

Counter-Terrorism and Border Security Bill 2018

The Bill strengthens existing legislative measures to tackle the terrorist threat.

Aims, Objectives and Projected Outcomes: The Counter-Terrorism and Border Security Bill will amend certain terrorism offences to update them for the digital age, strengthen the sentencing framework in order to better manage terrorist offenders, strengthen the powers of the police to prevent and investigate terrorism, and introduce powers to examine persons at the UK border to determine if they are, or have been, involved in hostile state activity.

The Bill will cover the following areas:

Changes to the criminal law

1. **Expressions of support for a proscribed organisation:** extending the offence of inviting support for a proscribed organisation to cover expressions of support that are reckless as to whether they will encourage others to support the organisation.
2. **Publication of images and seizure of articles:** Clarifying that the existing offence of displaying in a public place an image which arouses reasonable suspicion that the person is a member or supporter of a proscribed organisation covers the display of images (including of a photograph taken in a private place) online. Confer a power on constables to seize an item of clothing (outer garments only) or any other article which arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.
3. **Entering or remaining in a designated area:** providing for a new offence of entering, or remaining in, an area outside the United Kingdom that has been designated in regulations made by the Secretary of State.
4. **Obtaining or viewing material over the internet:** Updating the offence of obtaining information likely to be useful to a terrorist to cover terrorist material that is viewed or streamed over the internet multiple times, rather than downloaded to form a permanent record.
5. **Activity directed at children or vulnerable adults:** Provide for the offences of encouragement of terrorism and dissemination of terrorist publications to apply in cases where the conduct is directed at a child or vulnerable adult who may not understand what they are being encouraged to do.
6. **Extra-territorial jurisdiction:** Conferring extra-territorial jurisdiction on a number of further terrorism offences to ensure that individuals can be prosecuted for conduct engaged in overseas.

Punishment and management of offenders

7. **Increase in sentencing powers of the courts:** increasing to 15 years' imprisonment the maximum sentence for certain preparatory terrorism offences, namely: collecting terrorist information; eliciting, communicating or publishing information that is likely to be useful to a terrorist about a member of the armed forces, police or intelligence services; encouragement of terrorism; and dissemination of terrorist publications. Increasing to 10 years' imprisonment the maximum sentence for failing to disclose information about acts of terrorism. Bringing preparatory terrorism offences within the scope of Extended Determinate Sentences and Sentences for Offenders of Particular Concern to reflect the continued threat that individuals convicted of terrorism offences can pose. Extending to Northern Ireland sentencing provisions which require a court, when

sentencing a person for a specified non-terrorist offence, to treat a terrorist connection as an aggravating factor and adding to the list of such specified offences.

8. **Notification requirements:** Require registered terrorist offenders subject to the notification regime in Part 4 of the Counter-Terrorism Act 2008 to provide additional information to the police in line with what Registered Sex Offenders must provide as well as information about any vehicles of which the offender is the owner or otherwise has the right to use, require notification of foreign travel of any duration and extend the notification requirements to persons convicted of terrorism-related offences in Northern Ireland.
9. **Serious Crime Prevention Orders:** Add terrorism offences to the list of offences for which an individual can be subjected to a Serious Crime Prevention Order to enable the ongoing management of those involved in terrorism.

Counter-terrorism powers

10. **Evidence obtained under port and border control powers:** Introduce a statutory bar to the introduction of information gained through questioning under Schedule 7 in a subsequent criminal trial.
11. **Detention of terrorist suspects: hospital treatment:** Amend the Terrorism Act 2000 so that the detention clock can be paused when a detained person is transferred from police custody to hospital, in line with the Police and Criminal Evidence Act 1984.
12. **Retention of biometric data for counter-terrorism purposes:** Amend the retention regime to strike a better balance between enabling the police to use fingerprints and DNA to support terrorism investigations and continuing to provide proportionate safeguards for civil liberties.
13. **Anti-Terrorism Traffic Restriction Orders (ATTROs):** Amend the regime governing ATTROs, including by removing the requirement for an ATTRO to be advertised where to do so would frustrate the purpose of the order.

