HM Government

HMG Counter-Terrorism Disruptive Powers Report 2021

January 2023

CP 779

HMG Counter-Terrorism Disruptive Powers Report 2021

Presented to Parliament
by the Secretary of State for the Home Department
by Command of His Majesty

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Foreword

The terrorism threat to the UK is ever-present and ever-changing. Our law enforcement and intelligence agencies will have all the resources they need to keep the British people safe. Our world-leading counter-terrorism disruptions system has been made even stronger by this government.

During the last year, we have seen an increase in the danger posed by online terrorists and hostile state threats. The Online Safety Bill will make online users safer. It will require companies to better protect people on their platforms by removing illegal content.

Online threats have not replaced physical threats, of course. The Government passed emergency legislation following the terrorist attacks at Fishmongers' Hall and in Streatham to end the automatic early release of terrorist offenders. In addition, the Counter-Terrorism and Sentencing Act 2021 builds on the emergency legislation by introducing new and longer sentences – a minimum of 14 years in prison, increasing maximum penalties, and imposing stricter monitoring of terrorist offenders upon release. The Act also strengthens the tools available to counter-terrorism police and the security services to manage the risk posed by terrorist offenders and individuals of concern who are not in custody.

Another important step is finalising the National Security Bill, which will establish a modern framework for tackling the contemporary state threats we face. It will bring together measures that protect our national security and keep the UK safe from hostile state threats. We will also ensure even greater collaboration and cooperation between different agencies.

Of course, much of the work done by our brave law enforcement, intelligence and security services must take place in the shadows, but we will be as transparent as we responsibly can. British taxpayers need to know that their money is being well spent and that outstanding professionals are working around the clock with great courage and skill to keep them safe.

Suella Braverman
Home Secretary

1 - Introduction

The priority of any Government is keeping its people safe and secure. Under the Government's counter-terrorism strategy, CONTEST, we work to reduce the risk to the UK and its interests overseas from terrorism, so that people can go about their lives freely and with confidence. CONTEST was updated and strengthened in June of 2018.

Terrorism remains one of the most direct and immediate risks to our national security. The terrorist threat to the UK primarily emanates from self-initiated terrorists who are unpredictable and difficult to detect, and are inspired to act by terrorist ideology rather than directed or supported by terrorist groups.

Islamist terrorist groups overseas, such as ISIL (Daesh) and Al-Qa'ida (AQ), continue to play an important role in driving the terrorist threat in the UK; however, at present this role is primarily limited to attempts to inspire would-be attackers. We also face emerging extreme right-wing and single-issue terrorist threats.

To counter these and other threats, it is crucial that we have the necessary powers and that they are used appropriately and proportionately. This report includes figures on the use of counter-terrorism disruptive powers in 2021. It explains their utility and outlines the legal frameworks that ensure they can only be used when necessary and proportionate, in accordance with the statutory functions of the relevant public authorities.

There are limitations concerning how much can be said publicly about the use of certain sensitive techniques. To go into too much detail may encourage terrorists to change their behaviour in order to evade detection. However, it is extremely important that the public are confident that the security, intelligence and law enforcement agencies have the powers they need to protect the public and that these powers are used proportionately. The agencies rely on many members of the public to provide support to their work. If the public do not trust the police and security and intelligence agencies, that mistrust would result in a significant operational impact.

For the first time, this report includes information about the use of Serious Crime Prevention Orders (SCPO) specifically in relation to terrorism. This follows changes made by the Government through the Counter-Terrorism and Sentencing Act (CTSA) 2021 to the Serious Crime Act 2007, which enabled Chief Police officers to apply directly to the High-Court for a SCPO (previously only the relevant prosecuting authority could apply directly to the High Court).

2 – Terrorism Arrests and Outcomes

Conviction in a court is one of the most effective tools we have to stop terrorists. The Government and operational partners are as a priority committed to pursuing convictions for terrorist offences where they have occurred. Terrorism-related arrests are made under the Police and Criminal Evidence Act 1984 (PACE), or the Terrorism Act 2000 (TACT) in circumstances where arresting officers require additional powers of detention or need to arrest a person suspected of terrorism-related activity without a warrant. Whether to arrest someone under PACE or TACT is an operational decision made by the police.

In the year ending 31 December 2021, 186 persons were arrested for terrorism-related activity, a decrease of 1% from the 188 [1]arrests in the previous year. Of the 186 arrests, 57 (31%) resulted in a charge, and of those charged, 49 were considered to be terrorism-related. Many of these cases are ongoing, so the number of charges resulting from the 186 arrests can be expected to rise over time. Of the 49 people charged with terrorism-related offences, 17 have been prosecuted, 30 are awaiting prosecution, 1 was not proceeded against and 1 received another outcome. 17 of the prosecution cases led to all individuals being convicted of an offence, all of which were terrorism-related offences.

As of 31 December 2021, there were 229 persons in custody in Greater Britain for terrorism-connected offences. This total was comprised of 154 persons (67%) in custody who held Islamist extremist views, 52 (23%) who held extreme right-wing ideologies, and a further 23 (10%) individuals who held other ideologies.

From the year ending September 2021 onwards, data has been collected and published on the number of persons detained and applications for extension of detention in Great Britain under Schedule 8 of the Terrorism Act 2000. Data has also been collected and published on the number of requests for access to a solicitor by persons detained in Great Britain under Schedule 8 of the Terrorism Act 2000.

Under Section 41 of TACT 2000, police officers have the power to arrest persons suspected of terrorism-related offences without a warrant. These arrest powers also allow the extended detention of persons beyond the maximum 4 days available under standard arrest powers, to a maximum of 14 days. In the year ending 31 December 2021, of the 32 individuals arrested under Section 41 of TACT 2000 in Great Britain who were subsequently detained, there were 31 applications for extension of detention granted by a judicial authority under Schedule 8 of TACT 2000.

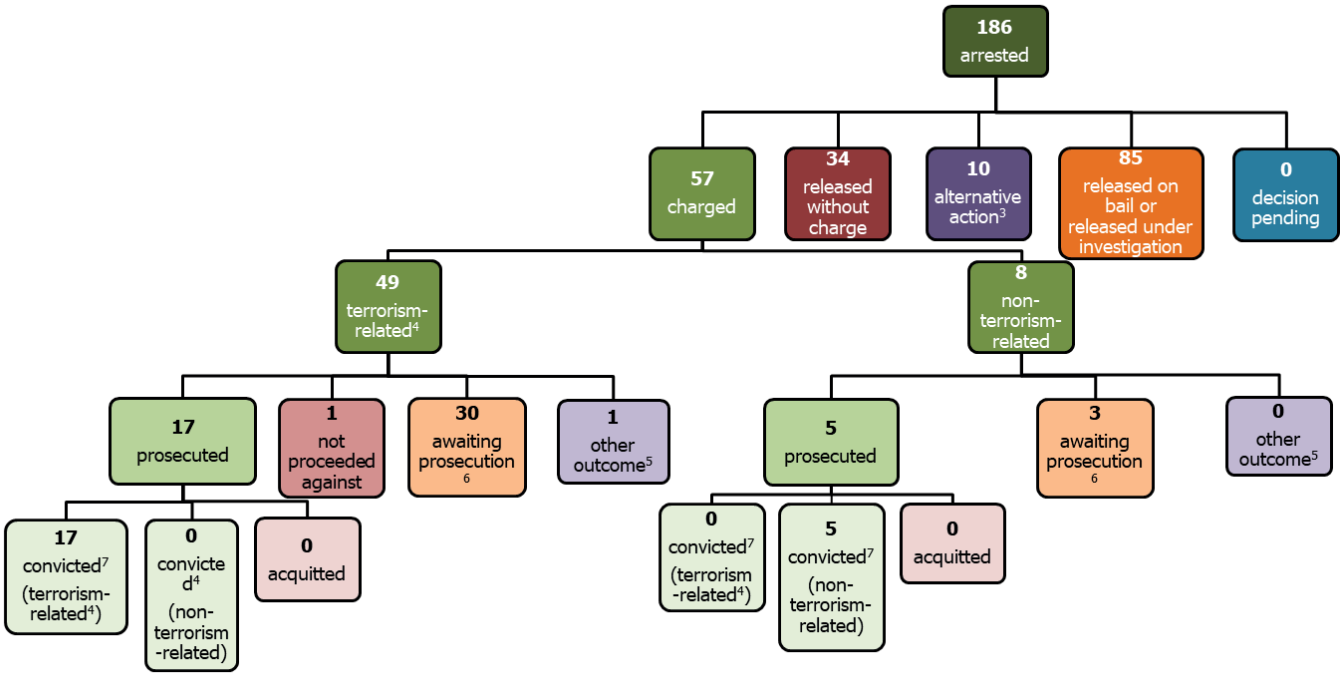
Under Section 41 of TACT 2000, a person detained in police custody under the terrorism provisions is entitled to consult a solicitor privately. A police officer of at least the rank of superintendent can authorise a delay in permitting a detained person to consult a solicitor if they believe that exercising this right will result in any of the consequences listed in Schedule 8 of the Act. In the year ending 31 December

[1] As cases progress over time, arrests figures are likely to be revised and updated. As such, figures quoted in this report may not match the figures quoted in previous years' reports. The latest arrests figures can be found in Table A.01 here.

