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Note Verbal No. 034

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its response to communication AL GBR 15 2024, further to the letter dated 4 December 2024 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the right to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 07 January 2025

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission
Geneva

United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communications AL GBR 15/2024 of 4 December 2024 sent by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy

Thank you for your letter of 4 December 2024 regarding the use of provisions under the Terrorism Act 2000, Terrorism Act 2006 and the Counter-Terrorism and Border Security Act 2019.

Your letter refers to several individual cases where criminal proceedings are ongoing. As a result, it would be inappropriate for the UK Government to comment on the specific cases you have raised. The UK's police, the Crown Prosecution Service (CPS) and the courts are all independent of the government-of-the-day. It is vital that these institutions can carry out their duties, and make decisions, free from political influence, including the influence of international organisations. The individuals involved have the right to a fair trial and it is imperative that this right is protected, including from interference by the Government and international organisations.

The questions that you raised, which are reproduced below, have been answered as fully as possible, given the points noted above.

- 1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

- 2. Please indicate how the application of counter terrorism laws against the activists and journalists is consistent with international human rights law and an appropriate application of the law.**
- 3. Please indicate the measures taken to prevent the misapplication of the counter-terrorism laws against journalists, activists and human rights defenders in order to ensure that they do not interfere with the freedom of expression.**

The UK has a comprehensive counter-terrorism (CT) legislative framework which must strike the right balance between protecting national security and individual freedoms, including the right to freedom of expression under Article 10 ECHR and Article 19 ICCPR. Domestic legislation in this context falls within the exceptions outlined in Article 19(3) ICCPR: (i) it is prescribed by law; (ii) any interference with freedom of expression is in pursuit of the protection of national security, public order, public health and “respect for the rights” of others; and (iii) such interference is “necessary” to pursue that aim, recognising the significant threat to national security and the rights and freedoms of others caused by terrorism. The UK’s counter-terrorism laws provide proportionate measures that have been constructed, and which are deployed, to carefully balance the right to freedom of expression against the significant harm that acts of terrorism cause. There are a number of safeguards, including independent oversight, which we have set out in further detail below. The UK’s domestic legislation construes the limitations in Article 19(3) narrowly, as elaborated further below.

On introduction to Parliament of any new legislation, in accordance with section 19 of the Human Rights Act 1998, the Government must make a statement of compatibility which explains whether or not the Government considers any new legislation to be compatible with the rights set out under the European Convention on Human Rights (ECHR). A statement that the legislation was compatible has been made for all CT legislation. UK legislation may be challenged before the UK’s courts on human rights grounds and section 6 of the Human Rights Act 1998 requires public authorities, including courts, to act compatibly with rights under the ECHR protected by that Act.

For certain terrorism offences and powers, Parliament has provided for additional safeguards for journalism and journalistic material, as well as academic research, recognising the vital role that journalists play in holding the state, and its institutions, to account. However, there is no absolute defence of journalism under CT legislation.

Arrests for terrorism-related activity may be made under the Police and Criminal Evidence Act (PACE) 1984 or under specific terrorism laws. The police must have regard to the relevant PACE Code of Practice which sets out the statutory framework for detention, treatment and questioning of individuals by police officers. PACE Code C is used for arrests under PACE 1984, whereas PACE Code H applies for arrests under the CT legislation. Both Codes of Practice are available via gov.uk¹.

The UK defines terrorism in section 1 of the Terrorism Act 2000² for the purposes of UK law.

The UK's CT framework, including the definition of terrorism, is kept under review by the Home Office, and is subject to independent scrutiny provided by the Independent Reviewer of Terrorism Legislation (IRTL). The IRTL, is completely independent from Government, with access to relevant national security information as well as personnel to carry out his role. Part of the IRTL's role is to inform the public and political debate on counter-terrorism legislation in the United Kingdom, including producing annual reports on different aspects of the operation of terrorism in the United Kingdom. Further information about his scope and role is available on his [website](#).

Schedule 3 - Counter-Terrorism and Border Security Act 2019 and Schedule 7 – Terrorism Act 2000

As set out above, it would not be appropriate for the Government to comment on an individual case. Every individual subject to examination under Schedule 7 to the Terrorism Act 2000 ("Schedule 7") or Schedule 3 to the Counter-Terrorism and

¹ [Police and Criminal Evidence Act 1984 \(PACE\) codes of practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

² [Terrorism Act 2000](#)

Border Security Act 2019 (“Schedule 3”) is provided with information about the powers and how to make a complaint if they are unhappy with their treatment.

