RIGHTS  
SESSION 2007-08 HL PAPER 57, HC 356

# **Counter-Terrorism Policy and Human Rights (Ninth Report): Annual Renewal of Control Orders Legislation 2008**

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

**April 2008**



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*Dear Andrew*

## **REPORT ON THE RENEWAL OF THE CONTROL ORDERS LEGISLATION**

I am grateful to you and the other members of the Joint Committee on Human Rights for your report on the 2008 renewal of the control orders legislation. I welcome your statement made during the course of the renewal debate in the House of Commons (on 21 February 2008) that "control orders, in some form, will be needed for the foreseeable future".

I also welcome the careful consideration that the JCHR continues to give the control order system. I attach the Government's formal response to the main recommendations in your report. A copy of this letter and the Government response will be placed in the House library and on the Home Office website.

*Yours*

*Jacqui Smith*  
**JACQUI SMITH**

## **GOVERNMENT REPLY TO THE REPORT BY THE JOINT COMMITTEE ON HUMAN RIGHTS ON THE ANNUAL RENEWAL OF CONTROL ORDERS LEGISLATION 2008**

### **Amendments to the control orders legislation**

**It appears that the Government has taken the view that no amendments to the control orders legislation are necessary following the judgments of the House of Lords. We disagree. (Paragraph 11)**

The Government continues to disagree with the JCHR on this point. As a result of the House of Lords' judgments of October 2007, control orders legislation is fully compliant with the European Convention on Human Rights and no amendments to the legislation are necessary.

### **Need for review of counter-terrorism legislation**

**We approach the question of the renewal of control orders in full agreement with the Government about the importance of the positive obligation imposed on the Government by human rights law, to take effective steps to protect the public from the real threat of terrorism. We also agree that it is essential to keep our counter-terrorism legislation under constant review, for two reasons: first, to ensure that the authorities are properly equipped to respond effectively to the current threat and so protect the public; and, second, in the light of experience, to ensure that the counter-terrorism measures which are in place are not themselves incompatible with human rights, or used in practice in a way which breaches human rights. Counter-terrorism measures which breach human rights are ultimately counter-productive and therefore worse than ineffective in countering terrorism: they risk exacerbating the problem. In our view it is therefore imperative that the Government's recent review of counter-terrorism law leads not only to proposals to take new powers where they are shown to be necessary in order to protect the public from terrorism, but also to amendments to existing counter-terrorism laws where experience has shown them to lead to breaches of human rights. (Paragraph 13)**

The Government agrees that it is important to keep our counter-terrorism legislation under regular review in order to ensure that it is effective, necessary and proportionate.

### **Compatibility of control orders with human rights law**

**Unless the modifications of the control order regime we recommended in our Report on the Counter-Terrorism Bill are made, in our view the use of control orders will continue to give rise to breaches of individuals' rights both to liberty and due process. (Paragraph 15)**

The Government disagrees. As stated above, as a result of the House of Lords' judgments in October 2007, control orders legislation is fully compliant with the European Convention on Human Rights.

## **Availability of reports by the independent reviewer of counter-terrorism legislation**

**We would go further than the House of Lords Merits Committee and suggest that by failing to ensure that Lord Carlile's report is available to Parliament sufficiently in advance of the renewal debate to permit proper scrutiny by parliamentary committees, the Secretary of State is frustrating the purpose of the important provisions for parliamentary review of the control order powers in s. 14 Prevention of Terrorism Act 2005. (Paragraph 24)**

**In our view, this apparent delay in making the statutory reviewer's report available to Parliament last year was not only poor practice, it was incompatible with the statutory requirements in s. 14 Prevention of Terrorism Act 2005. (Paragraph 25)**

**The Home Secretary and the statutory reviewer should therefore ensure that the latter's report is available to Parliament in sufficient time to allow such scrutiny before the parliamentary debate on renewal. (Paragraph 27)**

The Government appreciates the importance of making the reports of the independent reviewer of counter-terrorism legislation available in good time for the renewal debates. The reports are published as soon as reasonably practicable.

