

Equality Statement

Counter-Terrorism and Sentencing Bill 2020

Policy Summary

The Counter-Terrorism and Sentencing Bill will better protect the public by strengthening the approach taken to the sentencing and release of terrorism offenders. It will ensure that serious and dangerous terrorism offenders will spend longer in custody, properly reflecting the seriousness of the offences they have committed, which provides both better protection for the public and more time in which to support their disengagement and rehabilitation through the range of tailored interventions available while they are in prison. It will also improve the ability to manage those of terrorism concern when they are released, allowing for more effective intervention when this is required.

The Bill contains a number of provisions which increase the length of certain sentences (both the custodial and licence period); strengthens licence supervision for terrorist offenders; and strengthens disruptive tools for those who have engaged on terrorist-related activity. In detail:

- 1. Revision of the Extended Determinate Sentence regime and post-release licence for the most serious terrorism-related offences:** This is comprised of three separate changes:
 - a. The creation of a Special Terrorist Sentence (STS):** A minimum 14-year custodial sentence, to be served in full, for the most serious and dangerous terrorist offenders that would have previously been expected to receive an EDS. This includes much longer post-release supervision with a minimum licence period of 7 years up to a maximum of 25 years. It will apply to adult offenders.
 - b. Removing the conditional release point of the extended sentence for the most serious offences where there is a terrorist connection:** This ensures that terrorist offenders assessed as dangerous, whose offence is serious enough to attract a life sentence, but who receive an extended sentence, would no longer be eligible for release through the Parole Board at the two-thirds point of their sentence and will serve their full custodial term in custody instead.
 - c. Increasing the maximum licence period that courts can impose from 8 to 10 years.¹** It will apply to youth and adult offenders.
- 2. Aligning terror-related sentencing for those that do not meet the dangerousness threshold:** This follows on from the changes in the Terrorist Offenders (Restriction of Early Release) (TORER) Act 2020 and ensures consistent sentencing of terrorist offenders across all ages and parts of the UK. It is comprised of the following three changes:
 - a. Adding all the terrorism offences in scope of the TORER Act to the Sentence for Offenders of Particular Concern (SOPC) regime:** This will ensure that all terrorist offenders who do not receive an extended sentence will no longer be eligible for a Standard Determinate Sentence and will instead be sentenced to a SOPC, ensuring they are subject to a minimum licence period of 12 months after being released from custody, even if they spend the full custodial term in custody.
 - b. Creating new equivalents of the SOPC regime where they do not exist already:** This will apply to terrorist offenders under the age of 18 in England

and Wales and to all terrorist offenders (adult and youth) in Scotland and Northern Ireland, where there currently is no equivalent of the SOPC.

- c. **Extending the TORER Act provisions to Northern Ireland:** This will align the release arrangements for terrorist offenders in Northern Ireland to the changes made in Great Britain by the TORER Act, meaning they will only be considered for release before the end of their custodial term through referral to the Parole Commissioners, and only from the two-thirds point of their sentence, replacing the current system.
- 3. Introduction of polygraph testing as part of licence conditions:** This strengthens the supervision of terrorist offenders by making polygraph testing mandatory for high risk offenders. This will apply to terrorist offenders aged 18 or over on the day of release and makes polygraph conditions available for terrorist offenders on licence in Northern Ireland and Scotland.
- 4. Increasing the maximum penalty available for three terrorism offences:** This will increase the maximum sentence available for the courts to impose from 10 to 14 years for the following three terrorism:

 - Membership of a proscribed organisation
 - Supporting a proscribed organisation
 - Attending a place used for terrorist training
- 5. Amending the terrorist connection provisions within the Counter-Terrorism Act (CTA) 2008:** The Bill will amend the CTA so that a court can find any offence with a maximum penalty of more than two years to have a terrorist connection. This can be an aggravating factor when sentencing and trigger registered terrorist offender notification requirements and may result in the court ordering forfeiture in a wider range of cases.
- 6. Adding potential terror-related offences to the EDS regime:** This increases the range of offences for which the courts can include a terrorist connection, which ensures the offender will spend all of their sentence in custody and the possibility for the courts to impose longer licence periods after release.
- 7. Amendments to the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 (as amended by the Counter-Terrorism and Security Act 2015):** The Bill makes the following changes to TPIMs (that can be applied to both under and over 18s), which together strengthen our ability to manage the risk posed by those of terrorism concern, including those released from prison:

 - Lowers the standard of proof for imposing a TPIM notice
 - Specifies new measures which can be applied to TPIM subjects
 - Remove the maximum length for which a TPIM can last (currently set at two years) so it can be renewed indefinitely, provided it remains necessary
 - Allows a TPIM's relocation measure to be varied to ensure the efficient and effective use of resources in relation to the individual.
- 8. Amendment to the Serious Crime Act 2007:** This allows CT Policing to make a direct application to the High Court for a Serious Crime Prevention Order (SCPO) in relation to individuals over the age of 18 involved in terrorism, supporting their use in terrorism-related cases.
- 9. Expanding the Registered Terrorist Offender (RTO) notification requirements:** This adds the offences of breaching a TPIM notice and breaching a Temporary Exclusion Order to the list of relevant terrorism offences that trigger the RTO notification requirements, which require individuals aged 16 or over to provide certain information about changes in their circumstances to the police.

10. Remove the statutory deadline for the independent review of Prevent (while maintaining the legislative commitment to undertake the review), to ensure the review has sufficient time to fulfil its terms of reference.

The provisions in the Bill will apply to all relevant offenders equally, regardless of gender, race, religion, age or disability, except where inappropriate for young offenders. Counter-terrorism is reserved and the provisions in the Bill will apply UK wide – to England and Wales, Scotland and Northern Ireland.

Equality Duties

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be proportionately considered against the nine "protected characteristics" under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Equality Statement considers the potential effects of our proposals according to the protected characteristics for which we have data: race, sex and age.

Equality Considerations

Direct discrimination

The provisions in this Bill apply to all members of the public who are convicted of a relevant terrorism or terrorism related offence, although where appropriate some apply only to adults. There is therefore no direct discrimination within the meaning of the Equality Act as the law applies equally to all offenders charged and convicted of these offences. We do not consider that this results in people being treated less favourably because of protected characteristics.

Indirect discrimination

Sentencing is a matter for the courts to determine in individual cases, based on the full facts of the case and of the offender before them. The aim behind this Bill is to strengthen the sentencing and release framework for terrorist and terrorism-related offending, and to allow for improved monitoring and management of these offenders in the community.

The provisions of this Bill apply to all members of the public who are convicted and sentenced for a relevant terrorism offence. Our assessment is that the proposals are not unlawfully indirectly discriminatory within the meaning of the Equality Act 2010. We believe they do not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics. The new provisions will apply to all relevant terrorist offenders, regardless of ethnicity, religion or otherwise. except where inappropriate for young offenders.

Quantitative data suggests that Asian/British Asian and Muslim individuals within the Criminal Justice System (CJS) have been disproportionately affected by terrorism legislation relative to the percentage of Asian/British Asian and Muslim individuals in the total population¹. However, the trends reflect the terrorist ideologies prevalent in the UK, most notably Islamist Extremist and extreme Far Right terrorism. Of those individuals arrested, charged and convicted of terrorism offences under the Terrorism Act (2000), it is therefore Asian and White individuals who make up the majority of this cohort. Our assessment is that the proposals are unlikely to result in indirect discrimination within the meaning of the Equality Act as we believe they do not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics, and the overrepresentation of some groups within scope of this policy will reflect the nature of terrorism in the UK at any given point. As a matter of public protection, the provisions of the Bill are a proportionate approach to achieve the legitimate aims of the reforms as detailed above and not unlawfully indirectly discriminatory within the meaning of the Equality Act 2010.

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider any changes to sentencing and the extended sentence regime for these offenders would impact on the advancement of equality of opportunity.

Discrimination arising from disability and duty to make reasonable adjustments

In so far as this policy extends to disabled terrorist offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled offenders so that they are out of scope of the proposals, but it remains important to make reasonable adjustments for disabled offenders to ensure appropriate support is given.

We do not consider that any adjustments are required for disabled people over and above the ones already in place in courts and prisons.

