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Counter-Terrorism Bill Committee Stage Report

Bill 100 of 2007-8

This is a report on the Committee Stage of the *Counter-Terrorism Bill*, Bill 63 of 2007-08. The Bill as amended in Committee and published for the Report Stage is Bill 100 of 2007-08. This report has been produced in response to a recommendation of the Modernisation Committee in its report on The Legislative Process (HC 1097, 2005-06).

The *Counter-Terrorism Bill* covers a wide range of topics; however, the most contentious have proved to be proposals in relation to pre-charge detention, post charge questioning and inquests and inquiries.

The Bill Committee took evidence from a number of witnesses prior to debate, primarily on these issues. It held 14 sittings between 22 April and 15 May 2008. Remaining Stages are to be on 10-11 June 2008.

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CONTENTS

I Main provisions of the Bill 5

II Second Reading, 1 April 2008 6

III Public Bill Committee – Evidence Sessions 9

1. Sir Ian Blair (Metropolitan Police Commissioner) and Bob Quick (Chair, Terrorism and Allied Matters Committee), Association of Chief Police Officers 10
2. Sir Ken Macdonald QC (Director of Public Prosecutions) and Sue Hemming (Head of Counter-Terrorism Division, CPS) 11
3. Lord Goldsmith QC 13
4. Tony McNulty, Minister for Security, Counter-Terrorism, Crime and Policing 14
5. Coroners' Society of England and Wales 15

IV Public Bill Committee – Debate 15

A. Period of pre-charge detention 15

B. Post-charge questioning 18

C. Jurisdiction to try offences committed in the UK 19

D. Inquests and inquiries 20

1. Amendments agreed 20
2. Other significant areas of debate 20
3. Ministerial undertakings to consider 21

V Other developments 22

1. Potential concessions on pre-charge detention proposals: Media comment 22
2. The Prime Minister's Article 23

VI Home Office paper on revised pre-charge detention plans 24

A. The proposals 24

B. Responses to the revised proposals 25

C. Report of the Joint Committee on Human Rights (JCHR) 27

VII Annex: Members of the Public Bill Committee 28

VIII Annex 2 – Recent press coverage 29

IX Annex 3 – Home Office flow chart detailing the process involved in the proposed extension of pre-charge detention. 30

I Main provisions of the Bill

The *Counter-Terrorism Bill* was published on 24 January 2008 as Bill 63 of 2007-08.The Bill as amended in Committee and published for the Report Stage is now Bill 100 of 2007-08. It contains a number of provisions which the Government state are designed to enhance counter-terrorism powers.

Part 1 of the Bill includes (amongst other things) a new power to remove documents for examination, powers to take fingerprints and samples from people subject to control orders and data sharing powers.

Part 2 of the Bill includes a clause to introduce a reserve power to increase the time a person can be detained prior to charge, from 28 days to 42 days, by further amending the *Terrorism Act 2000*. This is likely to be the most contentious measure contained within the Bill. Part 2 also makes provision for the post-charge questioning of suspects.

Part 3 of the Bill introduces provisions for specified terrorism offences committed anywhere in the UK to be tried in any part of the UK. It also deals with sentencing for terrorist offenders, requiring courts to consider a terrorist connection as an aggravating factor. Part 4 would ensure that people convicted of terrorist or terrorism related offences, who were sentenced to more than 12 months imprisonment, would be subject to notification requirements and could be made subject of foreign travel orders. These orders would enable restrictions to be placed on the overseas travel of those persons subject to notification requirements, where there was reasonable cause to believe that they had acted in a way that made it necessary for an order to be made to prevent them from taking part in terrorist activity outside the UK.

Part 5 of the Bill relates to asset freezing proceedings and would amend the *Regulation of Investigatory Powers Act 2000* in order that intercept material could be used in asset freezing cases related to terrorism. It also provides an enabling power for the Lord Chancellor to make court procedure rules to allow the use of special advocates, closed hearings and withholding of evidence in civil court proceedings relating to asset freezing decisions.

Part 6 of the Bill, relating to inquests and inquiries, contains provisions for coroners' inquests to take place without a jury, where the Secretary of State certifies that the inquest would involve the consideration of material that should not be made public for certain reasons. It would also amend the *Regulation of Investigatory Powers Act 2000* to allow intercept evidence to be disclosed in exceptional circumstances. Parts 5 and 6 of the Bill are the only parts to make reference to intercept evidence and the Bill does not make any provision for the use of such evidence in criminal proceedings.

Part 7 of the Bill would amend the definition of terrorism in section 1 of the *Terrorism Act 2000* to include reference to acts carried out for the purpose of advancing a racial cause. It also creates an offence of communicating information relating to the armed forces, which is likely to be of use to terrorists; and amends the offence of failing to disclose information about a suspected terrorist offence. It includes amendments to the control order regime and a new scheme relating to the recovery of the costs of policing at gas facilities.

A House of Commons Library Research Paper, *Counter-Terrorism Bill* (RP 08/20) provides briefing on the main provisions of the Bill and the background to them. Documents relating to the Bill, including Library publications are available at:

http://services.parliament.uk/bills/2007-08/counterterrorism.html

II Second Reading, 1 April 2008

The Bill received an unopposed Second Reading on 1 April 2008.[1] While it appears that both the Conservatives and Liberal Democrats support some of the proposals in the Bill, there was fierce debate on the proposals relating to pre-charge detention and concern about the proposals on coroners.

The Bill was introduced by the Home Secretary, Jacqui Smith, who said:

> From the outset, my approach to this Bill has been to emphasise the importance of consultation and consensus-building. We have consulted widely, and at length, with hon. Members, the public, the police, civil liberties organisations, community groups and the judiciary. Our proposals have been scrutinised by relevant Committees here in Parliament, and by Lord Carlile, the independent reviewer of terrorism legislation. I believe that many measures in this Bill have already achieved broad support […]
>
> I want to turn now to the issue of the period of time that the police have available to investigate and question a suspect before charge—the period of pre-charge detention. That issue has divided the House before, and today has seen that yet again. It is the issue in the Bill that has been the subject of the greatest debate. Indeed, some have questioned why the Government are returning to this thorny issue once again. Quite simply, the response of the law cannot remain frozen when the scale and the nature of the threat are growing […]
>
> In my view the maximum time period is not the most important issue. The most important issue is whether people feel that in all circumstances in the future there would never be a time when 28 days would be insufficient. If people believe that, the argument arises of how and through what process it would be possible to extend beyond that. […] The complexity of the investigations […] is part of the argument that I shall make. In particular, senior police officers are clear that the combination of the changing nature of investigations to pre-empt and prevent potential terrorist actions and the scope and complexity of modern-day terrorist plots has the potential to impact on their ability to bring charges against terrorist suspects in the time currently available.[2]

For the Conservatives, the Shadow Home Secretary, David Davis first summarised his approach to the Bill as a whole, stating:

> The Bill contains many detailed provisions. We have called for some of the measures for years, such as post-charge questioning, and we welcome action at