Other measures

14. **Persons vulnerable to being drawn into terrorism:** Allow local authorities, as well as the police, to refer an individual to a Channel panel.
15. **Terrorism Reinsurance:** Amend the Reinsurance (Acts of Terrorism) Act 1993 so that the government-backed terrorism reinsurer, Pool Re, can extend its business interruption cover to include losses that are not contingent on physical damage to property.
16. **Hostile state activity port power:** Introduce a power to enable examining officers to stop and question an individual at a port or border area to determine if they are, or have been, involved in hostile state activity.

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

In drafting the Bill, the Home Office has complied with the Public Sector Equality Duty¹, which requires the Department to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic.

¹ Section 149, the Equality Act 2010.

We considered all the protected characteristics:

- Age
- Disability
- Gender Reassignment
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

In developing the measures in the Bill, the Home Office has consulted with the Ministry of Justice, Attorney General's Office, Metropolitan Police, Crown Prosecution Service, the Security Service, Centre for the Protection of National Infrastructure, Scotland Office, Northern Ireland Office, Department for Transport and devolved administrations. As the Counter-Terrorism and Border Security Bill largely amends existing legislation in order to bring it up to date and close gaps in the law, rather than create wholly new powers for tackling terrorism and protecting national security, no wider external consultation has been undertaken prior to the introduction of the Bill to Parliament. In relation to clause 18 of the Bill (persons vulnerable to being drawn into terrorism), a 12-month pilot was undertaken which saw local authorities complete the administration required to refer an individual to a Channel panel, before sending referrals back to the police for them to make the formal referral in accordance with the terms of the Counter-Terrorism and Security Act 2015. In the normal way, the Bill will be subject to full parliamentary scrutiny (its passage through Parliament is not being fast-tracked). The following sources were used to provide data included in this document:

- Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, financial year ending March 2018', 14 June 2018
- Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017', March 2018.
- Forward Thinking, 'UK "Building Bridges" Programme – Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester', July 2017
- Max Hill Q.C., 'The Terrorism Acts in 2016: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006', January 2018.
- David Anderson Q.C., 'The Terrorism Acts in 2015: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006', December 2016
- The Supreme Court in the case of, Beqhal (Appellant) v Director of Public Prosecutions (Respondent), 22 July 2015, UKSC 49

Race/Ethnicity	<p>Quantitative data:</p> <ul style="list-style-type: none"> • The Home Office statistical bulletin in June 2018 of the operation of police powers under terrorism legislation show that in the year to March 2018, there were 441 arrests for terrorism and terrorism-related offences. Of those arrested, 34.2% were White, 9.97% were Black, 40.8% were Asian, and 15.0% were Other. • In the same year, 114 people were charged with terrorism-related offences. Of these, 40.4% were White, 8.77% were Black, 44.7% were Asian, and 6.14% were Other. • 39 individuals were convicted of terrorism-related offences. Of these, 25.6% were White, 10.3% were
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	<p>Black, 53.8% were Asian, and 10.3% were Other.²</p> <ul style="list-style-type: none"> • 15,391 examinations were made under Schedule 7 to the Terrorism Act 2000 in the year to 31 March 2018. 27.9% of these examinations were of White individuals, 4.11% were Mixed, 7.30% were Black or Black British, 25.1% were Asian or Asian British, 19.5% were Chinese or Other, and 16.0% were Not Stated.³ • 1,776 individuals were resultantly detained following a Schedule 7 examination. Of these, 10.9% were White, 7.21% were Mixed, 11.4% were Black or Black British, 25.6% were Asian or Asian British, 27.8% were Chinese or Other, and 17.2% were Not Stated.⁴ • As of 31 March 2018, 228 individuals were in custody (both remanded and convicted) for terrorism and terrorism-related offences. Of these, 24.6% were White, 4.82% were Mixed, 51.3% were Asian or Asian British, 15.4% were Black or Black British, 3.07% were Other, and 0.88% were Not Declared.⁵ • The Race/Ethnicity of individuals who are referred via Prevent and who are discussed at or received support from a Channel panel are not currently recorded. <p>Qualitative data:</p> <ul style="list-style-type: none"> • David Anderson Q.C., the former Independent Reviewer of Terrorism Legislation, wrote of the statistics breaking down Schedule 7 examinations by ethnicity that “Were Schedule 7 supposed to be a randomly-exercised power, this [the statistics] would be strongly suggestive of unlawful discrimination. But it is not”.⁶ • David Anderson adds that “In many cases, officers will be acting on specific intelligence relating to individuals”.⁷ As such, Schedule 7 examinations are not random, and should therefore not be considered discriminatory. • This view was supported by the Supreme Court in the case of <i>Beghal (Appellant) v Director of Public Prosecutions (2015)</i>: “there is no evidence that the Schedule 7 powers have been used in a racially
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² A.11: Ethnic appearance of persons arrested, charged and convicted after a charge for terrorism-related offences, Operation of police powers under the Terrorism Act 2000, year to 31 March 2018: annual data tables

