



United Kingdom: Framework of Counter-Terrorism Laws

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LAW LIBRARY OF CONGRESS**UNITED KINGDOM****FRAMEWORK OF COUNTER-TERRORISM LAWS**

The United Kingdom has extensive experience in drafting and implementing anti-terrorism legislation both in a proactive and reactive manner. It has attempted to legislate both against specific offenses of terrorism and prevent individuals from actively recruiting or funding terrorism. The legislative regime is decades old and has been continually expanded.

I. Introduction

The history of anti-terrorism legislation in the United Kingdom (UK) is expansive and dates back nearly a century. This report will consider the more recent pieces of anti-terrorism legislation that apply to the entire UK. The UK's anti-terrorism laws have typically been reactive and enacted as emergency temporary legislation that later became permanent through constant renewal. The anti-terrorism laws have their genesis in the troubled relationship between Great Britain and Ireland over the partition of Northern Ireland in May 1921. The break-up was accompanied by the enactment of "special powers" legislation conferring wide powers of arrest, questioning, detention, and internment of persons involved in what the British viewed as acts of terrorism in Northern Ireland.

II. Legislation Prior to September 11, 2001

Modern legislation in the UK is based on the Northern Ireland (Emergency Provisions) Act 1973¹ and the Prevention of Terrorism (Emergency Provisions) Act 1974,² which were enacted in reaction to attacks by the IRA. The 1974 Act introduced increased powers to deal with terrorist attacks on mainland Britain. Due to the wide powers given to the police and the risk of abuse that such power brings, the government decided that the Act should be temporary and subject to annual renewal. The then Home Secretary stated, "I do not think that anyone would wish these exceptional powers to remain in force a moment longer than is necessary."³ To ensure this was the case, the legislation contained a "sunset clause," requiring that it be renewed each year after a review of its necessity. Despite this feature, the Acts were subject to continuous renewal and ultimately obtained a permanent place on the statute books.

The Terrorism Act 2000 was the first piece of anti-terrorism legislation formally placed on a permanent basis in the UK. Despite being drafted when there was hope of a tentative peace in Northern Ireland, it contains an extensive set of powers applying solely to Northern Ireland. Such powers are subject to review and include powers to stop and question individuals, to arrest them, to enter premises, to seize materials, along with various other police and army powers.⁴ It also provided the Secretary of State with powers to proscribe organizations he believes are active in international or domestic terrorism, as well as Irish terrorism, and makes membership of and activities connected to such organizations unlawful.

¹ Northern Ireland (Emergency Provisions) Act 1973, c. 53.

² Prevention of Terrorism (Temporary Provisions) Act 1976, c.8.

³ 882 PARL. DEB. (HC) 642.

⁴ Terrorism Act 2000, c. 11, §§ 65-113.

Many of these provisions are still in force, which have been expanded upon and amended by further anti-terrorism legislation.

III. Legislation Enacted After September 11, 2001

The UK passed emergency legislation in the form of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA)⁵ three months after the September 11, 2001, attacks in the United States. The government's intention in passing the ATCSA was to strengthen the existing anti-terrorism legislative regime to ensure that the UK has necessary powers to counter the increased threat posed by terrorists. There were many critics of the ATCSA who considered that the UK was already the most "legally fortified country in Europe"⁶ and that the extensive powers granted by the ATCSA granted deprived "terrorist suspects of basic human rights and undermine the values that it intends to protect."⁷

IV. Legislation Following the July 2005 Bombings

In the wake of the July 2005 terrorist bombings in London, Prime Minister Tony Blair held a press conference in which he asserted that the "rules of the game" for terrorists were changing.⁸ Despite the existing anti-terrorism legislative regime,⁹ Blair announced a forthcoming twelve point plan against terrorism that would take a tougher stance against individuals who encourage or advocate terrorism by disrupting the recruitment and training of would-be terrorists and making it more difficult for these individuals to remain in, or enter, the UK.¹⁰ The controversial measures were proposed in an unusual way by Blair in a press statement provided the day before he left for a summer vacation. A number of newspapers reported that some members of his own cabinet, many of whom also were on vacation, were not fully aware of the measures he proposed until the release of the statement.¹¹

The measures proposed by Blair were a combination of legislative and administrative changes, supplementing the existing comprehensive anti-terror legislation to close legal loopholes. The measures did not require legislation and had immediate effect, although the implementation of some were delayed until after a brief public consultation. Those requiring legislation were introduced during the 2005-2006 Parliamentary session in the form of the Terrorism Bill. The issue of 'home grown' extremists was tackled in part in the plan. To prevent isolation and encourage a sense of 'British pride' amongst immigrants, Blair announced that the requirements to obtain British citizenship were to be reviewed to raise the threshold for eligibility and encourage greater integration.

The Terrorism Bill faced considerable controversy and scrutiny in both the House of Commons and House of Lords, leading to a government defeat in the House of Commons and a rebellion from within the Prime Minister's Labour Party.¹² Many of the proposals were defeated, with a number of

⁵ Anti-Terrorism, Crime and Security Act 2001 (ATCSA), c. 24.

⁶ Clive Walker, *BLACKSTONE'S GUIDE TO THE ANTI-TERRORISM LEGISLATION*, 2002

⁷ SALLY BROADBRIDGE, *THE ANTI-TERRORISM CRIME AND SECURITY BILL: INTRODUCTION AND SUMMARY*, HOUSE OF COMMONS LIBRARY RESEARCH PAPER 01/101 at 26.

⁸ Prime Minister Tony Blair, Statement, July 21, 2005.

