

# UNITED KINGDOM

## Country Report: Anti-terrorism laws & policing

### 1. Country Summary\*

- a. **Government:** Constitutional monarchy and parliamentary democracy
- b. **Population:** 60 609 153
- c. **Size:** 244 820 sq km
- d. **Region:** Europe
  
- e. **General**

The United Kingdom includes England, Scotland, Wales and Northern Ireland. Historically, the region has experienced terrorism and sub-state violence.<sup>1</sup> The bulk of Ireland established independence from British rule in 1922, leaving volatile Northern Ireland as a province of the UK. The Irish Republican Army (IRA) rose to prominence in Northern Ireland after rioting and clashes between Catholics and Protestants in Ulster in 1969. Well into the 1990s, the organisation employed sniper attacks, bombings and assassination in their campaign to end British rule in Northern Ireland and unify the province with the neighboring Republic of Ireland. The US State Department continued to class the IRA as a terrorist organisation as late as 2000. “Real IRA” and the “Continuity IRA” (two IRA splinter groups) still deploy terrorist tactics.<sup>2</sup> Northern Ireland appears to be a perennial source of terrorist threats within the UK. Currently, 14 organisations in Northern Ireland are proscribed under the *Terrorism Act* 2006.

In the aftermath of the attacks on the USA in 2001, the UK strengthened its counter-terrorism capabilities. After the London bombings in 2005, effective counter-terrorism measures have been treated by the government as a matter of extreme political urgency. The UK has been specifically identified as a target by Al-Qaeda and its related terrorist network.<sup>3</sup> At the end of 2006, 44 international terrorist organisations were proscribed under the UK *Terrorist Act* 2000.

### 2. Relevant Legislation

- *Terrorism Act 2000* (TA): Some of the main concerns about this act are its broad definition of terrorism and the fact that it gives permanent status to past controversial temporary measures (contained in the *Emergency Provision Act* 1973 and the *Prevention of Terrorism Act* 1974).<sup>4</sup>

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\* Many thanks to Conor Gearty, Martin Innes and Colm O’Cinneide for their thoughtful reviews of this report.

- *Anti-terrorism, Crime and Security Act 2001 (ATCSA)*: This act was speedily passed through parliament after the terrorist attacks on the USA in 2001, and enacted within a month. Some the key features include the provision for extra powers for the forfeiture of terrorist property and freezing orders for terrorists funds, and greater police powers to identify terrorist suspects through fingerprinting and photographing. Arguably the most controversial section is Part 4, which relates to immigration controls.<sup>5</sup>
- *Crime (International Cooperation) Act 2003 (CA)*
- *Prevention of Terrorism Act 2005 (PTA)*: This act repealed Part 4 of the ATCSA, and introduced a regime of “Control Orders” aimed at restricting the liberty, movement and activities of people suspected of terrorism-related activity, whether they are in the UK or not.<sup>6</sup>
- *Serious Organised Crime and Police Act 2005 (SOCPA)*
- *Terrorism Act 2006 (TA)*
- *Terrorism (Northern Ireland) Act 2006 (TNIA)*

### 3. Law Summary


Since the 1970s, the UK has passed a series of expansive and stringent laws addressing terrorism. Following the terrorist attacks on the USA in 2001, the UK passed several new pieces of legislation including the ATCSA and PCA. After the London bombing incidents on 7 and 21 July 2005, these laws were bolstered by further enactments such as the TA 2006.

### 4. Provisions

#### a. Definition:

TA 2000, Part 1, Section 1 defines “terrorism” as:

- (1) In this Act "terrorism" means the use or threat of action where-
  - (a) the action falls within Subsection (2),
  - (b) the use or threat is designed to influence the government [or international governmental organisation (TA 2006 art 34)] or to intimidate the public or a Section of the public, and
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this Subsection if it-
  - (a) involves serious violence against a person,
  - (b) involves serious damage to property,
  - (c) endangers a person's life, other than that of the person committing the action,
  - (d) creates a serious risk to the health or safety of the public or a Section of the public, or
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within Subsection (2) which involves the use of firearms or explosives is terrorism whether or not Subsection (1)(b) is satisfied.
- (4) In this Section -
  - (a) "action" includes action outside the United Kingdom,

- 
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
  - (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
  - (d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

This is a very broad definition, and has formed the basis for all future anti-terrorism legislation in the UK. The nebulous nature of this definition, including the vague concept of "influencing government", and the lack of exceptions for cases of legitimate political activity leaves scope for politicised interpretation and prosecution.

