

The Counter-Terrorism and Sentencing Bill – Strengthening disruption and risk management tools

Fact sheet

What are we going to do?

1. The Bill improves public protection by strengthening the ability of the police and Security Service to disrupt and manage the risk posed by individuals who have been involved in terrorism-related activity (TRA). We are doing this by enhancing various tools at their disposal:
 - strengthening Terrorism Prevention and Investigation Measures (TPIMs);
 - supporting the use of Serious Crime Prevention Orders (SCPOs) in terrorism cases; and
 - adding breaching a TPIM notice and breaching a Temporary Exclusion Order to the list of relevant offences that trigger the Registered Terrorist Offender (RTO) notification requirements.

How are we going to do it?

TPIMs

2. The Bill amends the Terrorism Prevention and Investigation Measures Act 2011 (the TPIM Act) to improve the effectiveness of TPIMs as a risk management tool and support a more efficient operation of the TPIM regime through:
 - **Lowering the standard of proof for imposing a TPIM notice from “balance of probabilities” to “reasonable grounds for suspecting”.** The Home Secretary must therefore have reasonable grounds for suspecting that an individual is, or has been, involved in TRA before imposing a TPIM notice. Much radicalisation is now taking place online, and the operational pace for the Security Service and police is faster than ever seen before. This change will ensure that individuals involved in TRA can be managed more quickly through the imposition of TPIM measures by making it easier for operational partners to satisfy the requirement to demonstrate an individual is, or has been, involved in TRA. For example, this change will assist in the event of serious terrorism-related radicalisation or influencing, which may inspire attacks, but where there is insufficient evidence to prosecute, or in circumstances where 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.
 - **Removing the current two year limit on the length of a TPIM.** While the Government has no desire to keep individuals on a TPIM any longer than is necessary and proportionate to protect the public, this ensures that where individuals subject to a TPIM do pose an enduring risk we will be able to restrict and prevent their involvement in TRA for as long as is necessary. In cases of well-connected extremists who inspire and influence others to commit acts of terror, the TPIM reduces the wider long-term threat from many others who may have been influenced by the subject. For subjects who pose an enduring risk, a longer TPIM can also assist with longer-term risk management with more time to meaningfully pursue de-radicalisation through engagement in rehabilitative programmes like the Desistance and Disengagement Programme, and/or provide time and space for subjects to adopt

different lifestyles and move away from their previous extremist contacts. In line with current practice, TPIMs will continue to last for a year at a time and will be reviewed on a quarterly basis to ensure they remain necessary and proportionate for the purposes of public protection. The Home Secretary will also be required to determine on an annual basis whether or not the TPIM should be renewed for a further year. The Government will revoke a TPIM notice or measure(s), or choose not to renew it, when it is no longer necessary.

- **Introducing new measures that can be imposed on a TPIM subject.** This includes the ability to require the subject to provide clear information about their address (if they have not been relocated), all electronic devices to which they have access, take a mandatory drugs test, and participate in a mandatory polygraph test.
 - **Amending existing measures that can be imposed on a TPIM subject to:**
 - Allow a TPIM subject's relocation measure to be varied to support the efficient and effective use of operational resources in relation to the individual. This means that a TPIM subject who has been relocated from their home address to area X could be further relocated to area Y for operational resource reasons, however, the original national security justification for relocation must remain. An example of the type of situation that might necessitate use of this measure is if a TPIM subject was in Salisbury at the time of the Novichok poisoning and all Counter-Terrorism Policing resources in that area were diverted and would be for a prolonged period of time, it would be necessary to vary the location of the subject to ensure that they are effectively managed, including their risk to the public.
 - Amend the existing overnight residence measure so that a TPIM subject can be required to remain at a specified residence for specified times (not restricted to "overnight"). This will enhance our ability to manage those of terrorism concern.
3. The Government is clear that the use of TPIMs will remain proportionate and is confident that there shall continue to be robust safeguards for the civil liberties of those subject to a TPIM notice. Measures will always be applied on a case by case basis following advice from operational partners and when necessary to do so for purposes connected with preventing or restricting the individual's involvement in TRA.

Serious Crime Prevention Orders

4. The Bill amends the Serious Crime Act 2007 to allow the police to make a direct application to the High Court for a Serious Crime Prevention Order (SCPO) in terrorism-related cases. This will streamline the application process and is intended to support an increased use of SCPOs in such instances. Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, encouraged the greater use of SCPOs in his annual report on the Operation of the Terrorism Acts in 2018.

