# Criminal Offences Relating to Terrorism

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Andrew Cornford[1]

## 1. Introduction

The Terrorism Act 2000 defines terrorism as an act of a specified type that is 'designed to influence the government… or intimidate a section of the public' and that has 'the purpose of advancing a political, religious, racial or ideological cause'.[2] The specified types of action include serious violence, serious damage to property, and endangering the life, health, or safety of others.[3] Thus defined, acts of terrorism will generally be instances of 'ordinary' criminal offences. Examples include murder and other offences of violence against the person, as well as offences under firearms, explosives, and public order legislation. Additionally, the criminal laws of the United Kingdom[4] contain a range of 'inchoate' offences, which criminalise attempting, assisting, encouraging, and conspiring to commit other crimes. They therefore also catch various forms of involvement in terrorist plots, even those that ultimately fail.

The Terrorism Acts of 2000 and 2006 created a range of offences relating specifically to terrorism. The object of these offences was not acts of terrorism themselves, or those forms of inchoate involvement that are already criminalised. Such conduct can be and often is prosecuted as an 'ordinary' offence[5] – especially in Northern Ireland, where there seems to be

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[1] School of Law, University of Edinburgh. Email: a.cornford@ed.ac.uk. I am grateful to Kajsa Dinesson for helpful comments and discussion, and for sharing relevant early findings from her unpublished doctoral research: *Defining the Law: on Police and Prosecutorial Decision-Making under Broad and Vague Terrorism Offences*. The project draws on a variety of documentary sources, as well as interviews with decision-makers, to develop a picture of how terrorism offences are used in practice, and has informed the analysis below in several places.

[2] Terrorism Act 2000, s 1(1).

[3] Terrorism Act 2000, s 1(2).

[4] The United Kingdom in fact contains not one system of criminal law but three: those of Scotland, Northern Ireland, and England and Wales. The offences discussed in this paper apply across all three jurisdictions, so for the most part, it will not distinguish among them. However, it is worth bearing in mind that they differ, including in the range of 'ordinary' offences that might be used to deal with terrorist acts.

[5] Statistics on prosecutions for terrorism offences in Great Britain are included in a quarterly statistical bulletin published by the Home Office. For, at the time of writing, the most recent update, see Home Office, *Statistics on the Operation of Police Powers under the Terrorism Act 2000 and Related Legislation: Year to March 2022: Annual Data Tables* (2022) <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-march-2022>. Prosecutions for 'ordinary' offences in terrorism cases are

a marked preference for ordinary criminal charges in terrorism-related prosecutions.[6] Rather, the objects of these offences are the earlier stages of, and more remote forms of involvement in, terrorism and terrorist plots. Criminal law, it is thought, should 'defend further up the field' in this context than in others, given the scale of destruction and intimidation that terrorist attacks can cause.[7]

This precautionary approach has characteristic advantages and disadvantages. On the one hand, it enables the more efficient disruption of potential terrorist plots. Most importantly, it ensures that those involved at early stages of these plots can be arrested, prosecuted, and imprisoned before any real danger to the public is created. On the other hand, broader criminal offences create broader coercive powers and restrict a broader range of freedoms. The risk of the precautionary approach is thus that it also interferes with much conduct that does not involve a significant link to or risk of terrorism. This possibility becomes particularly concerning when the freedoms restricted are protected by human rights law, and when essentially innocent conduct can lead to a criminal conviction.

This central tension is well illustrated by the broad range of offences contained in the 2000 Act. These include:

- Offences relating to proscribed organisations: membership (section 11), inviting or encouraging support (section 12), and wearing a uniform (section 13).

- Offences relating to terrorist financing: fundraising (section 15), use or possession of property for terrorist purposes (section 16), entering into or becoming concerned in arrangements that fund terrorism (section 17), making insurance payments in response to terrorist demands (section 17A), and laundering terrorist property (section 18).

- Failure to disclose information that might be of assistance in preventing an act of

covered in table A.05b.

[6] For the most recent statistical bulletin relating to Norther Ireland, see Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2020/21* (2021) <https://www.gov.uk/government/statistics/northern-ireland-terrorism-legislation-annual-statistics-202021>. Prosecutions are listed by offence charged in table 5.1.

[7] D Anderson, 'Shielding the Compass: How to Fight Terrorism without Defeating the Law' [2013] European Human Rights Law Review 233, 237-240.

terrorism or in apprehending a terrorist offender (section 38B). There are also offences for those who, in the course of their employment, fail to disclose information or suspicions about possible financing offences (sections 19 and 21A).

- Disclosure of information that is likely to prejudice an investigation into terrorism or terrorist financing (sections 21D and 39).

- Offences relating to terrorist training: the 2000 Act created an offence of providing or receiving weapons training (section 54), which was supplemented in the 2006 Act by more general offences of providing or receiving terrorist training (section 6) and attending a place used for such training (section 8).

- Directing a terrorist organisation (section 56).

- Possession of articles for terrorist purposes (section 57).

- Collection of information of a kind likely to be useful to a terrorist (section 58). There is also a specific offence of eliciting or publishing such information when it relates to a member of the armed forces or intelligence services (section 58A; formerly section 103).

- Offences of inciting terrorism outside the United Kingdom (sections 59 to 61). There are also provisions that extend jurisdiction for various acts of terrorism and offences under the 2000 Act when committed outside the United Kingdom (sections 62 to 63D).

As will be demonstrated below, these offences vary greatly in their importance in practice. The 2006 Act, by contrast, created a relatively small number of offences, most of which have proved to be important. These include:

- Encouragement of terrorism (section 1).

- Dissemination of terrorist publications (section 2).

- Preparation of terrorist acts (section 5).

## 2. Prosecutions: statistical information

It is impossible to say exactly how often these offences are used in prosecutions. No set of data is available that covers the whole of the United Kingdom or that records every instance of a terrorism offence being charged. There are, however, published statistics relating to both Great Britain and Northern Ireland that paint a partial picture.

### *2.1. Great Britain*

In Great Britain, Home Office statistics record the number of times that certain terrorism offences have featured as the principal offence with which a person is charged: that is, the offence carrying the highest maximum penalty.[8] The following table lists these offences, from most to least frequently used:

| **Offence** | **Before 2006 Act** | **Since 2006 Act** | **Total** |
|---|---|---|---|
| Preparation (2006 Act, s 5) | - | 197 | **197** |
| Collection of information (2000 Act, s 58) | 7 | 166 | **173** |
| Dissemination (2006 Act, s 2) | - | 98 | **98** |
| Proscribed organisations (2000 Act, ss 11-13) | 22 | 68 | **90** |
| Possession for terrorist purposes (2000 Act, s 57) | 51 | 36 | **87** |
| Financing (2000 Act, ss 15-19) | 26 | 50 | **76** |
| Encouragement (2006 Act, s 1) | - | 40 | **40** |
| Provision of information (2000 Act, ss 38B and 39) | 15 | 22 | **37** |
| Incitement overseas (2000 Act, ss 59-61) | 4 | 9 | **13** |
| Training (2006 Act, ss 6 and 8) | - | 11 | **11** |
| Weapons training (2000 Act, ss 54 and 56) | 2 | 3 | **5** |

[8] Home Office, *Statistics on the Operation of Police Powers under the Terrorism Act 2000 and Related Legislation* (n 5 above) table A.05a.

| | | | |
|---|---|---|---|
| Fundraising overseas (2000 Act, s 63) | 0 | 2 | **2** |

It can be seen that preparation of terrorist acts is the offence most frequently used as a principal charge, despite not being created until 2006. A close second is the collection of information offence, which, despite its presence in the 2000 Act, has increased in importance since the 2006 Act was passed. Less often but still frequently used are the offences relating to financing and proscribed organisations under the 2000 Act, and those relating to encouragement of terrorism under the 2006 Act. Some other offences under the 2000 Act were formerly frequently used, but have become less important since 2006: most notably, possession for terrorist purposes,[9] but also the offences relating to the provision of information.

