

MEND's Response to the Second Reading House of Lords Briefing on the Counter-Terrorism and Border Security Bill (2017-2019)



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The House of Lord's second reading of the Counter-Terrorism and Border Security Bill 2017-2019 (HL Bill 131) elicits several concerns regarding its potential impact on Islamophobia, minority right and civil liberties, and represents the continuation of a highly problematic approach by the UK Government towards the challenges of terrorism.

Reasons for MEND Response to the Bill

Muslim Engagement and Development (MEND) works to support Muslim communities in the UK to actively engage with media, politics and mainstream elements of society. Our research has shown that Islamophobia is a major barrier to public inclusion and engagement. At the same time, repeated concerns have been raised over current UK Government approaches to counter-terrorism, with research suggesting that it often enables institutional Islamophobia. This is seen in the problematisation of Islamic identity markers and religious articulations, the disproportionate number of Muslims targeted by counter-terror legislation, and the divisive impact that certain counter-terror approaches have had on minority rights and community cohesion in the UK. As a result, British Muslims have often become problematised as a 'suspect community' who are deemed more 'at risk from radicalisation' than other communities and groups of British society.

The current counter-terror bill not only fails to address these problems but further entrenches them, criminalising non-violent expression and crucial research, increasing the risk of Muslims being reported as extremist under 'false positives' and increasing the scope and power for authorities to detain and question individuals based on limited evidence. This bill potentially serves as a significant hinderance to British Muslim participation in UK society and civic engagement and therefore requires adjustments to be made to prevent the further exclusion, isolation and securitisation of British Muslims. Specifically, MEND robustly disputes the following key elements of the Counter-Terrorism and Border Security Bill (2017-2019) in its current state at its second reading in the House of Lords are as follows:

1. *Criminalising expression:* This bill supports a seemingly concerted governmental drive to criminalise non-violent forms of expression and critical information seeking, irrespective of the actor's intent and the actual impacts of their action.
2. *Terminology:* Key legal terminology remains inadequately defined and problematic in its implementation
3. *PREVENT expansion:* The bill continues the inappropriate expansion of PREVENT into areas of civil society, shifting the responsibility for reporting suspected extremism onto local authorities inadequately trained for such a task.

4. *Schedule 3 powers:* Schedule 3 gives authorities the powers to stop, question and detain individuals who are or perceived as having been engaged in 'hostile activity' – a problematically broad term in scope – without any requirement for reasonable suspicion.
5. *"Extremist" bias:* Whilst the bill responds to the threat posed by Da'esh, most of the legislation fails to account for the threat posed by right-wing extremism and will impact disproportionately on UK Muslim communities.

Specific Observations

1. Clause 1: Expressions of support for a proscribed organisation – section 12 of the Terrorism Act 2000

1.1 Relevant Aspects of the Bill

12 "(1A) A person commits an offence if they –

- (a) Express an opinion or belief that is supportive of a proscribed organisation, and
- (b) In doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation."

1.2 Problems with Clause 1 of the Bill

- 1.2.1 Persons who express "an opinion or belief that is supportive of a proscribed organisation" is excessively broad in its scope. What constitutes "support" for a proscribed organisation need not be tangible, but could include approval, endorsement or other "intellectual" support. In other words, the vague nature of the wording leaves the bill open to abuse or over-use.
- 1.2.2 The process for determining what organisations should be proscribed lacks proper oversight. Currently 88 organisations are proscribed (74 national and 14 international organisations), with the Home Secretary given the powers to ban any organisation under the 2000 extension of the 1974 'Prevention of Terrorism (Temporary Provisions) Act that they "believe" to be "concerned in terrorism".¹ This means organisations can be banned purely on belief and at the behest of the ideological leanings and information (and limits thereof) of the Home Secretary.
- 1.2.3 The broad nature of Section 12 (1A) risks statements being misinterpreted as support for proscribed organisations that share ideological elements of other groups. The expression of an "opinion or belief that is supportive of a proscribed organisation" may be made in reference to other, legally-operating organisations. For instance:
 - 1.2.3.1 *Example:* Support of the liberation of Palestinian peoples from occupation is a central tenet ideological of both proscribed groups (such as Palestinian Islamic Jihad or the Popular Front for the Liberation of Palestine) and legally-operating groups (such as the Palestinian Liberation Organisation).

