



HM Government

The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2021 by the Independent Reviewer of Terrorism Legislation

February 2024



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of His Majesty

February 2024



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Home Secretary

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Mr Jonathan Hall KC
6KBW College Hill
21 College Hill
London
EC4R 2RP

27 February 2024

Dear Mr Hall KC

Review of the Operation of the Terrorism Acts in 2021

Thank you for your fourth annual report as the Independent Reviewer of Terrorism Legislation (IRTL). As in previous years, your review of our counter-terrorism legislative framework has been conducted in considerable depth and detail. I am grateful for the high-quality analysis that you continue to bring to this important role.

In 2023, the National Security Act received Royal Assent. The National Security Act is a game-changing update to our powers. We now have a modern set of laws to tackle today's threats, making the UK an even harder target for those states who seek to conduct hostile acts. This Act brings together vital new measures to protect the British public, modernise counter espionage laws and address the evolving threat to our national security. It will provide our world class law enforcement and intelligence agencies with new and updated tools to tackle modern threats.

On 15 September 2023, the UK Government proscribed Wagner Group as a terrorist organisation. Wagner has operated in the pursuit of Russia's foreign policy objectives and the objectives of host governments who have contracted Wagner's services. Proscription builds on existing sanctions and sends a clear message that the UK will continue to maintain its unwavering support for Ukraine against Russia's aggression.

Also, in October 2023, the Online Safety Act received Royal Assent. This landmark piece of legislation will make the UK the safest place in the world to be online and will make technology companies accountable for keeping their users safe. My Department's focus will now shift to the implementation of this legislation. I would like to thank you for the constructive analysis that you provided during the passage of the Act, particularly when looking at how companies recognise terrorist content on their platforms.

Your report on the operation of the Terrorism Acts in 2021 makes eight recommendations. I have considered all of these at length, and they have been discussed with operational partners and other Government departments where appropriate. Six of those recommendations have been accepted, one has been partially accepted, and one has been rejected.

2021 Threat picture

On 4 February 2021, the independent Joint Terrorism Analysis Centre (JTAC) lowered the UK National Threat Level to SUBSTANTIAL, meaning an attack in the UK is likely. The UK National Threat Level was later raised to SEVERE: an attack is highly likely, on 15 November 2021 following the detonation of an improvised explosive device at Liverpool Women's Hospital the previous day. The threat level to Northern Ireland from Northern Ireland-related terrorism remained at SEVERE, an attack is highly likely, throughout 2021.

In 2021, the terrorist threat to the UK was diverse, complex, volatile and driven by a range of factors which influenced terrorist methodology and capability.

Islamist terrorism remained the main threat to the UK in 2021, with the abhorrent murder of Sir David Amess MP in October at his constituency surgery in Leigh-on-Sea providing a tragic reminder of the enduring threat Islamist terrorism poses to the UK. There was an ongoing threat from Extreme Right-Wing Terrorism and to a lesser extent from Left-Wing Anarchist and Single-Issue Terrorism.

These attacks are a stark reminder of the chronic nature of the terrorist threat in the UK.

Our operational partners work tirelessly to keep the public safe from terrorism, and it is essential that our counter-terrorism legislative framework that underpins their efforts is robust, effective, and up to date.

Statistics on terrorism powers

Thank you for your informative analysis of terrorism statistics. I welcome the detailed oversight you continue to provide to help ensure that my Department's published statistics on the use of terrorism powers remains fit for purpose, and the numerous helpful recommendations you have made in this regard in each of your annual reports.

I accept your recommendation that all police forces should collect data on their use of the stop and search power in section 43 of the Terrorism Act (TACT) 2000. I agree with you that it matters not to the public whether section 43 is deployed by an officer in the Metropolitan Police Service (MPS), or a regional force. The purpose of statistics is to enable scrutiny of the power and, therefore, all forces' use of stop and search under section 43 of TACT 2000 should be published in the Home Office's quarterly TACT stats release. In addition to the data already published on a quarterly basis on the MPS's use of section 43, my Department will now take steps to publish data on the use of section 43 by all police forces across England and Wales within the quarterly TACT stats publication.

You made a separate recommendation in your report on the Terrorism Acts in 2020 that the Home Office and CT Policing give consideration as to how to ensure that statistics on the use of terrorism powers can continue to capture useful information about ethnicity. I set out in the Government response to that report that my officials were considering this further. I am pleased to confirm that my Department is taking steps to collect from all police forces both officer observed and self-defined ethnicity data for section 43 stops and searches. This data will also be published in the quarterly TACT stats publication. This will allow greater transparency and scrutiny of all police forces' use of stop and search under section 43 and consequently provide for stronger analysis of trends, including any racial disparities, in the use of this important power. My officials are continuing to consider the collection of both officer observed and self-defined ethnicity for examinations under Schedule 7 of TACT 2000.

