

LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

# **Renewing the Prevention of Terrorism Act 2005**

**Submission to the Joint Committee on Human Rights**

**February 2006**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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## Summary

1. The control order regime undermines fundamental democratic values: the rule of law, the presumption of innocence and the right to a fair trial. As the Council of Europe Commissioner for Human Rights observed:

“Control orders raise not only general points of constitutional principle concerning the rule of law and the separation of powers, but also a number of specific concerns regarding their compatibility with the rights guaranteed by the [European Convention on Human Rights].”<sup>1</sup>

For these reasons Liberty and others, including the Joint Committee on Human Rights (the “**JCHR**”), vigorously opposed the Prevention of Terrorism Bill as it was being rushed through Parliament. For these reasons, we now urge Parliamentarians not to renew the Prevention of Terrorism Act 2005 (the “**Act**”).

2. When we opposed the Bill in 2005 it was not on the basis of naivety about or blindness to the threat from terrorism. Indeed, we openly acknowledged that “the United Kingdom faces a serious threat.”<sup>2</sup> The tragic events in London, of July last year, do not, therefore, alter or undermine our principled objections to the control order regime. These events should not be used to dismiss concerns about the continuation in force of legislation which undermines our democratic values.

3. The past should, in fact, warn us of the dangerous counter-productivity of repression and injustice, of the unintended consequences of over-broad and repressive measures such as the control order regime. In 2005, we expressed our fears about “the counterproductive effects (on community relations and intelligence gathering) of visible injustice” and argued that “any departure, or ‘derogation’, from ancient and modern human rights standards [is] undesirable”.<sup>3</sup> Terrorism poses a threat to the rule of law, to our democratic values and to our human rights. By responding to terrorism with legislation which undermines these very values we also undermine the ultimate antidote to the threat from terrorism and the values that separate us from the terrorist.

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<sup>1</sup> Mr Alvaro Gil-Robles in his Report on his visit to the United Kingdom in November 2004, para 16

<sup>2</sup> First Paragraph of Liberty’s Briefing for Second Reading in the House of Lords, February 2005, at Annex 1

<sup>3</sup> Ibid

The Government argued that the control order regime was needed to safeguard us from terrorism. In retrospect, it is far from clear that it has had this effect.

4. We do not counsel inaction on the part of the Government. Quite the opposite, we expect the Government to take effective and proportionate steps to protect us from terrorism. However, rather than doing away with the presumption of innocence and fair trial guarantees, we urge the Government to prosecute and sentence those who have committed terrorist offences and to lift the ban on the use of intercept evidence in open criminal proceedings to facilitate such prosecutions. The prosecution and sentencing of terrorists would better protect members of the public than control orders, which could be counter-productive and, in terms of the protection they offer, fall far short of criminal sanctions.

## **Introduction**

5. The control order regime, created by the Act, will expire on 11<sup>th</sup> March 2006 (12 months after the Act was passed) unless renewed by an order of Parliament.<sup>4</sup> On 2<sup>nd</sup> February 2006 the Home Secretary laid an order before Parliament seeking renewal of the regime for a further 12 months (the “**Renewal Order**”). The debate on the Renewal Order in the House of Commons is scheduled for 15<sup>th</sup> March 2006. No date has yet been set for debate of the Renewal Order in the House of Lords.

6. On 17<sup>th</sup> January 2006 the JCHR sought “written evidence focusing on the human rights implications of the operation of the control orders system since it came into effect” in order to “assist it in reporting to both Houses of Parliament on this matter in time for any orders which the Home Secretary may lay before Parliament”.<sup>5</sup> This document has been produced in response to that call for evidence.

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<sup>4</sup> Section 13 of the Act

<sup>5</sup> JCHR, 17 January 2006, Session 2005–06, Press Notice No. 20.

