The Terrorism Acts in 2022

REPORT OF THE INDEPENDENT REVIEWER OF TERRORISM LEGISLATION ON THE OPERATION OF THE TERRORISM ACTS 2000 AND 2006, AND THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

By JONATHAN HALL K.C.

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EXECUTIVE SUMMARY

- Terrorism legislation still does not adequately deal with individuals who travel abroad to align with terrorist organisations like Islamic State/Da'esh.

- A new terrorist travel offence is needed, and extra-territorial jurisdiction should be applied to child mistreatment cases, where parents take their children with them.

- The law on questioning extradited terror suspects, like Hashem Abedi (Manchester Arena attack) should be clarified.

- Urgent changes are needed to deal with the possession of knives by TPIM subjects. The law is currently misunderstood.

- A better power is needed, most relevant to Northern Ireland, to take down flags of proscribed organisations being flown in public.

- The never-used and impracticable power to examine individuals at the land border between Northern Ireland and the Republic should be abolished.

- I consider the examination of small boats arrivals in Kent, the position of children arrested under terrorism legislation (again), and the contrasting positions under terrorism legislation of the IRGC (Iran's Islamic Revolutionary Guard Corps) and the Wagner Group.

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1. INTRODUCTION

1.1. This is my fifth annual independent report on the operation of terrorism legislation in the UK as Independent Reviewer of Terrorism Legislation. I was reappointed in May 2022. The Independent Reviewer's statutory duty is to review the operation of the provisions of the Terrorism Act 2000 and other pieces of terrorism legislation[1]. The key word is "operation", importing examination of concrete decisions made, and impacts felt, in the real world.

1.2. The reason for these annual reports to Parliament is to ensure public understanding of laws that sometimes trespass outside the limits of ordinary criminal liability and common investigative powers, which are exercised by a specialist group of officers and officials either in strict secrecy or under a veil of deliberate obscurity, and in circumstances of stress and fear where ethical principles and the rule of law could be most vulnerable to circumvention[2].

1.3. Once enacted, terrorism laws are hard to reverse but an independent watchdog can raise a flag if things are going wrong or left unaddressed or if there are new and unforeseen trends and can invite Parliament to consider new safeguards or even innovations. Greater transparency about how terrorism laws are used in practice can empower the media, Non-Government Organisations, lawyers, and interested members of the public to ask searching questions, and flush out bad practice. Public consent for strong terrorism laws can move from 'in principle' to 'informed'.

1.4. When it works, oversight and challenge can also foster improved decision-making. It is of course impossible for any reviewer imbued with the right quality of scepticism to answer the question, "How do you know that police and officials are being completely open with you at all times?", with full-throated certainty. But I suggest the more that police and officials feel the benefit of review, the more likely they are to be transparent with the reviewer. My own experience is that Counter-Terrorism Police and officials are sold on the benefits of review, which is a credit to them and a tribute to my predecessors who breathed life into this role.

[1] Under section 36 Terrorism Act 2006.

[2] For a terrifying overview of counter-terrorism powers exercised by the Taliban in Afghanistan, see Giustozzi, A., 'An Unfamiliar Challenge: How the Taliban are Meeting the Islamic State Threat on Afghanistan's University Campuses' at page 11.

1.5. Terrorism has a mobile ranking in terms of prominence. The UK has been accustomed to terrorist attacks and terrorist arrests. Some years stand out – 2001 (9/11), 2005 (7/7), 2017 (multiple attacks including Manchester Arena) – but in some years there are no or very few terrorist attacks within the United Kingdom. At the time of writing, the last fatal domestic terrorist attack was the murder of Sir David Amess MP in October 2021. The threat to the UK from overseas terrorist groups remains and is evolving, but more highly ranked these days is the threat from individuals or small groups who may sometimes be inspired or encouraged by organised terrorist groups, but act without their direction or material support. Alongside all this, and commanding ever greater official attention and resource, is the very real rise of hostile state threats[3].

1.6. In contrast to Northern Ireland, where police officers and other government servants are still targeted by those who still aim at influencing governance within Northern Ireland through violence, terrorism's latest iteration in Great Britain is a more muted phenomenon judged by standards of *national* security. Self-initiated loners are unlikely to alter government policy or bring about widespread change of public sentiment whatever the grandiosity of their plans. Their impact, if they manage to go through with an attack, will often be akin to the impact of other terrible but non-terrorist crimes. For example, it is unlikely that Danyal Hussein, who murdered two sisters in a London park in 2020 as a form of satanic sacrifice[4], would have had any greater or lesser impact on the nation's security if he had killed to advance his neo-Nazi beliefs.

1.7. It is difficult to fix a boundary between hate-based or personally motivated attacks and terrorism which satisfies the statutory definition, especially when considering the acts of lone attackers. Samiualahq Akbari was sentenced in 2019 to 21 years imprisonment for going on a knife rampage after saying he wanted to kill English people, but that was not prosecuted as terrorism[5].

1.8. Emad Al Swealmeen blew himself up when targeting Liverpool Women's Hospital in 2021: an exhaustive investigation concluded that he had a personal grievance but not a political, religious, racial or ideological cause as required by the Terrorism Act 2000[6]. Jake Davison murdered 5 people with a shotgun in Plymouth in 2021 – he was a

[3] A frontline explanation of the risks created by hostile state activity is found in Australian Security Intelligence Organisation, Director-General's Annual Threat Assessment (21.2.23). Note that in the US Intelligence Community's latest annual threat assessment (6.2.23), terrorism only warranted 5 references.
[4] 'Wembley park killings: Danyal Hussein jailed for life for murdering sister' (BBC News, 28.10.21).
[5] Central Criminal Court (15.8.19).
[6] Counter Terrorism Policing North West, report, 'Operation Itonia' (October 2021).

misogynist but not a terrorist. By contrast, Andrew Leak's firebomb attack on Western Jet Foil in Dover was considered to be motivated by a racial or political ideology[7].

1.9. All these men acted alone, so could not be judged by the company they kept or the values of any organisation to which they belonged. "Mindset material" in the form of electronic evidence on phones and other devices often provides a clue that a lone attacker is pursuing a wider agenda (as in Andrew Leak's case), but is sometimes encrypted, absent, or points to multiple overlapping or even contradictory causes, leaving deductions to be made from the manner of the attack (for example adopting the attack methodology of a particular terrorist group) or words spoken at the scene.

1.10. Al Swealmeen managed to kill no one but himself. Had he caused mass casualties, and survived, it is likely that he would have been tried as a terrorist, and determining whether he was advancing a wider cause or not would have been left to the jury or judge[8]. His methodology (improvised explosive devices, a flat rented to make bombs, evidence of operational security) was redolent of previous terrorist attacks; and his choice of target – Liverpool Women's Hospital, appearing to stand as an emanation of the British state he blamed for rejecting his asylum claim – could have suggested that his violence was intended to have some wider societal effect. But the defence would have pointed to the absence of any evidential corroboration from the exhaustive police enquiry.

1.11. The same applies to Jake Davison. Additionally, if his had been the third or fourth attack by a "black-pilled" (incel-inspired) individual, this might put a different perspective on his motivation[9]. Once a worldview, however obscure or unusual, starts to inspire repeated attacks on targets chosen because of their symbolic value, the existence of a "cause" may become clearer.

1.12. In practice it is not unusual for the police to come under pressure to "declare" whether an incident was terrorist or not. Public desire for categorisation of attacks, to allay or confirm fears, and not to be kept in the dark by the authorities, is natural and

[7] 'Dover migrant centre attack: Firebomber died of asphyxiation, inquest told' (BBC News, 8.11.22).
[8] If a defendant is not tried with a terrorism offence, and is convicted, or pleads guilty, it will be for the sentencing judge to determine whether there was a terrorism connection: section 69 Sentencing Code.
[9] A 17-year-old incel-inspired boy was convicted of terrorism in Canada after committing murder and attempted murder at a massage parlour with an engraved sword: R v OS, 2023 ONSC 4142 (12.7.23), although Canada's terrorism definition (for an ideological purpose, objective or cause) is potentially wider than the UK's.

understandable. “Declaring” a terrorist incident has no legal effect or utility[10], and risks pulling the police into areas of public debate.

1.13. For example, some commentators argued that the failure to label Jake Davison’s attack as terrorism proved that extreme misogyny was being overlooked by the authorities[11]. These are difficult judgement calls, depending on what evidence is available, what inferences can be drawn and potentially on whether the attack forms part of a wider pattern.

Travel to Terror Zones

1.14. The theme of this year’s annual report is Travel to Terror Zones. Writing in 2015, Professor Clive Walker KC called for a sustained and rational strategy to deal with Foreign Terrorist Fighters and reviewed domestic initiatives that had already been generated in response to Islamic State in Syria and Iraq[12]. Alongside consideration of the Terrorism Acts generally, this report seeks to update that earlier review by considering how terrorism legislation is used, and might even be developed, in response to the phenomenon.

1.15. The tide of terrorist violence within the UK has risen and fallen under the influence of foreign zones of instability or conflict. These zones are usually a product of states too weak to fight terrorism or govern effectively[13]. Violent conflict remains the primary driver of terrorism within countries[14].

1.16. Terrorism legislation reaches into overseas conduct, partly for reasons of international solidarity, partly because of the distribution of British interests around the world, but often for fear of blow-back in the form of UK attacks by returning terrorist travellers.

[10] There is a set of discrete powers, such as cordons, that are available in the case of a “terrorist investigation”: section 32 and Part IV Terrorism Act 2000.
[11] ‘If extreme misogyny is an ideology, doesn’t that make Plymouth killer a terrorist?’, Observer (15.8.21).
[12] Anderson, D., Terrorism Acts in 2015, Annex 2 (Guest chapter), ‘Foreign Fighters and UK Counter Terrorism Laws’, at para 7(d).
[13] Byman, D., ‘Understanding, and Misunderstanding, State Sponsorship of Terrorism’, Studies in Conflict & Terrorism, 45:12 (2022).
[14] Institute of Economics and Peace, ‘Global Terrorism Index report on 2022’ (March 2023). According to this report, the 10 countries most affected by terrorism were involved in an armed conflict.

1.17. As has been said before, Foreign Terrorist Fighters are not a new phenomenon[15]. At least 90 conflicts since the 1814 Congress of Vienna involved European foreign fighters, from the American Revolution and Greek War of Independence, through to the Spanish Civil war[16].

1.18. In the 1990s, jihadis travelled from the UK to, and returned from, Pakistan (especially Kashmir, North-West Frontier Province, the Federally Administered Tribal Areas, and Waziristan), Afghanistan, Bosnia, and Chechnya, where senior terrorists from groups such as Al Qaida, the Taleban and Laskhar-e-Taiba fought, trained and plotted[17].

1.19. A 2011 study estimated that one in five individuals convicted or killed in connection with serious terrorism attacks in the UK before that date had attended foreign terrorist training camps and/or participated in combat abroad prior to their offence. All of the 8 major identified UK bomb plots had involved at least one cell member with such experience[18]. Europeans were a small minority of the low tens of thousands estimated to have attended Al Qaeda training camps prior to 9/11[19].

1.20. Major attacks or attack plans in the 2000s by UK residents who had fought or received training in the valleys of Pakistan or Afghanistan include the 'shoe bomb' plot (Richard Reid), the fertiliser bomb plot (Operation Crevice), the ricin plot (Kamel Bourgass), the 'dirty bomb' plot (Dhiren Barot), the 7/7 suicide attacks, the failed suicide attacks of 21/7, and the transatlantic airline plot (Operation Overt).

1.21. The first European attack by a Syria returner was Mehdi Nemmouche's 2014 attack on the Jewish Museum in Brussels, followed by the coordinated attacks in Paris in 2015 and Brussels (again) in 2016.

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[15] Pisoiu, D., and Renard, T., 'Responses to returning foreign terrorist fighters and their families', RAN (2nd Edition, 2022).

[16] Renard, T., Coolsaet, R., (eds) 'Returnees: Who Are They, Why Are They (Not) Coming Back And How Should We Deal With Them?', Egmont (February 2018).

[17] For example: Kashmir (Dhiren Barot, Usman Khan); Bosnia (Andrew Rowe); Afghanistan/Pakistan border areas (Mohammed Sadiq Khan).

[18] Simcox, R. et al., 'Islamist Terrorism: The British Connections' (2011), The Henry Jackson Society. However in 2008 the influential terrorism scholar Mark Sageman cautioned against assuming that attendance at AQ training camps meant AQ command and control of plots: he referred to post 9/11 Pakistan training camps as finishing schools which transformed "wannabes" into dangerous terrorists: Testimony to the Senate Foreign Relations Committee, 'Confronting al-Qaeda: Understanding the Threat in Afghanistan and Beyond' (7.10.09).

[19] United State National Commission on Terrorist Attacks, 'The 9/11 Commission Report'.

1.22. In East Africa, Somalia and the terrorist group Al Shabaab were a main draw for foreign fighters[20], many of whom ended up on Control Orders or Terrorism Prevention and Investigation Measures on return to the UK[21]. Then the fluctuating territories of Islamic State in Syria and Iraq attracted thousands of travellers, some coming as combatants[22], others (often women) in supportive mode, a pattern of terrorist travel that has ended (for now). An estimated 5,000 came from Europe[23], including 900 UK-linked individuals of national security concern of whom about 25% were killed and half have returned[24].

1.23. Emerging destinations include the Sahel in Africa (especially Mali[25]), whilst post-US withdrawal Afghanistan has resurrected fears about terrorist safe havens[26]. During 2022 two brothers from Birmingham plotted to travel there to join a branch of Islamic State[27]. The possibility of terrorist travel to the Ukrainian battlefields has been voiced[28], if not yet realised to any significant degree[29]. The war in Ukraine does not provide a simple rallying point: in theory both sides in the war could entice Extreme Right-Wing Terrorists – to join fighters such as the Azov Battalion who in the past have despised Slav ethnicity, or align with Russia and its anti-liberal agenda. A related point (discussed in Chapter 3) is how the UK's terrorism framework might apply to Ukraine combatants such as the Wagner Group.

1.24. To date, the overwhelming motive for travel to terror zones is Islamist terrorism. There is no significant incidence of terror travel being used by Extreme Right-Wing Terrorists as a way of securing training or operational experience although, given the

[20] Renard, T., Coolsaet, R., supra.
[21] Secretary of State for the Home Department v AP [2008] EWHC 2001; CE [2011] EWHC 3159; XX [2012] EWCA Civ 742; Mohamed and another [2014] EWCA Civ 559; DD [2015] EWHC 1681.
[22] I considered the unsuccessful prosecutions of individuals who went out to fight with Kurdish groups against Islamic State in Terrorism Acts in 2019 at 727 et seq.
[23] Pisoiu, D., and Renard, T., 'Responses to returning foreign terrorist fighters and their families', RAN (2nd Edition, 2022). Van Dongen, T., Wentworth, M., Arkhis, H., 'Terrorist Threat Assessment 2019-2021', ICCT (Feb 2022) give a figure of 6,000.
[24] C3 & another v Secretary of State for Foreign, Commonwealth and Development Affairs [2022] EWHC 2772 (Admin), at para 14.
[25] Counter Extremism Project, 'Mali: Extremism and Terrorism' (2023).
[26] European Parliament Briefing, 'Security situation in Afghanistan: Implications for Europe' (2021); Jones, S., 'Countering a Resurgent Terrorist Threat in Afghanistan', Council on Foreign Relations (2022).
[27] 'Birmingham brothers admit planning to join Islamic State' (BBC News, 11.7.23).
[28] Kaunert, C., MacKenzie, A., Léonard, S., 'Far-right foreign fighters and Ukraine: A blind spot for the European Union?', New Journal of European Criminal Law (2023); Intelligence and Security Committee, 'Extreme Right-Wing Terrorism', HC 459 (2022).
[29] Lobel, D., 'The Far-Right Foreign Fighter Threat That Wasn't', European Eye on Radicalization 14 June 2022; Rekawek, C., 'A Trickle, Not a Flood: The Limited 2022 Far-Right Foreign Fighter Mobilization to Ukraine' (2022) 15.6 CTC Sentinel 6.

UK's restrictions on firearms ownership, it is possible to conceive of travel to more gun-permissive countries[30].

1.25. It has been said that contemporary conflicts are becoming increasingly transnational in nature[31], and the importance of travel for terrorism has given rise to an additional source of local risk arising from the failed or "frustrated traveller"[32], and the possibility that veterans of past travel can seed future travel[33].

The Response

UK Terrorism Legislation

1.26. The full remit of terrorist legislation is available for use against terrorist travellers. For example, Schedule 7 of the Terrorism Act 2000 (ports examination), first created to deal with Northern Ireland-related terrorists, was effectively pressed into service to identify and deter travellers to Afghanistan, Syria and Iraq.

1.27. However, some additions and amendments were made with the terrorist traveller phenomenon in mind. In 2006 it became an offence to attend a foreign training camp[34]. In 2015, special measures were created to seize passports from would-be jihadis, and, if they managed to travel out, to manage their risk on return through Temporary Exclusion Orders[35].

1.28. In 2015, and again in 2019, the power to prosecute existing terrorism offences (known as extra-territorial jurisdiction) was extended to overseas conduct[36]. In 2019 the Secretary of State was given the power to designate an area as a prohibited travel

[30] Overseas travel to Blood and Honour neo-Nazi type events is more common. In 2021 the Home Secretary deprived an Islamist terrorist of citizenship after he attended an active shooter course in Poland: E5 v SSHD SC/184/2021 (3.3.23).
[31] Morris, A., 'Who Becomes a Foreign Fighter? Characteristics of the Islamic State's Soldiers', Terrorism and Political Violence (2023).
[32] Simcox, R., 'When Terrorists Stay Home: The Evolving Threat to Europe from Frustrated Travelers', CTC Sentinel Vol 12 Issue 6 (2019).
[33] It is argued that the presence of veterans of Afghanistan, Algeria, Bosnia and Iraq in particular parts of Europe can be linked to clusters of subsequent terrorist travel: Duffy, L., 'Is There A Way To Resolve Europe's Problem in Repatriating Jihadist Fighters and Their Families?', European Eye on Radicalisation (Webinar, 2022).
[34] Section 8 taken together with section 17 Terrorism Act 2006.
[35] Counter-Terrorism and Security Act 2015.
[36] Under the Serious Crime Act 2015, and the Counter-Terrorism and Border Security Act 2019.

zone[37]. In fact, for reasons that I consider in Chapter 7, comparatively few UK returners have been prosecuted for their previous conduct in Syria[38].

1.29. Throughout this Report I consider the adequacy or otherwise of the current legislative framework.

Other Powers

1.30. Just as impactful, although regrettably outside the remit of my annual report, are measures taken under non-terrorism statutes and the Royal Prerogative[39]. The government records its use of these powers in a series of annual transparency reports[40], which show an array of decisions directed against individuals who travelled or sought to travel for terrorist purposes: withdrawal or refusal of passport facilities[41], exclusion from the UK[42], deportation, and deprivation of citizenship[43]. In 2014, Parliament enacted new powers for police to check for invalid travel documents, such as those cancelled under Royal Prerogative[44].

1.31. A related aspect, which I considered in some detail in a paper published in 2023, is the overall risk arising from the return, or non-return, of some or all British or formerly British individuals who were swept up after the fall of Islamic State and are currently held in detention in Northeast Syria[45]. It seems unlikely that the balance between national security risk and humanitarian considerations will be struck by the

[37] Section 58B, C Terrorism Act 2000, inserted by the Counter-Terrorism and Border Security Act 2019
[38] In 2021, the figure was 10: Terrorism Acts in 2020 at 2.25.
[39] The body of non-statutory powers exercised by Ministers.
[40] At the time of writing the most recent is, HMG, 'Counter-Terrorism Disruptive Powers Report 2022' (October 2023).
[41] Between 2013 and the end of 2021, 94 individuals had their passport facilities withdrawn under the Royal Prerogative for reasons of national security. In 2015 the Home Office issued guidance for worried parents who could request the cancellation of their child's passport: https://www.gov.uk/government/publications/cancelling-the-passport-of-a-child-at-risk-of-radicalisation.
[42] It is expressly noted that this power can be used to prevent the travel or return to the UK of foreign nationals suspected of terrorist related activity in Syria (see para 3.8).
[43] 2018 Report: 104 times overall in 2017. 2018/19 Report: used 21 times overall in in 2018. 2020 Report: used 27 times overall in 2019 and 10 times overall in 2020. 2021 Report: used 8 times in 2021. Deprivation is not unique to the UK. It was used 20 times by the Netherlands since the introduction of a deprivation power in 2017: Netherlands Ministry of Justice, Statement on Citizenship Deprivations (15.5.23).
[44] Anti-Social Behaviour, Crime and Policing Act 2014, Schedule 8. There are 4 categories of invalid document (see para 1(3)) (a) cancelled (b) expired (c) fake (d) altered.
[45] 'Returning from Islamic State: Risk and Response' (27.2.23): https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2023/02/KCL-Speech-final1.pdf.

judiciary, since the prevailing trend in matters of national security – at least in this context - is that the balancing exercise is almost exclusively for politicians not courts[46].

[46] Following the Supreme Court's judgment on the appeal of Shamima Begum [2021] UKSC 7, later applied at first instance in Begum v Secretary of State for the Home Department SC/163/2019 (23.2.23). In common law jurisdictions with written constitutions, additional considerations apply: Delil Alexander v Minister for Home Affairs [2022] HCA 19 (Australia, deprivation as enacted a form of punishment, therefore for judges not ministers); Canada v Boloh [2023] FCA 120 (Canada, Court of Appeal overturning first instance decision, constitutional right of entry not same as right of repatriation).

2. EVENTS

Worldwide

2.1. According to a yearly study[47], global deaths from terrorism in 2022 fell by nine per cent to 6,701 deaths and were 38 per cent lower than at their peak in 2015, whilst the number of terrorist attacks declined by almost 28 per cent[48]. This was principally accounted for by fewer terrorist attacks in Afghanistan. However, the number of countries experiencing terrorist deaths remained steady over the last 3 years (in the low 40s, down from a peak of 56 countries in 2015).

2.2. Notably, the epicentre of terrorist attacks has shifted to the Sahel region in sub-Saharan Africa, accounting for more terrorism deaths in 2022 than both South Asia and the Middle East and North Africa (MENA) combined. Terrorism deaths in the Sahel were approaching half the global total, having been 1% in 2007, whilst the number of suicide bombings in MENA had fallen very significantly[49]. Other affected areas and countries in Africa now include the Gulf of Guinea, Uganda, the Democratic Republic of Congo, Northern Mozambique and the Lake Chad Basin, alongside countries such as Somalia and Nigeria that have long endured terrorist attacks[50].

2.3. Terror attacks in Western countries continued to decline in 2022, although the count of terrorist gun attacks in the United States (not necessarily treated as terrorism) mounted inexorably[51], and Germany experienced the conspiracy-driven Reichsbürger plot which appeared to contemplate government overthrow by force[52]. In a rare case of its kind, Christian fundamentalist terrorists in the Australian state of Queensland carried out a mass shooting leading to three deaths[53]. It is understandable that major effort is expended by UK counter-terrorism police in stemming the production of

[47] Global Terrorism Index report on 2022, Institute of Economics and Peace (March 2023).
[48] This is a snapshot of the calendar year 2022. A UN report published in February 2023 found that "after years of decline, terrorist attacks have recently increased": 'Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy: Report of the Secretary General', UN General Assembly (A/77/718, 2.2.23).
[49] Global Terrorism Index report on 2022, supra.
[50] Report of the UN Secretary General, supra.
[51] E.g. the Texas synagogue attack; the Buffalo, New York shootings; the Colorado Springs nightclub shootings.
[52] Ritzmann, A, 'The December 2022 German Reichsbürger Plot to Overthrow the German Government', CTC Sentinel vol 16 issue 3 (March 2023).
[53] ABC News, Queensland police say Wieambilla shooting was 'a religiously motivated terrorist attack' (16.2.23).

homemade weapons and maintaining a key UK advantage: comparative difficulty in firearms access[54].

United Kingdom

2.4. The Joint Terrorism Assessment Centre reduced the threat level in Great Britain to 'substantial' in February 2022[55], down from 'severe' in November 2021 at which it had been set after the murder of Sir David Amess MP and the Liverpool Women's Hospital bombing.

2.5. There was only one completed terrorist attack in Great Britain during 2022. In October Andrew Leak, 66, threw petrol bombs over the perimeter of the Western Jet Foil migrant processing centre at Dover, before killing himself immediately afterwards. He was motivated by Extreme Right-Wing ideology and the attack was considered a terrorist attack. A deadlier version unfolded in Paris in December: an extreme right-wing terrorist, aged 69, attacked a Kurdish centre and shot three people, having earlier attacked a migrant centre with a sword. Both attacks conform to a noticeable pattern of extreme right-wing attacks by older males[56].

2.6. Other terrorist events during 2022 include the conviction of antisemitic and conspiracy-minded Oliver Lewin for attack-planning against phone, TV and radio masts as part of a plan to topple the government[57]; the extradition from Spain of Thomas Kearney, associated with far right group Patriotic Alternative, for disseminating terrorist publications; the disruption of serious Islamist attack plots by two converts, Edward Little and Matthew King; the charging of Aine Davis for offences in Syria following his deportation from Turkey[58]; and the sentencing of the killer of Sir David Amess MP, Ali Harbi Ali, to a whole life term.

2.7. With the benefit of hindsight, three observations can now be ventured on the post-2017 landscape in Great Britain. Firstly, the multiple attacks of 2017 have not been repeated, although it is impossible to know what would have happened without the

[54] 'UK police removing 'large amount' of online gun-making guides' (Guardian, 1.2.23).
[55] Hansard (HC), HCWS603 (9.2.22). Interestingly, the former Home Secretary referred to the Liverpool attack as a terrorist attack.
[56] Cf. Wells, D, 'The Growing Concern Over Older Far-Right Terrorists: Data from the United Kingdom' CTC Sentinel (26.2.23).
[57] Contrary to section 5 Terrorism Act 2006.
[58] Subsequently Aine Davis admitted to funding terrorism and possessing a firearm for terrorist purposes and was sentenced (13.11.23) to 8 years' imprisonment.

diligence of counter-terrorism police and MI5. Secondly, there has been a marked increase in the number of children arrested for terrorism related activity (almost all of it Extreme Right-Wing Terrorism)[59]. This could well be related to MI5's increased mission against, and rates of detection of, this flavour of terrorism[60]. Thirdly, there has been a marked shift of official attention and resources within the UK and fellow '5 Eyes' countries[61] towards state threats[62].

2.8. As always, the picture in Northern Ireland requires separate consideration, and is covered in Chapter 9.

Legislation

2.9. The Police, Crime, Sentencing and Courts Act 2022 made changes to the sentencing and release of violent prisoners (including terrorists), and the management of released terrorist risk offenders[63]. The new general power to refer high-risk offenders to the Parole Board for consideration of release, in place of automatic release, could apply to non-terrorist offenders who are radicalised in prison[64]. The new power for judges to impose a whole-life sentence for defendants aged between 18 and 20[65] was enacted following the case of Hashem Abedi, who conspired with his brother Salman to bomb the Manchester Arena in 2017[66].

2.10. The Nationality and Borders Act 2022 extended Schedule 7 to the Terrorism Act 2000 (ports examination) to allow the questioning of individuals who arrive in the UK irregularly, such as on small boats[67]. I consider the operation of this new power in Chapter 6.

2.11. Relevant legislation debated in Parliament in 2022 included the National Security Bill (now the National Security Act 2023), which establishes a regime for the

[59] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, table A.10.
[60] MI5 took primacy for Extreme Right-Wing Terrorism, and Left, Anarchist and Single-Issue Terrorism in April 2020.
[61] The '5 Eyes' countries are the UK, US, Australia, Canada and New Zealand.
[62] As Lord Anderson observes in his Independent Review of the Investigatory Powers Act 2016 (June 2023), the US Intelligence Community's annual threat assessment of 2023 only refers to global terrorism in its 7th chapter under the heading "Additional Transnational Issues".
[63] Following recommendations in my report on Multi Agency Public Protection Arrangements (2021).
[64] Section 132.
[65] Section 126.
[66] Abedi could not be sentenced to a whole-life term (he received a minimum term recommendation of 55 years).
[67] Section 78.

investigation, deterrence and punishment of espionage, sabotage and other state threat activity, closely modelled on the Terrorism Act 2000 and the Terrorism Prevention and Investigation Measures Act 2011. Part 5 has provisions relating to restrictions on civil damages, and civil legal aid, that might be awarded to terrorists, whilst Schedule 17 contains amendments to the Terrorism Act 2000 on arrest, cordons and search and seizure of journalistic material[68]. The Online Safety Bill (now the Online Safety Act 2023) creates obligations for service providers to deal with "terrorism content". I published notes about both these Bills[69]. The Economic, Crime and Corporate Transparency Bill (now Act) contains some provision for terrorism investigations and terrorist asset freezing[70].

2.12. Sir Duncan Ouseley's independent review of closed court procedures under the Justice and Security Act 2013, of relevance where an alleged terrorist sues the government in connection with matters of operational sensitivity, was published in November 2022[71].

[68] The amendments on arrest (to deal with arrest in hospital, and to ensure clear limits to length of detention where the initial arrest is under PACE) and cordons (limiting the power of search to urgent cases) flow from recommendations in my previous reports.
[69] Available under 'Evidence' at .
[70] Schedule 10.
[71] Sir Duncan Ouseley, Independent report on the operation of closed material procedure under the Justice and Security Act 2013 (2022)

3. TERRORIST GROUPS

3.1. It was the presence of Islamic State in Syria and Iraq, pretending to elements of statehood, that drove so much international counter-terrorism anxiety during the 2010s. The group's magnetic pull to terrorist travellers, and inspirational outreach to would-be attackers overseas, illustrates the potential malevolence of organisations with both fighting and propaganda capabilities. By 2022 travel to join Islamic State had been stemmed following considerable counter-terrorism pressure by the United States, the United Kingdom and their allies.

3.2. Despite its destruction as a territorial entity in 2019, Islamic State was the deadliest terrorist group worldwide in 2022, followed by al-Shabaab, the Balochistan Liberation Army and Jamaat Nusrat Al-Islam wal Muslimeen[72]. Its enduring threat, based on a decentralised structure capable of mounting complex attacks, was illustrated by its jailbreak operation in January and its foiled assault on a prison in December, both in North-East Syria[73], and its spreading impact throughout the Sahel and other parts of Africa. Its affiliate, IS-Khoran Province (IS-KP) began to increase its presence and impact in Afghanistan.

3.3. Within Great Britain, as in 2021, the threat primarily concerned lone actors and small cells, operating outside any formal organisation.

3.4. Because the power to proscribe only applies to organisations, not individuals, the current landscape of self-initiating terrorists, means that there are likely to be fewer reasons to use the proscription power against domestic groups. Prior to 2022, the Secretary of State had used her power to ban a number of extreme right-wing groups whose presence in the UK was effectively online only (Sonnenkrieg Division, Feuerkrieg Division, Atomwaffen, The Base). It is possible that conglomerates of extreme right-wing individuals have responded by adopting greater decentralisation.

3.5. No new proscriptions were adopted in 2022, although Parliamentarians raised the possibility of proscribing the Yemen-based Houthis[74] and Iran's Islamic Revolutionary

[72] Global Terrorism Index report on 2022, Institute of Economics and Peace (March 2023).
[73] 'Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy: Report of the Secretary General', UN General Assembly (A/77/718, 2.2.23).
[74] Hansard (HC), written question UIN151095 (Harriett Baldwin MP, 31.3.22).

Guard Corp[75]. I consider the legal dimensions of proscription and state bodies, and state sponsored terrorism (with reference to the Wagner Group) below.

Proscription: the Legal Power

3.6. Part II of the Terrorism Act 2000 enables the Home Secretary (or the Secretary of State for Northern Ireland) to ban any organisation which he believes "is concerned in terrorism". This means that the organisation must commit or participate in acts of terrorism; prepare for terrorism; promote or encourage terrorism; or be otherwise concerned in terrorism[76].

3.7. The first three criteria are self-explanatory and encompass attackers, attack-planners and propagandists.

- The bounds of the fourth criterion (otherwise concerned in terrorism) are more uncertain but judges have held that it must concern "activity" of a similar character to that contained in the first three criteria, with the example of an organisation which keeps a military capability and network on standby for future use if needed, even though currently inactive.
- On the other side of the line would be an organisation, lacking military capability, whose leaders merely contemplated the prospect of future violence even though they had no current capability or concrete plans[77]. Being concerned in terrorism therefore requires more than being extremist or having an extremist mindset[78].

[75] Hansard (HC), vol 724 col 881 (Greg Smith MP, 13.12.22).
[76] Section 3(4), (5). Formally speaking, the power belongs to the Secretary of State without identification of portfolio.
[77] In the Matter of the People's Mojahadeen Organisation of Iran (aka Lord Alton's case) PC/02/2006 (30.11.07) at paras 126-128, upheld by the Court of Appeal in SSHD v Lord Alton [2008] EWCA Civ 443, see in particular 38.
[78] Although curiously, the decision by the Secretary of State to refuse a man's application for naturalisation (citizenship) because of his association with the proscribed group Ansar Al Islam, and the judicial proceedings thereafter (culminating in the upholding of the decision in March by the Court of Appeal in R (Amin) v SSHD [2022] EWCA Civ 439) referred exclusively to Ansar Al Islam as an extremist rather than a proscribed organisation.

3.8. If an organisation is concerned in terrorism, then the government's published policy[79] is to consider 5 discretionary factors which are:

i. The nature and scale of the organisation's activities.
ii. the specific threat that it poses to the UK.
iii. the specific threat that it poses to British nationals overseas.
iv. the extent of the organisation's presence in the UK.
v. the need to support other members of the international community in the global fight against terrorism.

3.9. In practice, consideration of the fifth discretionary factor ranges more widely than considerations of international solidarity and can encompass all foreign policy concerns that might arise from a decision either to proscribe or not to proscribe.

3.10. Decisions to proscribe, or de-proscribe, must be ratified by Parliament but to date this has been an area of bipartisanship, undoubtedly based on the government of the day's superior access to sensitive intelligence and acknowledged responsibility for national security and public safety.

3.11. Once a group is proscribed:

- Anyone suspected of being a member, supporter or funder of the group is liable to arrest, and extended periods of pre-charge detention[80], and is particularly liable to be examined at a border.
- Membership, wearing its uniform or displaying its flags, soliciting support and financing become criminal offences[81]. In the case of flags and uniforms, the circumstances must be such as to arouse suspicion of membership of or support for the proscribed organisation[82]: mere public display is not enough[83].
- Proscription unlocks a definitional feature in the Terrorism Act 2000 whereby any action taken for the purposes of terrorism includes any action taken for the benefit of a proscribed organisation[84]. This could lead to liability to civil

[79] Home Office, 'Proscribed terrorist groups or organisations' (updated 26.11.21).
[80] Section 41 Terrorism Act 2000.
[81] Sections 11, 12, 13, 15-18.
[82] Section 13(1).
[83] Permitting a distinction to be made with Turkish cases found by the European Court of Human Rights to be in breach of Article 11 (right of association): e.g. Silgir v Turkey, App.No.60389/10 (3.5.22).
[84] Section 1(5).

orders such as Terrorism Prevention and Investigation Measures[85] or Temporary Exclusion Orders.

