TERRORISM ACT 2006

EXPLANATORY NOTES

COMMENTARY

Definitions

Section 1 – Encouragement of terrorism

20. Section 1 creates an offence of encouragement of acts of terrorism or Convention offences. The offence has been introduced to implement the requirements of Article 5 of the Council of Europe Convention on the Prevention of Terrorism ("the Convention"). This requires State parties to have an offence of 'public provocation to commit a terrorist offence'. This new offence supplements the existing common law offence of incitement to commit an offence.

Subsection (1)

21. The offence in section 1 is concerned with the publication of statements and **subsection (1)** sets out the type of statements to which it applies. These are statements that are likely to be understood by some or all of the members of the public to whom they are 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.

Subsection (2)

- 22. **Subsection (2)** sets out the conduct and mental element of the offence. Article 5 of the Convention requires parties to have an offence of public provocation to commit a terrorist offence. Terrorist offence is defined in Article 1 of the Convention as any offence within the scope of, or defined in, one of the treaties listed in the Appendix to the Convention. The Appendix lists a number of treaties the offences from which have been translated into UK law through legislation, as a consequence the concept of terrorist offence in Article 5 (and Article 1) of the Convention becomes the concept of Convention offence in the Act. Convention offences are set out in Schedule 1 to the Act which consists of a list of the UK provisions implementing the treaties listed in the Appendix to the Convention.
- 23. The new offence is committed if a person publishes a statement (as defined in subsection (1)) or causes another to publish such a statement and he has the necessary *mens rea*. The *mens rea* is that, at the time of publishing or causing to publish, he either intends members of the public to be directly or indirectly encouraged or otherwise induced, by the statement to commit, prepare or instigate acts of terrorism or Convention offences, or he is reckless as to whether members of the public will be so directly or indirectly encouraged by the statement. A number of definitions relating to this offence, including the definition of act of terrorism, publish, statement and public, are set out in section 20 of the Act. The effect of those definitions is set out in paragraphs 16-19 and 94 and 95 of these notes.

Subsection (3)

24. **Subsection (3)** provides that indirect encouragement of terrorism includes a statement that glorifies the commission or preparation of acts of terrorism or Convention offences but only if members of the public could reasonably be expected to infer that what is being glorified in the statement is being glorified as conduct that should be emulated by them in existing circumstances. Glorification is defined in section 20(2) as including praise or celebration. Section 20(7) clarifies that references to conduct that should be emulated in existing circumstances includes references to conduct that is illustrative of a type of conduct that should be so emulated. For example, if it was reasonable to expect members of the public to infer from a statement glorifying the bomb attacks on the London Underground on 7 July 2005 that what should be emulated is action causing severe disruption to London's transport network, this will be caught.

Subsection (4)

25. **Subsection (4)** specifically provides that when the questions of how a statement is likely to be understood, and what members of the public might reasonably infer from it, are determined, regard should be had to both the contents of the statement as a whole, and the circumstances and manner of its publication.

Subsection (5)

26. **Subsection** (5) sets out that the statement, or how it is likely to be understood, need not relate to a specific act of terrorism or Convention offence. It also sets out that an offence is committed whether or not any person is actually encouraged or induced to commit, prepare or instigate an act of terrorism or Convention offence. It follows from this that it is not necessary in order for the offence to be committed for an act of terrorism or a Convention offence actually to take place.

Subsection (6)

27. **Subsection (6)**sets out a defence to the offence created by this section. It is a defence for a person accused of the offence, where it has not been proved that he intended the statement to encourage or otherwise induce the commission, preparation, or instigation of acts of terrorism or Convention offences, to show that the statement published neither expressed his views, nor had his endorsement and that it was clear in all the circumstances of the statement's publication that it was not his view and did not have his endorsement. The defence is intended, for example, to cover news broadcasters. However, a person will not be able to take advantage of this defence if he is deemed to endorse a statement because he has failed to comply with a notice issued under section 3 (see paragraphs 39 to 45 of these notes).

Subsection (8)

28. **Subsection (8)**provides a transitional provision in respect of the period before the commencement of section 154(1) of the Criminal Justice Act 2003 (c.44). At the moment a Magistrates' Court can only give a penalty of up to six months' imprisonment. Once section 154(1) is in force this will increase to 12 months' imprisonment. Subsection (7), which sets out the penalties for the offence, is drafted as if section 154 is in force but as it is not in force a provision is needed to make it clear that, until such time as it is in force, the Magistrates' Court only has its existing powers to give a penalty of imprisonment.