

THE REAL STATE OF EMERGENCY

IS THE UK ABOUT TO BE TURNED INTO A POLICE STATE?

A guide to the proposed changes in the Terrorism Act.

Written by activist and barrister, Ralph Smyth, 22.Nov.01

More info: [Coalition Against the Terrorism Act\(s\)](#).

About this guide

This guide is intended to bridge the gap between Liberty's excellent though technical briefing and the 'on-message' press briefing from the Home Office, while being readable and strong on the context in which the new Bill will be used.

A simplified version of the wide-ranging definition provided in the Terrorism Act 2000 is appended at the end as it is key to understanding the breadth of some of this Bill.

Clause numbers will change as the Bill goes through Parliament and updates of this guide will be made available at <http://go.to/ta2000> which includes conditions of use and for copying. This is the first draft, dated 22/11/01.

Currently the new Bill is to be found at (URI may change as Bill progresses): www.publications.parliament.uk/

The Home Office has an information page including a press release and notes for guidance at: www.homeoffice.gov.uk/

Introduction

Moments after posing by monuments to those who 'died for freedom' on Remembrance Sunday, certain hypocritical British politicians went back to planning the biggest destruction of freedom since those soldiers died.

It is no understatement that the Anti-Terrorism, Crime & Security Bill (ATCSB) puts in place powers characteristic of a police state.

So why are these laws worthy of such criticism and not a proportionate response to the atrocities in New York? Quite simply some of the proposed powers are so broad that they give free reign to the executive without meaningful review by the courts. Some of the worst are:

- ▶ Indefinite internment for certain foreigners and excluding the scrutiny of the courts;
- ▶ Allowing the Government to transpose provisions euro-crimes and orders into UK law by decree;
- ▶ Duty to inform the police of any radical activities or face prison;
- ▶ Forcing communications providers to back up users' data so it can be viewed by the state if they fall into suspicion at a later date;
- ▶ Allowing police to use force to photograph any detainee and to keep the photos indefinitely and pass them onto foreign police;
- ▶ Clamping down on discussion about religion;
- ▶ Creating a UK wide paramilitary police force, and
- ▶ Allowing the Home Secretary to extend, if he thinks fit, any of these powers by decree.

Unsurprisingly there are a couple of sensible provisions in the legislation which few could disagree with.

In particular there are provisions to tighten up the law on foreign corruption, extend the law on hoaxes to include those involving Nuclear Chemical or Biological (NCB) weapons and tighten up the law on radioactive weapons.

However, a lingering suspicion remains that the Government wants to be seen to be "doing something" to respond to the terrorist attacks of September 11; passing laws at home is cheaper than changing policy abroad which may have dangerous consequences important trading interests.

With the Prime Minister's spokesman boasting that we already have "some of the toughest laws anywhere in the world" and Home Secretary Blunkett confirming that there is still no intelligence of a specific threat to the UK, there are growing questions whether this bill should be made law in such a rushed fashion let alone at all.

PART 1 - Terrorist Property

Clause 1 replaces sections 24 - 31 of the Terrorism Act are repealed by this part despite the fact they have not been really used yet and makes it easier for terrorist cash to be forfeited.

Clause 3 gives effect to Schedule 2 which makes the Terrorism Act 2000 even more draconian. It places incredible burdens are placed on financial bodies to report any suspicion transactions. The duty is absurdly wide for two reasons. Firstly the trigger of "reasonable grounds" is very low and effectively creates offence of strict liability. Secondly the definition of terrorism is incredibly indeterminate and it will be a long time before it is clarified much in the courts.

[This section will be expanded upon in the next draft of this guide.]

PART 2 - Freezing Orders

Part 2 allows the Treasury to make freezing orders for up to two years allowing accounts to be frozen if belonging to someone outside the UK and if (part of) the UK economy is threatened or alternatively someone's property or life is threatened. This is a much wider trigger than that in the Emergency Laws Act 1964 which it replaces.

The orders would have to be confirmed by Parliamentary vote

PART 3 - Disclosure of Information

This part allows the police to seek disclosure of a huge range of public information held by most branches of government. All they need do is show the information may be useful in an investigation; it is not necessary that a crime has been committed. There are no checks or audits proposed let alone any judicial supervision.

Worse still the information could be disclosed to law enforcement agencies anywhere in the world for their own investigations into matters which would amount to crimes if committed in any part of the UK - the 'dual criminality' rule.

However since the UK already has "some of the toughest laws anywhere in the world" this would include conduct which would be equivalent to offences such as not disclosing information to the police.