- Association with a proscribed group can provide a basis for immigration measures such as exclusion and deportation, or (in the case of dual nationals) citizenship deprivation.

3.12. In summary, the power of proscription is to push ordinary activities of association into the envelope of criminal liability.

3.13. During 2022, examples of how proscription led to practical consequences include the arrest in January of Luca Benincasa, later convicted of membership of Feuerkrieg Division[86]; the arrest of a man in connection with the display of PKK flags at a protest in Sheffield in April[87] (which led to him accepting a police caution)[88], and the arrest of a man at Luton Airport in July on suspicion of membership of the LTTE (after having been examined under Schedule 7 Terrorism Act 2000)[89]. One individual was charged with membership in 2022[90].

3.14. The very act of proscription is considered as an important societal signal on the unacceptability of certain group action, and the authorities' intent to act against it. It is difficult to establish the counter-factual and impossible to know how groups would have acted in the absence of proscription, but the use of proscription against National Action (the extreme right wing terrorist organisation) was considered a particular success.

3.15. Proscription is also a measure with a tempting degree of executive fiat about it. Politicians have few powers with such immediate impact on the counter-terrorism landscape. But in my experience Ministers to date have avoided making decisions based on that tempting immediacy.

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[85] Secretary of State for the Home Department LG and Others [2017] EWHC 1529 (Admin) at paragraph 52.
[86] 'Neo-Nazi Luca Benincasa locked up for terror and child sex crimes' (BBC, 25.1.23).
[87] 'Many arrested under terror laws as police accused of violence at Sheffield rally' (The Star, 25.4.22).
[88] 'Man cautioned under Terrorism Act following demonstration outside Sheffield Town Hall' (The Star, 27.5.22).
[89] 'Man arrested at Luton Airport on suspicion of terrorism offences' (Luton News Herald & Post, 8.7.22)
[90] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, table A.05a.

3.16. Decisions on whether to proscribe are subject to detailed cross-Whitehall advice provided by the Proscription Review Group hosted by officials in the Home Office. Having attended many of these, I can report that their scrutiny of potential proscription decisions is thorough, well-informed and careful, although in one ongoing case (concerning the LTTE), there was a failure to reflect their views in the Ministerial submission which led to a flawed decision[91].

States and State-Sponsored Terrorism

3.17. There is no legal or academic consensus on whether states (recognised territorial entities, not pretend ones like Islamic State) can commit terrorism[92].

The Islamic Revolutionary Guard Corp (IRGC).

3.18. There was widespread speculation during the latter part of 2022 and January 2023 that the government was on the point of proscribing the IRGC, a major component of Iran's military and intelligence apparatus[93].

3.19. In considering whether proscription powers are available against an entity of the state, the key point is that the enduring policy of the UK government has been to treat terrorism by states as not being amenable to the powers contained in the Terrorism Act 2000, including proscription.

3.20. The best illustration of the government's policy of self-restraint was the response to the Salisbury attack by Russia in March 2018. The government was scrupulous in treating this as hostile state activity, and no counter-terrorism powers were used. If it were otherwise, many of the new array of powers and offences proposed under the National Security Act 2023, debated during the course of 2022, would not have been needed.

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[91] Arumugam and others v Secretary of State for the Home Department PC/04/2019 (21.10.20); see further Terrorism Acts in 2019 at para 3.21.

[92] At the international level, attempts since 1996 to draft a comprehensive Convention on Terrorism have foundered on whether to acknowledge State terrorism: Anderson, D., 'Terrorism Acts in 2012' at ft.61; R v Gul [2014] AC 1260 at 46, citing the unsuccessful attempt made by the ad hoc general committee established by General Assembly resolution 51/210 of 17 December 1996 to exempt "The activities of armed forces during an armed conflict, as those terms are understood under International Humanitarian Law, which are governed by that law…" from the terms of the draft comprehensive international convention on terrorism.

[93] The following paragraphs are based on a Note I published in January 2023, which can be found at https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2023/01/IRGC-Note-Jan-23-1.pdf.

3.21. Any departure from this policy, particularly in the context of a military and intelligence force like the IRGC, would lead to awkward points of distinction having to be found. This is because, like the IRGC, all state forces are liable to use or threaten serious violence against persons, to influence a government (typically the government of the opposing forces), and for the purposes of advancing (at least) a political cause.

3.22. The logic would be that all state forces, including those of allies, must also "be concerned in terrorism" some or all of the time, and liable to proscription. It is one thing to characterise paramilitaries and individuals who would subvert the state through violence as terrorists; but quite another to apply the word terrorist to state bodies who conventionally are considered to enjoy a monopoly over the legitimate use of violence.

3.23. Considering the width of the terrorism definition, it is far from straightforward to distinguish between state bodies which ought, and ought not, to be proscribed:

- No distinction can be drawn between the IRGC and other state forces because of the *methods* used by the IRGC. Serious harm within section 1 of the Terrorism Act 2000 may be caused by bullet, or bomb, or poison, or improvised explosive, or radioactive device, by targeted assassination or heavy artillery.
- Nor can a distinction be drawn because the IRGC has an impact on the *UK* government or public. Terrorism applies to influencing any government or intimidating any section of the public.
- The fact that some states such as Iran are sponsors of terrorism adds nothing: the point of proscribing the IRGC would be that it engages in terrorism itself, not simply that it sponsors terrorism being committed by others.
- Finally, no distinction can be drawn between the *ideology* promoted by the IRGC and the political ideologies advanced by other armed forces. The Terrorism Act definition is ideology neutral.

3.24. There are two other possible candidates.

3.25. The first is superficially attractive but unsustainable. It could well be said that the IRGC is especially wicked, or its programme of action particularly harmful. But there is no intensity threshold when considering the application of the Terrorism Act.

It is not a defence to a charge under the Terrorism Acts that the conduct in question was morally justified[94], or could have been worse.

3.26. The second possibility, which merits greater consideration, is based on the proposition that when other state forces use or threaten violence they usually comply with the laws of war (also known as International Humanitarian Law), and that such activity necessarily falls outside the definition of terrorism[95].

3.27. In his 2013 report, Lord Anderson KC noted that the current definition, unlike in Canada[96], "contains no express exemption for acts carried out overseas that constitute lawful hostilities under International Humanitarian Law" and could in principle cover the activity of UK armed forces abroad[97]. In 2014, the Supreme Court drew attention to these observations, endorsing Lord Anderson's concern about the width of the statutory definition of terrorism but noting that "…the issue is ultimately one for Parliament"[98]. The Supreme Court rejected attempts to read down the definition of terrorism in light of International Humanitarian Law.

3.28. Parliament did not seek to amend the terrorism definition, whose width has continued to prove – as Lord Carlile KC put it in 2004 – "practical and effective" [99]:

- Its width has meant that juries have been able to consider terrorism prosecutions connected with overseas conflict without having to be directed on the boundaries of International Humanitarian Law.
- This has proven particularly relevant for terrorism prosecutions connected to armed conflict in Afghanistan, Syria and Iraq and travel to terror zones[100].

[94] R v F [2007] QB 960.
[95] Alternatively, as the government argued in R v Gul in the Court of Appeal [2012] 1 WLR at para 30, the forces of the state might enjoy combat immunity in customary international law which forms part of common law. The Court did not need to express a concluded view on this: the logical implication would be that forces of the state do commit acts of terrorism, even during armed conflict, but are simply immune from prosecution.
[96] As well as South Africa, Austria and Belgium.
[97] This observation must be read subject to the scope of the Terrorism Act 2000, applying R (on the application of Black) v Secretary of State for Justice [2017] UKSC 81: the Terrorism Act does not apply to the Crown.
[98] R v Gul, supra, at para 61.
[99] Lord Carlile KC, Report on the operation in 2004 of the Terrorism Act 2000, (Report, Independent Reviewer of Terrorism Legislation, United Kingdom, 2004) at 28; Lord Carlile KC, Report on the operation in 2005 of the Terrorism Act 2000, (Report, Independent Reviewer of Terrorism Legislation, United Kingdom, 2005) at 32.
[100] R v Gul, supra, concerned conflicts in Iraq and Afghanistan.

3.29. The current position, in light of the Supreme Court's binding ruling in 2014[101], is that there is no exemption from the Terrorism Acts for violence carried out in accordance with International Humanitarian Law by non-state parties to a conflict.

3.30. It follows that if the IRGC were proscribed on the basis that its violence amounted to terrorism, the argument would have to be that acts of violence carried out by friendly *state* forces such as the French army are not terrorism because, by contrast, they are carried out in accordance with International Humanitarian Law.

3.31. But there is no basis for such a distinction in the current Terrorism Acts. It would be open to Parliament to amend the Terrorism Act 2000 to exclude state activity in accordance with International Humanitarian Law from the definition of terrorism, but this could not be achieved by Parliament approving a proscription order for the IRGC[102].

3.32. Debates on proscription orders do not offer the opportunity for full debate on the full implications of altering the current approach to the terrorism definition, and these are deep waters. In 2014, Lord Anderson KC considered whether there should be an armed conflict exemption from the terrorism definition but was unable to recommend a change. He identified ten issues that needed to be considered in a legally-informed policy debate before such a step could be taken[103].

3.33. Consideration would also need to be given to how the lawful activity of state forces outside armed conflict could be exempted from the scope of terrorism. Undoubtedly the IRGC is involved in internal oppression, but state forces may also be called upon legitimately to deal with emergencies within states, including through use or threats of force, and should not fall within the definition of terrorism for that reason alone.

3.34. Even friendly armed forces will not always act in accordance with IHL[104]. If the distinction between the IRGC (concerned in terrorism) and friendly state forces (not

[101] R v Gul, supra.
[102] Proscription orders are subject to the affirmative resolution procedure: section 123(4) Terrorism Act 2000.
[103] Terrorism Acts in 2013 at 10.64 et seq.
[104] Inspector-General of the Australian Defence Force, 'Afghanistan Inquiry Report' (2020) ('the Brereton Inquiry').

concerned in terrorism) rested entirely on the application or compliance with International Humanitarian Law, it would have to be acknowledged that on occasion friendly states would also be "concerned in terrorism".

3.35. Finally, if there was an International Humanitarian Law distinction which applied to force used by state forces, it is foreseeable that the Supreme Court's ruling that the application of International Humanitarian Law was irrelevant to violent acts by *non-state* forces would start to come under pressure.

3.36. That said, the UK does apply *financial sanctions* to parts of the Iranian government, including on the basis of involvement in terrorism as defined by the Terrorism Act 2000. For example, the Directorate for Internal Security of the Iranian Ministry of Intelligence and Security is designated under the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019. The threshold for designation is being involved in "terrorist activity"[105] where terrorism is defined as having the same meaning as in the Terrorism Act 2000[106].

3.37. It is possible that statehood is less relevant to the definitional issue (whether states can commit terrorism) than to the powers issue (whether it is right to exercise Terrorism Acts powers, including proscription against states).

- Terrorism Acts powers such as proscription might be considered ill-suited in relation to state bodies.
- By contrast, sanctions against states are not only general state practice, but are designed to alter behaviour not to outlaw the designated entity entirely.

State Sponsored: the Wagner Group

3.38. In his leading work on the topic, Professor Dan Byman illustrates the manifold ways in which and reasons why states have long commissioned, aided, influenced, and benefited from the activities of terrorist organisations[107].

3.39. According to the UK's updated national security strategy (IR23), the boundaries between terrorism, organised and serious crime, and state threats are becoming

[105] Reg.6.
[106] Section 62(1) Sanctions and Anti-Money Laundering Act 2018.
[107] 'Deadly Connections: States that Sponsor Terrorism', Cambridge University Press (2012).

increasingly blurred[108]. The strategy expressly referred to the possibility of proscribing the Wagner Group, a private military contractor strongly aligned to the Russian government; and later in 2023 the Wagner Group was proscribed by the Home Secretary[109].

3.40. Some objections might be raised to the proscription of a military contractor such as Wagner.

3.41. Firstly, it could be said that if a group is directed by a state, or if it is supporting a state function (such as armed combat), then proscription of the group would come uncomfortably close to proscribing an organ of another state, contrary to the government policy.

3.42. However, it appears from UK practice that total independence from states has never been a pre-requisite for proscription and some proscribed groups, such as Hezbollah and Hamas, are notorious for receiving state support (Iran in both cases). Sometimes state support will make a group most enduring, most effective, most difficulty to counteract, and therefore more likely to present a terrorist threat to the UK or its allies[110]. The capability-boost that states can give to traditional terrorist organisations was illustrated by Hamas' deadly attacks on civilians within Israeli territory during October 2023.

3.43. It follows that the objection would have to be based on the *degree* of influence that a state has over the group, and/or degree to which a state views the group as contributing to its national objectives.

3.44. But determining the extent of influence or alignment will often be impossible:

- The extent of state influence on an organisation may be clandestine or unavowed[111].
- A group may agree to accept support or fulfil a state objective in order to swell its coffers or increase its influence on an opportunistic, whilst remaining entirely separate from the state.

[108] HM Government, Integrated Review Refresh 2023, policy paper (13.3.23) at paras 9, 17.
[109] The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2023.
[110] For example, Hezbollah's deadly bombings of a US Marine barracks in Beirut (1983), a Jewish cultural centre in Buenos Aires (1994), and the Khobar Towers in Saudi Arabia (1996).
[111] Part of the attraction of a mercenary group may be its deniability: Mehra, T., Demuynck, M., 'Raising the stakes against the Wagner Group: From mercenaries to a designated terrorist group?', ICCT (17.12.23).

- State support may not indicate approval of the group and may actually disguise an attempt to exert defensive control[112].
- It may not be clear whether state officials who provide support are doing so with the sanction of the state's own leadership[113].

3.45. Next, it could be argued that if a group is simply a mercenary outfit, its conduct is motivated by money, and therefore not done for the purpose of advancing a political or ideological or religious cause, as required by the Terrorism Act 2000[114]. But this is to confuse motive with intent: a mercenary group may very effectively use violence for the purpose of advancing the political cause of its paymaster. To make an exception for mercenaries could create liability gaps, and even encourage states to employ deniable proxies safe in the knowledge that neither they nor their proxies could be subject of proscription.

3.46. Finally, it could be argued that if a group is acting in support of a state, then the Terrorism Act is not appropriate for this category of conduct in light of the new National Security Act 2023 which creates a bespoke legislative framework for dealing with "state threats".

3.47. However, it does not appear that the Terrorism Acts and the National Security Act 2023 are mutually exclusive. Conduct pursued by an organisation may fall within scope of both enactments, and the selection of investigative or prosecutorial powers in respect of particular conduct will depend on the particular facts. MI5's latest threat update appears to acknowledge that there are no hard barriers, referring to Iran being the state actor which "most frequently crosses into terrorism"[115].

3.48. Indeed, it is possible that excluding private military contractors from the scope of proscription would set up broader dissonances:

- Wagner may exhibit some or all the typical indicia of extremist violence which are apparent in mainstream terrorist groups, described by Professor Quassim

[112] Byman, supra, concludes that the capacity required to provide significant support for a terrorist group is usually far less than that required to suppress it.
[113] According to Miller, M.C., 'Pakistan's Support for the Taliban: What to Know', Council for Foreign Relations (25.8.21), "It is important to note Pakistan's government and military are not monolithic institutions but rather groups of competing interests".
[114] In section 1 Terrorism Act 2000.
[115] Director-General MI5, annual threat update (16.11.22).

Cassam as ideological extremism, methods extremism, and psychological extremism[116].

- The violence used by mercenary groups more obviously satisfies the "design" aspect of terrorism ("designed to influence the government" or "intimidate the public") than self-initiated terrorists whose violence or intended violence may well have no greater impact on the government or public at large than other acts of individual criminal savagery.

3.49. The question of whether groups such as Wagner *should* be proscribed, as a matter of discretion, is of course different. I have already referred to the final published discretionary factor ("the need to support other members of the international community in the global fight against terrorism").

3.50. In practice, consideration of the "fifth discretionary factor" involves a compendious assessment of factors for and against proscription. In its 2023 report on the Wagner Network, the Foreign Affairs Select Committee recommended proscription and identified positives (deterrence to individuals, corporate entities and third countries, heightened 'cost of doing business', stigma impacting on access to ports, resources and the corridors of power, prosecution in the UK of Wagner members, encouragement of whistle-blowers, using mechanism of international counter-terrorism financing) and negatives (driving the network underground, and damage to the UK's diplomatic ties with other countries)[117].

3.51. In the context of a private military contractor such as Wagner negatives could include considering the impact of proscribing Wagner on the policy position of, and the UK's relationship with, African states which commission Wagner for counter-insurgency and counter-terrorism work[118]. It could also include considerations relevant to the Ukrainian battlefield: whether treating combatants to an International Armed Conflict as terrorists might complicate the reciprocal application of International Humanitarian Law[119]. It might include considerations of how Russia would perceive

[116] Cassam, Q., 'Extremism: A Philosophical Analysis' (Routledge, 2021).
[117] Foreign Affairs Select Committee, 'Guns for gold: the Wagner Network exposed', Seventh Report of Session 2022-3 (26.7.23) at para 65.
[118] The use of private military contractors is not unlawful. The International Code of Conduct for Private Security Service Providers 2012 was formulated by the UK- and US- (and other-) funded International Code of Conduct Association.
[119] Mehra, T., Thorley, A., 'Foreign Fighters, Foreign Volunteer and Mercenaries in the Ukrainian Armed Conflict', ICCT (11.7.22).

the act of proscription. The "fifth discretionary factor" is open to all these considerations.

3.52. But as a matter of legal principle and established policy, the mechanism of proscription does appear to be available for the Wagner group.

Humanitarian Organisations

3.53. In each of my previous annual reports I have referred to the interface between humanitarian activity and terrorism legislation, and how laws against funding terrorist groups can have an adverse impact on the activities of aid and peacebuilding agencies. The phenomenon is well-recognised[120].

3.54. Unstable terror zones crystallise the issue: proscribed organisations tend to operate in areas of weak control and high stress, precisely the parts of the world where aid and peacebuilding is most needed.

3.55. The point is well-made in guidance issued by the Director of Public Prosecutions in October 2022[121]. It states:

> "Humanitarian, development and peacebuilding work overseas often takes place in the context of conflict, instability and fluid governance arrangements, including in countries/regions where proscribed organisations are active, or form part of a government or control access to communities in need.
>
> Such work may involve contact with proscribed organisations and their members, ordinary and incidental financial transactions within the local economy, travelling or maintaining a presence in volatile environments to safely deliver aid to those most in need, or work to support dialogue and peacebuilding efforts.
>
> Organisations will need to manage and mitigate the risks in line with international laws and standards, and in compliance with UK law, while

[120] See for example, O'Leary, E. 'Politics and principles: The impact of counterterrorism measures and sanctions on principled humanitarian action', International Review of the Red Cross (2021); UN Counter-Terrorism Committee Executive Directorate, 'The interrelationship between counter-terrorism frameworks and international humanitarian law' (Jan 2022).
[121] CPS, Guidance, 'Humanitarian, Development and Peacebuilding Work Overseas' (3.10.22).

ensuring that wherever possible humanitarian, development and peacebuilding work is not unnecessarily disrupted, delayed or discouraged."

3.56. The guidance sets out factors that would be relevant to any decision to prosecute a humanitarian organisation. This is a welcome exercise in reassurance. Although no humanitarian organisation has to date been prosecuted, they are not experts in criminal prosecution or terrorism offences. Uncertainty about the law leads to costs, delay, consultation of lawyers and stifling of desirable aid programmes.

3.57. The government has its own guidance known in government and NGO circles as the "For Information Note"[122]. It says that the government,

> "… is committed to ensuring that counter-terrorism legislation, including counter-terrorism sanctions and export control legislation is applied in a clear and effective manner that is proportionate to risk. This information note is intended to support compliance with the legislative framework, without compromising other HMG priorities or unnecessarily impeding legitimate humanitarian activities overseas."

3.58. Although it purports to answer the question, "Will I be prosecuted in the UK because of my involvement in legitimate humanitarian or conflict resolution work?", it omits reference to the Director of Public Prosecution's guidance of October 2022. I **recommend** that it should be amended to reflect this latest guidance.

3.59. Elsewhere the government has acknowledged the concerns of charities operating overseas, including the problems of bank de-risking and other potential impacts of over-compliance, but affirms that it is committed to ensuring that anti-money-laundering and counter-terrorist-financing regulations do not "…unnecessarily impede legitimate, often life-saving, activities."[123]

3.60. It is true that terrorism funding offences under the Terrorism Act 2000 represent only a portion of the potential liabilities faced by humanitarian organisations:

[122] HM Government, Guidance, 'For information note: operating within counter-terrorism legislation, counter-terrorism sanctions and export control' (updated 13.4.23).
[123] HM Treasury, Home Office, 'National risk assessment of money laundering and terrorist financing 2020' (2020).

- The UK also imposes financial sanctions, whose prohibitions may overlap with terrorist financing offences. I have written about these in my two independent reports on sanctions for the Treasury and Foreign Commonwealth and Development Office[124].
- Other countries impose their own financial sanctions. Sanctions imposed by the United States are particularly feared owing to the long-arm of US enforcement, although their effect has been recently moderated by clear and effective guidance and licencing decisions by their Office of Foreign Asset Control, discussed below.

3.61. The tension between counter-terrorism and humanitarian assistance is not only shouldered by international non-governmental organisations. The possibility of aggravating a humanitarian disaster can inhibit states from pursuing new counter-terrorism goals.

- In the first half of 2022, it was reported that Western states were coming under pressure from Saudi Arabia and the United Arab Emirates to proscribe the Iran-backed group Ansar Allah, also known as the Houthis[125].
- The Houthis, who are already subject to an arms embargo[126], exercise significant control in parts of Yemen, and following proscription, delivery of aid to those areas would risk the commission of terrorist financing offences.
- In fact, it was worries about the impact of designation on Yemen's humanitarian crisis that had originally led the new Biden administration to *lift* the US's designation of the Houthis as a foreign terrorist organisation at the start of 2022.
- It was argued here that proscription by the UK could damage the humanitarian supply of food, medicines and fuel[127]. In the event the Houthis were not proscribed.
- In principle, one can see how fear of unintended humanitarian consequences could lead the Secretary of State to decide against proscription that was otherwise entirely desirable.

[124] On the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 and the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 respectively.
[125] Guardian, 'White House faces oil standoff with Saudi Arabia and UAE as prices soar' (13.3.22).
[126] Under the Yemen (Sanctions) (EU Exit) Regulations 2020.
[127] Guardian, 'UK plan to label Houthis as terrorists risks disaster in Yemen, aid bodies warn' (1.4.22).

3.62. The alternative to a stark 'counter-terrorism versus humanitarian aid' bifurcation is better integration of these concerns within terrorism legislation itself. For some time, and following recommendations in my second annual report[128], the government has been exploring whether the mechanism of prior consent under section 21ZA Terrorism Act 2000 could provide a partial solution.

3.63. In March 2023 the National Crime Agency, whose staff are responsible for consent decisions, issued amended guidance[129]. Addressing the position of humanitarian aid, it acknowledged that section 21ZA might provide a potential avenue for international non-governmental organisations who wanted to deliver aid without risk of committing an offence under sections 15-18 of the Terrorism Act 2000, recognising that "…[c]oncerns over committing a criminal offence may lead the INGO to suspend the planned activity rather than proceeding with it."

3.64. Where an application is made, the NCA officer will assess the risk of funds being used to fund terrorism and decide on balance whether to grant the request for a defence, ensuring its decision is proportionate and in the public interest[130]. In a non-humanitarian case, currently before the High Court, the NCA refused to grant consent to the transfer of civil damages (paid by the government) to an individual on the US sanctions list[131].

3.65. There has to date been only one application by a humanitarian organisation under section 21ZA, in the context of Afghanistan. The barriers to use are easy to see:

- Firstly, a charity or other person seeking an application must set out their grounds for suspicion that terrorist financing is involved in the transaction[132]. This leaves little room for those who do not suspect but are reluctant to proceed without the comfort of permission, because seeking permission is tantamount to accepting that involvement.
- Secondly, as the NCA's guidance correctly observes, each section 21ZA application and decision is specific to the transaction. For a charity sending

[128] Terrorism Acts in 2019.
[129] 'Requesting a defence from the NCA under POCA and TACT' (v.6.0).
[130] Ibid at page 10.
[131] R (Ullah) v NCA [2023] EWHC 371.
[132] Ibid at page 4.

small amounts of monies, for example periodic salary payments, section 21ZA creates a repeat hurdle for every transaction.

3.66. It is not surprising that, in the absence of strategic guidance about the public interest, NCA officers may take the view that consent should not be granted where there is a risk of monies, however small, reaching members of a proscribed organisation. This remains the case, even if the proscribed organisation is not soliciting monies for terrorism purposes but fulfilling government-type functions and seeking payment from the humanitarian organisation on account of fees such as road taxes. As things stand, section 21ZA is not an effective mechanism for securing protection for humanitarian action.

3.67. Section 21ZA must also be seen as part of the wider counter-terrorism landscape, and in particular counter-terrorism sanctions. In my recent report to the Foreign Secretary on the UK's autonomous international counter-terrorism sanctions regime[133], I have considered the window of opportunity created by UN Security Council Resolution 2664 for considering whether UK counter-terrorism sanctions should exempt humanitarian activity carried out by responsible aid and peace-building agencies.

3.68. In summary, the United Nations, whilst not discounting the possibility that humanitarian aid might be diverted towards terrorism, has accepted that humanitarian agencies involved in UN programmes can be sufficiently trusted to deploy their own due diligence and checks and balances.

3.69. From the point of view of humanitarian aid, the prohibitions contained in sanctions, and in the Terrorism Act 2000, can both have a chilling effect. If changes can be found to the UK's counter-terrorism sanctions, as I have recommended, then changes also need to be found in parallel to the Terrorism Act.

3.70. There are several options:

- A humanitarian exception to counter-terrorism sanctions, perhaps limited to trusted humanitarian actors, could be mirrored in a new statutory exception or defence to the counter-terrorism financing offences in sections 15-18 of the Terrorism Act 2000.

[133] Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019.

- Alternatively, the policy behind the humanitarian exception could be captured in the way in which the NCA considered requests for consent under section 21ZA, amended to allow 'block' or general permissions for ongoing UK-funded aid programmes. By this route, the NCA would give permission under section 21ZA wherever the activity fell within the humanitarian exceptions of counter-terrorism sanctions.

3.71. It is not necessary for me to make a formal recommendation that the Home Office considers the impact of UN Security Council Resolution 2664, because I am confident that Home Office officials are well aware of the sanctions regimes overseen by HM Treasury and the Foreign Commonwealth and Development Office, and will be keen to ensure that no policy dissonances arise between counter-terrorism sanctions and the terrorist financing provisions of the Terrorism Act 2000. As I remarked in my 2023 review of international counter-terrorism sanctions, a unified policy position on counter-terrorism and humanitarian relief is what is needed[134].

[134] 'Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019', paras 2.46 to 2.48.

4. INVESTIGATIONS

4.1. Investigations into suspected terrorism in the UK are characterised by close cooperation between Counter Terrorism Police and MI5. The ability to share sensitive intelligence means that potential threats can be investigated early on using the powers available to both police and intelligence agencies. If the threat appears real, CT Police, advised by the Counter Terrorism Division of the Crown Prosecution Service, will look to generate evidence of that threat with a view to prosecution.

4.2. Although there are some special investigatory powers available under the Terrorism Acts, the great majority of powers used by Counter Terrorism Police will be common to investigations of serious crime generally: obtaining communications data, seizing and examining devices, speaking to witnesses, visiting locations, conducting surveillance, and so on.

4.3. In this Chapter I consider:

- The investigation of terrorist conduct abroad; and
- The use of special terrorist investigatory powers more generally in 2022.

Investigating Conduct in Terror Zones

4.4. National and international attention has been given to the crimes committed in Syria and Iraq during the period of Islamic State's territorial caliphate.

4.5. In part this is about prosecution with a view to risk reduction. If individuals who travelled out to join Islamic State and Al Qaeda have returned to their country of origin, or have left to a third country, prosecution and incarceration is one way of securing public safety.

4.6. In part this is about accountability. Prosecution serves a wider public interest than risk reduction, and some of the most serious offences committed, including war crimes, demand investigation and prosecution.

4.7. As a result, there has been heavy international investment in the collection, analysis and dissemination of locally derived battlefield evidence to enhance the prospect of a successful investigation and prosecution.

4.8. Multiple international initiatives and support frameworks exist in the service of investigative cooperation, including the United Nations Investigative Team for Accountability of Daesh/ISIL (UNITAD), the UN-established International, Impartial and Independent Mechanism to Assist in the Investigations and Prosecution of Persons Responsible for the Most Serious Crimes under Intentional Law Committed in the Syrian Arab Republic since 2001[135], the 2020 Eurojust Memorandum on Battlefield Evidence, the EU Genocide Network[136], various initiatives to train up regional authorities in evidence-gathering, and bilateral projects such as the French-Swedish programme on crimes against Yazidis.

4.9. As an indication of scale, the EU Counter-Terrorism Coordinator reported in 2021 that the United States Federal Bureau of Investigations (FBI) had provided EU member states and Europol with data about 2,700 possible foreign terrorist fighters held in custody in North-East Syria. The list included names as well as photographs and fingerprints. Meanwhile UNITAD was able to extract facial profiles from image data across its archives, establishing a dedicated repository of over 175,000 profiles, and had started processing more than 34,000 video files with a view to extracting facial profiles[137].

4.10. In the UK, Counter Terrorism Police take a thematic and individual approach to UK-linked foreign terrorist fighters. The thematic work deals with travel to terror zones generally and is not limited to Islamic State and includes returners from West Africa as well as potential Extreme Right-Wing Terrorism travel to Ukraine.

4.11. Each individual Islamic State UK-linked traveller (man or woman) has an assigned investigator, and a contingency plan in the event of return. Options include examination on arrival under Schedule 7, arrest under the Terrorism Act 2000 or under PACE, and safeguarding measures in respect of children. Disruptive (non-terrorism related, such as child neglect) prosecutions are also considered.

[135] 'IIIM' or simply 'the Mechanism', established under General Assembly resolution A/71/248 (co-sponsored by the UK). In its 8th Report (A/76/690, 2022), the IIIM referred to assistance to prosecution of cases in Sweden and Germany.
[136] The UK has observer status. See further, Eurojust, '20 Years On: Main Developments In The Fight Against Impunity For Core International Crimes In The Eu' (The Hague, May 2022).
[137] Ibid, Annex.

- The emphasis is on risk management rather than legacy and accountability, and the degree of proactive investigation differs regionally, as Senior Investigating Officers take decisions based on competing priorities and will sometimes factor in the likelihood of an individual ever returning to face prosecution before committing further investigative resources.

Battlefield Evidence

4.12. Referred to in the UK as Collected Exploitable Material (or CEM), battlefield evidence can comprise notebooks, biometric data found on phones or improvised explosive devices, administrative lists or documents such as payroll records or contracts of marriage drawn up by Islamic State judges. A recent US prosecution of an Islamic State fighter shows the variety of evidence that Daesh's bureaucratic quasi-state generated, including brigade rosters, payroll records, personnel numbers, Islamic State Treasury spreadsheets and budget documents containing personal details[138].

4.13. CEM has been used in at least two successful UK terrorist prosecutions to date – those of Anis Sardar (Iraq bombmaker and terrorist whose fingerprints were found on explosive devices planted in about 2007 on a road near Baghdad[139]) and Khalid Ali (Westminster knife plotter and AQ bombmaker whose fingerprints were found on component parts of explosive devices handed to US forces in Afghanistan in 2012[140]) – and increasingly figures in live investigations.

4.14. The UK and its international partners receive Islamic State-related battlefield evidence mainly through United States Federal Bureau of Investigations legal attachés. The United States leads an interagency taskforce based in Jordan and known as Operational Gallant Phoenix[141].

4.15. To make it useable in court, written material will need to be translated, and then authenticated and attributed – no mean feat, because seizure of evidence by military or other overseas personnel, or non-government agencies, in insecure (and

[138] USA v Musaibli: these documents were eventually admitted, following appeal by the government, as evidence of conspiracy, US Court of Appeals for the 6th circuit, 22-1013 (2.8.22). Further examples are given in the US indictment in USA v Emraan Ali, 19-MJ-03949-Torres, at paras 25-8: https://www.justice.gov/opa/press-release/file/1322531/download (last accessed 28.7.23).
[139] BBC, 'Cab driver Anis Sardar jailed for Iraq bomb murder' (22.5.15).
[140] BBC, 'Khalid Ali: Westminster plot bomb-maker jailed for life' (20.7.18).
[141] EU Counter-Terrorism Coordinator, The EU's Work on Battlefield Information: Stocktaking and possible next steps (Council doc. 9481/21, 2021).

potentially classified) circumstances is very different from methodical investigation by civilian police in a more controlled environment.

4.16. Establishing provenance and the circumstances of seizure, necessary to rebut allegations of 'planted' or fabricated evidence, is far from easy. There is no ambition to dilute the standards of continuity, admissibility and robust challenge in terrorism cases – rightly so – but this means that UK prosecutions based on activities overseas are difficult.

4.17. Other jurisdictions can take advantage of wider forms of criminal liability catering for battlefield uncertainty and the grey-zone between alignment with and membership of a proscribed organisation[142]; trials in absentia; different standards of admissibility; and the presence of victims[143]. The US has greater experience than the UK with cooperating witnesses who might speak to the authenticity and provenance of documents[144], and has been willing to conduct voluntary evidential interviews in camps[145].

4.18. Matters are inherently complicated by fluid or non-existent bilateral relationships between the UK and the states where the evidence originates or may now be held. This is far removed from ordinary international enquiries involving liaison prosecutors and investigators and well-understood patterns of reciprocal assistance. Sharing evidence held by the UK with international partners, or even making requests for evidence about identified individuals, carry human rights[146] and policy[147] considerations if doing so may lead to mistreatment or application of the death penalty.

4.19. Counter-terrorism police have thought hard about workarounds, but there is also chicken-and-egg uncertainty: in the absence of more CEM-related prosecutions

[142] E.g. France's 'association de malfaiteurs en relation avec une entreprise terroriste', Article 21-2-1 or the USA's material support offence, discussed in Chapter 7.
[143] Because of its big refugee influxes, there was a greater chance of victims (especially Yazidi victims) being present in Germany: Koller, S., Schicle, A., 'Holding women accountable: Prosecuting female returnees in Germany', CTC Sentinel December 2021 38.
[144] See USA v Musaibli, United States Court of Appeals, Sixth Circuit. No. 22-1013 (ruling 2 August 2022); US v Fluke-Ekren, supra. For various reasons, the UK does not have the same tradition of participating witnesses: cf. the observations of Clare Montgomery KC on the difficulties of prosecuting serious fraud in the podcast 'Double Jeopardy' (12.12.22).
[145] As in US v Jihad Mohammed Ali, Case No. 19-MJ-03950-TORRES, Criminal Complaint (3.12.19).
[146] E.g. Elgizouli v Home Secretary [2020] UKSC 10.
[147] HMG, 'The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees' (2019).

it is hard to know what is likely to work. The current position is that the UK has greater experience in assisting CEM-related prosecutions abroad than conducting them at home.

4.20. Evidence relating to activity overseas, such as photos, may also be found on devices or online. Social media can be used to establish presence in the region or may establish involvement in atrocities or humiliating or degrading treatment of victims. Savvy returners avoid carrying digital devices.

