

1. Section 1 Terrorism Act 2006, titled 'Encouragement to terrorism', is an offence carrying a maximum of **15 years' imprisonment**.
2. The offence can be considered as having three components: a conduct element comprising the act of publishing a qualifying statement to an audience; a mental element involving intent or recklessness; and a defence.
3. The **conduct element** can be best understood by breaking it down into three components: (a) the act of publishing a statement, (b) a statement which is a qualifying statement, and (c) to a particular audience.
4. **Act of publishing a statement:** This is straightforward. Publishing a statement means publishing it in any manner, including to the public electronically. So this includes a statement published orally, in writing or online. Statement means a communication "of any description", and includes a communication by sound or image.
5. **Qualifying statement:** It goes without saying that not every statement that is published can qualify as a statement within section 1. Section 1 requires the court to consider the nature of the statement itself.
6. A qualifying statement is one that is likely to be understood by a reasonable person as a "direct or indirect encouragement or other inducement" to some of those to whom it is published, "to the commission, preparation or instigation of acts of terrorism or [certain listed explosives, CBRN and hijacking offences].
7. The acts of terrorism or listed offences in question can be specific or general. An example would be addressing a mosque congregation and saying, "Jihad, jihad, jihad, jihad is compulsory. Jihad by fighting by sword means jihad is a compulsory obligation upon you".
8. Every statement that "glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences" and "is a statement from which members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances", including illustrative conduct, counts as indirect encouragement for these purposes. An example of glorification would be to circulate online an image of Brenton Tarrant (Christchurch, New Zealand, murderer of Muslims), calling him a "hero".
9. The question of how a statement is likely to be understood, and what should be inferred from a statement, must be considered looking at the statement as a whole, and the circumstances and manner of its publication.
10. This all means that whether a statement qualifies or not is highly fact specific and that statements should not be taken out of context.
11. **The audience:** the audience must comprise members of the public. Public means the public or any section of the public at home or abroad, and includes any meeting or other group of persons which is open to the public unconditionally or conditionally (for example, on payment of a fee).

12. Importantly, it does not matter whether any person is in fact encouraged or induced to commit, prepare or instigate any act of terrorism.
13. There are two ways of committing the offence: intentionally or recklessly.
14. **Intentionally**: a person commits the offence if he intends members of the public to be directly or indirectly encouraged or otherwise induced by the qualifying statement to commit, prepare or instigate acts of terrorism or listed offences (either specific or general).
15. **Recklessly**: a person commits the offence if he is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or listed offences (either specific or general).
16. It should be noted that the mental element is additional to the need for a qualifying statement.
17. It follows that, even if a person intends someone to be encouraged, the offence will not be committed unless the statement is a qualifying statement as defined above.
18. Where recklessness is relied on by the prosecution, the defendant has a **defence** if he can show that the statement did not express his views nor had his endorsement, and that this was clear in all the circumstances.
19. There is no reported case where this defence has arisen.
20. This defence is not in principle available for **internet publishers** where a constable has previously served a take-down notice in relation to the statement. This provision, which was drafted with the unlikely possibility of prosecuting internet service providers and which I have previously described as a “hollow measure”, has never been used.