TA 2000 part 5, Section 40 defines terrorist as follows:

- (1) In this Part "terrorist" means a person who-
  - (a) has committed an offence under any of Sections 11, 12, 15 to 18, 54 and 56 to 63, or
  - (b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.
- (2) The reference in Subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the passing of this Act, concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by Section 1.

#### **b. Arrest**

TA 2000, Section 41 allows police officers to arrest individuals without warrant. This extends the ordinary powers of arrest under the *Police and Criminal Evidence Act 1984* [PACE] which requires police to have reasonable grounds for suspecting the person has committed or is about to commit an offence.


TA 2000 (as modified by TNIA), Section 82 permits arrest without warrant where an individual is reasonably suspected of committing or being about to commit a listed offence.<sup>7</sup>

TA 2000 (as modified by TNIA), Section 83 permits arrest without warrant by Army forces.

TA 2000, Section 13 confers powers of arrest without warrant upon policemen, which may be exercised in relation to individuals carrying a piece of clothing or items that arouse reasonable suspicion that they support a proscribed organisation.

#### **c. Detention/Custody**

Section 41 of the TA 2000 allows police officers to arrest individuals without warrant and subsequently detain them. During this period of detention, the detainee has the right to



have a person of their choice informed of their arrest and the place in which they are being detained (Schedule 8, Section 6).

The detainee is also entitled to inform a lawyer of their detention (Schedule 8, Section 7); however this right to counsel is limited as the detainee is obliged to meet the lawyer in the view of an officer (Schedule 8, Section 9). Further, the officer may authorise a delay in permitting the detainee external contact (Schedule 8, Section 8). Section 8(8) specifies that the extension of the delay must cease when no further grounds for the delay remain. However, there are several conceivable grounds upon which to authorise delay in contact and as such the period of incommunicado detention may be prolonged considerably. Sections 10-13 of Schedule 8 relate to the taking of fingerprints (modified by ATCSA, Section 89), non-intimate samples or intimate samples, with or without the consent of the detainee.

Under Section 41.2 TA 2000, detention without warrant should not be longer than 48 hours. However, it may be extended. Schedule 8, Part 2, Section 21 provides that the first review of the detention shall be made as soon as reasonably practicable, the subsequent reviews at intervals of no more than 12 hours. There is the possibility that review may be postponed (Section 22). If the detainee is not granted review, the officer has an obligation to inform him of his rights under Sections 6 and 7 (i.e. the right to contact).

TA 2000 Schedule 8, Section 29 (as modified by TA 2006 Section 23) provides that, if a person is detained without warrant, the authorities can extend the detention by seeking an arrest warrant that shall end no later than 28 days after the initial arrest.

