

UK INDEPENDENT REVIEWER OF TERRORISM LEGISLATION CRITICISES TOO-BROAD DEFINITION OF TERRORISM

INTRODUCTION

David Anderson Q.C., the UK's Independent Reviewer of Terrorism Legislation, published his annual report today on the operation of the Terrorism Acts.

The report covers a wide range of issues, including:

- alleged ethnic or community bias in the use of police powers (6.15-6.19, 7.7-7.15)
- the reform of the Schedule 7 port power, whose use has declined by almost 50% in the past four years (chapter 7)
- difficulties posed by UK counter-terrorism law to the operation of aid agencies and peacemakers operating in conflict zones (9.25-9.33)
- the worldwide reach of UK counter-terrorism law, and its treatment of foreign fighters in Syria (10.60-10.70) and
- the future of Independent review, in the light of recent Government proposals (chapter 11).

The Independent Reviewer's principal recommendations focus on the issue of the definition of terrorism – a subject which was last addressed in detail in the 2007 report of Lord Carlile Q.C., Mr Anderson's predecessor.

DEFINITION OF TERRORISM

The report finds:

- The UK has some of the most extensive anti-terrorism laws in the western world. They give Ministers, prosecutors and police the powers they need to combat violence perpetrated by al-Qaida inspired terrorists, right-wing extremists and dissident groups in Northern Ireland. They also apply extra-territorially, enabling prosecutions to be brought for activities in other countries including Syria and Iraq.
- But if these exceptional powers are to command public consent, it is important that they should be confined to their proper purpose. Recent years have seen a degree of "creep" that Parliament could reverse without diminishing in any way the utility of anti-terrorism law.

Three examples of this over-breadth are given in the report.

(1) Actions aimed at influencing the Government (Report 4.11-4.23, 10.35-10.43)

The politically-motivated publication of material that is thought to endanger life or to create a serious risk to the health or safety of the public is a terrorist act if it is done for the purposes of *influencing the Government* (Terrorism Act 2000, section 1(1)(b)). In other Commonwealth and European countries, and under the main international Treaties governing the matter, the bar is set higher: there must be an intention to *coerce* or *intimidate*.

This means that political journalists and bloggers are subject to the full range of anti-terrorism powers if they threaten to publish, prepare to publish or publish something that the authorities think may be dangerous to life, to public health or public safety. That is so even if they do not wish to spread fear or to intimidate – it is enough that their work is designed to influence the Government or an international organisation. Those who employ or support them, or who encourage others to do the same, could also qualify as terrorists.¹

The definition is broad enough to include a campaigner who voices a religious objection to vaccination. If his purpose is to influence the Government, and if his words are judged capable of creating a serious risk to public health, he could be treated as a terrorist: detained for long periods of time, prosecuted, have his assets frozen and so on. Voicing support for him could also be a terrorist crime.

We are fortunate that Ministers, prosecutors and police generally exercise their discretions with great care. Exorbitant use of their powers is rare. But as a unanimous Supreme Court held in October 2013,² these overbroad laws are undesirable even if they are not misused. They give too much power to individual police officers, and to the Government. They make people more cautious than they need to be in what they say and what they write. And they encourage cynicism about special powers which are necessary for dealing with terrorism, but which will fall into disrepute if they are perceived to extend more widely.

Fortunately there is a very simple solution: to bring UK law into line with that of other countries and with the various international Treaties in this area. Terrorism should be redefined so that it applies only if there is intent to coerce, compel or intimidate a Government or a section of the public. Lord Carlile Q.C. (David Anderson's predecessor as Independent Reviewer) first recommended this in 2007. The recommendation was not acted upon by the then Home Secretary, John Reid. Parliament should revisit the issue in the light of recent developments.

¹ The breadth of the law was highlighted in 2014 by the case of *R (Miranda) v SSHD and MPC* [2014] EWHC 255 (Admin). Few would question that the police should have the power to detain people whom they have reason to think (as in that case) may be carrying stolen secrets. But in holding that it was legitimate to use *terrorism laws* for that purpose, the High Court made it clear that under the current law, political journalism aimed at influencing the Government can be an act of terrorism when it endangers life or creates a serious risk to health or safety.

