

# LIBERTY

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# JUSTICE

## **Preventing Extremism Together Places of Worship**

### **Liberty and JUSTICE briefing**

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### **About JUSTICE**

JUSTICE is an all-party, law reform and human rights organisation, whose purpose is to advance justice, human rights and the rule of law. It is the British section of the International Commission of Jurists.

### **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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## Introduction

1. Plans to allow places of worship to be closed down were initially proposed as part of the Prime Minister's 12 point plan in his monthly press conference on 5 August. Since the London bombings the Government's response has been varied. Some sensible measures have been taken which are likely to cover existing gaps in the law. Others measures have been excessive and are likely to prove counterproductive. Among the most worrying of these is the proposal in this consultation to allow closure of places of worship where an order to stop extremist behaviour has not been complied with. The introduction to the consultation paper states that acting against extremism is not just a government issue 'it was a matter on which communities themselves had asked for support'<sup>1</sup>. The implication is that the proposal follows requests from Muslims to take action against extremism in places of worship. We are not aware of any Muslim group which has indicated support for the proposal. Indeed a joint statement from 38 Muslim groups was unequivocal in condemnation stating, *'criminalising the mere possession of certain opinions is the hallmark of dictatorships, not democracies. The same reasoning applies to the proposal to close mosques if they are arbitrarily defined as being 'extremist' or to try and politically influence what may or may not be said during a religious talk.'*<sup>2</sup>

2. The consultation goes to the heart of what legitimate action the state can take against views that might be distasteful, but which would not normally be thought of as 'criminal'. The same issue also arises in the 'encouragement to terrorism' offence contained in clause 1 of the Terrorism Bill currently before Parliament. This offence (in its current form following the Government amendment inserted during report stage) allows for the offence to be committed if a person is reckless as to effect of his or her actions so it is not necessary for there to be an intent that others commit terrorist offences. As well as the free speech implications of such an offence we have been concerned that overbroad criminalisation will have a divisive impact upon inter faith relations. We make the same points here. Although closing a place of worship

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<sup>1</sup> Para 2

<sup>2</sup> Joint statement of 38 Muslim groups 15 August 2005, available on <http://www.eurolegal.org/isterbrit/pressrelease.htm>

down is not in itself criminalisation<sup>3</sup> it does represent extremely repressive state sanction against non criminal behaviour.

3. Of particular concern is the inference throughout the document that extremism is in itself criminal. For example, saying ‘taking action against extremism ... is essential’<sup>4</sup> and talking of ‘scope to prosecute those who forment extremism’<sup>5</sup> clearly indicates that extremism is in itself within the scope of criminality. Genuine caution should be exercised here. It is one thing to talk of extremism as a problem. It is wholly different to treat it as a crime. Paragraph 17 defines ‘extremist behaviour’ in terms of existing criminal law<sup>6</sup> which at least places the term in some context. However, the government should be careful about the implications of directly conflating the concepts of extremism or fundamentalism with terrorism. The ‘British values of democracy, tolerance and free speech’ referred to<sup>7</sup> are exactly those which protect views that we might find distasteful. The importance of separating opinion from action can be demonstrated by examples from other religions. Some Catholic churches have allowed anti abortion literature to be distributed and displayed within their buildings. Extreme anti abortionists have committed acts of violence which would certainly fall within the definition of ‘terrorism’ under s.1 Terrorism Act 2000. While it is unlikely that any Catholic church would be affected by this proposal, it demonstrates the danger of allowing closure due to the existence of views that might be *associated* with terrorist violence.

### **The Proposal**

4. The suggestion contained in the consultation is to allow those ‘controlling’ a place of worship to be required by a court to take steps to stop extremist behaviour in a place of worship. A failure to take reasonable steps would be a criminal offence. Should extremist activity continue, a further order closing part or all of the premises could follow. There are three main issues we would wish to consider. The human rights framework, the existing law and the community impact. Before looking at these

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<sup>3</sup> Although if the proposed order is introduced a failure to comply with any order would be an offence.

<sup>4</sup> Para 10

<sup>5</sup> Para 15

<sup>6</sup> Or rather existing criminal law and behaviour that will be criminal once the Terrorism Bill is passed

<sup>7</sup> Para 1

in detail, we would draw attention to the social need for any action to be taken. The consultation states that, ‘there have been a number of high profile cases where extremist preachers, clerics or teachers have taken over, or have encouraged supporters to take over, places of worship’. We are aware of one instance where this has happened. In the absence of other examples our concern is that the situation envisaged as coming within the scope of the new powers are those where extremists might be present but not in ‘control’. In other words it appears that wide ranging powers with significant societal impact are being planned to deal with a problem that is significantly different from that described in the consultation. It is also worth noting that earlier this year trustees of Finsbury Park Mosque succeeded in removing Abu Hamza from his position there without the need for the proposal in this consultation to compel them.