[1] HC Deb 1 April 2008 cc 647-737
[2] HC Deb 1 April 2008, cc 650-653

> last in that area. There are measures that we can support in principle, such as making terrorism an aggravating factor in sentencing, notification requirements for those convicted of terrorist offences and travel restrictions on those convicted of terrorist offences. We may challenge the Government on other issues, depending on their case.
>
> In her speech, the Home Secretary did not cover the proposal to appoint a coroner, to forbid the appointment of a jury and to hold an inquest in secret when terrorism is involved. Why can that not be achieved by having security-cleared coroners and juries similar to those used in secret espionage trials in the cold war? I want the Minister to answer that question when he replies to the debate. […] I am also concerned about the proposal to make it a criminal offence to attempt to elicit information about members of the armed forces that is likely to be useful to a terrorist. Existing laws already cover that point, so I can see no benefit in introducing the provision—again, we will test that point.
>
> We have pressed for a further range of measures, which are entirely absent from the Bill: lifting the ban on using intercept evidence in court to bring terrorists to justice; establishing a dedicated border police force to check for terrorist suspects and fugitives coming in and out of the UK; tightening the rules on extremists entering the UK to preach hatred; and banning radical groups, such as Hizb ut-Tahrir, that serve as an antechamber for terrorism. The Government can and should do much more to protect this country from the terrorist threat that we face, before resorting to draconian measures that sacrifice our fundamental freedoms.[3]

He then turned to the issue of the proposed extension of pre-charge detention:

> Today, we address […] the proposal to extend pre-charge detention. What is at stake? It is the principle of habeas corpus—an individual's right not to be held for prolonged periods without the state bringing criminal charges against him. That ancient right dates back to the Magna Carta of 1215; it is one of our most basic, fundamental freedoms that millions died defending in the last century. We Conservatives will not give it up lightly. It should be borne in mind that in five years the maximum period of detention has already quadrupled from seven days to 28—the current maximum limit that the House agreed at the time should be used only in the most exceptional circumstances. We heard that argument yet again today. For non-terrorist cases, the limit is a mere four days. We have by far the longest period of detention without charge in the free world. Incidentally, before I talk about the other countries, I should say that I listened to the Home Secretary yet again confuse pre-charge detention with pre-trial detention. She compared the treatment on the continent with what is effectively remand, not pre-charge detention, in this country. However, putting that aside, which country has the longest period of detention without charge in the common law world? It is Australia, which allows 12 days' detention without charge. [Interruption.] We can talk about Zimbabwe in a second, if somebody wants me to; I shall come back to that. Canada allows one day. Even in the United States, which suffered the ultimate horror of 9/11, American citizens can be held for only two days before charge. If we were to extend the period still further, we would be in the same league as which countries? The first one, Zimbabwe, has been offered, and even China allows its police to hold suspects for only 37 days. […]

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3 *Ibid*, cc 662-664

> The senior law enforcement officers do not support an extension—nor does the senior prosecutor, the Director of Public Prosecutions. I listened with fascination to the Home Secretary trying to square what he said with what she believes. The former Attorney-General does not support an extension, nor does the former head of counter-terrorism at the Crown Prosecution Service. Neither this Home Secretary, nor the previous one, nor the one before—nor anyone else—has provided a shred of evidence that we need longer than 28 days. […]The head of MI5 has not even mentioned pre-charge detention when setting out the security challenges that we face, whether briefing in public or in private on Privy Council terms. The most that the Home Secretary can cite is Sir Ian Blair, who offers no evidence at all but merely draws a "pragmatic inference"—her words—that we might at some unspecified point in the future, faced with some unspecified threat, require an unspecified extension of detention without charge. That cannot be a sufficient basis for giving up a fundamental, basic right enjoyed in this country for 800 years.[4]

David Davis argued that extended detention could alienate the local communities and cut off vital sources of intelligence. He also cited Lord Dear QPM (a former senior police officer) as indicating that the proposals could be a "propaganda coup for Al Qaeda". He noted the case of Lofti Raissi, who had been held in extended detention pending an extradition request as an example of the fact that "the police and prosecutors who protect us are human, like everyone else; they make mistakes".

Chris Huhne, the Liberal Democrat spokesman for Home Affairs also gave a summary of the measures that he was broadly in agreement with:

> I shall set out what we welcome in the Bill, as well as what we deplore in it. There are good and bad things in what Ministers have brought forward. The good things include the use of intercept evidence in limited cases—in our view, too limited—and the ability to question people after charge, again in a limited and incipient form. Those are innovations with the potential to help substantially the attack on terrorism, particularly if combined with the benefits of greater flexibility in the decision to charge already being exercised by the Director of Public Prosecutions.[5]

He then went on to set out the areas of disagreement, mainly criticising the proposals on pre-charge detention and coroners. In relation to the latter point, he said:

> Nor are we persuaded of the need to abandon juries in coroners' courts or to give the Secretary of State extraordinary powers to appoint special coroners. That may seem a minor matter, but it is far from being so. Coroners' courts were one of the first and most fundamental bulwarks against the abuse by the state of its monopoly of the legal use of force. […] Frankly, this part of the Bill is an outrage against the traditions of this House and our constitutional traditions.
>
> Only if the cause of death could be independently established—this is the history of coroners' courts—could citizens be sure that there was a whistleblower who

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4 *Ibid*, cc 664-665

5 *Ibid*, c667

> would be alert to the corruption of state power. That is precisely why the Secretary of State should not have the right directly to appoint or dismiss a special coroner, and why juries are an essential part of the process of reaching judgments of fact, particularly in cases of death in custody.[6]

The vast majority of the remainder of the debate focused on the issue of pre-charge detention. On the issue of the suitability of a Parliamentary debate as a safeguard, Martin Salter asked "has not the House for many years had meaningful debate on the extension of the Prevention of Terrorism Act powers? Does the Home Secretary not accept that her proposals would be substantially improved if the House, instead of having to wait 30 days, had the opportunity to vote on the reserve powers within a far shorter time—say, within 10 or even seven days?"[7] Frank Field argued that "those who have lost their liberty temporarily can be compensated, but there is no adequate compensation for my constituent" [who had been injured in the London bombing].[8]

In contrast, Frank Cook, who indicated that he had initially told the Home Secretary that he supported the pre-charge detention proposals, said that:

> [S]ome time later I had another one-to-one discussion, with Shami Chakrabarti, the director of Liberty. She simply asked me, "Have you ever put yourself in the position of the person being detained?" That stopped me dead in my tracks. I thought, "Well, okay, what would it be like? Forty-two days—God, that's six weeks." I would be in custody, without charge, under suspicion—suspicion of what?—for one week, and then another and another, at the end of which someone would come to me and say, "All right, Mr. Cook, we believe that you're innocent—off you go." What would I feel like?
>
> I immediately felt angry, but then I thought, "Just a minute—what if Frank Cook was a Muslim and that happened?" What would I do then? I would be likely to go back to South Shields, the south bank or Southampton and play merry hell, providing evidence of the residual reservoir of resentment that had built up over those 42 days of not knowing what they wanted to detain me for. It would not only eat like acid into the individual soul, but provide justification for others within the community to feel the same levels of resentment and seek a similar kind of retribution.[9]

At the conclusion of the Second Reading, the Bill's Programme Motion and Money Resolution were agreed.