Where a person is charged with multiple offences, charges other than the principal offence are not counted in these figures. Thus, they likely understate how often some offences are charged. For example, preparation of terrorist acts carries a maximum sentence of life imprisonment,[10] so where it is charged, it is likely to be the principal offence. Offences that may be charged alongside it – such as encouragement, dissemination, and collection of information – are likely used more frequently than the above figures show.[11]

The available evidence suggests, however, that the complete picture does not differ dramatically from the above. Reports of the Independent Reviewer of Terrorism Legislation, for example, typically contain a brief summary of prosecutions in the year under review. Reporting on 2016, Max Hill KC remarked that 'offences of great utility' appear to include preparation, dissemination, collection of information, the financing offences, and inviting support for proscribed organisations; whereas we should consider 'the existence of any ongoing need' for some others, including the training offences and possession for terrorist

[9] The table in fact understates how dramatic the change has been in relation to this offence: it continued to be used frequently as a principal charge for a couple of years after 2006, but since then, has rarely been used as such more than once or twice per year.
[10] Terrorism Act 2006, s 5(3).
[11] For this reason, the current Independent Reviewer of Terrorism Legislation recommended that statistics should cover all offences charged, and not just the principal offence: J Hall, *The Terrorism Acts in 2018* (2020) <https://terrorismlegislationreviewer.independent.gov.uk/terrorism-acts-in-2018/> at [7.8]. However, this recommendation was rejected by the Government: J Hall, *The Terrorism Acts in 2019* (2021) <https://terrorismlegislationreviewer.independent.gov.uk/second-annual-review-on-terrorism-in-the-uk/> at [7.9].

purposes.[12] The reports of the current Independent Reviewer, Jonathan Hall KC, have remained consistent with these remarks.[13]

*2.2. Northern Ireland*

Statistics relating to prosecutions in Northern Ireland are published by the Northern Ireland Office, based on data collected by the Police Service of Northern Ireland.[14] These statistics differ from the Home Office statistics in various respects, which make direct comparison impossible. In one respect, the Northern Ireland statistics are broader in their coverage. They capture all uses of terrorism offences, not just use as a principal charge. In other respects, however, they are more limited. Most importantly, they refer only to cases that are 'linked to the security situation in Northern Ireland'.[15] It has been suggested that they ought rather to be 'ideology-neutral', as the Home Office statistics are.[16]

Analysis of the Northern Ireland statistics is also complicated by several factors. Unlike in Great Britain, the underlying data tables are not published, so prosecutions cannot easily be broken down by year. Prosecution figures are listed in three separate tables, which cover different periods and name the offences concerned in different ways.[17] The following table is an attempt to collate these figures,[18] using the same groupings as are used in the Home Office statistics where this aids comparison:

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[12] M Hill, *The Terrorism Acts in 2016* (2018) <https://terrorismlegislationreviewer.independent.gov.uk/the-terrorism-acts-in-2016/> at [7.9]-[7.10].
[13] Hall, *The Terrorism Acts in 2018* (n 11 above) at [7.11]; Hall, *The Terrorism Acts in 2019* (n 11 above) at [7.13]; J Hall, *The Terrorism Acts in 2020* (2022) <https://terrorismlegislationreviewer.independent.gov.uk/terrorism-acts-in-2020/> at [7.7].
[14] Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2020/21* (n 6 above).
[15] Police Service of Northern Ireland, *Police Recorded Security Statistics in Northern Ireland: Historic Information up to and Including July 2022: Accompanying Spreadsheet* (2022) <https://www.psni.police.uk/inside-psni/Statistics/security-situation-statistics> Explanatory Notes.
[16] Hall, *The Terrorism Acts in 2020* (n 13 above) at [9.35]. It should also be noted that the Northern Ireland statistics refer only to persons arrested under s 41 of the Terrorism Act 2000. In practice, however, this is not a significant difference, as unlike in Great Britain, terrorism-related arrests are normally carried out under s 41 in Northern Ireland: ibid at [9.36].
[17] Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2020/21* (n 6 above) Tables 5.1 (charges brought against persons by individual offence), 5.3 (persons charged with offences under the Terrorism Act 2000), and 5.4 (persons charged with offences under the Terrorism Act 2006 or Counter-Terrorism Act 2008).
[18] For offences under the 2000 Act, this table is based on Table 5.3, as this explicitly identifies the provisions to which the figures relate. The equivalent table for the 2006 Act, Table 5.4, only includes figures for the past year; the figures presented here are thus supplemented by figures from Table 5.1 that appear to relate to the same offences, but without explicitly identifying the relevant provisions.

| Offence | Charges |
|---|---|
| Proscribed organisations (2000 Act, ss 11-13) | 167 |
| Possession for terrorist purposes (2000 Act, s 57) | 158 |
| Collection of information (2000 Act, s 58) | 84 |
| Financing (2000 Act, ss 15-19) | 55 |
| Preparation (2000 Act, s 5) | 54 |
| Directing terrorist organisation (2000 Act, s 56) | 21 |
| Terrorist information (2000 Act, s 103) | 15 |
| Training (2006 Act, ss 6 and 8) | 4 |
| Weapons training (2000 Act, s 54) | 4 |
| Encouragement (2006 Act, s 1) | 1 |
| Dissemination (2006 Act, s 2) | 0 |

*2.3. Discussion*

Although direct comparison is impossible, the above figures suggest some similarities between Great Britain and Northern Ireland. Some offences – notably preparation, collection of information, the financing offences, and the proscribed organisations offences – are among the most frequently used in both places. Some offences also seem to be rarely used throughout the United Kingdom: notably, those relating to training,[19] conduct overseas, and the provision of information.

There are also some apparent differences. Most strikingly, the encouragement and dissemination offences are very important in Great Britain, whereas they seem barely to have been used in Northern Ireland. Among the offences that are frequently used in both places, there seem to be differences of relative importance. Whereas the preparation and collection of information offences are the most frequently used as principal charges in Great Britain, the proscribed organisations offences are the most frequently prosecuted in Northern Ireland. And while there are high numbers of charges for possession for terrorist purposes in both places, this offence has been used more frequently in Northern Ireland.

