



COUNTER TERRORISM AND SECURITY BILL BRIEFING **2014**

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Counter Terrorism and Security Bill 2014 Briefing

At a Glance:

- Police officers or border officials able to seize passports for up to 14 days (with renewal up to 30 days via Magistrates' court)
- Temporary Exclusion Orders (TEOs) that can ban a British citizen from entering the UK for up to 2 years and leave them effectively stateless during that time
- Maximum punishment for contravening TPIMs to extend to 10 years' imprisonment
- Government seeking power to intercept communications raising grave privacy concerns
- Airlines and carriers forced to adopt 'authority to carry' scheme which can effectively enforce 'no fly' lists on entire nationalities
- Prevent to become a statutory requirement in Councils, schools, universities and more
- Universities required to operate an 'extremist' speakers policy



Background to the Bill

The Counter-terrorism and Security Bill (CTSB) has been presented against the backdrop of the terrorist threat posed by ISIL, reports of British citizens travelling abroad to engage in 'terror-related activity'; including the so-called 'Jihadi John', and the raising of the domestic terror threat in response to perceived threats from those British citizens returning home from conflict zones where they are suspected of having undergone radicalisation.

The proposed measures were floated by the Prime Minister in a statement to the House of Commons in September where he set out plans to address (a) preventing suspects from travelling (b) dealing decisively with those already here who pose a risk. They were later repeated in an address by the PM to the Australian parliament in November.

The Bill should be read in conjunction with the report by the Intelligence and Security Committee into the murder of Fusilier Lee Rigby. The events of May 2013 (Lee Rigby's murder) and the summer of 2014 (the beheading of Steven Sotloff, James Foley and Alan Henning) and the outcomes of the Prime Minister's Extremism Taskforce provide useful context to understanding the legislative instruments laid out in the CTSB.

Main provisions of the Bill and implications for civil liberties

The Bill is composed of 7 parts and the main provisions of each Part are detailed below:

Part 1, Chapter 1: Powers to seize travel documents

Part 1 sets out provisions which permit a police officer, or other border official acting with imprimatur of a police officer, to seize and retain travel documents (passports and any other related documents) if s/he reasonable suspects that the individual is travelling “in connection with terrorism-related activity.”

The Bill allows for the confiscation of travel documents for up to 14 days, and renewal to 30 days by application to magistrates for an extension. The application for continued retention must be applied for to the courts but the Bill permits the exclusion of the defendant and his/her legal representation from this process where requested by the police. The measure is a further embodiment of the move away from open justice with individuals denied the right to hear the case against them for further retention of their travel documents.

The Bill also allows for the search of the person, their belongings, including vehicle by an officer exercising powers to deter an individual's travel.

The Bill introduces criminal offences punishable by up to 6 months' imprisonment for those individuals who refuse to hand over travel documents or who 'intentionally obstructs' or 'seeks to frustrate' in the search of their persons or vehicles.

The Bill stipulates the introduction of a Code of Practice for the exercise of these powers.

The powers are pervasive, disruptive, liable to discriminatory application and offer little redress to individuals unnecessarily impacted on by the arbitrary exercise of the powers.

The powers are exercisable on the basis of an officer 'suspecting' an individual of 'intending' to travel “in connection with terrorism-related activity.”

From what we know of racial profiling in the exercise of Schedule 7 powers, and in the arbitrary use of stop and search against BME persons, there is no reason to believe that these powers will be any less likely to affect a disproportionate impact on Muslims travelling in and out of the country. The presence of Codes of Practice has not prevented the discriminatory use of Schedule 7 or stop and search against Muslims and other minorities and is a fig leaf masking serious encroachment of an individual's freedom of movement.

Part 1, Chapter 2: Temporary Exclusion Orders (TEOs)

TEOs are a new development and respond to the political will espoused by the Government to “dealing decisively” with those who have travelled abroad to engage in terrorism-related activity and wish to return to the UK so that they may only do so “on our terms”, as the Home Secretary put it.

TEOs are effectively a measure to strip a British citizen of their citizenship rights by rendering them stateless for a period (up to 2 years) until and unless conditions are met. The conditions required stem from a 'permit to return' which is granted by the Home Secretary where a person (a) applies for one (b) is deported to the UK. Conditions to be met are for an individual to attend an interview and to comply with requirements for return travel as mandated by the Home Secretary. Return to the UK can be further supplemented with measures imposed under the TPIMs regime.