Interviews

4.21. Once arrested in the UK, an individual can be interviewed for up to 14 days before any decision is made on charge[148]. An interview is not just about securing admissions and adverse inferences from silence. Police and prosecutors want to flush out potential defences as soon as possible.

4.22. The position is to be contrasted with a person who is currently overseas, and who has not been subject to police interview. For example, police are unlikely to know whether a person suspected of becoming a member of Islamic State[149] has or may have a defence under the Modern Slavery Act 2015[150]. That defence might only emerge after they have returned, received legal advice, and been interviewed.

4.23. The benefit of assessing the prospect of successful prosecution is clear as it would provide ministers and others with a better idea of how to manage the risk of identified individuals on return. It could in principle lead to the United Kingdom agreeing to the return of an individual from abroad in the knowledge that immediate imprisonment was likely.

4.24. There is no prospect of suspected foreign terrorist fighters being questioned by Counter Terrorism Police whilst in detention in countries like Syria or Iraq. Standards of access to legal advice would be difficult to replicate, any admissions are likely to be found unreliable, and failures to mention facts most unlikely to lead to adverse inferences at trial[151]. The police might fear that their very presence would lead to

[148] Under section 41 Terrorism Act 2000.
[149] An offence under section 11 Terrorism Act 2000.
[150] Section 45 applies to some core terrorism offences such as membership: in my last annual report I recommended that the defence should not apply to any terrorism offence.
[151] Under section 34 Criminal Justice and Public Order Act 1994.

allegations of collusion in unlawful detention[152]; and detained individuals might be put at risk from Islamic State die-hards if known to have had direct contact with UK authorities.

4.25. This uncertainty chips away at UK confidence in investigation and prosecution as a viable means of risk management on return for individuals who are currently overseas.

4.26. One possible scenario for foreign terrorist fighters still located overseas is extradition. Consider, for example, a British national who has travelled overseas, and engaged in terrorist activity against UK interests, against whom there is sufficient evidence to prosecute, but who refuses to return to the UK. To extradite, a charging decision must first be made by the Crown Prosecution Service subject to the Attorney General's consent in terrorism cases[153].

4.27. This raises the question of whether, if it is not possible to interview overseas, it should at least be possible to interview extradited persons once received back into the UK[154]. Doing so may improve trial preparation by flushing out defences and allow adverse inferences to be drawn if no response is made to questions.

4.28. It is important to note that extradition has not been established for detainees currently held in North-East Syria. Since the Kurdish detaining authority, the Autonomous Administration of North and East Syria, is not a state authority, conventional extradition is not possible, and other extradition mechanisms need to be developed to overcome the objection that any return to face prosecution would be a form of rendition[155]. The UK currently has no direct diplomatic relations with the Syrian government.

4.29. But where extradition is available, the answer appears to lie in section 22 Counter-Terrorism Act 2008 which allows a Crown Court judge to authorise post-charge questioning, with the possibility of a jury later drawing adverse inferences if

[152] Cf. HM Government, 'The Principles relating to the detention and interview of detainees overseas and the passing and receipt of intelligence relating to detainees' (July 2019).
[153] Required for terrorism offences committed outside the UK: section 117(2A) Terrorism Act 2000.
[154] Assuming to do so is consistent with the purposes for which extradition is sought. If extradition is sought from the Requested State for the purposes of prosecution (based on a subsisting decision to charge), the true purpose cannot only be to question.
[155] In R v Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 AC 42, a terrorist prosecution was stayed because of the unlawful mode of return to the UK.

the defendant fails to mention something on which he later relies in court. Section 22 is supported by a Code of Practice (Code H).

4.30. Although section 22 has been criticized as giving rise to a risk of oppressive questioning[156], it is now a reasonably well-established feature of the counter-terrorism landscape. In a previous report, I summarised the three occasions (in 2014, 2016 and 2019) on which it had been used[157]. The fourth use of section 22 was in 2021 against Ben Styles, convicted in 2023 of possessing material useful to terrorists (including extreme right wing terrorist material) and of building a prohibited weapon (a sub-machine gun), but acquitted of attack-planning following a re-trial. Because of his ongoing trial it was not possible to report on this previously.

- Ben Styles was arrested in February 2021 and initially charged with firearms and ammunition offences. At this time police and prosecutors were not aware of any terrorist purpose of connection.
- Continuing investigation after charge led police to a USB device containing a large volume of material associated with weapons and explosives, as well as material supportive of extreme right-wing ideology.
- By now there was reasonable suspicion to believe that the firearm and ammunition were held in connection with a terrorist attack.
- However, since he had already been interviewed about the firearms and ammunition, authorisation for questioning post-charge was sought and granted by Mr Justice Sweeney in March 2021.

4.31. This use of section 22 falls squarely into the rationale identified in the Code which refers to the complexity of terrorist investigations and the fact that a great deal of evidence can come to light following charge of a terrorism suspect[158].

4.32. I detect some nervousness, however, amongst Counter Terrorism Police as to whether section 22 can be used routinely against individuals who have been extradited.

[156] Clive Walker, 'Post-charge questioning in UK terrorism cases: straining the adversarial process' The International Journal of Human Rights, 2016 Vol. 20, No. 5, 649-665, Clive Walker, 'Post-charge Questioning of Suspects', Criminal Law Review [2008]: 509, Michael Zander, 'Is Post Charge Questioning a Step Too Far?', Justice of the Peace 178 (2008): 716.
[157] Terrorism Acts in 2019 at 4.57.
[158] At para 15.

4.33. The measure was introduced in response to an influential report by the Joint Committee on Human Rights[159]. I have seen no evidence that Parliament considered its possible use in the extradition context.

4.34. It is correct that section 22 was sanctioned for use against Hashem Abedi, who plotted with his brother to bomb Manchester Arena in 2017 killing 22 people, following his extradition from Libya.

- The need to use section 22 did not arise because further evidence was discovered after charge but because Counter Terrorism Police had had no opportunity to interview Hashem Abedi until extradition had been completed.
- Although he could have been interviewed here voluntarily, adverse inferences could not have been drawn from any failure to answer questions.
- Nonetheless, permission for post-charge interview was granted by a High Court judge, without objection.

4.35. Despite this, there are indications in the statutory language that are inconsistent with its use in extradition cases. The overall power is for a judge of the Crown Court to "authorise the questioning of a person about an offence"[160]. However, the statutory criteria for use of section 22 are:

- that *further questioning* is necessary in the interests of justice;
- that the investigation for the purposes of which the *further questioning* is proposed is being conducted diligently and expeditiously; and
- that what is authorised will not interfere unduly with the preparation of the person's defence to the charge in question or any other charge[161].

4.36. The use of "further questioning" assumes that some questioning will already have taken place. To read "further questioning" as simply "questioning" might be justified if "further" simply meant "in the future". However, the natural meaning of "further questioning" is "additional questioning", which is the sense used elsewhere in the Code[162]. These points were not subject to consideration when section 22 was authorised against Hashem Abedi.

[159] Joint Human Rights Committee, Twentieth Report (2008) at paras 57-8.
[160] Section 22(2).
[161] Section 22(6).
[162] Code H paras 10.1, 12.5.

4.37. Given the safeguards of judicial authorisation and required adherence to the detailed provisions of Code H, together with the absence of any evidence that its use has to date been in any way oppressive, there is good reason for making section 22 available for use in extradition situations.

4.38. However, there is a strong argument that questioning after extradition would not amount to "further questioning". If so, section 22 is not available for use. The nervousness I detected amongst Counter Terrorism Police is well-founded. I therefore **recommend** that section 22(6) Counter-Terrorism Act 2008 should be amended by deleting the word "further".

Special Terrorism Powers

Stops and Searches

4.39. Figures for stop and searches under section 43 Terrorism Act 2000 are only collected by the Metropolitan Police Service and not by other forces in Great Britain.

4.40. During 2022, there were 327 uses of section 43 by the Metropolitan Police Service, the lowest since records began in 2011, although the proportion of resulting arrests (not necessarily for terrorism offences) is comparatively high (37 arrests)[163].

4.41. Recorded ethnicity under section 43 is currently self-defined. Out of 327 stops and searches, 102 people did not state their ethnicity: of those who did 68 were White people, 80 were Asian people, 40 were Black people, 6 were people of mixed ethnicity, and 31 were people of "Other" ethnicity[164]. The high number of "not stated" means that it is difficult to draw any sound conclusions.

4.42. A new search power was created by the Police, Crime, Sentencing and Courts Act 2022[165]. Section 43C, in force from June 2022, allows a constable to carry out a protective search of a released terrorist offender where his licence conditions authorise such a search. This could be a search for weapons, where a terrorist offender is known to be travelling to a crowded place. There are no statistics on the use of this power. I will report on any use of section 43C in next year's report.

[163] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, Table S.01.
[164] Table S.02.
[165] Based on my recommendation in my 2020 independent review of MAPPA arrangements for released terrorist offenders.

4.43. A revised Code of Practice on stop and search was issued in October 2022. As well as providing for the use of section 43C against released terrorist offenders, it gives improved guidance on authorising the very exceptional power contained in section 47A[166], which allows for suspicion-less stop and searches within a specific area if it is reasonably suspected that an act of terrorism will take place. This power was not used in 2022.

Search Warrants and Production Orders

4.44. Schedule 5 of the Terrorism Act 2000 provides for special powers of search production orders in connection with terrorist investigations. Unlike for ordinary powers it is not necessary to establish suspicion of a particular offence, and it is not necessary to be seeking for evidence (as opposed to intelligence).

4.45. Journalistic material is a possible target for production order applications because the interests of journalists and Counter Terrorism Police sometimes overlap. I have previously reported on the use of Schedule 5 to attempt to obtain un-broadcast footage of an interview with Shamima Begum[167], and the need for self-restraint on the part of investigators, given the possible consequences to journalists and journalism if source material is handed over to the authorities.

4.46. In March 2022, the Recorder of London refused an application by West Midlands Police for production of journalistic material held by Chris Mullins. The material sought related to the Birmingham Pub Bombings of which the Birmingham Six were convicted and subsequently cleared on appeal. In a detailed ruling, the judge found that despite the benefit likely to accrue to the terrorist investigation, the need to protect confidential journalistic sources was a stronger factor in the public interest balance[168].

4.47. A different outcome was reached in Northern Ireland in April 2022. A judge at Belfast Crown Court ordered the production, on terms that were agreed between the PSNI and the BBC, of un-broadcast material from the series 'Spotlight on the Troubles: A Secret History', which contained admissions of IRA activity by former

[166] As recommended in Terrorism Acts in 2018 at 4.18.
[167] Terrorism Acts in 2019 at 4.36.
[168] Ruling, 22.3.22: https://www.judiciary.uk/wp-content/uploads/2022/03/Application-for-a-production-order-under-the-Terrorism-Act-2000.pdf (last accessed 30.8.23).

priest Patrick Ryan, and an interview with convicted killer Laurence Maguire about his involvement with the Loyalist UVF[169].

4.48. A new search power for released terrorist offenders (section 43D) was added to the Terrorism Act by the Police, Crime, Sentencing and Courts Act 2022[170]. I will report on any use of this power next year.

4.49. During 2022, I was asked whether Counter Terrorism Police can use the non-terrorism search powers in section 18 Police and Criminal Evidence Act 1984. It allows the search of any premises occupied or controlled by a person "who is under arrest for an indictable offence"[171].

4.50. There is no difficulty where an individual is arrested under PACE on suspicion of committing an offence (including a terrorism offence). But it begs the question of whether the section 18 power is available if an individual has been arrested under section 41 Terrorism Act 2000.

- The sole condition for arresting under section 41 is that the individual is reasonably suspected to be a terrorist[172].
- A terrorist means *either* a person who has committed one of 9 listed offences under the Terrorism Act 2000 (no offences are listed under the Terrorism Act 2006), *or* someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

4.51. Since a person who is arrested under section 41 is not under arrest for an indictable offence but because he is suspected of being a terrorist, it follows that the section 18 power does not apply. Although it is possible to argue that in some cases the reason for suspicion of being a terrorist is that they have committed one of the 9 listed offences (a) the *ground* for arrest is that they are a terrorist and (b) in any event the 9 listed offences are fairly limited and will not reflect many terrorism-related arrest scenarios.

4.52. I intend to keep this matter under review. There are other statutory powers which enable Counter Terrorism Police to gain access to premises in an investigation

[169] 'BBC to hand over material from series on the Troubles' (BBC News, 7.4.22).
[170] Leading to the Criminal Justice (Sentencing) (Licence Conditions) (Amendment) Order 2022 SI 459 and revisions to Code H.
[171] Section 18(1).
[172] Section 41(1).

where section 41 is used, such as obtaining a search warrant under Schedule 5; and in any event (see Chapter 5) most terrorism-related arrests take place under PACE. I have not yet seen any evidence that the non-availability of section 18 in a section 41 case gives rise to any practical problems, so that I ought to consider a recommendation.

Overseas Production Orders

4.53. Counter Terrorism Police, like their colleagues, are waiting with keen anticipation to see how the new UK-US arrangements for judge-ordered access to overseas data in evidential format will work in practice. The arrangements flow from the bilateral UK/US: Agreement on Access to Electronic Data for the Purpose of Countering Serious Crime (known as the Data Access Agreement or DAA) which came into force on 3 October 2022[173]. Serious crime includes terrorism.

4.54. Statutory underpinning for access to evidential material is found in the Crime (Overseas Production Orders) Act 2019, in the UK, and the Clarifying Lawful Overseas Use of Data Act (or CLOUD Act), in the US.

4.55. From a counter-terrorism perspective, these arrangements will allow Counter Terrorism Police to obtain orders from judges in the UK, to be served directly on relevant US entities, for the obtaining of evidential material held mainly by large US-based tech companies. Traditional systems for securing overseas evidence by way of mutual legal assistance have proved far too cumbersome.

4.56. Assuming it can be attributed to a suspect, obtaining evidence direct from tech companies provides an alternative to wrestling with data on encrypted devices seized on arrest, which can lead to lengthy periods of delay before any decision to charge. The flow of data under these arrangements is more likely towards the UK, given the US's dominance of the large tech sector.

4.57. The US has insisted on strict and resource-intensive safeguards to avoid the return of data which targets US citizens[174]. Further restrictions relating to US constitutional standards of freedom of speech are directly relevant to terrorism

[173] The DAA also permits direct access to US-based data based on warrants or authorisations granted under the Investigatory Powers Act 2016. The scheme is overseen by the Investigatory Powers Commission: see IPCO Advisory Notice 1/2023.
[174] DAA, Article 4.3.

prosecutions. By virtue of a specific Understanding between the two states[175], the UK has agreed to consult with and obtain permission from the US Designated Authority (the Department of Justice) prior to using any received data as evidence in prosecutions under:

- Sections 1 (encouragement) and 2 (dissemination etc of terrorist publications) Terrorism Act 2006[176].
- Sections 12(1A) (reckless support for a proscribed organisation) and 13 (displaying symbol of proscribed organisation) Terrorism Act 2000.
- Sections 58(1) (possession, including streaming, of information likely to be useful to a terrorist) and 58A(1) (publishing information about members of the armed forces likely to be useful to a terrorist) Terrorism Act 2000.

Data Retention

4.58. In last year's report I referred to some practical difficulties in reviewing and deleting data[177]. The government has accepted a previous recommendation that it should review the retention, review and disposal (RRD) timeframes for electronic data obtained from Schedule 7 examinations[178]. The topic of data retention plainly applies across the activities of Counter Terrorism Police. I remain of the view that published policies should reflect accurately what is actually done and also what is feasible to be done in a world in which holdings of personal data are massive and distributed across the counter-terrorism network.

Biometrics

4.59. In last year's report I made an urgent recommendation for the government to regularise the position of Interpol-derived biometric holdings, some of which will undoubtedly concern foreign terrorist fighters[179]. This information falls within the scheme of National Security Determinations created by Part 1 of the Counter-Terrorism Act 2008 but is unsuited to it by reason of scale and nature, with the result

[175] HM Government, 'Understanding in relation to Freedom of Speech under the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime', Washington (3.10.19).
[176] Including how these provisions are applied to internet activity under section 3.
[177] Terrorism Acts in 2021 at 4.53.
[178] See further Chapter 6 (under Data Access and Downloads).
[179] Terrorism Acts in 2021 at 4.111.

that Counter Terrorism Police has been unable to process it according to the existing law. Amending legislation is currently before Parliament[180].

Cordons

4.60. No doubt reflecting the lower terror threat in 2022, there were only 4 uses of terrorist cordons under sections 33-36 of the Terrorism Act 2000 (down from 10 in 2021). Additional safeguards on searches of premises within cordons have now been added by the National Security Act 2023[181]; once in force, these will ensure that such searches can only be authorised in urgent cases. This welcome amendment goes back to analysis by my predecessor, Max Hill KC, of searches conducted following the Manchester Arena attack (Operation Manteline), and my subsequent recommendation[182].

Financial Investigations[183]

4.61. CT investigators applied for 27 disclosure orders under Schedule 5A Terrorism Act 2000 during 2022, giving rise to 117 disclosure notices. 14 disclosure orders were obtained under the Proceeds of Crime Act 2002 giving rise to 76 disclosure notices.

4.62. Section 22B Terrorism Act 2000 provides a power to require further information about disclosures. Section 22B has been amended by the Economic Crime and Corporate Transparency Act 2023, to enable orders to be sought for information for strategic analysis of terrorist financing (following a recommendation by the Financial Action Task Force). Unless sufficient safeguards are in place there is a risk of fishing expeditions. I responded to the consultation on the draft Code of Practice[184].

4.63. There were no Customer Information Orders or Explanation Orders, but 129 Account Monitoring Orders were granted during 2022[185].

4.64. 70 production orders were granted under Schedule 5 Terrorism Act 2000 in relation to financial investigations.

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[180] In the Data (Use and Access) Bill.
[181] Schedule 17, para 2.
[182] Terrorism Acts in 2018 at 4.27.
[183] Data in following paragraphs supplied to me by CT Police Headquarters.
[184] https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2023/05/Terrorist-Financing-Information-Orders-Code-of-Practice-IRTL-response.pdf (last accessed 31.8.23).
[185] Under paragraph 1 of Schedule 6, paragraph 5 of Schedule 5, and paragraph 2(1) of Schedule 6A to the Terrorism Act 2000, respectively.

4.65. In 2022:

- 674 Terrorism Act 2000 Suspicious Activity Reports (SARs) were disseminated.
- 317 Proceeds of Crime Act 2002 SARs were disseminated that were identified as potentially relevant to terrorism.
- 233 SARs were disseminated that contained a request for a defence against terrorist financing[186].
- 39 of these were refused.

[186] Under sections 21ZA or 21ZB Terrorism Act 2000.

5. ARRESTING AND DETAINING

5.1. 2022 saw the second lowest recorded number of terrorism-related arrests (166) ever recorded in Great Britain, down from 185 in 2021. The figure has declined significantly since the peak year of 2017 (467) characterised by the terrorist attacks in London and Manchester[187], when the threat level was briefly set at 'critical'.

5.2. In general, two arrest powers are used by counter-terrorism police:

- The general arrest power under the Police and Evidence Act 1984 ('PACE') that applies to all offences, including terrorism offences[188].
- Section 41 Terrorism Act 2000, which permits the arrest of any suspected terrorist and their pre-charge detention, subject to judicial oversight, for up to 14 days; there were 35 arrests under section 41 in 2022.
- The use of section 41 tends to indicate that the case is more serious and corresponds to a 'kitchen sink' approach: lots of investigative resources are made available on the basis that the individual must be charged or released (unconditionally[189]) after a maximum of 14 days.
- Since the 2010s only a minority of terrorism-related arrests have been made under section 41: the percentage use of section 41 (21%) is slightly up on last year but less than the rate in 2017 (33%).
- The number of individuals who were arrested under PACE[190] and then released under investigation has been separately recorded since 2014. This figure has ballooned: 52 in 2022, up from 20 in 2021 and 15 in 2020, from fewer than 10 in all the years to 2019. This suggests that counter-terrorism police are arresting individuals whose conduct, on further analysis, may be less straightforward (for example, it may not be clear what ideological or other cause they were seeking to advance[191]) and/or who are deemed sufficiently low risk to be released whilst investigations continue.

[187] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, Table A.01.
[188] Or its equivalents in Scotland (the Criminal Justice (Scotland) Act 2016) and Northern Ireland (the Police and Criminal Evidence (Northern Ireland) Order 1989).
[189] Bail is not available following release from detention under section 41. In Terrorism Acts in 2018 in Chapter 5 I considered the case for and against allowing the police to bail section 41 suspects, but concluded on balance that reform was not needed.
[190] And other non-terrorism arrest powers.
[191] A requirement of the definition of terrorism under section 1 Terrorism Act 2000.

5.3. Sometimes individuals are arrested under one power, then re-arrested under another (for example, under PACE, and then under section 41 if the matter appears more serious than first thought). This is known as 'flipping'.

Who Gets Arrested?

5.4. As has always been the case with gender, many more men (153 in 2022) are subject to terrorism-related arrests than women (13)[192].

5.5. 2022 had the highest number of juvenile terrorism-related arrests (32) in any calendar year[193]. The figure was 20[194] in 2021; in 2017, the high threat year of multiple attacks, it was 28. There was a fall in the numbers of over-25s arrested.

5.6. In 2022, as in the two previous years, broad statistics on ethnicity suggest that a greater number of White people (73) were subject to terrorism-related arrests than Black and Asian people combined (51). However, care needs to be taken in making comparisons because of the significant 'other' category (42)[195].

5.7. More detailed ethnicity statistics, available on my recommendation since 2022[196], demonstrate that this 'other' category corresponds to 'Any Other Asian Background' (25), mixed ethnicity (8), Arab (5), and 'any other' (4).

- The more accurate breakdown for terrorism relates arrests for recorded ethnicities is therefore: White people (73), Asian people (65), Black people (11), people with mixed ethnicity (8), Arab people (5).

5.8. Most terrorism-related arrestees are British[197] - the only other nationality to reach double figures in 2022 was Sri Lankan (10). Since records began the only non-British nationalities reaching double figures in Great Britain (mainly in the 10-20 range) are Ireland (2002), Turkey (2002, 2016), Algeria (2002, 2003, 2009, 2017), Libya (2017), Somalia (2005, 2012, 2015), Afghanistan (2003, 2007, 2009, 2017), India (2005, 2012), Pakistan (2005-9, 2011-13, 2017), Sri Lanka (2009, 2019, 2022), Iran (2005, 2017), and Iraq (2002-5, 2007, 2016-17).

[192] Table A.09.
[193] Table A.10.
[194] This is the official statistic: I have been informed that it includes at least one re-arrest of the same individual, so the figure of 20 arrests does not correspond to arrests of 20 children.
[195] Table A.11a.
[196] Table A.11b.
[197] Table A.12a.

5.9. No breakdown is given for ideology. It is likely that the increased arrests of children and White people reflect greater counter-terrorism activity against suspected extreme right-wing terrorists[198], but the absence of a terrorism-type category is a significant drawback in the official statistics. In the interests of public transparency, and society's shared interest in understanding emerging terrorist profiles, I **recommend** that official statistics for terrorism-related arrests should record whether the arrest relates to Islamist Extremist Terrorism, Extreme Right-Wing Terrorism, or other terrorism.

Detention under Section 41

5.10. After 48 hours, an arrestee must be released or the authorities must apply for a Warrant of Further Detention from a judicial authority (generally speaking, the Chief Magistrate at Westminster Magistrates' Court)[199]. Detention under section 41 is governed by Schedule 8 Terrorism Act 2000, and Code of Practice H, which contain detailed provision as to powers and safeguards[200].

5.11. The total permitted detention, if a further Warrant is sought and obtained, is 14 days[201]. I will report next year on welcome amendments made by the National Security Act 2023[202] to ensure that if a person is arrested under another power, but the arrest is then 'flipped' to section 41, then the total period of permitted *cumulative* detention is capped at 14 days.

5.12. There were 28 applications for Warrants of Further Detention in 2022 (down from 31 in 2021) – all were granted[203]. Detained individuals are entitled to notice, to make representations to the police, and to the judicial authority. Hearings are conducted remotely. Sensitive information, withheld from the detainee and his solicitor, can be relied on.

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[198] In 2021, 19 out of 20 arrests of children were for suspected ERWT activity.
[199] Section 41(3) Terrorism Act 2000.
[200] Home Office, August 2019.
[201] Para 36(3) of Schedule 8. Draft legislation (the Draft Detention of Terrorist Suspects (Temporary Extension) Bills, CM 8018 (2011)), exists so that the maximum could quickly be extended to 28 days if that step had to be taken in light of events. The purpose of the draft legislation was to allow prior Parliamentary scrutiny, recognising that in a genuine emergency the urgent need for an extension would rule out debate: see further, Joint Committee report, Session 2010-12, HL Paper 161, HC Paper 893 (14.6.11). If a person was ever detained under the Terrorism Act 2000 for more than 14 days, the Independent Reviewer of Terrorism Legislation would be required to secure that a review was carried out of that detention: section 36(4A) Terrorism Act 2006.
[202] Schedule 17, amending section 41.
[203] Table A.13a.

5.13. 49% of those detained under section 41 (35) were held for between 5-6 days (17). As with recent years, the percentage of individuals who are detained for longer than a week is small (4 out of 35). Two were held up to the 14-day maximum[204].

5.14. One person had his right of access to a solicitor delayed on the authority of a superintendent under special powers in Schedule 8[205]: that power may be exercised where the superintendent has reasonable grounds for believing that allowing access to a solicitor will interfere with the terrorism investigation[206]. The power was not exercised in 2021: no figures exist prior to this.

5.15. Individuals arrested for terrorist activity under PACE or section 41 are held in special custody suites (known as TACT[207] Suites) and visited by volunteer trained TACT Independent Custody Visitors (ICVs)[208]. Their purpose is to pick up any signs of mistreatment.

5.16. I am sent all records made by TACT ICVs and have visited several TACT Suites in Great Britain. The standard of custody in TACT Suites is very high. TACT suites were not designed with children in mind but during 2022 one child arrestee was given the run of the corridor, rather than being locked in his cell all the time.

5.17. At my request, the Independent Custody Visitors Association carried out a survey of the regional visitors who visit the different TACT Suites around the UK. It was not clear to me that TACT ICVs were being notified of individuals detained in local TACT Suites where they were subject to terrorism-related arrest under the Police and Criminal Evidence Act 1984 (as opposed to under section 41 Terrorism Act 2000).

5.18. The result of this survey showed that there are different regional practices.

5.19. Although the maximum period of detention under PACE is more limited (up to 96 hours), in my view all PACE-arrested individuals who are held in TACT Suites should be eligible for independent visits from TACT ICVs because (a) if they do not, there will be a black hole in independent oversight (b) a significant proportion of them

[204] Table A.02.
[205] Table A.13b.
[206] Paragraph 8.
[207] TACT is an acronym for Terrorism Acts and Counter-Terrorism.
[208] ICVs form part of the UK's National Preventive Mechanism (NPM) designed to prevent torture and other ill-treatment. Cf. National Preventive Mechanism, Monitoring Places of Detention 13th Annual Report 2021/22 (2023). My role also forms part of the NPM because of my interest in TACT suites.

are children (c) there is often a possibility that they will be 'flipped' into section 41 arrest and detention (d) TACT Suites are different from ordinary custody and potentially more isolating.

5.20. I therefore **recommend** that Counter Terrorism Police should notify TACT ICVs of all terrorism-related detainees in TACT Suites, whether arrested under PACE or section 41, and that the relevant TACT ICV authorities (Police and Crime Commissioners, and the Mayor of London) make arrangements so that visits take place. The Code of Practice on Independent Custody Visiting[209] should be amended to make this clear.

5.21. During 2023 it came to my attention that the number of ICVs in London (for whose recruitment and deployment the Mayor of London is the appropriate authority[210]) is seriously depleted, meaning that one TACT detainee received an inadequate number of custody visits despite being held for in excess of 13 days pre-charge. I have raised this with the Independent Custody Visitor's Association and hope to report next year that arrangements in London – home to many terrorism arrests – have improved.

Charge Rate

5.22. There were fewer principal charges under terrorism legislation in 2022 (44), the lowest since 2011, although there may be outstanding decisions for those arrested in 2022[211], together with 2 charges under non-terrorism legislation that were considered terrorism-related[212]. There was an increase in the most serious type of charge (attack-planning under section 5 Terrorism Act 2006) to 6 (up from 2 in 2021 and 3 in 2020), although for comparison the figures for the years 2014 to 2017 were 32, 22, 24 and 25[213].

5.23. Consistent with recent years, the majority of principal charges (meaning the most serious charge, if more than one) fall into the category of 'documentary offences': collection or possession of information useful for an act of terrorism (section 58 Terrorism Act 2000), and encouragement of terrorism and terrorist publications

[209] Home Office, March 2013.
[210] Under the Police Reform and Social Responsibility Act 2011.
[211] Table A.06a.
[212] Table A.05b.
[213] Table A.05a.

(sections 1 and 2 Terrorism Act 2006)[214]. These offences are typically committed online. They are classic 'precursor' offences, used to prosecute behaviour that is anterior to any attack. However the number of attack-planning charges (section 5 Terrorism Act 2006) was marginally up on the previous two years (6, compared to 3 in 2000 and 2 in 2001).

5.24. Despite the number of child arrests in 2022 (32) only 7 children were charged[215]. This is consistent with the police responding to what they assess to be imminent risk to public safety, only to discover that the circumstances are less serious, or less straightforwardly terrorist, than first reasonably suspected – inevitable when counter-terrorism police are having to make judgments based on online activity.

5.25. The more detailed ethnicity statistics[216] reveal that in 2022 there were 23 charges of White people compared to 73 arrests (but noting that not all arrests in 2022 will have led to charging decisions); 16 charges of Asian people compared to 65 arrests; 2 charges of people of mixed ethnicity compared to 8 arrests; and one charge of an Arab person compared to 5 arrests. These suggest a 'conversion rate' for all ethnic groups of between 20% to 32%.

5.26. Considering longer term trends (noting that 'other' may in fact mask further people of Asian background)[217], the average conversion rate of arrest to charge was:

- 20% (White people), 39% (Black people), 24% (Asian people), 17% (other) for the years 2008-10;
- 33% (White people), 35% (Black people), 35% (Asian people), 18% (other) for the years 2016-18;
- 39% (White people), 41% (Black people), 27% (Asian people), 24% (other) for the years 2019-21.

5.27. It is difficult to interpret these statistics. A high conversion rate for a particular ethnic category may indicate that the right people are being arrested, or that certain ethnicities are more likely to be charged whereas other categories are 'let off'. On the other hand, a low conversion rate may suggest an excess of speculative arrests, or conversely greater use of discretion on whether to charge (which could be particularly

[214] Table A.05a.
[215] Table A.10.
[216] Table A.11b.
[217] Table A.11a.

relevant to arrested children). This difficulty is compounded by the large 'other' category.

5.28. Most of those charged for terrorism-related conduct were British (37 out of 46).

5.29. 18 out of the 35 persons arrested under section 41 were charged[218]. Until 2011, roughly one third of section 41 detainees were not charged; since then, a majority of detainees have been charged.

5.30. Overall, this suggests that during the last decade the stronger section 41 arrest power has been appropriately used. However, out of those detained for 8 days or more in 2022 (3), only one was charged[219]. The others were released without charge, meaning that the police were ultimately unable to secure sufficient evidence to prosecute, and illustrates why strong oversight is needed for long periods of pre-charge detention.

Former Prisoners

5.31. A new arrest power (section 43B) was added to the Terrorism Act 2000 with effect from June 2022[220]. This enables the arrest of released terrorist offenders where a constable has reasonable grounds to suspect that the offender has breached his licence conditions and that it is necessary to detain him until a decision can be made by His Majesty's Prisons and Probation Service, an agency of the Ministry of Justice, on whether to recall him to prison.

5.32. This addition followed my review in 2020 of the management of released terrorist offenders in the wake of the Fishmonger's Hall attack of 2019 and the Streatham attack of 2020[221]. The power was necessary because an individual might display worrying behaviour which could not result in arrest for a suspected offence but could be an indication that an attack was being considered. I was satisfied from real case examples that the time gap before recall to prison could prove deadly unless the police had a power to intervene.

[218] Table A.02.
[219] Table A.02.
[220] Under the Police, Crime, Sentencing and Courts Act 2022.
[221] Hall, J., 'Terrorism Risk Offenders: Independent Review of Statutory Multi-Agency Protection Arrangements' (May 2020).

5.33. An individual arrested under this power may be detained at any police station[222] for up to 6 hours[223]. PACE Code H was revised in December 2022 to take account of these changes, with effect from 10 February 2023.

5.34. I am informed by CT Police Headquarters that during 2022 a released terrorist offender was arrested under this new power pending a decision to recall him to prison for breach of his good behaviour licence condition. The individual was taken to a London police station and detained whilst the recall decision was formally made.

[222] Home Office, The Terrorism Act 2000 (Places of Detention) (England and Wales and Scotland) Designation 2022 (23.8.22).
[223] Section 43B(6): 12 hours in Scotland and Northern Ireland.

6. STOPPING THE TRAVELLING PUBLIC

Introduction

6.1. Schedule 7 Terrorism Act 2000 is an exceptional counter-terrorism power standing at the frontline of the UK's response to terrorism generally and Travel to Terror Zones in particular. Unless they find some covert way into and out of Great Britain[224], every terrorist traveller will have passed through one of the country's ports and airports; and in the case of small boats, which I consider below, have arrived at Dover Western Jet Foil following interception by the maritime authorities.

6.2. The power enables police at ports to stop and question ("examine") individuals entering or leaving the UK, to determine whether they are or have been involved in the commission, preparation or instigation of acts of terrorism, without any grounds for suspicion. The power of examination includes detention for up to 6 hours; search of the person; seizure of property including mobile devices; examination and copying of electronic data; fingerprinting and taking of DNA. Failing to cooperate with an examination is a criminal offence.

6.3. Many more people may be spoken to at ports by Counter-Terrorism Police than are subject to statutory examination. Use of ordinary common law powers to speak to and interact with members of the public (which used to be characterised as 'screening') allows officers to decide whether to move to formal examination. In a substantial number of cases officers will already have decided who they want to speak to, based on information received or as a result of rules-based targeting communicated to frontline officers by the Regional Control Desk[225].

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[224] The position is different for Northern Ireland given the open border between the Province and the Republic. There is a power under Schedule 7 to examine cross-border movement: I consider this power in Chapter 9.

[225] There are various statutory requirements for carriers to provide advance passenger information and passenger name records, backed up by civil penalty (such as the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015, amended during 2022 by the Immigration and Police (Passenger, Crew and Service Information) (Amendment) Order 2022, SI 84 and Passenger, Crew and Service Information (Civil Penalties) (Amendment) Regulations 2022 SI 262). During 2023 the Authority to Carry Scheme created by the Counter-Terrorism and Security Act 2015 was replaced to account for the Electronic Travel Authorisation scheme (Authority to Carry Scheme and Civil Penalties Regulations 2023 SI 2023/326). The net effect is that the UK should know who is travelling to the UK from abroad (excluding the Republic of Ireland), and can block some people from travelling (e.g. those who have been deported).

