

million+ Parliamentary Briefing

Universities and the Counter-Terrorism and Security Bill, 2 December 2014

Background

Parts of HC Bill 127 will directly affect the governance and operation of higher education institutions.

Whilst much of the Parliamentary scrutiny of the Bill is likely to focus on restrictions on travel, TPIMs and internet privacy, measures in Part 5 Chapter 1 fundamentally change the relationship between Government and universities and it is vital this section of the Bill is given sufficient attention.

The Bill places a new duty on universities to “*prevent people from being drawn into terrorism,*” and gives the Home Secretary new powers to “give directions to [universities]” if she is satisfied they have failed to discharge that duty.

The Government is making the case that new powers in this Bill are needed urgently to deal with immediate security concerns. However, there are some questions to be asked:

- The legal definition of terrorism is very broad raising questions as to how it can be reasonably interpreted by education institutions
- Is it inappropriate for universities rather than the state, to have a duty to “prevent” terrorism?
- What evidence do Ministers have that new requirements on universities are needed to require this provision of the Bill to be fast-tracked through Parliament?

New requirements on universities - from cooperation to co-option: Part 5 Chapter 1 of the Bill places a duty on universities to “*have due regard to the need to prevent people from being drawn into terrorism.*” Universities take their responsibilities extremely seriously and parliamentarians will need to consider to what extent this is a proportionate and reasonable duty on universities.

Requiring organisations to cooperate with criminal investigations, or to report criminal activity that comes to their attention, is entirely reasonable. However, pro-active investigation and “preventing” crime is normally regarded as the responsibility of the police and other relevant authorities.

Ministers need to provide cogent reasons to justify the application of this provision to universities. However they also need to set out to Parliament how they expect any inspection and enforcement regimes to operate. This cannot simply be left to statutory guidance which will be published at a later date.

Non-state actors interpreting the definition of terrorism: Given the broad definition of terrorism it will be particularly challenging for university governing bodies to make reasonable judgements as to the scope of this requirement. David Anderson QC, Government-appointed UK Independent Reviewer of Terrorism Legislation, has raised concerns on this broad definition, stating:

“...political journalists and bloggers are subject to the full range of anti-terrorism powers if they threaten to publish, prepare to publish or publish something that the authorities think may be dangerous to life, to public health or public safety. That is so even if they do not wish to spread fear or to intimidate – it is enough that their work is designed to influence the Government or an international organisation.¹”

Placing a specific duty to “prevent people from being drawn into terrorism” requires organisations to make judgements as to what does and does not constitute a possible route towards a terrorist act – to some extent both a hypothetical and a value judgement.

When deciding whether to prosecute under terrorism legislation the Crown Prosecution Service has to consider whether the prosecution is in the public interest. Though the definitions of terrorism are broad, this largely prevents inappropriate application. If university governing bodies have a duty to consider whether activity may lead to an individual being involved in terrorism, managing risk to acceptable levels may mean having to take a much broader, and potentially inappropriate, reading of the legislation.

Part 5 Chapter 1 of the Bill should not be fast-tracked: When a bill is fast-tracked the Government sets out an explanation of the reasons for using a fast-track procedure in the accompanying explanatory notes. Whilst there may be an argument for expediting other sections of the bill to grant the Government new powers to deal with immediate threats, MPs and Peers will need to be satisfied that sufficient case has been made for the need for Part 5 Chapter 1 to be brought into law urgently. No evidence has been presented that universities have been failing to work with the police and security services on issues of terrorism and it has been suggested that the accompanying Statutory Guidance is unlikely to be brought in until the academic year 2015-16, in over nine months time.

The need for Part 5 Chapter 1 of the bill should be questioned. If new legislation on these lines is still deemed necessary, there is an argument that it should be brought before Parliament under a normal timeframe separately to the urgent security-related measures in other parts of the Counter-Terrorism and Security Bill.

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¹ UK Independent Reviewer of Terrorism Legislation Annual Report July 2014
<https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/22-July-2014-PRESS-RELEASE.pdf>