The power is exercised where the Home Secretary ‘reasonably suspects’ an individual of having been involved in terrorism-related activity outside the UK or ‘reasonably considers that it is necessary’ to protect the public against a risk of terrorism by imposing a TEO against an individual. TEOs can be consecutively applied, when one ceases to be valid, and its invocation invalidates a passport held by the individual, effectively stripping them of citizenship.

The Bill makes it a criminal offence punishable by up to 5 years’ imprisonment for someone subject to a TEO to return to the UK without a ‘permit to return’.

It has already been noted by the [Bureau of Investigative Journalism](#) that the power to strip British citizens of citizenship have been frequently applied by the Home Secretary with a considerable number of revocations occurring when citizens are abroad on holidays or visiting family overseas.

The CTSB introduces a euphemism for what is, in effect, an approaching violation of the UK’s treaty obligations to not revoke citizenship where it renders a British subject ‘stateless’ or, further, where the British subject is left in foreign lands with no recourse to consular or other assistance.

A more pressing concern is the loss of legal oversight in the arbitrary and executive power envisaged in the Bill and exercised by the Home Secretary. There are no adequate safeguards to protect the citizen against the power of the State (represented by the Home Secretary) in revoking their rights of citizenship. The frequent exercise of this power by the Home Secretary since May 2010 suggests a higher propensity to exercise at will with no provisions for legal challenge against arbitrary exclusion.

Part 2: Terrorism Prevention and Investigation Measures (TPIMs)

The Bill introduces measures on relocation of individuals subject to TPIMs, a feature of the old Control Orders system and one widely discredited one given legal challenges mounted in defence of an individual’s right to liberty (Article 5, ECHR) as well as embarrassment caused by absconding.

Relocation or ‘internal exile’ is set at 200 miles from an individual’s place of residence though no reason given for what amounts to an arbitrary geographic distance from primary residence.

The Bill extends the punishment for committing an offence in contravention of the TPIM from 5 years to 10 years.

It also revises the threshold for the invocation of the restrictions from “reasonably believes” to “is satisfied, on the balance of probabilities”

The relocation orders amount to internal exile and the mental health implications of this when exercised under the old Control Order system, and further, its impact on family life, has been [well documented](#).

The extension of TPIMs powers further demonstrates a lack of regard for due process with individuals effectively denied liberties without an opportunity to challenge the restrictions imposed. The removal of the courts from the process of determining whether a terrorism related offence has been committed and to release individuals from restrictions where no offence can be proven remains a blot on claims to respect and uphold the rule of law.

Individuals subjected to TPIM’s are denied right to due process by not being charged with offences while incurring serious encroachments on civil liberties. The Bill will add a further encroachment with the introduction of relocation.



Part 3: Data retention

Introduces amendments to the Data Retention and Investigatory Powers Act 2014 and which extends measures relating to communications data to “relevant internet data”.

“Relevant internet data” is defined as (a) relates to an internet access service or an internet communications service, (b) may be used to identify, or assist in identifying, which internet protocol address, or other identifier, belongs to the sender or recipient of a communication (whether or not a person).

The provisions in the Bill contain a sunset clause setting out expiration of the above powers on 31 December 2016, the time of expiration of the Data Retention and Investigatory Powers Act 2014 itself.

It is not certain that what the Government hopes to amalgamate by that time is a revival of the Communications Data Bill, which was dismissed earlier in the year after widespread criticism of its disproportionate surveillance of private communications of British citizens. The Home Secretary has already expressed her wish to revive the Comms Data Bill.

The Intelligence and Security Committee’s Report on the intelligence relating to the murder of Fusilier Lee Rigby highlights the problems faced in intercepting internet communications stating:

“The capability of the Agencies to access the communications of their targets is essential to their ability to detect and prevent terrorist threats to the UK and our allies. The considerable difficulty that the Agencies face in accessing the content of online communications, both in the UK and overseas, from providers which are based in the US – such as Apple, Facebook, Google, Microsoft, Twitter and Yahoo – is therefore of great concern.”