PART 4 - Immigration & Asylum Indefinite Internment

Clause 21 permits the Home Secretary to certify any foreigner as an "international terrorist" if he or she decides they may be a risk to national security and that they are either involved in non-domestic 'terrorism' or merely 'have links with' (neighbour, first cousin's daughter-in-law??) someone in a group which the Home Secretary suspects may be involved in non-domestic 'terrorism'. With the help of a repressive regime back home, almost all asylum seekers are at risk under such a stunningly broad power.

Clause 23 allows international terrorists to be detained. Clause 24 provides for international terrorists to apply to the Special Immigration Appeals Commission (SIAC) for bail.

Clause 26 requires SIAC to undertake reviews of each case every six months or where there has been a change of circumstance. It also allows a refugee to make an appeal to SIAC after the initial determination of the Home Secretary. The standard required for a successful review is that SIAC does not agree with the Home Secretary's suspicions.

Clause 28 sets out the duration of this proposal. These provisions supposed to last for 15 months and can then be extended (like you really can believe they won't be after the 'temporary' PTA) on a yearly basis thereafter. Clause 29 stops any court examining the legality of any detention, including judicial review. This effectively removes the protection of the rule of law from vulnerable refugees.

Clause 30 refers to the derogation to Article 5(1) of the European Convention on Human Rights - the derogation is contained in a statutory instrument - and provides that matters relating to the derogation can not be examined in any court or tribunal other than SIAC.

The fact that the UK is the only country in the developed world intending to derogate from basic human rights norms shows how little the culture of human rights has entrenched itself in our public life.

Exclusions from the refugee convention

Clause 33 allows the Home Secretary to certify that the protection of the Refugee Convention does not apply to someone making an appeal to SIAC. The Convention does allow in certain circumstances the denial of protection, however whether these apply should be decided by a tribunal not the Home Secretary.

Treating refugees like criminals

Clause 35 allows the fingerprints of any refugees, even those who have proved their case and have been allowed to stay in the country, to be kept for 10 years. This sends out a clear message: you may be in our country, you may be no longer facing imprisonment in a 'reception centre' but we are still going to treat you as a criminal suspect.

PART 5 - Race & Religion

This proposal would extend all existing race hate crimes, from possessing inflammatory material to racially aggravated violence, to cover religious hatred as well.

It increases the maximum penalty for public order offences of hatred from two to seven years. The fundamental problem is that religion involves opinion whereas race does not.

Even if you do not intend religious hatred to be stirred up by what you say, it is enough under the proposals that it is likely such hatred will result.

So, for example, if you point out that a certain religion has a practice or belief which is abominable to modern society you could be criminalized.

The alternative is to extend libel laws to include 'group libels' as at present if someone damages your representation by reference to a social or political group you are in, there is no remedy. Setting up a Human Rights Commission, which UN human rights bodies have just said the UK urgently needs, and extending discrimination law would also help.

PART 6 - Weapons of Mass Destruction

The law relating to NCB weapons is tightened up in Part 6, notably it brings the law on nuclear and biological weapons into line with that for chemical weapons.

There is of course a state opt-out allowing the secretary of state to license whatever use or development of these weapons that they wish.

This is without reference to responsibilities to international law, particularly humanitarian law and recent treaties. Other than this, Part 6 can be supported by almost all.

PART 7 - Security of Pathogens & Toxins

Part 7 clamps down on security at laboratories where certain dangerous substances, listed in Schedule 5, are held. Forces their owners to notify police of what they hold, pay for reasonable security costs and allow police to vet their employees.

These powers are so extensive that they amount to a licensing scheme for these laboratories. A Pathogens Access Appeal Commission would be set up rather than allowing the courts to rule on disputes.

PART 8 - Security of Nuclear Industry

This part allows the special Atomic Energy Authority Constabulary (UKAEAEC) police to operate anywhere it is necessary to safeguard nuclear materials being transported or within 5km of any nuclear site in the UK. This would allow them to police protests against nuclear fuel / waste transports especially if they started becoming as large as those in Germany.

The security of civil nuclear sites is tightened up by clause 77 which allows the Home Secretary to regulate them. Clause 79 is very draconian and makes it an offence to disclose any information or thing which might prejudice the security of any nuclear site or material. This does not include most nuclear waste as it is not "fissile". Clause 80 specifically prohibits disclosures of uranium enrichment technology.

PART 9 - Aviation Security

While the purported aim of this part is to ensure the security of airports, it is almost certain that the offences in it will be used mainly against protesters.

The existing offences relating to unauthorised presence at an airport or on an aircraft would become arrestable offences and the maximum fine for those convicted of them would increase. A power to remove such intruders is proposed, which could be exercised by a wide range of people at airports.

With airports becoming politicised these provisions will be their equivalent of the 'Criminal Justice Bill' of the mid-90s. The Government is clearly scared of the prospect of activists stopping flights containing forced deportees, for example by refusing to sit down for take-off, not to mention the prospect of environmentalists and locals trying to stop the building of Terminal 5 at Heathrow.

