RESEARCH PAPER 01/101
19 NOVEMBER 2001

The *Anti-Terrorism, Crime and Security Bill:* Introduction & Summary

Bill 49 of 2001-02

This paper describes the background to the introduction of the *Anti-terrorism, Crime and Security Bill*, which is due to be debated on Second Reading on 19 November 2001. It also contains a summary of the Bill and highlights some of the reactions which have emerged in the short time since it was published on 13 November, including the reports of the Home Affairs Committee and the Joint Committee on Human Rights. The Home Affairs Committee's summary of conclusions is reproduced as an appendix to this paper.

The various parts of the Bill are covered in six other Research Papers as follows: 01/92, 01/94, 01/96, 01/97, and 01/99.

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ISSN 1368-8456

Summary of main points

This paper describes the background to the introduction of the *Anti-terrorism, Crime and Security Bill*, which is due to be debated on Second Reading on 19 November 2001. It also contains a summary of the Bill and highlights some of the reactions which have emerged in the short time since it was published on 13 November, including the reports of the Home Affairs Committee and the Joint Committee on Human Rights. The Home Affairs Committee's summary of conclusions is reproduced as an appendix to this paper.

The Bill applies to the UK as a whole, except:

1. The following provisions do not extend to Scotland—
   a) Part 5 (Race and religion)
   b) Part 12 (Bribery and corruption)

2. The following provisions do not extend to Northern Ireland—
   a) section 76 (Atomic Energy Authority special constables)
   b) section 99 (Jurisdiction of British Transport Police)

As might be expected, where the Bill amends, repeals or revokes earlier legislation, the change applies to the same areas as the legislation which is being amended etc. Any amendments made by the parts listed above, however, do not apply to the areas to which those parts do not apply.

CONTENTS

I General introduction to the Bill

A. Background: the Attacks of 11 September 2001

On Tuesday 11 September 2001 the United States of America suffered a series of catastrophic terrorist attacks, which were co-ordinated and calculated to inflict massive civilian casualties and symbolic damage. Four US commercial aircraft on internal flights were hijacked. Two were flown deliberately into the twin towers of the World Trade Center, the tallest buildings in New York City and the workplace for some 40,000 civilians. A third aircraft hit the Pentagon in Washington DC, and a fourth crashed in Pennsylvania after passengers attempted to take control from the hijackers.

Around the world communities and political leaders expressed dismay, sadness and anger. Prime Minister Tony Blair said that "we … here in Britain, stand shoulder to shoulder with our American friends in this hour of tragedy and we, like them, will not rest until this evil is driven from our world."

The first indication that the Government intended to introduce emergency counter-terrorism legislation was given by the Home Secretary at the Labour Party Conference at the beginning of October. Further particulars about the likely content were announced and debated during the two later recalls of Parliament during the recess and in a number of statements and debates since Parliament's return[1].

B. Plans for new anti-terrorism measures

In addressing the Labour Party Conference on 3 October 2001, David Blunkett, the Home Secretary,referred to measures which the Government would take. He said:

> Of course we must defend ourselves. And of course we must defend those freedoms. But in facing that threat, it is absolutely crucial that we get across to everyone that Government not only is in charge, but needs to mobilise their vigilance as well.

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[1] Terrorist attack on America (Debates)
Hansard - debate 14th Sept 2001 (recall of Parliament)
Hansard - debate 4th Oct 2001 (recall of Parliament)
Hansard - debate 8th Oct 2001 (recall of Parliament)
Hansard - debate 15th Oct 2001 (David Blunkett: anti-terrorism measures)
Hansard - debate 16th Oct 2001 (Jack Straw: coalition again terrorism)
Hansard - debate 24th Oct 2001 (Clare Short: humanitarian situation)
Hansard - debate 29th Oct 2001 (David Blunkett: Asylum seekers)
Hansard - debate 1st Nov 2001 (Geoffrey Hoon: coalition again terrorism)

> So the measures we will take will be measured. Our propositions will be proportionate. The clamp-down on terrorist financing, alongside the Proceeds of Crime Bill[2] which is already drafted and ready to come into the Commons, freezing assets and ensuring the reporting of suspect transactions. None of which threaten our basic freedoms.
>
> Legislating to confirm the agreements reached in the last three weeks with our European partners - on arrest, on joint investigation, on shared information. And of course on extradition. What a farcical situation we face when it can take five, seven, ten years to extradite someone who is known to have been engaged in, or perpetrating, terrorism.
>
> Speeding up our processes will not remove due process but it will remove the ability of those to abuse it. Preventing those who are arrested under suspect at airports from using the asylum laws to be able to claim sanctuary, will not threaten those legitimately entering the country. Removing the constant use of judicial review, which has frankly become a lawyer's charter, will not remove basic freedom to appeal or to due process of law.
>
> These do not threaten our freedoms, but they do threaten those who seek to take away our freedoms, and that is the lesson of the last three weeks.
>
> And yes, we have asked carriers to ensure whether it is goods or people, that they provide their manifests in advance so that we know what is coming into the country and what is going out. And we will look at those who seek to incite hatred against others so that we can tighten our laws. And, of course, one of the most basic freedoms of all is freedom from hate.
>
> So I can tell Conference today that because it is clear that our laws against the use of race hate are not sufficient in these circumstances, we will now include religion, so that those who are faced with that form of hatred and bigotry will be covered.

On the same day, Mr Blunkett announced that measures were being worked on by the Home Office as part of the Government's legislative response to terrorism. A Home Office press notice[3] listed the measures announced as:

> *Money laundering*
> Making it an offence for financial institutions not to report transactions which they knew or suspected to be involved in terrorist activity.

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2 *The Proceeds of Crime Bill* (Bill 31 of 2001-2002) was introduced on 18 October and had its Second Reading in the House of Commons on 30 October: HC Deb: Col 757

3 *New anti-terrorist measures announced by David Blunkett*: Home Office Press Release 236/2001

Powers for law enforcement agencies
Giving law enforcement agencies full access to passenger and freight information which air and sea carriers will be required to retain.

Offences involving religious hatred
Widening the law on incitement to include religious hatred as well as racial hatred, while considering the creation of a new category of offences aggravated by religious hatred to complement the racially aggravated offences created by the Crime and Disorder Act.

Asylum
Amending the Immigration and Asylum Act 1999 to ensure those suspected or convicted of terrorist involvement cannot be considered for asylum.

Extradition
A complete overhaul of the UK's extradition system, replacing the current morass of arrangements with a simple four-tier system with streamlined procedures[4].

On 4 October, during the second recall of Parliament to consider developments, the Prime Minister said:

> We are also looking at our national legislation. In the next few weeks, the Home Secretary intends to introduce a package of legislation to supplement existing legal powers in a number of areas. It will be a carefully appraised set of measures--tough, but balanced and proportionate to the risk that we face. It will cover the funding of terrorism. It will increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures. It will widen the law on incitement to include religious hatred. We will bring forward a Bill to modernise our extradition law. That will not be a knee-jerk reaction, but I emphasise that we need to strengthen our laws so that, even if necessary only in a small number of cases, we have the means to protect our citizens' liberty and our national security.
>
> We have also ensured, in so far as is possible, that every reasonable measure of internal security is being undertaken. We have in place a series of contingency plans, governing all forms of terrorism.[5] These plans are continually reviewed and tested regularly and at all levels. In addition, we continue to monitor carefully developments in the British and international economy. Certain sectors in Britain and around the world have inevitably been seriously affected, though I repeat that the fundamentals of all the major economies, including our own, remain strong. The reduction of risk from terrorist mass action is important also to economic

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[4] in March 2001, the Government published a Review "The Law on Extradition" for consultation. The consultation period ended on 8 June 2001, and most of the responses are now available on the Home Office website at http://www.homeoffice.gov.uk/

[5] Reported in *The Daily Telegraph* of 8 October to "include orders for the RAF to shoot down any hijacked aircraft that appear to be on a suicide mission over London".

> confidence, as 11 September shows, so there is every incentive in that respect also to close down the bin Laden network[6].

The Leader of the Opposition, Iain Duncan Smith, said:

> The Prime Minister spoke of measures to be proposed by the Home Secretary. In the context of 11 September we will certainly give our support to whatever measures are justified and we will scrutinise them in the usual way.
>
> The Prime Minister rightly emphasised that this is not a war against Islam, but a war against terrorism--all terrorism, as he said. That has been recognised in Muslim countries such as Pakistan and others and by the majority of Muslims in the United Kingdom, many of whom I have met to discuss this issue, as has the Prime Minister. However, a small number of totally unrepresentative groups and individuals remain, to whom the Prime Minister referred as abusing the freedoms that we enjoy to voice support and raise money for terrorism, and in some cases to plan acts of terrorism overseas. When Sheik Omar Bakri Muhammad can claim from the safety of this country that the Prime Minister is a legitimate target for assassination if he visits a Muslim country, we need to review our anti-terrorism laws as a matter of urgency.
>
> The Home Secretary ought to be able to prevent individuals entering Britain and to deport them on the grounds of national security without the threat of his decisions being overturned as a result of the Human Rights Act 1998. The Government must not let the Act stand in the way of extradition to the United States of individuals facing terrorism charges. That would be the wrong route. Where the law is ineffective or inadequate, it needs to be remedied and I agree with the Prime Minister. I repeat our offer that the Opposition will co-operate with the Government in any way possible to ensure that that can be done[7].

The Prime Minister responded:

> The small but significant number of groups that are here and that abuse our freedom are precisely the reason why we need to legislate. I thank the hon. Gentleman for his support--in principle at any rate--for such legislation, subject obviously to discussion of the details. It is important that we try to discuss within the main political parties how we can take forward these measures because the quicker they are done, the better they are done and the greater the consent for them, the better the legislation will be.[8]
>
> […]

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6 HC Deb 4 Oct 2001 col. 475
7 Col 677
8 Col 679

> the legislation that we propose will apply to terrorism wherever it occurs--whether inside the United Kingdom or outside, or whether it is international or domestic[9].