III Public Bill Committee – Evidence Sessions

Debate in the Public Bill Committee focused on the entire Bill; however, it was apparent, both from the initial evidence sessions and subsequently, that the main points of contention were on the proposals relating to pre-charge detention, the use of

6 *Ibid*, c 677
7 *Ibid*, c 660
8 *Ibid*, c 666
9 *Ibid*, c 716

alternatives, such as post charge questioning and intercept evidence and the proposals relating to coroners. Accordingly, this paper will mainly concentrate on these issues. The Committee took evidence from a number of witnesses including:

Police	Sir Ian Blair (Metropolitan Police Commissioner) and Bob Quick (Chair, Terrorism and Allied Matters Committee), Association of Chief Police Officers; Former HM Inspector of Constabulary, Lord Dear QPM
Crown Prosecution Service	Sir Ken Macdonald QC (Director of Public Prosecutions) and Sue Hemming (Head of Counter-Terrorism Division, CPS)
Former Attorney General	Lord Goldsmith QC
JUSTICE	Dr. Eric Metcalfe, Director of Human Rights Policy
Lord Advocate	Elish Angiolini QC
Liberty	Shami Chakrabarti, Director, and Gareth Crossman, Policy Director
Independent Reviewer of Terrorism Legislation	Lord Carlile of Berriew QC
Home Office	Tony McNulty MP, Minister of State, Jennifer Morrish, Legal Adviser and David Ford, Head of Terrorism Legislation
Coroner	André Rebello, Her Majesty's Coroner for the City of Liverpool and the honorary secretary of the Coroners' Society of England and Wales

It held 14 sittings between 22 April and 15 May 2008. Some short extracts of the evidence are considered below.

1. Sir Ian Blair (Metropolitan Police Commissioner) and Bob Quick (Chair, Terrorism and Allied Matters Committee), Association of Chief Police Officers

Sir Ian Blair and Bob Quick were questioned intensively over the issue of pre-charge detention. In answer to a question by Dominic Grieve on the need for an extension, Sir Ian appeared to argue that the police were better placed than the CPS to advise on this issue, saying:

> Our position is unchanged since Peter Clarke and I gave evidence to the Home Affairs Committee. We have never put forward a case that there is evidence of a need for an extension of the length of pre-charge detention. What we have said repeatedly is that, given the circumstances that the UK has faced over the last few years, the growth in the number of plots, the number of conspirators in each plot and the magnitude of their ambition, a pragmatic inference can be drawn that sooner or later we are going to need more than 28 days. That is particularly affected by the different criminal investigation and criminal justice processes of the United Kingdom. We are not the same as the United States. We are not the

> same as France, Germany, Spain and Italy. We are in a place in which a great deal of responsibility is placed on police investigators rather than prosecutors. Although I respect the views of the DPP and the Attorney-General, it is appropriate for the professionals, who are charged with the actual investigation before the lawyers make their decision, to put forward a viewpoint. That is what ACPO has done. […]We are the people who have to investigate. We know the difficulties of investigation. We do not produce the material for the Crown prosecutors until we have actually got it. Both Bob and I could refer to a number of circumstances where it takes time to produce that material. Once the material is there, then of course the prosecutors are in a position to deal with it.[10]

Asked about operational difficulties and why it was difficult to turn intelligence information into evidence, Bob Quick said:

> In recent years, we have witnessed a much more volatile picture where suspects who are of interest or concern to us are not engaging in much activity. They will then go abroad where the intelligence coverage might not be as reliable or satisfactory as in the United Kingdom, receive their taskings, come back to the UK and immediately engage in attack-planning activity. In some investigations, we have seen that materialise so quickly that on public safety grounds we have had to act pre-emptively before we have had the opportunity to exploit pre-arrest evidential opportunities. That places a huge burden on the senior investigating officer.[11]

Ian Blair added that:

> [T]he perceived threat is so awful that we arrive at their premises right at the beginning of an investigation. With a lot of organised criminality you will have a great deal of evidence before you make the arrests—enough to charge in a number of cases—and the breaking of the encryption comes later. There is also something about the groups that we have met so far that makes them interested in IT. That is something quite remarkable. I had a bit of an interchange of correspondence with the other David Davis about some evidence that I gave before the Home Affairs Committee about a case—Tsouli and others, which has just finished—in which a million separate files had to be opened. The individuals do things such as breaking up an ordinary commercial film and inserting something into it. So the whole film has to be watched. That is the situation that we face.[12]

2. Sir Ken Macdonald QC (Director of Public Prosecutions) and Sue Hemming (Head of Counter-Terrorism Division, CPS)

The witnesses for the Crown Prosecution Service covered a number of issues, including post charge questioning, data sharing, aggravated offences, intercept evidence (of which Sir Ken Macdonald described himself as a "proponent", noting that it was considered

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[10] PBC Deb 22 April 2008 c 11
[11] *Ibid*, c 14
[12] *Ibid*, c 16

"absolutely indispensable" in other jurisdictions[13]). Much of the evidence turned on the issue of pre-charge detention. Asked whether he was in favour of the Government's proposals, Sir Ken indicated that:

> First, it is Parliament's decision, not mine. I have expressed my professional view, which is derived from our operational experience, on whether 28 days is sufficient and is likely to remain so, and our conclusion is that it is. I have read Hansard, which did not seem to catch all the debate. I heard Members calling out at one point, but, for some reason, that was not in Hansard. The Home Secretary said that I had never said that I did not want this legislation, and some Members called out, "He did." I think that the Home Secretary was saying that I had been perfectly plain that if the legislation is enacted, we will use it if it becomes appropriate to do so. It is not for us to say whether we do or do not want legislation, and I am not prepared to express a view about that—that is not my job. What I can say—I have said this on a number of occasions—is that for our part, as prosecutors, we do not perceive any need for the period of 28 days to be increased. Of course, people have argued to the contrary, and you have heard some evidence to the contrary. Various scenarios have been put up, and anything is possible, but the question is whether it is remotely likely.[14]

Following the evidence of the police witnesses, evidence was sought as to the working relationship between the police and the prosecution and why there was a "divergence of view" between the CPS and the police. Sir Ken observed that:

> During periods of detention, the police and prosecutors work extremely hard, at all hours. Miss Hemming and her colleagues will leave Scotland Yard when they need to sleep, but apart from that they are there. […] I looked at Sir Ian's evidence this morning and I think that he suggested that the police were better placed to make the judgment because they are involved in the investigation. In fact, prosecutors must determine when the investigation has turned up sufficient evidence to create a charge, and I should have thought that we were very well placed to make that judgment. I respect Sir Ian's view and the police view, and those of everyone on the other side, but our experience is that we have managed comfortably with 28 days, and have therefore not asked for an increase. It is possible to set up hypothetical situations in which you might have nothing after 28 days but suddenly get evidence after that time. I repeat: anything is possible; the question is whether it is remotely likely […] Of course, investigations always continue in such cases, and huge amounts of evidence come to light after charge. Our judgment is that the threshold test is sufficient to allow us scope to charge appropriately, even in the most extraordinarily complex terrorism offences. It is a question for Parliament whether the provision is directed against a real problem.[15]

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[13] PBC Deb 22 April 2008 c 48