## Summary

7. Liberty believes that Parliament should not approve the Renewal Order. Our reasons are set out in more detail below but, in outline, include:

- (a) Liberty and others, including the JCHR, vigorously opposed the Prevention of Terrorism Bill while it was being rushed through Parliament. We did not do so because we doubted that there was a risk from international terrorism. We did so because we feared that repressive measures which undermine the rule of law, the presumption of innocence and the right to a fair trial are not the most effective way to counter this threat. Our reasons for opposing the Bill then continue to hold true today.
- (b) In practice, control orders have been used to place severe restrictions on the rights and freedoms of those subject to them and their families. Despite this, the Home Secretary has used his power to impose restrictions in a blanket and indiscriminate manner without a true analysis of what, if any, risk is actually posed by each individual and how that perceived risk should be met.
- (c) Criminal prosecutions are preferable to continued recourse to restrictions on liberty, imposed by Ministers. Criminal prosecution respects the rule of law, the presumption of innocence and the right to a fair trial. Furthermore, once convicted of a serious offence, the state can protect the public by imprisoning the offender, a more effective safeguard for the public than a control order. There is no shortage of available criminal offences: a wide range already exists and a number of additional and broadly defined offences are contained in the Terrorism Bill currently before Parliament.<sup>6</sup> We urge the Government to remove the ban on intercept evidence in open criminal proceedings to facilitate criminal prosecutions.
- (d) Only by refusing to approve the Renewal Order can Parliament require the Government to propose more proportionate legislation to replace the control order regime. Had the Government done what Parliament had expected and introduced a bill, Parliament could have laid and debated amendments to the Act designed to ensure its human rights compatibility. By refusing to introduce a bill, Parliament

has been denied this opportunity. If Parliament is to protect our human rights and democratic values, it now has only one choice: not to approve the Renewal Order.

### **Original concerns about control orders**

8. We campaigned vigorously against the Prevention of Terrorism Bill as it was rushed through Parliament between 23<sup>rd</sup> February and 10<sup>th</sup> March 2005 (attached at **Annex 1** is Liberty's Second Reading Briefing for the House of Lords). Our concerns were shared by many both within and outside Parliament, including the JCHR. These include, in outline:

- (a) Although the United Kingdom faces a serious threat from terrorism, the unending nature of the threat and the counterproductive effects (on community relations and intelligence gathering) of visible injustice, make any departure, or 'derogation', from ancient and modern human rights standards undesirable.
- (b) Control orders fail adequately to address the underlying human rights objections to detention without trial under, the now repealed, Part 4 of the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA"). This objection is to the complete abrogation of the right to a fair trial and the presumption of innocence, in particular:
  - Unending restrictions on liberty (up to and including detention) based on suspicion rather than proof.
  - Reliance on secret intelligence (which by definition may be all the less reliable for having been gained by torture around the world) and which, it seems, may have been obtained by torture.<sup>7</sup>
  - The inability of the subject to test the case against him in any meaningful way.
- (c) The unlimited range of restrictions that can be placed on a person under a control order implicate a range of human rights guaranteed by the European Convention on Human Rights ("ECHR") and the Human Rights Act 1998, including Article

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<sup>6</sup> For information on Liberty's views on the Terrorism Bill, see <http://www.liberty-human-rights.org.uk/resources/policy-papers/main.shtml>

<sup>7</sup> *A (No 2) v. Secretary of State for the Home Department*, [2005] UKHL 71

3 (inhuman or degrading treatment), Article 5 (liberty), Article 6 (fair trial), Article 8 (private and family life), Article 9 (freedom of religion), Article 10 (free expression) and Article 11 (free assembly).<sup>8</sup>

- (d) The unsatisfactory judicial supervision of control orders. The supervision included in the Act operates as political palliative rather than a real cure for a process built on secret intelligence and suspicions which never solidify into charges or proof. The JCHR concluded, for example, that “it seems ... unlikely that the use of a special advocate procedure, in which the individual does not get to see the material on the basis of which the order against him is made, would be compatible with the right to a fair trial in Article 6(1) ECHR.”<sup>9</sup> It also commented that “the unprecedented scope of the powers contained in the Bill, and the potentially drastic interference with Convention rights which they contemplate, warrant a greater degree of judicial control than access to an *ex post* supervisory jurisdiction.”<sup>10</sup>
- (e) The Act should not provide for the making of orders which would amount to executive detention in breach of Article 5 of the ECHR and would, therefore, require derogation.<sup>11</sup>

### **The practical impact of control orders**

9. The JCHR’s call for evidence specifically sought information “on the human rights implications of the operation of the control orders system since it came into effect”. We welcome the fact that the JCHR is focusing on the impact of control orders in practice. The restrictions that have in reality been imposed; the impact these have had on individual rights and freedoms; and the way control orders have been imposed and their effects monitored, are all vital to Parliament’s decision about whether or not it should approve the Renewal Order. Parliament must also consider how effective control orders have been as a means of protecting the public from people who the Home Secretary considers to pose a threat to our security.

