

The Prevention of Terrorism Bill

1. Title of Proposal

1. The Prevention of Terrorism Bill is aimed at introducing preventative and restrictive measures to reduce the risk to the security of the United Kingdom and its interests posed by suspected terrorists of all nationalities and ideologies.

2. Purpose and intended effect of measure

(i) The objective

2. The objective of the proposal is to prevent or restrict the actions of individuals, whom the Secretary of State suspects are involved in terrorist activity, through the imposition of a control order designed to limit such behaviour.

(ii) The background

3. Under Part 4 of the Anti-Terrorism, Crime and Security Act (ATCSA) 2004, the Secretary of State may issue a certificate in respect of a person if he reasonably (a) believes the person's presence in the UK is a risk to national security, and (b) suspects that the person is a terrorist. The effect of a certificate is that the person can be detained under immigration powers even though his removal or departure from the UK is prevented (whether temporarily or indefinitely) by a point of law which wholly or partly relates to an international agreement, or a practical consideration (section 23).

4. The provisions were designed to address a particular problem, namely the position of foreign suspected terrorists who could not be deported because of the risk that removal would breach the UK's obligations under Article 3 ECHR. Under normal immigration powers (and under Article 5 ECHR) an individual can be detained for so long as removal is reasonably in prospect; section 23 permitted the detention of foreign suspected terrorists even though they could not (for the time being) be removed.

5. Since detention in these circumstances was (arguably) contrary to Article 5 ECHR, the UK derogated from that Article (in accordance with Article 15 ECHR) and designated the derogation by an order under section 14 of the Human Rights Act 1998. The basis for the derogation was the public emergency threatening the life of the nation arising from the threat posed in the aftermath of the terrorist attacks in the United States on 11 September 2001. The Government gave a commitment to Parliament and to the courts to use the Part 4 powers only in relation to those associated with or having links with Al Qaida.

6. In the recent case of *A (and others) v Secretary of State* [2004] UKHL 56, the House of Lords quashed the derogation order and made a declaration that section 23 was incompatible with Articles 5 and 14 of ECHR. The basis

for the decision was, broadly, that detention of foreign suspected nationals was discriminatory and disproportionate in that (a) the measures targeted foreign nationals alone and (b) it could not be said that measures short of detention would not adequately meet the threat posed by international terrorists. In the light of the judgement, the Government is looking to introduce measures that can apply to UK and foreign nationals alike and which are a proportionate response to the threat.

(iii) Risk assessment

7. The ATCSA was enacted because there was an unprecedented terrorist threat to the UK, which was assessed to emanate from Al Qaida and those individuals and groups within the loosely co-ordinated series of overlapping terrorist networks linked to it. Our understanding of the threat has advanced since then, both from an increasing intelligence base and through the investigation of both successful and thwarted attacks. It is clear that some British nationals are now playing a more significant role in these threats. At the same time, networks consisting of foreign nationals with international links remain.

8. The past year has seen the multiple attacks in Spain in March 2004, attacks at Al Khobar in Saudi Arabia in May, the attack on the Australian Embassy in Jakarta, Indonesia, in September, an attack on an Israeli owned hotel in Egypt in October and the attack on the US consulate in Jeddah in Saudi Arabia in December 2004.

9. The Race Equality Impact Assessment recognises that although the new proposed powers will be applicable to all individuals regardless of racial group, members of the Muslim community may feel disproportionately affected by these proposals. While the powers are designed for general application, whatever the nature of the threat, at present the greatest threat to the United Kingdom is assessed to be from extremists who justify their acts with reference to Islam. Muslims are a faith group and can come from any racial group, but the majority of Muslims resident in the UK are of Asian origin. With this in mind, we will seek to engage local communities if possible where action under the new provisions may have a direct bearing on an individual within their area. Our aim is to reduce community tension by reducing the fear of a terrorist attack. We can pursue this goal by engaging with community leaders of whatever ethnic/faith background.

