

Title: Counter-Terrorism and Security Act 2015 – Privacy and Civil Liberties Board – Royal Assent IA No: HO0149 Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)				
	Date: 11 February 2015				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Primary legislation				
Contact for enquiries: CTSBill@homeoffice.x.gsi.gov.uk					

Summary: Intervention and Options	RPC Opinion: n/a
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£-4.5m	0	0	No	N/A

What is the problem under consideration? Why is government intervention necessary?

On 29 August 2014 the Joint Terrorism Analysis Centre raised the UK threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. There is a need to legislate to deal with the increased terrorist threat. Currently, the Independent Reviewer of Terrorism Legislation, appointed under section 36 of the Terrorism Act 2006, provides crucial independent scrutiny of UK counter-terrorism legislation to ensure that it is fair, effective and proportionate and to inform Parliamentary and public debate. However, the Independent Reviewer carries out this task alone and further assistance is required to support this important role and currently the Independent Reviewer is confined to reviewing only certain counter-terrorism statutes.

What are the policy objectives and the intended effects?

The primary objective of the Privacy and Civil Liberties Board will be to assist the Independent Reviewer of Terrorism Legislation in ensuring that UK counter-terrorism legislation and policies strike a balance between the threat to the public and protection of privacy and civil liberties. It will provide further assurance to the public about the current UK counter-terrorism arrangements. Equally, changes to extend the remit of the Independent Reviewer to include other counter terrorism legislation, including Part 1 of the Counter-Terrorism and Security Act 2015, and to amend the reporting arrangements for matters falling within his remit, will ensure that the Independent Reviewer is able to consider a greater range of matters and that the Board will support him to discharge his widened statutory functions.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 – do not establish a privacy and civil liberties board

Option 2 – legislate to provide the Secretary of State with a power to establish a Privacy and Civil Liberties Board in regulations, to support the Independent Reviewer of Terrorism Legislation and consult on the detail of the Board for regulations.

Option 2 is the preferred option. During the passage of the Data Retention and Investigatory Powers Bill (which received Royal Assent on 17 July 2014), the Government committed to establishing a board that would provide assurance to the public about the current counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns in the face of the threat to the public.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 07/2016					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Do not establish a board

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m) 0		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

Option 1 is the baseline so there are no additional costs.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Option 1 is the baseline so there are no additional benefits.

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The Independent Reviewer may be constrained in his ability to undertake individual or additional reviews of particular areas (relating to counter terrorism laws and powers), which are an important aspect of ensuring effective review UK counter terrorism legislation and in informing Parliamentary debate and the public.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

Summary: Analysis & Evidence

Policy Option 2

Description: legislate to provide the Secretary of State with a power to establish a Privacy and Civil Liberties Board in regulations, to support reviewers of terrorism legislation and consult on the detail of the Board for regulations.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -8.1	High: -2.1	Best Estimate: -4.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0.2	2.1
High	0.03	0.9	8.1
Best Estimate	0.02	0.6	4.5

Description and scale of key monetised costs by 'main affected groups'

Costs will be incurred by central government to pay the salaries of the board members and the salaries of the additional secretariat support. The estimates are based on an assumed range of between three to five board members and one to two members of the secretariat. The best estimate (average) of the annual salaries of the board members is £510k annually. The best estimate of the secretariat support is £78k annually. There will be transition costs associated with recruiting and implementing the board. These will depend on who they are recruited by; however, there may also be a cost of up to £30k if recruitment consultants are required. This figure is based on past recruitment costs.

