

# TERRORISM ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### *Definitions*

#### *Section 2 – Dissemination of terrorist publications*

29. **Section 2** creates offences relating to the sale and other dissemination of books and other publications, including material on the internet, that encourage people to engage in terrorism, or provide information that could be useful to terrorists.

#### **Subsection (1)**

30. **Subsection (1)** focuses on the mental element of the offence. This is an offence which must be committed intentionally or recklessly. For an offence to be committed, it is necessary for an individual to carry out any of the actions set out in **subsection (2)**, which outlines various methods of dissemination, and for him either to have an intention that an effect of his conduct will be a direct or indirect encouragement or other inducement to terrorism, an intention that an effect of his conduct will be the provision of assistance in the commission or preparation of acts of terrorism, or for him to be reckless as to whether his conduct has one of these two specified effects.

#### **Subsection (2)**

31. **Subsection (2)** provides the conduct that will amount to an offence under section 2. The conduct is: distributing or circulating a terrorist publication; giving, selling, or lending a terrorist publication; offering a terrorist publication for sale or loan; providing a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of gift, sale, or loan; transmitting the contents of a terrorist publication electronically; and possessing a terrorist publication with a view to making it available in any of the ways listed. This means that the offence will cover not only bookshops but also those that sell books and publications over the internet whether the publication is in hard copy or electronic. It will also cover libraries and the distribution of leaflets and flyers.

#### **Subsection (3)**

32. **Subsection (3)** sets out the definition of terrorist publication. A publication will be considered a terrorist publication if it meets one of two tests. The first test is if matter contained in it is likely to be understood by some or all of the persons to whom it is or may become available as a consequence of the conduct in subsection (2) as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism. The second test is if it contains any matter which is likely to be useful in the commission or preparation of such acts and it is likely to be understood by some or all of the persons to whom it is or may become available as being contained in the publication, or made available to them, wholly or mainly for the purposes of being so useful to them. The first reason for a book or other publication

being a terrorist publication relates to the new offence under section 1. In either case, only a small part of a publication needs to satisfy the test for the publication to be a terrorist publication. As the whole publication will be a terrorist publication if a small part of it satisfies the test this means that the whole publication can be seized under the powers set out in section 28 and Schedule 2 (which provide for search, seizure and forfeiture of terrorist publications). However, in relation to the defence in subsection (9) of section 2, in order to establish part (a) of the defence, the defendant need only show that the part of a publication which satisfies the test did not express his views or have his endorsement.

### **Subsections (4) and (5)**

33. **Subsection (4)** sets out that, as in section 1, indirect encouragement of terrorism includes glorification of terrorism, so long as the person who understands the statement to be indirect encouragement could reasonably be expected to infer that the conduct that is glorified is glorified as conduct that should be emulated by him in existing circumstances. **Subsection (5)** provides that whether or not a publication is a terrorist publication must be determined at the time of the particular conduct in question, and having regard to the content of the publication as a whole and the circumstances in which the particular conduct occurred. This means that account can be taken of the nature of the bookseller or other disseminator of the publication.

### **Subsection (6)**

34. **Subsection (6)** sets out that references to an effect of a person's conduct in relation to a terrorist publication includes references to an effect of the publication on one or more of the persons to whom it is or may become available as a consequence of that conduct. This means that the effect of a person holding a publication intending to disseminate it (for example, by offering it for sale) will include the effect on the audience to whom it is intended it will be made available by a later act of dissemination (i.e. the sale itself). This is intended to cover the fact that if a person only, for example, holds a publication with the intention of disseminating it, the effect of that conduct is not to encourage terrorism or to be useful to terrorists, because only once the publication is disseminated can it have one of those effects.

### **Subsections (7) and (8)**

35. **Subsection (7)** provides that a terrorist publication need not encourage or induce, or be useful for, the commission, preparation, or instigation of a specific act of terrorism, but may instead be an encouragement or inducement for, or be useful for, acts of terrorism in general. **Subsection (8)** provides that whether or not an individual actually is encouraged or induced to commit, prepare, or instigate terrorist acts, or makes use of the publication in the commission or preparation of such acts, is irrelevant to the question of whether or not an offence has been committed.

### **Subsections (9) and (10)**

36. **Subsection (9)** provides a defence to the offence in section 2. The defence is only available if it has not been proved that the defendant engaged in conduct with the intention that his conduct would encourage terrorism and if the publications in question are terrorist publications by virtue of containing material that encourages terrorism, not ones that are useful for the purposes of terrorism (**subsection (10)**). The defendant can take advantage of the defence if he can show that the material that encourages terrorism did not express his views or have his endorsement and it was clear in all the circumstances that it did not express his views or have his endorsement. A defendant will not be able to rely on the defence in subsection (9) if he is deemed to have endorsed the terrorist material in a publication because he has failed to comply with a notice issued under section 3 (see paragraphs 39 to 45 of these notes).

### **Subsection (12)**

37. **Subsection (12)** provides a transitional provision in respect of the period before the commencement of section 154(1) of the Criminal Justice Act 2003. At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (11), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.

### **Subsection (13)**

38. **Subsection (13)** defines publication for the purposes of section 2 as an article or record of any description which contains matter to be read, matter to be listened to, or matter to be looked at or watched. This means that as well as covering books the section will also cover, amongst other things, films and videos (with or without sound), cassette tapes, electronic books, material contained on CD-ROMs and photographs. This definition of publication is different from that provided for in section 20 of the Act. Article and record are defined in section 20(2) and (8). Article includes anything for storing data such as a CD-ROM. Record means anything that is not an article, including a temporary electronic record that only exists for the purpose of, and during the transmission of, its contents. Under section 20(8) if there is a reference to what is contained in an article or record this includes anything embodied or stored on or in it and anything that may be reproduced from it.