¹ UK Government. 'Prevention of Terrorism (Temporary Provisions) Act 1974', Legislation.gov.uk. Available at: <http://www.legislation.gov.uk/ukpga/1974/56/contents/enacted> [Accessed 31st September 2018]

- 1.2.3.2 *Example:* Support of the reunification of the Republic of Ireland is a central tenet of both proscribed groups (such as the Irish Republican Army) and legally-operating groups (such as Sinn Féin).
- 1.2.4 The criminalising of the sharing of ideological tenets is highly problematic, as it is possible to support a cause and to concurrently problematise a method.
- 1.2.4.1 *Example:* Many people and organisations were against apartheid in South Africa, however some disagreed with Nelson Mandela's use of violence to achieve the end of apartheid.
- 1.2.4.2 *Example:* Many people and organisations are against the current illegal occupation of the Palestinian Territories but do not support violent solutions to the political impasse.
- 1.2.5 The requirement that a person must be 'reckless' in their expression of opinions or beliefs that are supportive of a proscribed organisation is problematic in being inadequately defined and delineated. What constitutes 'recklessness' in this regard constitutes a variety of interpretations and is highly dependent on the subsequent actions taken by those who were a party to the expressions of opinions or beliefs. As such, a person may be responsible for the actions of another long after the articulation of a statement, irrespective of their intent.

1.3 Key Impacts of these Problems

- 1.3.1 The wide scope of what constitutes 'expressions of support' leaves the clause open to poor implementation or misuse. This may result in a chilling effect on freedom of expression and lead to inappropriate use of the of counter-terror powers.
- 1.3.2 Academic and journalistic inquiry may be negatively affected by this bill, as engagement in critical debate risks being misinterpreted for support of proscribed ideologies or groups. Such academic discourse often includes the weighing up of the merits of arguments on all sides, and hence risks falling foul of such legislation.
- 1.3.3 It seems that this bill represents a convolution between non-violent and violent forms of discourse that hinders democratic debate and social progress - for instance, opinions that were, at the time, labelled 'extremist' have been used by activists to advance women's rights and LGBT rights, since becoming mainstream UK Government policy. By criminalising certain non-mainstream statements, we risk the self-policing, academic, journalistic and activist discussion, debate and inquiry on critical societal issues.
- 1.3.4 This section of the bill runs a high risk of criminalising legal statements that may be: provocative but non-violent; religious in sentiment; expressing non-British national ideas; or falsely attributed to the support of proscribed organisations.

2 **Clause 2: Publications of images and seizure of articles - Section 13 of the Terrorism Act 2000**

2.1 Relevant Aspects of the Bill

In the heading, after "Uniform" insert "and publication of images".

"(1A) A person commits an offence if the person publishes an image of –

(a) An item of clothing, or

(b) Any other article

In such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation."

2.2 Problems with Clause 2 of the Bill

2.2.1 This section of the bill criminalises the downloading, recording or production of certain images irrespective of their intent. An offence is committed not through the open support of an organisation, but through the implication by a third party that an item of clothing or any other article has 'arouse[d] reasonable suspicion' of membership *or* support of proscribed groups.

2.2.2 This bill is designed to circumvent limitations for prosecuting members of proscribed organisations by enabling prosecutions to be sought on the basis of 'reasonable suspicion' that the person is 'a member or supporter' of a proscribed organisation. It gives greater power to the Government to criminalise certain icons, designs or a "still or moving image (produced by any means)".

2.2.3 What constitutes a 'supporter' is conspicuously broad and may be based on misinterpreted statements of support of an opinion or belief unconnected to a proscribed organisation or shared with other, legally-operating organisations (as highlighted in Clause 1). This bill may determine someone a supporter of a proscribed organisation despite having no links nor contacts with the proscribed organisation.

2.2.4 What constitutes "publishing" is problematically wide in its scope. Even those that will not have had a direct hand in the composition and may be unaware of its existence may be prosecuted for publication. Where a statement has been deemed to be extremist has been published on a public forum or bulletin board, for instance, "the poster of the statement, the person running the website, and the ISP will all be 'publishers' of the statement for the purposes of the statement offence".²

2.3 Potential Impact of these Problems

2.3.1 This bill criminalises the wearing of costume, and photographs taken, within the private sphere. This blurs the lines between public and private expression and may act to criminalise private forms of expression.

2.3.2 The criminalising of the downloading, recording or production of certain images irrespective of their intent, raises significant challenges for civil freedoms, with UK

² Adrian Hunt, "Criminal Prohibitions on Direct and Indirect Encouragement," *Criminal Law Review* XXX (2007), p.6
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Government counter-terror legislation consistently acting to erode the notion of intent.

- 2.3.3 That a person can be prosecuted for acting “in such a way as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation” may lead to the mis-reporting of individuals based on stereotyping or misinformation. This poses specific challenges for minority communities, who frequently face disproportionately high levels of targeting.

