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JOINT COMMITTEE ON HUMAN RIGHTS

LEGISLATIVE SCRUTINY: COUNTER-TERRORISM AND SECURITY BILL

WEDNESDAY 3 DECEMBER 2014

JAMES BROKENSHIRE MP

Evidence heard in Public

Questions 1 - 48

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Members present:

Dr Hywel Francis (Chair)
Baroness Buscombe
Baroness Kennedy of The Shaws
Baroness Lister of Burtersett
Baroness O'Loan
Mr Virendra Sharma
Sarah Teather

Examination of Witness

James Brokenshire MP, Minister for Security and Immigration, Home Office

Q1 The Chair: Good morning and welcome, Minister, to this evidence session on the Counter-Terrorism and Security Bill. For the record, will you introduce yourself?

James Brokenshire: Good morning to the Committee. I am James Brokenshire, Minister for Security and Immigration.

Q2 The Chair: First of all, I want to place on record my thanks, and the thanks of the Committee, for your offering to come before us as quickly as possible. We are very grateful for that. It has taken barely a week for you to come, which is great.

In that spirit, can I also ask the following question? The Bill has been described as being fast-tracked but not urgent, yet the Prime Minister announced the Bill in September and it is now December. Obviously we are concerned and want to know the Government's assessment of the human rights implications of the proposals. We can assume that it has been well thought through, but why has it taken this long for us to see it?

James Brokenshire: On 1 September the Prime Minister set out his statement of the principles that we wanted to address and what were seen as gaps in the existing legislative framework. Clearly we have had a number of discussions, internally within Government and, indeed, with operational partners such as the police, to make sure that the powers and the proposals that come forward in the legislation are appropriately framed. Obviously we want to ensure that the Bill is properly scrutinised through Parliament.

But at the same time, knowing that there are clear operational needs—given the challenges that we see from Syria and Iraq, the 500 subjects of interest who have travelled out to that region, the potential threat that we see to our country as a consequence of that and,

obviously, the raising of the threat level as well—there is a degree of urgency, in terms of needing to get the powers available, but appropriately scrutinised; hence the reason, obviously, for having a speedier process through Parliament, but not trying to rush this through in days. We want to ensure, under the timetable that has been set out, that Parliament will have the opportunity to take Committee consideration before Christmas and then look to Report stage in the House of Commons after Christmas. It is with that intent that we are proceeding.

The Chair: So, he announced the principles, but the Bill clearly was not ready in September.

James Brokenshire: Obviously the principles were identified, and we wanted to introduce a Bill that had been properly examined internally within Government, and that is the process that we have taken, to ensure that we are presenting what we judge is right, necessary and proportionate. It is precisely with that viewpoint that we have taken this stance.

Q3 Mr Sharma: Do the police already have the power to arrest a person at the border if they have a reasonable suspicion that they are travelling to become involved in terrorism-related activity? If so, why are the new powers necessary?

James Brokenshire: That is an important question, Mr Sharma, because clearly we have a power, under schedule 7 to the Terrorism Act, to be able to stop someone to question them and there is the ability to hold them for around six hours in those circumstances. It is a non-suspicion power, but is obviously something that is used by the police at the moment. The difference on the temporary passport seizure power is that obviously it gives the police the right to take the passport and travel documents—it may also be the tickets and other items that the individual may have—and obviously hold them for an initial period of 14 days to then facilitate further investigation in respect of that individual; so I think you can distinguish that between the existing schedule 7 power and also the more stringent powers such as the use of the royal prerogative by the Home Secretary or, indeed, even further on things like TPIMs and other preventive measures.

Mr Sharma: Minister, you said 14 days?

James Brokenshire: It is an initial 14 days, and then you would have to apply to court to then extend to the 30 days, so that is why I broke it down in that sequencing; because we have thought about this carefully, on the need for safeguards, so that under the Bill it would be a constable that effectively would make that initial reasonable suspicion determination. That would then have to be confirmed by a senior police officer at the rank of

superintendent. There would then be a 72-hour further check by a further senior police officer of chief superintendent rank or above. That assessment would also be passed to the chief constable. That would then give you that position through to the 14-day period; then you would need to go to court to extend it further.

Q4 Baroness O'Loan: Minister, could you tell us how a person will be able to challenge the seizure of their travel documents on the basis that they are not in fact intending to leave the country to engage in terrorism-related activity abroad?

James Brokenshire: Obviously, as I have indicated, there is a further check point at the 14-day period, where the police would need to, if they wanted to extend it further, demonstrate that they were diligently advancing an investigation in relation to that individual; so they could not simply take the travel documents and just not do anything from that point. So you would have to demonstrate at that check point, but obviously there would still be a remedy of judicial review that could be available to an individual to challenge the ab initio decision of the constable, as then confirmed by the senior police officers, to take the passport.

Baroness O'Loan: Following on from that, a person is stopped, their passport is seized; how can they challenge it? Will they be informed of at least the gist of the reasons for suspecting that they intend to travel abroad for reasons of terrorism?

James Brokenshire: Certainly we intend to publish guidance that supports the measures in schedule 1 to the Bill, and indeed I want to see some form of consultation around that guidance. That will set out some more of the details of the procedures and provisions. What that will also show is the form that will be handed over, which would give some indication of the reasons why the power has been used. So it is the intent that someone would be notified, and that might need to take the form of gisting in certain circumstances; but yes, it is intended that there will be some means of informing the individual as to why the power had been used.

Q5 Baroness O'Loan: I just wanted to ask how you are going to provide for this gisting.

James Brokenshire: It depends—obviously the notice, as I have said, would give some indication. Equally, at the 14-day point, there may be the need for information to be presented in court to the district judge who would be the one that would need to make that decision as to whether things had been carried forward expeditiously. Similarly, I suppose, in respect of a judicial review, if that were to be a form of challenge, then again the ability to present in those circumstances—and clearly from a judicial review standpoint there may be,

if the relevant tests are satisfied under the Justice and Security Act 2013, the ability to move to closed material proceedings; but equally, then, the provisions that this Committee will know well from its previous scrutiny of that legislation, are the measures that might apply there.

The Chair: There are two supplementaries: Sarah Teather and then Baroness Kennedy.

Q6 Sarah Teather: I wondered whether you could confirm, following the decisions we have been making this week around JR, whether or not legal aid will be available in those cases for people to challenge that under JR.

James Brokenshire: Legal aid would be available in the magistrates court in respect of a magistrates court review; and so there may be a legal aid cost as a result of that. In respect of judicial review—and I am sure that the Committee will come to this equally on the temporary exclusion order as well—they do not currently fall within the framework of existing legal aid structures. It is something that we are considering carefully in the context of the new orders, but have not reached a final position on in that regard as yet.

Sarah Teather: Will you be reaching that final decision before we get to Committee stage? I think that is quite an important issue for Members of the House to consider. If people have no actual access to that remedy of justice, it is slightly meaningless.

James Brokenshire: I certainly recognise the point that you have made; indeed, I think that point was raised on the Floor of the House yesterday evening at the Second Reading debate. It is something we are carefully considering in the context of similar measures that may relate to the prevention of terrorism—equally, on judicial review and legal aid more generally—so I can certainly say to the Committee that it is something that we are actively examining, and we recognise the issues that have been flagged by you and by others.

The Chair: Baroness Kennedy and then Baroness Lister.

Q7 Baroness Kennedy of The Shaws: I was going to ask similar questions around the matter of judicial review and whether it is such a serious departure from normal processes, because we are dealing with allegations or suspicions of terrorism. It seems to me that those are precisely the sorts of circumstances where we have to have the opportunity to review decisions, and therefore judicial review would be particularly important and the public would want that kind of reassurance that there was not an abuse of power. Does it not seem to the Government that this is precisely the sort of situation where legal aid should be available for judicial review?