³ S.03: Examinations made under Schedule 7 of the Terrorism Act 2000, Operation of police powers under the Terrorism Act 2000, year to 31 March 2018: annual data tables.

⁴ Ibid.

⁵ P.02: Number of persons in custody for terrorism-related offences, by self-defined ethnicity and type of prisoner, as at 31 March 2017, Operation of police powers under the Terrorism Act 2000, year 31 March 2018: annual data tables.

⁶ David Anderson Q.C., *The Terrorism Acts in 2015: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, December 2016, pp43-44, para 7.19

⁷ Ibid.

	discriminatory fashion. Indeed, discriminatory use is specifically prohibited by the code [of practice]”. ⁸
Religion/ belief & non belief	<p>Quantitative data:</p> <ul style="list-style-type: none"> • Of the 228 persons in custody for terrorism-related offences as of 31 March 2018, the self-declared religion is as follows: 8.77% Christian, 81.6% Muslim, 0.88% Buddhist, 0.44% Jewish, 0.44% Sikh, 1.75% were Other Religious Group, and 6.14% were of No Religion.⁹ • The most recent published figures relating to Channel show that between April 2016 and March 2017, 1146 individuals were discussed at a Channel panel, up from 1072 between April 2015 and March 2016, an increase of 6.9%. • 760 individuals (66.3%) were discussed for concerns around Islamist extremism, down from 819 in 2015-16, a decrease of 7.20% • 271 individuals (23.6%) were discussed for concerns around Extreme Far Right beliefs, up from 188 in 2015-2016, an increase of 44.1%; and • 115 individuals (10.0%) were discussed for other concerns, up from 64 in 2015-16, an increase of 79.7%. • Of these discussions, 184 individuals (55.4%) received Channel support for concerns around Islamist extremism, down from 264 in 2015-16, a decrease of 30.3%. • 124 individuals (37.3%) received support for concerns around Extreme Far Right beliefs, up from 98 individuals in 2015-16, an increase of 25.3%; and • 24 individuals (7.23%) received support for other concerns, up from 18 in 2015-16, an increase of 33.3%.¹⁰ <p>Qualitative data:</p> <ul style="list-style-type: none"> • There is a perception amongst some Muslim communities that Muslims are disproportionately targeted and prosecuted under terrorism legislation. In particular, there are concerns around Schedule 7 to the 2000 Act and the Prevent strategy.¹¹ • However the Forward Thinking report notes that the view that laws are disproportionately applied to Muslims

⁸ The Supreme Court in the case of Beghal (Appellant) v Director of Public Prosecutions (Respondent) 22 July 2015, UKSC 49 (paragraph 89)

⁹ P.04: Number of persons in custody for terrorism-related offences, by self-declared religion, as at 31 March 2018, Operation of police powers under the Terrorism Act 2000, annual update to March 2018: Annual data tables.

