

# An activist's guide to the Terrorism Act 2000

Last changes: 10 March 2001

(this guide is being massively overhauled and expanded so it is back in draft format)

*This guide covers the law relating to England & Wales only. The law is basically the same in Northern Ireland but there are additional temporary powers, whereas there are a few more differences regarding the Act's application to Scotland due to its different legal system.*

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Now includes violence to people, damage to property, endanger life, threats to health and safety of a section of the population, interference or disruption of electronic systems. Actions have to be 'serious', and designed to intimidate a section of the population, influence a government or involve firearms or explosives. Count as 'terrorism'.

Gives the Home Secretary powers to proscribe (ban) organisations involved in terrorism. Any action taken for the benefit of a proscribed organisation is automatic deemed terrorist.

NB: While the offences of membership, support and uniform apply only to proscribed organisations, all the other offences in the Act can apply to anyone.

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SHORT OF TIME? Then read Parts I, IV and V as they are the most important.

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## *Introduction*

"Terrorism" has been defined so widely in the Terrorism Act 2000 (' the Act' ) that a huge and yet indeterminate range of activity is covered. While the Act is a serious threat for those who are engaged in direct action and those that support them, there are grounds for hope. What was known back in 1994 as the Criminal Justice Act (' CJB' ) not only polarised and politicised a new generation, it also freed many of them from concern about always staying inside the criminal law. If merely sitting down in front of a bulldozer was now a crime, surely it would be more sensible to deal with the bulldozer beforehand when you were less likely to be caught?

A crucial difference to the CJB and indeed any other law is the unprecedented amount of discretion the Act gives to the executive. While the Act could be used to clamp down on a wide range of activities, the law enforcement agencies will be able to pick people and groups off on their own terms. Indeed they would be seriously overwhelmed if they tried to deal with everything now classed as " terrorism" . And, if they try to go too far, using the Act against individuals or groups that the public clearly do not see as terrorists, they risk provoking the sort of outrage that was so lacking during the Act' s passage through Parliament.

This guide attempts to go beyond a narrow legalistic view of the Act and look at the context in which it would operate. After all, as those of us who have been harassed, detained and arrested while engaged in direct action know, what happens in practice is often a world apart from the black letter of the law. Particular attention will be paid to speeches made by Government ministers in Parliament as these will be relevant when it comes to interpreting the Act' s provisions in the court following the House of Lords decision in *Pepper v Hart* [1993] – expect to see these added by the end of April 2001.

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## *PART I – The redefinition of ' terrorism'*

## The fundamental definition

The first section of the Act states:

"1. - (1) In this Act "terrorism" means the use or threat of action where-

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it-

- (a) involves serious violence against a person,
  - (b) involves serious damage to property,
  - (c) endangers a person's life, other than that of the person committing the action,
  - (d) creates a serious risk to the health or safety of the public or a section of the public, or
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system."
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

Note that under subsection (5) any action taken for the benefit of a proscribed organisation also counts as terrorism.

## HRI

This section is of the greatest importance as it used to define most of the offences and powers in the rest of the Act. There is a [separate guide](#) that examines the definition more closely and includes a [simple explanation](#) of the definition. The absolutely key point to consider when attempting to interpret the definition is its context. To be convicted of an offence in the Terrorism Act, it would be necessary for the state to prove 'beyond reasonable doubt' (i.e. so that one is 'sure of guilt') that the action fell within the definition. However for a police officer to use the anti-terrorism powers, it is enough that they have reasonable grounds to believe the conduct falls within the definition. So in terms of going to court to challenge use of these powers, you would need to be able to prove that the police officer(s) in question had no real objective grounds that could have led them to believe as they did. That's rather difficult.

## Motives and purpose

While the new sub-section (1)(b) may seem like it has answered those critics who complained that the original definition made no mention of putting the public in fear – a key hallmark of true terrorism – it has not. It should state "designed to coerce the government". "Influence" is far too weak; the Government has borrowed the present phrase from emergency legislation rushed in at the start of World War II, hardly appropriate in the new era of the Human Rights Act.

The sub-section is weakened yet further by sub-section (3) which bypasses (1)(b), bringing in any armed liberation struggle, conflict or indeed war in the world within the redefinition. Because the two alternatives to "intimidating the public", that is influencing the government or using firearms or explosives, are

drafted so widely that key phrase will be worthless and irrelevant in practice. However, this clever piece of drafting was enough to fool the Lords into thinking the new definition had answered their concerns and not voting against it. So while the new subsection may provide a partial safeguard in the context of a prosecution for a few cases, it will offer very little protection against misuse of the new police anti-terrorism powers.

