



**Draft Prevention of Terrorism Act 2005 (Continuance in  
Force of Sections 1 to 9) Order 2010**

**JUSTICE Briefing for House of Commons Debate**

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**For further information contact**

Eric Metcalfe, Director of Human Rights Policy

email: [emetcalfe@justice.org.uk](mailto:emetcalfe@justice.org.uk) direct line: 020 7762 6415

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100  
fax: 020 7329 5055 email: [admin@justice.org.uk](mailto:admin@justice.org.uk) website: [www.justice.org.uk](http://www.justice.org.uk)

## Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance access to justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.
2. JUSTICE continues to oppose the use of control orders, introduced under the Prevention of Terrorism Act 2005 ('the Act'). We recognise that the UK faces a serious threat of terrorism and that public officials are under a duty to take effective measures to prevent further attacks. Nonetheless, we remain of the view that control orders are:
  - unnecessary;
  - ineffective; and
  - offensive to basic principle

## Key developments since March 2009

3. Since the last renewal debate, the control order regime has been dealt a major blow by the judgment of the House of Lords in *Secretary of State for the Home Department v AF*,<sup>1</sup> in which a panel of nine Law Lords held unanimously that the government's failure to disclose sufficient details of its case against persons subject to control orders breached their right to a fair trial under article 6 ECHR. JUSTICE was the only NGO granted leave to intervene in the appeal, arguing that there was a 'solid bedrock of a core legal principle' under both common law and the European Convention on Human Rights under which defendants were entitled to know the substance of the case against them.<sup>2</sup>
4. The same day that judgment in *AF* was handed down, JUSTICE published *Secret Evidence* – a report detailing how the use of closed proceedings and special advocates before SIAC and the Administrative Court have spread throughout the civil justice system.
5. As Lord Phillips of Worth Matravers, now the President of the UK Supreme Court, said:<sup>3</sup>

A trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him.

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<sup>1</sup> [2009] UKHL 56.

<sup>2</sup> *Ibid*, para 42.

<sup>3</sup> *Ibid*, para 63.

6. Lord Hope of Craighead, the deputy President, said:<sup>4</sup>

The consequences of a successful terrorist attack are likely to be so appalling that there is an understandable wish to support the system that keeps those who are considered to be most dangerous out of circulation for as long as possible. But the slow creep of complacency must be resisted. If the rule of law is to mean anything, it is in cases such as these that the court must stand by principle. It must insist that the person affected be told what is alleged against him.

7. Since that ruling, there have been a number of subsidiary judgments in the Administrative Court concerning its implications. Several control orders have been withdrawn because the government has been unwilling to disclose sufficient details of the closed evidence against defendants to enable their fair trial. In addition to this, a High Court judge in January ruled that two men whose control orders had been withdrawn due to lack of disclosure may be entitled to claim compensation.<sup>5</sup>
8. We note that the control order regime is already extremely expensive to administer and defend (including approximately £8 million in legal costs),<sup>6</sup> for the sake of a relatively small number of individuals – currently only a dozen men. Parliamentarians are urged to consider whether the public funds involved would not be better spent on lawful surveillance of persons suspected of involvement in terrorism, than on maintaining such a disproportionate regime.

### **Control orders are unnecessary**

9. The UK faces the same threat of terrorism as that faced by other western countries and yet no other country apart from Australia has introduced control order legislation. Indeed, of the two control orders made in the Australia, both have been discharged and no control orders are currently in force.
10. At the time that the 2005 Act was passed, there was already a comprehensive scheme of terrorism offences contained in the Terrorism Act 2000. This was added to in the Anti-Terrorism Crime and Security Act 2001. Since the 2005 Act was passed, there have now been two further Acts of Parliament creating new terrorism offences – the Terrorism Act 2006 and the Counter-Terrorism Act 2008 – including the offence of preparing terrorist acts contrary to

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<sup>4</sup> Ibid, para 84.

<sup>5</sup> See *Secretary of State for the Home Department v AF and AE* [2010] EWHC 42 (Admin).

<sup>6</sup> Daily Mail, 'Taxpayers' £8m legal bill for terror suspect control orders' by James Slack, 2 February 2010.

section 5 of the 2006 Act. It beggars belief that there are insufficient criminal offences with which to charge those suspected of involvement of terrorism.

11. If the Home Secretary sincerely believes that ‘prosecution and conviction by a jury of criminal offences is a far more wholesome and satisfactory way of dealing with suspected terrorists’ than control orders,<sup>7</sup> it would be far better to lift the ban on intercept evidence to enhance the ability of prosecutors to actually prosecute suspects than to seek renewal of the control order legislation.

### **Control orders are ineffective**

12. At the time they were introduced, control orders were described by the Home Secretary as being.<sup>8</sup>

for those dangerous individuals whom we cannot prosecute or deport, but whom we cannot allow to go on their way unchecked *because of the seriousness of the risk that they pose to everybody else in the country.*

13. Since the 2005 Act was introduced, 38 people have been subject to control orders at some point, of which 7 have absconded – an apparent failure rate of nearly 20%. Following two ascondments in late 2006, a junior Home Office Minister said that he ‘did not believe the public was at risk’ from the escaped men,<sup>9</sup> and the government-appointed reviewer of terrorism legislation agreed that the disappearances ‘present little direct risk to public safety in the UK at the present time’.<sup>10</sup> We find it difficult to reconcile the Home Secretary’s original claims of dangerousness in 2005 with the mild assessments offered the following year. It is equally hard to see how control orders could in any event be effective in preventing terror attacks with a failure rate now approaching 1 in 5.

ERIC METCALFE  
Director of human rights policy  
JUSTICE  
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<sup>7</sup> Home Office press release, ‘Home Secretary renews control order legislation’, 3 February 2009.

<sup>8</sup> Rt Hon Charles Clarke MP, Hansard, HC Debates, 23 Feb 2005: Column 339. Emphasis added.

<sup>9</sup> BBC News, ‘Two terror suspects ‘on the run’’, 17 October 2006.

<sup>10</sup> Lord Carlile, *Report in connection with the Home Secretary’s quarterly reports to parliament on control orders* (Home Office, 11 December 2006), para 21.