**We find the Government's failure to respond to our constructive proposals for improved parliamentary review extremely disappointing, especially in light of the renewed commitment of the Prime Minister to the importance of parliamentary oversight in relation to the unusual powers required to counter terrorism. (Paragraph 29)**

The independent reviewer of terrorism legislation already reports annually on the operation of the Terrorism Act 2000, including on the extended period of pre-charge detention. We will endeavour to ensure that these reports are made available in good time for the renewal debates on the extension of the pre-charge detention period from 14 to 28 days.

## **Recommendations for improved parliamentary oversight of control orders**

**We recommend that parliamentary oversight of the highly unusual and intrusive powers contained in the control orders regime should be strengthened by:**

- (i) Prescribing in more detail the information to be provided by the Secretary of State in her quarterly reports to Parliament about her exercise of the control orders power;**
- (ii) Requiring the Home Secretary to provide to Parliament, at least a month before the annual renewal debate, an annual report on the exercise of the control order powers since the last renewal;**
- (iii) Providing for the statutory reviewer of the operation of the Act to be appointed by Parliament not the Secretary of State, so that he or she is seen to be entirely independent of the Secretary of State and to emphasise that the reviewer's function is to inform Parliament and to facilitate informed parliamentary debate;**
- (iv) Providing for the statutory reviewer to report directly to Parliament, not to the Secretary of State (as does, for example, the Parliamentary and Health Services Ombudsman)**

**(v) Providing for the independent reviewer to report to Parliament on the operation in practice of the control orders regime and of the necessity for it, at least a month before the annual renewal debate.**

**(Paragraph 33)**

- i) The Government does not consider this to be necessary. This matter has already been considered by the independent reviewer of counter-terrorism legislation, whose report on this was published in December 2006, and included as Annex 2 of his February 2007 annual report on the operation of the Prevention of Terrorism Act 2005. Considerable additional information is now included in the Secretary of State's quarterly reports to Parliament. This change has been welcomed by the independent reviewer.
- ii) The Government does not consider this to be necessary. The Secretary of State already reports quarterly on the exercise of the control order powers.
- iii) The Government does not consider this to be necessary. The current arrangements remain appropriate.
- iv) The Government does not consider this to be necessary. The current arrangements remain appropriate.
- v) The Government does not consider this to be necessary. The independent reviewer is already required to review and report on the operation of control orders legislation as soon as reasonably practicable after mid-December, and the reports are published as soon as reasonably practicable.

#### **Approach taken by the courts on the deprivation of liberty**

**We recommend that the Prevention of Terrorism Act be amended to clarify the approach to be taken by courts to the question whether the effect of a control order is to deprive a person of their liberty. This could simply take the form, for example, of spelling out expressly in the statute that the courts must have regard to factors such as the nature, duration, effects and manner of implementation of the restrictions, and that the combination of obligations may amount to a deprivation of liberty even if no individual obligation amounts to such a deprivation. We will suggest amendments to give effect to this recommendation in our report on the Counter-Terrorism Bill.**  
**(Paragraph 46)**

The Government does not consider such an amendment to be necessary. The European Court of Human Rights has already made this clear; and this has been reflected in the judgments of the domestic courts, including the Law Lords.

The Government notes the courts' acceptance of the prime importance of physical liberty – and thus in control order cases, the curfew, in determining whether there was a deprivation of liberty. The European Court stated that 'In proclaiming the 'right to liberty', paragraph 1 of Article 5 is contemplating individual liberty in its classic sense, that is to say the physical liberty of the individual' (see judgments on *Engel* and *Guzzardi*). The Law Lords stated in *JJ and others* in October 2007 that it was to the principles laid down by the European Court 'that national courts must look for guidance.'