[14] *Ibid,* c 53-58

[15] *Ibid,* c 54-58

3. Lord Goldsmith QC

The former Attorney General, Lord Goldsmith, was also questioned about a number of issues, including intercept evidence (upon which he commented that "[a]s far as terrorism is concerned, from cases that I have seen, I am confident that there are cases in which intercept evidence would be valuable") and the necessity of extending pre-charge detention. Patrick Mercer posed a question as to whether, if a threshold test, post charge questioning, the use of intercepts and plea bargaining were allowed, there was a need for a longer period of pre-charge detention. Lord Goldsmith replied "I do not think that there is a need for a longer period of pre-charge detention even without some of the things that you have mentioned."[16] Asked by Dari Taylor if he was "seriously sitting there and denying the efficacy of what the police are saying" [in favour of extending pre-charge detention in "exceptional cases"][17] Lord Goldsmith said:

> I am sorry, but I am seriously sitting here and saying that, for two reasons. The police have had significant plots and concurrent plots that they have had to investigate and they have done enormously well. Jacqui Smith's statement the other day about the number of cases that have been prosecuted and the number of people who have pleaded guilty demonstrates that. It is a testament to our prosecutors, our intelligence services and the police and I pay tribute to them in relation to that. However, in none of those cases would it have been of help to have a longer period than 28 days. I looked hard at those cases personally when I was in government.
>
> As I say, you come to a point where you have to ask yourself what is the purpose of keeping someone in detention any longer. Are you going to get a sudden admission from them? No, you are not. Are you going to get any more information from them? Well, 28 days is four weeks. It is a long period in which to investigate. Is it simply that you want to protect yourself against the chance that you might find something later? If you find something later, you can still charge them. If you charge them with a lesser offence, and if you allow post-charge questioning, which I believe is right, you can ask them about that as well. Or are you simply concerned that they may be a threat? We have legislation to deal with people against whom you cannot prove enough to prosecute them when there is a threat—control orders. I regret to say that I do not think that the proposal is right.
>
> In principle, it is enormously important that something as significant as individual liberty, which is such an important part of this country's background, should not be undermined or removed unless you can show that that is necessary, not just that it might be desirable at some future stage. The test of necessity is important here, and it is not met. I am also concerned that the proposal is counter-productive, because it sends a message to people, particularly to Muslim communities, that we are down on them and that this is another attack on them. The worry is that misguided young men may take that as a justification for taking up arms, as they see it, against us. The proposal needs to be necessary, and I do not believe that it is. That is why I seriously, but respectfully, disagree with ACPO's conclusion.[18]

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[16] *Ibid,* c 64
[17] *Ibid*, c 66
[18] *Ibid*, c 66-67

4. Tony McNulty, Minister for Security, Counter-Terrorism, Crime and Policing

As with the other witnesses, much of the discussion with Tony McNulty revolved around the issue of pre-charge detention. When asked if there were “compelling reasons” for the extension, the Minister said:

> As I indicated earlier, the first question that we asked in this process was whether there was a compelling reason to go beyond 14 and make 28 days permanent, as Mr. Grieve indicated earlier. The answer was no for all the reasons that people have gone through. However, given the evidence, the trends, the intelligence and everything else that is in the public domain, is there a compelling reason to make the provision that we have made? We think that there is. In operational terms, the best advice from the police is that they need the additional 14 days, or rather they need the ability to go to a judge to secure more than 28 days. As people have inferred from our deliberations and more general matters, I think that that is sufficient in these extraordinary circumstances. I do not think that we will be coming back to the well for more, as it were, to ratchet it up after every single incident in the way that was implied by Liberty. I say that with a degree of confidence in the context of our other deliberations.[19]

The Minister was also asked for his response, if he were confronted with a situation whereby the police contacted the Home Office and said: “We have this group of people and we have had them for 27 days. It is absolutely imperative that they do not go back on the streets”? What could you do?” He responded by saying:

> No.1, I would say that that would not happen. On the premise that it did happen, I would say to Mr. Quick, “I am a Minister of the Crown and I do not do operations. Go back to your prosecutor colleagues and your police colleagues and secure the information and evidence that you need to charge. You have 24 hours or you will have to release. […] If there is not sufficient evidence on a holding charge basis, threshold test basis or any of the other bases that we have talked about to charge that person on the 28th day, the person in question would be released despite the intelligence detail—it may be that the process of translating that intelligence into admissible evidence had not been completed. That is the stark practicality of it. Ms Morrish [Home Office Legal Adviser] is whispering to me that if the situation is that severe, control orders or something similar could be used, but that is the only alternative.[20]

Asked if Control Orders were an option, he said:

> It is either out the door or a control order. Happily, given the recent House of Lords judgment—and doubtless that will be challenged—there will be a 16-hour [home detention] limit rather than 12, which is what we are testing at the moment. As a Government, we have never said that control orders were a satisfactory alternative. The stark reality is a control order regime of whatever description we think proportionate or we say to someone, “Out the door and off you go”.[21]

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[19] PBC Deb 24 April 2008 cc 138-9

[20] *Ibid*, c157

[21] *Ibid,* Interestingly, neither the Minister, nor the Opposition Members touched on the issue of derogating control orders provided for under ss3-6 of the *Prevention of Terrorism Act 2005*. Derogating control

The Minister also clarified the nature of the Parliamentary safeguards, stating that:

> Let us be very clear that Parliament's role within 30 days is to confirm or otherwise the Home Secretary's decision under order to commence the legislation. Its role is not to pass comment on an individual's case—whether one individual case, an individual plot or whatever—that prompted the DPP and the chief constable to go to the Home Secretary to seek the trigger. Its role is to deliberate on her decision to commence the legislation under order. It is entirely appropriate for the grown-up men and women who fill the House of Commons to have that debate.[22]

5. Coroners' Society of England and Wales

The Public Bill Committee heard evidence from André Rebello, Her Majesty's Coroner for the City of Liverpool and the honorary secretary of the Coroners' Society of England and Wales. Mr Rebello expressed concern about the effect the inquest provisions would have on the separation of powers commenting that it should not be possible for the Government to pick its own tribunal:

> What we would be doing here is throwing out the person who should ordinarily hear that case according to the Coroners Act and replacing them with what the public might perceive to be a Government stool pigeon who would side with the Government. That is probably not the case at all, but if we needed specially trained coroners, there are only 110 coroners, so why should not every coroner be specially trained and security cleared? If that were the case, there could be no accusation that the Executive was interfering with the judiciary.[23]

IV Public Bill Committee – Debate

At the outset, it is important to note that all references to clause numbers in the following sections refer to the clauses in the Bill as introduced on 24 January 2008.

A. Period of pre-charge detention

Clause 22 of the Bill provides for the introduction of Schedule 1 [now Schedule 2][24] which contains amendments relating to the period for which a person may be detained under section 41 of the *Terrorism Act 2000*. A division was held as to whether the clause should stand part of the Bill (Ayes 12, Noes 9). There followed a debate on the detailed provisions of Schedule 1.

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orders provide for a derogation from Article 5 of the *European Convention on Human Rights* in certain circumstances and would allow more stringent controls to be placed on suspects.

