



## BRIEFING PAPER

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# Terrorist Offenders (Restriction of Early Release) Bill 2019-2020

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## Summary

The [Terrorist Offenders \(Restriction of Early Release\) Bill 2019-20](#) was introduced on 11 February 2020. All stages in the House of Commons are due to take place on 12 February 2020.

The Bill has been introduced in response to the terrorist attacks on London Bridge in November 2019 and in Streatham in February 2020. The offenders in each of these attacks had been released from prison automatically without the involvement of the Parole Board.

The Government has said the Bill should be fast tracked through Parliament because legislation is needed urgently to put appropriate safeguards in place before further terrorist offenders, including some due for automatic release before the end of February 2020, are released from prison.

Currently prisoners serving a standard determinate sentence are automatically released from prison at the half way point of their sentence to serve the rest of their sentence in the community on licence. Prisoners serving extended sentences imposed before 2015 may be released automatically on licence at either the two thirds or half way point. Prisoners serving sentences for offenders of particular concern may be released on licence from the halfway point at the discretion of the Parole Board.

The Bill would change release provisions so that offenders given a determinate sentence for a relevant terrorism offence do not become eligible for release until the two thirds point of the sentence. Release at the two thirds point for these offenders would not be automatic. They would be referred to the Parole Board to decide if they are safe to release on licence.

The changes would apply not only to those sentenced for the relevant offences in the future but also to those currently in custody serving sentences for these offences. This has led to some debate as to the compatibility of the Bill with the European Convention on Human Rights, which prohibits the retrospective imposition of criminal penalties. The Government's position is that the changes relate to the administration of the penalty, rather than its scope, and that the Bill is therefore compatible with the Convention.

The Bill does not address concerns about the management of terrorist offenders within prisons. It is not clear whether the interventions used in prisons with extremist offenders are effective. Separation centres set up for some extremist offenders have been little used.

The Government has said it intends, in the coming weeks, to introduce a further bill making provision for the sentencing and release of terrorism offenders.

The provisions of the Bill would extend and apply to England, Wales and Scotland. Counter-terrorism is a reserved matter, although prisons and sentencing (including release provisions) are devolved to Scotland and Northern Ireland. The Government states that a Legislative Consent Motion will be required from the Scottish Parliament. For detail on the territorial extent and application of the Bill see page 7 and Annex A of the Explanatory Notes.

The Bill would come into force on Royal Assent.

The Government has published [Explanatory Notes](#). A [Gov.uk page](#) for the Bill provides links to a Factsheet, Equality Statement, European Convention on Human Rights Memorandum and an Impact Assessment. There is also a [Bill page](#) on the Parliament website.

# 1. Background to the Bill

## 1.1 The threat from terrorism

The Bill has been described by the Government as emergency legislation and consequently Parliament has been asked to expedite its progress.<sup>1</sup> According to the Explanatory Notes this is necessary because the UK faces an unpredictable risk to public safety from released terrorist prisoners. The Explanatory Notes further argue that there are terrorist offenders due for automatic release before the end of February 2020 who present a particular risk to the public and legislation is therefore needed urgently to put appropriate safeguards in place.

Announcing the legislation in a statement on the 3 February following the Streatham attack, the Solicitor General said

Yesterday's appalling incident plainly makes the case for immediate action ...

We face an unprecedented situation of severe gravity and, as such, it demands that the Government responds immediately, and that this legislation will therefore also apply to serving prisoners.<sup>2</sup>

The national threat level from terrorism is currently "Substantial". This means that an attack is likely. It was reduced from "Severe", meaning that an attack is highly likely, in November 2019, where it had been since September 2017.

The threat level is set by the Joint Terrorism Analysis Centre (JTAC) and MI5.

According to the latest Government statistics, there were 259 arrests for terrorism-related activity in year ending 30 September 2019, which was a decrease of 20% compared with the 325 arrests in the previous year.<sup>3</sup>

According to the Intelligence and Security Committee (ISC), 2017 represented a step change, with a shift in the threat from terrorism, largely due to developments in Syria and Iraq. This, combined with the speed of the radicalisation process, has meant that the police and security services have not been able to concentrate solely on the immediate threat, but have also had to consider how to manage the level of risk associated with this volume.<sup>4</sup>

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<sup>1</sup> Emergency or fast-tracked legislation is legislation which the Government represents to Parliament must be enacted swiftly, and then uses its power of legislative initiative and control of Parliamentary time to secure passage thereof. See Library Briefing Paper SN05256 [Fast-track legislation](#) for further details

<sup>2</sup> HC Deb 3 February 2020, c 55-56

<sup>3</sup> [Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search](#), Home Office, December 2019

<sup>4</sup> [The 2017 Attacks: What needs to change?](#), Intelligence and Security Committee of Parliament, HC1694, 22 November 2018

## 1.2 Recent terrorist attacks

### 2020 attacks

On 2 February 2020 Sudesh Amman attacked two people with a knife in Streatham (neither of whom died), before being shot by police.

Amman had been released from prison in January 2020, having been convicted of terrorism offences in November 2018. He was given a standard determinate sentence of 3 years' and 4 months' detention. He was released from prison automatically at the halfway point.<sup>5</sup> The Parole Board was not involved in his release.

On 9 January 2020 a convicted terrorist offender, Brusthom Ziamani, was reported to have attacked a prison officer with another inmate at HMP Whitemoor. Both were reported to have been wearing fake suicide vests. A prison officer was slashed and stabbed and several others were injured.<sup>6</sup>

The Metropolitan Police confirmed that the incident was being treated as a terrorist attack and investigated by officers from the Met Police Counter Terrorism Command.<sup>7</sup>

### 2019 attacks

On 30 November 2019 Usman Khan killed two people at Fishmongers' Hall near London Bridge before being shot by police.

Khan had been released from prison in December 2018, having been convicted of terrorism offences in 2012. He was released from prison automatically at the halfway point of the custodial part of an extended sentence for public protection (EPP). Khan was serving an EPP of 21 years comprising a custodial term of 16 years and an extended licence period of 5 years.<sup>8</sup> For an EPP imposed after 14 July 2008, as Khan's was, release was automatic at the halfway point of the custodial period. The Parole Board were therefore not involved in Khan's release.<sup>9</sup>

### 2017 attacks

Between March and June 2017 there were four terrorist attacks in London and Manchester in which vehicles, knives and explosives were used to kill and injure members of the public. 36 people were killed in the attacks and almost 200 were injured.

On 22 March 2017 Khalid Masood killed five people, including an on duty police officer, in Westminster before being shot by armed police.