[19] Although the offence of directing a terrorist organisation under s 56 of the 2000 Act – which is, for some reason, grouped with weapons training in the Home Office statistics – has been used relatively often in Northern Ireland.

The offence of possession for terrorist purposes is worth dwelling upon briefly. Roughly speaking, a person commits this offence if they possess any article 'for a purpose connected with the commission, preparation or instigation of an act of terrorism'.[20] The focus of the offence, in other words, is action towards a terrorist intention. As the next section will discuss, this is also the focus of the offence of preparation of terrorist acts. The possession offence may have declined from its former frequent use because it was 'eclipsed' by the preparation offence.[21] The same phenomenon may explain the limited use of the training offences, as training can also constitute preparation. Other examples of such overlap could also be highlighted.[22]

Although one might speculate further as to what explains these patterns of use, such discussion lies beyond the scope of this paper. Rather, the paper turns now to examine in more detail the terrorism offences that are most frequently prosecuted.[23]

## 3. Preparation of terrorist acts

As noted above, the offence of preparation of terrorist acts is among the most serious and the most frequently prosecuted of the terrorism offences. A person commits this offence if they intend to commit or assist acts of terrorism, and they engage 'in any conduct in preparation for giving effect to [this] intention'.[24] The intention need only relate to 'acts of terrorism' generally, rather than to any particular such act.[25] Involvement in a specific plot is thus not required for conviction, provided that a generalised intention to commit or assist terrorism can be proved.[26]

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[20] Terrorism Act 2000, s 57. In fact, the definition given in the text is a simplification: a person commits the offence if it would be *reasonable to suspect* them of having such a purpose, and the lack of any such purpose rather functions as a defence. By s 118 of the 2000 Act, however, the prosecution must generally prove beyond reasonable doubt that the defendant's purpose was a terrorist one. In practice, therefore, the unusual structure of s 57 is unlikely to make a significant difference.

[21] M Hill, *The Terrorism Acts in 2016* (n 12 above) at [7.11].

[22] Another example discussed in this paper is the overlap between the dissemination and collection of information offences: see text at n 83 below.

[23] The offences relating to terrorist financing are not discussed in detail, as the Commission is considering this regime in a separate session.

[24] Terrorism Act 2006, s 5(1).

[25] Terrorism Act 2006, s 5(2).

[26] See e.g. *R v Farooqi* [2013] EWCA Crim 1649, [2014] 1 Cr App R 8: the defendant in this case was convicted of preparation and sentenced to life imprisonment, even though an undercover operation had not found evidence of involvement in any specific plot.

The most notable feature of this offence is that literally any preparatory conduct can suffice for conviction. This includes everything from the first concrete steps towards a terrorist intention to the final stages of developed attack plans. At least in Great Britain, conduct at these final stages is often prosecuted as another type of offence: for example, conspiracy to murder or to cause explosions.[27] However, attack planning of other types often features in prosecutions for preparation. Probably the most frequent examples are acquiring, building, and/or testing bombs or other weapons,[28] often in combination with reconnaissance or research into potential targets.[29]

The offence is often also used, however, for earlier stages of preparation, where plans for any specific attack remain vague or absent. In recent years, the most commonly prosecuted type of preparation has been travelling, or preparing to travel, to join terrorist groups fighting abroad, most often in Syria.[30] Another common example is running or undertaking terrorist training,[31] or organising travel abroad with a view to receiving such training.[32] Even discussing such matters with others, or making contact in order to discuss them, can constitute relevant preparatory conduct: again, contacting others about travel to Syria is one example.[33]

The greatly varying seriousness of the conduct caught by this offence is reflected in the relevant sentencing guideline.[34] Like all such guidelines, this sets out several starting points for sentencing, based on the harmfulness and culpability of the offender's conduct. The former depends here on the scale and magnitude of harm that the planned attack would have risked, and on how likely the plan was to succeed. The latter depends on the offender's level

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[27] See the examples discussed in *R v Kahar* [2016] EWCA Crim 568, [2016] 1 WLR 3156 at [30]-[31]. In Northern Ireland, it may be that preparation charges are more commonly used for completed plots or failed attempts that have a terrorist dimension: Dinesson, *Defining the Law* (n 1 above).
[28] See e.g. *R v Tabbakh* [2009] EWCA Crim 464, [2010] Crim LR 79; *R v Roddis* [2009] EWCA Crim 585; *R v Khan* [2009] EWCA Crim 1085, [2010] 1 Cr App R (S) 35; *R v Khan* [2013] EWCA Crim 468; *R v Aziz* [2018] EWCA Crim 2412; *R v Shaikh* [2021] EWCA Crim 45, [2021] 2 Cr App R (S) 24.
[29] See e.g. *R v Hussain* [2018] EWCA Crim 2673; *R v Syed* [2018] EWCA Crim 2809, [2019] 1 WLR 2459; *R v Boular* [2019] EWCA Crim 798, [2019] 2 Cr App R (S) 41; *R v Ali* [2019] EWCA Crim 1527, [2020] 1 WLR 402.
[30] Dinesson, *Defining the Law* (n 1 above). Examples from the case law include *R v Ali* [2018] EWCA Crim 1475; *R v Rashid* [2019] EWCA Crim 797.
[31] See e.g. *Re Coney's Application for Bail* [2012] NIQB 110; *R v Sarwar* [2015] EWCA Crim 1886, [2016] 1 Cr App R (S) 54.
[32] See e.g. *R v Dart* [2014] EWCA Crim 2158.
[33] See e.g. *R v Ulhaq* [2016] EWCA Crim 2209: the defendant in this case had made contact with an Islamic State fighter about travelling to Syria, but had not yet acted on that advice in any way.
[34] Sentencing Council, 'Preparation of Terrorist Acts' (2018) <https://www.sentencingcouncil.org.uk/offences/crown-court/item/preparation-of-terrorist-acts/>.

of involvement in the plan ('lesser', 'significant', or 'leading') and on how advanced their preparations were (from 'very limited' to 'complete').[35] The starting points range from four years' imprisonment to life imprisonment with a minimum term of 35 years.

As well as varying in seriousness, preparatory conduct also varies in how great a risk it suggests of an impending terrorist attack. According to criminological research, some of the conduct mentioned above implies a stronger case for intervention: for example, acquiring weapons, building bombs, or recruiting others to participate in an attack. Other conduct, however, implies a less urgent need: for example, research, meetings, communications, or even participation in training.[36] Whether any preparatory conduct should suffice for this offence, or whether it could be limited to more specific types of such conduct, are thus questions worth considering.[37]

A further important feature of the preparation offence is the requirement for a terrorist intention. Given the wide range of conduct that might constitute this offence, liability often turns mainly on whether such an intention can be proved. In some cases, this requirement is unproblematic, as clear and repeated statements of intention are available as evidence. This is particularly common in cases involving covert surveillance or undercover operations.[38] Absent such direct evidence, however, intention can be harder to prove. Particularly at earlier stages of preparation, where the defendant's conduct may not itself indicate terrorist intention to the required standard of proof, intention is often the main issue contested at trial.