#### Actions that count

The police have started claiming that the use of fortifications, such as lock-ons and tunnels on sites and in squats occupied by protesters, is does not count as peaceful protest as it endangers the life of protesters using them and bailiffs trying to evict them. It is possible that under sub-section (2)(c) constructing such fortifications would involve a threat for a political purpose to endanger life to bailiffs (following an amendment endangering your own life no longer counts) and would therefore count as terrorism. As a result the police could use against this sort of peaceful protest the swathe of powers that will be examined later.

Subsection (2)(d) has to be the most vague and indeterminate of the five triggers. It is understandable that the Government wants to be able to deal with new forms of terrorism – this section was drafted in the light of the nerve gas attacks on the underground in Tokyo – but surely any such attack would fall within the other subsections? It is unlikely to have much affect on activists either. One example of action caught by section one given by Charles Clarke, Minister of State at the Home Office during the First Sitting of the Standing Committee was hacking into the national grid system. This would probably be covered by the other triggers as it could cause traffic lights or hospital machinery to fail, for example, and would certainly be covered by the new (2)(e).

#### Trade Union Disputes

Lord Bassam of Brighton (Home Office Minister in Lords) said (Third Reading in Lords 4 July 2000 Column 1449): "We have also made it clear on many occasions that our definition of terrorism is not intended to catch lawfully organised industrial action in connection with a legitimate trade dispute. It is worth putting that on record. I do not believe it likely that the courts would stretch the definition of a political cause as some have suggested.

Moreover, unions which operate in essential services usually go to considerable lengths to seek to avoid serious risk to life, health and safety as a result of the way in which they pursue industrial disputes. Therefore, in our view their actions would be doubly unlikely to fall within our definition." [emphasis added]

So it is clear that unions engaging in unlawful (which could include just trespass) or illegal (e.g. secondary picketing) action could be caught – see Trade Union and Labour Regulations (Consolidation) Act 1992. The Government could simply accuse them of making illegitimate demands and putting the public's health and safety if they were in an essential service like health or fire and this could be hard to rebut. Certainly the police then would then have the necessary level of 'suspicion' to be able to use the Act.

#### Overseas Terrorism

Under section 1(4) the definition of terrorism is extended so that it covers acts done or threatened anywhere in the world. There is much scope for prosecutions under sections 59-61 (relating to inciting terrorism overseas) to be motivated by pressure from foreign governments and a fair trial could be difficult to obtain as evidence and witnesses would have to come from those countries. Of course there is an even greater possibility of anti-terrorism powers being used following overseas pressure. In essence anyone involved in solidarity campaigns with movements abroad that fall within the new definition could be treated exactly the same as someone involved in terrorism here.

Who is the Act likely to be used against?

The Act will and indeed has already been used against real terrorists.

Straw has claimed in Parliament (Official Report, 14 Dec 1999, Vol 341 Cm 154) that ‘ the new definition [of terrorism] will not catch the vast majority of so-called domestic activist groups’ . Unless he has a very strange definition of activist groups this statement is quite simply wrong. Serious violence against persons could include unplanned violence between protesters and police at the end of big demonstrations. While Straw does claim (Cm 154) that the Act ‘ is not designed to be used in situations where demonstrations unaccountably turn ugly’ , he was more than happy to accept the allegations about the violence at demonstration in the City of London on June 18 1999 being pre-planned.

The possibility of damage to property alone constituting terrorism has rightly been of great concern. Straw has said (Cm 158) that ‘ I say with considerable care that I know of no evidence whatever related to Greenpeace’s activities that could bring it remotely within the Act’s ambit.’ Since Greenpeace has been involved in trashing genetics test sites, this might make you think that this sort of activity would not be covered by the Act. Then again remember that specific assurances were given about the Harassment Act 1997 and how it wouldn’t be used against protesters – the first few times it was used was against animal liberationists. Greenpeace and other well know groups are very unlikely to find themselves at risk from the Act. Not only would any attempt to use it against it surely backfire and cause public outrage but also there is little need as Greenpeace and other large organisations can be served with injunctions and raided, as it has indeed happened already. On the other hand radical genetics activists could find themselves targeted in an attempt to divide and rule.

It is most likely that the first domestic groups the powers will be used against are those engaged in the struggle for animal liberation. It is they who are presently the closest to what the public considers terrorism. At the same time a combination of dirty tricks, for example Sunday Times articles and careful provoking of riots as happened in London on ‘ N30’ (the day things kicked off in Seattle against the World Trade Organisation) along with slick media manipulation and press conferences will be used to try to divide the radical direct action groups and activists from the liberals. Dirty tricks were a key part of the state’s tactics in Northern Ireland, during the miners’ strike and Greenham Common and it seems certain that they will continue to be used. There has probably been enough dirt on Reclaim The Streets to allow the police to feel confident about using some of the proposed powers against them and groups working with them before another big day of action.

