

<b>Title: Counter-Terrorism and Border Security Bill</b> <b>IA No: HO0308</b>  <b>RPC Reference No: N/A</b> <b>Lead department or agency: Home Office</b>  <b>Other departments or agencies: Ministry of Justice, Department for Transport, HM Treasury</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 30/08/2018			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> Gwilym.Williams13@homeoffice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£49.8m	N/A	£0	N/A	N/A

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

The UK national threat level, set by the independent Joint Terrorism Analysis Centre, has been set at SEVERE or higher since 29 August 2014, meaning that a terrorist attack is 'highly likely'. In 2017, the UK was subject to five terrorist attacks in London and Manchester. The terrorist threat is rapidly evolving, with much radicalisation taking place online. The operational pace for the police and Security Service is much faster than seen before. The risks from state-based threats have both grown and diversified. Government intervention is required to update, and close gaps in existing legislation to ensure that law enforcement and intelligence agencies have modernised powers they need to help keep the country safe from these threats.

**What are the policy objectives and the intended effects?**

The Bill's objective is to help reduce the risk of terrorism and hostile state activity to the UK by:

- Updating offences for the digital age and to reflect contemporary patterns of radicalisation.
- Ensuring that the punishment properly reflects the crime, and better preventing re-offending;
- Preventing terrorism and ensuring that terrorist offenders are investigated more rapidly.

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

Option 1 – Do nothing. Retain the current position.

Option 2 – Legislate to amend certain terrorism offences to close gaps in their scope; strengthen the sentencing framework for terrorism-related offences and the power for managing terrorist offenders following their release from custody; strengthen the powers of the police to manage the risk surrounding individuals linked to terrorism and to investigate terrorism offences; and introduce powers to examine persons at the UK border to determine if they are, or have been, involved in hostile state activity.

**Option 2 is the Government's preferred option.**

**Will the policy be reviewed?** It will be reviewed in line with the Post Legislation Review process, 3-5 years after Royal Assent. **If applicable, set review date: 09/2021**

Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> 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 2

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 18-19	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -28.2	High: -71.3	Best Estimate: -49.8

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£3.0m	<b>£28.2m</b>
High	-	£7.7m	<b>£71.3m</b>
Best Estimate	-	£5.3m	<b>£49.8m</b>

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

Most of the estimated costs are those falling on the Criminal Justice System (CJS) as a result of an increase in expected proceedings. The extension of Extra-Territorial Jurisdiction forms a large part of this cost, estimated to be £26.7m. The increase in sentencing powers of the courts is also relatively high in cost compared to other measures in this Bill, estimated to be £14.4m.

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

There are some measures that will impose a cost but which could not be monetised. These include the impact on the Northern Ireland Prison Service of likely increased sentence lengths for terrorism-related convictions under non-terrorism-related legislation. Some measures will also affect law enforcement – while this effect is likely to be small, it has not been monetised either.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Not Quantified	Not Quantified	<b>Not Quantified</b>

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

N/A

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

This package of measures could result in averting a successful terrorist attack against the UK, UK interests overseas, or another country and, due to the 'upstream' nature of the interventions, fewer longer-term investigations by the police and other agencies such as MI5.

Despite the costs to the CJS due to these measures, in the long-run, if the individuals were not prosecuted due to a number of these proposed measures, it is possible that they would be convicted of another offence later on. It is possible that the latter convictions would have a cost equal to or above those demonstrated in this IA. If the individuals that are targeted are not caught by the CJS, they might go forward to design and execute terrorist attacks. A terrorist attack can have a large impact on the UK, both in terms of the immediate impact, such as lives lost, damaged property and lost output, and long-term costs such as higher public anxiety.

Therefore, although only the costs have been illustrated, some of these costs would be borne in the longer term in any case, but this effect has not been monetised, as it's unclear what proportion. This policy is expected to have a positive net benefit to society.

#### Key assumptions/sensitivities/risks

#### Discount rate

3.5%

It is not feasible to estimate the increase in proceedings according each of the offences affected by this Bill. It is assumed that a 20-50% increase in existing volumes against the counterfactual (and 1-2 proceedings per year through ETJ where that extension applies). These volumes are not evidence-based, but rather used to give an indicative range with which to estimate total costs.

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: £0.0	Benefits: £0.0	Net: £0.0	

## **A. Background**

1. One of the priorities of the 2015 National Security Strategy is to ‘tackle terrorism head-on at home and abroad in a tough and comprehensive way’. The Strategy also indicated the Government’s intent to ‘take action to investigate, disrupt and wherever possible convict terrorists’. Since 29 August 2014, the UK national threat level has stood at SEVERE or higher, meaning that a terrorist attack is ‘highly likely’. Since the murder of Fusilier Lee Rigby in May 2013 to August 2018, 25 terrorist attacks in the UK have been foiled, including 12 since the Westminster attack. However, between March and September 2017, the UK was subjected to five terrorist attacks at Westminster, Manchester, London Bridge, Finsbury Park, and Parsons Green. In addition, in response to the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018, the Prime Minister announced that the Government would introduce new powers to harden the United Kingdom’s defences at the border against hostile state activity.

### **Existing measures**

2. The Counter-Terrorism and Border Security Bill will sit alongside the existing suite of powers that are already used to combat the terrorist threat including:
  - A suite of bespoke terrorism offences, including encouragement of terrorism, disseminating terrorist publications, the collection of information likely to be useful to a person committing or preparing an act of terrorism and eliciting, publishing or communicating information about members of the armed forces etc.
  - The power for the Secretary of State to proscribe organisations that are concerned in terrorism, together with associated criminal offences.
  - The power for the police to arrest and detain suspects, and the powers to search premises, vehicles and pedestrians, where there is a suspicion of involvement in terrorism.
  - Using Extra-Territorial Jurisdiction to prosecute individuals who commit a variety of terrorist offences whilst overseas.
  - Requiring specified bodies to have regard to the need to prevent people from being drawn into terrorism, and for local authorities to support people vulnerable to being drawn into terrorism.

### **Groups Affected**

3. The groups affected by this legislation include:
  - Criminal Justice Agencies for example, the police, Crown Prosecution Service (CPS); the courts; the Legal Aid Agency and HM Prison Service (and equivalent bodies in Scotland and Northern Ireland).
  - Security and Intelligence Agencies.
  - Local Authorities (including traffic authorities).
  - The Independent Reviewer of Terrorism Legislation.
  - Investigatory Powers Commissioner.
  - Organisers of events subject to an Anti-Terrorism Traffic Regulation Order.
  - Commercial undertakings and other taking out terrorism-related insurance.
  - The general public, whose safety and security are affected by the capabilities of the police and other agencies to prevent and disrupt terrorist attacks.

### **Consultation**

4. The Home Office engaged closely with operational partners and across Government on the measures included in the legislation. This included the police, the Security Service, the Crown

Prosecution Service, the Ministry of Justice, the Attorney General's Office, the Department for Transport and the devolved administrations. A number of the measures included in this Bill stem from recommendations made by the then Independent Reviewer of Terrorism Legislation, David Anderson Q.C.

## **B. Rationale for Intervention**

5. On 4 June 2017, following the London Bridge attack, the Prime Minister announced that there would be a review of the Government's counter-terrorism strategy "*to make sure the police and security services have all the powers they need*". Subsequently, on 3 October 2017, the former Home Secretary announced that counter-terrorism laws would be updated to keep pace with modern online behaviour and to address issues of online radicalisation. This reflects the evolving landscape of terrorism and radicalisation, with individuals expressing support for, and encouraging others to support, proscribed organisations such as Daesh online. It also recognises the ways in which terrorist information can be disseminated online. In addition to updating the criminal law in these ways, the Bill will also provide the police and other operational partners with the powers needed to better manage the risk posed by individuals linked to terrorism. In a statement to the House of Commons on 26 March 2018, the Prime Minister announced that the Government is developing legislative powers to harden the country's defences against all forms of hostile state activity. The National Security Capability Review made a commitment to "develop proposals for powers to stop, question, search and detain individuals at the UK border to determine whether they have been involved in matters that threaten our national security".

## **C. Objectives**

6. The measures included in the Counter-Terrorism and Border Security Bill will improve the operation of existing legal powers under current counter-terrorism and connected legislation. The Bill aims to help reduce the risk of terrorism and hostile state activity to the UK by:
  - Amending certain terrorism offences to update them for the digital age and to reflect contemporary patterns of radicalisation and to close gaps in their scope;
  - Strengthening the sentencing framework for terrorism-related offences and the power for managing terrorist offenders following their release from custody, including by increasing the maximum penalty for certain offences, to ensure that the punishment properly reflects the crime and to better prevent re-offending;
  - Strengthening the powers of the police to prevent terrorism and investigate terrorist offences;
  - Introducing powers to stop, search, question and detain an individual at the border in order to determine if they are, or have been, involved in hostile state activity.

## **D. Options**

7. Two policy options were considered:

**Option 1** – No legislation / do nothing but this does not meet the Government's objectives.

**Option 2** (the preferred option) – Introduce legislation and include measures to:

- Disrupt the ability of individuals to promote proscribed organisations and to radicalise others.

- Enhance the ability of the criminal justice agencies to prosecute for a broader range of terrorism offences committed overseas.
- Ensure that sentences for terrorism and terrorism-related offences properly reflect the seriousness of the crime and the risk posed by offenders.
- Provide the police with additional powers to manage the risk surrounding individuals linked to terrorism and to investigate terrorism offences.
- Better support those individuals at risk of being drawn into terrorism.

### **Proposed measures**

8. The Counter-Terrorism and Border Security Bill covers the following areas:

#### *Changes to the criminal law*

9. **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.
10. **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 online (including of a photograph taken in a private place). It will also confer a power on constables to seize an item of clothing (outer garments only) or other article which arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.
11. **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 would be an offence, in order to protect the public from a risk of terrorism.
12. **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 just viewed or streamed over the internet, rather than downloaded to form a permanent record. The existing reasonable excuse defence will apply in circumstances where a person did not know that the document would contain terrorist material.
13. **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.
14. **Extra-territorial jurisdiction:** Conferring extra-territorial jurisdiction on a number of further offences to ensure that individuals linked to the UK can be prosecuted for having encouraged or carried out acts of terror overseas.

#### *Punishment and management of offenders*

15. **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.
16. **Notification requirements:** Require Registered Terrorist Offenders to provide additional information to the police in line with what Registered Sex Offenders must provide, and extend the notification requirements to persons convicted of terrorism-related offences in Northern Ireland.

17. **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 an individual convicted for a terrorism offence.

#### *Counter-terrorism powers*

18. **Evidence obtained under port and border control powers:** Introduce a statutory bar to the introduction of information gained under a Schedule 7 admission in a subsequent criminal trial.
19. **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.
20. **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.
21. **Anti-Terrorism Traffic Regulation 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*

22. **Persons vulnerable to being drawn into terrorism:** Allow local authorities, as well as the police, to refer an individual to a Channel panel.
23. **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.
24. **Hostile state activity ports powers:** Provide for the power to stop, question and search individuals at the border or port of entry to determine whether they are involved in activity for, or on behalf of, a foreign power.

#### **Non-regulatory options**

25. Non-regulatory measures were considered but rejected because of the covert and criminal nature of some of the behaviour and acts committed by individuals or groups. This makes it impossible to prevent harm to UK life, property and society unless legislative enforcement measures are put in place to help combat such behaviour. These legislative measures should help to increase UK security, and non-regulatory measure would fail to achieve this.

## **Overview of the Counter-Terrorism and Border Security Bill 2018**

An overview of each of the measures included in the Counter-Terrorism and Border Security Bill 2018 is set out below:

### **Expressions of support for a proscribed organisation**

#### Problem under consideration

26. Section 12 of the Terrorism Act 2000 (the 2000 Act) currently criminalises a person who 'invites' others to provide support for a proscribed organisation, but not those who express their own support for, or personal approval of, such an organisation. Given the way the offence is constructed it has not always been possible to take action against persons who make inflammatory public speeches in which they made it clear that they supported Daesh, or another proscribed organisation, but do not invite others to do so.

#### Proposal

27. Extend the section 12 offence to cover expressions of support that are reckless as to whether they will encourage others to support the organisation.

## Rationale for intervention

28. By extending the section 12 offence, it would close the gap between an expression of support for a proscribed organisation, and an implied invitation to others to support a proscribed organisation. This would therefore make it possible to prosecute individuals who express their support for, or personal approval of, a proscribed group. This is of particular importance in preventing individuals from radicalising others without explicitly doing so, and is intended to allow for more effective early intervention to tackle the risk of individuals being quickly radicalised and carrying out a terrorist attack. The recklessness test is in line with section 1 of the Terrorism Act 2006 (the 2006 Act) which makes it an offence to publish a statement which directly or indirectly encourages the preparation, instigation of commission of an act of terrorism, or that is reckless as to whether it will have this effect.