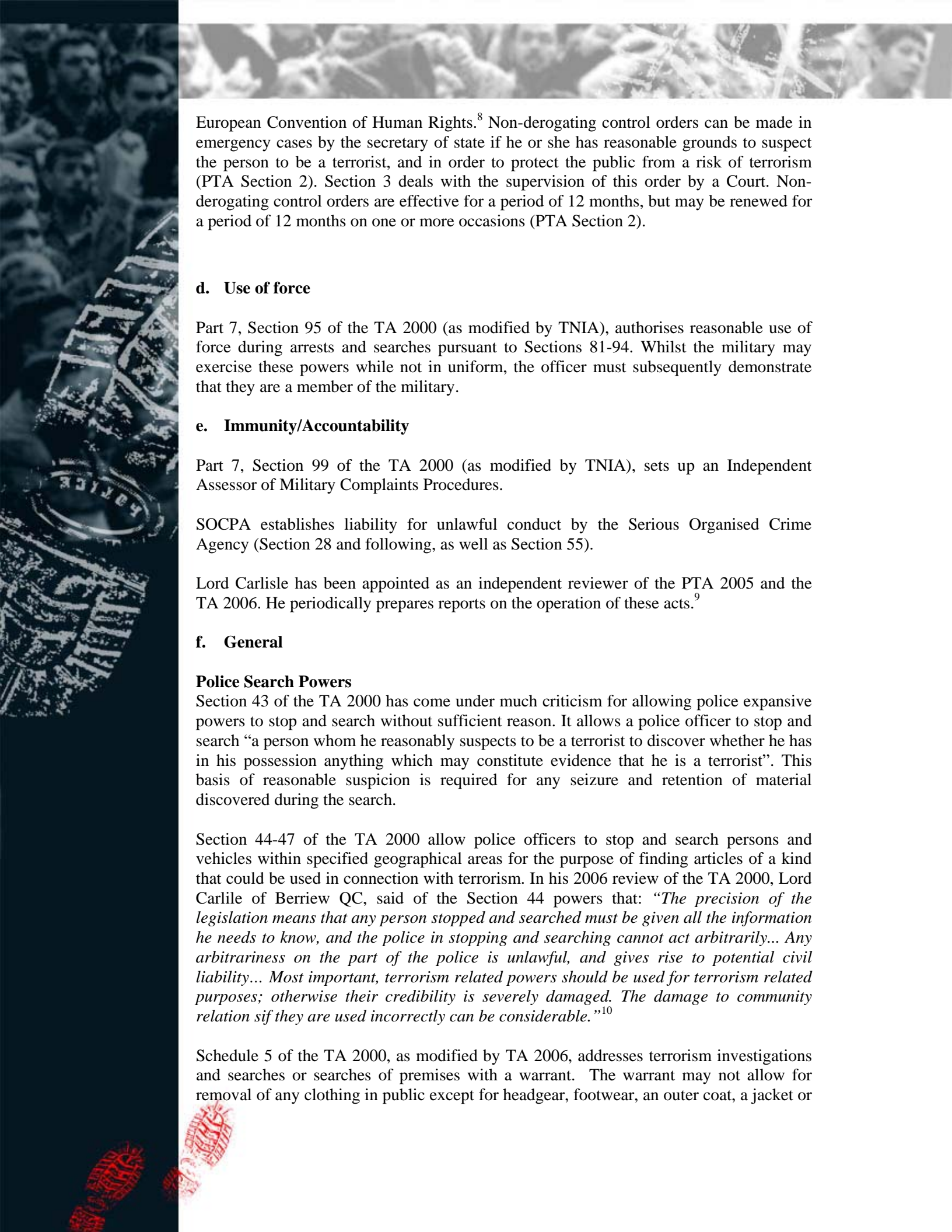
TA 2006, Section 26 sets a “sunset clause” for the provisions relating to the extended detention for 28 days. This Section provides that the provisions extending the maximum period of detention to 28 days will apply for one year, and thereafter the maximum period of detention will be reduced to 14 days, unless the Secretary provides otherwise.

TA 2000 Schedule 8, Section 30 provides that an application for a warrant for detention must be made no later than 6 hours after the initial delay of 48 hours.

TA 2000 Schedule 7 relates specifically to Northern Ireland. Under Section 69 (as modified by TNIA) the maximum length of custody is 28 days. Under Section 68, the Judge may assign a detainee legal counsel. Section 83 permits detention without warrant by the army for up to 4 hours.

**Control Orders:** Section 1 of the PTA deals principally with control orders, which can impose restrictions on an individual in the following areas: the use of specified articles, substances, services and facilities; work or occupation; communication with other people; residence; movement to, from or within the UK; and surrender of passport. A person under a control order may also be required to comply with other arrangements to monitor his or her whereabouts, to provide certain information, or to report to certain persons at specified times. A breach of a control order is a criminal offence.

These orders can either be non-derogating or derogating, with the latter amounting to a deprivation of liberty. In June 2006, the UK Court of Appeal affirmed Justice Sullivan’s High Court decision that a number of obligations imposed by control orders made under the PTA – including an obligation to spend 18 hours a day in a small flat with no use of phone or internet – amounted to a deprivation of liberty in breach of Article 5(1) of the



European Convention of Human Rights.<sup>8</sup> Non-derogating control orders can be made in emergency cases by the secretary of state if he or she has reasonable grounds to suspect the person to be a terrorist, and in order to protect the public from a risk of terrorism (PTA Section 2). Section 3 deals with the supervision of this order by a Court. Non-derogating control orders are effective for a period of 12 months, but may be renewed for a period of 12 months on one or more occasions (PTA Section 2).