6.4. Examination is an investigatory and disruptive power. It is investigatory because it may allow officers, through questioning or search of mobile phone data to uncover intelligence or information of terrorist activity. For example, E5, a suspected Islamist Extremist Terrorist who was deprived of his citizenship in 2021, had attended an active shooter course in Poland in 2019; on his return he was stopped at London City Airport under Schedule 7 and his phone download contained searches relating to weapons[226].

6.5. It can be disruptive because formal examination of a person suspected of travelling to a terror zone may force them to change their plans; provide an opportunity to safeguard children who are being taken out; or give police sufficient justification to seize a passport.

- This power of passport seizure, for up to 14 days pending a decision of whether for example to withdraw the passport using the Royal Prerogative, is contained in Schedule 1 to the Counter-Terrorism and Security Act 2015. This power was frequently used for travellers to terror zones (and was used 60 times between 2015 and the end of 2021) – although it is currently used infrequently[227].

6.6. The Manchester Arena attack of 2017 was coordinated by two brothers, Salman and Hashem Abedi. In his report on the preventability of the attack, Sir John Saunders found that there was a missed opportunity to take a possible (but not publicly identified) investigative action. Had that investigative action been taken, it could have led to Salman Abedi being stopped at Manchester Airport under Schedule 7 on his return to the United Kingdom and that "…a stop may have had a deterrent effect or led to investigative steps"[228].

6.7. But whatever the utility of Schedule 7, the burden that falls on individuals is a high one. True it is that the nature of the suspicion may become apparent through the questions that are asked, but no reason need be given for the stop, and the decision to exercise the powers is correspondingly difficult to challenge[229].

[226] E5 v Home Secretary, SC/184/2021 (3.3.23).
[227] This power was exercised four times in 2022; since 2015, 74 individuals have been subject to this power: Disruptive Powers Transparency Report 2022 (published October 2023).
[228] Volume 3, 'Radicalisation and Preventability', at para 24.78.
[229] Although it may be possible to challenge the way the power is exercised – for example by demonstrating a departure from the Code of Practice.

Use of the Power in 2022

6.8. In the year to 31 December 2022 the power to examine was exercised 2,415 times in Great Britain[230]:

- This is slightly down from 2021 (2,495), but well down from the level in 2012 (60,127). Interestingly, the use of Schedule 7 has fallen year-on-year, even during the Islamic State years (roughly 2014 to 2019).
- The number of greater than one-hour examinations has increased (1343), and more importantly the total number of detentions (1366) is the highest ever percentage of examinations (57%), compared to only 10% as recently as 2017.
- So, the current overall trend is a continuing reduction of the number of Schedule 7 examinations, but an increase in the number of detentions. I am informed by CT Police that the largest number of detentions were in the category of 3 to 4 hours duration.
- Almost all detentions are related to the length of examination in the sense that examinations for more than one hour can only take place if the person is detained[231]. There were 1,343 examinations in detention over the hour, and only 23 where detention was imposed before the hour.
- Two factors lie behind these changes over time. Fewer Examining Officers at ports, and greater reliance on targeted or intelligence-led examinations leading to fewer examinations but longer period of examination. Current figures may also be impacted by continuing reductions in traveller numbers post-Covid.

6.9. Given the rising proportion of detentions, I refer, as I have done before[232], to the need for the bodies comprising the National Preventive Mechanism to consider how to ensure places of detention under Schedule 7 are visited. This flows from the United Kingdom's obligations under Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[230] Home Office, Operation of police powers under the Terrorism Acts, statistics to y/e 31.12.22, table S.03a.
[231] Schedule 7 para 6A(2).
[232] Terrorism Acts in 2020 at 6.23.

6.10. Of the United Kingdom examinations in 2022 (2,592), a total of 430 (or 17%) related to journeys taken between ports within the United Kingdom[233].

Ethnicity

6.11. An examination will not be lawful if it amounts to unlawful discrimination contrary to the Equality Act 2010[234], and the obligation to avoid discrimination on grounds of ethnicity or religion in the exercise of policing powers is reiterated in the Code of Practice[235].

6.12. To their credit, Counter Terrorism Policing HQ have imposed significant requirements on frontline officers for data and have effective tools for analysing it[236]. Recent improvements in self-defined ethnicity categories mean that it is now possible to say that very few Chinese people are in fact being examined under Schedule 7 (14)[237] despite the size of the "Chinese or Other" category (716)[238]. It is also an improvement that the proportion of people who are examined whose ethnicity is 'Not Stated' (either because they were not asked or declined to provide it) has started to fall.

6.13. During 2022, persons selected for examination (total 2,415) were more likely to be Asian people (740) than White people (444), and, if the category 'Not Stated' (237) is removed, a selected person is less likely to be White (444) than another ethnicity (1,734)[239].

6.14. Furthermore, as a percentage of all persons examined, the number of White people being examined has gone down from 39% (of 60,127 total stops) to 18% in 2022 (of 2,415 total stops) (if 'Not Stated' is removed, the 2022 figure for White people is 20%). This is despite the rise in the number of White people being arrested, amounting very roughly to one half of terrorism-related arrests in the years after

[233] Table S.04.
[234] And there could be no criminal liability for failing to comply with such an examination: Cifci v Crown Prosecution Service [2022] EWHC 1676 at para 32.
[235] July 2022 at para 25.
[236] In the course of considering this data, it became apparent that the figure provided to the Home Office on the number of times (4) the power to delay access to a solicitor was exercised under Schedule 8 para (1) was inaccurate. The power was not used at all in 2022.
[237] Table S.03b.
[238] Table S.03a.
[239] Police Powers etc., Table S.03a.

2018[240] corresponding with an increase in arrests of suspected Extreme Right-Wing terrorists.

6.15. Given that the Schedule 7 power ought to be exercised in a manner that is proportionate to the sources of terrorist risk, these figures could imply that something other than terrorist risk is being considered in the decision to examine, with the high percentage of other ethnicities amounting to evidence of racial or (by inference) religious discrimination. There is no separate data for religion.

6.16. I am unable to provide a clear answer to whether this is statistical evidence of race or religious discrimination. Much higher use of Schedule 7 against people other than White people *could* be evidence of race or religious discrimination. On the other hand, I would not expect the proportion of White people stopped under Schedule 7 to track the proportion of Extreme Right Wing Terrorist arrests (by inference, of White people) in the UK.

- This is because, even assuming similar travel rates through seaports and airports for White people and people of other ethnicities[241], extreme right-wing terrorists have fewer reasons to engage in international travel for terrorist purposes such as training and fighting and association. Much of their association takes place online and they are less likely to be members of terrorist organisations that are active overseas.

6.17. This may mean that, although Schedule 7 provides an investigative opportunity in relation to any terrorist, Schedule 7 is less likely to be an investigative or disruptive option of choice for extreme right-wing terrorism compared to Islamist Extremist terrorism. In addition, a significant proportion of Schedule 7 examinations are conducted on non-British nationals, and so the overall picture is unlikely to correspond to the distribution of the UK terrorist population.

6.18. For all that, whenever the exercise of a terrorism power leads to different collective outcomes for different ethnicities, there is every reason for senior managers and local team leaders to examine critically how the power is being used on a day-to-day basis. As in previous years I have been impressed by the national leadership of CT Borders Policing and its willingness to ask data-driven questions.

[240] Ibid, Table A.11a.
[241] This may be a flawed assumption in the case of children who make up a significant number of those arrested for extreme right-wing terrorism.

6.19. All these figures should be seen in the context of the precipitous fall in the total number of Schedule 7 examinations, from over sixty thousand in 2012 to 2,415 in 2022. The reason for this decline is better targeting (including increased use of watchlists) and fewer untasked stops. Although no decision is immune from possible discrimination, it stands to reason that tasked stops based on specific indicators that an individual may be involved in terrorism are less likely to be discriminatory than decisions made on the spot.

6.20. I am therefore pleased that Counter-Terrorism Police have accepted my recommendation to analyse ethnicity categories for those subject to tasked, compared to untasked, examinations. I have been informed that improvements on data collection were implemented during the second quarter of 2022, and analysis of the data will now be possible.

6.21. As to detention, the proportion of individuals who are detained is broadly the same across all ethnic categories (White people, 61%; Black people, 63%; Asian people, 56%, 'Chinese or Other' people, 57%).

Complaints

6.22. National data on all complaints concerning Schedule 7 is now available. There were 20 complaints arising from the exercise of Schedule 7 powers in 2022: half of these related to the West Midlands region. Given that some of these complaints are directed against the existence of the power rather than the manner of its exercise, this is a relatively modest number.

Small Boat Arrivals

6.23. According to Home Office published statistics, the number of migrants arriving into the UK on small boats during 2022 was 45,774, up from only 299 in 2018[242]. This increasingly popular mode of arrival pointed to a general risk that the authorities will miss a counter-terrorism opportunity for individuals who arrive using entry points other than ports designated under Schedule 7 Terrorism Act 2000.

[242] Home Office, Irregular migration summary tables (2023).

6.24. Amendments were made to Schedule 7 by the National Security Act 2022 and came into force in June 2022[243]. Although the amendments were undoubtedly inspired by small boats, they are mode-of-arrival-neutral and would also apply to migrants arriving on the back of lorries.

6.25. Their effect is that the power to examine is extended to any person who has been detained or arrested under a provision of the Immigration Acts, subject to two important limitations:

- The individual is believed to have been apprehended within 24 hours of their arrival on UK soil; and
- No more than 5 days have elapsed since their apprehension.

6.26. These limitations tie the examination power to the time of entry, consistent with the established use of Schedule 7, and excludes the use of the power against people whose entry, whether regular or not, is historic. The Windrush scandal of 2018, in which long-term residents were wrongly detained, threatened with deportation, and in some cases deported, based on a flawed retrospective assessment of their right to reside, demonstrates the need to avoid a roving power based only on the authorities' assessment of immigration status.

6.27. These amendments are supported by a Code of Practice[244]. Individuals must be informed that the purpose of the examination is not to elicit evidence or information relating to any immigration offence[245].

6.28. Conducting examinations under Schedule 7 on small boat arrivals presents uniquely challenging features to Counter-Terrorism Police: their power under Schedule 7 depends on the exercise (and lawfulness) of the exercise of powers under the Immigration Acts; and their practical ability to conduct examinations requires novel and unprecedented joint working with Home Office and Border Force officials. It was suggested to me that small boats arrivals should be conceptualised as the opening up of another major UK port.

[243] Section 78, inserting subparagraph (3A) into paragraph 2 of Schedule 7.
[244] Brought into force by the Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2022/SI 674.
[245] Para 44.

6.29. There are no published figures for the use of Schedule 7 on small boats arrivals, but the number is expected to increase as familiarity and working arrangements improve.

6.30. To see for myself, during 2023 I went to Western Jet Foil, the marina at the Port of Dover where small boat arrivals are brought after being picked up by UK vessels[246], also the site of Andrew Leak's extreme right wing terrorist attack in October 2022. I then visited Manston Migrant Processing Centre, a former airfield just under 20 miles North of Dover, where migrants are later taken by bus, subject to processing (such as fingerprinting), and detained in the short term (up to 96 hours) under immigration powers[247]. Minors go to the Kent Intake Unit in Dover.

6.31. On a calm day, up to 1,000 migrants may arrive at Western Jet Foil, of which the overwhelming majority will be young adult men. In turn many of these will be from unstable countries such as Afghanistan where terrorism is endemic, and in other Schedule 7 settings would be prime candidates for possible examination. However, the overall numbers mean that Counter-Terrorism Police select for examination based principally on watch-listing, once identity has been established.

6.32. The flaw in the current set up is that a large influx of arrivals could stretch the processing capacity at Manston. During 2022 some individuals were released before Schedule 7 examination because of overcrowding.

6.33. Although the amended Schedule 7 allows for examination whilst in lawful detention for up to 5 days after apprehension, statutory requirements for detainee accommodation mean that individuals may only be lawfully detained in the types of premises at Manston for periods well short of 5 days[248].

6.34. This means that individuals cannot be detained at Manston for the full amount of time during which Counter-Terrorism Police might want to consider exercising their Schedule 7 powers. After being removed from Manston, exercising the Schedule 7

[246] Monitoring of the Channel is such that small boats are almost all intercepted and their occupants brought to Wester Jet Foil.
[247] That was the intention. In 2022 the facilities were overwhelmed, and individuals were held for much longer than 24 hours (the then-maximum). The Chairs of the Home Affairs and Joint Committee on Human Rights wrote jointly to the Home Secretary on 2 November 2022 with reference to "dire" and "overcrowded and degrading" conditions.
[248] The Short-term Holding Facility Rules 2018, as recently amended by the Short-term Holding Facility (Amendment) Rules 2022 to enable individuals to be detained in residential holding rooms for up to 96 hours.

power becomes almost impossible in practice, and is no longer available in principle if the individual is bailed.

6.35. Provision for longer periods of permitted detention to allow Schedule 7 powers to be exercised at Manston is undesirable: the counter-terrorism tail would end up wagging the immigration detention dog. Far better would be to accelerate the identification of irregular migrants arriving in the UK.

6.36. This could be achieved in part by establishing technological means of identification at Western Jet Foil using facial recognition (FR), accessible to Counter-Terrorism Police.

- Since every arrival into the UK must eventually be processed and their identity established or at least recorded (by the taking of biometrics), there can be no objection to routine use of FR on every person arriving at Western Jet Foil.
- If this leads to watch-listed individuals being identified sooner and considered for examination, so much the better, and will not depend upon arrangements for detention at Manston.

6.37. I therefore **recommend** that the government establishes a system of facial recognition for all arrivals at Western Jet Foil.

Biometrics

6.38. Statistics on biometrics taken under Schedule 7 have only been published from the calendar year 2021. In 2022, at least one biometric identifier (fingerprints or DNA) was taken in 1,301 examinations out of the total of 2,592 United Kingdom examinations (almost exactly 50%). This compares to 1,031 out of 2,631 examinations in 2022 (39%)[249]. Biometrics may only be taken from a person who has been detained[250].

6.39. Where there is no other lawful basis to retain fingerprints or DNA, they may only be retained after 3 years for the purposes of national security where a National Security Determination is made under Part 1 of the Counter-Terrorism Act 2008.

[249] Table S.05.
[250] Paragraph 10 of Schedule 8 Terrorism Act 2000.

6.40. In the years to 2022, the scheme of National Security Determinations was subject to oversight by the Biometrics Commissioner, a role undertaken with distinction by Professor Fraser Sampson during the period of this report. In February 2022, that role was combined with the role of Surveillance Camera Commissioner (also held by Professor Sampson), following which the Government at the time decided that the role should be abolished entirely, and its function transferred to the Investigatory Powers Commissioner.

6.41. Provision for this was made in the Data Protection and Digital Information Bill which was before Parliament at the time of writing. Professor Sampson resigned his position with effect of November 2023. That Bill fell on the calling of the General Election earlier in 2024 and, at the time of writing, these provisions have not been re-introduced in any Bill under the new Government. There remains a question as to who will fulfil the oversight role over Schedule 7 (and other) biometrics.

Data Access and Downloads

6.42. There are no published figures for digital downloads under Schedule 7. It would not be illegitimate to infer that (1) just as the number of biometrics is increasing, so too is the number of digital downloads; and (2) that the growing use of detention (and likely longer periods of detention) reflects the increasing amounts of time required to interrogate and/or image seized phones and devices.

6.43. As the storage capacity of devices increase, it is foreseeable that 6 hours examination time may be insufficient for officers to image a seized device and ask any necessary questions. Officers will then be faced with the difficult decision of whether it is justified to detain a device for analysis[251] whilst the individual is allowed to continue with their journey. Seizure of phones is deeply inconvenient, and officers may need to think creatively about to how to minimise the effect on increasing numbers of members of the public.

6.44. The question in every case remains whether seizure or detention is appropriate. There can be no conveyor belt of decisions whereby device interrogation is a feature of every examination[252].

[251] Under para 11(2) of Schedule 7.
[252] In a recent case the government conceded that a policy to seize phones from people arriving irregularly in the UK on 'small boats' had been unlawful because it was both a blanket policy and unpublished: R (on the application of HM) v Secretary of State for the Home Department [2022] EWHC 695 (Admin).

6.45. The government accepted the recommendation in my annual report Terrorism Acts in 2020 that it should review the retention, review and disposal (RRD) processes for electronic data obtained from Schedule 7 examinations. I regret that I am unable to report any progress on that front.

6.46. In last year's report I considered in some detail the topic of remote access to electronic data and the need for a new power[253]. This is relevant to Schedule 7 because local data could in principle be moved entirely from device to remote storage prior to arrival at port. The government has been working actively on this topic – with the acronym RSED (Remotely Stored Electronic Data).

Freight

6.47. The number of Schedule 7 examinations of freight has continued to fall – in 2022 there were 435 examinations of freight carried by air and 160 of freight carried by sea. The earliest figures are for 2016 when there were 3,463 examinations of air freight and 7,969 examinations of sea freight[254]. This undoubtedly reflects a shift of police resources based on evaluation of the threat.

Schedule 7 and Public Order

6.48. In April 2023, the use of Schedule 7 against a French publisher, Ernest Moret, was the subject of widespread concern. I produced an 'ad hoc' report in July 2023 that was critical of the use of counter-terrorism powers for what was really an investigation into a public order matter. I reproduce it in full at Annex A at the end of this report.

6.49. The Home Secretary has already accepted my recommendation that the Code of Practice should be amended to make it clear that Schedule 7 should not be used for the purposes of public order policing[255].

[253] At 4.22 to 4.39.
[254] Table S.03a.
[255] Home Secretary, Government response to Terrorism Acts in 2021 (27.2.24).

7. CRIMINAL

Terrorism Prosecutions: Statistics

7.1. The high conviction rate in terrorism cases in Great Britain over recent years bespeaks appropriate selection of charges, good preparation, and jury confidence. Whereas in 2002, there were 45 persons charged under terrorism legislation, but 13 not proceeded with and 16 acquittals, in 2017 there were 87 charges, 78 prosecutions and 8 acquittals[256], and this level has been maintained since. It is too early to report on the charge to conviction rate during 2022.

7.2. As in previous years, the main offences prosecuted were what I refer to as documentary offences: possession of information useful to a terrorist (section 58 Terrorism Act 2000), making encouraging statements (section 1 Terrorism Act 2006), and disseminating terrorist publications (section 2 Terrorism Act 2006)[257]. More Extreme Right Wing Terrorism cases are now being prosecuted than previously[258].

7.3. According to a recent study of over 200 Extreme Right-Wing Terrorism offences of which 70 individuals were convicted between 2007 and 2022[259], these comprised only 8 types of offence. Two types of offence only occurred once[260]. If those singletons are excluded, the offences were, in order of descending frequency:

- 141 possession of useful information (section 58 Terrorism Act 2000),
- 33 dissemination (section 2 Terrorism Act 2006),
- 23 encouragement (section 1 Terrorism Act 2006),
- 17 membership (section 11 Terrorism Act 2000),
- 13 attack-planning (section 5 Terrorism Act 2006), and
- 7 possession of items with intent (section 57 Terrorism Act 2000).

[256] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, Table A.06a.
[257] Ibid, Table C.02.
[258] Lee, B., et al, Extreme Right-Wing Terrorism in the UK (CREST 2022).
[259] Jupp, J. 'From Spiral to Stasis? United Kingdom Counter- Terrorism Legislation and Extreme Right-Wing Terrorism', (2022) Studies in Conflict & Terrorism.
[260] Section 15 Terrorism Act 2000 (funding); and Schedule 7 Terrorism Act 2000 (fail to comply with ports examination).

Notable Criminal Cases in 2022

7.4. During 2022:

- The High Court upheld the need for the Director of Public Prosecutions' consent (and Attorney General's in overseas-connected cases) before initiating terrorism prosecutions[261].
- Three terrorist prisoners (Hashem Abedi, who plotted the Manchester Arena attack, Ahmad Hassan, the Parsons Green tube bomber, and Islamic State-supporting Mohammed Saeed) were convicted of attacking a prison officer inside high security HM Prison Belmarsh[262].
- Daniel Harris, an apparently "unassuming, quiet young man" whose extreme right wing terrorist propaganda inspired Payton Gendron who carried out a mass shooting in Buffalo, New York (May 2022) was convicted of terrorist publication offences and trying to print a 3D rifle[263].
- Oliver Lewin was convicted for planning to attack communication masts. Motivated by antisemitism and Covid-conspiracies, he subscribed to 'Resistance UK'[264].
- Two brothers were prosecuted for disseminating Islamist terrorist propaganda: one was convicted, the other was acquitted[265].
- An extreme right-wing terrorism motivated 14-year-old pleaded guilty to possession of information likely to be useful to a terrorist[266].
- A 15-year-old from the Isle of Wight was charged with planning a terror attack.
- Luke Skelton, an autistic teenager from Northeast England, was tried for attack planning. The jury failed to agree in 2022: he was convicted at a retrial in 2023 and sentenced to the comparatively short term of 4 years imprisonment[267].

[261] R (Defending Christian Arabs) v DPP [2022] EWHC 1374 (Admin).
[262] CPS, 'Three terrorists convicted of attacking prison officer' (22.2.22).
[263] Subsequently sentenced to 11 and a half years: BBC News, 'Daniel Harris: UK teen sentenced over videos linked to US shootings' (27.1.23).
[264] This socially isolated and autistic defendant was sentenced to 6 and a half years: BBC News, 'Oliver Lewin: Engineer jailed over TV and radio mast terror plot' (20.1.23).
[265] Counter Terrorism Policing, 'Man jailed for sharing terrorist content on social media' (9.6.23).
[266] Guardian, '14-year-old boy one of youngest in UK to be convicted of terror charges' (19.1.22).
[267] BBC, 'Right-wing Washington terror plotter Luke Skelton jailed' (11.7.23).

- A Facebook live-streamer was jailed for encouraging terrorist attacks on the government of Zimbabwe[268].
- Ahmiri Azizi and Mohammed Hussini, Islamic-State supporting propagandists, were convicted, and sentenced to 11 and 7 years respectively[269].
- Munawar Hussain, an individual with poor mental health and a hatred of Israel, was tried for terrorism-connected attempted murder of women in Marks and Spencer (he was retried and convicted in 2023)[270].
- Luca Benincasa was convicted of being a prominent member of proscribed organisation Feuerkrieg Division (which grew out of National Action)[271].
- Nikolas Karvounakis, a 35-year-old Greek national, was sentenced in Scotland to 8 years and 4 months imprisonment after pleading guilty to planting an explosive device in Princes Street, Gardens, Edinburgh in support of an eco-terrorist organisation[272].

Prosecution and Terror Zones

7.5. The courts have suggested several reasons why terrorism prosecution of individuals who travel out to armed conflicts may be desirable:

i. the fact that amateur soldiers are less trained and therefore more likely to cause collateral damage to civilians, or conduct themselves contrary to International Humanitarian Law, than professional soldiers;
ii. the risk to themselves of being killed or traumatised (especially in the case of amateur soldiers with pre-existing mental illnesses);
iii. the impact on British foreign policy in the area if they are taken hostage;
iv. the risk posed to British society if they return traumatised and "experienced in killing";

[268] Evening Standard, 'Londoner who encouraged bombings in Zimbabwe in online speeches jailed' (16.12.22).
[269] Counter Terrorism Policing, 'Two Men Convicted of Terrorism After Digital Experts Hack Devices & Find Daesh Propaganda – Sentencing Update' (3.11.22).
[270] BBC, 'Burnley M&S knifeman had terrorist motives, court hears' (1.2.22); Jewish Chronicle, 'Terrorist who attacked M&S customers over store's 'Israel ties' found guilty' (27.3.23).
[271] BBC, 'Cardiff teen admits part in banned neo-Nazi terror group' (15.7.22).
[272] HMA v Nikolaos Karvounakis, sentencing remarks of Lord Braid (16.2.22) available at https://judiciary.scot/home/sentences-judgments/sentences-and-opinions/2022/02/16/hma-v-nikolaos-karvounakis (last accessed 24.7.23).

v. the risk that amateur soldiers may end up, through ignorance or reliance on partial information, acting against the cause they intend to promote or acting in a way that is contrary to the national interest[273].

7.6. Writing in 1976, Lord Diplock's committee on the recruitment of mercenaries reported that no one had ever been prosecuted under the Foreign Enlistment Act 1870 because of difficulties in providing to the satisfaction of a criminal court what a particular individual has done while he was abroad[274].

7.7. Those long-standing difficulties continue to bedevil the prosecution of individuals who have travelled to terror zones, especially women whose role may have been domestic but vital to the aims of the putative Islamic State. This is despite the progressive extension of territorial jurisdiction over terrorist conduct abroad (extended under the Criminal Justice (International Cooperation) Act 2003, the Terrorism Act 2006, the Serious Crime Act 2015 and finally the Counter Terrorism and Border Security Act 2019).

7.8. There are three key reasons for the low rate of prosecution in the UK. Firstly, UK criminal legislation lacks the breadth of the United States' offence of 'material support' (considered further below) or France's terrorist association offence[275] (notably used to prosecute returning females[276]).

7.9. Secondly, domestic rules of admissibility, continuity of evidence, and disclosure amplify the challenges of proving conduct to the criminal standard[277]. With the benefit of hindsight[278], it was always going to be tough to prosecute those who associated themselves with Islamic State in Syria and Iraq in the absence of specific evidence of terrorist conduct, which is often hard to come by.

[273] R v James, Abuse of Process Ruling (15.10.18), Edis J., at paragraph 40, cited by the Court of Appeal in R v AJ [2019] EWCA Crim 647.
[274] Cm.6569.
[275] Association de malfaiteurs en relation avec une entreprise terroriste, Article 21-2-1.
[276] Koller, S., 'Prosecution of German Women Returning from Syria and Iraq', Counter Extremism Project (Oct 2022).
[277] I consider some of these challenges in Chapter 4.
[278] Walker, C., 'Foreign Terrorist Fighters and UK Counter Terrorism Laws' in annex 2 to Lord Anderson KC, 'Terrorism Acts in 2015' (2016), thought that no major gaps existed in the catalogue of potential offences.

7.10. Thirdly, defendants must be present in the UK. Unlike jurisdictions such as France, the UK does not prosecute 'in absentia'. Even if the government wanted to, no extradition or deportation arrangements currently exist with the Administrative Authority of North and East Syria (the Kurdish non-state body responsible for the camps and detention centres) for compulsory return.

7.11. In total only 11 individuals have been convicted of terrorism offences in respect of their conduct in Syria during the period of Islamic State: Mashudur Choudhury (training), brothers Mohammod Nawaz and Hamza Nawaz (training), Yusuf Sarwar and Mohammed Nahin Ahmed (fighting), Imran Khawaja (training and fighting), Tareena Shakil (joining Islamic State), Mohammed Uddin (travelling out to fight), Mohammed Abdallah (membership of Islamic State), Mohammed Yamin (membership of Al-Qaeda)[279], and Shabbaz Suleman (Islamic State membership and firearms)[280]. Four others who travelled out have been convicted of terrorism offences relating to conduct before they left or after they returned[281].

7.12. This may explain the prosecution of current or former British nationals in jurisdictions without these obstacles, exemplified by the prosecution of former British citizens Alexander Kotey and Safee El-Sheikh in the United States[282]. Leaving aside questions of accountability, in pure public safety terms it is difficult to guarantee that any individual who does return can be managed, risk-wise, by the application of the criminal law.

Liability for Terrorism Overseas

7.13. Criminal liability is generally based on harmful acts or agreement to commit such acts. Terrorist offences are unusual in penalising conduct which precedes the harmful act or the formation of any agreement: it makes individuals liable for planning attacks at a merely preparatory stage, training for terrorism, collecting information

[279] For further details of these individuals see Terrorism Acts in 2020 at 2.25. Most individuals were charged with attack-planning under section 5 Terrorism Act 2006.
[280] BBC, 'High Wycombe man jailed for travelling to Syria to join IS' (26.2.23).
[281] Terrorism Acts in 2020 at 2.25.
[282] The viability of a domestic case versus prosecution in the US was referred to in Elgizouli v Home Secretary [2020] UKSC 10 at paras 183-6. See also the cases of Operation Pathway suspect Abid Naseer who was extradited to face prosecution for, inter alia, a bomb plot in Manchester: US v Abid Naseer, USDC SDNY, 5 March 2015; and extradited AQAP supporter Minh Pham: US v Minh Quang Pham USDC SDNY, 8 January 2016. According to Mehra, T., et al, 'Trends in the Return and Prosecution of ISIS Foreign Terrorist Fighters in the United States' (ICCT 2023), around 300 US FTFs travelled and 39 repatriated by the authorities. Some others deported/extradited. 16 faced trial (2 women).

useful to terrorists, and encouraging terrorism[283]. These are often referred to as precursor offences and are sometimes criticized because (a) they penalise behaviour that is not intrinsically harmful and (b) could sometimes intrude into legitimate conduct (such as academic research) or political speech (for example, debate on overseas conflicts)[284].

7.14. Offences relating to proscribed groups are in substance another form of precursor conduct. It is not necessary to wait for the group to carry out an attack. It is an offence merely to be a member, solicit support, or provide the group with money[285], being conduct which sustains a hostile group and therefore its potential for attack.

7.15. Given the difficulties of proving specific conduct (including membership[286]), and assuming that it is desirable for ethical or risk-management reasons to extend the net of liability to terror travellers, reform could potentially go in two directions: penalising more loosely defined behaviour or making criminal liability dependent on geographical location alone.

7.16. I examine each of these below by reference to the US offence of material support for a Foreign Terrorist Organisation, and the (as yet unused) UK designated area offence under section 58B Terrorism Act 2000. I then look at certain non-terrorism offences that could be used for Syria returners: war crimes and child neglect.

Material Support

7.17. In 1996 the United States prohibited the provision of "material support or resources" to designated foreign organisations that engage in terrorist activity (Foreign Terrorist Organisations or FTOs are designated by order of the US Secretary of State)[287]. It is an offence to provide such support knowing that the group is

[283] Sections 5 Terrorism Act 2006, section 8 Terrorism Act 2006, section 58 Terrorism Act 2000, and section 1 Terrorism Act 2006.
[284] See for example, Zedner, L., 'Countering terrorism or criminalizing curiosity? The troubled history of UK responses to right-wing and other extremism', (2021) Common Law World Review, 50(1), 57–75.
[285] Sections 11, 12, 15 Terrorism Act 2000.
[286] See R v Ahmed [2011] EWCA Crim 184 at paras 86 to 95.
[287] 18 USC §2339B(a)(1) inserted by the Antiterrorism and Effective Death Penalty Act 1996, PL 104-132, s 303. A limitation is that designation only applies to foreign terrorist organisations rather than domestic ones (as in the UK). See further, Laguardia, F., Considering a Domestic Terrorism Statute and Its Alternatives 114:1061 (2020) 114 North Western University Law Review 1060. Hoffman, B. and Ware, J., 'American Hatred Goes Global', Foreign Affairs (19.9.23), object that the material support offence is not available because of the inability to designate domestic groups, and argue that it reinforces a perception that foreign terrorists, often only distinguishable by skin colour or religion are treated more harshly by the judicial system than domestic terrorists.

designated, but there is no requirement of intent or belief as to any terrorist conduct being aided[288]. Such organizations "are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct"[289].

7.18. The material support offence occupies the front row of the US's criminal law response to international terrorism. Between 1997 and 2011, it has been reported that a total of 415 separate charges were successfully brought against Al-Qaida related offenders: a quarter of those were material support charges[290].

7.19. The term material support or resources means "any property, tangible or *intangible*, or *service*, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, *personnel (1 or more individuals who may be or include oneself)*, and transportation, except medicine or religious materials"[291].

7.20. I have used italics to emphasize that the offence includes any intangible property, service, or personnel (including the defendant himself). Provision of personnel must be for the purpose of working under the terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization[292].

7.21. The following conduct has been prosecuted as material support in the US:

- The provision of expert assistance and support to the Chechen Mujahadeen and the Taliban through creating websites (whilst the defendant was located in the UK[293]).

[288] Intelligence Reform and Terrorism Prevention Act 2004, PL 108-458, s.6603(c)(2).
[289] Holder v Humanitarian Law Project, 4=561 US 1 (2010), per Roberts CJ.
[290] Simcox, R., 'The Presumption of Innocence: Difficulties in Bringing Suspected Terrorists to Trial', Henry Jackson Society (2013). The reference to material support also refers to the offence under §2339A (1994) which penalises support knowing or intending it to be used to carry out one or more specified offences.
[291] §2339A(b)(1); see also §2339B(g)(4).
[292] §2339B(h).
[293] Babar Ahmad: indictment available at https://www.ice.gov/doclib/news/releases/2012/121009newhaven1.pdf (last accessed 21.7.23).

- Designing computer script allowing Islamic State propaganda to be more easily distributed[294].
- Providing satellite-television services to Hezbollah[295].
- Martial arts training and instruction[296].
- Medical support to wounded jihadists[297].
- Translating Al-Qaida texts for an extremist website[298].
- Acting as Osama Bin Laden's driver and bodyguard[299].

7.22. The first three concern technological support. UK terrorism funding offences are capable of catching supply of money to terrorist groups such as Islamic State[300], and property other than money (e.g. shoes[301], ballistic glasses[302]). But as I noted in last year's report, the Terrorism Act fails to criminalise provision of intangibles like web services to a proscribed organisation, despite the obvious harm that this conduct facilitates[303]. Ironically it *is* an offence under UK law to invite intangible support[304] – but not to provide it.

7.23. The final example – acting as a driver and bodyguard – is also significant. Professor Clive Walker KC drew attention to, "…the scale and diversity of opportunities for volunteers associated with the assumption of statehood rather than some clandestine terrorist vanguard"[305]. Individuals took roles with the Caliphate which UK terrorism legislation never contemplated, like administrative support worker, cleaner, or nurse.

[294] US v Osadzinski USDC 18 October 2021
[295] United States v. Iqbal, No. 06-Cr-1054 (RMB) (S.D.N.Y. filed Jan. 20, 2007).
[296] United States v. Shah, No. 05-Cr-673 (LAP) (S.D.N.Y. filed Dec. 6, 2006).
[297] Ibid.
[298] US v Tarek Mehanna (2012).
[299] The decision of the Military Commission was quashed by the Court of Appeals, on the grounds that the offence was not a war crime, and so the Commission lacked jurisdiction: Hamdan v US, US Court of Appeals for D.C., no.11-1257 (16.10.12).
[300] For example, Syed Hoque and Mashoud Miah, who exploited aid convoys: BBC, 'Syria aid convoys: Two jailed for funding terror' (13.1.17).
[301] R v Majdi Shajira (2015), noted by Professor Clive Walker KC.
[302] R v Mohammed Abdul Saboor (2015), ibid.
[303] Terrorism Acts in 2021 at 3.48.
[304] Section 12(1)(a) Terrorism Act 2000 as explained by the Court of Appeal in R v Choudary and another [2018] 1 WLR 695 at para 45.
[305] Walker, C, supra.

7.24. On the other hand, potential reasons to resist importing the material support offence to the UK is its wide if not uncertain ambit, and its potential impact on humanitarian aid agencies[306].

7.25. Both these considerations are illustrated by the famous challenge brought against the US Attorney General by the Humanitarian Law Project and charities on grounds of free speech and vagueness. The charities wished to provide legal training to and engage in political advocacy on behalf of the Kurdish PKK and the Tamil LTTE (both designated by the US as Foreign Terrorist Organisations, and also proscribed in the UK). They asked the US Supreme Court to rule that the offence was unconstitutional, which the Court refused to do[307].

