



INDEPENDENT COMMISSION
UK COUNTER-TERRORISM
LAW, POLICY AND PRACTICE

Call for Evidence

July 2022

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What this Call for Evidence is about

Setting the Scene

The threat level from terrorism in the UK is at "substantial", meaning an attack is likely; the number of potential terrorism suspects on the security services' radar remains at about 3,000; and the Security Services report disrupting 31 late-stage attack plots over the last four years alone. In addition, recent developments and events - including the surge in referrals relating to right-wing extremism to the counter-radicalisation Channel programme, the tragic murders of Jo Cox and David Amess, arguments over the deprivation of citizenship of British nationals who travelled to conflict zones in Syria, mounting tensions in Northern Ireland, controversies on the extension of counter-terrorism to other political and social causes, and to misogynistic violence, - demonstrate the ever-present risk of polarisation in the public discourse about terrorism in the UK.

It is over 20 years since the Lloyd Inquiry into the need for specific and permanent terrorism legislation and 15 years since the first publication of the UK counter-terrorism strategy, CONTEST. Legislation, policy and practice continue to evolve and expand in response to developments in the nature of the threats from terrorism and changes in society. The scope of counter-terrorism has expanded to encompass policies for preventing or countering violent extremism (P/CVE). New laws and policies have been subject to different levels of Parliamentary and judicial scrutiny and the Independent Reviewer of Terrorism Legislation provides an important avenue for raising concerns and influencing policy change. While there have been Government initiated reviews and revisions of the CONTEST strategy, and elements of the strategy such as Prevent, there has not been a broad independent public consultation on the overall picture of counter-terrorism law, policy, and strategy, their implementation and their impact.

This Commission will examine current law, policy and practice in light of CONTEST's aim of reducing the risk to the UK from terrorism, 'so that people can go about their lives freely and with confidence.'^[1] The reduction in the risk of terrorism can be the result of a wide range of laws, policies and practices outside of counter-terrorism as well as the consequence of counter-terrorism measures. The Commission recognises that counter-terrorism laws, policies and practices impact on the safety and also the openness and cohesiveness of society. Effective counter-terrorism laws and policies require not only necessary and proportionate powers, but also public support. Counter-terrorism laws, policies and practices may be experienced and viewed as unfair and disproportionate by particular groups and communities, which can undermine trust, confidence and cooperation.

There is now robust and consistent research evidence showing that public support for and cooperation with government policies, including in counter-terrorism, increases when they are developed in a way that meets basic standards of good law and policy making in a democracy.^[2] This requires opportunities for those groups and individuals, whose cooperation is most needed or who may be particularly impacted by a law, policy or practice, to participate in policy formulation and development by having their voices heard and their concerns listened to, acknowledged, and addressed. This entails

understanding how impacts and experiences vary across different intersections, including age, class, immigration status, gender, race, and religion. The COVID 19 pandemic, Russia's invasion of Ukraine, and the impact of the cost-of-living crises are a reminder of the need to assess the proportionality of investment in countering terrorism relative to both current and future terrorist threats and to the efforts needed to counter other non-terrorism related threats to the safety and well-being of individuals and society as a whole. This also requires recognition that the burdens and costs of security measures protecting against terrorism vary across different settings and groups. This is an understandably sensitive area with few spaces for the open dialogue and discussion needed to address concerns, depolarise the debate and build consensus.

The perceived democratic legitimacy of counter-terrorism laws and policies also depends on the public having confidence that they are compatible with the requirements of the Rule of Law and respect our international obligations such as those relating to human rights, including women's rights, children's rights, prohibitions on torture, and racial and religious discrimination. Peaceful and inclusive societies can only be achieved through protecting human rights and fundamental freedoms, reinforcing the rule of law, and ensuring accountability through access to justice. A state's approach to countering terrorism provides a stress test of its commitment to effective and accountable institutions and normative frameworks. Its response to terrorism shapes and reinforces its commitment to a culture of constitutionalism.