The Government has sought, in the now defunct Communications Data Bill, to legislate for intercept of internet communications. The provisions in the CTSB are a step towards narrowing what has been identified as a capability gap. Questions that remain focus on rights to privacy and costs to internet companies to comply with the provisions.

Part 4: Aviation, Shipping and Rail

The Bill sets out requirements that “carriers” must adhere to if they wish to embark/disembark at UK ports. The Bill introduces an ‘authority to carry’ scheme which requires ‘carriers’ (air, sea, trains) to comply with:

- (a) a requirement for carriers to provide specified information on passengers or crew by a specified time before travel;
- (b) a requirement for carriers to provide the information in a specified manner and form;
- (c) a requirement for carriers to be able to receive, in a specified manner and form, communications from the Secretary of State relating to the information provided or granting or refusing authority to carry

The ‘authority to carry’ scheme will cover:

- (a) the classes of carrier to which it applies (which may be all carriers or may be defined by reference to the method of transport or otherwise),
- (b) the classes of passengers or crew in respect of whom authority to carry must be sought (which may be all of them or may be defined by reference to nationality, the possession of specified documents or otherwise), and
- (c) the classes of passengers or crew in respect of whom authority to carry may be refused.

The Bill proposes the amendments to cover the envisaged provisions through changes to the Immigration Act 1971; Immigration, Asylum and Nationality Act 2006; Aviation Security Act 1982; Aviation and Maritime Security Act 1990 and Channel Tunnel (Security) Order 1994.

The Bill introduces a financial penalty for “carriers” that do not comply with the scheme and, further, imposes executive power to refuse an airline to “fly in or into the United Kingdom unless such searches (of persons or property or of the aircraft itself)”.

The Bill’s terminology, with references to “classes of passengers or crew” as “defined by reference to nationality, the possession of specified documents or otherwise” is extremely disconcerting raising valid anxieties, given the operation of ‘no fly-lists’ and the disproportionate impact on Muslim passengers, of discriminatory application and racial profiling.

The Bill does not explain what happens to an individual who is refused the right to travel by virtue of compliance with the ‘authority to carry’ scheme. The measure reads like a Kafkaesque dereliction with passengers stranded and given no means of contesting the refusal to grant them passage to travel.

We know from the operation of ‘no fly lists’ and the invocation of exclusion orders on the basis of presence ‘not being conducive to the public good’ that individuals are restricted in their travel and/or from entry into the UK. Given the sometime arbitrary nature in which exclusions to entry have been applied, eg Sheikh Raed Salah, it is clear that the powers are open to abuse with the Home Secretary effectively permitted to deny the right to travel without demonstration of just cause or reason for preventing passage. The power is further open to abuse considering the politicisation of decisions on denying entry to the UK as evidenced in the Sheikh Raed Salah case.

Part 5: Risk of being drawn into terrorism

Introduces a duty on specified authorities to “have due regard to the need to prevent people from being drawn into terrorism.”

The duty extends to local and metropolitan councils, prison governors (including governor of a young offender institution or provider of probation services), universities, schools and healthcare providers.

The duty rests on guidance issued by the Home Secretary (not yet in circulation) and where the specified authority is deemed to have failed, the Bill provides the Home Secretary with powers of “direction to the authority for the purpose of enforcing the performance of that duty.” Where a direction is issued by the Home Secretary, it “may be enforced...by a mandatory order”.

This raises considerable concern about the concentration of powers in the hands of the Home Secretary over these bodies. It further raises the issue of a centralisation of power in the Home Office and away from institutions.

The Bill establishes a requirement on local authorities to establish “local panels” on which local authority representation and a senior police officer must sit, with others, for the purposes of “assessing the extent to which identified individuals are vulnerable to being drawn into terrorism” and devising “a plan in respect of identified individuals whom the panel considers should be offered support for the purpose of reducing their vulnerability to being drawn into terrorism”.

The Bill places the Prevent strand of counter-terrorism work on a statutory footing with the specified authorities charged with complying with guidance issued by the Home Secretary or face “direction” from the centre.