3 Clause 3: Obtaining or viewing material over the internet – Section 58 of the Terrorism Act 2000

3.1 Relevant Aspects of the Bill

58 “(1) A person commits an offence if –

- (a) He collects or makes a record of information of a kind likely to be useful to a person committing or preparing acts of terrorism [or]
- (b) He possesses a document or record containing information of that kind
- (c) The person views, or otherwise accesses, by means of the internet a document or record containing information of that kind”

“(1A) The cases in which a person collects or makes a record for the purposes of subsection (1a) include (but are not limited to) those where the person does so by means of the internet (whether by downloading the record or otherwise)”

“(3A) The cases in which a person has a reasonable excuse for the purposes of subsection (3) include (but are not limited to) those in which at the time of the person’s action or possession, the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism”

3.2 Problems with Clause 3 of the Bill

- 3.2.1 Significant concerns have already been raised over the broad scope of Sections 57, 58 and 58A of the Terrorism Act 2000. Section 57 makes it an offence to ‘possess an article in circumstances which give rise to a reasonable suspicion that its possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism’.³ This can include a potentially infinite number of more abstract objects, as demonstrated in the case of Zafar (2008)⁴ – in which five individuals were charged for possession of documents, computer discs and drives containing material described as ‘radical’, ‘religious or philosophical’ and ‘ideological propaganda’ – with prosecutions sought based on materials that were ‘indirectly’ connected to an act of terrorism. The degree of ‘remoteness’ the item has to a potential act of terrorism is poorly defined: ‘a purpose connected with’ an act of terrorism could include a plane ticket to Pakistan, a credit card which was

³ UK Government, "Terrorism Act 2000," 1 (legislation.gov.uk, 2000). p.26

⁴ EWCA Crim 184 (2008) 2 W.L.R. 1013

used to book the flight, or even the defendant's passport. In instances where the lawful possession of such items falls within section 57, this runs the risk the criminalising of thought crimes.⁵

3.2.2 Sections 58 and 58A confer less importance on the intentionality of accruing information. In section 58, an offence is committed if the individual 'collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism' or 'possesses a document or record containing information of that kind'.⁶ This specifically includes photographic or electronic records, and instances already exist of academic and journalistic researchers facing the threat of prosecution under these laws.⁷

3.2.3 An offence is committed both when the defendant is in control of the computer, but also in situations where a person "was viewing the material, for example, over the controller's shoulder". This could also be used to criminalise the inadvertent opening of emails or email attachments, irrespective of whether they have knowledge of the contents. This creates questions regarding the remoteness of the person prosecuted when they were not in control of the electronic device used for accessing such material. Persons risk being prosecuted for being actions beyond their control.

3.2.4 Whilst (3A) of HL-131 looks to exclude cases where "a person has a reasonable excuse" for obtaining such materials, this is vulnerable to a broad scope of interpretation or may be inadequately considered during prosecutions.

3.3 Potential Impact of these Problems

3.3.1 The criminalising of the downloading or viewing of certain materials represents an attack on freedom of expression, which further ignores aspects of intentionality and impact to ensure a greater success rate of problematic prosecutions.

3.3.2 This section of the bill acts as a significant deterrence for the conduct of research into terrorism and terrorist actors during a period in which such research is critical. Researchers and journalists conducting crucial, legal work risk being targeted through this legislation and dissuaded from conducting such research.

3.3.3 Recent experience of the enactment of sections 57, 58 and 58A of the 2000 Terrorism Act have shown that Muslims have been disproportionately targeted as a threat in downloading or viewing of certain material.⁸ Meanwhile, far-right content

⁵ Graham Virgo, "Possession of Articles," *The Cambridge Law Journal* 67, no. 2 (2008). pp.237-238

⁶ Government.

⁷ One example in which a researcher has fallen foul of legal challenges is that of Bradley Garnett who conducted deep participation research during a PhD project with a group of urban explorers. Spending prolonged periods of time with group on night-time excursions, Garnett also acted as the designated 'scribe for the tribe', detailing explorations and findings. Despite the research being approved by supervisors, a university ethics committee and successfully signing off his PhD after a defence with internal and external examiners, the British Transport Police took legal action against Garnett and a group of eight research participants. This centred around the collection of materials that were, according to the charge, 'illegally obtained information', and despite working through the doctoral process according to university regulations, the university refused to offer their support for him or the work. Even more concerning, the British Transport Police seized his doctoral research findings, including personal text messages, quotes from his thesis, field notes, photographs, video footage and even chat logs from social media, all of which were connected 'off my person and from my house, which they raided while I was in custody after taking my door down with a battering ram'. Bradley Garnett, "Access Denied," *Times Higher Education* 2, no. 155 (2014). p.38

⁸ Fahid Qurashi, "The Prevent Strategy and the UK 'War on Terror': Embedding Infrastructures of Surveillance in Muslim Communities," *Palgrave Communications* 4, no. 1 (2018).

providers have been given significant freedom to operate and disseminate extremist content:

3.3.3.1 *Example:* In 2017, Darren Osborne deliberately drove a car into a crowd of worshippers in Finsbury Park, killing Makram Ali and injuring nine others. During his trial, it was revealed that he had become “obsessed” with Muslims after watching a BBC TV drama on the so-called “Rochdale grooming scandal” and had been heavily reading and sharing posts by Britain First and the English Defence League.⁹

3.3.3.2 *Example:* Anders Breivik, who murdered 91 persons – many of whom were children – in the worst attack in Norway since the second world war, was a prolific in sharing far-right content, many of which was produced in the UK. He “made little secret... of his racist views” on social media sites such as Facebook, and “had corresponded with far-right groups in several countries, including the UK, both to discuss ideological issues and also political strategies”.¹⁰

3.3.4 This bill fails to consider the differential impact that such counter-terrorism has had on racial and religious communities, and risks further alienating Muslim communities and their trust in policing and counter-terrorism. This result in poorer interaction between Muslim communities and authorities, diminishing the effectiveness of all forms of countering terrorism and fracturing British communities.