3. Options

10. The UK has two major anti-terrorism acts: the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act (ATCSA) 2001. A system of Control Orders would supplement this legislation and would deal with a subset of individuals whom we believe to be engaged in terrorism but where there is insufficient evidence to prosecute in open court. Whilst the existing powers are extensive, they do not fully cater for the evolving nature of the terrorist threat we face, especially in light of the House of Lords judgement of 16 December 2004.

11. A number of options have been considered to enable the Government to meet adequately the current challenges and to ensure the delicate balance between security and liberty is continued:

- **Option 1:** Do nothing and introduce no more counter terrorism powers.
- **Option 2:** Release the current ATCSA Part 4 detainees, pending Memoranda of Understanding (MoU) on deportation with assurances.
- **Option 3:** Renew the ATCSA Part 4 powers, pending MoU on deportation with assurances.
- **Option 4:** Introduce legislation providing for control orders, allowing the ATCSA Part 4 powers to lapse after this is in place.

Option 1

Do nothing and introduce no more counter terrorism powers

12. The Part 4 powers of the ATCSA are due to lapse on 13 March 2005. Unless the Home Secretary seeks to renew them, the powers will be lost and those individuals currently in detention, as a result of suspicion about their involvement in international terrorist activity, would be set free without any constraints. The Government continues to believe that these individuals constitute a serious threat to public safety. Without the introduction of further powers, these individuals would be at large in local communities and free to resume terrorist-related activity.

13. Given the nature of the threat to the country and the constantly evolving terrorist networks involved, it would be wrong not to take steps to prevent the ATCSA Part 4 detainees from engaging in terrorist related activities. It is not, therefore, a realistic option to do nothing.

Impact on race/community relations

14. If our aim is to reduce community tension by reducing the fear of a terrorist attack, the option to do nothing is not viable. A terrorist attack perpetrated by groups claiming affiliation to Islam, for example, may have severe repercussions on community relations and cause a resulting increase in Islamophobic incidents. It is imperative to strike the right balance between the safety and security of citizens against the rights and liberty we seek to protect; this option would not strike such a balance. **More information is available at ANNEX A.**

Option 2

Release the current ATCSA Part 4 detainees and pursue deportation under the conditions of Memoranda of Understanding

15. The Government continues to believe that the detainees pose a credible threat to this country. Releasing them into the community without any constraints could place members of the public at risk for the reasons described in Option 1.

16. Work continues on establishing appropriate MoU between the UK and certain African and Middle Eastern countries to allow the detainees to be returned to their countries of residence with guarantees over their future safety. It will take time for these agreements to be implemented. It would not be appropriate for the Government to allow the detainees to go free in the meantime, with the risk that they could again pose a grave threat to the nation or go to ground to avoid removal action.

Impact on race/community relations

17. As referred to in Option 1. **More information is available at ANNEX A.**

Option 3

Renew ATCSA Part 4 powers and pursue deportation under the conditions of Memoranda of Understanding

18. Whilst the ATCSA Part 4 powers are not illegal following the House of Lords judgement, the derogation order, which allowed section 23 of the ATCSA (which enabled the Government to detain foreign nationals suspected of involvement in international terrorism) to be legally compatible with Article 5 ECHR, was quashed for being both discriminatory and disproportionate. The Law Lords also found that section 23 was incompatible with Article 14 on the grounds that it was discriminatory. In practical terms, this means that the Government has legislation to enable the lawful detention of individuals as a matter of domestic law but the legislation has been declared incompatible with the rights contained in the ECHR, which forms part of our international obligations.

19. The Government has said that it accepts the Law Lords' judgement. It would be inappropriate, therefore, for the Government to continue its use of the Part 4 powers for anything other than a limited period until alternative measures. The likely impact of continuing to use the Part 4 powers is covered in the Race Equality Impact Assessment. However, it is recognised that use of these powers has caused anxiety and tension for certain sections of society.

20. Work continues on establishing appropriate MoU between the UK and certain African and Middle Eastern countries, which would allow the detainees to be returned to their countries of residence with guarantees over their future safety. It will take time to implement these agreements and for the reasons set out above, it would not be appropriate for the Government to continue to detain the suspects in the meantime.