## Impact

29. For each extra defendant proceeded against under section 12 as a result of this measure, there will be a cost to various agencies in the Criminal Justice System (CJS). The weighted unit cost per defendant is estimated to be approximately £100,000, plus a cost to the Crown Prosecution Service (CPS) of approximately £3,000<sup>1</sup>.

30. In the steady state, the cost per defendant proceeded against can be broken down as follows<sup>2</sup>:

**Table 1: S12 TACT 2000 Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>3</sup></b>
HMCTS	£3,000
Legal Aid	£8,000
HM Prison Service	£86,000
HM Probation Service	£6,000
<b>Total CJS excl. CPS</b>	<b>£100,000</b>
CPS	£3,000

31. The prediction of a likely extra volume of such cases as a result of this measure is not feasible. Therefore, the analysis uses an increase in proceedings of 20-50 per cent as an indicative range with which to suggest a total annual cost. Compared to 2016, a 20-50 per cent increase in proceedings according to section 12 of the 2000 Act would result in a total annual cost to the CJS of £105,000 - £315,000.

## **Publishing images and seizure of articles**

### Problem under consideration

32. It is an offence under section 13 of the 2000 Act for a person to wear clothing, or wear, carry or display articles in a public place in such a way or in such circumstances as to arouse reasonable suspicion that the individual is a member or supporter of the proscribed organisation. Section 121 of the 2000 Act defines a public place as “*a place to which members of the public have or are permitted to have access whether or not for payment*”. Given that the publication of much terrorist material now

<sup>1</sup> Due to a lack of available data, this unit cost to the CPS uses a proxy cost from section 17 of the Terrorism Act 2000 (“Funding Arrangements”).

<sup>2</sup> The steady state reflects when stability has been reached in terms of the costs of offenders proceeded against, in custody and on probation. Here, no further adjustment or increase in the cost per defendant will occur. For example, if it is assumed that one offender is proceeded against and convicted to four years in prison per year, he/she will serve two years in custody and two years on probation. In this case, the steady state will be reached in year four, as in that year there will be two offenders on probation and two offenders in prison.

<sup>3</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding. These are indicative estimates, specific to these offences only. They are weighted per case proceeded against, profiled through a magistrates’ court and the Crown Court using available data (prosecution costs to HMCTS and Legal Aid are different in a magistrates’ court and the Crown Court, and are higher in the latter).

commonly occurs online, measures are needed to ensure that activity in this ‘virtual’ public place is covered by legislation in the same way that activity in any other public place would be.

33. At present, police are only able to seize an article, such as a flag, if they arrest the person displaying it and take them to a police station. However, this will not always be appropriate given wider public order considerations, and the legal test for the necessity of an arrest.

Proposal

34. Clarify that a person publishing an image of him- or herself wearing an item of clothing or displaying an article associated with a proscribed organisation “*in a public place*” includes publication online.
35. Introduce a power which would enable the police to seize articles such as flags banners, and items of clothing (outer garments only), where they have reason to believe that such an item is evidence of an offence under section 13 of the 2000 Act and it is necessary to seize the item to prevent the loss or destruction of evidence.

Rationale for intervention

36. This measure creates a new offence to criminalise the publication online by a person of an image (whether a still or moving image) of him- or herself wearing an item of clothing, or wearing, carrying or displaying an article in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation. The offence would, for example, cover a person uploading on to social media a photograph of him- or herself, taken in his bedroom, which includes in the background a Daesh flag. This measure recognises how terrorist ideology can spread, and radicalisation occurs, online and is intended to make counter-terrorism offences suitable for the digital age.
37. The power to seize flags, banner or garments would ensure that the best evidence is available to support prosecutions of a section 13 offence.

Impact

38. For each extra defendant proceeded against under section 13 as a result of this measure, there will be a cost to various agencies in the CJS. The weighted unit cost per defendant is estimated to be approximately £15,000, plus a cost to the CPS of approximately £3,000<sup>4</sup>. There have been no cases for section 13 of the 2000 Act since 2013; in that year there was one proceeding but no recorded disposal. It has therefore only been possible to estimate an approximate cost for this offence.
39. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 2: S13 TACT 2000 Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>5</sup></b>
HMCTS	<£1,000
Legal Aid	<£1,000
HM Prison Service	£11,000
HM Probation Service	£2,000
<b>Total CJS excl. CPS</b>	<b>£15,000</b>
CPS	£3,000

40. The prediction of a likely extra volume of such cases as a result of this measure is not feasible. Therefore, the analysis uses an increase in proceedings of 20-50 per cent as an indicative range with which to suggest a total annual cost. The dearth of past proceedings means that for this case, this

<sup>4</sup> Due to a lack of available data, this unit cost to the CPS uses a proxy cost from section 17 of the Terrorism Act 2000 (“Funding Arrangements”).

<sup>5</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding.



volume is one. An increase in proceedings according to section 13 of the 2000 Act would result in a total annual cost to the CJS of £15,000.

41. It is not expected that the power to seize articles or garments would incur any cost on the police or CJS.

## **Designated area offence**

### Problem under consideration

42. Recent conflicts have seen individuals travelling overseas to join proscribed organisations, engaging in acts of terrorism and attempting to radicalise others in their home country and beyond. Due to the instability of these conflict zones, it can be a challenge to gather sufficient admissible evidence that individuals have been involved in specific terrorist-related activity, which limits the Government's ability to prosecute such individuals should they return to the United Kingdom.

### Proposal

43. Amend the Terrorism Act 2000 to make it an offence for a United Kingdom national, or a United Kingdom resident, to enter or remain in an area abroad designated by the Secretary of State. The Secretary of State may make such a designation if satisfied that it is necessary for the purpose of protecting members of the public from a risk of terrorism.

### Rationale for intervention

44. By introducing the ability to prosecute individuals for travelling to or remaining in a designated area, the impact is twofold. Firstly, it is anticipated that it will have a deterrent effect, with individuals less inclined to travel to a designated area. Secondly, it provides an alternative way of prosecuting individuals who have travelled abroad to engage in terrorism-related activity and radicalisation, but who it might not be possible to prosecute for a variety of reasons. This offence will not allow for retrospective prosecution of individuals who have entered an area prior to its designation (unless they are still in the area when it is designated and not leave it within a month) , however the offence could assist in a future conflict involving foreign fighters.

### Impact

45. Due to a lack of data, it has not been feasible to attribute a unit cost to this offence. However, since the offence does not allow for retrospective prosecution, and because the volume of its use is anticipated to be low, this offence is likely to have, on average over the 10-year appraisal period, a minimal impact on the CJS and operational partners.

## **Obtaining or viewing material over the internet**

### Problem under consideration

46. Section 58(1) of the 2000 Act makes it an offence to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. However the existing offence would not capture the situation where a person viewed such material over the internet without obtaining permanent access to it (for example by viewing material or streaming a video without downloading it).

### Proposal

47. Clause 3 makes it an offence to view (or otherwise access) any terrorist material online whilst providing that the existing reasonable excuse defence includes circumstances to the effect that the person did not know, and had no reason to believe, that the material being viewed contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism. Once a defendant has raised this defence, the burden of proof (to the criminal standard) to disprove this defence will rest with the prosecution.

Rationale for intervention

48. This change reflects the changing methods in which terrorist material is distributed and consumed in the digital age. Rather than having to download terrorist material which can be used in the radicalisation process, individuals are now able to stream such videos. This nuance is not captured by the section 58 offence, in spite of the fact that the material can still contribute to the radicalisation of individuals.

Impact

49. For each extra defendant proceeded against under section 58 as a result of this measure, there will be a cost to various agencies in the CJS. The weighted unit cost per defendant is estimated to be approximately £50,000, plus a cost to the CPS of approximately £3,000<sup>6</sup>.

50. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 3: S58 TACT 2000 Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>7</sup></b>
HMCTS	£3,000
Legal Aid	£8,000
HM Prison Service	£32,000
HM Probation Service	£5,000
<b>Total CJS excl. CPS</b>	<b>£50,000</b>
CPS	£3,000

51. The prediction of a likely extra volume of such cases as a result of this measure is not feasible. Therefore, the analysis uses an increase in proceedings of 20-50 per cent as an indicative range with which to suggest a total annual cost. Compared to 2016, a 20-50 per cent increase in proceedings according to section 58 of the 2000 Act would result in a total annual cost to the CJS of £50,000 - £150,000.

**Encouragement of terrorism**

Problem under consideration

52. Section 1 of the 2006 Act makes it an offence to publish a statement “*that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism*”. The 2006 Act defines “*publishing a statement*” and “*the public*” in a way that has led to this offence being interpreted as applying only to statements that are made available to the general public, and to more than one person. Operational partners have highlighted that the ability to intervene early using this offence is important to tackle radicalisation that can quickly escalate an individual’s risk. However, there is currently a gap in legislation in that if the encouragement is directed at a child or vulnerable adult, they may not have the necessary understanding to appreciate that they are being encouraged to engage in terrorist activity. A similar issue arises in relation to the offence of dissemination of terrorist publications (section 2 of the 2006 Act) where it is necessary to show that the material contained in the publication is likely to be understood as an encouragement to terrorism.

<sup>6</sup> Due to a lack of available data, this unit cost to the CPS uses a proxy cost from Section 17 of the Terrorism Act 2000 (“Funding Arrangements”).

<sup>7</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding.

Proposal

The legislation will:

- 53. Clarify that the offences of encouragement of terrorism and dissemination of terrorist publications cover the encouragement of and dissemination to children or vulnerable adults (under sections 1 and 2 of the 2006 Act).

Rationale for intervention

- 54. Currently, the encouragement offence requires that the person being encouraged is likely to understand that they are being encouraged to commit, prepare or instigate an act of terrorism. Similarly, for the purpose of the dissemination of terrorist publications offence, it is necessary to show that the material in the publication is likely to be understood to be an encouragement to terrorism, or to be useful in the commission or preparation of terrorist acts. However, under the present wording, a person could evade liability if they are trying to groom or indoctrinate a child or vulnerable person who does not objectively understand what the person is encouraging them to do. Under the law as it stands, provided there is the requisite understanding, the offences are made out even if the person shown the material takes no action on it: that is, they reject the encouragement or decline to make use of the terrorist publication. The focus of these offences is therefore on the nature of the material, and the intention or recklessness of the person disseminating it, rather than on whether or not it actually results in the person to whom it is disseminated taking some action as a result. The same principle should apply regardless of whether the material is disseminated to a child or vulnerable adult who cannot fully comprehend the nature of the material.
- 55. By closing the above gap in existing legislation, the Bill increases the opportunity to prosecute individuals who seek to radicalise others.

Impact

- 56. For each extra defendant proceeded against under sections 1 and 2 as a result of this measure, there will be a cost to various agencies in the CJS. For section 1 of the 2006 Act, the weighted unit cost per defendant is estimated to be approximately £85,000; for section 2, the estimated unit cost is £30,000. There is a unit cost to the CPS of approximately £3,000<sup>8</sup> for each of these.
- 57. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 4: S1, S2 TACT 2006 Estimated Unit Cost**

Agency	Unit Cost s1 <sup>9</sup>	Unit Cost s2
HMCTS	£3,000	£2,000
Legal Aid	£8,000	£4,000
HM Prison Service	£70,000	£21,000
HM Probation Service	£6,000	£2,000
<b>Total CJS excl. CPS</b>	<b>£85,000</b>	<b>£30,000</b>
CPS	£3,000	£3,000

- 58. The prediction of a likely extra volume of such cases as a result of these measures is not feasible. Therefore, the analysis uses an increase in proceedings of 20-50 per cent as an indicative range with which to suggest a total annual cost. Compared to 2015<sup>10</sup>, a 20-50 per cent increase in proceedings according to section 1 of the 2006 Act would result in a total annual cost to the CJS of approximately £90,000. Compared to 2016, a 20-50 per cent increase in proceedings according to section 2 of the

<sup>8</sup> Due to a lack of available data, this unit cost to the CPS uses a proxy cost from section 17 of the Terrorism Act 2000 (“Funding Arrangements”).

<sup>9</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding.

<sup>10</sup> 2016 data not available.

2006 Act would result in a total annual cost to the CJS of approximately £95,000 - £195,000. The total estimated cost of this measure is therefore £185,000 - £280,000 per year.

## **Extra-territorial jurisdiction**

### Problem under consideration

59. The overarching aim of this measure is to further deal with the significant and evolving threat posed by 'foreign terrorist fighters', that is, UK-linked individuals who travel to foreign countries to engage in terrorist activities and who may pose a security risk upon their return to the UK.
60. Extra-territorial jurisdiction (ETJ) means that an individual, whether a British citizen or otherwise, would be liable under UK law for prosecution if they commit an offence in a foreign country in the same way as if they had committed the offence in the UK. Section 17 of the 2006 Act provides the UK courts with ETJ for a number of terrorism offences, including encouragement of terrorism (section 1 of the 2006 Act), training for terrorism (section 6 of the 2006 Act) and membership of a proscribed organisation (section 11(1) of the Terrorism Act 2000).
61. The Bill extends ETJ to four further offenses to ensure more complete coverage for which there is an operational case. The operational case for these changes is based on the experience of investigating subjects of interest in Syria and elsewhere, who have attempted to radicalise individuals, particularly online. Gaps in the current law as regards the ability to prosecute, in the UK courts, persons who commit preparatory acts of terrorism abroad are inhibiting our ability to protect the public from the threat posed by returning foreign fighters.