⁹ Terrorism Act 2000 c. 11, Anti-terrorism, Crime and Security Act 2001, c. 24, and the Prevention of Terrorism Act 2005, c. 2.

¹⁰ Prime Minister Tony Blair, Statement, Aug. 5, 2005.

¹¹ Steve Richards, *We Need Calm Effective Action on Terror, Not This Rush to Media-Pleasing Headlines*, *INDEPENDENT* (London) Aug. 11, 2005, at 27.

¹² BBC News, *Blair Says MPs are Out of Touch*, Nov. 10, 2005, http://news.bbc.co.uk/1/hi/uk_politics/4423678.stm.

Members from Blair's own party voting against them. Proposals that were defeated or dropped include the ability to detain terrorism suspects for up to ninety days and the required closure of extremist mosques. The Terrorism Bill eventually was passed and came into force in April 2006.¹³

V. Terrorism Offenses

The UK's anti-terrorism legislative regime contains terrorism offenses both in specific anti-terrorism acts and the criminal laws. The criminal laws include offenses such as bomb hoaxes,¹⁴ criminal damage, and threats to damage or destroy property,¹⁵ as well as numerous offenses relating to activities conducted in public, including riots, unlawful assembly, and affray. Certain criminal statutes that date back to 1883 have been adapted to apply to terrorists, such as the offense to conduct preparatory acts to conduct an explosion in any part of the world.¹⁶ The Public Order Act 1986 also prohibits acts intended to cause racial hatred; to make people fear or provoke violence; to cause harassment, alarm, or distress; or to control public processions and assemblies.¹⁷

A. Definition of Terrorism

One area of controversy within the anti-terrorism legislation has been the definition of terrorism, which encompasses the use or threat of serious violence and/or serious damage to property, regardless of location; endangering a person's life; creating a serious risk to public health or safety; and interfering with or seriously disrupting an electronic system. Unless explosives and firearms are used, these activities must be designed to influence any government or international governmental organization¹⁸ or to intimidate the public of any country to advance a political, religious, or ideological cause.¹⁹

By recognizing that terrorists may have a religious or ideological motivation, the Terrorism Act 2000 was expanded for application to domestic terrorism and international terrorism. The government argued that the evolution of terrorist threats necessitated this wider definition. Others argued that it was both too wide and too narrow, and criticized it for creating a "twin track criminal justice system" that discriminated on the basis of individuals' motives. Including domestic terrorism in the definition caused British citizens to believe thousands of people would become terrorist suspects for merely participating in activities in a democratic society, and the definition would encompass extremist environmental and animal rights activists, whose actions occasionally cause serious damage to property, and thus fall within its scope.

B. Terrorism Offenses

The anti-terrorism legislative regime encompasses many specific offenses that continually have been expanded, typically as a reaction to devastating terrorist attacks, such as those in the United States on September 11, 2001, and the London bombings in July 2005. The primary counter-terrorism piece of

¹³ Terrorism Act 2006, c. 11.

¹⁴ Criminal Law Act 1977, c. 45, § 51.

¹⁵ Criminal Damage Act 1971, c. 48.

¹⁶ Explosive Substances Act 1883, c. 3, § 17(5), as amended.

¹⁷ Public Order Act 1986 c. 64, §§ 1-5 and §§ 11-17.

¹⁸ The term International Governmental Organization was inserted by the Terrorism Act 2006, c. 11 to bring the UK's definition into line with the definition contained in the Conventions that it is party to.

¹⁹ Terrorism Act 2000, c. 11, § 1.

legislation continues to be the Terrorism Act 2000, which allows the proscription of terrorist organizations, expands police powers, and introduces criminal offenses for inciting terrorism, seeking or providing terrorist training in the UK or overseas, and instructing or training individuals in the use of firearms, explosives, or chemical, biological, or nuclear weapons. This list was added to in 2001 with the ATCSA, which further strengthened police powers to enable them to investigate and prevent terrorist activity and serious crime. The ATCSA's measures were introduced to cut terrorist financing, streamline immigration procedures, enable greater cooperation and information sharing among government offices and departments, provide greater security for nuclear and aviation sites, improve the security of dangerous substances, extend police powers, and meet international obligations in the area of corruption, bribery, police and judicial cooperation, and detention of suspected international terrorists.²⁰ The most recent piece of anti-terrorism legislation is the Terrorism Act 2006, which creates additional offenses in preparing to commit a terrorist offense, encouraging terrorism, and disseminating terrorist publications and extends the offense of training or receiving terrorist training.

1. Proscribing Terrorist Organizations

The legislation grants the Secretary of State authority to proscribe, by order, organizations he believes are concerned with terrorism that is either international or domestic in nature.²¹ Organizations can be proscribed when the Secretary of State has a subjective belief that an organization is promoting, unlawfully glorifying,²² encouraging, preparing for, committing, participating in, or otherwise proponents of acts of terrorism.²³

One aim of prohibiting terrorist organizations is to prevent the UK from becoming a base for the finance and organization of international terrorists, by prohibiting the supply of materials to proscribed organizations and enabling authorities to seize the assets and criminalize behaviors connected to these organizations. Proscribing terrorist organizations has been described as a symbolic and practical act of deterrence, as there a number of offenses in the Terrorism Act that relate solely to proscribed organizations. The provisions essentially prohibit all activities related to membership or support (including administrative, financial, and organizational) of a proscribed organization.²⁴ It facilitates the conviction of an individual who contributes resources to, or gains proceeds from, a proscribed organization, as it creates certainty regarding what is and is not a terrorist organization. Directing a terrorist organization at any level, regardless of whether such direction is lawful, (e.g., directing a surrender) also is an offense.²⁵

Liberty, a civil rights organization, criticized the government's decision to widen its proscription and the offenses related to proscribed organizations as a limitation on freedom of expression and assembly and believed that only the actions of, rather than support and involvement in, organizations

²⁰ Home Office, *Anti-Terrorism, Crime and Security Act 2001*, <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/anti-terrorism-crime-security-ac/> (last visited May 5, 2006).