James Brokenshire: Certainly in some other circumstances. I think I am right in saying that TPIMs do fall within that construct in terms of legal aid. That is something that we have acknowledged in other circumstances. We are examining it closely and carefully in terms of the judicial remedies that are available in respect of the specific measures, and we are reflecting on the representations that we are receiving.

Baroness Lister of Burtersett: I noticed, Minister, that you carefully avoided answering Sarah's question about whether you will have finished your considerations by the time it reaches Committee stage in the Commons. I can understand why. If that is not possible, could you give a firm commitment that you will have come to a decision before it comes to the Lords, because, as you know, there are many people in the Lords who care a lot about judicial review?

James Brokenshire: I recognise, obviously, the clear focus that the Lords have given to the issue of judicial review over recent weeks. That matter is led by the Ministry of Justice, rather than by me as a Home Office Minister. Although I recognise the points that have been raised, it is obviously difficult for me to commit my colleagues in the Ministry of Justice, in terms of their time and their consideration, but I am sure they will be made aware of the points that this Committee has made to me this morning.

Q8 Mr Sharma: Minister, you have already explained the powers of the police and the new powers. In that case, will special advocates be appointed to represent the interests of a person who is excluded, along with their legal representatives, from any part of the court hearing to determine whether to extend the 14-day period for which travel documents may be seized or where relevant information is ordered to be withheld?

James Brokenshire: The way that schedule 1 is framed—with, effectively, the determination on the extension to the 30-day period and whether the police are expeditiously and appropriately continuing to investigate—does not contemplate a special advocates type of structure in that environment. Because it would be going to a district judge, it is a different type of hearing. But as I have indicated, if you had a judicial review of the initial decision and the relevant requirements of the Justice and Security Act were satisfied, it could mean that you would be into a closed material proceeding and a special advocates type of arrangement.

Q9 Mr Sharma: Do you think, then, that this proposed new power will be compatible with the right to a fair hearing in article 6 of the ECHR?

James Brokenshire: We believe that the hearing can still be, and would be, fair on the basis of the information that is being provided, and because of the nature of the hearing itself. It is

in essence making a determination as to whether to extend from 14 days to 30 days. As schedule 1 explains, it is for the courts to determine whether the police have been carrying forward their investigations in a timely and appropriate way. It is important to understand that the purpose of this power is, in essence, to deal with what might be an immediate risk of somebody travelling out, hence the reason why the power is framed as being used at the port, rather than in a different context.

It is important, therefore, to understand the context of this and to give that time and space to allow the police to conduct an investigation as to whether further action may be needed, given that obviously this is a situation where a power is being used where there are reasonable grounds to suspect that the individual is intending to leave the UK for the purposes of terrorism-related activity. So it is a slightly different context, and we therefore do believe that a fair trial would be made available in those circumstances.

Q10 Mr Sharma: But do you not think that a person who is stopped and taken inside while the police are investigating, during which period he or she has no legal representation, will be at a disadvantage, without further advice and support from anybody?

James Brokenshire: No. Just to clarify on the magistrates or the district judge hearing at the 14-day period, there is the intent that there would be legal representation for the individual. Indeed, that is why I made the point around legal aid in the context of the magistrates court hearing.

I think what you are pointing to is the specific aspect of whether an application is made to exclude the applicant or someone representing them in respect of specific information that may be relied on, but that may need to be withheld because of security or sensitive issues. It is that aspect of, in essence, paragraph 10 of schedule 1 that I think you are pointing to, Mr Sharma. But the point is that that does not in any way mean that an individual would not be represented on the substantive aspects of whether the police were actually pursuing their investigations in an appropriate way.

The Chair: There are two supplementaries: Baroness O'Loan, then Baroness Kennedy.

Q11 Baroness O'Loan: I can understand the appeal of this measure, which enables you to stop someone from leaving the country and to investigate. Take away the passport—I can understand the appeal of it in terms of the effectiveness of the strategy against counter-terrorism, but I do bear in mind what happened in Northern Ireland as various repressive

measures were introduced, in terms of growing support for those engaged in terrorism and distrust in the authorities as a consequence.

What I wanted to ask you is this: I think it's just my deficiency, but I cannot understand how the article 6 obligations are met when a person is faced with a court that is determining the fact that they cannot travel—they may have very legitimate or commercial reasons to travel, but they cannot travel—and they do not really know why, because there is no indication that the gisting would be other than very superficial. I presume that the argument would be that the material upon which the decision has been made is so sensitive that it cannot be released to them. So you really have a gap where the special advocate would come in in other proceedings, but apparently will not come in in these proceedings.

James Brokenshire: I think what I would just want to make clear is that if the police apply to the court to extend the retention period for the passport, they would issue a notice informing the individual of the reasons for the seizure and retention of the travel documents that were seized and retained, and the reasons would be as full as possible, subject to national security considerations, and could be in gisted form.

Obviously, we have had a broader, wider debate around closed material proceedings and the case law that you, Baroness O'Loan, will be familiar with on gisting, which we have obviously discussed in this Committee before. That structure has been upheld as compliant with the article 6 obligations. Clearly, we have signed a compatibility statement in respect of this Bill and are satisfied therefore that article 6 obligations would be satisfied and would be met. So there would be that provision of information as to why the passport had been seized, subject to those very specific national security considerations.

Q12 Baroness O'Loan: You said that the gisting procedures and the closed material procedures have been accepted by the courts, but they don't apply to this application—there will be some gisting, but there will be no closed material, with all the protections that come, such as they are.

James Brokenshire: There are two elements here, aren't there? There is the potential for judicial review to challenge the initial decision, which could engage closed material proceedings in relation to that decision. Separately, there is the distinct decision that would have to be taken by the court as to whether the police were acting in a speedy and judicious manner in the investigation of that individual, so a different type of test is having to be satisfied in those circumstances as to what the court is looking at. Your remedy on the ab initio decision would be by judicial review, then engaging all those aspects that we've talked

about, but the decision on whether to extend to 30 days—so moving from 14 days to 30 days—is obviously focused on the actions that the police are taking and have been taking to investigate that individual.

Q13 Baroness O’Loan: But if the only thing the court is interested in is whether the police are doing the investigation in a timely and effective way, and the person is challenging the removal of the passport on the ground that the grounds are not founded, I don’t quite understand how the reason for the removal of the passport is not at issue if the police are claiming to be proceeding in a judicious and timely way and the person is producing evidence to show that the grounds upon which the passport was withheld are not founded.

James Brokenshire: I suppose one of the points is that, in order to get to that position, the police would have to have made an application to the court, in essence, to exclude the individual or their legal representatives in that narrow framework, as per the reference I made to paragraph 8 of schedule 1. Therefore, the district judge would equally then need to be satisfied, by virtue of the different tests that are set out there, that that was appropriate, so there is already a further hurdle that would need to be satisfied by the police in actually getting to that point. Therefore, the judge would no doubt have to have considered some of those very issues in even making a determination as to whether paragraph 8 applied or not. So I think there are checks and safeguards. Clearly, on whether the police got this fundamentally wrong from the outset, which I think is the key point you are rightly challenging me on, in essence, the remedy of judicial review in respect of that primary decision could be available and could therefore challenge that decision in the normal way.

The Chair: I think we need to make some progress, but I will let you finish that question.

Baroness O’Loan: That does make the need for legal aid for judicial review absolutely vital, doesn’t it?

James Brokenshire: And I’ve noted the points that have been made by other Members.

The Chair: Baroness Kennedy and then Baroness Lister.