Impact on community/race relations

21. There may be a negative impact on community relations if the Government sought to renew the ATCSA Part 4 powers. Faith groups and human rights' organisations have argued that these powers discriminate unfairly against a specific section of British society and can foster radicalisation. The Government has accepted the Law Lords' ruling. Renewing the Part 4 powers, particularly for an extended period, might well intensify community tension. **More information is available at ANNEX A.**

Option 4

Introduce legislation providing for control orders, allowing the ATCSA Part 4 powers to lapse after this is in place

22. The principle criticisms from the Law Lords' judgement were that the ATCSA Part 4 powers were discriminatory and consequently disproportionate. The Government has accepted this judgement and needs to take measures to address the issues concerned. The challenge, as laid out elsewhere in this assessment, is to meet the security needs of the evolving threat to the nation and to protect the safety and freedoms of the UK's citizens. The main method that the Government has identified to achieve these aims is to implement a system of Control Orders.

23. A system of Control Orders would focus on the Law Lords' main criticisms. Firstly, the Orders would be a regime applicable to both UK and foreign nationals, thereby dealing with the discrimination concern. Control Orders would also introduce a range of conditions that would offer a more flexible approach than a choice between detention or nothing (as is the current case with the ATCSA Part 4 powers), thus addressing the question of proportionality. If Control Orders were introduced, there would be no need to continue with the Part 4 powers and these would be allowed to lapse.

24. The Government has made clear that the new provisions will be ECHR compliant. Any obligation imposed on an individual that amounted to a deprivation of liberty would require derogation from Article 5 ECHR. The Government does not intend to seek derogation at present and it follows that no Order could impose a condition amounting to a deprivation of liberty. However, in recognition that circumstances may change, the Bill contains provisions for conditions amounting to deprivation of liberty to be imposed provided that the Government has enacted the necessary derogation. Any derogation in this respect would be subject to Parliamentary approval.

25. The ATCSA Part 4 powers, since their inception, have been applied to 17 individuals, of whom 11 are still certified and detained. Whilst it is impossible to predict the number of people who could become involved in terrorist-related activities, the figures for those expected to be subject to a Control Order are not expected to be substantial. Each case will be subject to a high degree of judicial scrutiny throughout the Control Order process.

Impact on community/race relations

26. An option that did not involve the renewal of the ATCSA Part 4 powers is likely to be broadly welcomed by Muslim communities. The Control Orders system addresses the accusations that the Part 4 powers are discriminatory and disproportionate. Control Orders would not be used to target groups because of their race or religion, and a system of safeguards built into the new provisions will provide assurance that this is the case. Efforts would be made, where possible, to engage local communities on measures that might affect an individual in their area to minimise any adverse impact on community relations.

4. Benefits

Option 1: Do nothing and introduce no more counter terrorism powers

27. There would be no obvious benefits in this course of action; there would be a significant reduction in the UK's capacity to tackle terrorism.

Option 2: Release the current ATCSA Part 4 detainees, pending Memoranda of Understanding (MoU) on deportation with assurances

28. For similar reasons to Option 1 there would be no obvious benefits in pursuing this course of action. Whilst it is preferable where possible to deport terrorist suspects to their countries of origin, it is likely to take some time for necessary MoU to be put in place. It would be undesirable to allow the detainees the opportunity to engage in terrorist activity even for a limited time whilst deportation negotiations were resolved.

Option 3: Renew ATCSA Part 4 powers, pending MoU on deportation with assurances

29. The threat posed by the detainees would be considerably reduced if this option were followed. However, the Government has accepted the Law Lords' judgement on the ATCSA Part 4 powers. The Government is committed to finding a way forward that satisfies the Law Lords' concerns and can still provide a level of protection to the public commensurate with the current terrorist threat. Obtaining suitable MoU may take some time. A lengthy continuation of the Part 4 powers without the imposition of an alternative means of protecting the public would not be appropriate.

Option 4: Introduce legislation providing for Control Orders, allowing the ATCSA Part 4 powers to lapse after this is in place

30. A system of Control Orders, which could impose restrictions on the activities of suspected terrorists of all nationalities and ideologies, would address the proportionality and discrimination concerns of the Law Lords' judgement. It would also allow a more flexible regime than the ATCSA Part 4 powers, which relies on an all or nothing (detention or at liberty) approach.

