The Rules of the Game
the Terrorism Bill 2005

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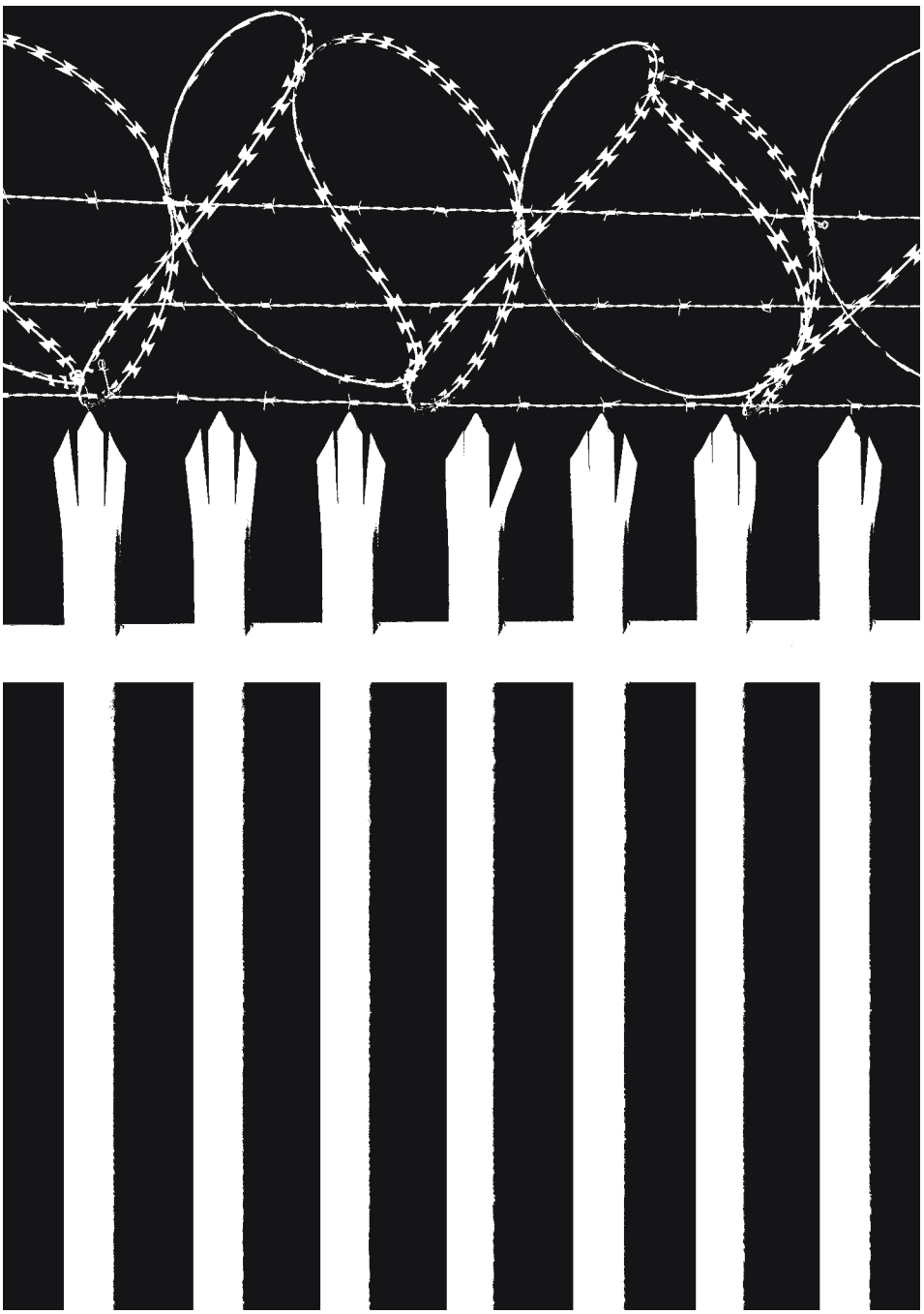
The new Terrorism Bill now in the House of Commons is the government's fourth counter terrorism measure in five years. This briefing provides an at-a-glance analysis of the Bill's main proposals (see pages 2 and 3). It also provides an overall review of the new legislation and the counter terrorism strategy in which the Bill takes its place. Among the issues considered are the need for good intelligence and co-operation from the Muslim communities; the case for using intercept evidence in open court; the new police rules on the use of lethal force; practice on stop and search powers; the possible use of material obtained by torture in court proceedings; and comment on the proposal for prolonged detention without charge.

