

## GUIDE TO THE NEW TERRORISM LEGISLATION

---

### Dealing with all three Terrorism Acts and their Developments

#### BACKGROUND TO THE LAW

Since the year 2000, anti-terror legislation in the United Kingdom has been the subject of much controversy due to its wide scope and seeming incompatibility with sections of the European Convention on Human Rights (ECHR). To understand fully why such legislation has been passed by the Government, it is important to understand how and why the current law has developed.

#### THE TERRORISM ACT 2000

The Terrorism Act 2000 was not, contrary to popular opinion, in fact borne from any particular form of international terrorism or any specific perceived terrorist threat at the time. In fact, it was a response to what was hoped to be lasting peace in Northern Ireland. Following an inquiry headed by Lord Lloyd into the need for specific counter-terrorism legislation in the UK, it was concluded that should the peace in Northern Ireland continue, there would still be a need for permanent anti-terrorist legislation and the recommendation was made to extend the legislation to cover international terrorism.

The 2000 Act was intended to strike a balance between the need to restrain terrorism and the protection of the rights of ordinary people. In view of the protection of such rights, the law should have been compatible with rights protected by the ECHR, which was about to become part of national law under the Human Rights Act 1998.

However, the new law was inconsistent with Article 5 of the ECHR as it controversially contained provision to detain suspected terrorists before charge. Article 5 provides;

‘1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;

\* (a) the lawful detention of a person after conviction by a competent court;

\* (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

\* (c) the lawful arrest or detention of a person effected for any purpose of bringing him before the competent legal authority on reasonable suspicion of having commit-

ted an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.’

However, the UK used Article 15 to include the provision to detain suspected terrorists before charge for up to 7 days, in the Terrorism Act 2000.

Article 15 of the ECHR confers a power of derogation, stating;

‘In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.’

Not only this, but the definition of ‘terrorism’ was greatly extended by the 2000 Act, including even some popular organizations devoted to political action, for example, campaigning against genetically modified crops! Its provisions also extended to international terrorism, and terrorism by or on behalf of domestic groups in the UK. The definition of terrorism even included activity abroad. Indeed, under the 2000 Act, not only might the relevant action be outside the UK but also the ‘public’ at risk may be the public of a country other than the UK. The definition was so wide it essentially gave the Government the power to pick and choose which organisations caught by the Act it wanted to act against.

Further offences were created relating to ‘terrorist property’, defined as money or other property which is likely to be used for the purpose of terrorism; proceeds to the commission of acts of terrorism; the proceeds of the commission of acts of terrorism, and proceeds of acts carried out for the purposes of terrorism.

#### Reaction to 9/11 - Anti-Terrorism, Crime and Security Act 2001

Only a short while after the Terrorism Act of 2000 had been introduced, an even more controversial set of powers was introduced by the Anti-Terrorism, Crime and Security Act 2001. Following the events of September 11th in New York, it was argued that further measures were necessary to allow the UK to respond effectively to a terrorist threat.

The measures contained in the 2001 Act amended and extended even further the powers contained in the 2000 Act. It is a very long Act, running to some 129 sections, and attracted criticism for introducing measures which are only distantly related, if at all, to the security concerns which prompted it. Most controversially, it provided for the indefinite detention of suspected international terrorists and extended racially aggravated offences under the Crime and Disorder Act 1998 to include religious aggravation. Additionally, an offence was created of failing to give information about acts of terrorism. Meaning, therefore, the family of an alleged terrorist might be charged with failing to give information about acts of terrorism and face up to 5 years imprisonment. All of this came from a Labour government!

The provision relating to the indefinite detention of suspected international terrorists required yet another derogation from the ECHR under Article 15.

The powers of disclosure and retention of information and data was also greatly extended, so much so that there are concerns about their effect on the right of the individual to privacy guarded by Article 8 of the ECHR. There already exist significant powers in the Regulation of Investigatory Powers Act 2000 (RIPA) relating to surveillance and the interception of communications, and the duties of telephone and internet providers to retain information.