22 *Ibid*, c 159

23 PBC Deb 24 April 2008 c 134

24 A new Schedule 1 containing consequential amendments relating to disclosure and the security services was introduced.

a. Evidence of need for extension

Dominic Grieve, the Shadow Attorney General, stressed at the outset that "[a]s far as terrorist cases are concerned, we are not talking about extending 28 days—in fairness, the Government have already accepted that 28 days is an emergency procedure. We are talking about extending the period from 14 days, first to 28 days, which we are currently doing in the annual renewal under the 2005 Act, and then to 42 days, having previously rejected the Government's initial attempt two years ago to move it to 90 days."[25] He argued that no evidence had been presented, either to the Public Bill Committee, or the Home Affairs Committee (which had considered the issue) to demonstrate that the current 28 day detention limit was proving insufficient. He noted the reluctance to accept the use of emergency powers only in a state of emergency, arguing that "we are debating whether there should be an extension beyond 28 days not in a state of emergency but on the basis of a decision taken by the Secretary of State, following a report from a chief officer of police and the DPP, on the need to operate a new reserve power."[26]

Mr Grieve was critical of the proposed safeguards, saying that "the entire apparatus of parliamentary scrutiny provided for in Schedule 1 is not only pointless, but fundamentally wrong in principle".[27] He expressed the view that there may be a "fundamental, philosophical difference" between the parties on the issue of pre-charge detention.[28]

Tom Brake (LD) concurred with Dominic Grieve that the Government had not provided "compelling evidence for 42 days"[29] He also argued that "one of the witnesses who gave evidence to us was clear that the technology available to the secret service and the police force is also moving forward at pace and keeping up to speed with what is available to terrorists."[30]

Dari Taylor (L) argued that:

> We are being asked to support powers on an emergency basis, on a case by case basis, when it is believed by the police and by a judge, who will make a judgment on the evidence produced, that we need to extend the time that is allowed for pre-questioning. It is an emergency. It is temporary. I hear the cynicism about parliamentary oversight. I, too, had a question mark over it. However, it is a question mark no more. The requirement to have something on the shelf when necessary, if necessary, is totally appropriate.[31]

b. Conditions of detention

Dominic Grieve indicated that he understood that one person who had previously been detained for the 28 day period had subsequently gone on to develop "mental health

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[25] PBC Deb, 6 May 2008, c 250
[26] *Ibid*, c 251
[27] *Ibid* c 255
[28] *Ibid*, c 258
[29] *Ibid*, c 273
[30] *Ibid*, c 271
[31] *Ibid*, c 276

problems".[32] David TC Davies (C) expressed concerns about the conditions that detainees would be kept in, noting that "[i]t has traditionally been, and probably still is, a form of punishment to put people who misbehave in prisons into some form of solitary confinement. It has a marked effect on the individual, and to put somebody into solitary confinement for 28 days without any access to reading materials, television or anything else that could stimulate their mind could be said to amount to torture."[33] During the course of the debate, Tony McNulty, Minister for Security, Counter-Terrorism, Crime and Policing, clarified that persons detained for more than 14 days would not be kept in isolation in police cells, but would instead be removed to "a more conducive environment in prison."[34]

c. Community relations

Douglas Hogg (C) argued that "[w]hen an individual is arrested under those powers and detained for up to 42 days, but is then not charged and cannot be deemed to be guilty of any offence, there is going to be immense anger in the host community."[35] In contrast, Adrian Bailey (L) said that:

> [On] the issue of relations with the Muslim community, I, like other members, have a substantial Muslim community in my constituency. Muslims represent about 9 per cent. of my electorate. I would be circumspect about adopting a position on any of these issues if I felt that there was a strong community reaction, but as the hon. Member for Reading, West said, nobody has ever approached me about them.[36]

d. Judicial Scrutiny – representation of defendants

A further concern was expressed that although there may be judicial scrutiny, proposed defendants may not necessarily be present at the hearing as there is a power to exclude the defendant and the defendant's representative.[37] The Minister conceded the existence of the power, but argued that that "the power to have *ex-parte* hearings with the other side excluded had not been availed of at all."[38]

e. Parliamentary oversight

In response to the questions about Parliamentary oversight, Tony McNulty discussed the issue of parliamentary scrutiny of the powers, questioning whether opposition Members would be "minded to […] at least have the vote or the discussion in Parliament at the seven to 10-day period rather than at the 30-day period?"[39] This appeared to reflect earlier suggestions that the Government might be willing to concede this point.[40]

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32 *Ibid*, c 251
33 *Ibid*, c 280
34 *Ibid*, c 279
35 *Ibid*, c 297
36 *Ibid*, c 306
37 *Ibid,* c 304-5
38 *Ibid*
39 *Ibid*, c 302
40 See: *The Guardian*, "Home Secretary makes concession in terror detention row", 26 February 2008

He also added, in respect of the Parliamentary oversight model:

> I thought that everyone was fairly comfortable with where Sue Hemming got during the course of the alleged airline plot that is currently before the courts—I do not want to say too much about it—where she and Peter Clarke at the end of their deliberations could at least get into the public domain the number of individuals involved, the nature of the plot, the complexity, the when and why and all of the other elements that would be perfectly acceptable to know had that come before Parliament in that extant model before us. That would have given Parliament more than sufficient reason to deliberate on what it should be deliberating on, which is whether it agrees with the Home Secretary commencing the order for that model to be alive and no more.[41]

In relation to the question of amending the Bill, the Minister said:

> I ask in all seriousness: where are the amendments that address the points made about the parliamentary scrutiny process being fatuous and not working? Where is the alternative? I have asked twice now and got no substance. If hon. Gentlemen are seriously suggesting that it is a sop—I think that that was someone's phrase—in terms of parliamentary scrutiny and that it should not be there at all, let them bring back an amendment on Report and we will consider it. If they are saying that Parliament should consider how the judiciary interpret it in some other fashion—that is a serious matter—let them bring it back, and we will have a look. If they are saying that the most appropriate vote should mirror the [*Civil Contingencies Act*] far more closely, as my hon. Friend the Member for Reading, West has suggested, and take place within seven or 10 days rather than 30, let them bring amendments.[42]

In relation to the question of amendments, Dominic Grieve said:

> [T]o table amendments to a measure when, in fact, the first building block has not been placed to get the argument off the ground, because the Government's advisers and, in particular, the Crown Prosecution Service do not consider that the draconian power that the Government envisage is necessary, is to tinker around with the detail and not look at the generality. We have had a good debate on the generality, but the Minister has not persuaded me during that debate to move from the position that I held previously and will continue to hold until someone persuades me of a pragmatic case for the extension.[43]

There followed a division on Schedule 1, in which it was agreed. (13 Ayes, 10 Noes).

B. Post-charge questioning

During the course of the debate on post-charge questioning, in response to a number of probing amendments, Tony McNulty gave assurance that "[t]hrough additions and amendments to the PACE codes, we can deal with matters of repetitious questioning,

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41 PBC, 6 May 2008, c303
42 PBC Deb, 6 May 2008, c 323
43 *Ibid*, c 326

oppressive questioning and overburdening questioning. As I have said, I will bring forth those changes as soon as I can."[44]

A number of Liberal Democrat amendments were made to the clauses relating to post-charge questioning. In particular, an amendment was accepted to make it compulsory for PACE codes of practice to be put in place for post-charge questioning (**Clause 23**, leave out "may" and insert "must").[45] An identical amendment to **Clause 25** (referring to powers in Scotland) was also agreed. A further technical amendment was accepted to **Clause 26** relating to post-charge questioning for offences under s 113 of the *Anti-Terrorism, Crime and Security Act 2001*. That section makes it an offence to use noxious substances or things to cause serious violence or endanger human life or public safety, to influence or intimidate the Government or the public. That is an offence where the conduct takes place in the United Kingdom but also, by virtue of section 113A and subject to some conditions, overseas. The amendment makes post-charge questioning for the section 113 offence possible, irrespective of whether the conduct relating to the offence took place in the UK or overseas.

