Counter-Terrorism Bill, Lords Stages

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This note provides details of the House of Lords consideration of the *Counter-Terrorism Bill* and other recent developments. The Bill had its second reading in the House of Lords on 8 July 2008. Committee stage commenced in early October. Full information about the background and Commons stages can be found in Research Paper 08/20 on the Counter-Terrorism Bill[1] and Research Paper 08/52 Counter-Terrorism Bill: Committee Stage Report.[2] Following a vote on 13 October 2008, the Government announced that controversial proposals relating to pre-charge detention would be removed from the Bill. A separate Library paper, (SN/HA/4614) is also available focusing on the provisions relating to coroners, inquests and inquiries (which are also expected to be removed from the Bill). Explanatory notes relating to the Lord Amendments were published on the 18 November 2008, and are available at:

http://www.publications.parliament.uk/pa/cm200708/cmbills/168/en/2008168en.pdf

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1 http://www.parliament.uk/commons/lib/research/rp2008/rp08-020.pdf
2 http://www.parliament.uk/commons/lib/research/rp2008/rp08-052.pdf

1 Introduction

The *Counter-Terrorism Bill* contained a number of contentious proposals. These included: the introduction of 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*) and clauses to allow 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).

As mentioned above, two Research Papers set out the background to the proposals. Prior to the Bill's Third Reading in the Commons, the Government made some amendments to the pre-charge detention proposal. These amendments are discussed in Research Paper 08/52 Counter-Terrorism Bill: Committee Stage Report.[3] The pre-charge detention proposal was extremely controversial and only narrowly cleared the House of Commons. On the crucial division, the government won by 315 votes to 306, with 36 Labour MPs voting with the opposition.[4]

It has been announced that both the pre-charge detention and inquest and inquiry provisions will be removed from the Bill after the Lords Committee stage, the former following a vote, the latter following a Government announcement that the proposals would be revisited in the forthcoming *Coroners and Death Certification Bill*. (see "**Other developments**", below).

Prior to these changes, there had been a large number of Select Committee reports on the Bill including, most recently:

Joint Committee on Human Rights, *The Twenty-first Report from the Committee on Counter-Terrorism Policy and Human Rights: 42 Days and Public Emergencies* (HC 635, 2007-08)[5] and The House of Lords Committee on the Constitution, *Counter Terrorism Bill: The Role of Ministers, Parliament and the Judiciary* (HL 167, 2007-8)[6]

2 Lords Stages

2.1 Second Reading

Second Reading of the *Counter-Terrorism Bill* in the House of Lords took place on 8 July 2008.[7] The Bill was introduced by Lord West of Spithead, who stated that:

> Since the beginning of 2007 alone, 68 terrorists have been convicted. As the DPP has made clear, the CPS is currently enjoying a 92 per cent successful conviction rate in terrorist cases compared with 77 per cent for other crimes. It is also the case that nearly half of those convicted pleaded guilty to their crimes. This shows, I believe, that the actions we are taking are working. But as the threat from terrorism evolves so our laws must change and we must continue to ensure that the front-line agencies have the right legal tools they need to do the job. […]
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> [T]he Bill contains measures to provide a proper statutory framework to retain and use DNA and other forensic material related to terrorism; to provide statutory gateways for sharing information with the security and intelligence agencies; and to make sure that all information can be used for defined challenges against asset-freezing decisions.

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3 http://www.parliament.uk/commons/lib/research/rp2008/rp08-052.pdf
4 *The Guardian* "Brown wins dramatic victory on 42 day detention", 11 June 2008
5 http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/116/116.pdf
6 http://www.publications.parliament.uk/pa/ld200708/ldselect/ldconst/167/167.pdf
7 HL Deb 8 July 2008, c632 *et seq*

The Bill will also allow the questioning of terrorist subjects after charge, a measure that has broad consensus from all sides. Together with the other measures in the Bill, we believe that this will help the police and prosecutors to ensure more successful convictions.

Post conviction, the Bill will ensure that those found guilty of terrorist-related offences receive a sentence that reflects the seriousness of their crimes. There will also be a new requirement for convicted terrorists to provide the police with key personal information when they are released from custody, thereby strengthening the arrangements for monitoring terrorist offenders in the community.

