

NOTE ON NEW CLAUSE:  
DESIGNATION AND RESTRICTION OF EXTREME CRIMINAL PROTEST GROUPS

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## Introduction

1. This Note considers the new clause inserted by the House of Lords at Report stage on 9 March 2026<sup>1</sup> from a terrorism legislation perspective. It is due for consideration by the House of Commons on 14 April 2026.
2. In summary:
  - The new power overlaps with terrorism proscription but the relationship is unclear.
  - The existence of the new power will be used to undermine terrorism proscription.
  - It is doubtful that the range of new precursor offences, and the use of intelligence as a basis for designation, are suitable for groups operating below the national security threshold.

## The New Clause

3. The new clause creates a proscription-light mechanism for the Secretary of State to designate groups below the terrorism threshold. Although the title refers to ‘Extreme Criminal Protest Groups’, the designation criteria do not refer to extremity or to protest.
4. Assuming that the proscription of Palestine Action is a motivating consideration behind the clause, the key point appears to be that it permits the designation of a group that has ‘as its purpose and practice’ the deliberate commission of criminal

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<sup>1</sup> Hansard (HL) Vol 854 col 87 (9.3.26).

damage<sup>2</sup>. Designation is also possible for groups undertaking riot, violent disorder, or interference with critical national infrastructure<sup>3</sup>.

5. Designation by regulation, with the possibility of designation on the basis of sensitive intelligence<sup>4</sup>, will be possible when two further criteria are met.
6. Firstly, the criminal damage (or riot, etc) must be done with the intention of influencing public policy, parliamentary debate, ministerial decision-making, or the exercise of democratic functions<sup>5</sup>. This is effectively a gloss on the first part the purpose limb of the terrorism definition (“the use or threat is designed to influence the government...”<sup>6</sup>), although unlike the terrorism definition, designation is not possible where the intention is to intimidate the public or a section of the public.
7. Secondly, the activities of the group must create a risk of serious harm to public safety, democratic institutions, or the rights of others<sup>7</sup>. This is not an easy threshold to interpret. Risk of serious harm to public safety and/or democratic institutions appears to raise a high bar; on the other hand, serious harm to the rights of others might routinely be met in any case of a criminal damage campaign affecting private property.
8. The effect of designation is that a series of offences are created which broadly match the proscription-related offences under the Terrorism Act 2000: designation, public promotion, fundraising, directing, and “providing material support”<sup>8</sup>. However, the formulation “providing material support” comes from US counter-terrorism legislation<sup>9</sup>, and goes beyond the Terrorism Act prohibitions<sup>10</sup>.
9. Unlike the Terrorism Act 2000, the offences are not graduated by severity: they are all either-way offences attracting a maximum of 3 years’ imprisonment on indictment<sup>11</sup>.

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<sup>2</sup> Clause (1)(a)(iii).

<sup>3</sup> Contrary to section 7 Public Order Act 2023.

<sup>4</sup> A statement of reasons must be laid before Parliament but excluding sensitive information which would otherwise be contained in that statement of reasons: Clause (6), (7).

<sup>5</sup> Clause (1)(b).

<sup>6</sup> Section 1(1)(b).

<sup>7</sup> Clause (1)(c).

<sup>8</sup> Clause (3).

<sup>9</sup> E.g., 18 U.S.C. 2339B.

<sup>10</sup> Terrorism Acts in 2022, at 7.17-7.27.

<sup>11</sup> Clause (5).

10. Provision is made to exempt supportive expressions of opinion or belief from the public promotion offence<sup>12</sup>.

### **Relationship with Terrorism**

11. Although the clause expressly provides that designation does not amount to proscription under the Terrorism Act 2000<sup>13</sup>, a comparison with terrorism proscription is inevitable, and has practical consequences.

12. It will be recalled that the Terrorism Act definition includes action or threat of action which “involves serious damage to property”<sup>14</sup>, if designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and it is made for the purpose of advancing a political, religious, racial or ideological cause<sup>15</sup>.

