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Dear Home Secretary

Counter Terrorism Legislation

Following our brief discussion at the weekly security meeting I indicated my intention as the newly appointed Assistant Commissioner Specialist Operations and Chair of the ACPO Terrorism and Allied Matters committee to review the police position in relation to pre-charge detention.

The matter has been subject to a great deal of previous correspondence; the Commissioner Sir Ian Blair and my predecessor gave evidence to the Home Affairs Select Committee and the Commissioner also gave evidence to the Joint Committee on Human Rights.

ACPO Chief Constables Council have considered the issue and determine that it is realistic to assume that the increasing complexity of counter terrorism operations will lead to the requirement to extend pre-charge detention to beyond 28 days. The Commissioner wrote to the Director General: Crime Policing Counter Terrorism & Delivery in January of 2007 to conclude that 28 days pre charge detention may not be sufficient and propose that some form of gateway mechanism be explored. The proposed counter terrorism legislation seeks to address this concern.

Material made public by successive heads of the Security Service has highlighted the growing number of persons that are identified as causing concern, rising from approximately 1600 in November 2006 to 2000 by November 2007.

The discussion is well rehearsed in terms of the increase in complexity and global nature of terrorist investigations. Networks tend to be informal, diffuse and spread over numerous jurisdictions; mobile phone and Internet communication is growing and is not constrained by national boundaries.

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A number of issues can have a direct bearing on the need to detain persons for longer periods than existing legislation allows in terrorism cases. These include the rapid escalation of intelligence indicating advanced attack planning; precipitating earlier intervention than otherwise could be foreseen. This will naturally reduce the opportunity to secure evidence pre arrest. I shall return to this point.

The impact of this increased complexity on police investigations is, in part, illustrated by the growth in volume and variety of evidential material. The material handled by the Metropolitan Police Counter Terrorism Command has almost trebled since the Criminal Justice Act 2003 allowed for 14-day pre charge detention. In 2004 a total of 69,000 exhibits, statements, documents, enquiry actions etc were recorded. This figure had risen to over 190,000 by 2006. The rising trend is also identified within specific items; the number of mobile phones seized has risen from 13 in 1996 to 1,620 in 2006; the number of computers seized has risen from zero in 1996 to over 350 in 2006.

The volume of material is however only one factor in determining how long it will be necessary to detain a person for investigation before it may be possible to lay a charge. This returns to my earlier point on how the intelligence picture develops. A key factor is how much intelligence and evidence has been gathered prior to the point of arrest

The changing nature of the threat and the intent to cause mass casualties without warning and without consideration to personal risk has meant that a decision to arrest is often made earlier than in previous CT investigations. Operations against violent extremists are characterised by the risk of having to take pre-emptive action on public safety grounds before evidential opportunities have been fully exploited. This sets such investigations apart from almost all others and when the complexity is considered they become unique.

This requirement to take pre-emptive action denies the senior investigating officer the opportunity to secure available evidence prior to arrest. Therefore where, as has proved to be the case recently, a senior investigating officer is forced into making early arrests the detention period becomes the critical period during which evidence sufficient to charge must be secured. The growing complexity of more recent cases has demonstrated how even the 28 day detention period has come under pressure.

The 14 day detention period was used to its' full extent shortly after its inception. In 2004 Operation Rhyme, the plot that suggested limousines packed with gas cylinders required the full 14 days prior to charging some of those suspected. Similarly the 28-day period was used in the course of an operation in 2006 that is currently sub-judice and cannot be discussed publicly due to the imminent trial. The detention of those persons was subject to scrutiny of the courts and was confirmed as necessary with the investigations being conducted diligently and expeditiously. It is clear therefore that developing trends have already pushed investigating officers to the limit and

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that both increases were timely and appropriate for effective investigation reflecting the growing risk and complexity.

The record will show that the majority of those arrested under the Terrorism Act spend only a few hours in detention, most are released within 24 hours and only an exceptional few are detained to the maximum period permitted; only 6 have ever been detained over 27 days.

Having reviewed key material, recent operations and spoken to senior practitioners, I consider that nothing has changed since the Commissioner and my predecessor gave their evidence. In my view there is an obvious correlation between the increased risk (necessitating early intervention), the increased evidential, technical and cross jurisdictional complexity and the risk that a greater period of pre-charge detention might be required within the foreseeable future.

Accordingly I conclude that a pragmatic inference can confidently be drawn from statistical and empirical evidence arising from recent investigations that circumstances could arise in the future which render existing pre-charge detention limits inadequate to ensure a full and expeditious investigation of detained persons.

Yours sincerely



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