In such cases, circumstantial evidence of terrorist intention is often crucial to securing a conviction. One example is evidence of association with known terrorists or terrorist groups.[39] Perhaps the most important, however, is the possession of so-called 'mindset

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[35] These factors are mostly to be assessed relative to the offender's own plans, although likelihood of success should be judged objectively: *R v Boular* [2019] EWCA Crim 798, [2019] 2 Cr App R (S) 41 at [50]-[51].
[36] See generally BL Smith, P Roberts and KR Damphousse, 'The Terrorists' Planning Cycle: Patterns of Pre-Incident Behaviour' in G LaFree and JD Freilich (eds), *The Handbook of the Criminology of Terrorism* (Wiley Blackwell 2017); N Bouhana and others, 'Lone Actor Terrorism: Radicalisation, Attack Planning and Execution' in A Silke (ed), *Routledge Handbook of Terrorism and Counterterrorism* (Routledge 2019) 116-120.
[37] See the comparative discussion in A Cornford and A Petzsche, 'Terrorism Offences' in K Ambos and others (eds), *Core Concepts in Criminal Law and Criminal Justice: Volume I* (Cambridge University Press 2020) 179-181.
[38] See e.g. *Khan* [2009] EWCA Crim 1085; *Khan* [2013] EWCA Crim 468; *Dart* [2014] EWCA Crim 2158; *Syed* [2018] EWCA Crim 2809; *Shaikh* [2021] EWCA Crim 45. Statements found in electronic communications often also serve as direct evidence of intention: see e.g. *Sarwar* [2015] EWCA Crim 1886; *Ali* [2018] EWCA Crim 1475.
[39] See e.g. *Ulhaq* [2016] EWCA Crim 2209; *Coney* [2012] NIQB 110; *R v Connor* [2021] NICA 2.

material': material that is thought to demonstrate an extremist ideology or commitment to a terrorist cause.[40] This can include a wide range of propaganda materials and terrorist imagery, such as videos of terrorist attacks.[41] In at least some cases, such materials have provided almost the sole evidence of alleged terrorist intention, combined with the defendant's failure to give evidence to explain them away.[42]

The reliance on mindset material as evidence of terrorist intention raises several potential concerns. A first is the probative value of such material: that is, how much likelier a person is to have terrorist intentions if they possess it. Research suggests that this probative value may be limited: interest in extremist materials is not strongly correlated with extremist behaviour, and many people possess such materials who do not have terrorist intentions.[43] These points may be obscured if, as seems to be the case, the quantity and distressing content of the material found are considered sufficient to justify its use.[44]

A second, related concern is the risk of underplaying alternative explanations for the defendant's behaviour. An example of how this concern might arise is the case of *Roddis*, in which the defendant was charged with acquiring instructions and ingredients for making a bomb. The Crown argued that this was action on a terrorist intention, relying, among other things, on extremist material found in his possession. The defendant argued that his behaviour rather reflected a childish obsession, and that some of it amounted to practical jokes or pranks. This explanation was supported by a diagnosis of autism spectrum disorder (ASD). This condition, it was argued, explained the defendant's unusual and fixated interests, and his failure to see how his 'pranks' would be perceived by others. Following multiple appeals, however, his conviction was upheld. The mindset evidence was correctly admitted,[45] and the ASD diagnosis did not affect the safety of his conviction.[46]

A final concern is the potential prejudicial effects of admitting mindset evidence. Again,

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[40] Propoganda materials often serve this evidential role in preparation cases, as well as being an aggravating factor that increases the seriousness of the offence: Dinesson, *Defining the Law* (n 1 above).
[41] See e.g. *Tabbakh* [2009] EWCA Crim 464; *Roddis* [2009] EWCA Crim 585; *R v Iqbal* [2010] EWCA Crim 3215; *Coney* [2012] NIQB 110; *Ulhaq* [2016] EWCA Crim 2209; *R v Hussain* [2018] EWCA Crim 2673.
[42] See e.g. *Tabbakh* [2009] EWCA Crim 464.
[43] For further discussion and references, see A Cornford, 'Terrorist Precursor Offences: Evaluating the Law in Practice' [2020] Criminal Law Review 663, 668-670.
[44] See e.g. the remarks of the Court of Appeal in *Roddis* [2009] EWCA Crim 585 at [13].
[45] *Roddis* [2009] EWCA Crim 585.
[46] *R v Roddis* [2020] EWCA Crim 396, [2020] 4 WLR 69.

*Roddis* is a good illustration here: the materials relied upon included videos of beheadings, edited versions of which were played to the jury. Research has found that such shocking imagery tends to provoke strong emotional reactions among jurors, which are associated with a higher likelihood of conviction.[47] Overall, more careful regulation of the use of such evidence – or the adoption of a more stringent requirement, such as a firm intention to commit a specific terrorist act[48] – are worth considering as options for reform.

**4. Collection of information**

Section 58 of the Terrorism Act 2000 is headed 'Collection of information'. It makes it an offence to collect, record, possess, or view via the internet 'information of a kind likely to be useful to a person committing or preparing an act of terrorism'.[49] Case law has held that this means 'information which would typically be of use to terrorists, as opposed to ordinary members of the population'.[50] The information must, that is, be of a kind that is useful to prospective terrorists, and not 'in every day use by ordinary members of the public'.[51]

A person charged under section 58 has a defence if they can show they had a 'reasonable excuse' for collecting, possessing, or viewing such information.[52] The section does not further define 'reasonable excuse', but since 2019, it has included a non-exhaustive list of examples. These are academic research; work as a journalist; and not knowing, or having reason to believe, that the document or record in question contained information of the relevant kind.[53] Beyond these examples, case law has held that 'reasonable excuse' means an 'objectively reasonable' explanation for the defendant's actions.[54] The defendant, that is, must show that they had good reason for collecting etc the information.[55] If they cannot do so, then they face a sentence of up to 15 years' imprisonment.[56]

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[47] J Goodman-Delahunty, 'Assessing Unfair Prejudice from Extremist Images in Terrorism Trials' in D Tait and J Goodman-Delahunty (eds), *Juries, Science and Popular Culture in the Age of Terror* (Palgrave Macmillan 2017).
[48] In German law, where such a standard is adopted, it has proved difficult to secure convictions based purely on circumstantial evidence and silence at trial: Cornford and Petzsche, 'Terrorism Offences' (n 37 above) 181-184.
[49] Terrorism Act 2000, s 58(1).
[50] *R v G* [2009] UKHL 13, [2010] 1 AC 43 at [43].
[51] *R v Muhammed* [2010] EWCA Crim 227, [2010] 3 All ER 759 at [47].
[52] Terrorism Act 2000, s 58(3).
[53] Terrorism Act 2000, s 58(3A).
[54] *G* [2009] UKHL 13 at [79].
[55] *R v Y* [2010] EWCA Crim 762, [2010] 1 WLR 2644.
[56] Terrorism Act 2000, s 58(4).