Other key non-monetised costs by 'main affected groups'

There are no non monetised costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

The measure will enable the Independent Reviewer of Terrorism Legislation to draw upon a wider range of expertise and viewpoints providing further public assurance that the current counter-terrorism legislative arrangements have due regard to their impact on privacy and civil liberties as well as to the terrorism threat facing the UK.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The salaries of the board are estimated based on the recruitment processes of specialist contractors. The salaries are estimates, and may vary depending on the recruitment process and experience/seniority of board members.
The level of secretariat support required is an estimate, given that this will vary depending on the number of board members, and the board workload.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0
	No	N/A

A. Define the problem

On 29 August 2014 the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and Iraq since the start of the conflicts and we estimate that around half of those have returned; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant (ISIL). On 1 September 2014 the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations, or conduct terrorist related activity, and subsequently returning the UK, and to deal with individuals already in the UK who pose a risk to the public.

This threat is constantly evolving and it is essential that our counter-terrorism response is kept under review, and keeps pace, to ensure the police and security services have the powers they need to tackle all new and existing threats, whether international or home-grown.

The existence of this threat inevitably requires the Government to make difficult choices, including amongst other things, how to bring about legislation in support of national security objectives while making sure this does not come at the expense of fundamental civil liberties.

Ensuring our counter-terrorism legislation and the manner in which it is operated, is fair, effective and proportionate is an important part of CONTEST¹, the UK's counter-terrorism strategy, and the role of the Independent Reviewer of Terrorism Legislation is essential to this. It is right and proper that legislation which necessarily provides for powers which may, in some instances, go above and beyond those available under ordinary criminal law, is subject to effective scrutiny and independent oversight. This has been effectively done in respect of counter-terrorism legislation for some 35 years by the Independent Reviewer of Terrorism Legislation. David Anderson QC, the incumbent Independent Reviewer, provides independent scrutiny of our counter-terrorism legislation and his findings are vital in informing both parliamentary debate and the general public.

Notable and significant changes that have been brought about in part by this careful scrutiny include those made following the Government's 2011 review of Counter Terrorism and Security Powers². These included, amongst others, changes to UK terrorism stop and search powers and pre charge detention powers. In addition, recent changes introduced in the Justice and Security Act³, which received Royal Assent in April 2013, extended the remit of the Intelligence and Security committee of Parliament, strengthening its oversight of the security and intelligence agencies and clarifying its independence, and are a clear indication of this Government's commitment to ensuring robust independent scrutiny and full accountability on some of our most intrusive powers.

However, the Government recognises that as the legislative landscape has developed in this area, some areas of counter-terrorism law are subject to greater scrutiny than others and that this is a substantial task for one individual to undertake.

During the passage of Data Retention and Investigatory Powers Bill (which received Royal Assent on 17 July), the Government committed to establish a board that would provide further assurance to the public about the current counter-terrorism arrangements and balance the

¹ www.gov.uk/government/publications/counter-terrorism-strategy-contest

² www.gov.uk/government/publications/counter-terrorism-and-security-powers

³ www.legislation.gov.uk/ukpga/2013/18/contents/enacted/data.htm

threat to the public with ensuring that legislation and policies have due regard for civil liberty and privacy concerns.

B. Rationale

Protecting the UK against terrorism is a fundamental role of Government. Counter-terrorism measures require judgments on the need to balance protecting the public with safeguarding civil liberties and dealing with sensitive issues of national security. Such judgments should not be left to the private sector. The private sector does not have the access to intelligence to understand the scale/nature of the threat.

It is the Government that manages sensitive information and intelligence on individuals that pose a terrorist threat and is responsible for the safety and security of UK citizens. Given the necessity of counter-terrorism measures, and the role of the Government to protect the public, the Government is uniquely placed to fulfil this role.

C. Objectives

The primary objective of the Privacy and Civil Liberties Board, which will support the role of the Independent Reviewer of Terrorism Legislation, will be to provide assurance to the public about the current UK counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns.

The board will have the following responsibilities to achieve this:

- Assist, advise and undertake particular duties on behalf of the Independent Reviewer of Terrorism Legislation to support him reviewing the operation of legislation which falls within his statutory responsibilities, with particular regard to whether these are sufficient to meet the threat and adequately take account of privacy and civil liberty concerns.