Background and Purpose

This consultation is an activity of the Commission on UK Counter-Terrorism Law, Policy and Practice, which is convened by the Bingham Centre for the Rule of Law. The Commission is independent and is chaired by the Rt Hon Sir Declan Morgan QC PC, formerly the Lord Chief Justice of Northern Ireland. He is joined by 14 Commissioners. There is a full list of Commissioner at the end of this document.

The purpose of this consultation is to invite your thoughts, ideas and proposals. This paper sets out a series of general questions in section 1. This is followed by more specific questions related to particular issues in sections 2-11.

Terms of Reference

The Commission's formal Terms of Reference set out its aims as follows.

The Commission will:

- Review relevant UK counter-terrorism laws, policies and practices;
- Consider their impact on different groups and communities;
- Examine adherence to human rights standards and the requirements of the Rule of Law;
- Make recommendations on changes in law, policy and practice.

In conducting its review and formulating its recommendations, the Commission will take into account:

- Current threats posed by terrorism;
- Evolving challenges and emerging trends in the nature and scope of terrorism;
- Evidence of the experience of civil society organisations, legislators, policymakers, practitioners, victims and survivors of terrorism, and other relevant stakeholders;
- Evidence of relevant laws, policies and practices in jurisdictions both within and outside the UK.

How to Respond to the Call for Evidence

You are welcome to send thoughts to the general question listed on page 6 (section 1).

Instead, or as well, you are welcome to send your thoughts on one or more of the specific topics outlined on pages 7-19 (sections 2-10).

They are to do with:

- The conception and definition of terrorism;
- Criminal law offences related to terrorism;
- Police investigation, stop and search, arrest and detention powers;
- Administrative and executive measures;
- Measures for countering terrorism financing;
- Digital technologies and counter-terrorism;
- The Prevent Strategy and counter-radicalisation policies;
- Prisons, reintegration and rehabilitation;
- Review, oversight and accountability.

You are not expected to answer every question in this consultation. Rather, you are welcome to focus just on the questions and topics which are of most interest to you. Where appropriate we would encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Responses can be any length and can be accompanied by copies of relevant documents. In its eventual report the Commission will acknowledge all the responses which it receives and will almost certainly wish to quote from some of them.

Deadline for Submission of Responses

We hope you can please respond by 15 November 2022.

Note on Terminology

Our understanding of the Rule of Law is based on Lord Bingham's eight principles of the Rule of Law:

1. The law must be accessible and so far as possible intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
5. The law must afford adequate protection of fundamental human rights.

6. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
7. The adjudicative procedures provided by the state should be fair.
8. The Rule of Law requires compliance by the state with its obligations in international law as in national law.

Contacting the Commission

You can submit your response online, by post or email.

- **Online:** <https://bit.ly/3NXE18Z>
- **Post:** The Independent Commission on UK Counter-Terrorism Law, Policy and Practice, Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP.
- **Email:** CT.Commission@binghamcentre.biicl.org - when emailing your submission, please ensure to attach your name and organisation (if applicable).

Notes

[1] HM Government, CONTEST: The United Kingdom's Strategy for Countering Terrorism, Cm 8123, London: The Stationary Office, 2011, p.40.

[2] See for example: Aziz Z. Huq, Tom R. Tyler, and Stephen J. Schulhofer. "Mechanisms for eliciting cooperation in counter terrorism policing: Evidence from the United Kingdom", *Journal of Empirical Legal Studies* 8, no. 4 (2011) 728-761; Tyler, Tom, Stephen Schulhofer and Aziz Huq. 2010. Legitimacy and deterrence effects in counterterrorism policing: A study of Muslim Americans. *Law and Society Review*. 44:365-402; Cherney, Adrian and Kristina Murphy. 2013. Policing terrorism with procedural justice: The role of police legitimacy and law legitimacy. *Australian & New Zealand Journal of Criminology*. 46:403-421; Madon, Natasha, Kristina Murphy and Adrian Cherney. 2017. Promoting community collaboration in counterterrorism: Do social identities and perceptions of legitimacy mediate reactions to procedural justice policing? *British Journal of Criminology*. 57(5): 1144-1164; Kristina Murphy, Natasha S. Madon, Adrian Cherney, (2017) "Promoting Muslims' cooperation with police in counter-terrorism: The interaction between procedural justice, police legitimacy and law legitimacy", *Policing: An International Journal*, 40(3): 544-559.