2021, of the 32 individuals arrested under Section 41 of TACT 2000 in Great Britain who were subsequently detained, there were 31 requests for access to a solicitor, all of which were allowed immediately.

Figure 1: Arrests and outcomes year ending 31 December 2021

Figure 1 summarises how individuals who are arrested on suspicion of terrorism-related activity are dealt with through the criminal justice system. It follows the process from the point of arrest, through to charge (or other outcomes) and prosecution.



Source: *Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation', data tables A.01 to A.07*

Figure 1 notes:

1. Based on time of arrest.
2. Data presented are based on the latest position with each case as at the date of data provision from National Counter Terrorism Police Operations Centre (NCTPOC) (26 January 2022).
3. 'Alternative action' includes a number of outcomes, such as cautions, detentions under international arrest warrant, transfer to immigration authorities etc. See table A.03 https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2021 for a complete list.
4. Terrorism-related charges and convictions include some charges and convictions under non-terrorism legislation, where the offence is considered to be terrorism-related.
5. The 'other' category includes other cases/outcomes such as cautions, transfers to Immigration Enforcement Agencies, the offender's details being circulated as wanted, and extraditions.

6. Cases that are ‘awaiting prosecution’ are not yet complete. As time passes, these cases will eventually lead to a prosecution, ‘other’ outcome, or it may be decided that the individual will not be proceeded against.
7. Excludes convictions that were later quashed on appeal.

3 – Disruptive Powers

3.1 - Stops and Searches

Powers of search and seizure are vital in ensuring that the police can acquire evidence in the course of a criminal investigation and are powerful disruptive tools in the prevention of terrorism.

Section 47A of the Terrorism Act 2000 (TACT) enables a senior police officer to give an authorisation, specifying an area or place where they reasonably suspect that an act of terrorism will take place. Within that area and for the duration of the authorisation, a uniformed police constable may stop and search any vehicle or person for the purpose of discovering any evidence – whether or not they have a reasonable suspicion that such evidence exists – that the person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or that the vehicle is being used for such purposes.

The authorisation must be necessary to prevent the act of terrorism which the authorising officer reasonably suspects will occur, and it must specify the minimum area and time period considered necessary to do so. The authorising officer must inform the Secretary of State of the authorisation as soon as is practicable, and the Secretary of State must confirm it. If the Secretary of State does not confirm the authorisation, it will expire 48 hours after being made. The Secretary of State may also substitute a shorter period, or a smaller geographical area, than was specified in the original authorisation.

Until September 2017, this power had not been used in Great Britain since the threshold of authorisation was formally raised in 2011. This reflects the intention that the power should be reserved for exceptional circumstances, and the requirement that it only be used where necessary to prevent an act of terrorism that it is reasonably suspected is going to take place within a specified area and period. However, following the Parsons Green attack, on 15 September 2017, the power was authorised for the first and only time to date, by four forces: British Transport Police (BTP), City of London Police, North Yorkshire Police, and West Yorkshire Police. There were a total of 128 stop and searches conducted (126 of which were conducted by BTP), which resulted in 4 arrests (all BTP).

In the year ending 31 December 2021, 383 persons were stopped and searched by the Metropolitan Police Service under section 43 of TACT. This represents a 27% decrease from the previous year's total of 524. Over the longer term, there has been a 64% fall in the number of stop and searches, from 1,052 in the year ending 31 December 2011. In the year ending 31 December 2021, there were 27 resultant arrests; the arrest rate of those stopped and searched under section 43 was 7%, down from 11% in the previous year.[2]

[2] Full statistical releases on the operation of police powers under the Terrorism Act 2000, including stop and search powers, are available at www.gov.uk/government/collections/counter-terrorism-statistics

3.2 - Port and Border Controls

Schedule 7 to the Terrorism Act 2000 (Schedule 7) helps protect the public by allowing an examining police officer to stop and question and, when necessary, detain and search individuals travelling through ports, airports, international rail stations or the border area. The purpose of the questioning is to determine whether that person appears to be someone who is, or has been, involved in the commission, preparation or instigation of acts of terrorism. Schedule 7 also extends to examining goods to determine whether they have been used in the commission, preparation or instigation of acts of terrorism.

Prior knowledge or suspicion that someone is involved in terrorism is not required for the exercise of the Schedule 7 power. Examinations are also about talking to people in respect of whom there is no suspicion but who, for example, are travelling to and from places where terrorist activity is taking place, to determine whether those individuals are, or have been, involved in terrorism.

The Schedule 7 Code of Practice for examining officers provides guidance on the selection of individuals for examination. The most recent version of the Code, which came into effect in August 2020[3], is clear that selection of a person for examination must not be arbitrary or for discriminatory reasons and so should not be based on protected characteristics alone. When deciding whether to select a person for examination, officers will take into account considerations that relate to the threat of terrorism, including known and suspected sources of terrorism, specific patterns of travel and observation of a person's behaviour.

When an individual is examined under Schedule 7 they are given a Public Information Leaflet, which is available in multiple languages and outlines the purpose of Schedule 7 as well as any rights and obligations relating to use of the power. No person can be examined for longer than an hour unless the examining officer has formally detained them. Any person detained under Schedule 7 is entitled to receive legal advice from a solicitor and have a named person informed of their detention. A more senior 'review officer' who is not directly involved in the questioning of the individual must then consider on a periodic basis whether the continued detention is necessary.

The Public Information Leaflet and Code of Practice also include relevant contact details in case a person wishes to make a complaint regarding their examination. An individual can complain about a Schedule 7 examination by writing to the Chief Officer of the police force for the area in which the examination took place. Additionally, the Independent Reviewer of Terrorism Legislation is responsible for reporting each year on the operation of the Schedule 7 power.

[3] The full Schedule 7 Code of Practice is available at https://www.gov.uk/government/publications/codes-of-practice-for-officers-using-examination-powers-at-ports. It is worth noting that a revised draft Code of Practice was published for consultation in March 2022

Statistics on the operation of Schedule 7 powers are published by the Home Office on a quarterly basis[4].

In the year ending 31 December 2021, 2,631 examinations were made under Schedule 7 of TACT 2000 in the United Kingdom, 23% lower than the previous year when 3,434 examinations were made. Of the 2,631 examinations made in the year ending 31 December 2021, 572 (22%) were intra-UK examinations, compared to 591 of 3,434 (17%) in the previous year.

Throughout the same period, the number of detentions following examinations decreased by 6% from 1,191 in the year ending 31 December 2020 to 1,117 in the year ending 31 December 2021. The notable fall in the number of Schedule 7 person examinations and resulting detentions is consistent with the large reduction in passenger volume due to the measures being taken to respond to Covid-19 during the same period.

Of those individuals that were detained (excluding those who did not state their ethnicity), 34% categorised themselves as 'Asian or Asian British'. The next most prominent ethnic groups were: 'Chinese or Other' at 32% and 'White' at 18%. The proportion of those that categorised their ethnicity as 'Black or Black British' or 'Mixed' made up 8% and 7% respectively.

