

Protection of Freedoms Bill

Fact Sheet – Part 4: Counter-Terrorism Powers

The Coalition's Programme for Government included a commitment to "*introduce safeguards against the misuse of anti-terrorism legislation*". Part 4 contains provisions relating to two counter-terrorism powers – the maximum length of time that terrorist suspects can be detained before they are charged for a criminal offence or released; and the police's ability to stop and search people and vehicles with no suspicion in order to prevent terrorism.

Pre-charge detention

The arrest and detention of terrorist suspects is different from the arrangements for other criminal investigations. The most controversial aspect of the arrangements for terrorist suspects has been the length of time for which suspects can be detained without charge (this is known as 'pre-charge detention'). Concerns have been raised in Parliament and more widely about the maximum detention period possible under the existing legislation - namely 28 days. The concerns relate to 28 days being unnecessary (no one has been detained for longer than 14 days since July 2007); that it is out of step with other Western democracies; incompatible with human rights obligations; and has a negative impact on Muslim communities. In light of these concerns, pre-charge detention was considered in the Government's review of counter-terrorism and security powers. The findings were published in January 2011 and recommended a return to 14 days as the standard maximum period that a terrorist suspect can be detained before they are charged or released. The Bill does this by repealing section 25 of the Terrorism Act 2006. Section 25 provides the legislative mechanism by which the Government, with Parliamentary approval, can increase the maximum period from 14 to 28 days on an annual basis.

The current maximum period that a terrorist suspect can be detained before they are charged or released is 14 days since the Government did not seek to renew the 28 day maximum limit in January 2011.

The Government's counter-terrorism powers review also recommended that the Government produces a draft emergency Bill to increase to 28 days if an investigation required it. This draft legislation (which is, in fact, two Bills dealing with the position before, and after, the Protection of Freedom Bill becomes law) has been published by the Government. The draft Bills are separate to the Protection of Freedoms Bill. They have been subject to pre-legislative scrutiny – the Parliamentary process by which draft laws are scrutinised by MPs and Peers before they are actually introduced. Whilst the Government did not accept all of the recommendations from this process, the Protection of Freedoms Bill has been amended as a result to confer on the Home Secretary a power to increase the maximum period of pre-charge detention to 28 days when Parliament is dissolved (that is, in the period covered by a general election campaign).

Terrorism stop and search powers

Sections 44 to 46 of the Terrorism Act 2000 (referred to frequently as 'section 44') enables the police to stop pedestrians or vehicles within a particular area

to search for items that could be used for terrorism. The power can only be used when a senior police officer authorises it for a particular time or place. The power has been controversial because of concerns about the breadth of section 44 and allegations of overuse and misuse. There have also been concerns about whether section 44 has been effective in dealing with terrorism. The European Court of Human Rights found that the legislation breached Article 8 (right to privacy and family life) in a judgment that became final in June 2010. After that judgment, and in light of the wider concerns, the Home Secretary stopped the use of section 44 as a 'no suspicion' power whilst the power was considered in the Government's review of counter-terrorism and security powers.

The review of counter-terrorism and security powers recommended that section 44 be repealed and be replaced with a tightly circumscribed version. The Protection of Freedoms Bill does this¹. The new power enables the police to stop and search people and vehicles with no suspicion only in the exceptional circumstances where: (a) a senior police officer reasonably suspects that an act of terrorism will take place; and (b) where the powers are considered necessary to prevent such an act. In addition to this significantly higher threshold for the police to authorise the use of the powers, there are a range of strengthened safeguards. These include reducing the maximum authorisation length from 28 to 14 days; a requirement that the size and time of authorisations should be no longer than necessary; and the purposes of the search are narrowed. This is supported by a robust statutory Code of Practice. As an interim measure, pending the passage of the Bill, the Home Secretary has made the Terrorism Act 2000 (Remedial) Order 2011 which has the effect of replacing the section 44 powers with powers similar to those set out in clause 60 of and Schedule 5 to the Bill. The Remedial Order was passed by Parliament in October.

In addition to repealing and replacing the 'no suspicion' stop and search section 44 power, Part 4 contains changes to the 'reasonable suspicion' stop and search power. This power, provided by section 43 of the Terrorism Act 2000, currently only allows the police to stop and search individuals. The Bill extends this so the police can stop and search vehicles which they reasonably suspect are being used for terrorism.

This Chapter also amends the stop and search powers in relation to unlawful munitions or wireless apparatus contained in Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 Act to the effect that the 'no suspicion' power is now subject to an authorisation process similar to the UK-wide counter-terrorism powers. These powers only apply in Northern Ireland.

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¹ In March 2011 the Home Secretary made the Terrorism Act 2000 (Remedial) Order 2011 which introduced, on an interim basis, replacement counter-terrorism stop and search powers, exercisable without reasonable suspicion, pending the enactment of the permanent provisions set out in this Part of the Bill. Schedule 9 to the Bill revokes the Remedial Order.