### Proposal

62. The Bill will confer ETJ on the UK courts in relation to the following additional offences:
- Displaying an article associated with a proscribed organisation (section 13 of the 2000 Act).
  - Encouragement of terrorism (section 1 of the 2006 Act) (this offence already has limited ETJ in cases where certain specified offences are encouraged).
  - Dissemination of terrorist publications (section 2 of the 2006 Act).
  - Making or possessing explosives under suspicious circumstances (section 4 of the Explosive Substances Act 1883) where the offence is committed for terrorist purposes.

### Rationale for intervention

63. This measure would enable the prosecution of both British and foreign nationals or residents, in relation to activity falling under these offences that took place anywhere in the world. Individuals have been active online, reaching back to radicalise individuals in the UK and elsewhere in the world. This has included promoting their affiliation to proscribed organisations such as Daesh and encouraging people to support or travel to join those organisations, through methods including displaying the emblem or flag of the organisation online. It has also included encouraging UK nationals and others to commit terrorist attacks in their home countries. It has further included distributing extremist propaganda, training materials and other terrorist publications through online channels. The inclusion of the explosives offence will close a gap which has manifested itself, whereby individuals who participate in terrorist activities and fighting overseas could previously not be prosecuted.
64. Applying ETJ to the above offences would enable the police to prosecute UK-linked individuals who have prepared and carried out terrorist acts overseas, and thereby further contribute to the effective disruption of individual activities and terrorist organisations.

### Impact

65. For each defendant proceeded against through ETJ under these offences, there will be a cost to various agencies in the CJS. These are set out below.
66. There is limited data for section 13 of the 2000 Act; as such, there is no robust unit cost for this offence. The analysis assumes a worst-case scenario in which all offenders proceeded against receive a custodial sentence, lying at the maximum available in a magistrates' court of six months. It is assumed that an offender serves half their sentence in prison and is released at 50 per cent subject to a post-release license. The weighted unit cost per defendant is estimated to be

approximately £15,000, plus a cost to the CPS of approximately £80,000 - £130,000<sup>11</sup>. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 5: S13 TACT 2000 ETJ Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>12</sup></b>
HMCTS	£3,000
Legal Aid	<£1,000
HM Prison Service	£11,000
HM Probation Service	£2,000
<b>Total CJS excl. CPS</b>	<b>£15,000</b>
CPS	£80,000 - £130,000

67. The estimated unit cost of proceeding under section 1 of the 2006 Act through ETJ is based on data from proceedings under section 1 for offences committed domestically. It is assumed that all defendants prosecuted under ETJ will receive a custodial sentence, lying between 39 and 84 months (the maximum sentence for the offence in question), with the upper bound reflecting the likely relative seriousness of those who are being prosecuted under ETJ. It is estimated that the weighted unit cost per defendant is approximately between £200,000 and £400,000, plus a cost to the CPS of approximately £80,000 - £130,000. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 6: S1 TACT 2006 ETJ Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>13</sup></b>
HMCTS	£60,000 - £110,000
Legal Aid	£100,000
HM Prison Service	£70,000 - £150,000
HM Probation Service	<£10,000
<b>Total CJS excl. CPS</b>	<b>£200,000 - £400,000</b>
CPS	£80,000 - £130,000

68. The estimated unit cost of proceeding under section 2 of the 2006 Act through ETJ is based on internal data for domestic proceedings. It is assumed that 100 per cent of those charged for section 2 through ETJ will be proceeded against in the Crown Court, and that all will receive a custodial sentence, lying between 33 and 42 months (the maximum sentence for the offence in question), given the likelihood that someone being charged under ETJ will receive a harsher sentence. The weighted unit cost per defendant is estimated to be between £200,000 and £400,000, plus a cost to the CPS of approximately £80,000 - £130,000. In the steady state, the cost per defendant proceeded against can be broken down as follows:

<sup>11</sup> Due to a lack of available data, these ETJ unit costs to the CPS uses proxy costs from sections 5 and 6 of the Terrorism Act 2006 (ETJ was extended to these offences under the Serious Crime Act 2015).

<sup>12</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000.

<sup>13</sup> Costs by agency rounded to the nearest £10,000; total cost per case rounded to the nearest £100,000. Costs to Legal Aid are rounded to the nearest £100,000 to reflect the high degree of uncertainty.

**Table 7: S2 TACT 2006 ETJ Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>13</sup></b>
HMCTS	£60,000 - £110,000
Legal Aid	£100,000
HM Prison Service	£60,000 - £150,000
HM Probation Service	<£10,000
<b>Total CJS excl. CPS</b>	<b>£200,000 - £400,000</b>
CPS	£80,000 - £130,000

69. For section 4 of the Explosive Substances Act 1883, based on data for 2016, it is assumed that 100 per cent of those proceeded against through ETJ will be convicted and sentenced to immediate custody. It is assumed that there is a lower bound of sentencing of 80 months and a higher bound of 192 months, to reflect that this offence has a life sentence<sup>14</sup>. The weighted unit cost per defendant is estimated to be between £400,000 and £1,000,000, plus a cost to the CPS of approximately £80,000 - £130,000. In the steady state, the cost per defendant proceeded against can be broken down as follows:

**Table 8: S4 ESA 1883 ETJ Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>15</sup></b>
HMCTS	£60,000 - £110,000
Legal Aid	£200,000
HM Prison Service	£140,000 - £690,000
HM Probation Service	<£10,000
<b>Total CJS excl. CPS</b>	<b>£400,000 - £1,000,000</b>
CPS	£80,000 - £130,000

70. The prediction of a likely extra volume of such cases as a result of this measure is not feasible. Therefore, an indicative range of 1-2 proceedings per year is used for each of these four offences through ETJ. This would result in a total annual cost to the CJS of between approximately £1,200,000 and £4,500,000.

71. While this measure has one of the single biggest costs of any in this Bill, as set out below, it should be noted that in the long-run this policy is expected to have a positive net benefit to society. If the individuals who are targeted are not caught by the CJS, it is possible that they might go forward to design and execute terrorist attacks. A terrorist attack can have a large negative impact on the UK.

## **Increase in sentencing powers of the courts**

### Problem under consideration

72. Currently, the offences of encouraging terrorism and disseminating terrorist publications attract a maximum sentence of seven years' imprisonment. The offences of possessing or collecting information likely to be useful to a person preparing or carrying out acts of terrorism, and of eliciting, publishing or communicating information about members of the armed forces, police or intelligence agencies, likely to be useful to a person preparing or carrying out an act of terrorism attract a

<sup>14</sup> The maximum sentence for section 4 was extended from 20 years to life by the Criminal Justice and Courts Act 2015.

<sup>15</sup> Costs by agency rounded to the nearest £10,000; total cost per case rounded to the nearest £100,000. Costs to Legal Aid are rounded to the nearest £100,000 to reflect the high degree of uncertainty.

maximum sentence of ten years' imprisonment. The offence of failure to disclose information about acts of terrorism currently carries a maximum sentence of five years' imprisonment. These sentence maxima were established 12 or 18 years ago. The terrorist threat has since changed with individuals engaging in such conduct now likely to pose an increased risk of moving quickly on to attack planning, given the rapid trajectory of radicalisation now being observed. Increased sentences would better reflect the increased risk and the seriousness of these offences.

73. Offenders sentenced to a standard determinate sentence serve the first half in prison and the second half in the community on licence. They are released automatically at the half way point in their sentence. For example, if a court imposes a four year determinate sentence, the offender will spend two years in custody and two years on licence. If they breach their licence conditions they may be recalled to prison until either the end of the sentence or for a fixed period of 28 days.
74. The Criminal Justice Act 2003 (the 2003 Act) separately provides for public protection sentences. Those convicted of certain specified terrorist offences (and specified sexual or violent offences) can receive an extended determinate sentence. Under the extended sentence an offender will only be eligible for early release at two thirds of their custodial term and only if the Parole Board considers it safe to release them before the end of their sentence. Once released from custody, the offender is subject to an extended period on licence. The 2003 Act also provides for a sentence for "*offenders of particular concern*" (SOPC). Under that sentence where a court does not impose a life sentence or an extended sentence it must impose an SOPC. That means the offender will not be released automatically at the half way point in their sentence but will only be released before the end of their sentence if the Parole Board consider them safe to release. These provisions apply to some of the more serious terrorism offences, but not to any which are not violent offences. As a consequence, these public protection sentences are not available to help manage the risk posed by individuals who commit preparatory terrorism offences.
75. Under section 30 of the Counter-Terrorism Act 2008 (the 2008 Act), judges in England and Wales (and under section 31 in relation to Scotland) must consider when sentencing for a non-terrorism offence whether there is a terrorist connection. If so, this must be treated as an aggravating factor for the purpose of calculating the sentence. The current list of specified offences includes a number of offences under the Offences against the Person Act 1861, but does not include the offence of wounding with intent (section 18 of the 1861 Act) which might be charged in a terrorism context.
76. Additionally, the section 30 provision does not currently apply to Northern Ireland. Sentences in terrorism cases in Northern Ireland are generally lower than analogous sentences in Great Britain. This is particularly the case for convictions of non-terrorism specific offences, mainly those relating to explosive substances and firearms which make up the majority (some 70%) of terrorism related convictions in Northern Ireland.

### Proposal

77. Increase to 15 years' imprisonment the maximum sentence for the following offences:
- Collect, record or possess information likely to be useful to a person committing or preparing an act of terrorism (section 58 of the 2000 Act).
  - Publish or elicit information about the armed forces, police or intelligence agencies for the purpose of preparing an act of terrorism (section 58A of the 2000 Act).
  - Encourage terrorism (section 1 of the 2006 Act).
  - Disseminate terrorist publications (section 2 of the 2006 Act).
78. Increase to 10 years' imprisonment the maximum sentence for the following offence:
- Failing to disclose information about acts of terrorism (section 38B of the 2000 Act).
79. Bring the following preparatory terrorism offences within the scope of the Extended Determinate Sentences (and analogous sentences in Scotland and Northern Ireland) and Sentences for Offenders of Particular Concern provisions in the 2003 Act:
- Membership of a proscribed organisation (section 11 of the 2000 Act).
  - Inviting support for a proscribed organisation (section 12 of the 2000 Act).

- Collecting, recording or possessing information likely to be useful to a person committing or preparing an act of terrorism (section 58 of the 2000 Act).
  - Eliciting, publishing, communicating information about a member of the armed forces etc (section 58A of the 2000 Act).
  - Entering or remaining in a designated area (new section 58B of the 2000 Act).
  - Encouragement of terrorism (section 1 of the 2006 Act).
  - Dissemination of terrorist publications (section 2 of the 2006 Act).
  - Attendance at a place used for terrorism training (section 8 of the 2006 Act).
80. Add 'wounding with intent' and certain Scottish common law offences to the list of specified offences for the purposes of sections 30 and 31 of the 2008 Act.
81. Extend the provision of section 30 of the 2008 Act to Northern Ireland and add Northern Ireland firearms offences and the offences of false imprisonment, blackmail, intimidation and putting people in fear of violence to the list of specified offences.

### Rationale for intervention

82. Increasing the maximum sentences for the offences in sections 58 and 58A of the 2000 Act and sections 1 and 2 of the 2006 Act will ensure that they properly reflect the increased risk and seriousness of these offences.
83. The offence under section 38B is a serious offence. In the case of *Sherif* (convicted of the section 38B offence in connection with the attempted bombings in London on 21 July 2005), the sentencing judge described the existing five years' maximum penalty as "woefully inadequate". Similarly, the current Independent Reviewer of Terrorism Legislation, Max Hill QC, identified in oral evidence to the Public Bill Committee that this is an offence where the maximum penalty could be usefully increased.
84. By adding wounding with intent to the list of specified offences for the purposes of section 30 of the 2008 Act, this will ensure that where this offence is used to prosecute an act of terrorism, the link to terrorism will be reflected in the sentence handed down.
85. These increases in maximum sentences, the extension of the public protection sentences to further terrorism offences and the application of section 30 of the 2008 Act to Northern Ireland will increase the length of time convicted terrorists spend in prison, increasing control around their early release and linking this to risk, and increasing the duration of restrictions on them following release. Taken together they will increase the disruptive effect of the sentencing regime on terrorist activity.