¹⁰ Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017, Annex A: Prevent Statistics, Table D.03: Type of Concern of those referred, discussed at a Channel panel and who received Channel support, 2016/17,

¹¹ Forward Thinking, 'UK "Building Bridges" Programme – Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester', July 2017, pp7-8, 22, para 2.19-2.21, 5.6.3.

	over other groups 'may represent a perception more than the reality'. ¹²
Disability	<p>Statistics relating to the disability of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.</p> <p>The measures available under a Serious Crime Prevention Order could have an impact on disability, particularly if an order includes restrictions on where the subject of an order may reside or other premises which he or she may access. It will be for the court, having heard representations from prosecution and defence, to decide what measures are necessary and proportionate in the particular case.</p>
Sex	<p>Quantitative data:</p> <ul style="list-style-type: none"> • The Home Office statistical bulletin in June 2018 of the Operation of police powers under the terrorism legislation show that in the year to March 2018, there were 441 arrests for terrorism offences. Of these, 87.3% were male, 12.7% were female. • Of the 114 individuals charged with a terrorism-related offence, 89.5% were male, 10.5% were female. • Of the 114 persons charged with a terrorism-related offence in the year to 2018, 39 individuals (100% of those whose trials had concluded) were convicted, 79.5% were male, 20.5% were female.¹³ • The most recent published figures relating to Channel Panels show that between April 2016 and March 2017, 1145 individuals were discussed at a Channel Panel. Of these, 942 (82.3%) were male, 195 (17.0%) were female, 2 (0.17%) were other, and 6 (0.52%) were not known. • Of the 332 who received Channel support, 290 (87.3%) were male, and 42 (12.7%) were female.¹⁴
Gender Reassignment	Statistics relating to the gender-identity of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.
Sexual Orientation	Statistics relating to the sexual orientation of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.

¹² Forward Thinking, 'UK "Building Bridges" Programme – Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester', July 2017, p22, para 5.6.1.

¹³ A.09: Gender of persons arrested, charged and convicted after a charge for terrorism-related offences, Operation of police powers under the Terrorism Act 2000, annual update to March 2018: Annual data tables.

¹⁴ D.02: Gender of those referred, discussed at a Channel panel and who received Channel support, 2016/17 Annex A: Prevent statistics, April 2016 to March 2017, Individuals referred to and supported through the Prevent Programme, April to March 2017.

Age	<p>Quantitative data:</p> <ul style="list-style-type: none"> • The Home Office statistical bulletin in June 2018 of the Operation of police powers under terrorism legislation show that in the year to March 2018, there were 441 arrests for terrorism offences. Of these, 6.12% were under 18, 11.3% were 18-20, 17.2% were 21-24, 19.0% were 25-29, 46.0% were 30 or over, and 0.22% were not known. • Of the 114 individuals charged, 7.01% were under 18, 10.5% were 18-20, 24.6% were 21-24, 20.2% were 25-29, 37.7% were 30 or above • Of the 39 individuals of those charged that year who were convicted before the end of the year, 7.69% were under 18, 15.4% were 18-20, 15.4% were 21-24, 25.6% were 25-29, and 35.9% were 30 or over.¹⁵ • The most recent published figures relating to Channel Panels show that between April 2016 and March 2017, 1146 individuals were discussed at a Channel Panel. Of these, 291 (25.4%) were Under 15; 406 (35.4%) were 15-20; 201 (17.5%) were 21-30; 120 (10.5%) were 31-40; 91 (7.94%) were 41-50; 22 (1.92%) were 51-60; 9 (0.79%) were 61+; and 6 (0.52%) were unknown. • Of the 332 individuals who received Channel Support, 90 (27.1%) were under 15; 136 (41.0%) were 15-20; 57 (17.2%) were 21-30; 23 (6.93%) were 31-40; 21 (6.33%) were 41-50; and 5 (1.51%) were 51-60.¹⁶
Pregnancy and maternity	<p>Statistics relating to pregnancy or maternity of individuals arrested, charged, or convicted of terrorism or terrorism-related offences are not gathered.</p>

Human Rights

Baroness Williams of Trafford has signed a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the European Convention on Human Rights. ECHR Memorandums published alongside the Bill address the Bill's compatibility with the Convention rights.