#### **d. Use of force**

Part 7, Section 95 of the TA 2000 (as modified by TNIA), authorises reasonable use of force during arrests and searches pursuant to Sections 81-94. Whilst the military may exercise these powers while not in uniform, the officer must subsequently demonstrate that they are a member of the military.

#### **e. Immunity/Accountability**

Part 7, Section 99 of the TA 2000 (as modified by TNIA), sets up an Independent Assessor of Military Complaints Procedures.

SOCPA establishes liability for unlawful conduct by the Serious Organised Crime Agency (Section 28 and following, as well as Section 55).

Lord Carlisle has been appointed as an independent reviewer of the PTA 2005 and the TA 2006. He periodically prepares reports on the operation of these acts.<sup>9</sup>


#### **f. General**

##### **Police Search Powers**

Section 43 of the TA 2000 has come under much criticism for allowing police expansive powers to stop and search without sufficient reason. It allows a police officer to stop and search “a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist”. This basis of reasonable suspicion is required for any seizure and retention of material discovered during the search.

Section 44-47 of the TA 2000 allow police officers to stop and search persons and vehicles within specified geographical areas for the purpose of finding articles of a kind that could be used in connection with terrorism. In his 2006 review of the TA 2000, Lord Carlile of Berriew QC, said of the Section 44 powers that: *“The precision of the legislation means that any person stopped and searched must be given all the information he needs to know, and the police in stopping and searching cannot act arbitrarily... Any arbitrariness on the part of the police is unlawful, and gives rise to potential civil liability... Most important, terrorism related powers should be used for terrorism related purposes; otherwise their credibility is severely damaged. The damage to community relation sif they are used incorrectly can be considerable.”*<sup>10</sup>

Schedule 5 of the TA 2000, as modified by TA 2006, addresses terrorism investigations and searches or searches of premises with a warrant. The warrant may not allow for removal of any clothing in public except for headgear, footwear, an outer coat, a jacket or



gloves (TA 2000, Schedule 5, Section 1(4)). In urgent cases, an officer is allowed to personally sign him/herself the warrant (TA 2000, Schedule 5, Section 15).

Power to stop and search in Northern Ireland under art 96 of the TCSA, that modifies the Public Order (Northern Ireland) Order 1987 (POO):

- (1) If a police officer of or above the rank of inspector reasonably believes-
- (a) that incidents involving serious violence may take place in any locality, and that it is expedient to give an authorisation under this Article to prevent or control their occurrence, or
  - (b) that persons are carrying dangerous instruments or offensive weapons in any locality without good reason,

he may give an authorisation that the powers conferred by this Article are to be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.

- (2) This Article confers power on any constable in uniform-
- (a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;
  - (b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments;
- and a constable may in the exercise of those powers stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or dangerous instruments.

This article allows as well for the seizure of dangerous instruments or articles that could be weapons.