### Impact

#### *Increase in maximum sentences*

86. Increasing the maximum penalty for the above offences will affect sentencing and so prison costs. Due to the low historic volumes of these offences, it is not possible to observe patterns in sentence length verdicts which would help formulate evidence-based assumptions. Because of these uncertainties, a lower bound of a 25 percent uplift on custodial sentences is applied, with an upper bound of 50 per cent<sup>16</sup>.
87. It has not been possible to provide estimates for section 58A of the 2000 Act, because nobody has been convicted of this offence where 58A was the primary offence. For section 38B of the 2000 Act, convictions have been low enough historically that the impact of this measure is considered to be minimal. In the five years from 2013 to 2017 inclusive, there were only two custodial sentences handed out<sup>17</sup>.

<sup>16</sup> This measure is applied in conjunction with the EDS/SOPC measure below. Due to the mentioned uncertainties, the Home Office do not model the interaction of the two measures, but rather assume the EDS/SOPC 'effect' is captured in the indicative 25-50 per cent custodial sentence uplift range.

<sup>17</sup> Criminal Justice System Statistics Quarterly: December 2017 (experimental statistics)



88. The unit costs of the increased maximum penalties are as follows:

**Table 9: Maximum Penalty Increase Estimated Unit Costs**

<b>Section</b>	<b>Increase in prison costs (per case)<sup>18</sup></b>	
	<b>Lower</b>	<b>Upper</b>
S58 TACT 2000	£8,000	£16,000
S1 TACT 2006	£17,000	£35,000
S2 TACT 2006	£5,000	£11,000

89. This measure is applied in tandem with those in the rest of this Bill. As such, it is assumed that there is a new volume for some of the offences to which the maximum penalty increase is applied. Where  $n$  is the number of proceedings before this Bill, the analysis assumes the increase in the maximum penalty affects a new volume in the range of  $1.2n + 1$  to  $1.5n + 2$  (where both the offence is amended and ETJ is extended to it).

90. Applying these volume assumptions, a total estimated cost of this measure to prisons of between £195,000 and £520,000 per year is calculated, which can be broken down as follows:

**Table 10: Maximum Penalty Increase Estimated Total Costs**

<b>Section</b>	<b>Total Cost<sup>20</sup></b>	
	<b>Lower</b>	<b>Upper</b>
S58 TACT 2000	£50,000	£130,000
S1 TACT 2006	£70,000	£175,000
S2 TACT 2006	£80,000	£215,000

*Additions to Schedule 15 to the Criminal Justice Act 2003*

91. Bringing preparatory terrorism offences within the scope of the EDS/SOPC provision in the 2003 Act is also likely to increase prison costs. The effect of the addition of offences to Schedule 15 to the Criminal Justice Act 2003 is modelled as being release from prison at 80 per cent of the sentence length as opposed to 50 per cent. This is on the rationale that the 2016 Prison Releases statistics show EDS prisoners served on average 80 per cent of their sentence length<sup>19</sup>.

92. The unit costs of this measure are set out below:

**Table 11: EDS/SOPC Extension Estimated Unit Costs**

<b>Section</b>	<b>Average Custodial Sentence Length (ACSL)</b>	<b>ACSL served (months)</b>	<b>ACSL served post-policy</b>	<b>Net cost per defendant<sup>20</sup></b>
S1 TACT 2006	39	20	31	£40,000
S2 TACT 2006	33	17	26	£15,000
S8 TACT 2006	36	18	29	£40,000
S11 TACT 2000 <sup>21</sup>	120	60	96	£130,000

<sup>18</sup> Costs rounded to the nearest £1,000.

<sup>19</sup> Offender Management Statistics Quarterly publication <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

<sup>20</sup> Costs rounded to the nearest £5,000.

<sup>21</sup> Based on an indicative scenario given lack of data concerning these offences.

S12 TACT 2000	48	24	38	£50,000
S58 TACT 2000	45	23	36	£20,000
S58A TACT 2000 <sup>21</sup>	120	60	96	£130,000

93. As with the increase in the maximum penalty for some offences, this measure is applied in tandem with those in the rest of this Bill. As such, a new volume is assumed for some of the offences to which EDS is applied. Where  $n$  is the number of proceedings before this Bill, it is assumed that EDS affects a new volume in the range of  $1.2n + 1$  to  $1.5n + 2$  (where both the offence is tweaked and ETJ is extended to it).

94. Applying these volumes assumptions for this measure gives a total estimated cost to prisons of between £1,070,000 and £1,305,000 per year, which can be broken down as follows:

**Table 12: EDS/SOPC Extension Estimated Total Costs**

EDS/SOPC Costs	Total Cost	
	Lower	Upper
S1 TACT 2006	£165,000	£205,000
S2 TACT 2006	£190,000	£245,000
S8 TACT 2006	£40,000	£40,000
S11 TACT 2000	£130,000	£130,000
S12 TACT 2000	£305,000	£410,000
S58 TACT 2000	£115,000	£155,000
S58A TACT 2000	£130,000	£130,000

*Adding 'wounding with intent' to the list of specified offences for the purposes of sections 30 and 31 of the 2008 Act.*

95. There are no examples of cases where the absence of this offence has resulted in the failure of a court to recognise a terrorist connection. Judges already have discretion to determine a terrorist connection when sentencing for any offence that is not specified; even if an offence is not specified, a terrorist connection can still be treated as an aggravating factor when considering the sentence for it. There is also no statistical evidence available in relation to this power. As such, it is assumed that this measure will have a negligible impact.

*Extending the provision of section 30 of the 2008 Act to Northern Ireland and adding Northern Ireland firearms and other offences to the list of specified offences.*

96. Due to a lack of available data, it has not been possible to monetise the cost of this measure. It is expected that treating terrorism as an aggravating factor for these non-terrorism offences would increase the average sentence length handed down for each conviction, and so increase the cost to the Northern Ireland Prison Service.

## Notification requirements

### Problem under consideration

97. Part 4 of the 2008 Act provides for notification requirements on release from prison to be imposed on people sentenced to 12 months' or more imprisonment for a specified terrorism offence (or an offence with a terrorist connection). There are a number of areas where amendments could be made to those requirements to address gaps highlighted by operational partners, and to bring them into line with the equivalent requirements under the Sexual Offences Act 2003.

98. The notification requirements on registered terrorist offenders currently only partially apply in Northern Ireland. Those convicted of a specified terrorism offence in Northern Ireland are subject to the notification requirements in the same way as a person convicted of such an offence in England and Wales or Scotland. However, while a person convicted of a specified terrorism-related offence (that is, an offence in the general criminal law which is not terrorism specific, for example murder or hostage-taking, in relation to which a judge has decided there is a terrorist connection) in England and Wales or Scotland is also made subject to the notification requirements, this is not currently the case in Northern Ireland. This represents a gap in the ability of the Police Service of Northern Ireland to manage the risk posed by convicted terrorists when they are released, and the Bill fixes that gap.

### Proposal

99. Amend the notification scheme to strengthen requirements on Registered Terrorist Offenders (RTOs) aligning them with the requirements currently imposed on registered sex offenders:
- Oblige RTOs to provide seven days' notice of any travel outside the UK (of any length).
  - Oblige RTOs of no fixed abode to notify police, on a weekly basis, of areas they will frequent or where they can usually be found whilst homeless.
  - Confer a power (authorised by a warrant issued by a magistrate or equivalent) on the police to enter and search the home address of an RTO for the purpose of assessing the risks posed by the offender.
  - In addition to name, address, date of birth and National Insurance number, RTOs will be required to provide police with: bank and financial account details; passport details; details of vehicles owned or used; phone numbers and email addresses used by the RTO.
100. Extend the Part 4 notification regime in Northern Ireland to include offences with a 'terrorism connection'.

### Rationale for intervention

101. These amendments to the notification scheme would close a number of gaps and loopholes in the scheme and thereby, ensure that the police have effective but necessary and proportionate powers to monitor the whereabouts of convicted terrorists.
102. At present an RTO is only required to notify the police of overseas travel lasting three days or more. This is open to exploitation as it would enable an RTO to travel overseas for periods of less than three days to engage in terrorist activity. Requiring an RTO to notify the police in advance of all foreign travel would provide a comprehensive picture of when an RTO is travelling outside of the UK, allowing police to complete relevant checks, identify any risks, and take any mitigating action required.
103. Requiring an RTO to notify police on a weekly basis of where they can be contacted if they are of no fixed abode would allow the police to have greater contact with the RTO, better placing them to assess risk and to manage any potentially terrorist or criminal behaviour. This would reduce the risk of an RTO seeking to exploit their no fixed abode situation by remaining out of contact with the authorities.
104. Conferring a power on the police to enter and search an RTO's home is intended to allow the police to properly manage and risk assess RTOs, including by verifying that they live at their registered address and to ascertain the RTO's health and wellbeing.
105. By requiring RTOs to notify the police of the additional information detailed above, it will give operational partners useful starting points for an investigation should previous offenders be identified as possibly re-offending, and would be a beneficial tool for the police in locating missing offenders.
106. These changes will bring the provisions for registered terrorist offenders into line with provisions already in place for registered sex offenders which take a similar approach to managing the long term risk posed by such offenders to wider society.
107. Extending the Part 4 notification regime to Northern Ireland will ensure that this power can be applied consistently across the UK and will enable the Police Service of Northern Ireland to manage

the risk of those convicted of terrorism-related offences when they are released, overcoming a gap in their current capability.

## Impact

108. In August 2017, there were approximately 111 RTOs<sup>22</sup>. In 2016, there were four prosecutions against a breach of notification requirements – a 4 per cent rate, assuming an approximate consistency between the two years<sup>23</sup>. As a result of this measure, the analysis models the more stringent notification requirements as having the effect of a 2-5 percentage point increase in this annual detected breach rate.

109. An RTO breach is prosecuted under section 54 of the Counter-Terrorism Act 2008, which will carry a cost to the CPS and the other CJS agencies. Each proceeding against a breach carries a unit cost to the CJS of approximately £35,000, plus a cost to the CPS of £3,000<sup>24</sup>.

110. In the steady state, the unit cost can be broken down as follows:

**Table 13: RTO Breach Proceeding Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>25</sup></b>
HMCTS	£2,000
Legal Aid	£1,000
HM Prison Service	£30,000
HM Probation Service	£2,000
<b>Total CJS excl. CPS</b>	<b>£35,000</b>
CPS	£3,000

111. An increased breach volume of 2-5 percentage points against the counterfactual would bring with it a total annual cost of this measure to the above CJS agencies of approximately £115,000 to £225,000.

112. This measure will also affect the way in which the police manage RTOs. There will be a one-off cost to the police in notifying RTOs of their new obligations in writing or in person, and in re-servicing the notice evidentially at a police station (the latter to support any future breach investigations and prosecutions). The more stringent requirements are also likely to increase the intensity of ongoing monitoring of subjects' compliance. It is unlikely that police will have to increase the frequency of home visits as a result of the new requirements. Taken together, and in recognition of the relatively low current volumes of RTOs, these costs to law enforcement are likely to be negligible.

## **Serious Crime Prevention Orders**

### Problem under consideration

113. Once a convicted terrorist has completed their sentence, including any period spent in the community on licence, there are limited options (for example Terrorism Prevention and Investigation Measures (TPIMs)) for managing the risk posed by those who might seek to re-engage in terrorist activity. Serious Crime Prevention Orders (SCPOs) are an important and cost-effective means of preventing and disrupting serious and organised crime. A SCPO is a court order that is used to protect the public by preventing, restricting or disrupting a person's involvement in serious crime. A SCPO can prevent involvement in serious crime by imposing various conditions on a person. The cases in which SCPOs can be made do not at present expressly include terrorism. By adding terrorism offences to the list of indicative serious offences in respect of which an application may be made to a court for a SCPO,

<sup>22</sup> National Counter Terrorism Policing Headquarters. Conservative estimate, not including Northern Ireland.

<sup>23</sup> This should be considered a lower bound estimate of the overall breach rate, since data on undetected breaches is not possible by definition.

<sup>24</sup> Due to a lack of available data, this unit cost to the CPS uses a proxy cost of prosecution against a breach of foreign travel notification requirements for Registered Sex Offenders in the Crown Court.

<sup>25</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding.

these orders may then similarly be used to prevent terrorism and disrupt terrorist offending and remove any impression that terrorism is not serious crime.

### Proposal

114. Add terrorism offences to the list of specified 'serious offences' in Schedule 1 to the Serious Crime Act 2007.

### Rationale for intervention

115. By enabling terrorism offences to be covered by a SCPO, individuals deemed to pose an ongoing risk would be subject to a court order which enables ongoing management of risk. By adding terrorism offences to the list of specified trigger offences for SCPOs, the courts will be obliged to consider applications for SCPOs in terrorism cases. A SCPO can impose any notification requirement, prohibition, or restriction the court considers necessary to protect the public, breach of which is an offence punishable by up to five years' imprisonment. Such requirements can relate to, for example, the subject's employment and financial, business or property dealings, their travel, their communications and association, their access to and use of premises, or the provision by them of certain information. SCPOs can last for up to five years, and can be renewed on application to the court. Breach of the conditions of a SCPO is a criminal offence punishable by up to five years' imprisonment. The requirements of a SCPO would be a useful additional tool for managing the risk in a terrorism case.