Key Findings:

1. The quantitative data suggests that Asian/British Asian and Muslim individuals have been disproportionately affected by terrorism legislation relative to the percentage of Asian/British Asian and Muslim individuals in the total population. There is a perception by some Muslim communities that terrorism legislation is both designed and used to target Muslim communities. However the trends reflect the current types of terrorism which are prevalent in the UK, most notably Islamist and extreme Far Right terrorism, with significant numbers of

¹⁵ A.10: Age group of persons arrested, charged and convicted after a charge for terrorism-related offences, Operation of police powers under the Terrorism Act 2000, annual update to March 2018: Annual data tables.

¹⁶ D.01: Age group of those referred, discussed at a Channel panel and who received Channel support 2016/17, Annex A: Prevent statistics, April 2016 to March 2017, Individuals referred to and supported through the Prevent Programme, April to March.,

White individuals arrested, charged and convicted of terrorism offences under the 2000 Act. With this context, the quantitative data shows that no group, as defined by a protected characteristic, has been disproportionately affected relative to the scale of the threat that these types of terrorism pose.

2. Of the proposals under the Bill, none are considered to discriminate against individuals with protected characteristics; however this is contingent on the continued need to ensure that the measures are used in a necessary and proportionate manner. In spite of this, the finding in 1. may continue to be observed as a result of the types of terrorism which continue to be prevalent.

Proposals under the Bill:

Changes to terrorism offences:

The changes to terrorism offences set out in the Bill will not have an impact on an individual as a result of his or her protected characteristics. The Bill adds to the comprehensive legal framework surrounding terrorism and terrorism-related offences. The definition of terrorism in the Terrorism Act 2000 (the 2000 Act) is without prejudice to any particular cause, ideology or religion, and does not discriminate against any group defined by a protected characteristic. Likewise, organisations are proscribed under the 2000 Act due to their activities, and not as a result of the characteristics of their members or the reason for which they exist. The existing legal framework around terrorism has been used to arrest, charge and convict individuals, and to proscribe groups including those relating to the extreme Far Right, Northern Ireland-related terrorism, Islamist terrorism, and certain Kurdish groups.

The introduction of the 'Designated Area' offence may have a disproportionate impact on diaspora communities in the UK, and on individuals who have reasons to travel to the area which is designated (such as strong family ties). However, the Bill includes a reasonable excuse defence, and as with other terrorism offences, once this defence has been raised, it would be up to the prosecution to disprove this beyond reasonable doubt. Therefore, where a person has such a reasonable excuse, they will be able to travel to the designated area. In addition, the Secretary of State must keep under review whether the area should continue to be designated.

Changes to sentencing and orders consequent upon sentencing:

A judge (in England and Wales) sentencing an individual for an offence introduced in or modified by the Bill must follow any relevant guidance issued by the Sentencing Council unless it would not be in the interests of justice to do so. In March 2018, the Sentencing Council introduced bespoke guidelines for certain terrorism offences to assist judges in this. An individual convicted may appeal against their conviction and/or sentence.

The extension of notification requirements for convicted terrorist offenders subject to the Part 4 of the Counter-Terrorism Act 2008 regime places a burden on such an offender to provide the required information, but does not restrict the activity of that individual. Furthermore, these notification requirements will apply to all such offenders, irrespective of their protected characteristics or the type of terrorism with which they were involved.