C. Jurisdiction to try offences committed in the UK

Following a probing amendment, Dominic Grieve rehearsed the evidence received by the Public Bill Committee from the Lord Advocate, noting that there "was little anxiety among the Scottish Government about the clause, which was designed to facilitate trials taking place with maximum flexibility in relation to the United Kingdom. In her judgment, it was not intended to be used, and would not be used, to try to remove cases from Scotland or, for that matter, vice versa."[46] The Minister indicated that

> Clause 27 gives UK-wide jurisdiction for specific terrorism offences so that they can be tried in any part of the UK, as the Lord Advocate clearly stated, irrespective of which jurisdiction they were committed in. Hon. Members will know that London-Glasgow last summer was the source of some of the concerns raised about the clause. […] The provision in the clause will be extremely helpful when, for example, in a single investigation there are linked defendants, one in Wales and one in Scotland, both of whom are found to be in possession of terrorist articles, which is an offence under section 57 of the 2000 Act. Each defendant could be tried only under separate jurisdictions as the common law rule would prevent a joint trial, no acts of the Welsh defendant having taken place in Scotland or vice versa. The provision in clause 27 will allow such cases to be tried by the same court.[47]

An amendment introduced by Dominic Grieve relating to the retrospective nature of the provisions was withdrawn.[48]

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[44] PBC Deb 8 May 2008 c 337
[45] *Ibid*, c 347
[46] PBC Deb 8 May 2008 c 360
[47] *Ibid*, c 361-362
[48] *Ibid*, c 365

D. Inquests and inquiries

In Public Bill Committee, several members referred approvingly to a presentation by the Home Office that had explained to them the reasoning behind this part of the Bill. It was regarded as helpful and had aided members in understanding the issues intended to be addressed. Nevertheless some members indicated that they would continue to resist clauses which remained in an unsatisfactory form.

Some members of the Committee argued that the Bill was not the appropriate place to deal with amendments to the law relating to inquests and coroners and that it would be better to include the provisions in the proposed *Coroners and Death Certification Bill* (now included in the draft legislative programme for 2008-09).[49]

1. Amendments agreed

Government amendments were agreed to extend to Northern Ireland the scope of:

- the amendments to the *Regulation of Investigatory Powers Act 2000* contained in clause 67, which would make intercept material admissible at inquest proceedings and

- the power for the Secretary of State to certify that an inquest would involve "the consideration of material that should not be made public" and should be held or continued without a jury.[50]

2. Other significant areas of debate

a. Inquest without jury

Opposition concerns were raised about the width of the provision which would allow the Secretary of State to issue a certificate for an inquest to be held without a jury. It was feared that its potential use would not be confined to terrorism cases or to cases involving national security considerations. Elfyn Llwyd (PC) considered that although the Minister had said that the provision would apply to only a small number of cases, "he does not gainsay the fact that this could be opened up and used as often as was liked. It could be used every time someone dies in police custody or every time someone dies with any peripheral involvement of the police".[51] Members of opposition parties spoke of the importance of ensuring that justice was seen to be done and the public reassurance of having a jury. Concerns were also raised about the compatibility of the proposals with the UK's human rights obligations and about the lack of any judicial scrutiny of the certification process.

An amendment was debated which would have restricted the scope of the section, by removing the provision enabling a certificate to be issued if the Secretary of State

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[49] Cm 7372, [Preparing Britain for the future]
[50] PBC Deb 13 May 2008 cc475-6
[51] PBC Deb 13 May 2008 c457

considered that the inquest would involve the consideration of material that should not be made public "in the interests of the relationship between the United Kingdom and another country or otherwise in the public interest".

Tony McNulty agreed that the provision would not only cover terrorism cases and argued that there were good reasons for including the wider clause, including compliance with human rights obligations. He said that it was intended to deal with a small number of cases (and had been prompted in part by a specific case) which could not otherwise proceed and would enable the coroner to deliberate on sensitive material as part of a fact finding exercise.[52] The alternative would be to have the coroner sit with a jury but for certain information to be withheld so that an unsatisfactory conclusion would be reached. Tony McNulty further argued that public interest immunity would not serve the same purpose because that was about withholding material whereas the intention of the new provision was actually to enable a coroner to consider sensitive information.

A division on the amendment was defeated and a clause stand part vote on **Clause 64** was carried.

b. Specially appointed coroners

A clause stand part vote was carried.

c. New clause

Dominic Grieve moved a new clause 13 (later withdrawn) which would have required the Secretary of State to make an application to the Lord Chief Justice for an inquest to be held without a jury. Douglas Hogg said that he did not believe that the public "will ever be content with a process whereby the Secretary of State, acting alone and through certificate, can prevent a hearing before a jury".[53]

3. Ministerial undertakings to consider

Tony McNulty agreed to consider a number of matters further including:

- the certificating process for inquests without a jury and whether this should involve a role for the Lord Chief Justice[54]
- the structure of this part of the Bill and how to relate the provisions to the wider reforms proposed for the coroners system[55]
- where an inquest has begun but is subsequently treated as having restarted because a special coroner is appointed, how to use evidence given by a significant witness who has appeared earlier but who, for whatever reason, is unable to give evidence again[56]

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[52] Library Research Paper 08/20, *Counter-Terrorism Bill*, includes information about the case of Azelle Rodney which has previously caused concern
[53] PBC Deb 15 May 2008 c536
[54] PBC Deb 13 May 2008 c459
[55] PBC Deb 13 May 2008 c465
[56] PBC Deb 13 May 2008 c467

- whether the Lord Chief Justice, rather than the Secretary of State, should be responsible for appointing specially appointed coroners: David Heath (Liberal Democrat Shadow Secretary of State for Justice) said: "It simply cannot be right that in the first instance the Secretary of State decides that it is inconvenient for an inquest to be held with a jury and for certain matters to be put before an open court, and then to decide who will sit in judgment on that closed matter in the coroner's court"[57]
- the procedure for, and parliamentary involvement in, matters related to specially appointed coroners.