Use of Schedule 7 is informed by the current terrorist threat to the UK and intelligence underpinning the threat assessment. Whilst the impact of Covid-19 makes it more difficult to draw inferences from the current data, self-defined members of ethnic minority communities do comprise a majority of those examined under Schedule 7. However, the proportion of those examined should correlate not to the ethnic breakdown of the general population, or even the travelling population, but to the ethnic breakdown of the terrorist population. In his 2018 report, the Independent Reviewer of Terrorism, Jonathan Hall QC, acknowledged that Schedule 7 was not a randomly exercised power, and so whilst the majority of those examined self-define as members of ethnic minority communities, it did not automatically follow that Schedule 7 was being applied unlawfully. His report also declared he had found no reason to suggest officers were motivated by conscious bias when selecting individuals for examination following screening.

Since April 2016, the Home Office has collected additional data relating to the use of Schedule 7. This data includes the number of goods examinations (sea and air freight), the number of strip searches conducted, and the number of refusals following a request by an individual to postpone questioning. In the year ending 31 December 2021, a total of 710 air freight and 614 sea freight examinations were conducted in Great Britain. Regarding strip searches over the same period, there were six instances carried out under Schedule 7.

[4] Full statistical releases on the operation of police powers under the Terrorism Act 2000 are available at: https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2021

There were no refusals to postpone questioning (usually to enable an individual to consult a solicitor) and four individuals who were delayed access to a solicitor during the same period.

From the year ending June 2021, data has also been collected and published on the number of persons where one or more biometric identifier was taken during an examination made under Schedule 7 in the United Kingdom. A biometric identifier (taken during an examination under Schedule 7) includes photographs, fingerprints and DNA samples. In the year ending 31 December 2021, 39% of examinations made under Schedule 7 resulted in at least one biometric identifier being taken from an individual (1,031 persons out of 2,631 examinations).

3.3 – Counter-Terrorism Sanctions in the UK

The Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act), which came into force on 23rd May 2018, provides the legal framework for the UK to impose, update and lift sanctions both autonomously and in compliance with our UN obligations, following exit from the EU. Under the Sanctions Act, regulations have been introduced to replace the Terrorist Asset-Freezing Act 2010 (TAFA) and EU sanctions regulations, to ensure that financial sanctions continue to be implemented and enforceable in the UK.

There are three main counter-terrorism sanctions regimes in effect in the UK which are led by the Foreign, Commonwealth and Development Office (FCDO) and Her Majesty's Treasury (HM Treasury). The FCDO is responsible for all international sanctions and designations, and HM Treasury's Office of Financial Sanctions Implementation (OFSI) is the competent authority for the implementation and enforcement of financial sanctions in the UK.

ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 ("CT1")

The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019[5] is an FCDO-led regime, implementing the UK's obligations under UN Security Council Resolution 2368, and designates individuals and entities named on the United Nations ISIL (Da'esh) & Al-Qaida 1267 Sanctions List. Measures imposed against persons designated under these regulations include an asset freeze, arms embargo and travel ban[6].

The Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 ("CT 2")

The Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019[7] is also an FCDO-led regime, which replaces the implementation of the EU's Common Position 931, the EU autonomous AQ/Da'esh regime, and the Terrorist Asset-Freezing Act 2010. This set of regulations relating to international counter-terrorism sanctions allows the UK to implement autonomous UK listings with an international focus related to counter-terrorism, including many that were previously made under the EU Common Position 931 regime. The regime (along with the domestic sanctions regime below) ensures the UK implements its international obligations under UN Security Council Resolution 1373.

[5] The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 are available at: https://www.legislation.gov.uk/uksi/2019/466/made/data.pdf

[6] Further information on the procedure for listing can be found in paragraph 6 here - https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_the_conduct_of_its_work_0.pdf

[7] The Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 are available at: https://www.legislation.gov.uk/uksi/2019/573/made/data.pdf

The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 ("CT3")

This is a HM Treasury-led regime and is the UK's domestic counter-terrorism sanctions regime. The intention of the Counter-Terrorism (Sanctions)(EU Exit) Regulations 2019 is the designation of individuals, groups or entities with a clear UK nexus (e.g. the target resides in the UK, is likely to return to the UK, holds economic resources in the UK) or where the designation will be in the interests of UK national security in a counter-terror context or for the prevention of terrorism in the UK where UN financial sanctions are not available or deemed an appropriate tool to utilise). Meeting these UNSCR 1373 obligations is also part of the 40 standards on anti-money laundering and counter-terrorist financing set out by the Financial Action Task Force (FATF). FATF evaluated the UK's compliance with its standards in 2018 and has given the UK the highest possible ratings on the UK's system to combat terrorist financing, including through the UK's sanctions legislative framework. The full 2018 report can be found here: https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf

Financial sanctions imposed by the UK's three counter-terrorism sanctions regimes operate to freeze any funds or economic resources owned, held, or controlled by a designated person[8] (as such, persons are prohibited from dealing with such funds or economic resources if they know, or have reasonable cause to suspect[9], that they are dealing with such funds or economic resources).

Financial sanctions also make it an offence for any person to make funds or economic resources available (directly or indirectly) to, or for the benefit of, a designated person (including entity) where that person knows, or has reasonable cause to suspect, the individual or entity is designated. The UK's counter-terrorism sanction regimes contain robust safeguards with the aim of keeping any restrictions proportionate to their purpose.

Under regulation 6(1)(a) and (2) of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 and the Counter Terrorism (International Sanctions) (EU Exit) Regulations 2019, HMT or FCDO may only designate persons where they have reasonable grounds to suspect that the person is, or has been, involved in terrorist activity, or is owned, controlled (directly or indirectly) or acting on behalf of or at the direction of someone who is, or has been, involved in terrorist activity, or is a member of, or associated with, a person who is or has been so involved.

In addition, there are a number of other safeguards to ensure that the UK's counter-terrorism sanctions regimes operate fairly and proportionately:

- The Home Secretary may direct that exceptions are made to travel bans on individuals.

- HM Treasury may grant licences authorising certain activities or types of transaction that would otherwise be prohibited by sanctions legislation.

[8] Under the Sanctions Act, "person" includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

[9] Due to change in 2022 under updates to the ECTE ACT 2022.

- In addition to issuing licences relating to a specific person, HM Treasury may also issue general licences, which authorise otherwise prohibited activity by a particular category of persons.

  The overall objective of the licensing system for terrorism designations is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and respecting the human rights of designated persons and other third parties. HM Treasury grants licences where there is a legitimate need for such activities or transactions to proceed. This helps to ensure that the sanctions regime remains effective, fair and proportionate in its application.

- The appropriate Minister must without delay take such steps as are reasonably practicable to inform the designated person of the designation, variation or revocation under the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 or the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.

- Designations must generally be made public, along with the "statement of reasons", which is a brief statement of the matters that the appropriate Minister knows, or has reasonable grounds to suspect, in relation to the designated person which have led the appropriate Minister to make the designation. Designations can be notified on a restricted basis and not be made public when one of the conditions in regulation 8(7) of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 is met. Those conditions are that:
    1. the Secretary of State or the Treasury believe that the designated person is under the age of 18; or
    2. the Secretary of State or the Treasury consider the disclosure of the designation should be restricted:
        - i) in the interests of national security or international relations;
        - ii) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere; or
        - iii) in the interests of justice.

  Where a designation is notified on a restricted basis, the Secretary of State and HMT can specify that people informed of the designation treat the information as confidential.

- A designated person may request a variation or revocation of their designation under section 23 of the Sanctions Act, for instance, if they consider that they no longer satisfy the criteria for designation. The appropriate Minister must then decide whether to vary or revoke the designation, or to take no action with respect to it. Section 25 of the Sanctions Act provides a right for persons designated by the UN to request that the

Secretary of State uses their best endeavours to secure their removal from the relevant UN list.

- Following a review under section 23, a designated person has a right to apply to the High Court to request that the appropriate Minister's decision on that review be set aside (see section 38 of the Sanctions Act). Anyone affected by a licensing decision (including the designated person) can seek to challenge on judicial review grounds any licensing decisions of HMT. If necessary, there is a closed material procedure available for such appeals or challenges using specially cleared advocates to protect closed material whilst ensuring a fair hearing for the claimant.

- The Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, has conducted a review of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 and has submitted the report to HMT on 7 June 2022. The review reports on the operation of the counter-terrorism sanctions regime.

- In 2021 there was £76,000 frozen across the UK's three counter-terrorism sanctions regimes[10].