7.26. The US Supreme Court accepted that the charities' independent advocacy fell outside the scope of the offence but considered it impossible to disaggregate the PKK and LTTE's legitimate activities from their terrorist activities. Even humanitarian assistance could assist those organisations – conferring legitimacy, straining the US's relationship with allies, freeing up other resources, or allowing them to engage in peaceful negotiation as a cover for building up terrorist capacity[308].

7.27. The fact that the offence is only committed with respect to a designated entity mitigates the risk of uncertainty, as does the sound use of prosecutorial discretion. But as I discuss in Chapter 3, worries about liability under UK terrorism legislation adversely affects confident aid delivery by humanitarian organisations. That could only be remedied if enactment of a material support offence was accompanied by clear carve-outs for such relief[309]. Although I make no positive recommendation that a material support offence should be introduced, I consider an alternative relating to terrorist travel and proscribed organisations, below.

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[306] For useful checklist published in Goddard, D., Judge of the Court of Appeal, New Zealand as part of his 'Making Laws That Work: How Laws Fail and How We Can Do Better' (Hart, 2022).

[307] Holder v Humanitarian Law Project, 561 U.S. (2010), Nos 08-1498 and 09-89, 21 June 2010. This decision has long been contentious, for example on the basis that the offence could be contrary to International Humanitarian Law: e.g. Graber, S., 'Teaching Terrorists: How United States Counterterrorism Violates International Humanitarian Law' (2023) 48 Yale J Int'l L 153.

[308] The subsequent case of Al Haramain Islamic Foundation Inc. v. U.S. Department of the Treasury (AHIF) 686 F.3d 965 (9th Cir. 2012) placed some limits on this effect of this analysis, in the context of advocacy within the US that an FTO should be de-designated.

[309] For a consideration of the US position see Hume, L., and Corrado, M, 'The Treasury Department's Material Support Carveouts are a Welcomed First Step – But Congress Must Act to Create a Sustainable Fix', Just Security (24.1.23).

Designated Area Offence and Terrorist Travel

7.28. A very limited number of terrorism offences penalise geographical presence. Since 2006 it has been an offence to attend at a place used for terrorist training, subject to proof that the person knew or believed or ought to have understood that it was being so used[310].

7.29. The potential to make it an offence to visit *any* overseas location was created by the Counter Terrorism and Border Security Act 2019, which inserted a designated area offence into the Terrorism Act 2000 (section 58B). It is no fast track to conviction: not only must the prosecution prove that the individual was present within the area after its designation but deal with a list of potential defences which were inserted to avoid blameless individuals being prosecuted for terrorism offences merely because they happened to be present[311]. The offence was pioneered in Australia in 2014[312].

7.30. Criminal prosecution does of course depend on the Secretary of State deciding to designate an area. The threshold for designation is that it is necessary, for the purpose of protecting members of the public from a risk of terrorism, to restrict United Kingdom nationals and United Kingdom residents from entering, or remaining in, the area[313]. No designation has happened to date. In Australia two areas were 'declared': Mosul District, Ninewa province, Iraq between 2 March 2015 and 19 December 2019; and Al-Raqqa province in Syria between 4 December 2014 and 27 November 2017[314]. Very few individuals have been charged under the offence in Australia.

7.31. One explanation for why the Secretary of State never pressed the designation trigger is that the offence was brought in too late, when Islamic State was in terminal territorial decline. There are other important practical, diplomatic, and public interest reasons why designating another country's territory as a terrorist hot-spot may prove less than tempting.

[310] Section 8 Terrorism Act 2006.
[311] As well as a defence of reasonable excuse, there are defences for humanitarian workers, local litigants, workers for the UN or other governments, journalists, those attending funerals or the terminally ill, and those with dependent relatives: Section 58B(2), (5).
[312] In Australia's Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill.
[313] Section 58C(2).
[314] Law Council of Australia response to Parliamentary Joint Committee on Intelligence and Security, 'Review of the 'declared area' provisions of the Criminal Code Act 1995 (Cth) (2020).

7.32. Even if some part of Syria is now designated, historic travel would not be caught. True it is that section 58B also penalises those who choose to *remain* in a designated area, so an individual who stays in the area after designation could in principle be prosecuted. But the obstacles to prosecution are formidable: it is not an offence to remain involuntarily (relevant to those in camps and detention centres), or where there is a reasonable excuse for not leaving, or to remain for the purposes of providing care for a dependent family member[315]. Successful prosecution would require sufficient evidence to rebut any defences that might be raised. Prosecution for staying abroad would appear to be at odds with the government's policy of keeping them at arm's length (referred to as 'strategic distance'[316]). Even for those who travel out, it is an open question whether juries would be prepared to convict without some evidence of terrorist intent or mindset.

7.33. Of course, prosecution may only be one objective. It may be enough to designate an area to deter would-be travellers. This might be doubted in some cases – for example, those who decide to make a new life in a Caliphate and have no intention of returning – but might have dissuasive effect on the less committed. For this reason, I do not recommend that it should be repealed. But there remain considerable doubts as to whether a geographic offence is the right means of penalising travellers to terror zones.

7.34. The designated area offence was undoubtedly designed to fill a gap.

- As I have previously reported, there is no offence of providing moral or intangible support to a terrorist organisation (although it is an offence under section 12 Terrorism Act 2000 to invite such support).
- Section 5 Terrorism Act 2006 is frequently used to prosecute those who prepare to travel abroad to engage in terrorist fighting, but only applies to those who intend to commit, or assist another to commit, 'acts of terrorism'. It does not apply to those who travel to provide moral support or (in the terminology of officials) 'align with' a proscribed organisation, such as those who travelled out as jihadi brides, or those whose overall intentions are unclear.

7.35. A possible solution is to create an offence which blends these two elements: the presence of a proscribed organisation, and travel. Under this model, a person who

[315] Section 58B(2), (4) and (5)(g).
[316] See Terrorism Acts in 2020 at 2.20.

travelled to provide support (including moral support) to a proscribed organisation would commit an offence.

7.36. The benefit of such an offence is that it would (a) avoid the need for novel designation of territory but be based on the well-established practice of proscription (b) involve some fault element (going to support a proscribed organisation). One limitation would be that the prosecution would have to prove that the defendant intended to join an existing proscribed organisation – but new organisations can be designated if they start to attract foreign recruits, and the availability of the offence will depend, like all offences, on the evidence obtained by the police.

7.37. I therefore **recommend** that to future-proof against further iterations of Islamic State, or its equivalent, consideration is given to whether a new terrorist travel offence should be introduced based on travelling to support a proscribed organisation.

War Crimes etc

7.38. UK law expressly provides for universal criminal jurisdiction over, inter alia, torture[317], hostage-taking and certain grave breaches of the 1949 Geneva Conventions and its first additional Protocol. UK citizens or residents may also be prosecuted, under the International Criminal Court Act 2001, for war crimes, crimes against humanity and genocide committed overseas, including for certain conduct during Non-International Armed Conflicts. War crimes committed during the ascendancy of Islamic State might include looting and pillage (living in a house or apartment taken from Yazidi victims of persecution), the inhumane treatment of dead persons, slavery, enlisting child soldiers, or murder as a crime against humanity.

7.39. Other European countries have had more success at prosecuting war crimes committed by their returning nationals and residents than the UK[318]. I understand that the very large influx of refugees to Germany increased the prospect of prosecution because victims were able to identify perpetrators living in the same town. This sometimes results in female returnees being held accountable[319].

[317] And led to prosecution in the case of Faryadi Zardad, 'Afghan warlord guilty of torture' (BBC News, 18.7.05).
[318] Although any international comparison must take account of different types of criminal liability, rules of evidence, and mode of prosecution available in each jurisdiction.
[319] Koller, S., and Schicle, A., 'Holding women accountable: Prosecuting female returnees in Germany', CTC Sentinel December 2021 38. So far as France is concerned, Koller, S., 'Prosecution of returnees from

7.40. Some countries, such as Sweden, have devoted considerable resources to investigating and prosecuting atrocities committed against Yazidi people. Countries have been encouraged to consider 'cumulative prosecutions' of both terrorism offences and crimes against humanity to ensure full accountability for inhumane conduct[320]. The Eurojust's Genocide Network publishes a detailed list of such prosecutions by EU Member States[321].

7.41. There have been no such prosecutions in the UK. In large part this may be because of the evidential standards that apply in UK criminal courts. I also detect that since these international crimes are investigated by the Metropolitan Police's War Crimes Unit, they are not part of the core response of Counter Terrorism Police when considering potential prosecutions.

Mistreating Children

7.42. In its guidance on prosecuting those who take a child abroad to join terrorist groups[322] the Crown Prosecution Service suggests that the most likely potential offences are:

- Child cruelty, neglect and violence contrary to section 1 Children and Young Persons Act 1933.
- Child abduction contrary to section 1 of the Child Abduction Act 1984.

7.43. However, as the guidance correctly notes, the child cruelty offence does not carry extraterritorial jurisdiction, so any conduct must have taken place within the United Kingdom.

Syria and Iraq in France', Counter Extremism Project (2023) notes that after 2016 female returnees have been more rigorously prosecuted than before including for war crimes; and that in comparison to other European countries their successful prosecution requires less evidence and leads to longer sentences. It is possible that war crimes could be a better 'fit' for the conduct of non-combatant women, who were nonetheless involved in crimes against the Yazidis, than terrorism offences: in principle, this could lead to women being a greater focus for domestic war crime prosecution than men. In the UK it is possible that the Islamic State phenomenon saw increased use of Schedule 7 examinations against women (although there are no statistics), and TEOs and citizenship deprivation. There are questions about voluntariness in the context of gender (risks of grooming or trafficking to Syria, see Begum SC/163/2019). The impact that TPIMs against men have on their wives and families is not new.

[320] Eurojust, 'Supporting judicial authorities in the fight against core international crimes' (2020).

[321] 'Overview of National Jurisprudence' (January 2023): https://www.eurojust.europa.eu/sites/default/files/assets/gns-table-cic-national-jurisprudence-january-2023.pdf (last accessed 5.9.23).

[322] CPS Guidance, 'Child Abuse (non-sexual)' (updated 16.8.23).

7.44. And whilst there is extraterritorial jurisdiction for the child abduction offence it only applies where the child is taken or sent abroad without "the appropriate consent", meaning that no offence is committed where the mother and the father (if he has parental responsibility) both agree[323].

7.45. The impact on children who have been taken overseas to Islamic State (some of whom remain to this day in camps in Syria), or exposed to violence and cruelty upon arrival, is incalculable. As well as being conduct that merits prosecution on account of the culpability of parents involved, and the harm caused, a more available child cruelty offence could provide another option for intervention on return.

7.46. I **recommend** that consideration is given to introducing extraterritorial jurisdiction, subject to Attorney General consent to prosecution, for the offence of child cruelty contrary to section 1 Children and Young Persons Act 1933, where there is a terrorist connection in accordance with the Counter Terrorism Act 2008[324].

Vulnerable People

Children

7.47. Rhianan Rudd was 15 when she was charged with terrorism offences in April 2021. 7 months earlier she had been referred to Prevent. Charges were dropped in late 2021 but, having been moved to a children's home, she killed herself in May 2022. The inquest is due to be heard next year. It has been reported that she was autistic, suffered from poor mental health, and had been sexually groomed by an older man at the time of her alleged offending[325].

7.48. As these annual reports have repeatedly noted, the profile of alleged terrorist offenders is getting younger, and includes children who may accurately be described as vulnerable, in the sense of mental or neurodivergent conditions that leave them weaker to resist malign influences, especially those found online, than the population at large[326]. This is not vulnerability in the sense that is sometimes clumsily applied to any individual, including adults, who gives in to the temptation to engage in terrorist conduct.

[323] Section 1(3).
[324] Section 93.
[325] 'Rhianan Rudd: MI5 had evidence teen terror suspect was exploited' (BBC News, 3.1.23).
[326] Wolbers, W., et al, Understanding and preventing internet facilitated radicalisation (673, Australian Institute of Criminology, 2023)

7.49. Police and prosecutors must constantly assess the validity of assumptions that, in practice if not in law, underpin the use of precursor offences such as encouragement, dissemination or possession of useful information[327]. I have previously referred to these offences as "documentary offences". They tend to relate to texts and images held on computer.

- This form of liability enables the authorities to "defend further up the field", using criminal justice intervention to cut off the risk of terrorist attacks at an early stage.
- The assumption is that these documentary offences demonstrate an elevated risk of terrorist attack. Possession of this sort of material, plus what is known as 'mindset material', has frequently been found in the possession of adult terrorists who did have intent and capability to carry out an attack[328].

7.50. The need for a case-by-case approach to assessing the risk posed by possessors or propagators of terrorist texts and images is particularly important when it comes to children.[329]. The prospect that the content and implication of the words and images found on a computer or phone (including so-called 'mindset material') reflect ideological belief may not hold true.

7.51. Children may be attracted by the aesthetics, driven by curiosity, or fixated by violence and gore, or just going through a phase. In practice some older children, or even young adults, may have been involved in a pattern of conduct over many years without carrying out an act of terrorism.

7.52. As a result, the terrorism label for children involved in documentary offences is often an awkward fit.

- Anonymous transgression online, through racist jokes, edgy content, posturing expression of violence towards common enemies, together with a

[327] Sections 1 and 2 Terrorism Act 2006 and section 58 Terrorism Act 2000.
[328] For example, Khuram Butt, one of the London Bridge attackers in 2017: see further Terrorism Acts in 2019 at 7.61.
[329] There may be some parallel to considering the relationship between collecting Indecent Images of Children Offences (IIOC) and going on to commit contact offences against a child. According to a literature review carried out by the Scottish Sentencing Council, it is only rarely that contact offences are first committed after IIOC viewing: Hamilton, M., Belton, I., 'Offences involving indecent images of children' (Aug 2022) at page 78.

tendency towards conspiracy and a search for deeper meanings and connection with others, are common features.

- Where their conduct and state of mind satisfies the definition of terrorism, it is rarely "national security" terrorism[330] which impacts on national life. Indeed, if conducted entirely online, it will be entirely unknown to the general public.
- Some of the new restrictions on convicted terrorists (such as extended licences and enhanced post-release reporting[331], or limitations on access to legal aid[332]) appear to have been designed with a higher tier of terrorist operative in mind.

7.53. That said, the material generated and disseminated by children can have real world effect by acting on the minds of others. Daniel Harris was convicted in 2022 of encouraging terrorism (section 1 Terrorism Act 2006) by spreading online his slick murderous and operational terrorist videos from his bedroom in Derbyshire. He also attempted to make a 3D gun. He was sentenced to 11 years 6 months imprisonment. The sentencing judge recorded that the material inspired Peyton Gendron who carried out a racist mass shooting in the US later in 2022[333].

7.54. As I report in Chapter 10, Police Scotland believe they have had some success in using 'welfare visits' as an opportunity to confront children and their parents with their terrorist risk behaviour at an early stage. There is wisdom in ensuring that children and parents, who may not realise or care about the possible impact of their behaviour, are enlightened. Visits may deter; or give greater insight into the child's culpability and future risk, if the same behaviour is repeated thereafter.

- Any further intervention in these cases would have to address their online life, leading to the question of whether CT Police have access to sufficient 'online mentors'.
- There is a possibility that children will move on or grow up with no or limited intervention, and the further possibility that arrest and prosecution will disrupt that benign process.

[330] The authorities in Northern Ireland distinguish between different proscribed groups – the conduct of some terrorist groups (such as the New IRA) is generally considered "national security" terrorism because it impacts upon the organs of the state, whereas the conduct of other (mainly Loyalist) terrorist groups is considered a crime: see Terrorism Acts in 2019 at 9.13 et seq.
[331] Under Part 4 Counter-Terrorism Act 2008.
[332] Under Part 5 of the National Security Act 2023.
[333] Sentencing remarks (27.1.23).

- There are however some circumstances touching on public safety where it is difficult for CT Police to avoid taking immediate disruptive action.

7.55. I am also informed that there is some willingness to use Prevent-type interventions alongside a criminal investigation, meaning that children are not left in limbo whilst waiting for possible charge and prosecution. The government is still considering my recommendation from last year's report on child diversion orders.

7.56. It will be interesting to consider any longitudinal study that is done on outcomes for children who have been sentenced for terrorism offences over the last 4 years:

- Have they reoffended?
- Whether or not they have reoffended, have they disengaged?
- If they have disengaged from all interest in terrorism, when did this happen – point of arrest, point of conviction, during sentencing measure (imprisonment or non-custodial)?
- In hindsight, are there any factors suggesting that their offending was/ was not linked to neurodivergence or poor mental health?

7.57. Then is the position of children who were taken to Islamic State as youngsters or travelled there under their own steam. There are parts of the world, such as sub-Saharan Africa, where children are abducted or forcibly recruited, others are enticed by promises of money or other material advantages, some join terrorist groups voluntarily and some have little or no choice but to accompany their parents or other family members.

7.58. According to the UN, a child recruited by a terrorist group should be treated primarily as a victim, and membership or association should not lead to prosecution; and the point is well made that the right analogy for child terrorist recruits is child soldiers[334], although victimhood need not imply immunity in the case of later heinous acts[335].

[334] Rogitti, C., Barboza, J., 'Unfolding the case of returnees: how the European Union and its Members States are addressing the return of foreign fighters and their families', International Review of the Red Cross, No.916-917 (Feb 2022).
[335] UN Office on Drugs and Crime, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (2017).

7.59. To date, there have been no UK prosecutions of children on account of their overseas conduct with Islamic State in Syria and Iraq[336]. Overall, it seems very unlikely that prosecutions will be brought against any of the 60 or so UK-linked children who are currently in camps in North-East Syria, or indeed against any individuals who were brought over as children but have now reached adulthood, unless evidence of particularly heinous acts comes to light.

Neurodivergence and Poor Mental Health

7.60. A recent study of current terrorist prisoners has found that those who were primarily radicalized online were over 6 times more likely to have a strongly present rating for mental illness, personality disorder or neurodivergence than those who were primarily radicalized offline; and over 4 times more likely to have a such a rating than those radicalized through both online and offline influences[337].

7.61. This study does not include those sentenced to non-custodial measures, or arrested but not prosecuted, many of whom will be children where, anecdotally from my discussions with police and prosecutors, the presence of autism spectrum disorder (often associated with other morbidities) is very significant.

7.62. In a study on the interaction between features of autism against vulnerability and resilience, the distinguished Forensic Psychologist, Dr Zainab Al-Attar considered 7 facets of autism spectrum disorder which have been postulated to be relevant to risk and protection: circumscribed interests; rich vivid fantasy and impaired social imagination; the need for order, rules, rituals, routine and predictability; obsessionality, repetition and collecting; social interaction and communication difficulties; cognitive styles; sensory processing[338].

7.63. It is not difficult to see how some facets – for example, obsessionality and collecting, or rich fantasy, or social isolation leading to overreliance on the internet – could be relevant when evaluating the type of conduct that is increasingly encountered:

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[336] Although various teenagers have been prosecuted for attempting to join Islamic State under their own steam or assisting others to do so.
[337] Kenyon, J., Binder, J. F., & Baker-Beall, C. (2022). Online radicalization: Profile and risk analysis of individuals convicted of extremist offences. Legal and Criminological Psychology, 00, 1–17.
[338] Al-Attar, Z., 'Autism spectrum disorders and terrorism: how different features of autism can contextualise vulnerability and resilience', The Journal of Forensic Psychiatry & Psychology (2020), 31:6, 926-949.

- Collection of large numbers of instructional manuals and other material falling within section 58 Terrorism Act 2000 may be indicative of obsessive compulsion to collect rather than a particularly deep ideological commitment to a terrorist cause[339].
- Detailed plans for attack could be expressions of rich fantasy rather than expressive of future intention.
- A focus on narrow interests, especially online, may lead to a risk of repetition of documentary-type offences without escalating to action offline.

Sentencing and Release

7.64. A record number of non-custodial sentences were imposed for terrorist offending in 2022 (14, up from 11 in 2021)[340]. This probably reflects the number of children and documentary offences going through the system. There were no sentences of over 20 years. "Intensified" penalties[341] were established for the most serious offending by the Counter-Terrorism and Sentencing Act: whether these longer sentences are imposed (such as the Serious Terrorism Sentence) will be dictated by events.

7.65. Were individuals who have been held for years in camps and detention centres in North-East Syria, to return to face prosecution, it is an open question to what extent, if at all, that earlier deprivation of liberty would be taken into account in their favour at the sentencing stage.

- It would be for the courts to decide whether deprivation of liberty, especially if in inhumane conditions and on account of conduct imputed by the detaining authorities (for example, on account deemed membership of Islamic State), would reduce their sentence if convicted on return.
- I am informed that there are signs that this is happening in other European countries.

[339] Interestingly, the Scottish Sentencing Council review of literature, supra, refers to indecent images of children (IIOC) offenders with Autism Spectrum Disorder who find "the ritualistic nature of IIOC to be compelling" and may find it harder to perceive the pain caused to the children (at page 112).
[340] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, Table C.04.
[341] Lee, F., and Walker, C., 'The Counter-Terrorism and Sentencing Act 2021 and the advance of intensified terrorism punishment' [2022] Criminal Law Review 864-892.

- Shorter sentences could in principle reduce the possibility that prison could provide an opportunity for moral and physical disengagement, reflection, and structured risk assessment which may be needed for individuals who have spent many years with a terrorist organisation.

7.66. Following a consultation, the Sentencing Council revised its guidelines for some of the most frequently prosecuted terrorist offences with effect from October 2022[342].

7.67. The ideologies of the terrorist prison population in Great Britain are slowly shifting. Out of 226 terrorist prisoners, 59 (26%) are identified as Extreme Right-Wing Terrorists versus 149 (66%) who are identified as Islamist Terrorists[343]. This compares to 2016 when only 10 Extreme Right Wing Terrorist prisoners compared to 160 Islamist Terrorists. The vast majority are British nationals 184 (81%)[344]; 84 (37%) of the terrorist prisoner population comprises White people[345].

7.68. The number of terrorists released in 2022 was 41 (down from 44 in 2021)[346]. It remains to be seen whether the emergency legislation on automatic releases in 2020[347], greater caution in decision-making by the Parole Board[348], and limitations on progress through the prison system affecting suitability for eventual release[349], drives down the rate of release.

[342] For a case where the Court of Appeal held that the sentencing judge had misapplied the sentencing guideline, leading to a reduction in sentence, see Deghayes 2023 [EWCA] Crim 97.
[343] Table P.01.
[344] Table P.03.
[345] Table P.04.
[346] Table P.05 taken from statistics to end of March 2023. The prison release figures are reported one quarter behind.
[347] The Terrorist Offenders (Restriction of Early Release) Act 2020. In Morgan [2023] UKSC 14 the Supreme Court held that this change to the release regime did not constitute retrospective punishment.
[348] In R (Dich) v Parole Board for E&W [2023] EWHC 945 (Admin), the High Court held that the Parole Board was not limited to considering future risk posed after release but during the unexpired portion of the sentence. One of the 'Fertiliser Bomb' (Operation Crevice) plotters, Omar Khyam, failed to secure release because, although his risk could be safely managed in this country, he was due to be deported to Italy: 'Terrorist kept in prison because Home Office plan to deport him causes 'risk to public'', Independent (8.8.22). In its Root and Branch Review of the Parole System (Command Paper 654, 2022), the government announced its intention to ensure that a more precautionary approach should be taken for the most serious offenders including terrorists. The Victims and Prisoners Bill (now the Victims and Prisoners Act 2024), envisages a greater role for the Secretary of State for certain terrorist offenders.
[349] R (Khyam) v SS for Justice [2023] EWHC 160 (Admin) provides insight into prison progress of Omar Khyam, another plotter convicted of his part in Operation Crevice.

7.69. The release prospects of non-terrorist offenders who are radicalised in prison or otherwise identified as posing a terrorist risk will be affected by general changes made by the Police, Crime, Sentencing and Courts Act 2022. These will allow the Secretary of State to refer certain high-risk offenders, who would otherwise be released automatically, to the Parole Board. The 2022 Act also added specific measures to manage terrorist risk offenders on their release which included:

- Powers of arrest pending recall, and search (considered in Chapter 4).
- An expansion of the availability of multi-agency arrangements under the Criminal Justice Act 2003 and clarity on the lawfulness of sharing data[350].

7.70. The bite of the notification provisions which apply to released terrorist offenders under the Counter-Terrorism Act 2008 was illustrated by the imposition of 18 month's imprisonment on an offender who failed to notify his alias and financial activities[351]. Challenges to notification requirements were rejected in Northern Ireland[352], and in the UK (where requirements were imposed because of conviction of a terrorist offence in the United States)[353]. The leading legal authority that automatic notification provisions are lawful, even in the absence of any right to review, is a High Court decision from 2013[354], when notification provisions were less burdensome. As the requirements increase, and apply more and more to children[355], the case for a review mechanism may become more persuasive[356]. The absence of a "release valve"[357] in the longest 30-year period is striking.

[350] Following the recommendations in my MAPPA report (2020). The management of terrorist offenders by the Ministry of Justice's National Security Division was found to be impressive in 'Counter Terrorism Joint Inspection – National security division and multi-agency arrangements for the management of terrorist offenders in the wake of terrorist attacks: An inspection by HM Inspectorate of Probation, HM Inspectorate of Constabulary and Fire & Rescue Services and HM Inspectorate of Prisons' (July 2023).
[351] R v Anwar Said Driouich 5 September 2022 Manchester CC. Driouich had been convicted in 2020 and sentenced to 20 months' imprisonment for explosives and terror manual offences – he was said to be a fantasist obsessed with massacres.
[352] In re Lancaster [2023] NIKB 12.
[353] Metropolitan Police Commissioner v Bary [2022] EWHC 405 (QB).
[354] R (Irfan) v Secretary of State for the Home Department [2013] QB 885.
[355] Section 44 applies the notification provisions to those who are 16 or over at the time of sentencing.
[356] The High Court (Northern Ireland) upheld the notification requirements in In re Lancaster [2023] NIKB 12, despite the absence of a review, applying earlier caselaw, although it was not considering the longest 30-year period.
[357] The phrase "release valve" comes from the judgment of Scoffield J. in In re Lancaster, supra, at para 164.

7.71. Polygraph measures for released terrorist offenders were made available by the Counter-Terrorism and Sentencing Act 2021[358], subject to it being a condition of the offender's licence condition. As with all polygraphs on offenders the statutory purposes are[359]:

- monitoring the offender's compliance with the other conditions of his licence; or
- improving the way in which he is managed during his release on licence.

7.72. According to policy[360], other than where a disclosure is made by the subject, an examination result alone (for example, 'deception indicated') cannot be used to justify recall. It might however lead to greater resource being committed to offender management, which could in turn lead to recall if information of non-compliance or risk was uncovered.

7.73. An evaluation of the operation of polygraphs on terrorist offenders was published by the Ministry of Justice in 2023[361]. It found that:

- A total of 46 individuals have been subject to the polygraph licence condition between 29 June 2021 and 30 June 2023.
- A total of 88 polygraph examinations were completed by 39 individuals.
- The examination result was classified as "significant response" in 31 instances (35% of examinations). A significant response is an examination result interpreted as 'deceptive', where the examiner concludes the individual has not been telling the truth when answering one or more of the polygraph examination questions.
- Disclosures of risk related information were recorded in 63 instances (72% of examinations).
- Three individuals have been recalled due to disclosures made during examinations, and one individual was recalled for not complying with the polygraph licence condition.

[358] As they are for sex offenders. Section 32 of the 2021 Act amended section 28 of the Offender Management Act 2007 to extend the scheme to terrorist offenders. The rules governing polygraph were updated by the Polygraph (Amendment) Rules 2022/191. The Ministry of Justice has published a polygraph examinations policy framework applicable to both sex offenders and terrorist offenders (updated 1.12.22).
[359] See section 29 of 2007 Act.
[360] MOJ Framework, supra, para 4.70-76.
[361] Ministry of Justice, 'The use and operation of Counter-Terrorism Polygraph Examinations: Process Evaluation Findings' (October 2023).

7.74. Serious Crime Prevention Orders (SCPOs) in terrorism cases are now comparatively frequent as part of an offender's sentence. The latest figures[362] show that in 2021, 13 SCPOs were imposed by the Crown Court in relation to cases involving terrorism offences, following applications made by the Crown Prosecution Service, and a further 8 were imposed in 2022.

7.75. There is generic reference in terrorism sentencing guidelines[363] to personal mitigation where an offender's responsibility is "substantially reduced by mental disorder or learning difficulty". General guidelines that apply to all offenders with mental disorders, developmental disorders, or neurological impairments[364] deal with the assessment of culpability. They specify that culpability will only be reduced if there is "sufficient connection" between the offender's impairment or disorder and the offending behaviour. The courts of New South Wales (Australia) have more detailed principles on the ways in which impairment may be relevant to sentence[365].

7.76. It will not always be easy to determine whether a sufficient connection is established. As set out above, there are factors which appear to be relevant to some forms of offending.

[362] HM Government, Disruptive Powers Transparency Reports for 2021 and 2022 (January 2023 and October 2023, respectively).
[363] E.g. Sentencing Council, Guideline, Collection of terrorist information (effective from 1.10.22).
[364] Sentencing Council, Guideline (effective from 1.10.20).
[365] Known as the *Verdins* principles, after the case of R v Verdins [2007] VSCA 102.

8. SPECIAL CIVIL POWERS

8.1. The bulk of this Chapter reports on two counter-terrorism measures that can be imposed on individuals outside the criminal justice process: Terrorism Prevention and Investigation Measures[366], and Temporary Exclusion Orders. The latter have a particular application for individuals returning after travelling to terror zones.

8.2. I also report on financial measures, online measures (with which last year's report was mainly concerned) and other civil measures that can be used in cases of suspected terrorism.

TPIMS

8.3. The use of Terrorism Prevention and Investigation Measures, successors to the regime of Control Orders introduced in 2005, has become less frequent in recent years.

8.4. Under the TPIM Act 2011, TPIM subjects can be forced to comply with an array of measures tailored to the particular case: these can include relocation of home address, exclusion from certain areas or activities, limitations on possession of cash and electronic communications devices, bans of socialising with listed individuals, and requirements to report to the police a specified number of times per week.

- The essential basis for imposing a TPIM is that the Secretary of State reasonably believes that the individual has been involved in terrorism-related activity and reasonably considers that it is necessary to impose measures to protect members of the public from a risk of terrorism[367].

- In any judicial review of a TPIM, the Secretary of State is entitled to rely on closed evidence that is withheld from the TPIM subject and their lawyers, subject to a basic minimum of fairness. In practice, there are usually two witnesses relied on by the government: one of the Home Office and one from MI5. Both produced 'open' and 'closed' statements. A Special Advocate is appointed to represent the TPIM subject's interests in closed session.

[366] I am required by the TPIM Act 2011, as amended by the Counter-Terrorism and Sentencing Act 2021, to report on the operation of the TPIM Act annually for a period of 5 years beginning with 2022.
[367] Section 3.

- A TPIM can now be renewed annually for up to 5 years. Prior to the Counter-Terrorism and Sentencing Act 2021, the limit was 2 years.

- Breach of a TPIM measure is a separate criminal offence punishable by up to 5 years' imprisonment. It is not uncommon that TPIM subjects go in and out of custody when they are arrested and/or convicted of breach.

8.5. Despite their major impact on everyday life, and the limitations on an individual's ability to challenge them in court, TPIMs have become a settled feature of the legal landscape. There are few reported cases. In these circumstances, a reviewer's role becomes more important and I make no apology for the detail that follows.

TPIMs and Terror Zones

8.6. TPIMs are well suited to restrict individuals who aspire to travel to overseas terror zones. As well as potential controls on residence and movement, they permit the Home Secretary to prohibit access to travel documents and transportation facilities. But the absconding of two TPIM subjects who aimed to fight abroad, Ibrahim Magag and Mohammed Mohammed in 2012 and 2013 respectively, showed that TPIM controls could be circumvented, and led to a thorough review by the Home Office[368].

8.7. TPIMs have also been used to control the terrorist risk posed by returners: Mohammed Mohammed and "CF"[369] were reasonably believed to have fought in East Africa alongside the proscribed organisation Al-Shabaab before they were brought back to the United Kingdom.

8.8. Given:

- The resources needed to manage TPIMs; and
- The availability of Temporary Exclusion Orders (which permit fewer controls but operate a lower threshold of proof: reasonable suspicion[370] rather than reasonable belief[371]),

[368] Lord Anderson KC, second report into operation of TPIM Act 2011 (March 2014) at 4.36-40.
[369] TPIMs upheld by the High Court [2012] EWHC 2837, but remitted by the Court of Appeal for reconsideration [2014] EWCA Civ 559.
[370] Section 2(3) Counter-Terrorism and Security Act 2015.
[371] Section 3(1) TPIM Act 2011.

they are only likely to be used for returners at the higher end of risk. Many of these have been killed on the battlefield, deprived of citizenship, or are currently held in detention without any means of return.

TPIMS in 2022

8.9. During 2022 a total of 3 different TPIMS were in force at various times, all against British citizens.

- 2 TPIMs were in force on 28 February 2022. One earlier TPIM had expired and one had been revoked ("UD") during the previous three months[372].
- The same 2 TPIMs were in force as at 31 May 2022, having been extended[373].
- Only one remained in force on 31 August 2022, after the other one was revoked.
- Two were in force on 30 November 2022. This included the one new TPIM notice served in 2022[374].

8.10. To put these numbers in context, during the 6 years of the Prevention of Terrorism Act 2005, 52 control orders were made; and in the 11 years since the Terrorism Prevention and Investigatory Measures Act 2011 came into force, a total of 29 TPIMs have been made[375] (24 were made in the period up to 31 December 2020[376], and 5 after 1 January 2021).

8.11. For the first time, a TPIM notice was served on an individual believed to be involved in Extreme Right Wing Terrorism.

8.12. Other TPIMs would almost certainly have been in force during this period, having been made before 2022, but for the fact that the TPIM subject had been arrested, and the TPIM revoked. One of these individuals ("KG") killed himself in prison following conviction for TPIM breaches. Other TPIMs were made on a contingency basis but never served.

[372] HLWS105 (16.6.22).
[373] HCWS389 (28.11.22).
[374] HCWS543 (6.2.23).
[375] HM Government, Transparency Report for 2022 (October 2023).
[376] HM Government, Transparency Report for 2020 (March 2022) at para 4.4.

8.13. During 2022 one individual was found guilty on 16 March of four counts of breaching monitoring measures and was sentenced to 30 months' imprisonment; another was convicted of 5 breaches of his electronic communications device measures and sentenced to 8 months imprisonment[377]; and a third was convicted of breaching his residence measure, fined and made subject to a 4-week curfew (this individual was sentenced several months after the TPIM itself had been revoked)[378]. All these concern breaches of TPIMs – I have seen no evidence of cases where prosecution would be possible for the underlying terrorism-related activity[379].

8.14. Sentencing for TPIM breaches often provides an alternative to maintaining the TPIM: assuming a custodial sentence is passed, they will be subject to a special sentence incorporating a minimum period of licence[380] and then subject to post-sentence reporting obligations[381].

8.15. Decisions on whether to prosecute for TPIM breaches are for the Crown Prosecution Service. Whilst there is a clear sense among officials that TPIM breaches need to be investigated and considered for prosecution in order to maintain the integrity of the TPIM regime, in one case I detected real regret that sensible variations had not been made before the TPIM subject took steps which were, in hindsight, entirely predictable but resulted in his arrest for breach. Not all breaches have led to arrest or prosecution.