Registered Terrorist Offender Notification requirements

5. The Bill adds the offences of breaching a TPIM notice and breaching a Temporary Exclusion Order to the list of relevant terrorism offences that trigger the Registered Terrorist Offender (RTO) notification requirements. This will help to close current gaps in our ability to manage terrorist offenders following their release from prison.

6. Adding breach of a TPIM to the list of relevant offences that trigger the notification requirements addresses a recommendation that Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, made in his report on the use of Multi-Agency Public Protection Arrangements to manage terrorist offenders and other offenders who may pose a terrorist risk. He noted that ‘offenders who are subject to these orders and go on to breach them are likely to need greater monitoring when they are released from prison and should therefore be liable to notification requirements’¹.

Background

7. **TPIMs** were introduced in 2011 as a tool to prevent or restrict an individual’s involvement in TRA. They place various restrictions on where individuals can go and what they can do. For example, individuals subject to a TPIM can be required to observe an overnight curfew, to surrender a passport, or to wear an electronic tag. TPIMs can also be used to relocate the subject from geographic areas where their national security threat is most significant.
8. **TPIMs** are often used as a last resort to protect the public from individuals whom it is not possible to prosecute or deport. This can include individuals who have previously been convicted of criminal activity but subsequently released. TPIMs are an executive order imposed by the Home Secretary. There is however robust judicial oversight: High Court permission is needed to impose the measures; the TPIM subject is entitled to a full automatic review of the imposition of the TPIM as well as the measures imposed; and a right of appeal against refusal of a request to revoke or vary the measures or against extension of a TPIM notice.
9. **SCPOs** are used to prevent and disrupt further serious criminal activity, by those who have previously been involved in serious criminal activity, including terrorism. They are not punitive but preventative, and can be applied if there is a real risk that an individual will be involved in further criminal conduct from which the public requires protection. SCPOs may contain such prohibitions, restrictions, or requirements on an individual that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime.
10. **RTO notification** requirements apply automatically to those sentenced to 12 months’ or more imprisonment for a relevant terrorism offence or for an offence with a terrorist connection. When in the community, terrorist offenders must provide the police with certain personal information (including their name, home address(es), date of birth, national insurance number, vehicle details and banking details), notify any changes to this information, confirm its accuracy periodically and notify any foreign travel². This enables the police and other authorities to manage any ongoing risk that the offender poses.

Q&A

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913983/supervision-terrorism-and-terrorism-risk-offenders-review.pdf

² We strengthened the notification requirements through the Counter-Terrorism and Border Security Act 2019, mandating that RTOs provide additional information to enhance risk management.

TPIMs

Why are you lowering the standard of proof for imposing a TPIM?

- This change supports the use of TPIMs as is necessary and proportionate to protect the public from TRA.
- In 2019, Parliament took the step of updating the counter-terrorism legislative framework (through the Counter-Terrorism and Border Security Act) because pathways into terrorism have changed and – in some cases – accelerated, with individuals moving rapidly from consuming radicalising content online to planning lone actor attacks.
- Lowering the standard of proof will ensure that – where necessary and proportionate – and in circumstances where there is insufficient evidence to prosecute or the intelligence case is lighter because someone has not been known to the Security Service for a prolonged period of time, that a TPIM can still be imposed. This might include cases where an individual is suspected of having been abroad to fight for a terrorist organisation but evidence of their activity overseas is difficult to prove, or circumstances where an individual’s risk profile accelerates rapidly.
- We must ensure that the Security Service and Counter-Terrorism Policing can make full use of the tools available to them to manage the risk posed by those involved in terrorism.

Why are you removing the two-year time limit for a TPIM?

- It is for the benefit of public protection that a TPIM lasts for as long as it is necessary rather than face the prospect of a ‘cliff edge’ after the arbitrary deadline of two years expires. Experience has shown that on more than one occasion 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.
- We must also confront the problem of TPIM subjects “riding out” the maximum two years with no change to their extremist mindset and an un-willingness to engage with rehabilitative measures. This is an issue that has been reported on by a former Independent Reviewer of Terrorism Legislation. This change creates a genuine incentive for the subject to demonstrate they have rehabilitated themselves and that extending the TPIM notice is not necessary.
- In cases of well-connected extremists, it will also multiply the benefits of the TPIM by a) reducing that individual’s capability of conducting TRA; b) dismantling their networks so they are ineffective at inspiring and influencing TRA; and c) reducing the wider long-term threat from others who may have been influenced by the subject, were it not for the TPIM measures.
- 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.
- A former Independent Reviewer of Terrorism Legislation has publicly commented that throughout the management of a TPIM subject, careful consideration is given to the proportionality of the measures in place and the ‘exit strategy’. A big focus of the ‘exit strategy’ is providing support to subjects in their efforts to rehabilitate.