The following table sets out the number of natural and legal persons, entities or bodies designated under the UK's autonomous counter-terrorism sanctions regimes as at 31 December 2021:

	ISIL (Da'esh) and Al-Qaida	**Counter-Terrorism (International)**	**Counter-Terrorism (Domestic)**
Total number of designations (at the end of the quarter)	352	44	1
Total number of designated individuals (at the end of the quarter)	263	22	1
Total number of designated groups and entities (at the end of the quarter)	89	22	0

Listings

1. List of all the individuals, entities and ships that are designated or specified under regulations made under the Sanctions and Anti-Money Laundering Act 2018:

   https://www.gov.uk/government/publications/the-uk-sanctions-list

2. Consolidated list of all those subject to financial sanctions imposed by the UK:

   https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets

[10] An asset freeze does not result in a change of ownership of the assets and is not equivalent to HMG seizing assets.

Further information about the UK's autonomous counter-terrorism sanctions regimes can be found here:

https://www.gov.uk/government/collections/uk-sanctions-on-isil-daesh-and-al-qaida
https://www.gov.uk/government/collections/uk-international-counter-terrorism-sanctions
https://www.gov.uk/government/collections/uk-counter-terrorism-sanctions

3.4 - Terrorism Prevention and Investigation Measures

Terrorism Prevention and Investigation Measures (TPIMs) allow the Home Secretary to impose a powerful range of disruptive measures on a small number of people who pose a real threat to our security but who cannot be prosecuted or, in the case of foreign nationals, deported. These measures can include residence requirements (including relocation to another part of the UK), police reporting, an electronic monitoring tag, exclusion from specific places, limits on association, limits on the use of financial services, telephones and computers, and a ban on holding travel documents.

It is the Government's assessment that, for the foreseeable future, there will remain a small number of individuals who pose a real threat to our security but who cannot be either prosecuted or deported, and there continues to be a need for powers to protect the public from the threat posed by these people.

The use of TPIMs is subject to stringent safeguards. Before the Secretary of State decides to impose a TPIM notice on an individual, she must be satisfied that five conditions are met, as set out at section 3 of the Terrorism Prevention and Investigation Measures Act 2011 (TPIM Act)[11].

The conditions are that:

a) the Secretary of State reasonably believes, that the individual is, or has been, involved in terrorism-related activity (the "relevant activity");
b) where the individual has been subject to one or more previous TPIM orders, that some or all of the relevant activity took place since the most recent TPIM notice came into force;
c) the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for Terrorism Prevention and Investigation Measures to be imposed on the individual;
d) the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified Terrorism Prevention and Investigation Measures to be imposed on the individual; and
e) the court gives permission, or the Secretary of State reasonably considers that the urgency of the case requires Terrorism Prevention and Investigation Measures to be imposed without obtaining such permission.

The Secretary of State must apply to the High Court for permission to impose the TPIM notice on the individual, except in cases of urgency where the notice must be immediately referred to the court for confirmation.

All individuals upon whom a TPIM notice is imposed are automatically entitled to a review hearing at the High Court relating to the decision to impose the notice and the individual measures in the notice. They may appeal against any decisions made

[11] The Terrorism Prevention and Investigation Measures Act 2011 is available at www.legislation.gov.uk/ukpga/2011/23

subsequent to the imposition of the notice, i.e. a refusal of a request to vary a measure, a variation of a measure without their consent, or the revival or extension of their TPIM notice. The Secretary of State must keep under review the necessity and proportionality of the TPIM notice and specified measures during the period that the notice is in force.

The Counter-Terrorism and Security Act 2015[12] enhanced the powers available in the TPIM Act, most notably by introducing the ability to relocate a TPIM subject elsewhere in the UK (up to a maximum of 200 miles from their normal residence, unless the TPIM subject agrees otherwise).

The Counter-Terrorism and Sentencing Act 2021[13], which received Royal Assent on 29 April 2021, made further amendments to the TPIM Act. The amendments below have been made to strengthen TPIMs as a risk management tool and support a more efficient operation of the TPIM regime.

- Section 34 amends section 3(1) of the TPIM Act 2011 to lower the standard of proof for imposing a TPIM from "balance of probabilities" to "reasonable belief". The Secretary of State must therefore reasonably believe that an individual is, or has been, involved in terrorism-related activity before imposing a TPIM notice.

- Section 35 amends section 5 TPIM Act 2011 to extend the maximum duration of a TPIM notice from two to five years. The effect of this is that a TPIM notice will continue to last for one year at a time but be capable of annual renewal up to a maximum of five years (provided the conditions in section 3 of that Act continue to be met).

- Section 36 inserts an additional ground for variation into section 12 of the TPIM Act 2011. By virtue of this amendment, it will be possible for the Secretary of State to vary the relocation measure in a TPIM notice if considered necessary for resource reasons. This power will only apply where the individual has already been relocated away from their home address, and where the national security reason for requiring relocation still exists. Section 36 (3) amends section 16 of TPIM Act 2011 (appeals and court proceedings) to include this additional ground of variation. Decisions to vary the relocation measure for resource reasons will therefore be capable of appeal. As with other unilateral variations to the TPIM notice, the function of the appeal court will be to review whether the variation was necessary for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity. But additionally, for variations to the relocation measure on resource grounds, the function of the appeal court will also be to review whether the variation was indeed necessary for the efficient and effective use of resource.

- Section 37 amends the overnight residence measure in Schedule 1 to the TPIM Act 2011 to remove the word "overnight". The consequence of this is

[12] Counter-Terrorism and Security Act 2015 (legislation.gov.uk)

[13] See the full details on the changes on the .GOV.uk website; Counter-Terrorism and Sentencing Bill - GOV.UK (www.gov.uk)

that the newly named “Residence measure” will now allow the Secretary of State to require a TPIM subject to remain at or within a specified residence between any such hours as are specified. This period could be longer than overnight if considered necessary in a particular case (subject to the overriding restrictions on length of curfews established by caselaw relating to Article 5 of the European Convention on Human Rights).

- Section 38 inserts a new measure into Schedule 1 to the TPIM Act 2011: a polygraph measure. This section allows the Secretary of State to impose a requirement on an individual who is subject to a TPIM notice to participate in a polygraph examination for the purposes of: (i) monitoring their compliance with other specified measures; and (ii) assessing whether any variation of the specified measures is necessary for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity. This amendment came into force on 29 June 2021; secondary legislation (regulations) relating to the conduct of the tests has been laid before Parliament and came into force on 12 May 2022.

- Section 39 inserts a new measure into Schedule 1 to the TPIM Act 2011: a drug testing measure. If imposed, a TPIM subject would be required to submit to drug testing by way of providing a relevant sample. As with the other measures in Schedule 1, this measure may only be imposed if Condition D in section 3 of the Act is met (or by way of variation under section 12).

- Section 40 amends an existing measure and inserts a new measure into Schedule 1 to the TPIM Act 2011, to allow the Secretary of State to require the provision of additional information. Subsection (2) amends the Electronic Communication Device measure in two ways. Firstly, to require the TPIM subject to provide details of any electronic communication devices possessed or used by the TPIM subject or any other individuals in the TPIM subject’s residence (for example, mobile phone of family members residing with the TPIM subject). Secondly, to clarify that the definition of “electronic communication device” includes not only those devices which are designed or adapted for connecting to the internet, but also those capable of being adapted to do so. Subsection (3) inserts a new measure in Schedule 1 to the TPIM Act 2011: to enable the Secretary of State to require a TPIM subject to provide details of their address. This could be required, for example, if a TPIM subject has not been relocated and moves house during the life of the TPIM. Subsection (3) also inserts new paragraph 12A(2) of Schedule 1 to the TPIM Act 2011 which provides a power for the Secretary of State to specify other conditions in connection with the disclosure of the address information. This power could be relied upon to require a TPIM subject to give notice a certain time ahead of a planned move.

- Section 41 amends section 20 of the TPIM Act 2011 to require an annual review of that Act by the Independent Reviewer of Terrorism Legislation (IRTL) for a period of five years beginning with 2022 (with reviews at the discretion of the reviewer after that period). It requires the IRTL to produce an annual report on the operation of the TPIM Act 2011 and the Secretary of State to lay that report before Parliament.

