

Universities and the Counter-Terrorism and Security Bill

million+ Parliamentary Briefing: Committee Stage, 16 December 2014

Background

Universities will be directly affected by clauses 21-27 and 38 of the Counter-Terror and Security Bill to be discussed on day three of the Committee of the Whole House. The Bill places a new duty on universities to “*prevent people from being drawn into terrorism*¹,” and gives the Home Secretary new powers to “*give directions to [universities]*²” if s/he is satisfied they have failed to discharge that duty.

Universities already cooperate with appropriate authorities on matters of security, most notably with the Prevent programme. However million+ has concerns that new duties in this Bill move the role of universities from one of co-operation with appropriate authorities to one of co-option. Liberty has also stated these provisions will “*create a bureaucratic nightmare for hundreds of public bodies now presumably required to have counter-terrorism prevention policies regardless of their suitability or relevance to law enforcement*³.” A [briefing](#) circulated by million+ in advance of the Second Reading of the Bill outlined these broad concerns.

This briefing outlines key concerns relevant to committee stage in terms of detailed terms and phrasing issues in the Bill, issues of parliamentary scrutiny and oversight of new powers, and highlights the challenges that universities will face balancing responsibilities between duties proposed in this Bill and the 1986 Education (No. 2) Act, relating to freedom of speech.

The issues

- The Bill provides the Home Secretary with wide-ranging new powers for which there is currently no Parliamentary or judicial oversight.
- The scope of the Bill is extremely wide: as such all guidance issued under the Bill’s provision should be laid before Parliament as an affirmative instrument.
- Clause 21 is broad: it should be amended to provide clarity to affected organisations on their new legal duties.
- There are complex inter-relations with Education (No. 2) Act 1986. Ministers should clarify how they expect universities to balance these responsibilities in a way that also minimises the potential for third-parties to take legal action.
- No information has been published as to how this new duty will be monitored in universities or enforced. Ministers must publish detailed proposals, including any transitional arrangements.

¹ Part 5, Chapter 1, Clause 21 – General duty on specified authorities

² Part 5, Chapter 1, Clause 25 – Power to give directions

³ <https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Second%20Reading%20Briefing%20on%20the%20Counter-Terrorism%20%26%20Security%20Bill%20in%20the%20House%20of%20Commons.pdf> (Sections 48-53)

Scrutiny and oversight of new powers

This Bill gives the Secretary of State sweeping new powers, including the possibility of direct intervention in the governance of universities. As such it is vital that Parliament and, where appropriate, the judiciary are able to scrutinise the use of such powers.

Clause 25 (5) provides that “The Secretary of State may from time to time revise any guidance issued under this section.” Given the extremely broad nature of this legislation it would be appropriate for Parliament to be able to scrutinise any such guidance, both when it is initially produced but also when it is subject to any amendment. All such guidance should be laid before Parliament as an affirmative instrument.

Similarly, **Clause 38** gives the Secretary of State power to make consequential provisions and does not have sufficient mechanisms for oversight. The instrument named in 38 (3) should be an affirmative instrument, given that it has the potential to amend primary legislation.

When the Secretary of State does give direction, under **Clause 25**, there should be provision in the Bill that this should trigger an immediate independent review.

The Independent Reviewer of Counter-Terrorism Legislation has indicated that Part 5 falls outside of his remit. Urgent clarity should be sought on this and Ministers should indicate how this legislation will be reviewed and by whom.

Duties, terms and language in the Bill

Clause 21

“A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.” There are a number of detailed issues with the wording of this clause and the duty it introduces.

Universities already co-operate with appropriate authorities on matters of state security. However, co-opting organisations to “prevent” criminal activity raises a number of issues of principle as well as questions as to how effective such a statutory duty is likely to be in preventing terrorism.

The Bill relies on the Terrorism Act 2000 meaning of terrorism, an extremely broad definition. In practice the police, security services, Crown Prosecution Service and the courts define what actually constitutes “terrorism.” The inclusion of the phrase *“being drawn into”* will further compound the complications that universities will face in defining “terrorism.” The phrasing of this clause means universities have to make a judgement about what activities may constitute a path to an individual possibly becoming associated with terrorism-related activity.

For these reasons it would be preferable if Ministers clearly defined organisations and individuals within the scope of Clause 21, by using Proscribed Terrorist Organisations as provided for under the Terrorism Act 2000.

Clause 24 - Guidance

Guidance as referred to in Clause 24 has not yet been published. As the Bill introduces so many new powers it is vital that Parliament can assure itself of the appropriateness of any such guidance, and that sufficient consultation has taken place. Provision should be made for all such guidance to be laid before Parliament as an affirmative instrument, following consultation.

Clause 25 - Monitoring

There is no information on how Ministers expect the duty introduced in Clause 21 to be monitored in order to trigger Clause 25. Clarity is needed as to precisely how this monitoring will work, who will be responsible for it and what transitional arrangements may be introduced.

Universities' legal obligation to ensure freedom of speech

It is accepted there is no “absolute” freedom of speech: universities seek to create safe and inclusive environments for their staff, students and guests. However, higher education in the United Kingdom not only has a long and proud history of providing space for debate, institutions have a legal duty to provide that space:

Education (No. 2) Act 1986 c61 Part IV Section 43

Freedom of speech in universities, polytechnics and colleges.

(1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.

(2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—

- (a) the beliefs or views of that individual or of any member of that body; or*
- (b) the policy or objectives of that body.*

Meeting this legal duty is not always easy but universities take it extremely seriously. Unless statutory guidance is clear there is a strong possibility that third-parties will take legal action challenging decisions made by universities balancing obligations to both Education Act (1986) and the Counter-Terrorism and Security Bill. Ministers must outline how new duties in the Counter Terrorism and Security Bill will sit alongside the statutory duties to not use “beliefs or views” as grounds to refuse access to premises as specified in the Education (No 2.) 1986 Act.

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