In addition to these measures, the Bill contains new powers covering the removal of documents for examination, new offences relating to information about the Armed Forces and others, and new provisions relating to control orders, forfeiture and the policing of gas facilities. We have consulted widely, and the proposals have been scrutinised by relevant committees in Parliament, and by the noble Lord, Lord Carlile, the independent reviewer of terrorism legislation. As a result, I believe that many measures in the Bill have already achieved broad support.

However, I accept that there is not a consensus on everything, and I turn now to the issue of pre-charge detention, which has caused most debate, both inside and outside Parliament. Two factors are relevant to the issue of pre-charge detention, and to my assessment that there will be exceptional cases where the police will require more than 28 days to frame charges. First, because of the severe consequences of a successful terrorist attack, the police often need to intervene much earlier in terrorist cases. They cannot afford—and I would not want them to—to wait until an attack has happened, and may need to step in at a very early stage of an investigation, before they have had the chance to gather admissible evidence. In the Dhiren Barot case, for example, former Deputy Assistant Commissioner Peter Clarke, the then National Co-ordinator of Terrorist Investigations, said that, “there was not one shred of admissible evidence” at the point of arrest. This is different from what happens in most other crimes, where there are victims, witnesses and forensic material that can be used as evidence. Barot subsequently pleaded guilty and was sentenced to 40 years.

Secondly, the clear trend is for terrorist investigations to grow in scale and complexity. In 2001, for example, when the police investigated the last major IRA case, they had to analyse the contents of one computer and a handful of floppy disks. The suspects used their own names, and their activities were confined to the Republic of Ireland and the UK. In 2004, the investigation into Dhiren Barot involved the seizure of 270 computers, 2,000 computer disks and 8,224 exhibits. There were seven co-conspirators and, during the investigation, police carried out enquiries in the United States of America, Pakistan, Malaysia, the Philippines, Indonesia, France, Spain and Sweden. I make no apologies for banging this home. In another recent case, 30 addresses were searched within two hours of the start of the arrest phase of the operation; and 400 computers and 8,000 computer disks were seized, along with more than 25,000 exhibits.

I have looked in detail at the possibility of throwing resources—both people and money—at the problem, to reduce timescales and boost our technical capability of looking at these things. However, the choke points of other jurisdictions and encryption mean that this will not solve the problem. In addition, the consequences of radiation, chemical or biological contamination could delay investigations by days if not weeks. I fear that all the indications are—and I do not say this lightly—that it is not a matter of if such an attack will be plotted, but when.

> As a result of the increasing complexity of investigations, and the need to intervene early, the police have held 11 suspects for more than 14 days before charging them. Investigations have already needed all 28 days, and the indications are that this may be insufficient in future. That is why the police asked us to look again at the issue. The question we face is: will there be a potential need for pre-charge detention of more than 28 days? I have looked at this in depth for nearly 12 months and I believe that there will. Therefore, we face the problem of whether to legislate now. I believe that it is better for us to legislate calmly, on a precautionary basis, than to find ourselves scrambling for emergency legislation in the heat of a serious operation. That is why we have included in the Bill a proposal to extend the pre-charge detention limit in future if required.[8]

Conservative Spokesperson, Baroness Neville-Jones replied:

> The Bill contains many detailed provisions and we have called for some of the measures—such as post-charge questioning—for some years. There are measures that we support in principle, such as making terrorism an aggravating factor in sentencing; notification requirements; travel restrictions on those convicted of terrorist offences; and offences related to the security of members of the Armed Forces. There are other measures with which we still have certain difficulties, such as control orders. My noble friend Lady Hanham will, in winding up, also touch on inquests, inquiries and the rules of court. Important concerns on these were largely obscured in another place by the debate on 42 days' detention.[9]

Baroness Neville Jones then went on to focus on the pre-charge detention proposals, arguing that:

> At the heart of the debate is one central question: what type of society are we trying to create, protect and secure? After all, it is on the effects of our actions, not our intentions—however virtuous these may be—that we will be judged. Extending pre-charge detention seeks to guard against the terrorist threat by giving more power to the state. We take a different view from that of the Government. Security measures should not have as their sole focus a reduction in the threat, essential as this is. If security is to be sustainable over the long term, security measures must also facilitate and protect a united society based on shared liberal values and the mutual trust of a free, responsible citizenry. Citizens must be able to repose their trust in each other, not in the state for fear of each other. The impact of this legislation on different communities is, therefore, not a minor, subordinate matter. It goes to the heart of our chances of reconciling freedom with security.
>
> Will the proposed extension achieve and protect an open and unified society? The answer is emphatically no. It represents yet another attempt on the part of the Government to abridge, without sufficient justification, fundamental democratic rights and freedom that have underpinned our society for centuries and which we have defended against tyranny on so many occasions. The Government are putting those rights and freedoms at risk in a reactionary fashion. Terrorists want to undermine our freedoms and way of life by provoking the state into putting in place repressive measures. We therefore risk, in effect, doing their job for them. No doubt many noble Lords will make comparisons with other common-law jurisdictions to illustrate the point that our allies are addressing the terrorist threat without draconian extensions of detention.

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8 HL Deb, 8 July c 633-635

9 HL Deb 8 July 2008, c637

If we are to approve any measures that restrict our fundamental rights and freedoms, we must have two things. First, evidence is needed to show that new measures are required, the proportionality of which we can then assess. Secondly, if restrictive powers are deemed necessary, we must have proper safeguards. In his speech of 17 June, the Prime Minister noted that the civil liberties aspects of extended detention without charge could be taken care of by a bunch of claimed safeguards. But, in the view of those on these Benches, precise justification for the proposed extension and considerations about proportionality must come first. […]

The Government have laid much stress on the complexity of terrorist conspiracies, which they say gives rise to the need for extended time for investigation. To make that argument, the Government have relied on what they have called pragmatic inference. At an extreme, Mr Tony McNulty, the Minister of State in the Home Office, has painted an alarming picture of complexity combined with magnitude. Imagine, he says, five 9/11s. But such a scenario would be in the catastrophic class, for which there is already legislation on the statute book in the shape of the Civil Contingencies Act 2004. The Government are not powerless in such a situation, and to suggest otherwise is to scaremonger.

The Metropolitan Police Commissioner has said explicitly:

“We have never put forward a case that there is evidence of a need for an extension”.

Precisely, but that is not good enough. The evidence actually suggests that an extension is not needed and would not be proportionate. Last week, this House approved an order to renew the extension of pre-charge detention from 14 to 28 days. It was clear that, in the past year, no terrorist suspect has been detained without charge for the maximum of 28 days. If we look at the cases often cited to demonstrate the complexity of investigations, which we do not underestimate, we find that in no case was there a need for an extension beyond 28 days. The case of Dhiren Barot, which the Minister cited, was one of the most technically challenging, but charges were successfully brought within 14 days. In the case of the 2004 Crevice fertiliser bomb plot, all charges were brought within 14 days.

The original justification for an extension to 90 days involved a scenario with over 20 suspects, multiple locations, multiple targets, multiple computers with encrypted files in different languages and dependency on foreign intelligence. Operation Overt, the investigation into the alleged plot to attack 10 airliners at Heathrow in 2006, had every one of those characteristics, yet the police were able to charge every suspect within 28 days. All those facing the most serious charge—conspiracy to murder—were charged within 21 days. Of the five held to the end, three were discharged and two were charged with lesser offences based on information obtained well before the 28th day. This is far from being up against the buffers, as has been claimed. In his broadcast on the “Today” programme last November, the Minister spoke of the importance of being certain of the need for more than 28 days. He is right in this. The trouble is that the Government have not demonstrated the need for what the Minister has described as “the precautionary approach”.

