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NCCL



The Extension of the Prevention of Terrorism Powers to cover  
International Terrorism: The Prevention of Terrorism Bill Clause 12(2)(b).

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The Prevention of Terrorism Act was first introduced in 1974 in response to the Birmingham pub bombings as temporary legislation covering the whole of the United Kingdom.

"Terrorism" was defined as "the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear".

The Act provided for:

- \*The banning of organisations involved in political violence relating to Northern Ireland
- \*The exclusion (internal exile) of people suspected of involvement in such violence from, or to, Northern Ireland.
- \*The arrest and detention of people suspected of involvement in political violence for upto 7 days without charge (with the Home Secretary's consent after 48 hours).

The Act was re-enacted with minor modifications in 1976 and is now, following an official enquiry by Lord Jellicoe into the operation of the Act, in the process of being re-enacted by the Prevention of Terrorism Bill.

This Briefing covers only the arrest/detention powers which are covered by clauses 12 and 13 of the Bill.

Although the 1974 and 1976 Acts were introduced specifically to deal with political violence relating to Northern Ireland, they provided for the detention of anyone suspected of involvement in any kind of political violence. This was because, it is said, a constable could not be expected to ascertain the motive of the suspect before apprehending him/her. However, a circular was issued to chief constables advising them that an extension of detention would only be granted by the Home Secretary if the suspected offences were connected with Northern Ireland. It was made clear during the parliamentary debates that the powers were directed only at terrorism related to Northern Ireland.

Lord Jellicoe recommended that this restriction be removed to allow the police to detain anyone suspected of involvement in political violence relating to international conflicts because "London could become a battleground for warring Middle East terrorist factions". Because parliament in 1976 had not intended the Act to have this wide application he said that the Government should not simply remove the circular but should specifically provide for the power in the new Bill.



Lord Jellicoe added: "my strong preference is for the proper extent of the section to be clear on its face and not, as at present, left for restriction by government circular". Nevertheless, this is precisely what the Government has done. (see p4).

The Government published the new Bill in July 1983, amending the 1976 Act to allow the detention of anyone suspected of involvement in acts of terrorism relating to Northern Ireland and "acts of terrorism of any other description" (except domestic terrorism which is outside the scope of the Bill).

NB : the Bill creates no new offences in relation to international terrorism. It allows the detention for upto 7 days of people suspected of involvement in such acts , for questioning. At ports police, immigration and customs officials could detain people without any suspicion to establish "whether any such person appears to be a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism". The acts of violence in question could have been planned/committed before or after the Act comes into force.

There are a number of points to note about this development:

1. The Government claims that the Act has not been 'extended' because the 1976 Act allowed the detention of any terrorist suspect. However, it is clear that this was not parliament's intention , the restriction to Northern Irish affairs being omitted only because of assumed legal difficulties. (Significantly , the government does not appear to anticipate the same difficulty arising from the exclusion of domestic terrorism). Moreover, the Act has always been restricted by circular to Northern Ireland terrorism.

2. Although Lord Jellicoe argued that the extension was necessary because of a threat of violence in Britain he provided no evidence that international terrorism had increased here nor that the police cannot cope satisfactorily with their existing powers.

NCCL has examined the Metropolitan Police Commissioner's Annual Reports, and Her Majesty's Inspectorate of Constabulary Annual Reports for the last three years and found few references to international terrorism and no indication at all that the police or Inspectorate felt that this was a growing or unmanageable problem for which more powers were needed.

Mr Whitelaw , then Home Secretary, answered a Parliamentary Question in June 1982 in which he was asked whether there had been an increase in acts of terrorism within the Metropolitan area over the last ten years by saying: "There does not appear to have been an increase in crimes connected with terrorism in this period".

During the Committee stage Ministers similarly provided no examples of incidents in which these additional powers would have affected the outcome.

3. Lord Jellicoe argued that the extension was necessary to deal with a problem of violence in the United Kingdom. But the wording



of the Bill , clause 12(2) (b) , allows the detention of anyone suspected of involvement in international political violence anywhere in the world , whether or not the acts have any connection with this country at all.

Lord Jellicoe did not include acts of violence abroad in his enquiry and did not recommend the need for any such power. The Home Secretary, introducing the Bill at Second Reading, did not mention that the Bill would have this effect and, during the early part of the Commons Committee stage, Conservative members of the committee actually wrote to concerned organisations telling them that they had misunderstood the Bill and that it would not have this effect.