The briefing draws upon a more detailed scoping report, *The Rules of the Game: the government's counter terrorism laws and strategy*, which is available on the Joseph Rowntree Reform Trust website, www.jrrt.org.uk.



Does it work?

The most immediate issues for the British people are – will the government's emerging counter terrorism strategy work? And will the new Bill strengthen our ability to identify and apprehend those who plan terrorist attacks and to prevent the attacks? But the strategy and new laws will also have a profound effect on British democracy, the rule of law, criminal justice, the conduct of the police and security forces, civil and political rights, and the shape of community relations perhaps for generations to come.

It is too soon to predict what will happen. But we can identify dangers and opportunities. Governments in this country are too strong and are making themselves stronger. From the 1970s onwards, governments of both main parties have taken more and more powers to combat terrorism, crime, public disorder and "anti-social behaviour". The activities of the security forces, emergency measures and laws for dealing with terrorism related to the conflict in Northern Ireland included unjustifiable killings by the security forces, arbitrary detentions (soon rightly abandoned), the arguable misuse of stop-and-search powers, arrest and holding charges, maltreatment and beatings of prisoners, and miscarriages of justice (the worst injustices, paradoxically, resulted from jury trials in Great Britain, not in the province's jury-less Diplock courts). It is important that the authorities avoid the excesses of this period in this new period of anti-terrorist activity, not least because