²¹ The Terrorism Act 2000, c. 11 § 3(5) provides that "an organisation is concerned in terrorism if it: commits or participates in acts of terrorism; prepares for terrorism; promotes or encourages terrorism; or is otherwise concerned in terrorism."

²² Terrorism Act 2005, c. 11, § 21.

²³ Terrorism Act 2000, c. 11, § 3. Proscribed organizations are listed in Schedule 2 of the Act and further orders made under the Act. The Terrorism Act 2000 (Proscribed Organizations) (Amendment) Order 2001, S.I. 2001/1261 added a further twenty one international organizations to Schedule 2, including Al-Qaeda.

²⁴ The offenses are listed in §§11-13 of the Terrorism Act 2000, c. 11, and offenses of financing terrorist organizations are listed in §§ 15-18.

²⁵ The section does not require that the organization be proscribed under the Terrorism Act 2000.

should be subject to criminal sanctions. The government attempted to protect civil liberties by providing that orders can only be passed through an affirmative resolution in the Houses of Parliament and establishing a procedure that permits any proscribed organization, or person affected by a proscription, to apply to the Home Secretary for de-proscription. If the application is rejected, the organization or individual can appeal to the Proscribed Organizations Appeal Commission, which then reviews the decision.

Forty international terrorist organizations, which include some extremist religious organizations that also have terrorist purposes, are currently proscribed under the Terrorism Act 2000, meaning they are outlawed in the UK.²⁶ An additional fourteen organizations are proscribed in Northern Ireland under the older legislative regime. The proscription of terrorist organizations is constantly ongoing, with twenty-one groups proscribed in March 2001; four in October 2002; and fifteen in October 2005.

2. Offenses Relating to Weapons of Mass Destruction

Specific terrorism related offenses connected with radioactive materials are provided for in the Terrorism Act 2006.²⁷ This Act provides that it an offense to make or possess a radioactive device,²⁸ or possess radioactive material,²⁹ with the intent of using or making the device or material available for the purposes of terrorism, regardless of whether the individual has a specific act in mind.³⁰ This offense is punishable with life imprisonment. To cover the possibility that terrorists might target nuclear facilities, the Terrorism Act 2006 provides it is an offense to damage or use a nuclear facility for the purposes of terrorism if it “causes a release of radioactive material or creates or increases a risk that such material will

²⁶ Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2005, SI 2005/2892 lists the proscribed organizations as: Revolutionary Organisation (N17); Abu Nidal Organisation (ANO); Abu Sayyaf Group (ASG); Al-Gama'at al-Islamiya (GI); Al Ittihad Al Islamia (AIAI); Al Qaida; Ansar Al Islam (AI); Ansar Al Sunna (AS); Armed Islamic Group (Groupe Islamique Armée) (GIA); Asbat Al-Ansar ('League of Parisans' or 'Band of Helpers'); Babbar Khalsa (BK); Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA); Egyptian Islamic Jihad (EIJ); Groupe Islamique Combattant Marocain (GICM); Hamas Izz al-Din al-Qassem Brigades; Harakat-Ul-Jihad-Ul-Islami (HUJI); Harakat-Ul-Jihad-Ul-Islami (Bangladesh) (Huji-B); Harakat-Ul-Mujahideen/Alami (HuM/A) and Jundallah; Harakat Mujahideen (HM), previously known as Harakat Ul Ansar (HuA); Hizballah External Security Organisation; Hezb-E Islami Gulbuddin (HIG); International Sikh Youth Federation (ISYF); Islamic Army of Aden (IAA); Islamic Jihad Union (IJU); Islamic Movement of Uzbekistan (IMU); Jaish e Mohammed (JeM); Jeemah Islamiyah (JI); Khuddam Ul-Islam (Kul) and splinter group Jamaat Ul-Furquan (JuF); Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK); Lashkar e Tayyaba (LT); Liberation Tigers of Tamil Eelam (LTTE); Mujaheddin e Khalq (MeK); Palestinian Islamic Jihad - Shaqaqi (PIJ); Revolutionary Peoples' Liberation Party - Front (Devrimci Halk Kurtulus Partisi - Cephesi) (DHKP-C); Salafist Group for Call and Combat (Groupe Salafiste pour la Predication et le Combat) (GSPC); Sipah-E Sahaba Pakistan (SSP) (Aka Millat-E Islami Pakistan (MIP) (SSP was renamed MIP in April 2003 but is still referred to as SSP)) and splinter group Lashkar-E Jhangvi (LeJ); Libyan Islamic Fighting Group (LIFG). Proscribed Irish groups: Continuity Army Council; Cumann na mBan; Fianna na hEireann; Irish National Liberation Army; Irish People's Liberation Organisation; Irish Republican Army; Loyalist Volunteer Force; Orange Volunteers; Red Hand Commando; Red Hand Defenders; Saor Eire; Ulster Defence Association; Ulster Freedom Fighters; and the Ulster Volunteer Force.

²⁷ These offenses are needed for the UK to ratify the UN Convention for the Suppression of Acts of Nuclear Terrorism that it signed in September 2005.