In terms of international groups, it does depends on what happens abroad and how friendly our government is with the government in whose territory alleged terrorism is taking place. Certainly those involved in affairs in anywhere from Afghanistan to Ogoniland, East Timor to Kurdistan, should be careful. With the powers becoming effective in Spring 2001, it is most unlikely that the Act will be used this side of the next general election, unless the state needs them to react to a terrorist outrage or something..

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## *PART II – Proscribed Organisations*

Under section 3 the Home Secretary can proscribe, i.e. ban, an organisation if it:

- ‘ (a) commits or participates in acts of terrorism,
- (b) prepares for terrorism,
- (c) promotes or encourages terrorism, or
- (d) is otherwise concerned in terrorism.’

The Minister of State for Northern Ireland Adam Ingram stated at the Second Sitting of the Standing Committee that proscription was firstly a deterrent for low-level terrorist activity, such as tracking the movements of a target, and secondly a signal of the Government's view of the unacceptability of the proscribed organisation. At the Third Sitting he gave the following guidelines for which groups might be proscribed: ' a number of factors must be taken into account, for both domestic and international groups, including the nature and scale of a group's activities, the threat it poses to the United Kingdom, the extent of its presence within the UK and our need to support the international community in the battle against international terrorism.'

The only groups listed in Schedule 2, i.e. which are proscribed, are involved in Irish terrorism, though there are plans to add 21 foreign and predominantly Islamic groups. Clarke stated while the Bill was progressing through Parliament (Cm 225) that ' the Home Secretary has no plans at present to proscribe any domestic group' though he did quote from the Consultation Document which suggests that two domestic groups, the Justice Department and Animal Rights Militia, ' have crossed the threshold' . Proscription is a really extreme power and it is unlikely that any domestic groups would be proscribed unless they are extremely active and their public reputation has been severely blackened, through dirty tricks or otherwise.

### Reviewing proscription decisions

Under section 5 those affected by an order of proscription can challenge the Home Secretary's decision to proscribe by going to the Proscribed Organisations Appeal Committee (POAC), which is set up in Schedule 3 of the Act. POAC can also review a decision not to deproscribe a proscribed group. However, it is wrong to call this a right of appeal as only the principles of judicial review apply. This means only the legality as opposed to the merits of the decision can be challenged, i.e. whether the Home Secretary got the law wrong, and with sections 1 and 3 as vague as they are this means that few reviews will be successful.

The only right of further appeal is on legal points only and such an appeal would go to the Court of Appeal. It gets worse: under section 3(3) of Schedule 3, not only can the representative of the proscribed organisation and their lawyer be banned from the hearing, POAC can refuse to give full details of its reasons for dismissing an appeal. The Government's repeated justification of the lack of judicial control here (and elsewhere) is that it would prevent "second-guessing" of Secretary of State's decisions, without the benefit. Ingram even ruled out consultation saying in the Third Sitting that ' [i]f everyone talked to all the human rights groups, the civil liberties groups and political parties, the death of someone might be the result.'

### Effect of deproscription

In the unlikely event of a proscription decision being challenged successfully, an appeal against convictions based on the wrongful proscription can be made. If the original offence was tried summarily – in the magistrates' court - the appeal will be made to the Crown Court as long as the appeal is lodged within 21 days of the deproscription order. Otherwise a convicted person has 28 days to lodge an appeal with the Court of Appeal. However, their activity to which charge referred to took place wholly after the refusal to deproscribe. Question: what if Parliament votes against resolution?

### Offences relating to proscribed organisations

It is important to distinguish those offences that can only be committed in relation to a proscribed organisation from the others in the Act. These offences carry a maximum punishment of ten years and an unlimited fine except for uniform which is summary only, i.e. maximum six months imprisonment and unlimited fine.

Membership – Section 11 creates an offence of belonging or professing to belonging to a proscribed organisation;

Support – Section 12 creates three offences: (1) inviting support (support not being limited to the provision of money or other property) for a proscribed organisation; (2) being involved in (assisting) organising a meeting supporting, furthering the activities of, or, including a speech by a member of, a proscribed organisation; (3) addressing a meeting to encourage support for a proscribed group (this could include just saying it shouldn't be proscribed) or further its activities;

Uniform – Section 13: wearing an item of clothing or displaying an article to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

Section 12(5)(a) defines a "meeting" as being a meeting of more than three or more people, whether or not the public are invited. So the simple act of someone, a journalist or negotiator, for example, speaking to a member of a proscribed organisation in the presence of another, be they a translator or a bodyguard could be an offence under s12.

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### *PART III – Funding and terrorist property*

The following offences relate to funding and “terrorist property” defined in section 14 basically anything to do with terrorism. ‘likely’ and reasonable cause to suspect it might. Cf Art 2 ICSTF and Hansard. They carry a maximum penalty of 14 years imprisonment and an unlimited fine.