8.16. The TPIM against "TL", first made subject to the measure in March 2021, extended in March 2022, was upheld by the High Court following review[382]. The Court found that TL was, as the Home Secretary of State believed, an Islamist extremist associated with the proscribed organisation Al-Muhajiroun, who had engaged in radicalising activity, and might aspire to carry out an Islamist extremist attack in the UK.

[377] HCWS389 (28.11.22).
[378] HCWS543 (6.2.23).
[379] The police are required to keep this under review: section 10 TPIM Act 2011.
[380] Counter-Terrorism and Sentencing Act 2021 amending the Sentencing Act 2020 by addition of section 252A.
[381] Under the Counter-Terrorism Act 2008, as amended by the 2021 Act.
[382] TL v Home Secretary [2022] EWHC 3322 (Admin).

8.17. The Court was critical of the way TL's desistance and disengagement programme had been administered and recorded – in particular, one of his mentors had appeared to invite TL to impart legally privileged information[383].

8.18. With reference to duration:

- The Court observed the burden remained on the Secretary of State to demonstrate that a TPIM was necessary and proportionate at every stage.
- It was therefore insufficient for the Secretary of State to say that the TPIM was justified and the TPIM subject had not demonstrated that it had ceased to be so[384].
- In deciding necessity and proportionality, the length of time would always be a "major consideration" even in the absence of positive evidence of progress[385].

8.19. These observations now carry even greater weight, since TL is the last TPIM with a maximum duration of 2 years. His TPIM expired in March 2023. All new TPIMs now have a maximum of 5 years' duration.

8.20. For the first time ever, a TPIM was revoked by the Home Secretary before its natural expiry (leaving aside revocation on arrest). This is a significant first: no previous TPIM had been proactively terminated earlier than the maximum allowable period. This is precisely what the legislation is designed to allow – the revocation of a TPIM notice "at any time"[386].

TPIM Management Generally

8.21. I have reviewed TPIM papers, attended meetings of the quarterly TPIM Review Group, spoken to officials, and attended useful look-back reviews on two recently expired TPIMs. Home Office officials demonstrated a commendable determination to review the overall utility of TPIMs, and the ways in which TPIM management[387], including exit strategy, could be improved. Where measures have been relaxed,

[383] Paras 32-4.
[384] Para 34.
[385] Para 35.
[386] Section 13 TPIM Act 2011.
[387] E.g. responding to requests for variations; suggesting variations; providing mentoring; dealing with mental health or other personal crises.

perhaps as part of an exit strategy, one of the questions that a post-expiry review can ponder is whether that relaxation could have happened sooner.

- As before, I have been impressed by the degree of challenge injected by Home Office officials. The ability and willingness to test assumptions requires a serious degree of confidence and purpose, and I hope that this is replicated as personnel inevitably changes.

- I am also pleased to report that the officials are now proactively considering whether measures (for example, curfew hours) can be relaxed in a way that allows testing for overall risk reduction. This is proportionality in action, promoting the least interference with individual rights that is consistent with public security.

- More imaginative use of TPIMs may have been promoted by features that were not previously encountered in TPIM subjects such as youth and diagnosed autism.

- A continuing challenge is to balance controls on access to electronic communications devices, which can be used for any number of malign purposes including terrorism-related activity, with the demands of the real world. For example, a job as a delivery driver usually requires access to a smartphone. So it is not possible to conceptualise smartphones as a luxury or optional extra: restrictions on access have major consequences in allowing TPIM subjects the semblance of an ordinary life, which could hinder risk reduction.

8.22. Since all fresh TPIMs after June 2021 can now last for up to 5 years[388], it might be tempting, given the public safety imperative, to roll TPIMs from one year to the next. Discipline is required, at each renewal, to consider whether the TPIM remains necessary and proportionate.

- Previously, any extension was a one-off, leading to a final year, quite possibly comprising a gradual winding-down of measures as part of an exit strategy.

[388] Section 5 TPIM Act 2011 as amended by the Counter-Terrorism and Sentencing Act 2021.

- Any residual comfort there may have been, when a case was finely balanced, that the TPIM will "end anyway" is no longer available.

- Officials will need to think about the desirability and impact of measures over this increased timescale – for example, whether it is sustainable to require a person to attend mentoring sessions for 5 years continuously.

8.23. Under the Counter-Terrorism and Sentencing Act 2021, and in accordance with recent rules[389], polygraph ('lie-detector') measures have been available for TPIM subjects[390]. A polygraph measure was imposed on one TPIM subject during 2022 but no polygraph sessions were administered. I will report further if and when a polygraph is used on a TPIM subject.

Changing Cohort of TPIM subjects

8.24. The High Court found that "TL" suffered from poor mental health, which may have been aggravated by the demands of complying with a TPIM. The Court also concluded that the Home Office had reacted with impressive conscientiousness when his mental health deteriorated[391]. This matches my own impression of the resource-intensive and humane approach taken by officials and police to TPIM subjects (not limited to "TL") experiencing poor mental health.

8.25. The Home Office recognises poor mental health as a dominant feature amongst recent TPIM subjects. I am pleased to report it is now routine for Home Office psychologists to attend relevant TPIM review group meetings. This allows officials to think sensitively and creatively about improved communication with TPIM subjects, extra stresses they may be suffering, medication regimes, and to interpret otherwise baffling or confused behaviour which could, if not properly understood, lead to erroneous (unduly high or unduly low) assessments of risk.

8.26. During the currency of one TPIM during 2022, the individual's mental health appeared to improve as a result of the attention given to his condition by the authorities. It is not possible to give any further details here, save to observe that the TPIM measure requiring attendance at mentoring sessions can provide stability and company. In fact, the power to require attendance at appointments "with specified

[389] Terrorism Prevention and Investigation Measures (Polygraph) Regulations 2022/462.
[390] Paragraph 10ZA of Schedule 1.
[391] TL v Home Secretary, supra, at para 27.

persons or persons of specified descriptions"[392] is broad enough to require attendance at sessions that are not part of any formal Desistance and Disengagement Programme.

8.27. Further work is required on how mentoring might continue to be offered on a voluntary basis post-expiry: positive relationships may be built up with existing mentors, but there are practical reasons why the same Home Office-approved mentors may not be able to engage in informal mentoring. In these circumstances thought could be given to whether Prevent-type mechanisms can be introduced towards the end of a TPIM.

8.28. This aspect of TPIMs is not surprising in the wider context of counter-terrorism, which is increasingly having to react to individuals with poor mental health or neurodivergence. Flexibility, realism, and the ability to draw on a wider pool of expertise is essential.

8.29. Another feature of future TPIM management may be youth – previous TPIM subjects have tended to be in their 30s and married. Younger TPIM subjects will have strong claims to greater TPIM flexibility in terms of meeting people, going on dates and forming relationships than have generally been permitted under the 'association measure', and their access to social media. Up to 5 years is a long time in anyone's life, especially those who are at the beginning. Excessive control could embitter and frustrate leading to more uncertain long-term management of their terrorist risk.

Knives and Bladed Articles

8.30. During 2022, as in previous years, measures imposed on TPIM subjects contained the standard prohibition on possession of offensive weapons, imitation firearms and explosives. However, current TPIM notices have added:

"…Offensive weapons include any knives/bladed articles that you have not sought permission from the Home Office in advance to possess and use."

8.31. There may be sound reasons for wanting to limit the possession of knives and bladed articles, given their potential use in attacks. In practice this measure was used to limit the number of knives an individual could have at home and/or require them to

[392] Paragraph 10A of Schedule 1.

use special knives, suitable to preparing food but designed to be less useful for offensive use, provided by the Home Office. It is understandable that the police should be concerned for their own personal safety if a TPIM subject brings a knife into the house which has not been provided by the Home Office.

8.32. Despite the good intention, the addition went beyond what is permitted by statute.

8.33. Paragraph 6A of Schedule 1 to the TPIM Act 2011[393] allows the Home Secretary of impose "a prohibition on possessing offensive weapons", where an offensive weapon is defined as "an article made or adapted for use for causing injury to the person, or intended by the person in possession of it for such use (by that person or another)".

8.34. Crucially, paragraph 6A does not allow the Home Secretary to prohibit the possession of bladed articles generally. Bladed articles may be prohibited but only where they are either made or adapted for causing injury (such as a home-made "shank") or intended for such use.

8.35. The use and abuse of knives is familiar to the criminal law. Before 1988, a person who carried a knife in a public place could only be prosecuted if the knife was an offensive weapon (adapted or intended for use for causing injury)[394]. In 1988, in response to the growing threat from knives carried in public places, Parliament enacted the CJA 1998 which made it an offence to possess any knife or bladed article in a public place without reasonable excuse[395].

8.36. However, this provision was not carried into Schedule 1 of the TPIM Act 2011. Schedule 1 could have included a provision such as "bladed article…other than where permission has been granted by the HO", but it did not.

8.37. Other potential TPIM measures do turn on Home Office permission: under paragraph 5 of Schedule 1, a person may not possess cash over a certain value without the permission of the Home Secretary; under paragraph 7, the Home Secretary's permission is required for the possession of electronic communication

[393] Para 6A was added to Schedule 1 by the Counter-Terrorism and Security Act 2015.
[394] Under the Prevention of Crime Act 1953.
[395] Section 139.

devices; under paragraph 9, a person may not engage in work or study without permission of the Home Office.

8.38. By contrast, paragraph 6A does not prohibit the possession of knives at home merely because the Home Secretary has not given permission. Refusal of permission does not make a weapon offensive, any more than refusal by the Home Secretary makes possession of a cricket bat or teapot (both of which could be offensive weapons if held with the requisite intent) into offensive weapons.

8.39. As the legislation currently stands, the police will be unable to enforce a prohibition of having knives for which permission has not been granted, unless they can show that the knife was adapted or held with intent to cause injury. It seems to me inevitable that any attempt to prosecute an individual who is subject to such a measure, merely for possessing a knife without permission, would be bound to fail.

8.40. This is obviously unsatisfactory. Given the need to control the access of some TPIM subjects to knives (especially those who are reasonably believed to be attack-planners), I **recommend** that the TPIM Act 2011 is amended to enable the Home Secretary to prohibit the possession of unapproved knives or bladed articles.

Post-Sentence TPIMs

8.41. A looming possibility is the use of TPIMs against released prisoners. The prospect is most likely for those released at the conclusion of their sentences without any licence conditions, for example individuals who have served the entirety of their sentence in custody and are therefore not subject to post-release supervision on licence. That might apply to determinate sentence prisoners who have been recalled to prison, or those who are not released following reference to the Parole Board by the Justice Secretary following the reforms of 2022[396].

8.42. In some cases, the "terrorism-related activity" required for imposition of a TPIM might have nothing to do with their criminal sentence – for example, a terrorist who is imprisoned for a non-terrorist-connected offence, or a person who becomes radicalised for the first time in prison.

[396] Section 244ZB Criminal Justice Act 2003, inserted by the Police, Crime, Sentencing and Courts Act 2022.

8.43. However, it is possible that an individual might be sentenced to a term of imprisonment for terrorist offending but then, on release, find themselves subject to a TPIM based on the *same* terrorist conduct. There is no bar to this in the TPIM Act 2011: the only barrier to repeated use of terrorism-related activity is that a new TPIM can only be imposed based on terrorism-related activity that post-dates the previous TPIM[397].

8.44. A decision to impose a TPIM on the basis of the same activity that led to conviction would have something in common with the use, in Australia, of extended supervision orders[398]. These allow the Commonwealth to impose monitoring and other measures on individuals released from terrorism-related sentences.

8.45. I recognise that TPIMs against released prisoners will probably not rely on the very same conduct that led to conviction:

- Since TPIMs operate at the level of reasonable belief not proof beyond reasonable doubt, are civil orders admitting a wider range of evidence than applies in criminal proceedings, and allow the use of evidence in secret (such as phone intercept or evidence from covert sources), the evidential picture is unlikely to be identical.

- In some cases, it may be supplemented by evidence of terrorist mindset relating to the individual's time in prison.

8.46. However, the greater the overlap between the prosecuted conduct and the TPIM conduct, the greater the risk that a TPIM might appear to be an additional punishment, or amount to the Secretary of State's disagreement with the sentencing outcome. I look forward to considering any cases of this nature in next year's report.

Temporary Exclusion Orders

8.47. TEOs were introduced by the Counter-Terrorism and Security Act 2015, and enable the Secretary of State to set conditions on the return to the UK of foreign-

[397] Section 3(2),(6).
[398] Under Division 105A of the Criminal Code Act 1995 (Commonwealth). These measures, and the use of Continuing Detention Orders (CDOs) under the same Division, were reviewed by the Independent National Security Legislation Monitor, Grant Donaldson KC in an insightful and powerful report of March 2023. The INSLM recommended the abolition of CDOs and exposed significant flaws in the process of risk assessment.

based individuals who are reasonably suspected of involvement in terrorism-related activity. In practice this means specifying the flight that must be taken, and imposing requirements to report to police and attend mentoring sessions once back in the UK.

8.48. They are only available against those with a right of abode in the UK (in effect, British citizens)[399]. From the authorities' perspective, they are less resource-intensive because they operate at the level of reasonable suspicion and there is no automatic court review.

8.49. The first TEOs were imposed in 2017. Analysis of 5 government reports from 2017 to 2023[400] shows as follows for the years prior to 2022:

Year	TEO imposed	TEO returned	Men	Women
2017	9		3	6
		4	1	3
2018	16		14	2
		5[401]	2	3
2019	4[402]		2	2
		2	1	1
2020	1		1	0
		1	0	1
2021	5		4	1
		5	4	1
TOTAL	35		24	11
		17	8	9

[399] Section 2(6).
[400] HM Government Transparency: Disruptive and Investigatory Powers Reports: Cm 9420, Feb 2017; CM 9609, July 2018; CP 212, March 2020; CP 621, March 2022; CP 779, Jan 2023 at paras 5.8, 5.8, 5.8, 4.8 and 3.9 respectively.
[401] It is possible that some of the 16 individuals on whom TEOs were imposed in 2018 returned later: from report CP 621 onwards, the figure for returners is given from the individuals made subject to a TEO in that year.
[402] Three TEOs were used against the same individual (2 were revoked), so the total number of TEOs (6) is more than the number of individuals concerned. I have used the figure for the number of individuals concerned.

8.50. It follows that only half of those made subject to TEOs actually returned to the UK. Twice as many TEOs were made against men as against women, but more women returned than men.

8.51. In 2022, two more TEOs were imposed on individuals, one of whom also returned during 2022[403].

8.52. TEOs last for a maximum of 2 years from date of notice of imposition[404] and cannot be renewed or extended. In a previous report I recommended that the 2-year period should run from return to the UK not imposition (so that a full 2-year period was always available)[405].

- The government accepted this recommendation, which would require statutory amendments to the 2015 Act, in October 2020 but no suitable legislation has to date been identified (despite the passage of the Illegal Migration Act 2023). I am wary about recommending that TEOs should be extendable, even for only one extra year, given the lower standard of proof and because once a facility exists it can be hard to resist using it.

8.53. "QX" remains the only TEO subject who has mounted a court challenge[406]. His case was heard by Court of Appeal in 2022, on the question of disclosure (now subject to appeal to the Supreme Court)[407]. The absence of court challenges may be because in most cases the return to the UK is desired and a TEO is seen as the temporary price of return; the measure is time limited; the threshold of proof is low; and the compliance burden is relatively limited.

TEOs and Terror Zones

8.54. TEOs were introduced at the height of travel to Syria for terrorist purposes[408].

[403] HM Government, Transparency Report for 2022 (October 2023).
[404] Section 4(3). Where a TEO is made but not implemented (because for example the TEO subject does not return within the 2 year period), a new TEO can be made later on based on the same threat case if they do decide to return.
[405] Terrorism Acts in 2018 at 8.51.
[406] Under section 11.
[407] QX v Home Secretary [2022] EWCA Civ 1541.
[408] Explanatory Notes, para 3 under "Summary and Background".

8.55. Out of the 35 TEOs imposed up to 2021, the vast majority have related to individuals returning from Syria. One of these was allegedly "QX"[409], whose case is currently before the courts. The Secretary of State alleged that he went to Syria in 2013, to support an Al-Qaida-aligned terrorist group[410]; a TEO was imposed in 2018; and he was deported to the UK with his family from Turkey in 2019[411].

8.56. These numbers are minimal compared to the number of individuals (estimated at 450) who returned to the UK after travelling to Islamic State territories. For these individuals, any de-radicalising interventions will depend on voluntary cooperation. A significant body of literature examines deradicalisation and disengagement schemes across the world with a particular focus on returning families[412].

8.57. Some early TEOs were imposed on AQ-aligned travellers who were believed to be abroad but never showed any intention of returning. Nowadays they are mainly used where there is some indication that an individual is going to return. TEOs have been used for some individuals who successfully challenged their citizenship deprivation whilst they were overseas, and who therefore won the right to return as British citizens[413].

8.58. TEOs have also been deployed against British citizens returning to the UK from Afghanistan, Indonesia, Iraq and Pakistan.

8.59. Overall, they are seen as an effective mechanism for managing terrorist risk whilst reintegrating individuals who may have spent a very long time abroad. Practical

[409] QX v Home Secretary, supra.
[410] Para 58.
[411] Para 8-9.
[412] E.g. Khalil, J., Brown, R., Chant, C., Olowo, P., Wood, N., 'Deradicalisation and Disengagement in Somalia', RUSI (January 2019) on former Al-Shabaab members; Lister, C., 'Returning Foreign Fighters: Criminalisation or Reintegration'; Rigotti, C., Barboza, J., 'Unfolding the case of returnees: How the European Union and its member States are addressing the return of foreign fighters and their families', International Review of the Red Cross (2021), 103 (916-917), 681–703; Mehra, T., Wentworth, M., 'Repatriation of child returnees from Northeast Syria' (ICCT 2022); Mehra, T., 'The Repatriation of Five Women and Eleven Children from Syria: A Turning Point in the Netherlands?', ICCT (11.2.22); Human Rights Watch, 'My Son is Just Another Kid: Experiences of Children Repatriated from Camps for ISIS Suspects and Their Families in Northeast Syria' (2022); Pisoiu, D., and Renard, T., 'Responses to returning foreign terrorist fighters and their families: Radicalisation Awareness Network Manual' (2nd Edition, 2022'. The fascinating 2022 documentary, 'The UnRedacted' by US film-maker Meg Smaker follows a group of former jihadists and Guantanamo Bay detainees at a rehabilitation centre in Saudi Arabia.
[413] In B4 v Home Secretary SC/159/2018 (1.11.22), Special Immigration Appeals Commission rejected the submission that a TEO ought to have been imposed in place of deprivation.

support from mentors has generally been a positive. In most cases restrictions have been allowed to taper off during the 2 year period.

8.60. If the government were to approve UK return for British nationals currently held in camps and detention centres in North-East Syria, the existing TEO regime could offer a framework for managing risk, with the most serious cases being candidates for TPIMs.

8.61. Currently, TEOs allow the imposition of a very limited number of permitted obligations after return[414]. If the Counter-Terrorism and Security Act 2015 were amended, additional obligations could reasonably include:

- Tightening up the residence notification provisions so that they apply to temporary stays away from the notified residence[415].
- Extending TEOs to non-British citizens (for example, if the UK was to return any deprived former citizens[416]).

8.62. It is right to be cautious about adding further TPIM-type measures such as tagging, which are seriously intrusive on personal freedoms. Unlike TPIMS, TEOs operate a lower standard of proof and are not subject to automatic court review.

8.63. TEOs are in principle available for children, although they have never been used in this way. Some British children currently in Syria may only know life under Islamic States and in the camps[417]. They may present a risk to the general public, and will certainly require significant investment of time and resources.

- The government has published guidance to local authorities and funds a returning families unit at the Tavistock mental health clinic in London. All this depends on the cooperation of the child and their family.

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[414] Section 9(2): the permitted obligations are reporting to a police station; attendance at appointments; and notification of place of residence.
[415] Section 9(2)(b) refers to notifying any changes in the individual's place of residence: place of residence has (reasonably) been interpreted as excluding a place where an individual stays on a one-off basis.
[416] The government has previously rejected my recommendation to this effect.
[417] HMG, 'Advice for Local Authorities – Safeguarding Children Returning to the UK from Syria' (2017) HMG, https://adcs.org.uk/assets/documentation/DfE_safeguarding_children_returing_UK_from_Syria_advice_to_LAs.pdf (last accessed 1.9.23); 'Advice relating to minors returning from Syria' (additional guidance): https://adcs.org.uk/assets/documentation/Advice_relating_to_minors_returning_from_Syria_FINAL.pdf (last accessed 1.9.23).

- For children who have been indoctrinated or trained as terrorists and therefore present a risk on return to the UK which needs to be monitored or managed through compulsory measures, TEOs, or something akin to TEOs, could be an option.

- But before TEOs were used in this way, I would expect at the very least careful thought about how measures, designed for adults, could be used on children, consistent with their needs and rights as children. Additional safeguards and adaptations might be required, and proper scepticism should be shown about whether they have actually been involved in terrorism-related activity, and whether they really present a terrorist risk to the public.

Money Measures

8.64. Uncertainty is often voiced about the overall impact of financial counter-terrorism measures[418], and it is fair to say that low sophistication attacks using knives and vehicles hardly need sustained terrorist fundraising. However, given the degree to which technology is exploited in ordinary crime, it is foreseeable that cryptocurrency will play an increased role in terrorism funding. In many ways it lends itself to circumvention of traditional checks on finances, and the current technologically-minded cohort of internet plotters and radicalisers. Terrorists are known to solicit donations in virtual assets[419].

8.65. The Anti-Terrorism, Crime and Security Act 2001 ('ACTSA') allows the forfeiture of terrorist assets. Unlike the conditions for forfeiture in the Proceeds of Crime Act 2002, liability to forfeiture under ACTSA does not turn on derivation from or use in particular offences, but applies to assets intended to be used for the purposes of terrorism generally, or which consist of the resources of a proscribed organisation, or that are or represent property obtained through terrorism[420]. This has something in common with liability to arrest as a "terrorist" under section 41 Terrorism Act 2000 (see Chapter 5).

[418] Davis, J., 'Understanding the Effects and Impacts of Counter-Terrorist Financing Policy and Practice', (2022) Terrorism and Political Violence. A 2022 study found that Islamic State terrorists tended to prefer conventional and simpler modes of financial transfer: Whittaker, J., 'The Role of Financial Technologies in US-Based ISIS Terror Plots', (2022) *Studies in Conflict & Terrorism.*
[419] FATF, 'Ethnically or Racially Motivated Terrorism Financing' (June 2021).
[420] Section 1(1).

8.66. Part 4 of the Economic Crime and Corporate Transparency Act 2023, updates ATCSA to make provision for cryptoassets. Complexities arise because of the practical dimensions of using cryptoassets, with the need to cater for cryptowallets, seed phrases (written phrases recorded on or offline from which it is possible to restore access to cryptoassets) and conversion to fiat currency. Special provision already exists to allow the freezing of monies in bank accounts (account freezing) pending further investigation.

8.67. During 2022, under the ATCSA[421]:

- New cash detentions were valued at £7.2m.
- There were 83 ongoing cash detentions.
- There was one cash forfeiture order (final order).
- 6 account freezing orders granted[422].
- 8 account forfeiture orders (final orders) were made.

8.68. ATCSA allows the use of withheld information before the Court at the detention or freezing stage[423]. Just as terrorism-related arrests, exercised on sensitive information, in situations of high pressure and uncertainty, may not lead to charge and conviction, there is an inherent risk that assets seized, detained or frozen under ATCSA will turn out, on investigation, to have nothing to do with terrorism.

Online Measures

8.69. The government has partially accepted my recommendation that a list should be published of online content which has led to terrorism convictions in the UK. A list is to be provided to internet service providers, not to the general public. The purpose is to ensure that internet service providers can be educated on content that ought to be removed as being inconsistent with UK terrorism legislation. I note that at the time of writing, one of the videos created by Daniel Harris, sentenced in 2022 to 11 and a half years for creating dangerous Extreme Right Wing Terrorism propaganda (see Chapter 7) is still readily available via online search.

[421] Figures supplied to me by CT Police Headquarters.
[422] There was a total of 444 Account Freezing Orders still active in 2023 (taking account of orders made in previous years).
[423] E.g. for cash detention, see paragraph 3 of Schedule 1.

8.70. The Online Safety Bill has (in 2023) reached the conclusion of its passage through Parliament. The proposed regulator, OFCOM, will in due course have to issue guidance on what amounts to "terrorism content"[424]. This is likely to prove a tricky exercise, especially in the context of bot-generated content; service providers will need to consider the mental fault of the person assumed to exercise control of the bot[425]. In the course of next year I intend to report on artificial intelligence and terrorism content.

Other Measures

8.71. Special amendments were made by the Counter-Terrorism and Sentencing Act 2021 to allow police applications to the High Court for SCPOs in terrorism-related cases[426]. No applications have been made in terrorism cases using this High Court (non-conviction) route[427].

8.72. SCPOs offer an additional method, alongside TPIMs and TEOs, for dealing with individuals returning from terror zones, and for preventing them travelling out.

8.73. Domestic autonomous sanctions, under the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019, would be an imaginative but potentially useful response to returners: the extent to which counter-terrorism sanctions inhibit an individual's freedom of action, and therefore opportunity to engage in terrorism-related activity, should not be discounted[428].

[424] In OFCOM's proposed 'Illegal Contents Judgments Guidance'.
[425] Clause 193(7). The working view of government is that most terrorism content, to the extent that it is identified and removed, will fall within existing terms and conditions against violence and expressions of hatred. If that is right, then service providers may only rarely need to consider the requirements of UK terrorism legislation, assuming their systems and policies meet the higher duties that apply to "terrorism content" compared to more general "illegal content".
[426] Amending section 8 and inserted section 8A into the 2007 Act.
[427] There is an error in HM Government's Transparency Report for 2022 (October 2023), which states that two High Court SCPOs had been sought.
[428] I have carried out separate independent reviews of the Treasury's Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019, and the Foreign Commonwealth and Development Office's Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019.

9. NORTHERN IRELAND

Introduction

9.1. As elsewhere, the suppressive effect of Covid-19 on terrorist activity evaporated during 2022. With freedom of movement restored, terrorist organisations returned to their pre-Covid levels of operational activity[429]. Terrorism and what is described in Northern Ireland as paramilitarism continued to be a feature of life with a prominence unrecognisable to inhabitants of England, Scotland and Wales[430].

9.2. In Northern Ireland paramilitarism is the malign activity of proscribed organisations which is criminal and sometimes sectarian, but is not considered to affect national security[431]. The Paramilitary Crime Task Force, a joint endeavour comprising officers from the Police Service of Northern Ireland (PSNI), the National Crime Agency and His Majesty's Revenue and Customs, is the principal law enforcement response to paramilitarism.

9.3. In relation to terrorism, including Extreme Right-Wing Terrorism[432], the PSNI's Terrorism Investigation Unit acts in conjunction with MI5 whose declared headquarters are at Palace Barracks, just outside Belfast. At a policy level, terrorism is a reserved matter and a matter for the UK government and in particular the Northern Ireland Office. The Terrorism Acts 2000 and 2006 apply to Northern Ireland as to the rest of the United Kingdom.

[429] Independent Reviewer of National Security Arrangements: 2022 Report, as summarised in a written statement to Parliament, Hansard (HC) Vol 732 Col 40WS (18 May 2023).
[430] I am grateful to my special adviser Karl Laird for his help on this chapter.
[431] For the distinction between "national security" terrorism, and paramilitarism, see Terrorism Acts in 2019 at 9.23 et seq.
[432] Northern Ireland Policing Board, 15th Human Rights Annual Report (2023). Ironically, this means that MI5 has lead responsibility for ERWT activity by children, but does not have lead responsibility for the 'paramilitary' activity of proscribed terrorist organisations.

Events

9.4. During 2022[433]:

- One person was killed in an attack where the death was categorised by PSNI as "security related"[434]. This is the joint lowest together with the years 2008, 2011, and 2013, and one fewer than in 2021.
- There were 29 shooting incidents (2 more than 2021) and 5 bombing incidents, in which 5 bombing devices were used in connection with the security situation (same as 2021).
- There was a total of 33 casualties because of "paramilitary-style attacks" (down from 51 in 2021 and the lowest since records began).
- These paramilitary attacks were made up of 8 "paramilitary style shootings" (5 committed by Loyalist groups and 3 by Republican groups) and 25 "paramilitary style assaults" (19 committed by Loyalist groups and 6 by Republican groups).
- The PSNI recovered 24 firearms (down from 39 in 2021), 1,898 rounds of ammunition (up from 1,002), and 0.65kg of explosives (up from 0).

9.5. PSNI recorded three incidents in 2022 as "national security attacks"[435]. These were:

- Shots fired at police close to an anti-internment bonfire in Londonderry in August[436]. No injuries were caused. Claimed by the new IRA.
- The bombing of a PSNI patrol vehicle in Strabane, County Tyrone, in November 2022 using a command wire improvised explosive device (IED)[437]. Claimed by the new IRA.
- The forcing of a delivery driver, at gunpoint, to drive a viable IED (which failed to function) to a Londonderry police station, also in November 2022[438]. Claimed by Arm na Poblachta (ANP).

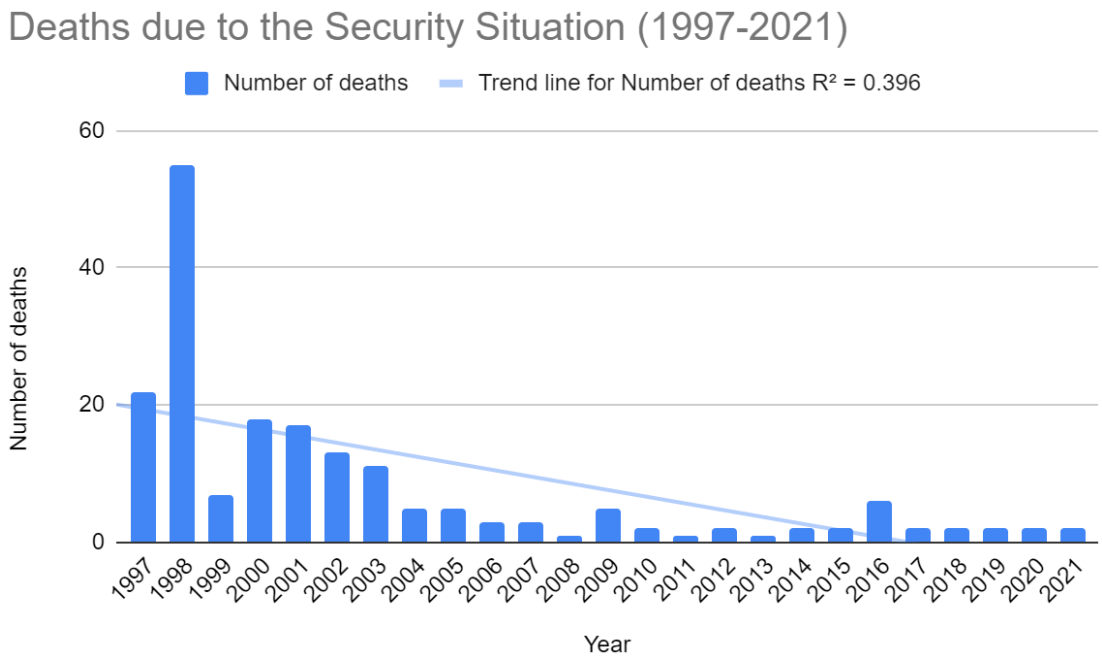
[433] PSNI, 'Security Situation Statistics, information up to and including March 2022', unless otherwise stated.
[434] According to the PSNI's guidelines, "those which are considered at the time of the incident to be directly attributed to terrorism, where the cause has a direct or proximate link to subversive/ sectarian strife or where the death is attributable to security force activity": PSNI, User Guide to Security Situation Statistics Northern Ireland (updated September 2020).
[435] Information provided by PSNI.
[436] 'New IRA claims shots fired at police for first time since Lyra killing' (Irish News, 18.8.22).
[437] 'Strabane bomb attack: Police say device was a "viable explosive"' (BBC News, 18.11.22).
[438] 'Londonderry alert: Man forced to drive at gunpoint to police station' (BBC News, 21.11.22).

9.6. Another serious incident was the attack on PSNI officers with petrol bombs following an Easter parade linked to dissident Republicans in Londonderry in April 2022. The parade was planned by National Republican Commemoration Committee, an organisation linked to the New IRA[439].

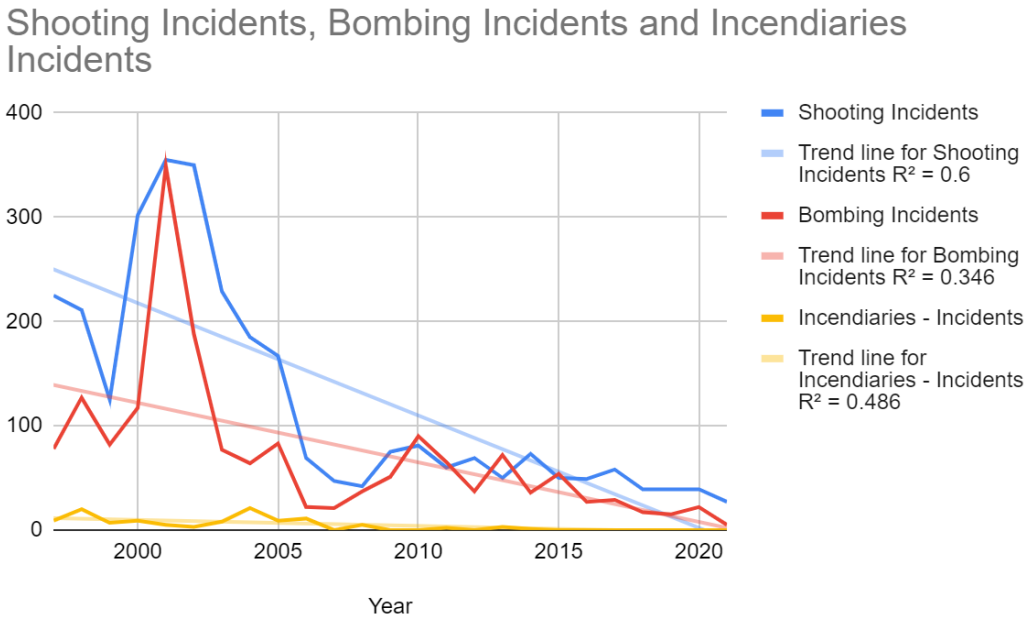
9.7. All these events led to arrests under the Terrorism Act 2000. The shooting of PSNI Detective Chief Inspector John Caldwell, whilst he was off duty in Omagh, in February 2023 will be covered in next year's report.

