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Dear Lord Armstrong

I would like to reiterate my thanks to you and the Committee for conducting such a thorough inquiry into the Draft Detention of Terrorist Suspects (Temporary Extension) Bills. I know that this is an issue which can divide opinion and about which many people hold strong views, so I am grateful for the care with which you have conducted your scrutiny.

My response to the Committee's conclusions and recommendations are as follows.

Independent Review of Terrorism Legislation

The Independent Reviewer of Terrorism Legislation has a relatively wide remit and the post holder can choose what he wishes to examine during a reporting year. As we have seen, where they have thought it appropriate to do so, reviewers have conducted ad hoc reviews of particular operations. These have included examination of whether the arrest power in section 41 of the Terrorism Act 2000, the detention powers in Schedule 2 to the Act and the relevant code of practice issued under the Police & Criminal Evidence Act 1984, have been complied with. Lord Carlile QC conducted such a review following Operation PATHWAY, and the current reviewer, David Anderson QC, conducted a review of the arrests in Operation GIRD, which concerned an alleged plot to attack the Pope.

However, given the exceptional nature of extended pre-charge detention, I understand the Committee's feeling that there should be an expectation and a certainty that such reports will be conducted if individuals are held for longer than 14 days. I have therefore made amendments to the Protection of

Freedoms Bill to require that the Independent Reviewer of Terrorism Legislation, or a person acting on his behalf, must produce a report on the detention of an individual or individuals where that detention is longer than 14 days. That will not, of course, preclude the reviewer from conducting any other ad hoc investigations should he believe it is appropriate to do so. The amendment was tabled on 22 September.

The need for an extended period of pre-charge detention

I welcome the Committee's conclusion that it is appropriate to plan for the circumstances in which longer than 14 days pre-charge detention may be necessary. As the Committee recognises, it is sensible to acknowledge that longer than 14 days may be required, and to plan accordingly.

Use of the Civil Contingencies Act 2004

I agree with the Committee's conclusion that the Civil Contingencies Act 2004 would not necessarily be an appropriate means of extending the maximum period of pre-charge detention. My review of counter terrorism and security powers, which reported to Parliament in January this year, concluded that there were risks in just relying on the Civil Contingencies Act for this purpose. The circumstances in which a civil emergency could arise may not be the same as those when longer detention periods might be needed. As Lord Goldsmith said in his evidence to the Committee, the Civil Contingencies Act was not designed for this purpose.

Type of Contingency Mechanism

I welcome the Committee's conclusion that the Government is right to introduce some form of contingency to extend the maximum period from 14 days to 28 days. I hope that it would never be used.

The Committee has concluded that the emergency legislation is not the appropriate contingency mechanism. Whilst I understand how the Committee has come to this conclusion, it is not one that the Government accepts. We, and I believe your Committee, recognise that there is no perfect contingency mechanism that meets all the operational requirements and provides Parliament and the public with assurance that such exceptional powers are subject to scrutiny. It is a matter of balance. I believe that the contingency mechanism provided by emergency legislation provides the right balance.

The review of counter terrorism and security powers concluded that extended pre-charge detention of 28 days was such an exceptional measure, and that as 14 days was generally the maximum required, this should be reflected on the face of the legislation. As long as the order-making power in section 25 of the Terrorism Act 2006 existed, there remained a temptation (which proved too strong for the previous Government to resist) to continually ask Parliament to renew the powers and keep 28 days as the maximum period even when it was not necessary.

An order-making power of the type described in the Committee's report would, I believe, not be a clear expression that the "normal" maximum period of pre-charge detention should be no longer than 14 days (and I accept the Committee's point that even 14 days is exceptional). 28 day detention is so exceptional that I continue to believe that Parliament should have the opportunity to debate the issue first, and that the most appropriate and effective way to do this is by using emergency primary legislation.

Your report suggests that scrutiny of such legislation would be, *"so circumscribed by the difficulties of explaining the reasons for introducing it without prejudicing the rights of a suspect to a fair trial, as to make the process of justifying the legislation almost impossible for the Secretary of State and totally unsatisfactory and ineffective for members of both Houses of Parliament".* As I made clear to your Committee when I gave evidence, Parliament would be able to debate whether, in principle, the maximum period of detention should be longer than 14 days in circumstances where that was required. Those circumstances would be explained in as much detail as possible. Parliament would also be able to discuss in general, the issues around the threat and the reasons why an increased threat may require a longer maximum detention period.