Fund-raising – section 15 creates three related offences of (1) inviting another to provide property, (2) receiving property or (3) providing property where you have reasonable suspicion it may be used for purposes of "terrorism"

Use and possession – section 16 creates an offence of using or possessing property for the purposes of "terrorism"

Funding arrangements – section 17 creates an offence of entering into or being concerned into an arrangement whereby property is (to be) made available to another where you have reasonable suspicion it may be used for purposes of "terrorism"

Money laundering – section 18 creates an offence of entering into or being concerned in an agreement facilitating the retention or control of property likely to be used for purposes of terrorism (note that for this offence the burden is on the defendant to prove they didn't know property might be used for "terrorist" purposes)

To comply with the International Convention on the Suppression of the Financing of Terrorism, the Government inserted a new section 63 which gives UK courts jurisdiction over offences in sections 15-18 committed abroad. While before this amendment UK courts would have been able to try cases where, for example, money was held by someone here for the purposes of terrorism in another country, the amendment allows them to try cases where the money and the person holding it have been abroad and where that person and prospective defendant is only passing through the UK. This could create a “reverse Pinochet effect”, where oppressive regimes put pressure on UK authorities to get tough with dissidents visiting the UK.

## Duty to disclose suspicions

Section 19 (disclosure of information: duty) creates an offence of believing or suspecting someone has committed one of the offences in the previous section (sections 15 to 18) due to ‘ information which comes to his attention in the course of a trade, profession, business or employment’ . The maximum punishment is an unlimited fine and 5 years. Section 20 overturns confidentiality requirements. This could end up being used to get journalists to report activists to the police: while there is no offence of committing terrorism, section 16 would make using or even possessing property for terrorism is an offence, so there effectively would be. This could cover, for example, possessing tools for trashing a genetics test site or fortifying a protest site in anticipation of eviction. Journalists not telling all could be threatened by police who would have an excellent tool to keep activist-friendly journalists in line. It could also lead to journalists being forced to rely less on people in direct action movements for information and instead turning to the state, etc.

## S21 no offence if acting with express consent of officer

The GAndALF case is a prime example of legal terms being given wide definitions in order to hit radical reporting. In that case a supporter of the Animal Liberation Front and the editors of Green Anarchist were charged with conspiracy to incite persons unknown to commit unknown criminal damage by reason of their having printed reports of ALF actions against animal abuse. The Court of Appeal only overturned the convictions due to a technicality regarding the indictment.

Note: The offence in section 19 does NOT apply to information that comes to your attention in a personal capacity or relationship. The Government has kindly restricted the offence to business relationships.

## Journalistic and legal privilege

Section 23 Forfeiture same bad standard. Even payment for committing one of these offences can be forfeited under (6). While the real owner has the right to be heard under (7) that does not amount to much. Strong doubts exist as to whether the provisions relating to third party owners – who are facing seizure of their property due to it having been in the control or possession of a convicted terrorist – are compliant with the Human Rights Act.

Sch 4 Restraint orders – where an inv

S25 Seizure of case. If r grounds rather than if just likely. Civil standard.

Sch 6 – financial information – general bank circulars but not include details of what is in the account – need specific investigation / warrant for that.

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## *PART IV – Terrorist Investigations*

Section 32 defines a terrorist investigation as an investigation of —

- “(a) the commission, preparation or instigation of acts of terrorism,
- (b) an act which appears to have been done for the purposes of terrorism,
- (c) the resources of a proscribed organisation,
- (d) the possibility of making an order [of proscription], or
- (e) the commission, preparation or instigation of an offence under this Act.”

The wide definition in this section coupled with the redefinition of terrorism makes for huge police powers. Not only can police investigate acts that haven’ t been committed, they can also deal with those that support them. The term “ instigation” is far more vague and loose than incitement as it covers general support for acts rather than just encouraging someone to do a specific act.

Incitement in criminal law has to be specific. So simply inciting someone to bomb a "MuckDonalds" in Russia would not be enough, but inciting someone to bomb a specific one or indeed all of them would be. Moreover, to be found guilty of incitement it has to be proved that you intended to incite. Instigation is far more vague concept and could exist in a longer timeframe and might need to be based around more than one specific act of terrorism, unless that act was exceptional.

### Detective and physical powers

Under section 33 if a police officer considers it 'expedient for the purposes of a terrorist investigation' they could declare a cordon. Anyone going inside or not following a direction to leave or remove a vehicle commits an offence. While there is a defence of having a "reasonable excuse" it is not clear how this will be interpreted. The cordon can last for 14 days and can be extended to a maximum period of 28 days, surely enough for any eviction let alone normal demonstration? With terrorism so loosely defined and the only requirement for setting up a cordon being expediency, a rather vague term itself, it would be hard to challenge the use of this power, which only needs a superintendent to authorise it. Worse is that even if you hadn't been told about the cordon you would still be committing an offence.

