

# HOUSE OF LORDS

## Merits of Statutory Instruments Committee

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3rd Report of Session 2010-11

Drawing special attention to:

### **Draft Terrorism Act 2006 (Disapplication of Section 25) Order 2010**

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### *The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Lord Methuen
The Lord Eames OM	Rt Hon. the Baroness Morris of Yardley
Rt Hon. the Lord Goodlad ( <i>Chairman</i> )	The Lord Norton of Louth
The Baroness Hamwee	The Lord Rosser
The Lord Hart of Chilton	Rt Hon. the Lord Scott of Foscote
The Lord Lucas	

### *Registered interests*

Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Declared interests for this Report are in Appendix 2.

### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

### *Statutory instruments*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Third Report

## INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.**

### **Draft Terrorism Act 2006 (Disapplication of Section 25) Order 2010**

*Summary: The purpose of this draft Order is to keep the maximum period of pre-charge detention for terrorist suspects at 28 days, for a period of six months starting from 25 July 2010. Without the draft Order the maximum period would be 14 days. The Explanatory Memorandum (EM) lists a number of general reasons why the Government believes this draft SI is necessary. As specific evidence, the Home Office has provided a summary of a terrorism investigation 14 days after the initial arrests, and the detention, charge and conviction figures for terrorist suspects detained without charge for 14 days or more (see Appendix 1). The Committee has seen copies of the detailed briefings prepared by Justice and Liberty for the debates on this draft SI. The Justice briefing sets out why they believe the current maximum period of pre-charge detention is unnecessary, at odds with the right to liberty and lacking in safeguards. The Liberty briefing also explains why they do not believe the case for retaining the 28 day pre-charge detention limit has been made, and includes a detailed analysis of the practical experience since 2006. The Government has announced a review of counter-terrorism legislation, including pre-charge detention. The review will report to Parliament in the Autumn. The House may wish to take note of the further information from the Home Office and the points made by Justice and Liberty when considering the merits of this Order.*

**This instrument is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

1. This draft Order disapplies Section 25 of the Terrorism Act 2006 (“the 2006 Act”) for a period of six months beginning on 25 July 2010. Section 25 of the 2006 Act modifies Schedule 8 of the Terrorism Act 2000 (“the 2000 Act”) to reduce the maximum period of detention under that Schedule from 28 days to 14 days. The effect of the draft Order will be that the maximum period of pre-charge detention for terrorist suspects will remain at 28 days for the six months from 25 July 2010. Without the draft Order, the modifications in Section 25 of the 2006 Act would take effect and the maximum period of detention under Schedule 8 of the 2000 Act would be 14 days. The Explanatory Memorandum (EM) says that the maximum period of pre-charge detention under Schedule 8 of the 2000 Act has remained at 28 days since July 2006 (EM paragraph 4.3). This is a result of three previous Orders which disapplied Section 25 of the 2006 Act for one year each.
2. A commitment to have the extension of pre-charge detention subject to annual renewal was made during Parliamentary debates on what became the Terrorism Act 2006 (EM paragraph 4.1). The EM says the Government consider the current maximum period of pre-charge detention of 28 days is

still necessary because of a number of factors. These include: the increasingly complex nature of terrorist networks; greater use of encrypted computers; and the increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad (EM paragraph 7.1). The EM suggests this draft SI has been laid without any consultation; and the Committee notes that the EM for the last Order to disapply Section 25 of the 2006 Act listed exactly the same reasons for the then Government considering that Order to be necessary<sup>1</sup>. The EMs for the earlier Orders in Summer 2007 and Summer 2008 also list a number of the same reasons for the then Government considering those Orders to be necessary<sup>2</sup>. The House may wish to bear these factors in mind when considering the case for the continued need for 28 day pre-charge detention.

3. The Government's intention to renew the current maximum period for pre-charge detention was announced in a Written Ministerial Statement by the Secretary of State for the Home Department and repeated by Baroness Neville-Jones on 24 June (Minister of State, Home Office)<sup>3</sup>. The Statement also said that the Government have made clear their commitment to review counterterrorism legislation, and that pre-charge detention will form part of that review. The Statement said that the review will report to Parliament in the Autumn, and without prejudging the outcome, the coalition are clear that the 28-day maximum period should be a temporary measure.
4. The Committee asked the Home Office for any specific evidence to show that the SI is necessary. In response, the Home Office has provided a summary of a terrorism investigation 14 days after the initial arrests (see Appendix 1). The Home Office has also provided a table setting out the number of terrorist suspects that have been detained without charge for 14 days or more and the outcome of their detention. This shows that a total of 11 terrorist suspects have been detained for 14 days or more, of which 8 were charged and 4 were convicted (3 for terrorism or terrorism related offences and 1 for non-terrorism related offences). The other 3 suspects were released without charge (see Appendix 1). The House may wish to use the debate on this SI to get a better understanding of this attrition rate.
5. The Committee has seen a briefing that Justice have prepared for the debate on this draft SI. The briefing sets out in detail the view of that organisation that the current maximum period of pre-charge detention: violates the right to liberty; is unnecessary; is far longer than in any other western democracy; and lacks sufficient safeguards<sup>4</sup>. The Committee has also seen a briefing that has been prepared by Liberty. They believe the case for retaining this period of pre-charge detention has not been made. The briefing covers a number of issues, including: an international perspective on the proposals; and other alternatives to lengthy pre-charge detention. The House may be interested in Liberty's analysis of the practical experience of the provisions since 2006, particularly their conclusion that this indicates that it has never been