Fostering good relations

We do not consider that there is any significant impact on the achievement of this objective.

Evidence

Please see the table below for a summary of the current equalities data for England, Wales and Scotland as published on 5 March 2020 in The Home Office statistical bulletin to year ending December 2019 of the operation of police powers under terrorism legislation, which collects data from Police (National Counter-Terrorism Police Operations Centre), HMPPS (England and Wales) and Scottish Prisons Service². While proportions are high for some protected characteristics, numbers are small so care should be taken when interpreting the results.

¹ In previous publications we have made comparisons of ethnic groups to ethnic groups in the population using 2011 Census data. In the 2011 Census the proportion in each ethnic group was as follows: 87% White, 3% Black, 6% Asian, 2% Mixed and 2% Chinese or Other. As this data is now several years old it may not accurately represent the distribution of ethnic groups in the population, particularly for children when comparing to 2018 CJS figures. As such analysis to compare against the general population, which relies on the 2011 Census data is not usually included.

² <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>

Table 1

<p>Race/Ethnicity</p>	<ul style="list-style-type: none"> • The Home Office statistical bulletin published in March 2020 of the Operation of police powers under terrorism legislation shows that in the year ending December 2019 there were 280 arrests for terrorism and terrorism-related activity. Of those arrested, 42% were White ethnic appearance, 8% were Black, 40% were Asian, and 11% were identified as Other. • In the same year, 65 people were charged with terrorism-related offences. Of these, 43% were White, 11% were Black, 34% were Asian, and 12% were Other. • 22 individuals were convicted of terrorism-related offences. Of these, 50% were White, 21% were Black, 21% were Asian, and 8% were Other.³
<p>Religion/belief & non belief</p>	<ul style="list-style-type: none"> • Of the 231 persons in custody for terrorism-related offences as at 31 December 2019, the self-declared religion is as follows: 10% Christian, 76% Muslim, 0.43% Buddhist, 0.43% Jewish, 0.87% Sikh, 3% were Other Religious Group, and 9% were of No Religion. There were no persons in custody for terror-related offences as self-declared Hindu.⁴ • Of the 231 persons in custody for terrorism-related offences as at 30 December 2019, the category of prisoner, broken down by ideology 77% Islamist extremist, 18% Extreme right wing, 6% Other.⁵
<p>Disability</p>	<p>Statistics relating to the disability of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.</p>
<p>Sex</p>	<ul style="list-style-type: none"> • The Home Office statistical bulletin published in March 2020 of the Operation of police powers under terrorism legislation shows that in the year ending December 2019 there were 280 arrests for terrorism and terrorism-related activity. Of those arrested 89% were male, 11% were female. • In the same year, 65 people were charged with terrorism-related offences, 91% were male, 9% were female. • Of the 22 individuals convicted, all were male.⁶
<p>Gender Reassignment</p>	<p>Statistics relating to gender identity of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.</p>

³ A.11: Ethnic appearance of persons arrested, charged and convicted after a charge as recorded by police at time of arrest, for terrorism-related activity <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>

⁴ P.04: Number of persons in custody for terrorism-related offences, by self-declared religion <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>

⁵ P.01: Number of persons in custody for terrorism-related offences, by ideology <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>

⁶ A.09: Gender of persons arrested, charged and convicted after a charge for terrorism-related offences <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>

Sexual Orientation	Statistics relating to the sexual orientation of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.
Age	<ul style="list-style-type: none"> • The Operation of police powers under terrorism legislation statistical publication shows there were 280 arrests for terrorism offences. Of these, 4% were under 18, 10% were 18-20, 11% were 21-24, 17% were 25-29, 57% were 30 or over, and 0% were not known. • Of the 65 individuals charged, 3% were under 18, 15% were 18-20, 14% were 21-24, 22% were 25-29, 46% were 30 or above • Of the 22 individuals of those charged that year who were convicted before the end of the year, 5% were under 18, 18% were 18-20, 5% were 21-24, 32% were 25-29, and 41% were 30 or over.⁷
Pregnancy and maternity	Statistics relating to pregnancy or maternity of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.

⁷ A.10: Age group of persons arrested, charged and convicted after a charge for terrorism-related offences, <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2019>