LAWS WHICH 'WOUND IDENTITY' COULD DO NO MORE THAN EXACERBATE THE SITUATION

– The Carlile Report 2005

THE TERRORISM BILL 2005: AT A GLANCE SUMMARY

Description and analysis	Does it replicate existing law?	What is the effect on human rights and the rule of law?
Definition of terrorism *Clause 33*		
The broad definition of terrorism, established in the Terrorism Act 2000 and Anti-terrorism Crime and Security Act 2001, includes serious violence against people or damage to property that is designed to influence the UK or other governments or to intimidate the public to advance "a political, religious or ideological cause." Clause 33 adds attempts to influence international organisations such as the UN for the first time.	Clause 33 extends existing law.	The Terrorism Act 2000 definition was criticised at the time for being too wide and vague to satisfy the clarity required for the criminal law. Amnesty International warns that new offences in the draft Bill based on the UK's definition of terrorism may not amount to "recognizably criminal offences" under international law.
Encouraging or glorifying terrorism *Clause 1*		
The original clauses 1 and 2 are substantially revised to form a new clause 1 that now covers statements that glorify the commissioning or preparation of acts of "terrorism" (of the past, present or future) which other people may understand as direct or indirect encouragement to similar acts. Maximum penalty: 7 years.	Incitement to commit terrorism (direct or indirect) is already covered by a range of criminal offences. There is no need to create this fresh offence, especially one so broad and poorly-drafted.	A serious threat to legitimate free expression that almost certainly breaches Article 10(2) of the European Convention on Human Rights (ECHR). A person may be guilty of "encouraging or glorifying terrorism" without meaning to do so. The broad scope of the offences could cover any reference to political violence at any time against any government anywhere in the world. Lord Lloyd, Britain's former adviser on terrorism law, said, "we're trying to create a criminal offence out of something that is just too vague and too uncertain".
Disseminating "terrorist" publications *Clause 2*		
Clause 2 makes it an offence to distribute, publish, loan, etc, any publication which contains "information of assistance"' to someone planning a terrorist attack. This offence carries a maximum penalty of seven years in prison and is designed to tackle bookshops and websites that deal in "terrorist" publications, including "apparently authoritative tracts wrapped in a religious or quasi-religious context" (*Guardian*, 13 October).	Clause 1 already makes it illegal to incite terrorism by any written or electronic publication. Together with sections 57 and 58 of the Terrorism Act 2000, the police already possess sufficient powers to arrest and charge any individual who possesses, publishes on a website or in written form, or otherwise makes available, material connected to or useful to the preparation or commission of an act of terrorism.	Casts an imprecise net too widely. The prosecution does not have to show that an accused person intended to encourage or facilitate terrorism. A person may be guilty of this offence merely by making available a publication that someone else may regard as useful for terrorism. As JUSTICE points out, the London A-Z may thus qualify as a "terrorist publication".
Preparing terrorist acts *Clause 5*		
Lord Lloyd, Britain's former terrorism law adviser, "implored" the Home Secretary to include such an offence in the Terrorism Act 2000 and Lord Carlile, who reviews terrorism law for the government, has also recommended this provision. The offence widens existing criminal and conspiracy laws to catch those who, intending to commit terrorist acts, prepare the facilities to do so (securing accommodation, fund-raising through credit card fraud, etc.).	Yes, largely replicates existing provisions in the Terrorism Act 2000, including support for terrorism, as well as existing criminal and conspiracy laws.	This clause is acceptable, though widely drafted and could be abused. It makes someone found guilty of *any* conduct preparatory to terrorism, however trivial or marginal, liable to life imprisonment. Charges under this offence could be used to assist the police questioning a suspect if they were denied an extension to their powers to hold suspects for up to three months without charge.
Training for terrorism *Clause 6*		
Clause 6 provides that anyone who provides or receives instruction or training in connection with terrorist offences may be imprisoned for up to ten years. It includes invitations to take part in training and provides for the seizure of materials used in such courses.	Largely replicates section 54 of the Terrorism Act 2000 on weapons training, but does add "noxious substances".	This is a valuable offence in principle but is too widely drawn. It makes it an offence for someone to provide or invite others to receive training knowing or just "suspecting" that the person being trained has terrorist intent. The clause needs careful re-drafting.
Attendance at a place used for terrorist training *Clause 8*		
Clause 8 creates an offence of attending a terrorist training camp which could carry a ten-year jail term. It is designed to ensure that someone who receives training at a terrorist training camp overseas as well as in the UK should not be able to escape prosecution.	New offence.	Again, too widely drafted. A person may commit this offence simply by being at a training camp while training is going on. They need not receive training or instruction; they must just either know or "could not reasonably have failed to understand"" that training for terrorist purposes is going on. JUSTICE complains that this is an offensive offence based purely on the idea of "guilt by association" and should be scrapped.