Under the TPIM Act the Secretary of State is required to report to Parliament, as soon as reasonably practicable after the end of every relevant three month period, on the exercise of her TPIM powers. Copies of all the Written Ministerial Statements, which detail the number of cases per quarter, can be found by searching https://hansard.parliament.uk/

The total number of individuals who have been served a TPIM Notice since the TPIM Act 2011 received Royal Assent (December 2011) up to 31 December 2021 is 28.

3.5 - Royal Prerogative

The Royal Prerogative is a residual power of the Crown which is used widely across Government in a number of different contexts. Secretaries of State exercise a range of prerogative powers and the courts have upheld the legitimacy of prerogative powers that are not based in primary legislation.

A passport remains the property of the Crown at all times. HM Passport Office issues or refuses passports under the Royal Prerogative and there are a number of grounds for withdrawal or refusal. The Home Secretary has the discretion, under the Royal Prerogative, to refuse to issue or to withdraw a British passport on public interest grounds. This criterion supports the use of the Royal Prerogative in national security cases. The Royal Prerogative is therefore an important tool to disrupt individuals who seek to travel on a British passport to engage in terrorism-related activity and who would return to the UK with enhanced capabilities to do the public harm.

On 25 April 2013, the Government redefined the public interest criteria to refuse or withdraw a passport in a Written Ministerial Statement to Parliament[14].
The policy allows passports to be withdrawn, or refused, where the Home Secretary is satisfied that it is in the public interest to do so. This may be the case for:
"A person whose past, present or proposed activities, actual or suspected, are believed by the Home Secretary to be so undesirable that the grant or continued enjoyment of passport facilities is contrary to the public interest." (Written Ministerial Statement to Parliament 25 April 2013)

The application of discretion by the Home Secretary will primarily focus on preventing overseas travel, but there may be cases in which the Home Secretary believes that the past, present or proposed activities (actual or suspected) of the applicant or passport holder should prevent their enjoyment of a passport facility whether or not overseas travel is a critical factor.

Under the public interest criterion, in relation to national security, the Royal Prerogative was exercised to deny access to British passport facilities once in 2021. Since 2013 until 31 December 2021 the total number of individuals who have had their British passport facilities withdrawn under the public interest criteria is 94.

An individual may ask for a review of any decision to deny access to passport facilities or apply for a new passport at any time (prompting a review of the decision). In addition, if significant new information comes to light a case review may be triggered. In 2021, there were nine reviews undertaken which led to eight individuals having their passport facilities restored. The Home Secretary maintained the decision to continue to deny British passport facilities to one individual.

[14] The full Written Ministerial Statement is available at www.gov.uk/government/speeches/the-issuing-withdrawal-or-refusal-of-passports.

3.6 – Seizure and Temporary Retention of Travel Documents

Schedule 1 to the Counter-Terrorism and Security Act 2015 enables police officers at ports to seize and temporarily retain travel documents to disrupt immediate travel, when they reasonably suspect that a person intends to travel to engage in terrorism-related activity outside the UK.

The temporary seizure of travel documents provides the authorities with time to investigate an individual further and consider taking longer term disruptive action such as prosecution, exercising the Royal Prerogative to withdraw or refuse to issue a British passport, or making a person subject to a TPIM order.

Travel documents can only be retained for up to 14 days while investigations take place. The police may apply to the courts to extend the retention period, but this must not exceed 30 days in total.

The power was used once in 2021.

Since 2015 until 31 December 2021 the total number of individuals who have had their passport and travel documents seized under Schedule 1 powers are 60.

3.7 Serious Crime Prevention Orders in relation to terrorism

Serious Crime Prevention Orders (SCPOs) were introduced by the Serious Crime Act 2007. They are civil preventative orders which can impose tailored prohibitions, restrictions and requirements on an individual, bodies corporate, partnerships and unincorporated associations for a period of up to five years to prevent or disrupt their involvement in serious crime, including terrorism. The terms of an SCPO might relate to, for example: an individual's business and financial dealings, their use of premises or items, association with individuals, means of communication, or travel. SCPOs are potentially a powerful tool for preventing and disrupting the activities of the highest-harm criminals.

An SCPO can be made in the Crown Court following a conviction for a serious offence, or in the High Court in the absence of a conviction where the court is satisfied that a person has been "involved in serious crime" as defined at section 2(1) of the 2007 Act. Either court may only make an SCPO if it has reasonable grounds to believe that an order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime. Breach of an SCPO is a criminal offence carrying a maximum penalty of five years' imprisonment. SCPOs are available UK-wide.

In recent years, the Government has made legislative changes to support the use of SCPOs in relation to terrorism. Changes made through the Counter-Terrorism and Border Security Act 2019 ensured that SCPOs can be applied for in connection with terrorism offences, through adding these to the list of 'serious offences' in Schedule 1 of the 2007 Act. Through the Counter-Terrorism and Sentencing Act (CTSA) 2021, the Government amended the 2007 Act to enable chief police officers to apply directly to the High Court for an SCPO in terrorism-related cases. The legislation requires chief police officers to consult the relevant prosecuting authority before submitting the application.

Section 44 of the CTSA requires the Secretary of State to review the operation of the amendments made by the CTSA to the 2007 Act and publish the outcome of the review in a report before June 2024. To allow sufficient time for the necessary implementation activity to support this new reporting requirement, the below figures relate to England and Wales and will be expanded to cover UK-wide in future iterations of this report.

In 2021, 13 SCPOs were imposed by the Crown Court in relation to cases involving terrorism offences, and following applications made by the Crown Prosecution Service (CPS). In the same time period, no applications were made by the CPS or chief officers of police for High-Court SCPOs in terrorism-related cases.

3.8 – Exclusions

The Secretary of State (usually the Home Secretary) may decide to exclude a person if he or she considers that the person's presence in the UK would not be conducive to the public good. If a decision to exclude is taken it must be reasonable, consistent and proportionate based on the evidence available. Exclusion is normally used in circumstances involving national security, unacceptable behaviour (such as extremism), international relations or foreign policy, and serious and organised crime.

Until 31 December 2020, European Economic Area (EEA) nationals and their family members could be excluded from the UK in accordance with the Immigration (European Economic Area) Regulations 2016 on the grounds of public policy or public security, if they were considered to pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. From 1 January 2021, the threshold for exclusion of EEA nationals depended on their status and whether or not their rights are protected under the Withdrawal Agreement.

The number of individuals excluded in 2021 is as follows:

- 1 on the basis of unacceptable behaviour (including extremism)
- 14 on national security grounds
- 4 on criminality grounds (including serious organised crime)
- 0 on the basis of international crimes

The Secretary of State uses the exclusion power when justified and based on all available evidence. In all matters, the Secretary of State must act reasonably, proportionately and consistently. The power to exclude an individual from the UK is very serious and the Government does not use it lightly. This power can be used to prevent the travel or return to the UK of foreign nationals suspected of taking part in terrorist related activity in Syria due to the threat they would pose to public security.

3.9 - Temporary Exclusion Orders

The Counter-Terrorism and Security Act 2015 introduced Temporary Exclusion Orders (TEOs). This is a statutory power which allows the Secretary of State (usually the Home Secretary) to disrupt and control the return to the UK of a UK national who has been involved in terrorism-related activity outside of the UK. The tool is important in helping to protect the public from any risk posed by individuals involved in terrorism-related activity abroad, including those who travelled to Syria and Iraq.

A TEO makes it unlawful for the subject to return to the UK without engaging with the UK authorities. It is implemented by withdrawing the TEO subject's travel documents ensuring that when individuals do return, it is in a manner which the UK Government controls. The subject of a TEO commits an offence if, without reasonable excuse, he or she re-enters the UK in breach of the terms of the order.

A TEO also allows for certain obligations to be imposed once the individual returns to the UK and during the validity of the order. These usually include reporting to a police station, notifying the police of any change of address, or attending appointments under the Desistence and Disengagement Programme (DDP). The subject of a TEO also commits an offence if, without reasonable excuse, he or she breaches any of the conditions imposed.

There are two stages of judicial oversight for TEOs. The first is a court permission stage before a TEO is imposed by the Secretary of State. The second is an optional statutory review of the decision to impose a TEO and any in-country obligations after the individual has returned to the UK.