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<sup>1</sup> SI 2009/1883 Terrorism Act 2006 (Disapplication of Section 25) Order 2009: Explanatory Memorandum paragraph 7.1

<sup>2</sup> SI 2008/1745 Terrorism Act 2006 (Disapplication of Section 25) Order 2008: Explanatory Memorandum paragraph 7.1 & SI 2007/2181 Terrorism Act 2006 (Disapplication of Section 25) Order 2007

<sup>3</sup> HL Written Statements, 24 June 2010, WS 114

<sup>4</sup> JUSTICE Briefing for House of Lords Debate July 2010

necessary to hold an individual for longer than 14 days<sup>5</sup>. The House may wish to consider the points made in the Justice and Liberty briefings when considering the merits of this legislation in the debate.

## OTHER INSTRUMENTS OF INTEREST

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### ***Draft National Minimum Wage Regulations 1999 (Amendment) Regulations 2010***

6. The draft National Minimum Wage Regulations 1999 (Amendment) Regulations 2010 (“the Regulations”) amend the National Minimum Wage Regulations 1999 and come into force on 1 October 2010. The Regulations implement recommendations contained in the 2010 report of the Low Pay Commission, an independent body which assisted with the introduction of the National Minimum Wage (NMW) and which has a continued statutory role of reporting on matters relating to the NMW that are referred to it by the Secretary of State. The Regulations increase the hourly rate of the NMW for adults, 18 to 20 year olds and 16-17 year olds. It may be of interest to the House that the Regulations also provide that 21 year olds must be paid at least at the adult rate, a change which the Impact Assessment estimates will result in an increase in total annual labour costs of £48 million.

### ***Rice Products from the United States of America (Restriction on First Placing on the Market) (England) (Revocation) Regulations 2010 (SI 2010/1585)***

7. Following European Commission Decision 2010/315, published on 9 June, these Regulations lift the ban on importing long grain rice into the EU unless it has been tested and certified to say that it does not contain certain GM contamination (although Article 2 of the Decision requires Member States still to maintain an appropriate level of random monitoring). The Regulations were made on 13 June, laid on 15 June and came into force on 16 June. Since lifting a ban cannot be argued to be for the protection of human health the Committee queried what the actual negative consequences of delaying the legislation to comply with the 21 day rule would be. The Food Standards Agency responded that EC Decisions come into effect upon being notified to Member States so the domestic legislation it gave rise to should be removed forthwith, and that failure to do so could leave the Agency open to legal challenge by an importer unable to import his product. The Committee noted the argument but maintains that where a Department concludes that “forthwith” does not include the normal period for scrutiny by this Parliament a rather stronger justification should be included in the EM.

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<sup>5</sup> Liberty’s Briefing on the proposed renewal of 28 days pre-charge detention: LIBERTY July 2010: page 16 (<http://www.liberty-human-rights.org.uk/pdfs/policy10/liberty-briefing-on-renewal-of-28-days-pre-charge-detention.pdf>)

## INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.**

### Draft Instruments requiring affirmative approval

Draft Health and Social Care Act 2008 (Consequential Amendments No. 3) Order 2010

Draft National Minimum Wage Regulations 1999 (Amendment) Regulations 2010

### Instruments subject to annulment

SI 2010/1551 Secretary of State for Culture, Olympics, Media and Sport Order 2010

SI 2010/1552 European Communities (Designation) (No. 2) Order 2010

SI 2010/1584 Football Spectators (Seating) Order 2010

SI 2010/1585 Rice Products from the United States of America (Restriction on First Placing on the Market) (England) (Revocation) Regulations 2010

SI 2010/1593 Health and Social Care Act 2008 (Consequential Amendments) (Wales) Order 2010

SI 2010/1627 Marine Strategy Regulations 2010

SI 2010/1634 National Health Service Pension Scheme (Amendment) Regulations 2010

SI 2010/1664 Safety of Sports Grounds (Designation) (No. 2) Order 2010

SI 2010/1675 Export Control (Burma) (Amendment) Order 2010

## APPENDIX 1: DRAFT TERRORISM ACT 2006 (DISAPPLICATION OF SECTION 25) ORDER 2010: GOVERNMENT RESPONSE

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### Information from the Home Office

**Q1.** *Paragraph 7.1 lists a number of general factors which the EM suggests support the case for this SI. Is there any specific evidence you can put before the Committee to show that this SI is necessary?*

**A1.** We set out below a summary of the state of one particular terrorism investigation 14 days after the initial arrests. This gives evidence of the specific difficulties of obtaining evidence in that case, but we are advised by the police and Crown Prosecution Service that the scale and nature of the enquires described below is typical of the type of terrorism investigations they face which require extended periods of pre-charge detention.