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<sup>5</sup> [R. v. Sudesh Faraz Amman. Sentencing remarks, 17 December 2018](#)

<sup>6</sup> [HMP Whitemoor prison stabbings classed as 'terror attack'](#), bbc.co.uk, 10 January 2020

<sup>7</sup> [Update: Counter Terrorism investigation into serious assault at HMP Whitemoor](#), 10 January 2020, news.met.police.uk

<sup>8</sup> [R v. Khan & ors \[2013\] EWCA Crim 468](#). Khan had successfully appealed his original sentence

<sup>9</sup> For further information, see: Full fact, [Usman Khan and sentencing terror offences](#); Channel 4 News, [FactCheck Q&A: can the government change the law to keep terrorists in prison?](#)

On 22 May 2017 Salman Abedi detonated an explosive at Manchester Arena, killing himself and 22 others.

On 3 June 2017 Khurum Butt, Rachid Redouane and Youssef Zaghba killed eight people before being shot by armed police.

On 19 June 2017 Darren Osbourne drove a van into a crowd outside Finsbury Park Islamic Centre, one of whom died.

On 15 September 2017 Ahmed Hassan left an improvised explosive device on an underground train. It partially exploded after the train arrived at Parsons Green station, injuring a number of people. No one was killed.

## Response to the 2017 attacks

According to the 2018 CONTEST strategy (see below), the 2017 attacks represented a shift in the nature of the terrorist threat, which led to a increased emphasis on reducing reoffending and improving the reintegration of those already engaged in terrorism.<sup>10</sup> The response to the threat of extremism and radicalisation in prisons aims to reduce the risk from terrorism through rehabilitation and reintegration.

Following the attacks MI5 and Counter-Terrorism Policing (CTP) launched a number of internal reviews in order to identify learning points arising out of each case, among other things. They also established an Operational Improvement Review (OIR) which sought to identify and recommend improvements in counter-terrorism work.

The ISC published a report on the attacks in November 2018.<sup>11</sup> This looked at the internal reviews, as well as primary material relating to the attacks and evidence taken from the then-Home Secretary and MI5 and CTP.

In the report, the ISC questioned whether some extremist prisoners may be “tactically engaging with de-radicalisation programmes ... in order to dupe the authorities into believing that the risk they pose has decreased”. JTAC’s assessment of this issue is redacted in the report.<sup>12</sup>

The ISC also recommended that improvements should be made to schemes for the monitoring of visitors to extremist prisoners, and that prison officers should be trained to identify instances where a prisoner has converted to Islam following association with extremists. This would enable an assessment of whether the conversion was part of a “negative journey” for an individual, and to take action if necessary.<sup>13</sup>

Having taken evidence on joint working with respect to extremism in prisons, the ISC expressed concern that the number of different bodies involved might pose risks, both of effectiveness and efficiency. Consequently, the Committee recommended that the Government keep

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<sup>10</sup> [CONTEST Strategy, 2018, para 128](#)

<sup>11</sup> [The 2017 Attacks: What needs to change?](#), Intelligence and Security Committee of Parliament, HC1694, 22 November 2018

<sup>12</sup> *Ibid*, para 68

<sup>13</sup> *Ibid*, recommendation I

the matter under review and report on whether it is still working within 12 months.<sup>14</sup>

Lord Anderson QC conducted an assessment of nine classified internal reviews conducted by MI5 and Counter-Terrorism Policing into the handling of intelligence prior to the attacks. One of the strategic themes covered by the internal reviews was the exploitation of intelligence opportunities which arise when “subjects of interest” are in prison.

The reviews led to 126 recommendations on improvements to be made in the way intelligence is handled in counter-terrorism operations in the future. These included commitments to better data exploitation; wider sharing of information derived from MI5 intelligence; and consistent assessment and investigation of all terrorist threats, regardless of ideology.

### Reoffending by terrorist offenders

The Office for Security and Counter Terrorism (OSCT) said in evidence to the ISC in May 2018 that the direct risk of violence posed by former terrorist prisoners on release should be kept in proportion. OSCT described reoffending rates as “relatively low”, stating that only 9% of terrorist prisoners released since 2012 had been re-convicted for any type of offending. This was contrasted with an overall re-offending rate of almost 50% for adults released from custody. Of 183 terrorist offenders released from custody since 2012, only 5 had been convicted of further Terrorism Act offences at that point.<sup>15</sup>

In February 2020 Lord Anderson received a response to a Parliamentary Question stating that between January 2013 and December 2019, 3.06% of released terrorist offenders (6 out of 196) had been convicted of a subsequent terrorist offence.<sup>16</sup>

## 1.3 Counter-terrorism strategy

### CONTEST

The Government published an update to its overarching counter-terrorism strategy, CONTEST, in 2018. Setting out the strategic context, it states that the UK faces a number of different and enduring terrorist threats, the foremost of which is Islamist terrorism.

The Strategy committed to introducing legislation that would enable the CPS to intervene at an earlier stage, underpinned by “longer prison sentences and stronger management of terrorist offenders after their release”.<sup>17</sup> The *Counter-Terrorism and Border Security Act 2019* introduced a number of new offences and provided for longer prison sentences for certain existing offences.

It also described the approach to managing risks from terrorist offenders, explaining that in 2017 the Home Office and Ministry of Justice established a joint unit to strengthen the response to the threat

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<sup>14</sup> Ibid, recommendation K

<sup>15</sup> Ibid, para 87

<sup>16</sup> [HL782, 11 February 2020](#)

<sup>17</sup> HM Government, [CONTEST](#), 2018, para 10



from extremism and terrorism in prisons and among those on probation. This unit manages the risk from a wide range of offenders, approximately 700 at any one time, ranging from highly motivated terrorists to those with mental health issues or other vulnerabilities

We identify the risk and needs of each offender of concern both in prison and on probation and provide a range of interventions, from psychological support and mentoring to education provision.<sup>18</sup>

A multi-agency case management process identifies those that pose the greatest risk of radicalising other prisoners. According to the Strategy, two specialist Separation Centres were introduced to help safeguard the mainstream prison population from these individuals (see part 4 below for further detail).

The National Prisons Intelligence Coordination Centre is a multi-agency organisation led by CTP which co-ordinates the response to the threat from extremism, terrorist and organised crime prisoners.<sup>19</sup> According to CONTEST it “continues to improve ... understanding of the risk terrorist offenders pose while in prison and upon release”.<sup>20</sup>

Terrorist offenders on probation are managed through the Multi-Agency Public Protection Arrangements (MAPPA, see part 4 below for further detail), with input from prisons, regional police-led Counter-Terrorism Units and other public service partners.