Description and analysis	Does it replicate existing law?	What is the effect on human rights and the rule of law?
Offences involving nuclear devices, materials and sites *Clauses 9-12*		
Clauses 9-11 create offences for making and possessing nuclear devices or materials or damaging nuclear facilities for terrorist purposes which will carry a life sentence. Clause 11 covers blackmail using nuclear threats. Clause 12 creates offences dealing with trespassing and damaging civil nuclear sites. These offences require proof of intent for conviction – a requirement that should apply to all offences created under the draft Bill.	There is already an abundance of criminal offences relating to the use or possession of radioactive material for criminal purposes (including section 47 of the Anti-Terrorism Crime and Security Act 2001). Thus any person in possession of radioactive material for the purposes of terrorism would almost certainly be guilty of one or more of the existing criminal offences.	A sensible precaution, but there are two concerns. The offence of damaging a nuclear facility and creating or increasing the risk of a nuclear release could conceivably make a nuclear protester liable to prosecution if he or she damaged a nuclear site and arguably increased the *risk* of such a release. It should be an appreciable risk. Secondly, the perimeter fences around nuclear sites are often within the designated exclusion zones. Thus protesters who demonstrate around a perimeter fence may well be committing an offence.
Terrorist offences abroad *Clause 17*		
Clause 17 creates provision for anyone in another country who commits any of the new offences in the draft Bill or some offences under the Terrorism Act 2000 to be treated as having committed them in the UK. Clause 17 also catches people who plan, incite or aid any such terrorist offence or who are members of a proscribed organisation while abroad.	New law.	The clause doesn't specify that there is any intention to commit an offence in the UK and could apply to an act that takes place elsewhere if it would be an offence in the UK. Is it really right, or the government's intention, that people (possibly foreign nationals struggling against repression) should be tried in the UK for acts or statements than have nothing to do with this country? The clause as such is far too broad.
Proscription of non-violent organisations *Clauses 21-22*		
Clause 21 extends the grounds for proscription under the Terrorism Act 2000 to cover non-violent organisations that glorify terrorism, "whether in the past, in the future, or generally". Under the 2000 Act belonging to a proscribed organisation carries a maximum penalty of ten years in jail. It is sufficient to support or "further the activities" of such an organisation by literally any means – even to wearing a T-shirt or displaying a badge that may indicate membership or support. Clause 22 creates a new offence that prevents proscribed organisations escaping the ban by simply changing their name. Appeals are allowed to a proscribed organisations appeal commission.	A new and undesirable extension of the 2000 Act.	The leap from proscribing groups involved in violence and terror to non-violent groups, such as presumably the Prime Minister's prime target, Hizb-ut-Tahira, would bring state censorship of political views to Britain. All the arguments against making glorification an offence apply to this proposal. But clause 21 would people who have never made any "glorification" comment liable to arrest and prosecution. Just wearing the wrong T-shirt could land them in jail. If enacted, clause 21 would violate rights to freedom of association and expression under the European Convention on Human Rights.
Three-month detention without charge *Clauses 23-24*		
The upper limit for holding a terrorist suspect without charge will be increased from the current 14-day limit to up to three months. After 48 hours a police superintendent or superior officer or crown prosecutor can apply to a district judge for weekly extensions up to the new three-month cut-off. The police have argued vigorously for this extension in view of the difficulties they encounter in investigating modern terrorism. There is a well-founded suspicion that the proposal may be the first bid in a political auction for a period between 14 days and three months.	A new provision which considerably weakens the already weak rules for judicial supervision of people held under anti-terrorism laws. Under ordinary legislation, the maximum period of detention without charge is four days, with further 36-hour and 24-hour extensions being granted by a judicial authority after the initial 36 hours. As has been widely stated, this is equivalent to sentencing someone who is simply a suspect to a six-month jail sentence imposed on a person found guilty of a criminal offence.	This proposal seems likely to violate the right to liberty under Article 5(3) of the ECHR. Lord Lloyd has said that it "borders" on internment and is "intolerable". Lord Steyn, another former law lord, says that it is a "wholly disproportionate power" and warned that such excessive powers are abused "from time to time", citing miscarriages of justice under previous anti-terrorism laws. Amnesty International has also warned from its long experience that "prolonged periods of pre-charge detention provide a context for abusive practices". A variety of experts have suggested that there are legal means for dealing with the difficulties the police have adduced in support of the proposal. The Law Society suggests giving them more resources.
Consent to prosecution *Clause 19*		
Requires the consent of the DPP for any prosecutions for offences under Part 1 of the draft Bill in England and Wales (or the DPP for Northern Ireland in the province). Where the offences apply wholly or partly to a foreign country the relevant Attorney General's consent is also required.	Not in principle new.	A provision officially described as "a safety valve against hasty or inappropriate decisions".
Review of terrorism legislation *Clause 35*		
The Home Secretary must appoint someone to review the operations of the draft Bill's Part 1 (which introduces the new offences) and the 2000 Act. The reviewer must report at least annually to the Home Secretary who must then lay the report before Parliament.	A now standard provision	It would strengthen the mechanisms of accountability to Parliament if the chairman of the Home Affairs Committee and the committee were given responsibility for appointing the reviewer and receiving his or her report.

they contributed to resentment and alienation within the minority Catholic community which made access to intelligence more difficult.

We do not live in a police state. But we do live under an increasingly authoritarian regime that is often intolerant not only of free speech and dissent, but of the legitimate role of the judiciary in applying the rule of law to its actions.