Q14 Baroness Kennedy of The Shaws: I just want to nail that last one down. To make it real, what happens is that a police officer would say, “We are continuing to investigate this matter. We have intelligence or reason to believe that this person is leaving the country to go to a training camp, or to do something that is going to relate to terrorism.” At that point, the defendant is likely to say, “But I’m not. I’m leaving to go to a family wedding”, or, “I’m leaving to deal with a business matter which is of great urgency and involves my presence to

sign contracts in Lahore”—or Syria, or wherever. At that point, the police will be pressed into saying, “It is intelligence that we’ve received that makes us want to retain this passport further.” How does the district judge deal with that? Does he remove the defendant and the defendant’s lawyer and hear something more about what the intelligence is? If so, how do you fulfil the article 6 rights?

James Brokenshire: The district judge would have to be satisfied, following an application under paragraph 10—sorry, it is paragraph 10 rather than paragraph 8—in respect of whether there should be an exclusion in those circumstances on national security grounds. Clearly—to take the article 6 point—that is why it is about the provision of sufficient information in respect of the details as to why the passport was seized at that time, and therefore the need for potentially gisting in certain circumstances to enable the individual and their lawyer to challenge that. That is why we think that the article 6 right is adhered to and that you would have a proper, robust court hearing to assess that extension.

Baroness Kennedy of The Shaws: I see a long period of cases coming before the higher courts based on whether the gisting is adequate or not. I hope that the Oxford dictionary is putting down “gisting” as a new verb.

James Brokenshire: Baroness Kennedy, I know from the discussions we have had that it will no doubt be featuring in a future edition.

Baroness Kennedy of The Shaws: Can I move to the issue of compensation? Let’s imagine that someone ends up getting their passport back and the courts decide that the leaving of the country was, in fact, for a legitimate purpose and that the taking of the passport interfered with the rights of the citizen or individual. Will there be compensation to the person who missed their flight and was not able to go their business meeting, have their vacation, or attend the family wedding? Will there be compensation?

James Brokenshire: If the application were to fail at the 14-day period—in other words, if you have the safeguards and the application were to fail at that 14-day period—in those circumstances there would be no compensation at that point.

The Chair: Baroness Kennedy, you jumped the queue. Baroness Lister was supposed to be asking the question before.

Q15 Baroness Lister of Burtersett: How do the Government propose to ensure that in practice the new power is not used in a discriminatory way? Clearly, that is one of the fears.

James Brokenshire: Part of this resides in the code of practice that we intend to publish alongside the schedule 1 provisions, in the same way that schedule 7 and other intrusive powers are operated. We are very clear that this needs to be conducted in a proportionate and non-discriminatory fashion. That will be made clear in the code of practice. As I say, my intent is that that should be published very soon, so that that sense of the safeguards and the practical operation of the schedule 1 powers is clear and can give direct assurance on the decision-making process at the outset. While we have the specific additional safeguards on the approvals process and, indeed, the court challenge at 14 days, it is also bounded by the code of practice, which will give greater clarity on those various points.

Q16 Baroness Lister of Burtersett: You said that you hope the code of practice will be published very soon. Will it be published before the Bill has passed through Parliament? Will you be monitoring for any possible discriminatory impact?

James Brokenshire: It is certainly my intent that it will be published during the Bill's passage, so that Parliament and others can see the nature of this. We want to give assurance on this because of the very understandable points on discrimination that might otherwise rest in people's minds. We have given clarity for other issues like stop and search, which we are absolutely clear should be conducted in an entirely appropriate manner and not in some sort of discriminatory fashion. The guidance will make that clear.

Baroness Lister of Burtersett: And will you be monitoring?

James Brokenshire: The relevant requirements in the memorandum will show that there will be a need to keep records and information in respect of that. I am quite sure that that will facilitate an examination of the use of that power as I would want it to be, to ensure that it is not used in any inappropriate fashion.

Q17 Baroness Buscombe: Minister, the Bill provides for temporary exclusion orders, which require the individual not to return to the UK unless their return is "in accordance with a permit to return issued by the Secretary of State" or they are deported to the UK by the state they are in. Specifically, do you agree with the Independent Reviewer that the provisions in the Bill on temporary exclusion orders and permits to return are more about managing the return of British citizens than revoking their entitlement to return to the UK and live here?

James Brokenshire: The clear threat that we see is of people going out to Syria and Iraq and then potentially travelling back, and the risk that their return poses to the UK. They may have been radicalised and they may have been tasked in some way by a terrorist group while

they are out there—they may have been exploited in that fashion. There is therefore the need for control to be exerted in respect of their potential return.

The temporary exclusion order does what it says—it temporarily excludes. It can last for a two-year period and during that time someone is unable to return unless they have the necessary permissions, so you could say that there is a sense of exclusion in that context. Having made an application to return, there is exclusion to the extent that that permit is then not granted, albeit that there is a specific obligation in the Act that says that the Secretary of State must grant that permission, subject to a very narrow exclusion in respect of the individual then not turning up to a meeting with the police or our border agencies. It excludes but also manages and controls. It uses that term, and I think that is the appropriate term for it.

Q18 Baroness O’Loan: Minister, again on temporary exclusion orders, the explanatory notes to the Bill state that the Government “has discussed the proposals with other governments who might be affected by them”. Could you tell us a little more about the discussions the Government has had with other states about the temporary exclusion of UK nationals from the UK, and what the response of other states has been to the proposal?

James Brokenshire: There have been discussions with a number of countries, particularly Turkey, France and other EU partners, to ensure the effective practical implementation of these proposals. Those discussions are ongoing, but what I would say is that the discussions have been positive and are working through the operational details of the manner in which this power might present itself at the border or for someone seeking to arrive at an airport, and what would happen in those circumstances. I can certainly give the Committee the assurance that we are not simply looking at legislation; we are absolutely working with our international partners to ensure that the powers are applied appropriately, recognising that we want to ensure that people are returning in the manner in which the Act contemplates, given the differing circumstances in which that may arise.

Baroness O’Loan: Just to follow that through, if it becomes clear that you have had discussions with Turkey and France, won’t people take other routes to come back?

James Brokenshire: That was why I mentioned the discussion with other EU partners and others. It is looking at all of the different challenges and the different routes that may be operating. You are right in making that point, but we know that there are particular flows through from Turkey, obviously, as neighbour to Syria, and then where the points may be if someone were then to travel back across Europe. It is right that we have had those

discussions in those ways, because we want to ensure that this is operated appropriately and effectively.

Q19 Baroness O’Loan: I presume it then follows that if another state revoked the passport of a foreign national who is present in the UK on the ground of their suspected involvement in terrorism, the UK would react accordingly. What would accordingly be?

James Brokenshire: Well, obviously it is difficult, as at this stage it is, I suppose, a hypothetical situation because we have not been presented with that. Certainly, we are looking to ensure the powers that we have framed here on seeing that someone is returned—and to be clear, given the interest I know the Committee has taken over issues of statelessness in the past, we are not making someone stateless, as they do allow someone to return. So we would look at that in the context of our international obligations, as this Committee would expect us to.

The Chair: Baroness Buscombe wanted to ask a supplementary.

Q20 Baroness Buscombe: Notwithstanding the fact that temporary exclusion orders relate to return, would I be right in suggesting that there might be a hope on the part of the Government that these measures, which are being introduced to reflect the severity of the threat we face, could be deemed in a positive way to be prevention measures, to perhaps deter individuals from considering leaving the country to carry out acts of terrorism—I would prefer to call that treason, actually—in the first place?

James Brokenshire: I am very clear that people should not be travelling out to Syria to become engaged in the conflict or for any other reason. Travelling out to Syria does not help the situation at all. Some people may think that providing aid or assistance in that manner might be seen to be contributing, but the risk that this poses to them and the risk of them coming into contact with terrorism organisations, like ISIL, like the al-Nusra front, and other groups that are aligned to al-Qaeda, means that that simply is not helping and actually plays into President Assad’s narrative, which is that it is all about foreign fighters and others from outside of Syria. So we have been very clear for quite some time that people should not be travelling, and therefore in any way that we can communicate that message, we will certainly do so.

