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BRIEFING ON THE PREVENTION OF TERRORISM BILL 2005

A counter-productive measure

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

BIRW has been monitoring the effects of counter-terrorism laws in Northern Ireland for the past 15 years. We have first hand experience of the terrible effects of terrorism, and take it as read that legitimate governments are entitled – indeed, have a duty – to take every reasonable step to protect their citizens from terrorism. However, our work has also taught us that in a democracy very great care must be taken not to adopt counter-terrorism measures which themselves undermine the rights and freedoms that define democracy itself. To do so is to allow the terrorists to win, because democracy will have been weakened if not destroyed in the process.

The Prevention of Terrorism Bill 2005 already displays two of the most telling hallmarks of just such counter-productive anti-terrorist legislation. First, it is being proposed in order to avoid compliance with a landmark ruling by the House of Lords, which held¹ that indefinite detention without trial was incompatible with the Human Rights Act 1998. Secondly, it is being rushed through Parliament at the tail end of a government, without time for proper debate. These two features have figured time and again in over 30 years of so-called emergency, but in practice permanent, laws in Northern Ireland. The operation of these laws has led us to conclude that repressive laws do not prevent terrorism or eradicate it. If we treat terrorists differently from other criminals because of the motive for their crimes, whether they be murder, hijacking or other acts of violence, we only create miscarriages of justice and martyrs to their supposed cause. The greater the terrorist threat, the more careful we need to be to ensure that our response to it is justified and proportionate.

¹ In A & Ors, X & Anor v Secretary of State for the Home Department [2004] UKHL 56

BIRW URGES Parliament not to pass the Prevention of Terrorism Bill because it raises fundamental issues of human rights and public policy and will cause serious operational problems for the police, particularly but not only in Northern Ireland.

Human Rights Concerns

The control orders proposed in Clause 1 of the Bill give the Secretary of State the power to impose **any** obligation on **anyone** suspected of involvement in **terrorism-related** activity. This is a draconian power which is couched in the vaguest of language. The subject of a control order need not have committed any crime. Experience tells us that such laws are wide open to abuse.

Control orders have the potential to impose internment without trial. Although the courts will have the power to review control orders depriving an individual of liberty within seven days [Clause 2], and persons made the subject of a control order will have the right of appeal, they will not be able to challenge the control order in any other court [Clause 9]. Northern Ireland experience has shown that review by a court after the fact, for example the granting of bail in terrorist cases, is all too often a rubber-stamping exercise. Parliament should not allow themselves to be fooled by the inclusion of a judicial figleaf that this Bill is not truly a naked attack on civil liberties in this country.

Although the Bill deals with situations which violate a person's right to liberty under Article 5 of the European Convention on Human Rights, it makes no mention of the many other human rights that control orders have the capacity to violate. Nor does it refer to the UK's obligations under a range of other human rights treaties, such as the International Covenant on Civil and Political Rights, the Convention against Torture or the Convention on the Rights of the Child.

Under this Bill, a person could be held incommunicado, in solitary confinement, in conditions far harsher than they would experience in a prison. Their rights to family life, to privacy, to freedom of conscience, to freedom of expression, to freedom of association, and above all to the right to a fair trial could all be affected by control orders. Not only they, but members of their family, may also be affected.

The Bill does not set out the rules of evidence for hearings concerning control orders, but makes provision for special rules of court in the Schedule to the Bill. It is clear that the government intends to use these rules to withhold information from suspects concerning the allegations against them, and to exclude both suspects and lawyers from hearings. Such provisions fly in the face of the right to a fair trial and abrogate the principle that all persons are equal before the law. A particular concern is that only suspicion of involvement in terrorism is required, rather than proof, and that such suspicion may rely on intelligence based on confessions or information extracted under torture.

As if all that were not enough, the numbers involved are so small that such measures are unjustified and, as the House of Lords pointed out, disproportionate

– according to the Home Secretary only 17 people have been detained without trial to date².

Public policy concerns

By vesting such power in the Secretary of State, the Bill makes the question of whether to impose a control order a political decision. Over the past decade in Northern Ireland, a series of reforms have sought to remove decisions such as whether a contentious parade should be allowed to take place, or whether a victim of a potential miscarriage of justice should be allowed to appeal, from the political arena. Decisions about terrorism should lie with the police and the courts, rather than with politicians who are always under intense pressure to “do something”, even if they do the wrong thing, at times of public crisis. Here in the United Kingdom we have developed a sophisticated system of checks and balances and accountability which set high standards for our police and our courts, which are adequately equipped to deal with terrorism.

One of the reasons that the government is bringing forward this Bill is its unwillingness to force the intelligence service to become more accountable, despite very real public concern about the accuracy of intelligence material on which governments make extremely important decisions affecting the safety of the nation. We accept that intelligence work is necessary to combat terrorism, but we do not accept that the public interest in maintaining secrecy about intelligence-gathering methods outweighs the public interest in maintaining the freedoms enshrined in a democracy. As in all such matters, a balance must be struck, and this Bill is as far out of kilter as it is possible to be.

In the past in Northern Ireland, a situation was allowed to develop in which intelligence was collected for its own sake. The effects on policing in Northern Ireland were devastating. Gathering and controlling intelligence took priority over the detection and prevention of crime, instead of being put at the service of these functions. The need to recruit, and then keep in place, informants meant that some agents were allowed to participate in crimes without being prosecuted, while other criminals were also granted de facto impunity in order not to blow agents’ cover. As a result, many people died needlessly in the name of saving lives.

The Prevention of Terrorism Bill will turn back the clock on the vital reforms that are taking place in Northern Ireland, and will put the rest of the UK at risk of developing a similar, intelligence-led culture which devalues the right to life.

Operational policing concerns

Allowing politicians to decide that someone is a terrorist but there is not enough evidence to bring them to court will seriously erode the Police Service of Northern Ireland’s (PSNI) efforts to de-politicise policing and create a service which is transparent, accountable and equally available to the whole community.

² Statement of the Secretary of State for the Home Department on Measures to Combat Terrorism, *Hansard*, 26 January 2005, col 305 et seq

Policing house arrest will divert precious resources from real police work and set officers up for confrontation, if not worse.

These provisions will undermine police ability to combat terrorism as they would ordinary crime, by bringing terrorists to court and convicting them. Excessive powers road-tested in Northern Ireland, such as internment without trial, failed to combat terrorism and frequently, especially when operated by politicians rather than the police, made actual policing redundant.

If these powers are actually used in Northern Ireland or elsewhere in the UK, they will elevate young men currently drawn towards the use of violence for political ends into martyrs to their cause and act as a recruiting sergeant for terrorism.

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Unlike the rules criticised by the Law Lords, this law will apply not only to foreign nationals but to British citizens. Never before have such restrictive laws been applied in peacetime to British citizens by their own government.

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