

SUMMARY OF THE PREVENTION OF TERRORISM ACT 2005

Control Orders

Control Orders were created by the Prevention of Terrorism Act 2005 (PTA), in response to the House of Lord's ruling against indefinite detention without charge or trial for foreign nationals contained in Part IV of the Anti-terrorism Crime and Security Act 2001 (ATCSA).

Control orders enable the Home Secretary to impose an unlimited range of restrictions on any person he suspects of involvement in terrorism. Among the restrictions that can be imposed are curfews of up to 16 hours enforced by an electronic tag, restrictions on the use of mobile phones and the internet, vetting of all visitors and meetings and restrictions on an individual's movements. Whilst the PTA contains a long list of the type of activities that might be prohibited, the Home Secretary has the power to add new restrictions or obligations as he sees fit.

There need not be a connection between the person's alleged involvement in terrorism and the restrictions imposed by the control order. This is bizarre and alarming: despite the open-ended range of restrictions available, there is no need for them to be tailored to counter the specific threat which the individual supposedly presents.

Types of Orders

Where a control order is imposed that the Government does not think involves the right to liberty, and therefore does not require the UK to opt out of (or risk breaching) article 5 of the European Convention on Human Rights, it is known as 'non-derogating'. These will be made by the Home Secretary, last for a year, and can be renewed every year. The Home Secretary can revoke or modify a non-derogating control order at any time.

Even the Government recognises that some control orders, infringe the right to liberty, and so do require the UK to 'opt out' of article 5. These are known as 'derogating' control orders, and the Home Secretary must first opt out of article 5 and then ask the High Court for authority to grant such an order. They last for 6 months and can be renewed every 6 months after.

It is not only house arrest which raises civil liberty and human rights concerns. Non-derogating' orders threaten the rights and liberties of those subject to the order, and their families. Yet only when the Government's lawyers believe liberty is concerned, is the decision to make an order taken by a court. In all other cases a politician will have the power to restrict, without charge or trial, an individual's freedom of movement and association.

Breaching the conditions of a control order is a criminal offence, punishable by up to 5 years in prison.

Definitions of Terrorism

In the PTA, 'Terrorism-related activity' includes the commission, preparation, or instigation of acts of terrorism, facilitating or encouraging such acts and supporting or assisting those who are engaged in such acts. It is 'immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally'.

'Terrorism' is defined as the use or threat of action designed to influence the government or to intimidate the public or a section of the public with the purpose of advancing a political, religious or ideological cause.

Imposing a Non – Derogating Control Order

The Home Secretary may make a control order if he has 'reasonable grounds for suspecting that the individual has been involved in terrorism-related activity' and if he considers it is necessary to protect the public from the risk of terrorism. This is an extremely low threshold. There does not have to be any factual basis for this assessment of risk. Even if the suspicion is based on wholly inaccurate and misleading information, all that is required is that the suspicion of the Secretary of State be reasonable according to what is placed in front of him.

The High Court must give authorisation, either before or within seven days of the order being made. But the court can only refuse or overturn an order if it finds that the Home Secretary's reasons are 'obviously flawed'.

Derogating Control Orders

To impose a 'derogating' control order the Home Secretary must apply to the High Court. The Court will then hold an immediate preliminary hearing to determine whether to grant an order imposing 'derogating' obligations. The preliminary hearing need not involve the individual concerned; who may not even know it is taking place and has no right to be represented.

Secret Evidence

If a court decides to impose a control order (either derogating or non-derogating), it must then convene a full hearing. This is not a 'full hearing' in any normal sense. Just as the men detained without charge in Belmarsh and Woodhill did not know the intelligence which led to their detention, neither will those served with a control order. The decision to impose a control order is based on secret intelligence which the individual concerned is unable to see and powerless to dispute. Under the 'special advocate' procedure the Attorney General may appoint a legally qualified person to represent the 'controlee' in 'closed proceedings' (at which neither the 'controlee' nor his lawyer are able to attend). A special advocate is not allowed to disclose any exempt material to the controlee meaning that the secret intelligence cannot be challenged. The European Court of Human Rights has held that the indefinite detention regime (as overseen by the Special Advocate procedure) breaches Article 5 of the ECHR as Special Advocates could not perform their function in any useful way if the detainee was not provided with sufficient information regarding the evidence against him. In June 2009 the House of Lords ruled that three men subject to control orders had not been given sufficient information to comply with their Article 6 rights to know the case against them.

Challenging a Control Order

A person who is the subject of a control order can apply at any time to the court for the withdrawal or modification of an order, but the chances of successful appeal are very slim. The court can only uphold an appeal if it finds the Home Secretary's grounds for making an order or any of the provisions of the order are 'obviously flawed'. Even if a control order was quashed, there is nothing to prevent the Home Secretary from issuing another control order, on the same grounds and using the same restrictions.

Sunset Clause

When control orders were first introduced, parliamentarians were assured that they would be a temporary measure. Part 1 of the PTA, which established the control order regime, was set to expire 12 months after the Act was passed.

However, control orders have now been in force for over four years (having been renewed each year by the Home Secretary with approval from Parliament) and the government has not, as yet, made any indication as to when the policy will end. Liberty understands that the imposition of orders has been recently ratcheted up and the practice of secret evidence, used widely in control order hearings, is now taking root in other areas of our legal system.