#### **Maximum daily limit on curfew imposed by control orders**

**We recommend that Parliament should amend the Prevention of Terrorism Act to impose a maximum daily limit on the curfew which can be imposed in a control**

**order in order to make it less likely that control orders will be found to be in breach of Article 5. (Paragraph 47)**

**Given the seriousness of the other restrictions imposed on individuals in the most onerous control orders, and their open-ended nature, it should be 12 hours, not 16 hours as the Government currently interprets its obligations under Article 5 ECHR. (Paragraph 48)**

The Government does not agree with either recommendation. Introducing a maximum curfew of 12 hours for controlled individuals would significantly damage the Government's ability to protect the public from the threat of terrorism.

In addition, the Law Lords unanimously agreed that 12 and 14 hour curfews do not deprive an individual of their liberty in their October 2007 judgments on *E* and *MB and AF* respectively. Further, in their judgment on *JJ and others* a majority of the Lords effectively indicated that a control order with obligations including a 16 hour curfew would not breach Article 5 of the European Convention on Human Rights; a 16 hour curfew has since been upheld by the High Court in the case of *AE*. The Lords also judged (by a majority of three to two) that an 18 hour curfew would amount to a deprivation of liberty. Amending the Prevention of Terrorism Act or introducing a maximum curfew of 12 hours is therefore not necessary as a matter of law.

Each control order is made on a case by case basis and the obligations it imposes are tailored to meet the particular risk posed by the individual concerned. All the obligations, including the curfew, are considered necessary and proportionate to address the threat to national security posed by the individuals in question.

#### **Effect of curfews of less than 12 hours**

**Control orders which contain curfews of less than 12 hours are still capable of amounting to a deprivation liberty if the other restrictions imposed on the individual are sufficiently severe. (Paragraph 49)**

As stated above, the European Court has recognised that Article 5 of the European Convention on Human Rights is concerned with individual liberty in its classic sense – the physical liberty of the individual. In their judgment on *JJ and others* in October 2007, the House of Lords recognised this point and concentrated on the length of curfew as the prime factor in determining whether there was a deprivation of liberty. They effectively indicated that a 16 hour curfew would not breach Article 5 of the European Convention on Human Rights.

While it may therefore be theoretically possible for a 12 hour curfew in conjunction with other severe restrictions to amount to a deprivation of an individual's liberty, the Government considers such a scenario to be extremely unlikely, if not impossible, in practice.

#### **Fairness of the special advocate system**

**We also note that Lord Carlile's Report suggests that the special advocate procedure is working well, and that the Rules of Court governing the conduct of control order proceedings also "continue to work reasonably well." We are surprised by this conclusion, given the serious concerns about the fairness of the special advocate procedure expressed in evidence to us by a number of special advocates, and the concerns of the majority of the House of Lords in *MB* about the dangers of controlees being denied the essence of a fair hearing. We are also disappointed that the statutory**

**reviewer of the operation in practice of control orders does not appear to have taken into account our own detailed recommendations about how to improve the fairness of the special advocate regime. (Paragraph 56)**

The Government continues to disagree with the JCHR on this point. The House of Lords' judgment on *MB* in October 2007 'read down' the control order legislation in order to ensure that the procedure adopted under it would be compatible with Article 6 of the European Convention on Human Rights in every case. The Lords concluded that the High Court should consider the compatibility of each control order with the individual's Article 6 rights on a case by case basis. Where the judge concludes that there is material that it is necessary to disclose in order for the controlled individual to have a sufficient measure of procedural protection, the Secretary of State will be put to her election. In other words, the Secretary of State is given a choice whether to disclose the information, or withdraw it from the case. If the latter, the case then proceeds without that material included. Either way, the case continues in a manner compliant with Article 6. This consideration forms part of the mandatory review of each control order by the High Court – one of the many safeguards in place to secure each individual's human rights.

Thus, as a result of the House of Lords' judgment in the case of *MB*, no control order will be upheld through a process whereby the individual's Article 6 rights have not been protected. Control orders legislation, including the special advocate system, as supplemented by this judgment, is therefore fully compliant with Article 6 of the European Convention on Human Rights.