4 Clause 3: 58B and the Securitisation of Travel – Section 58 of the Terrorism Act 2000

4.1 Relevant Aspects of the Bill

“(1) A person commits an offence if –

(a) The person enters, or remains in, a designated area, and

(b) The person is a United Kingdom national, or a United Kingdom resident, at the time of entering the area or at any time during which the person remains there”

4.2 Problems with the Bill

4.2.1 Such legislation disproportionately targets Muslim communities, as designated areas are clearly far more likely to be Muslim-majority areas. This therefore risks criminalising British citizens with links to “designated areas”, who would be more likely to engage in travel there.

4.2.2 Whilst it is a defence under this section “to prove that the person had a reasonable excuse for entering, or remaining in, the designated area”, it again is vulnerable to a broad scope of interpretation, may be inadequately considered during

⁹ BBC, “Finsbury Park: Man ‘Wanted to Kill Muslims in Van Attack’,” *BBC*, 22nd January 2018.

¹⁰ Peter Beaumont, “Anders Behring Breivik: Profile of a Mass Murderer,” *The Observer*, 23rd July 2011.

prosecutions, and may act as a significant deterrence for researchers, journalists, aid workers, as well as those with family in the designated areas.

5 Section 5: Encouragement of terrorism and dissemination of terrorist publications – Terrorism Act 2006

5.1 Relevant Aspects of the Bill

Re-wording of the following section:

- (1) *“This section applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement of other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences”*

Which has been changed to the following:

- (1) *“This section applies to a statement that is likely to be understood by a reasonable person as a direct or indirect encouragement of other inducement to some or all of the members of the public to whom it is published to the commission, preparation or instigation of acts of terrorism or Convention offences”*

Similar changes are to be implemented for sections (3) and (4).

5.2 Problems with this Section of the Bill

- 5.2.1 This section forms part of a wider target against ‘hate preaching’ and incitement. Whilst MEND recognises that there is a need to target such issues, this has led to several convictions based on statements that have been misinterpreted and risks stigmatising Muslims and curbing freedom of expression.
- 5.2.2 The scope of indirect encouragement is excessively broad, so that even statement unconnected to an act would be capable of attracting criminal liability. Persons could be prosecuted for the dissemination or articulation of a matter as constituting an extremist act even though the conduct is likely to be considered too remote from the impugned material to be considered “encouragement” when applying traditional principles of incitement law. The act of encouragement traditionally requires direct forms of communication, which is not proven in this case through the means of having “published” something. We are also concerned that due to shared ideology support for a legal group could be misinterpreted as ‘indirect encouragement’ for a proscribed group.
- 5.2.3 The prosecution of a person using this section of the bill is largely contingent on additional factors: 1) the subsequent actions of those receiving the inducement in carrying out extremist acts; 2) the interpretation of “a reasonable person” in associating certain statements with extremist acts. This makes the section potentially unwieldy, whilst also making elements of the prosecution highly unstable, reliant on an *ex post facto* interpretation of the impacts of statements.

5.3 Impact of these Problems

5.3.1 The rewording of this section makes it easier for persons to face prosecution by lowering the threshold for determining that a person has acted to encourage terrorism. This risks the increase of persons being wrongly reported or arrested and places limits on certain forms of expression within Muslim communities.

6 Section 19: Persons vulnerable to being drawn into terrorism – Counter-Terrorism and Security Act 2015

6.1 Relevant Aspects of the Bill

(3) *Section 36: “A chief officer of police and local authorities may refer an individual to a panel only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism.”*

(8) *Section 38: “The reference in subsection 1b to functions of the police and local authorities in connection with section 36 includes, in particular, a chief officer’s function of determining whether an individual should be referred to a panel for the carrying out of an assessment of the kind mentioned in subsection 1a of that section.”*

6.2 Problems with this Section of the Bill

6.2.1 In expanding legal obligations for reporting into the hands of local authorities – such as public workers in schools and further/higher educational institutions, prisons, social services and healthcare – this section of the bill places reliance on persons inadequately trained and prepared for such a task. At present, PREVENT delivery officers and local authorities obligated with referring individuals “at risk” of radicalisation receive as little as 45-60 minutes of training to identify signs of radicalisation. Such basic training is only capable of providing a generic overview of what radicalisation entails, at best. This, in turn, creates a misleading framework through which nurses, teachers and other public sector employees are required to attempt to identify radicalisation. This lack of effective training was highlighted by the Home Affairs Committee who noted, “We are concerned about a lack of sufficient and appropriate training in an area that is complex and unfamiliar to many education and other professionals, compounded by a lack of clarity about what is required of them”.¹¹

6.2.2 As well as limited training time of local authorities and over public sector employees obligated to report on those at risk from extremism, there also appears to be no formative examination nor on-going assessment for PREVENT officers – an approach which exhibits a lack of regulation that would not be tolerated within any other workspace.

