

Comments on the Renewal of Part VII of the Terrorism Act 2000, letter to Lord Dubs,
February 2002

Lord Dubs
The House of Lords
Westminster
London SW1A 0AA
13 February, 2002

Re: Renewal of Part VII of the Terrorism Act 2000

I understand that an order has been laid in Parliament to renew the temporary Northern Ireland powers contained in Part VII of the Terrorism Act 2000. It is being considered by the House of Lords on Thursday 14 February. In laying the order the Government has taken into account the report of Lord Alex Carlile into the operation of those provisions during 2001. I am writing to you now to make known to you the views of the Northern Ireland Human Rights Commission on the renewal order.

The Human Rights Commission believes that many of the provisions in question should *not* be renewed. We have come to this conclusion notwithstanding the continuing threat from terrorists in Northern Ireland, although we are conscious that we may not be as well informed as we should be on this matter since the limitations on our powers precludes us from gaining access, even on a confidential basis, to many of the documents and opinions which are made available to Lord Carlile. Once again I feel that the Commission's effectiveness in advising you and others on important issues is jeopardised by the reluctance of some government agencies to co-operate fully with our inquiries.

The main points on which we differ from Lord Carlile are as follows:

- We are at present unconvinced that the danger of intimidation of those called for jury service justifies the continuing scheduling of offences. At the time of the last review of the Diplock Courts in May 2000 the government refused to supply the Commission with evidence of intimidation in specified cases and we have since seen no evidence to suggest that the risks of intimidation – or the difficulties which would be encountered in protecting jurors – are any higher in February 2002 than they were 21 months ago. There is nothing in Lord Carlile's report to suggest that he has seen evidence of the potential for intimidation of jurors. This Commission therefore repeats its advice given to the Government in February 2000, namely that the provisions dealing with scheduled offences should be repealed.
- If the scheduling provisions were repealed, the restrictions on bail imposed by section 67 of the Act would of course become otiose. If scheduling remains, the bail issue needs to be addressed. Lord Carlile's conclusion that the restrictions are justified is not supported by the fact, which he acknowledges, that three-quarters of those charged with scheduled offences are granted bail before trial (Table C), which is a proportion very similar to that in relation to non-scheduled offences. The international standards are clear that the general rule should be that persons awaiting trial are not to be held in custody; the exceptional circumstances justifying remand in custody are the same in relation to all categories of offence. We therefore urge that the *de facto* position – that similar treatment is accorded in respect of scheduled and non-scheduled offences – should be recognised in law by the repeal of the relevant provisions.
- We are also of the view that the police power of arrest under section 82 of the Act is

unnecessary. According to Lord Carlile's report it was exercised only once between 19 February 2001 and 30 September 2001. Unfortunately Lord Carlile simply states that this power "works reasonably well", but he does not address the prior question of whether the power is necessary. In our opinion the police's powers of arrest under the Police and Criminal Evidence (NI) Order 1989 are sufficient to enable the threat of terrorist activity to be dealt with.

- As regards the powers to stop and question (section 89 of the Act) we do not understand Lord Carlile's statement in para 10.2 that it is impracticable to maintain statistics on persons failing to stop or answer questions. We would have thought it was easier to maintain these statistics than those relating to persons who do stop and answer questions, not least since failure to stop and answer questions will usually constitute an offence. We should add that we are concerned by the report in the *Guardian* last week that a leaked memorandum from an Assistant Commissioner in the Metropolitan Police encourages officers to use their stop and search powers against pedestrians "to support future applications for its continuance". We certainly hope that no such thinking pervades the Police Service of Northern Ireland.
- At para 13.2 Lord Carlile expresses no surprise that approximately £2 million is still being spent per year on compensating persons from actions taken under the Terrorism Act and the Northern Ireland (Emergency Provisions) Act. (Curiously, while Lord Carlile's text refers to a 16-month period and an annualised figure of £2 million, the Table shows a four-month period from which an annualised figure of nearly £3 million can be projected. Even allowing for the time lapse between the commission of those actions and the payment of compensation, the Commission is alarmed to hear that such large sums are still having to be paid. We will seek to obtain from the Compensation Agency further details about these payments.
- Lord Carlile concludes that section 108 of the Act is proportional and necessary. He does not, however, say whether it has been used. The Commission is of the view that if a power is not used that provides some evidence that it is not necessary. We would hope that in future review Lord Carlile will supply information about how frequently *all* of the powers conferred by Part VII of the Act have been exercised since the previous review.

Finally, in relation to section 76 of the Act (admissions in trials on indictment) we applaud Lord Carlile's recommendation that the Government should give early consideration to its repeal and that PACE standards should be applied to confession evidence in all cases. However, we note that in response to this recommendation the Secretary of State is shortly to launch a consultation exercise. This is a provision which the Human Rights Commission recommended should be repealed in February 2000. We believe that there is no justification for delaying the repeal while a further consultation is conducted.

Thank you for considering these points. We hope they are of some interest to you.

Brice Dickson
Chief Commissioner