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<sup>8</sup> Section 1 of the Act

<sup>9</sup> Ninth Report, para 14

<sup>10</sup> Tenth Report, para 12. See also the JCHR’s comments on the need for the involvement of the independent judiciary in the making of control orders in paras 16-17 of the Tenth Report.

<sup>11</sup> Cf JCHR, *Prevention of Terrorism Bill: Preliminary Report*, Ninth Report of Session 2004-05, HL Paper 61, HC 389, paras 5-9

10. The way control orders impact on the lives of those subject to them will, of course, depend on the restrictions they impose – the Act does not impose any limit on the obligations that can be imposed.<sup>12</sup> Although we do not know exactly what restrictions have been imposed by each control order, we understand that many control orders have imposed a standard range of restrictions. These are set out in Annex 2 to Lord Carlile’s Report and, as Lord Carlile states “[o]n any view those obligations are extremely restrictive.”<sup>13</sup>

11. These restrictions would give rise to a range of severe interference with human rights and freedoms guaranteed by the ECHR and the Human Rights Act 1998:<sup>14</sup>

(a) The right to freedom from inhuman or degrading treatment (Article 3): The question of whether a person’s treatment will breach Article 3 is dependant “on all the circumstances of the case, such as the duration of the treatment [and] its physical or mental effects”.<sup>15</sup> A number of factors applicable to control orders would support an assertion that control orders violate Article 3, including: (i) that those subjected to control orders were previously detained without charge for a number of years; (ii) the fact that, during this time and as a result of the internment, a number of those people had become seriously mentally ill;<sup>16</sup> (iii) the fact that those subject to control orders must feel powerless as they do not know the nature of the case against them, are unable to defend their position and do not know when they will cease to be subject to restrictions imposed by the executive; and (iv) the fact that some of those subject to control orders are aware that attempts are being made to return them to countries in which they may previously have faced persecution and in which there is a real risk that they would be subjected to torture or other extreme rights violations once returned.

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<sup>12</sup> Section 1(4)

<sup>13</sup> *First Report of the Independent Review Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 2<sup>nd</sup> February 2006, para 42

<sup>14</sup> For more information on the range of human rights implicated by the restrictions imposed by control orders, see paper delivered by Tom de la Mare (Blackstone Chambers) on 28<sup>th</sup> June 2005 “Control Orders and Restrictions on Liberty” (available at: <http://www.blackstonechambers.com/papers.asp>)

<sup>15</sup> *Selmouni v France* (2000) EHRR 403

<sup>16</sup> Cf European Committee for the Prevention of Torture report dated March 2004 and published on 9<sup>th</sup> June 2005. See also Robbins I, MacKeith J, Davison S, Kopelman M, Meux C, Ratnam S, Somekh D and Taylor R (2005) Psychiatric problems of detainees under the 2001 Anti-Terrorism Crime and Security Act, *Psychiatric Bulletin*, 29, 407-409 ([http://www.rcpsych.ac.uk/press/parliament/StatementAntiTerror\\_01.pdf](http://www.rcpsych.ac.uk/press/parliament/StatementAntiTerror_01.pdf))

- (b) The right to respect for private and family life (Article 8) would be severely restricted by the powers to access, search and monitor the home; the powers to interfere with correspondence; restrictions on who can visit the controlled person at home and who they can and cannot visit; and the impact of control orders on normal family life.
- (c) The right to religious freedom (Article 9): may be implicated by the restrictions on the controlled person's movement which could, for example, prevent or restrict attendance at a place of worship.
- (d) Freedom of expression (Article 10) would be severely restricted by the controls imposed on a person's ability to receive and impart information, including by restricting access to communications equipment and restricting who a person can meet and converse with and when.
- (e) Freedom of association (Article 11) would be severely restricted by, for example, the ban on unapproved pre-arranged meetings and the restrictions on who can visit the home.

We attach at **Annex 2** a redacted witness statement by Gareth Peirce, solicitor for a number of the men subject to control orders. This outlines the impact control orders have had in practice on those subject to them<sup>17</sup> and explains the context in which control orders have been used.