Certainly people should understand that there are measures that we are contemplating in this Bill. Equally, those who have travelled out very much risk prosecution by the Crown Prosecution Service, if the evidence is there, and it is absolutely right that we should ensure that our laws are enforced robustly.

It is important to note that this is an enduring threat. I think that we will see the challenge from Syria and Iraq, and terrorism linked to that, for the foreseeable future. That is why we are taking the measures in this Bill to ensure that we are confronting that in all ways and ensuring that the police and our security agencies have the powers they need to meet the threat that we see.

The Chair: Baroness O'Loan, do you have a question?

Baroness O'Loan: I wanted to ask what would happen if foreign states revoked passports when their nationals were on UK soil, but I think we dealt with that.

The Chair: I call Mr Sharma.

Q21 Mr Sharma: Minister, what guarantees does the Bill currently provide against the power of temporary exclusion being used arbitrarily?

James Brokenshire: The main right of challenge under the temporary exclusion order is judicial review, and there is the ability for someone to challenge the decision that has been taken. Obviously, clause 2 of the Bill sets out the relevant requirements that the Secretary of State must be satisfied on and therefore, having issued a temporary exclusion order, it is then open to the individual to seek to challenge that order in that way.

Q22 Mr Sharma: How can a British citizen who has been temporarily excluded from their country of nationality challenge that exclusion before an independent court or tribunal?

James Brokenshire: There have been many cases that we have seen, which have come before our courts, of individuals who are overseas and they have the ability to challenge decisions that the British Government have made before our courts, notwithstanding the fact that they may be overseas. That is a principle that has been understood. Indeed, we can look at some of the measures we have introduced under the Immigration Act, on non-suspensive appeals, for example, where someone's appeal rights are maintained even though they may be removed from the country. Therefore it is not a bar, or necessarily an inhibition, to someone being able to make a challenge before our courts notwithstanding the fact they may not be within the UK.

Q23 Baroness Lister of Burtersett: Minister, will a person who is subject to a temporary exclusion order be entitled to consular assistance in the country they are in? Will their family be entitled to such assistance in the event of their death while they are abroad?

James Brokenshire: I suppose that is a question to advance with the Foreign Office as much as to me, but certainly British citizens are entitled to appropriate support from our consular

network and, indeed, our embassies. Therefore in terms of the principle of British citizenship and what that means, certainly for families, and so on and so forth, for people in an overseas environment, obviously connection and contact with the British embassy would potentially be available. Indeed, in serving a temporary exclusion order, which is obviously contemplating that someone may make a request to come back to the UK, in those circumstances it would have the relevant information and details as to who to contact in order to take that forward.

Baroness Lister of Burtersett: So are you suggesting we should write to the Foreign Office specifically?

James Brokenshire: Certainly I will take this away from the Committee and seek any further clarification from colleagues at the Foreign Office, if that is of assistance. I will ensure that that is an action point.

Q24 Sarah Teather: I am just a bit surprised that that did not come up during the cross-Government write-rounds, especially considering how long it took between the Prime Minister announcing this and the Bill being published. I remember how frustrating and time consuming the process of cross-Government write-rounds was when I was trying to get stuff through. It surprises me that the Foreign Office did not raise this as an issue. Were there direct discussions with the Foreign Office on the point?

James Brokenshire: They will have been part and parcel of the discussions. It is more about me confirming the information that I have before me, rather than anything else; I want to confirm and clarify. Obviously, consular assistance is provided to British citizens and that does not change the citizenship of an individual.

Q25 Baroness Kennedy of The Shaws: I suggest that this is more complicated than it may appear from the documents and the Bill. I want to understand. You make arrangements with Turkey or with France, and presumably with any other country from which there is access to Britain—people might come on other crossings from other countries. Is the person going to be detained? If they present their travel documents in Turkey, would somebody immediately say, “Step aside, sir, we want to have a word with you” and tell them that they are going to be served with an exclusion order, preventing them from returning to Britain because there is a suspicion that they have been involved in terrorist activities? Are they then taken into custody? Are they detained, or can they turn tail and say, “Goodbye, I’m going back to Syria and what I was doing”?

James Brokenshire: There are a number of circumstances in which this could happen. For example, as the Bill suggests, there may be circumstances around deportation, such as someone being deported back to the UK because they have been arrested by the authorities in a particular country; there is a need to govern that. The Bill and the guidance we have put out around it clearly says that if a temporary exclusion order has been taken out against a particular individual, we would seek to serve that notice on the individual, preferably in person but, clearly, service may be on their last known address in the UK. Steps may be taken to notify the person, and we may put markers on our warnings index so that if someone were to try to board an aircraft, that may be flagged up.

We are having discussions with our international partners about the arrangements that would manage that particular instance occurring—say, at an airport—and the ability to ensure that that person may not just simply disappear from the airport. It is precisely those practical operational issues that we are working through with our international partners to ensure that this operates in the manner we want. I take on board your point on different circumstances and arrangements. It is precisely those issues that we are advancing with our international partners.

Baroness Kennedy of The Shaws: I can well imagine that international partners might be rather alarmed at the idea that they are going to be dumped with our problems. I wanted to ask—

James Brokenshire: I suppose they would not be because of the clarity that we have. Someone may request, or, in certain urgent circumstances, the Secretary of State may issue, the permit to return. It is important to understand that this is not about getting other countries to sort out our problems, but having clarity of our control and mechanisms, and explaining that to our international partners.

Q26 Baroness Kennedy of The Shaws: I just want to go through this. I have done some cases where passports have been removed from people so I know how it works. A family receive a letter through the door saying that their son is going to be the subject of a temporary exclusion order. The family tries to communicate that with the son, but let us imagine that they have not been able to. The son arrives at the airport in Turkey to board a flight to Britain. There is a flag on his name, he produces his documentation and they say, “Sorry sir, step to one side; you are subject to an exclusion order”, which he was not aware of. The Turkish authorities then take him to one side. Do our police officers fly out to Turkey?

James Brokenshire: Yes, they may do.

Baroness Kennedy of the Shaws: So we are going to have them fly out there. They will then question the person. Supposing the person is someone we know has been involved, because of Facebook photographs or being present at beheadings, do we make a decision that that person is to be arrested and transported to Britain to be put on trial? Or do we say that we do not know anything about this chap, and we think he is just on the periphery, might be subject to a managed return when he promises to obey the law and will not do anything dangerous to us, and we will keep him under supervision? What happens?

James Brokenshire: You could not arrest overseas, obviously.

Baroness Kennedy of the Shaws: That is the problem; that is why I am asking you.

James Brokenshire: The point is that under this mechanism, the person would have a facilitated return back to the UK. That may involve further questioning by the police. It may indeed result in arrest upon their return to the UK, depending on the facts and circumstances that would exist. Clearly, it is then for the prosecutors and police to determine on the facts and evidence how that is taken forward.

Under the temporary exclusion order, we have the power expressed there to put the conditions on someone to report to a police station or engage positively with probation and Channel-type—our de-radicalisation programme—facilities. It would have to be examined on a case-by-case basis, because it may depend on the facts and risks that attach to that individual. You may be looking at prosecution or other measures such as terrorism prevention and investigation measures being applied.

In country, those decisions and that assessment would take place. If you are talking about the arrangements at the airport in those circumstances, there are clearly ongoing discussions that take place on a daily basis about situations where people present at airports. People flying in to a particular country who do not have the right to be there are facilitated back. Therefore, there is a network of contact that we have with international partners to manage those very practical issues of people presenting at airports. It is in the context of the liaison officers we have to facilitate such situations that we build on that, and look further to deepen discussions in the context of this specific measure of facilitating return in those specific circumstances.