Possibly being used where an event is threatened or in aftermath of bomb

### Schedule 5

Section 37 simply gives effect to the complex Schedule 5 which relates to powers to obtain information. According to Clarke in the Fourth Sitting, the previous version of these provisions was used mainly to investigate terrorist funds, failing to mention that journalists and their sources were the in fact most harassed. He also stated that searches will be governed by Code A of the Police and Criminal Evidence Act 1984 (PACE), which is the main piece of legislation on police powers in England and Wales. So it will not be possible for a police officers to search somebody of the opposite sex. The main difference to the search provisions in PACE is that that police would not have to satisfy a judge or magistrate that they have reasonable grounds to suspect the commission of a serious arrestable offence before obtaining a warrant under Schedule 5.

Excepted materials – what is public interest

### Warrant for non residential premises

However, there are two particularly worrying provisions in this Schedule. First, in cases of 'great emergency' where 'immediate action is necessary' a superintendent can give permission for a search without a warrant. Second and worst of all is paragraph 13, which could force a suspect to give an explanation for any material found. While Liberty point out that failure to obey would be contempt of court, they don't mention that it is a separate offence to recklessly make a statement that is untrue or even just partially misleading. This carries a maximum of two years imprisonment and a unlimited fine. How easy this will be to prove and how it will be used is hard to guess at.

### Tipping Off

Section 39 (Disclosure of Information) creates an offence of tipping off during a terrorist investigation. The offence is much wider than it sounds as it also covers interfering with material likely to be relevant to an investigation and disclosing anything to anybody if it is likely to prejudice an investigation. It applies even if a terrorist investigation has not been started yet, if you have reasonable grounds to suspect it might be. If you did not know that there was an investigation taking place and had no reason at all to suspect it might be, that will provide a defence.

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## *PART V – Counter Terrorist Powers*

From the perspective of an activist, the new powers the Act would create are of far greater concern than the new offences. For as Straw points out (Cm 162): ‘ The main purpose of the Act is not to extend the criminal code, but to give the police special powers to enable them to prevent and investigate that special category of crime.’

### Powers of arrest and detention

A terrorist is defined in section 40 as a person who

- (a) has committed an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 58, or
- (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Section 41 then allows a general power of arrest without a warrant for anyone who a police officer reasonably suspects to be a terrorist and provides that instead of the normal PACE rights the provisions of Schedule 8 (detention: treatment, review and extension) shall apply. The danger of this power of arrest is that police do not need evidence of a specific offence and can arrest for a more general suspicion of involvement or support for terrorism – don’ t forget what was said about "instigation". Police would not be required to inform those being arrested of specific grounds for the arrest either.

So while Straw is at pains to point out that no new offence of "terrorism" is created by the Act, this is beside the point. It’ s characteristic of this type of legislation that there a lot of arrests and few prosecutions. This is backed up by an arrest card Fuascailt made advising the Irish community on the PTA. It says:

‘ It is important to bear in mind that your detention will probably have little to do with being a "suspected terrorist" and more to do with general information gathering and intimidation of the Irish Community...Some statistics: 98% of all those detained under the PTA were innocent of any crime. In 1995 (during IRA ceasefire) 22,691 overwhelmingly Irish people were stopped and searched for up to one hour.’

Leon Brittan, the former Home Secretary, pretty much admitted this in a 1985 interview on Radio Telefis Eireann, when he defended the PTA saying ‘ The object of the exercise is not just to secure convictions but to secure information.’ What makes these arrests really frightening is that it is usual practice for the arrested person to be held incommunicado without any legal advice. It is very likely that these "fishing trips" could be found to be a violation of the ECHR if used against activists, indeed Liberty in their briefing produce strong arguments that the arrest section would be a clear violation of Convention rights.

### Detention Regime

While Schedule 8 does bring the regime for detention of those charged with terrorist offences more into line with PACE than is the case under the present legislation, there are still some extremely disturbing aspects. Firstly access to a lawyer and the initial authorisation of detention by a court can be delayed up to 48 hours after arrest, as opposed to 36 hours under PACE. In contrast to the PACE regime where the ‘ detention clock’ starts ticking when the detainee is first booked in at a police station, Schedule 8 provides for the clock to start ticking on arrest.

Generally this will only mean a couple of hours difference at the most, however not where there is a mass arrest leading to detainees being held for considerable periods in police vehicles or where the police wish to convey a detainee to the high security custody suite at Paddington Green in London. In those cases the extra pre-police station time would eat in to the twelve hour difference as to how long a suspect can be detained before being brought to court.