A Serious Crime Prevention Order (SCPO) can be made on application to the High Court, or the Crown Court (in Scotland, the High Court of Justiciary or the sheriff), where the court has reasonable grounds to believe that the order would protect the public. The provisions of an SCPO are set out in the Serious Crime Act 2007, and can

include measures such as restricting an individual's travel. These measures could have an impact on disabled persons if an order includes restrictions on where the subject of an order may reside or other premises which he or she may access. The measure could have a negative impact under the five questions which form 'The Family Test'. An SCPO may also restrict an individual's financial, property or business dealings or holdings, or their working arrangements, which could have an adverse impact on an individual's socio-economic situation. Given this, the Court must be satisfied that the SCPO is necessary and proportionate, and that it balances public safety and national security with the impact on the individual subject to the order in relation to their protected characteristics. An individual may make representations during any proceedings if they believe that the SCPO is likely to have a significant adverse impact on them. Nothing in the Bill affects one way or another the possibility of an SCPO being imposed which has the effects outlined above; the amendments are neutral with respect to protected characteristics of those who might be made subject to SCPOs.

Recommendations by the Independent Reviewer of Terrorism Legislation:

The introduction of a statutory bar on the use of evidence gathered under a Schedule 7 examination at a subsequent criminal trial will help to preserve the right of an individual not to incriminate him- or herself. This measure strengthens the safeguards around the use of Schedule 7 examinations which may be carried out only if an examining office has grounds for suspecting that a person may be concerned with terrorism. The introduction of this measure will not impact on individuals of any particular protected characteristic.

Providing the police with the ability to pause the detention clock whilst an individual is receiving hospital treatment will have no equality issues.

Retention of Biometric Data:

The increase in the maximum length of a National Security Determination (NSD) from two to five years is necessary and proportionate when it is determined that an individual poses a risk to national security. The retention of data under an NSD will be a decision made by a Chief Constable, with the agreement of the Biometric Commissioner, on a case-by-case basis. Biometric data will not be retained en masse in accordance with a particular protected characteristic.

Persons vulnerable to being drawn into terrorism:

The Prevent programme seeks to work in partnership, across all types of terrorism, in order to identify and tackle the influences of radicalisation. A wide range of organisations have a statutory obligation to report concerns under Prevent, and it is not limited by those organisations which might interact with a demographic limited by race, ethnicity or religion. It does not target a particular ideology or type of terrorism. Although over half of the 6093 individuals referred to Prevent between April 2016 and March 2017 were 20 or under, the policy does not discriminate on age, but reflects the increasing youth of individuals who are at risk of being radicalised and being involved in terrorism. The Channel programme works with individuals referred to it under the Prevent duty by the police and does not target specific groups of communities. For example, it currently works with individuals referred for concerns around Far Right terrorism as well as Islamist ideologies. This measure allows local authorities to make references to Channel panels and does not have any equality issues.

Hostile state activity ports power:


The powers to stop, question, search and detain persons at the UK border to determine whether they are, or have been, engaged in hostile state activity are largely

based on the existing powers in Schedule 7 to the Terrorism Act 2000 to examine persons at the border for counter-terrorism purposes. The exercise of the powers of itself will not discriminate against individuals based on their protected characteristics, however it is anticipated that their use will reflect contemporary threats based on hostile state activity, and as such, it may theoretically disproportionately impact on certain groups – although this is unlikely to be on the basis of ethnicity.

Overall Impact of the Counter-Terrorism and Border Security Bill

The Government believes that, overall, the Bill does not unlawfully discriminate against individuals on the basis of protected characteristics. The Bill has a neutral effect on equality of opportunity.

The Government considers that the Bill does not harm or create barriers to good relations between individuals who share protected characteristics and those who do not, despite the perception of certain counter-terrorism measures.

SCS sign off		Name/Title	Nick Toogood
<p>I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</p>			
Directorate/Unit	CT Pursue Unit, OSCT	Lead contact	Gwilym Williams
Date	12/09/2018	Review Date	3-5 years after Royal Assent

Retain the completed PES for your records and send a copy to Diversity team@homeoffice.gsi.gov.uk and your relevant business area Equality and Diversity Lead.