Counter terrorism strategy

The right to life is the paramount human right. The government is under a duty to protect the public from terrorist atrocities like those of 7 July 2005 and to seek out those who plan such atrocities. The difficult and dangerous tasks of identifying and apprehending them and preventing further outrages falls upon the police and intelligence services. The government has to maintain a crucial balancing act: giving them sufficient powers and resources to perform these tasks and secure convictions while at the same time preserving civil and political rights, democratic values and tolerance, good community relations and the integrity of criminal justice in the UK.

It is important to be clear-headed. The two key motors of an effective counter terrorism strategy are, first and foremost, accurate and reliable intelligence and secondly, the ability successfully to identify and prosecute those guilty of terrorist or criminal plans and acts.

The key role of intelligence

Intelligence is the key to defeating terrorism. It cannot be done by laws alone, however severe; and indeed, it is widely accepted by the security community, as well as by human rights organisations, that overly severe measures, particularly those that target a particular community, are counter-productive. The Jellicoe review of terrorism law in 1983 found that the measures which were most likely to violate civil liberties were also the least valuable.[1]

Sir David Omand, the former Cabinet Office Security and Intelligence Co-Ordinator, observed recently that security measures implemented in Northern Ireland in the early 1970s were an example of what can go wrong "if you don't have appropriate intelligence . . . you end up using a bludgeon." The consequence was "alienating the community" which was, "in the end, counter-productive".[2]

Lord Carlile gave the government a stark warning in his review of the new Terrorism Bill: " There are . . . young men prepared to rationalise their own criminal acts in terms of death and glory . . . laws which have the effect of wounding identity further are unlikely to do more than exacerbate the situation".[3]

It is therefore important that the Terrorism Bill, and police tactics, take care not to target Britain's Muslim communities insensitively, but are instead geared to winning their confidence and co-operation – and badly needed "human intelligence". As BBC *Newsnight* revealed (27 October 2005), the absence of good human intelligence in terrorist and local circles allowed Mohammed Sidique Khan to associate with extremist groups and organise the 7 July London bombings undetected.

Stop and search

Stop and search powers seem most likely to turn people against the police. The police can stop and search anyone whom they "reasonably suspect" of being a terrorist (under the Terrorism Act 2000). In 2003-04, 29,407 stop and searches were carried out under the Act, 77.5 per cent in London. A BBC survey has now shown that they are being used more intensively since 7 July: more than half the forces surveyed had stopped more people in the past three months than in the previous year.

The use of stop and search against Asians has been rising far faster than for whites in the past few years. The Joint Committee on Human Rights has noted "mounting evidence that the powers under the Terrorism Act are being used disproportionately against members of the Muslim community in the UK. According to Metropolitan Police Service data, the stop and search rates for Asian people in London increased by 41% between 2001 and 2002, while for white people increased by only 8% over the same period."

Designated areas

Senior officers can also designate areas in which police can stop and search people and vehicles without having a "reasonable suspicion" that they are terrorists. The whole of London has long been continuously a designated area under rolling 28-day authorisations. The Metropolitan Police misused these powers to search and harass protestors outside the Arms Fair in Docklands, London, in September 2003. The then Home Secretary David Blunkett's first reaction was to challenge this use of the powers. The Newton review report warned that the powers could cause individual cases of injustice or harm, creating "a false sense of security" while real terrorists went about their business, and bringing special powers into disrepute.[4] The Appeal Court held that the police action was "a close call" but acceptable. We believe they abused their powers. The case is now going to the House of Lords.

More recently, over 600 people were stopped and searched in the Brighton area during the Labour Party conference. Walter Wolfgang, the 82 year old party delegate, was simply the most famous victim of zealous police action.

Out of 8,120 searches in designated areas in 2003-04, there were only five arrests for offences connected to terrorism, all of white people, though there were also arrests for other offences. The police defend the low arrest and even lower conviction rates on the grounds that stop and search is intended to disrupt and deter terrorism, more than detect it. Hazel Blears, the Home Office minister, explained that their use helps "to deter all kinds of terrorist activity by creating a hostile environment for would-be terrorists to operate in."[5] Unfortunately it is also "hostile" for many more non-terrorists.

