



HM Government

The Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2013

December 2014

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Second Report of the Independent Reviewer
on the operation of the Terrorism Prevention
and Investigation Measures Act 2011

December 2014



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Printed on paper containing 75% recycled fibre content minimum.



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26 November 2014

Dear David

**SECOND ANNUAL REPORT ON THE OPERATION ON TERRORISM
PREVENTION AND INVESTIGATION MEASURES ACT 2011**

Thank you for your report on the operation in 2013 of the Terrorism Prevention and Investigation Measures Act 2011.

I am grateful to you for providing a helpful and considered report and I enclose the Government's formal response to the recommendations you have made.

I am copying this letter and the Government response to the Rt Hon Keith Vaz MP, Chair of the Home Affairs Select Committee and to Dr Hywel Francis MP, Chair of the Joint Committee on Human Rights, and will place a copy in the House Library. A copy will also be placed on the gov.uk website.

The Rt Hon Theresa May MP

The Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2013

1. Though no TPIMs are currently in force, the power to impose TPIMs or some analogous measure should remain on the statute book.

The Government agrees that TPIMs should remain part of the disruptions available to deal with terrorists where the police and Security Service consider them a suitable tool and such measures are necessary and proportionate for the protection of national security.

2. The very broad definition of terrorism-related activity in TPIMA 2011 section 4 should be revisited, when the occasion next arises to amend the Act.

The Government accepts that it is important to keep the definition of terrorism-related activity in the TPIM Act 2011 under review to ensure that it does not unintentionally include cases for which a TPIM notice would not be necessary or proportionate.

The amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill therefore include removing elements of the current definition of terrorism-related activity as specified at section 4 of the TPIM Act. The amendment means that involvement in terrorism-related activity will no longer include conduct which gives support or assistance to individuals who encourage or facilitate the commission, preparation or instigation of acts of terrorism.

The Government will continue to keep the definition of terrorism-related activity in the TPIM Act 2011 under review to ensure that it continues to provide sufficient scope to address the terrorist threat from individuals who cannot currently be prosecuted or deported, and that there are sufficient safeguards in place to ensure that TPIMs are only used in appropriate cases.

Where a TPIM notice has been imposed, the Secretary of State must also demonstrate in court that it is necessary to impose the TPIM notice to protect the public from the threat of terrorism and that doing so is proportionate. As the Independent Reviewer's report indicates, a TPIM notice has only been imposed when the individual circumstances of the case have justified its use. The power has been used sparingly and in each case the TPIM notice has been upheld in review by the courts. This review process is an important safeguard to ensure that TPIM notices are not imposed where there is insufficient justification for doing so and, when notices are imposed, it is in full knowledge that the exercise of this power will be subject to intense and detailed scrutiny by the courts. The court would quash or revoke a TPIM notice if it considered the tests were not met – whether because it did not consider there were reasonable grounds to believe that the individual was involved in terrorism-related activity, or because the notice was not necessary to protect the public or proportionate to that aim. Consequently a TPIM notice imposed without adequate grounds would not survive court scrutiny.

- 3. The possibility of requiring the Home Secretary to satisfy a court that a TPIM subject has been involved in terrorism (rather than, as now, that her own belief in that involvement is reasonable) should also be considered, though the Government's rejection of this recommendation in 2013 is noted.**

The Government accepts that the legal test for a TPIM notice should be kept under review to ensure that it provides an adequate safeguard. The amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill increase the legal test from the current test that "the Secretary of State "reasonably believes" an individual is involved in terrorism-related activity to a higher threshold of the Secretary of State is satisfied on the "balance of probabilities" that an individual is involved in terrorism-related activity.

The Government will continue to keep the legal threshold under review to ensure that it enables the police and Security Service to make use of TPIMs in appropriate cases to protect the public from terrorism. In conjunction with this, the Government will also continue to keep under review whether any changes require additional safeguards and whether any existing ones remain adequate.

- 4. The range of locational measures available under Schedule 1 to TPIMA 2011 should be revisited, with a view to using them more effectively and/or strengthening them. In particular, consideration should be given to:**
 - (a) making more use of the existing power to impose exclusion measures (Schedule 1, para 3);**
 - (b) amending that power so as to clarify or extend the possibilities for imposing exclusion zones; and/or**
 - (c) if operational requirements so dictate, restoring the power to effect involuntary relocation. Any such power could and should however allow subjects to travel within a significantly wider area than was the case under the control order system.**
- 5. If a power to impose new locational measures is introduced, particular care should be taken to ensure that it is used only when the individual circumstances of the particular TPIM subject render it necessary and proportionate to do so.**

The Government accepts these recommendations. The police and Security Service have said that they believe TPIMs have been effective in disrupting individuals and their networks. The Government has made clear to the police and Security Service that they should consider using every available power under the TPIM Act to its fullest possible extent.

Nonetheless, the Government continues to keep under review the powers that are available to the police and Security Service in order to manage the evolving threat from terrorism. As a result of this, and following consultation with the police and Security Service, the provisions in the Counter-Terrorism and Security Bill will allow TPIM subjects to be required to live anywhere appropriate in the UK and for measures to be imposed which restrict their ability to travel outside of the area in

which they may be required to live. The provisions in the Bill also place limits on how this power may be used. For example, it would only be possible to move a TPIM subject a maximum of 200 miles from their former residence, unless they agree to a location of a greater distance. The Secretary of State will publish factors that she considers are appropriate to take into account when deciding whether to impose measures restricting travel.