²⁸ Radioactive device is defined in the Prevention of Terrorism Act 2006, c. 11, § 9 as a “nuclear weapon or other nuclear explosive device; a radioactive material dispersal device; or a radiation-emitting device.” The term device includes “any of the following, whether or not fixed to land, namely, machinery, equipment, appliances, tanks, containers, pipes and conduits.”

²⁹ Radioactive material is defined in the Prevention of Terrorism Act 2006, c. 11, § 9 as “nuclear material or any other radioactive substance which contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation, such as alpha radiation, beta radiation, neutron particles or gamma rays; and is capable, owing to its radiological or fissile properties, of causing serious bodily injury to a person; causing serious damage to property; endangering a person's life; or creating a serious risk to the health or safety of the public.”

³⁰ Prevention of Terrorism Act 2006, c. 11, §§ 9-10.

be released.”³¹ Threats³² or demands to obtain the supply of a radioactive device, radioactive material, possession of a nuclear facility, or access to a nuclear facility for the purposes of terrorism is an offense, but only if the demand is supported by a credible threat to take action.³³ Individuals found guilty of these offenses can be sentenced with up to life imprisonment.

3. Inciting, Assisting, Encouraging or Glorifying Terrorism

There are a large number of offenses relating to the preparation, assistance and encouragement of terrorism. To take into account technological developments and the substantial role the Internet plays in modern day communications, the majority of these offenses encompass the publication of materials via the Internet. For example, the Terrorism Act provides it is an offense for individuals to make information about weapons training readily available through sources such as the Internet.³⁴

Inciting terrorism overseas was included in the Terrorism Act to prevent individuals from using the UK as a base to orchestrate or encourage others to commit terrorist attacks in foreign countries.³⁵ This provision caused concern that it would cover individuals who fight against tyrannical governments, as well as concerns over its implementation, due to the narrow distinction between opinion and incitement. The Terrorism Act 2006 further expands upon these provisions and makes it an offense, punishable with up to life imprisonment, to prepare, or assist others to prepare for, acts of terrorism.³⁶ This provision was added to supplement the existing common and statutory law,³⁷ which provided it is an offense to conspire to carry out, or attempt to carry out, terrorist attacks. It filled the gap to cover preparatory acts, as the common law of conspiracy requires that the act must be more than preparatory and must be conducted for a specific offense.³⁸

The Terrorism Act 2006 made it an offense to glorify, condone, or encourage acts of terrorism in the UK or elsewhere, extending the common law offense of inciting a criminal act. This prohibition specifically applies if a person publishes, or causes someone else to publish, a statement in any form, such as on the Internet, that is likely to be understood as either direct or indirect encouragement or other inducement to the commission, preparation, or instigation of acts of terrorism or other offenses contained in the Council of Europe Convention on the Prevention of Terrorism.³⁹ Such statements encompass those

³¹ *Id.*, § 10(2). Nuclear facility is defined in section ten as “a nuclear reactor, including a reactor installed in or on any transportation device for use as an energy source in order to propel it or for any other purpose; or a plant or conveyance being used for the production, storage, processing or transport of radioactive material.”

³² Threats are defined in the Prevention of Terrorism Act 2006, c. 11, § 11 as a “threat to use radioactive material; a threat to use a radioactive device; or a threat to use or damage a nuclear facility in a manner that releases radioactive material or creates or increases a risk that such material will be released.”

³³ *Id.*

³⁴ Terrorism Act 2000, c. 11, § 4.

³⁵ Terrorism Act 2000, c. 11, §§ 59-61. The offenses under the definition of incitement of terrorism include murder, intentional wounding, poisoning, causing explosions or life-threatening damage to property.

³⁶ Terrorism Act 2006, c. 11, § 5.

³⁷ Criminal Law Act 1977, c. 45.

³⁸ Mulcahy (1868) LR 3 HL 306.

³⁹ Terrorism Act 2006, c. 11, § 1.

that glorify,⁴⁰ or suggest the glorification of, the commission or preparation of terrorist acts and suggest that these acts should be emulated.

The Terrorism Act 2006 creates a further offense for selling or otherwise disseminating terrorist publications, including materials provided on the Internet that directly or indirectly are of use to terrorists or encourage, or otherwise induce, people to engage in acts relating to terrorism.⁴¹ Publication in this context refers to any material that can be read, listened to, looked at, or watched. These items again encompass those that glorify terrorism, apply to individuals that possess publications with the intent to disseminate them, and to such acts done outside the UK.⁴²

The provisions under the Terrorism Act 2006 involving the dissemination of materials through the Internet are broad and encompass Internet Service Providers who may be unaware of the materials posted via their service, as well as innocent individuals that may have inadvertently placed material on the Internet that can be misused by terrorists. To prevent the arbitrary application of these provisions, a defense is available to individuals affected that the publication does not express their views or have their endorsement. To ensure that these defenses are not abused, there is a presumption that a publication is endorsed if, after receiving notice from a police constable that the materials are "unlawfully terrorism-related," the person or body fails to make the materials unavailable to the public or modify them to remove the offending language within two working days after receiving the notice.⁴³

4. Terrorist Training

Providing, receiving, or inviting a person to receive training or instruction in weapons for the purposes of terrorism is an offense, even if the invitation occurs outside of the UK.⁴⁴ This act is punishable by up to ten years' imprisonment, a fine, or both these penalties.⁴⁵ The training or instruction for the purposes of terrorism must include acts in connection with noxious substances⁴⁶ or, rather broadly:

[T]he use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or Convention offence or in connection with assisting the commission or preparation by another of such an act or offence; and (c) the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything.⁴⁷

⁴⁰ Glorification is defined as praising or celebrating terrorism. Terrorism Act 2006, c. 11, § 20.