Baroness Kennedy of the Shaws: What do you do with the person who says in Turkey, “I am here doing humanitarian work. I refuse to have a managed return because I am not

doing anything as a terrorist. I want you, Turkey, to release me to return to where I came from. I am not going along with any of this.” What do you do with him when you do not have powers of arrest in Turkey?

James Brokenshire: It will depend on the individual circumstances and country. There may well be either criminal or border protection issues in relation to that country to see that that individual does not simply leave the airport. It is those operational arrangements that we are working through with our international partners in respect of the situation on the ground.

That, frankly, presents itself in a number of different ways already—when alerts are triggered, when there may be interest in a particular individual. It is building on those relationships and that position with our international partners, and then overlaying the new additional structure that we are contemplating in the Bill to ensure that we are able to facilitate managed return and deportation in urgent situations, or indeed where the individual has requested to be returned.

Q27 Baroness Kennedy of the Shaws: I want to put this to you. You are putting in place a complex arrangement that would be legally challengeable and expensive, with police officers going to foreign countries to interrogate people. Why not allow them to travel to Britain and, at the point they get off the aeroplane or the boat, take them into custody, offer them the managed process—one of your options—or arrest them for a crime and put them on trial? Why not deal with it at this end, given that they are our citizens, rather than create this complex set of arrangements in some foreign country? Why not do that?

James Brokenshire: In all honesty, because of the potential risk of that individual. Even overseas, they may pose a direct threat to the UK by either seeking to radicalise or to control others within the UK, so we need to manage risk in an appropriate way. That is why we have done this in the manner that we have. We already have what we describe as our pre-departure checks system, where we have the ability to prevent people from boarding aircraft. Indeed, in a separate provision, the Bill actually strengthens those powers further in respect of British citizens.

A range of different measures is potentially available. We have that existing measure that we are strengthening further in this Bill to prevent people from getting on aircraft, and then separately, we have the powers under the temporary exclusion order to facilitate the return of an individual in a controlled way and, frankly, to keep them out if they do not adhere to that. It will depend on a case-by-case basis. I recognise why you are rightfully challenging me

in respect of this, but it will depend on the individual circumstances and the individual factors of the case, and on the individual country and so on. This is something we are contemplating very carefully and in a considered fashion, not just domestically, but with our international partners, too.

The Chair: I think we have taken this as far as we can. If we need to pursue it further, we can write to the Minister.

Q28 Sarah Teather: We are moving on to TPIMs. The raising of the threshold for a TPIM from reasonable belief to balance of probabilities is a welcome change, but the independent reviewer questioned whether that would be meaningful unless a similar change was made to require the court to consider whether the balance of probability standard was satisfied, rather than leaving it at the lighter touch of JR. Why has that decision been taken? Is there any reason why that change could not also be applied to the court?

James Brokenshire: In the context of the overall measures that a TPIM is intended to provide, and taking into consideration what David Anderson said about the issue of relocation, we judged that it was appropriate to make the change that we have contemplated in the Bill in terms of raising the threshold of the decision that is made to the balance of probabilities, rather than reasonable belief. It is important to recognise the distinction of TPIMs as they are currently framed on the basis of reasonable belief. Control orders were on the basis of reasonable suspicion. TPIMs have the two-year time limit and control orders did not, so it is a very different measure that we are looking at, notwithstanding the conflation as people might try to suggest there has not been a change in the regime—there has—and the additional safeguards that have been put in place, and indeed David Anderson's comments over the period of TPIMs as to what they do provide. But in this context of the changes to the measures that are contemplated under TPIMs, we have made that amendment in respect of the balance of probabilities that is framed within the Bill.

Q29 Sarah Teather: But all of those are reasons why you would apply the same thing to the court that supervises the Secretary of State's exercise of TPIM powers. You have made an excellent argument for changing it, which I wholly agree with, and I cannot understand why the next step has not also been done. It is a different point.

James Brokenshire: Certainly, our intention is that the Secretary of State must be satisfied on the balance of probabilities, as she would currently be satisfied on the basis of reasonable belief, so it is actually taking it up to the next level. Clearly, the court will examine the Secretary of State's decision in respect of being satisfied on that basis of reasonable belief. If

there is a further technical point that is being made, I am happy for the Committee to write to me.

Sarah Teather: I am a bit muddled by your answer, so that might be better.

James Brokenshire: So if the Committee could write to me, I will be happy to look at that specific point in further detail.

Q30 Baroness Kennedy of The Shaws: This Committee was in fact rather pleased when the Government replaced control orders with TPIMs, because that was the position that we took and you took, and indeed some of us from other parties took. What we were rather surprised about is that there has now been a change. Great objection was taken to a power to relocate individuals away from other communities—a sort of internal exile part of the control order—but now it has been reintroduced. What changed, other than perhaps being suborned by the security services, that persuaded you and the Government to justify internal exile?

James Brokenshire: I appreciate, Baroness Kennedy, that you have consistently been opposed to this.

Baroness Kennedy of The Shaws: I have.

James Brokenshire: And I respect that. I certainly would not use the words that you chose on this being internal exile. It is a residence requirement that can be imposed for a period of up to two years if it is proportionate, necessary and all the relevant tests are satisfied.

To answer your question directly on what has changed, when we did the counter-terrorism review at the start of this Parliament that led to the creation of TPIMs, it was on the basis of the threat picture as we saw it at that point in time. Obviously, the situation has moved on and changed; we have now got the threat from ISIL and others and the ongoing situation in Syria. I think it is right that we considered the availability of different measures. It is important to note that we have done it in this way rather than seeking to move to the enhanced TPIMs structure, which has a number of other different conditions and which we have said that we still reserve the right, in exceptional circumstances, to be able to deploy. However, we have had a serious and sustained risk.

Clearly, we have consulted the independent reviewer of counter-terrorism legislation. I know that he appeared before the Committee last week and reported back on the utility and why he was persuaded that this was an appropriate measure to introduce to continue to manage risk to ensure that we are dealing with the threat that is presented to us. I would

frame it in the changing nature of the threat picture, the risk picture and the people who have travelled out to Syria. It is in that context that we have reflected and reviewed the situation and why we judge that it is appropriate—with the safeguards and the different legal tests that now have to be met—to introduce this in this way.

Q31 Mr Sharma: How does the Government propose to mitigate the alienation and resentment that might arise in some minority communities as the result of the reintroduction of relocation powers in TPIMs?

James Brokenshire: We are very conscious, in introducing any additional counter-terrorism measures, of ensuring that we are bringing communities with us and that people understand why we are doing things, the threat picture and the context of this. I think communities across the UK recognise and understand that. That is why I have been struck by British Muslims standing up, underlining “This is not in my name” and the true nature of Islam. It is a peaceful religion that rejects the extremist, perverted, twisted narrative of ISIL and others. Therefore, there is understanding as to why the police and other agencies need to take action in certain circumstances to prevent risk to all communities. Let’s not forget, if we look at the situation in Syria, that ISIL is killing other Muslims. It is important to recognise that that is the case.

There is an understanding of why we have to take clear action against individuals where they might pose a risk and why we are seeking to encourage communities to come forward if they have individuals whom they fear might be being radicalised. We are able to intervene earlier, before we are actually at that stage in the process, and we can use our Channel deradicalisation approach and other measures to seek to deradicalise someone so that they don’t end up in those circumstances. It is recognising the need for proportionality, which the Bill seeks to do, and understanding what the purpose and context of this is. Why we are doing this is something we will continue to underline to bring communities with us.

Q32 Sarah Teather: We are moving on to data protection. Indiscriminate or blanket retention of communications data has been held by both the European Court of Human Rights and the Court of Justice of the European Union to be incompatible with the right to respect for privacy and the right to protection of personal data. Will you explain briefly why the requirement to retain relevant internet data authorised by the Bill does not fall foul of the ban on indiscriminate or blanket retention?