## Prevent

The *Prevent* strategy was drawn up after the London bombings of 2005, as part of CONTEST. It sought to deal with community cohesion and integration, with those individuals and groups promoting division and hatred, and with the factors that predispose individuals or groups to respond to terrorist ideologies.

The 2018 CONTEST strategy describes the objectives of Prevent, which are to:

- Tackle the causes of radicalisation and respond to the ideological challenge of terrorism.
- Safeguard and support those most at risk of radicalisation through early intervention, identifying them and offering support.
- Enable those who have already engaged in terrorism to disengage and rehabilitate.

The [Counter-Terrorism and Security Act 2015](#) (CTSA) put *Prevent* on a statutory footing, placing a duty on certain bodies, in the exercise of their functions, to have “due regard to the need to prevent people from being drawn into terrorism”.

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<sup>18</sup> Ibid, page 41

<sup>19</sup> [The 2017 Attacks: What needs to change?](#), Intelligence and Security Committee of Parliament, HC1694, 22 November 2018, para 61

<sup>20</sup> Ibid, page 41

A list of bodies that are subject to the duty, known as “specified authorities”, is set out in Schedule 6, and includes the governor of a prison in England and Wales and a provider of probation services.

These authorities must have regard to guidance issued by the Secretary of State in carrying out this duty. [Prevent duty guidance](#) for prisons and probation sets out the activities that should be carried out, including preliminary risk assessment; assessing ongoing risk and interventions; transition from custody to supervision in the community; and staff training.

According to the Office for Security and Counter-Terrorism (OSCT, part of the Home Office) a significant proportion of the Prevent budget is spent on implementation in the prison and probation system, and this is supplemented by funding from the Ministry of Justice and the Prison Service.<sup>21</sup>

The capability and effectiveness of counter terrorism work in prisons is assessed every six months via an assessment that looks at performance in terms of identifying and understanding extremist risk; and prisoner management, support and intervention.<sup>22</sup>

### **Desistance and disengagement**

A new part of the Government’s Prevent strategy is the Desistance and Disengagement Programme (DPP). The 2018 Strategy explains that a pilot project has focused on returning fighters:

The programme has been running in pilot through 2017, focusing on people subject to court approved conditions, including all terrorism and terrorism-related offenders on probation licence, as well as those on Terrorism Prevention and Investigation Measures (TPIMs) and those who have returned from conflict zones in Syria or Iraq and are subject to Temporary Exclusion Orders (TEOs). Where mandated for individuals subject to TEOs, TPIMs or probation requirements, non-compliance could lead to the possibility of being charged for breach of conditions or being recalled to prison.

130 The DDP reflects increasing collaboration across different elements of the counter-terrorism system, notably Prevent and Pursue. Through the DDP, we provide a range of intensive tailored interventions and practical support, designed to tackle the drivers of radicalisation around universal needs for identity, self-esteem, meaning and purpose; as well as to address personal grievances that the extremist narrative has exacerbated. Support could include mentoring, psychological support, theological and ideological advice. We are working with academics to inform development of the DDP.<sup>23</sup>

All terrorist offenders in prisons and subject to probation requirements may be required to attend interventions as part of DDP.<sup>24</sup>

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<sup>21</sup> [The 2017 Attacks: What needs to change?](#), Intelligence and Security Committee of Parliament, HC1694, 22 November 2018, para 66

<sup>22</sup> *Ibid*, para 67

<sup>23</sup> [CONTEST Strategy, 2018, paras 129-130](#)

<sup>24</sup> *Ibid*, page 41

## Counter-extremism strategy

In October 2015 the Government published a new [Counter-Extremism Strategy](#).<sup>25</sup> The Strategy set out evidence of extremism in institutions, including prisons, noting that there is a risk of peer-to-peer radicalisation in prisons as a result of the proximity of convicted terrorist and extremists to other prisoners who may be vulnerable to those promoting extremist ideologies. Groups such as Al-Muhajiroun have specifically targeted prisoners and those on probation, according to the Strategy.<sup>26</sup> As a result it announced a full review of the overall approach to dealing with Islamist extremism in prison, looking at

the nature and extent of the threat in prisons, current capabilities to manage that threat, including the management of high-risk offenders, and what we can learn from international best practice.<sup>27</sup>

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<sup>25</sup> Cm9148, October 2015

<sup>26</sup> Ibid, para 32

<sup>27</sup> Ibid, para 84. See 'The Acheson Review' below

## 2. Sentencing and release - England and Wales

The point at which a prisoner becomes eligible for release from prison, and whether the Parole Board will make the decision to release, depends on the type of custodial sentence they have been given and when it was imposed. This section sets out a brief summary of the current law.

In anticipation of the Bill, the Independent Reviewer of Terrorism Legislation published a detailed summary of [sentencing and release provisions in relation to terrorism offences](#), 7 February 2020.

### 2.1 Life sentence

Where a person is given a life sentence, a judge must specify the minimum term (sometimes called the tariff) the person must spend in prison before becoming eligible to apply to the Parole Board for release.<sup>28</sup> In rare cases a life sentence with a whole life order is imposed meaning that the offender is never considered for release.

Most prisoners with life sentences are eligible for release on life licence at the end of the minimum term. Release is subject to a Parole Board recommendation which is binding on the Secretary of State.<sup>29</sup> The Parole Board will only direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.<sup>30</sup> Once released, the offender remains on licence for life, liable to recall to prison.

### 2.2 Extended Determinate Sentence

An offender convicted of certain serious offences who is not given a life sentence and is judged to be 'dangerous' can receive an Extended Determinate Sentence (EDS).<sup>31</sup>

An EDS can be imposed where:

- an offender is convicted of a specified offence listed in [Schedule 15 of the Criminal Justice Act 2003](#),<sup>32</sup>
- the court considers that there is a significant risk to members of the public of serious harm from the offender committing further specified offences (this is known as the dangerousness test);
- the court is not required to impose a life sentence; and
- one of the following two conditions is met:

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<sup>28</sup> The Library briefing [The Parole System of England and Wales](#) provides information on the Parole Board

<sup>29</sup> Section 28 *Crime (Sentences) Act 1997*

<sup>30</sup> For details see Parole Board, Guidance, [How we make our decisions](#)

<sup>31</sup> The EDS was created by section 124 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*

<sup>32</sup> Further terrorism offences were added to Schedule 15 by the *Counter-Terrorism and Border Security Act 2019*

- condition A, that at the time the offence was committed the offender had been convicted of an offence listed in [Schedule 15B](#) of the *Criminal Justice Act 2003*
- condition B, that the appropriate custodial term for the current offence would be at least 4 years.