#### **Use of new evidence by the High Court to revoke a control order**

**We share Lord Carlile's concern about whether the legislation is sufficiently clear to ensure that the High Court can set aside a control order if it is based on a serious factual error or that there is new evidence to show that there has been a substantial change in the situation since the making of the order. We intend to suggest an amendment to ensure that the issue is considered by Parliament during the passage of the Counter-Terrorism Bill. (Paragraph 59)**

As noted in the Government's formal responses to the independent reviewer's 2007 and 2008 reports on the operation of the Prevention of Terrorism Act, the High Court can already do this. The Court of Appeal judgment on *MB* of 1 August 2006 makes clear that, when considering whether the Secretary of State was justified in imposing a control order, the court should consider the evidence up to the time of the hearing rather than at the time of the creation of the control order.

Last year's High Court, Court of Appeal and Law Lords' judgments in relation to *E* provide examples of new material being taken into account in determining whether a control order remains necessary. Similarly, the recent judgment in the case of *Bullivant*, in which his control order was quashed, demonstrates that judges can and do consider circumstances at the time of the court hearing. The judgment stated that, 'even if the grounds were reasonable on the material when the order was made, they may be shown not to have been reasonable by subsequent material.' The judge went on to say that he was 'satisfied the decision to make a control order was justified on the material available at the time,' but that he was 'equally satisfied that reasonable grounds for suspicion do not now exist'.

Controlled individuals can also ask for modifications to their control order if there has been a change in circumstances – and appeal if the Government refuses those modifications.

No amendment to the Prevention of Terrorism Act on this point is therefore necessary.

## Prosecution of suspected terrorists

**We continue to welcome the Government's professed policy of the priority of prosecution. We regard criminal prosecution, rather than indefinite resort to the parallel jurisdiction of control orders, as the way, compatible with human rights, to deal with these cases in the long run. (Paragraph 61)**

The Government agrees. We currently face an unprecedented threat from terrorism. In tackling it, we must ensure that we achieve the appropriate balance between individual liberty and our national security. We must ensure that we protect the most important of civil liberties, the right to life, whilst also protecting our other fundamental values.

The Government's preference when dealing with suspected terrorists is prosecution. We continue to seek improvements in our ability to do this – for example:

- Introducing new offences in the Terrorism Act 2006 such as the preparation or encouragement of terrorist acts;
- Putting forward new measures such as post-charge questioning in the Counter-Terrorism Bill currently before Parliament; and
- Accepting the recommendations of the Chilcot report for the introduction of intercept as evidence.

Where prosecution is not possible, and the suspected terrorist concerned is a foreign national, we aim to deport them. We have agreed, and are continuing to negotiate, appropriate arrangements with other countries to protect deported individuals' human rights.

Despite these improvements, there remain a small number of suspected terrorists whom we can neither prosecute nor deport. Without some disruption of their terrorism-related activity, these individuals would be free to continue to facilitate or execute acts of terrorism. This is not a risk the Government is prepared to take. Control orders remain the best available means for managing the risk posed by these individuals.

## Prosecution of controlled individuals for terrorism-related offences

**The fact that no individual who has been made the subject of a control order has subsequently been prosecuted for a terrorism offence, other than for breach of a control order, seems to us to be significant. We therefore continue to question the extent to which, in relation to certain individuals, priority is really given to criminal prosecution rather than the indefinite and extensive control which is currently available through the use of control orders. In our view, the Government's professed policy of preferring to prosecute as a first resort could be more effectively underpinned by a number of amendments to the control orders framework. (Paragraph 65)**

The Government disagrees. Prosecution remains our preferred approach for dealing with suspected terrorists. The decision on whether to prosecute a particular individual is an operational matter for the police and the Crown Prosecution Service. The police are under a duty to keep under review the possibility of prosecution of individuals subject to a control order. The possibility of prosecution is considered on an ongoing basis and is formally captured on a quarterly basis by the Control Order Review Group.