- The investigation was being carried out 24hrs a day, 7 days a week.
- There were 300 detectives, 100 uniform officers and 40 support staff deployed in the investigation with a further 107 officers from County Constabularies expected to join the investigation shortly.
- There were three experienced prosecutors working full time reviewing the evidence and another prosecutor making the applications for warrants for further detention under Schedule 8 to the Terrorism Act 2000. Each one needed a full understanding of the emerging case.
- There were over 80 crime scenes, including the bomb factory, to search.
- Forensic recovery included explosive swab testing, fibre retrieval, and the preservation of items and surfaces for DNA and fingerprints.
- In excess of 11,000 exhibits were seized. Of these 700 exhibits were submitted to the Forensic Science Service for examination and further items were submitted daily on a priority basis.
- Approximately 400 computers and 8000 items of associated media storage including 'Thumb Drives' (USB's), MP3 players, hard drives, memory cards, floppy disks, CDs and DVDs were seized and had to be examined.
- A total of 200 mobile phones and a significant number of SIM cards were recovered and the communications data associated with those phones had to be applied for and examined.
- Over 20 motor vehicles were searched. Some of these searches involved minute forensic examination for explosive traces, fingerprints, fibres and DNA. 4 vehicles were sent to the Forensic Explosives Laboratory for examination.
- 3,000 items of CCTV footage were seized.
- Financial investigations were being conducted to identify purchases of relevant material (articles or chemicals) capable of making explosives or improvised explosive devices. 146 production orders had been applied for, granted and served on various financial institutions to obtain confidential material relating to these enquiries. The details of several hundred bank accounts and other related financial information had been obtained and converted into a useable format for analysis.
- There was ongoing liaison with foreign police forces and agencies, requiring international co-operation, authorities and agreements.

**Q2.** *Does the DPP explicitly support the purpose of this SI?*

**A2.** Yes

**Q3.** *Do ACPO explicitly support the purpose of the SI?*

**A3.** Yes

**Q4.** *Please could you provide up to date numbers of terrorist suspects that have been detained without charge since July 2006, showing the period of their detention, the ones which were subsequently charged, and the ones which were subsequently convicted.*

**A4.** The table below sets out the number of terrorist suspects that have been detained without charge for 14 days or more and the outcome of their detention.

	Length of Detention			
	14 days	18 days	19 days	27 days
Charged	1	1	3	3
Released				3
Total	1	1	3	6

Of the 8 individuals charged, 4 were convicted (3 for terrorism or terrorism related offences, 1 for non-terrorism related offences).

**Q5.** *When will the review commence? Will it complete before 25 January 2011?*

**A5.** The Home Secretary intends to formally announce the review of counter-terrorism legislation, powers and measures shortly – the date has not yet been confirmed. The Home Secretary, in her Written Ministerial Statement of 24 June 2010, committed to reporting to Parliament in the autumn on the outcome of the review. The review will therefore be completed before 25 January 2011. The commitment to review our counter-terrorism powers was made in the Coalition Agreement and it has also been referred to in the Written Ministerial Statement on control orders and on section 44 stop and search authorisations.

**Q6.** *Lord Carlile says in paragraph 127 of his June 2009 report that in his view, judges scrutinising extended detention should have vested in them the power to request explanations and materials from the prosecution side and possibly from the suspect too (with caveats). What is the Government's position on this issue?*

**A6.** The Government will be reviewing pre-charge detention powers as part of the review referred to above and this will include consideration of Lord Carlile's suggestions. It should be noted, however, that judges hearing applications for warrants for further detention under Schedule 8 to the Terrorism Act 2000 may (and do) already closely scrutinise the case put forward by the police or CPS making such applications.

**Q7.** *Do you know when Lord Carlile will publish his 2010 report?*

**A7.** Lord Carlile's report on the Operation in 2009 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 will be published by the end of July.

29 June 2010

## **APPENDIX 2: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from The Stationery Office.

For the meeting on 6 July 2010 Members declared the following interests:

### ***Draft Terrorism Act 2006 (Disapplication of Section 25) Order 2010***

Baroness Butler-Sloss: daughter is acting Chairman of Liberty.

### ***Attendance:***

The meeting was attended by B. Butler-Sloss, L. Eames, L. Goodlad, B. Hamwee, L. Methuen, L. Norton of Louth and L. Scott of Foscote.