The collection of information offence was originally said to be 'designed principally to catch those compiling or possessing targeting information'.[57] In practice, the focus of most prosecutions is instructional material: for example, instructions on bomb-making or carrying out different types of attack.[58] In many cases, this material is found in publications produced by terrorist organisations, such as the al-Qaeda magazine *Inspire*, or sometimes in manuals like *The Anarchist's Cookbook*.[59] However, charges have also related to a range of other types of information that could be useful to a terrorist. Examples include the name and address of a serving soldier,[60] hand-drawn plans of a Territorial Army centre,[61] advice on surveillance and avoiding detection,[62] and even a physical fitness regime written by and for prospective terrorists.[63]

The potential scope of the offence extends beyond even these types of information. Things like maps and timetables for public transport do not fall within the offence, as they are useful to ordinary people as well as to terrorists.[64] However, information may be caught even if it is readily available, limited in its usefulness to terrorists, and/or of great use for purposes other than terrorist purposes. There is no reason in law why a wide variety of 'specialist' information – about, for example, computing, infrastructure, or chemical engineering – should not be the subject of a prosecution for this offence.[65]

Since the offence catches such a wide range of information, the 'reasonable excuse' defence is important in limiting its scope. As noted above, providing a reasonable excuse means providing good reason for one's collection, possession, or viewing of the relevant information. In a limited range of cases, courts have held that, as a matter of law, an explanation cannot provide such a reason. Examples include mental illness, non-terrorist criminal purposes, and supplying the information to others who are known to subscribe to a

[57] *Legislation against Terrorism: a Consultation Paper* (Cm 4178, 1998) at [12.14]; see also Lord Lloyd of Berwick, *Inquiry into Legislation against Terrorism* (Vol. 1, Cm 3420, 1996) at [14.8].
[58] For recent examples, see e.g. *R v Cleary* [2019] EWCA Crim 2411; *R v Hafeez* [2020] EWCA Crim 453; *Dudgeon v HM Advocate* [2020] HCJAC 6.
[59] Dinesson, *Defining the Law* (n 1 above).
[60] *R v Mansha* [2006] EWCA Crim 2051, [2007] 1 Cr App R (S) 70.
[61] *G* [2009] UKHL 13.
[62] *Muhammed* [2010] EWCA Crim 227; *Hafeez* [2020] EWCA Crim 453.
[63] *R v Amjad* [2016] EWCA Crim 1618, [2017] 1 Cr App R 22.
[64] *G* [2009] UKHL 13 at [42].
[65] Cornford, 'Terrorist Precursor Offences' (n 43 above) 679-683.

terrorist ideology.[66] Outside these cases, however, defendants should be allowed to put their reasons to the court. Whether these reasons are indeed good enough to excuse their conduct will then be for the jury to decide.

Because this issue is mostly left to juries to decide on a case-by-case basis, it remains unclear when an excuse will and should be accepted as reasonable. Juries need not accept wholly lawful or 'innocent' purposes – such as curiosity, self-education, or obsessive interest – as supplying good reasons.[67] Again, this may be particularly concerning where the defendant's fascination with the material concerned is borne of a condition like ASD.[68] Strikingly, a lawful purpose does serve to excuse such defendants where the charges involve the possession or manufacture of actual explosives.[69]

It follows that the collection of information offence is one of potentially remarkable breadth. It is at least capable of catching relatively innocuous information, which has been collected or viewed for innocent (and certainly for non-terrorist) purposes. In this light, it is notable that the offence often attracts sentences of several years' imprisonment, and that it is so frequently used as a principal charge – that is, where the defendant is not accused of any more serious conduct, such as actually preparing terrorist acts. One may wonder what justification exists for such an offence, when it requires neither any link to prospective terrorism nor any element of terrorist fault.

Responding to such concerns, the current Independent Reviewer, Jonathan Hall KC, has recently argued that the offence can still be justified.[70] 'There remains a strong public interest in allowing the police to arrest and detain, and the CPS to prosecute, in circumstances where little or no evidence can be obtained of attack-planning.'[71] This justification turns, however, on the use of prosecutorial discretion to filter out cases in which there is no real link to or risk of terrorism. Prosecutions are currently brought only where there is evidence of either

[66] See e.g. *G* [2009] UKHL 13 at [79] and [88]; *R v Dunleavy* [2021] EWCA Crim 39 at [47] and [49].
[67] *G* [2009] UKHL 13 at [83]-[84].
[68] See e.g. *Dunleavy* [2021] EWCA Crim 39; *R v Bel* [2021] EWCA Crim 1461.
[69] See *R v Copeland* [2020] UKSC 8, [2021] AC 815: a case involving a defendant with ASD who was also convicted of the collection of information offence. For analysis, see KE Dinesson, '(Un)reasonable Excuses – on *R v Dunleavy*, *R v Copeland*, and Section 58' (2022, forthcoming) Modern Law Review <https://doi.org/10.1111/1468-2230.12721>.
[70] See generally Hall, *The Terrorism Acts in 2020* (n 13 above) at [7.23]-[7.45].
[71] Ibid at [7.44].

'terrorist intent or terrorist sympathy'.[72]

Two observations may be made about this justification. First, as noted above, there is a significant difference between terrorist sympathy and terrorist intention. It may be that, as with the preparation offence, sympathy is taken to be evidence of intention: it may render possession of instructional materials suspicious, and cast doubt on any excuse that the defendant has to offer.[73] However, several recent cases have involved defendants with evident terrorist sympathies who were conceded to have no terrorist intention.[74] The justification for lengthy prison sentences in such cases is surely questionable, particularly where ASD may explain the collection of the relevant material.[75]

Second, if the offence is really a way of allowing intervention where attack planning cannot yet be proved, then its current definition seems difficult to defend. It is particularly hard to see why a non-terrorist purpose – or at least, a wider range of lawful purposes – should not constitute a defence.[76] The range of information caught should also arguably be limited: for example, to information that, by its nature, arouses suspicion that it is to be used for a terrorist purpose. Ironically, this is roughly how section 58 was formerly interpreted, prior to the line of case law explained above.[77]

## 5. Encouraging and glorifying terrorism

The Terrorism Act 2006 created two offences relating to the encouragement and glorification of terrorism. The first is the offence of encouragement of terrorism under section 1. This offence applies to statements that are 'likely to be understood by a reasonable person as a direct or indirect encouragement or other inducement… to the commission, preparation or instigation of acts of terrorism'.[78] A person commits the offence if they publish such a

[72] Ibid.
[73] Dinesson, *Defining the Law* (n 1 above).
[74] See e.g. *Dunleavy* [2021] EWCA Crim 39; *Bel* [2021] EWCA Crim 1461; *R v John* [2022] EWCA Crim 54, [2022] 1 WLR 2625.
[75] As was the case in *Dunleavy* and *Bel*.
[76] One way of achieving this would be to create a general 'lawful object' defence: see Dinesson, '(Un)reasonable Excuses' (n 69 above). Another would be to add to the list of purposes that explicitly constitute reasonable excuses: cf. Cornford and Petzsche, 'Terrorism Offences' (n 37 above) 202-204.
[77] *R v K* [2008] EWCA Crim 185, [2008] QB 827; overruled by the House of Lords in *G* [2009] UKHL 13.
[78] Terrorism Act 2006, s 1(1).