### Impact

116. This measure is expected to lead to an increase in the number of SCPOs being used. It is assumed that there will be a proportionate increase in the number of breaches that lead to a criminal prosecution. Such breaches carry cost implications for the CJS.

117. Costs are provided for the breach of a SCPO as an indicative range. In the lower bound it is assumed that 100 per cent of cases take place in a magistrates' court, and in the upper bound it is assumed that there is a 100 per cent committal rate. It is assumed in both cases that 50 per cent of those proceeded against receive an immediate custodial sentence and receive half the maximum sentence available in either a magistrates' court or the Crown Court, and that they serve half their sentence in prison and the remainder on licence. This results in a total unit cost of £5,000 to £33,000, plus a cost to the CPS of £200 to £3,000.

118. In the steady state, the unit cost can be broken down as follows:

**Table 14: SCPO Breach Proceeding Estimated Unit Cost**

<b>Agency</b>	<b>Unit Cost<sup>26</sup></b>
HMCTS	£1,000 - £3,000
Legal Aid	<£1,000 - £1,000
HM Prison Service	£3,000 - £27,000
HM Probation Service	£1,000 - £3,000
<b>Total CJS excl. CPS</b>	<b>£5,000 - £35,000</b>
CPS	<£1,000 - £3,000

119. It is forecasted that there will be the imposition of an additional 15-30 Crown Court SCPOs each year as a result of this measure. Assuming a breach rate of 10 per cent, and the unit cost given above, this would lead to a total cost of between approximately £10,000 and £110,000 per year.

<sup>26</sup> Costs by agency rounded to the nearest £1,000; total cost per case rounded to the nearest £5,000. Costs may not sum due to rounding.

120. The additional costs for prosecutors and law enforcement agencies to develop applications will be minimal, as most casework would be carried out as part of the main criminal prosecution that precedes the SCPO application. The resource needed to monitor SCPOs varies significantly, and it is not possible to give an estimate of this cost.

## **Evidence obtained under port and border control powers**

### Problem under consideration

121. Schedule 7 to the 2000 Act provides for counter-terrorism port and border controls. It enables examining officers to stop and question, and where necessary, detain and search a person travelling through a port, airport, international rail station or the border area, for the purpose of determining whether the person is concerned in the commission, preparation or instigation of acts of terrorism. The Supreme Court ruled in the *Beghal* case in July 2015 that answers given in response to questions asked in Schedule 7 examinations cannot be used as evidence in subsequent criminal proceedings. The former Independent Reviewer of Terrorism Legislation, David Anderson Q.C., recommended that this bar on the introduction of Schedule 7 admissions in a subsequent criminal trial should be enshrined in statute.

### Proposal

122. Amend Schedule 7 to the 2000 Act to provide for a statutory bar on the use as evidence in a criminal trial of an answer given by a person in response to a question as part of a Schedule 7 examination save in the following circumstances:

- Wilful failure to comply with a duty imposed under or by virtue of Schedule 7, wilful contravention of a prohibition imposed under or by virtue of Schedule 7; and wilful obstruction or frustration of search or examination imposed under or by virtue of Schedule 7.
- On a prosecution of perjury.
- On a prosecution for another offence where, in giving evidence, the defendant makes a statement inconsistent with the answer or information provided by him or her in response to a Schedule 7 examination.

### Rationale for intervention

123. Officers carrying out an examination under Schedule 7 will be in a position to provide added assurance to those being examined that their answers may not be used against them in criminal proceedings. The statutory bar will further safeguard the common law protection against self-incrimination and thereby the right to a fair trial.

### Impact

124. It is not expected that this measure will bear a significant monetary impact on the criminal justice system, law enforcement, or other bodies.

## **Detention of terrorist suspects: hospital treatment**

### Problem under consideration

125. At present, where a person is arrested or detained under the 2000 Act and is injured or taken ill, any time spent in hospital counts towards the 14-day time limit by which the suspect must be charged or released. The inability to interview the suspect during this period might mean the investigation could not progress, and on his or her discharge from hospital there might not be enough time remaining for police to investigate to the point where a charging decision can be made, before they have to release the suspect. The former Independent Reviewer of Terrorism Legislation, David Anderson Q.C., recommended that the law should be changed so as to allow the detention clock to be suspended in the case of detainees who are admitted to hospital, and that the detention clock should not restart until questioning takes place or until the person arrives back at the police station.

### Proposal

126. Amend the 2000 Act so that the detention clock can be paused when a detained person is transferred from police custody to hospital.

### Rationale for intervention

127. The inability to interview a suspect detained under the 2000 Act while he or she is in hospital receiving treatment can significantly impair a police investigation. In contrast to the 2000 Act, where a person is arrested and detained under the Police and Criminal Evidence Act 1984 (PACE 1984) any time spent receiving treatment in hospital, or travelling to or from hospital, does not count toward the maximum period of pre-charge detention. By providing the ability to pause the detention clock, the police will be able to use the full period provided by the law to interview a terrorist suspect and reach a charging decision.

### Impact

128. It is not expected that this measure will bear a significant monetary impact on the criminal justice system, law enforcement, or other bodies.

## **Retention of biometric data for counter-terrorism purposes**

### Problem under consideration

129. The Protection of Freedoms Act 2012 (POFA) introduced strict controls on the circumstances in which the police can retain the fingerprints and DNA profiles of people who have not been convicted, and the periods for which they can do so, with the intention of rebalancing the system in favour of civil liberties. In a number of respects this legislation has proven to be complex to operate, placing disproportionate burdens on the police and Biometrics Commissioner and not giving sufficient weight to the need to protect the public. The amended measures are designed 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 individuals who have not been convicted of an offence.

### Proposal

130. The Bill will:

- Extend the maximum length of a National Security Determination (NSD) from two to five years.
- Harmonise PACE 1984 and Terrorism Act biometric retention periods following arrest on suspicion of a terrorism offence.
- Allow police to treat multiple sets of biometric data, taken on different occasions but in relation to the same individual, as a single combined record (with a single retention period and the ability to make a single NSD).
- Allow Chief Constables to make NSDs authorising retention of biometric data taken in force areas other than their own.

### Rationale for intervention

131. In counter-terrorism cases a Chief Constable can make a NSD authorising the retention, for up to a further two years, of biometric data that would otherwise be required to be destroyed, subject to approval by the Biometrics Commissioner. The legal test is that it is necessary to retain the material for the purposes of national security. Operational experience is that the two-year length of an NSD is too short. The nature of contemporary radicalisation and terrorist threats is such that if an individual presents a risk on national security grounds today, it is likely that they will continue to do so in over two years' time. In addition, having to review an NSD ever two years is disproportionately burdensome on the police and the Biometrics Commissioner. Furthermore, biometrics data which may be deleted could be of value in a future investigation, and can provide vital tripwire intelligence to indicate that a former subject of interest has re-engaged in terrorist activity.

132. At present if a suspected terrorist with no previous convictions is arrested under section 41 of the 2000 Act but is not subsequently charged, their biometrics can be retained for three years on the basis of the arrest. In contrast, if the same person is arrested on suspicion of a CT offence under PACE 1984 but is not charged, there is no automatic retention period and their biometrics must be deleted (unless an NSD is made). By harmonising the PACE 1984 and the 2000 Act biometric retention periods, this measure implements the policy intention of the POFA that there should be an

automatic retention period where a person has been arrested on suspicion of terrorism but not charged. Since police routinely use their powers under PACE 1984 to make planned arrests on suspicion of a particular terrorist offence, the automatic retention period of three years intended by Parliament under the 2000 Act is not available for the arrests made on this basis. Therefore amending the legislation will close the gap and harmonise the PACE 1984 and the 2000 Act retention periods for specified terrorism offences.

133. Currently, if an individual is arrested on different occasions and biometric data taken on each of them, these sets of data would have to be managed as two or more different data sets, despite referring to the same individual. This would mean that the workload associated with managing the POFA records for the purpose of the retention periods and NSDs would be duplicated, and there would be a risk that the records may not be joined up or treated in the same way. The Bill would therefore allow multiple records relating to the same individual to be combined and reviewed together at the earliest retention expiry date. Similarly, at present an NSD can only be made by the Chief Officer of the police force where the biometric data in question was taken. In cases where multiple sets of biometrics are taken, this can mean that multiple Chief Officers have to consider the same case in order to make multiple NSDs. This measure would allow a Chief Officer to make an NSD in relation to data taken outside their force area. This will ensure that such decisions can be taken by the Chief Officer who is best placed to do so, because their force is investigating the individual.

### Impact

134. These measures largely affect the administration of data, and are unlikely to bear significant monetary impact on law enforcement or other bodies.

135. It is not possible to establish the length of time material would be kept without this extension of an NSD, as this will depend on a case-by-case assessment of necessity and proportionality of ongoing retention. While police forces would be required to review NSDs less frequently as a result of this Bill, and therefore in some cases a decision not to renew might not be taken as soon and the information might be retained for longer, experience suggests that retention periods are in fact likely to be similar, as necessity in national security cases may not change significantly over a shorter period, so it is assumed that storage costs are unaffected. However there will be a cost saving to Police Forces and the Biometrics Commissioner in preparing and considering less frequent applications for NSDs.

136. Following arrest under PACE on suspicion of a terrorism offence, biometric material is currently collected so no new collection costs would be introduced. The material can currently be retained, but with the requirement of an NSD. There may therefore be a cost saving to Police Forces and the Biometrics Commissioner where NSD applications do not need to be prepared and considered during the three-year retention period this measure would provide, and there may be a slight increase in DNA and Fingerprint storage costs as a result of the automatic retention period in a case which might not otherwise have been made subject to an NSD. This measure also reduces the administrative burden of having to delete biometrics if an individual arrested on suspicion of a terrorism offence is not charged.

137. The combining of multiple sets of biometric data under one NSD would remove the nugatory duplication of effort and resources in requiring multiple Chief Officers to consider identical NSD cases, decreasing the overall number of NSDs needing to be made and the number of decisions needing to be reviewed by the Commissioner.

138. Allowing Chief Officers to make NSDs authorising retention of biometric data taken in force areas other than their own is unlikely to have any significant direct monetary impact, though it will provide a more efficient means of considering such NSDs as Chief Officers of forces which have no interest in the subject of the NSD will no longer be required to spend time and effort familiarising themselves with the case in order to make a decision on it.

## **Traffic Regulation**

### Problem under consideration

139. Anti-Terrorism Traffic Regulation Orders (ATTROs) allow vehicle or pedestrian traffic to be restricted for counter terrorism reasons. These can be permanent or temporary, and can include the installation of equipment such as bollards and barriers as well as the restriction of parking on or access to roads. An ATTRO can only be made by the relevant traffic authority on the



recommendation of a Chief Office of Police, typically advised by specialist counter-terrorist officers and experts from the Centre for the Protection of National Infrastructure.

140. The legislation (the Road Traffic Regulation Act 1984 (the 1984 Act)) governing the operation of ATTROs works well but a number of proposed changes have been identified to enhance their utility and effectiveness, including by removing the requirement to advertise an ATTRO where to do so would undermine the purpose of the order, for example by giving advance notice of a visiting VIP.

### Proposal

141. Amend the 1984 Act to:

- Disapply the requirement to publicise an ATTRO in advance where in the opinion of the Chief Officer of police such publicity would undermine the purpose of the order.
- Allow the discretion of a constable in managing and enforcing an ATTRO to be delegated to third parties such as local authority staff or private security personnel.
- Align provisions for temporary notices and orders under the ATTRO power.
- Allow the cost of an ATTRO to be recharged to the beneficiary (the power to charge will not apply in a case where an ATTRO has been imposed in relation to public processions or assemblies).
- Put onto a statutory footing the existing common-law police power to deploy obstructions to enforce temporary traffic restrictions in exceptional circumstances

### Rationale for intervention

142. Currently only a police officer can exercise discretion when manning a barrier under an ATTRO to allow accredited vehicles or persons through the barrier. This is not always necessary and places a burden on the police. This measure will allow responsibility to be delegated to, for example, security guards employed by event organisers or local authority staff when this is deemed appropriate and subject to appropriate safeguards determined by the police.

143. At present, an ATTRO must always be advertised before coming into force, to ensure that those affected by it can be informed in advance. Although this is generally the right approach, it can in certain situations create a security risk by highlighting a potential target, for example revealing the fact of a sensitive visit by a VIP, or indicating the extent of a protective security cordon. This measure will allow this requirement to be disapplied where such publicity would undermine the purpose of the order.