As a result of recommendations made by Lord Carlile last year and various judgments, improved procedures in relation to prosecution are in place. In relation to the initial

consideration of the possibility of prosecution, in every case, an advice file is prepared by the police and examined by the Crown Prosecution Service along with any available primary evidence. The Crown Prosecution Service returns that file to the police along with their recorded advice. The police subsequently write a letter to the Home Office on the prospect of prosecution, as required under section 8 of the Prevention of Terrorism Act. The letter from the police to the Home Office will explain the conclusion that the police have reached and how it was arrived at. These letters include more detail than previously. Similarly, last year new procedures were put in place in relation to the ongoing prospect of prosecution. The police review any new material brought to their attention and, where it is necessary to do so, update the existing police file and consult the Crown Prosecution Service. The Crown Prosecution Service examines every case as part of the procedures pertaining to the imposition of a control order and has been asked to reconsider some cases where a review is being carried out. In those cases, prosecution has not resulted because the case has not passed the prosecution tests in the Code for Crown Prosecutors.

The House of Lords' judgment on *E* in October 2007 confirmed the extent of the Government's duties with regard to examining the prospects for prosecuting individuals subject to control orders for offences relating to terrorism. As per section 8(2) of the Prevention of Terrorism Act, before making a control order against an individual, the Secretary of State must consult the police regarding the prospects of prosecution of that individual for a terrorism-related offence. But this consultation is not a condition precedent of making an order. Still less is it a condition precedent that the Secretary of State must herself consider the prospects of prosecution or know the result of that consultation – i.e. must have been told that it is not feasible to prosecute with a reasonable prospect of success. The Law Lords emphasised that this was not just a matter of statutory construction; there were also strong practical reasons for it.

In terms of the ongoing prospect of prosecution, under sections 8(4) and 8(5) of the Prevention of Terrorism Act, the duty of keeping the prospect of prosecution under review is laid on the chief office of police in conjunction with the relevant prosecuting authority. This has been supplemented by the Court of Appeal judgment in *E*:

*“Once it is accepted that there is a continuing duty to review pursuant to MB’s case, it is implicit in that duty that the Secretary of State must do what he reasonably can to ensure that continuing review is meaningful... it was incumbent upon him to provide the police with material in his possession which was or might be relevant to any reconsideration of prosecution. The duty extends to a duty to take reasonable steps to ensure that the prosecuting authorities are keeping the prospects of prosecution under review. The duty does not, however, extend to the Secretary of State becoming the prosecuting authority. The decision whether to prosecute lies elsewhere.”*

This position was supported by the House of Lords' judgment on *E* in October 2007. No amendments to the Prevention of Terrorism Act are therefore necessary.

Control orders are only applied to the small number of suspected terrorists who we cannot prosecute or deport. The fact that no individuals who have been subject to control orders have subsequently been prosecuted for a terrorism-related offence (other than for breaches of their control order) should not therefore be surprising. It demonstrates that at the time of the creation of the control order there was, and continues to be, no realistic prospect of prosecution. Moreover, since control orders are designed to prevent, restrict or disrupt individuals' involvement in terrorism-related activity this also arguably indicates that the control order against them has been successful in disrupting their terrorism-related activity.

## **Consideration of prospect of successful prosecution in making control orders**

**We recommend that the Prevention of Terrorism Act 2005 should be amended to provide that, except in urgent cases, the Secretary of State may only make a control order where she is satisfied that there is no reasonable prospect of successfully prosecuting the subject of the order for a terrorism-related offence. (Paragraph 67)**

The Government disagrees. The Crown Prosecution Service, not the Secretary of State, is responsible for deciding whether a person should be charged with a criminal offence, and if so, what that offence should be. The Crown Prosecutor makes these decisions in accordance with the Code for Crown Prosecutors and the Director's Guidance on Charging. The decision on whether to prosecute is taken by the Crown Prosecutor following full consideration of the evidence and intelligence. This recommendation would therefore undermine the role of the independent prosecuting authorities.

