

## THE REAL STATE OF EMERGENCY – THE UK IS NOW A POLICE STATE ON PAPER

### *About this guide*

This is the second draft, dated 8 January 2002. It aims to be comprehensive rather than covering things in depth, readable yet legally precise.

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The first people to be given “ jail minus trial” before the new Anti-Terrorism Crime & Security Act 2001 had even been published. While there are a number of briefings dealing with what was still a bill in Parliament, there is little other than “ on message” Home Office briefings on the Act. In fact, given that there have been no substantial cases setting precedents or guides clarifying provisions of the Terrorism Act 2000, we are not likely to see much about this abominable set of laws for some time yet.

This cannot be allowed to happen – we cannot allow these laws to become permanently entrenched. Hopefully this guide will stimulate informed debate and enough opposition in time for the review in April 2003 for most of the Act to be repealed then.

### *Reasonable doubts*

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 Act 2001 (ATCSA or ‘the Act’) 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 them are so broad that they give free reign to the executive without the possibility of meaningful review by the courts. Some of the provisions meriting the greatest concern are:

- Indefinite internment for foreigners without trial or proper legal scrutiny;
- Allowing the Government to transpose European laws on terrorism into our law by order for the next six months;
- 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;
- Allowing police to remove facial coverings in any area where there might be a crime;
- 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.

### *Being seen to be believed*

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 for 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 is real doubt that this law needed to be passed. The truth is, the mandarins at the Home Office have used the Act as a Trojan horse to get into law all the dodgy proposals at the bottom of their filling cabinets.

Because much of the Act amends and extends other legislation rather than being new legislation itself, it is not only concentrated but it is also very difficult to understand, particularly without the other acts it

refers to in front of you. It has an extraordinarily large impact both on many statutes and on fundamental legal principles because of this double strength and indeed its length. As a result it is hardly surprising a month was quite insufficient time for Parliament to consider it carefully.

### *From bottom drawer to key law*

Some civil libertarians supported the principle of permanent anti-terrorism legislation on the grounds that if nothing was in place, when there was an emergency, legislation would be rushed from the Home Secretary's drawer and turned into law without proper scrutiny. They thought if permanent terrorism laws were debated and put in place when there was no rush or pressure, the resulting laws would be far better. This argument has been blown out of the water by the legal reaction to September 11. Worse still, the next time there is an attack, UK anti-terror law can and no doubt will be extended by secondary legislation meaning even less debate and time to oppose it.

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 dissidents for their beliefs. 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.

## Commentary

The Act is well over 100 pages long so it is best to just print out the contents pages and then, using the guide below, the sections which concern you most.

### *PART 1 – Terrorist Property*

Section 1 relates to the seizure of cash believed to be connected to terrorism by giving effect to Schedule 1. This Schedule replaces sections 24 – 31 of the Terrorism Act despite the fact they have not been really used yet.

Section 3 gives effect to Schedule 2 which amends the Terrorism Act's provisions on dealing with property suspected to have some connection with terrorism to make it even more draconian. It places incredible burdens 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.

[Schedule 2 is very technical and will be expanded upon in the next draft of this guide if there is demand for it.]

### *PART 2 – Freezing Orders*

Section 4 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 bind UK citizens and companies even if they are abroad. The orders would have to be confirmed by Parliamentary vote

### *PART 3 – Disclosure of Information*

Section 17 allows the public bodies to disclose an enormous range of confidential information to law enforcement agencies in connection with (proposed) criminal investigations anywhere in the world. Schedule 4 sets out the list of laws which contain disclosure provisions which this part extends: up to now information obtained under these laws could only be used for the purposes the original law was made, e.g. health & safety, agricultural subsidies or patients' health.

There are no checks or audits let alone procedures to inform individuals or businesses that their confidential information is being passed around let alone any judicial supervision of the process as a whole. While the Government did introduce a safeguard in s17(5) that any disclosure had to be proportionate to "what is sought to be achieved by it", there is effectively no one to check up on this.

Section 18 creates the other supposed safeguard which allows the Government to direct that information

shall not be disclosed in relation to specified overseas proceedings. However directions can only be made where it is felt that it would be more suitable for an investigation to be carried out or jurisdiction exercised in the UK or a third country, the *forum conveniens* principle. There is no provision for disclosure bans to countries or security services with poor human rights records.

Section 19 replicates the effect of section 17 with regard to information held by the Inland Revenue and Customs.

Section 20 brings in another supposed safeguard: the ‘dual criminality’ rule. This means that for a criminal investigation abroad to count as one for which information can be disclosed, the crime being investigated abroad would also be a crime if carried out in the UK. 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. In short another unsafe safeguard.

## *PART 4 – Immigration & Asylum*

### **Indefinite Internment**

Section 21 permits the Home Secretary to certify any foreigner as an “international terrorist” if he or she decides they are a risk to national security and that they are a terrorist. Given that there is a risk inherent in everyday activities and that the courts have a very hands-off approach to matters of ‘national security’, almost anyone could fall foul of this the first part of the test.

‘Terrorist’ is defined differently in sub-section (2) to the Terrorism Act. It is narrower in that only those concerned in international as opposed to domestic terrorism count as a terrorist. The House of Lords tried their best to make this section cover domestic terrorism (i.e. foreigners involved in domestic terrorism, not UK subjects concerned in terrorism) but failed; the Government was concerned of the impact this might have on the peace process in Northern Ireland.