The Newton report expressed concern about the extensions of police powers to search, examine, photograph and fingerprint persons at police stations. The report noted, "Most of the reported uses of the Part 10 powers have not been related to counter-terrorism." The government responded that while most uses were not related to terrorism, the police welcomed the new powers which had proved to be "appropriate and useable".

The danger is that all such powers contaminate criminal justice and make the police more powerful in their dealings with the public, creating "injustices and harm" to individuals and a "hostile environment" for many people while contributing rather less to combating terrorism. Are we in danger of resorting once more to David Omand's "bludgeon"?

"Immature" strategy

The leaked Downing Street report, criticising the government's immature, unaccountable and disconnected counter terrorism strategy, complains that "real work impact is seldom measured". Our scoping report suggests that more thought needs to be devoted to dealing with the root causes of terrorism rather than multiplying legislation. Sir Andrew Turnbull, the then Cabinet Secretary, wrote to permanent secretaries in April that, "The aim is to prevent terrorism by tackling its causes . . .

to diminish support for terrorists by influencing social and economic issues", pointing out that certain Muslim communities were most likely to suffer from unemployment and other disadvantages.[6]

The Terrorism Bill 2005

The main aim of the current Terrorism Bill seems to be to criminalise as widely as possible any acts or conduct that may be connected with terrorism, and possibly, to reassure the public that tough measures are being taken. One purpose of this expansion of the law is to facilitate prosecutions. The Bill casts a loosely-drafted net of new or expanded offences most of which do not require the authorities to prove criminal intent or even clearly criminal acts – and in some cases they need not meet the criminal standard of "beyond reasonable doubt".

Using intercept evidence in court

Yet the government refuses to introduce a simple change to the law in the new Bill which would make prosecutions easier to bring to fruition and make unnecessary much of the government's tampering with due process and interference with basic civil and political rights. The Regulation of Investigatory Powers Act 2000 bans the use of domestic intercepted communications as evidence in open court. The UK is the only country other than Ireland to have such an absolute prohibition in place. (Strangely, foreign courts *may* use British if the security services are willing to provide it.) The prohibition is a major obstacle to mounting prosecutions and therefore provides an excuse for exceptional measures - extended pre-charge custody, control orders, deportations and the like. There is, as the parliamentary Joint Committee on Human Rights noted, "overwhelming support" for allowing its use in the courts, subject to the safeguard that the security forces could protect damaging releases. Lord Lloyd, the former law lord who conducted the 1996 review of terrorism laws, says that the ban is "potty". In 1996, he found at least 20 cases of Irish-related terrorism in which intercept information would have enabled prosecutions.

Do we need another Terrorism Bill?

We already have 200 pieces of counter terrorism legislation on the statute book; "we also," as the Director of Public Prosecutions told the JCHR, "have the common law and a large range of other criminal offences. There is an enormous amount of legislation that can be used in the fight against terrorism". So do we need yet another terrorism bill at all? Terrorists are criminals and it is preferable to treat them as such, rather than potentially glorifying their cause by making them subject to special legislation.

We recommend that the authorities make explicit the already wide use of criminal laws in terrorist cases. Murder is murder. Of the 10,787 charges brought against people detained under the Prevention of Terrorism Acts in Northern Ireland between 1974-2000, 650 were for murder and 536 for attempted murder.[7]

As the "at a glance" summary of the Bill shows (pages 2-3), most of the offences it sets out are already covered by existing legislation. Even the most widely canvassed change, making the preparation of terrorist acts a criminal offence, largely replicates existing laws. Existing laws make the new much-publicised provision against encouraging and "glorifying" terrorism unnecessary, except for propaganda purposes.