The Leader of the Liberal Democrats, Charles Kennedy, asked the Prime Minister about the effect on civil liberties:

> There are several specific aspects. Does the Prime Minister concur that any forthcoming legislation must meet two tests? First, is it likely to impact directly on the clear terrorist threat and the campaign against it? Secondly, can we satisfy ourselves that it does not compromise civil liberties to such an extent that the terrorist is seen to win by default? We will certainly support moves on extradition, as we have already with our colleagues in the European Parliament. [10]
>
> On religious hatred, an extension of existing discrimination law should be supported, although a longer-term, fuller equality act might prove to be the best way forward in days to come.

The Secretary of State for Defence, Geoffrey Hoon, concluded:

> My right hon. Friend the Home Secretary has indicated what we intend to do on the legislative front. The new Terrorism Act 2000 came into force in February, and extended the proscription regime to include 21 international organisations. As for the point made by the hon. Member for North Essex, the Act includes a definition of terrorism. Perhaps that is a useful starting point for examining terrorism both nationally and internationally. We are determined that the United Kingdom will not become a place where terrorists and their supporters can take refuge.
>
> My right hon. Friend the Home Secretary has set in hand an urgent review of the case for new powers, policies and other action that may be necessary in the light of what happened on 11 September. New legislation will be brought forward during this Session.
>
> As I have mentioned, the existing legal powers to tackle terrorism have been updated very recently. They are among the toughest in the world. Even so, as a measure of our determination, these powers will still be reviewed. Consideration is being given to providing the courts with new powers, improving the appeals process and cutting off terrorists' access to the money that they use to finance their operations. The Home Office is also considering proposals for tightening the asylum system to deal with those who seek to abuse it. Against this background, it is considering the means by which transport companies obtain a wide range of information on arriving passengers and then provide it to law enforcement agencies. All these measures are expected to have benefits to law enforcement

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9 Col 684
10 Col 680

> agencies that are fighting related threats to our society such as drugs and organised crime, a point well made by my hon. Friend the Member for Plymouth, Sutton.
>
> The Home Office is also considering tightening the laws on incitement to cover religious as well as racial hatred, a point made by my hon. Friend the Member for North Warwickshire (Mr. O'Brien) and other hon. Members. [11]

On 15 October 2001, the Home Secretary confirmed the proposals in a statement to the House:

> in the next few days we will introduce separate measures in the proceeds of crime Bill, which will now be complemented by anti-terrorist legislation. Terrorists use organised crime and trade in human misery to finance their activities. The tough new financial controls in the emergency Bill will help us to staunch the flow of terrorist funding.
>
> The emergency legislation will build on the provisions of the Proceeds of Crime Bill[12] to deal specifically with terrorist finance through monitoring and freezing the accounts of suspected terrorists. My right hon. Friend the Chancellor of the Exchequer will spell out in more detail measures on the seizure of cash within this country and strict reporting requirements on the financial institutions. Separately, a new anti-terrorist finance unit is to be established in conjunction with my right hon. Friend under the auspices of the National Criminal Intelligence Service.
>
> The events of 11 September have led to a new determination to co-operate at European and international level. Terrorists do not respect national boundaries. In line with the Europe-wide endeavour, I intend to include in the emergency Bill an enabling power to allow implementation by affirmative order of measures from the Justice and Home Affairs Council on police and judicial cooperation.
>
> Regrettably, there are those who are prepared to exploit the tensions created by the global threat. Racists, bigots, and hotheads, as well as those associating with terrorists, are prepared to use the opportunity to stir up hate. It is therefore my intention to introduce new laws to ensure that incitement to religious, as well as racial, hatred will become a criminal offence. I also intend to increase the current two-year maximum penalty to seven years.
>
> I am examining wider powers in relation to incitement by people in the United Kingdom, against groups or individuals overseas. I am also examining additional powers in relation to conspiracy. None of those measures is intended to stifle free speech, dialogue, or debate. Fair comment is not at risk, only the incitement to hate.

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[11] Col. 808

[12] The draft, which was not a complete Bill, had been published for consultation in March 2001 (Cm 5066). The Bill was introduced on 18 October.

Obtaining good intelligence and being able to target and track potential terrorists is essential. We need comprehensive powers to require best practice to become the norm. This legislation will therefore facilitate the exchange of information in two key areas. It will ensure that law enforcement agencies can access vital information on passengers and freight. It will also enable customs and revenue officers to pass information to the police. These provisions will remove barriers which currently prevent the exchange of information in the fight against terrorism. These will be carefully targeted measures designed to protect the public, not affecting the privacy of law-abiding citizens.

We will introduce measures to enable communication service providers to retain data generated in the course of their business, by which I mean the recording of calls made and other data, not the content. We will work with the industry on a code of practice. I wish to thank those who have co-operated so well over the past five weeks in the industry.

I think that we all accept that there is a compelling need for more effective powers to exclude and remove suspected terrorists from our country. We rightly pride ourselves on the safe haven that we offer to those genuinely fleeing terror. But our moral obligation and love of freedom does not extend to offering hospitality to terrorists. That is why, both in the emergency terrorism Bill and in a separate extradition measure, I will ensure that we have robust and streamlined procedures.

I believe that it will be possible to achieve these changes without substantial alteration to the Human Rights Act 1998. Nevertheless, it may well be necessary, using article 15, to derogate from article 5 of the European convention. That would allow the detention of foreign nationals whom we intend to remove from the country, and who are considered a threat to national security. This would occur in circumstances falling outside those permitted by article 5 of the European convention on human rights, but within the scope of article 1f of the 1951 refugee convention.

I am also looking to take power to deny substantive asylum claims to those who are suspected of terrorist associations, and to streamline the existing judicial review procedures while retaining the right of appeal. Appropriate safeguards would apply to any such derogation.

A review of extradition procedure had been undertaken by the Government before 11 September. I intend to bring forward a separate substantive measure to modernise and place our laws in the context of the new international situation. Streamlining, while retaining rights of appeal, will form part of this measure. I also intend, following an announcement to the House in the weeks ahead, to modernise our nationality and asylum system.

There are four other measures to which I wish to refer today. The first, which relates to the responsibilities of my right hon. Friend the Secretary of State for Transport, Local Government and The Regions, will strengthen security at

> airports and for passengers. Powers both within restricted areas at airports and aboard aircraft will all be strengthened.
>
> In addition, I can announce that we will expand the role and jurisdiction of the British Transport police, together with those working on enforcement from the Ministry of Defence and the Atomic Energy Authority. We will ask the House to agree to widen their powers beyond the boundaries of particular sites. I am also seeking powers to provide the police and customs services with the authority to demand the removal of facial covering or gloves. That is a basic requirement to enable identification where finger printing or other biometric tests are important.
>
> I am also including in the Bill clauses on nuclear, chemical, biological and radiological materials, generally described as weapons of mass destruction, which will cover the intention to use, produce, possess or participate in unauthorised transfers of those materials. At the time of the millennium, a great deal of work was undertaken to ensure the security of key utilities. I want to assure the House that both in the Civil Contingencies Committee, and more widely, we have examined and put in place further work to update our preparedness, preventive action and remedial steps, should they be necessary. [13]

During the debate, the Home Secretary gave additional particulars of some of the proposals :

Offences involving religious hatred

> It is not our intention to include in the Bill a definition of religion, for all the reasons that many in the House will be familiar with. The Attorney-General and I would wish to assure ourselves that we were handling the matter sensitively, bearing in mind the fact that the existing law in relation to race provides for those religions that have a direct relationship with the race of the individual concerned. We want to extend that facility to people who follow Islam and Christianity. The measures will also enable us to deal with those who deliberately use the current law to stir up dissention and hate, which we would all find unacceptable.
>
> I am examining why existing law has been used so infrequently--in the past decade about four prosecutions a year have been successful--and whether, in conjunction with the police and the Crown Prosecution Service, we should be slightly more robust in what we do about those who, in writing or in speech, deliberately cause hate in our community. [14]

Terrorism Act 2001

> The list [of organisations proscribed under the Terrorism Act 2001] will be kept up to date. The 14 original organisations, and the additional 21 that my right hon.

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13 Col 923
14 Col 932

> Friend the Foreign Secretary introduced earlier this year when he was Home Secretary, will be reviewed. What is more, we need to ensure that those who fragment within those organisations, change their name and reconfigure themselves in new forms are dealt with adequately and speedily[15].

Retaining data

> **Mr. Paul Marsden**: I welcome [the Home Secretary's] aim of outlawing incitement to religious hatred, but in our headlong rush to protect our democracy there is a real danger that we will forgo basic civil liberties. What, specifically, does he mean by retaining data? I am sure that many businesses are very concerned about what that will involve. Personally, I am concerned about whether it means nosing through private e-mails or steaming open letters.
>
> **Mr. Blunkett**: It explicitly does not mean ferreting through people's private e-mails or steaming open their post. The Regulation of Investigatory Powers Act 2000 is the greatest safeguard that exists in any democracy in the world in its updating of earlier provisions for protecting our rights. Having had this job for four months, I am well aware that that is the case. Great care is taken in these matters.
>
> Being able to find out from service providers--just as we can from telecommunications agencies--whether a phone call was made at a certain time, when we are investigating terrorism, makes sense. Holding that information for a longer period than would otherwise be commercially desirable--it is not information that does not already exist--and reaching agreement with the industry on achieving that, through a code, threatens no one except those who are up to no good[16].

