

# The decreasing of safeguards in UK anti-terror law is a worrying trend that should be halted

By The Author

*The recent assertion that current anti-terror laws are inadequate in providing the State an avenue for the prosecution of those who travel to Syria and Iraq to fight with the terror group ISIS is simply incorrect. This call has merely served to create a panicked parliamentary and media response. **Simon Hale-Ross** argues for an end to the movement towards greater permissiveness in our anti-terror law.*



Civilians in Iraq, where the Islamic State have recent taken control of several towns and cities ( Credit: Peter Stevens, CC BY 2.0)

Following recent news regarding British citizens leaving the UK to fight in Syria and Iraq for the terror group, the Islamic State (IS), the jihadist group formerly known as the [The Islamic State in Iraq and Syria/Levant \(ISIS/ISIL\)](#), the adequacy of the law protecting UK citizens from terror attacks has come back into sharp focus. In what appears to be an atmosphere of indignation, some have asserted that [new legislation](#) is required, containing a provision that makes it illegal for UK citizens to join and fight with international terror groups. Given that up to [500 UK citizens](#) are now fighting with ISIS, the intent and extremist views of those returning to the UK are highlighted as a concern, especially so, given the relatively [unknown and unpredictable](#) nature of the number of those who may pose a terror threat, although current estimates show at least 10% may commit acts of terrorism against the UK government. Returning citizens may also use the UK as a base to gain funds and support for terrorist action overseas, potentially against UK neighbours.

Further legislation, however, is not necessary. [The Terrorism Act 2000](#) and the [Terrorism Act 2006](#), which extremely wide in nature, serve to provide a robust and clear legal framework. [Section 1 Terrorism Act 2000](#) defines an act of terrorism occurring when there is the use or threat of action, that is designed to influence the government or international governmental organisation, or to intimidate the public or section of the public, committed for the purposes of advancing a political, religious, racial or ideological cause. This national legislation has an international effect, as the phrase 'government' is not confined to the UK. It is applicable to those actions taken against any government, be it democratic or otherwise. The judiciary in [R v F 2007](#) and [R v Gul 2012](#) has

affirmed the extra-territorial application.

[Sections 5 and 6 of the Terrorism Act 2006](#) furthers this, confirming that a person commits an offence if he intends to commit acts of terrorism, intends to assist another and engages in preparation, or receives training for terrorist purposes. All anti-terror legislation, with particular reference to the above is purposefully wide in nature to ensure such actions are captured.

Political debates in this area tend to revolve around the intrusiveness of legislation: the State being afforded wide powers, conjuring Orwellian images, verses individual human rights. In the UK, an intrusiveness sine curve can be observed, with State anti-terrorism powers increasing from 2000 until 2010 when a process of relaxation began, continuing today. Initially led by the UK judiciary and as a result of the jurisprudence of the European Convention on Human Rights, the final phase was accelerated by the 2010 Coalition Government agreement campaigning to redress the balance between civil liberties and UK security in the anti-terrorism laws. The law in this area has been in a constant state of flux due to this increased permissiveness. The Coalition Government commissioned Lord Macdonald to review anti-terror legislation and in 2011 his report was persuasive in furnishing legislative change. [The Protection of Freedoms Act 2012](#) is representative of such change, influenced initially by the European Court of Human Rights decision in [Gillian v UK and Quinton v UK](#). It repealed the no-suspicion stop and search powers available to policing agencies under [s44 Terrorism Act 2000](#), replacing them with more specifically framed powers.

Pre-charge detention is another area that has been reformed since 2010. Originally standing at 28 days, officers now have 7 days, which can be extend to 14 under certain circumstances. Therefore, should a UK citizen having been fighting in Syria or Iraq return, they can be arrested and held for this time whilst evidenced is collated. Reasonable suspicion is the pre-requisite in this instance and when the police and security services do hold adequate intelligence to charge and prosecute then this action should be taken regardless of cost.

Pertinent to this argument are the changes to quasi-criminal law measures taken by the State when adequate evidence to charge and prosecute the suspect is lacking. These modifications were furnished by [R \(on the application of AP\) v Secretary of State for the Home Department](#), serving the replacement of the decidedly invasive and unpleasant system of Control Orders. Under Control Orders the citizen could be removed from their community, from their family and friends, and placed under 16-hour curfews and restricted from individuals from using mobile phones and the Internet.

Time-limited and less onerous [Terrorism Prevention and Investigation Measures Act 2011](#) (TPIMs) was introduced as a result. The result of such reform, however, means that policing powers are constrained potentially leading to some suspects being able to escape surveillance. The absconding of the terror suspect [Mohammed Ahmed Mohamed](#) who was subject to a TPIM order provides such an example. This would not have been possible under the previous control order system. It is important to note that only eleven UK citizens are currently subject to a TPIM.

Following former MI6 director [Richard Barrett's assertion](#) that the UK should be worried because the police and security agencies would be unable to monitor all British citizens who have fought in Syria and Iraq, commanded a panicked response from the media and Members of Parliament, in turn leading Lord Carlile (former independent reviewer of UK terrorism legislation) calling for '[something like control orders](#)' to be reintroduced. Considering the UK already has this in place in the form of a TPIM order, one fails to see the point of this postulation.

What changes may be required?

The absconding of Mohammed Ahmed Mohamed suggests TPIM's are not adequate in so far as surveillance and control over the suspect is concerned. The monitoring tag provided by G4S does not provide 24 hour monitoring as such and herein lays the problem. The tag simply allows the State to monitor and control what time the suspect can leave his dwelling and what time he must return. During that time, the suspect is free to travel and associate, albeit limited geographically.

It is this area that requires strengthening. One possibility is for a GPS device to be fitted inside the tag to effectively provide 24-hour monitoring. When introducing such a policy, the Coalition Government must take into

account the ECHR does not approve of blanket laws or policies that lack a proportionate response. Each particular case must be reviewed and assessed on its own merits, as the UK already does, then this would serve to satisfy that requirement.

UK anti-terrorism laws and policy are adequate in protecting the UK from acts of terrorism. However, considering what is at stake, the move towards permissiveness in our anti-terror laws from 2010 onwards is a worrying trend that should not continue since it has the potential to reduce the scope, thereby increasing the security risk posed to the UK.

---

*Note: this piece represents the views of the author and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. The shortened URL for this post is: <http://buff.ly/1uOpGdz>*

---

**Simon Hale-Ross** is a PhD candidate in law and part-time lecturer at Liverpool John Moores University, having previously studied there for a Bachelor in Laws with Honours.