There are also powers for the Home Secretary to make regulations concerning those providing security at airport and for aircraft to be detained if those operating them have not complied with security rules or if there is a threat of a violent act onboard.

PART 10 - Police Powers

Fingerprinting and other examination - full body profiling

Clause 89 would insert a new section 54A into the Police And Criminal Evidence Act 1984 (PACE) increasing powers to take fingerprints, search and examine (including looking for marks: "features and injuries") suspects.

Clause 88 has the same effect on the regime for terrorist suspects under Schedule 8 of the Terrorism Act.

Existing powers allow the police to fingerprint, etc. you in certain circumstances to ascertain your identity if you have been arrested. These clauses would allow police to do so to see if you were not a particular suspect and generally make it easier for them to justify use of these powers.

Photographing by force

Clause 91 would insert a new clause 64A into PACE allowing police to use force, including that necessary to remove any "item or substance" (so would include fancy dress masks and face paints), on any part of the head to take photographs of anyone detained at a police station.

There is already an existing power to do take photographs of terrorist suspects under the Terrorism Act, which begs the question why this provision is in this Bill.

The photographs could be kept with few controls and they could be disclosed to law enforcement agencies world wide if they were needed for a criminal investigation. There are simply no safeguards providing for the destruction of photos if the detainee is not convicted or regarding the handing over of photos to foreign agencies. The effect of these provisions will be to encourage the police to arrest many people on flimsy grounds so that they can photograph and examine them to make keeping tabs on them easier.

Removal of disguises - data fodder for CCTV

Clause 93 would insert a new section 60AA into the Criminal Justice and Public Order Act 1994. It would allow police to remove any facial coverings or disguises in a specified area for 24 hours following the order of a senior police officer. There is no provision for sensitivity regarding religious articles.

The senior officer could make an order if they suspected crimes might be committed in the area over the next 24 hours! Is New Labour so convinced by its propaganda on criminal justice that it thinks most areas in the UK are crime free?

Or does this mean that we will be forced to remove anything covering our faces at times so the automatic face-reading CCTV at every corner can scan our mass of faces for those whose risk profiles suggest a need for 'preventative containment'?

Paramilitary police for all

It is proposed in clauses 97-100 that the British Transport Police (BTP) and the armed Ministry of Defence (MoD) police will be able to assist other police forces if they are asked to.

In other words the MoD police will be the first national paramilitary police force who could come in very useful at times of unrest. Schedule 7 makes it easier for the BTP and authorised civilian employees of the Strategic Rail Authority to carry firearms.

PART 11 - Retention of Communications Data

This part concerns the retention of data such as which numbers you have phoned or have been called by, who you exchange e-mail with and which websites you visit.

Few people realise that it also can include the information you type in on web pages, for example when you use a search engine. All this violates the basic principle of data protection that personal data should not be held for longer than is necessary.

The Home Secretary will be explicitly authorised to publish codes of practice for communications providers, who will make it known to them "in such manner as he considers appropriate", i.e. the public don't get to find out what it will say.

The code of practice will not be legally binding so there would be a reserve power for the Home Secretary to make binding directions. However this reserve power will run out after two years if it is not used, unless an order is made extending it.

The Government's discretion regarding compensating companies for the cost of storing all this data is as extraordinarily wide: "as much as [the Home Secretary] thinks appropriate".

The Regulation of Investigatory Powers Act already allows for wide ranging powers of surveillance. This part merely forces communications providers to back-up communications so that if someone comes to the state's attention it can not only monitor that individual's communications now and in the future but also in the past.

PART 12 - Bribery & Corruption

This part clarifies the common law so that the offence of bribery can be committed in relation to non-UK officials and gives our courts power to deal with bribery committed abroad by UK nationals and companies.

PART 13 - Miscellaneous

Euro-law becomes our law

It is quite incredible there has been little murmur of dissent from the Tories against allowing euro-laws to replace parts of our criminal law after 90 minutes of discussion in parliamentary committee.

Would they oppose a provision to replace Sterling with the Euro if it was in this Bill and touted as an anti-terrorist measure?

At present only European Community measures such as banana sizes can be implemented in our law by statutory instruments. This proposal would allow third pillar measures (Justice and Home Affairs, including the Schengen Information System) from the European Union, of which the EC is the economic part, to become UK law without a proper debate in Parliament.

These could include new crimes, new reductions in rights against the police, or even the harmonisation of our criminal law in a new euro-code. In particular it would allow the EU's new extradition and anti-terrorism proposals to be implemented quickly and simply.

Noxious substances nasty sentences

Clause 111 creates a very wide crime of using a noxious substance. The definition borrows much from the text of the Terrorism Act but fails to clarify what 'noxious' means. It could, as Liberty point out, mean an environmentalist who threatened to use pesticide on GM crops could face up to 14 years in prison.