31. A system of Control Orders could also help to address concerns that have arisen within certain sections of the community over the use of the Part 4 powers. The Orders will be applicable to all terrorist suspects of any nationality, in keeping with the Law Lords' judgement.

32. Overall, it is likely that a system of Control Orders will be a valuable tool to help law enforcement, intelligence and security agencies reduce the risk of a terrorist attack. An indirect benefit leading on from this could be to make the UK a more hostile operating environment for terrorists.

Savings

Savings made from no longer detaining individuals under the ATCSA Part 4 powers as Category A prisoners in high security prisons.

33. The cost of keeping a Category 'A' prisoner at a high security prison such as HMP Belmarsh is approximately £40,000 per annum. This means that the approximate cost of holding the existing Part 4 detainees is £440,000 on the basis of holding 11 prisoners at high-security detention centres. However, any savings are likely to be nugatory as the places available will remain whether used in connection with terrorism or not.

Other savings

34. Since appeals under the new system will be considered by the High Court there will be some savings to the Special Immigration Appeals Commission (SIAC) which currently considers the ATCSA Part 4 cases. These savings are estimated to be in the region of £250,000.

35. The cost of a terrorist attack would likely run into millions of pounds, depending upon the target. The human cost of a successful terrorist attack is impossible to quantify. While figures can be put on the number of dead and wounded, the emotional impact on survivors and friends and relatives of those involved is immeasurable. It is possible from this perspective to argue that any action to prevent a terrorist attack is worth the financial cost incurred by the Government. The case studies below of two terrorist incidents that have occurred in the UK, the IRA Manchester and Bishopsgate bombings, give an idea of the monetary effect of a significant terrorist attack:

Bishopsgate 1993

36. On Saturday 24 April 1993, a large goods vehicle was driven into the financial heart of the City of London by two members of the provisional IRA. They stopped the lorry, carrying a bomb which had the power of 1200kgs TNT equivalent, in Bishopsgate opposite the NatWest Tower. The abandoned lorry attracted the suspicions of a patrolling police officer and, whilst he was carrying out checks of the vehicle, a bomb threat was received from the IRA. This chain of events led to the detonation of the most powerful terrorist device yet on mainland Britain. One man was killed in the blast which also caused

several millions of pounds' worth of damage to City centre property and significant disruption to the business community.

Manchester 1996

37. On Saturday 15 June 1996 a terrorist bomb packed into a cargo van exploded in the heart of Manchester's busy shopping area. It had the power of 800kgs TNT equivalent. With the help of the Fire Service and security staff from local businesses the police succeeded in moving about 80,000 people out of the immediate area in one hour and thirty-nine minutes before the explosion occurred in which 216 people were injured, some suffering serious wounds. The Greater Manchester Fire Service, which deployed over 30 appliances to the scene, rescued more than 30 people from damaged buildings and rendered first aid to some of the injured. The ambulance service received 1600 calls in the hour following the explosion, and deployed 35 paramedic units and 81 ambulance and support vehicles.

38. The explosion caused severe damage to 373 shops, 47 offices, 28 pubs and cafes, four bank branches and a number of residential premises, all within a radius of 200 metres. Windows were shattered extensively within a half mile radius. The City bus station was destroyed and the railway station damaged. About 100,000 square metres of office and retail space was damaged by the blast. Some 670 businesses were affected. The loss in trade was estimated at £5m on the first day alone. Tenants of 50 flats, other residents in the City Centre and guests staying at hotels were evacuated and given temporary accommodation and financial support. The incident is estimated to have cost the local authority some £5m, quite apart from the cost to businesses and individuals.

Environmental & Social benefits

39. The environmental and social benefits arising from the implementation of this proposal will be entirely preventative and they are numerous, including:

- Depending on the nature of a possible attack (for instance chemical, biological, radiological, nuclear or standard high explosive), the measures could prevent potentially devastating long-term ecological damage;
- The avoidance of damage to personal property;
- The avoidance of over-stretching local facilities to breaking point, particularly hospitals and other emergency response sectors;
- The avoidance of negative effects on local and national businesses and economies;
- The avoidance of potentially inflammatory local and national ethnic tensions, with the ensuing consequences, depending on the perpetrators of the attack.