One: General Questions for Consultation

The Commission would like to know your views on the following general questions:

- 1.1. What do you understand by the term terrorism?
- 1.2. What do you understand to be the nature and level of threats of terrorism in the UK today?
- 1.3. Do you believe laws, policies and practices on preventing and countering terrorism in the UK are appropriate to current and future threats and proportionate to the efforts to counter other threats to the safety and well-being of individuals and society as a whole?
- 1.4. What has worked and what has not worked in reducing the risk of terrorism in the UK?
- 1.5. What effect have laws, policies and practices on preventing and countering terrorism had on individuals, groups and communities?
- 1.6. What effect have laws, policies and practices on preventing and countering terrorism had on relations between different individuals, groups and communities?
- 1.7. To what extent have laws, policies and practices on preventing and countering terrorism effected education, work and professional life, civic and political participation?
- 1.8. What impact do laws, policies and practices on preventing and countering terrorism have on the Rule of Law and the UK's international legal obligations, including those relating to human rights?
- 1.9. What, if any, changes should there be to laws, policies and practices on preventing and countering terrorism?
- 1.10. Is there anything further you would like to add that would be relevant to the Commission's review?

Two: The Conception and Definition of Terrorism

Context

Terrorism is a contested concept covering a diverse range of actors and groups for which it has not been possible to reach an agreed international definition. In the UK, counter-terrorism policies cover violent extremism and non-violent extremism. There is no legal definition of extremism. The Prevent Strategy defines extremism as ‘vocal and active opposition to fundamental British values including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.’^[1] It also includes calls for the death of members of British armed forces.

For the purposes of counter-terrorism law, policy and practice, terrorism is defined by section 1 of the Terrorism Act 2000 (see box 1). This definition is fundamental to the use of a wide range of extensive policing and investigatory powers that are not ordinarily available, it forms the basis of criminal offences related to terrorism, and information connecting an individual to terrorism related activities provides the basis for exercising extraordinary executive and administrative powers. Getting the definition of terrorism right is crucial. If it is too narrow it can limit the ability of the police and others to take action. If it is too wide, it brings within the scope of terrorism a wide range of actions and activities, the targeting of which has a direct impact of the strength of a functioning democracy.

Questions for Consultation

- 2.1. What do you understand by terrorism?
- 2.2. What do you understand to be the nature and level of threats of terrorism in the UK today?
- 2.3. What do you understand to be the nature of the relationship, if any, between terrorism, violent extremism, non-violent extremism and radicalisation?
- 2.4. What, if any, changes relating to the legal definition of terrorism are needed?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Box 1: Definition of terrorism in Terrorism Act 2000

1 Terrorism: interpretation.

(1) In this Act “terrorism” means the use or threat of action where—

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it—

- (a) involves serious violence against a person,
- (b) involves serious damage to property,
- (c) endangers a person’s life, other than that of the person committing the action,
- (d) creates a serious risk to the health or safety of the public or a section of the public, or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

- (a) “action” includes action outside the United Kingdom,
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
- (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
- (d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

Notes

[1] HM Government, *Prevent Strategy* Cm 8092, London: The Stationary Office, 2011, p,107.

Three: Criminal Law Offences Related to Terrorism

Context

Ordinary criminal law offences can be used to prosecute those involved in violent terrorist attacks. Incomplete or inchoate offences also enable prosecutions before harms occur. For example, if a person is attempting, assisting, encouraging or aiding and abetting another in committing an offence.