The specified terrorism offences for which an EDS is currently available are listed in Part 3 of Schedule 15 of the *Criminal Justice Act 2003*. A number of these offences were added to Schedule 15 by the *Counter-Terrorism and Border Security Act 2019*.

An EDS comprises a custodial term and an extended licence period. The extended licence period for a terrorist offence can be a maximum of eight years.

For all EDS imposed from 13 April 2015 the prisoner is eligible for release at the discretion of the Parole Board from the two thirds point of the custodial term.<sup>33</sup> The Parole Board will only direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.<sup>34</sup>

If the Parole Board does not grant release during the custodial part of the sentence, release is automatic at the end of the custodial term. When released, the offender must serve the remainder of their custodial term (if any) plus the extended period on licence and is liable to recall to prison during this time.

## Release of those sentenced to extended sentences before April 2015

There are different release provisions for those sentenced to extended sentences before 13 April 2015 and prior to 2012

### Extended determinate sentences imposed before 13 April 2015

Where an extended determinate sentence was imposed on or after 3 December 2012 and before 13 April 2015:

- If the custodial period was less than 10 years **and** the sentence was not imposed in respect of an offence in Schedule 15B to the *Criminal Justice Act 2003*, release is automatic at the two-thirds point of the custodial period.
- If the custodial period was less than 10 years, **but** the sentence was imposed in respect of an offence in Schedule 15B, **or** the custodial period was 10 years or more, release is at the discretion of the Parole Board at the two-thirds point of the custodial period. If parole is not granted, automatic release will be once the custodial period has been served in full.

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<sup>33</sup> Section 4 of the *Criminal Justice and Courts Act 2015* ended automatic release at the two thirds point of the custodial period for all extended determinate sentences imposed on or after 13 April 2015

<sup>34</sup> For details see Parole Board, Guidance, [How we make our decisions](#)  
The Library briefing [The Parole System of England and Wales](#) provides information on the Parole Board

### **Extended Sentences for Public Protection**

Other kinds of extended sentences were imposed prior to December 2012 and different release provisions are in place for these. The Extended Sentence for Public Protection (EPP) was created by the *Criminal Justice Act 2003*.

Where an EPP was imposed before 14 July 2008 release is at the discretion of the Parole Board at the halfway point of the custodial period. If the prisoner is not released by the Parole Board, release is automatic at the end of the custodial period. Where an EPP was imposed after 14 July 2008 release is automatic at the halfway point of the custodial period.<sup>35</sup>

## **2.3 Special Sentence for Offenders of Particular Concern**

For certain offences, if an offender is sentenced to a term of imprisonment, is not deemed 'dangerous' and does not receive a life sentence or EDS, the court must impose a Special Sentence for Offenders of Particular Concern (SOPC).<sup>36</sup>

The SOPC was introduced by the *Criminal Justice and Courts Act 2015*. A SOPC comprises the custodial term and an additional licence period. Release on licence from the half-way point is at the discretion of the Parole Board. Release is automatic at the end of the custodial term. On release the offender must serve the remainder of their custodial term (if any) plus 12 months on licence and is liable to recall to prison during this time.

The specified terrorism offences for which a SOPC is currently available are listed in [Schedule 18A](#) to the Criminal Justice Act 2003. Further terrorism offences were added to Schedule 18A by the *Counter-Terrorism and Border Security Act 2019*.

## **2.4 Standard determinate sentence**

The most common type of prison sentence is a standard determinate sentence. A person sentenced to a standard determinate sentence will serve the first half of the sentence in prison and the second half in the community on licence. Release at the half-way point in the sentence is automatic.<sup>37</sup> A person on licence may be recalled to prison.

For offences committed on or after 1 February 2015, offenders sentenced to less than two years will additionally be subject to post sentence supervision so that the licence and supervision periods will together make up 12 months.

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<sup>35</sup> The change to automatic release at the halfway point for EPPs imposed after 14 July 2008 was made by section 25 of the *Criminal Justice and Immigration Act 2008*

<sup>36</sup> Section 236A of the *Criminal Justice Act 2003*

<sup>37</sup> [Section 244](#) of the *Criminal Justice Act 2003*

## 3. Sentencing and release - Scotland

### 3.1 Determinate sentences

In Scotland prisoners serving short term custodial sentences (under four years) are automatically released at the halfway point.<sup>38</sup> Release is unconditional.<sup>39</sup> Prisoners serving long term sentences (four years or more) are eligible for release from the halfway point at the discretion of the [Parole Board for Scotland](#). The Parole Board for Scotland's website explains what happens if release is not directed at the halfway point:

If early release is not directed at the first review then the Board will reconsider the offender's case at no more than 12 month intervals until the offender reaches their Earliest Date of Liberation (the two thirds point of their sentence or 6 months before the expiry of the sentence depending on when they were sentenced) at which point the Scottish Ministers are statutorily required to release the prisoner into the community on licence.<sup>40</sup>

When prisoners serving a long term sentence are released into the community they will be on licence and can be recalled to prison if they commit an offence or otherwise breach the terms of this licence.<sup>41</sup>

### 3.2 Extended sentences

In Scotland the Court may impose an extended sentence if it is intending on passing a determinate sentence in relation to a sexual offence of any length, or a violent or terrorism offence of four years or more, and considers that the terms of a standard sentence would not be adequate for the purpose of protecting the public from serious harm from the offender. An extended sentence is made up of a custodial term and an extension period set by the Court (up to ten years).<sup>42</sup>

Prisoners serving an extended sentence are eligible for release by the Scottish Ministers on a recommendation from the Parole Board at the halfway point. If not released by the Parole Board, release will be automatic at either the two thirds point of the custodial part of the sentence or, for those sentenced after commencement of the *Prisoners (Control of Release) Scotland Act 2015* on 1 February 2016, at the end of the custodial term. Release will be on licence, subject to recall to prison, until the end of the extension period.

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<sup>38</sup> Section 1 of the *Prisoners and Criminal Proceedings (Scotland) Act 1993*

<sup>39</sup> There are exceptions for short term prisoners serving sentences for sex offences

<sup>40</sup> Parole Board for Scotland, [Frequently Asked Questions. What category of offender can qualify for parole?](#)

<sup>41</sup> Scottish Sentencing Council, [Prison sentences](#)

<sup>42</sup> [Terrorist Offenders \(Restriction of Early Release\) Bill, Explanatory Notes](#), para 26

## 4. Management of terrorist offenders

This section of the briefing applies to England and Wales.