Dominic Grieve expressed optimism that the debate had established a basis for agreement but "[t]hat might well require the Government to redraft the clauses in question radically to get them in a form that would command general acceptance".[58]

V Other developments

1. Potential concessions on pre-charge detention proposals: Media comment

The proposals on pre-charge detention were the focus of much media speculation in the run up to the Report Stage of the Bill. On 29 May, the BBC, *The Times* and the *Daily Telegraph* reported that the Government was planning a "concessions package". *The Times* reported that the Government would offer greater Parliamentary and judicial safeguards.[59]

There were also further interventions on the issue in early June. On 1 June, Lord Goldsmith said the measure undermined the very values the government was trying to protect: "Some supporters of 42 days say we have to take this step to protect our values and our way of life which terrorists threaten to destroy […] But we start ourselves to destroy these values and the very basis of the free society which our ancestors fought hard to create, if we readily give away critical liberties, such as the right we all have not to be arbitrarily held without charge."[60]

It was latter suggested that the Council of Europe's Human Rights Commissioner, Thomas Hammarberg had written to the Prime Minister to say 42 days' detention without charge would be "excessive" and "counter-productive".[61] By contrast, on 3 June, the former head of Scotland Yard's counter terrorism command, Peter Clarke, wrote in the *Daily Telegraph* that:

> When I was asked, in 2005, by the home affairs select committee how many terrorists I had been obliged to let go through lack of time to investigate, I inwardly despaired. It was the wrong question. We should look forward, not back.

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57 PBC Deb 13 May 2008 c470
58 PBC Deb 13 May 2008 c475
59 The Times, "Concessions package to woo rebel MPs on terrorism detentions", 29 May 2008
60 Observer, "Smith 'sidelined' in cabinet row over detention powers", 1 June 2008
61 BBC Online, "Brown urges terror plan support, 2 June 2008

> The fact that we have been able to convict more than 60 terrorists in the last year or so is irrelevant.
>
> The better question would have been: "Is it likely that there will come a time when the present 28-day limit is insufficient?" The answer would have been, "undoubtedly". That is why we should legislate now, and not in panic in an emergency.
>
> The details of the 42-day detention plan may not be perfect, but the principle of being able to protect the public in extremis must be right.[62]

Following a private meeting of the Parliamentary Labour Party, the Home Secretary, Jacqui Smith, was said to have announced that:

> The power to detain suspects for up to 42 days would only be introduced in a grave terrorist emergency, or an imminent one, rather than as a matter of routine terrorist investigation. This will be reviewed once a year.
>
> She would amend the bill so that MPs would be able to vote on endorsing the introduction of the power within a week of it being introduced.
>
> Parliament would be given the power to vote again on whether to retain the 42-day detention power within 30 days of its first being introduced.[63]

It was also suggested that "although rank and file MPs could not be told the detail of terror cases, senior Parliamentarians would be given extra details of sensitive cases on Privy Council terms".[64]

2. The Prime Minister's Article

On 2 June 2008, the Prime Minister wrote an article in the *Times* entitled *42-day detention; a fair solution*. In the article he said, amongst other things, that:

> Britain has lived with terrorist threats for decades. But I am under no illusion that today's threats are different in their scale and nature from anything we have faced before. […] Look at the scale and complexity of today's terrorist plots and you will understand why the amount of time required before charges can be brought has increased. In 2001 police investigating the last big IRA case had to analyse just one computer and a few floppy disks. The suspects used their own names and never went beyond Ireland and the UK.
>
> By 2004 the police investigating the al-Qaeda plotter Dhiren Barot had to seize 270 computers, 2,000 disks, and more than 8,000 other exhibits. There were seven co-conspirators, and the investigation stretched across three continents. In the 2006 alleged airline bomb plot, the complexity had grown again - 400 computers, 8,000 disks and more than 25,000 exhibits.

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62 Daily Telegraph, "Longer detention is about saving the public", 3 June 2008

63 The Guardian, "42-day detention: Smith reveals details of new safeguards", 3 June 2008

64 The Times, "Home Secretary Jacqui Smith woos Labour rebels on 42-day detention", 3 June 2008

> The police find themselves investigating multiple identities and passports, numerous mobile phone and e-mail accounts, and contacts stretching across the world. Simply establishing the true identity of a suspect may itself take days.[…]
>
> I have received much advice in recent weeks. Some have argued that I should drop or significantly water down the 42-day limit. But having considered carefully all the evidence and arguments, I believe that, with […] protections against arbitrary treatment in place, allowing up to 42 days' pre-charge detention in these exceptional terrorist cases is the right way to protect national security.[65]

VI Home Office paper on revised pre-charge detention plans

A. The proposals

On 3 June, the Government produced a list of amendments to the Bill, which were described in some quarters as concessions.[66] The Home Office also published a "fact sheet" with revised proposals relating to pre-charge detention. It stated, *inter alia*, that:

> The Government's revised proposal would enable the pre-charge detention period to be increased beyond 28 days in future in exceptional circumstances.
>
> The proposal is significantly different from that currently included in the Counter-Terrorism Bill. There are 3 main changes:
>
> 1. The role of Parliament is strengthened. The new proposal will bring forward the vote to within 7 days of the order being laid, instead of within 30 days.
>
> 2. The exceptional nature of the threat. Under the new proposal, the 42 day limit can only be made available if there is a grave exceptional terrorist threat. The definition of a grave exceptional terrorist threat is spelt out, and is very similar to the definition in the Civil Contingencies Act. The power can only be triggered by an investigation into the most serious terrorist related offences.
>
> 3. The temporary and exceptional nature of the power. The time the higher limit is available is reduced from 60 days to 30 days. The new proposal continues to provide the police with the power to detain suspects for up to 42 days in future where there is a grave exceptional terrorist threat.
>
> We are also making an amendment to the Civil Contingencies Act to make it clear that it cannot be used for pre-charge detention in terrorist cases. This will put it beyond doubt that the Civil Contingencies Act could never be used to extend detention to 58 days. Only the reserve power in the Counter-Terrorism Bill could be used to increase the detention limit.[67]

The paper went on to indicate that:

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65 The Times, "42-day detention; a fair solution", 2 June 2008

66 The amendments proposed on 3 June 2008 can be found at:: http://www.publications.parliament.uk/pa/cm200708/cmbills/100/amend/pb1000306a.2481-2487.html

67 Home Office, "Pre-charge detention: the facts", 3 June 2008

> A grave exceptional terrorist threat is defined as an event or situation involving terrorism which causes or threatens the serious loss of human life or serious damage to human welfare in the UK (through, for example, disruption of energy supplies or transport facilities) or serious damage to the security of the UK. The terrorist attack planned or executed need not have taken place in the UK.[68]

It suggests that this definition is "a higher test than originally proposed, and is very similar to the test in the *Civil Contingencies Act*." The paper also indicates in order to utilise the power not only would the Home Secretary require the receipt of a report from the DPP and police on the operational need for extended detention, but that her decision to use the power "would be subject to judicial review." The paper says that the Home Secretary would have to take "independent legal advice"[69] which would have to be laid before Parliament "at the same time that he/she makes the written statement" that the reserve power would be exercisable. That statement would have to be laid "as soon as practicable" and would lead to a vote after 7 days. The paper also states that "the proposal provides for the recall of Parliament during prorogation and adjournment if an order needs to be approved at that time."

The Home Office have produced a flow chat to explain how the proposals would work in practice. This is reproduced at Annex 3.[70]

B. Responses to the revised proposals

Following the announcement that concessions would be made, David Cameron accused the Government of sending out mixed messages about its position on BBC Radio 4's World at One.