5. Costs

Options 1 & 2

40. Both of these options would result in the release of the detainees although potentially only temporarily in the case of Option 2. They would result in nugatory savings in detention costs for the Government.

Option 3

41. Renewal of the ATCSA Part 4 powers would continue the current position so there would be no additional costs.

Option 4

Public Sector Costs

42. Costs to the public sector are not expected to be significant. There will be costs to the Police/Home Office in terms of monitoring the Orders but where possible these will be contracted out to private companies as per existing arrangements. Systems are already in place for monitoring criminals released on licence and other offenders. It is unlikely that the small numbers of Orders expected to be applied in the short term will cause an undue resource burden.

- Electronic monitoring in a specimen Bail case (the Part 4 detainee, "G") cost £789.60 per month (£9,475.20 per annum). By extension, the cost of monitoring 10 individuals for 12 months would be £94,752 and the cost to monitor 20 people per annum would be £189,504.

43. The RIA for the Proceeds of Crime Act estimated that Account Monitoring Orders cost £250 per 90 days, or approx £1,000 per annum. These, or similar processes, might be appropriate if restrictions were placed on an individual in an attempt to prevent fraudulent activity supporting terrorism. Control Orders are likely to cost an equivalent amount for monitoring financial accounts although the specific circumstances of the Control Order may alter this amount.

44. It is estimated therefore, that monitoring Orders through a variety of means may amount to between £100,000 and £250,000 per annum depending on the number of orders and type of conditions imposed.

Cost to law enforcement, security and intelligence agencies

45. The Police and other Agencies are involved in the preparation of cases concerning the ATCSA Part 4 suspects, which are presented to the Home Secretary for his final decision on detention. A similar process will be involved for Control Orders as for the ATCSA cases, so there will be few additional burdens placed on the Police and Agencies on this particular point. Similarly, any proceedings in the event of a breach are unlikely to cause significant

resource burdens. Police are called upon to prepare cases for Terrorism Act (TACT) 2000 prosecutions; it is unlikely that the preparation for proving a breach of an Order would be more burdensome than a TACT case.

46. Where there will be a potential heavier resource burden on the Police is through case management of those subject to Control Orders. Work continues with ACPO(TAM) and the current operational position is that existing Police structures can absorb the added resource burden that these cases will bring. Therefore, Police costs will initially be covered by existing central funding to the relevant forces although longer term resource implications will be kept under review.

The establishment of a new appeal system and associated costs

47. Appeals under the new legislation will be considered in the high Court and incur new costs. Cases will be considered by a high Court judge who may appoint a lay adviser to assist in considering intelligence material. Due to the nature and sensitivity of certain intelligence information the Court will be able to consider material in closed session from which the appellant and his legal adviser will be excluded. In such instances the interests of the appellant will be represented by a Special Advocate.

48. The precise costs of the new appeals system will depend on the number of cases considered and their complexity – including whether appeals proceedings progress as far as the House of Lords. For costing purposes it has been assumed that hearing each case may take an average of 10-15 days in total.

49. Costs (which are shown on a *per case* basis below as a range to take account of the differing length and potential complexity of cases) will include:

High court judge	£11,160	-	£22,320
Lay assessor	£3,660	-	£7,320
Legal aid	£10,000	-	£100,000
Administrative support and other costs (T&S, transcription, staff, court accommodation)	£42,450	-	£88,900
Total cost per case	£67,270	-	£218,540

50. Overall costs will depend on the number of control orders made but for comparative purposes for example:

- 10 cases might cost between £670,000 - £980,000; and
- 20 cases might cost between £1.3m - £1.6m

As a working figure, therefore, the costs are put in the region of £1.5 - £1.7m per annum.

