

# Reviewing counter-terrorism legislation

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## There is a case for reconsidering and consolidating the counter-terrorism legislation passed in recent years

The *Terrorism Act 2000* was designed as a consolidating provision, drawing together previous anti-terror laws into a single code that would not require renewal or re-enactment (save for one part that related to Northern Ireland). Since the passage of that Act, the deadly consequences of terrorism have been dramatically highlighted in the West by the attacks of September 11, the Madrid bombings, the 7/7 bombings in London and a host of failed domestic and international plots.

These incidents appear to have acted as a catalyst for further terrorism legislation. Though there have been “only” 59 terrorism-related deaths in Great Britain since 2001, the threat should not be underestimated; the

authorities have been able to prevent a series of plots, and atrocities have been avoided through the incompetence of the terrorists themselves.

The 2000 Act has been heavily amended by subsequent Acts. While this is a common legislative practice, it can make parts of the Act difficult to follow. Furthermore, there have been successful legal challenges to powers introduced by the 2000 Act (and indeed subsequent Acts). Calls for a consolidation of the legislation have been heard for some time and now seems an auspicious time to question whether the legislation is, in the modern parlance, still “fit for purpose”. A number of issues may arise in the new Parliament. These include:

- Consideration of the control order regime established under the *Prevention of Terrorism Act 2005*. This is subject to annual renewal, with a vote due in the spring of 2011. The regime has been subject to successful legal challenge in the courts and further cases are still ongoing.
- Extended pre-charge detention. When the legislation was first enacted, section 41 of the 2000 Act provided for 7 days’ pre-charge detention. This was amended to 14 days in 2003 and 28 days in 2006. Further attempts by the previous Government to extend the length of pre-charge detention were defeated. The 28 day period introduced by the 2006 Act is subject to the further safeguard of only being granted for one year (renewable). In 2008/09, no terrorism suspects were detained for longer than 14 days before action was taken.

- In response to a recent judgment by the Supreme Court in *Her Majesty’s Treasury v Ahmed* the previous Government rushed emergency legislation through Parliament, namely the *Terrorist Asset Freezing (Temporary Provisions) Act 2010*. This legislation ensures the temporary validity of certain Orders in Council imposing financial restrictions on persons suspected of involvement in terrorist activity. It is only effective until December 2010 and, accordingly, Parliament will have to consider further measures in due course to ensure the UK meets its international obligations in this area.

Concerns have also been expressed about a number of other issues, such as: the definition of terrorism; the stop and search powers allowed under s 44 of the *Terrorism Act 2000* (the use of which was subject to a successful legal challenge in the European Court of Human Rights in *Gillan and Quinton v UK*, 2010); and the ability of members of the public to take photographs in public places. One change, made by the *Counter-Terrorism Act 2008*, restricts the ability of people to photograph the police. While the legislation does not strictly prohibit the practice, it made eliciting, publishing or communicating information about the police a potential offence, unless the person concerned had a “reasonable excuse”. There has been some disquiet about this power, particularly following the death of Ian Tomlinson at the April 2009 G20 protest.

There is always likely to be some conflict between counter-terrorism legislation and human rights: by its very nature, the

legislation restricts freedom, rights and in some cases, liberty. It is a long time since Lord Atkinson was the lone voice, arguing that “amidst the clash of arms, the laws are not silent”. The Government is now expected to comply with the rule of law, even in times of war.

**With the threat level unlikely to diminish, it becomes harder to justify temporary measures**

The Home Affairs Select Committee has previously warned against the tendency to rush through terrorism legislation, noting that in some cases such legislation proved counter-productive and legislation that was supposed to be temporary often turned out to be permanent. The current threat level seems unlikely to diminish any time soon and, accordingly, it becomes harder to justify temporary or “exceptional” measures. The Home Office has previously discussed the idea of re-consolidating the terror laws and, given the current difficulties, such a move is likely to be welcomed. However, it would be naive to think that any single piece of legislation could address every possible terror threat, and further controversy is likely in this field.

### Few people have been detained without charge for 14 days plus

Persons detained by days from arrest under s41 of Terrorism Act 2000, 2006/07 - 2008/09