12. As the European Commissioner for Human Rights observed “[s]ubstituting ‘obligation’ for ‘penalty’ and ‘controlled person’ for ‘suspect’ only thinly disguises the fact that control orders are intended to substitute the ordinary criminal justice system with a parallel system run by the executive.”<sup>18</sup> Given the severe nature of the restrictions that have been imposed by control orders, and the purpose of those restrictions, the fair trial guarantees in Article 6 of the ECHR would apply. These include the right to a fair and public hearing by an independent and impartial tribunal; the entitlement to the presumption of innocence; and the underlying principle of equality of arms. The procedure for the imposition of control orders would not meet these requirements:

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<sup>17</sup> Paras 14-17

<sup>18</sup> Mr Alvaro Gil-Robles in his Report on his visit to the United Kingdom in November 2004, para 22

“non-derogating control orders are initially made by the executive rather than, as Article 6 ECHR would properly require, the judiciary ... it does not seem to me that the weak control offered by judicial review proceedings satisfies the requirement of the judicial determination of what could be considered, in effect, as criminal charges. Added to this, the proceedings fall some way short of guaranteeing the equality of arms, in so far as they include *in camera* hearings, the use of secret evidence and special advocates unable subsequently to discuss proceedings with the suspect of the order. The proceedings, indeed, are inherently one-sided, with the judge obliged to consider the reasonableness of suspicions based, at least in part, on secret evidence, the veracity or relevance of which he has no possibility of confirming in the light of the suspect’s response to them. Quite apart from the obvious flouting of the presumption of innocence, the review proceedings described can only be considered to be fair, independent, and impartial with some difficulty.”<sup>19</sup>

13. Control orders do not only impact on the men subject to them. Given the nature of the restrictions imposed, they also impact on their wives and children. Gareth Peirce has been instructed to act, in a collateral legal challenge to control orders, on behalf of the wives and children of two men subject to control orders (we understand that control orders were made against these two men last March and that they are still in place). We provide at **Annex 3** a redacted witness statement by Ms Peirce explaining how, in practice, control orders have affected her clients and other wives and families in similar positions.<sup>20</sup> The statement explains, for example that:

- (a) The restrictions imposed have meant that the families of men subject to control orders could not obtain the support, including from qualified professionals, needed to help them cope with the return home of men mentally damaged by indefinite detention for three and a half years under the Anti-Terrorism, Crime and Security Act 2001.
- (b) Control orders have resulted in families being imprisoned in their own homes and stigmatised and isolated from society. Friends of wives and children are no longer willing to visit the home and there are also restrictions on who the families are

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<sup>19</sup> Ibid, para 21

<sup>20</sup> Available on request

able to visit. Given the cultural and religious context this has meant that the women and children are socially isolated.

- (c) Families no longer have privacy and security in their own homes and are constantly disturbed by police disruption and telephone calls.
- (d) Wives and children feel constant and severe anxiety that their husbands or fathers will be taken into custody for breaching the control order. This is exacerbated by the uncertain nature of some of the restrictions imposed.
- (e) Family members are unwilling to communicate with people outside of the home as they fear that their conversations are intercepted.

Control orders not only engage the human rights of those subject to them but also the rights of their families. Ms Peirce states, for example, that the rights of families under Articles 3, 8, 10 and 11 of the ECHR have been violated by the imposition of control orders.

14. As Lord Carlile explained in his report:

“The key to the obligations is proportionality. In each case they must be proportionate to the risk to national security presented by the controlee. I would urge that in each case the individual risks are examined closely, and the minimum obligations consistent with public safety are imposed.”<sup>21</sup>

It seems unlikely that the Secretary of State has adequately assessed the proportionality of the restrictions imposed by control orders. It is also notable that Lord Carlile has not sought in his report to assess the impact that control orders have had on those they affect, directly and indirectly.<sup>22</sup>

15. We understand that control orders impose a standardised set of restrictions.<sup>23</sup> Lord Carlile explains, for example, that “the proforma of the Schedule of Obligations [at Annex 2 of his Report] [have been] imposed on most but not quite all of the controlees

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<sup>21</sup> Para 45

<sup>22</sup> Despite the fact that he has “tasked himself to replicate exactly the position of the Home Secretary” (para 35)

<sup>23</sup> Annex 2, para 14

so far”.<sup>24</sup> We doubt whether standardised restrictions, which interfere with fundamental rights in the ways set out above, could satisfy a proportionality assessment. In order for a control order to satisfy such an assessment, the Government would have to show that it had considered the threat posed by each individual and, in each individual case, that it had assessed what limitations on the person’s rights are really needed to address that threat. The Government must also undertake regular proportionality reviews of the restrictions imposed by control orders and, following the recent House of Lords judgment on the admissibility of torture evidence, must review the evidence used in that assessment to ensure that it was not obtained by torture.<sup>25</sup>