James Brokenshire: Well, we have obviously had this “in principle” debate before in relation to the consideration of DRIPA, the judgment of the European Court in respect of

the data retention regulations that preceded it, and why we legislated in the way that we did earlier this year. Ultimately, it is about the need to protect the public—the criminal justice issues—and therefore the ability to prevent and solve crime. I think that that has been recognised by the courts. It is not blanket or indiscriminate in that way; indeed, time limits apply and there are other safeguards reflected in DRIPA that will be shown in the codes of practice that will be published shortly, alongside that legislation. That necessity, as well as the proportionality measures that sit alongside it, ensures that the legislation is compliant with relevant human rights legislation.

Q33 Sarah Teather: I wonder whether you recognise the concern expressed by a lot of human rights campaigning organisations that DRIPA was passed as emergency legislation and completed all its stages in one day, and we are now fast-tracking further legislation that amends previous emergency legislation and there has been no opportunity for full scrutiny.

James Brokenshire: Well, I suppose we are scrutinising the Bill in the manner that we have discussed, with this Committee being able to scrutinise me and others around these provisions. Indeed, time is being taken, so this is not like DRIPA, where we were having to act at pace because of the court judgment and therefore the sustainability of our existing legal framework. It is important to note that the Independent Reviewer of Terrorism Legislation, David Anderson, is also conducting a review of RIPA and this whole position, because I think that we will need to come back to this in the next Parliament—

Sarah Teather: I think that there are three ongoing reviews.

James Brokenshire: When we look at the Bill itself, the specific provisions that relate to this additional requirement on industry to retain information on what is known as dynamic IP resolution is time-limited—in the same way as the underlying DRIPA is limited to the end of 2016—in order to ensure that we will have David Anderson's report by next May and to give Parliament the opportunity to completely review all this. So it does have that time-limited safeguard in there so that we know that Parliament must come back to this issue and look at it in the round, informed by David Anderson's review, as well as, I am sure, other investigations and recommendations from Select Committees that will undoubtedly come through during that time. It is important to recognise that this is not in some way seeking to drive any wedge or change in that manner. Parliament will absolutely need to return to this matter in that informed manner.

Q34 Baroness Lister of Burtersett: We want to move on to the Prevent strategy, Minister. We have a number of questions about higher education, in which I have a particular

interest as an emeritus professor. What evidence can you cite to demonstrate the need for a power for the Secretary of State to be able to direct universities about the content of their policies on extremist speakers?

James Brokenshire: It is important to recognise that a number of universities—as well as, indeed, the NUS—have already introduced codes of practice over the use of university facilities, because of the underlying responsibility that they see themselves having to their students to confront actions that might lead to someone becoming involved in terrorism. Sadly, we have seen individuals who have in some way had connections or links at times when they were at university that may have led on to actions that took place thereafter. I suppose we look back to the 7/7 bombers in that original context.

In respect of the Bill itself, we are saying that bodies must take steps to recognise their duty to combat terrorism and therefore have due regard to the need to prevent people from being drawn into terrorism. Many organisations are absolutely doing that at the moment. We are trying to ensure consistency of approach and that organisations such as universities and other colleges reflect on that requirement and put in place appropriate policies and procedures to have regard to that.

Q35 Baroness Lister of Burtersett: I quite accept that codes of practice and so forth are already being developed. As you will be aware, concerns have been raised about academic freedom. In your view, how is such a power compatible with the right to academic freedom in universities?

James Brokenshire: I certainly do not see this as being at odds with universities' commitment to freedom of speech and the rationality underpinning the advancement of knowledge. That is something that we treasure in our universities, and it represents some of the most important safeguards against extremist views that might lead to terrorism. I absolutely support that. However, we know that some extremist preachers have sought to use higher education institutions as a platform for spreading their twisted messages that are linked to the underpinning of terrorism.

This is not about restricting freedom of speech. It is about universities taking account of the interests and well-being of their students, staff and wider communities, which so many of them already do. It is about ensuring that there is a statutory underpinning and that a base level of consideration is given, which so many of them already have entrenched within their policies and approaches. We are seeking to ensure that that is underpinned and that there is

recognition of that duty. As I say, so many institutions are already fulfilling and adhering to that.

Q36 Baroness Lister of Burtersett: The kind of unease that I have picked up is perhaps around where lines will be drawn. You are probably aware of an article by Professor Peter Scott in yesterday's *Guardian*, where he wrote about his fear that, among other things, key definitions are likely to be expandable and open-ended. He said: "Those who express their opposition to UK interventions in Iraq, Afghanistan and now Syria, possibly in ill-judged rhetorical language, could well be caught in the net." Can you give an assurance that it would not catch people in the net? Can you give some sense of where you see the lines being drawn?

James Brokenshire: I suppose, ultimately, it is for those institutions to set their frameworks and guidelines in relation to the use of facilities or the invitation of particular speakers. That is something that many institutions are confronting at the moment. This is not novel and new. What we are seeking to do is give guidance and use guidance to express the good practice that is already being adopted by a number of institutions, so that we are levelling things up to be able to provide that base level of protection. Those institutions can then reflect and use that as a means of ensuring that students who may be vulnerable and whom others may seek to take advantage of are not at risk.

It is the statutory duty—I know some people have focused on the fact that the Secretary of State may issue guidance. Coming back to the point on making sure that we do what we are able to to inform Parliament about that, I intend that the guidance on these requirements will be published as soon as possible. We are working to see that that is the case. That guidance will give some of that clarity and, equally, address some of the concerns that others have been raising around this particular provision. It is about that concept of safeguarding. It is about that basic duty that institutions have to ensure that their students and those attending their institutions are not being taken advantage of.

Q37 Baroness Lister of Burtersett: But it is not just about guidance, is it? There will also be a power to give directions. That, I think, is where people start getting rather nervous. Where do you envisage that power to give directions? What would happen if someone did not follow those directions?

James Brokenshire: The power to give directions covers a situation where a specified authority is not discharging its duties. In other words, notwithstanding the guidance, an institution says, "Nobody else has got these policies in place. We are not going to do it," and

almost turns their face completely against what is seen to be good practice and standards within the sector to fulfil their duties in that way.

We would draw on that only where we have tried all other options to see that a body is meeting that base statutory duty. It must be important to have a backstop mechanism if someone is palpably not fulfilling their basic requirements to give a direction. It would then be for the court to determine if that direction, if we were to enforce it, were proportionate and appropriate.

There are a number of layers of safeguard put in place to ensure that it is properly focused on getting institutions to have the right policies and procedures in place to meet the fundamental duty to “prevent people from being drawn into terrorism”. It is quite stark in what we are seeking to meet. I hope that responsible organisations would recognise the need to ensure that people in their institutions were not being drawn into terrorism.

Q38 Baroness Kennedy of the Shaws: Minister, forgive my cynicism, but I see this as one of those expressions of the state being authoritarian. The nature of the university is to develop the mind. It is about the whole business of freedom of speech. Freedom of exchange of ideas is at the heart of the university. By challenging orthodoxies people grow in ideas. Inevitably, some of those ideas will be bad ones, but the best way to deal with them is in debate and by challenging them in the process of learning.

No university has created a fundamentalist who has gone to Syria to take part in what is going on there. Yes, people may have been influenced, probably more by other students. That can happen in a café in Birmingham as much as in any university. You are introducing a chilling effect on the whole thing that universities are about, which you and I benefited from, as did most people who went to university—and 40% of our young now go to university.

You are doing this when we know that universities up and down the land are already considering these issues and thinking about how they might deal with them and how they might create the debate, without having a statutory duty to do so. That is what concerns people: the statutory duty with a power to give directions from the state. The state will be able to tell universities what they ought to do, and they will be punished in some way if they do not fulfil the requirement set by the state and Government.

That is where there is alarm. Dr Lister was rather understated in the concern that is felt in the academic community about this. I ask that the Government think again. This is precisely not what universities are about. I want you to explain to us why it needs to be a statutory duty.