Where the Bill extends existing laws, however, the drafting is often too wide and open to abuse by the authorities. And it incorporates the very broad definition of terrorism from the Terrorism Act 2000, while extending it, so that as Amnesty International warns, the offences as set out in the Bill "violate the principle of legality and legal certainty by being too wide and vague".[8]

Prolonged detention without charge

The proposal to prolong the period of detention for terrorist suspects for up to three months is a wholly disproportionate power that is liable to abuse (see also the "at a glance" table). The government's own survey of practice in similar countries shows that three months' detention far exceeds the period of detention without charge in six similarly developed countries. The argument as to whether the proposal amounts to internment or not is largely irrelevant. The proposal overturns the basic principle that people in Britain are innocent until proved guilty. Three months detention without charge imposes on someone who has not been charged, let alone found guilty, the equivalent to a six-month prison sentence on a person convicted of a criminal offence.

The scoping report on the Reform Trust's website sets out the police arguments for such a power, but they are not persuasive enough to justify a proposal that almost certainly violates Article 5(3) of the European Convention on Human Rights, which requires that people in detention should be brought "promptly" before a judge. Holding charges and other means exist for assisting the police in their inquiries.

Periods of detention without charge (survey of selected nations) [9]

Country	Pre-charge detention
Australia	Normally 24 hours, 48 hours with interpreter. Can be extended by warrant up to 168 hours (seven days).
France	Normally 48 hours, with two 24-hour extensions possible in terrorist cases.
Germany	24-48 hours
Greece	Suspects must be brought to public prosecutor within 24 hours
Norway	48 hours
Spain	72 hours incommunicado + up to two more days

Proscription

The Bill extends the grounds for proscription under the Terrorism Act 2000 to cover non-violent organisations that glorify terrorism, "*whether in the past, in the future, or generally*". Under the 2000 Act belonging to a proscribed organisation carries a maximum penalty of ten years in jail. It is sufficient to support or "further the activities" of such an organisation by literally any means – even to wearing a T-shirt or displaying a badge that may indicate membership or support. There is a Proscribed Organisations Appeal Commission that hears appeals against proscription (once again only special advocates may see secret material). The leap from proscribing groups involved in violence and terror to non-violent groups, such as presumably the Prime Minister's prime target, Hizb-ut-Tahira, would bring state censorship of political views to Britain; and just wearing the wrong T-shirt could someone in jail.

Control orders

The Prevention of Terrorism Act 2005 introduced control orders for terrorist suspects following the law lords decision that foreign terrorist suspects who could not be deported could not be detained indefinitely either. Control orders impose restrictions on the activities of suspects (e.g., curfews, choice of accommodation, possessions, etc) and provide for their surveillance.

"Derogating" control orders amount to house arrest and require derogation from the ECHR. They are renewable every six months by a statutory order laid before Parliament while non-derogatory orders can run for a year on the Home Secretary's say-so. For both types of control order there are full court hearings of a suspect's defence, but as with SIAC hearings, only a special representative (not chosen by the suspect) may see "closed" material which is heard at "closed" hearings. For derogating control orders, the standard of proof is "balance of probabilities", lower than the criminal standard of "beyond reasonable doubt". For non-derogating control orders, the standard of proof – "reasonable suspicion" – is yet lower.

Use of torture

There are concerns that the government makes use of information extracted under torture in other nations in contravention of its international human rights obligations. In 2004, the Court of Appeal ruled that the government could rely on information obtained by torture, including to justify detention, provided the government was not complicit in the torture. Government ministers have not unequivocally given assurances that they do not rely on such information in secret detention, proscription and control order proceedings. For example the Home Secretary, told the Joint Committee on Human Rights (JCHR) in February 2005 that he did not believe that information obtained by torture was used in detention cases heard by SIAC, "but we are in a serious difficulty here in that proving a negative is a difficult thing to do." The JCHR has noted that Prevention of Terrorism Act 2005 "'was silent" on this question, despite the fact the government might well rely on material obtained by torture to obtain control orders; and has expressed its concern about whether the government has a system for ascertaining whether intelligence reaching it on people allegedly involved in terrorism has been obtained by torture. The UN Committee Against Torture has recommended that the government give formal effect to its expressed intention not to rely on or present in proceedings evidence known or believed to be obtained by torture. The JCHR has endorsed this recommendation. [10]

Lethal force

On 22 July 2005, the day after the failed bomb attempts in London, secrity marksmen shot dead Jean Charles de Menezes, a 27-year-old Brazilian electrician, in the belief that he was a potential terrorist. He was shot under a new "shoot-to-kill" policy, drawn up by the Association of Chief Police Officers, to deal with suicide bombers who might blow up themselves and ordinary citizens nearby at the point of arrest if not immediately incapacitated. This shift in policy was apparently agreed without reference to ministers or the Home Office.