The Government said in July 2019 that around 650 individuals in prison and probation were being managed through a counter terrorism specialist case management process. This included individuals with terrorism convictions and those identified as showing signs of extremist views or vulnerabilities.<sup>43</sup>

### 4.1 Management in prison

At the end of September 2019, there were 224 individuals in custody for terrorism-related offences. This includes individuals on remand as well as those serving a prison sentence. Of these, 173 were identified as Islamist extremists.<sup>44</sup>

#### Healthy Identities Intervention

Prisons run the Healthy Identities Intervention (HII) which aims to challenge the thinking of terrorism offenders. It involves prisoners in one to one interactions with specially trained prison psychologists talking about their motivations, beliefs and identity.<sup>45</sup> Involvement with HII is voluntary.

Christopher Dean, a forensic psychologist involved in creating HII, has explained its aims to the BBC:

"The two main aims of healthy identity intervention are primarily to try and make individuals less willing or prepared to commit offences on behalf of a violent extremist group cause or ideology," he said.

"If we can reduce someone's relationship or identification with a particular group, cause or ideology, that in itself may have an impact on whether they're willing to offend or not."<sup>46</sup>

A [process evaluation](#) carried out following the pilot of HII was published in 2018. A full evaluation is yet to be completed. Mr Dean explained why no assessment of the effectiveness of HII had been undertaken:

HII could not currently be tested like other rehabilitation programmes, he said, because there were too few offenders to get a scientifically-robust assessment of what worked.

Mr Dean said it would also be unethical to exclude some offenders from the scheme because of the risk of them returning to terrorism when there had been an opportunity to intervene in their lives while in prison.

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<sup>43</sup> [Prisoners: Radicalism: Written question - HL16558](#)

<sup>44</sup> Home Office, [Operation of police powers under the Terrorism Act 2000: quarterly update to September 2019: quarterly data tables](#), table P.01

<sup>45</sup> For details of the development of the programme see: National Offender Manager Service, [Healthy Identity Intervention: Summary and Overview](#), 2013

<sup>46</sup> [Top psychologist: No certainty terror offenders can be 'cured'](#), BBC, 2 January 2020



Concerns have been raised that there is not enough capacity to deliver the HII. HII is delivered by specially trained and qualified prison psychologists and requires repeated sessions which can take place over a number of months. Andrew Silke, Professor of Terrorism, Risk and Resilience at the Cranfield Forensic Institute, has said that prisoners willing to undertake the HII have been unable to do so due to a lack of resources.<sup>47</sup> This has led to access being prioritised on the basis of the seriousness of the prisoner's offence and the date they are due for release.

It has been reported that prison governors have been critical of HII stating that prisoners know how to "game the system" with their responses. David Wilson, Emeritus Professor of Criminology at Birmingham City University and a former prison governor, told the press:

Basically, people know what they have to say so that you can tick boxes to say you have done the courses. It is not rigorous and nobody has confidence that it does what it says on the tin.<sup>48</sup>

It has also been reported that prisoners are refusing to engage with HII

A growing number of terrorist prisoners are refusing to engage with efforts to deradicalise them, raising questions about the effectiveness of programmes intended to protect the public.

Others are refusing to participate after coming under pressure from their peers or because they are sceptical about the government making an assessment of the risk they pose to the prison system and the public.<sup>49</sup>

## The Acheson Review

In 2015 Ian Acheson, a former prison governor, was asked by the then Justice Secretary, Michael Gove, to lead a review into Islamist extremism in prisons, probation and youth justice. The review assessed the threat posed to prison and probation services by Islamist extremism and the capability of those services to meet that threat.

A [summary of the review](#) was published in August 2016. The review made 11 principal recommendations. These included:

- An independent advisor on counter-terrorism in prisons;
- A new security category for terrorist and extremist offenders;
- Specialist units to separate a small subset of extremists from the general population and provide deradicalisation interventions;
- Suitable training for staff;
- Tightened vetting of prison chaplains;
- Tackling the availability and source of extremist literature;
- Greater focus on the safe management of Friday prayers.

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<sup>47</sup> [Prisons put terrorists on waiting list to receive help to deradicalise](#), Guardian, 3 December 2019

<sup>48</sup> [London Bridge attack: Terrorist prisoners turn their backs on deradicalisation scheme](#), Times, 2 December 2019

<sup>49</sup> Ibid

In its [response to the review](#) the Government agreed to implement eight of the recommendations. It said it would be partially implementing or continuing to review its response to the other three recommendations.

In July 2019 the Government said it had delivered against all of the actions it agreed to implement in its response to the Acheson Review. Lord Keen said:

For example, Separation Centres were established to allow greater separation and specialised management of extremists who pose the highest risk to other prisoners. Over 22,000 prison staff, including all new recruits since January 2017, have received enhanced extremism awareness training, covering all forms of ideology. Arrangements are in place to systematically remove extremist literature from prisons, and tightened vetting arrangements for prisoner-facing staff, including the Chaplaincy, are now standard procedure.<sup>50</sup>

Other steps being taken to address Islamist extremism in prison were described by the Justice Secretary in May 2019:

A HMPPS and Home Office Joint Extremism Unit (JEXU) was established in April 2017 to be the strategic centre for all counter terrorism work in prison and probation and have oversight of delivery across the end-to-end offender management process.

Prisoners identified as being of extremist concern, or who have shown signs of being vulnerable to extremism, are managed actively as part of a comprehensive case management process. Over 22,000 prison staff have received specialist extremism awareness training, to enable them to identify, report and challenge extremist views. In addition, HMPPS employs multi-faith chaplaincy teams in all prisons, whose role it is to provide support, guidance and to challenge inappropriate behaviour. To further help offenders rehabilitate and disengage from extremism and terrorism, JEXU has rolled out a theological intervention programme. A small group of chaplains are receiving specialised training and ongoing support to lead this important capability.<sup>51</sup>

Recently, Ian Acheson has questioned the progress the Government has made since his review. In December 2019 he said:

I'm not sure any tangible progress has been made since my review concluded three years ago.<sup>52</sup>

Following the Streatham attack, Mr Acheson told the BBC Radio 4's Today programme that he remained concerned about the prison service's ability to manage terrorist offenders. He said:

I am still unconvinced that the prison service itself has the aptitude or the attitude to assertively manage terrorist offenders.<sup>53</sup>

## Separation centres

One of the recommendations made by Ian Acheson was specialist units to hold a small subset of extremists "who present a particular and

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<sup>50</sup> [Islamist Extremism in Prisons, Probation and Youth Justice Review: Written question - HL16557](#)

<sup>51</sup> [Prisons: Radicalism: Written question - 254762](#)

<sup>52</sup> [London Bridge attack: I told ministers we were treating terrorist prisoners with jaw-dropping naivety. Did they listen?](#), Sunday Times, 1 December 2019

<sup>53</sup> [Streatham attack shows Britain needs new ideas on deradicalisation](#), Guardian, 4 February 2020

enduring risk to national security through subversive behaviour, beliefs and activities” separately from the general prison population.

