

THE COUNTER-TERRORISM AND SENTENCING BILL

CHANGES TO TPIM STANDARD OF PROOF AND TIME LIMIT

Background

1. Terrorism Prevention and Investigation Measures (TPIMs) are an important part of the toolkit available to the Government and operational partners to prevent or restrict an individual's involvement in terrorism-related activity. TPIMs were introduced in 2011, replacing Control Orders. TPIMs are a last resort to protect the public from dangerous individuals whom it is not possible to prosecute or deport, or individuals who remain a real threat after being released from prison. They are used in a very small number of cases (three as of 30 November 2020¹) and it is not expected that this will change significantly as a result of this legislation.

Lowering the Standard of Proof

What are we doing?

2. The Counter-Terrorism and Sentencing Bill will support the use of TPIMs by amending the TPIM Act 2011 and lowering the standard of proof from 'balance of probabilities' to 'reasonable grounds for suspecting'. This is the same as under the Control Order regime in place between 2005 and 2011, whose framework was heavily tested in court and found to be compatible with the European Convention on Human Rights.
3. This change will make only **one** of the **five** conditions that needs to be met in order to impose a TPIM easier to satisfy. The other four conditions – including the Home Secretary reasonably considering that the TPIM and its specified measures are necessary for purposes connected with protecting the public from a risk of terrorism – will remain unchanged with strict conditions around the measures that can be imposed and robust safeguards. The Court will still have to sanction the use of each TPIM in advance and the subject of the TPIM will still have an automatic right to a Court review against the decision to impose a TPIM.
4. Lowering the standard of proof increases the flexibility of TPIMs as a tool for public protection, supporting its use in a wider variety of circumstances by making it more practical for operational partners to satisfy the requirement to demonstrate an individual is, or has been, involved in terrorism-related activity.

Why are we doing it?

5. The terrorism threat has evolved. Much radicalisation is now taking place online, and the operational pace for the Security Service and police is faster than ever seen before. There are several scenarios where the lower

¹ <https://questions-statements.parliament.uk/written-statements/detail/2021-01-12/hcws698>

standard of proof could make a material difference as to whether a TPIM can be considered as an option to manage the risk from someone involved in terrorism-related activity:

- **Scenario one:** significant concern around an individual's behaviour or activities as a radicaliser has led to their arrest. There is however insufficient material to reach the prosecution threshold and the individual is released. The lower burden of proof may have utility in assisting to manage the risk posed by the individual whilst further investigative and risk mitigation measures are pursued.
- **Scenario two:** an individual's risk profile accelerates rapidly in the form of them moving quickly from consuming terrorist content online to presenting a future risk. There will not always be sufficient evidence to prosecute, particularly where an individual does not have a long history of terrorism-related activity. Lowering the standard of proof will help ensure that a TPIM can be used where it is the most appropriate tool for mitigating the risk.
- **Scenario three:** an individual has been to Syria (or similar theatres) to fight for or assist a terrorist organisation, but evidence of their activities there is hard to gather. Should they return, prosecution is the Government's strong preference. However, if there are evidential difficulties and the burden of proof required by a criminal court – beyond reasonable doubt – cannot be satisfied but there is a reasonable suspicion that they have been involved in terrorism-related activity, lowering the standard of proof will ensure that a TPIM can be considered as a risk management tool to protect the public.

Removing the Two-Year Time Limit

What are we doing?

6. The Bill removes the existing two-year limit on the length of time a TPIM can be imposed. This means a TPIM notice will last for one year at a time, but will be capable of repeated renewal, provided the conditions set out in the TPIM Act continue to be met.

Why are we doing it?

7. This change ensures that where subjects do pose an enduring risk, we will be better placed to restrict and prevent their involvement in terrorism-related activity for as long as is necessary for public protection.
8. This change tackles the threat from TPIM subjects "biding time", waiting for the current maximum of two years to expire with no change to their mindset and an unwillingness to engage with rehabilitative measures. This

is an issue that a former Independent Reviewer of Terrorism Legislation has publicly reported on².

9. It also addresses the risk of a “cliff edge” being created by necessarily removing the TPIM after two years when a risk to public safety remains. Experience has shown that there have been occasions when we have had to impose a further TPIM on a subject after they have reached the current two-year limit. This has resulted in gaps of up to 16 months while a new TPIM was prepared and imposed. It is not in the interests of public protection to have such individuals at large within the community without the appropriate risk management tools in place.
10. The test to impose a TPIM must still be met on an ongoing basis. Critically, the subject still has the right of appeal to the Court under section 16 of the TPIM Act 2011 if they feel that the TPIM is not merited each time it is extended.

