

Counter-Terrorism and Security Act and 'Prevent'

This briefing sets out the background to the recently introduced 'Counter Terrorism and Security Act', the wider Prevent agenda, and the implications of this for colleges, universities and students' associations.

NUS' Position on the Act and Prevent

NUS has a number of serious concerns about the Government's new Counter-Terrorism and Security Bill, both in terms of ramifications we foresee upon its implementation, as well as the underlying rhetoric being invoked and the atmosphere it creates. We are also alarmed about the speed at which the Bill is being introduced. Rushed laws are very often ill-thought out, or otherwise poorly scrutinised, and we will continue to strongly oppose the Bill whilst calling for a thorough assessment into the legality of its proposals.

The Bill proposes a number of new measures that build upon decades of previous 'anti-extremism' legislation that has served to legitimise mass surveillance and erode the civil liberties of people in the UK. We recognise that the timing of the Bill has coincided with a number of tragic global events which have brought these issues to the fore - but this makes it all the more critical the issues are

considered with care and the Bill is not seen as capitalising on this situation.

The expansion of the 'PREVENT' and 'Channel' initiatives under the proposals concern us gravely. Placing a vague statutory responsibility on universities to 'prevent people being drawn into terrorism', and giving the Government undefined powers to order that 'extremist' speakers be banned risks further developing a culture of suspicion and surveillance on campuses, whilst also potentially conflicting with institutions' duties to promote freedom of speech, by making them overly risk-averse and unwilling to engage in important topics of discussion.

The direct impact which this Bill will have on education should be the subject of forensic scrutiny. Any expectation by the state for academic staff to be involved in monitoring their students is deeply worrying, and could have a chilling effect on relations between staff and students. We fundamentally believe that universities and colleges are places for education, not surveillance.

Rather than winning the support of minority communities, this Bill could serve to isolate many students who already feel that the only avenue through which the Government will engage them is 'anti-radicalisation' initiatives, resulting in further alienation and disaffection. The intemperate language often used by politicians when discussing issues around faith, belief and 'extremism' is hugely unhelpful and has in the past reinforced stereotypes that have had a strongly negative impact on some of our most vulnerable communities and members. The 'anti-extremism' agenda now needs a thorough reassessment, not further expansion.

NUS Scotland supported this wider position adopted by NUSUK. We were of the view that the proposed guidance, could be harmful to community cohesion, creating unintended and extremely negative consequences for the issues it purports to tackle. Further and higher education institutions, right across the UK, have a long and proud history as places where the sharing of information, free speech and academic freedom are encouraged and celebrated. As such, we believe the scope of this Bill has no place in our universities or colleges, where we should encourage education and expression over suspicion and surveillance. Moreover, we believe that this legislation in Scotland is inappropriate, and has no place more generally, in Scotland, which has rightly chosen to take a much more inclusive, partnered approach, to the issues of terrorism and extremism.

We maintained that, if the Westminster government chose to fast-track this legislation in the face of opposition from universities,

colleges, and student representatives, along with much of wider civic society, and implement it in Scotland, then as a bare minimum, it should be for the Scottish Government and representative bodies to develop and implement separate, Scottish-specific guidance, which best meets the needs of our institutions, staff and students.

Background of the Act & Prevent

The Counter-Terrorism and Security Act 2015 received Royal Assent earlier this year, after being fast-tracked through the Houses of Commons and Lords, in face of significant pressure and opposition across the UK. At the time of this rushing of legislation through Parliament, NUS Scotland's position was:

NUS Scotland supports the position adopted by NUSUK that this Bill, and the proposed guidance, could be harmful to community cohesion, creating unintended and extremely negative consequences for the issues it purports to tackle.

Further and higher education, right across the UK, have a long and proud history as places where the sharing of information, free speech and academic freedom are encouraged and celebrated. As such, we believe the scope of this Bill has no place in our universities or colleges, where we should encourage education and expression over suspicion and surveillance. Moreover, we believe that this legislation in Scotland is inappropriate, and has no place more generally, in Scotland, which has rightly chosen to take a much more inclusive, partnered approach, to the issues of terrorism and extremism.

