COUNTER-TERRORISM AND SECURITY BILL: CONSTITUTION COMMITTEE REPORT

I am grateful to you and your Committee for your consideration of the Counter-Terrorism and Security Bill and your report of Monday 12 January. On behalf of the Government, I am keen to address your recommendations prior to the Bill being considered at Committee Stage, which commences on Tuesday 20 January.

Time taken to prepare the Bill (paragraph 3 of your report)

This legislation represents a considered, targeted approach. As the Prime Minister set out in his statement of 1 September 2014, it will ensure that our law enforcement and intelligence agencies have the powers they need to respond to the heightened threat to our national security.

Following that statement, substantial work went into the drafting of the clauses, in consultation with the police, MI5 and other operational partners. The Government also consulted with those in the private sector or civil society where measures in the Bill were likely to impact upon them. It was important that proper consideration was given to these sensitive issues, in order to ensure that our proposals were feasible, that they would deliver significant operational value, and that they would strike the correct balance between our rights to privacy and security.

As the Explanatory Notes set out, a number of the matters in the Bill have previously been the subject of pre-legislative scrutiny or public consultation, notably those on data retention and elements of our transport security proposals. We are at present conducting public consultations on relevant measures in parallel to the legislative passage of the Bill, allowing the public and Parliamentarians to contribute on how these measures should be implemented in practice. This includes consultations on the statutory Code of Practice on the Temporary Passport Seizure power (Part 1 Chapter 1), guidance on the Prevent duty (Part 5 Chapter 1), the revised Code for Schedule 7 to the Terrorism Act 2000 (Part 6) and the proposed Privacy and Civil Liberties Board (Part 7). Details of these consultations are available at www.gov.uk/government/consultations.
The Government is committed to ensuring that there is sufficient time for Parliament to consider the legislation. The timetabling of the Bill over a number of months is enabling this to take place, while also ensuring that the police and agencies are able to use these new capabilities without undue delay. The House of Commons was able to give appropriate consideration to every amendment tabled, without any debate being curtailed. Indeed, in its report on the Bill, the Joint Committee on Human Rights welcomed “the amount of parliamentary time that has been made available for scrutiny of the Bill on the floor of the House of Commons”.

**Justification for fast-tracking provided in the Explanatory Notes (paragraph 5)**

I am pleased that the Committee found the detailed justification in the Explanatory Notes valuable.

I would like to reassure you that the need for these new powers is pressing. As recent events in Paris – and those in Belgium, Canada, Australia and Pakistan – have demonstrated, the threat that we face from ISIL and those that they inspire is real. As a result, the Government, along with the police and MI5, have identified that new powers are needed to restrict the ability of individuals to travel abroad for terrorism-related activity, to manage their subsequent return, and to monitor those who are already in the UK.

It is, of course, not enough to simply disrupt the activities of those that have already been radicalised. We must also prevent individuals being drawn into terrorism in the first place. That is why, in order to ensure a holistic approach, it is necessary to improve the delivery and consistency of the ‘Prevent’ strand of the Government’s counter-terrorism strategy, CONTEST, by placing it on a statutory basis in the Bill.

**Fast-tracking of counter-terrorism legislation (paragraph 6)**

The Government agrees with the Committee that Parliament should be given ample opportunity to scrutinise draft legislation, and that Bills should only be fast-tracked where there is a clear and pressing need.

**Judicial Oversight of Temporary Exclusion Orders (paragraph 11)**

I welcome the Committee’s recognition that it is for the Secretary of State to decide whether a Temporary Exclusion Order is necessary. This is in line with other counter-terrorism powers of this sort. As the Home Secretary outlined in the House of Commons, “to vest the power to impose one of these orders in the Secretary of State without first requiring an application to the courts is in line with the comparable use of the royal prerogative to cancel the passport of a British citizen” (15 Dec 2014, Column 1208).

It should also be noted that, in comparison to other similar powers, the interference with an individual’s rights as a result of a Temporary Exclusion Order is low: their passport will be revoked and they will be placed on the no-fly list, but their daily activities will not be disrupted in the same way as, for instance, a TPIM subject. This measure must be considered within this context.
However, as you state in your report – in the light of the comments from David Anderson and others, and following the debates in the House of Commons – the Government has committed to considering further whether it is appropriate to introduce judicial oversight for this power. We will return to this issue at Committee Stage next week.

Amending the Data Retention and Investigatory Powers Act 2014 (paragraphs 14 and 15)

The data retention measures in the Bill will be limited to data that is required for Internet Protocol resolution and will not include the full package that was covered under the Government’s previous proposals in the Draft Communications Data Bill. While I realise that the wider issue of communications data is extremely sensitive, it is worth noting that with respect to IP resolution, the Joint Committee on the Draft Communications Data Bill concluded:

“We accept that if CSPs could be required to generate and retain information that would allow IP addresses to be matched to subscribers this would be of significant value to law enforcement. We do not think that IP address resolution raises particular privacy concerns.”

I recognise the concerns raised by your Committee in relation to amending the Data Retention and Investigatory Powers Act 2014. These measures have, however, been subject to pre-legislative scrutiny. The increase in the threat level increases the need to take action to slow the degradation in our communication data capability. Given the extensive scrutiny of these proposals to date and the broad political consensus on the need to legislate, the Government believes it is appropriate to do so at this time.

We endorse the general principles being advocated by the Committee, but trust that this justification will reassure Peers that including these measures in the Bill represents a suitable course of action.

I trust that this response addresses the issues raised by your Committee, but please be in touch with my office on 020 7035 8805 if you wish to discuss the Bill further. I look forward to debating these matters at Committee Stage.

I am copying this letter to the Minister for Immigration and Security and all Peers that spoke at Second Reading of the Bill. A copy of it will be placed in the Library of the House.

Yours ever,

Lord Bates