statement and they either intend or are reckless as to its encouraging effects.[79]

The second offence is dissemination of terrorist publications under section 2. This offence applies to publications that either (a) directly or indirectly encourage terrorism, as defined in relation to section 1, or (b) are useful in the commission or preparation of terrorist acts.[80] A person commits the offence if they disseminate the publication in one of several specified ways, and they either intend or are reckless as to the encouragement or assistance that the publication provides.[81] The specified forms of dissemination include offering and hosting publications and possessing them 'with a view to' their dissemination, as well as various ways of actually supplying them to others.[82]

(It should be noted here that publications of type (b) basically correspond to the kinds of documents caught by the collection of information offence, examined above. That offence does not require dissemination to others, and until 2019, it carried a higher maximum sentence.[83] Perhaps for these reasons, the section 2 offence has more often been used for 'encouraging' publications of type (a). In fact, many prosecutions involving charges under section 1 also involve charges under section 2, suggesting that these offences target different conduct but largely the same type of material.[84] Mere collection or possession of such material is not currently an offence, although it has recently been suggested that it should be.[85])

For the purposes of both offences, 'indirect encouragement' explicitly includes glorifying acts of terrorism, in a way that suggests that the conduct should be emulated in existing circumstances.[86] The encouraging content need not relate to any particular act of terrorism, and it is irrelevant whether anyone is in fact encouraged.[87] In cases of unintentional and merely reckless encouragement, it is a defence to show that the statement or publication did not express the defendant's views or have their endorsement, and that this was clear in the

[79] Terrorism Act 2006, s 1(2).
[80] Terrorism Act 2006, s 2(3).
[81] Terrorism Act 2006, s 2(1).
[82] Terrorism Act 2006, s 2(2).
[83] See the amendments made by the Counter-Terrorism and Border Security Act 2019, s 7.
[84] Dinesson, *Defining the Law* (n 1 above).
[85] For critical discussion of this suggestion, see Hall, *The Terrorism Acts in 2019* (n 11 above) at [7.61]-[7.83].
[86] Terrorism Act 2006, ss 1(3) and 2(4).
[87] Terrorism Act 2006, ss 1(5) and 2(7).

circumstances.[88] Both offences carry a maximum sentence of 15 years' imprisonment.[89]

These offences were created partly to implement the Council of Europe Convention on the Prevention of Terrorism, which requires the criminalisation of intentional but indirect forms of terrorist incitement.[90] Glorification of terrorism was also explicitly included, as it was believed that this plays a key role in the process of radicalisation.[91] The offences' main targets, in other words, were statements and publications that do not explicitly incite specific terrorist acts, but that do so impliedly or in general terms. Hence, prosecutions have often related to materials that praise terrorist acts[92] or that justify their commission,[93] as well as to those that encourage terrorism directly.

What is less clear is how far 'indirect encouragement' extends beyond statements and publications of these kinds, which encourage terrorism 'by necessary implication'.[94] It is unclear, in particular, whether material can constitute indirect encouragement simply because it might have encouraging effects. Case law has not yet clarified this point; in fact, the Court of Appeal has suggested that trial judges should avoid elaborating upon the concept of indirect encouragement.[95] The available evidence, however, suggests that the concept is expansive. In particular, a large number of prosecutions have related to depictions of terrorists, or of terrorist acts or their aftermath, accompanied by positive but not unambiguously encouraging comments or slogans.[96]

It should be emphasised here that no-one need actually be encouraged by a statement or publication in order for it to fall within sections 1 and 2. Indeed, people have been convicted

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[88] Terrorism Act 2006, ss 1(6) and 2(9)-(10).
[89] Terrorism Act 2006, ss 1(7) and 2(11).
[90] Council of Europe Convention on the Prevention of Terrorism (CETS No. 196, 2005), Art. 5. A similar obligation was later included in EU Directive 2017/541, Art. 5. The former obligation of course remains binding on the United Kingdom, following its departure from the European Union.
[91] See generally T Choudhury, 'The Terrorism Act 2006: Discouraging Terrorism' in I Hare and J Weinstein (eds), *Extreme Speech and Democracy* (Oxford University Press 2009).
[92] See e.g. *R v Gul* [2013] UKSC 64, [2014] AC 1260; *R v Ahmad* [2018] EWCA Crim 133; *R v Nugent* [2021] EWCA Crim 1535, [2022] 1 Cr App R (S) 60.
[93] See e.g. *R v Faraz* [2012] EWCA Crim 2820, [2013] 1 WLR 2615; *R v Hamza* [2021] EWCA Crim 1460.
[94] A gloss suggested by the trial judge in *Faraz* [2012] EWCA Crim 2820 at [52]-[53].
[95] *R v Ali* [2018] EWCA Crim 547, [2018] 1 WLR 6105 at [22].
[96] Dinesson, *Defining the Law* (n 1 above). Among reported cases, see at least some of the materials and statements at issue in *R v Mohammed* [2008] EWCA Crim 1465, [2008] 4 All ER 661; *R v Rahman* [2008] EWCA Crim 1465, [2008] 4 All ER 661; *R v Iqbal* [2010] EWCA Crim 3215; *Ali* [2018] EWCA Crim 547; *Faraz* [2012] EWCA Crim 2820; *R v Khan* [2015] EWCA Crim 1341, [2015] 2 Cr App R (S) 76; *Ahmad* [2018] EWCA Crim 133.

of these offences where it was conceded that their actions encouraged no-one.[97] This feature is notable in light of research into radicalisation and the role that terrorist propaganda plays in this process. This research suggests that, while such materials are often involved in radicalisation, mere exposure to them is not a risk factor: their influence depends heavily on other factors, such as a person's existing motivations and prolonged immersion in an extremist social environment.[98]

A further notable feature of these offences is that they do not require an intention to encourage terrorism. Rather, it is enough that the defendant was reckless: that is, that they were aware of an unreasonable risk that their conduct would encourage terrorism.[99] The offences therefore catch potential encouragement that is a side-effect of pursuing some other purpose: for example, the expression of opinion or the dissemination of knowledge. Again, people have been convicted of these offences where it was conceded that their encouragement was unintentional, and the threshold for recklessness seems easily to have been crossed in practice.[100] The defence that is available in such cases, of clear non-endorsement, has not been used in any reported case.[101]

In combination, these features mean that the encouragement offences have a significant impact on freedom of expression. Discussions or depictions of terrorism might well fall within them, and it is no defence that any risk of encouragement was remote or unintended. Fears of this kind have certainly had a chilling effect on the sharing of knowledge about terrorism and terrorist groups.[102] They may well have similar effects on political speech, particularly within certain communities.[103]

The right to freedom of expression is protected by Article 10 of the European Convention on