If the government chooses to still fast-track this legislation in the face of opposition from universities, colleges, and student representatives, along with much of wider civic society, and implement it in Scotland, then we believe that, as a bare minimum, it should be for the Scottish Government and representative bodies to develop and implement separate, Scottish-specific guidance, which best meets the needs of our institutions, staff and students.

As well as measures that bolster existing powers for passport removal and measures that allow police to “disrupt” individuals who are suspected of leaving the country to join terror cells abroad, it also imposes a duty upon public bodies including police, schools and universities to address individuals they believe are at risk of being drawn into terrorism.

As such all further and higher education institutions must, “in the exercise of [their] functions, have due regard to the need to prevent people from being drawn into terrorism”. Following considerable debate in the Lords, when carrying out the duty, an institution must simultaneously “have particular regard to the duty to ensure freedom of speech, if it is subject to that duty”. This is a reference to a university’s freedom of speech duties under the Education Act No. 2 1986. It must also “have particular regard to the importance of academic freedom”. This a cross reference to the academic freedom as defined in the Education Reform Act 1988.

The Prevent strategy was published by the UK Government in 2011, as part of the overall counter-terrorism strategy, CONTEST. While

this strategy is not new, the Counter-Terrorism and Security Act puts greater emphasis on the Prevent strategy. There are three specific objectives of Prevent:

- *Respond to the ideological challenge of terrorism and the threat we face from those who promote it;*
- *Prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and*
- *Work with sectors and institutions where there are risks of radicalisation that we need to address.*

In essence, the Prevent strategy is to stop people from being drawn into violent and non-violent terrorism. In this context, it is important to understand how the government defines ‘extremism’, which is as follows:

- *‘Vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces.’*

The Counter-Terrorism and Security Act sets up a monitoring authority, which in Scotland is the Multi-Agency Strategic CONTEST Board (MASCBC) for Scotland and the Prevent Oversight Board. For colleges, there is one person appointed at senior level to be the single Prevent point of contact for each college. This person then represents the college on the Scottish FE Prevent Network. A similar arrangement is required from universities,

where there is a lead representative that is engaged at the Scottish HE Prevent network.

Background on the Statutory Guidance

As stated before, NUS Scotland—along with staff trade unions and universities and colleges themselves—that if this poor legislation was to be fast-tracked and implemented then it had to be for Scotland, and Scottish representative bodies, to determine the appropriate guidance for Scotland, taking account of our distinctive position. This one small concession was granted, and Scotland has since then been developing its own statutory guidance.

The Statutory Guidance was developed for specified Scottish authorities and institutions by the Scottish Government on the duty stated in the Counter-Terrorism and Security Act 2015 to have 'due regard to the need to prevent people from being drawn into terrorism'. The statutory guidance applies to most public organisations, including Colleges and Universities. Further guidance was developed for universities in the form of a Good Practice Guide. This was developed by the Higher Education Prevent Working Group in which NUS Scotland was consulted.

Student unions are not explicitly mandated to use the Guidance, however it is stressed that institutions need to work with their student unions in order to meet the statutory duty.

Guidance for Universities & Colleges

In Scotland, a similar duty, to England and Wales, applies to higher and further education

institutions, but the guidance is the responsibility of the Scottish Government and its version makes only passing references to students' unions. Again, however, institutions will be responding to the new duty and working on risk assessments over the summer.

