

## Possession of terrorist materials

### Latest Update

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The two relevant offences are:

1. Possession for terrorist purposes, contrary to [s.57\(1\)](#) of the [Terrorism Act 2000](#)
2. Collecting, possessing or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, contrary to [s.58\(1\)](#) of the [Terrorism Act 2000](#).

These two offences are the most commonly charged terrorism offences. Of the 447 persons charged under terrorism legislation between 11 September 2001 and 31 December 2013, 38% of them were charged with possession under one of the above sections as the principal offence. (See [Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches- June 2014.](#))

[Section 57](#) carries a maximum penalty of fifteen years imprisonment (only in respect of offences committed on or after 13 April 2006: [Terrorism Act 2006 s.13\(2\)](#), and the [Terrorism Act 2006 \(Commencement No. 1\) Order 2006/1013](#)); [s.58](#) carries a maximum penalty of ten years imprisonment. No definitive guideline has been issued by the Sentencing Council in respect of either offence.

Following conviction for [ss.57](#) or [58](#) offences, provided the court imposes a qualifying sentence or order triggering notification, the defendant must be made subject to the notification requirements set out in [Pt 4](#) of the [Counter Terrorism Act 2008](#).

### Overview of Topic

1. This area of the criminal law has been described as "an intermingled nexus of overlapping terrorism-related offences" ([Possession of terrorist information: role of intention J. Crim. L. 2010, 74\(5\), 397-400](#)). True it is that both [s.57](#) and [s.58](#) have been widely drafted, no doubt deliberately. In addition the Court of Appeal has acknowledged ([R. v Rowe \(Andrew\) \[2007\] EWCA Crim 635; \[2007\] Q.B. 975](#)) that these two widely-drafted anti-terrorism offences overlap. However, although it is conceivable that the same material could be caught by both sections, the Court of Appeal has emphasised in [R. v G \[2009\] UKHL 13; \[2010\] 1 A.C. 43](#) that core differences remain between the two. Three of the most significant are set out below.

2. First, [s.57](#) focuses on the circumstances in which material is possessed, namely whether they give rise to a reasonable suspicion of a terrorist purpose. [Section 58](#), by contrast, centres on the nature of the material, regardless of the circumstances in which it is held or the purpose of the possessor.
3. Second, [s.57](#) covers a wider range of material. The word "article" in [s.57\(1\)](#) has been broadly interpreted to include items from balaclavas to gas cylinders. [Section 58](#), by contrast, is more narrowly circumscribed, being limited to a "document or record". Common examples of material charged under [s.58](#) include digital magazines published by Al-Qaeda in the Arabian Peninsula containing bomb-making instructions, as well as the Anarchist's Cookbook.
4. Third, [s.57](#) is limited to possession, while [s.58](#) has broader application encompassing possession as well as collecting or making.
5. **Section 57 of the Terrorism Act 2000:** [Section 57](#) states as follows:
 

"57.- Possession for terrorist purposes.

(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article-

(a) was on any premises at the same time as the accused, or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

(4) A person guilty of an offence under this section shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding [15 years], to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

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6. The central purpose of [s.57](#) was to criminalise the possession of ordinary household items which could be used in the manufacture of bombs. "Article" is defined in [s.121](#) to include "substance and any other thing", and has been used to charge those found in possession of items such as fertilizer ([R. v Khyam \(Omar\) \[2008\] EWCA Crim 1612; \[2009\] 1 Cr. App. R. \(S.\) 77](#)), aluminium powder ([R v Khyam](#)), petrol ([R. v Lusha \(Krenar\) \[2010\] EWCA Crim 1761](#)). Also included in that case were computer hard drives containing instructions on the manufacture of bomb-making equipment), a lighter ([R. v Wong \(William\) \[2012\] NICA 54](#)) and latex gloves ([R v Wong](#)). This section tends not to be used to indict defendants found in possession of items such as firearms and explosives, where charges under the [Firearms Act 1968](#) and the [Explosives Substances Act 1883](#) are available.

