



Proscription of terrorist groups in the United Kingdom

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Background

Proscription as a means of dealing with organisations deemed to be involved in terrorist activities has been used in the Northern Ireland context since the 1920's¹. It was introduced in Great Britain in 1974, though still concerned only with organisations connected to Northern Ireland. Great Britain and Northern Ireland were covered by separate proscription regimes until the introduction of the Terrorism Act 2000², which made one regime applicable throughout the United Kingdom. In addition to the Irish groups, the Terrorism Act also introduced, for the first time, the proscription of international and domestic organisations.

Currently, 40 international terrorist organisations are proscribed under the Terrorism Act, with 14 Northern Irish organisations remaining proscribed under previous legislation and under Schedule 2 of the Act³. As of March 2001, when 21 international organisations were proscribed⁴, a further 19 organisations have been added in two separate amendments to the Terrorism Act 2000⁵. None have been deproscribed.

¹ For a short history of proscription, see the judgment delivered on 30 June 2004 by Her Majesty's Court of Appeal in Northern Ireland in the case of the Queen vs Z, paras 4-8:

http://www.courtsni.gov.uk/NR/rdonlyres/FC00B196-1C96-4043-87D6-9339A5EC4538/0/j_j_KERC5003.htm, accessed on 21 March 2006.

² The Terrorism Act 2000 came into force on 19 February 2001, repealing the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996 with the exception of certain provisions listed in Schedule 1.

³ Home Office List of Proscribed terrorist groups, <http://security.homeoffice.gov.uk/counter-terrorism-strategy/legislation/tact/proscribed-groups>, last accessed on 22 March 2006. The Terrorism Act 2000 lists four organisations additional to the ten proscribed under the Northern Ireland (Emergency Provisions) Act 1996, <http://www.opsi.gov.uk/ACTS/acts1996/1996022.htm>.

⁴ Statutory Instrument 2001 No 1261, entry into force on 29 March 2001, <http://www.opsi.gov.uk/se/si2001/20011261.htm>.

⁵ Statutory Instrument 2002 No 2724, entry into force on 1 November 2002, <http://www.opsi.gov.uk/si/si2002/20022724> and Statutory Instrument 2005 No 2892, entry into force on 14 October 2005, <http://www.opsi.gov.uk/si/si2005/20052892.htm>.

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A new Terrorism Act received Royal Assent on 30 March 2006. As the bulk of it entered into force on 13 April 2006⁶, it created several new offences, such as encouragement to terrorism and giving or receiving training in terrorist techniques. While not directly part of our research, discussions about the 2006 Act demonstrated an anticipated change to the proscription regime. These changes would most notably be due to the new offences created by the act. Whether there will, indeed, be significant changes will need to be verified once the Act has been in force for some months.

In its own information about the Act, the Home Office expects that it will provide for increased flexibility in the proscription regime, notably allowing proscription of organisations that glorify terrorism⁷. In addition, the Independent Reviewer of the UK's terrorism legislation⁸, Lord Carlile of Berriew QC, expects 'a significant number of additional proscriptions'⁹ to result from the new Act on the grounds of activities and statements which glorify, exalt or celebrate terrorism. Our interviewees do not expect the envisaged changes to the proscription criteria to have an impact on mediation activities in and of themselves. Nevertheless, we have been advised to keep the new legislation under review.

Proscription and its results

The proscription procedure as provided for in the Terrorism Act 2000 is fairly simple. In Schedule 2 of the Act, 14 organisations with links to Northern Ireland are proscribed. The Act provides for further proscription decisions to be taken by the Home Secretary 'only if he believes that [the organisation] is concerned in terrorism'¹⁰. The term 'concerned in terrorism' is defined in the Act as committing or participating in terrorist acts, or preparing for, promoting or encouraging or otherwise being concerned in terrorism¹¹. The 2006 legislation has clarified what is meant by 'promoting and encouraging' terrorism¹², and specifies that this includes for example unlawful glorification of the commission or preparation of acts of terrorism. The new legislation also makes provisions to safeguard against name changes by organisations¹³. If the Home Secretary believes that a

⁶ Statutory Instrument 2006 No 1013 of 30 March 2006 provides that sections 1-22, 26-36 and 37(1)-(4) along with Schedules 1 and 2, as well as 37(5) with certain exceptions, and Schedule 3 with certain exceptions will enter into force on 13 April 2006. This excludes for example the new provisions on detention times.

⁷ See <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act-2006/>, last accessed on 20 April 2006.

⁸ The operation of the Terrorism Act 2000 and subsequent anti-terrorism legislation is reviewed by an independent expert on a regular basis. The reviewer, Lord Carlile of Berriew QC, has throughout his tenure taken an interest in the proscription regime. He published his first report on the operation of the Terrorism Act in November 2002.