There are also crimes that are specifically related to terrorism. This includes offences of possession of items for terrorist purposes,[1] or collection of information useful for terrorism[2] as well as offences relating to the preparation of terrorist acts,[3] indirect encouragement of terrorism,[4] dissemination of terrorist publications,[5] training for terrorism,[6] and attending a place used for terrorist training.[7] A number of criminal offences also arise from the proscription of an organisation as a terrorist organisation.[8]

The following questions are seeking your views on terrorism related criminal law offences. Your answer can relate to one or as many terrorism-related criminal law offences you think are appropriate. To assist with our analysis, please identify the measure(s) to which your answer relates.

Questions for Consultation

- 3.1. What role, purpose and impact do terrorism related criminal law offences have in reducing the risk to the UK from terrorism?
- 3.2. What, if any, concerns do the prosecution of terrorism related criminal law offences raise in relation to their impact on the Rule of Law, and the UK's international obligations, including those relating to human rights?
- 3.3. What has been the impact of prosecution and sentencing of terrorism related criminal offences on individuals, groups and communities that experience these measures?
- 3.4. What, if any, changes should there be to terrorism related criminal law offences?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

- [1] Terrorism Act 2000, s57.
[2] Terrorism Act 2000, s58.
[3] Terrorism Act 2006, s5.
[4] Terrorism Act 2006, s1.
[5] Terrorism Act 2006, s2.
[6] Terrorism Act 2006, s6.
[7] Terrorism Act 2006, s8.
[8] Terrorism Act 2000, ss 11-13.

Four: Policing Powers and Counter-Terrorism

Context

Police at all levels, from community policing to specialist counter-terrorism units as well as the Security Services, contribute to countering terrorism. Counter-terrorism policing has sought to engage with communities and to develop partnerships with different groups and communities. Some individuals, groups, and communities feel they face disproportionate focus from the police and Security Services.

Police investigations of individuals and groups that may be planning terrorist acts are important for disrupting terrorism and for gathering evidence needed for criminal prosecutions or for the imposition of administrative measures. Counter-terrorism laws provide police with powers to carry out investigations that are not available for other criminal offences. This includes powers that allow for access to and search of documents and places; powers to stop, search, detain and question individuals, and access and examine electronic devices. Investigations can involve various forms of covert surveillance. Arresting a person under the Terrorism Act 2000 (TA 2000) allows the police to hold a suspect in pre-charge detention for a longer period than for other arrests,^[1] and to have access to their lawyer delayed. There are also additional stop and search powers that can be used in counter-terrorism. Some allow authorised officers to stop and search a person without the need for reasonable suspicion.

The following questions are seeking your views on policing powers related to countering terrorism. Your answer can relate to one or as many police counter-terrorism powers as you think are appropriate. To assist with our analysis, please identify the measure(s) to which your answer relates.

Questions for Consultation

- 4.1. What role, purpose and impact do police counter-terrorism powers have in reducing the risks of terrorism in the UK?
- 4.2. What, if any, concerns are there from the exercise of these powers on different individuals, groups and communities that experience these powers? How can any negative impacts be minimised or removed?
- 4.3. What, if any, concerns do police investigation, stop, search, arrest and detention powers raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 4.4. What, if any, changes should there be to police powers relating to terrorism investigations, stop and searches, detentions and arrests?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

[1] Police and Criminal Evidence Act 1984, s42.

Five: Administrative and Executive Measures

Context

Administrative and executive measures are actions taken by officials in the executive branch of government that do not require prior permission of a court or other judicial body. There are several executive and administrative measures that the government is able to use in countering terrorism. The government can ban organisations that are concerned in terrorism, this is called proscription. Administrative and executive action against individuals include the imposition of Terrorism Prevention and Investigation Measures (TPIMs). At ports and airports, officials have powers to stop, question, search, detain, take fingerprints and examine electronic devices of any individual to determine if they are a terrorist, without requiring reasonable suspicion that the person being stopped may be a terrorist.