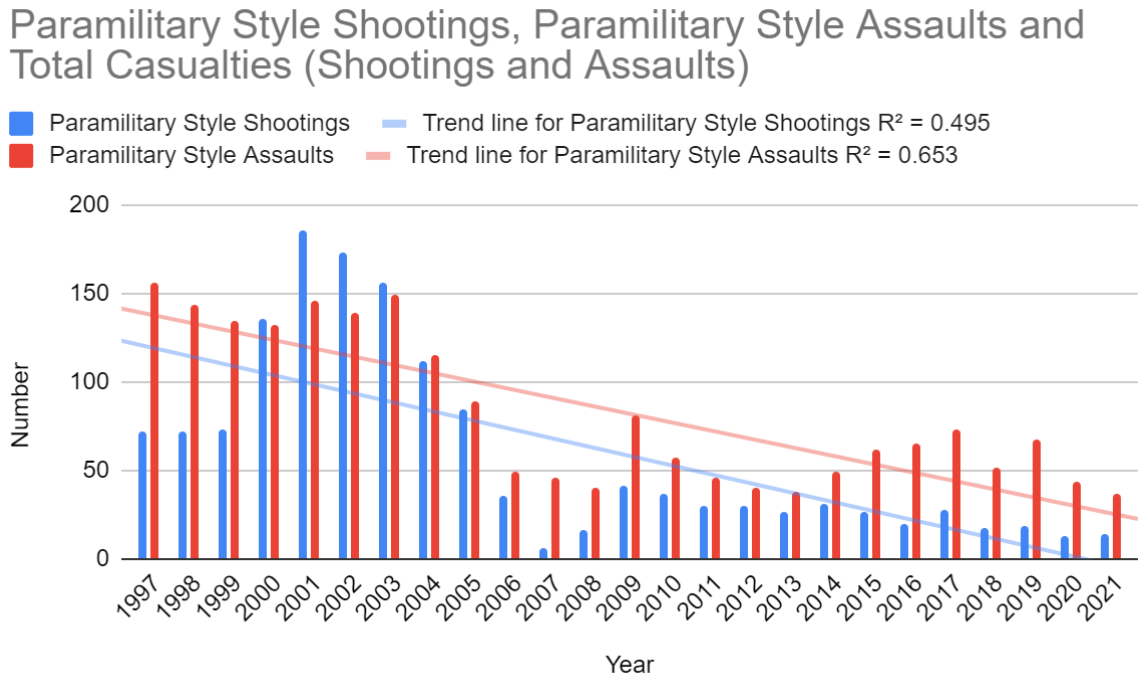
Trends

9.8. Over a longer-term, there has been a sustained decline in serious violence relating to the security situation. This is illustrated by the following three charts published by the government in 2023[440].



[439] 'Londonderry: Petrol bomb attack on police 'premeditated'' (BBC, 19.4.22).
[440] Extracted from, HMG, 'Consultation Response: Non-Jury Trials, Justice and Security (Northern Ireland) Act 2007' (April 2023).





9.9. In 2022, and for the first time ever, the threat level was lowered by MI5 from 'severe' to 'substantial' (corresponding to the 'substantial' level in Great Britain, where the decision-maker is the Joint Terrorism Analysis Centre, JTAC). In Parliament the Secretary of State for Northern Ireland referred to this reduction as a testament to

efforts against Northern Ireland Related Terrorism over the previous decade[441], which make sense in the context of the charts shown above.

9.10. However, this diminution in the published assessment of terrorist risk proved to be short-lived, as it was returned to 'severe' in late March 2023. Given that this unwelcome elevation came immediately before the 25th anniversary commemorations of the Good Friday/ Belfast Agreement, attended by world dignitaries, it can be inferred that MI5's assessment processes are independent of politics.

9.11. The background threat of proscribed organisations to ordinary life in Northern Ireland means it can be difficult to distinguish between severe and substantial threat.

Terrorist Groups in Northern Ireland

9.12. There has been no legislative activity regarding terrorist groups in Northern Ireland since the introduction of the Terrorism Act 2000, and all 14 groups that were proscribed under that Act were already proscribed under predecessor legislation.

9.13. During the past 5 years, there were only two likely perpetrators of national security attacks, namely the dissident Republican groups the New IRA and Continuity IRA[442].

9.14. A separate dissident Republican organisation is Arm na Poblachta (ANP). In recent years it had appeared quiescent but flamed back into temporary prominence. ANP claimed responsibility for forcing a delivery driver to take a viable IED to a Derry police station in November 2022, and was suspected of an attempted hijacking in Derry in February 2023[443].

9.15. In last year's report I noted that ANP was not considered by the Northern Ireland Office to be proscribed[444].

9.16. The emergence or re-emergence of small groups or subgroups, driven in whole or in part by personal rivalry or a share of any criminal profits, is hard to predict. The threat presented by a small group will often be affected by the capability of its

[441] Hansard (HC) HCWS704 (22.3.22).
[442] The last attack attributed to Óglaigh na hÉireann (ONH) was in January 2017.
[443] 'Republic group ANP suspected of involvement in Derry alert' (The Irish News, 21.2.23).
[444] Terrorism Acts in 2019 at p176 footnote 708.

individual members, for example in the manufacture of Improvised Explosive Devices or their ability to conduct ambush attacks.

9.17. Other Republican groups, and all Loyalist groups, are categorised by PSNI and MI5 as 'paramilitaries'. The threat they pose is not to national security in the narrow sense of attacks on agents of the Crown but is part of a background blight on life in Northern Ireland, usually allied to crime and the desire to retain status or preserve heritage, and results in severe harm for the victims of "punishment" shootings and beatings.

9.18. In 2022, the Independent Reporting Commission described paramilitarism as a 'clear and present danger'[445].

9.19. Moreover,

- Despite the decommissioning of guns as part of the Good Friday Agreement, weapons remain in many communities including in the hands of proscribed organisations.
- Communities, in particular working-class communities, remain polarised and fearful, in some cases passing down hostility and anxiety to future generations.
- Proscribed organisations continue to claim a role and responsibility in what can be described as 'alternative policing', especially in the context of illegal drugs, reinforcing their power and control in disadvantaged communities[446]. There are areas where it is particularly hard for PSNI to police.
- There remain small pockets of Northern Ireland society that reject the Good Friday Agreement and continue at various levels to mobilise and commit violent acts up to and including murder in the pursuit of their political goals.
- There is a yearning to communicate improvements in day-to-day life, and to present PSNI as 'community police' with a focus on ordinary crime and improving quality of life. Security issues, and the abiding presence of terrorist organisations, detract from this message.

9.20. The Independent Reporting Commission advocates 'group transition' involving disarmament, demobilisation and rehabilitation. The need for transition is supported by the highly knowledgeable Independent Reviewer of the Justice and Security

[445] 5th Report, supra.
[446] See for example, 'Dissident republicans vow to shut down deadly drugs gang following string of murders' (Sunday World, 25.1.23).

(Northern Ireland) Act 2007, Professor Marie Breen-Smyth[447], whose term concluded in 2024.

9.21. Whether de-proscription will in practice play a role in such a process is open to doubt. This follows from what might be described as proscription-stasis. Despite the recommendations of successive Independent Reviewers of Terrorism Legislation[448], the government has not taken the opportunity to spring-clean the Northern Ireland proscription list. De-proscription appears too bold a move.

9.22. Proscribed organisations who say they wish to transition but insist on using military terminology such as 'commander' or 'brigade' hardly help their cause. Lawful policing suffers in two directions: proscribed groups use their hardman status to commit crimes; and present themselves as the true protectors of forgotten working class communities. Both facets drive proscribed organisations to discourage local trust in the PSNI

9.23. A feared upswing in politically-driven violence following Brexit did not materialise[449].

Symbols and Flags

9.24. The use of symbols and flags to consolidate allegiance or intimidate outsiders is a firm feature of life in many parts of Northern Ireland. In November 2022 a Derry window display featured a snowman triggering a bomb as support for dissident Republicans[450]. In early 2023 a loyalist bandsman was charged with a display of military-style clothing associated with the Ulster Defence Association[451].

9.25. The PSNI are accustomed to the dilemmas of policing such displays – remove flags associated with proscribed organisations from lampposts and risk public order backlash and proliferation; do nothing and appear weak in the face of expressions of support for terrorist organisations. In May 2022 a valuable report by a civil liberties

[447] 15th Report: 1 August 2021 – 31 July 2022 (2023).
[448] See Terrorism Acts in 2018 at 9.39 et seq.
[449]Independent Reporting Commission, 5th Report, supra.
[450] 'Saoradh window mural showing snowman pressing bomb trigger condemned' (Derry Daily, 26.11.22).
[451] 'Loyalist bandsman accused of wearing 'suspicious UDA-like clothing'' (Belfast Telegraph, 15.4.23).
On a separate matter, I am unable to respond to the use of the common law "unlawful assembly" offence, an alternative to offences under the Terrorism Act 2000, as I have been invited to do in the Northern Ireland Policing Board Human Rights Annual Report 2021-22 (recommendation 8), because criminal proceedings are ongoing.

organisation considered in some depth the operational approach of the PSNI based on published and unpublished guidance[452].

9.26. Aside from operational choices, there is a legislative aspect that requires further consideration. This was prompted by my own trip to Belfast in 2023 when I saw, and discussed with PSNI, the brazen presence of UDA flags displayed prominently on lampposts directly outside the PSNI training college[453]. The choice of location was clearly deliberate.

9.27. In its original form, section 13 Terrorism Act 2000 ('Uniform') prohibited any person from wearing an item of clothing or wearing, carrying or displaying an article so as to arouse a reasonable suspicion that he or she belonged to or supported a proscribed organisation.

9.28. Significant amendments were made to section 13 by the Counter-Terrorism and Border Security Act 2019, most notably by updating its scope for the digital age. The offence was expanded to the publication of images (either still or moving) to capture, for example, online displays of ISIS flags[454].

9.29. Additionally, section 13 was amended to provide a bespoke power to seize uniforms or other articles. This was required because existing seizure powers were dependent upon arrest, and arrest was not always suitable[455]. The seizure power arises if police reasonably suspect that the item is evidence in relation to the section 13 offence, *and* that it is "necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed"[456].

9.30. It is unlikely that this amendment was made with Northern Ireland in mind. Flags often appear on lampposts with no connection to the individual who displayed the flag. It is therefore hard to say that the flag arouses suspicion of that (or any other) person's membership of or support for a proscribed organisation.

[452] Committee on the Administration of Justice, 'Dealing with hate expression in public space in Northern Ireland' (May 2022).
[453] Also picked up in the press: 'UDA flags outside PSNI training college 'giving two fingers to police'' (The Irish News, 1.6.23).
[454] Section 2(3) 2019 Act inserting subsection (1A) into section 13 Terrorism Act 2000.
[455] Explanatory Notes, para 30.
[456] Section 13(4).

9.31. Faced with such a flag, unable to identify a perpetrator at the scene and with no genuine prospect of ever doing so, PSNI are unable to satisfy both statutory criteria for seizure.

- Certainly, the flag is reasonably suspected of being evidence of an offence under section 13.
- But in the above circumstances no PSNI officer could be satisfied that it was necessary to seize it to preserve it as evidence[457], since the officer could not sincerely contemplate that it might ever form part of criminal proceedings for the section 13 offence.
- Seizure would promote other objectives (such as reducing support for proscribed organisations) but it would not be done for the purpose of securing evidence.
- In these circumstances seizure would fall outside the objects and purpose of the statutory provision[458].

9.32. The absence of a seizure power creates a serious gap. Of course, PSNI have difficult operational decisions to make, and as with all exercises of law enforcement power may decide that the cure is worse than the disease. But without an effective seizure power, the option of removing paramilitary flags is not sufficiently available to PSNI. Potential workarounds are inadequate: for example, PSNI relying on an alleged victim to say that they are in fear, so as to unlock common law powers to keep the King's peace; or relying on civilian workers from the NI Executive to remove flags from lampposts for whose maintenance they are responsible.

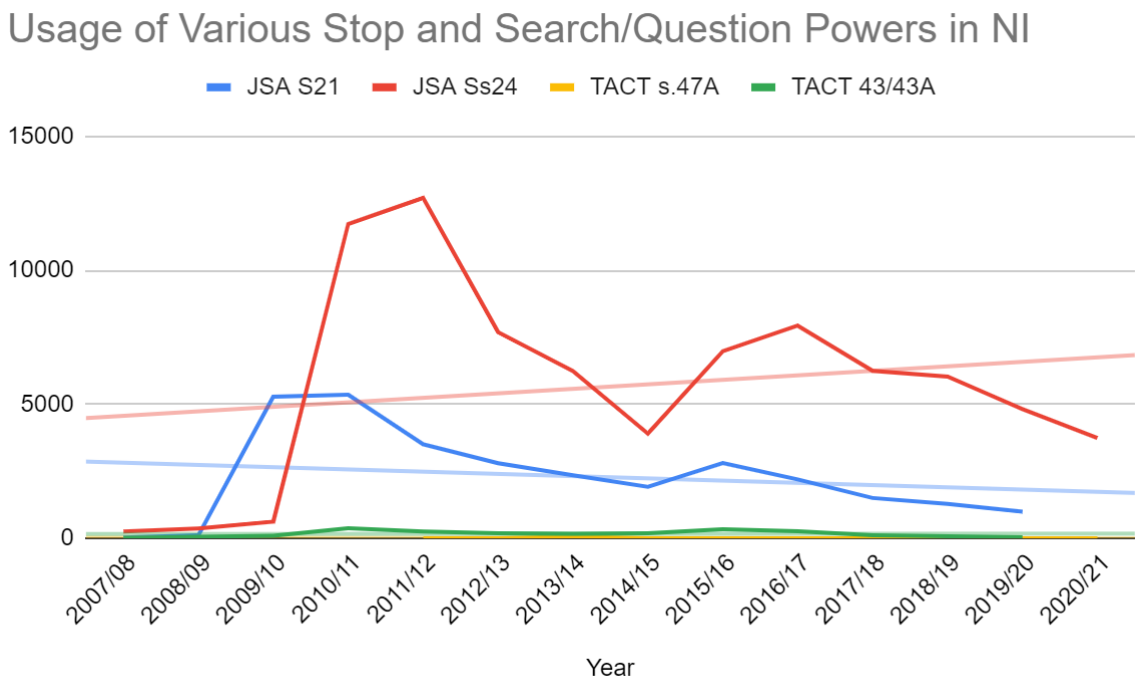
9.33. I therefore **recommend** that section 13 is amended to allow the seizure of any article if the constable reasonably suspects that it has been displayed in such a way or in such circumstances as to arouse reasonable suspicion that a person is a member or supporter of a proscribed organisation. It will be for PSNI to decide when to use such a power, but they will not be stifled by unrealistic expectations of evidence-gathering.

[457] Section 13(4)(b).
[458] Padfield and others v Ministry of Agriculture Fisheries and Food [1968] 1 All ER 694.

Stop and Search

9.34. Use of the special provisions in the Justice and Security (Northern Ireland) Act 2007[459] has always dwarfed the use of stop and search powers under sections 43 and 43A of the Terrorism Act 2000. Section 47A (suspicion-less stops based on prior authorisation) has only ever been authorised for use in Northern Ireland during one period in May 2013[460].

9.35. The pre-2022 situation is well illustrated by this chart[461].



9.36. In 2022, there were 53 persons stopped under section 43, 22 persons stopped under section 43A, 5 persons stopped under both sections 43 and 43A, and an additional 12 occasions in which these powers were used in conjunction with the powers in the Justice and Security (Northern Ireland) Act 2007[462].

9.37. The ongoing topic of recording the background of those stopped (known as 'community monitoring') has been expertly considered by the Independent Reviewer

[459] Which replaced Part VII of the Terrorism Act 2000 which was specific to Northern Ireland.
[460] PSNI, Stop and Search Statistics – quarterly update to 30 September 2023 (22.11.23) accompanying spreadsheet, Tables 3 and 4, Note (3).
[461] Extracted from, 'Consultation Response: Non-Jury Trials, Justice and Security (Northern Ireland) Act 2007', supra.
[462] Figures provided to me by PSNI.

of the Justice and Security (Northern Ireland) Act 2007 although its practical implementation remains stuck[463].

- The phrase 'monitoring of community background' is found in the judgment of the Lord Chief Justice of Northern Ireland in Ramsey (No 2)[464] and is protean.
- The obligation for some form of statistical oversight was found to derive from the Code of Practice to the 2007 Act (which referred to the need to identify and investigate any apparently disproportionate use "in relation to specific sections of the community"[465]).
- It is understood by PSNI to refer to monitoring a person's political allegiance in terms of Loyalism/Unionism versus Republicanism/Nationalism rather than religion.
- One of the PSNI's difficulties is that modern citizens of Northern Ireland do not necessarily define themselves by reference to their place on the Orange/Green spectrum. PSNI officers, especially those born outside Northern Ireland, do not have special radar.
- But PSNI officers do know the type of threat they are investigating: dissident Republican terrorism, or Loyalist terrorism, and this might shed some light on those who are affected by the power.

Investigations

9.38. 106 premises were searched on a warrant granted under Schedule 5 to the Terrorism Act 2000. The largest number of searches occurred between April and June 2022 (30)[466].

9.39. In 2022, 8 cordons were erected in Northern Ireland under section 33 Terrorism Act 2000[467]. Cordons do not confer any power of search, but they allow a constable to order a person or vehicle to leave the cordoned area, and prohibit access to it.

[463] 15th Report, supra.
[464] In the matter of an application by Steven Ramsey for judicial review (No 2) [2020] NICA 14, at paras 58-59.
[465] Para 5.11.
[466] Northern Ireland Office, 'Northern Ireland Terrorism Legislation: Annual Statistics 2022' (Sep 2023), Table 2.2.
[467] Ibid, Table 10.1.

Arrest and Charge

9.40. The Northern Ireland Office is now publishing statistics relating to terrorism legislation on a calendar year basis. This has helpfully facilitated comparison with statistics from Great Britain[468].

9.41. In the year under review, there were 110 arrests and detentions under section 41 Terrorism Act 2000 (down from 130 in 2021)[469]. This compares to 35 arrests under section 41 in Great Britain in 2022.

9.42. Three of those arrested under section 41 were held for more than 48 hours (on order of a judicial authority) and 13 ended up being charged[470]. No one was held pre-charge for more than 4 days[471]. 2 people who requested that a named person should be informed had their request delayed[472]; no one had access to a solicitor delayed[473].

9.43. During my visit in 2023 I returned to the question of why section 41 is so heavily used in Northern Ireland compared to Great Britain, where Police and Criminal Evidence Act 1984 (PACE) powers are routinely used for terrorism-related arrests.

9.44. I have previously reported on PSNI's view that section 41 *ought* to be used for terrorism-related activity for reasons of public perception (that terrorism was being taken seriously)[474]. My recommendation that PSNI should not take account of public perception when choosing the appropriate arrest power was rejected, although the importance of not taking account of irrelevant factors was decisive in the successful challenge by two PSNI officers to the former Chief Constable's decision to suspend them following arrests a commemoration of the victims of a Troubles-era loyalist paramilitary attack[475].

[468] Northern Ireland Office, 'Northern Ireland Terrorism Legislation: Annual Statistics 2022' (Sep 2023). Further statistics could usefully be included in this publication: for example, there is a table on the use of section 47A (never used in Northern Ireland) but not statistics on the use of section 43 and 43A.
[469] Table 3.1.
[470] Table 4.1.
[471] Table 4.2.
[472] Table 4.3.
[473] Table 4.4.
[474] Terrorism Acts in 2020 at para 9.34 et seq.
[475] In re JR 168 and 168A [2023] NIKB 83.

9.45. Additional explanations were given to me in 2023:

- Firstly, that section 41 was the most "legislatively appropriate" power of arrest for terrorism offences or terrorist-related offending. However, PACE powers are no less "legislatively appropriate", as they are available for any offence including terrorism offences and terrorist-related offences[476].
- Secondly, that the choice of arrest powers is influenced by whether a terrorist investigation has been declared under section 32 Terrorism Act 2000. But this is to misunderstand the purpose and effect of section 32, which is merely to unlock the limited number of powers in Part IV of the 2000 Act such as cordons. The arrest power under section 41 is entirely separate and its use or non-use does not depend on a terrorist investigation being declared.

9.46. It is fair to say that PSNI recognise that arresting under PACE might be appropriate in some cases such as youths (because bail is available). It is therefore implicitly (and correctly) recognised that there are no statutory limits on arrest powers[477].

9.47. The other argument I have heard from PSNI is that it does not matter which power is used because in practice the use of extended periods of detention under section 41 is rare, and in any event any detention beyond 48 hours is subject to decision by an independent judicial authority. But it is only necessary to consider the situation in concrete terms to see that this is a fallacy. Imagine receiving a call at home to say that one's spouse has been arrested, but not to worry because detention practice is different in Northern Ireland from that in England and in Wales, and that if there is no evidence to charge then they will almost certainly be out before 14 days are up.

9.48. It is testimony to PSNI's openness to independent review that it has proven possible to flush out all these reasons for the overreliance on section 41. I suspect these reasons demonstrate a long-standing type of received wisdom within PSNI. It is perfectly possible that a more straightforward use of section 41 would result in greater use in Northern Ireland than in the rest of the United Kingdom. I remain of the

[476] The Police and Criminal Evidence (Northern Ireland) Order 1989, article 26.
[477] In R (on the application of Virdee) v National Crime Agency [2018] EWHC 1119, the Divisional Court in England and Wales confirmed that law enforcement bodies could validly make choices between different statutory powers which were directed to the same outcome.

view that it would be better if the presumptive use of section 41 in terrorism cases was disavowed.

9.49. The 110 arrests under section 41 in 2022 led to 13 people being charged. This compares to 130 arrests (23 charged) in 2021 and 79 arrests (14 charged) in 2020. Charges in 2022 included two individuals charged with directing the new IRA[478].

9.50. The 13 individuals were charged with a total of 46 offences. Almost half were firearms related (21) and the next most numerous concerned explosives (8). There were 9 offences under the Terrorism Acts (the most serious being 3 charges of preparing terrorist acts, and 2 of directing a terrorist organisation). There were no individuals charged with encouraging terrorism or disseminating terrorist publications[479].

9.51. By comparison, there were 53 people charged in Great Britain in 2022 following 166 arrests for terrorism-related activity[480]. There were 6 charges for preparation, no charges of directing a terrorist organisation; and four firearms and one explosives charge (not all terrorism related). Half the offences charged in Great Britain concern possession or publication of terrorism information[481].

- Crudely put, in Northern Ireland offending is tilted towards firearms and explosives; in Great Britain there is a preponderance of preparatory offending using computers.

9.52. It is consistent with the greater threat in Northern Ireland that the severity of terrorism and terrorism-related charges was proportionately much higher than in Great Britain[482].

9.53. PSNI have had some experience of children who appear to present a terrorist risk. Wisely the authorities have adopted a multi-agency approach and localised risk management. As ever, information exchange is key. It should be no more normal for a child to store weapons than to store cocaine.

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[478] 'Two men appear in court charged with directing terrorism' (Belfast Telegraph, 26.8.22)
[479] Table 5.1.
[480] This is a better comparator because the way they use arrest powers in NI differs in practice from GB, as I discuss below.
[481] Home Office, Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation, year to 31.12.22, table A.05a.
[482] The population of Northern Ireland is only about 3% of the UK population.

9.54. The counter-radicalisation programme Prevent does not operate in Northern Ireland. The 'Communities in Transition' project relates to Northern Ireland Related Terrorism only (so not Extreme Right Wing Terrorism or Islamist Terrorism) and has an area-based (not individual-based) focus[483].

Detention following Arrest

9.55. I have continued to receive reports from the Independent Custody Visitors scheme for individuals detained under section 41, and as before I have discussed the take-up of the scheme, and possible improvements, with John Wadham, Human Rights Advisor to the Northern Ireland Policing Board. Even allowing for the obvious suspicion by many terrorist suspects in Northern Ireland towards anyone connected to the police service, in my view there remains a persistent shortfall in trust from detainees towards visitors.

9.56. It was something of a surprise to discover that responsibility for the ICV scheme for TACT detainees does not fall more squarely within the remit of the Human Rights Advisor to the Policing Board and the officials who work with him. Instead, the Board keeps arrangements for the ICV scheme under review, and where issues are raised in respect of PSNI's compliance with the Human Rights Act 1998, these are discussed with the Advisor[484].

9.57. The existence of the ICV scheme is directed towards protecting the human rights of the individual subject, in the case of terrorism suspects, to the special rigours of terrorism arrest and detention at Musgrave Police Station. The ICV scheme is not, for example, an adjunct to the PSNI or a form of police capability. It is important that the scheme receives attention which is sufficiently focussed on safeguarding the rights of detainees, which the Human Rights Adviser is well placed to give.

9.58. The table below sets out information provided to me by the Policing Board of Northern Ireland about the independent custody visits which took place in Northern Ireland in 2022. All detainees were arrested under section 41 Terrorism Act 2000.

[483] Independent Reporting Commission 5th Report Dec 2022 (2022-23 HC 893).
[484] Northern Ireland Policing Board, 'Human Rights Annual Report 2021/22', at page 96.

2022	Detainees visited	Valid visits	Invalid visits	Seen by ICVs	CCTV reviews	Unsatisfactory visits
	23	34	1	11	0	0

Stopping the Travelling Public

9.59. Schedule 7 of the Terrorism Act 2000 allows officers to examine those travelling through ports or borders to determine if they are terrorists; to search them; to detain them; to require them to hand over electronic devices for examination; and to take their fingerprints. Failure to cooperate with an examination is a criminal offence.

9.60. As in Great Britain, there has been a long-term decline in the number of Schedule 7 examinations in Northern Ireland[485].

Year	Number of persons examined
2016	2082
2017	1248
2018	717
2019	559
2020	120
2021	139
2022	188

9.61. In terms of detentions, in 2017, 11 people were detained. In 2018, 6 people were detained. In 2019, 31 people were detained. In 2020, 11 people were detained and in 2021, 34 people were detained. In the year under review, 73 people were detained.

9.62. As with previous years, I obtained the figures on self-defined ethnicity directly from the PSNI as they are not published.

[485] Northern Ireland Office, 'Northern Ireland Terrorism Legislation: Annual Statistics 2022' (Sep 2023), Table 8.1. PSNI has subsequently revised the 2020 figure from 119 to 120.

	2020	2021	2022
White	38%	41%	35%
Mixed	8%	6%	2%
Black	13%	10%	8%
Asian	17%	20%	18%
Chinese or other	16%	16%	31%
Not stated	8%	6%	6%
Not completed	1%	0%	1%

9.63. I hope that in time PSNI can find more detailed alternatives to the category "Chinese or other", as has now been successfully done in Great Britain.

9.64. Detentions under Schedule 7 were as follows[486]:

	2020	2021	2022
White	0%	26%	21%
Mixed	18%	9%	4%
Black	27%	9%	5%
Asian	27%	24%	18%
Chinese or other	9%	24%	49%
Not stated	18%	9%	3%

9.65. In terms of freight, in the year under review there were 3 examinations of unaccompanied freight (in 2021 there were 19). These figures relate only to sea freight. Examinations of air freight are conducted by Border Force officials and are not recorded as examinations conducted by the PSNI.

9.66. I **recommend** that the power to examine and detain a person under Schedule 7 at "the border area" in Northern Ireland[487] is abolished:

- A place is within the border area for these purposes if it is no more than one mile from the border between Northern Ireland and the Republic of Ireland; or

[486] Ibid.
[487] Paragraph 2(1)(a) Schedule 7.

for a train travelling from the Republic, at the first station within Northern Ireland[488].

- The power is available where an officer believes that the person's presence there is connected with his entering or leaving Northern Ireland.
- Examination is for the purpose of determining whether a person is a terrorist.
- At a border area, examination may also be (under paragraph 3) for the purpose of determining whether his presence there is connected with his entering or leaving Northern Ireland.
- Taken at face value, this means that a person may be examined (and detained) under the Terrorism Act 2000 without any sort of counter-terrorism objective.
- I will assume that a court, if ever called upon to interpret paragraph 3, would conclude that the paragraph 3 power can only be used for the purposes of determining whether a person is a candidate for counter-terrorism examination.
- Even then, a necessary (if not sufficient) justification for such an unusual preparatory power is that Schedule 7 counter-terrorism powers are needed in the border area.
- That justification is absent. Schedule 7 has never been used since its enactment to examine an individual at the border area.
- Since it has never proven necessary to exercise the Schedule 7 power in the border area, it is impossible to see how the paragraph 3 preparatory power can be justified.
- Nor is there any reason to retain the rest of the power. It has not proven necessary to examine individuals at the border area to determine whether they are terrorists.
- The infrastructure requirements for exercising the power are formidable. PSNI buildings would need to be identified or constructed for the purposes of examination[489].
- Abolition would constitute a modest normalising step.

[488] Paragraph 4.
[489] Including for the purposes of displaying a copy of the Schedule 7 Code as is required by paragraph 9 of the Code.

Terrorist Trials and Sentencing

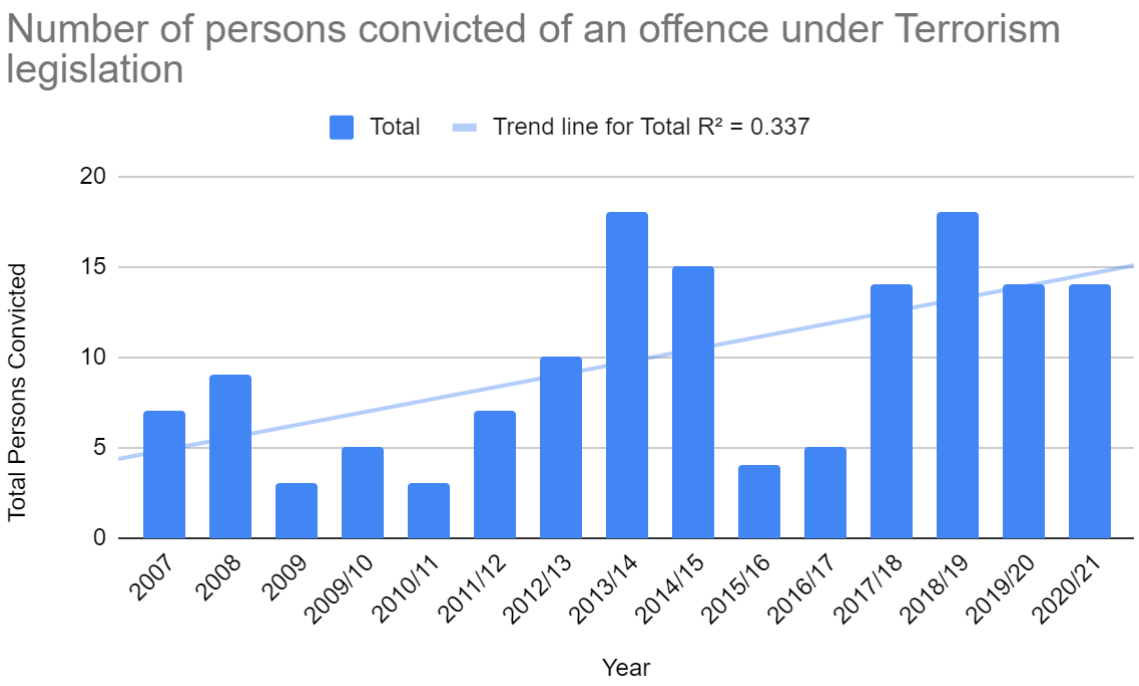
9.67. The government has opted for two more years of non-jury trials[490]. I published my response to the government's consultation in November 2022[491].

9.68. During 2022, 36 people were convicted under terrorism legislation in Northern Ireland. However, this included 34 individuals convicted in the Magistrates' Court[492]. This is a significant increase from previous years which were calculated on a financial year basis (18 in 2018/19, 14 in 2019/20, 14 in 2020/21). However only 2 people were convicted in the Crown Court in 2022 which deals with more serious offences (compared to 6 in 2018/19, 2 in 2019/20, 10 in 2020/21).

9.69. Three individuals were subject to notification requirements under the Counter-Terrorism Act 2008[493]. Since notification is mandatory for all terrorism offenders (except less serious offences such as flags and articles[494]) who receive sentences of over 12 months' imprisonment[495], like the predominance of magistrates' courts cases, this suggests that the great majority of cases brought under *terrorism legislation* in Northern Ireland are at the less serious end. I emphasize *terrorism legislation*, because many of the most serious terrorism cases will be prosecuted as murder, attempted murder, explosives offences etc. However, the limited number of notification requirements suggests that there are few cases in which the court determines that the offence has a terrorist connection[496], which would make notification mandatory[497].

9.70. As this chart shows, the number of people convicted of offences under terrorism legislation is very high over the longer term. The following chart[498] goes back to 2007:

[490] Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023, SI 2023/668.
[491] https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2022/11/IRTL-response-to-NJT-consultation-Nov-2022.pdf.
[492] Table 7.1.
[493] Table 13.1. In re Lancaster [2023] NIKB 12 concerned a failed challenge to notification based on freedom of movement in the Common Travel Area.
[494] Section 13 Terrorism Act 2000. The list of terrorist offences to which the Counter-Terrorism Act 2008 applies is at section 41.
[495] Section 45(3).
[496] Section 30.
[497] Section 42.
[498] Taken from HM Government, 'Consultation response on Non-Jury Trials in Northern Ireland' (24.4.23).



Delay

9.71. Delay is a widely acknowledged and persistent feature in the Northern Ireland criminal justice system. It is a damaging aspect of the 'operation' of the terrorism legislation that I am required to review.

9.72. The Criminal Justice Inspectorate of Northern Ireland has drawn attention to a litany of reports showing long police investigations, slow decision making and cases not ready to proceed at Court with resulting adjournments and negative experiences for victims and witnesses as well as defendants[499]. Despite this, there has not been a significant reduction in delay since justice devolution in 2010[500].

9.73. With endemic delays across criminal justice, it is no surprise that terrorism cases lag badly compared to England and Wales. During 2022 the Lady Chief Justice of Northern Ireland felt it necessary to comment on the "vintage" of a terrorism prosecution for conduct that was alleged to have taken place 7 years previously[501], and in another terrorism case her Ladyship referred to delay as "inimical to the

[499] 'The Operation of Bail and Remand in Northern Ireland' (January 2023) at paras 1.3 and 2.6.
[500] CJINI, 'An inspection of File Quality, Disclosure and Case Progression and Trial Recovery from the Covid-19 Pandemic' at para 3.72.
[501] In the matter of an application by Paul Crawford for Leave to apply for judicial review [2022] NIQB 2 at 24.

administration of justice" [502]. The progress of the prosecution of Colin Duffy speaks for itself. Duffy was reported by PSNI to the Public Prosecution Service in November 2014, and produced in court in November 2015 on charges of directing the new IRA. By March 2023 the court had not ruled on whether Duffy and his co-defendants had a case to answer.

9.74. The Independent Reporting Commission identified how avoidable delay erodes public trust and confidence in the rule of law[503].

9.75. A tangible outcome of delay is that alleged terrorists of a serious stripe, who would ordinarily be held on remand for the purposes of public protection, develop a strong claim for bail. This undermines confidence in the protective aspects of the criminal justice system. During 2023, the High Court released a defendant who had been on remand for 3 years on the grounds of delay; her case was still at the committal stage[504]. For those who are not released on bail, delays mean longer jail time based on accusations that the prosecution may ultimately fail to prove[505].

9.76. It would be a grievous mistake to conclude that the belated abolition in 2022 of mixed committals in Northern Ireland[506] (calling of witnesses to give oral evidence at a preliminary stage, prior to giving evidence at trial), with a view to further reform of the preliminary stages in due course[507], is the answer to this pattern. The problems go deeper.

- Judicial review challenges are too frequently used to attack preliminary decisions in terrorism cases, slowing down the progress of trials (again, recently deprecated by the Lady Chief Justice[508]).