Conspiracy

> We are looking with the Crown Prosecution Service to examine ways in which those who are not directly engaged in fundraising, organising or inciting by pronouncement, may be involved in conspiracy by supporting or succouring those who are engaged in terrorism. The question of conspiracy would come into play in the case of people who had been engaged, as is alleged about some of those who are currently held throughout the world, in facilitating terrorism through training, providing goods and services or engaging in communication networks with those involved in terrorist activity. I am working with the Attorney-General and the Lord Chancellor on the best way of tackling that[17].

Extradition

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15 Col 935
16 Col 936
17 Col 929

> **Mr. Simon Thomas**: On behalf of the Scottish National party and Plaid Cymru, I welcome the Home Secretary's statement. We want to work with the Government and assist them in ensuring that the right legislation is put through the House. To that end, will the right hon. Gentleman agree to work with all parties in the House, not only on the details of the legislation but on the timing and the amount of debate that we will have on the crucial questions that will be asked, such as those that have been asked by many Members today?
>
> The Home Secretary made some important announcements on extradition. Nevertheless, will he now rule out the extradition of individuals from this country to places where they will face the death penalty? Instead, will he work within multilateral agreements to ensure that such individuals can be extradited, but with a different result? Finally, does he accept that despotic Governments use accusations of terrorism against their genuine opponents who are not guilty of terrorism? What safeguards does he envisage in his legislation so that this country still provides a safe haven for genuine refugees and for people who oppose terrorism and terrorist Governments?
>
> **Mr. Blunkett:** No genuine refugee has anything to fear from the proposals that I have introduced this afternoon. Those who claim that specialist status, having been picked up on suspicion of terrorist acts or who are in transit through our airports, will still be entitled to go to the Special Immigration Appeals Commission and to appeal to the Court of Appeal, so there is no question of taking away their rights. Speeding up the operation of those rights and not suffering fools gladly is how we intend to proceed. We will consult the minor parties as much as possible on the way in which we proceed in the months ahead.
> [-]
>
> Where we have specific extradition treaties--we would seek to extend them--they already apply in that way. We have had an extradition treaty with the United States since 1976, and only last Thursday we extradited a man called Qadar, who was wanted in the state of New York. The treaty has been working well. There have been no difficulties with it, and I have agreed with the Attorney-General in the US that we will update it--but as with all extradition treaties with other countries, the provisions that we have in place will safeguard that basic acceptance which the House has affirmed on numerous occasions.
>
> We do not intend to introduce internment, although if a major crisis arose from the terrorist threat, other specific measures would have to be introduced, as has always been the case since the second world war. Governments have always held that in reserve. [18]

The following exchange took place in the House of Lords on the same day:

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[18] 930

> **Lord Marsh**: My Lords, will the Government take this opportunity to review the rules that prevent the extradition of someone accused of serious and appalling crimes to other countries--even to an ally such as the United States--unless they change their domestic law on capital punishment?
>
> **Lord Rooker**: My Lords, that is not true. We have extradited many people accused of heinous crimes to the United States. We have an agreement with the United States and the rules are clearly laid down. We will extradite if there are reasonable grounds, provided there is a commitment that those extradited will not be subject to the death penalty. That has worked. It has not proved a barrier to extraditing people to the United States and there is no reason why it should prove a barrier in the future.[19]

Human Rights Act

Mr Blunkett said:

> We are not, therefore, seeking to withdraw from or deratify the ECHR[20], which would be necessary in terms of denying article 3[21]. As I said, we may derogate[22] from article 5[23], while continuing to hold to article 1f of the refugee convention[24], in order to have the ability better to protect ourselves while protecting appeal rights[25].
>
> **Mr. David Cameron** : Given the recent history of legislation on issues such as asylum and extradition being taken apart by the courts, why is the Home Secretary waiting before deciding whether or how much to amend the Human Rights Act 1998? Is not the history of Home Office legal advice on such matters that if officials think that it might possibly be necessary, it almost certainly will be necessary--so why not do it at once? Could we hear a little more of his thinking on that subject?
>
> **Mr. Blunkett:** Delphically put, if I may say so. I use the word "might" because we want to be absolutely sure when we introduce the legislation that it will be absolutely necessary, in order to achieve our goals, to derogate in the way that I described. I am pretty certain that it will be, given the advice that we have already

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19 HC Deb 15.10.01 c370

20 European Convention on Human Rights

21 Article 3 deals with prohibition of torture

22 Article 15 of the ECHR allows governments to derogate from some Convention obligations "in time of war or other public emergency threatening the life of the nation": section 1(2) of the Human Rights Act 1998 provides that the Convention rights are to have effect subject to any designated derogation or reservation

23 Article 5 deals with the right to liberty and security and sets out

24 the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention.

25 Col 928

> received and the views of the Attorney-General--but precisely for the reasons that the hon. Gentleman outlined, I want to ensure that we have taken every possible step to get the best legal advice before committing ourselves.

C. Obligations arising from the European response

The Justice and Home Affairs Council of the European Union met on 20 September and agreed two proposals for Council Framework Decisions, one on combatting terrorism and the other on the establishment of a European arrest warrant and surrender procedures between Member States[26]. The texts of these decisions can be found on the Europa website at http://europa.eu.int.

The former establishes minimum rules for the constituent elements of criminal acts and penalties in some circumstances of between 2 and 20 years imprisonment for those who have committed or are liable for terrorist offences. Prior to the events on 11 September there does not appear to have been an EU definition of terrorism. However, the Council Framework Decision on Combating Terrorism defines acts of terrorism in Articles 3, 4 and 6, as follows:

> **Article 3 – Terrorist Offences**
>
> 1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of a country, will be punishable as terrorist offences :
> (a) Murder;
> (b) Bodily injuries;
> (c) Kidnapping or hostage taking;
> (d) Extortion;
> (e) Theft or robbery;
> (f) Unlawful seizure of or damage to state or government facilities, means of public transport,
> infrastructure facilities, places of public use, and property;
> (g) Fabrication, possession, acquisition, transport or supply of weapons or explosives;
> (h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment;

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[26] For further background see Library Standard Notes: *The European Union's Response to Terrorism* 4 October 2001 and *EU Response to the Anti-Terrorism Campaign (Update)* 31 October 2001

(i) Interfering with or disrupting the supply of water, power, or other fundamental resource;
(j) Attacks through interference with an information system;
(k) Threatening to commit any of the offences listed above;
(l) Directing a terrorist group;
(m) Promoting of, supporting of or participating in a terrorist group.
2. For the purpose of this Framework Decision, terrorist group shall mean a structured organisation established over a period of time, of more than two persons, acing in concert to commit terrorist offences referred to in paragraph (1)(a) to (1)(k).

Article 4 – Instigating, aiding, abetting and attempting
Member States shall ensure that instigating, aiding, abetting or attempting to commit a terrorist offence is punishable.

Article 6 – Aggravating Circumstances
Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall ensure that the penalties and sanctions referred to in Article 5 may be increased if the terrorist offence:
(a) is committed with particular ruthlessness; or
(b) affects a large number of persons or is of a particular serious and persistent nature; or
(c) is committed against Heads of State, Government Ministers, any other internationally protected person, elected members of parliamentary chambers, members of regional or local governments, judges, magistrates, judicial or prison civil servants and police forces.

Article 4.5 of the proposal for a European arrest warrant summed up the mechanism for the arrest and extradition procedure, as follows:

1. the purpose of the European arrest warrant is the enforced transfer of a person from one Member State to another. The proposed procedure replaces the traditional extradition procedure. It is to be treated as equivalent to it for the interpretation of Article 5 of the European Convention of Human Rights relating to freedom and security;
2. it is a horizontal system replacing the current extradition system in all respects and, unlike the Treaty between Italy and Spain, not limited to certain offences;
3. the mechanism is based on the mutual recognition of court judgments. The basic idea is as follows: when a judicial authority of a Member State requests the surrender of a person, either because he has been convicted of an offence or because he is being prosecuted, its decision must be recognised and executed automatically throughout the Union. Refusal to execute a European arrest warrant must be confined to a limited number of hypotheses. The scope of the proposed text is almost identical to that of extradition:[27] the European arrest warrant allows

[27] The two conditions (penalty remaining to be executed and maximum penalty incurred) were cumulative in the extradition system. They are independent here (see infra, Article 2).

a person to be arrested and surrendered if in one of Member States he has been convicted and sentenced to immediate imprisonment of four months or more or remanded in custody where the offence of which he is charged carries a term of more than a year. Given that the mechanism is particularly binding for the person concerned, it is felt important to allow its use only in cases that are serious enough to justify it;

4. the procedure for executing the European arrest warrant is primarily judicial. The political phase inherent in the extradition procedure is abolished. Accordingly, the administrative redress phase following the political decision is also abolished. The removal of these two procedural levels should considerably improve the effectiveness and speed of the mechanism;

5. the European arrest warrant will take account of the principle of citizenship of the Union. The exception made for the nationals should no longer apply. The primary criterion is not nationality but the place of the person's main residence, in particular with regard to the execution of sentences. Provision is made for facilitating the execution of the sentence passed in the country of arrest when it is there that the person is the most likely to achieve integration, and moreover, when a European arrest warrant is executed, for making it possible to make it conditional on the guarantee of the person's subsequent return for the execution of the sentence passed by the foreign authority;

6. the cases of refusal to execute the arrest warrant are limited and are listed in order to simplify and accelerate the procedure. The principle of double criminal liability is abolished, as is the principle of speciality. But Member States have the possibility, if they wish, of drawing up a negative list of offences for which they will state that they refuse to execute the European arrest warrant on their territory. Similarly, it is possible to restore the requirement of the double criminal liability for cases in which the issuing State exercises extraterritorial authority;

7. the elements appearing in the European arrest warrant are standardised at the level of the Union. They must, in all but exceptional cases, enable the authority of the executing country to surrender the person without other controls being carried out;

8. the mechanism of the European arrest warrant is intended to replace, as between the Member States, the 1957 Convention, its two protocols of 1975 and 1978, the provisions concerning extradition of the terrorism Convention and the two Union Conventions of 1995 and 1996. Certain provisions of the Schengen Implementing Convention are also replaced.