Administrative and executive powers include restrictions on travel, exclusion from the UK and the deprivation of British citizenship. Executive and administrative measures are also used to manage individuals returning from conflict zones such as Syria. Since 2001, the Home Secretary's power to remove citizenship has been expanded and used to remove British citizenship from over 200 British nationals.

Executive and administrative measures can also be the basis for further criminal offences. Once an organisation is proscribed then membership and activities related to the organisation are the basis of criminal offences.[1] Breach of a TPIM condition is a criminal offence. Failure to answer questions under a Schedule 7 stop is a criminal offence.

Executive and administrative measures raise issues of procedural fairness. Decisions on administrative measures are first made by government ministers or other authorised officials. Executive and administrative measures usually take immediate effect. Individuals affected by a measure can challenge these through review bodies and the courts, this takes time and resources. The use of Closed Material Proceedings[2] and Special Advocates[3] means that the information and evidence that justifies the use of administrative or executive measures may not be fully disclosed to the individual subject to the measure or to their lawyer.

The following questions are seeking your views on administrative and executive measures used in relation to counter-terrorism. Your answer can relate to one or as many administrative or executive measures you think are appropriate. To assist with our analysis, please identify the measure(s) to which your answer relates.

Questions for Consultation

- 5.1. What has been the role, purpose and impact of administrative and executive measures in reducing the risk to the UK from terrorism?
- 5.2. What has been the impacts of administrative and executive measures on individuals, groups and communities that experience these measures?

- 5.3. What, if any, concerns do administrative and executive measures raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 5.4. To what extent is there appropriate and timely monitoring, oversight, accountability, and redress in relation to administrative and executive measures?
- 5.5. To what extent are current approaches to managing the return, reintegration, and rehabilitation of British nationals and residents who have travelled to conflict zones, such as Syria, working effectively, and are there things that could be done differently?
- 5.6. What, if any, changes should there be to the use of executive and administrative measures in counter-terrorism?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

[1] Terrorism Act 2000, ss 11-13.

[2] A Closed Material Procedure (CMP) allows the state to disclose and rely on sensitive material to the judge without having to disclose the material to the other party.

[3] A Special Advocate is appointed to represent the interests of a party in closed proceedings, i.e. proceedings from which that party has been excluded.

Six: Counter-Terrorism Financing Measures

Context

The UK has measures aimed at detecting, preventing, deterring and disrupting the flow of money that could be used to finance terrorism. This includes criminal offences related to terrorism financing^[1] and financial sanction measures (such as asset freezes) which give effect to the UK's obligations under UN Security Council Resolutions 1373 and 2368. There are also obligations on financial institutions and professionals to monitor and report on actions that could breach counter-terrorism finance laws.^[2]

Risks arising from counter-terrorism financing measures impact on the willingness of financial institutions to provide services to charities and non-governmental organisations. The counter-terrorism legislation and policies impact organisations working in international development and humanitarian aid. For those working in conflict zones, this includes both law and policies on terrorism financing and proscribed organisations. The Charity Commission has also become increasingly active in investigating organisations in relation to terrorism related risks.

Questions for Consultation

- 6.1. What is the role, purpose and impact of counter-terrorism financing measures in reducing the risk to the UK from terrorism?
- 6.2. What has been the impacts of counter-terrorism financing measures on individuals, groups and communities that are the target of these measures?
- 6.3. What has been the unintended impacts of counter-terrorism financing measures on individuals, groups and communities?
- 6.4. What has been the impact of counter-terrorism laws and policies, including counter-terrorism financing measures on non-governmental organisations providing aid and humanitarian relief?
- 6.5. What, if any, concerns do counter-terrorism financing measures raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 6.6. To what extent is there appropriate and timely monitoring, oversight, accountability, and redress in relation to counter-terrorism financing related administrative and executive measures?
- 6.7. What, if any, changes should there be to the use of counter-terrorism financing measures?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

[1] Terrorism Act 2000, ss.15-18

[2] Terrorism Act 2000, s19.