6.2.3 This public sector-based approach has been shown to result in a high number of ‘false positives’ in which Muslims are disproportionately over-represented in being reported due to cultural stereotyping. The lack of an evidentiary basis for such an approach, combined with poor training of public sector workers, has led

¹¹ House of Commons, "Radicalisation: The Counter-Narrative and Identifying the Tipping Point - Eighth Report of Session 2016-2017," ed. Home Affairs Committee (House of Commons, 2016).

to a situation where everyday normative practices of the Islamic faith (for example, the wearing of a hijab) or taking an interest in politics (for example, publicly criticising foreign policy) can be seen as a sign of extremism and a vulnerability to radicalisation. Recent studies into the increasing 'PREVENT Duty' referrals to CHANNEL by public sector workers have been shown to have impact in the following areas:

- 6.2.3.1 *Schools:* With the largest majority referrals to PREVENT have come from the education sector (32% in 2016/17), the impact of PREVENT in schools and on the learning and development of children is of primary concern. PREVENT has been recorded as impacting negatively on primary and secondary education by: contributing towards a lack of trust in the classroom; creating a pre-criminal space; increasing schoolyard bullying; and hindering learning and developing.
- 6.2.3.2 *Universities:* In 2017, the National Union of Student (NUS) launched a report into the experience of Muslim students in British universities. The report concluded that "Prevent is a key issue for respondents' ability to engage meaningfully with the structures of their institutions, unions and NUS, in particular around democratic engagement. It is particularly notable that being affected by Prevent has a negative impact on respondents' engagement with political debates. This negative impact persists whether or not respondents articulated that fear around Prevent was the cause. This correlation demonstrates the chilling effect of Prevent, and that being affected by Prevent accompanies an erosion in trust of institutions who have responsibility to combat Islamophobia". The central concerns raised by PREVENT in further and higher education institutions include: an impact on free speech; the limitation of political engagement; and PREVENT being used as a tool to shut down opposing voices.
- 6.2.3.3 *the NHS:* Alongside schools, the NHS comes into contact with some of society's most vulnerable citizens. Therefore, they have a duty of care toward all patients. Concern has been raised that the pressures of PREVENT put undue strains on this duty of care, particularly in terms of safeguarding. Indeed, research conducted by the University of Warwick noted that there is "evidence to suggest that the mentally ill are being inappropriately stigmatised as terrorism risks".¹² Particular concerns have been raised over the unclear guidelines, its conflicts that it creates with safeguarding and the sentiment that PREVENT had no place in healthcare.
- 6.2.3.4 *Example:* "A nurse on an inpatient hospital ward reported an elderly gentleman, who had learning disabilities and lived alone. His behaviours were interpreted as indicating radicalisation. Safeguarding forwarded the case to CHANNEL."¹³
- 6.2.3.5 *Example:* "On a home visit to a family, a healthcare professional noticed a child sitting in front of an Arabic televised news channel. There were also Arabic

¹² Charlotte Heath-Kelly and Erzsebet Strausz, "Counter-Terrorism in the Nhs: Evaluating Prevent Duty Safeguarding in the Nhs," (University of Warwick, 2017).

¹³ Ibid. p.25

reading materials lying around. The family were reported to social care as a potential case of radicalisation. The case did not reach CHANNEL".¹⁴

- 6.2.4 Of the 7,361 individuals referred to PREVENT in 2015/16, 4,997 were referred to for "Islamist extremism" (68%), but only 5% went on to receive CHANNEL support for de-radicalisation, with the remaining 95% deemed not to be at risk of radicalisation.¹⁵ In 2016/17, of the 6,093 individuals referred, 3,704 (61%) were again referred for "Islamist extremism", but only 184 (4.9%) went on to receive CHANNEL support.¹⁶
- 6.2.5 Definitions of 'extremism', 'radicalisation' and 'vulnerability' within a counter-terror context are highly unstable and context-dependent. Such important legislation demands a reliable definition of these terms. The methodology shown for tackling extremism demonstrates the UK Government's insistence on ideology being used as the key motivational and determinant factor in the formation of terrorism. This draws on discredited theories of the "conveyor belt of radicalisation", even though the government itself acknowledges that there is no single pathway to terrorism. Furthermore, one of the Bill's core objectives is the 'updating [of] offences for the digital age and to reflect contemporary patterns of radicalisation',¹⁷ yet the Government has also admitted that patterns of radicalisation are as different as an individual's fingerprints.