Investigating Terrorism

I am grateful for your thorough analysis of the important powers permitted to CT Policing in legislation to investigate and disrupt the threat of terrorism. I appreciated your detailed consideration of access, encryption and retention in relation to remotely stored electronic data, your discussion of material subject to Legal Professional Privilege (LPP) and your helpful analysis of policing's use of various powers, including stop and search, cordons, premises searches, biometrics and financial investigations.

CT Policing accept your recommendation that their established practice should provide for an effective process to deal with unexpected material that is subject to Legal Professional Privilege (LPP), consistent with the Attorney General's Guidelines on Disclosure, that does not involve the locking down of the entire device. I recognise your concern that delays resulting from locking down an entire device while LPP material is sought and removed could significantly delay investigations with potential detrimental implications on public safety. My officials have worked with CT Policing and I can confirm that there now exists a recently developed application which, with appropriate authorisation by the Senior Investigating Officer (usually at least the rank of Detective Inspector), allows for either the manual unlocking of a device or the

removal and securing of an individual file believed to contain LPP material, whilst allowing the remaining data to be examined appropriately. CT Policing have also confirmed that these procedures were created in compliance with the Attorney General's Guidelines on Disclosure.

I appreciate your analysis on the complexity of policing's response to members of the public who are acting as 'auditors' of policing or otherwise sensitive locations. I am keen to ensure that there is effective guidance in place for the police to tackle any suspicious activity being carried out by 'auditors' in an appropriate and proportionate manner, including where the use of stop and search under section 43 of the Terrorism Act 2000 may or may not be appropriate. The National Police Chiefs Council (NPCC), who own the guidance, has considered and accepts your recommendation that improved guidance should be issued to police forces in England and Wales on how to most appropriately respond to 'auditors'. The NPCC will pursue a full review of the guidance in 2024. The updated guidance will specifically provide information on where stop and search under section 43 in relation to auditors is appropriate and proportionate. The NPCC has also noted that it plans to provide information in the updated guidance on wider nascent and evolving mechanisms which auditors are using to record activity around sensitive locations, which will ensure that the guidance continues to provide for an effective law enforcement response, where appropriate, to auditors' activities.

Following careful consideration of the issue, I have decided against your recommendation that the Code of Practice governing the exercise by police of statutory powers of entry, search and seizure, including the use of powers contained in Schedule 5 to TACT 2000, should be amended to specify that journalistic material should not be seized or viewed. As you will be aware, the Government made several amendments to TACT 2000 through the National Security Act 2023, one of which amended the urgent cases premises search power in Schedule 5 to TACT to add an ex-post factum judicial authorisation safeguard. I am clear that in the interests of national security, it is proportionate that there should be a legally robust process under which confidential journalistic material should be available for the police to view. Policing has a responsibility to pursue all legitimate lines of inquiry, regardless of where they may lead. It is therefore right that confidential material should be accessible in cases where the police can show that the action is necessary, proportionate and satisfies the legal tests in these provisions, while pursuing a terrorist investigation. I also recognise that press freedoms are important. Where such material is seized during a search that has been authorised under this urgent procedure, it is right that a warrant must be sought from a judge for its continued retention, and that an application for retention can – in urgent cases – be made after the search itself has taken place. The amendments to Schedule 5 TACT 2000 ensure consistency between the terrorism power and new equivalent power for use in state threat-related cases also provided for by the National Security Act 2023. My

Department will in due course be updating Police and Criminal Evidence Act Code of Practice B to ensure it reflects the creation of this new safeguard governing the retention of confidential journalistic material.

I accept your recommendation that steps should be taken to exempt INTERPOL biometric holdings from the National Security Determination (NSD) regime under Part 1 of the Counter-Terrorism Act (CTA) 2008. As you are aware, CT Policing is currently required to handle these biometrics in line with the relevant retention rules contained within the CTA 2008. I recognise the significant concerns that CT Policing have raised, including the misalignment of the statutory three-year retention period for biometrics established by the CTA 2008 with the duration of INTERPOL Notices. I also share your assessment that “biometrics can play an important and sometimes central role in terrorist investigations” and as such I have decided that our CT legislative framework should be amended to support the police in retaining biometrics disseminated by INTERPOL in national security related cases for as long as the relevant INTERPOL dissemination remains in force. As you will be aware, an amendment was made to the Data Protection and Digital Information Bill in November 2023 which will provide for this change, supporting effective use of biometrics in terrorist investigations.

Stopping the travelling public

I appreciate your investigation of the use of Schedule 7 powers against Ernest Moret at St Pancras International in April of this year. I agree with you that Schedule 7 should be used solely for establishing an individual’s involvement in the commission, preparation or instigation of acts of terrorism as it was intended, and that it should not be used for the purposes of public order policing.

As such, I accept your recommendation. My Department will amend the relevant Code of Practice through secondary legislation at the next available opportunity to reflect this important distinction.