Seven: Counter-Terrorism and Digital Technologies

Context

The past decade has seen a rapid extension of digital life, which has had many consequent societal effects. There are three particularly pronounced issues that arise in a counter-terrorism context:

1. Social media platforms – The spread of social networks has allowed for the proliferation of terrorism material. The speed and scale of the largest platforms means that terrorist content can proliferate and be widely seen before the platform can act to remove it. For example, recent attacks have been live streamed on platforms and shared widely before the content can be removed. Platforms are often criticised for taking a reactive approach, rather than a proactive approach. That reactive approach may at least partly be explained by the position of platforms as an intermediary host of content.
2. Mass communication providers – Messaging systems have allowed for widespread online communication. Those same messaging services offer protections for users, often in the form of encrypted communications. Such encryption is however a barrier to access to terrorist messaging for law enforcement agencies.
3. Developing technology – Law enforcement are increasingly relying on developing technology that digitisation has facilitated. They enable government to access, collect, retain and analyse large amounts of data and deploy artificial intelligence in a range of counter-terrorism policies and practices. This includes, behavioural profiling (e.g. online radicalisation or ‘smart border’ applications, predicting criminal recidivism, predictive policing, predicting terrorist risk, predicting children at-risk); automated surveillance (e.g. to detect ‘terrorist’ content online, ‘suspicious financial transactions’, ‘terrorist’ social networks, PNR, biometrics such as facial, fingerprint, gait or voice recognition, watch listing); and data fusion for example with foreign terrorist fighters at the intersection of Passenger Name Records, watch-listing and biometrics. These raise the possibilities of more efficient direction of resources, early detection and prevention of terrorist attacks but also raise concerns about their effectiveness and impact on fundamental rights. Those technologies present unique civil liberties challenges and are often deployed in legal grey spaces.

The Online Safety Bill, currently before the UK Parliament, includes measures to regulate ‘terrorism content’. Concerns about the Bill’s provisions have been raised by the Independent Reviewer of Terrorism Legislation.[1] The Commission will follow the discussion on the Bill closely and would welcome views on the approach eventually adopted through the legislation.

Questions for Consultation

- 7.1. What is the role, purpose and impact of the regulation of social media content in reducing the risk to the UK from terrorism?
- 7.2. What has been the impact of the regulation of social media on individuals, groups and communities that are the target of these measures?

- 7.3. What, if any, concerns do the current approaches to the regulation of social media content raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 7.4. What is the role, purpose and impact of the use of developing technologies, such as AI, in reducing the risk to the UK of terrorism?
- 7.5. What has been the impact of the use of such technologies in counter-terrorism on individuals, groups and communities that are the target of these measures?
- 7.6. To what extent is the use of developing technologies in the context of counter-terrorism readily understood? If so, what do you understand such developments to entail? For example, what do you understand by the term "AI" in a counter-terrorism context?
- 7.7. What, if any, concerns do the use of developing technologies raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 7.8. To what extent is there appropriate and timely monitoring, oversight, accountability, and redress for the use of developing technologies in counter-terrorism?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

[1] Independent Reviewer of Terrorism Legislation (2022) *Missing Pieces: A Note Terrorism Legislation in the Online Safety Bill*.

Eight: The Prevent Strategy and Counter-Radicalisation Policies

Context

Prevent is one of the four strands of the overall counter-terrorism strategy (CONTEST). Its stated purpose is to 'to stop people becoming terrorists or supporting terrorism'. The first Prevent Strategy from 2007-2011 focused only on 'international terrorism' and focused on preventing 'violent extremism'. Since a review in 2011, the Prevent Strategy has covered all forms of terrorism, broadened its focus from 'violent extremism' to 'extremism'.^[1] Extremism is defined as 'vocal and active opposition to fundamental British values', which are identified as including 'democracy, the rule of law, individual liberty and mutual respect and toleration of different faiths and beliefs'.^[2] In 2015, a statutory duty on specific authorities to show 'due regard to the need to prevent people being drawn into terrorism' was introduced.^[3] This has been implemented across a wide range of public services including education, healthcare, prisons, social services and youth services. The Prevent Strategy and Duty does not apply in Northern Ireland. As well as the Prevent Strategy, there is a separate but related strategy for Countering Extremism that was published in 2015.^[4]

The Prevent Strategy is perhaps the most high-profile and controversial strand of the CONTEST strategy. Concerns about Prevent and its impact have been raised by Parliamentary committees, UN human rights bodies and civil society groups. A review of Prevent is being carried out by Sir William Shawcross, but it is yet to publish its findings. This review was boycotted by a significant number of civil society organisations. A civil society led People's Review of Prevent published its report in February 2022.