7. Documentary materials such as bomb-making instructions are capable of amounting to "articles" falling within this section. For example, in [R. v Rowe \(Andrew\) \[2007\] EWCA Crim 635; \[2007\] Q.B. 975](#) the subject of the first count was a W.H. Smith notebook containing manuscript notes that included instructions on how to assemble and operate a mortar. Typically, however, documentary material tends to be charged under [s.57](#) where it is found alongside physical materials such as fertilizer connoting an overall terrorist purpose.
8. The requirement in [s.57\(1\)](#) to prove that the material was possessed "for a purpose connected with" terrorism was held in [R. v Zafar \(Aitzaz\) \[2008\] EWCA Crim 184; \[2008\] Q.B. 810](#) to be imprecise and capable of giving rise to uncertainty. To address this, and to ensure a requirement for a direct connection between the object possessed and the act of terrorism, the subsection must be interpreted as if it in fact read:

"A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that he intends it to be used for the purpose of the commission, preparation or instigation of an act of terrorism."
9. In [Zafar](#), the articles concerned were extremist literature including ideological propaganda, stored on digital media. The prosecution alleged that the defendants had used the stored literature to incite each other to travel to Pakistan, train there and fight in Afghanistan. Although there was evidence that supported the existence of a plan to travel as alleged, there was nothing that evidenced expressly the use, or intention to use, the extremist literature to incite each other to do so. Accordingly the appeal was allowed.
10. It is not necessary that the relevant article be possessed for the sole purpose of terrorism. Hard drives or latex gloves, for example, may be possessed for more than one purpose. In [R v Altimini \[2008\] EWCA Crim 2829](#) the Court of Appeal held that materials held on a hard drive by a "sleeper" contravened [s.57](#), notwithstanding that his immediate purpose was storing them. Given that a further purpose was connected with the commission, preparation or instigation of an act of terrorism, the offence was made out.
11. The low threshold of "reasonable suspicion" required to satisfy [s.57\(1\)](#) is balanced by the wording of [s.57\(2\)](#), which provides that it is a defence to "prove" that the possession was not for a terrorist purpose. In order to avoid offending [art.6\(2\) of the European Convention on Human Rights](#), the burden on the defence is an evidential one only. Furthermore, by [s.118](#), if the defence discharge the evidential burden, the court shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
12. Importantly, the prosecution need do no more than prove that the proffered reasonable excuse is untrue. There is no need to go further and prove that the defendant's possession of the article was for a purpose connected with terrorism. That would be to create an additional element of the offence not present in [s.57\(1\)](#). To illustrate the point, where a defendant suggests that his reasonable excuse for possession of timers was an interest in cooking, the prosecution must show that the defence is untrue. That may be achieved by calling evidence to show, for example, that there were no kitchen utensils in the house and that the number of timers was more than could reasonably be required. There would be no need to prove beyond reasonable doubt that the real reason for possessing the timers was for a purpose connected with an act of terrorism.
13. Sentences have included twelve years in the case of [R. v Muhammed \(Sultan\), R. v Khan \(Aabid Hassain\) \[2009\] EWCA Crim 2653; \[2010\] 1 Cr. App. R. \(S.\) 103](#). The second accused was found in possession of for convictions arising from the possession of a "vast collection" of terrorist related documentation stored on digital media. The material also showed the active engagement of Khan in advice and recruitment of others more vulnerable

than himself. He was involved in an extremist website which translated and published Al-Qaeda videos and articles, seeking to promote their cause and of particular sinister import seeking to persuade others of their obligation to take part in fighting and in suicide bombing. In the case of [R. v Khyam \(Omar\) \[2008\] EWCA Crim 1612; \[2009\] 1 Cr. App. R. \(S.\) 77](#) eight-year concurrent sentences for two counts of possession of aluminium powder and fertilizer were upheld. This was in the context of a life sentence imposed for an offence of conspiracy to cause explosions relating to proposed attacks on the London Underground, nightclubs, public houses and synagogues.

14. **Section 58 of the Terrorism Act 2000:** [Section 58](#) states as follows:

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"58.- Collection of information.

1) A person commits an offence if-

(a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or he possesses a document or record containing information of that kind.

(2) In this section "record" includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession.

(4) A person guilty of an offence under this section shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both. (...)

"

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15. Unlike [s.57](#), there is no requirement in [s.58\(1\)](#) for the prosecution to prove that the defendant possessed the information for a terrorist purpose. Instead, the touchstone of this offence is the nature of the information rather than the circumstances in which it is possessed. The information must be of practical assistance to a would-be terrorist. Material which merely glorifies terrorism is insufficient, even where it has the effect of encouraging such activity. Accordingly, in relation to the Inspire magazines published by Al-Qaeda in the Arabian Peninsula it is only articles such as that titled "How to make a bomb in the kitchen of your mom" that cross the statutory threshold. Other examples include information as to how to avoid surveillance and detection ([R. v Muhammed \(Sultan\) \[2010\] EWCA Crim 227; \[2010\] 3 All E.R. 759](#)). In the case of [R. v Malik \(Samina Hussain\) \[2008\] EWCA Crim 1450](#) (the self-styled "Lyrical Terrorist") her conviction was based not on the propaganda documents, but those containing practical information about military techniques (The conviction was overturned due to the judge's failure in summing up to properly identify and isolate those documents that could properly found a conviction by reference to the elements of [s.58\(1\)](#)).
16. Equally, whilst a train timetable might be of use to a terrorist seeking to plant a bomb, such a document would not fall within [s.58](#) as it is not designed to provide practical assistance to a person committing or preparing an act of terrorism.