When the Committee reached the relevant clauses, the Minister acknowledged for the first time that the Bill would enable the detention of people who are not suspected of any offence for which they could be charged in this country.

He argued that the power could not be restricted to acts committed in the UK because they wanted the power to detain people suspected of planning attacks against British persons or property abroad. Writing to Bob Hughes MP (chairman of Anti-Apartheid Movement) the Home Secretary said: "We did not have in mind individuals who have been admitted lawfully to the UK and who are living here peacefully " but " it is difficult to think of any definition which would, with certainty, catch those against whom the Bill is directed but not those with whom you are concerned".

NCCL considers that:

- a) the powers of the PTA should not be extended because no evidence has been presented to justify such an extension. The onus is on those who want extraordinary powers to show that there is a need and this the Government has failed to do. The police already have wide powers in the existing criminal law.
- b) the powers should not be extended to cover those who are not suspected of any offence in this country because:
  - \* the Jellicoe enquiry did not cover acts of violence abroad and provided no evidence that such a power was necessary. As Mr Waddington, Home Office Minister himself said during the Committee : "We should not extend the emergency powers in the absence of clear evidence of a mischief that needs to be dealt with".
  - \* it is unacceptable in principle to detain people who are not suspected of any offence and could not be charged (and against whom no extradition application has been made). These people would be deprived of their liberty for upto a week, presumably for questioning, before being released without charge.
  - \* the power could be used indiscriminately to detain people with overseas connections to obtain information from them. Refugees, foreign students, black tourists and members of Liberation and Solidarity groups could face arbitrary detention and



harassment when entering or leaving the country or inland.

- \* although the English criminal law is generally, and quite properly, not concerned with prosecuting people for offences they intend, or have committed abroad, there are a number of exceptions to this rule which already enable the police to detain people suspected of involvement in acts of violence abroad because these are offences for which they could be charged in this country:

eg. a person can already be charged, and arrested, in this country if they:-

- \* murder a British citizen abroad or conspire to commit such a murder
- \* plan to use weapons abroad to endanger life
- \* are a non British citizen and conspire to murder anyone abroad
- \* conspire to commit any crime abroad if they do anything unlawful here as part of their plan, eg forge documents or steal a vehicle.
- \* conspire abroad to commit a crime here if at least 2 of the conspirators enter this country and continue to plan their crime, eg by buying an A - Z map of the area of the attack.
- \* possess firearms here lawfully but with intent to use them to endanger life abroad.

#### Government Circular

In response to considerable criticism that this power is unacceptable and unnecessary the Home Secretary told the Committee that he would advise the police that they should not use the power unless there was some prospect of the person being charged or deported . NCCL considers these assurances unacceptable because:

1. It is inappropriate for the Government to mitigate against the potential effects of a widely drawn clause by giving ministerial assurances that it will in practice only be used in a more limited way. The correct course would be for the Government to amend the Bill.
2. The assurances are not legally binding:
  - if the political climate changes they could be withdrawn; eg the Home Secretary's recent change of policy on parole.
  - they cannot be relied upon by the judiciary in interpreting the law or the limits of police powers in individual cases
  - the police have a statutory duty to enforce the law and cannot be told not to , hence the Home Secretary's 'advice' . Racism in the police force, confirmed by the recent Policy Studies Institute Report, may make black people particularly vulnerable, despite the Minister's advice.
3. Even assuming the circular was observed, if a future government decided that it was conducive to the public good for members of a particular liberation movement to be deported (perhaps under pressure from a 'friendly' foreign government), they could use these powers to detain the individuals prior to the deportation order being made. Under existing law they could not be detained until the deportation order was made ; the detention could be used



to question the individual to obtain information to support the deportation order.

4. The circular assumes that the constable will always know before he makes the arrest whether there is a possibility of a charge or deportation. This cannot always be the case. If he already has sufficient evidence to prefer charges, he can do so under the existing criminal law.
5. The grounds on which someone can be deported, 'conducive to the public good', are so wide that the limitation of the circular to those who could be deported is only a weak restriction.

NCCL therefore opposes both the extension of the powers to cover people suspected of involvement in acts of international political violence committed in this country and the extension to cover people suspected of involvement in political violence abroad. The powers are unnecessary, unacceptable in principle and open to abuse.

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