



# **United Kingdom: Post-July 2005 Anti-Terrorism Measures**

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## UNITED KINGDOM

## POST-JULY 2005 ANTI-TERRORISM MEASURES

*Executive Summary*

*In reaction to the July terrorist bombings in London, Prime Minister Tony Blair announced a number of measures that will be introduced to aid in the fight against terrorism. The measures are a combination of administrative changes and those that will need legislation in order to introduce them. They include tightened immigration provisions, particularly with regard to deportation; powers to deprive individuals of their British citizenship or naturalization rights; streamlined extradition processes; and pre-trial judicial investigation procedures.*

**I. Introduction**

*This has been a most terrible and tragic atrocity that has cost many innocent lives ... when [terrorists] try to intimidate us, we will not be intimidated. When they seek to change our country or our way of life by these methods, we will not be changed. When they try to divide our people or weaken our resolve, we will not be divided and our resolve will hold firm. We will show, by our spirit and dignity, and by our quiet but true strength that there is in the British people, that our values will long outlast theirs. The purpose of terrorism is just that, it is to terrorise people, and we will not be terrorized ... let no-one be in any doubt, the rules of the game are changing ... coming to Britain is not a right and even when people have come here, staying here carries with it a duty ... to share and support the values that sustain the British way of life. Those who break that duty and try to incite hatred or engage in violence against our country and its people have no place here. Prime Minister Tony Blair, Statement, July 21, 2005.*

A series of four coordinated bombings in London on July 7, 2005 brought the city's public transportation to a standstill and validated the British governments' prediction and fears that it was never a matter of if, but when, a terrorist attack would occur on British soil. Exactly two weeks after the initial attacks London faced another series of bombings that, although unsuccessful, demonstrated again the limitations of the government and the law. Despite an existing and extensive anti-terrorism legislative regime,<sup>1</sup> Prime Minister Tony Blair made a statement announcing that the British government would take a tougher stance against individuals who encourage or advocate terrorism and make it more difficult for these individuals to remain in, or to enter, the United Kingdom.<sup>2</sup> The measures proposed by Mr. Blair are a combination of administrative changes and those that require legislation to be given effect. Mr. Blair stated that the measures that do not require legislation would have immediate effect, or become effective after a brief public consultation, while those requiring legislation will be examined and introduced during the next Parliamentary session. Mr. Blair is currently indicating that he will recall Parliament for two days in September in order to begin debating these measures.

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<sup>1</sup> Terrorism Act 2000 c. 11, Anti-terrorism, Crime and Security Act 2001, c. 24, and the Prevention of Terrorism Act 2005, c. 2.

<sup>2</sup> Tony Blair, Press Conference, Aug. 5, 2005, available at <http://www.number-10.gov.uk/output/Page8041.asp>.

## II. Immigration Measures

### a. Deportation and Exclusion

New criteria for the deportation and exclusion of individuals from the United Kingdom are to be introduced and used in a “widespread and systematic manner”<sup>3</sup> when the Secretary of State makes the decision to exclude or deport non-nationals on the grounds that their presence is not conducive to the public good. These new measures are to be implemented through policy.

Mr. Blair stated that anyone that has participated, or been involved, in terrorism in any way in any jurisdiction will be refused entry into the United Kingdom. The Secretary of State has further stated that the criteria to exclude and deport individuals will be extended to those that foment, glorify, justify, advocate terrorism or serious criminal activity, or provoke others to commit acts of terrorism or serious crime, those that advocate the use of violence to further particular beliefs and individuals that “foster hatred which may lead to intra-community violence in the United Kingdom.”<sup>4</sup> The criteria will also be broadened to include those that “present an indirect threat to national security, public order or the rule of law in the UK or to the UK's good relations with a third country ... and those who express what the Government considers to be extreme views that are in conflict with the UK's culture of tolerance.”<sup>5</sup> These criteria apply to individuals that have not yet arrived in the United Kingdom as well as those that have already been granted either temporary or indefinite leave to remain. The behavior undertaken by these individuals may have occurred in the United Kingdom or abroad, and been taken through any “means or medium including writing, producing, publishing or distributing material; public speaking including preaching; running a website; using a position of responsibility such as teacher, community or youth leader to express views.”<sup>6</sup> To ensure that all views are taken into account in what many consider to be overly broad and indefinable terms the government is conducting a two-week consultation on the behaviors to be considered unacceptable.<sup>7</sup>