University Prevent Group

According to the Good Practice Guide for Scottish Higher Education Institutions each university should have an established working group or as part of another high-level group (the title of this group may be called University Prevent Group). This group will be responsible for:

- *"maintaining a shared awareness and understanding of the risks of radicalisation within the campus community;*
- *Communicating to relevant staff the requirements and importance of the statutory duty;*
- *Ensuring that the statutory duty is addressed effectively; and*
- *Making decisions on sensitive matters that may arise in relation to Counter-Terrorism and Security"*

Web-filtering

The Scottish Guidance mentions, but does not mandate, universities to use web-filtering tools in order to stop breach of policy, such as blocking certain websites or restricting access. The Guidance emphasises freedom of speech, but that some element of monitoring will flag up any access to terrorism-related material by a member of staff or a student. There is specific mention that in the case of academic research is to be performed with the use of terrorism-

related websites permission will have to be sought by a senior official.

The guidance emphasises that the duty builds on existing good practice and doesn't seem to call for significant changes: if organisations already use filtering to protect users from other types of harmful material it suggests they "consider" whether this can also contribute to their Prevent duty, but there seems to be no expectation that organisations will start to use filters just for this purpose. In addition, there is a recommendation that the statutory duty be mentioned in IT Policies.

Universities cooperating with Student Unions

The statutory duty does not apply to student unions, however the Scottish Guidance makes clear that universities should cooperate with student unions on the following matters:

- *9.3.1. Management of speakers and events. HEIs must ensure that their student unions work in partnership with them in relation to controversial speakers and events. Unions may, as independent charitable bodies, wish to establish their own protocol for making decisions on controversial speakers and events organised by student societies. It is possible though that, where a student union supports a particular speaker or event, the institution may nevertheless be unwilling to allow the event to take place on campus.*
- *9.3.2. Provision of welfare and pastoral support. Student unions are often better placed than institutional staff to provide welfare and pastoral support to students. Where in the course of this work, student*

officers have concerns that a student may be being drawn into terrorism, they should be encouraged to raise this concern in confidence with the University Secretary or equivalent, who would refer it to the University Prevent Group for consideration.

- *9.3.3. Training. Where student union staff or elected officers are engaged in the provision of welfare and pastoral support, the institution should invite them to attend Prevent training.*

Colleges

While the Act covers both further and higher education institutions, in terms of college student unions there are some slight nuances because college student unions are not subject to charity law.

In regards to monitoring, the further education guidance states that Education Scotland college inspectors will evaluate colleges annually, including the college's safeguarding processes where any extremism-related issue were to arise.

External Speakers

In July 2015, the Prevent guidance was revised amid concerns about the potential impact on academic freedom and freedom of expression. It states that relevant higher education bodies (RHEBs) should '*consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups*'. In other words, conditions may be put in place on certain speakers or events, or the institution may refuse to allow them on campus.

This duty also applies to SU's as it encompasses 'all activities taking place on the campus, whether organised by institutional managers, by other members of staff, by students, or by a third party'. What this means is that if a SU event includes controversial speakers that are linked with extremist views and will have a direct impact on the wellbeing of students, staff or visitors then the University may express to the SU not to hold the event, or include the speaker. According to the duty, institutions may discipline the SU if an event goes against this law.

Further details of the management of speakers at events is provided in the Good Practice Guide for Higher Education Institutions:

"Procedures for the management of speakers and events must:

- *Clarify that the organisers of events are responsible for assisting the institution in addressing its statutory duty;*
- *Establish clearly who has authority for agreeing to the provision of campus accommodation for a speaker or event;*
- *Encompass all activities taking place on the campus, whether organised by institutional managers, by other members of staff, by students, or by a third party;*
- *Include a clear protocol for escalating decisions to senior staff where they are controversial or difficult;*
- *Require decisions on controversial speakers and events to be made by the University Prevent Group, to be articulated and recorded clearly, and to be made in relation to an established set of criteria;*
- *Address the need to ensure that speakers on campus are not prevented, by*

aggressive or intimidating behaviour, from communicating with their audience;

- *Require that the senior manager responsible for campus security should participate in decisions on controversial speakers and events, and should liaise with the Police where appropriate.*
- *Involve effective cooperation with the student union."*

While this guidance is explicitly for universities, colleges will have similar policies in place. The first instance should be to set up a meeting with your institution to discuss external speakers and how this may, or may not, affect events throughout the year.