In 2021, five (5) TEOs were imposed on four (4) males and one (1) female.
Of the five TEOs imposed in 2021, four returned to the UK in 2021 (3 males, 1 female) and one returned in 2022 (male).

3.10 - Deprivation of British Citizenship

The British Nationality Act 1981 provides the Secretary of State with the power to deprive an individual of their British citizenship in certain circumstances. Such action paves the way for possible immigration detention, deportation or exclusion from the UK and otherwise removes an individual's associated right of abode in the UK. The Secretary of State may deprive an individual of their British citizenship if satisfied that such action is 'conducive to the public good' or if the individual obtained their British citizenship by means of fraud, false representation or concealment of material fact.

When seeking to deprive a person of their British citizenship on the basis that to do so is 'conducive to the public good', the law requires that this action only proceeds if the individual concerned would not be left stateless (no such requirement exists in cases where the citizenship was obtained fraudulently).
The Government considers that deprivation on 'conducive' grounds is an appropriate response to activities such as those involving:

- national security, including espionage and acts of terrorism directed at this country or an allied power;
- unacceptable behaviour of the kind mentioned in the then Home Secretary's statement of 24 August 2005 ('glorification' of terrorism etc)[15];
- war crimes; and
- serious and organised crime.

By means of the Immigration Act 2014, the Government introduced a power whereby in a small subset of 'conducive' cases – where the individual has been naturalised as a British citizen and acted in a manner seriously prejudicial to the vital interests of the UK – the Secretary of State may deprive that person of their British citizenship, even if doing so would leave them stateless. This action may only be taken if the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country outside the United Kingdom, to become a national of that country.

In practice, this power means the Secretary of State may deprive and leave a person stateless (if the vital interest test is met and they are British due to naturalising as such), if that person is able to acquire (or reacquire) the citizenship of another country and is able to avoid remaining stateless.

David Anderson QC undertook the first statutory review of the additional element of the deprivation power, as required by the Immigration Act 2014. His report was published on 21 April 2016[16]. A subsequent review has not been completed but to date the power has not been used since its introduction in July 2014.

The Government considers removal of citizenship to be a serious step, one that is not taken lightly. This is reflected by the fact that the Home Secretary personally

[15] https://www.parliament.uk/written-questions-answers-statements/written-question/lords/2015-01-14/HL4168

[16] https://www.gov.uk/government/publications/citizenship-removal-resulting-in-statelessness

decides whether it is conducive to the public good to deprive an individual of British citizenship.

Between 1 January 2021 and 31 December 2021, 8 people were deprived of British citizenship on the basis that to do so was ‘conducive to the public good’.

3.11 - Deportation with Assurances

Where prosecution is not possible, the deportation of foreign nationals to their country of origin may be an effective alternative means of disrupting terrorism-related activities. Where there are concerns for an individual's safety on return, government to government assurances may be used to achieve deportation in accordance with the UK's human rights obligations.

Deportation with Assurances (DWA) enables the UK to reduce the threat from terrorism by deporting foreign nationals who pose a risk to our national security, while still meeting our domestic and international human rights obligations. This includes Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment.

Assurances in individual cases are the result of careful and detailed discussions, endorsed at a very high level of government, with countries with which we have working bilateral relationships. We may also put in place arrangements – often including monitoring by a local human rights body – to ensure that the assurances can be independently verified. The use of DWA has been consistently upheld by the domestic and European courts.

The then Independent Reviewer of Terrorism Legislation, David Anderson QC, reviewed the legal framework of DWA and examined whether the process can be improved, including by learning from the experiences of other countries, his report was published in July 2017[17]. Mr Anderson noted that the UK had taken the lead in developing rights-compliant procedures for DWA; that future DWA proceedings were likely to take less time now that the central legal principles have been established by the highest courts; that for as long as the UK remains party to the ECHR, the provisions of the ECHR will remain binding on the UK in international law; that the key consideration in developing safety on return processes was whether compliance with assurances can be objectively verified; and that assurances could be tailored to particular categories of deportee, or to particular outcomes.

The Government published a response to Mr Anderson's report in October 2018[18]. The Government response acknowledged Mr Anderson's findings on the UK's use of DWA and advised that future use of DWA would be based on responding to operational needs via a flexible, adaptable approach, with urgently negotiated agreements being made as needed. The response confirmed that DWA remained appropriate in relevant cases and would remain one of the tools available to the Government.

A total of 12 people have been removed from the UK under DWA arrangements. There have been no DWA removals since 2013 and new agreements would need to be negotiated for any future cases.

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[17] https://www.gov.uk/government/publications/deportation-with-assurances

[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747014/Government_response_to_report_on_Deportation_with_Assurances.pdf

3.12 - Proscription

Proscription is a powerful tool enabling the prosecution of individuals who are members or supporters of, or are affiliated with, a terrorist organisation. It can also support other disruptive powers including prosecution for wider offences, immigration powers such as exclusion, and terrorist asset freezing. The resources of a proscribed organisation are terrorist property and are therefore liable to be seized.

Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if she believes it is concerned in terrorism. For the purposes of the Act, this means that the organisation:

- commits or participates in acts of terrorism;
- prepares for terrorism;
- promotes or encourages terrorism (including the unlawful glorification of terrorism); or
- is otherwise concerned in terrorism.

“Terrorism” as defined in the Act means the use or threat of action which: involves serious violence against a person; involves serious damage to property; endangers a person’s life (other than that of the person committing the act); creates a serious risk to the health or safety of the public or section of the public; or is designed seriously to interfere with or seriously to disrupt an electronic system. The use or threat of such action must be designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public and be undertaken for the purpose of advancing a political, religious, racial or ideological cause.

If the statutory test is met, there are other factors which the Home Secretary will take into account when deciding whether or not to exercise the discretion to proscribe. These discretionary factors include:

- the nature and scale of an organisation’s activities;
- the specific threat that it poses to the UK;
- the specific threat that it poses to British nationals overseas;
- the extent of the organisation’s presence in the UK; and
- the need to support other members of the international community in the global fight against terrorism.

It is a criminal offence for a person in the UK to:

- belong, or profess to belong, to a proscribed organisation in the UK or overseas (section 11 of the Act);
- invite support for a proscribed organisation (the support invited need not be material support, such as the provision of money or other property, and can also include moral support or approval) (section 12(1));
- express an opinion or belief that is supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation (section 12(1A));

- arrange, manage or assist in arranging or managing a meeting in the knowledge that the meeting is to support or further the activities of a proscribed organisation, or is to be addressed by a person who belongs or professes to belong to a proscribed organisation (section 12(2)); or to address a meeting if the purpose of the address is to encourage support for, or further the activities of, a proscribed organisation (section 12(3));
- wear clothing or carry or display articles in public in such a way or in such circumstances as to arouse reasonable suspicion that the individual is a member or supporter of a proscribed organisation (section 13); and
- publish an image of an item of clothing or other article, such as a flag or logo, in the same circumstances (section 13(1A)).

The penalties for proscription offences under sections 11 and 12 are a maximum of 14 years and/or an unlimited fine. The maximum penalty for a section 13 offence is six months in prison and/or a fine not exceeding £5,000.

Under the Terrorism Act 2000, a proscribed organisation, or any other person affected by a proscription, may submit a written application to the Home Secretary, asking that a determination be made whether a specified organisation should be removed from the list of proscribed organisations. The application must set out the grounds on which it is made. The precise requirements for an application are contained in the Proscribed Organisations (Applications for Deproscription etc) Regulations 2006 (SI 2006/2299).

The Home Secretary is required to determine a deproscription application within 90 days from the day after it is received. If the deproscription application is refused, the applicant may appeal to the Proscribed Organisations Appeals Commission (POAC). POAC will allow an appeal if it considers that the decision to refuse deproscription was flawed, applying judicial review principles. Either party can seek leave to appeal POAC's decision at the Court of Appeal.

If the Home Secretary agrees to deproscribe the organisation, she will lay a draft order before Parliament removing the organisation from the list of proscribed organisations. Alternatively, if POAC allows an appeal it may make an order for the organisation to be removed from the list of proscribed organisations.

Under the same legislation proscription decisions in relation to Northern Ireland are a matter for the Secretary of State for Northern Ireland, including deproscription applications for Northern Ireland groups.