This policy does not seek to replace the statutory role of the Independent Reviewer. Rather, measures in the Counter-Terrorism and Security Act 2015 addresses unsatisfactory gaps which have developed over time in respect of the independent oversight of key pieces of counter-terrorism legislation and ensure that the Independent Reviewer, supported by the Privacy and Civil Liberties Board, can review a wider range of matters and provide full assurance to the public that all of our counter-terrorism powers operate as intended and are fair, effective and proportionate. The Act therefore extends the statutory remit of the Independent Reviewer to include: Part 1 of the Anti-terrorism, Crime and Security Act 2001, and Part 2 of that Act insofar as the power is used in cases relating to terrorism: the Counter-Terrorism Act 2008; and Part 1 of this Act (containing the new Temporary Passport Seizure and Temporary Exclusion Order powers) and provides for greater flexibility in the reporting arrangements by requiring the Independent Reviewer to set out an annual work programme.

This policy provides the Home Secretary with a mechanism to establish a statutory board of individuals who could provide support and advice to the Independent Reviewer in discharging his widened statutory duties.

The measure provides for the board to be chaired by the Independent Reviewer of Terrorism Legislation (as appointed under section 36 of the Terrorism Act 2006) and for the Board to operate under his direction and control.

Timeframe/Outcome

The provision within the Counter-Terrorism and Security Act provides the Secretary of State with a power to make regulations which would establish the Privacy and Civil Liberties Board. This order-making power can only be exercised once it has been commenced, which will be two months after the date of Royal Assent.

D. Options

Option 1: Retention of the Independent Reviewer of Terrorism Legislation (status quo)

This would maintain the position whereby the statutory responsibilities of the Independent Reviewer of Terrorism Legislation under section 36 of the Terrorism Act 2006, to review the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, are discharged without the assistance of the Privacy and Civil Liberties Board. In practice, the Independent Reviewer of Terrorism Legislation additionally reviews the operation of the Terrorism Prevention and Investigation Measures Act 2011 (under section 20 of that Act) and the Terrorist Asset-Freezing etc. Act 2010 (under section 31 of that Act) (though these could legitimately be carried out by separately appointed independent reviewers). This option would mean that a number of counter-terrorism statutes would continue to operate without being subject to independent oversight by the Independent Reviewer of Terrorism Legislation.

Option 2: Consult on the detail of creating a statutory board to support the Independent Reviewer of Terrorism Legislation

This would provide the Secretary of State with a power to create, through regulations, a Privacy and Civil Liberties Board which would provide advice and support the Independent Reviewer of Terrorism Legislation, details of which would be informed by responses to a public consultation.

Groups Affected

The proposals in this IA affect all in the United Kingdom as the Terrorism Act 2000, Part 1 of the Terrorism Act 2006, the Terrorism Prevention and Investigation Measures Act 2011 and the Terrorist Asset-Freezing etc. Act 2010, the operation of which is reviewed by the Independent Reviewer of Terrorism Legislation, as well as those areas of law to which we are extending the Independent Reviewer's statutory remit, all apply to the whole of the UK.

COSTS

The precise costs of each of the options are difficult to forecast at this stage, as the details of the board will be defined through consultation and the subsequent regulations. Neither of the options impact upon the private sector or business.

As an illustrative guide, we have set out the costs for each option below.

Option 1:

Option 1 is the baseline. David Anderson QC, the Independent Reviewer of Terrorism Legislation, has a current budget allocation of £250,000 per year. Under this option therefore, there would be no additional costs.

Option 2:

Simply including a clause as a provision in the Counter-Terrorism and Security Act providing the Secretary of State with a regulation-making power to create a statutory board does not have any costs. However, utilising this power and creating a statutory board does have costs.

Creating an advisory group would require additional costs over and above that of the Independent Reviewer (i.e. in total significantly more than £250,000). Costs are dependent on:

- The number of individuals who belong to the Privacy and Civil Liberties Board
- salaries of Board members
- whether the Board and its members would operate on a full-time or part-time basis
- a secretariat to the Board.