Why are you adding polygraph and drug testing to the list of measures that can be imposed on an individual subject to a TPIM?

- These new measures will further support operational partners in their ability to manage the risk posed by TPIM subjects:
 - Polygraph testing will help operational partners assess whether an individual is complying with their measures. The results will only be used, where necessary, to make changes to the individual's suite of measures to prevent or restrict their involvement in TRA. The results will not be used to renew the TPIM for an additional year, or as evidence for any criminal or terrorist offence the subject may admit to during the course of the test.
 - Drug use can exacerbate the risk of a subject engaging in TRA. This measure supports operational partners to mitigate this risk by confirming drug use through a mandatory drug test appointment and, where necessary, mandate attendance at rehabilitation programmes.
- Measures will always be applied on a case by case basis following advice from operational partners and when necessary to do so for purposes connected with preventing or restricting the individual's involvement in TRA.

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.

Are the TPIM changes retrospective?

- The changes to lower the standard of proof and to enable a TPIM to be renewed indefinitely will only be applied to any new TPIMs imposed after the Bill has received Royal Assent.

- The Bill makes changes to the measures that can be imposed on TPIM subjects. Following Royal Assent, it will be possible for these measures to be applied to existing TPIMs.

What is the process for imposing a TPIM?

- The Security Service will put a national security case forward for the Home Secretary to consider whether it is necessary and proportionate to impose a TPIM notice on an individual.
- Home Office officials work with the Security Service and police to make preparations to ensure a TPIM notice is served successfully on an individual, taking into account the personal circumstances of the individual and the risk they pose.
- If the Home Secretary decides to impose a TPIM, the case goes before a judge at a permission hearing; the judge will consider whether, when the Home Secretary made her decision to impose the notice, it was 'obviously flawed'. If it is not, the judge will grant permission for the Home Secretary to sign the TPIM notice and for it to be served on the individual.
- The police serve the TPIM notice on the individual and relocate (if that is required under the TPIM measures) the individual to a Home Office provided residence up to 200 miles away.

What happens if a TPIM subject breaches their measures?

- Breaching any TPIM measure is a criminal offence. Every suspected breach is treated very seriously and investigated robustly by the police. Like any normal criminal offence, the police lead on investigating and evidencing the criminal offence and refer the case to the Crown Prosecution Service.
- The Government will always work with the police and the Crown Prosecution Service to support prosecution.
- Since 2017, nine TPIM subjects have been prosecuted for breaching measures imposed on them; with six pleading guilty and two found guilty by a jury.
- The courts take breaches of a TPIM notice very seriously and sentencing has reflected that – including a three-year custodial sentence being handed down in one case.

SCPOs

In what circumstances would a SCPO be used instead of a TPIM?

- The Government is making changes through the Bill to improve the effectiveness and efficiency of SCPOs and TPIMs as disruptive and risk management tools. It is a matter for operational partners to decide which tools should be applied depending on the specific circumstances in question.

Why are you making this exception for terrorism-related cases only?

- In his report on 'The Terrorism Acts in 2018', Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation noted that SCPOs are a seriously under-used power, particularly in terrorism-related cases. The Bill seeks to address this by streamlining the process for police to make an application for an SCPO in terrorism-related cases, thereby encouraging their use in such instances.

Could enabling the police to apply directly for an SCPO see a shift away from seeking to secure prosecutions in the first instance?

- No, it will remain the case that in the first instance the police will look to charge individuals where there is sufficient evidence to do so.
- The Bill requires the police to consult the relevant prosecuting authority before submitting a SCPO application. It will also remain a decision for the Court on whether to impose an SCPO.

RTO notification requirements

How do the police enforce the RTO notification requirements?

- CT Policing holds a central list of RTOs that is regularly updated to reflect the latest releases from prison.
- Regional and local police forces are primarily responsible for monitoring Part 4 requirements for RTOs within their jurisdiction. Following identification of a breach, it is investigated and comprehensive action taken. For example, in October 2019 an individual was jailed for three years for breaching seven notification requirements (including phone, email, financial and vehicle).

Key facts and figures

- The number of people on a TPIM is published quarterly by the Home Secretary. As of 30 November 2020, there were three individuals on a TPIM³.
- As of 1 May 2020, there were 224 individuals in the UK subject to notification requirements following conviction for a terrorism offence⁴. The notification requirements remain in place for a minimum of 10 years and for up to 30 years depending on the length of sentence imposed by the courts.

³ <https://questions-statements.parliament.uk/written-statements/detail/2021-01-12/hcws698>

⁴ Based on data held by Counter Terrorism Policing Headquarters