I turn now to the safeguards, in which the Prime Minister reposes so much confidence as the guarantee of our liberties. The Terrorism Act 2006 and the Civil Contingencies Act contain key provisions for Parliament, such as a sunset clause and stringent requirements for judicial supervision. The Government’s concessions to secure the passage of this Bill in another place do not compare. They still allow the extension to 42 days to be triggered at the subjective, unfettered discretion of the Home Secretary. They do not allow judicial review of the Government’s claim that a “grave exceptional

> terrorist threat" exists. There is no requirement for Parliament to vote on whether there is an emergency or a "grave exceptional terrorist threat".
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> Does one not think that in the context of greater restriction of liberty, the safeguards against its abuse might be at least as great as those which apply in the case of lesser restriction? Is not this inverse relationship of greater restriction and lesser safeguard extremely odd? Even if the Government's concessions could be considered proper safeguards, the former Home Secretary, Charles Clarke, has made clear his view that the procedures that will be established are so cumbersome that the police and the prosecuting authorities will be most unlikely to seek an extension. Mr Clarke also labelled the so-called concessions "constitutionally damaging", in that they would confuse the role of Parliament with that of the judiciary. Members of this House may share this view [...]
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> We also know that a significant number of current senior police officers see the risks. It may surprise the House to learn that the Association of Chief Police Officers, ACPO, has never collectively discussed the effect on its work of an extension to 42 days. The Director of Public Prosecutions and the former head of counterterrorism in the Crown Prosecution Service, as well a number of noble Lords, have all voiced their opposition. Should not so many weighty and knowledgeable dissenters give the Government pause? It is clear that an extension is not needed, will not work and will have an active downside. Why are the Government therefore fighting so hard for it? If one looks at the history of the debate one sees that the Government first wanted 90 days, then wanted 56 days and now want 42 days. It seems that they have become fixated on extending pre-charge detention for political reasons, rather than for well considered policy and strategic reasons. Alternative, proportionate security measures are, in effect, neglected.[10]

The proposals were criticised by a number of figures including: the former Labour Lord Chancellor, Lord Falconer QC; the former Labour Attorney General, Lord Goldsmith QC; the former Director General of the Security Service (MI5) (2002-7) Baroness Manningham Buller; Lord Condon, the former Metropolitan Police Commissioner (1993-2000) and the former Law Lords, Lord Steyn and Lord Lloyd of Berwick.

Lord Falconer argued:

> We should pay special attention to what the Government say on these matters, not only because, as I know from my own experience, these judgments are difficult, but above all because of the consequences to innocent lives if atrocities occur as a result of our getting it wrong. However, I am absolutely clear that no advantage in fighting terrorism will be obtained by extending pre-charge detention to 42 days. I will therefore oppose this part of the Bill […] the Crown Prosecution Service has successfully used what is described as the threshold test in the vast majority of cases to charge terrorist defendants. The threshold test allows charging where the evidence to show 50 per cent-plus prospects is not yet available but the authorities believe on reasonable grounds that it will become available and where, if the detainee were released, he would be a danger to individuals or the community at large. The test allows charging where the authorities believe that the evidence will come, for example, from the forensic examination of computers from abroad. It means that there is no need for an artificial deadline. We know that the CPS is satisfied with that approach; the Director of Public Prosecutions has made that clear. They know best; they are the ones making the decision about charges that determine whether people who may be terrorists have

[10] *Ibid*

to be released before the opportunities have existed to gather evidence against them. They do not think that pre-charge detention extensions are required.[11]

Lord Goldsmith QC claimed:

I think, all the cases that the noble Lord, Lord West, referred to, which I dealt with at the time with the prosecutors. When we believed that plots were being uncovered in the summer of 2006, I flew back from my holiday, stayed with the prosecutors and got detailed briefings throughout that period. I was anxiously considering and wanted to know whether a longer time would be necessary. It was not. I asked the prosecutors, "If you had had longer than 28 days, would you have used it?". "No", they said.