May explained the thinking behind the duty saying in her speech at RUSI on 24 November (days before the CTSB was published), “[F]or example universities will have to put in place extremist speaker policies and prisons will have to show they are dealing with extremist prisoners in an appropriate way.”

The concerns that arise from the statutory duty largely rest on the fact that the Government has done counter-radicalisation very badly, both in the present Prevent programme and the preceding one. Placing a statutory duty on a range of specified bodies will do nothing to dispel fears that Muslim communities are being ‘spied on’ by agencies delivering key goods and services. The New Local Government Network report (2009) and the report by the Institute of Race Relations (2009) established patterns of distrust and alienation arising from the implementation of the Prevent programme by local councils, health and education authorities. The Bill will exacerbate the problems of an already disenfranchised community and worsen of the ‘suspect community’ narrative causing further division and polarisation in communities.

The power of “direction” opens the way for abuse with “failure” to comply resting in the Home Secretary assessment of the situation. We have already seen in the case of Universities UK and guidance issued both on protecting Freedom of Speech on Campus and guidance on balancing “protected characteristics” and external speaker policy that the issues are highly contested and politicised. The Bill raises the spectre of a further narrowing of civil society and an encroachment on the right to dissent.

The Bill also raises serious implications for empirical assessment of perceived causal links between specified authorities and radicalisation (the perception that universities, schools and prisons are breeding grounds for radicalisation). There has been much investigation into these links with the Home Affairs select committee report into The Roots of Violent Radicalisation stating that “the role of prisons and universities was less obvious” and that there is “seldom concrete evidence to confirm that this is where they [terrorists] were radicalised.”

The absence of empirical analysis adds a further question over the proper target for proposed measures on tackling radicalisation. Studies show that political marginalisation and exclusion exacerbate the dislocation that can make people vulnerable to radicalisation. By issuing guidance and placing counter-radicalisation requirements on a statutory footing the Bill could prove counter-productive by deepening the very chasms that feed radicalisation, a sense of exclusion.

Part 6: Amendments of or relating to the Terrorism Act 2000

This part of the Bill introduces measures prohibiting insurance companies from reimbursing payments that have been made in response to terrorist demands on kidnap or ransom. The Home Secretary laid out reasons for the provisions saying the “UN estimates that ransom payments raised up to £28million for ISIL”.

The Bill amends section 17 of the Terrorism Act 2000 making it a criminal offence for insurer’s to pay demands that are made “wholly or partly for the purposes of terrorism”.

This part of the Bill also amends paragraph 9 of Schedule 7 to the Terrorism Act 2000 on the power to examine goods broadening the remit of the powers. It also introduces amendments to the Postal Services Act to allow for interception of letters and other post. Liberty refers to the amendment as a “blanket power to read all of our letters, birthday cards, bills and bank statements too. Needless to say, the provisions again, point to efforts by the Government to revive the infringement envisaged in the Communications Data Bill in another guise and knowingly violate Article 8 of the European Convention on the rights to privacy.

Part 7: Privacy and Civil Liberties Board

In Part 7 the Home Secretary offers a modicum of restraint in a Bill otherwise tilting the balance of power from liberty to security and from individual to the State through the establishment of a Privacy and Civil Liberties Board.

The Board is set up with the purpose of supporting the work of the Independent Reviewer of Terrorism Legislation who currently oversees the implementation of terrorism legislation in the UK.

The Board is a welcome development given the Bill’s extension of terrorism powers and the likelihood of discriminatory use in respect of some of the provisions contained therein. The Independent Reviewer has in the past spoken against the “excessive enthusiasm” with which terrorism powers have been applied and the need for rebalancing in favour of liberty.

The Board however, and the appointment of the Independent Reviewer himself, who appointed by the Home Secretary, has already raised concerns over the degree of independence exercised in reviewing terrorism legislation. The establishment of the Board does not dampen those concerns despite setting up an oversight body.

This briefing is produced by MEND (Muslim Engagement and Development), a not for profit, community funded, British Muslim organisation dedicated to tackling Islamophobia in Britain.

For further information on this briefing or the work of MEND, please contact: info@mend.org.uk



mend

St Brides Chambers,
8 Salisbury Court,
London EC4Y 8AA

Tel. 020 7871 8430
email: info@mend.org.uk
www.mend.org.uk



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