You can find more information in NUS Scotland's specific guidance on external speakers below:

<http://www.nusconnect.org.uk/strong-students-unions/faith-and-belief/external-speakers-guidance>

Implications for Student Unions

As is the case with the freedom of speech duty in the Education Act 1986, the Counter Terrorism and Security Act does not directly apply to students' unions. Rather, it places duties on HE and FE institutions that influence SU activities by (in practical terms) using partnership relationships and the control and use of grant funding, rooms and student behavioural codes.

This duty is less explicit in Scotland, but charity law does directly apply to almost all higher education students' unions (for colleges, see section 4.4). OSCR in Scotland would expect that HE students' unions (or associations), and

specifically their trustees, will take into account the expectations of the HE institution alongside other factors given role of the HE institution as principal funder and landlord. It would also expect the students' union to manage risk and would expect that they may curtail speakers when they infringe rights of others, discriminate, commit an offence, or act in a way contrary to rights of individuals.

The charity law issues and wider legal framework are well rehearsed in the first section NUS' guidance on external speakers. At the time of writing, there is no specific guidance published by OSCR for charitable bodies (including SU's) on Prevent. However, the general OSCR guidance is available here: <http://www.oscr.org.uk/media/1577/guidance-for-charity-trustees.pdf>

Additional issues to consider

Dialogue with the institution

Whilst SUs will themselves have varying policy on Prevent and the Act, it will be important to understand – and to influence where possible – the response of the institution and how it may affect the SU. Therefore we would encourage dialogue with the appropriate individuals on the issue. The best person to talk to would be the Prevent lead at your institution, this will be someone at senior management level.

What about students themselves?

Whilst procedures for external speakers are well understood, little work has been carried out on activity from students and the interplay between union codes of behaviour and university codes of behaviour.

Focus of SU on issues such as far-right extremism

The focus of those implementing in institutions may be narrower than is desirable but in pursuit of welfare objectives many SUs will in particular consider racist/fascist groups and individuals as ongoing concerns and should continue to do so.

What is an "SU event"

Increasingly club/society events are held off campus. This does not mean that they are suddenly not an SU event and unions should consider appropriate management of such events.

Websites

Society websites, Facebook pages, Twitter accounts and so on should also be considered as 'part' of the SU. We would recommend reviewing the rules and arrangements in place, to ensure that communication between the SU and societies remains open and transparent.

Next Steps

We'll be in contact with every students' association when the guidance around external speakers is finalised. We would encourage every students' association to consider their position on Prevent and discuss this with your university or college. NUS Scotland can provide more detailed guidance on a case-by-case basis.

Additional information

- Prevent Duty Guidance for Further Education Institutions in Scotland: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/44591

[9/Prevent Duty Guidance For Further Education Scotland -Interactive.pdf](#)

- Prevent Duty Guidance for Higher Education Institutions in Scotland:
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445921/Prevent Duty Guidance For Higher Education Scotland -Interactive.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445921/Prevent_Duty_Guidance_For_Higher_Education_Scotland_-_Interactive.pdf)
- Revised Prevent Duty Guidance for Scotland:
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445978/3799 Revised Prevent Duty Guidance Scotland V2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445978/3799_Revised_Prevent_Duty_Guidance_Scotland_V2.pdf)
- Scotland Against Criminalising Communities published an open letter to the Scottish Government in relation to concerns regarding the Prevent Duty Guidance for Scotland. You can read the letter and the Scottish Government's response here:
<http://www.sacc.org.uk/prevent>
- UCU has published guidance for their branches and members on the Prevent Duty. (Please note this publication is more focused on England and Wales, rather than the Scottish context):
[http://www.ucu.org.uk/media/pdf/8/i/Prevent_duty_guidance Jul15.pdf](http://www.ucu.org.uk/media/pdf/8/i/Prevent_duty_guidance_Jul15.pdf)