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Dear Richard.

18 OCT 2018

Counter-Terrorism and Border Security Bill

I am very grateful to you and all the other Peers who spoke at Second Reading on 9 October for the considered and conciliatory way in which you, and they, addressed the sensitive issues dealt with in this Bill. All Peers rightly recognised that need to keep this country safe from the current threats we face from terrorism and hostile state activity. The Government firmly believes that the measures in the Bill are a necessary and proportionate response to those threats, but I fully accept that they are properly a matter for debate and scrutiny by the House as the Bill progresses. In winding up at Second Reading I was able to respond to many of the points raised, but there are a number of others where I thought it would be helpful to set out the Government's position ahead of Committee stage.

Designated area offence - "reasonable excuse" defence: Burden of proof

New section 58B of the Terrorism Act 2000, as inserted by clause 4 of the Bill, contains the new designated area offence, and section 58B(2) contains a reasonable excuse defence for that offence. You asked why the Bill does not include provision for the burden of proof to rest with the prosecution to disprove this defence once it is raised. [*Official Report*, col. 20-21]. Paragraph 38 of Schedule 4 to the Bill amends section 118(5) of the 2000 Act to include reference to the new offence; the effect is that section 118 applies. It provides that:

> "*(1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.*
>
> *(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution provides beyond reasonable doubt that it is not.*"

In the judgment of the House of Lords in *R v G* and *R v J*[1] in relation to section 57 of the 2000 Act, which also contains a reasonable excuse defence, the Lords found at paragraph 68 that:

> "By virtue of section 118(2), the jury are to assume that this defence under section 57(2) is satisfied, i.e. made out, unless the prosecution proves beyond reasonable doubt that the defence is not satisfied."

The operation of section 118 in relation to the new designated area offence will act as an important safeguard, placing the onus on the prosecution to disprove the defence.

Prosecution of returnees from Syria and Iraq

You asked if the Government could provide a figure of how many individuals who travelled to Syria and Iraq could have been prosecuted had the designated area offence been on the statute book at the time of the conflict beginning. John Woodcock MP raised the same questions at Commons Report stage, and I attach a letter (dated 3 October) from the Security Minister which responds to these.

Debate in relation to Schedule 3 and Northern Ireland

Lord Bew discussed the debate which has taken place in relation to Schedule 3 (Border security) with respect to Northern Ireland. Tony Lloyd MP asked for reassurance on how the powers contained within that Schedule would operate in relation to the Northern Irish border, to which the Security Minister responded on 4 October. I attach the letter which addresses the issues raised in both debates as well as recent media coverage of the power.

Prevent Duty Guidance

Baroness Howe mentioned a number of guidance documents and strategies which she suggested local authorities would be informed by when referring an individual to a Channel panel, including the Prevent Duty Guidance. However, this guidance is not the relevant document for the purposes of clause 19 (persons vulnerable to being drawn into terrorism). Clause 19 instead relates to the duty on local authorities to maintain a panel to assess and provide support to people who are vulnerable to being drawn into terrorism, a duty supported by the 'Channel Duty Guidance'. The Channel Duty Guidance is clear that "preventing terrorism will mean challenging extremist (and non-violent) ideas that are also part of a terrorist ideology". The Guidance goes on to say that "association with organisations that are not proscribed and which espouse extremist ideology as defined in the Prevent Strategy is not, on its own, reason enough to justify a referral to the Channel process".

However, the Prevent Duty Guidance, which Baroness Howe discussed, is clear that there exist forms of non-violent extremism which can create an atmosphere conducive to terrorism and which can popularise views which terrorists then exploit. Preventing people from being drawn into terrorism requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. The High Court, in the case of Salman Butt v Secretary of State for the Home Department, which Baroness Howe also mentioned, was clear that the Government was fully within its powers to include this form of non-violent extremism within the scope of the Prevent Duty Guidance.

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[1] [2009] UKHL 13

Local Authority resourcing

Baroness Barran expressed concern that the provision in clause 19 to allow a local authority to directly refer an individual to a Channel panel would present an additional resourcing challenge to local authorities. I would like to reassure both you and Baroness Barran that the additional resource required to support this change, in the form of funding for Local Authority Channel Coordinators and supervisor posts, is provided in full by the Home Office in those areas participating in Project Dovetail.

Judge-led inquiry into rendition

Lord Tyrie called for a judge-led inquiry into the UK's involvement in rendition. The Minister of State for Europe and the America, Sir Alan Duncan MP, stated on 12 September in response to parliamentary questions from Alex Sobel MP that "The Government is giving the necessary careful consideration to the need for an independent judge-led inquiry and will update the House after it returns in October." That remains the case. I hope you and Lord Tyrie would agree that it is not in the interests of anyone for a decision on this important question to be rushed.

I am copying this letter to all Peers who spoke at Second Reading and to Lord Hope of Craighead, Lord Judge, Lord Carlile and Lord Evans of Weardale; I am also placing a copy in the library of the House.

Baroness Williams of Trafford