144. Currently the cost of managing an ATTRO is met by the police. The Bill would expressly enable a local authority to charge the beneficiary of an ATTRO, such as an event organiser (but not the organiser of a public procession or assembly), for the costs associated with the order, reflecting the existing position with other, non-terrorism-related, orders made under the 1984 Act. However, the Bill provides that charges cannot be imposed in relation to a procession or assembly held in a public place.

145. The police have common law powers to deploy obstructions, such as bollards and barriers, to enforce temporary traffic restrictions imposed under section 67 of the 1984 Act (which empowers the police to deploy temporary traffic restrictions in exceptional circumstances linked to terrorism and to deploy signs on the road indicating what those restrictions are). To provide for greater clarity and transparency, the Bill would place these powers on a statutory footing.

### Impact

*Disapply the requirement to publicise an ATTRO in advance where in the opinion of the Chief Officer of police such publicity would undermine the purpose of the order.*

146. There are approximately 40 ATTROs per year, at a cost of £3,500 to £10,000 each to police or local authorities in advertising and other administration. Approximately 90 per cent of this cost is advertising. This measure will affect only those ATTROs whose advertising could be deemed a security risk – around 5 per cent of the total. This measure would therefore save police and local authorities £6,300 to £18,000 per year in advertising costs.

*Allow the discretion of a constable in managing and enforcing an ATTRO to be delegated to third parties such as local authority staff or private security personnel.*

147. Around 80 per cent of ATTROs last 1-2 days. While no new cost to society will result from this measure, delegating the management of ATTROs will transfer opportunity cost away from police to local authority staff or private security personnel.

*Align provisions for temporary notices and orders under the ATTRO power.*

148. This component is not expected to bear any cost.

*Allow the cost of an ATTRO to be recharged to the beneficiary.*

149. Approximately 50 per cent of ATTROs will be charged back to a beneficiary other than police or a local authority. While no new cost to society will be generated as a result of this measure, it is likely to transfer a cost to businesses of £66,900 to £191,000 per year, taking into account the unit costs and volumes given above. This is offset by the resulting benefit to police or the local authority.

*Put onto a statutory footing the existing common-law police power to deploy obstructions to enforce temporary traffic restrictions in exceptional circumstances.*

150. This component provides clarity and transparency – it is not expected to bear any cost.

## **Persons vulnerable to being drawn into terrorism**

### Problem under consideration

151. Part 5 of the Counter-Terrorism and Security Act 2015 (the 2015 Act) provides the statutory underpinning of the Government's Prevent programme. The purpose of the Prevent programme is to stop people becoming terrorists or supporting terrorism. The most significant threat to the UK is currently from Daesh and other terrorist organisations in Syria and Iraq, but terrorists associated with the extreme right also pose a continued threat to our safety and security. The "Channel" programme in England and Wales is a multi-agency programme which provides tailored support to people who have been identified as at risk of being drawn into terrorism. Through the programme, agencies work together to assess the nature and the extent of this risk and, where necessary, provide an appropriate support package tailored to individual needs. In Scotland the programme is known as "Prevent Professional Concerns". Chapter 2 of Part 4 of the 2015 Act underpins the Channel arrangements. In particular, section 36 requires local authorities to establish a panel (known as a "Channel panel") to discuss and, where appropriate, determine the provision of support for people who have been identified by the police as at risk of being drawn into terrorism. The panel must determine what support may be provided and in what circumstances. At present, only the police can approve the referral of an individual to a Channel panel.

### Proposal

152. Enable local authorities, in addition to the police, to refer an individual at risk of being drawn into terrorism for discussion at a Channel panel.

### Rationale for intervention

153. A 12-month pilot has recently concluded which assessed the feasibility of transferring Channel administrative functions from the police to local authorities. This saw local authorities completing the information gathering and Vulnerability Assessment Framework, but they were then required to send referrals back to the police, as under section 36 of the 2015 Act only the police may make a decision on whether the individual is at risk of being drawn into terrorism and should therefore be referred to a Channel panel.

154. Following evaluation of the pilot it is intended to roll out the transfer of functions across England and Wales. This measure would streamline the process and remove potential delays.

## Impact

155. This measure, by adding local authorities as a body to the Channel panel referral process, is largely a streamlining exercise. There may be some savings to police, as they can use the time usually spent approving the Channel referral on other activity. However this saving is unlikely to be significant. Without this Bill, Police involvement in the Channel process as a whole would remain largely the same. There will be no costs to law enforcement, local authorities, or other bodies as a result of this measure.

## **Addressing non-physical damage business interruption gap in the Reinsurance (Acts of Terrorism) Act 1993**

### Problem under consideration

156. The Reinsurance (Acts of Terrorism) Act 1993 (the 1993 Act) enables the government to act as reinsurer of last resort by authorising an unlimited guarantee to the terrorism reinsurer, Pool Re, for costs relating to damage to commercial property from acts of terrorism. The Act aims to ensure that firms in Great Britain can access insurance to protect themselves against the financial costs of terror attacks. The Act was designed in response to the IRA bombing campaign of the 1990s-targeting commercial property in the City of London. While recent terror attacks across Europe have caused relatively minor damage to commercial property they have resulted in significant business interruption costs for firms.

157. For example, the London Bridge terror attack in 2017 saw many firms in the area forced to close as they were located within the resulting police cordon. The police cordon was set up to investigate the knife attacks by the terrorists, and not as a result of any physical damage to property. Therefore, firms' business interruption costs would not have been covered by any terrorism insurance policy reinsured by Pool Re due to the wording of the Act.

### Proposal

158. To address this gap, it is proposed that the 1993 Act be amended to enable Pool Re to cover the full range of business interruption costs resulting from a terror attack.

### Rationale for intervention

159. This amendment would address a technical gap in the wording of the 1993 Act, enabling it to continue to deliver on its policy objective of ensuring firms have access to insurance to protect against the financial costs of terror attacks. This ensures that firms will be able to continue to operate in areas at risk of a terror attack.

## Impact

160. It is not expected that this measure will have a significant impact. It will not impose additional direct costs on firms in the UK, as terrorism insurance remains optional.

161. In addition, firms can already purchase some forms of business interruption cover under the current wording of the 1993 Act. However, take-up of terrorism insurance remains low. As such, the amendment would be unlikely to significantly increase the risk of the government guarantee being called upon. This will be confirmed by analysis to be commissioned by Pool Re from the Government Actuaries Department.

## **Hostile State Activity Ports Power**

### Problem under consideration

162. In a statement to the House of Commons on 26 March 2018, the Prime Minister announced that the Government is developing legislative powers to strengthen the country's defences against all forms of hostile state activity. These measures will include a power to stop, question, search and detain persons at the UK border to determine whether they are involved in activity for, or on behalf of, a foreign power. This commitment was also contained within the National Security Capability Review, published on 28 March 2018.

163. At present, an individual may be stopped at a port or border area for the purpose of determining if that individual is concerned in the commission, preparation or instigation of acts of terrorism. This power is provided for under Schedule 7 to the Terrorism Act 2000.
164. However there is no equivalent power to stop an individual at a port or border area to determine if they are involved in hostile state activity. The need for such a power has become more acute in following the incident in Salisbury on 4 March 2018 during which a nerve agent of a type developed by Russia was used.

### Proposal

165. To address this gap, it is proposed that legislation equivalent to Schedule 7 to the Terrorism Act 2000 (and associated provisions of that Act) is introduced to provide for the for powers to stop, question, search and detain individuals at the UK border to determine whether they are, or have been, involved in hostile activity for, or on behalf of, a foreign power.

### Rationale for intervention

166. This provision would give officers the ability to stop and question individuals for the purpose of determining whether they are, or have been, involved in hostile activity for, or on behalf of, a foreign power. In doing so, this would help to strengthen the ability of the UK to defend itself against such hostile acts.

### Impact

167. It is expected that the annual use of this power will be very low (and far below the 16,349 Schedule 7 examinations conducted in 2017<sup>27</sup>). It is further expected that the rate of non-compliance will be low. As such, while arrests and proceedings associated with non-compliance would carry costs for the Criminal Justice System, these will be negligible in relative terms.
168. All persons detained under this power will be eligible for Legal Aid, at a unit cost of approximately £600. The low expected rate of use of this advice (used approximately 415 times during Schedule 7 examinations in 2017<sup>28</sup>), in conjunction with the low expected use of this power, is likely to result in a small annual cost.
169. There will be administrative costs incurred as a result of the proposed changes, for example the requirement to train examining and supervising officers. However, these costs are not likely to be high, and can be managed within existing budgets.
170. For each detention and examination under this power, there will be an opportunity cost in terms of officers' time. At a maximum examination time of six hours, this unit cost is estimated to be £790. Due to the expected low frequency of stops, this cost too is expected to be minimal.
171. There will be some cost associated with oversight of this power by the Investigatory Powers Commissioner, which will be paid for by existing Home Office budgets. This cost of salary and overheads is estimated to be in the range of £100,000 – £200,000 per year (taking into account the resources expected to be needed to provide effective oversight).

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<sup>27</sup> National Counter Terrorism Policing Headquarters.

<sup>28</sup> Legal Aid Agency

## **E. Appraisal (Costs and Benefits)**

### **General Assumptions and Data**

172. While efforts have been made to understand the costs and benefits to all affected groups, it is necessary to make some assumptions. These are detailed in full at the end of this IA, and in the footnotes above. In addition:

- For the purposes of both annual and 10-year totals, it is assumed that the unit prison costs for each proceeding fall in the year in which that proceeding takes place.
- The appraisal period over which this analysis has been conducted is 10 years, in line with the Home Office standard and Green Book (HM Treasury, 2018) guidance.
- Costs are in 2018/19 prices.

### **COSTS**

#### **Monetised Costs**

173. There are no transition costs associated with the proposals in this Bill, and the related costs outlined below are on an ongoing annual basis.

174. Based on the individually monetised impacts described above, it is expected that these measures may have an estimated total cost of between £3.0 million and £7.7 million per year, with a central estimate of £5.3 million.

175. Over a 10-year period (from 2019/20), the measures in this Bill are expected to cost between £28.2m and £71.3m, with a central estimate of £49.8m (present values).

#### **Non-Monetised Costs**

176. As set out above, there are some measures that will impose a cost but which could not be monetised. These include the impact on the Northern Ireland and Scottish Prison Services of likely increased sentence lengths. Some measures will also affect law enforcement – while this effect is likely to be slight, it has not been monetised either.

### **BENEFITS**

#### **Monetised Benefits**

177. There are no monetised benefits in this IA.

#### **Non-Monetised Benefits**

178. This package of measures could result in:

- Averting a successful terrorist attack against the UK, UK interests overseas, or another country.
- Due to the 'upstream' nature of the interventions, fewer longer-term investigations by the police and other agencies.

179. While the estimated costs to the CJS due to these measures have been demonstrated, it should be noted that in the long-run it is possible that this policy is cost-neutral for the CJS. If the individuals were not prosecuted due to a number of these proposed measures, it is possible that they would be convicted of another offence later on. The expectation is that the latter convictions would have a cost equal to or above the costs demonstrated of the proposed measures.

180. If the individuals who are targeted are not caught by the CJS, it is possible that they might go forward to design and execute terrorist attacks. A terrorist attack can have a large negative impact on the UK, both in terms of the immediate impact, such as lives lost, damaged infrastructure and lost output, and long-term costs such as higher public anxiety.

181. Therefore, although only the costs have been illustrated, this policy is expected to have a positive net benefit to society.

### **Total Costs and Total Cost to Business**

182. The total cost of this policy is £49.8 million in the central scenario, and between £28.2 million and £71.3 million in the low and high scenario respectively (net present cost is calculated over 10 years from 2019/20 and the price year is 2018/19). There are no monetised costs to business in this IA, other than the small potential transfer detailed above.

### **Total Benefits and Total Benefit to Business**

183. There are no monetised benefits or benefits to business in this IA.

### **Net Present Value (NPV) and Business Net Present Value (BNPV)**

184. The NPV of this policy is -£49.8 million in the central scenario, and between -£28.2 million and -£71.3 million in the low and high scenario respectively (NPV is calculated over 10 years from 2019/20 and the price year is 2018/19). There is no BNPV in this IA.

### **Estimated Annual Net Direct Cost to Business (EANDCB)**

185. There is no EANDCB in this IA.

## F. Risks

186. The proceedings uplift volumes used in this IA (20-50 per cent increase in existing volumes against the counterfactual and 1-2 proceedings per year through ETJ where that extension applies) are not evidence-based; rather, they are used to give an indicative range with which to estimate total costs.
187. It is possible that, against the counterfactual, the real increase in proceedings breaches this 50 per cent upper bound. This would mean that total costs to CJS agencies would be higher than those set out in this IA.
188. It has not been possible to obtain data on CPS unit costs. As such, this IA has used a common proxy offence for each of the measures. Despite being assessed as the best available figure, it is possible that this proxy offence is not a good analogue for those that are amended in this Bill.
189. Further risks are set out in Annex 1.