The Government announced the opening of the first separation centre at HMP Frankland in July 2017. A press release explained its use:

Offenders are placed in the specialist centres if they are involved in planning terrorism or are considered to pose a risk to national security. Those seeking to influence others to commit terrorist crimes, or whose extremist views are purposely undermining good order and security in the prison estate, may also be placed in the centre.<sup>54</sup>

A second centre, at HMP Full Sutton, was opened in April 2018.<sup>55</sup> A third was planned at HMP Woodhill but has not opened.

It has been reported that only one, HMP Frankland, is now in use. An article in the Times gave possible reasons for the lack of use:

Prison sources said that one reason why only one centre was open was that the criteria for eligibility had been set high. Others said that legal challenges by prisoners against being held in the units made the prison service reluctant to place more inmates in the centres.<sup>56</sup>

A Ministry of Justice spokesperson gave the following comment:

“Separation centres are just one way in which we manage them, and we are reviewing how they are used in light of recent events. We know the majority of extremist prisoners can be managed in the mainstream prison system and putting more into the centres could undermine their main purpose.”

## 4.2 Management on release

### MAPPA

Terrorist offenders are monitored and managed under Multi Agency Public Protection Arrangements (MAPPA).<sup>57</sup> MAPPA is not a statutory body in itself but is a mechanism through which agencies can better discharge their statutory responsibilities and protect the public in a co-ordinated manner. The agencies involved include police, the probation service, and the security services.

MAPPA offenders are managed at one of three levels according to the extent of agency involvement needed and the number of different agencies involved. The great majority are managed at level 1 (ordinary agency management). This involves the sharing of information but does not require multi-agency meetings. The others are managed at level 2 if an active multi-agency approach is required (MAPP meetings), and at level 3 if senior representatives of the relevant agencies with the authority to commit resources are also needed.

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<sup>54</sup> Ministry of Justice, press release, [Radical extremists moved as first separation centre opens](#), 6 July 2017

<sup>55</sup> Ministry of Justice, press release, [Government bolsters crackdown on extremism in prisons](#), April 2018

<sup>56</sup> [Two in three ‘jails within jails’ left empty of Islamists](#), Times, 5 February 2020

<sup>57</sup> MAPPA is also used for serious violent and sexual offenders

Prior to a prisoner's release these agencies consider additional licence conditions to be imposed (see below).

[Chapter 24 of MAPPA Guidance](#) provides detail on the management of terrorist and domestic extremist offenders. It states that these offenders should be considered for management at the higher levels of MAPPA:

Given the nature of their offending, these offenders should be considered for active multi-agency management at MAPPA level 2 or 3. This is even though some offenders may have committed what on the face of it appears to be a low-level offence. The very fact of their involvement in such an activity, or in a group committed to terrorist or extremist acts, significantly raises the potential level of risk of serious harm which they present.<sup>58</sup>

The Government has announced a review of MAPPA for monitoring and managing terrorist offenders, to be led by the Independent Reviewer of Terrorism Legislation. [Terms of reference](#) were published on 24 January 2020.

### Licence conditions

All prisoners released on licence will be supervised in the community and must comply with certain conditions. Standard conditions such as keeping in touch with and receiving visits from a supervising officer and residing permanently at an address approved by the officer apply to all offenders. Additional licence conditions may also be imposed where necessary and proportionate to effectively manage the offender. These can include:

- restrictions on the possession and use of mobile phones and on use of the internet,
- reporting to the police
- residence at Approved Premises
- a curfew with electronic monitoring.

Further conditions are available only for extremist or terrorist offenders. These too can only be imposed where necessary and proportionate to manage the risk posed by the offender. These conditions can include:

- No contact with any person charged or convicted of any extremist related offence, without prior approval of the supervising officer
- Not attending or organising any meetings or gatherings other than those convened solely for the purposes of worship without prior approval of the supervising officer
- Not possessing, without the prior approval of the supervising officer, any material or notes:
  - which contain encoded information or
  - that promote the destruction of or hatred for any religious or ethnic group or

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<sup>58</sup> [MAPPA Guidance 2012](#), Version 4.5, Updated July 2019, para 24.8

- that celebrates, justifies or promotes acts of violence, or that contain information about military or paramilitary technology, weapons, techniques or tactics.

The Prison Service Instruction, [Licence Conditions, Licences and Licence and Supervision Notices](#), 12/2015, sets out in detail the various licence conditions that can be imposed. Annex B lists the additional conditions that are available only for terrorist or extremist offenders.

If an offender breaches the conditions of their licence they can be returned (recalled) to prison to serve part, or all, of the remainder of their sentence in prison.<sup>59</sup>

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<sup>59</sup> For detail on recall see: Ministry of Justice/ HM Prison and Probation Service, [Recall, Review and Re-Release of Recalled Prisoners Policy Framework](#), 27 January 2020

## 5. Disruptive powers: alternative measures for managing terrorist suspects

Disruptive powers are used by MI5 and CTP to dissuade or prevent individuals from engaging in terrorist-related activities. They provide an opportunity to manage risk where prosecution is not possible. According to MI5, disruptive powers is the term they employ “for everything in addition to and alongside prosecution that we can reach for that can make a difference to the risk presented by individuals”. This includes warnings to individuals that their activities are being monitored by the authorities and the issuing of Terrorism Prevention and Investigation Measures, as well as various immigration powers.<sup>60</sup>

### 5.1 Terrorism Prevention and Investigation Measures

Terrorism Prevention and Investigation Measures (TPIMs) were introduced by the [Terrorism Prevention and Investigation Measures Act 2011](#) (TPIMA).

A TPIM notice imposes restrictions on an individual in order to protect the public from a threat posed by a person suspected of terrorism-related activity. TPIMs are intrusive measures aimed at disrupting terrorism related activity and facilitating the investigation of such activity. They are intended to be used as an exceptional measure in cases where there is a terrorist threat but it is not possible to prosecute or deport the suspect.

TPIM notices can only be imposed in certain cases that meet the statutory conditions set out in the TPIMA.

The Act provides for measures to be imposed on an individual where the Secretary of State is satisfied, on the balance of probabilities, that the person is, or has been, involved in terrorism-related activity. There are five conditions (‘Conditions A – E’) that must be met before a TPIM notice can be imposed. These conditions are set out in [section 3](#) of the Act:

Conditions A to E

(1) Condition A is that the Secretary of State is satisfied, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity (the “relevant activity”).