Since 2000, the following four groups have been deproscribed:

- the Mujaheddin e Khalq (MeK) also known as the People's Mujaheddin of Iran (PMOI) was removed from the list of proscribed groups in June 2008 as a result of judgments of POAC and the Court of Appeal;
- the International Sikh Youth Federation (ISYF) was removed from the list of proscribed groups in March 2016 following receipt of an application to deproscribe the organisation; and

- Hezb-e Islami Gulbuddin (HIG) was removed from the list of proscribed groups in December 2017 following receipt of an application to deproscribe the organisation.
- Libyan Islamic Fighting Group (LIFG) was removed from the list of proscribed groups in November 2019 following receipt of an application to deproscribe the organisation.

There are currently 78[19] terrorist organisations proscribed under the Terrorism Act 2000. In addition, there are 14 organisations in Northern Ireland that were proscribed under previous legislation. Information about these groups' aims is given to Parliament at the time that they are proscribed and is available on GOV.UK.

In 2021, the Home Secretary proscribed three terrorist organisations. In April, the Home Secretary proscribed Atomwaffen Division, an extreme right-wing terrorist organisation based in the US. In July, the Home Secretary proscribed the Base, another extreme right-wing terrorist organisation. Most recently, in November the Home Secretary extended the proscription of Hamas, extending the proscription of its so-called military wing to cover the organisation in its entirety, thereby removing the artificial distinction between the 'wings'.

[19] The actual number of proscribed organisations is lower than this figure as some groups appear on the list of proscribed organisations under more than one name, for example, 'Al Ghurabaa' and 'The Saved Sect' both refer to the group commonly known as 'Al Muhajiroun'.

3.13 – Tackling Online Terrorist Content

The open internet is a powerful tool which terrorists exploit to radicalise and recruit individuals, and to incite and provide information to enable terrorist attacks. Terrorist groups and individual actors make extensive use of the internet to spread their messages and continue to diversify their approach, using a broad range of platforms to host and disseminate content. Our objective is to ensure that there are no safe spaces online for all forms of terrorists to promote or share their extreme views.

In order to counter the online threat effectively, a coordinated and multi-sector approach is vital. This means collaborating with law enforcement, tech companies, our international partners as well as with civil society organisations who are working to counter extremist ideologies and support people who could be vulnerable to radicalisation. The UK's dedicated police-led Counter-Terrorism Internet Referral Unit (CTIRU) refers content that they assess as contravening UK terrorism legislation to tech companies. If tech companies agree that it breaches their policies they remove the content voluntarily. Since its inception in February 2010, the CTIRU has secured the removal of over 318,966 pieces of terrorist content. The Europol Internet Referral Unit replicates this model at a European level and services all Member States.

However, this Government has been clear that tech companies should not rely on referrals from law enforcement or the public, but instead should invest, where possible, in automated technology to more quickly detect and remove terrorist content from their platforms. Given the pace at which terrorist content can disperse across the internet, it is critical that tech companies adopt a coordinated approach to tackling the online threat. This is why the work of the Global Internet Forum to Counter Terrorism (GIFCT) - an international, industry-led forum to tackle terrorist use of the internet - is so important. The UK Government sits on the GIFCT's Independent Advisory Committee alongside colleagues from civil society, other governments and international organisations. Through our involvement in some of the GIFCT's working groups, we support the development and improvement of industry-led responses to terrorist use of the internet.

The Government also works bilaterally with tech companies to help prevent their platforms from being exploited to disseminate terrorist content and activity, through regular engagement and by responding to terrorist attacks where there is an online element. Where a terrorist attack occurs in the UK with an online element (for example, an attacker livestreams their attack or a proscribed group disseminates related propaganda), we will enact our crisis response protocol. This involves working closely with the CTIRU, affected tech companies, and the GIFCT where relevant, to remove terrorist content related to the attack.

The Government strongly supports the Christchurch Call to Action and are committed to working with its signatories to reduce the drivers towards terrorism and eliminate the spread of terrorist content online. During 2020, the UK Government took part in a Christchurch Call Community Consultation, through which the governments of France and New Zealand sought to understand how supporters of the Call are implementing the commitments made in May 2019, as well as to inform decision-making around the future areas of focus. The consultation report was

published in April 2021 and can be found here: Chch-Call-Community-Consulation-Report-2021.pdf (christchurchcall.com). The UK also attended the Leaders' Summit in May 2021 to mark the second anniversary of the Call's inauguration, and we will continue to be a strong proponent for this important global initiative.
During the UK's G7 Presidency in 2021, the Government led the development and adoption of a G7 Statement on Preventing & Countering Violent Extremism and Terrorism Online. This Statement outlines the priorities for the international community on preventing terrorist use of the internet going forward and reiterates the importance of the Global Internet Forum to Counter Terrorism in developing international, multi-stakeholder approaches to tackling this issue.

Online Safety Legislation

In March 2022 the Government introduced the Online Safety Bill. This world-leading and much needed legislation will usher in a new age of accountability for tech to protect children, restore trust in the industry and protect free speech. This framework will be overseen by an independent regulator, Ofcom, who will be given a range of powers to help them hold these companies to account.

Ofcom will also be given an express power in legislation to require a company to use automated technology to identify and remove illegal terrorist content from their public channels. This power will be used where this is the only effective and proportionate and necessary action available and will be subject to strict safeguards including the accuracy of the tools, prevalence of illegal terrorist activity on the public channels of a service and the regulator being clear that other measures could not be equally effective. The Government will continue to support companies that choose to use technology to identify online terrorist content and activity on a voluntary basis once online harms legislation is in force, where the use is appropriate and proportionate.

The Full Government Response was accompanied by the interim code of practice on terrorist content and activity online, published by the Home Office. The interim code of practice will help to bridge the gap between Government's response to the Online Harms White Paper, and the framework becoming operational. The interim code is principles-based and contains examples of good practice companies may wish to undertake when implementing the code. This will enable companies to take swift action in tackling terrorist content and activity online. The Government will work with industry stakeholders to review the implementation of the interim codes so that lessons can be learned and shared with Ofcom, to inform the development of their substantive codes.

4 – Litigation Safeguards

4.1 - Closed Material Procedure

The Justice and Security Act 2013 extended the use of the Closed Material Procedure (CMP) to higher civil courts across the UK. Sections 6 to 11 of the Act make provision about the disclosure of sensitive material in civil proceedings. In particular, section 6 of the Act empowers senior courts (the Supreme Court, the Court of Appeal and the High Court (including in Northern Ireland), and the Court of Session (in Scotland)) to make a declaration that the case is one in which a closed material application may be made in relation to sensitive material, the disclosure of which would be damaging to national security, and that it is in the interests of the fair and effective administration of justice in the proceedings to make such a declaration [20]. CMPs ensure that government departments, the UK Intelligence Community, law enforcement bodies and any other party to proceedings have the opportunity to properly defend themselves, where sensitive national security material is considered by the court to be involved. CMPs allow the courts to scrutinise matters that were previously not heard because disclosing the relevant material publicly would have damaged national security.

A CMP application can be made by either party to the proceedings or the court can make a CMP declaration of its own motion.

Where a Secretary of State makes the application, the court must first satisfy itself that the Secretary of State has considered making, or advising another person to make, an application for public interest immunity in relation to the material. The court must also be satisfied that material would otherwise have to be disclosed which would damage national security and that closed proceedings would be in the interests of the fair and effective administration of justice. Should the court be satisfied that the above criteria are met, a declaration may be made. During this part of the proceedings, a Special Advocate may be appointed to act in the interests of parties excluded from proceedings. Generally, once the Special Advocate has seen the sensitive material, they are unable to consult further with the excluded party.

Once a declaration is made, the Act requires that the decision to proceed with a CMP is kept under review, and the CMP may be revoked by a judge at any stage of proceedings, if it is no longer in the interests of the fair and effective administration of justice.

A further hearing, following a declaration, determines which parts of the case should be dealt with in closed proceedings and which should be released into open proceedings. The test being considered here remains whether the disclosure of such material would damage national security.