## G. Enforcement

190. Enforcement will be the primary responsibility of the police, the intelligence services, CPS and the courts. Local Authorities will also have responsibilities in respect of the change to the referral arrangements for Channel panels.

## H. Summary Tables

**Table 15: Summary of Annual Costs, £ million, present value**

<b>Measure</b>	<b>Lower<sup>29</sup></b>	<b>Upper</b>	<b>Central</b>
Expressions of support for a proscribed organisation	0.11	0.32	0.21
Publishing images of person wearing uniforms etc.	0.02	0.02	0.02
Obtaining or viewing material over the internet	0.05	0.15	0.10
Encouragement of terrorism	0.19	0.28	0.24
Extra-territorial jurisdiction	1.20	4.50	2.90
Increase in sentencing powers of the courts	1.27	1.83	1.55
Notification requirements	0.12	0.23	0.17
Serious Crime Prevention Orders	0.01	0.11	0.06
Evidence obtained under port and border control powers	-	-	-
Detention of terrorist suspects: hospital treatment	-	-	-
Retention of biometric data for counter-terrorism purposes	-	-	-
Anti-Terrorism Traffic Regulation Orders <sup>30</sup>	-0.01	-0.02	-0.01
Persons vulnerable to being drawn into terrorism	-	-	-
Terrorism Reinsurance	-	-	-
Hostile State Activity ports power	0.10	0.20	0.15
<b>Total</b>	<b>3.00</b>	<b>7.70</b>	<b>5.30</b>

<sup>29</sup> Rounding of costs based on those given previously.

<sup>30</sup> For this measure, as outlined above, there is also a monetised cost to business. Since this is a transfer, there is a net zero cost to society, so it is not recorded in the total.

**Table 15: Summary of 10-Year Costs, £ million, present value**

<b>Measure</b>	<b>Lower</b>	<b>Upper</b>	<b>Central</b>
Expressions of support for a proscribed organisation	1.0	2.9	2.0
Publishing images of person wearing uniforms etc.	0.2	0.2	0.2
Obtaining or viewing material over the internet	0.5	1.4	1.0
Encouragement of terrorism	1.7	2.6	2.2
Extra-territorial jurisdiction	11.1	42.3	26.7
Increase in sentencing powers of the courts	11.8	17.0	14.4
Notification requirements	1.1	2.1	1.6
Serious Crime Prevention Orders	0.1	1.0	0.6
Evidence obtained under port and border control powers	-	-	-
Detention of terrorist suspects: hospital treatment	-	-	-
Retention of biometric data for counter-terrorism purposes	-	-	-
Anti-Terrorism Traffic Regulation Orders	-0.1	-0.2	-0.1
Persons vulnerable to being drawn into terrorism	-	-	-
Terrorism Reinsurance	-	-	-
Hostile State Activity ports power	0.9	1.9	1.4
<b>Total</b>	<b>28.2</b>	<b>71.3</b>	<b>49.8</b>

## **I. Implementation**

191. Subject to certain exceptions, the provisions of the Bill will come into force two months after Royal Assent. The exceptions relate to the statutory bar on the use in criminal trials of evidence obtained under Schedule 7 to the 2000 Act, the stopping of the detention clock during the period where a terrorist suspect receives hospital treatment, changes to the regime governing the retention of biometric data and the new hostile state activity ports power. These provisions will be brought into force by commencement regulations made by the Home Secretary. The terrorist reinsurance provision will come into force on Royal Assent.

## **J. Monitoring and Evaluation**

192. In the normal way, the Counter-Terrorism and Border Security Bill will be subject to a post-legislative review to determine whether the legislation is working in practice as intended. This will take place between three and five years following Royal Assent.

193. The CPS (and prosecutors in Scotland and Northern Ireland) will be responsible for determining whether to charge an individual under the new or modified offences introduced in this Bill. In making a decision to charge the CPS will apply the provisions of the code for Crown Prosecutors issued by the Director of Public Prosecutions. The code provides for a two-stage test. First, the evidential test, namely whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. Second, the public interest test, namely whether a prosecution is required in the public interest.

194. It is a matter for individual judges to determine the appropriate sentence in any individual case, subject to the statutory maximum for the offence. In doing so, they must follow any relevant guidance issued by the Sentencing Council unless it would not be in the interests of justice to do so. Those convicted may appeal against their conviction and/or sentence and the Attorney General may refer cases to the Court of Appeal under the unduly lenient sentence scheme.

195. The Biometrics Commissioner, appointed under section 20 of the Protection of Freedoms Act 2012, is independent of government, and his role is to keep under review the retention and use by the police of DNA samples, DNA profiles and fingerprints. The Commissioner will therefore have oversight of the measures in the Bill relating to the retention of Biometric Data.



196. Intelligence and Security Committee exists as a statutory committee of Parliament, whose role is to examine the policy, administration and expenditure of MI5, GCHQ, SIS, as well as Defence Intelligence, the National Security Secretariat, and the Office for Security and Counter-Terrorism. It will therefore be able to examine the work of these organisations, including the application of the measures introduced in this Bill where appropriate.

197. The Investigatory Powers Commissioner, established by section 227 of the Investigatory Powers Act 2016, will be under a duty to keep under review the operation of the hostile state activity ports power and report annually to the Home Secretary.

### **Feedback**

198. Under section 36 of the 2006 Act, the Independent Reviewer of Terrorism Legislation is required from time to time to carry out a review of the 2000 Act and Part 1 of the 2006 Act (offences) and submit a report of the outcome of the review to the Home Secretary who must lay the report before Parliament. To the extent that the provisions of the Counter-Terrorism and Border Security Bill amend provisions in the 2000 Act or Part 1 of the 2006 Act they will fall within the remit of the Independent Reviewer.

## Glossary

**Cost per defendant:** The cost per defendant is a cost per person proceeded against. It is a weighted cost that accounts for the proportion of defendants tried in the magistrates' and Crown Court, the proportion of offenders sentenced to each disposal and the average time those sentenced to a custodial sentence spend in prison. It tells you the average cost of a proceeding from the beginning of that proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible).

**Criminal justice system:** The CJS encompasses the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and HM Prison and Probation Services (HMPPS) – and equivalent bodies in Scotland and Northern Ireland.

**Crown Court:** Deals with the more serious, triable either way or indictable only cases, for example murder, rape and serious fraud/theft. In the Crown Court, whether the defendant is found guilty or not guilty is decided by a jury.

**Disposal:** The end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.

**Indictable-only:** An offence that is triable only in the Crown Court in England and Wales; all proceedings will start in the magistrates' court but will be sent straight for trial in the Crown Court.

**Magistrates' court:** magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences). A magistrates' court deals with summary only offences. Some cases are triable-either-way in either a magistrates' courts or the Crown Court.

**Proceeding:** The start of legal action brought against somebody charged with committing a criminal offence.

**Summary-only:** An offence that is triable only in a magistrates' court; all proceedings will start and end in a magistrates' court.

**Triable either-way:** An offence that is triable in either a magistrates' court or the Crown Court. Some proceedings will start and end in a magistrates' court whereas others will start in a magistrates' court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court if the offence is deemed serious enough.

**SOPC and EDS:** Sentences for offenders of particular concern and extended determinate sentences differ from normal determinate sentences in that a defendant may only be released at the half way and two thirds point of their custodial sentence length (respectively) subject to the approval of the Parole Board.

## Annex 1

Assumptions for s12 s13 s58 s58a TACT 2000; s1 s2 TACT 2006; CT Act 2008; SCA 2007	Risks																											
<b><i>Progression of cases through the CJS</i></b>																												
<p>The following proceedings data was used to estimate the progression of cases:</p> <ul style="list-style-type: none"> <li>- Terrorism Act 2000: Section 12, section 13, section 58</li> <li>- Terrorism Act 2006: Section 1, 2 and 5</li> <li>- Counter-Terrorism Act 2008: section 54</li> </ul>																												
<p>2016 MoJ Criminal Justice Statistics data are used to identify the volumes, disposals and the sentence lengths of individuals proceeded against.</p>	<p>Every effort has been made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by HM Courts and Tribunal Service (HMCTS). As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.</p>																											
<p><b>Proportion of cases tried in a magistrates' court vs. the Crown Court</b></p> <table border="1" data-bbox="137 1048 799 1532"> <thead> <tr> <th>Section</th> <th>Magistrates Court</th> <th>Crown Court</th> </tr> </thead> <tbody> <tr> <td>TACT 2000 S12</td> <td style="text-align: center;">0%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>TACT 2000 S13</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">0%</td> </tr> <tr> <td>TACT 2000 S58</td> <td style="text-align: center;">0%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>TACT 2006 S1</td> <td style="text-align: center;">0%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>TACT 2006 S2</td> <td style="text-align: center;">55%</td> <td style="text-align: center;">45%</td> </tr> <tr> <td>CT Act 2008</td> <td style="text-align: center;">50%</td> <td style="text-align: center;">50%</td> </tr> <tr> <td>SCA 2007 (I)</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">0%</td> </tr> <tr> <td>SCA 2007 (II)</td> <td style="text-align: center;">0%</td> <td style="text-align: center;">100%</td> </tr> </tbody> </table> <p><i>Source: Criminal Justice Statistics, MoJ</i></p>	Section	Magistrates Court	Crown Court	TACT 2000 S12	0%	100%	TACT 2000 S13	100%	0%	TACT 2000 S58	0%	100%	TACT 2006 S1	0%	100%	TACT 2006 S2	55%	45%	CT Act 2008	50%	50%	SCA 2007 (I)	100%	0%	SCA 2007 (II)	0%	100%	<p>More/less defendants could be tried in the Crown Court which could lead to higher/lower costs.</p> <p>Data for the breach of an SCPO is particularly limited given that it is based on an entirely illustrative pair of scenarios.</p>
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SCA 2007 (II)	0%	100%																										

<b>Proportion of defendants found guilty</b>			<p>More/less defendants could be convicted which could lead to higher/lower costs.</p> <p>Data for the breach of an SCPO in particular is inherently limited given that it is based on an entirely illustrative pair of scenarios.</p>
Section	Proportion Found Guilty	Percentage Proceeded against who receive Custodial Sentence	
TACT 2000 S12	100%	100%	
TACT 2000 S13	100%	100%	
TACT 2000 S58	100%	40%	
TACT 2006 S1	100%	100%	
TACT 2006 S2	45%	36%	
CT Act 2008	75%	75%	
SCA 2007	50%	50%	
Source: <i>Criminal Justice Statistics, MoJ</i>			
<p><b>Disposals given:</b></p> <p>The proportion of defendants given each disposal is calculated by taking the number given that disposal as a proportion of defendants proceeded against.</p> <p><b>Average custodial sentence length (ACSL):</b></p> <p>See Table 4. It is assumed that offenders serve half of the sentence in prison and the remainder on licence.</p> <p>Source: <i>Further breakdown of Criminal Justice Statistics, MoJ</i></p>			<p>That the ACSL given is longer / shorter, meaning costs would be higher / lower.</p> <p>Actual costs of post sentence supervision may be lower/higher than estimated.</p>
<b>Cost Assumptions</b>			
<p><b>HMCTS costs (magistrates' court):</b></p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £2,000 per sitting day. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial, staff, estates and other costs coming from the jurisdictional costs model. HMCTS timings data come from the Activity Based Costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process. The costs are in 2016/17 figures.</p>			<p>Timings data for offence categories:</p> <p>The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available for example, when a District Judge (magistrates' court) (DJ(MC)) sits.</p> <p>Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however it has been excluded for simplicity.</p>

	<p>The timings are collection of data from February 2009. Any difference in these timings could influence costings.</p> <p>The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of (closed unexpectedly) ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimated.</p> <p>Guilty plea proportions at the initial hearing from Q3 in 2013 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</p> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p><b>HMCTS costs (Crown Court):</b></p> <p>The Crown Court cost per sitting day is estimated at £2,400. The HMCTS costs are based on average judicial, staff, estates and other costs, coming from the jurisdictional costs model. Timings data comes the Criminal Court Statistics Quarterly publication for January to March 2017.</p> <p><a href="https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2017">https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2017</a></p>	<p>Timings data for types of cases:</p> <p>The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</p> <p>The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</p> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional</p>