16. As noted above, control orders also impact on the families of the controlled men. Therefore, a proportionality assessment of the restrictions imposed by control orders would require a consideration of the specific family circumstances in each case.<sup>26</sup> Ms Peirce’s witness statement explains that this has not been done:

“Despite the fact that the Control Orders are very clearly having a significant impact upon the families as a whole, the Secretary of State has never consulted with the [wives and children] about the terms of the Control Orders or their effects, and has never sought any information about their impact.”<sup>27</sup>

17. The danger of giving the executive sweeping statutory powers to impose severe restrictions on individual liberties is that these powers will be applied in an arbitrary, unfair and disproportionate manner. The Government frequently answers such criticisms by stating that, as a public authority, it is bound by the Human Rights Act 1998 to act compatibly with Convention Rights, which includes the requirement to act in a proportionate manner.<sup>28</sup> The experience of control orders over the last year illustrates that such an answer is unsatisfactory and that Parliament should not allow it to be used to justify the creation of sweeping powers, exercisable by the executive with little substantive judicial supervision. Despite its legal obligation to respect human

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<sup>24</sup> *First Report of the Independent Review Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 2<sup>nd</sup> February 2006, para 42

<sup>25</sup> *A (No 2) v. Secretary of State for the Home Department*, [2005] UKHL 71

<sup>26</sup> *Anderson v Sweden* (1992) 14 EHRR 615

<sup>27</sup> Para 45

<sup>28</sup> Section 6

rights, it appears that the Government has not undertaken a satisfactory proportionality assessment when making control orders and when deciding to keep them in place.

18. Lord Carlile felt the need in his report to recommend “the establishment of a Home Office led procedure whereby officials and representatives of the control authorities meet regularly to monitor each case, with a view to advising on a continuing basis as to the necessity of the restrictions imposed on each controlee.”<sup>29</sup> Given the range of rights engaged by control orders, and the extent to which these rights are restricted, it is unacceptable that no such procedure is already in place. The only way Parliament can ensure that the Government does not impose disproportionate restrictions on human rights pursuant to control orders is to refuse to approve the Renewal Order.

19. A consideration of the practical impact of control orders also illustrates their limited capacity to protect the public from people who the Home Secretary considers to pose a threat to our security. This has been admitted by the UK Government in its recent intervention in the case of *Ramzy v the Netherlands* before the European Court of Human Rights in which it described the control order system as providing “at best partial protection for the public.”<sup>30</sup> Cases of controlees attending public meetings and demonstrations have, for example, been reported.<sup>31</sup> Mahmoud Abu Rideh, one of those subjected to a control order, has been cited as stating “The government is playing games. If I am a risk to security, why are they letting me out to be with people?”<sup>32</sup> Control orders are not a satisfactory way of protecting the public against those suspected of serious terrorist crimes. It would be more effective for world and national security if such people were prosecuted and, if found guilty, sentenced accordingly.

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<sup>29</sup> Para 46

<sup>30</sup> Application No. 25424/05, Observations of the Governments of Lithuania, Portugal, Slovakia and the United Kingdom, 21<sup>st</sup> November 2005, para 16

<sup>31</sup> Cf Guardian, “Control order flaws exposed”, Thursday March 24, 2005

<sup>32</sup> Ibid

## Criminal prosecution

20. Individuals suspected of committing terrorism offences should be prosecuted wherever possible.<sup>33</sup> This would allow more effective measures to be taken to protect the public while also respecting the rule of law, the presumption of innocence and fair trial guarantees.

21. A wide range of criminal offences already exist which would enable those directly and indirectly involved in acts of terrorism to be prosecuted. The Terrorism Bill currently before Parliament would create a number of additional, widely defined terrorism-related offences.<sup>34</sup> As Lord Carlile observed:

“Proposals in the *Terrorism Bill* ... may well have the effect of reducing the number of control orders as a result of prosecutions for new offences provided for in the Bill. If that is the effect, it will be beneficial in that due criminal process will apply to more terrorism suspects.”<sup>35</sup>

If the Bill is enacted there should be very few cases in which it would not be possible to prosecute someone involved, directly or indirectly, in terrorism. Accordingly, there should be no “need” for the Government to avoid the rigours of the criminal justice system by resorting to the use of control orders.

