



Counter-Terrorism and Border Security Bill

Briefing Note 15 October 2018

Contact: Joy Hyvarinen, Head of Advocacy, joy@indexoncensorship.org 020 7963 7262

This briefing note highlights some of Index on Censorship's concerns about the Counter-Terrorism and Border Security Bill. We raised initial concerns in an earlier [submission](#).

The Bill would undermine UK citizens' fundamental rights and would damage journalism and academic research. While Index believes that the Bill is fundamentally flawed and would do long-lasting harm to basic freedoms in British society, we propose some possible amendments below.

We also note that other organisations have identified serious issues related to the Bill which we do not address. For example, the Committee for the Administration of Justice (CAJ) [has pointed out](#) that new border powers in the Bill could make for the 'hardest of hard borders' in Northern Ireland.¹

Index has [filed an official notification](#) with the Council of Europe's platform for the protection of journalism regarding the Bill's impacts on media freedom. At the time of writing we await the government's reply to the Council.

We note that the Media Freedom Representative of the Organization for Security and Co-operation in Europe (OSCE) has written to the UK authorities [to express concerns and recommend amendments](#) to protect journalism.

We note that United Nations special rapporteur Professor Fionnuala Ní Aoláin [has expressed significant concerns](#) about the Bill and has emphasised that it should be brought in line with the UK's obligations under international human rights law.²

¹ Committee for the Administration of Justice, Briefing on the Counter-Terrorism and Border Security Bill 2018, 9 August 2018, para.19.

² Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Submission, House of Commons Public Bill Committee, OL GBR 7/2018, 17 July 2018.

Clause 1 Expressions of support for a proscribed organisation

The vague and unclear clause would criminalise expressing an opinion that is ‘supportive’ of a proscribed organisation if the person does so in a way that is ‘reckless’ as to whether it encourages someone else to support a proscribed organisation.

Index believes that this comes far too close to criminalising the holding of an opinion. The dangers of the clause are aggravated by the possible prison sentence of up to 10 years.

Clause 1 would shut down democratic debate. The [Joint Committee on Human Rights](#) has pointed out that ‘It is arguable that clause 1 could include, for example, an academic debate during which participants speak in favour of the de-proscription of currently proscribed organisations’.³

Proposed amendment

Clause 1, page 1, line 5, leave out Clause 1.

Effect

Leaving out the clause would prevent the criminalisation of expression of an opinion or belief.

Clause 2 Publication of images and seizure of articles

The clause would criminalise publication, including posting on social media, of pictures or video of an item of clothing or an article such as a flag in a way that raises ‘reasonable suspicion’ that the person doing so is a member or supporter of a terrorist organisation. We do not take a view here on seizure of articles.

The [Joint Committee on Human Rights](#) found that the clause ‘risks a huge swathe of publications being caught, including historical images and journalistic articles’.⁴

Proposed amendment

Clause 2, page 1, line 15, leave out subsections (2) and (3).

³ Joint Committee on Human Rights, Legislative Scrutiny: Counter-Terrorism and Border Security Bill Ninth Report of Session 2017–19, para. 12.

⁴ Above, para. 26.

Effect

The amendment would remove the creation of the new offence of publishing images.

Clause 3 Obtaining or viewing material over the internet

This clause would make it an offence to view or otherwise access information online that is likely to be useful to a person committing or preparing acts of terrorism. The offence would carry a sentence of up to 15 years.

Clause 3 would make the work of investigative journalists and academics researching terrorism-related issues very risky because of the absence of a clear and explicit safeguard. Anyone who wanted to understand terrorism and its causes better could be caught by the clause; for example someone who was concerned about a family member at risk of being attracted to terrorism.

In their [submission related to clause 3 Max Hill QC and Professor Clive Walker](#) said:

“To justify clause 3, one must make the assumption that the activity is inherently risky and points towards an inevitable outcome. Thus, the inherent claim is that viewers will either be seduced or have their will overwhelmed by the inevitable power and persuasion of the terrorist messages ... Yet, other outturns are statistically more likely by far.”⁵

Hill and Walker pointed out that the government and researchers have repeatedly asserted that there is no clear production line from viewing extremism or even being ‘radicalised’ into becoming an active terrorist.

We agree with the view of the Joint Committee on Human Rights, [in amendments proposed on 12 October](#), that the government’s amendments to the original clause 3 made it worse.

Proposed amendment

We support amendment 6 as proposed by the Joint Committee on Human Rights, which would leave out clause 3, with the effect of not creating a new offence of viewing or accessing information online.

⁵ Max Hill QC & Clive Walker, Submission in relation to Clause 3 of the Counter Terrorism & Border Security Bill 2018, July 2018, para.1 p.3.

Clause 19 Persons vulnerable to being drawn into terrorism

Index shares the concern of the Joint Committee on Human Rights that that the Prevent programme is being developed without an independent review of how the programme is currently operating.

We note that United Nations special rapporteur Professor Fionnuala Ní Aoláin's [recommendations](#) include that the United Kingdom should launch an independent review of Prevent and that the review should incorporate a comprehensive assessment of Prevent's human rights impact.⁶

Proposed amendment

We support amendment 19 proposed by the Joint Committee on Human Rights, which would insert a new provision into the Counter Terrorism and Security Act 2015 requiring the Secretary of State to carry out an independent review of the Prevent strategy and to report findings to Parliament.

Clause 21 and Schedule 3

The proposed new border security measures in Schedule 3 are extremely concerning. The wide and unclear concept of 'hostile activity' combined with new powers to stop, search and detain is likely to impact significantly on rights of UK citizens and others.

Index is particularly concerned about the impacts on journalism. For example, under Schedule 3 a journalist catching a domestic flight could be stopped without there being any suspicion that she or he had engaged in hostile activity. She or he could be held for up to one hour with no right to consult a solicitor. It would be an offence for the journalist not to provide the examining officer with any information requested. There is no protection for confidential journalistic sources.

The Law Society has found that the Bill [infringes the right to confidential and independent legal advice](#)⁷, which aggravates the risks to journalists.

We do not offer proposed amendments here because of the many issues raised by Schedule 3 and we urge Parliament to send it back to the drawing board.

⁶ Note 2, para. 24.

⁷ The Law Society, Parliamentary Brief, Counter-Terrorism and Border Security Bill 2017-19, Tuesday 9 October, House of Lords Second Reading.