(2) Condition B is that some or all of the relevant activity is new terrorism-related activity.

(3) Condition C is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for terrorism

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<sup>60</sup> [The 2017 Attacks: What needs to change?](#), Intelligence and Security Committee of Parliament, HC1694, 22 November 2018, para 220. Details of additional methods were redacted from the report.

prevention and investigation measures to be imposed on the individual.

(4) Condition D is that the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified terrorism prevention and investigation measures to be imposed on the individual.

(5) Condition E is that—

- a) the court gives the Secretary of State permission under section 6, or
- b) the Secretary of State reasonably considers that the urgency of the case requires terrorism prevention and investigation measures to be imposed without obtaining such permission.

In relation to Condition A, “terrorism-related activity” is defined in [section 4](#) as:

- a) the commission, preparation or instigation of acts of terrorism;
- b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
- c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;
- d) conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraph (a).

In relation to Condition B, “new terrorism-related activity” is defined in [section 3\(6\)](#) as:

- a) if no TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring at any time (whether before or after the coming into force of this Act);
- b) , terrorism-related activity occurring after that notice came into force; or
- c) if two or more TPIM notices relating to the individual have been in force, terrorism-related activity occurring after such a notice came into force most recently. Where the above five conditions are met, a TPIM notice can be imposed only where prosecution or deportation (in the case of foreign nationals) is not considered possible.<sup>61</sup> [Section 10](#) of the Act places a duty on the Secretary of State to consult on the prospects of prosecuting an individual before any measures can be imposed.

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<sup>61</sup> Home Office Memorandum to the Home Affairs Committee, '[Post-Legislative Assessment of the Terrorism Prevention and Investigation Measures Act 2011](#)', October 2016, p1, para 4

The list of measures that may be imposed by a TPIM include the following:

- Overnight residence requirement
- Travel restriction
- Exclusion areas (often tightly drawn, street by street)
- Movement restrictions
- Financial services measure
- Property measure, ie limitations on items permitted to be in the possession of the TPIM subject
- Weapons/explosives prohibition (clearly necessary in every case)
- Electronic communications device restriction
- Association measure ie a list of persons whom the TPIM subject is forbidden from meeting or contacting in any way
- Work and study allowances or restriction
- Reporting measure ie to physically present oneself at a nominated police station on a frequency up to seven days a week
- Requirement to attend appointments when notified
- Requirement to submit to new photographs of the TPIM subject eg to monitor and protect against risk of absconion
- Monitoring, to include the continual wearing of a GPS tag, usually an ankle tag
- Relocation up to 200 miles from the subject's ordinary home.

Section 19 of the Act requires the Secretary of State to report regularly to Parliament on the use of the powers. As of 27 January 2020 there were 5 TPIM notices in force, all of which were in respect of British citizens.<sup>62</sup>

## 5.2 Serious Crime Prevention Orders

The Serious Crime Act 2007 introduced Serious Crime Prevention Orders (SCPO) for the purpose of preventing and disrupting further serious criminal activity, by those who have been involved in previous serious criminal activity. They are intended to be preventative rather than punitive and can be applied if there is a real risk that an individual will be involved in further criminal conduct. They can contain prohibitions, restrictions or requirements that a court consider appropriate for the purpose of protecting the public.

The [Counter-Terrorism and Border Security Act 2019](#) extended SCPOs to terrorism offences. A [Government Factsheet](#) accompanying the Bill explained that this would enable the imposition of conditions “to protect the public from risks posed by individuals who are considered to

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<sup>62</sup> [HC Deb 27 January 2020, c26WS](#)



have been involved in and to pose a continuing risk of involvement in serious crime”.

### 5.3 Surveillance

The Government have stated that Sudesh Amman was under surveillance by armed police at time of the Streatham attack, which enabled swift intervention.<sup>63</sup>

According to CONTEST, CTP and the security and intelligence agencies use a wide range of tactical and technical capabilities to disrupt terrorist activity, including covert human intelligence sources, surveillance assets and the interception of communications.<sup>64</sup> These powers are governed by the *Regulation of Investigatory Powers Act 2000* and the *Investigatory Powers Act 2016*.

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<sup>63</sup> HC Deb 3 February 2020, c

<sup>64</sup> [CONTEST](#), para 136

## 6. Retrospectivity and the European Convention on Human Rights

It is possible that the Bill engages provisions of the European Convention on Human Rights (ECHR).

Article 7 of the ECHR provides that there should be no punishment without law:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.<sup>65</sup>

Article 7 thus prohibits the retrospective application of the criminal law where it is to an accused or convicted individual's disadvantage. This includes modifying the scope of a "penalty" while the sentence is being served.

However, Article 7 will only be engaged if the changes to release provisions constitute a "penalty". The domestic courts and the European Court of Human Rights (ECtHR) have drawn a distinction between measures that constitute a "penalty" and measures relating to the "enforcement" or "administration" of that penalty. Issues relating to release policies and the manner of their implementation are not generally considered to come within the definition of a "penalty".<sup>66</sup>

In *Hogben*, the applicant was sentenced to life imprisonment. Whilst serving his sentence, the Government changed policy to the effect that he would only be eligible for release on parole after serving 20 years of his sentence of imprisonment. He challenged the policy on the basis that it breached his Article 7 rights. The House of Lords held that the sentence imposed by the court was the punishment, and that changes to the parole system that result in an offender having to spend longer in prison did not amount to a punishment or penalty that went beyond that sentence.<sup>67</sup>

The European Commission of Human Rights rejected his application on the basis that the "penalty" was life imprisonment and that changes to

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<sup>65</sup> The ECtHR has produced a [Guide to Article 7](#) which explains in detail the Court's approach to determining its scope

<sup>66</sup> *Ibid*

<sup>67</sup> [1985] AC 318

parole policy related to the execution of the sentence, rather than the “penalty” itself.<sup>68</sup>

In *Uttley*<sup>69</sup> the applicant challenged a change in the rules relating to release on licence which occurred between when he committed certain offences and when he was convicted and sentenced for those offences. The effect of the change was a requirement that he spend additional time on licence after serving the custodial part of the sentence. The Court of Appeal held that Article 7 had been violated and made a declaration that the relevant provisions were incompatible with the ECHR. However, on appeal the House of Lords concluded that Article 7 would only be infringed if a sentence was imposed on a defendant that constituted a heavier penalty than that which could have been imposed at the time the offence was committed. Because Mr Uttley had not received the maximum sentence for the offences he had committed, the subsequent imposition of additional licence conditions did not amount to a heavier penalty.