D. Scrutiny by Parliamentary Committees

1. Home Affairs Select Committee

On 24 October 2001, before the Bill was published, the Home Affairs Committee issued a press notice[28] announcing that it would conduct a short inquiry into the proposed legislation.

[28] Press Notice No. 3 of Session 2001-02, dated 24 October 2001

Chris Mullin MP, chairman of the Committee, said:

> Our purpose is to look at each of these measures to see if they are reasonable and necessary in current circumstances. We do not intend to delay the passage of the bill. Some of these proposals have been considered before and we aim to hear in public the arguments in favour and against making these changes now.

Two public oral evidence sessions on the main policy aspects of the Bill were held. On 8 November the Committee took evidence from:

John Wadham, Director, Liberty
Nicola Rogers, Assistant Director, Aire Centre & Executive Committee Member, ILPA
Rick Scannell, Chair, ILPA
Conor Gearty, Professor of Human Rights Law, KCL

On 14 November, the Committee took evidence from:

Beverley Hughes, the Parliamentary Under Secretary of State at the Home Office
Robert Whalley, Head of Terrorism and Protection Unit, and
Iain Walsh, from the Asylum Policy Unit.

The Committee's Report on the Anti-Terrorism, Crime and Security Bill 2001 was published on 19 November 2001 [HC 351 of 2001-02]. Copies of the Report and of the uncorrected evidence are available on the Committee's website at:

http://www.parliament.uk/commons/selcom/hmafhome.htm

2. Joint Committee on Human Rights

The Joint Committee on Human Rights took evidence from the Home Secretary on 14 November 2001. Their Report was published on 15 November. The Report and uncorrected evidence are available on the Joint Committee's website at:

http://www.publications.parliament.uk/pa/jt/jtrights.htm

E. Publication of the Anti-Terrorism, Crime and Security Bill 2001

The Bill was introduced on 12 November 2001. It was published with Explanatory Notes[29] prepared by the Home Office, Her Majesty's Treasury, Department of Trade and

[29] Bill 49-EN

Industry, Ministry of Defence, Department for Transport, Local Government and the Regions and the Foreign and Commonwealth Office, explaining the measures as intended to:

- Cut off terrorist funding
- Ensure that government departments and agencies can collect and share information required for countering the terrorist threat
- Streamline relevant immigration procedures
- Tackle those who seek to stir up religious and racial hatred or violence
- Ensure the security of the nuclear and aviation industries
- Improve the security of dangerous substances that may be targeted or used by terrorists
- Extend police powers available to relevant forces
- Ensure that we can meet our European obligations in the area of police and judicial co-operation and our international obligations to counter bribery and corruption
- Update parts of the UK's anti-terrorist powers

The Bill is in 14 parts-

Part 1 - Terrorist property, contains provisions for the seizure, detention of terrorist cash, and introduces account monitoring orders to enable the police to require financial institutions to provide information on accounts.

Part 2 - Freezing orders, updates the *Emergency Laws (Re-enactments and Repeals) Act 1964* to allow the UK to take swift action to freeze the assets of overseas governments or residents, to counter threats to any part of the UK economy or threats to the life or property of a UK resident or national.

Part 3 - Disclosure of information

Part 3 of the Bill would give HM Customs and Excise and the Inland Revenue powers to disclose information held by them for law enforcement purposes and to the intelligence services. Part 3 also clarifies and extends a number of existing powers to disclose information from public authorities to agencies involved in criminal investigations and proceedings. The new powers are intended to ensure that public authorities can disclose certain types of otherwise confidential information where this is necessary for the purposes of fighting terrorism and other crimes.

Provisions similar to those in part 3 of the Bill were included in the *Criminal Justice and Police Bill 2000-01*. On 9th May 2001, the Government agreed to their removal at the Bill's Report stage in the Lords in order to secure the passage of the Bill as a whole, given the proximity to the general election.

Part 4 -Immigration and asylum

Part 4 allows the detention of those the Secretary of State has certified as threats to national security and who are suspected of being international terrorists where their removal is not a realistic option within a reasonable period of time, excludes substantive consideration of asylum claims by suspected terrorists where the Secretary of State certifies that their removal would be conducive to the public good, and allows for ten years' retention of fingerprints taken in asylum and certain immigration cases.

Like the announcements which preceded it, this part of the Bill has attracted some controversy and argument, for three main reasons. Firstly, it would allow for what could potentially be indefinite (in other words, not time-bounded) detention without trial. Secondly, it would do so through machinery from which the courts' customary powers of judicial review would be excluded. Thirdly, the Government considers that the Bill's powers to detain could not be exercised without derogating from the European Convention on Human Rights, about a year after the Human Rights Act 1998 came into force and the United Kingdom's sole remaining derogation was withdrawn.

Part 5 - Race and religion, extends the racially aggravated offences of assault, public order, criminal damage and harassment to cover attacks aggravated by religious hostility and also extends the law on incitement to racial hatred to include incitement to religious hatred, increasing the maximum penalty for such offences from 2 to 7 years imprisonment.

Part 6 - Weapons of mass destruction, is to strengthen current legislation controlling chemical, nuclear and biological weapons.

Part 7 - Control of pathogens and toxins, will compel managers of laboratories and other premises holding stocks of specified disease-causing micro-organisms and toxins to notify their holdings, to comply with any reasonable security requirements which the police may impose, and to furnish the police with details of people with access to the dangerous substances.

Part 8 - Nuclear Security, is to reinforce and update the regulatory regime for security in the nuclear industry, and extend the jurisdiction for the United Kingdom Atomic Energy Authority Constabulary (AEAC) so that their constables can be deployed in all civil licensed nuclear sites.

Part 9- Aviation security, is to improve enforcement of aviation security requirements and the ability of the police to deal with potentially dangerous situations at airports and

on board aircraft, giving police power to remove an unauthorised person who refuses to leave an airport's Restricted Zone, or an aircraft.

Part 10 - Police powers, contains powers to give the police and customs services the authority to demand the removal of any item which they believe is being worn wholly or mainly for the purpose of concealing identity, and will allow the British Transport Police and Ministry of Defence Police to act outside their normal jurisdiction in particular circumstances.

Part 11 - Retention of communications data. Communications and traffic data, such as itemised telephone bills and records of emails sent, are retained by service providers for billing and other business purposes. These data do not include the content of the communications, but can provide a map of one's daily life and contacts. The *Data Protection Act 1998* provides enforceable criteria governing the length of time such data may be held.

Under Part 11 of the Bill, communications service providers (telephone and internet companies for example) will be able to retain this information for longer than would be normal under the 1998 Act. A period of 12 months has been suggested in a written answer.

At least initially, the communications industry would be expected to adhere to a system of voluntary codes and agreements on data retention. *Access* to this data by law enforcement agencies is governed by Part I Chapter II of the *Regulation of Investigatory Powers Act 2000*.

The Bill contains provisions to allow the Secretary of State to issue statutory directions to communications service providers if he considers the voluntary retention system unsatisfactory. These powers are subject to a "sunset" clause in that they must be exercised within an (extendable) initial period, if at all.

Part 12 - Bribery and corruption, is designed to ensure that United Kingdom (UK) obligations are met under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. There has been some doubt as to whether existing common and statute law on bribery and corruption was sufficient to meet the concerns expressed by the OECD Working Group on Bribery in its Implementation Review of the UK in 2000. Clauses 106 and 107 of the Bill cover acts committed by foreign public officials and give courts in England, Wales and Northern Ireland extra-territorial jurisdiction over acts of bribery committed abroad by UK nationals and UK companies.

A more comprehensive review of the law on bribery and corruption was undertaken by the Law Commission in 1998. A white paper was issued in June 2000, which accepted the main recommendations of the Commission. Legislation is now expected to be introduced when parliamentary time permits. This legislation is expected to cover:

• Replacement of the Prevention of Corruption Acts 1889-1916
• Subjecting MPs to the criminal law on bribery and corruption

Consultation continues on a new offence of misuse of public office, as recommended by the Committee on Standards in Public Life.

Part 13 – Miscellaneous, is to allow measures on police and criminal judicial co-operation agreed by the JHA Council of the EU (third pillar) to be implemented by secondary legislation, to introduce new offences relating to the use or threatened use of noxious substances for terrorist and other similar purposes, and hoaxing involving apparently noxious substances, to extend the powers of GCHQ, to reintroduce the offence of a general failure to disclose information about terrorism, and to extend some of the powers now contained in the *Terrorism Act 2000* (including a power to require carriers to supply information about passengers and freight to enforcement agencies).

F. Research Papers

The various parts of the Bill are covered in six other Research Papers as follows:

01/92 The Anti-terrorism, Crime and Security Bill, Part XII: Anti-Corruption Legislation
01/94 The Anti-terrorism, Crime and Security Bill, Parts VI & VII: Pathogens, Toxins & Weapons of Mass Destruction
01/96 The Anti-terrorism, Crime and Security Bill, Parts IV& V: Immigration, asylum, race and religion
01/97 The Anti-terrorism, Crime and Security Bill, Part X: Police powers
01/98 The Anti-terrorism, Crime and Security Bill, Parts III & XI: Disclosure and Retention of Information [Bill 49 of 2001-02]
01/99 The Anti-terrorism, Crime and Security Bill, Parts I, II, VIII, IX & XIII: Property, Security and Crime

G. Reactions to the Bill

Although the Bill was published less than a week before Second Reading, some (though not all) of the provisions now in it had been outlined in sufficient detail during the preceding weeks, to allow for well-informed evaluation. Commentaries on particular parts are referred to in the separate Research Papers covering individual Parts of the Bill. This part of this paper summarises some of the published reactions to the Bill as a whole and to some of the provisions which have attracted a large amount of comment.