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[97] See e.g. *Khan* [2015] EWCA Crim 1341, in which the offences related to four posts made on Facebook; these posts reached only the defendant's friends, none of whom was actually encouraged by them.
[98] See Choudhury, 'The Terrorism Act 2006' (n 91 above) 473-480.
[99] See e.g. *Mohammed* [2008] EWCA Crim 1465 at [34] and [36]. This reflects the more general understanding of 'reckless' in English criminal law.
[100] For examples and discussion, see Cornford, 'Terrorist Precursor Offences' (n 43 above) 675-676.
[101] Ibid 676-677.
[102] An example is the case of the Taliban Sources Project: a collection of thousands of primary materials designed to give insight into the workings of the Taliban. The British Library declined to host and give access to these materials, due to concerns about the impact of the 2006 Act: see 'British Library statement regarding the Taliban Sources Project' <https://www.bl.uk/press-releases/2015/august/british-library-statement-on-taliban-sources-project>.
[103] Choudhury, 'The Terrorism Act 2006' (n 91 above) 472-473, 481-486.

Human Rights. This right is qualified rather than absolute: it may be restricted by law, so long as the restrictions are necessary and proportionate for specific purposes, such as national security, public safety, and the prevention of crime.[104] The Court of Appeal has now rightly accepted that the expression of political and religious views is protected by Article 10, even if such expression also encourages terrorism.[105] However, it was quick to hold that the prohibition of intentional and reckless encouragement is 'clearly lawful, proportionate and necessary'.[106] This conclusion is questionable in light of the relevant case law, which suggests that intentional incitement and actual danger of violence are crucial to the proportionality of restrictions on political and religious speech.[107] The lack of any requirement for actual or intended encouragement, and the apparent lack of a requirement for an unambiguously encouraging message, should be considered in any future reform.

## 6. Proscribed organisations

The offences relating to proscribed organisations are contained in sections 11 to 13 of the Terrorism Act 2000. They apply only to organisations that have been explicitly proscribed, or that operate under the same name as an organisation that has been proscribed.[108] Splinter groups claiming to represent a proscribed organisation can satisfy this requirement, even if they operate under a slightly modified name.[109] Organisations may be proscribed only if they are 'concerned in terrorism'.[110] This includes promoting and encouraging terrorism, as well as actually committing, preparing, and participating in terrorist acts.[111] There is no requirement that terrorism-related activity be the organisation's sole or primary purpose.

### *6.1. Membership*

[104] European Convention on Human Rights, Art 10.2.
[105] Earlier cases had held, wrongly, that such expression is not protected by Article 10: *Brown* [2011] EWCA Crim 2751 at [20]-[21]; *Faraz* [2012] EWCA Crim 2820 at [49]-[57].
[106] *Ali* [2018] EWCA Crim 547 at [17].
[107] See the analyses in A Hunt, 'Criminal Prohibitions on Direct and Indirect Encouragement of Terrorism' [2007] Criminal Law Review 441, 450-452, 456-457; SA Marchand, 'An Ambiguous Response to a Real Threat: Criminalizing the Glorification of Terrorism in Britain' (2010) 42 George Washington International Law Review 123, 152-155; A Petzsche, 'The Penalization of Public Provocation to Commit a Terrorist Offence' (2017) 7 European Criminal Law Review 241, 254-256.
[108] Terrorism Act 2000, s 3(1). Proscribed organisations are listed in sch 2 to the Act.
[109] *R v Z* [2005] UKHL 35, [2005] 2 AC 645.
[110] Terrorism Act 2000, s 3(3)-(4).
[111] Terrorism Act 2000, s 3(5).

Section 11 of the 2000 Act makes it an offence to belong, or to profess to belong, to a proscribed organisation.[112] The maximum sentence is 14 years' imprisonment.[113] 'Belonging to' a proscribed organisation probably requires more than 'unilateral sympathy': there may be a 'necessary element of acceptance or reciprocity'.[114] However, there is no requirement of involvement in the organisation's terrorist activities.[115] Inactive or nominal members, as well as members who are involved only in an organisation's civic or political activities, also fall within the offence.[116]

The offence also extends beyond actual to professed membership. In the leading case on section 11, the House of Lords was divided on what 'professed membership' means. In particular, they disagreed as to whether the offence applies only to believable declarations of membership[117] or to all such declarations, no matter how unbelievable.[118] Either way, the offence catches at least some conduct by people who are not actual members of a proscribed organisation – again raising concerns about the criminalisation of fantasists and obsessives.[119]

No mental element is required regarding the nature of the organisation. The defendant need not be aware that it was proscribed, or even concerned in terrorism.[120] It is a defence, however, that the organisation was not proscribed when the defendant first became or professed to be a member, and that they have not been involved in its activities since its proscription.[121] The offence may interfere with the right to freedom of association, under Article 11 of the European Convention, although this has not yet been tested.

*6.2. Support*

Section 12 of the 2000 Act criminalises various ways of encouraging support for proscribed

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[112] Terrorism Act 2000, s 11(1).
[113] Terrorism Act 2000, s 11(3).
[114] *R v Ahmed* [2011] EWCA Crim 184, [2011] Crim LR 734 at [89].
[115] *R v Hundal* [2004] EWCA Crim 389, [2004] 2 Cr App R 19.
[116] For critical discussion, see L Levanon, 'Criminal Prohibitions on Membership in Terrorist Organisations' (2012) 15 New Criminal Law Review 224.
[117] *Attorney-General's Reference (No 4 of 2002)* [2004] UKHL 43, [2005] 1 AC 264 at [64] (Lord Rodger).
[118] *Attorney-General's Reference (No 4 of 2002)* [2004] UKHL 43 at [48] (Lord Bingham).
[119] Lord Bingham, ibid: observing that the defendant in the instant case might well have been a fantasist rather than a prospective terrorist.
[120] *Hundal* [2004] EWCA Crim 389.
[121] Terrorism Act 2000, s 11(2).

organisations. It likewise imposes a maximum sentence of 14 years' imprisonment.[122] Sometimes referred to as 'the hate preacher offence', it is typically used for speeches that encourage support for terrorist groups. (Recall that the encouragement offences, examined above, apply only to publications and published statements.) The defendant need only encourage support for the organisation, rather than for its terrorist activities, and no-one need actually be encouraged to support the organisation.[123]

The original core of the offence was 'inviting' support,[124] which courts understood to mean the intentional requesting of support.[125] Arranging and addressing meetings with the purpose of encouraging such support were also explicitly included.[126] Merely endorsing an organisation, or expressing support for it oneself, fell outwith the offence.[127] In 2019, however, a new sub-section was added. This made it an offence to express support for a proscribed organisation, being reckless as to whether others would thereby be encouraged to support it.[128] It remains to be seen what kinds of statement might be taken to 'express support', and whether unintentional encouragement of support will lead to prosecution.