Moreover, as stated above, this matter was explicitly considered by the Law Lords in the case of *E*. They judged that no changes to section 8 of the Prevention of Terrorism Act were required. Indeed, they considered that such an approach would have the "...potential to emasculate what is clearly intended to be an effective procedure".

## **Determining the prospects for successful prosecution**

**We welcome the improvements to the Home Office's systems for keeping the prospects of prosecution under review. In our view, however, the policy of giving priority to prosecution would be better served by turning this from a matter of mere practice into one of express statutory obligation. We recommend that the Prevention of Terrorism Act 2005 be amended to impose an express duty on the Secretary of State, throughout the period during which a control order has effect, to ensure that the question of whether there is a reasonable prospect of successfully prosecuting the subject of the order for a terrorism-related offence is kept under review at least every 3 months. (Paragraph 72)**

The Government does not agree with this recommendation. Prosecution is the responsibility of the police and the Crown Prosecution Service. Under sections 8(4) and 8(5) of the 2005 Act, there is already a statutory obligation on the police to keep the possibility of prosecution under review and to consult the Crown Prosecution Service as appropriate. Moreover, this is formally captured by the Control Order Review Group on a quarterly basis. As stated above, the Lords confirmed the extent of the Government's duties on this point and that no changes to this section of the Act were required.

**We therefore recommend that the Secretary of State should be placed under a duty to consult the police prior to her regular review of the prospects of prosecution and to share with the police such information (including intelligence information) as is available to her which is relevant to the prospects of a successful prosecution. (Paragraph 73)**

The Government does not consider these recommendations to be necessary. As above, court judgments have made clear the extent of the Secretary of State's duties under section 8 of the Prevention of Terrorism Act. The Control Order Review Group, consisting of law enforcement agencies and the Home Office, formally reviews the possibility of prosecution on a quarterly basis.

**We recommend that the control orders legislation be amended to secure greater transparency of decisions that prosecution is not possible, first by imposing a duty on**

**the chief officer of police to provide reasons when he advises the Secretary of State that there is no realistic prospect of prosecution and, second, by providing that those reasons shall be disclosed to the controlled person to the extent that such disclosure would not be contrary to the public interest. (Paragraph 76)**

The Government does not agree with either of these recommendations. As outlined in the Government's formal response to the independent reviewer's 2008 report on the operation of the Prevention of Terrorism Act, we do not consider it appropriate for any further detail to be included in the letters. Providing reasons for not proceeding with the prosecution of a particular individual to that individual would also be highly unusual, and to do so could risk prejudicing future prosecutions.

### **Recruitment of controlled individuals by the Security Service**

**Recruitment as an informer by the Security Service would not in our view be a legitimate exit strategy as this would introduce an illegitimate purpose into the maintenance of the control order. We look forward to receiving the Home Secretary's confirmation that individuals who are the subject of control orders have not and will not be approached by the Security Service for this purpose. (Paragraph 79)**

We are not prepared to comment on specific cases or possible actions by the Security Service.

Clearly, in order for each control order to continue it must be considered necessary for purposes connected with protecting members of the public from a risk of terrorism. This necessity is kept under regular review by the Control Order Review Group and judicially reviewed by the High Court.

### **Review of the grounds for reasonable suspicion of involvement in terrorism-related activity**

**We recommend that the control order legislation be amended to impose an express duty on the Secretary of State to keep the decision to impose a control order under review, including by considering whether there continue to be reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity and whether a control order continues to be necessary at all. (Paragraph 84)**

The Government does not consider such an amendment to be necessary. The Secretary of State is already effectively under a duty to ensure the tests in section 2(1) of the Prevention of Terrorism Act (that the individual is reasonably suspected of involvement in terrorism-related activity and that a control order is necessary to protect members of the public from a risk of terrorism) continue to be met. The Control Order Review Group already reviews each quarter the circumstances surrounding each control order including whether these tests continue to be met. The Control Order Review Group considers the circumstances at the time of the review rather than at the time of the creation of the control order. This is reflected by the fact that the Government has revoked three control orders over the last year.