This would be a new (annual) cost which would need to be factored into future budgets. It will be possible to be clearer about costs following consultation on the detail of the measure. However, the potential upper and lower limit costs have been estimated.

Estimates

Board salary costs

Lower limit cost scenario:

A group consisting of three part-time members who are paid a mid-level specialist contractor salary, requiring little support. The salary used for estimation is £535 per day (£139,100 pro rata equivalent) so the sum of three part-time members working two days per week on this salary is £166,920 per annum⁴.

To take into account non-wage staff costs (such as social security contributions) to the Home Office, a multiplier of 1.1806⁵, or 18.06% is applied to salaries to give the total staff costs. Applying this to the lower limit cost gives a best lower-limit cost estimate of **£197,066 per annum**.

Upper limit cost scenario:

A group consisting of five part-time members who are paid a senior-level specialist contractor salary, again requiring little support. The salary used for estimation is £897 per day (£233,220 pro rata equivalent) so the total cost of five part-time members working three days per week would be £699,660 per annum⁶.

Applying the same 1.1806 multiplier to account for non-wage staff costs, gives a best upper-limit cost estimate of **£826,019 per annum**.

The best estimate is an average of the upper and lower limit costs, **£511,543 per annum**.

Other costs

- The Board will be expected to work flexibly, with laptops. It is anticipated they will meet the Independent Reviewer regularly, but on the assumption that they will not have dedicated office space, any accommodation costs are expected to be negligible.
- There will be costs associated with recruiting and implementing the board. It has not yet been decided how the board will be recruited, or whether a recruitment consultant service would be required. If this service is not required, the recruitment costs are expected to be negligible. If the service is required, this is estimated to cost approximately £30,000 to recruit all members. **£0** and **£30,000** are therefore assumed to be the upper and lower limits of the recruitment costs, with an average of **£15,000** as a best estimate. This cost will only be incurred in the first year.
- It is likely the Board will require additional secretariat support. Currently, the Independent Reviewer has no dedicated support but is provided with administrative support, on a flexible basis, by the Counter-Terrorism Legislation Team in the Office of Security and Counter Terrorism. However, it is likely that the board would require dedicated support.
- Based on the lower limit cost scenario, we estimate the dedicated support to be equivalent to one additional full-time SEO. On the upper limit cost scenario, we estimate the dedicated support to be equivalent to one additional full-time Grade 7 and SEO. The

⁴ (£139,100*0.4)*3. In this equation, 0.4 reflects a 2 day working week.

⁵ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/File:Labour_costs_per_hour_in_EUR_2008-2013_whole_economy_excluding_agriculture_and_public_administration.png (calculated as $0.153/(1-0.153) = 0.1806$)

⁶ (£233,320*0.6)*5. In this equation, 0.6 reflects a 3 day working week.

salaries used for estimation are £39,147 and £53,456 (the average of the upper and lower limits of Home Office SEO Policy Advisor salary and Grade 7 Policy Advisor salaries, respectively). Taking into account the non-wage staff costs, the overall lower cost estimate is **£46,217 per annum**. The overall upper cost estimates are £46,217 + £63,110, a total of **£109,327 per annum**. The best estimate is an average of the upper and lower limit cost estimate, **£77,772 per annum**.

NET PRESENT COST

Discounted at 3.5%

High Estimate										
Year	1	2	3	4	5	6	7	8	9	10
Recruitment (000's)	£30	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual Salaries (000's)	£935	£904	£873	£844	£815	£788	£761	£735	£710	£686

Best Estimate										
Year	1	2	3	4	5	6	7	8	9	10
Recruitment (000's)	£15	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual Salaries (000's)	£589	£569	£550	£532	£514	£496	£479	£463	£448	£432

Low Estimate										
Year	1	2	3	4	5	6	7	8	9	10
Recruitment (000's)	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual Salaries (000's)	£243	£235	£227	£219	£212	£205	£198	£191	£185	£178

High estimate net present cost over 10 years = £8.1m

Best estimate net present cost over 10 years = £4.5m

Low estimate net present cost over 10 years = £2.1m

BENEFITS

Option 1:

Option 1 is the baseline, so there are no additional benefits.