⁹ Report on 'Proposals by Her Majesty's Government for changes to the laws against terrorism', 12 October 2005, para 51, available at <http://security.homeoffice.gov.uk/news-and-publications1/publication-search/independent-reviews/carlile-review-121005>.

¹⁰ Terrorism Act 2000, Part II, Section 3(3) and 3(4).

¹¹ Idem, Section 3(5).

¹² Terrorism Act 2006, Part 2, Section 21.

¹³ Idem, Section 22.

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proscribed organisation is operating wholly or partly under a new name, or that the new name is for all intents and purposes distinguishing the same group, there will now not be a need to review the proscription decision. Instead, the new name may simply be added, by separate order, to the existing list as another name for the listed organisation.

Terrorism is understood to mean the use or threat of action under circumstances specified in the 2000 legislation. The new legislation has not amended these provisions. The proscription decision has to be affirmed by Parliament, which is, indeed, what has happened in all three cases as referred to above when a proscription decision has been taken. Thus, unless contested by Members of Parliament, the decision becomes law.

On the organisational level, proscription means ‘that an organisation is outlawed in the UK and that it is illegal for it to operate [in the UK]¹⁴’. Proscription also entails consequential offences which carry various levels of penalties on individuals. Thus, professed or real membership of a proscribed organisation carries a penalty of up to ten years’ imprisonment. Public display or wear of clothing or other articles that may provoke the suspicion that the person carrying out such an act is a member or supporter of a proscribed organisation is punishable by up to six months’ imprisonment.

It is also an offence, punishable by up to ten years’ imprisonment, under certain criteria to invite support for a proscribed organisation. Arranging or managing meetings, or assisting in such arrangement or management, for the purpose of inviting support for a proscribed organisation, for furthering the activities of such an organisation of where a real or professed member of such an organisation is to speak carries similar penalties.

Such activities as fundraising, use or possession of money or property for the purposes of terrorism and making property available for the purposes of terrorism are punishable by up to 15 years’ imprisonment (prior to TA 2006, 14 years). It is also an offence, punishable by up to five years’ imprisonment, not to disclose to a police officer one’s suspicion or belief that these kinds of crimes have taken place, even if the information upon which the suspicion is based derives from professional activities. Professional legal advisers are, under certain circumstances, exempt from disclosing privileged information.

It is worth noting in this context that, with the exception of carrying terrorist insignia, being found guilty of the above offences also means the individual concerned will be defined as a terrorist. One or several consequences may follow from such a designation, and the individual may, upon reasonable suspicion and required authorizations by the authorities, be faced with arrests without warrant, search of premises where he may be present, or search of his person.

Several additional offences are provided for in the law and collectively labelled terrorist offences. They include weapons training, the direction of terrorist organisations, possession of articles which may give suspicion that they are to be used in terrorism, collection of information which may be useful to terrorists, incitement of terrorism

¹⁴ Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2005, section 7.2, http://www.opsi.gov.uk/si/em2005/ukciem_20052892_en.pdf.

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overseas, terrorist bombings or financing of terrorism. These offences carry penalties ranging from fines to imprisonment for life.

The Terrorism Act 2006 has added several specific individual terrorist offences, which do not as such derive from the proscription decision. The new legislation also clarifies some of the previous provisions, and makes additional provisions to several offences. In this way, new offences include, as an example, the encouragement of terrorism (maximum penalty of 7 years' imprisonment), dissemination of terrorist publications (7 years), preparation of acts of terrorism in any way (life), training in terrorist skills (10 years) and attending training facilities where such skills are being imparted (10 years).

Criteria for proscription

The factors which influence a proscription decision were notified to Parliament when the terrorism legislation was introduced. Such factors would be 'the nature and scale of the organisation's activities, the specific threat that it posed to the United Kingdom, the specific threat that it posed to British nationals overseas, the extent of the organisation's presence in the United Kingdom, and the need to support other members of the international community in the global fight against terrorism'¹⁵. Some factors can also be discerned from the Draft Statutory Instruments regarding the proscription of named groups. Listed are items such as aims of the organisation, realised attacks, specific attacks on UK or Western interests and representation and activities in the UK¹⁶. These have not been laid down in law. Some of them provide opportunities for factual assessment, but the 'need to support other members of the international community in the global fight against terrorism' opens the door for determination on political as well as factual grounds.