6.3 Impacts

- 6.3.1 Unless there is a significant change in the way the UK Government defines and assess radicalisation and extremism, further implementation of PREVENT across these public bodies will keep resulting in the same misguided approach.
- 6.3.2 There is a paucity of research on the effects of false referrals on persons accused of extremism or highlighted as being vulnerable to radicalisation, but it is likely that the stigmatising effects of being flagged as a "security risk" will be adverse and affect individuals from psychological, social, educational and employment perspectives. Additionally such a reckless 'sledgehammer' approach to identifying individuals at risk being drawn into terrorism risks alienating whole swathes of the Muslim community.
- 6.3.3 This approach to safeguarding through public sector employees has been shown to disproportionately impact on Muslim communities in the UK. Home Office data indicates that 5,000 individuals were referred to PREVENT for "Islamist extremism" in 2015-2016. Assuming all of those referred for "Islamist extremism" Muslim, this means that roughly 1 in 500 Muslims were referred to PREVENT during the year. A conservative estimate of the proportion of the white population referred for far-right concerns is less than 1 in 60,000, making the likelihood of a Muslim being referred for "Islamist extremism" more than 110 times the likelihood of a white person being referred for "far-right extremism" to the programme.

¹⁴ Ibid.

¹⁵ UK Government, "Individuals Referred to and Supported through the Prevent Programme, April 2015 to March 2016," ed. Home Office (2017).

¹⁶ "Individuals Referred to and Supported through the Prevent Programme, April 2016 to March 2017," ed. Home Office (2018).

¹⁷ "Impact Assessment: Counter-Terrorism and Border Security Bill," ed. Home Office (2018).

- 6.3.4 As a consequence of the disproportionate representation of Muslims being referred to CHANNEL programmes, critics have condemned such approaches as inherently discriminatory. Beyond issues of equality and social justice, such a discriminatory approach may also prove to be counterproductive for counter-terrorism. MI5 has concluded that “experiences of inequality, marginalisation or victimisation, particularly racial or religious attacks, both verbal and physical” play a direct role in the radicalisation of individuals. Approaches which enable and promote such a high level of “false positives” therefore hinder counter-terrorism and counter-extremism approaches, as well as negatively impacting on community cohesion.

7 Section 21: Schedule 3 (Border Security)

7.1 Relevant Aspects of the Bill

“(4) An examining officer may exercise the powers under this paragraph whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity”

“(6) An act is a “hostile act” if it –

(a) Threatens national security

(b) Threatens the economic well-being of the United Kingdom

(c) Is an act of serious crime”

7.2 Problems with the Bill

7.2.1 Schedule 3 represents a significant expansion of the much-criticised Schedule 7 of the 2000 Terrorism Act, which itself has been described as a “breathtakingly broad and intrusive power to stop, search and hold individuals at ports, airports and international rail stations” which is “ripe for overuse and abuse”.¹⁸ ESRC research on the similar Schedule 7 found that Asians and individuals of “other” ethnic groups were 11.3 times more likely than White people to be stopped and searched. The study concluded that although the total proportion of examinations of Asians or “other” ethnic minorities at all ports and airports was 46.6% in 2010/11, an analysis of airports indicated that 63.5% of total examinations were of Asians and “other” ethnic minorities. Meanwhile, 65.2% of all port and airport examinations and detentions lasting over an hour were of Asians or “other” ethnic minorities.¹⁹

7.2.2 Abuse of Schedule 7 powers and the level of disproportionality of stops has continued to grow over recent years. Whilst the overall number of Schedule 7 examinations has declined since 2011/12, the proportion of those stopped who are from Asian or “other” ethnic backgrounds continues to grow. Despite individuals of Asian ethnicity comprising just 8% of the overall population, 2015/16 marked the first year where those stopped who were of Asian ethnicity (30%) outnumbered

¹⁸ Liberty, “Schedule 7,” (Liberty).

¹⁹ Karen Hurrell, “An Experimental Analysis of Examinations and Detentions under Schedule 7 of the Terrorism Act 2000,” (Equality and Human Rights Commission, 2013).

those of White ethnicity (27%), with those of Asian or Asian British ethnicity being most likely to be detained under Schedule 7 powers.²⁰

7.2.3 What is determined to be a 'hostile act' is vague and can be applied to a wide variety of actions. Acts that threaten national security, the economic well-being of the United Kingdom and is an act of serious crime can be levelled against a wide variety of events.