Test it this way: you cannot keep somebody for as long as it takes. You can keep them only so long as there is a reasonable suspicion that they have committed an offence and you have a reasonable prospect of getting the evidence if you keep them a little longer. After 28 days, how likely is that? In my judgment, having looked at it, it is not likely at all. Therefore I cannot support the proposal. Detention without charge for a long period would undermine the fundamental freedoms on which this country is based, of which this country should be proud, and of which—yes, I will say it—my party ought to be proud. I for one will not undermine them by voting for this proposal.[12]

Baroness Manningham Buller said:

I applaud the fact that we are discussing now, rather than against the background of an atrocity, where this country wants to draw the line on issues such as pre-charge detention. I have considerable sympathy with the police on the collection of evidence, which is very challenging, given the need to move early, the amount of seized data, the complexity of cases and the forensics. I congratulate the anti-terrorist branch of the Metropolitan Police for the superb job that it does. But arguments can be made to justify any time of detention, just as in other countries, although mercifully not here, they can be made to justify any method of interrogation.

In deciding what I believe on these matters, I have weighed up the balance between the right to life—the most important civil liberty—the fact that there is no such thing as complete security and the importance of our hard-won civil liberties. Therefore, on a matter of principle, I cannot support the proposal in the Bill for pre-charge detention of 42 days.

Lord Condon stated:

The 42-day proposal, even with the checks and balances that others have spoken about, undermines our moral authority to win the battle for hearts and minds that the Prime Minister has acknowledged is central to the long-term success in countering terrorism. All the wasted time and energy expended on the debate about extending detention without charge is a debilitating, divisive and counterproductive distraction from our real task, which is to put in place a meaningful strategy and legislation to deal with the long-term struggle against extremists and their propensity for terrorist acts throughout the world. It is for that reason, even though I have enormous respect for those who have argued the other way, that I must argue against and will not support the proposal to extend detention without charge to 42 days.[13]

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11 HL Deb 8 July 2008 c644-6
12 HL Deb 8 July 2008 c657
13 HL Deb 8 July 2008 c676

Lord Thomas of Gresford (for the Liberal Democrats) focused *inter alia* on the possible impact of the pre-charge detention proposal on relations with the Muslim community, arguing that:

> The police and security services, in targeting people, do not make wild guesses. They act on information that is obtained from within the Muslim community. If you lose the confidence of that community, in the fairness of our police and in the justice of our legal system, you will hinder the prevention and the detection of terrorist acts. That is the apprehension which unites the people who know most about policing, about prosecuting and about the conviction and punishment of terrorism, many of whom will speak in this debate today.[14]

This view was supported by Lord Ahmed, who said:

> Over the past few weeks, I have been consulting various groups from my community, and my fear is that the proposal in the Counter-Terrorism Bill for 42 days' pre-charge detention will play into the hands of extremist groups and individuals and increase anti-Muslim feelings. It will be counterproductive as it will lead to damaged community relations and will further alienate the people we are aiming to integrate into our society. It is unjust and violates people's rights. It will inevitably undermine the UK's moral authority around the world. We have a proud history of respecting civil liberties from the early days of Magna Carta and the principle of habeas corpus. It is for these reasons that I will be opposing the Government's proposed extension of pre-charge detention to 42 days.[15]

A number of Peers spoke in favour of the proposals, including Lord Howarth of Newport, Baroness Park of Monmouth, Lord Imbert (Commissioner of the Metropolitan Police Service from 1987 to 1993); Lord Mackenzie of Framwellgate (former President of the Police Superintendent's Association of England and Wales), Lord Clinton-Davis and Lord Foulkes of Cumnock.

Lord Imbert said:

> The fact that, over this past year, the extension of detention over 14 days has hardly been used is no argument against that provision; it is clear evidence that police act with integrity and as swiftly as possible. They do not hold, and do not wish to hold, persons any longer than the time for which it is absolutely essential either to gather the evidence to charge the suspect or to exonerate him or her. However, the scale and complexity of terrorist investigations is growing at a pace where an extension of detention is becoming more likely. It is significant that the demands on police and the security services in their surveillance of security suspects has grown, and is still growing apace. On 9 November 2006, my noble friend Lady Manningham-Buller, then the director of the Security Service and now a Member of your Lordships' House, spoke of 1,600 persons of concern to that service. […]
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> Two years ago, there were 1,600 persons of interest to her service. Just over one year later, her successor spoke in an early public speech of there being 2,000 individuals of concern—a considerable increase in just one year. Memories are short, and some people seem to think that the terrorist threat has abated. Sadly, that is not so. I am told that the threat level is still classed as severe. […] Another most important point [which has been made is that we] should not play into the hands of extremist manipulators of the more naïve who are open to such manipulation. The favourite expression that we have often heard is that any extension to pre-charge detention "will become the