⁴¹ Terrorism Act 2006, c. 11, § 2.

⁴² Terrorism Act 2006, c. 11, § 17.

⁴³ Terrorism Act 2006, c. 11, § 3.

⁴⁴ Terrorism Act 2000, c. 11, § 54 and the Terrorism Act 2006, c. 11, § 6. Purposes of Terrorism include those: "for or in connection with the commission or preparation of acts of terrorism or Convention offences; or for assisting the commission or preparation by others of such acts or offences." Terrorism Act 2006, c. 11, § 6(b)(ii).

⁴⁵ Purposes of Terrorism include those: "for or in connection with the commission or preparation of acts of terrorism or Convention offences; or for assisting the commission or preparation by others of such acts or offences." Terrorism Act 2005, c. 11, § 6(b)(ii).

⁴⁶ Noxious substance is defined the Terrorism Act 2006, c. 11, § 6(7) as "a dangerous substance within the meaning of Part 7 of the Anti-terrorism, Crime and Security Act 2001, c. 24; or any other substance which is hazardous or noxious or which may be or become hazardous or noxious only in certain circumstances."

⁴⁷ Terrorism Act 2006, c. 11, § 6(3).

The court has the authority to order the forfeiture of any items in the possession of a person convicted of the above offense if it believes the items were connected to the offense. It is also an offense for individuals to merely attend places used for terrorist or weapons training⁴⁸ in the UK or abroad.⁴⁹ It is irrelevant whether the person received or provided training at the place in question. The individual attending the place must be aware that the training or instruction is connected, or partly connected, to the commission or preparation of acts of terrorism. The required *mens rea* for the offense arises in situations where it cannot reasonably be believed that the attendee failed to understand the instruction or training was being provided there wholly or partly for purposes of terrorism.⁵⁰ This offense is punishable with up to ten years' imprisonment.

5. Possessing Articles for Terrorist Purposes

Possessing articles or collecting information for terrorist purposes is an offense under the Terrorism Act 2000.⁵¹ The offense of possessing articles for the purposes of terrorism has been controversial because it requires no proof that a person charged under this offense had a terrorist purpose in mind; the offense is not restricted to members or supporters of proscribed organizations; and the burden of proof is on the defendant to show that the articles were not for the purposes of terrorism.⁵² This provision has a key role in preventing terrorism that is implied through the increase in its penalty from a maximum of ten years' imprisonment to up to fifteen years' imprisonment in the Terrorism Act 2006.⁵³

6. Duty to Disclosure of Information to Prevent Acts of Terrorism

The ATCSA places a duty on individuals to disclose information that is material to the prevention of an act of terrorism, or to secure justice for individuals responsible in the commission, preparation, or instigation of terrorist acts.⁵⁴ The maximum imprisonment term for a violation under this provision is five years. A similar provision in the Prevention of Terrorism Act was criticized in *Inquiry into Terrorist Report*, which argued the obligation to report information to the police should remain a moral, rather than a legal duty, and the provision, mostly used against family members, placed these persons in an impossible position of conflicting loyalties.²⁰¹

C. Enforcement

1. Problems of Enforcement

Recent concerns over alienating the British Muslim population with excessive implementation of the anti-terrorism laws has restrained the government to a certain degree. Most of those arrested under anti-terrorism legislation have been Muslims who were later released due to lack of evidence against them. This has caused considerable resentment about poor intelligence and investigations. Between the

⁴⁸ Training in this context refers to the offenses of terrorist training contained in section six of the Terrorism Act 2006, c. 11 and weapons training contained in section fifty-four of the Terrorism Act 2000, c. 11.

⁴⁹ This implements Article Seven of European Convention of the Prevention of Terrorism, which requires the creation of an offense of training for terrorism.

⁵⁰ Terrorism Act 2006, c. 11, § 8.

⁵¹ Terrorism Act 2000, c. 11, §§ 56-58.

⁵² *Id.* § 57.

⁵³ Terrorism Act 2006, c. 11, § 13.

⁵⁴ ATCSA, c. 23, § 117.

period between September 11, 2001, and September 30, 2005, 895 people were arrested under the Terrorism Act 2000, with 138 people charged under the anti-terrorism legislation, and only twenty-three of these charges resulting in a conviction of a terrorist offense.⁵⁵ Some 496 of the people arrested were later released without charge.

2. Police Arrest and Search Powers

Police powers under the Terrorism Act 2000 are wide-ranging and there were concerns over opportunities for abuse. It permits investigations into the resources of proscribed organizations and the commission, preparation, or instigation of acts that are offenses under the Act. With a warrant, police can enter property, search and seize material in the course of a terrorist investigation, and may stop and search persons based on a reasonable suspicion that they are terrorists.⁵⁶ Police can arrest individuals without a warrant based on a reasonable suspicion that they have been involved in the preparation, instigation, or commission of acts of terrorism, regardless of whether police believe the suspect is committing or has committed a crime. The government justified this “pre-emptive power of arrest” by stating that the delay in collecting sufficient information for an arrest warrant would, in some cases, be too late to prevent the terrorist act.

The ATCSA increased police powers to obtain identification from detained individuals. Police have the authority to search individuals without their consent to secure solely identification information when they have been convicted, charged, or cautioned with a recordable offense.⁵⁷ For individuals detained under terrorism provisions, fingerprints can be taken without their consent where they would confirm or repudiate an individual’s involvement in a criminal offense.⁵⁸ Similarly, it is permissible to take photographs of detained suspects without their consent, and any item or substance worn on the individual’s head may be removed with or without consent, using reasonable force if necessary. Photographs taken under these provisions can be retained and disclosed for purposes related to the prevention, detection, or investigation of a crime in the UK or overseas.⁵⁹ Concerns were raised that the forced removal of religious head garments could cause conflict and tension and lead to accusations of religious discrimination.