> One minute the prime minister says he is standing firm and he's sticking to his guns and the next minute it's headlong retreat and concessions. It's quite hard to work out what the government is doing. If the Government really came to us with evidence [...] we would engage with them."[71]

Mr Cameron said the government had still not convinced the Conservatives that it was necessary to allow pre-charge detention for up to 42 days, but he insisted that he was not opposing the proposal because he was soft on terrorism, saying "[t]he first politician I ever worked for, Ian Gow, was murdered by the IRA. There isn't a bone in my body which is soft on terror. But we must do the right thing,"[72]

David Davis was reported as saying:

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68 *Ibid*

69 This has now been defined as "advice from a lawyer other than a government lawyer" (NC 32(2))

70 Home Office, Pre-charge detention flow-chat, 3 June 2008

71 BBC, "Smith Hopeful on 42 day vote", 3 June 2008

72 The Guardian Online, "Smith Reveals Details of New Safeguards", 3 June 2008

> Yet again, Gordon Brown has buried an issue of high principle in a blizzard of fine print. These amendments are a deception. The Home Secretary's power to extend the period of detention without charge to 42 days remains as wide as before - and is certainly not confined to a state of emergency. They are a politically driven attempt to deceive Parliament. A Labour minister promised a series of 'Mickey Mouse' amendments to buy- off Labour rebels. The Government has delivered.[73]

Chris Huhne was also reported to have described the amendments as "a con".[74] He added:

> All [the home secretary] has to do is to tell parliament that there is a grave and exceptional terrorist threat, and she will be entitled under the proposed amendment to go ahead without even considering whether the proposals are proportionate to the problem.[75]

The human rights group Liberty has called the amendments "'cons', not concessions" arguing that the Government have not met the concerns expressed by the group. In particular, it has said that:

> The proposal has been dressed up with more language about "grave and exceptional terrorist threats," but there is still no legal requirement for a terrorist emergency to exist and no requirement for the Home Secretary to show that 42 days detention is urgently needed to deal with any threat.[76]

In effect, Liberty is saying that while the Home Secretary will have to inform Parliament that there is a grave and exceptional terrorist threat, the trigger mechanism is not inherently linked to that threat, but is instead dependent upon the original trigger mechanism of a report from the DPP and chief police officer. Also it is not apparent that Parliament would be asked to vote on whether or not there is a "grave and exceptional" threat. Liberty states that the "[s]afeguards offered by Government today offer far less protection than that offered in the Civil Contingencies Act."

Liberty has also claimed that the courts may not be able to overturn these "reserve powers."[77]

On 4 June, *The Guardian* reported concerns that that the new higher threshold of a "grave exceptional threat":

> [I]s defined as a situation involving terrorism which causes or threatens the serious loss of human life or serious damage to human welfare in Britain, or to the security of the UK. But the "threat" involved does not even have to relate to a planned attack in Britain - it could be anywhere.[78]

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[73] The Times, "Power to detain suspects for 42 days would be limited to cases 'involving serious loss of life'", 4 June 2008

[74] *Ibid*

[75] The Guardian Online, Smith optimistic she can win over 42-day rebels, 4 June 2008

[76] Liberty, "Government offers cons, not concessions", Press Notice: 3 June 2008

[77] *Ibid*

[78] Guardian Online, "Analysis", 4 June 2008

C. Report of the Joint Committee on Human Rights (JCHR)

On 5 June the JCHR published a report entitled *Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 Days and Public Emergencies*. The report considered the "adequacy of the additional safeguards" which the Government said it intended to propose (i.e. it was finalised just prior to the publication of the Government's amendments) and stated, *inter alia*, that:

> A requirement that the Secretary of State should simply make a declaration to Parliament that there is exceptional need would not be much of a safeguard without making it a precondition of the exercise of the power. Nor would a requirement for parliamentary authorisation of the Secretary of State's decision within 7 days be a very significant safeguard either. The exceptional need would relate to a specific investigation which means that the debate in Parliament would be heavily circumscribed by the risk of prejudice to future trials.[79]

The Committee has also argued that:

> In any event, as the Committee has explained in earlier reports, no amount of additional parliamentary or judicial safeguards can render the proposal for a reserve power of 42 days' pre-charge detention compatible with the right of a terrorism suspect to be informed "promptly" of the charge against him under Article 5(2) [European Convention on Human Rights]. The Bill is therefore incompatible with Article 5(2) on its face and a derogation from the UK's obligations under Article 5 would be required to make such a power available.[80]

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79 Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 Days and Public Emergencies*, Twenty-first report of Session 2007-08, HC 635, 5 June 2008

80 *Ibid*

VII Annex: Members of the Public Bill Committee

Chairmen: John Bercow, Mr. Edward O'Hara
Bailey, Mr. Adrian (West Bromwich, West) (Lab/Co-op)
Blunt, Mr. Crispin (Reigate) (Con)
Brake, Tom (Carshalton and Wallington) (LD)
Brown, Mr. Russell (Dumfries and Galloway) (Lab)
Campbell, Mr. Alan (Lord Commissioner of Her Majesty's Treasury)
Coaker, Mr. Vernon (Parliamentary Under-Secretary of State for the Home Department)
Davies, David T.C. (Monmouth) (Con)
Grieve, Mr. Dominic (Beaconsfield) (Con)
Gwynne, Andrew (Denton and Reddish) (Lab)
Heath, Mr. David (Somerton and Frome) (LD)
Heppell, Mr. John (Nottingham, East) (Lab)
Hodgson, Mrs. Sharon (Gateshead, East and Washington, West) (Lab)
Hogg, Mr. Douglas (Sleaford and North Hykeham) (Con)
Holloway, Mr. Adam (Gravesham) (Con)
Llwyd, Mr. Elfyn (Meirionnydd Nant Conwy) (PC)
McNulty, Mr. Tony (Minister for Security, Counter-Terrorism, Crime and Policing)
Mercer, Patrick (Newark) (Con)
Mountford, Kali (Colne Valley) (Lab)
Reed, Mr. Jamie (Copeland) (Lab)
Salter, Martin (Reading, West) (Lab)
Taylor, Ms Dari (Stockton, South) (Lab)
Wallace, Mr. Ben (Lancaster and Wyre) (Con)
Wilson, Phil (Sedgefield) (Lab)

VIII Annex 2 – Recent press coverage

The Times, "Concessions package to woo rebel MPs on terrorism detentions", 29 May 2008
The Telegraph, "Law: Is 42 days' detention really necessary?" 29 May 2008
BBC Online, "Terror limit compromise 'planned'", 29 May 2008
BBC Online, "Terror concessions planned", 30 May 2008
Telegraph, "We shouldn't hold terror suspects for 42 days", 1 June 2008
The Times, "42-day detention; a fair solution", 2 June 2008
BBC Online, "Brown urges terror plan support, 2 June 2008
The Guardian Online, "Smith Reveals Details of New Safeguards", 3 June 2008
BBC, "Smith Hopeful on 42 day vote", 3 June 2008
The Times, "Home Secretary Jacqui Smith woos Labour rebels on 42-day detention", 3 June 2008
Daily Telegraph, "Longer detention is about saving the public", 3 June 2008
Telegraph, "Terror law: concessions not enough, say MPs", 5 June 2008
BBC Online, "Doubts over terror law safeguard", 5 June 2008
Guardian Online, "Timeline: 42-day detention", 5 June 2008

IX Annex 3 – Home Office flow chart detailing the process involved in the proposed extension of pre-charge detention.