[14] HL Deb 8 July 2008 c642
[15] HL Deb 8 July 2008 c692

> recruiting sergeant for al-Qaeda". In my humble and non-political view—I am not a politician—the recruiting sergeant was that we supported President Bush and invaded an Islamic country in the first place. Many of our troops are still in that country. The recruiting sergeant has already done his work.[16]

While much of the debate focused on the issue of pre-charge detention, Lord Lester QC argued against the provision on coroners' inquests. He said:

> The procedure proposed by the Bill would empower the Secretary of State to certify that the inquest should be conducted without a jury—and with a special coroner—if, in the Minister's opinion, it is in the interests of national security, or in the interests of the relationship between the UK and another country, or if it is otherwise in the public interest. The Secretary of State thus seeks sweepingly broad discretionary powers, going well beyond those needed to counter terrorism. The Government's justification—the need to comply with Article 2 of the convention—is an example of Home Office chutzpah.
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> Independence is essential, and a system based on special appointment of security-cleared coroners by the Minister would inevitably involve serious breaches of convention rights and obligations, because it would be fatal to any appearance of independence.[17]

2.2 The Lords Constitution Committee Report

On 5 August 2008, the House of Lords Constitution Committee published a report entitled *Counter Terrorism Bill: The Role of Ministers, Parliament and the Judiciary* (HL 167, 2007-8)[18]

Commenting on the report, the Chairman of the Committee, Lord Goodlad, said:

> We are concerned that some of the proposals being put forward by the Government in the Counter-Terrorism Bill would place inappropriate responsibilities on Parliament.
>
> We have invited the House to consider the demands that the Bill will place on Parliament to act in a quasi-judicial manner in deciding the pros and cons of detaining suspects beyond 28-days without charge. Considering that any debate will be highly political in nature and any vote may well be whipped by the political parties, we are deeply concerned that the independence of the judiciary may appear to be undermined and that trials may be prejudiced.
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> We are also critical of the proposal that ministers should be able to order that an inquest be held without a jury. This should clearly be a matter for the judiciary, not ministers, to determine.[19]

In particular, the press notice issued on publication of the report stated that:

> The Bill, which would enable the extension of the period terrorist suspects can be held without charge to 42 days in exceptional circumstances, is criticised by the Committee because Parliament would be asked to make decisions that it is "institutionally ill-equipped to determine". The Committee argue that while the Government's attempt to

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16 HL Deb 8 July 2008 c
17 HL Deb 8 July 2008 C653-4
18 http://www.publications.parliament.uk/pa/ld200708/ldselect/ldconst/167/167.pdf
19 House of Lords Constitution Committee, Press Notice "Constitution Committee Criticises Proposed Involvement of Parliament in the Detention of Terrorism Suspects" 5 August 2008

involve Parliament in the detention of terrorist suspects is understandable to ensure democratic accountability, it is muddled. They say **"The Bill risks conflating the roles of Parliament and the judiciary, which would be quite inappropriate".**

The Committee go on to state that it is "ill-advised" to create a decision-making process that requires Parliament and the judiciary to answer similar questions within a short space of time. They point out that a judge determining an application for extended detention will be asked to exercise powers a matter of days or perhaps hours after what may have been a highly politicised debate in Parliament. As well as potentially being perceived to undermine judicial independence, the Committee state that **"This is a recipe for confusion that … arguably risks undermining the rights of fair trial for the individuals concerned".**

The Committee are also critical of the proposal for the Government to show the chairmen of three parliamentary committees the confidential information upon which the Home Secretary will have based her decision to extend the maximum period of pre-charge detention. **The Committee concludes that this "untenable" proposal would undermine the "consensual ethos" of parliamentary committees and "should be removed from the Bill".**

With regard to the role of the Home Secretary and Government in the process, the Committee conclude that "the Bill preserves a constitutionally proper division of responsibilities between the Home Secretary and the judiciary" because it "maintains the principle that in any given case it will be a judge, not a minister, who determines whether an individual suspect continues to be detained".