	<p>cases in the courts have not been considered; for example juror costs.</p>
<p><b>Legal Aid Costs:</b></p> <p><i>Cases in the magistrates' court</i></p> <p>It is assumed that the eligibility rate in a magistrates' court is approximately 50%. The average cost per case is £500 and assumes that there is one defendant per case. This is based on the legal aid statistics (2016/17), and is calculated by dividing total case value by total case volume.</p> <p>See: <a href="https://www.gov.uk/government/collections/legal-aid-statistics">https://www.gov.uk/government/collections/legal-aid-statistics</a>. Source: <a href="https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2017">https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2017</a></p>	<p><i>Magistrates' court</i></p> <p>Variance in the legal aid eligibility rate assumed for cases in a magistrates' courts would impact the costings.</p> <p>More than one defendant may be prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</p>
<p><b>Legal Aid Costs</b></p> <p><i>Cases in the Crown Court</i></p> <p>It is assumed that the eligibility rate for legal aid in the Crown Court is 100%.</p> <p>One defendant is assumed per case. One defendant instructs one solicitor who submits one bill. As such, the cost per solicitor bill from the 2016/17 data is used as a proxy for the cost per defendant.</p> <p>Source: <a href="https://www.gov.uk/government/statistics/legal-aid-statistics">https://www.gov.uk/government/statistics/legal-aid-statistics</a></p>	<p><i>Crown Court</i></p> <p>Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</p> <p>There may be more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</p>
<p><b>Prison costs:</b></p>	

<p>It is assumed that an offender serves half of their given custodial sentence in prison and the remainder on licence.</p> <p>Based on the distribution of Terrorism Act 2000 (TACT) offenders through the prison estate, and the additional CT specific cost, the average cost per annum is estimated to be £40,000 (to the nearest £10,000).</p> <p>Source: MoJ internal analysis; <a href="#">HMPPS Annual Reports and Accounts 2016-17</a></p>	<p>The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.</p> <p>The distribution of TACT offenders amongst the prison estate is subject to fluctuation and as such the costs must be treated with caution.</p>
<p><b>Probation costs:</b></p> <p>Probation costs are divided into the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs). NPS manage high risk offenders and CRCs are private companies and third sector organisations that manage low and medium risk offenders.</p> <p><b>All offenders convicted of one these offences are assumed to be automatically sifted to the NPS given that they would be considered high risk due to the terrorist element.</b></p>	<p>The distribution between NPS and CRC for a specific offence category may not mirror the average distribution across all categories.</p> <p>The proportions of offenders managed by NPS/CRCs may be different to those assumed and costs could be higher or lower if more offenders are managed by NPS or CRCs, respectively.</p>
<p><b>Probation - NPS costs</b></p> <p><b>Community Order (CO)/Suspended Sentence Order (SSO)sentence costs:</b></p> <ul style="list-style-type: none"> <li>Proportion of offenders assumed to be allocated to NPS is presented above.</li> </ul> <p>Source: MoJ (HMPPS) modelling</p> <p><b>Post release licence costs:</b></p> <p><b>For offenders who spend 12 months or less on licence:</b></p> <ul style="list-style-type: none"> <li>Proportion of offenders assumed to be allocated to NPS is presented above.</li> </ul> <p>Source: MoJ (HMPPS) modelling</p>	<p>Costs reflect delivery of the sentence to high risk offenders by the National Probation Service (NPS)</p> <p>Costs are indicative and reflect modelling of delivery by the NPS, not actual plans or operating models</p> <p>Custodial sentence costs include pre-release work</p> <p>Corporate service costs (e.g. HR, Finance) are not apportioned within unit costs</p> <p>Intervention purchase costs are apportioned in proportion to direct spend by sentence type</p> <p><i>There may also be costs to the NPS for production of pre-sentence reports to court and costs to prison, probation or through contracts such as Electronic Monitoring in relation to breach during the post-sentence supervision/licence period.</i></p>
<p><b>CRC costs – Indicative Unit costs</b></p> <p><b>Community Order (CO)/Suspended Sentence Order (SSO)sentence costs:</b></p>	<p><b>CRC costs – Indicative Unit costs</b></p> <p>The WAV model is a simplified version of the payment mechanism for Community Rehabilitation Companies.</p>

<p>Proportion of offenders assumed to be allocated to CRCs is presented above.  <i>Source: MoJ Modelling</i></p> <p><b>Post release licence costs:</b></p> <p><b>For offenders who spend 12 months or less on licence:</b></p> <p>Proportion of offenders assumed to be allocated to CRCs is presented above.  <i>Source: MoJ Modelling</i></p>	<p>For modelling purposes a 'straight line' function is used. This is indicative and may vary in reality.</p> <p>The actual payment implications for CRCs will also depend on the distribution of impacts across different CRCs and whether the impacts are large enough to trigger a change in payment (as payments are based on a step function). Estimates from the model should therefore be considered indicatively only</p>
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Assumptions for ETJ and EDS/SOPC	Risks/limitations
<p><b>Progression of a case through the CJS (e.g., proportion sentenced to immediate custody):</b>  It is assumed that all cases prosecuted through Extra-Territorial Jurisdiction under ss. 1 and 2 will be tried in the Crown Court (NB, for s.4 this is not an assumption as it is indictable only).</p> <p>It is assumed that all defendants will be found guilty.</p>	<p>As the offences are triable-either-way there is a risk that some defendants may be tried in the magistrates' court, although it is unlikely given the case is being prosecuted under ETJ. There is a chance that some defendants will be acquitted or found innocent in which case the unit costs would be overestimated as they would necessarily not incur any HMPPS costs.</p>
<p><b>HMCTS costs</b>  HMCTS costs are calculated by applying an estimated cost per sitting day in the court to the estimated number of sitting days per trial.</p> <p>It is assumed that all defendants are tried in the Crown (but have one preliminary hearing in the magistrates').</p> <p>It is assumed that there are a range of possible trial lengths.  <b>Ss. 1, 2 TACT 2006, s. 4 Explosive Substances Act 1883</b></p> <p>For the lower cost estimate, it is assumed there is a trial length of 27 sitting days and for the higher a trial length of 52 sitting days.  <b>S. 13:</b> for s. 13 it is assumed there is a trial length of 1.25 sitting days.  <i>Source: MoJ internal estimate</i></p> <p>The estimated costs per sitting day in the magistrates' and Crown Court respectively are approximately £2,100 and £2,400 (to the nearest £100 in 2016/17 prices).  <i>Source: HMCTS jurisdictional cost model</i></p>	<p>Given the complexity of cases prosecuted through extra-territorial jurisdiction, each trial is likely to differ in length. Therefore, there is a risk that the trials for offences under TACT 2000 s. 13, TACT 2006 ss. 1, 2 and Explosive Substances Act 1883 s. 4 take more or less time than assumed for each.</p> <p>Costs may be subject to change if the figures in the HMCTS provisional jurisdictional model are revised.</p>



<p>A sitting day is assumed to be 5 hours. It is assumed that proceedings involving multiple defendants occur concurrently. If proceedings occur separately then it is assumed that the cost per case is the cost per defendant</p>	
<p><b><u>Legal Aid costs</u></b>  <b>Specific to s. 13 of TACT 2000</b>  The eligibility rate in a magistrates' court is assumed to be 50%.  The average cost per case is £500 and assumes that there is one defendant per case. This is based on the legal aid statistics (2016/17), and is calculated by dividing total case value by total case volume.  An eligibility rate of 100% is assumed for cases in the Crown Court.</p> <p><b>ss. 1, 2 and 4</b>  Legal Aid costs are estimated to be £95,000 for ss. 1 and of the TACT 2006 and double that at £190,000 for s. 4 of the Explosive Substances Act 1883</p> <p>This based on a case with one defendant involving allegations of offences committed overseas where the evidence was gathered overseas and the case complexity that this entails. This reflects the complexity of cases owing to the challenged of evidence based overseas and the inherent complexity of terrorism cases in general. It is based on an average case length of approximately 30 days for ss. 1 and 2 and double that for s. 4.</p>	<p>Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.  There is a strong risk that the average cost in the magistrates' court would underestimate the cost for s. 13 given that it is terrorism related.  Assuming 100% eligibility for legal aid in the Crown Court carries several other risks.  Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.  There may be more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.  There is a risk that legal aid costs for specific Extra-Territorial Jurisdiction cases could be higher. This is because the legal aid costs of cases, even within the specific offences category, can vary greatly and are contingent upon unique factors of each case. The actual legal aid costs could exceed £200,000 for, say, a trial which takes longer than 52 days.</p>
<p><b>HM Prison Costs</b></p> <ul style="list-style-type: none"> <li>• It is assumed that each defendant will serve half their custodial sentence in prison and will be released on license for the remainder if sentenced for 2 years or more.</li> <li>• Those sentenced to under 2 years serve half their custodial sentence in prison, half on license and post-sentence supervision so that the supervision period totals 12 months. These</li> </ul>	<p>There is a risk that the ACSLs for all offences will lie outside the bounds these costs are based upon and thus the observed costs may be higher or lower.  The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the</p>

changes were introduced by the Offender Rehabilitation Act 2014.

- It is assumed that those prosecuted under s. 13 will receive an ACSL of 6 months, the statutory maximum.
- It is assumed for ss. 1 and 2 of TACT 2006 that defendants will receive Average Custodial Sentence Lengths between their domestic ACSL and the statutory maximum of 7 years.
- For s. 4 of the Explosive Substances Act the maximum sentence is life imprisonment; a range is taken between its domestic ACSL and the mean amount of time served in prison for mandatory lifers. [Source: Offender Management Statistics Quarterly]
- It is assumed that those found guilty will be sentenced to half the maximum sentence available in the court in which they were tried (i.e. 3 months or 2.5 years)

marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.

The distribution of TACT offenders amongst the estate is subject to fluctuation and as such these costs per annum must be treated with caution.

The cost per year of managing a prisoner is based on the establishment type in which they are housed:

<b>Function</b>	<b>Cost per Prisoner</b>
<b>Male category B Trainer</b>	£26,003
<b>Male category C Trainer</b>	£19,148
<b>Male dispersal</b>	£40,884
<b>Female closed</b>	£28,692
<b>Female local</b>	£34,978
<b>Female open</b>	£33,574
<b>Male closed YOI (ages 18-21)</b>	£31,921
<b>Male YOI young people (ages 15-17)</b>	£63,092
<b>Male local</b>	£22,530
<b>Male open</b>	£17,297

Source: [HMPPS Annual Reports and Accounts 2016-17](#)

Based on the distribution of TACT offenders through the prison estate, and the additional CT specific cost, an average cost per annum of £40,000 is estimated (to the nearest £10,000).

Source: *MoJ internal analysis*

<p><b>HM Probation Service: CRC costs</b></p> <p>Probation costs are divided into the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs). NPS manage high risk offenders and CRCs are private companies and third sector organisations that manage low and medium risk offenders.</p> <p><b>A 100% allocation to the National Probation Service for all defendants convicted of offences in this note is estimated, based on them being automatically considered high risk due to the terrorist element.</b></p> <p><b>NPS costs</b></p> <p><i>Community Order (CO)/Suspended Sentence Order (SSO) sentence costs:</i> Proportion of offenders assumed to be allocated to NPS is presented above. <i>Source: MoJ (HMPPS) modelling</i></p> <p><i>Post release licence costs:</i> For offenders who spend 12 months or less on licence: Proportion of offenders assumed to be allocated to NPS is presented above. <i>Source: MoJ (HMPPS) modelling</i></p>	<p>The distribution between NPS and CRC for a specific offence category may not mirror the average distribution across all categories.</p> <p>The proportions of offenders managed by NPS/CRCs may be different to those assumed and costs could be higher or lower if more offenders are managed by NPS or CRCs, respectively.</p> <p>Costs reflect delivery of the sentence to high-risk offenders by the National Probation Service (NPS)</p> <p>Costs are indicative and reflect modelling of delivery by the NPS, not actual plans or operating models</p> <p>Custodial sentence costs include pre-release work Corporate service costs (e.g. HR, Finance) are not apportioned within unit costs Intervention purchase costs are apportioned in proportion to direct spend by sentence type</p> <p>There may also be costs to the NPS for production of pre-sentence reports to court and costs to prison, probation or through contracts such as Electronic Monitoring in relation to breach during the post-sentence supervision/licence period.</p>
<p><b>Extended Sentencing</b></p>	
<p>Offenders become eligible for a Parole Board review at the mid-point and two thirds point of their sentence when placed on an SOPC or EDS (respectively) and will become eligible for a further review each subsequent year until the end of their sentence.</p> <p>It is assumed that offenders placed on an EDS or SOPC will on average serve 80% of their custodial sentence length and that, for the baseline cost, they would have served 50% of their sentence length.</p>	<p>There is a risk that offenders with a terrorist connection will be less likely to be granted release by the Parole Board and hence spend longer in prison given that the 80% figure is for all EDS sentences.</p> <p>The 80% figure furthermore is a mean amount and as such is liable to being skewed by some</p>

This comes from the Offender Management Statistics Quarterly's Prison releases: 2016 publication that showed an average time in prison at 80% of the custodial sentence length of those people released from EDS sentences in 2016.

outliers, such as people serving 100% of their sentence.

On the other hand, given that prisoners on SOPC are eligible at 50% rather than two thirds there is a significant chance the figure is an overestimate.

In the absence of clear data, it is assumed that these will be cancelled out, although there is a significant risk of that not happening.