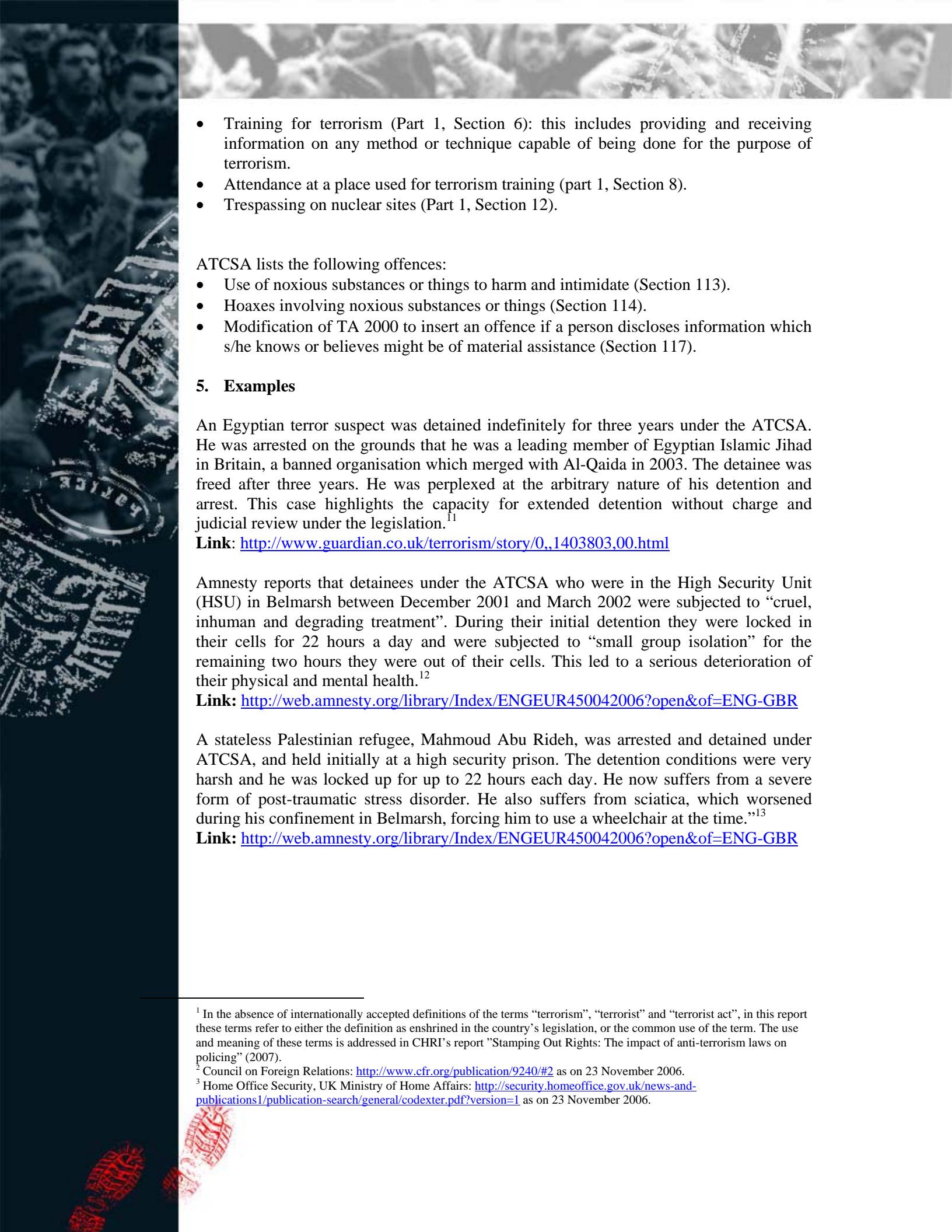
### **Terrorism Offences**

TA 2000 (part 6) lists the following terrorist offences:

- It is an offence to provide, receive or invite to receive instructions or training in the making or the use of firearms, explosives, or chemical, biological or nuclear weapons (Section 54). It is a defence for the person charged under this Section in relation to instruction or training to prove that his/her action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.
- Directing, at any level, the activities of an organisation that is concerned in the commission of acts of terrorism (Section 56).
- Possession of an article in circumstances which give rise to a reasonable suspicion that the possession is linked with a terrorist action (Section 57).
- Collection or possession of information likely to be useful to a person preparing or committing an act of terrorism (Section 58).
- Inciting terrorism (Sections 59-61).

TA 2006 sets out the following offences:

- Encouragement of terrorism: “a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences”. There is no need for a link with a particular act or attempt of an act of terrorism (Part 1, Section 1).
- Dissemination of terrorist publications (Part 1, Section 1).
- Preparation of terrorist acts (Part 1, Section 5).

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- Training for terrorism (Part 1, Section 6): this includes providing and receiving information on any method or technique capable of being done for the purpose of terrorism.
  - Attendance at a place used for terrorism training (part 1, Section 8).
  - Trespassing on nuclear sites (Part 1, Section 12).

ATCSA lists the following offences:

- Use of noxious substances or things to harm and intimidate (Section 113).
- Hoaxes involving noxious substances or things (Section 114).
- Modification of TA 2000 to insert an offence if a person discloses information which s/he knows or believes might be of material assistance (Section 117).