One other measure proposed by Mr. Blair aims to prevent extremists from entering the UK in the first instance. He has stated that the government is consulting with Muslim leaders to assemble a list of clerics considered unsuitable to preach who are not British citizens, and to exclude these individuals from the United Kingdom. The Foreign and Commonwealth Office is also compiling an international database of individuals whose activities or views are considered to pose a threat to the national security of the United Kingdom. The list will be used to exclude these individuals from the United Kingdom, although a right of appeal outside the country will be provided. Border controls will further be tightened by the introduction of biometric visas in an attempt to prevent individuals entering the country using forgeries. These controls may be introduced over the next twelve months and do not require legislation.

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<sup>3</sup> 20 July 2005, PARL. DEB., (HC) 1255, available at [http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm050720/debtext/50720-04.htm#50720-04\\_spm0](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm050720/debtext/50720-04.htm#50720-04_spm0).

<sup>4</sup> Home Office, *Broadening Powers to Tackle Extremism*, Aug. 5, 2005, available at [http://www.ind.homeoffice.gov.uk/ind/en/home/news/press\\_releases/broadening\\_powers.html](http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/broadening_powers.html).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> HOME OFFICE, EXCLUSION OR DEPORTATION FROM THE UK ON NON-CONDUCTIVE GROUNDS: A CONSULTATION DOCUMENT, Aug. 2005, available at <http://www.homeoffice.gov.uk/docs4/deportation.pdf>.

## b. Memoranda of Understanding

To overcome the prohibition of *refoulement* and what is considered by many to be a strict judicial interpretation of Article 3 of European Convention on Human Rights,<sup>8</sup> which provides that individuals cannot be deported to their country of origin if they may face torture or death,<sup>9</sup> the British government has negotiated Memoranda of Understanding with a number of countries. It has recently concluded such an agreement with Jordan; further Agreements are being sought with Algeria, Lebanon and seven other countries, reportedly Egypt, Tunisia, Morocco, Libya, Syria, Yemen, and the United Arab Emirates.<sup>10</sup> The Special Rapporteur on Torture for the United Nations has warned the British government that diplomatic agreements from countries where there is a substantial risk of torture, such as Algeria, Jordan, and Egypt, are not a sufficient guarantee and that deporting individuals in such circumstances is likely to contravene international law.<sup>11</sup> Mr. Blair stated that France and Spain, both subject to the European Convention on Human Rights, have relied on assurances of foreign governments to deport individuals to Algeria without breaching international law.<sup>12</sup> The decision to deport is still subject to judicial review and an appeal to the Special Immigration Appeals Court. Mr. Blair has stated a desire to introduce legislation providing deportees with a right of appeal that can be lodged in the country of deportation, rather than in the United Kingdom.

The Home Office announced that ten foreign nationals deemed to be a threat to the national security of the United Kingdom have been detained prior to deportation. The Home Secretary has announced that the British government is close to obtaining the “necessary reassurances” that these individuals will not be subject to torture or ill treatment in their home countries.<sup>13</sup>

## III. Proscription of Terrorist Organizations

Mr. Blair announced his intention to proscribe Hizb-ut-Tahira and its successor organization, al-Muhajiroun. The current anti-terror legislation grants the Secretary of State the authority to proscribe, by order, organizations if he believes them to be concerned with terrorism.<sup>14</sup> In this instance, officials from the Home Office reported that this organization is not considered to be a terrorist group and thus primary legislation may be needed to expand the definition of terrorist to include radical extremist groups before organizations such as these can effectively be proscribed.<sup>15</sup>

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<sup>8</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 UNTS 222. The European Convention on Human Rights was incorporated into the national legislation of the United Kingdom by the Human Rights Act 1998, c. 42

<sup>9</sup> *Chahal v. United Kingdom*, (1996) 23 EHRR 413.

<sup>10</sup> Nigel Morris and Marie Woolf, *London Attacks: Extremists who are Deported will be Tortured Warns UN Expert*, INDEPENDENT (London) Aug. 10, 2005 at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Guardian, Deportation: Case Not Proven*, GUARDIAN (London) Aug. 12, 2005 at 23.

<sup>14</sup> 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.”

<sup>15</sup> Christopher Adams and Bob Sherwood, *Prime Minister Accused of Panic over Terror Laws Aftermath*, FINANCIAL TIMES (London) Aug. 9, 2005 at 3.