Hoaxing

Clause 112 extends the law of bomb hoaxes to include NBC weapons as opposed to just explosive devices. While this does close a legal loophole, the maximum penalty of seven years is too high. Fortunately there was no attempt to make the offence retroactive, probably because there were no major hoaxes.

GCHQ expands

Clause 114 allows GCHQ (the UK's spy service which does the eavesdropping) to conduct operations abroad and confirms acts done here which are or are intended to be done towards equipment abroad count as being done outside the UK. This would mean that if they hacked into a foreign computer from a terminal in the UK, there would be fewer controls as the act was deemed to 'happen' entirely outside the UK.

Failing to confess

Clause 115 creates an offence of failing to provide information. This is different to section 19 ('disclosure of information: duty') in the Terrorism Act, which only applies to information obtained through work and to suspicions that certain property related terrorist crimes have been committed.

The clause would insert a new section 38A into the Terrorism Act, which would recreate the notorious section 17 of the old Prevention of Terrorism Act with the same maximum penalty of five years.

It would be an offence not to report to the police which might prevent acts (this includes the mere threat of terrorism) of terrorism anywhere in the world or which would help detain or convict someone in the UK for acts of terrorism. What makes this clause so worrying is that the definition of terrorism is so wide these acts could take place anywhere in the world.

Border controls - now the 'borders' are everywhere

Clause 116 effectively make people and goods travelling by air within the United Kingdom subject to the same anti-terrorist powers as international travellers and those travelling between Northern Ireland and Great Britain.

Schedule 7 of the Terrorism Act allows any person to be detained for up to nine hours or any goods or property for seven days without police or customs needing to give or indeed have any reason. Clause 117 further allows police to collect information on passengers from any aircraft or ship travelling within the UK.

Dirty weapons

Clause 118 seems to widen the offence of weapons training in the Terrorism Act to include radioactive weapons. Essentially this means now that lo-tech 'dirty bombs', which explode causing radioactive contamination but without any nuclear reaction, are included. The definition of biological weapon is clarified slightly.

PART 14 - Supplemental

Clause 120 has to be read to be believed. It allows certain ministers to make any order by statutory instrument they wish which they feel is necessary for the purposes of this Bill - that is reference to the purposes in the bill's preamble.

For example, if terrorists started hijacking trains, an order could be made extending the anti-terrorism powers relating to air travel to rail travel. The remaining clauses in this part are merely technical provisions.

Conclusions

It is quite shameful that UK of all countries is leading this race to the bottom for civil liberties. Our colonial past has sown the seeds for human rights abuses all over the world.

For example, sedition laws from the time of colonial occupation in Malaysia and Israel are still being used to persecute people. Now, in our desire to 'modernise' our ancient and esteemed system of law, to bring it up to date with the latest events, we will become a beacon of hope to despots in the darkest corners of the world.

This new Bill is really is colossal monster. It's presently 122 pages long and bound to get bigger. What's worse, it is extremely hard going with technical provisions on 'de-hybridization' not to mention references to and amendments of sub-sub sections of a multitude of other acts cropping up all over the place.

Because it modifies other laws more than being a new law itself, these 122 pages have a far greater effect on our legal system than you might expect.

For a Bill of this size, technical nature and implications for fundamental rights the proposed timetable of a month provides no time for proper parliamentary scrutiny let alone public debate.

Of course in the present political climate of hysteria and desire to approve anything which may help in the fight against terrorism - to borrow from the words of the shadow home secretary - it is unlikely to be changed much.

It seems as accessible to those without legal training as the tube is accessible to a wheelchair user. Even a lawyer would need to have all the other acts of parliament it refers to and amends in front of them. The truth is, the mandarins at the Home Office have used the Bill as a Trojan horse to get into law all the dodgy proposals at the bottom of their filing cabinets.

This Bill is wholly misconceived being based around not the need to do something about the terrorist threat but the need to appear to be doing something. It will have the effect of a daisy-cutter on our legal traditions, standards and reputation. There is very little time to stop it.

Definition of "terrorism"

Terrorism, under section 1 of the Terrorism Act 2000, is

- 1) is the (i) **"use"** OR (ii) **"threat"** of action;
- 2) which (i) involves **serious violence against any person**, (ii) **involves serious damage to property** (iii) **endangers life**, (iv) **creates a serious health / safety risk to a section of the public**, or (v) is **designed seriously to interfere with or seriously to disrupt an electronic system**;
- 3) (i) **involves firearms or explosives**, (ii) **is designed to influence the government**, or (iii) is **designed to intimidate the public or a section of the public**;
- 4) is for the purposes of advancing a (i) **political**, (ii) **religious**, (iii) or **ideological cause**.

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