According to our interviewees, proscription takes place on the basis of both policy and intelligence information. We do not know the quality of 'policy' information in this case, but may assume that political consideration might play a part. In this context, the Independent Reviewer has, in his reports on the functioning of the terrorism legislation, shed some light on the process in itself and the quality of the information used as a basis for proscription. While he has pointed out the potential for error in the collected information, he has also noted that the 'multi-agency approach to information and evidence shows considerable care and success in the obtaining, preparation and analysis of material by the public service'¹⁷. On the intelligence information in particular, he has

¹⁵ England and Wales High Court (Administrative Court) Decision in the cases of the Kurdistan Workers' Party and others, the People's Mojahedin Organisation of Iran and others and of Nisar Ahmed and the Secretary of State for the Home Department, [2002] EWHC 644 (Admin), 17 April 2002, at <http://www.bailii.org/ew/cases/EWHC/Admin/2002/644.html>. It is worth noting that these factors remain the same in the Home Office press release 147/2005 of 10 October 2005, http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/home_secretary_moves.html

¹⁶ Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2005, section 7.2, http://www.opsi.gov.uk/si/em2005/uksiem_20052892_en.pdf.

¹⁷ Report on the operation in 2004 of the Terrorism Act 2000, issued 20 July 2005, paragraph 32.

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stated that it appeared to him cautious and reliable¹⁸. This would indicate a reasonably clear approach to the gathering of information and its use, thus leaving less room for political manoeuvring than might be assumed.

The information concerned is reportedly reviewed by an inter-departmental working group. This group decides both on new proscriptions and whether currently proscribed entities merit being kept on the list. In effect, this provides for an automatic review of the proscription decisions. Reportedly, the review takes place every six months.

Deproscription and appeal

The Terrorism Act 2000 provides for a deproscription procedure, which is launched by application to the Home Secretary¹⁹. The application may be made by the proscribed organisation or any person affected by the proscription. Should the Home Secretary refuse the deproscription, case law shows that he will reveal to the party concerned his reasons for doing so²⁰. Such reasons have included the nature and scale of the organisation's activities, the threat posed to UK nationals, the need to support other members of the international community in the global fight against terrorism, and the non-recognition of political motives or perceived self-determination as justification for acts of terrorism.

In the event the Home Secretary refuses to deproscribe an organisation, the Act provides for a Proscribed Organisations Appeal Commission (POAC)²¹ to handle these cases. Should the POAC decide to allow an appeal, the Home Secretary will have to move to have the relevant legislation changed 'as soon as practicable' in order to delist the organisation. Parties to an appeal before the POAC may, upon permission by the POAC or the relevant court, bring further appeals on a point of law before a court of second instance in the country of the United Kingdom where the first appeal was heard.

On a question of law, a party to an appeal made to the Proscribed Organisations Appeal Commission and which has been determined by that Commission may bring a further appeal to the appropriate court of next instance, depending on the country of the UK in which the first appeal was heard. This further appeal may only be brought with the permission of the said Commission or, in case it refuses, with the permission of the court

¹⁸ Report on the operation in 2004 of the Terrorism Act 2000, issued 20 July 2005, paragraph 38.

¹⁹ Terrorism Act 2000, Part II, Section 4.

²⁰ England and Wales High Court (Administrative Court) Decision in the cases of the Kurdistan Workers' Party and others, the People's Mojahedin Organisation of Iran and others and of Nisar Ahmed and the Secretary of State for the Home Department, [2002] EWHC 644 (Admin), 17 April 2002, sections 25, 39 and 57, at <http://www.bailii.org/ew/cases/EWHC/Admin/2002/644.html>.

²¹ Terrorism Act 2000, Part II, Section 5. Further provisions regarding constitution and competences of the POAC are contained in Schedule 3, and procedural rules set down in the Proscribed Organisations Appeal Commission (Procedure) Rules 2001, entry into force on 19 February 2001, <http://www.opsi.gov.uk/si/si2001/20010443.htm>. The Terrorism Act 2006 has to some degree amended Section 5 of TA 2000 to take account of the inclusion in the new legislation of the possibility to simply add to the proscription regime additional or new names believed to be used by proscribed organisations.

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in question. Any pending Commission order will rest until the appeals procedure has been exhausted. While not explicitly mentioned as an appeals venue, the ultimate instance for appeal would be the House of Lords, as insinuated in the relevant section text.

The membership of the Proscribed Organisations Appeal Commission is appointed by the Lord Chancellor. Three members must attend a sitting, and one of them must hold or have held high judicial office. The POAC appeals procedure is governed by parliament-approved rules²², as provided for in the relevant Terrorism Act schedule. The procedure involves set time limits for appeal, notices and designated representatives to attend hearings.