VI. Terrorism and Money Laundering

Certain Terrorism Act provisions restrict or prevent the financing of terrorist acts in response to concerns that the UK may become a base for terrorist financing.⁶⁰ The Terrorism Act replicated many of the provisions in the Prevention of Terrorism Act (Temporary Provisions) Act 1984⁶¹ and extended them

⁵⁵ Home Office, Terrorism Act 2000, at <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/> (last visited August 3, 2006). The Home Office notes that of the 138 people charged under the anti-terrorism legislation, sixty two “of these were also charged with offences under other legislation; 156 were charged under other legislation. This includes charges for terrorist offences that are already covered in general criminal law such as murder, grievous bodily harm and use firearms or explosives; 63 [were] transferred to Immigration Authorities; 20 on bail to return; 11 cautioned; 1 received a final warning for non-TACT offences; 8 dealt with under mental health legislation; 1 dealt with under extradition legislation; 1 returned to Prison Service custody; [and] 1 transferred to PSNI custody.”

⁵⁶ Terrorism Act 2000, c. 11, §§ 42-46.

⁵⁷ ATCSA, c. 23, §§ 89-90.

⁵⁸ *Id.* §§ 89,92.

⁵⁹ *Id.* § 92.

⁶⁰ House of Commons Library, THE TERRORISM BILL, Research Paper 99/101, at 31.

⁶¹ Prevention of Terrorism (Temporary Provisions) Act 1984, c. 8.

to include international and domestic terrorism. Its financial offenses encompass a broad variety of activities connected to terrorist property, including money laundering,⁶² using property for terrorist purposes, fund raising for terrorist organizations, becoming involved in funding agreements for the purposes of terrorism, and becoming involved in an arrangement that makes money or property available for terrorism.⁶³ Terrorist property is defined broadly under the Act as money or property that is likely to be used for terrorist purposes or any proceeds of acts of terrorism.⁶⁴ The definition of terrorist property for proscribed organizations is broader still, including any resources of these organizations.⁶⁵ Any person convicted on indictment of an offense under the Act can face up to fourteen years imprisonment, a fine, or both these penalties. Persons sentenced on summary conviction face imprisonment for up to six months a fine, or both these penalties.⁶⁶

A. Reporting Suspicious Transactions

The UK has established a number of mechanisms in which individuals are obliged to report suspicious transactions. For example, Financial Sectors must have a system to submit suspicious transaction reports to the Serious Organized Crimes Agency. There are two reporting requirements in UK law, under the Terrorism Act 2000, which applies specifically to money or property related to terrorism, and the Proceeds of Crime Act 2002, which applies to all criminal property.

B. Terrorist Property

Under the Terrorism Act, individuals that obtain information in the course of their trade, business, profession, or employment have an obligation to report to a constable the actions of a person they believe, or suspect, of committing a money laundering offense.⁶⁷ Failure to disclose this type of information within a reasonably practicable period is an offense unless the information was obtained in professionally privileged circumstances;⁶⁸ the individual had a reasonable excuse for not making the disclosure; or a disclosure was made in accordance with the procedures established by the individual's employer.⁶⁹ Individuals carry an additional duty to report transactions made by a person whom they suspect, know, or have reasonable grounds to know or suspect, are involved in laundering either money, terrorist property, or the proceeds of drug trafficking offenses, when the information comes to them in the course of their business in a regulated sector.⁷⁰

A person who becomes involved in a transaction or arrangement relating to laundering terrorist property may be exempt from prosecution under the Terrorism Act if he disclose his suspicion or belief

⁶² Terrorism Act 2000, c. 11, § 18 prohibits people from entering into or becoming concerned in any arrangement to facilitates the retention or control of terrorist property by concealing it, transferring it to nominees or removing it from the jurisdiction of the UK. The burden of proof is shifted to the defendant to prove that he did not know or had reasonable cause to suspect that the arrangement was related to terrorist property.

⁶³ *Id.* §§ 15-18.

⁶⁴ *Id.* § 14.

⁶⁵ *Id.* § 18.

⁶⁶ *Id.* § 22.

⁶⁷ *Id.* § 19. The money laundering offenses relate to funding terrorism, use and possession of money or property for the purposes of terrorism, and money laundering.

⁶⁸ *Id.* § 1A, Proceeds of Crimes Act 2002, § 330 and The Money Laundering Regulations 2003, SI 3075/2003, reg. 7.

⁶⁹ *Id.* § 19.

⁷⁰ *Id.* § 21A.

that the transaction or arrangements relate to terrorist money or property; the information that the suspicion is based on must be provided on his own initiative as soon as reasonably practicable.⁷¹ The Act provides a number of defenses to individuals disclosing information, such as the individual disclosed the information according to the particular regulated sectors' policy, or that a perpetrator contacted the individual in their capacity as a professional legal advisor. Offenses under these sections are punishable with up to five years' imprisonment.⁷²

The ATCSA further supplements these disclosure requirements by granting police authority to obtain information from financial institutions for up to ninety days when it is desirable to trace terrorist property to enhance a terrorist investigation.⁷³