Terrorism trials and sentencing

In respect to your commentary on child diversion, I agree that a custodial sentence may not always be the most appropriate outcome for minors in respect of terrorism offending, and that the implications for minors being labelled as “terrorists for life” should be thoroughly considered. I therefore accept your recommendation to consider whether a new diversionary tool is needed. Operational partners should have access to a range of diversionary tools to support effective risk management of minors in circumstances where a custodial sentence is determined not to be the right outcome. These tools need to strike a balance between accounting for minors’ specific vulnerabilities in their design and use, while also allowing operational partners to present a robust and effective response where minors are presenting terrorism risk. I have instructed my officials to work with operational partners and the Ministry of Justice (MoJ) to assess the scope and versatility of

existing diversionary options and whether reform of these tools might achieve the policy objective, alongside consideration of whether a new diversionary tool is required and what it should look like.

I would like to thank you for your detailed analysis of the impact of the section 45 defence within the Modern Slavery Act (MSA) 2015 and the National Referral Mechanism on terrorism prosecutions. My officials, CT Policing and the Crown Prosecution Service have considered your recommendation and agree that there would be several benefits to be realised from adding all terrorism offences to Schedule 4, removing terrorism offences from the ambit of the section 45 defence. This will ensure that all terrorism casework is considered under the same process, rather than the current practice of applying different tests with respect to different types of terrorism offending where matters of modern slavery arise. The CPS considers that the existing prosecutorial public interest test provides a much more appropriate basis to consider modern slavery concerns, with its expert CT prosecutors best placed to make consistent and informed decisions in these cases. As such, I am confident that this change will not remove protections for genuine victims of modern slavery. I also agree with your analysis that all terrorism offences are sufficiently serious to warrant inclusion in Schedule 4, with operational partners echoing this view. I therefore accept in full your recommendation that all terrorism offences should be added to Schedule 4 to the MSA. This change will be made at the next practicable opportunity.

Online radicalisation

It is critical that technology companies are able to take informed decisions on content moderation, particularly where content that exists on their platforms may breach terrorism legislation. In this context, I partially accept your recommendation to develop a list of content that has breached section 2 of TACT 2006 (dissemination of terrorist publications) and section 58 of TACT 2000 (collection of information for terrorist purposes). My officials have engaged CT Policing and the CPS in considering this recommendation, and the CPS have agreed to contribute to setting up a new list by reviewing legacy case material. Overall, maintenance and monitoring of the list will fall to CT Policing, specifically the National Digital Exploitation Service (NDES), who will formally own the list. I am aware that in your recommendation you suggested that the list should be made publicly available. Having taken advice from officials, informed by the views of CT Policing and the CPS, I am concerned about the potential risks of making the list publicly available. Including that the list may inadvertently become a 'go-to' list for would-be terrorists, and that having a publicly available list could also support and inform any efforts to conceal criminal activities. I am particularly concerned about this in relation to instructional material. For this reason, I am partially accepting this recommendation at this time. I recognise that it may be beneficial in future to share the list with research institutions or specific civil society organisations, potentially on a privileged basis, and therefore will review this once a list has been shared with technology companies.

Recommendations from previous reports

In your report on the Terrorism Acts in 2019 you recommended that Home Office officials and National Crime Agency officers should meet with aid agencies within the Tri Sector Working Group with a view to formulating guidance on the use of section 21ZA in connection with humanitarian assistance. Following engagement, I am pleased to update you that the National Crime Agency published in March the “*Requesting a defence from the NCA under POCA and TACT*” guidance on their website which can be found at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/43-requesting-a-defence-under-poca-tact/file>.¹

I would like to take this opportunity to update you on progress concerning a recommendation from your 2019 Report in relation to publishing all first instance judgments on applications for journalistic material under Schedule 5 to TACT 2000; and, where publication has to be delayed on the grounds of prejudicing a forthcoming trial, to ensure that judgments are available for use in other cases.

My Department’s response to your 2019 report confirmed that the MoJ was in the process of implementing long-term changes to the publication and preservation of judgments using the new UK Government portal “Find Case Law” (FCL). Although the long-term goal of this project is offering the public a complete online record of court judgments and tribunal decisions, this is in the process of being implemented and the MoJ is working with the Judiciary to determine whether judgments under Schedule 5 to TACT 2000 should be published using the FCL route, or whether alternative arrangements may be required in the short-term. While the decision to publish these judgements will be for the judiciary, my officials will continue to engage with the MoJ and the Judicial Office to explain the case for publishing these judgements, particularly in relation to transparency, ahead of any publication decision.

I would like to reiterate my thanks again to you for your 2021 Report and the comprehensive analysis it contains. I look forward to receiving your forthcoming annual report and continuing to work alongside you in your role as the Independent Reviewer of Terrorism Legislation.

¹ <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports>

A handwritten signature in black ink, appearing to read 'J Cleverly', positioned above the printed name.

Rt Hon. James Cleverly MP
Home Secretary

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