1. The Joint Committee on Human Rights

In their Second Report, published on 16 November, the Joint Committee on Human Rights explained their approach:

> 4. In this report we highlight the key areas of concern relating to the protection of human rights in the legislation which is proposed. It may not be our last word on the subject.
>
> 5. As general background to our considerations, we have borne in mind that any novel powers which are proposed should be clearly directed to words combatting a novel threat, and should not be used to introduce powers for more wide-ranging purposes which would not have received parliamentary support but for current concerns about terrorism and fear of attack. The international and national law of human rights, and in particular the provisions of the Human Rights Act 1998, for which we were appointed as the parliamentary guardians, represent core values of a democratic society such as individual autonomy, the rule of law, and the right to dissent, and these must not lightly be compromised or cast away. It is precisely those values which terrorists seek to repudiate and undermine.
>
> 6. We also note that the powers of the police and other agencies to deal with terrorism were thoroughly overhauled and extended in the Terrorism Act 2000. That Act makes it a criminal offence triable in the United Kingdom to do anything to finance, prepare for or carry out acts of terrorism (very widely defined) anywhere in the world.[10]
>
> 7. We also note that the powers of the police and the security and intelligence services to carry out intrusive and other kinds of surveillance were thoroughly re-examined and extended in the Regulation of Investigatory Powers Act 2000; and that the duties of telecommunication service providers and Internet service providers to keep information about the use of their services and make it available to investigative bodies were also re-examined and extended only last year in that Act and the Electronic Communications Act 2000.
>
> 8. The Terrorism Act 2000 also imposes extensive duties (backed by serious criminal sanctions) on financial services professionals to keep records and to disclose suspicions that assets are intended to be used to finance terrorism, and includes provisions allowing such assets to be frozen by a court order. These duties are in addition to the extensive duties imposed on everyone carrying on financial services business by the Money Laundering Regulations 1993 (as amended)[11] and the Money Laundering Regulations 2001.[12]
>
> 9. Therefore, when assessing the necessity for any new measure which may interfere with human rights, it will be important to establish what, if anything, it usefully adds to the powers already available to the state, and duties already applying to individuals and organisations, to protect and enhance the security of the state and its citizens.[30]

Their general conclusion was:

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[30] HC 372 of 2001-02

> 76. We have had to consider the Anti-terrorism, Crime and Security Bill at great speed. We are very conscious of the circumstances which gave birth to it, and the threat that many citizens of this country still feel to their safety after the terrible events of 11 September. However, Parliament should take a long view, and resist the temptation to grant powers to governments which compromise the rights and liberties of individuals. The situations which may appear to justify the granting of such powers are temporary—the loss of freedom is often permanent.
>
> 77. The Government has made sincere efforts to safeguard rights while addressing the threat that it assesses exists to national security. Indeed, the Home Secretary has been keen to stress that he has sought the derogation from the ECHR because he wishes to override a lesser right (to a fair trial) in order to preserve a greater one (to be free from torture or capital punishment or inhuman and degrading treatment). All such decisions involve balancing freedom and security—a balancing act of which it is difficult to judge the success because Parliament is not privy to all the information to which Ministers have access.
>
> 78. We have concluded that, on the evidence available to us, the balance between freedom and security in the Bill before us has not always been struck in the right place. In particular, although we recognise the dilemma from which the Home Secretary sought to free himself by recourse to the derogation from Article 5, we are not persuaded that the circumstances of the present emergency or the exigencies of the current situation meet the tests set out in Article 15 of the ECHR. It is now for Parliament to draw its own conclusions, and for Members of both Houses to satisfy themselves that there are adequate safeguards to protect the rights of the individual citizen against abuse of these powers .
>
> 79. On the other matters of concern which we have outlined above[31], we will be seeking further evidence and giving them further consideration. We may report to each House again before the Bill reaches the statute book—in whatever form it gets there. Careful consideration is not, however, aided by the decision to push a Bill of this size and complexity through Parliament at such breakneck speed. Too many ill-conceived measures litter the statute book as a result of such rushed legislation in the past.[32]

2. The Home Affairs Select Committee

The Home Affairs Select Committee published their report on the Bill on 19 November. The report's summary of conclusions is printed as an appendix to this paper. The committee expressed gratitude that the Home Office, the Security Service and the police had gone out of their way to co-operate with the Committee in its attempt to engage in at least some pre-legislative scrutiny. They went on:

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31 principally on Parts III, IV, X, XI and XIII

32 Ibid

> Even so, the speed with which it is proposed that these new measures should be passed into law makes effective scrutiny difficult. We have had to commence our inquiry without a copy of the Bill. Oral evidence has been taken from witnesses who were only able to make an educated guess at what the Bill might contain. And now it is to be passed through the House of Commons in a matter of days. This is far from satisfactory[33].

They regarded Part IV as containing the most significant provisions in terms of finding the right balance between the civil liberties of the individual and the need to protect society against terrorism. They looked in particular at the provisions for:

> • detention of those who are threat to national security but who cannot be removed
> • rejection of asylum claims made by persons certified to be excluded from the protection of Art.33(1) of the Refugee Convention
> • removal of judicial review in decisions made by the Special Immigration Appeals Commission

and the key questions they addressed were:

> • Do the Government's proposals represent a proportionate response to the current situation and are they all strictly necessary to combat terrorism?
> • Is there any alternative to the proposal for indefinite detention of suspected international terrorists who cannot be removed from the UK?
> • Why is it not possible to prosecute and convict people in this category under the broad powers and offences contained in the Terrorism Act 2000 and can these problems be addressed?
> • Is it necessary to introduce a power of indefinite detention, then what safeguards ought to be in the Bill to ensure that a fair balance is struck between the twin objectives of combatting terrorism and protecting individual rights?
> • Should the principal measures, such as detention, be permanent or temporary?

They questioned:

> whether it is appropriate for this Bill to be passed through the House of Commons in exactly two weeks with only three days of debate on the floor of the House. A Bill of this length – 125 clauses and eight schedules covering 114 pages – with major implications for civil liberties should not be passed by the House in such a short period and with so little time for detailed examination in committee.

They reluctantly accepted that there might be a small category of persons who were suspected international terrorists who could not be prosecuted, extradited or deported and therefore would have to be detained. They were also, reluctantly, persuaded of the case

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[33] HC 351 of 2001-02

for removal of judicial review in decisions made by the Special Immigration Appeals Commission, but had particular concerns:

> We are concerned that the power of detention is exercised only as a last resort, i.e., in circumstances where it is clearly not possible to proceed with prosecution, extradition or deportation. The Committee understands that, in some cases, prosecutions do not proceed because certain types of intelligence, such as telephone intercepts, cannot be admitted in court. We believe that within the law enforcement community there is a variety of views on whether such evidence should be used in court. We suggest that the Government conduct a review of the law and procedure relating to the admissibility of intercept evidence in court, with a view to extending the circumstances in which such evidence could be admitted.

And they added reservations about the duration of the provisions:

> This measure can only be described as "temporary" if it will expire after a set number of years – subject to Parliament passing new primary legislation. We recommend that a "sunset" provision – such as that contained in the Prevention of Terrorism Act 1984 – should apply to the immigration and asylum provisions in part 4 of the Bill after five years. Any revival or continuance of the detention and other powers would then depend on the full parliamentary consideration given to a Bill and not just the 90 minute debate in a standing committee required for an annual renewal order.

The Committee also expressed reservations about the proposed extension of the criminal law in cases involving racial hatred, and about the proposed broad power to implement third pillar measures by means of secondary legislation.

3. The National Council for Civil Liberties ("Liberty")

Liberty (the National Council for Civil Liberties) has prepared a 12 page briefing document[34] of which a substantial proportion is devoted to Part IV (Immigration and asylum) issues. It also contains a number of general comments as well as comments on individual Parts of the Bill.

> Liberty's comments are made with the following three principles in mind:
> - The horrific events of September 11 are of the gravest concern.
> - Any legislative response must be rational, necessary and proportionate. Ultimately, liberal democracies do not defend their way of life by dismantling the very rights and freedoms which distinguish them from their enemies.

[34] Briefing for the Second Reading in the House of Commons, November 2001, available on its website at http://www.liberty-human-rights.org.uk/

- Any legislation (particularly more draconian measures) must be effective rather than counter-productive.

The anti-terrorism bill has now been finally published after weeks of hints, partial revelations and spin. It is being pushed as emergency legislation and, says the government, must be rushed through Parliament as quickly as possible, to be law by Christmas. To oppose it is to wish to live in an "airy-fairy" world according to the Home Secretary and evidence of support for terrorism.

Liberty's concerns about terrorism measures are reflected in the fact that of the more than 7,000 people detained in Britain (i.e. not including Northern Ireland) under the Prevention of Terrorism Act, the vast majority have been released without charge and only a tiny fraction have ever been charged with anything remotely resembling terrorism.

To take an example in 1992, when the activities of the IRA and others were still at their height, 160 people were arrested under the Act in Britain. Of these eight were charged with murder, conspiracy or possession of explosives, three were deported or excluded, twelve were charged with theft or fraud and eight with other minor offences. There is no evidence to suggest that these people charged could not have been arrested under the ordinary criminal law. However all of the others arrested, none of whom were convicted of any crime, were subjected to unnecessary arrest and detention.

The anti-terrorism laws in this country have led to some of the worst human rights abuses in this country over the last 30 years, contributed to miscarriages of justice and have led to the unnecessary detention of thousands of innocent people, mainly Irish.

We are particularly concerned to see a number of measures smuggled into this Bill which either have nothing to do with terrorism or the events of 11th September or are very much more wide-ranging in their remit. These measures should be removed from the Bill and be added to next Home Office measure so that they can be properly considered and debated outside of the current crisis.