22. In his recent report Lord Carlile reiterates his view that “there might possibly be a few cases in which it would be appropriate and useful to deploy in a criminal prosecution, material derived from public system telephone interceptions and convertible into criminal evidence”.<sup>36</sup> Liberty has never supported an absolute bar on the admissibility of intercept evidence in criminal trials. The imperative behind the historic bar was clearly the protection of Security Services’ sources and methods rather than any obvious concerns for the fairness of the trial process. In legal terms, this bar is an anomaly. The UK is the only country in the world, with the exception of Ireland, to maintain a ban on the use of such evidence. While the Regulation of Investigatory Powers Act 2000 forbids the use of domestic intercepts in open UK court proceedings,

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<sup>33</sup> A belief shared by Lord Carlile and the JCHR and, apparently, also Government

<sup>34</sup> For our comments on these offences see: <http://www.liberty-human-rights.org.uk/resources/policy-papers/main.shtml>

<sup>35</sup> Para 76

foreign intercepts can be used if obtained in accordance with foreign laws. Bugged (as opposed to intercepted) communications or the products of surveillance or eavesdropping can be admissible even if they were not authorised and interfere with privacy rights. There is no fundamental civil liberties or human rights objection to the use of intercept material, properly authorized by judicial warrant, in criminal proceedings.

23. Removal of the bar on intercept evidence would overcome one of the primary obstacles to bringing proper criminal proceedings against terrorist suspects. The continued failure of the Government to bring forward proposals to remove the bar is, to say the least, surprising given the threat we face from international terrorism and the fact that criminal prosecution would be the best way of tackling the threat, from the perspective of both fairness and effectiveness.

### **The management of renewal**

24. When he presented Lord Carlile's report and the Renewal Order before Parliament on 2<sup>nd</sup> February, the Home Secretary stated:

“Mr Speaker, the last stage of the Prevention of Terrorism Act was a significant Parliamentary occasion. All members of this House will remember it well. During the debate I made a commitment to timetable further counter-terrorism legislation for the spring of this year in order that Lord Carlile's report would be available to inform the House in considering any amendments to the control order legislation.”<sup>37</sup>

The reasons Parliament insisted that the Home Secretary give this commitment in March 2005 are clear – control orders are a very serious matter and Parliament was not given sufficient time in 2005 properly to scrutinise the legislation creating the control order regime.<sup>38</sup>

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<sup>36</sup> Para 37

<sup>37</sup> HC Deb, 2 Feb 2006 : Column 478

<sup>38</sup> Lord Carlile explains at para 2 of his report that the Act “came into force on Royal Assent, on 11<sup>th</sup> March 2005, following very intensive Parliamentary stages concentrated between 23<sup>rd</sup> February and 10<sup>th</sup> March”.

25. Unfortunately, Parliament has been denied the opportunity to consider ways of amending the Act to ensure its compatibility with fundamental democratic values and human rights. The Home Secretary explained to Parliament: “On receiving Lord Carlile’s report, Mr Speaker, I was left to consider the merits of bringing forward a Bill with little content to enable the Hon Members to lay amendments to the Prevention of Terrorism Act”.<sup>39</sup> For a number of reasons, enumerated in his speech on 2<sup>nd</sup> February, he decided not to introduce a Bill. This decision has thereby left Parliament with only two choices: (i) renew the Act or (ii) refuse to renew the Act.<sup>40</sup>

26. A further option would have been open to Parliament had the Home Secretary laid the Renewal Order a day earlier or made clear that he did not wish to stand by the commitment to introduce primary legislation this spring. Amendments might then have been laid to the Terrorism Bill designed to improve the control order regime in the Act. Unfortunately,<sup>41</sup> the final opportunity to lay amendments to the Terrorism Bill was 1<sup>st</sup> February (the Third Reading of the Terrorism Bill), the day before the Home Secretary’s announcement and the introduction of the Renewal Order.

27. If Parliament is to perform its vital constitutional role and to protect our fundamental freedoms and democratic values, like the right to a fair trial and the presumption of innocence, the Government has now given it only one option. Parliament should not approve the Renewal Order. Only by refusing to approve the Renewal Order can Parliament require the Government to introduce more proportionate counter-terror legislation.

**Jago Russell,**  
**Policy Officer, Liberty**

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<sup>39</sup> HC Deb, 2 Feb 2006 : Column 479

<sup>40</sup> It was exactly in order to avoid this situation that the Opposition had sought a sunset clause which would have required the Home Secretary to introduce new primary legislation after a year.

<sup>41</sup> Though, we suspect, not coincidentally