### **Limits on the duration of a control order**

**We do not believe it is sufficient to rely solely on the courts to ensure that the operation of an individual control order is not indefinite or so prolonged that it breaches human rights obligations. We see the force of Lord Carlile's suggestion that there could be a statutory presumption against control orders being extended beyond a maximum**

**duration of two years other than in genuinely exceptional circumstances. On balance, we are in favour of a maximum limit on the duration of a control order, both as an important safeguard of the liberty and mental health of the individuals concerned, and as a discipline on the investigative and enforcement authorities to find material capable of being the basis for a criminal prosecution within a reasonable time. Beyond prohibiting severe controls of indefinite duration, however, human rights law does not provide any clear answer as to what that limit should be. We recommend that Parliament should debate the principle of whether there should be a maximum limit on the duration of a control order, and if so what that limit should be. We will propose an amendment to the Counter-Terrorism Bill to enable such a debate to take place. (Paragraph 87)**

The Government does not agree. The Government accepts that control orders should be imposed for as short a time as possible, commensurate with the risk posed. To ensure this, each control order is subject to rigorous external judicial scrutiny. In addition, the consideration of exit strategies for each control order is an integral and significant part of the formal review held each quarter for every control order by the Control Order Review Group.

Exit strategies have been implemented for a number of individuals subject to control orders:

- 9 have been served with notices of intention to deport (6 of whom have been deported);
- 3 have had their orders revoked; and
- 2 orders have not been renewed.

The Government does not agree with the idea that there should be an arbitrary end date for individual control orders. We need to be careful about assuming individuals no longer pose a threat after a defined period of time. Each order is addressing individual risk and if the Government considers it necessary and proportionate to extend a control order in order to protect the public from a risk of terrorism it is the Government's responsibility to do so. The statutory tests in the Prevention of Terrorism Act already ensure that the Government can only lawfully renew a control order if it is necessary to do so. The fact that each individual can appeal to the High Court against the renewal of their control order ensures that rigorous judicial scrutiny of the necessity of the control order continues throughout the duration of the order. In addition, a definite end date to every control order would mean the individuals subject to them could simply disengage from involvement in terrorism-related activity on the basis that they know they could re-engage at the end of that time period.

To clarify a matter raised in the JCHR's report and during this year's debates on the renewal of the Prevention of Terrorism Act, there were at that date five individuals who had been subject to control orders for longer than two years (and not seven as suggested). Two other cases would have reached the two year point on 23 February 2008 but lapsed without being renewed. These control orders were those imposed on two of the individuals who absconded in May 2007.

### **Need for amendments to the control orders legislation**

**We express in this Report our major concerns about the adequacy of parliamentary scrutiny of the control order regime that was both promised by the Government**

**at the outset and that is necessary. For the reasons we have explained in this and previous Reports, we continue to have very serious concerns about the human rights compatibility of both the control orders regime itself and its operation in practice. In particular we remain concerned that the regime as it currently stands and as it is currently operated is very likely to result in breaches of both the right to liberty and the right to a fair hearing (paragraph 88). We therefore have very serious reservations about the renewal of the control order regime unless the Government is prepared to make the amendments we identify in this Report which are intended to render it human rights compatible. Unless those modifications of the control order regime are made, in our view it is inevitable that the use of control orders will continue to give rise to breaches of individuals' rights both to liberty and due process. (Paragraph 89)**

The Government disagrees. As outlined above, as a result of the House of Lords' judgments in October 2007, the control orders legislation is fully compliant with the European Convention on Human Rights.



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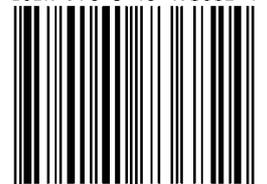
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