Quotes

Lord Carlile of Berriew, former Independent Reviewer of Terrorism Legislation – The Times (9 July 2020)

“At present [TPIMs] can be imposed for one year and extended for one more. Under the control orders system, there was no such limit — in one case three individuals were subject to an order for four years, after judicial scrutiny. The bill proposes that TPIMs follow the example of control orders. This is sensible. The focus will shift from arbitrary time limits to necessity.”

ACC Tim Jacques, Deputy Senior National Coordinator for Counter-Terrorism Policing – (July 2020)

“CT Policing are supportive of the proposed changes to the two-year limit on the length of time a TPIM can be in place. The use of a TPIM is a relatively rare occurrence and we do not anticipate this changing with the introduction of this legislation. This change will provide us with the flexibility to maintain a TPIM for as long as it is necessary and proportionate, to mitigate the risk to the public posed by the subject under consideration.”

Q&A

Does the lower standard of proof increase the risk that TPIMs will be imposed on innocent people?

- No. The Security Service will only recommend an individual for a TPIM where the individual poses a threat to national security and where a TPIM is considered to be the most appropriate tool to assist in managing the risk the individual poses. The Home Secretary will consider carefully the intelligence that the Security Services hold on those individuals before making a decision on whether the TPIM is necessary and proportionate.

² The Terrorism Acts in 2017:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747009/The_Terrorism_Acts_in_2017.pdf

- The Court will consider at a permission hearing whether the Home Secretary's decision was 'obviously flawed' and prevent her from imposing a TPIM notice where that is the case.
- Following service of a TPIM notice the individual is entitled to challenge its imposition and will be provided with a gist of the allegations against them.

Will we see an increase in the number of individuals placed on TPIMs after reducing the legal threshold from 'on the balance of probabilities' to 'reasonable grounds for suspecting'?

- While the changes we are making look to support operational partners in the use of TPIMs as a disruptive and risk management tool, we are clear that their use will remain proportionate.
- We are not making amendments to the TPIM Act to increase frequency; we are making them to ensure that we have the flexibility to use TPIMs in cases where we need to for public protection.
- TPIMs will continue to be imposed only in exceptional instances where we cannot prosecute, deport, or otherwise manage an individual of terrorism concern, and where necessary to protect the public from terrorist-related activity.

Will we see individuals on TPIMs forever after the removal of the two-year limit?

- The Government has no desire to keep individuals on a TPIM any longer than is necessary and proportionate to protect the public.
- Experience of the Control Order regime – which allowed for orders to be renewed without placing a limit on the number of renewals allowed – demonstrates these orders did not last indefinitely. Within the lifetime of Control Orders, 30 individuals were subject to an order for up to 2 years, 8 for between 2 and 3 years, 4 individuals for between 3 and 4 years and only 3 for between 4 and 5 years.
- As is current practice, annual reviews carried out in conjunction with operational partners will assess the risk posed by the individual and inform the decision on whether it is necessary and proportionate for the TPIM notice to remain in place for a further year. Where it is no longer necessary and proportionate to keep a TPIM notice imposed, the TPIM will not be renewed.

What safeguards are in place for those subject to TPIM notices?

- There will continue to be robust safeguards for the civil liberties of those subject to the measures, including:
 - When the Home Secretary first seeks to impose a TPIM notice, there will be a continued requirement under section 6 of the TPIM Act 2011 to gain permission from the Court to do so.
 - TPIM subjects will continue to have the right to review the imposition of their TPIM in the courts under section 9 of the TPIM Act 2011.

- Section 11 of the TPIM Act 2011 requires that TPIMs be kept under regular review during the period they are in force, which in practice takes the form of quarterly TPIM Review Groups which are chaired by the Home Office and attended by Security Service and CT Policing representatives. There is also a standing invitation for the Independent Reviewer of Terrorism Legislation.
- In line with current practice, TPIMs will also continue to be reviewed on an annual basis and will be revoked where it is no longer necessary or proportionate to extend them for the purposes of public protection.
- TPIM subjects will continue to have the right to bring an appeal under section 16 of the TPIM Act 2011 to challenge a refusal to vary the TPIM notice or an extension of it.
- All TPIM subjects are also granted an Anonymity Order by the court, which prohibits the publication and broadcast (including on social media) of information that would identify that individual as being on a TPIM.