Section 12 of the Act requires the Secretary of State to prepare (and lay before Parliament) an annual report on the use of CMP under the Act. The reports are

[20] The Justice and Security Act is available at www.legislation.gov.uk/ukpga/2013/18/contents

published on GOV.UK[21]. In the first eight years of operation, between 25 June 2013 and 24 June 2021, there were:

- June 2013 to June 2014 – 5 Applications made, 2 Declarations made.
- June 2014 to June 2015 – 11 Applications made, 5 Declarations made.
- June 2015 to June 2016 – 12 Applications made, 7 Declarations made.
- June 2016 to June 2017 – 13 Applications made, 14 Declarations made.
- June 2017 to June 2018 – 13 Applications made, 5 Declarations made.
- June 2018 to June 2019 – 4 Applications made, 7 Declarations made.
- June 2019 to June 2020 – 6 Applications made, 4 Declarations made.
- June 2020 to June 2021 – 6 Applications made, 5 Declarations made

Section 13 of the Act contains a requirement to review the first five years of operation of CMP under the Act. The review must cover the period from 25 June 2013 to 24 June 2018. On 25 February 2021, the then Lord Chancellor announced the appointment of an Independent Reviewer, Sir Duncan Ouseley. In accordance with sections 13(4)-13(6) of the Act, once the review is completed, the reviewer must send a report on the outcome of the review to the Secretary of State. A copy of it must then be laid before Parliament, excluding any part of the report that would be damaging to the interests of national security. More information on the review can be found on GOV.UK[22].

[21] https://www.gov.uk/government/collections/use-of-closed-material-procedure-reports

[22] https://www.gov.uk/guidance/review-of-closed-material-procedure-in-the-justice-and-security-act-2013

5 – Oversight

The activities of the UK intelligence and security agencies (SIS, GCHQ and MI5) are governed by robust legal frameworks and oversight arrangements. Within HMG, there are internal oversight mechanisms such as the Home Secretary's statutory responsibilities to oversee MI5, as well as the independent oversight provided by various judicial and parliamentary bodies. Further information on Independent Reviewer of Terrorism Legislation (IRTL) and the Investigatory Powers Tribunal (IPT) is provided below given their particular relevance to this report.
For further information on other oversight bodies such as the Office of the Biometrics Commissioner, Information Commissioner's Office (ICO), the Intelligence and Security Committee of Parliament (ISC), and the Investigatory Powers Commissioner's Office (IPCO) please see their public websites.

5.1 – The Independent Reviewer of Terrorism Legislation

The current Independent Reviewer of Terrorism Legislation (IRTL), Jonathan Hall QC, was appointed to the role in May 2019 and his current term lasts until May 2025. The IRTL is appointed by the Home Secretary through open competition in accordance with the Governance Code on Public Appointments.

The role of the IRTL is to keep under independent review the operation of a range of UK counter-terrorism legislation to ensure that it is effective, fair and proportionate. This helps to provide transparency, inform public and political debate, and maintain public and Parliamentary confidence in the exercise of counter-terrorism powers as the legislative landscape and threat from terrorism evolve. To allow the IRTL to perform his duties, he is security cleared and has access to the most sensitive information relating to counter-terrorism, as well as access to Government staff and operational partners working in this area.

The IRTL is required by section 36 of the Terrorism Act 2006 (TACT 2006) to report periodically on the operation of Part 1 of that Act and annually on the Terrorism Act 2000, although in practice the IRTL's annual reports generally cover both Acts. Following changes made by the Counter-Terrorism and Sentencing Act 2021, the IRTL is also required to report annually on the operation of the Terrorism Prevention and Investigation Measures Act 2011[23]. Beyond this, he has discretion to set his work programme and can also review a range of other legislation depending on where he feels he should focus his attention, or if requested to do so by the Home Secretary or other Ministers. The full remit of the IRTL includes:

- Terrorism Act 2000;
- Anti-terrorism, Crime and Security Act 2001 (Part 1, and Part 2 in so far as it relates to counter-terrorism);
- Part 1 of the TACT 2006;
- Counter-Terrorism Act 2008;
- Terrorism Prevention and Investigation Measures Act 2011; and
- Part 1 of the Counter-Terrorism and Security Act 2015.

[23] More information is available in the TPIM section of this report.

The IRTL's reports are presented to the Secretary of State, who is required to lay them before Parliament and publish them. The Government also routinely publishes a formal response to each report.

The IRTL's annual reports on TACT 2000 and part 1 of TACT 2006 typically cover the following thematic areas:

- the definition of terrorism;
- proscribed organisations;
- terrorist property;
- terrorist investigations, including stop and search powers;
- arrest and detention;
- port and border controls;
- terrorism trials and sentencing; and
- special civil powers.

At the beginning of every year the IRTL is required to provide the Home Secretary with a work programme that specifies what reviews they intend to conduct in that 12 month period. The Secretary of State may also ask the IRTL to undertake other ad hoc or snapshot reviews.

The current IRTL, Jonathan Hall QC, is also separately appointed by the Foreign Secretary and Her Majesty's Treasury to review the operation of regulations made under the Sanctions and Anti-Money Laundering Act with a counter-terrorism purpose.

6 – Recommended Reading List

Legislation

- Anti-Terrorism, Crime and Security Act 2001 http://www.legislation.gov.uk/ukpga/2001/24/contents
- Counter-Terrorism Act 2008 http://www.legislation.gov.uk/ukpga/2008/28
- Counter-Terrorism and Border Security Act 2019 - https://www.legislation.gov.uk/ukpga/2019/3/contents
- Counter-Terrorism and Security Act 2015 - www.legislation.gov.uk/ukpga/2015/6/contents
- Counter-Terrorism and Sentencing Act 2021 - https://www.legislation.gov.uk/ukpga/2021/11/contents
- Freedom of Information Act 2000 – www.legislation.gov.uk/ukpga/2000/36/contents
- Human Rights Act 1998 – www.legislation.gov.uk/ukpga/1998/42/contents
- Investigatory Powers Tribunal Rules 2018 - http://www.legislation.gov.uk/ukdsi/2018/9780111173343/contents
- Justice and Security Act 2013 – www.legislation.gov.uk/ukpga/2013/18/contents
- Police Act 1997 – www.legislation.gov.uk/ukpga/1997/50/contents
- Policing and Crime Act 2017 http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted
- Proscribed Organisations (Applications for Deproscription etc) Regulations 2006 (SI 2006/2299) – www.legislation.gov.uk/uksi/2006/2299/made
- Protection of Freedoms Act 2012 – www.legislation.gov.uk/ukpga/2012/9/contents
- Terrorism Act 2000 – www.legislation.gov.uk/ukpga/2000/11/contents
- Terrorism Act 2006 – www.legislation.gov.uk/ukpga/2006/11/contents
- Terrorism Prevention and Investigation Measures Act 2011 – www.legislation.gov.uk/ukpga/2011/23
- Terrorist Asset-Freezing etc Act 2010 – www.legislation.gov.uk/ukpga/2010/38/contents
- Terrorist Offenders (Restriction of Early Release) Act 2020 - https://www.legislation.gov.uk/ukpga/2020/3/contents

Government Publications

- CONTEST: The United Kingdom's Strategy for Countering Terrorism – www.gov.uk/government/collections/contest
- Counter-Terrorism Statistics, Operation of Police Powers under the Terrorism Act 2000 – https://www.gov.uk/government/collections/counter-terrorism-statistics

- Exclusion Decisions and Exclusion Orders - https://www.gov.uk/government/publications/exclusion-decisions-and-exclusion-orders
- Police and Border Officials on Seizing Travel Documents Code of Practice - https://www.gov.uk/government/publications/code-of-practice-for-police-and-border-officials-on-seizing-travel-documents
- Royal Prerogative - https://www.gov.uk/government/publications/royal-prerogative

Independent Publications

- Attacks in London and Manchester between March and June 2017; Independent Assessment of MI5 and Internal Reviews, David Anderson QC - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664682/Attacks_in_London_and_Manchester_Open_Report.pdf
- Independent Reviewer of Terrorism Legislation website, including Annual Reports (Terrorism Acts, TPIMs, Asset-Freezing etc.) – Independent Reviewer of Terrorism Legislation
- Deportation with assurances, Independent Reviewer of Terrorism Legislation review https://www.gov.uk/government/publications/deportation-with-assurances
- Intelligence and Security Committee, Publications https://isc.independent.gov.uk/publications/

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