Any person, irrespective of profession, can be subject to Schedule 7 and Schedule 3 examinations if the statutory conditions are met. The powers to stop, question, detain and search a person in Schedule 7 may be exercised for permitted purposes connected to whether the person appears to be concerned in the commission, preparation or instigation of acts of terrorism (defined in section 1 of the Terrorism Act 2000). The powers in Schedule 3 may be exercised for permitted purposes connected to whether the person appears to be currently or previously engaged in hostile activity for, on behalf of or in the interests of a foreign state. As set out in the accompanying statutory Codes of Practice, although the selection of a person for examination is not conditional upon the examining officer suspecting that particular person of terrorism or hostile activity, the decision to select must be informed by the threat from terrorism or hostile activity to the UK, for example known and suspected sources of terrorism, their patterns of travel through specific ports, observations of a person’s behaviour or referrals from other security, transport or enforcement agencies.

Given the no-suspicion and intrusive nature of these powers, they are limited to port and border areas and are only available in relation to terrorism and state threats, which are matters of national security. The powers are rational, justified and proportionate given the potentially serious consequences of terrorism and state threats and the limitations on the exercise of the powers, noting in particular that people travelling through border areas expect to be subjected to this type of check.

Although failure to answer questions under examination is an offence, subject to limited exceptions, answers may not be used as evidence in criminal proceedings. This ensures the requirement to answer questions is Article 6 ECHR compliant and does not interfere with the right not to self-incriminate. The examination is not an inquiry preparatory to criminal proceedings, but a public interest inquiry related to border control.

Schedules 7 and 3 are designed to protect the work and material of legitimate journalists while also being effective against sophisticated and capable adversaries who seek to harm the UK and its people.

There are therefore additional safeguards in place for journalists. To ensure Article 10 ECHR compliance, the Code of Practice provides that “Protected Material” (confidential journalistic material or LPP for example) obtained under Schedule 7 cannot be accessed. Under the equivalent power in Schedule 3 there is a special process to access such material where it is required to prevent hostile activity, involving authorisation from Investigatory Powers Commissioner’s Office (IPCO).

During the passage of Schedule 3, Parliament considered whether the protections in place for confidential journalistic material should be extended to all journalistic material. It decided not to on the basis that not everything captured by a broad definition of journalistic material is inherently confidential and deserving of enhanced protections. Under Schedule 3 therefore, the police can retain, copy, and examine this material, but this is subject to independent judicial authorisation by the Investigatory Powers Commissioner.

Schedules 7 and 3 are subject to significant independent oversight by the IRTL and Independent Reviewer of State Threats Legislation (IRSTL). [REDACTED] currently holds both these roles. As explained above, the IRTL’s role (and IRSTL’s role) is to provide independent oversight, scrutiny and transparency on the use of counter-terrorism legislation in practice, including how the powers under Schedules 3 and 7 are used in practise. This function for Schedule 3 was previously held by the Investigatory Powers Commissioner (IPC) until the establishment of the IRSTL under the National Security Act 2023. The IPC oversees the IPCO. IPCO in turn oversees the use of covert investigatory powers by more than 600 public authorities, including the UK’s intelligence agencies, law enforcement agencies, police, councils, and prisons.

The specific safeguards in place for journalists, and this rigorous independent oversight, ensures that there are the necessary protections against any unjustified interference in any journalist’s freedom of expression.

The strict safeguards in place also ensure these powers are not subject to misuse and ensure that they are applied reasonably and proportionately.

These include that only accredited officers that have completed their training can exercise these powers, and they are guided by the Code of Practice which also sets out the other safeguards. Accreditation is reviewed biennially and anyone who fails to complete their training will not be able to exercise Schedule 7 or 3 powers.