The most dangerous measure being proposed will give the authorities the power to intern on the basis of suspicion, to imprison not on the basis of what a person has done but what some intelligence expert thinks they might do.

The very notion of specific "counter-terrorism legislation" is questionable in principle. The ordinary criminal law of this country is more than equipped to balance the competing interests of individual rights and public protection via its mechanisms for impugning criminal acts, attempts and conspiracies and for allowing pre-trial detention (subject to appropriate thresholds and other safeguards). The obvious danger of any distinct anti-terrorist law is that of creating a second-class criminal justice system affording lesser protections to the individual (either in terms of the conduct for which he may be criminalised or in the procedure under which his case will be heard).

> In any event, we already have a highly developed and recently revised body of counter-terrorism law in this country (principally contained in the Terrorism Act 2000 and the Immigration Acts). This sits along side an expansive body of criminal law (including offences over which our courts enjoy extra-territorial jurisdiction). Some of the more notable elements of that present law include:
>
> - The Secretary of State's power to proscribe organisations and offences relating to association with such organisations .
> - Extended pre-charge detention in the anti-terrorist context .
> - Offences relating to inciting and funding terrorism (- terrorism being very broadly defined).
> - The Special Immigration Appeals Commission ("SIAC") procedure which attempts to balance national security and natural justice concerns by allowing the sensitive aspects of an immigration/ asylum appeal to be tested by a vetted "special advocate" in closed session .
> - Exclusion provisions under the 1951 UN Refugee Convention.
>
> Our experience is not that of counter-terrorist experts. However we have as yet, heard nothing in Government statements pointing to specific gaps in current U.K legislation which have been exposed by the recent U.S experience.
>
> We are conscious of the understandable instinct of lawyers and legislators to see amendments to the statute book as an obvious means of achieving policy and operational outcomes. Crucially however, legislation will not answer questions of resources or of intelligence. Further, any legislation which alienates minority communities, could make the task of obtaining counter-terrorist intelligence more difficult.

Liberty's general conclusion is that the UK already has some of the most draconian anti-terrorism measures anywhere in the Western World and further measures are likely to violate fundamental principles, be counter-productive in the long term and at the same time are unlikely to be effective. They therefore urge caution before new laws are put in place, suggesting that any new proposals should be subject to proper consideration by Parliament and should not be rushed through.

Some of Liberty's particular criticisms are set out below. There is criticism of Part III of the Bill (Disclosure of information) of which it says -

> This Part of the Bill appears to be unconnected with terrorism or the events of 11th September. It must be assumed these new powers have been requested by the authorities and this is seen as suitable vehicle for delivering them. This part should be removed from the Bill or restricted to terrorist related activities.
>
> These measures allow personal and private information to be obtained by the police and others without any controls checks or safeguards. It will allow the police to trawl through the files held by other government departments.

> The police will not need reasonable suspicion that the file contains evidence of a crime merely that it is useful in an investigation. The police will not need to go to a magistrate of court for authorisation and they will be able to access files without subsequent checks or audits. The subject of these investigations is unlikely ever to be told the police have rifled through their files and there will be no real remedy if the police are mistaken, over-zealous or plain malicious.
> Is this a proportionate response to the current situation?

Liberty also asked whether the proposed derogation from Article 5 of the ECHR is necessary:

> So significant is this measure that the government, only one year after enshrining the European Convention on Human Rights into our law, is having to opt out or "derogate" from one of its fundamental provisions, the prohibition on arbitrary detention. Such derogations are supposed to be reserved for "war or other public emergencies threatening the life of the nation".
>
> There is no imminent threat of the complete breakdown of civil society in the UK. We have not reached this point as yet and although there are threats, the nation itself is not in jeopardy. That is why of the forty or so countries signed up to the Convention we are the only country indicating we want to opt out. Not even in the US where the atrocities happened has the government considered it necessary to adopt a policy of indefinite detention.
>
> A policy of indefinite detention without trial would indeed require derogation from Article 5. However, Parliament should view any such derogation with great scepticism. In addition to the substantive indefinite detention issue, extreme caution should be exercised before derogating from fundamental human rights. This is all the more concerning so soon after the implementation of the Human Rights Act 1998 ("HRA") and before there has been an a real opportunity for human rights to become embedded in the political, legal and wider social aspects of our constitutional culture.
>
> Such a derogation could in principle send a very negative signal to the country as to the value which the executive places upon constitutional rights and the rule of law. Even in the present climate, it is hard to conceive of the US legislature countenancing an abrogation of American constitutional rights as an appropriate method of combating terrorism.
>
> […]
>
> given the nature of terrorist threats to European countries generally, the question will need to be asked as to why is it that the vast majority of the other forty or so countries signed up to the Convention do not feel that similar measures are so "strictly required" in their countries. Overcoming this hurdle will be particularly difficult given that the assessment of the lawfulness of the measure will be by a majority of judges who come from those other countries who have not found it necessary to design provisions which involve indefinite detention without trial and which breach a fundamental right of the Convention.

> In Clause 21(1)(b) the Secretary of State only has to suspect a person rather than believe a person is a terrorist (cf. 21(1)(2)). In clause 21(2) the definitions are very wide ranging allowing a person to be detained if they merely have "links" with another person. Thus the Secretary of State only has to suspect that they have links with another person to trigger the provision. There is no definition of "links". Thus a person might have "links" with another because of professional and innocent dealings (as a lawyer or doctor).
>
> In any event, Parliament should be slow to attempt to frustrate judicial scrutiny and the rule of law, particularly where fundamental rights are at stake and the perception of legitimacy in administrative/ executive action is all the more important. Those who fear delayed decision-making or an over-interventionist judiciary should remember that UK courts have a long and thriving tradition of deference to the Government in matters relating to national security. A UK Government might well prefer the scrutiny of domestic courts to that of the Strasbourg court in this context.

Liberty also suggested that the proposed new offence, in Part V, of incitement to religious hatred, might be counter-productive:

> We are far from convinced that this new criminal offence (aimed at speech rather than threats or harm to persons or property) will be effective in the significant struggle to end religious discrimination (eg. by employers and institutions) and build a cohesive and tolerant liberal society. Indeed, in our view, the criminal law is rarely the appropriate device for achieving such pluralistic social outcomes. In any event, the struggle is likely to be made far harder by draconian measures which mark out minority communities.
>
> […]
>
> In our view, the creation of the new offence could be particularly divisive and counter-productive at a time when free religious discourse (both within and between faiths) may be more important than ever. In our view, a climate of religious freedom and tolerance will not be created by criminal censorship. It could be extremely dangerous to provide a form of martyrdom for religious extremists of whatever faith by driving their speech underground.
>
> Further, the possibility of Muslims themselves facing prosecution (at the complaint of other Muslims or members of other faiths) cannot be ruled out. In any event, perceptions of prosecution contrary to free speech would be extremely counter-productive to the aim of social cohesion.

On Part X (Police powers) Liberty added:

> Clause 89 is a further provision which is not specifically related to the terrorist threat and which should form no part of this "emergency measure".
> To require this information to be stored will violate the data protection principle and does in effect mean that millions of innocent users of communications

> systems, including email and the internet, will have their private communications information stored on the off chance that it might be of use in the future. The absence of any adequate safeguards before this material can be accessed by the police and others creates real threats to privacy. If this material is to be retained, in violation of data protection principles, then access to this material should only be available in respect to targeted suspicion of particular people and with the authority of a magistrate's warrant.
>
> We are particularly concerned to see that again this provision is not restricted to terrorist investigations even though it has been publicly promoted as a response to the terrorist threat.

Liberty believes the proposal to allow European Union law on Home Affairs matters to be implemented by way of secondary legislation to wrong in principle and usurping the key role of Parliament in protecting the rights of citizens. It says:

> As a result of this measure laws which make substantial changes to our criminal law and criminal justice system will be introduced with very little opportunity for debate and no possibility of amendment.
>
> This measure is of constitutional significance and has no place in this Bill and should not be rushed through on the basis of the fear of terrorist attack

4. The Law Society

The Law Society has commented that the measures proposed need to be tested against strict criteria.

> Are they proportionate to the real threats we face? Will they be effective in combating terrorism? Are there proper safeguards against the abuse of powers? And are they appropriate measures for inclusion in emergency anti-terrorism legislation rather than in more 'mainstream' legislation?

In its Parliamentary briefing it has outlined its concerns about particular measures. It comments that Part III (Disclosure of information)

> is a carbon copy of Part 2 of last year's Criminal Justice & Police Bill, which was previously dropped in the face of fierce criticism.
>
> While it is understandable that the Government would wish to find an opportunity to reintroduce these provisions, an emergency bill on terrorism is not the place to do so. This Bill should not be used as a convenient way to 'mop-up' other Home Office issues, particularly those of a controversial nature.
>
> If powers on these lines are to be included in this Bill, they should be restricted to cases where terrorism is an issue.

Of Part X (Police powers), the Law Society comments that it is not clear what emergency need is met by inclusion of these provisions in this Bill, and that police powers are extended in several ways which appear to be entirely unrelated to investigation of terrorist activities.