7.2.3.1 *Example:* The 2016 Leave Campaigns in the UK Brexit vote could potentially be determined a "hostile act" under these broad conditions:

- a. *National Security:* The decision to leave the EU may lead to the loss of several national security partnerships, especially if a no-deal scenario occurs.
- b. *Threatens the economic well-being of the United Kingdom:* The decision to leave the EU has been shown to have threatened the economic well-being of the United Kingdom, leading directly to a sharp decline in the value of Sterling, the loss of significant manufacturing sectors and creating barriers for continued trading bodies.
- c. *Is an act of serious crime:* The leading Brexit campaign body Vote Leave was found guilty in 2018 of breaking electoral law in 2016, whilst unofficial campaign group Leave.EU was also convicted of illegal activity in the run up to the Brexit vote.

The breaking of electoral law on a national scale, as well as concern over the role of hostile external funding and state actors, means that actors within this event can be construed as being involved in a "hostile act" under these broad definitions.

7.3 Impact of the Problems

7.3.1 Schedule 3 – along with the earlier Schedule 7 – have been shown to erode trust between authorities and persons from Muslim communities, who have faced disproportionate targeting due to racial profiling and the reliance of authority actors on stereotypes. The former Independent Reviewer of Terrorism Legislation, David Anderson QC, has stated that the use of Schedule 7 powers had "given rise to resentment among some Muslim groups who feel they are being singled out" by authorities.²¹ He further noted that Schedule 7 detentions and examinations were imposed upon members of ethnic minority groups to a greater extent than "their presence in the travelling population would seem to warrant",²² suggesting evidence of disproportionate use. Whilst later reports suggest that this disproportionality does "not constitute evidence that Schedule 7 powers are being used in a racially discriminatory manner" and subsequent 2014 amendments to Schedule 7, concerns remain over the broadening of powers at the disposal of border officials combined with the limitations in current training of officers to ensure racial and religious profiling is avoided and the inherent difficulties in identifying those suspected of being engaged in "hostile activity". That Schedule 3 is so rooted in the problematic approaches of Section 7 suggests that the UK

²⁰ UK Government, "Operation of Police Powers under the Terrorism Act 2000, Financial Year Ending March 2016," ed. National Statistics (2018).

²¹ Rowena Mason, "Uk Terror Law Watchdog Calls for End to Detention at Borders without Suspicion," *The Guardian*, 1st December 2013.

²² David Anderson QC, "The Terrorism Acts in 2011: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006," (2012).

Government has failed to respond to the criticism that border stop and searches are often predicated on prejudicial judgements, acting to diminish the rights of British Muslims and minority communities and to severely undermine the UK Government's work in developing a coordinated response to threats posed by terrorism and foreign attacks.

8. Conclusions

In analysis of above clauses, sections and schedules of The House of Lord's second reading of the Counter-Terrorism and Border Security Bill 2017-2019 (HL Bill 131), several concerns have been raised regarding its potential impact on Islamophobia, minority right and civil liberties, and represents the continuation of a highly problematic approach by the UK Government towards the challenges of terrorism. These can be divided into the following five issues:

8.1 Criminalising expression

- 8.1.1 There is a significant risk that academic, journalistic and activist inquiry and expression may be negatively affected by this bill, as engagement in critical debate faces being misinterpreted for support of proscribed ideologies or groups. The bill suggests a convolution between non-violent and violent forms of discourse that hinders democratic debate and social progress.
- 8.1.2 By criminalising certain non-mainstream statements, we risk the self-policing critical debate and inquiry on central societal issues.
- 8.1.3 Legal statements that may be provocative but non-violent, religious in sentiment, expressing non-British national ideas or falsely attributed to the support of proscribed organisations run the significant risk of leading to prosecution of persons inappropriately caught in the wide net of this bill.
- 8.1.4 The scope of what constitutes 'expressions of support' leaves the clause open to poor implementation or misuse and may result in a chilling effect on freedom of expression and the inappropriate use of the of counter-terror powers.

8.2 Terminology

- 8.2.1 Discussion on key terminology - crucial in determining the scope and limitations of aspects of this bill - remain conspicuously and concerningly absent. There is still concern over the lack of what delineates "extremist" material and action, especially in an environment where definitions of terms such as "extremism", "radicalisation" and "vulnerability" within a counter-terror context are highly unstable, unreliable and context-dependent.

8.3 PREVENT expansion

- 8.3.1 There is concern that this bill inappropriately expands the powers of PREVENT, particularly in the continued problematic direction of requiring local authorities and public sector workers to refer persons deemed "at risk of radicalisation".

- 8.3.2 The methodology shown for tackling extremism demonstrates the UK Government's insistence on ideology being used as the key motivational and determinant factor in the formation of terrorism, drawing on discredited theories of the "conveyor belt of radicalisation" despite government acknowledgment that there is no single pathway to terrorism.
- 8.3.3 In expanding legal obligations for reporting into the hands of local authorities – such as public workers in schools and further/higher educational institutions, prisons, social services and healthcare – this section of the bill places reliance on persons inadequately trained and prepared for such a task.
- 8.3.4 This public sector-based approach has been shown to result in a high number of 'false positives' in which Muslims are disproportionately over-represented in being reported due to cultural stereotyping, decreasing trust in UK Government counter-terror approaches.
- 8.3.5 This leads to a degradation in the effectiveness of counter-terror and counter-extremism strategies, as well as risking the fragmentation of community cohesion.

