

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

SUMMARY OF THE PREVENTION OF TERRORISM ACT 2005

Control Orders

The Prevention of Terrorism Act 2005 (PTA) allows for the imposition of 'control orders' for purposes connected with protecting members of the public from a risk of terrorism'.

Restrictions that can be applied under control orders include dictating an individual's occupation; placing them under house arrest; controlling access to telephones or the internet; and restricting who they meet or communicate with. 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

Control orders that the Government doesn't think involve the right to liberty, and therefore do not require the UK to opt out of (or risk breaching) article 5 of the European Convention on Human Rights are 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, including house arrest, 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 Control Order

The Home Secretary must simply have 'reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity'. He must consider it necessary to make an order to protect the public from the risk of terrorism.

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, which must immediately hold a hearing to determine whether such an order should be made. This need not involve the individual concerned; who may not even know it is taking place and has no right to be represented.

If the court decides to impose an order, it must hold a full hearing. This is not a 'full hearing' in any normal understanding of the words. Just as the men detained without charge or trial in Belmarsh and Woodhill did not know the intelligence which led to their detention, neither will

those served with control orders. In a system indistinguishable from that imposed under the much denigrated Anti-terrorism Crime and Security Act, special security cleared lawyers will have access to the intelligence, but not the individuals concerned. On this basis they will 'represent' them.

The first an individual under threat of house arrest or other intrusive sanctions may know of their situation will occur when they are arrested and detained for, potentially, four days, pending the Court's granting of the order.

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.

Control orders have been set deliberately outside the 'normal' law. They can not be challenged by judicial review, or under the Human Rights Act.

Sunset Clause?

The part of the PTA relating to control orders is due to expire 12 months after the Act was passed, on 10th March 2006. However, it is anticipated that the Home Secretary will seek to extend the powers for a further year, and with the approval of both Houses of Parliament, he will achieve this.

In the meantime, there are opportunities to challenge the PTA via our elected representatives. Every three months the Home Secretary must give Parliament a report on the use of control orders and, after nine months, the first review of the operation of the PTA will take place.

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