As is well-known, Sir Ian Blair, the Metropolitan Police Commissioner, wrote at once to the Home Office to prevent the Independent Police Complaints Commission (IPCC) from investigating the shooting and barred the IPCC staff from the scene. He requested that the Home Office draw up "rules of engagement", similar to those provided for the military in a war. He described discussing with the Prime Minister "maximising the legal protection for officers who had to take decisions in relation to people believed to be suicide bombers".

The Home Office refused his request and the IPCC inquiries began a few days late. In the atmosphere of heightened fear in July there was a danger that the atrocities and failed bombing would not only strengthen the coercive powers of the police, but also reduce their already low accountability for fatal incidents.

Section 3 of the Criminal Law Act 1967 states that "a person may use such force as is reasonable in the circumstances in the prevention of crime, or in the effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large". Police officers may use force "only when strictly necessary and to the extent required for the performance of their duty". [11] They also have a right of self-defence.

The authorities and courts have always given the police a wide margin of discretion in the use of fire-arms, recognising the difficult circumstances in which most such incidents occur. This was especially the case with Irish-related terrorism from 1969 to 1993 when the security forces killed 350 people and there were well-founded suspicions that a "shoot to kill" policy was briefly in operation. Only 18 cases came to full trial and two convictions, for murder and manslaughter, resulted.

The recent decision not to prosecute two police marksmen for the lethal shooting of Harry Stanley (who had the misfortune to be carrying a table leg) has also highlighted the fact that no officers have been convicted for any of the 30 fatal shootings of civilians that have occurred over the past 12 years. Further, the police have put the authorities under intense pressure not to investigate such cases.

The European Convention establishes a non-derogable right to life in Article 2 – the very Article that justifies the government's anti-terrorist policies. But this right cuts both ways and should apply to actions of the security forces as well. However the Standing Commission on Human Rights in Northern Ireland (SACHR) observed in 1993 that there is "a substantial divergence between the legal standard for the use of lethal force in the United Kingdom . . . and the prevailing international standards." [12]

In 1995, the European Court itself condemned authorities' lack of appropriate care in control and organisation of the Gibraltar arrests that ended in three IRA terrorists being shot dead.

The Menezes inquiry will prove to be a significant test case for the IPCC and British justice.

Footnotes

[1] Lord Jellicoe, *Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976*, Cmnd 8803, February 1983
[2] Gresham College lecture, 20 October 2005.
[3] Lord Carlile of Berriew QC, *Proposals by Her Majesty's Government for Changes to the Laws against Terrorism*, October 2005
[4] *Anti-terrorism, Crime and Security Act 2001 Review: Report*, HC100, December 2003.
[5] Letter to the *Guardian*, 7 October 2005.
[6] *Guardian*, 24 October 2005
[7] Northern Ireland Office, *Statistics on the operation of the Prevention of Terrorism acts* , Research and Statistical Bulletin, June 2001.
[8] *Amnesty International's Briefing on the Draft Terrorism Bill 2005*, October 2005, p.6.
[9] Foreign and Commonwealth Office, *Counter-Terrorism Legislation and Practice: A Survey of Selected Countries*, October 2005.
[10] *Prevention of Terrorism Bill*, Joint Committee on Human Rights, HL 68, HC 334 (Stationery Office, London, 4 March 2005).
[11] See, for example: Association of Chief Police Officers (ACPO), 'Briefing Note concerning ACOI Firearms policy and Deadly and Determined Attacks'.
[12] SACHR Annual Report, 1992-93.