C. Restraining Terrorist Property

The High Court can issue restraint orders in a number of circumstances to prevent a person from dealing with or removing any property specified in the order from the UK. Restraint orders can be issued when proceedings are underway for offenses under sections fifteen to eighteen of the Terrorism Act 2000; when the prosecution applies for a restraint order; when a forfeiture order has been made, or if it seems likely that one will be made; and where the court is satisfied that a person will be charged with fund raising, using, or possessing terrorist property, arranging terrorist funding, or money laundering.⁷⁴ To ensure cooperation when the relevant property is located in another jurisdiction, both restraint and forfeiture orders have been extended to apply in the British Isles and certain other countries and territories. The enforcement of external forfeiture orders has been reciprocally extended to specified countries to facilitate cooperation between them and the UK.⁷⁵

D. Forfeiture of Terrorist Property

Individuals convicted of fund raising or using, providing, or possessing money or property for terrorist purposes⁷⁶ can be ordered by the court to forfeit any money or property under their control or possession at the time of the offense, provided it was intended to be used for terrorist purposes; the individual had reasonable cause to believe that it would be used for the purposes of terrorism;⁷⁷ and it is money or any other property received as payment or other reward in connection with the offenses of money laundering, fund raising, using, possessing, or involvement therein.⁷⁸ The court's powers to order the forfeiture of money are expansive and may encompass "any money or other property that, wholly or

⁷¹ *Id.* § 21.

⁷² *Id.* § 19 and § 21A.

⁷³ ATCSA, Sch. 2.

⁷⁴ *Id.* sch. 4.

⁷⁵ *Id.* This controls enforcement orders in the British Isles and the Terrorism Act 2000 (Enforcement of External Orders) Order 2001, S.I. 2001, No. 3927 enables the enforcement in the UK of designated countries' external forfeiture orders.

⁷⁶ *Id.* § 15. Section 15 defines fund raising as inviting another to provide money or other property that he knows or has reason to believe will be used for the purposes of terrorism or receive money intending, or having reasonable suspicion that it will be used in the funding or money laundering of terrorist property. Section 16 provides that a person commits an offense if they use money or other property for the purposes of terrorism, or possess money or other property that they intend or reasonably suspect may be used for terrorist purposes.

⁷⁷ *Id.* § 23. Section 23 applies in relation to the offenses of fund raising and the use and possession of terrorist property ('16(1-2) and '17).

⁷⁸ *Id.*

partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.”⁷⁹

The courts also have authority to order the forfeiture of terrorist cash regardless of whether proceedings have commenced with respect to an offense related to the cash.⁸⁰ When reasonable grounds exist for suspecting cash is terrorist cash, an authorized officer can seize it for an initial forty-eight hour period. This period can be extended for three months and up to a total of two years when there is reasonable suspicion that it belongs to a proscribed terrorist organization or is earmarked as terrorist property,⁸¹ and a protracted detention is required to investigate, bring, or continue proceedings against a person.⁸²

E. Freezing Terrorist Property

Freezing orders can be made at the start of an investigation to reduce the risk of terrorist property being sent overseas during an investigation. The power to freeze assets also extends to cases where there is a reasonable belief that overseas governments or residents are conducting actions that threatens the UK’s economy or life or property of UK nationals or residents.⁸³ The Orders are wide ranging and prohibit all UK residents, nationals, and incorporated companies from providing funds or benefits to a named person or persons.⁸⁴

VII. Bio-terrorism

The misuse of biotechnology for the purposes of terrorism or weapons has been addressed in legislation dating back to the Biological Weapons Act 1974, which makes it a criminal offense to develop, produce, stockpile, acquire, retain, or transfer outside the UK certain biological agents or toxins. Legislation regarding bio-terrorism was added through the Chemical Weapons Act 1996,⁸⁵ and expanded upon in the Terrorism Act 2000 and the ATCSA. When combined, these Acts provide a broad legislative regime for the control, security, development, production, possession, and transfer of substances that could be utilized for bio-terrorism.⁸⁶

The Chemical Weapons Act provides a strict regime of controls for chemical weapons and certain toxic chemicals. It specifically provides that the use, development, production, possession, transfer or military preparation of chemical weapons is prohibited unless the intended purpose is peaceful, for protection against toxic chemicals, for legitimate military purposes, or to enforce the law. When the intended use of the chemicals is permissible, a license must be obtained from the Secretary of State that

⁷⁹ *Id.* § 23 and PETER ALLRIDGE, MONEY LAUNDERING LAW, 2003 at 219.

⁸⁰ *Id.* § 1.

⁸¹ Earmarked as terrorist property refers to property, regardless of its location, that has been obtained from acts of terrorism. Earmarked terrorist property can be traced through different property, with profits accrued being treated as terrorist property, and the hands of any person who obtains the property with the exception of a bona fide purchaser for value without notice. *Id.* Sch. 1, Part 5.

⁸² *Id.* Sch. 1, and the Magistrates Courts (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001, S.I. 2001, No. 4013.

⁸³ *Id.* § 4.

⁸⁴ *Id.* § 5.

⁸⁵ Chemical Weapons Act 1996, c. 26.

⁸⁶ An overview of government policy for responding to a biological or chemical attack is available from the Civil Contingencies Secretariat at <http://www.lga.gov.uk/lga/publicprotection/biological.pdf> (last visited Apr. 25, 2006).

includes terms such as the quantities of the chemicals that can be kept and requirements for record keeping.⁸⁷

During the drafting of the ATCSA, the government considered the possibility of a bio-terrorist attack and created a specific offense for the use, or threat of use, of a noxious substance⁸⁸ to influence the government or intimidate the public. This offense encompasses the use of any biological agent and would apply to individuals that send anthrax spores through the post regardless of the recipient's location. Anyone found guilty of committing this offense faces up to fourteen years imprisonment. Individuals in the UK that place or send substances through the post with the intention of inducing a person, wherever that individual is located, to believe that the substance is noxious and likely to cause harm also are guilty of an offense under the ATCSA and liable to up to seven years' imprisonment.⁸⁹ The Terrorism Act 2000 also specifically addressed the possibility of a bio-terrorist attack, providing an offense for training terrorists, or receiving training, in the use of biological, chemical, or radioactive materials for terrorist purposes.⁹⁰ The Terrorism Act 2000 also considers the international impact of a bio-terrorist attack and includes provisions with an extraterritorial effect that make it an offense to aid, abet, counsel, procure or incite a person outside the UK to commit acts of biological terrorism.⁹¹ This offense is punishable with up to life imprisonment.