Para 8(4) reasons for delay in addition to PACE, include interference with the gathering of information about an act of terrorism, hindering of recovery of property which could be forfeited under s23 or the alerting of a person making it either more difficult to prevent an act of terrorism or more difficult to secure a person's apprehension or conviction in connection with such an act.

8(9) Interviews may only taken place within sight and hearing of an officer.

Code of Practice – power to exclude solicitor from interview should only be used exceptionally. Special judge for each jurisdiction

During the hearing on whether to authorise continued detention, under paragraph 28(3) a court can exclude the person being held and their lawyer. This provision further allows the information relied upon by the police to justify continued detention to be withheld from the defence. So while there may be a right to a judicial hearing whether to allow continued detention, there is certainly no right to a fair hearing. Only once unlike PACE and reviews every 12 not 9 hours.

It seems that while a court needs reasonable grounds to withhold information from the detainee or their lawyer, there is no such qualification for excluding them from the hearing. Hopefully there will be some guidelines laid down for this power. The maximum period before charge or release is still seven days as opposed to four days under PACE. The Government needed a derogation – an opt-out – from the ECHR for these extended detention limits in the NIEPA and PTA. They will be withdrawing it following the Act becoming law as they argue that there is no need since authorisations of detention will now be made by judges not ministers, though this is very arguable.

Another very worrying provision is that under paragraphs 3, 5 and 7, relating to fingerprints, intimate and non-intimate samples respectively, even if a detainee is not convicted, their fingerprints or samples will not have to be destroyed unlike the situation under PACE, though the Criminal Justice and Police Bill currently before Parliament would largely bring PACE in line with the Act in this respect.

Note: Paragraphs 11-15 of Schedule 8 apply only to Scotland where PACE does not apply.

Powers relating to searches and vehicles

A power to search a building to find a suspected terrorist on a warrant from a magistrate is provided by section 42. All the magistrate has to find is 'that there are reasonable grounds for suspecting that a person whom the constable reasonably suspects to be a [terrorist] is to be found there'. They do not have to examine whether the constable's suspicions were reasonable so it would be very easy for police to enter into houses on the flimsiest of grounds as long as they can show the person they want to harass might be there. Basically if you've been at all involved in any campaign or group they start using anti-terrorist powers against, you would not be being at all paranoid to expect a visit from the police and a free trip down the police station.

Section 43 creates a general power of stop & search for anyone whom a constable 'reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.' With the definition of a terrorist being so vague and freed from the need to be based on a specific offence it would again be difficult to challenge the use of this power.

Section 44 gives a specific power to stop and search vehicles and pedestrians in a specified area 'for articles of a kind which could be used in connection with terrorism' without needing the usual reasonable grounds. This would replace the existing power inserted by section 81 of the Criminal Justice and Public Order Act 1994 (CJPOA) into s13 PTA 1989. An authorisation for the use of this power can only be granted if an assistant chief constable or in London a commander considers it 'expedient for the prevention of acts of terrorism'. In addition it has to be approved within 48 hours by the home secretary and cannot last more

than 28 days.

This power is unlikely to be used much against us for they already have s60 CJPOA. It allows police to search people without needing reasonable grounds, if an incident of 'serious violence' is feared. This power has been used extremely readily at demonstrations, particularly animal liberation ones. The lack of reported cases on s60 shows how hard it is to challenge the interpretation of the phrase. While it can be only used to search for offensive weapons and dangerous instruments, the police can carry out very thorough searches as they claim to be looking for razor blades. The s60 power can be authorised by a superintendent and does not need the approval of the Home Secretary, but it can only last for 24 hours and could not be used merely for threats to health and safety, etc. The s60 power also has the advantage of being the trigger to permit police to use their new power to demask people contained in the new s60A CJPOA. Demasking powers were not put in the Act as they were not felt necessary, particularly with the alternative of s60A CJPOA being available.

S45 power to seize – r suspects intended for use in connection with terrorism

Section 48 permits an authorisation restricting or prohibiting the parking of vehicles along a specified stretch of road if an officer 'considers it expedient for the prevention of acts of terrorism'. While it has to be given by one of the highest ranks of police officer, there is no exception for the disabled and orange badge holders. The authorisation can last for up to 28 days.

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## *PART VI – Miscellaneous*

Section 53 gives effect to Schedule 7 containing provisions on port and border controls. It allows police or exceptionally, where no police are available, customs and immigration officials to detain and question anyone coming into or leaving Northern Ireland and Great Britain (including travelling between the two) for up to nine hours without needing any grounds. This power will be extremely useful as the police do not have the right to question people coming in from or leaving other member states of the European Union. All that can be done at present is an examination of identity documents to ensure the holder is an EU national and customs checks. However, it is not likely that this power will be such an important part of the Terrorism Act as its predecessor was in the previous legislation where it was frequently used on those travelling within the Common Travel Area (UK, Eire and islands). Instead the use of the arrest and search powers will make up a greater proportion of anti-terrorist detentions.