The Committee also expresses concern that the Bill would allow ministers to order that an inquest be held without a jury, arguing that it is inappropriate for the Government to intervene in judicial proceedings in this way-particularly given that some inquests may concern deaths caused by the actions of agents of the state. **The Committee concludes that the decision should be taken by a judge, possibly following an application by the Government.**[20]

2.3 Recent comment prior to the Committee stage

On 6 October 2008, the former Assistant Commissioner for Special Operations at Scotland Yard, Andy Hayman, wrote an article in *The Times* in which he argued that the proposals on 42 day pre-charge detention suggested by the Government were "not fit for purpose". In particular, he argued that:

> The current Bill, which was heavily amended to secure its passage through the Commons, has some immensely complicated clauses. It would have been my job to make these proposals work but just trying to understand them gives me a headache.
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> If the Director of Public Prosecutions and the police decide a longer period of detention is needed, the Home Secretary must obtain independent legal advice to satisfy that there is a sufficiently grave threat to justify the use of the 42-day power. Then, the Home Secretary must make a written statement to Parliament. Within seven days, once Parliament has seen the independent legal advice, it must approve or dismiss the request. If approved, a judge has to agree the grounds before issuing a warrant for further detention.
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> Let's get real. This will just not work. It is an extremely convoluted process that will be unpopular with those who have to make it work. The police and Crown Prosecution Service will have the unenviable task of preparing the necessary papers. Already, the

[20] *Ibid*

> number of police officers taken away from frontline duties to the backroom task of administering control orders has mushroomed; the same will surely occur with this legislative monster. At the height of a terrorist investigation, when lives may be at risk, all efforts should be directed to solving or preventing the crime rather than form-filling or preparing a politically acceptable case for MPs and ministers. [21]

Mr Hayman argued that "the day will come when the current threshold of 28 days will prove insufficient. But this Bill is not the answer. It replaces a legal process that has passed the test of time. The original police case for stronger powers of detention is unrecognisable. It is completely detached from the operational needs of the police. The Bill is about politics and it won't work."[22]

2.4 Committee Stage

Committee Stage commenced on 9 October and ended 21 October 2008.

The full details of the Committee stage debate can be found at:

http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81009-0002.htm#08100958000002
http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81013-0002.htm#0810135000003
http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81013-0002.htm#0810135000003
http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81021-0002.htm#08102134000002

3 Other developments

As mentioned above, it has been announced that both the pre-charge detention and inquest and inquiry provisions will be removed from the Bill after the Lords Committee stage, the former following a vote, the latter following a Government announcement that the proposals would be revisited in the forthcoming *Coroners and Death Certification Bill*.

The proposals to extend pre-charge detention were defeated by 309 votes to 118, following the introduction of an amendment by Lord Dear. A number of former Labour ministers voted against the measures, including Lord Falconer and Lord Irvine (both former Lord Chancellors), Lord Goldsmith, Baroness Morris and Lord Dubs.[23]

Following the vote, the Government made a statement to the House of Commons on 13 October. The Home Secretary indicated that while the measures had been dropped from the current *Counter-Terrorism Bill*:

> I have prepared a new Bill to enable the police and prosecutors to do their work – should the worst happen, and should a terrorist plot overtake us and threaten our current investigatory capabilities […] The *Counter-Terrorism (Temporary Provisions) Bill* now stands ready to be introduced if and when the need arises. It would enable the Director of Public Prosecutions to apply to the courts to detain and question a terrorist suspect for up to a maximum of 42 days. […] The Bill's powers would sunset

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[21] *The Times* "Stop playing politics with our safety", 6 October 2008
[22] *Ibid*
[23] In total 24 Labour Peers voted against the pre-charge detention proposals. Dominic Grieve commented that "the Government were able to muster only 118 votes from a total of well in excess of 200 peers taking the Labour Whip". (HC Deb, 13 October 2008, c621

> automatically after 60 days. I will place a copy of the new Bill in the Library of the House.[24]