13. It follows that:

- Both terrorism proscription and extreme protest group designation will be available for organisations that have a policy of serious criminal damage where this is done to influence public policy.
- It is unclear whether extreme protest group designation will be available for non-serious criminal damage; the threshold of “serious harm to public safety, democratic institutions, or the rights of others” suggests that it would not be available, although (as set out above) it is possible that non-serious damage could still risk serious harm to the rights of others.
- Only terrorism proscription will be available where serious criminal damage is done to intimidate the public or a section of the public. This might arise if a group decided that public policy was never going to change so it was necessary to “stop genocide” by intimidating businesses alleged to form part of Israel’s supply chains.
- Away from criminal damage, riot and violent disorder (which I assume carry the risk of serious violence to people or serious damage to property), only extreme protest group designation will be available for peaceably interfering with key national infrastructure such as road or rail infrastructure or onshore windfarms<sup>16</sup>.

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<sup>12</sup> Clause (4).

<sup>13</sup> Clause (2).

<sup>14</sup> Section 1(2)(b).

<sup>15</sup> Section 1(1)(b), (c).

<sup>16</sup> The full list of key national infrastructure is at section 7(6) Public Order Act 2023.

## Consequences

14. Terrorism proscription is unique. It operates at a high threshold that is well understood domestically and internationally, and it provides a range of well-understood precursor offences allowing the police to intervene where necessary. The possibility of debate about whether a group like Palestine Action is properly proscribed, or whether sign-holders ought to be arrested, does not detract from its key role in UK counter-terrorism. The fact that the authorities will draw on intelligence to inform an assessment of national security as part of the proscription process is acceptable in this context.
15. It is quite another thing to use this regime in respect of criminal damage, or indeed peaceable interference with key national infrastructure, where national security is not an issue. It extends the ambit of criminal liability based on an individual's involvement with a designated group, rather than their conduct under general criminal law.
16. The existence of proscription-light will have foreseeable consequences in relation to terrorism proscription.
17. Noting the recent decision of the Divisional Court in the Palestine Action case, it will be argued in serious damage to property cases that terrorism proscription is "disproportionate"<sup>17</sup> because the desired outcome can be achieved through extreme protest group designation. To succeed the government would need to point out some outcome of terrorism proscription that is not achievable by designation.
18. The same arguments will also arise where terrorism proscription is done on a number of bases but the assessment of serious violence to persons is weaker: it will be argued that the 'core' of the group's mischief can be dealt with by extreme protest group designation, as this will have less impact on rights of freedom of expression and assembly.
19. Similar issues will arise where the group is both intending to influence government policy (for which designation is available) and to intimidate a section of the public (for which designation is not).

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<sup>17</sup> R (Huda Ammori) v Secretary of State for the Home Department [2026] EWHC 292, at para 138-9.

20. Losing control of the proscription power is damaging. It is also doubtful that shifting to an extreme protest group designation will be effective:

- Group members or supporters will equally object to extreme protest group designation, and seek to get themselves arrested (for example, by making symbolic 50p contributions to the group’s funding, thus committing an offence)<sup>18</sup>.
- It is more than arguable that the same “disproportionality” arguments would arise because the proposed offences are broadly equivalent to terrorism offences (and potentially wider in the case of “material support”)<sup>19</sup>.
- Moreover, it will be said that designation is even less appropriate where the government can be taken to have decided, by eschewing use of terrorism proscription, that national security is not an issue.

## **Conclusion**

21. Aside from the principled objection to introducing a proscription-type power and precursor offences for groups who are not of national security concern, the new clause risks undermining the proscription power which has been an important mainstay of UK terrorism legislation.

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<sup>18</sup> Noting that a proposed maximum penalty of three years’ imprisonment, now suspendable (see section 2 Sentencing Act 2026), may not have much deterrent effect.

<sup>19</sup> See Ammori, *supra*, at para 140.