However there are other alternative ways you can be classified as a terrorist. If you belong to, are a member of or have links to an “international terrorist group”, you also count as a terrorist. An international terrorist group does NOT have to be proscribed under the Terrorism Act; it is simply any group which is firstly subject to the control or merely influence of people outside the UK and secondly one that the Home Secretary suspects is concerned in terrorism. Links are defined in sub-section (4) as supporting or assisting an international terrorist group; the original bill was widely criticised for not doing so.

So if the Home Secretary suspects you support a group which he suspects engages in some terrorism, you are at risk. With the help of a repressive regime back home, most asylum seekers are at risk from such a stunningly broad power.

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

Section 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. Section 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.

Section 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**

Section 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.

### **Superior court of record**

Section 35 makes SIAC “ superior court of record” , making it equal to the High Court in its legal standing rather than just being another quasi-judicial review body. This gives it greater powers to review the Home Secretary’ s internment decisions and was the main concession the Government offered in this part. Because the internment power is drafted so widely, however, this safeguard is of little effect or indeed importance.

### **Treating refugees like criminals**

Section 36 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*

Section 38 extends the provisions brought in by the Crime & Disorder Act 1998 imposing tougher sentences on certain crimes (assaults, criminal damage, public order offences & harassment) aggravated by racial hatred to those also aggravated by religious hatred. Section 40 increases the maximum sentence from two to seven years. This is law changing for the sake of it; judges are unlikely to impose sentences much above two years as

### **Comments on the previously proposed religious offences**

The Government backed down on proposals to create new crimes of inciting religious hatred as the Lords felt their proposed safeguard of publishing guidelines for prosecutions did not nearly go far enough. However the ‘ opposition’ parties did say that they were willing to consider this proposal in a less rushed fashion as a separate bill; the Government responded saying there was no legislative time available for the foreseeable future.

The fundamental problems with the original proposals were firstly that religion involves opinion whereas race does not, meaning clamping down on free speech. Secondly, under the original proposals even if you did 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, you could have been criminalized if you pointed out that a certain religion has a practice or belief which is abominable to modern society.

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. This would only work if our libel law was made less draconian and brought into line with other countries such as the USA. 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 (UKAEAAC) 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 Section 77 which allows the Home Secretary to regulate them. Section 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". Section 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**

Section 90 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. Section 89 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 Sections 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**

Section 92 would insert a new Section 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. Since there is already a power to do this in relation to terrorist suspects under the Terrorism Act, the purpose of this section is clearly to level down the ordinary criminal law to the extremes of anti-terrorism laws.

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 – toupees threatened?**

Section 94 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'? We are all data fodder now.

#### **Paramilitary police for all**

It is proposed in Sections 98-101 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**

At present only European Community measures such as banana sizes can be implemented in our law by statutory instruments, which can be passed after 90 minutes of discussion in parliamentary committee. This proposal would allow third pillar measures (Justice and Home Affairs, including the Schengen Information System) from the European Union, of which the European Community 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 one of its largest concessions on the Act, the Government agreed that this power would only run until July 2002 and that it would only cover matters related to terrorism. This provision will allow the EU’ s new extradition and anti-terrorism proposals to be implemented quickly simply and without proper debate or scrutiny.

#### **Noxious substances nasty sentences**

Section 113 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**

Section 114 extends the law of bomb hoaxes to include NCB 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**

Section 116 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

Section 117 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 terrorist crimes concerning dealing with property have been committed.

The Section 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 information which might be of 'material assistance' in preventing 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. Information has to be given to the police as soon as 'reasonably practicable' and there is a defence of having a 'reasonable excuse' not to disclose.

What makes this offence so worrying is the lack of definition or rather the indeterminacy of key elements of the offence notably what is terrorism and a reasonable excuse. While there were very few prosecutions under the old law, it was used frequently as a threat to make people become informers or carry out the will of the state. It's a stick the police can use against many people and tool to create a permanent state of paranoia in minority communities.

## Border controls – now the 'borders' are everywhere

Section 118 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. Section 119 further allows police to collect information on passengers from any aircraft or ship travelling within the UK.

## Dirty weapons

Section 120 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

Section 122 - seven members of the Privy Council to make report within two years on the Act. Any section of the Act condemned in the report would lapse six months later unless Parliament gets round to debating the report.

Section 124 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 Act – that is reference to the purposes in the Act'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. Other possibilities are: internment being extended to UK citizens; the 2006 sunset provision on the internment power being removed; disclosure information offences being extended to cover non-fissile nuclear waste (so covering nuclear waste transports) and extension of the higher sentences for hate crimes to hatred of political and ideological groups (i.e. "terrorism").

The remaining Sections in this part are merely technical provisions. Section 127 provides that most of the Act came into force the day it was passed. Part 1 (Terrorist Property), Part 7 (Security of Pathogens & Toxins) and Part 12 (Bribery & Corruption) come into force on a day specified in a statutory instrument, while sections 84 (removal of airside intruders) & 87 (air cargo documents) come into force two months from when the Act was passed.

## 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.**