



## **Terrorism Bill**

### **JUSTICE Briefing for Consideration of Lords Amendments**

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## Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.
2. JUSTICE has produced briefings on the Bill for Second Reading, Committee and Report stages in the House of Commons. Rather than repeat those more detailed briefings, this briefing urges support for the following key amendments made to the Bill by the House of Lords:
  - the removal of the language of 'glorification' from the offence of encouragement to terrorism (amendment no. 4);
  - the insertion of a requirement of intention into the offence of disseminating terrorist publications (amendment no. 9);
  - requiring the approval of a judge before the issuing of notices against website providers under clause 3 (amendment no. 23);
  - limiting criminal liability to persons who intentionally provided training for terrorism (amendment no. 30); and
  - consequential amendments removing the language of glorification from clauses 20 and 21 (amendments no. 32 and 34).

## Clause 1 – encouragement of terrorism

3. House of Lords Amendment No 4 removes the language of glorification contained in clause 1(3) of the Bill, containing the offence of encouragement of terrorism. We strongly urge Members of Parliament to agree to these amendments for the following reasons:
4. First, the language of glorification is unnecessary: the existing law already prohibits incitement of terrorist acts. This was made abundantly clear in the case of Abu Hamza, who was convicted on 7 February of six counts of soliciting murder contrary to section 4 of the Offences against the Person Act 1861.<sup>1</sup>
5. Secondly, the language of glorification is hopelessly vague and overbroad. As a consequence, it is likely to have a serious chilling effect on the freedom of individuals to legitimately express contentious (yet non-violent) views, opinions and beliefs, contrary to the right to freedom of expression under Article 10 of the European Convention on Human Rights and Article 19 of

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<sup>1</sup> See e.g. 'Hamza guilty of inciting murder', BBC Online, 7 February 2006.

the International Covenant on Civil and Political Rights. This concern was expressed by the UN High Commissioner for Human Rights, Louise Arbour, in her letter of 28 November 2005.<sup>2</sup>

6. Thirdly, the vagueness of the language of glorification means that it would be difficult for courts to apply in a predictable manner. Accordingly, it is likely to breach the basic requirement of both English and European law that a criminal offence should be clearly defined.<sup>3</sup> It would also lead to serious practical difficulties for judges, confusion for juries and injustice for defendants.
7. Fourthly, the language of glorification is not required by the UK's obligations under the Council of Europe Convention on the Prevention of Terrorism 2005. Nothing in Article 5 of the Convention requires the use of such language. Moreover, Article 12 of the same convention states that any criminal provisions made pursuant to Article 5 must respect the right to freedom of expression.
8. For these reasons, we consider the removal of the language of glorification is needed for Parliament to ensure that the proposed offence in clause 1 is not incompatible with the right to freedom of expression under the Human Rights Act.

## **Clause 2 – dissemination of terrorist publications**

9. House of Lords Amendment No 9 inserts a much-needed requirement of intention into the offence of disseminating terrorist publications.
10. We consider that intention is an essential element of this offence because of the extremely broad definition given to the term 'terrorist publication' under clause 2(2)(b). As currently drafted, it includes any item or document containing 'information of assistance in the commission or preparation' of terrorist acts. In other words, it would include such everyday items as a London A-Z or a map of the London Underground.
11. The Lords' amendment was necessary to limit the scope of the offence to individuals who *intentionally* distributed terrorist publications, i.e. with the intention of assisting or encouraging

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<sup>2</sup> Letter from the UN High Commissioner for Human Rights to the UK's Permanent Representative to the UN Office and other international organisations in Geneva, 28 November 2005: 'The draft offence contained in clause 1 fails to strike a balance between national security considerations and the fundamental right of freedom of expression'.

<sup>3</sup> The principle of *nullum crimen, nulla poena sine lege* is expressed in Article 7(1) ECHR ('No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed'). See also the speech of Lord Bingham of Cornhill in *R v Wilmington* [2005] UKHL 63, para 36, expressing the view that a criminal offence should be 'clear, precise, adequately defined and based on a discernible rational principle'.

an act of terrorism. This would prevent innocent persons from being wrongfully convicted of an offence. We would, however, support the amendment of Amendment No 9 to remove the requirement of recklessness contained in paragraph (c) ('he is reckless as to whether his conduct has an effect mentioned in paragraph (a) or (b)'), which we consider has no place in a criminal offence of this kind.

### **Clause 3 – application of ss 1 and 2 to internet activity**

12. Clause 3(3) provides that, where it appears to a police constable that a website contains a statement or material that may constitute an encouragement to terrorism or a terrorist publication (as defined in clauses 1 and 2 respectively), the constable may issue a notice directing the removal of the material.
13. House of Lords Amendment No 9 requires that a constable may not issue such a notice unless and until it has been approved by a judge. It further provides that individuals who have been served with such a notice are able to apply to a court for revocation of a notice.
14. This amendment is necessary to ensure that the coercive powers of the police under clause 3 are not exercised in an arbitrary or restrictive manner. Given the importance of freedom of expression in a democracy and given the sheer breadth of the proposed offences under clauses 1 and 2, we consider it essential that any power of the executive to restrict publication of contentious material should be subject to the oversight by and control of independent judicial authority. We therefore urge this House to agree to this amendment. To do otherwise would, in our view, essentially hand to the police a broad-ranging power to censor websites on grounds of national security without check.

### **Clause 6 – training for terrorism**

15. Prior to its amendment, anyone who provided training in relation to the use of noxious substances to any other person *with the mere suspicion* that that person might use that knowledge to commit an act of terrorism would be guilty of an offence under clause 6(1)(b). This would include, for example, a chemistry teacher who had suspicions about a student. We consider that this would impose a wholly unrealistic burden on teachers and trainers.
16. Accordingly, House of Lords Amendment No 30 limits criminal liability for the act of 'training for terrorism' to individuals who provide training to another person *with the knowledge* that the other person intends to use that knowledge to commit an act of terrorism. This is consistent, moreover, with criminal liability provided for the existing offence of weapons training under section 54 of the Terrorism Act 2000. We urge the House to agree this amendment.

## **Clauses 20 and 21 – Interpretation of Part I and Grounds of proscription**

17. House of Lords Amendments No 32 and 34 are consequential amendments made in light of the removal of the language of glorification from clause 1 above. We support these amendments for the same reasons as set out in relation to Amendment No 4 discussed above.

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