5. The Opposition

Writing in the *Daily Telegraph* on 16 November, the shadow Home Secretary, Oliver Letwin, described some of the Opposition's concerns:

> One of the great tests of a government is whether it is able to maintain this balance at times of crisis. We are now faced with such a crisis - and the question is whether the emergency legislation which is to be debated in the House of Commons next week passes the test. Many clauses of this very long Bill contain appropriate and proportional measures to tighten security. Compelling people to remove coverings so that they can be identified by the police makes abundant sense at a time like this, as does a requirement for airlines to reveal lists of passengers.
>
> […]
>
> But there are two major elements of this Bill that raise deep questions about the balance between safety and liberty. The first of these gives the home secretary power to detain indefinitely foreign nationals whom he regards as posing a threat to our national security.
>
> Indefinite detention (otherwise known an internment) is a pretty dramatic step. True, David Blunkett is proposing only to detain foreign nationals. True, also, the threat facing Britain is exceptional. But there is no denying that the use of internment raises profound concerns.
>
> Part of the concern is that internment may actually threaten our public safety. If we have to detain significant numbers of dangerous foreign nationals in Britain, there is a severe risk of inviting reprisals in which - for example - British subjects might be taken hostage in an attempt to trade their freedom for the release of the suspects.
>
> The second concern is that detainment without trial reinforces a precedent which, if widened at some later time, could begin to erode the all-important concepts of due process and the presumption of innocence, on which our liberties depend.
>
> Does Mr Blunkett need to detain these dangerous people? Here, we hit a ghastly irony. The only reason why he feels he needs to detain them is that, because of the Human Rights Act, he is unable to prevent them entering the country in the first place, or remove them from the country once they arrive here.
>
> The Government should use the flexibility afforded by Articles 57 and 58 of the European Convention on Human Rights to establish a "reservation" against Article 3, so that the home secretary, like the president in France, can in times of

> national emergency remove foreign nationals whom he believes to be a threat to our security.
>
> It is difficult to see, for example, why Indian nationals who pose a threat to our security should not be deported to India - a country with a perfectly well-established legal system. The Government, in the name of "human rights", is denying itself the ability to make that decision and is putting itself in the position of having to resort to indefinite detention.
>
> The second worrying element of the Bill deals with incitement to religious hatred. The Government's aim, here, is noble. It wants to protect vulnerable religious communities against the rhetoric that underlies violence of the sort that we saw in the despicable recent attacks on mosques.
>
> […] In our free society, there is hot debate about the validity of differing religious beliefs. Because such beliefs are regarded by many as central to their lives, this debate frequently evokes strong passions. As a result, people of differing faiths from time to time use intemperate language. We may regret this tendency - but, before we pass legislation which will make such language an offence, we should consider whether that will unduly restrict free speech in this country.
>
> […]
>
> Here, as in the case of indefinite detention without trial, one needs to look at the balance of the arguments. Is the threat to public safety which arises from intemperate use of religious language so great as to justify the constraint on freedom of speech contained in Mr Blunkett's Bill? Conservatives will be arguing in Parliament that Mr Blunkett has got the balance wrong. Tougher penalties for religiously inspired violence - by all means. New laws on religious discrimination - well worth discussing. But emergency legislation which could result in severe constraints on the expression of passionately held religious beliefs – no[35].

H. Measures which have not been adopted

The final part of this Introduction describes other measures which had, at an earlier stage, been thought possible candidates for inclusion in the Bill, and some reaction to them.

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[35] It shouldn't be a crime to call the Pope the Antichrist – David Blunkett's emergency legislation raises questions about the balance between safety and freedom, says Oliver Letwin, the shadow Home Secretary, 16 November 2001, Daily Telegraph.

1. Conspiracy

The Home Secretary told the House in October[36] that he was examining additional powers in relation to conspiracy. The question of conspiracy would come into play in case of people who had been engaged in facilitating terrorism through training, providing goods and services or engaging in communications networks with those involved in terrorist activities.

However, in giving evidence to the Home Affairs Committee, the Minister said that the Home Secretary had examined that but he had concluded that the existing laws, including conspiracy to commit terrorist offences, were sufficient to deal with the situation and that we did not need to strengthen those any further.[37]

2. Retrospective penalties for hoaxing

In the aftermath of the terrorist bombings, there were immediate international fears that other terrorist acts would follow, including possible use of biological or chemical weapons. Within days it was confirmed that postal workers in the United States had contracted anthrax, and there was soon a spate of hoaxes, in the United Kingdom as well as in the United States and elsewhere.

Reports in October[38] suggested that the London police were receiving at least 100 anthrax false alarms every day. Other reports suggested that retrospective legislation was proposed so that anthrax hoax calls made after 21 October would be offences punishable by up to seven years imprisonment. The Sunday Telegraph reported:[39]

> EMERGENCY legislation to deter anthrax hoaxers with the threat of up to seven years in prison is to brought forward to take effect from today.
>
> The new powers came into force at midnight last night, even though an Act of Parliament to enshrine them in law will not be passed until next month. It is believed to be the first time a law has taken effect before it has been debated in the House of Commons.
>
> The decision was made by ministers on Thursday after a spate of anthrax hoaxes.
>
> […]
>
> Civil-liberties campaigners protested yesterday, saying the Government was short-circuiting Parliament. Lawyers at the Home Office believe that it will carry

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36 HC Deb October 15 Cols 924, 929
37 Uncorrected evidence, para 263
38 *London has 100 false alarms each day, claim police*; Independent, 26 October 2001
39 *"Hoaxers face seven years' jail from today"* :Sunday Telegraph: October 21, 2001

> legal force, however, and that the police can make arrests of suspects without delay.
>
> From today, anyone convicted of a hoax involving threats of biological, chemical, nuclear or radioactive contamination can be jailed for up to seven years. The same penalty already exists for sending fake bombs.
>
> […]
>
> The closest precedent for making a law retrospective was the War Crimes Bill of 1991 which allowed suspected Nazi war criminals to be tried for atrocities committed overseas during the Second World War. That proved so controversial that the Parliament Act was invoked to pass it against opposition in the Lords, mainly from constitutional and legal experts.
>
> Downing Street insisted that the new move was necessary because of the threat posed by hoaxers sending harmless powders to imitate the terrorists posting real anthrax spores to politicians and media offices in America.

The Human Rights organisation Liberty issued a statement[40] on 20th October, reporting its Director, John Wadham as saying:

> It's a traditional principle of English/British law, and of our constitution (reflecetd also in principles of European Convention[41]) that you don't make retrospective law so you can punish people more severely for offences they've already committed.
>
> If, as is being reported, the Government is introducing this without at least consulting parliamentary leaders, then it suggests the PM is just assuming Parliament will do his bidding and not take an independent view. That seems to undermine Parliament's authority and the democratic process.

Although clause 112 of the Bill published on 13th November would create a new offence of hoaxing, there is no provision for it or the penalty to have retrospective effect.

3. Identity Cards

In the immediate aftermath of the attacks, the Home Secretary had suggested that identity cards might be introduced in Britain as one of the longer-term security measures. He was

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[40] *Government's rushed anthrax 'law': questionable whether it's legal, democratic or effective*: 20 October 2001

[41] Article 7.1 of the European Convention on Human Rights provides that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

reported as having said on 1 October 2001 that he was not prepared to rush a decision on the issue and to have suggested that public consultation would be necessary before such a decision could be taken. On the following day, *the Daily Telegraph* reported:

> Speaking at a conference fringe meeting organised by the think tank Demos and The Sunday Telegraph, Mr Blunkett said his failure to rule out the option soon after September 11 had been to blame, in part, for media speculation that identity cards would be introduced.
>
> However, civil liberty campaigners accused Home Office and Downing Street of deliberately floating the idea to test public reaction.
>
> 'It's not my intention to deal with this issue this week at conference,' Mr Blunkett said. 'It's not our intention to rush something through. The first emergency measure which will deal with the question of tackling terrorism head on will not invlude legislation on ID and entitlement cards.'
>
> "We have not yet come to any conclusions on whether we should have a debate about this. We haven't made a decision yet. We are interested in thinking about it. If thinking about it means we intend on going ahead with it, then we are not." [42]

On 15 October Lord Rooker said:

> I was asked about ID cards. I was asked a straightforward question; namely, whether ID cards were part of the Government's emergency legislation. I replied, "No". I did not add, "How could they be? If we were to do that it would take years and this is emergency legislation". The next day the headline in the media was, "Government abandon ID cards from emergency legislation". When I replied "No" to the question that I was asked, it was an honest answer. That is not to say that the Government are still not considering the issue. I have not issued a "put down". I simply made the point that we were not rushing the matter, that there were no secret policies or plans and that the Government would discuss that matter and, if it was considered appropriate, we would bring forward proposals but that it would not be part of the emergency legislative package. It could not possibly be so in a country with nearly 60 million people.

Arguments against the introduction of identity cards, from 14 contributors were set out in a pamphlet published jointly by the civil liberty groups Liberty and Charter 88. Among the comments were:

> A wide range of possible ID card schemes has been mooted by politicians and commentators in recent days. Some involve giving the police the power to ask any citizen to produce their card and to arrest those that do not. Others wish to bring in an entitlement card, with the principal focus being on monitoring and

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[42] Blunkett retreats in battle over ID Cards, *Telegraph*, 2 October 2001

controlling access to government services. At this stage, it is not clear what proposals, if any, the government will bring forward. However, any debate about ID cards has to start from the understanding that any attempt to portray cards as a serious anti-terrorist measure is deeply misleading. There is no evidence to suggest that introducing national ID cards will help the fight against terrorism. Sophisticated terrorist networks would not find it difficult to forge or steal the cards. In any event, those who carry out terrorist attacks are often chosen because they are unknown to the police. No one has suggested that more rigorous official identification procedures would have prevented the recent atrocities in the USA. Preventing future terrorist attacks is a real and complex challenge. There is a danger that in the current climate, with people feeling understandably concerned about their safety, the government could implement a series of measures which will have no real effect in combating terrorism, but which will seriously undermine freedom here in the UK. Furthermore, there is no good evidence that ID cards would help tackle illegal immigration or domestic crime. There is, however, ample evidence that compulsory ID cards - and the police purposes [43]