[502] In the matter of an application by Issam Bassalat for leave to apply for judicial review [2023] NIKB 8 at para 2.
[503] Fifth Report (December 2022, HC 893) at para 1.66.
[504] In the matter of Sharon Jordan [2023] NIKB 95.
[505] Northern Ireland has the highest rate of remand in custody in Europe: CJINI, 'The Operation of Bail and Remand in Northern Ireland', supra.
[506] Criminal Justice (Committal Reform) Act (Northern Ireland) 2022.
[507] Explanatory Notes indicate that direct transfer is the aspiration. If a terrorism investigation is still ongoing when sent to the Public Prosecution Service (PPS), then the PPS may charge on the basis that there is a reasonable expectation that the Test for Prosecution will be met (PPS Code for Prosecutors at para 4.20). In such cases there is an expectation that full papers (in preparation for contested committal) will be served within one year. Preparation has to be conducted on the basis of little forewarning of what the trial issues are.
[508] In the matter of an application by Issam Bassalat, supra, at paras 50, 60 and 61.

- A limited pool of the most senior barristers who deal with terrorism cases forces terrorism cases into a holding pattern until counsel become available.
- There can be a tendency to stack terrorism cases with similar issues (for example, voice recognition) behind a 'lead' case[509] meaning that cases become clogged in the system.
- Judges are not supported by procedural guidance in terrorism cases[510] as they are in England and Wales[511] where part of the Criminal Practice Direction has bespoke rules for cases in the terrorism list[512].

9.77. Key current issues in terrorism trials in Northern Ireland include voice recognition, surveillance, expert evidence, authenticity of exhibits, continuity of exhibits, the relevance of Covert Human Intelligence Sources, and the role of MI5. There is a legacy of suspicion about counter-terrorism in Northern Ireland (some justified). Judge-only terrorism trials lead to granular analysis of circumstantial or forensic evidence[513]. In England and Wales, one way of bottling all the experience that comes from trying terrorism cases is the appointment of a Judge-in-Charge of the Terrorism List who is steeped in these issues[514] and can help prepare the ground for trial.

9.78. The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 received Royal Assent in September 2023. On the criminal side, the Northern Ireland Policing Board[515] give some sense of the scale of legacy criminal cases that could be affected by the scheme to move from criminal investigation and prosecution to Reconciliation and Information Recovery: as of January 2023 there were 1117 incidents within the PSNI's Legacy Investigations Branch of which 15 were under active criminal investigation, together with 13 cases in the court system, and 5 cases sent to the Public Prosecution Service for charging advice.

[509] Duffy, supra, was identified as a lead case for voice recognition.
[510] Practice Directions of 2015 and 2019 exist for crime generally. In her Opening of Term Address 2022 (5.9.22), the Lady Chief Justice referred to robust case management as being a means of addressing delay.
[511] See Haddon-Cave, C., 'The Conduct of Terrorism Trials in England and Wales' (2021) 95 ALJ 1.
[512] CrimPRC(23)90(b), Chapter 13.
[513] E.g. The King v Peter Granagan [2022] NICC 32.
[514] Haddon-Cave, C., supra.
[515] 15th Human Rights Annual Report (2023).

Sentencing and Release

9.79. During 2022, Niall Sheerin was sentenced to 7 years' imprisonment for possessing the gun used to kill the journalist Lyra McKee. Two men are currently charged with her murder.

9.80. The Court of Appeal in Northern Ireland held that sentencing guidelines in terrorism cases from England and Wales, whilst not binding, could be taken into account as an aid to orientation when sentencing for attack-planning[516].

9.81. In Sheerin's case, the court also imposed a Serious Crime Prevention Order[517]: as part of it, this possessor of firearms was banned from being on private agricultural land without prior consent, no doubt to inhibit any use of weapons caches in future[518]. The imposition of such restrictions aimed at shutting down future terrorist violence, tailored to the facts of the case, is unobjectionable.

9.82. Changes to release dates for serving prisoners, enacted by the Terrorist Offenders (Restriction on Early Release) Act 2020 after the Fishmongers' Hall attack in London, and imported into Northern Ireland through the Counter-Terrorism and Sentencing Act 2021[519], led to legal challenges by terrorist prisoners. Seamus Morgan, Terrence Marks, Kevin Heaney and Joseph Lynch had all been sentenced to fixed terms for terrorism offences.

9.83. Their complaints of retrospective punishment were initially successful before the Court of Appeal of Northern Ireland[520] but ultimately rejected by the Supreme Court[521].

- The Supreme Court held that release was different from sentencing, that legislative changes to release dates for "compelling policy reasons" were foreseeable, and that the special role of the sentencing judge in setting release

[516] R v Niall Lehd [2022] NICA 51 at para 89, now on the Judiciary NI website under Sentencing Guidelines – Terrorist Offences.
[517] Under the Serious Crime Act 2007.
[518] 'Lyra McKee: Niall Sheerin subject to Serious Crime Prevention Order' (BBC News, 28.10.22).
[519] Which inserted article 20A into the Criminal Justice (Northern Ireland) Order 2008.
[520] [2021] NICA 67. In the matter of an application by Terence Marks for Judicial Review [2022] NIQB 57 concerned Terence Marks' unsuccessful challenge to the refusal of the Minister of the Department of Justice to exercise the Royal Prerogative of Mercy in response to the lengthening of his jail time: membership and weapons training offences were terrorism within the meaning of section 1 Terrorism Act 2000 and therefore reserved matters.
[521] Morgan and others v Ministry of Justice [202] UKSC 14.

dates did not put Northern Ireland sentences in a different category from the rest of the United Kingdom.

- As in England, Wales and Scotland, these sentencing changes bring the possibility of cliff-edge: prisoners who are not released by the Parole Commissioners before sentence expiry, and return to society without any licence conditions.

9.84. Light was shed on post-release supervision in a different case[522]. Following a credible threat to the Probation Board of Northern Ireland which was responsible for supervising offenders until 2017, special arrangements had to be made, and after power-sharing was resumed in 2020, this involved alternative arrangements not involving Parole Board staff. This ultimately led to a Multi-Agency Review Panel to manage and assess released Terrorist Risk Offenders involving staff from PSNI, the Prison Service, HMPPS – National Security Division – Probation Service and the Department of Justice[523].

[522] In the matter of an application for judicial review by Denies Mullan [2023] NIKB 19, concerning the lawfulness of the Department of Justice's decision not to initiate recall proceedings for a released lifer Garfield Beattie (one of the notorious Glenanne Gang involved in a series of sectarian murders).
[523] Paras 26-31.

10. SCOTLAND

10.1. National security and dedicated powers for dealing with terrorism are reserved matters under the Scotland Act 1988 and the Terrorism Acts apply equally to Scotland as to the rest of the United Kingdom. They do so, however, within the framework of different Scottish processes for investigating and charging offences (in which prosecutors under the Lord Advocate have a formal role), and separate rules of evidence and procedure[524].

10.2. Terrorism cases are infrequent in Scotland, and 2022 was no exception.

10.3. During 2022[525]:

- Police Scotland CT investigators made 17 arrests, all under the Criminal Justice (Scotland) Act 2016.
- Of these, 5 arrests related to suspected terrorism offences (4 relating to Extreme-Right Wing Terrorism, and one to Northern Ireland Related Terrorism). The other 12 arrests concerned non-terrorism offences, but were of individuals suspected of involvement in terrorism, mainly Extreme-Right Wing Terrorism.
- Police Scotland Borders Policing made two arrests under section 41 Terrorism Act 2000.

10.4. I am informed by Police Scotland that all these arrests led to one or more charges, although the majority were not under terrorism legislation.

10.5. During 2022, Police Scotland reported 41 terrorism charges to prosecutors in the Crown Office and Procurator Fiscal's Service (COPFS) for consideration, in relation to 10 individuals (which may have included individuals investigated before 2022). Not all of these led to a decision to prosecute under terrorism legislation. Other terrorism-related matters were investigated by Police Scotland, and discussed with COPFS, but did not result in formal reports[526].

[524] Described in Terrorism Acts in 2019 at 10.6 to 10.15. The need for corroboration means that some additional steps may be required by Police Scotland which are not required in England, Wales and Northern Ireland. Cooperating forces, such as SO15 officers acting in support of a Scottish investigation, sometimes need to be made aware of these requirements.
[525] Statistics provided to me by Police Scotland Organised Crime and CT Investigations.
[526] Statistics provided to me by COPFS.

10.6. There were only two terrorism trials during 2022:

- In February, Nikolaos Karvounakis, a 35-year-old Greek national, was sentenced to 8 years and 4 months for an offence under section 57 Terrorism Act 2000 (possession of article with intent), together with a Serious Crime Prevention Order. He had placed an explosive device in a cardboard box in Princes Street Gardens, Edinburgh. The device failed to detonate. The terrorist cause was linked to anarchism and eco-terrorism[527].
- In June, an autistic man from Aberdeen was acquitted of terrorism and explosives offences. He successfully argued that he was interested in chemistry[528].

10.7. Three individuals charged in 2022 are subject to active proceedings at the time of writing for a variety of offences under sections 1 and 2 Terrorism Act 2006 (encouragement and terrorism publications), sections 12 and 13 Terrorism Act 2000 (inviting support for a proscribed organisation, and displaying an article), and sections 57 and 58 Terrorism Act 2000 (possession of instructional material, and articles with intent)[529].

10.8. As I found out on a visit to the Scottish Crime Campus at Gartcosh, where police and prosecutors from the COPFS are co-located, the wave of child arrests which has been apparent in England and Wales over the last 4 years, has now arrived in Scotland.

- There is high level of personal vulnerability amongst the terrorism offender cohort.
- Like England and Wales, the Procurator Fiscals are considering how children subject to investigation can avoid being excluded from the types of support (such as mentoring) that is available to individuals who have been referred to Prevent.

10.9. Since 2022 it has been Scotland's judicial policy to treat young people who are convicted at any time before the age of 25 as not yet "fully developed" for the purposes

[527] COPFS website, Terrorism Prosecutions in Scotland.
[528] 'Man cleared of terrorism and explosives offences in Aberdeen' (BBC News, 14.6.22).
[529] Ibid.

of sentencing. The Scottish Sentencing Council's Guidelines, which apply equally to terrorism offending, observe that young people are less able to exercise good judgment, more vulnerable to negative influences, and greater risk-takers[530].

10.10. Given Scotland's low rate of terrorism offending, this guideline may rarely be called into play, although in Great Britain as a whole, those up to and including the age of 24 now comprise up to half of those convicted of terrorism offending[531].

- It is correct that lower sentences for terrorist offenders up to the age of 24 could lead to public and political objections, as has happened with cases of rape and murder[532].
- However, the substance of most modern terrorism offending by children concerns the consumption and dissemination of terrorist propaganda online, which is considered precursor conduct rather than as acts of completed terrorism. The question of whether young people (however defined) fully appreciate the significance of their actions for national security is a live one.

10.11. There are few terrorists serving time in the Scottish prison estate or being managed on release in Scotland. There may therefore be less reason for bespoke terrorist handling and coordination arrangements than in England and Wales[533]. However, the same objectives will apply – access to the right information, tailored decision-making, coherency of planning, responsiveness to changing circumstances, and avoidance of over-management – and it only takes one case of terrorist reoffending by a terrorist offender to dominate the headlines. Standards for risk assessment and management by the justice agencies are developed by Scotland's Risk Management Authority.

10.12. Police Scotland publishes annual and quarterly figures for their use of Schedule 7, comprising overall use and ethnicity data[534]. The annual figures run from 2016 to 2021, and show a major decrease, even before the Covid-19 pandemic, from 3421 (2016) to 948 (2018). The overall 2021 figure is 249.

[530] 'Sentencing young people Sentencing Guideline' (January 2022).
[531] Police Powers statistics to June 2023, Table A.10.
[532] 'Justice secretary in talks over sentencing guidelines for young people' (STV News, 1.1.23).
[533] In England and Wales, there is now a special category (category 4) for released terrorists.
[534] Police Scotland website (last accessed 12.9.23).

10.13. The most recent reported quarter is the second quarter of 2022 with an overall figure of 39. The ethnicity figures show a very high percentage of 'not stated' (over 43% in 2021). It is to be hoped that Police Scotland Borders Policing can find effective ways to increase the recording of ethnicity data. I have considered ethnicity data in Great Britain in some detail in Chapter 6.

10.14. There does not appear to have been any police progress in Scotland, as with the rest of the UK, in rationalising the retention, review and deletion of electronic data obtained during Schedule 7.

10.15. In last year's report I considered the difficulties that arise where an individual, who is willing to give his fingerprints, must nonetheless be transported a great distance to a police station. I recommended that paragraph 20 of Schedule 8 is amended so that the power to take fingerprints applies with consent at a port. The government has accepted this recommendation.

10.16. Police Scotland have had little to do with those who travelled to Syria and Iraq during the period of Islamic State, although one of the UK's most famous female IS recruiters, Aqsa Mahmood, who is subject to UN Sanctions[535], travelled there from Glasgow in 2013.

[535] Under the UN Security Council 1267 Islamic State and Al-Qae'da regime.

Annex A: The Ernest Moret Report

INDEPENDENT REVIEWER OF TERRORISM LEGISLATION

REPORT ON USE OF SCHEDULE 7 POWERS AGAINST ERNEST MORET

Introduction

1. This report is the outcome of the investigation I undertook as Independent Reviewer of Terrorism Legislation into the use of Terrorism Act powers against Ernest Moret on 17 and 18 April 2023. This is a public report, which provides as much detail as possible. There is no closed or private report.

2. The powers used against Mr Moret are contained in Schedules 7 and 8 Terrorism Act 2000 (examination at ports). He was later arrested under the Police and Criminal Evidence Act 1984 with respect to the offence under paragraph 18 of Schedule 7 Terrorism Act 2000 (failure to cooperate with examination).

3. As my predecessors have done from time to time[536], I produce this report outside my usual cycle of annual reporting in order to consider a specific use of counter-terrorism powers. My purpose has been to consider whether Schedule 7 was used correctly, and whether any recommendations can be made for the future. Any question of whether the power was used lawfully or not would be for a Court to determine. Matters of professional standards are not for me.

4. Even if the power was exercised lawfully against Mr Moret, that would still leave the question of whether it was right to examine Mr Moret in these circumstances. I have reached the clear conclusion that this examination should not have happened, and that additional safeguards are needed to ensure it is not repeated.

5. The decision to examine was taken by Counter Terrorism Border Policing Officers from the Metropolitan Police Service's SO15. It was a pre-planned examination based on information which the police did not evaluate as they ought to have done.

6. I have not sought to report on the basis or provenance of the information that led to the stop.

7. I refer to information on which the police acted later in this report, but it comes with a health-warning: information or intelligence is often fragmentary and partial and sometimes wrong. The way in which it is phrased is rarely definitive, and can employ generic terms such as "associated".

8. That does not mean that intelligence should not be relied upon when pursuing an important goal such as protecting the UK against terrorism, even if it later transpires to be incorrect.

[536] For example: Lord Carlile KC's report on the arrests in Operation Pathway (2009); Max Hill QC's report on the use of Schedule 7 in the case of Ms Lauren Southern (2018).

9. I have not examined any interaction between UK Border Force and Mr Moret at the juxtaposed controls at Paris Gare Du Nord where there was no exercise of Schedule 7 powers.

10. I have had full cooperation in conducting my investigation and reviewed all relevant documentation.

The Law: Schedule 7 Terrorism Act 2000

11. Schedule 7 is an exceptional counter-terrorism power which enables police at ports to examine individuals entering or leaving the UK, in order to determine whether they are terrorists, and without any grounds for suspicion. It may be exercised against any person irrespective of nationality, and irrespective of whether an equivalent power exists in their country of nationality[537].

12. As part of an examination officers can detain up to a maximum of 6 hours, search, seize devices, require cooperation (including passwords to devices) and take biometrics.

13. In the year to 31 December 2022 the power was exercised 2,415 times in Great Britain[538]. There are no public statistics for how often it has been exercised at St. Pancras International railway station.

14. The power has been the subject of detailed consideration by the Supreme Court[539], and in each of my previous annual reports[540]. In summary, it is a valuable and justified counter-terrorism power which enables the authorities to detect and deter terrorist activity within and outside the UK. It falls within the PROTECT part of the government's CONTEST counter-terrorism strategy.

15. The power may only be used by accredited police officers[541] against a person "for the purpose of determining whether he appears to be a person falling within section 40(1)(b)"[542]. That section defines "terrorist" as a person who "is or has been concerned in the commission, preparation or instigation of acts of terrorism". This point is reiterated in the Code with which examining officers must comply[543]. The fact that it may only be used for counter-terrorism purposes was important to the Supreme Court's decision that it could be used consistently with fundamental rights and freedoms[544].

16. The Code of Practice contains a list of considerations that examining officers may have in mind when deciding when to exercise the power including known and suspected sources of terrorism; persons, organisations or groups whose current or past

[537] To state the obvious, different countries have different counter-terrorism regimes. The UK conducts more checks at borders than some other states, but does not have compulsory ID cards: Beghal v Director of Public Prosecutions [2015] UKSC 49 at para 38.
[538] Home Office, Operation of police powers under the Terrorism Acts, statistics to y/e 31.12.22, table S.03a.
[539] Beghal, supra.
[540] At chapter 6 in Terrorism Acts in 2018, 2019, 2020 and 2021 available at https://terrorismlegislationreviewer.independent.gov.uk under 'Reports'.
[541] Other than in exceptional urgent operational need: Code of Practice, supra, at para 18.
[542] Para 2(1).
[543] Para 23.
[544] Para 43 (Lord Hughes); para 88 (Lords Dyson and Neuberger).

involvement in acts or threats of terrorism is known or suspected; and possible current, emerging and future terrorist activity[545].

17. Any use of Schedule 7 must also be on a reasoned basis, proportionately and in good faith[546], and must not be arbitrary[547].

18. In practice, ports officers exercise their powers under Schedule 7 in three scenarios:

    - Based on information received.
    - As a result of rule-based targeting communicated to front-line officers via the Regional Control Desk[548];
    - Based on the front-line officer's observation or interaction with the member of the travelling public (known as 'untasked stops') [549].

19. Schedule 7 cannot be exercised, and there is no indication that this was the case here, on behalf of a foreign government.

20. A person who is examined must give any information in his possession which the examining officer requests[550]. It is an offence, punishable by up to 3 months' imprisonment or a fine, to fail to comply with this duty[551]. However, a person may only be convicted where the exercise of the Schedule 7 power was lawful[552].

21. Even if enquiries lead to the establishing of a person's innocence, the impact of the original examination and detention (including embarrassment, worry, inconvenience, potentially missed travel arrangements, seizure of work and personal devices, fear, loss of privacy) and of arrest (further embarrassment, worry, fear of criminal prosecution, restrictions imposed by police bail) are likely to be significant.

22. Where it is exercised lawfully, it has been held that the public interest in effective counter-terrorism is likely to outweigh other considerations[553]. However, because it may be exercised without suspicion, there remains the risk that it can be misused, wilfully or inadvertently. Constant vigilance and attention to safeguards are necessary to stop it being used in a way that is contrary to the individual rights and the wider public interest.

Terrorism and Public Order Policing

23. The definition of terrorism in UK law[554], whilst practical and effective, is broad and carries the risk of terrorism powers may be exercised in cases which fall outside what

[545] Para 30.
[546] R (Miranda) v Secretary of State for the Home Department [2016] EWCA Civ 6 at para 112, per Lord Dyson MR.
[547] Ibid at 119.
[548] Ibid at 6.8.
[549] Ibid at 6.9.
[550] Para 5 of Schedule 7.
[551] Para 18.
[552] Cifci v CPS [2022] EWHC 1676 at para 31.
[553] R (Gillan) v Commissioner of Police for the Metropolis [2006] UKHL 12 at para 30, per Lord Bingham.
[554] Section 1 Terrorism Act 2000.

would generally be considered terrorism[555]. There are no clear dividing lines between terrorism and violent activism or protest[556].

24. In the run-up to the Terrorism Act 2000, the then government's principal concerns in connection with what was then described as "domestic terrorism" were animal rights activists followed by Scottish and Welsh nationalist extremists, environmental rights activities and (potentially) violent anti-abortionists[557].

25. There have been many incidents of ideologically motivated public violence in the UK which could, in principle, have fallen within the definition of terrorism: from the anti-Vietnam War Grosvenor Square riots of 1968 to anti-vaccine violence in 2021[558]. In practice, however, these have not been treated as terrorism. Instead violent protests and violent activism have been dealt with as a facet of public order policing and maintaining the King's Peace, and are sometimes referred to as domestic extremism.

26. Restraint in the exercise of counter-terrorism powers is needed because their use in this context could be contrary to democratic values and individual freedoms. This has not always been achieved. In particular, counter-terrorism stop and search powers[559] came to adverse attention in 2005 when they were used to remove a heckler (Walter Wolfgang) from the Labour party conference.

27. In subsequent years:
    - Police guidance was issued in 2008 which expressly stated that stop and search powers under the Terrorism Act 2000 should never be used as a public order tactic[560].
    - In 2009, Parliament's Joint Committee on Human Rights, whilst accepting that a demonstration could be used to mask a terrorist attack, warned about the use of counter-terrorism powers, and noted the government's expressed intention that these should not be used to deal with public order or protests,[561].
    - Following a decision by the European Court of Human Rights in 2010[562], the counter-terrorism stop and search power was abolished. The Court had found a real risk that such a widely framed power could be misused against demonstrators and protestors in breach of fundamental rights of expression and lawful assembly[563].

28. An important aspect of public order policing is to ensure as far as possible that the possibility of violence or disorder, and even its sporadic occurrence, does not result in restrictions on political speech or on debates of questions of public interest[564].

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[555] Beghal, supra, at para 63 to 64.
[556] In Blackstone's Guide to the Anti-Terrorism Legislation, 3rd Ed, Oxford, Professor Clive Walker KC observes that there are concerns about whether section 1 "fairly recognises the rights of political activism" (at para 1.44).
[557] See HM Government, Legislation Against Terrorism, consultation paper, Cm4178 (December 1998) at para 3.8 et seq.
[558] Sky News, 'COVID-19: Five police officers injured after violence breaks out at anti-vaccine protest in London' (3.9.21).
[559] Section 44 Terrorism Act 2000.
[560] Association of Chief Police Officers, Practice advice on stop and search in relation to terrorism (2008).
[561] Joint Committee on Human Rights, 'Demonstrating respect for rights? A human rights approach to policing protest', 7th Report of Session 2008-9 (23.3.09).
[562] Gillan and Quinton v The United Kingdom, App.No.4158/05 (12.1.10).
[563] At para 85.
[564] General Comment No. 37 by the UN Human Rights Committee on #ICCPR Article 21, contains a comprehensive analysis of freedom of assembly under international human rights law.

Otherwise the right of protest would be too easily curtailed by the authorities. It does not follow from an individual's attendance at a demonstration at which violence has been used that they were themselves not exercising their right of freedom to peaceful assembly.

29. The police have specific powers for dealing with violent protest contained in the Public Order Acts 1986 and 2023[565], and are able to use, where justified, general common law and statutory powers[566] to gather intelligence.

30. Until recently, counter-terrorism police and MI5 were mainly concerned with International and Northern Ireland Related Terrorism. However, since 2020, an expanded range of violent ideological and political causes has been assumed within the counter-terrorism system: specifically, Extreme Right Wing Terrorism (ERWT) and Left, Anarchist and Single Issue Terrorism (LASIT). The latter in particular carries the risk that counter-terrorism will be drawn into matters that have been historically dealt with as public order matters.

The examination of Mr Moret

31. On the evening of 17 April 2023, Mr Moret, 28, arrived at St. Pancras International station on the Eurostar from Paris.

32. At about 1930 hrs he was stopped by Metropolitan Police Border Policing Officers from SO15 (counter-terrorism command) who told him he was being examined under Schedule 7 Terrorism Act 2000.

33. This was a planned intelligence-led stop based, in summary, on information that Mr Moret may be associated with violent extremism or terrorism overseas, including violence against law enforcement. The decision to examine was exclusively a UK decision.

34. The examination began at 1940 hrs and was conducted by two SO15 officers. He asked for and was permitted to consult a solicitor.

35. At 2013 hrs he was informed he was no longer free to go, and was detained under paragraph 6 of Schedule 7. He was served with a Notice of Detention[567].

36. The examination under Schedule 7 concluded at 0038 hrs (having lasted 4 hrs 58 mins) on 18 April 2023. I have listened to the audio tapes.

37. It is clear that the substance of the questioning was directed entirely towards establishing whether Mr Moret was involved in violent demonstrations. As part of this, he was asked about his political views and those of his associates.

38. The rest of the examination concerned Mr Moret's PIN numbers for his seized iPhone and MacBook laptop. Officers also told him that they intended to look at the digital media on his phone and laptop, and required him to provide his PINs.

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[565] For a history of police powers and protest see House of Commons Library, Briefing Paper, 'Police powers: protest', No.5013 (19.5.21). For practical guidance see College of Policing, Public order public safety, Authorised Professional Practice at https://www.college.police.uk/app/public-order-public-safety (last accessed 27.6.23).

[566] Under the Regulation of Investigatory Powers Act 2000.

[567] In the form contained at Annex A to the Schedule 7 Code of Practice (July 2022).

39. At this juncture, I need to refer to two aspects of the content of the examination.

40. In general, officers conducting examinations under Schedule 7 have significant latitude about the questions they ask. It is legitimate for officers, if examining to determine whether a person is a terrorist and therefore a threat to national security, to proceed indirectly, to seek to build trust and rapport, to gather general information whose significance may well not be apparent to the person under examination.

41. However, in my view two aspects of the examination of Mr Moret went wrong.

42. Firstly, at one point the officer directly asked Mr Moret what he had been told by his lawyer. Although I believe that in doing so the officer was trying to emphasize the criminal consequences of failing to cooperate with the examination (on the assumption that Mr Moret's lawyer would have explained it to him), it was incorrect in principle for an officer to ask about a legally privileged communication. In the event Mr Moret clearly but politely declined.

43. Secondly, the officer's assertions about the consequences of a conviction for failure to provide the PINs were overstated. The officer had no basis to say that Mr Moret would never be able to travel internationally again to see family members if he was convicted of failure to provide his PINs: he could not possibly know this because future travel would be up to individual jurisdictions and carriers. It was exaggerated and overbearing.

44. Mr Moret answered all questions that were asked him. He said that he felt violated by the requirement to provide access to his devices. He said that his phone would contain photos of family and friends. He said it was not fair to examine his digital media, and that he did not want this intrusion into his privacy.

45. A DNA swab was taken from Mr Moret. An attempt was made to take his fingerprints, but the machine was broken.

46. In a later note following the examination, the officers recorded their assessment that they did not think Mr Moret was likely to push a political agenda thorough violence, or was a threat to national security.

47. At the conclusion of his examination, at 0041 hrs on 18 April 2023 Mr Moret was arrested on suspicion of wilfully obstructing a Schedule 7 examination, contrary to paragraph 18 of Schedule 7 to the Terrorism Act 2000, by refusing to disclose his PINs. He was transferred to a police custody suite at 0220 hrs.

48. In interview under caution from 1618 to 1706 hrs on 18 April 2023 Mr Moret reiterated that whilst he was happy to cooperate and answer questions, he did not understand why he should give access to his private and work files.

49. Mr Moret was bailed from police custody the same day and later released under investigation.

50. On 23 June 2023 Mr Moret was informed that he would not be prosecuted. The police issued a statement saying they had been advised by the Crown Prosecution Service (CPS) that the evidential test for prosecution was not met[568]. I have no knowledge of the CPS's independent advice, but it is at least possible that any prosecution might

[568] Under the Code for Crown Prosecutors issued by the Director of Public Prosecutions, a person can only be prosecuted if there is a realistic prospect of conviction.

have failed to prove to the criminal standard that the examination was lawful, which is a precondition for any conviction[569].

51. Mr Moret's phone and computer were returned to him unexamined. I am informed by police that a download of his SIM card was taken but that the data has not been disseminated and has now been made inaccessible.

52. Mr Moret showed dignified composure and good humour throughout, despite the inevitable impact on him of being told he was subject to counter-terrorism powers.

Conclusions

53. I start by acknowledging that I should accord a substantial degree of deference to the police's expertise in assessing the risk to national security and in weighing it against countervailing interests. I also accept that, as the Code states, officers are entitled to exercise the power in relation to new or emerging forms of terrorism; and that terrorism could be linked to violent protest.

54. But it also necessary to record that the Schedule 7 power, however useful and justified in some cases, is powerful. It must therefore be exercised with due care.

55. The fundamental question to be answered in this report is whether counter-terrorism police should have exercised the Schedule 7 power at all. It has never been the case that terrorism powers should be exercised merely because it is possible to use them. In general, counter-terrorism powers are exercised with restraint. This is vital for public confidence.

56. In my view, based on the information provided, police both *could* have decided not to exercise the power, and *should* have decided not to exercise the power.

57. The substance of the examination was to determine whether Mr Moret was a violent protester. This was an investigation into public order for which counter-terrorism powers were never intended to be used. The rights of free expression and protest are too important in a democracy to allow individuals to be investigated for potential terrorism merely because they may have been involved in protests that have turned violent.

58. I do not seek to minimise the impact of violence at protests, or defend violent protest, merely to distinguish between conduct that may attract public order powers, and conduct that may attract counter-terrorism powers.

59. Despite this being a pre-planned examination, no one involved stood back and asked themselves whether this was really a matter of public order. If they had, they would have realised that the use of Schedule 7 was not appropriate.

60. In addition, once the decision was taken to examine, there was never any further reflection on whether it was right to exercise the further Schedule 7 powers (to detain, to seize devices, to take DNA) that were used.

61. It is difficult not to sympathise with some of what Mr Moret said during examination.

62. He described the decision to detain him and to seize and download his devices as "crazy" and as "not normal" in a democracy. The problem with exercising counter-

[569] Cifci, supra.

terrorism powers to investigate whether an individual is a peaceful protestor or a violent protestor is that it is using a sledge-hammer to crack a nut. The police have many other powers to investigate public order matters.

63. Now that Left and Single Issue Terrorism (LASIT) is part of the core work of counter-terrorism police and MI5, a relatively new area of work where understanding of thresholds may not yet be well developed, there is a risk of recurrence unless modest but additional safeguards are built into the Code of Practice.

64. I **recommend** that the Code is amended to specify that Schedule 7 should not be used for the purpose of public order policing. I believe that is simple and clear, reflects long-standing policy, and does not inhibit police from investigating terrorism. There should also be training to that effect.

JONATHAN HALL KC
21 JULY 2023

Annex B: RECOMMENDATIONS AND RESPONSES TO PREVIOUS RECOMMENDATIONS

In **this year's report** I make 10 recommendations.

Chapter 3

- HM Government's Guidance "For information note: operating within counter-terrorism legislation, counter-terrorism sanctions and export control' should be amended to make reference to the Director of Public Prosecution's guidance of October 2022 [3.58].

Chapter 4

- In order to ensure that it is available for use following an individual's extradition to the United Kingdom, section 22(6) Counter-Terrorism Act 2008 should be amended by deleting the word "further" [4.38].

Chapter 5

- Official statistics for terrorism-related arrests should record whether the arrest relates to Islamist Extremist Terrorism, Extreme Right-Wing Terrorism, or other terrorism. [5.9].

- Counter Terrorism Police should notify TACT Independent Custody Visitors of all terrorism-related detainees in TACT Suites, whether arrested under PACE or section 41 Terrorism Act 2000, and relevant authorities (Police and Crime Commissioners, and the Mayor of London) should make arrangements so that visits take place. The Code of Practice on Independent Custody Visiting should be amended accordingly [5.20].

Chapter 6

- To improve police ability to use Schedule 7 Terrorism Acts to examine individuals arriving on small boats, the government should establish a system of facial recognition at Western Jet Foil [6.37].

Chapter 7

- The Home Secretary should give consideration to whether a new terrorist travel offence should be introduced based on travelling to support a proscribed organisation [7.37].

- The Home Secretary should consider introducing extraterritorial jurisdiction, subject to Attorney General consent to prosecution, for the offence of child cruelty contrary to section 1 Children and Young Persons Act 1933, where there is a terrorist connection in accordance with the Counter Terrorism Act 2008 [7.46].

Chapter 8

- TPIM Act 2011 should be amended to enable the Home Secretary to prohibit the possession of unapproved knives or bladed articles [8.40].

Chapter 9

- Section 13 Terrorism Act 2000 should be amended to allow the seizure of any article if the constable reasonably suspects that it has been displayed in such a way or in such circumstances as to arouse reasonable suspicion that a person is a member or supporter of a proscribed organisation [9.35].

- The power to examine and detain a person under Schedule 7 Terrorism Act 2000 at "the border area" in Northern Ireland should be abolished [9.68].

In last year's report **Terrorism Acts in 2021** I made 8 recommendations. The Home Secretary formally responded to these recommendations in a response laid before Parliament on 27 February 2024.

  - CT Police should establish a new practice for dealing with unexpected LPP material, consistent with the Attorney General's Guidelines on Disclosure, that does not involve the locking down of the entire device [4.65]. ACCEPTED

- Improved guidance on ‘auditors’ and the use of section 43 Terrorism Act 2000 powers should be issued to police forces in England and Wales [4.82]. ACCEPTED

- Consideration should be given to whether individual forces should be required to report on their use of section 43, for publication in official statistics [4.83]. ACCEPTED

- The Code of Practice on the use of Schedule 5 Terrorism Act 2000 powers of search and seizure in urgent cases should be amended to specify that journalistic material should not be seized or viewed [4.97]. REJECTED

- Steps should be urgently taken to exempt Interpol biometric holdings from the NSD regime under Part 1 of the Counter-Terrorism Act 2008 [4.108]. ACCEPTED

- A new child violence diversion order should be considered in cases of children arrested on suspicion of committing terrorist offences [7.88]. ACCEPTED

- Schedule 4 Modern Slavery Act 2015 should be amended so that all terrorism offences are excluded from the ambit of the section 45 defence [7.133]. ACCEPTED

- A formal list should be created and published by CT Police of content whose possession or dissemination has led to convictions in the United Kingdom under section 2 Terrorism Act 2006 or section 58 Terrorism Act 2000 in order to assist tech companies with content moderation decisions [12.83]. PARTIALLY ACCEPTED (list to be created but not published)

Previously unaddressed recommendations from earlier reports

In **Terrorism Acts in 2018** I recommended that time spent in detention following a PACE arrest should be deducted from the maxim time for which individuals can be detained under section 41 Terrorism Act 2000. Amendments have now been made to section 41 Terrorism Act 2000 by Schedule 17 to the National Security Act 2023.

Section 41 is further amended by Schedule 17 to the National Security Act 2023 to cater for suspects who are initially detained in hospital, as recommended in **Terrorism Acts in 2019.** No progress has been made on my recommendation in that report to create an accessible database of first instance judgments on production order applications under Schedule 5 Terrorism Act 2000, but I recognise that decisions on the publication of judgments are ultimately for the judiciary.

The government is yet to make a decision on my recommendation in **Terrorism Acts in 2020** concerned with section 3 Terrorism Act 2006 (court recommendation at sentence). This recommendation may fall away given the government's partial acceptance of my final recommendation in Terrorism Acts in 2021 (creation of a list of content, assuming the list is then shared with tech companies).

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