As with any measure available under the TPIM Act, it will only be possible to move TPIM subjects under these provisions where it is necessary and proportionate to do so. When powers are exercised under the TPIM Act 2011, the decision takes into account what is necessary to protect the British public and to prevent the subject from undertaking terrorism-related activity. In each instance, both the notice itself and the use of individual measures must be necessary and proportionate. It is also open to the court to assess whether each of the measures is necessary and proportionate.

- 6. A new power to require subjects to attend meetings with specified interlocutors should be added to Schedule 1.**
- 7. As regards the use of that power, careful consideration should be given to:**
 - (a) the purpose of the intervention (which I envisage normally being led by the probation service or Prevent);**
 - (b) the need to afford the TPIM subject complete clarity as to the purpose of the intervention, the identity of his interlocutors and the use (if any) to which his answers could be put; and**
 - (c) the possible offer of reassurance on the analogy of restricted use undertakings under SOCPA section 72.**

The Government accepts the substance of these recommendations. We engaged probation to work with certain TPIM subjects during the final months of their TPIM notices. In a number of cases this engagement was beneficial. We also continue to keep under review whether additional powers are needed in order to manage TPIM subjects effectively, including whether there are powers available under other legislation that could assist with the management of TPIM subjects. As a result, the amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill include a new measure that can be used to require TPIM subjects to attend meetings. This new power will mean TPIM subjects must meet with statutory bodies and other persons as required by the Secretary of State. This could include: probation, Prevent officers, Job Centre Plus staff or others who can contribute to the ongoing management of a TPIM subject. We do not at this stage judge that specifying a blanket approach to, for example, reassurance about meetings with the wide range of different actors who might be relevant would be appropriate.

- 8. Exit strategies, including engagement-based strategies, should be formulated so far as possible when TPIM notices are first imposed, and not left to their final months.**
- 9. The Home Office and police should give all possible assistance to TPIM subjects in relation to employment, studies and future housing.**

The Government agrees that the forthcoming expiry of a TPIM notice should always form part of the ongoing management of TPIM subjects. We have always been clear that TPIM notices were time limited and would come to an end after two years. Throughout the life time of the notices, the Home Office, Security Service and police therefore planned on this basis and drew up exit plans accordingly. Whilst each TPIM notice was in force, we regularly reviewed the ongoing management of each TPIM subject, the plans for the lead up to the expiry of the TPIM notices, and the plans for the period after their expiry. We will continue on this basis for all current and future TPIM notices.

As part of the planned ending of the TPIM notices, we have provided opportunities for TPIM subjects to discuss issues connected with employment, studies and housing with the appropriate bodies and have provided all other appropriate assistance. For example, we have offered mentoring from the probation service to help former TPIM subjects to secure employment, made reasonable adjustments to TPIM measures to allow TPIM subjects to take part in education and study (where that was consistent with the requirements of national security), and liaised with relevant housing providers to ensure TPIM subjects were in a position to take steps to access appropriate accommodation after the expiry of their measures.

- 10. A working group should be established, chaired by a High Court judge, to discuss and seek solutions to procedural and timing problems in TPIM cases, or closed material cases more generally, including (by way of an illustrative and non-exhaustive list) the perceived problems of:**
 - (a) late and piecemeal disclosure by the Government;**
 - (b) late service of expert evidence, to which the special advocates lack the practical ability to respond;**
 - (c) over-use of closed material proceedings for evidence which could safely have been heard in open, or by other procedures such as an *in camera* hearing;**
 - (d) the absolute nature of the bar on the special advocates' ability to communicate with the subject and the open advocates after the case has gone into closed; and**
 - (e) the time that cases (including but not limited to variation appeals) take to come to court.**

The terms of reference of any such group should be sufficiently broad to allow any matters of procedural concern to the court or to the parties before it to be raised and, so far as possible, resolved by practice guidance or by recommendations for changes to the applicable rules.

The Government accepts this recommendation and will seek to establish a working group, chaired by a High Court judge, to discuss and seek solutions to perceived procedural and timing problems with TPIM cases, **or** closed material cases more generally. The group's purpose would be to discuss procedural and timing concerns and seek solutions and/or make recommendations to the Home Office for improvements.

The Government remains committed to the TPIM regime and will always seek to adhere to any court directions to enable the proper scrutiny of cases. The illustrative areas that a working group might cover include a range of issues which it is already clearly within the court's remit to address. For example, if the court believes that a closed material proceeding is not appropriate it is not required to enter such a proceeding, and even if a closed proceeding forms part of a case it may require specific pieces of material to be put in open if they are to be relied upon. As part of the important role carried out by Special Advocates, they can and have successfully argued that some previously closed material should be disclosed to TPIM subjects. In addition, there is not an absolute bar on Special Advocates' ability to communicate with subjects and the open advocates after the case has gone into closed. Communications can, and do, take place where permission is granted by the court. We are also not aware of any instances where the delay in hearing cases, including variation appeals, was specifically due to the Government. Nevertheless, a working group will be established to ensure that any concerns are considered by stakeholders.

TPIM Closed Material Working Group Terms of Reference

Purpose

To discuss procedural and timing concerns in the closed material aspect of TPIM litigation and seek solutions and/or make recommendations to the Home Office for improvements.

Role

A working group should be established, chaired by a High Court judge, to discuss and seek solutions to perceived procedural and timing problems with TPIM cases, or closed material cases more generally.

Membership

- Chair: High Court judge
- Special Advocates for ongoing TPIM litigation
- Special Advocates with previous experience of TPIM litigation
- Counsel for the Secretary of State for TPIM litigation
- Representatives of the Secretary of State for the Home Department
- Representatives of the Treasury Solicitor
- Others, by agreement of all parties