James Brokenshire: When counter-terrorism legislation is contemplated the university sector will sometimes challenge to ensure that it is not inhibiting freedom of speech in that very diverse, enriching process of universities. I have already spoken of that and I absolutely celebrate it as one of the fantastic things that we have in our university sector. It enables good, lively, robust debate around a number of things that students may have on their minds, and is therefore an enriching approach. As I have indicated, that can of itself be one of the most powerful means of confronting and combating the pernicious extremist narrative that ISIL or others may seek to proffer.

I have sought to give assurances to the Committee. This is about the prevention of the drawing of people into terrorism—a pretty high bar, I would suggest, in terms of the extant issues—and, therefore, it is about our desire to ensure that places and spaces where extremism and radicalisation may take place are properly addressed in our approaches to counter-terrorism. That has been the ethos of our Prevent strategy for many years—looking at where an individual may be capable of being radicalised or twisted in some way that takes them down a path towards terrorism.

It must be right that organisations such as local authorities, in the manner in which they seek to make their buildings and facilities available, universities, and others have policies and approaches in place that properly recognise that duty. We are seeking to specify that duty in the Bill. It is right and proper to ensure that all organisations that fall within the Bill's ambit recognise their duty and responsibility to the individuals that will be passing through their institution and to society as a whole. That is the manner in which the provisions are framed, and I think it is right and proper that we should do that.

Q39 Baroness Kennedy of The Shaws: Why not encourage lively debate in universities and colleges around the different issues? There are many Muslims who can and do speak out against the fundamentalism that underpins this jihadist terrorism. Why not encourage that, rather than creating a statutory duty, bannings, keeping people out, closing the debate down, and therefore encouraging terrorism?

James Brokenshire: We are seeing British Muslims from across the country—students or others in their community—doing precisely that. I wholly endorse that in challenging and making clear that this is a twisted, pernicious narrative. Indeed, 100 imams signed a letter to set out why this confronts it.

Baroness Kennedy of The Shaws: Do you agree that it is the best way?

James Brokenshire: I think that there is a positive message to be given out to prevent people from going down the path towards terrorism. However, there is also a further preventive message and mechanism to ensure that we are doing all that we can on the internet to remove illegal material—internet companies have a responsibility. Public bodies and other bodies have duties and responsibilities to safeguard to ensure that their facilities are not exploited by those who seek to poison people’s minds. Therefore, they are two distinct and different issues, which is why we are trying to meet this particular aspect in this way.

The Chair: We have three more questions.

Q40 Baroness Lister of Burtersett: Let us say that I was holding a seminar and a student was trying to understand what motivates someone to go to fight for ISIS, and there was a big debate about it. As the academic, would I be under a duty to report that student if, in effect, that could be judged as encouraging people being drawn into terrorism? Those are the kinds of debates that I think Baroness Kennedy is talking about; they are happening and people are trying to understand. In the debate people could get a bit heated and perhaps—

Baroness Kennedy of The Shaws: Carried away.

Baroness Lister of Burtersett: Yes. They might say something such as, “Well, I can understand it. I would try it myself.” You could see how that could happen.

James Brokenshire: I am sure that there will continue to be lively debate and discussion on campus about a whole range of issues. I do not see that this statutory duty would inhibit that. There might be someone whom a lecturer has concerns about, not simply because of one particular lively debate, but because they are becoming withdrawn and reserved, and perhaps showing other personality traits. In the same way as the lecturer might want to seek to safeguard that individual because of other factors, they should not feel constrained about saying, “I am concerned about an individual,” to see that they are safeguarded. Again, I think that they are two different things: lively debate versus someone who there would naturally be concerns about because of their greater isolation, some of their actions and what they are saying.

I would encourage anyone across communities—this is part of what raising awareness of Prevent has been about—to see this as part of a broader safeguarding agenda. I do not see this provision seeking to inhibit lively debate. What I see it doing is ensuring that universities and other institutions have appropriate policies. Even with the policies that many universities and institutions will already have around this, I do not think that that is inhibiting lively

debate on campus at the moment. It is, rather, ensuring that appropriate mechanisms are in place for the use of facilities—as the NUS itself does at the moment—and that, in respect of guidance around student bodies, those pillars, basic frameworks and policies are in place to ensure that those bodies and institutions are seeking to confront terrorism.

Q41 Baroness Lister of Burtersett: Do you agree with the independent reviewer of terrorism legislation that, just as he provides independent oversight of the Pursue strand of the Government's counter-terrorism strategy, there should be arrangements in place for independent oversight of the Prevent strand?

James Brokenshire: It is a genuinely interesting question on oversight over different aspects of the Contest counter-terrorism strategy. The independent reviewer of terrorism legislation, as a QC, is rightly framed on what we call the "pursue" aspect—those pieces in statute that deal with seeking to prosecute or take preventive orders against an individual. It is the ability to look at specific cases and specific circumstances. I think that David Anderson and his predecessor, Lord Carlile, have done an excellent job, which is world-leading in terms of having someone independent of Government who is able to scrutinise, challenge and come forward with robust and clear independent representations and recommendations about our legislation.

Because of the nature of Prevent, which is looking into communities and other delivery mechanisms of aspects of Government, I am not necessarily sure that an independent reviewer would be the best method. Clearly, we have oversight through Select Committees. We have a range of different measures and mechanisms to look at Prevent, and that may well be a more effective way of dealing with this. We are looking at the privacy and civil liberties board in the context of this Bill, which is there to support David Anderson in his role as the independent reviewer. Obviously, he has also made some recommendations in his last counter-terrorism report about how he might see that role moving forward. We are continuing to reflect on that in the context of the specific point he made. I am not sure that the reviewer himself is in the right space to do this, given the nature of Prevent.

Q42 Baroness O'Loan: Minister, the power that we discussed in the previous question—the power, as Baroness Kennedy put it, to impact on academic freedom—is a profoundly significant one. Rather than developing another process by which you balance that power, would it not actually be sensible to simply use the independent reviewer of terrorism legislation? This is part of counter-terrorism strategy. The independent reviewer already has access to all the high-level sensitive intelligence, so you are simply using an existing structure

to provide better advice to Government. Would that not be a very common-sense balance which might go some way to alleviating some of the concerns being presented about academic freedom?

James Brokenshire: I can understand why you make the point in that way. David Anderson is an eminent QC. He is looking at matters of law—the matters before the court—and he does a fantastic job. My question is: when you are looking at the impact on deradicalisation, and when you are looking at the delivery of services in communities and at more societal-type issues, is that the right construct with which to give that advice and guidance? We have the Select Committees of this House, which rightly challenge me and other bits of Government. It is not simply the Home Office that deals with this. It will be BIS and the universities and the Department of Health and the NHS and what they are doing when people with mental health issues who may have been radicalised present themselves to front-line health professionals. All I am suggesting is that, yes, it fits within our counter-terrorism strategy, but it is a different type of approach—a different strand—that I think lends itself to perhaps different viewpoints. But we will be interested to hear what this Committee says about oversight in relation to Prevent.

Rather than automatically looking at it in the way of an existing structure, it has been designed for a specific purpose and does a very good job in that context. If you then stretch it over something else, would it continue to do so? Obviously, we will be consulting on the privacy and civil liberties board—something else that I want to ensure is properly consulted on so that it adds value to the work of David Anderson and therefore gives him further support. Again, I think there will be a further opportunity to reflect on the privacy and civil liberties board as we have that consultation around its structure as well.