Immigration & Asylum Issues

T v Immigration Officer

TA overrules s1 Immigration Act 1971

Schedule 7

Paragraph 2 stop, question and detain. 5 Must give information, id document, declare if possess any sort of certain type of document and

7, 8 search anything (or believed has been or is about to be on one) or anybody on ship, vehicle, train or aircraft connected with his entering or leaving Great Britain or Northern Ireland

9 examine goods to examine if for commission, preparation or instigation of acts of terrorism.

11 seize goods for 7 days then longer if for criminal/immigration proceedings

16 carding

18 wilfully fails to comply with a duty imposed 3 months level 4

### Code of Practice for Examining Officers

No need for cautioning unless being arrested. Minimise causing offence or embarrassment to those with no terrorist connections and do not use power in a discriminatory way. "When deciding whether to question a person the examining officer should bear in mind that the primary reason for doing so is to maximise disruption of terrorist movements into and out of the United Kingdom." The selection of people stopped should reflect an objective assessment of the threat posed by various terrorist groups. Once the examination has lasted one hour, an explanatory notice of examination should be served on the detainee. If the examination last for a long time, regular refreshments should be provided. Children travelling with a responsible person, e.g. parent, should be examined in their presence, unless they are thought to be exerting influence or pressure which could be detrimental to the child's interests. Children (under 16) travelling alone should not be examined in detail unless an appropriate adult is present. This also applies to other vulnerable people such as the mentally disabled.

### Searches:

A search of baggage should be but does not have to be carried out by an officer of the same sex, however a personal search must be. The searching officer, if asked, should provide enough information for themselves to be identified later. The search power must not be used for any purpose other than determining whether the suspect is a terrorist. A strip search, where more than outer clothing is removed, should only be carried out in the custody of the police. It may take place where an examining officer has reasonable grounds to suspect that the person has concealed something which may be evidence that he is a terrorist.

Every reasonable effort should be made to communicate the relevant information to those who have problems understanding English.

Section 114 allows police to use reasonable force under this Act, except to question people (!). However immigration or customs officials do not have the right to use reasonable force.

Section 54 creates an offence of weapons training, which covers providing, receiving or inciting others to provide training in the making or use of firearms, explosives or Nuclear, Chemical & Biological weapons. So as not to catch the armed forces there is a defence that the purpose of weapons training was wholly other than "terrorism", but, given the redefinition, this defence doesn't sound as watertight as the draftsmen might have hoped at least in relation to armed forces from outside the UK.

While the offence of weapons training shouldn't worry activists, the offence in section 56 of directing a terrorist organisation should. It does not matter what level you are directing an organisation which is concerned in the commission of acts of terrorism and the maximum sentence is life imprisonment. We all know the classic police inability to understand the concept of non-hierarchical organisation and their insistence at protests to be taken to the "leader", so they could well adopt a flexible interpretation of this section. While placing facilitation of a meeting within the scope of this offence could be a bit over the top, on the other hand evidence of being a facilitator could be the final piece needed to secure a conviction. It is possible this offence would be used in the context of non-hierarchical groups as an alternative to conspiracy charges, which are very unpopular among judges and readily chucked out of court.

### Possession of information

Liberty provide an excellent analysis of the draconian offences proposed in sections 57 (possession for terrorist purposes) and 58 (collection of information). As they point out, there have only been two prosecutions under the predecessor of the first offence and in both of those it was literature and correspondence which was relied upon. After the failure of the GAndALF trial, the security services must be licking their lips in anticipation of these offences becoming law. As happened to the defendants in that case, the police and security services would sift through everything personal to try to dig up enough dirt to cast enough suspicions on your character to secure a prosecution. Of course they would very much enjoy making copies of everything for their own records as well. For the offence of possession, if the police find anything on you or in the place where you are, they have to prove you possessed an article that was possessed for the purposes of terrorism. You could be done under this offence for possession of a Genetix Snowball handbook in theory, so a lot of notable people ought to watch out.

The offence of collection of information is very worrying as well. The Corporate Watchers' Address Book, which contains a list of ethically challenged companies along with the addresses of its offices and directors, is a prime example of a tool for lobbying and information that could be caught as it is 'information of a kind likely to be useful to a person committing or preparing an act of terrorism'. Mere possession as well as collection of information is enough to commit the offence. This offence is worrying for journalists, especially campaigning journalists with a record of investigative political journalism. It is likely the police could target them to hinder their work, just as they target photographers and video journalists on actions, seizing their films until deadlines are past.

