

From control orders to TPIMs: variations on a number of themes in British legal responses to terrorism

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Abstract As part of its response to terrorism the British government has established and employed a number of specially created Executive powers as an alternative to prosecution. These powers facilitate the imposition of controls on individuals judged to be involved in terrorism who are thought to present a continuing danger. This article examines the latest version of these powers, “Terrorism Prevention and Implementation Measures”, which replaced a regime of restrictions called “control orders”. The Government argues that the new measures are an improvement on the control order system because they represent a fairer balance between the human rights and civil liberties of the individuals concerned, and the need to protect society from the danger these individuals are thought to present. However it is argued that this is an inaccurate picture of these new measures. Many of the key features of the control order regime remain, and some of the changes are cosmetic rather than real. Further, other features of the new regime were necessitated by case law concerning control orders and therefore do not really represent concessions to civil liberties on the Government’s part. It will also be shown that some of the changes serve as a basis for questioning the underlying justification for this sort of regime. In particular, the imposition of a time-limit on these measures means that individuals still judged to be a danger, will have to be subjected to ordinary criminal law powers of surveillance and investigation in any event.

Amongst a range of different measures which the British government introduced in the aftermath of 9/11 are Executive powers aimed at individuals who the Government claim have been engaged in terrorism and related activities, but who cannot be prosecuted with a criminal offence. The first of these post 9/11 powers, which was employed from 2001 to 2005, involved detention without trial [2; Part IV] of foreign nationals who could not be deported, who were judged to have been involved in terrorism but whom it was claimed could not be prosecuted with criminal offences.¹

¹This required derogation by the United Kingdom from its obligations under Article 5 (Right to Liberty and Security) of the ECHR.

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