In 1996 the Home Office commissioned us to look at the way ID cards were used in other European countries, public attitudes and the impact on the relationship between the police and ethnic minority groups. We found that identity checks carried out by the police were a constant source of tension. We gathered significant evidence in Germany, France and the Netherlands of these groups being disproportionately stopped by the police for identity checks. Even in countries where the scheme was supposedly voluntary, compulsion by stealth had taken place; public officials were much more suspicious of those who did not have an ID card. There was very much a sense of 'it may be voluntary, but if you don't want any hassle, get an ID card'. Do you really want to prove your identity every time you want to use a multi-storey car park or enter a shopping mall? A third concern is the nature of any ID card law. Knee-jerk legislation is usually bad legislation. In the Netherlands, poorly-constructed ID card legislation led to a proliferation in the people, places and circumstances demanding roof of identity, well beyond what was originally envisaged. Finally, there is the organisation and cost of such a scheme. Most commentators agree that the real cost is not producing the cards, but maintaining the system and the integrity of the data. A key issue is whether an address field is included; between 10 and 50 per cent of the population in parts of some cities move at least once a year. This presents an enormous administrative challenge. Given the history of security breaches at the DVLA and the recent administrative chaos at the Passport Agency, neither would seem ideal candidates for the job. We would require a new agency, with a new infrastructure, with a possible remit of gathering information on every citizen in the UK and keeping it up-to-date and secure.[44]

There is no right to privacy recognised in UK law. We cannot stop the authorities finding out things that we wish, quite properly, to keep to ourselves. Without the

[43] Mark Littlewood, Director of Campaigns, Liberty
[44] Adrian Beck, Lecturer in Security Management at the Scarman Centre, University of Leicester

> written constitution possessed by many other democracies we in the UK can be particularly vulnerable. In Germany, by contrast, the Federal Constitutional Court ruled in 1983 that each individual had the right to "information self-determination." Data Protection Commissioners were therefore able to argue that the introduction of a unique identity number system would be incompatible with this right. As a result, the German ID Card Act of 1987 was obliged to contain detailed provisions to this effect. ID cards will do little if anything to prevent terrorist acts. They will nevertheless shift the balance between the rights of the individual and the rights of the state significantly in favour of the latter.
>
> The burden is on those who support ID cards to make the case. And we should only accept them if the arguments in favour are overwhelming – and if they meet the interests of the citizen and not just of the state. Liberals and Liberal Democrats have never yet been persuaded. And we should beware of the backdrop of international terrorism providing a cover for a fundamental shift in state power which is privately justified by civil servants for other purposes – and as easier identification for overstaying asylum seekers. The arguments against include the practical. Why will ID cards not be any less able to be forged than passports and driving licenses and cheque cards? Will they be able to change easily when one's personal information changes? What would make terrorists be bound to carry them – or stop being terrorists just because they carry them? But perhaps most importantly – who will be expected to use them? If UK citizens only, then what's the point? There are millions of other people here every day perfectly lawfully who would not be covered. Why could UK citizens not claim to be one of these?[45]
>
> As citizens of Britain, Muslims would find it a clear violation of their civil rights if identity cards are introduced to combat terrorism. Muslims are the same as everyone else in that they value freedom of expression, freedom of movement and the freedom that all British people enjoy to walk around without identification[46].

In answer to a written question by Dr Julian Lewis, the Home Office Minister Angela Eagle confirmed on 8th November that there were no plans to introduce an identity card scheme.

> **Dr. Julian Lewis**: To ask the Secretary of State for the Home Department what assessment he has made of the value of (a) compulsory and (b) voluntary identity cards in combating terrorism in the United Kingdom.
>
> **Angela Eagle:** The Government have no plans to introduce a compulsory or voluntary identity card scheme as part of their response to the atrocities in the United States on 11 September. However the policy on identity cards is kept

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45 Simon Hughes MP, Liberal Democrat Spokesman on Home Affairs

46 Jaffer Clarke, Joint Deputy Leader, Muslim Parliament of Great Britain.

> under review and the Government are considering whether a universal card which allowed people to prove their identity more easily and provided a simple way to access a range of public services would be beneficial. Such an entitlement card scheme could also help to combat illegal working which disproportionately affects the poorer sections of our society by undercutting the minimum wage and encouraging unscrupulous employers. It could also reduce fraud against individuals, public services and the private sector.
> The Government do not consider that an entitlement card scheme would have a significant effect in combating terrorism in the United Kingdom. The introduction of an entitlement card would be a major step and the Government would not proceed without consulting widely and considering all the views expressed very carefully.

4. Mercenary activities

There have also been reports that young British Muslims have gone to Afghanistan intending to fight for the Taliban, which has drawn attention to the question of mercenary activities.

> **Mr. Robert Key** : Will the Home Secretary explain why he has not taken this opportunity to legislate on mercenary activity? He will recall that we were promised a Green Paper in November last year, and that in April this year the Government regretted that they had not got around to it. Now we see young British men recruited by British citizens to fight for the Taliban, possibly against British service men and women. Should not the Home Secretary now take the opportunity to legislate? [47]
>
> **Mr. Blunkett:** I have known the hon. Gentleman for many years in opposition, so let me be frank with him. No, I did not know that we were thinking of producing a Green Paper, but I will go back and read the material, along with all the other tomes that I have been reading over the past five weeks. [48]

On 2 July 2001, the Minister of State at the FCO, Peter Hain had said:

> The aim of the Green Paper, recommended by the Foreign Affairs Committee in its Report on Sierra Leone published in February 1999, is to set out options for the regulation of mercenaries and private military companies. Work on the Green Paper is continuing; the issues are complex. I am unable at present to give a specific date for publication of the paper.[49]

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47 HC Deb15 Oct 2001 : Col 934

49 HC Deb 2 July 2001 C 1W

5. Extradition

When announcing the measures being worked on by the Home Office, in early October, the Home Secretary referred to a complete overhaul of the UK's extradition system. The Anti-Terrorism, Crime and Security Bill does not include provisions to replace the current extradition arrangements. In her evidence to the Home Affairs Select Committee, Beverley Hughes MP referred to an Extradition Bill which the Government intended to bring forward.[50]

[50] Uncorrected evidence, para 246

Appendix: Home Affairs Committee First Report, Summary of Conclusions

Select Committee on Home Affairs First Report [HC 351 of 2001-02], 19 November 2001

THE ANTI-TERRORISM, CRIME AND SECURITY BILL

SUMMARY OF CONCLUSIONS

68. The Anti-Terrorism, Security and Crime Bill should be given a second reading but will need close examination in committee.

(a) We express the hope that, in time, all Government departments will acquire the habit of making Bills available in draft form far enough in advance for evidence to be taken from interested parties and assessed by the relevant select committee (paragraph 3).

(b) We question whether it is appropriate for this Bill to be passed through the House of Commons in exactly two weeks with only three days of debate on the floor of the House. A Bill of this length - 125 clauses and eight schedules covering 114 pages - with major implications for civil liberties should not be passed by the House in such a short period and with so little time for detailed examination in committee (paragraph 11).

(c) Whilst we do not, for a moment, suggest that the Government should send people back to countries where they would be at risk of torture or ill-treatment, we do think that the Government should engage in a review with our European partners, with a view to finding some acceptable solution that might avoid the need to exercise a power of indefinite detention. It would be desirable for the Home Secretary, who is accountable to Parliament, to be able to exercise his discretion within the framework of Article 3 (paragraph 20).

(d) We reluctantly accept that there may be a small category of persons who are suspected international terrorists who cannot be prosecuted, extradited or deported and therefore will have to be detained (paragraph 27).

(e) We are concerned that the power of detention is exercised only as a last resort, i.e., in circumstances where it is clearly not possible to proceed with prosecution, extradition or deportation. The Committee understands that, in some cases, prosecutions do not proceed because certain types of intelligence, such as telephone intercepts, cannot be admitted in court. We believe that within the law enforcement community there is a variety of views on whether such evidence should be used in court. We suggest that the Government conduct a review of the law and procedure relating to the admissibility of intercept evidence in court, with a view to extending the circumstances in which such evidence could be admitted (paragraph 34).

(f) The proposed safeguards about the process for individual cases are acceptable in the circumstances. Given the previous experience with similar powers of detention, we shall take a close interest in the way this power is implemented (paragraph 36).

(g) We welcome the provisions that the power of detention will only continue in force for 15 months and then will require annual renewal by Parliament for one year. We recommend that such renewal should be based on an annual report by an independent commissioner (paragraph 40).

(h) This measure can only be described as "temporary" if it will expire after a set number of years - subject to Parliament passing new primary legislation. We recommend that a "sunset" provision - such as that contained in the Prevention of Terrorism Act 1984 - should apply to the immigration and asylum provisions in part 4 of the Bill after five years. Any revival or continuance of the detention and other powers would then depend on the full parliamentary consideration given to a Bill and not just the 90 minute debate in a standing committee required for an annual renewal order (paragraph 43).

(i) We are reluctantly persuaded of the case for removal of judicial review in decisions made by the Special Immigration Appeals Commission (paragraph 53).

(j) We welcome the measures designed to improve data-sharing between government agencies which we recommended in our report on Border Controls earlier this year. The various provisions for preventing terrorists moving money around to finance their activities are also desirable (paragraph 55).

(k) We have not seen sufficient evidence to justify the proposition that extending the law of incitement to include religious as well as racial hatred will work in practice. The proposals in the Bill would be difficult to enforce. We note in particular the evidence from a group of distinguished Muslim organisations and individuals: "we have grave reservations about the extension of this criminal power to cover religious groups at this particular time." We therefore see no reason for this measure to be included in this emergency terrorism Bill (paragraph 61).

(l) We accept that there is a strong case for a new offence for hoaxes and threats involving noxious substances. We welcome the decision not to make it retrospective (paragraph 64).

(m) We view with concern the broad power to implement justice and home affairs measures under the third pillar of the Treaty of European Union - whether concerned with terrorism or not - by means of a secondary rather than primary legislation. This would enable a wide range of EU measures on police and judicial co-operation on criminal matters to be brought into effect in the UK. We believe that the power to do so in this Bill should be confined to EU measures contained in the proposed Framework Decision on combatting terrorism (paragraph 67).