5. Any restriction on the use of places of worship raises implications under Article 9 of the Human Rights Act 1998 (HRA). This protects the ‘right to freedom of thought conscience and religion’. The rights contained in the HRA are taken directly from the European Convention on Human Rights. However, under the HRA Article 9 is highlighted as being of particular importance. Section 13 (1) provides that ‘If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention Right of thought conscience and religion, it must have particular regard to the importance of that right.’

6. Any interference with the right to freedom of conscience and religion will result in a breach of Article 9. However, this is not a restriction upon the Muslim faith itself that is being considered here but rather the ability of individuals to manifest that belief. The proposals would clearly impact on the ability of those considered to be extremists to manifest their religion. If the proposed powers were ultimately used to close a mosque they would also impact more widely and indiscriminately on the right of others to worship in their place of choice and, where no alternative place of worship is accessible, would totally prevent attendance at a place of worship. The right to manifest belief can be limited under Article 9(2). This allows for restriction when prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society. Each of these requirements raises issues. Proscription by law requires a level

of certainty as to what is or is not permissible. As we have said previously the holding of extremist views is not a crime. To be barred from a place of worship<sup>8</sup> for holding extremists views is too arbitrary a concept for legal certainty. There is an attempt to define ‘extremism’ as including support for organisations proscribed under the Terrorism Act 2000. Given that the definition of proscription is being amended under the current Terrorism Bill to include non violent political groups this will still be an exceedingly broad definition. The next requirement under Article 9 (2) is that the restriction is in pursuit of a legitimate aim. For Article 9 these aims are ‘the interests of public safety, the protection of public order, health or morals, or for the protection of the rights and freedom of others’. It could be argued that taking action against those who are, for example, inciting other to commit terrorist acts, would serve any one of these purposes. However, it is much less clear that barring those who hold extreme views from places of worship or ultimately closing a place of worship could legitimately be said to serve these aims. Even if any restriction can be said to serve a legitimate purpose, the last requirement is that it is necessary in a democratic society. This is known as a proportionality test and requires that the measure taken is not excessive in relation to the result sought. Given our comments on the extent of the problem and the impact of the proposed solution, we have considerable doubt that the proposed powers would be proportionate. Caselaw in the European Court of Human Rights (ECHR) has established that to be proportionate any restriction ‘must be established convincingly...The adjective ‘necessary’...implies the existence of a pressing social need’<sup>9</sup>. It might seem easy to argue that, as there have been terrorist attacks in the UK, there is a pressing social need justifying any measure. This is incorrect. Attacks have taken place but any response must still be effective and not excessive. Domestic courts have held that the case for any restriction must be ‘strictly proved’ by those asserting them<sup>10</sup>.

7. Other HRA articles would also be engaged. In particular, the right to freedom of expression under Article 10 and the prohibition on discrimination under Article 14. Article 10 safeguards our right to hold and express opinions whether or not others find these distasteful. As with Article 9, freedom of expression is not an absolute right, and

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<sup>8</sup> Presumably about the only course of action available to those ‘controllers’ subject to an order would be to bar any ‘extremists’.

<sup>9</sup> *Zana v Turkey* (1999) 27 E.H.R.R 667

<sup>10</sup> *R v Secretary of Health Ex parte Wagstaff* (2001) W.L.R 292

the state is entitled to impose proportionate limitations for a legitimate purpose. Many of the arguments we have raised in relation to Article 9 will also apply to Article 10. Due to the short time period allowed for this consultation (4 weeks as opposed to the usual 12) time prohibits a separate detailed consideration of these although should legislation be published we will consider this in greater detail. Article 14 provides that the enjoyment of other Convention Rights shall be secured without discrimination. Accordingly, if a legal measure would have an impact which is within the ambit of other Convention Rights, in this case Articles 9 and 10, this impact must not be discriminatory. Although the consultation does not specify that any new powers will be specifically targeted at Mosques, this is clearly the intent. Again time prohibits detailed examination but we believe that there will be clear Article 14 issues.