Overall

51. Whilst some additional costs will be incurred during the enforcement stages of control orders these will be offset by savings made from no longer detaining the ATCSA Part 4 suspects in high security institutions. The resource burden on the Police and other agencies is unlikely to be altered substantially from the current position with the Part 4 detainees. The most significant element of costs arising will be in relation to judicial proceedings in the High Court.

Environmental

52. None

Social

53. It is possible that the imposition of Control Orders could have an impact on local communities. This is being addressed by the separate Race Equality Impact Assessment (attached at **ANNEX A**).

6. Equity and Fairness

54. It is possible that the imposition of Control Orders could have an impact on local communities. This is being addressed by the separate Race Equality Impact Assessment (Attached at **ANNEX A**).

7. Consultation with small business: the Small Firms' Impact Test

55. A Small Firms' Impact Test is not required in this RIA because the proposal impacts only on the public services. This has been verified by the completion of a Public Services Threshold Test.

8. Competition Assessment

56. A Competition Assessment is not required in this RIA because the proposal impacts only on the public services. This has been verified by the completion of a Public Services Threshold Test.

9. Enforcement and Sanctions

57. A case for a control order will be compiled by the Security Service and the Police and presented to the Home Secretary, who will then make an informed assessment of all the available intelligence and evidence to determine whether a Control Order should be imposed. Restrictive conditions will be determined on a case by case basis on advice from the Security Service and Police, which will be aimed at reducing the capability of the terrorist suspect from engaging in terrorist-related activity.

58. The Police will serve the Order on the suspect and officers may detain the suspect whilst the appropriate technological measures are put in place to monitor compliance with the restrictive conditions. Monitoring arrangements will be covered by existing regimes, where it would be appropriate for the individual Control Order. This would involve the use of contracted private

companies to monitor the tagging system on a day to day basis and would be an extension of the current regime utilised for bail conditions for the ATCSA Part 4 detainees released on bail and other individuals (such as sexual offenders).

59. Breach of any one of the conditions as set out in the Control Order will be an offence and will result in criminal prosecution. The Police, with advice from other Agencies where necessary, will take the lead in deciding to go ahead with criminal proceedings against the individual with the CPS involved as per normal. If found guilty of a breach, an individual will face a penalty ranging from a fine to a maximum of five years' imprisonment (or both). If the breach involved other criminal activity (e.g. suspected theft, murder, etc.), proceedings against the individual would follow in tandem as in other cases where multiple charges are brought.

60. Where an Order is made, there will be a right of appeal to the High Court against the imposition of the Order and the obligations imposed in it. This will involve the hearing of evidence in open and closed sessions; special advocates will represent the interests of individuals in closed sessions. An Order will last for a fixed period after which the Home Secretary can renew it or allow the restrictive conditions to lapse.

10. Monitoring and Review

61. The powers contained within the Bill will be subject to an independent annual review of the operation of the powers themselves. This would be a similar process to that currently undertaken for the ATCSA Part 4 powers (Lord Carlile operates as the independent reviewer). In addition to these measures, the Secretary of State will provide regular reports to Parliament on the exercise of his powers under the legislation.

11. Consultation

i) Within government

62. Throughout the process of drafting this Bill, key stakeholders have been involved at all levels. These include, among others:

- Internally within the Home Office
- Attorney General's Office
- Department for Constitutional Affairs
- Scottish Executive
- Northern Ireland Office
- Police and Security Service

63. Due to the time constraints associated with the introduction of the Bill, a formal consultation process has not been undertaken specifically on this legislation. However, the Home Secretary opened a public consultation, *Counter Terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper*, on future counter-terrorism issues in February 2004, which ended in August 2004. One of the key themes that arose from

responses to the consultation was that a system of restrictive orders would be more welcome than detaining foreign, international terrorist suspects under the ATCSA Part 4 powers. More detailed information on the results of the consultation process will be published at a later date.

12. Summary and Recommendation

64. The Government proposes to proceed with Option 4. Given the Law Lords' judgement, which the Government has accepted, an alternative method of preventing terrorism of all types and by people of all nationalities is needed. A system of Control Orders is the method which the Government believes addresses best the Law Lords' concerns and which will reduce the risk of a terrorist attack.

13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Minister's name, title, department

Contact point