#### Inciting terrorism overseas

Section 59 creates an offence in England & Wales of inciting terrorism overseas, while sections 60 and 61 contain the offences for Scotland and Northern Ireland respectively. Only acts of terrorism that would constitute certain offences if carried out in this country would count. Those offences are: murder; wounding with intent (GBH); poisoning; causing explosions, and criminal damage being reckless as to whether life is endangered.

#### International Convention Offences

These three offences were added at a late stage to allow the Government to ratify two new international conventions against terrorist finance and terrorist bombing. Section 62 creates an offence of causing an explosion, or using biological or chemical weapons abroad. Section 63 creates an offence of committing an offence contrary to section 15,16,17 or 18 abroad. While those two offences give universal jurisdiction to the UK courts regarding those offences,

Section 64 makes committing, conspiring or attempting to commit those offences extraditable. It seems that while the extraditable offence could take place anywhere in the world, extradition could actually only happen to countries that have also ratified the respective convention.. The broad effect is that wherever the acts took place, anyone passing through would be either extradited or prosecuted – the principle is known as *aut dedere aut judicare*. Were it not for the definition of terrorism in section 1 – wholly at odds with the one in the international conventions – and the breadth of "property" in s14, these offences would be one of few reasonable parts of the Act. Put another way, these offences show the Home Office making a dog's ear of implementing our international obligations domestically.

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## *PART VII – Northern Ireland*

Sections 65 to 113 (Part VII) apply to Northern Ireland ONLY – this includes Schedule 10 which allows the police and army to search for munitions and

transmitters. The provisions in this part will gradually be removed as the situation in Northern Ireland improves. It is therefore highly unlikely that these exceptional provisions will be extended to the rest of the UK, even taking account of the U-turn that Labour has done on terrorism legislation since it came to power.

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## *PART VIII – General*

Section 117 provides that no prosecutions for all offences created – with the exception of offences created by sections 31 (cordons), 47 (searches) and 51 (parking) – in the Act can proceed without permission from the Director of Public Prosecutions (DPP), a government appointee. Prosecutions for offences which appear to the DPP to be concerning foreign governments will now need permission from the Attorney General (AG) instead. One of the most damning criticisms of the Act that Straw and his supporters could not deal with was that the uncertainty of not knowing what the DPP will do would scare off people from activities which they have fundamental rights to doing in a democracy. This ‘chilling effect’ alone opens the Act to serious challenges under the Human Rights Act 1998. If the DPP or AG was asked to consent to the prosecution of an offence which infringed the ECHR, they would be required not to grant consent under section 6(1) of the Human Rights Act.

Straw avoids the point when he claims that the Human Rights Act will be a ‘profound safeguard’ against disproportionate use of the Act’s powers. Citizens will not know how much of a safeguard the HRA will be until a prosecution or use of powers under the Terrorism Act is challenged and only then when a ruling comes from the highest courts of the land. Even then, for a citizen to have some certainty about the legality of their actions, the subject matter of the decision will have to be rather similar to that of their acts. As it will take a number of years for these rulings, the chilling effect will be a problem for a long time.

Section 118 relating to defences was inserted following concern about "negative proof" and removes the reversal of the burden of proof. Where a section in the Act requires a defendant to prove something, all they have to do is raise an issue, or possibility. Then the prosecution have to disprove it beyond reasonable doubt.

12(4), 39(5)(a), 54, 57, 58, 77 and 103 which ones do have reverse burdens – membership,

119. - (1) The Secretary of State may make regulations providing for any of sections 15 to 23 and 39 to apply to persons in the public service of the Crown. (2) The Secretary of State may make regulations providing for section 19 not to apply to persons who are in his opinion performing or connected with the performance of regulatory, supervisory, investigative or registration functions of a public nature.

However s59(5) provides full immunity for all Crown servants and agents.

Section 121 provides for the interpretation of a number of terms in the act. Worthy of note is the definition of "organisation" which ‘includes any association or combination of persons’ so it would easily cover an affinity group let alone a self-styled (horrible journo phrase, I know) "disorganisation". Some have commented that the fact "premises" is defined to include ‘any place and...a tent or moveable structure’ suggests that protest sites are being specifically targeted. But the existing law on searches under s23 PACE already defines premises in exactly the same way so this fear seems unfounded.

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## *Conclusions*

‘ We are being asked to accept a real paradigm shift. Somehow the threat to the stability of the state has given way to threats to the corporate estate, and that will be the basis for the new definition of social terrorism. That is a desperately dangerous path to go down.’

Alan Simpson MP (Cm 202)

It is best to view the powers and offences in the Act as tools for the state to use to enforce social discipline and their order on us. How much they dare to use them depends on whether society consents or rather acquiesces. While the fight to stop the Terrorism Act becoming law is over, though not completely lost as there have been improvements, the fight to stop the new definition of terrorism being accepted by the public has only just begun. It' s time to get active...