8. The second issue we wish to consider is the scope of existing laws. As mentioned above, the removal of Abu Hamza from Finsbury Park mosque was achieved through existing powers. There is an irony in the consultation stating that ‘it is unacceptable to allow the actions of a few extremists to interrupt individuals’ rights’ while proposing measures that will allow exactly that. As we have said, the consultation worryingly makes references to ‘extremism’ as a thing that is in itself criminal. It is not. However there is already a large amount of criminal law that could be used. Before any new powers are introduced there should be proper consideration of what is already (or is soon likely to be) available. The consultation makes passing reference to existing powers but there is more that can be added. As well as introducing the proposed offences of encouragement of terrorism and dissemination of terrorist materials the bill will extend powers of proscription under the Terrorism Act 2000 (TA) so that non-violent organisations who ‘glorify’ terrorism can be proscribed. Under section 12 TA, it is sufficient to support or ‘further the activities of’ a proscribed organisation by literally any method. Organising or addressing a meeting, with full knowledge of it aims to support or further the activities of a proscribed organisation, is an offence under section 12. The Government clearly intends that this extension will allow groups such as Hizb-ut-Tahrir to be proscribed. We are extremely concerned by, and have opposed the extension. However, if it is passed by Parliament then it will presumably allow criminal prosecutions to be brought against many of those who the Government believes should be targeted by the powers proposed here.

9. A range of other crimes might also be used. Under Section 8 of the Accessories and Abettors Act 1861 it is an offence to counsel or procure any other person to commit an indictable offence. It is an offence at common law to incite someone to commit any indictable offence. It is an offence to incite someone to racial hatred and will soon become an offence to incite someone to religious hatred.

10. It is telling that extremist behaviour is defined as ‘that which the police reasonably believe amounts to support for a proscribed organisation or encouragement of terrorism as proposed in the Terrorism Bill’<sup>11</sup>. Support for a proscribed organisation is a crime. Encouragement of terrorism will be a crime. They can be prosecuted. What this power will effectively mean is that the police believe a crime is being committed. Rather than arresting those alleged to be offending an order is taken out against those who control the place of worship where the crime takes place. Unless those ‘controllers’ take reasonable steps to prevent the criminal behaviour *they* will commit a crime. This cannot be an acceptable approach to criminal justice. The police should not delegate their enforcement powers to others who are then penalised unless they take action. People should be encouraged to co-operate with the police. Coercion is undesirable and will be counterproductive.

11. This leads to the final issue we believe to be relevant. A power to close down places of worship clearly aimed at a particular religion will have a severe community relations impact, however sparingly it is used. As the Muslim website Salaam<sup>12</sup> points out ‘Restrictions have never been imposed on Catholic churches during the Northern Ireland troubles, or on Sikh gurdwaras affiliated to Akali Dal, or Croatian and Serbian Churches during the Balkan crisis’. The suggested proposals will not have any positive impact and will be counterproductive. We must accept that there are people in this country who believe, for example, that Islam is at war with western democracy. Many law-abiding Britons of all races and faiths have profound conceptual concerns with definitions of terrorism which, whilst rightly condemning violent acts of individuals and groups, ignore comparable acts by Governments and who are concerned that the UK applies double standards in its treatment of Muslims. The

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<sup>11</sup> Para 17

<sup>12</sup> [www.salaam.co.uk](http://www.salaam.co.uk)

practical challenge is to establish and persuade people that whatever the complexities and injustices of world affairs, Britain is not at war with any belief or religion, and most importantly, that the murdering of innocent civilians should be abhorred by all. Driving underground those who hold extreme views will not stop them holding these views and might remove them from moderating influences. Obliging ‘controllers’ to take action (and potentially criminalising them) is likely to breed resentment among those whose goodwill is vital to help prevent and bring to justice those who would harm us and moderate those who hold extreme views.

## **Conclusion**

12. The Prime Minister and others in Government have repeatedly emphasised the need for all people and all communities to work together against the threat of terrorism. The proposals in this consultation are the worst type of response. They will alienate without any discernable benefit. Liberty and Justice will support the Government where appropriate and make positive suggestions as to where we believe there might be improvement. However, we do not see how any part of what is planned can be justified and hope that this does not progress further. A Home Office press release of 10 November listed one of the main proposals arising from the ‘Preventing Extremism Together’ working groups set up after the July bombings as ‘Supporting places of worship to become community hubs’. The government cannot have it both ways. To gain the support of all communities it is necessary to make all feel that the laws passed are a fair and proportionate response to the threat we face.

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