8.4 Schedule 3 powers

- 8.4.1 Schedule 3 represents a significant expansion of the much-criticised Schedule 7 of the 2000 Terrorism Act, which has faced a raft of criticism over its broad and intrusive power which securitises movement. Studies into such border stop and searches has suggested that they are implemented in a way that is highly discriminatory, resulting in a disproportionate level of Muslims and minorities being detained.
- 8.4.2 Schedule 3, as envisaged in this bill, is particularly concerning in that what constitutes a "hostile act" is worryingly vague, whilst authorities are given the freedom to use these powers "whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity".
- 8.4.3 This risks replicating and amplifying the more negative impacts of Schedule 7, increasing distrust particularly amongst young Muslim males, who often face the brunt of this approach.

8.5 "Extremist" bias

- 8.5.1 This bill fails to address the imbalance in current legislation that leads to a hugely disproportionate number of British-Asian Muslims being targeted, over and above all other ethnic or religious groups. Sections 57, 58 and 58A of the Terrorism Act 2000 have all been shown to be used disproportionately against Muslim persons, and the extension of these powers in the obtaining and viewing of material, as well as travel bans, looks to continue this process.
- 8.5.2 In contrast, those with far-right views have far more freedom to publish and disseminate material that could be seen as "extremist", and the bill fails to adequately rebalance the UK Government's counter-terror response to account for this.

Recommendations

Groups such as MEND exist solely to promote the active engagement of Muslims in civic society. Indeed, MENDS work empowers disaffected individuals to approach their grievances through the democratic system and attempts to promote healthy interactions through engagement and inclusion. As the EU Parliament Magazine stated, “the EU could learn a lot from MEND’s work on counter-radicalisation through engagement”.

We therefore strongly urge that the UK Government work with such groups in reducing the vulnerability communities face to radicalisation rather than maintaining its disengagement policy towards Muslim organisations such as MEND and the MCB. The Government would do well to heed the advice proffered in Citizen UK’s ‘Missing Muslims’ report that stated, “The Commission suggests that wider engagement, including the robust challenging of views with which it disagrees, rather than the apparent boycott of certain organisations, could best enable the Government to hear from the widest possible cross-section of the UK’s Muslim communities”.²³

MEND is one of the organisations that is ideally placed to steer people away from paths of extremism by offering them the hope that they can achieve their political and human rights through peaceful means of engagement with the democratic process.

With this organisational experience in supporting Muslim and minority communities and rights, MEND has the following recommendations in response to the Second Reading House of Lords Briefing on the Counter-Terrorism and Border Security Bill (2017-2019) on 9th October 2018.

1. The UK Government’s approach to extremism urgently needs to undergo a rigorous independent review to evaluate its effectiveness and impact. Serious concerns hang over the way in which elements of extremism are criminalised, with singular, ideologically-based explanations explicitly prioritised in this bill despite the UK Government’s admission that there is no single pathway to radicalisation. A thorough review into the impacts of this approach, which accounts for the growing volume of peer-reviewed criticism of these methods, is strongly recommended by MEND.
2. There should be a drive for problematic terminology to either be adequately defined by the Government or dropped from counter-terror approaches. The inability for legislation to determine the meaning and limits of central terms – such as “extremism” and “radicalisation” – has been shown to leave counter-terror legislation open to misinterpretation, impoverished application and outright abuse.
3. As stated by the Joint Committee on Human Rights in response to the problems and limitations within the Bill and current counter-extremism strategy, “an independent review of the Prevent Strategy and Duty [should be conducted] as part of the consultation on the Bill”.²⁴ We therefore urge the Government to launch

²³ Esmat Jeraj, "The Missing Muslims: Unlocking British Muslim Potential for the Benefit of All," (London: Citizens UK, 2017).

²⁴ MEND, "Jchr Report on Counter Extremism Strategy, Extremism Bill and Prevent," <https://mend.org.uk/news/jchr-report-on-counter-extremism-strategy-extremism-bill-and-prevent/>.

an immediate root and branch independent review which engages with all community stakeholders, mainstream Muslim organisations and the phalanx of criticism such approaches have drawn in reinforcing negative stereotypes and securitising British Muslims. Having been repeatedly criticised by so many actors, research and organisations, it is unthinkable that the UK Government could seek to expand the powers of PREVENT in absence of considering these evidence driven concerns.

4. Legislation regarding Schedule 3 requires far greater scrutiny in its approach as it gives authorities the freedom to detain and question individuals “whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity”.
5. The far-right and its role in exacerbating community tensions needs to be further understood and accounted for in legislation. Furthermore, the use of language and the choice of policies by the UK Government – which often openly pander to such divisive rhetoric – must be addressed.

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