## 5. Examples

An Egyptian terror suspect was detained indefinitely for three years under the ATCSA. He was arrested on the grounds that he was a leading member of Egyptian Islamic Jihad in Britain, a banned organisation which merged with Al-Qaida in 2003. The detainee was freed after three years. He was perplexed at the arbitrary nature of his detention and arrest. This case highlights the capacity for extended detention without charge and judicial review under the legislation.<sup>11</sup>

**Link:** <http://www.guardian.co.uk/terrorism/story/0,,1403803,00.html>

Amnesty reports that detainees under the ATCSA who were in the High Security Unit (HSU) in Belmarsh between December 2001 and March 2002 were subjected to “cruel, inhuman and degrading treatment”. During their initial detention they were locked in their cells for 22 hours a day and were subjected to “small group isolation” for the remaining two hours they were out of their cells. This led to a serious deterioration of their physical and mental health.<sup>12</sup>

**Link:** <http://web.amnesty.org/library/Index/ENGEUR450042006?open&of=ENG-GBR>

A stateless Palestinian refugee, Mahmoud Abu Rideh, was arrested and detained under ATCSA, and held initially at a high security prison. The detention conditions were very harsh and he was locked up for up to 22 hours each day. He now suffers from a severe form of post-traumatic stress disorder. He also suffers from sciatica, which worsened during his confinement in Belmarsh, forcing him to use a wheelchair at the time.”<sup>13</sup>

**Link:** <http://web.amnesty.org/library/Index/ENGEUR450042006?open&of=ENG-GBR>

<sup>1</sup> In the absence of internationally accepted definitions of the terms “terrorism”, “terrorist” and “terrorist act”, in this report these terms refer to either the definition as enshrined in the country’s legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI’s report “Stamping Out Rights: The impact of anti-terrorism laws on policing” (2007).

<sup>2</sup> Council on Foreign Relations: <http://www.cfr.org/publication/9240/#2> as on 23 November 2006.

<sup>3</sup> Home Office Security, UK Ministry of Home Affairs: <http://security.homeoffice.gov.uk/news-and-publications1/publication-search/general/codexter.pdf?version=1> as on 23 November 2006.

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<sup>4</sup> Amnesty International Report (23 February 2006) *United Kingdom – Human Rights: A Broken Promise*: <http://web.amnesty.org/library/index/engneur450042006> as on 23 November 2006.

<sup>5</sup> Amnesty International Report (23 February 2006) *United Kingdom – Human Rights: A Broken Promise*: <http://web.amnesty.org/library/index/engneur450042006> as on 23 November 2006.

<sup>6</sup> Amnesty International Report (23 February 2006) *United Kingdom – Human Rights: A Broken Promise*: <http://web.amnesty.org/library/index/engneur450042006> as on 23 November 2006.

<sup>7</sup> This part ceases to have effect one year after its entry in force unless renewed, TA 2000, Part 7, section 112. It was renewed under the TNIA, section 1, at the exception of section 78.

<sup>8</sup> See Judiciary of England and Wales (1 August 2006) *Summary of Judgments: Secretary of State for the Home Department v MB and Secretary of State for the Home Department v JJ, KK, GG, HH, NN & LL*: <http://www.icj.org/IMG/UKAppealsCOSummary.pdf> as on 30 November 2006. See also BBC News (28 June 2006) “Judge Quashes Anti-Terror Orders”: [http://news.bbc.co.uk/2/hi/uk\\_news/5125668.stm](http://news.bbc.co.uk/2/hi/uk_news/5125668.stm) as on 30 November 2006.

<sup>9</sup> See, eg, Lord Carlile of Berriew QC (June 2007) “Report of the Operation in 2006 of the Terrorism Act 2000”: <http://security.homeoffice.gov.uk/news-publications/publication-search/terrorism-act-2000/TA2000-review061.pdf?view=Binary> as on 20 September 2007.

<sup>10</sup> Lord Carlile of Berriew QC (June 2007) “Report of the Operation in 2006 of the Terrorism Act 2000”, p. 30: <http://security.homeoffice.gov.uk/news-publications/publication-search/terrorism-act-2000/TA2000-review061.pdf?view=Binary> as on 20 September 2007.

<sup>11</sup> Travis, A (2 February 2005) ‘Surprise release for terror suspect’ *The Guardian*: <http://www.guardian.co.uk/terrorism/story/0,,1403803,00.html> as on 30 November 2006.

<sup>12</sup> Amnesty International Report (23 February 2006) *United Kingdom – Human Rights: A Broken Promise*, p. 26: <http://web.amnesty.org/library/index/engneur450042006> as on 23 November 2006.

<sup>13</sup> Amnesty International Report (23 February 2006) *United Kingdom – Human Rights: A Broken Promise*, p. 28: <http://web.amnesty.org/library/index/engneur450042006> as on 23 November 2006.