I appreciate the fact that Parliament would not be able to discuss matters relating to particular individuals or anything that might compromise an investigation or future prosecution, but it is important to recognise the difference between agreeing whether 28 day detention should be available in principle, and the judiciary's role in agreeing extension of detention warrants for individuals under Schedule 8 to the 2000 Act, which would remain the case. Parliament would not be taking a decision about an individual suspect. That would be a decision for the proper judicial process. Parliament would be taking a decision about the principle of 28 days.

I note the Committee's suggestion that it would be "*almost impossible*" to introduce and pass the legislation within a sufficiently short period of time, particularly when Parliament was in a long recess. I do not agree with this conclusion. We have already seen this summer that it is possible to recall Parliament at very short notice even in the middle of the long summer recess (and has been seen previously, for example in response to the 9/11 attacks). I believe that the circumstances in which it was necessary to introduce a measure such as 28 day detention, would be of sufficient importance for Parliament to respond quickly.

I do, however, accept the Committee's point that emergency legislation is not appropriate during a period of dissolution and before the opening of a new Parliament. I have, therefore, made amendments to the Protection of Freedoms Bill to allow for an urgent order-making power similar to that suggested by the Committee, for any period when Parliament is dissolved and before the Queen's Speech. The amendment was tabled on 22 September.

Legislating for "Exceptional Circumstances"

As your report points out, it is difficult to predict the exact nature of the circumstances in which a longer period of pre-charge detention might be required, and it would be even harder, and I believe inappropriate, to try to address these on the face of primary legislation.

I do not think it is helpful or possible to try to "crystal ball" every possible scenario. Doing that leads us onto a path of developing ever more draconian powers and contingencies to cover every possibility, or alternatively, creates the danger that we legislate for specific circumstances and then find ourselves constrained by the parameters of the legislation if a scenario emerges that we had not forecast.

There are, however, three broad scenarios in which a longer period of pre-charge detention may be necessary:

- in response to a fundamental change in the threat environment which means that the police and CPS anticipated that multiple complex and simultaneous investigations would necessitate 28 days.
- during an investigation or series of investigations, but before arrests, which was so complex or significant that 14 days was not considered sufficient.
- during an investigation but after arrests had taken place.

In addition to these, the Committee's consideration of possible scenarios and conditions is a helpful guide, and I hope would be useful to Parliament generally should the Government ever believe it is necessary to introduce emergency legislation to increase the maximum per-charge detention period.

Strengthening the Judiciary's Role in Determining Whether to Grant Warrants of Further Detention

I note the Committee's recommendation that further criteria should be applied by a judge when deciding whether to issue a warrant of further detention, particularly the compatibility with Article 5 of the European Convention on Human Rights.

In practice, of course, all UK legislation is required to comply with the ECHR and in exercising any function under law, the judiciary will automatically read in the requirements of the ECHR when considering their decision.

However, as the Independent Reviewer of Terrorism Legislation, David Anderson QC, points out in his latest report, it is desirable that legislation should reflect the requirements of the ECHR as fully as possible. He also notes that this particular issue is to be considered by the Supreme Court in the case of *Duffy*.

As it would be premature to consider a change to the detention regime in Schedule 8 prior to the Supreme Court's ruling in *Duffy,* I therefore intend to revisit this issue once that ruling has been handed down.

Director of Public Prosecution Consent for Applications for Warrants of Further Detention

The Committee's report recommends that applications for warrants of further detention beyond 14 days should only be made by, or with the consent of, the Director of Public Prosecutions (DPP).

As the DPP made clear in his evidence to the Committee, he would be sighted on any such applications given the seriousness of any such investigation, so that this safeguard would apply in practice in any case.

I note, however, the Committee's view that such a requirement should be made explicit in the legislation and I accept this recommendation. I have therefore made the necessary changes to the Protection of Freedoms Bill to provide for this, including equivalent provisions for Scotland and Northern Ireland. The amendment was tabled on 22 September.

Thank you again for the Committee's helpful scrutiny of the Bills.

Yours sincerely

The Rt Hon. Theresa May MP