Proscription and Section 12 Terrorism Act (TACT) 2000³

The power to proscribe terrorist organisations under section 3 of TACT 2000 is a key component of the UK's CT toolkit. Once an organisation is proscribed, membership, support and certain other activity connected to that organisation is an offence, meaning that the group is effectively outlawed and unable to operate in the UK. The decision to proscribe an organisation is not taken lightly. The Government only exercises the power to proscribe after properly reviewing the relevant evidence from a range of sources, including advice from the cross-government Proscription Review Group. The Government must believe that the organisation meets the statutory test in section 3, and that proscription is necessary and proportionate. As noted by the current IRTL⁴, decisions on whether to proscribe an organisation are subject to 'thorough, well-informed and careful' scrutiny. The role Parliament plays in scrutinising proscription decisions is an important one. Any decision to proscribe a new organisation is subject to the affirmative procedure and must be debated and approved by both Houses of Parliament before (or, in urgent cases, within 40 days of) being made.

The proscription offences (sections 11 – 13 TACT 2000) are crucial to disrupting and dismantling an organisation once it has been proscribed. This includes disincentivising people from becoming members or supporters of the organisation. There are a range of proscription offences, including:

- Membership of a proscribed organisation, section 11 TACT 2000;

³ [Terrorism Act 2000](#)

⁴ [The Terrorism Acts in 2022](#) [Paragraph 3.16]

- Support for a proscribed organisation, section 12 TACT 2000; and,
- Displaying or wearing articles, such as clothing or flags, in circumstances which arouse reasonable suspicion that the individual is a member or supporter of a proscribed organisation, section 13 TACT 2000.

The offences of inviting support for a proscribed organisation in section 12 TACT 2000 capture a range of activity to degrade proscribed organisations by, for example, inhibiting recruitment. The offences include inviting support for a proscribed organisation; arranging or managing or assisting in managing meetings that support, further the activities of, or will be addressed by an individual who belongs or professes to belong to a proscribed organisation; and addressing a meeting to encourage support for a proscribed organisation or further its activities.

The Counter-Terrorism and Border Security Act 2019 amended section 12 TACT 2000 to introduce a new offence of recklessly encouraging support for a proscribed organisation (section 12(1A)), which also carries a maximum sentence of 14 years). Expressing an opinion or belief that is supportive of a proscribed organisation, even where an individual is reckless as to whether expressing such support will encourage others to support the organisation, can lead to a real risk of harm to the public. This reflects that any support for a proscribed organisation is a serious matter; where there is suspicion that a proscription offence may have been committed it is right that there is a full and proper investigation by the police.

“Support” is not defined in TACT 2000, which as previously noted by the IRTL⁵, is important to enable the degradation of the effectiveness of terrorist organisations in a wide range of circumstances. Under section Human Rights Act 1998, a decision to prosecute an offence of support for a proscribed organisation must be compatible with the right to freedom of expression protected under Article 10 ECHR, which would bring in the rights protected under Article 19 ICCPR.

4. Please provide an update on the retention of data taken from the journalists and the existence of criminal investigations against them.

⁵ [The Terrorism Acts in 2021](#) [Paragraph 3.1]

As noted above it would not be appropriate for the UK Government to comment on an individual case, particularly where criminal proceedings are ongoing.

In relation to the retention of data during criminal proceedings, the Code of Practice issued under the Criminal Procedure and Investigations Act 1996⁶ sets out the duties on the police to retain all material relevant to the investigation until a decision is taken on whether to institute proceedings against a person for an offence. If a criminal investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case.

The police are also subject to the duties under Part 3 of the Data Protection Act 2018, including the duty under section 39 of that Act which places a requirement on law enforcement authorities to keep the retention of personal data under review and to only retain it for as long as it is considered necessary for the purpose for which it is processed. Independent oversight of compliance with the requirements of the Data Protection Act 2018 is provided by the Information Commissioner's Office.

Under Schedule 7 and 3 the circumstances under which copies of data may be retained are set out in the legislation and our Codes of Practice. The powers to copy must be exercised in a manner which is proportionate to the legitimate aim. Copies of information obtained during an examination must be managed in compliance with the requirements detailed above.

The UK's counter-terrorism framework has been carefully developed to strike the right balance between the need to protect national security alongside freedom of expression. That framework provides protections for the work and independence of the media and press, which is essential to a free society, ensuring transparency, accountability and tackling disinformation. The UK's counter-terrorism framework is subject to important safeguards, including independent oversight. It would be inappropriate for the UK Government to comment on individual and ongoing criminal cases. We hope that the information included above is helpful.

⁶ [Criminal Procedure and Investigations Act 1996 \(section 23\(1\)\) Code of Practice](#)