#### IV. Extradition

Mr. Blair has proposed the introduction of new legislation to ensure the efficient and effective operation of the extradition system through the establishment of a maximum time limit for all extradition cases that involve terrorism. A consultation is currently underway regarding this issue.

#### V. New Anti-terrorism Legislation

Mr. Blair stated that he is aiming to introduce the following measures in new anti-terror legislation as soon as Parliament reconvenes in September:

- A criminal offence of condoning or glorifying terrorism in the United Kingdom or elsewhere. Critics have argued that the language used is not easy to define, to which the government has responded by stating that the “terms are not unknown to the law ... and it is for the courts to decide;”
- An *in camera* pre-trial procedure, based on the French inquisitorial system, overseen by special judges that possess security clearance. This will, in turn, permit the longer detention of terrorist suspects and the use of sensitive information and telephone tap evidence, which is currently cited as a problem in the failure to prosecute individuals previously indefinitely detained.<sup>16</sup> This approach has been recommended by a number of individuals charged with reviewing the operation of the current anti-terror legislation and is currently under consultation;
- An expansion in the capacity of the courts through an increase in the number of judges qualified to hear terrorism-related cases. The judges will be appointed through the current process, which is done by the Lord Chancellor;
- A significant extension of the amount of time a terrorist suspect can be detained prior to charge is being considered, up to three months from fourteen days. It is likely that the detention period will be combined with the pre-trial procedure, described above;
- An extension in the use of control orders, which essentially provides for ‘house arrest,’ to cover British nationals, with any breach resulting in jail; and
- A new power to close places of worship used as centers for fomenting extremism.

#### VI. Citizenship

To integrate the minority population, to prevent isolation and to encourage a sense of “British pride,” Mr. Blair announced that the requirements for obtaining British citizenship are to be reviewed with the intention of raising the threshold to encourage greater integration. This can be introduced without any legislation. The government is also looking to establish, with the Muslim community, a commission to advise on integration. The government is also considering extending its current powers to deprive an individual of citizenship or naturalization rights if it believes feels that the individual has been engaged in extremism.

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<sup>16</sup> Ben Hall, *Home Office Considers Secret Courts to Prepare Prosecutions of Suspects*, FINANCIAL TIMES (London) Aug. 10, 2005 at 2.

## VII. Political Aspects

The measures announced by Mr. Blair supplement the existing comprehensive anti-terror legislation and aim to close loopholes. The main problems faced by the Labour government have been the use of the European Convention on Human Rights, incorporated into the national law of the United Kingdom by the Human Rights Act 1998. The Labour government now claims that the judiciary uses this Act to overturn a vast number of laws passed by Parliament and to frustrate their intent. The government has repeatedly expressed frustration with the courts and accused it of ‘judicial activism,’<sup>17</sup> particularly with regard to the use of Article 3 of the Convention to block attempts to deport radical Muslim clerics preaching extremist views. The government has argued that the judiciary has interpreted individual rights as taking precedence over the national security of the United Kingdom. Mr. Blair has stated “it is important that the laws we regard as important and necessary are passed and upheld.”<sup>18</sup>

Mr. Blair has stated that he hopes judges will revise their interpretation of Article 3 and move toward the needs of the national security of the United Kingdom in light of the July bombings<sup>19</sup> by using Article 2, which provides for the right to life. Mr. Blair has strongly indicated that if this does not occur he is willing to introduce legislation and amend the Human Rights Act with regards to this interpretation of Article 3.<sup>20</sup> The practical difficulties of either derogating from Article 3 of the European Convention of Human Rights or introducing legislation to instruct Judges on the interpretation of Article 3 may prove to be prohibitive; the courts are likely to strike down any instructions on how to interpret the law and, if derogation is even legally possible, it may come with a high political cost.

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<sup>17</sup> Brendan Carlin et al., *Howard Attacks Courts on Terrorism*, DAILY TELEGRAPH (London) Aug. 10, 2005 at 1.

<sup>18</sup> George Jones and Sebastian Berger, *Blairs on Collision Course over Laws to Beat Terrorism*, DAILY TELEGRAPH (London) July 27, 2005 at 5.

<sup>19</sup> James Blitz and Ben Hall, *Prime Minister Pushes to Shut the Gates to Londonistan*, FINANCIAL TIMES (London) Aug. 6, 2005 at 2.

<sup>20</sup> George Jones and Sebastian Berger, *supra* note 18.