There does not seem to be any publicly available information about the number of appeals for deproscription. Since the list of proscribed organisations has only grown, with no reductions, it is clear that if any appeals have been made, none have been successful. Information about some challenges have come out in the public domain, however. The proscription of the Kurdistan Workers' Party (PKK), the People's Mojahedin Organisation of Iran (PMOI) and the Lashkar e Tayyabah (LeT) was challenged on points of law in 2001 by the organisations concerned in the first two cases, and by an individual in the third case²³. While the court in question did not grant the right for this appeal, but instead referred the challenges back to POAC, it did discuss the circumstances under which the challenges had been brought. It also sheds light on the procedures of both listing and appeal. Reportedly, the PMOI later withdrew from legal proceedings²⁴ and, like the other groups, remains proscribed under UK legislation.

The 2006 legislation provides for the listing of additional names of proscribed organisations. In this specific case, it also provides a procedure for 'delisting'²⁵. In line with the new provisions, the Home Secretary can revoke an order to add the new name to the proscription list, or even otherwise provide for such a name not to be treated in such a manner. It is not clear which other means the Home Secretary can invoke. The delisting process otherwise described above applies also to organisations whose names have been added to the list in the manner provided for by the new legislation.

Exceptions and exemptions

Neither the Terrorism Act 2000, nor the new legislation of 2006, makes explicit provisions for exceptions or exemptions from the proscription regime. There are, however, exceptions envisaged for some of the potential offences in the 2000 legislation.

²² The Proscribed Organisations Appeal Commission (Procedure) Rules 2001, entry into force on 19 February 2001, <http://www.opsi.gov.uk/si/si2001/20010443.htm>.

²³ England and Wales High Court (Administrative Court) Decision in the cases of the Kurdistan Workers' Party and others, the People's Mojahedin Organisation of Iran and others and of Nisar Ahmed and the Secretary of State for the Home Department, [2002] EWHC 644 (Admin), 17 April 2002, at <http://www.bailii.org/ew/cases/EWHC/Admin/2002/644.html>

²⁴ See <http://www.statewatch.org/terrorlists/listschallenges.html>, last accessed on 23 March 2006.

²⁵ Terrorism Act 2006, Section 22.

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Thus, for example, fundraising or other property-related activities are not regarded as offences if they have been carried out with the explicit consent of a police officer.

The absence of exemptions would most likely in itself not affect a peace process adversely. Our interviewees see no reason for political dialogue not to continue despite the existence of a proscription decision, and indeed do seem concerned if this is the case. This might indicate a potential willingness to agree to extraordinary exemptions if such were needed under certain circumstances, provided any negative impact could be proven to exist.

Efficiency of proscription

The outlawing of organisations and their activities may be regarded as a reasonable tool in the fight against terrorism. According to our interviewees, however, the tool is somewhat blunt. It targets groups, but to have any effect, it should at least similarly target individuals. It is also easy to argue that the impact of proscription can, in reality, only be felt by individuals, provided that membership of the organisations in question or fundraising for it can be proven. Statistics provided in the Independent Assessor's reports show that only 25 individuals were charged under the Terrorism Act 2000 for being members of a proscribed organisation between January 2002 and December 2004. The bulk of these cases, 19 in total, were processed between July 2002 and December 2003. In 2004, only 4 individuals were charged with this offence.

Similarly, the statistics show that the one offence which yielded the most charges between 2002 and 2004 (54 for the three-year period) was that of Possession for Terrorist purposes. Again, the bulk of the charges fall within the time period July 2002-December 2003. No charges at all were brought on accounts of support for terrorism, the wearing of terrorist insignia, the duty to disclose information, or directing terrorist organisations. No conclusions as to the efficiency of the legislation per se can be drawn from the statistics, but it would seem to demonstrate that either there are very few cases in the first place, or that sufficient proof is hard to come by.

Nevertheless, it would seem that a proscription decision will affect an organisation at least morally, even if no concrete sanctions were to otherwise follow. As stated by some of the organisations proscribed, the impact on them of a proscription decision is not limited to a pure question of law. In the case of the Kurdistan Workers' Party (PKK), for example, 'proscription [was] seen by many in the Kurdish community as a victory for the Turkish government and the endorsement of suppression of the Kurds'²⁶. It was further maintained that proscription would entail a prohibition of support even of peaceful policies of the PKK.

²⁶ England and Wales High Court (Administrative Court) Decision in the cases of the Kurdistan Workers' Party and others, the People's Mojahedin Organisation of Iran and others and of Nisar Ahmed and the Secretary of State for the Home Department, [2002] EWHC 644 (Admin), 17 April 2002, section 42, at <http://www.bailii.org/ew/cases/EWHC/Admin/2002/644.html>.