While the control of dangerous pathogens is dealt with primarily in health and safety legislation, anti-terrorism legislation also has encompassed certain aspects relating to the security of pathogens and toxins, with the most relevant provisions contained in the ATCSA.⁹² The Act provides that the Secretary of State must be notified prior to the storage or use of pathogens and toxins specified in a schedule to the ATCSA on a site. The police have extensive powers to request information from the occupant of the premises regarding the security of, and access to, pathogens and toxins.⁹³ If the police are not satisfied that security is adequate, they may require the owner to improve security measures and in certain instances, if the Secretary of State believes that satisfactory security measures are not in place and are unlikely to be taken, he may require the disposal of the dangerous substances. The police also may request information on individuals that have access to both the premises and the substances. Once this type of request has been made, the owners of the premises are required to notify the police of any additional people who have been granted access to the premises and must delay their access for thirty days, unless otherwise agreed with the police. In the interests of national security, the Secretary of State can require access to the premises or to the dangerous substances that were denied to a specific person.⁹⁴ Anyone denied access has a right of appeal to the Pathogens Access Appeal Commission, as established under the ATCSA.⁹⁵

⁸⁷ Chemical Weapons Act 1996, c. 6, §§ 20-22.

⁸⁸ ATCSA, c. 23, §§ 113-114. The noxious substance must be used in an act that “uses serious violence against a person anywhere in the world; causes serious damage to real or personal property anywhere in the world; endangers human life or creates a serious risk to the health or safety of the public or a section of the public; or induces in members of the public the fear that the action is likely to endanger their lives or create a serious risk to their health or safety.”

⁸⁹ ATCSA, c. 23, § 114.

⁹⁰ Terrorism Act 2000, c. 11, § 54, as amended by the Anti-terrorism, Crime and Security Act 2001, c. 23, § 120.

⁹¹ ATCSA, c. 23, § 50.

⁹² ATCSA (Commencement No. 4) Order 2002 (SI 1279).

⁹³ ATCSA, c. 23, § 60.

⁹⁴ ATCSA, c. 23, § 64.

⁹⁵ Pathogens Access Appeal Commission (Procedure) Rules 2002 (SI 1845) and the Court of Appeal (Appeals from Pathogens Access Appeal Commission) Rules 2002 (SI 1844).

To ensure that the list of noxious substances reflects any advances in technology the Secretary of State maintains a list in schedule seven of the ATCSA, where he can add animal or plant pathogens, pests, or toxic chemicals by order⁹⁶ if he is satisfied that “the chemical could be used in an act of terrorism to endanger life or cause serious harm to human health.”⁹⁷ The list currently contains “pathogens and toxins that potentially pose the greatest risk to human life if misused by terrorists.”

VIII. Agro-terrorism

Agro-terrorism has not yet become a separate item on the anti-terrorism agenda, with the laws against it intertwined with those for bio-terrorism. The British government is aware of the risk posed by agro-terrorism and the Department for Rural, Food and Agricultural Affairs has noted its dangers:

“[the] use of plant pathogens for malevolent purposes [is not considered to have] such high potential in comparison with human and animal diseases ... nevertheless, attackers could potentially cause severe economic damage by spreading plant diseases, and agriculture is possibly more open to such a threat as a result of large scale production systems and monocultures ... [and] the use [or threat of use] of plant pathogens as delivery systems ... could severely undermine consumer confidence in a particular crop.”⁹⁸

The UK has a certain degree of security within its agricultural industry as it has followed a protectionist approach, which involves a system of licenses to import animal pathogens and move such pathogens within the UK.⁹⁹ The importation of certain plant pathogens that pose a threat to the health of plants is prohibited without a license.¹⁰⁰ These licenses are administered by the Department for Environment, Food and Rural Affairs in England and Wales and by the Scottish Executive Environment and Rural Affairs Department in Scotland.

The British government also has been an active proponent of including animal and plant diseases in the international surveillance of biological agents and thus has included animal and plant pathogens that can be added to the list of noxious substances under the ATCSA.¹⁰¹ The ATCSA’s controls with regard to dangerous pathogens also apply to any animal or plant that may carry a pathogen listed in the schedule to the Act.¹⁰²

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⁹⁶ The order must be approved by a resolution from both Houses of Parliament.

⁹⁷ ATCSA, c. 23, § 75.

⁹⁸ Department for the Environment, Food and Rural Affairs, *Contributions to a State-of-the-Art Review of Biosecurity Risk Management*, ¶ 4.1, http://www.defra.gov.uk/science/project_data/DocumentLibrary/SD0310/SD0310_3042_FRP.doc, (last visited Apr. 25, 2006).

⁹⁹ The Importation of Animal Pathogens Order 1980 and the Specified Animal Pathogens Order 1998.

¹⁰⁰ Plant Health (Great Britain) Order 1993 (as amended) SI 1993/1320.

¹⁰¹ ATCSA, c. 23, § 75.

¹⁰² ATCSA, c. 23, § 58.