17. It is not necessary that the information should only be of use to a would be terrorist. For example, information on where to obtain explosives might equally be of assistance to a safe-cracker. Nonetheless it is still capable of satisfying [s.58\(1\)](#).
18. Unlike [s.57\(3\)](#), which contains a statutory assumption about the possession of articles in certain circumstances, it is a requirement of [s.58\(1\)](#) that the defendant knew that he had the document or record and was aware of the nature of the information it contained ([R. v G \[2009\] UKHL 13; \[2010\] 1 A.C. 43](#)).
19. Where the prosecution has proved all the elements of the offence [s.58\(3\)](#) provides the defendant with a defence of "reasonable excuse", which the prosecution must then disprove beyond reasonable doubt. There is no requirement for the prosecution to go further by establishing that the article was possessed for a purpose connected with terrorism ([R v G](#)). Suppose a defendant raised a defence in relation to possession of the publication "39 Ways to Serve and Participate in Jihad" that he had confiscated it from a relative and was on his way to the police station. If the Crown could show that to be untrue - for example by showing that the route he took went nowhere near a police station - the defence would be disproved. There is no additional requirement to show that the defendant had the material for a specific terrorist purpose.
20. The House of Lords in [R v G](#) emphasised that to fall within the defence afforded by [s.58\(3\)](#) the excuse must be reasonable. In that case, collecting information so as to irritate prison officers was not reasonable. Equally, a defence contention that information was intended to be used for burglary rather than bombing the Home Secretary's house also failed to engage the defence. The effect has been to extend the scope of [s.58](#), and with it to draw within the ambit of terrorism legislation common or garden criminality.
21. The penalties on conviction for [s.58](#) offences, particularly where related to terrorist literature, tend to be significantly lower than for [s.57](#) offences.
22. In [R. v Muhammed \(Sultan\) \[2010\] EWCA Crim 227; \[2010\] 3 All E.R. 759](#) the appellant was found to be in possession of a document entitled "Draft Ideas" created by himself and an associate over the internet. It contained advice for which model of mobile phone to use, and what words to avoid as well as the use of code words in emails. The Court of Appeal held that the appropriate sentence after a trial, was two years' imprisonment. It should be noted that this document was produced in the context of possession of material including bomb-making instructions.
23. [Mohammed Abul Hasnath](#), a 19-year-old from East London, was charged with four counts contrary to [s.58](#) in relation to possession of a USB memory device that contained six editions of Inspire Magazine, as well as a laptop containing another edition of the magazine and other extremist material. He pleaded guilty and on 11 May 2012 was sentenced to 14 months' imprisonment concurrent on each offence.
24. [Asim Kausar](#) pleaded guilty to four [s.58](#) counts relating to documents found on a USB drive, three of which provided instructions on making munitions and devices and one which provided a recipe for ricin. He later pleaded guilty and on 27 January 2012 was sentenced at Manchester Crown Court by HHJ Gilbert QC to concurrent sentences of two years and three months' imprisonment on each of the four offences.
25. [Christian Edme and Robert Baume](#), two German nationals, were found at Dover in possession of computer media containing four editions of Al-Qaeda publications together with extremist videos and a document called "39 Ways to Support and Participate in Jihad". On 2 February 2012, both pleaded guilty. Mr Edme pleaded guilty to four counts and

received a sentence of 16 months' imprisonment. Mr. Baume pleaded guilty to one count and received a sentence of 12 months' imprisonment.

## **Key Acts**

[Terrorism Act 2000](#)

[Terrorism Act 2006](#)

[Counter Terrorism Act 2008](#)

## **Key Subordinate Legislation**

[Terrorism Act 2006 \(Commencement No. 1\) Order 2006/1013](#)

## **Key Quasi-legislation**

None.

## **Key European Union Legislation**

[European Convention on Human Rights](#)

## **Key Cases**

[R. v G \[2009\] UKHL 13; \[2010\] 1 A.C. 43](#)

[R. v Zafar \(Aitzaz\) \[2008\] EWCA Crim 184; \[2008\] Q.B. 810](#)

## **Key Texts**

None.

## **Further Reading**

[Possession of terrorist information: role of intention J. Crim. L. 2010, 74\(5\), 397-400](#)

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