In what seems to be a clear breach of the individual's right to privacy, the 2001 Act included provision for the police to search, fingerprint and photograph suspects without their consent. Indeed, the police are now permitted by Section 92 to require a suspect to remove head or face covering for the purpose of a photograph, and if they refuse, the police can remove it!

#### Widening the net further - The Terrorism Act 2006

Just as the 2001 Act was a hurried response to the September 11th events, the Terrorism Act 2006 was drafted following the bombings in Central London on 7th July 2005. Most significantly, it extends the time suspects can be detained for questioning by police prior to charge from 7 to 28 days.

There are judicial procedures to be followed to authorise such detention, but even with such provisions, the terrorist suspect is very vulnerable. It is important to note that a person held without charge in this way retains his right to consult a solicitor. However, even this right is eroded as there is provision for the police to direct that, in certain circumstances, the consultation with a solicitor should be conducted in the sight and hearing of a police officer. Such a consultation will clearly be of little assistance to the terrorist suspect.

As with the 2001 Act, the Terrorism Act 2006 has been heavily criticised for being an erratic and draconian set of

provisions which make serious breaches of fundamental freedoms and rights.

Section 1 makes a 'statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences' an offence carrying a sentence of up to seven years imprisonment. This covers most mediums, including sermons, speeches, chants at demonstrations, and written material including the internet. Section 1(3) reads:

'For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which -

\* (a) glorifies the commission or preparation (whether in the past, the future or generally) of such acts or offences; and

\* (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.'

It will already be apparent to the reader that Section 1 has serious implications regarding the fundamental right to freedom of expression as provided by Article 10 of the ECHR. Article 10 provides that:

'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law, and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Not only has the current law impinged upon yet another Convention protected right, but it is at best vague about what in fact constitutes the offence. It is unclear how many 'some members' of the public would be required to constitute the offence, or indeed, to what extent it would be 'likely' that they should be encouraged to commit acts of terrorism or what constitutes 'glorification'. It is anticipated that such loose drafting will give rise to many legal challenges.

There is a specific defence to this offence, namely, that the statement did not address his views or have his endorsement, and that it was clear, in all the circumstances of the statement's publication, that it did not express his views and did not have his endorsement. Once the defendant raises this as his defence, the prosecution must then prove, beyond a reasonable doubt, that the statement did express his views and have his endorsement.

The Act creates further offences relating to the distribution of 'terrorist publications', intended to catch not the authors of terrorist 'statements' covered by Section 1 but by those who circulate 'terrorist publications', whether they be written, audio, electronic or visual recordings. A 'terrorist publication' is defined as such if either matter contained in it is likely to be understood by some or all of the persons to whom it is, or may become available, as a direct or indirect encouragement to them to commit acts of terrorism; or matter contained in it is likely to be useful in the commission or preparation of acts of terrorism, and to be understood as such by some or all of those persons to whom it is or may become available, wholly or mainly for the purpose of being so useful to them.

A defendant will have a defence if he can show that the matter by reference to which the publication in question was a terrorist publication neither expressed his views nor had his endorsement; and that it was clear, in all the circumstances of the conduct, that the matter did not express his views and did not have his endorsement.

The net has been cast wider still with regards to the 'preparation of terrorist acts', created as an offence by Section 5, to cover someone who has not done enough to be charged with attempt but any form of preparatory act, provided that the intention was either to commit an act of terrorism or to assist another in committing an act of terrorism. It can be seen just how wide this power is. It hinges on the intention of the accused to commit or assist another in an act of terrorism. If such an intention could be established, the slightest act might constitute 'any conduct in preparation', for example, making enquiries about a course to learn how to fly an aeroplane. The sentence for this offence is life imprisonment.

The government has attempted to address the idea of terrorist training camps in the new legislation, by making offences of 'training for terrorism' and 'attendance at a place used for terrorist training'. Again, the lack of clear definition of the terms used leave it open to interpretation as to what conduct will in fact constitute an offence.

Author: Aziz Rahman, Solicitor Advocate and Partner at the Leading Criminal Defence Firm Rahman Raveli, Specialising in Human Rights, Financial Crime and Large Scale Conspiracies/Serious Crime.