'Support' here excludes purely financial support, which is covered by the financing offences.[129] Beyond this, the term is interpreted broadly: it includes encouragement and advocacy, as well as practical support.[130] Interestingly, however, the offence applies only to those who invite or encourage others to provide such support; it is not an offence to provide support oneself. Certain types of indirect support for proscribed organisations – where the person is not themselves a member or involved in any terrorist activity – may thus lie outside the scope of the criminal law.[131]

The breadth of this offence again raises concerns about the freedoms that it may limit. Some have worried, for example, that those who provide aid in areas controlled by proscribed

[122] Terrorism Act 2000, s 12(6).
[123] See e.g. *R v Alamgir* [2018] EWCA Crim 21.
[124] Terrorism Act 2000, s 11(1).
[125] *R v Choudary* [2016] EWCA Crim 61, [2018] 1 WLR 695 at [42].
[126] Terrorism Act 2000, s 11(2)-(4).
[127] *Choudary* [2016] EWCA Crim 61 at [70].
[128] Terrorism Act 2000, s 11(1A).
[129] Terrorism Act 2000, s 1(1)(b).
[130] *Choudary* [2016] EWCA Crim 61 at [52]-[60].
[131] See the discussion in Hall, *The Terrorism Acts in 2019* (n 11 above) at [7.92]-[7.98].

organisations inevitably risk committing it.[132] It also risks impacting freedom of expression. As with the encouragement offences, courts have held that the support offence infringes Article 10, but that the infringement is proportionate to a legitimate aim: it is not decisive that encouraging support extends beyond encouraging terrorist violence.[133] Apparently crucial to this decision, however, was that the offence was limited to intentional invitation of support, and that mere expressions of support were not criminalised.[134] It is thus an open question whether this view can survive the 2019 reform.

*6.3. Uniform and publication of images*

Section 13 of the 2000 Act makes it an offence to wear clothing, or to wear, carry, or display an article, 'in such a way or in such circumstances as to arouse reasonable suspicion that [one] is a member or supporter of a proscribed organisation'.[135] Publishing an image of clothing or other articles in such a way or in such circumstances is also an offence.[136] The offence does not require any mental element; it requires only that the defendant's conduct, viewed objectively, gives reason to suspect them of being a member or supporter.[137] That the defendant is not, in fact, a member of a proscribed organisation seems not to preclude conviction.[138]

Compared to membership and support, this is a non-serious offence. It is triable only summarily, and carries a maximum sentence of six months' imprisonment.[139] There are few reported cases, although enough to indicate the types of conduct that the offence might catch. These include waving the flag of an organisation,[140] wearing a ring bearing its initials,[141] and marching in paramilitary uniform as part of a funeral cortege.[142] Again, courts have held that section 13 infringes Article 10, but that it does so justifiably. A decisive factor here was the

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[132] See D Anderson, *The Terrorism Acts in 2013* (2014) <https://terrorismlegislationreviewer.independent.gov.uk/the-terrorism-acts-in-2013-july-2014/> at [9.27]-[9.31].
[133] *Choudary* [2016] EWCA Crim 61; see also *R v Alamgir* [2018] EWCA Crim 1553, [2018] 4 WLR 145.
[134] *Choudary* [2016] EWCA Crim 61 at [70].
[135] Terrorism Act 2000, s 13(1).
[136] Terrorism Act 2000, s 13(1A).
[137] *Pwr v DPP* [2022] UKSC 2, [2022] 1 WLR 789.
[138] *Rankin v Murray* 2004 SLT 1164.
[139] Terrorism Act 2000, s 13(3).
[140] *Pwr* [2022] UKSC 2.
[141] *Rankin v Murray* 2004 SLT 1164.
[142] *Barr v Public Prosecution Service* [2020] NICA 46.

non-serious nature of the offence, which was thought to counterbalance its broad definition.[143]

## 7. Conclusions and potential reform

The above discussion has highlighted several areas of concern that might be addressed through future reform. Some of these are of a general nature, for example:

- It would be useful if there were a set of data that covered all uses of terrorism offences in prosecutions throughout the United Kingdom, regardless of ideology. Ideally, this data would clearly identify the offence charged and be easy to analyse by year.

- Consideration should be given to abolishing offences that seem very rarely to be used in practice, such as those relating to training, the provision of information, and possession for terrorist purposes.

- Relatedly, consideration could be given to a more general rationalisation of the entire suite of terrorism offences. Particular attention could be given to the many instances of overlap between offences, and the inconsistencies in how some sets of offences are structured. (For example, among the offences examined above, it could be questioned why it is criminal merely to possess instructional material but not propaganda material, and why it is criminal to invite but not to provide support for proscribed organisations.)

- It is notable that many of the offences examined require either no element of terrorist fault or no significant link to terrorism (for example, actual encouragement of terrorism, or conduct that indicates a significant risk of a future terrorist attack). Some of them seemingly require neither: for example, collection of information, or professed membership of a proscribed organisation. At the level of principle, it is doubtful whether conviction of a terrorism offence should be possible where neither of these elements is proved.

[143] *Pwr* [2022] UKSC 2 at [68].

- It is worth considering whether the use of mindset evidence in terrorism-related prosecutions should be more carefully regulated, and if so, how that could be achieved. Particular consideration should be given to defendants with an obsessive interest in terrorism driven by conditions like ASD, and to whether they are adequately protected by current law and practice.

Several possible concerns have also been raised, and reforms suggested, in relation to specific offences:

- In relation to the preparation offence, it should be questioned whether any preparatory conduct should potentially suffice for conviction. An alternative would be to require one of a list of specified types of conduct that indicate a significant risk of a future terrorist attack. Given the seriousness of the offence, the intention requirement could also perhaps be more stringent: requiring, for example, a firm intention to commit a specific terrorist act.

- It may be questioned whether there is any justification for retaining the collection of information offence. Given its importance in practice, however, abolition may be an unrealistic recommendation. One possible reform would be to replace the reasonable excuse defence with a non-terrorist purpose or 'lawful object' defence, or at least, to add to the statutory list of examples of reasonable excuses. Another would be to narrow the range of information that the offence catches: for example, to material that, by its nature, gives rise to a suspicion that it is to be used for terrorist purposes.

- It is strongly arguable (including from a human rights perspective) that the encouragement and dissemination offences should be limited to intentional forms of encouragement, and to conduct that actually has some encouraging effect. Alternatively, further ways of limiting liability for reckless encouragement should be explored.[144] A clearer definition of 'indirect encouragement' – ideally, one that limits the offences to material that has a clearly encouraging meaning or message – would

[144] For example, through strengthening the defence of non-endorsement, or through developing instructions on recklessness that could be given to juries: Cornford, 'Terrorist Precursor Offences' (n 43 above) 677.

also be welcome.

- In relation to membership of a proscribed organisation, perhaps the most important question is whether mere profession of membership should suffice for conviction of a terrorist offence. More radically, it is arguable that the offence should require involvement in an organisation's activities, even if involvement in actual terrorist activity is not required.

- As with the encouragement offences, it is arguable that reckless expression of support for proscribed organisations should not be criminal, and that actual encouragement of support should be required for conviction of the support offence.