Questions for Consultation

- 8.1. To what extent are current approaches to preventing people becoming involved in terrorism working, and are there things that could be done differently?
- 8.2. How do you understand the factors and processes by which people end up supporting or engaging in terrorism takes place?
- 8.3. What has been the role, purpose and impact of the Prevent Strategy and Duty in reducing the risk to the UK from terrorism?
- 8.4. What effect have the Prevent Strategy and Duty had on individuals, groups and communities and relations between different groups and communities?
- 8.5. What, if any, concerns do the Prevent Strategy and Duty raise in relation to their impact on the Rule of Law, and the UK's international obligations including those relating to human rights?
- 8.6. How has the Prevent Duty impacted on the work of individuals, institutions and organisations where it applies (e.g. education, healthcare, social services and youth services?)
- 8.7. To what extent is there appropriate and timely monitoring, oversight, accountability, and redress in relation to the actions under the Prevent Strategy and Prevent Duty?
- 8.8. What, if any, changes should there be to the Prevent Strategy and Duty?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Notes

[1] HM Government, Prevent Strategy, Cm 8092, 2011.

[2] Ibid. p.107.

[3] Counter-Terrorism and Security Act 2015, s. 26.

[4] HM Government, Counter-Extremism Strategy, Cm 9148, 2015.

Nine: Prisons, Rehabilitation, and Reintegration

Context

There are over 200 prisoners in the UK convicted of terrorism and terrorism connected offences (known as TACT offenders). In addition to this, there are prisoners that are convicted of crimes unrelated to terrorism but who are assessed to present a risk of committing an act of terrorism. Separation Centres have been created to keep those thought to pose the greatest risk to the general prison population. More generally, there are risks that other prisoners are influenced by TACT prisoners to support terrorism or join violent group by other means while in prisons, given the confined environment and therefore prisoners' vulnerability to influence. The Commission welcomes evidence on the management of TACT offenders and terrorism risk while in prisons, both in separation centres and the general population.

As well as punishment, rehabilitation, and reintegration of offenders is vital for public safety, and both prisons and probation services need to manage these risks. Securing employment, training or housing, return to families and communities, recognised as important for reintegration and rehabilitation, can be particularly difficulty for TACT offenders. The Commission welcomes evidence on the efforts to rehabilitate and reintegrate those who have been convicted of terrorist offences, or who are considered a terrorist risk.

Questions for Consultation

- 9.1. What has been the role of prisons in reducing or increasing the risk to the UK from terrorism?
- 9.2. To what extent are current approaches to managing TACT offenders working effectively, and are there things that could be done differently?
- 9.3. To what extent are rehabilitation and reintegration approaches for both TACT and non-TACT prisoners effective in reducing the risk of further attacks?
- 9.4. To what extent are rehabilitation and reintegration approaches for TACT offenders effective in achieving rehabilitation and reintegration?
- 9.5. What, if any, concerns do current approaches to prisoners, reintegration and rehabilitation of TACT offenders within prisons raise in relation to their impact on the Rule of Law, and the UK's international obligations, including those relating to human rights and non-discrimination?
- 9.6. What, if any, changes should there be in relation to prisons, reintegration and rehabilitation?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

Ten: Review, Oversight, and Accountability

Context

Review, oversight and accountability are fundamental to ensuring protection of rights and adherence to the Rule of Law. There are numerous routes for this in relation to counter-terrorism laws, policies and practices. For example, the government has undertaken consultations and commissioned reviews on particular policies and laws. The government has also sought to increase accountability and transparency through the publication of data on the use of counter-terrorism policing powers, arrests, prosecutions and convictions, as well as through the publication of data on the use of executive and administrative powers and on Prevent referrals.