Option 2:

The creation of a Privacy and Civil Liberties Board could enable the Independent Reviewer of Terrorism Legislation to draw upon on a wider range of expertise and viewpoints on a more formalised basis. It could contribute to providing further public assurance that the current arrangements ensure that the implementation of legislation and policies relating to the prevention of terrorism have due regard to their impact on privacy and civil liberties as well as to the terrorism threat facing the UK.

The ability of the Board to advise and assist the Independent Reviewer of Terrorism Legislation could allow for a wider range of areas to be the subject of review, as determined by the Independent Reviewer's annual work programme, and allow a greater degree of flexibility to the way in which the Independent Reviewer carries out his duties.

GENERAL ASSUMPTIONS & DATA

The salaries of the board are estimated based on the recruitment and recruitment process of specialist contractors. The salaries are estimates, and may vary depending on the recruitment process and experience/seniority of board members.

The multiplier for non-wage staff costs is taken from EU labour statistics.

The level of secretariat support required is an estimate, given that this will vary depending on the board members, and the board workload. However, a full-time SEO and Grade 7 equivalent is likely to be an upper-limit estimate.

It is assumed that the board will work flexibly and not have dedicated office space, so there are no estimated accommodation costs. This is the likely scenario however it could be subject to change, depending on board members, board workload and logistics.

We have assumed the board will be established in the first year.

ONE-IN-TWO-OUT (OITO)

Out of scope

E. Risks

Option 1:

- The Independent Reviewer may be constrained in his ability to undertake individual or additional reviews of particular areas (relating to counter-terrorism laws and powers), which are an important aspect of ensuring effective review UK counter-terrorism legislation and in informing Parliamentary debate and the public.
- There would continue to exist gaps in the oversight arrangements of UK counter-terrorism legislation.

Option 2:

- Although best estimate, indicative costs have been provided, the exact costs will depend on the details of the proposal, which have not been defined at this stage.
- Effectiveness of the Privacy and Civil Liberties Board to support the Independent Reviewer of Terrorism Legislation, will depend to a large extent on membership; appointment of appropriately qualified individuals will be an important factor.

F. Implementation

Option 2 is delivered within the Counter-Terrorism and Security Act with further work required setting out the detail in regulations. Implementation will take place following the laying of regulations which will follow commencement of the order-making power.

G. Monitoring and Evaluation

This Act makes changes to the statutory remit and reporting arrangements for the Independent Reviewer of Terrorism Legislation. In addition to those Acts currently subject to review by the Independent Reviewer – that is, the Terrorism Act 2000, Part 1 of the Terrorism Act 2006, the Terrorist Asset-Freezing Etc Act 2010 and the Terrorist Prevention and Investigation Measures Act 2011 – the Independent Reviewer will also be able to review Part 1 of the Anti-terrorism, Crime and Security Act 2001, and Part 2 of that Act insofar as the power is used in cases relating to terrorism; the Counter-Terrorism Act 2008; and Part 1 of this Act, containing the new Temporary Passport Seizure and Temporary Exclusion Order powers, when enacted. The Independent Reviewer will, in future, set out an annual work programme, which he must notify to the Secretary of State, including the matters which he intends to report on in the following 12 month period. He will be supported by the Privacy and Civil Liberties Board in discharging his statutory functions. Reports will be provided to the relevant Secretary of State, to lay a copy of the report before Parliament.

Any additional reporting requirements of the Board would be provided for in Regulations.

H. Feedback

The Government is required to provide a formal published response to all reports and recommendations of the Independent Reviewer of Terrorism Legislation.