

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Prevention of Terrorism Bill

**Liberty's briefing note on the remaining
stages in the House of Lords**

March 2005

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

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1. This briefing note is intended to accompany Liberty's detailed second reading briefing which we circulated to the House of Lords earlier this week¹. We have been encouraged by comments made by Peers from all parties during the second reading debate. Many share Liberty's belief that the very concept of control orders undermines the rule of law, the right to fair trial and the presumption of innocence. Many agree that no amount of amendment can redeem this fundamentally flawed legislation. Many are shocked at the speed with which the Government plans to pass laws which undermine centuries of freedom from arbitrary detention by the state.

2. Because of this we do not intend to propose amendments to the Bill. Our comments are restricted to those points of principle which apply to any alteration or amendment proposed by the Government or any opposition party. Making a proposal that appears slightly less oppressive than originally planned does not make it acceptable.

3. Much of the criticism directed at the Bill has focussed on the involvement of the judiciary in the making of orders. The principle concession offered by the Home Secretary is that control orders which require derogation from human rights commitments will be made by a judge in the High Court rather than a politician. As the Government has made it clear that they are not intending to make derogation control orders this does not amount to a substantive concession. In any event, whether authorisation is given by a politician or judge does not legitimise a process that bypasses the right to a fair trial. Even if the Home Secretary's proposal is adopted, it will not transform control order authorisation into a fair and lawful process but will instead effectively turn the High Court into a secret commission.

4. Non-derogation orders can only be appealed by judicial review rules which test the legality of procedure, rather than test the evidence. As the court only needs to satisfy itself that the Home Secretary had 'reasonable suspicion' for issuing the control order, there is little prospect of successful appeal.

¹ Available at www.liberty-human-rights.org.uk

Derogation orders will allow the courts to make its own determination, which gives a thin veneer of fairness. However, this will still involve the use of special advocates, closed evidence and the inability of the appellant to test the evidence against him. This is the same process that was denounced by the House of Lords Appellate Committee as “the stuff of nightmares”², in their judgment on the detention of foreign nationals under Part 4 of the Anti Terrorism Crime and Security Act 2001. Whatever amendments are suggested, the control order process cannot be reconciled with British traditions of fair trial and the presumption of innocence. Parliament must have the opportunity to seek solutions which reconcile national security concerns with British traditions of liberty and due process.

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² Lord Scott. See para 155 *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* [2004] UKHL 56