Parliament is involved in scrutiny of legislation and carries out inquiries on specific issues. The Intelligence and Security Committee of Parliament is able to examine the work of the intelligence community.

Policing operations relating to terrorism are also within the scope of general policing bodies and mechanism for review, oversight and accountability. This includes the Independent Office of Police Conduct, the Mayor's Office for Policing and Crime, Police Encounter Panels as well as local scrutiny panels on issues such as stop and search.

The UK's Independent Reviewer of Terrorism Legislation publishes annual reports on the operation of terrorism legislation and has been invited to examine specific issues and evaluate particular counter-terrorism operations. There is also an Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007.

Questions for Consultation

- 10.1. To what extent has Parliament been able to provide sufficient review and scrutiny of counter-terrorism laws, policies and their implementation? Are there ways in which this can be improved?
- 10.2. To what extent has the Independent Reviewer of Terrorism Legislation been able to provide review and scrutiny of counter-terrorism laws and policies? Are there ways in which this can be improved?
- 10.3. To what extent do individuals, groups and communities impacted by counter-terrorism measures feel able to engage in review, oversight and accountability mechanisms?
- 10.4. What, if any, barriers have particular individuals, groups or communities faced when seeking to engage with current review, oversight and accountability mechanisms?
- 10.5. What, if any, changes are needed to current review, oversight and accountability mechanisms?

We encourage you to illustrate your thoughts with reference to evidence from your own personal or professional experience as well as to research or other relevant data.

The Commissioners

The Commission members are all serving in personal capacities, not as representatives of bodies with which they have connections.

Rt. Hon. Sir Declan Morgan PC QC (Chair)

Supplementary Panel member of the UK Supreme Court. Formerly, Lord Chief Justice of Northern Ireland.

Alyson Kilpatrick

Chief Commissioner at the Northern Ireland Human Rights Commission. Formerly, a special legal advisor to the UK's Independent Reviewer of Terrorism Legislation.

Amanda Weston QC

Public law barrister, Garden Court Chambers.

Dame Anne Owers

Chair of the Independent Monitoring Boards. Formerly, the Chair of the Independent Police Complaints Commission and Her Majesty's Chief Inspector of Prisons.

Rt. Hon. Dominic Grieve QC

Former Attorney General for England and Wales (2010-14) and Chair of the Intelligence and Security Committee (2015-19).

Professor Hilary Pilkington

Professor of Sociology at the University of Manchester.

Professor John Denham

Director of the Centre for English Identity and Politics at Southampton University.

Dr Katherine Brown

Reader in Religion and Global Security in the Department of Theology and Religion, University of Birmingham.

Professor Lucia Zedner

Senior Research Fellow at All Souls College, Oxford, and Professor of Criminal Justice in the Faculty of Law, University of Oxford.

Dr Mohammed Aziz

Trustee at Demos and Muslim Aid. Formerly, Advisor Department for Community and Local Government.

Murray Hunt

Director of the Bingham Centre for the Rule of Law.

Sir Peter Fahy QPM

Former Chief Constable of Greater Manchester and Association of Chief Police Officers (ACPO) national lead for the Prevent counter-terrorist programme.

Richard Barrett CMG OBE

Formerly worked for the British Government in the Security Service, the Foreign Office and the Secret Intelligence Service.

Ravi Naik

Co-founder of the data rights agency, AWO. Visiting fellow, Oxford University Internet Institute.

Rt. Hon. Baroness Sayeeda Warsi PC

Former Minister for State for the Foreign and Commonwealth Office and Minister of State for Faith and Communities.

July 2022 Call for Evidence



INDEPENDENT COMMISSION
UK COUNTER-TERRORISM
LAW, POLICY AND PRACTICE

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