² *R v Gul* [2013] UKSC 64, [2013] 3 WLR 1207; Report, 4.9 – 4.10. The Supreme Court described David Anderson Q.C.'s previous discussions of the definition of terrorism as "very instructive" and suggested that his recommendations for reducing the width of the statutory definition of terrorism would "merit serious consideration".

(2) Hate crimes (Report, 10.44-10.49)

The law makes a terrorist of the boy who threatens to shoot his teacher on a fascist website, and of the racist who throws a pipe bomb at his neighbour's wall. The criminality of such people is obvious, and serious: but if they intend harm only to their immediate victims, no purpose is served by characterising them as terrorists.

Once again there is an easy fix: removing the special rule (Terrorism Act 2000, section 1(3)) that shooters and bombers are deemed to be terrorists even if they are not trying to influence or intimidate anyone other than their immediate victim. That rule is unique to the UK, and does not apply to poisoners, arsonists or people who use cars or machetes as weapons. Nothing of any value would be lost by repealing it.

(3) The penumbra of terrorism

Recent Acts of Parliament have empowered Ministers to apply some very onerous measures including asset freezes and TPIMs (the former control orders) to persons involved in "terrorist activity" or "terrorism-related activity". Terrorism is already a very broad concept, as outlined above: but those phrases extend it still further. They catch for example a family member who *supports* someone who *encourages* someone else to *prepare* an act of terrorism.

There are a huge number of terrorist crimes in this country, including preparatory and ancillary offences. There is a good case for limiting these powerful executive measures to cases in which the Home Secretary believes that one of these offences has been committed, without extending their reach still further by recourse to vague concepts such as "terrorism-related activity".

In practice, these measures appear to be used only when a crime is believed to have been committed. To extend them further is unnecessary.

QUOTE

Mr Anderson said:

"The UK quite rightly has very tough laws against terrorism. When terrorism is suspected, people can be arrested more easily, detained for longer, prosecuted for behaviour falling well short of attempt, conspiracy or incitement and made subject to restrictions by ministerial order on their finances and their movements.

The public accepts special terrorism laws so long as they are used only when necessary. But they can currently to be applied to journalists and bloggers, to criminals who have no concern other than their immediate victim, and to those who are connected with terrorism only at several removes.

This is not a criticism of Ministers, prosecutors or police – who as a rule exercise their remarkably broad discretions with care and restraint. But it is time Parliament reviewed the definition of terrorism, to avoid the potential for abuse and to cement public support for special powers that are unfortunately likely to be needed for the foreseeable future.”

BACKGROUND

- The Independent Reviewer of Terrorism Legislation is appointed by statute to review the operation of the UK’s anti-terrorism laws and report on them to the Home Secretary and to Parliament. He is given access to secret papers and discussions, and charged with informing the public and political debate on the law as it relates to terrorism.
- David Anderson Q.C. succeeded Lord Carlile of Berriew C.B.E. Q.C. as Independent Reviewer in February 2011. His reports are on his website <https://terrorismlegislationreviewer.independent.gov.uk/> and he can be followed on twitter @terrorwatchdog.
- Separately from this report, the Government announced earlier this month:
 - o that David Anderson Q.C. has been asked to conduct a detailed review of communications data and lawful interception (including parts of RIPA and the proposed Communications Data Bill) before the General Election; and
 - o that the post of Independent Reviewer will be replaced in due course by an Independent Privacy and Civil Liberties Board.

The Independent Reviewer has commented on these developments on his website: <https://terrorismlegislationreviewer.independent.gov.uk/whirligig/> and <https://terrorismlegislationreviewer.independent.gov.uk/what-does-a-terror-watchdog-do/>. The latter piece contains a link to a recent article that describes in more detail the history, working arrangements and influence that attaches to the role.

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