Q43 Sarah Teather: Talking of the privacy and civil liberties board, when David Anderson came to speak to us last week, it was obvious that he was mystified by exactly what the purpose of the board would be and whether it was really there to provide advice—he already seeks advice from many people—and whether it would not be more useful for him to have somebody working underneath him as a junior to increase his capacity. In terms of how the board is structured, is it going to have the same access to all the sensitive information that the reviewer will have? If not, how is it supposed to work? Have you considered the other option that David Anderson suggested, of increasing his own capacity by providing him with a junior, as opposed to a separate advisory board? Tell us a bit more about what is in your mind.

James Brokenshire: The privacy and civil liberties board was announced at the time of DRIPA to enhance further and give further confidence to the public over the oversight of our counter-terrorism legislation. That was the framework to this. In the sense of supporting David Anderson through an expert panel, I think you are right to challenge whether this is about practical support to David Anderson or whether it is about an expert panel that is able to assist him, and indeed for him to potentially ask the panel to look at specific issues. We see it more in those terms.

If you take, for example, the work that David Anderson is doing around RIPA and the review of the surveillance issues, we have given additional resource to David Anderson to have a junior assisting him specifically with that work. It is certainly something that we are prepared to consider, depending on the workload that David Anderson has and his ability to meet the expectations that you, I and the public would have of him. But I think that is distinct from the role of the privacy and civil liberties board, which is intended to be a panel of experts who could be called upon by David Anderson to look into things and to support him in his work.

It is important that we have proper public consultation on this. It is something that David Anderson has asked for, and I agree with him in relation to that. We want this to be something that is enhancing and gives greater confidence to the public. We want that expert panel to support him and give him greater capacity and reach in a different way, rather than simply enabling him to have a further assistant or a further administrative resource to support him in his current work as currently framed.

Q44 Sarah Teather: And would the panel have the same access to sensitive information?

James Brokenshire: That is something we believe may be necessary. Therefore, there is a need to ensure that panel members are selected appropriately to support David in his work. It is precisely these themes that we want to see consulted on to ensure that this is seen as a positive further step to give assurance around counter-terrorism legislation and its use. We want to ensure that the public can have confidence and trust in the great care that I see in our agencies' use of their powers. We can continue to underline those steps to the public so that this is properly framed in that wider debate.

Q45 The Chair: Minister, we are coming to the end of the session. One final question follows on from independent review. I want to raise a matter that concerns us, and that is the question of oversight. There is an oversight, in that you appear not to be giving the power to the Independent Reviewer of Terrorism Legislation to have any responsibility to

look at these new powers. Is that an oversight due to the fact that you have rushed this matter through? If it is, will you bring forward a Government amendment?

James Brokenshire: The independent reviewer will already have oversight over specific aspects of the Bill in relation to TPIMs and the Terrorism Act, over which he has already purview. Issues relating to data retention fall within the ambit of the Interception of Communications Commissioner and the Information Commissioner. It would not have been right to say, “Well, the independent reviewer will review this piece of legislation,” because it touches on different themes and issues.

It was not an oversight; it was something we considered. A number of the provisions in the Bill in some measures will already fall within David Anderson’s purview. Other issues will fall under the purview of others. We approached the Bill in that frame of mind.

Q46 Baroness O’Loan: I would like to ask you one final, limited question, Minister. David Anderson has publicly expressed his need for assistance in his work in the form of a junior counsel, as referred to by Sarah Teather. Can the Government give more resources to the independent reviewer, so that he can do the work, notwithstanding the possible creation of—

James Brokenshire: We will always consider that, and there are ongoing discussions with the independent reviewer. As I say, we have asked him to conduct this review in relation to the Regulation of Investigatory Powers Act 2000, for which he has been given additional junior resource to support him. We want the independent reviewer to continue to command the authority and respect of Parliament and the public, as he has done. Therefore, we will continue to consider specific issues. If there are requests, we will consider them fairly.

Baroness O’Loan: But, specifically, you have provided junior counsel for the RIPA surveillance issues.

James Brokenshire: Because that was effectively an additional piece of work that we were asking him to do.

Baroness O’Loan: But he has no support in the work that he does generally. I say to you again that I think it is something that Government should do more than consider.

James Brokenshire: Okay. All I can fairly say is that we will reflect on any specific requests from David Anderson, in order for him to be able to do the job that you and I would want.

The Chair: I think I speak on behalf of the Committee. You praised David Anderson's work. We also do that and we feel that he needs more support, as he does. Baroness Kennedy, you wanted to ask something.

Q47 Baroness Kennedy of the Shaws: We raised the issue of universities with Mr Anderson. He felt that that was a specifically separate area that he was not able to deal with. I want to be clear from you, and I am sorry to return to it: is there a sanction? The universities are very concerned that they are being turned into an arm of the state that is supposed to be a policeman, and that if they see someone that they are at all suspicious of, they will have to report them. Will there be a sanction against an individual academic or university if there is a failure to report? What does the duty mean?

James Brokenshire: I think that a lot of this will get spelled out when we publish the guidance, which I am keen to do, to set out that this is about setting basic policies and procedures for different organisations and institutions.

Baroness Kennedy of The Shaws: Yes, but what is the sanction?

James Brokenshire: The sanction would be, as the Bill frames it, against the institution if they were not taking necessary and proportionate steps to comply with the duty. It would be a direction that the Secretary of State would then give if, as I say, that institution was clearly failing to comply and was ignoring the duty. I see this as a backstop type of arrangement and power that is in place for the Secretary of State to give that duty, having exhausted all other means to see that the institution was seeking to meet its obligation to effectively ensure that it was acting against terrorism.

Baroness Kennedy of The Shaws: Supposing the university or college say, "We see this as interfering with our academic freedom. We're not going to comply with this because you are turning us into a policeman," and they refuse to co-operate. What is the answer?

James Brokenshire: Ultimately, the Secretary of State would have to enforce that through the courts. Effectively, it would be a statutory obligation that the relevant body would have to meet and have to take. It would therefore be an order of the court, ultimately, that would require the institution to take that necessary step.

Baroness Kennedy of The Shaws: And failure to do so?

James Brokenshire: Under normal circumstances—I can certainly write to the Committee to set out complete chapter and verse on this.

Baroness Kennedy of The Shaws: And the sanction?

James Brokenshire: Effectively, I suppose, if the court ordered something, there would in essence be a contempt of court in those circumstances. So it would be that type of—

Baroness Kennedy of The Shaws: So they will jail the director of the college.

James Brokenshire: I know that you are rightly trying to push this to the nth degree. This is an absolute backstop measure that is intended—

Baroness Kennedy of The Shaws: You have to think it through.

James Brokenshire: Of course, and that is why this Committee does the job that it does and why Parliament does the job that it does: to ensure that we do not have any misuse of these sorts of power. This does not have the policy intent that the Government have on not seeking to constrain freedom of speech and making sure that this is about ensuring that appropriate policies and procedures on this level of guarding against terrorism are adhered to. So ultimately, the different checks would be: first, having that policy in place; secondly, the Secretary of State working with that institution and seeking to challenge—

Baroness Kennedy of The Shaws: You're still not answering my question.

James Brokenshire: I haven't got to point five yet. The Secretary of State would be working with that institution to look at the guidance and guidelines that would be published. They will have plenty of opportunity, I hope, to look at that, so that you can see that I am not in any way seeking to pull the wool over the Committee's eyes in that fashion, which I am not.

Baroness Kennedy of The Shaws: And if the institution says no?

James Brokenshire: Then the Secretary of State would have to issue a direction. If the institution then failed to comply with that direction, the Secretary of State would have to go to court in those circumstances to effectively seek a mechanism that would make the institution comply with that order.

Baroness Kennedy of The Shaws: And what is the sanction?

James Brokenshire: Ultimately, it will be a contempt of court sanction.

Q48 The Chair: Could I finally ask you, Minister, who will oversee part I on travel restriction?

James Brokenshire: At the moment, part I would in essence be within the purview of the Select Committees of this House. That would be the general approach taken in relation to part I.

The Chair: Thank you very much for your presence today.