The Home Secretary criticised the opposition parties for making "no efforts to engage in […] consensus building."[25]

In response to the statement, the Shadow Home Secretary, Dominic Grieve, said:

> For all the way in which the Prime Minister's spin doctors have prevented the right hon. Lady from saying in straightforward terms that she is abandoning 42 days pre-charge detention, may I say to her that many in this House, including many on her own Benches, will be delighted to learn of that decision?[26]

The Liberal Democrat Home Affairs spokesman, Chris Huhne, indicated that:

> Whatever the Home Secretary says, this was a crushing defeat for the Government, because they not only lost the vote in the Lords, but comprehensively lost the argument.[27]

The status of the *Counter-Terrorism (Temporary Provisions) Bill* was not immediately apparent, although a number of commentators described it as a Bill to be held "in reserve" should there be a terrorist emergency.[28] Liberty, the human rights NGO which has been campaigning against the pre-charge detention proposals, commented that:

> The Upper House has demonstrated why Britain is the oldest unbroken democracy on Earth. Common decency says we don't lock people up for six weeks without charge. Common sense should tell the Government that when you're in a hole and you've lost the argument- stop digging.[29]

There was no vote on the inquests and inquiries provisions. It was reported that a Ministry of Justice official stated that the proposals were dropped as:

> Both the Commons and Lords have expressed a strong desire to debate the coroners' proposals within the context of wider coronial reform. We will therefore be removing the proposals from the counter-terrorism bill and bringing them forward again in legislation to reform the coroner system more widely. The government recognises that in a very small number of cases a change to the law may be required to enable inquests to go ahead where highly sensitive material is relevant.[30]

It was also reported that Dominic Grieve said (in response to the removal of the coroners' proposals): "We welcome this decision. The counter-terrorism bill was no place for debating this extremely controversial measure, which should be in the *Coroners Bill*. It is vital that the independence and transparency of the coroners system is maintained - not undermined."[31]

4 Notable amendments made at Report and Third Reading

There were a number of votes that took place at report and third reading. The most notable of these were:

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[24] HC Deb, 13 October 2008, c620
[25] *Ibid*, c 622
[26] *Ibid*, c 621
[27] *Ibid*, c 623
[28] See for example: *The Guardian*, "Brown abandons 42-day detention after Lords defeat", 14 October 2008
[29] Liberty Press Release, 13 October 2008
[30] *The Guardian*, "Government abandons secret inquests in terror bill", 15 October 2008

- A Government defeat on an amendment calling on judges sitting as coroners to have access to intercept evidence.[32] The BBC quoted Baroness Miller as saying the amendment would enable Azelle Rodney's family and the relatives of those involved in similar incidents to get answers on why their loved ones had died. "This small change can make a big difference to how we handle sensitive evidence at inquests in future,"[33]

- Peers backed a Conservative amendment to force the government to publish new guidelines on removing a person's data from the database. The proposed guidelines would outline procedures enabling people to discover what information is held on them and their family and how they can seek to have it removed. These would also require the police to explain to people why information should not be removed in individual cases.[34]

- Concerns were raised about the introduction of a New Schedule 7 to the Bill (focusing on money laundering, terrorist funding and associated matters). Lord Marlesford commented that "I am disappointed that the Government should treat Parliament in the way they did last week when they added a massive amendment on Report. New Schedule 7 […] consists of 23 pages of fresh legislation that is only tangentially related to the Bill. It is extremely technical and needs detailed discussion in Committee." It was reported that Ministers narrowly avoided a fourth defeat, at the Bill's third reading, when peers rejected - by 130 to 125 - a bid by Tory backbencher Lord Marlesford to insist on a JP's warrant for any enforcement action under these parts of the Bill.[35] Further information about this can be found in Lords Hansard for 17 November 2008, from column 936.

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[31] *Ibid*
[32] See for example: BBC Online, "New Labour terror defeat in Lords", 11 November 2008
[33] *Ibid*
[34] See: BBC Online, "Government defeat on DNA database", 5 November 2008
[35] http://www.asianimage.co.uk/uk/3856407.Terror_bill_clears_Lords/)