The ECtHR declared his application inadmissible, finding that the licence conditions were not part of the penalty, but part of the regime by which prisoners could be released before serving the full term of the sentence imposed.<sup>70</sup>

Notwithstanding the distinction drawn by the courts between the “penalty” itself and its “administration”, the ECtHR has held that changes relating to remission of sentences are capable of violating Article 7. In *Del Rio Prada* the Court found that changes to Spanish policy relating to early release and remission of sentence made whilst the applicant was serving her sentence did have the effect of altering the “scope” of the “penalty”, and therefore constituted a breach of Article 7.<sup>71</sup> The Court noted that the distinction between the “penalty” and its “manner of execution” was not always clear cut, and it therefore had to examine in each case what the “penalty” imposed actually entailed under domestic law in order to determine its “intrinsic nature”.

The Government is required by section 19 of the Human Rights Act to make a statement confirming that a Bill is compatible with the Convention. According to the Explanatory Notes the government considers that the Bill is compatible with the ECHR and does not engage Article 7, on the basis that it does not increase the penalty imposed by the court,

The government considers that release arrangements are part of the administration of a sentence, which can change without breaching an offender’s human rights.<sup>72</sup>

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<sup>68</sup> *Hogben v UK* (1986) ECHR, App. No. 11653/85

<sup>69</sup> *R (Uttley) v Secretary of State for the Home Department* (2003)

<sup>70</sup> [2005] ECHR 955

<sup>71</sup> *Del Rio Prada* ECHR 307 (2013)

<sup>72</sup> Terrorist Offenders (Restriction of Early Release) Bill, Explanatory Notes, para 70

The ECHR Memorandum provides some further analysis of the case law and states that

Article 7 is engaged but not breached because whilst the provisions will be applied retrospectively to all relevant offenders who already have these sentences imposed at the point of commencement, the provisions do not alter the length of the sentence, and therefore the penalty, already imposed by the court.<sup>73</sup>

The Memorandum also states that Article 5 (liberty and security); Article 8 (private and family life); and Article 14 (discrimination) are engaged but not breached by the Bill.

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<sup>73</sup> [Terrorist Offenders \(Restriction of Early Release\) Bill 2020: ECHR Memorandum](#), para

## 7. Related Government proposals

In the [December 2019 Queen's Speech](#) the Government said it would introduce new sentencing laws to “ensure the most serious violent offenders, including terrorists, serve longer in custody”. The [background briefing notes](#) provided set out the main elements to be included in a Counter-Terrorism (Sentencing and Release) Bill:

- Tougher sentences for the most serious terrorist offenders and a 14-year minimum for the worst terrorist offenders.
- Removing the possibility of any early release from custody for dangerous terrorist offenders who receive an Extended Determinate Sentence (EDS).
- Moving the earliest point for discretionary release by the Parole Board from half-way to two thirds for terrorist offenders who are not deemed “dangerous” and therefore do not receive an EDS.
- Measures to strengthen licence supervision for terrorist offenders.

A [press release](#) from the Home Office and Ministry of Justice in January 2020 said the new Counter-Terrorism Bill would be introduced in the first 100 days of this Government.<sup>74</sup> It also announced a review of the Multi Agency Public Protection Arrangements (MAPPA) for monitoring and managing terrorist offenders.

The Justice Secretary made a [statement to Parliament](#) on 3 February 2020 in response to the Streatham attack the previous day. He spoke about the measures to be proposed in the Counter-Terrorism Bill but stated that in addition to this, more immediate action was required. He announced that emergency legislation would therefore be introduced.

The Justice Secretary spoke of the wider measures being considered:

When someone is released we will always ensure that terrorist offenders are subject to the most robust safeguards. And we will consider whether new legislation is required to provide additional assurance.

And finally, we will review whether the current maximum penalties and sentencing framework for terrorist offences is indeed sufficient or comprehensive on the underlying principle that terrorist offenders should no longer be released until the Parole Board is satisfied that they are no longer a risk to the public.<sup>75</sup>

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<sup>74</sup> Gov.uk, [Tougher sentencing and monitoring in government overhaul of terrorism response](#), 21 January 2020:

<sup>75</sup> Gov.uk, [Government response to the Streatham incident](#), 3 February 2020

## 8. The Bill

The Bill would provide that offenders who have been given a determinate sentence for a relevant terrorism offence do not become eligible for release until the two thirds point of their sentence. Release at the two thirds point would not be automatic. These offenders would be referred to the Parole Board to decide if they are safe to release on licence.

The changes would apply not only to those sentenced for the relevant offences in the future, but also to those currently in custody serving sentences for these offences. The Government has said around 50 prisoners currently serving standard determinate sentences would be affected by the changes.<sup>76</sup>

The Government's [ECHR Memorandum](#) for the Bill explains:

... some prisoners currently serving the custodial part of their sentence will now spend longer in prison until they can be considered for release, and some will have lost a right to automatic release before the end of their custodial term or sentence, some both. All will now be liable, unless released earlier by the Board, to serve until the end of their custodial term or end of sentence (depending on the type of sentence they are serving).<sup>77</sup>

The Government's [Impact Assessment](#) for the Bill estimates that the changes made by the Bill would result in fewer than 100 additional prisoners, at an estimated cost annually, in a steady state, of £1.8 million. The Impact Assessment estimates costs of £18.3 million to build prison places for prisoners kept in custody for longer as a result of the changes.

### 8.1 Release from the two thirds point subject to Parole Board decision

#### England and Wales

**Clause 1** of the Bill would insert a new section 247A into the *Criminal Justice Act 2003*. This would create a new release provision that would apply to all relevant terrorist offenders serving the following fixed term sentences:

- Standard Determinate Sentence (SDS)
- Sentence for Offenders of Particular Concern (SOPC)
- Extended Determinate Sentence (EDS) imposed before 13 April 2015
- Extended Public Protection sentences (EPP)
- Discretionary Conditional Release sentence which applied under the *Criminal Justice Act 1991*.

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<sup>76</sup> Ministry of Justice, press release, [End to automatic early release of terrorists](#), 11 February 2020

<sup>77</sup> *Terrorist Offenders (Restriction of Early Release) Bill*, [ECHR Memorandum](#), Para 8

Relevant terrorist offenders would become eligible for release at the two thirds point of their sentence. In the case of an extended sentence or SOPC this would be the two thirds point of the custodial element of their sentence.

At the two thirds point of their sentence these offenders would be referred to the Parole Board which would decide whether they are safe to be released on licence.

If the Parole Board decides that a prisoner is not safe to release at the two thirds point, a review would take place at least every two years. If a prisoner is serving an EDS, EPP or SOPC the Secretary of State would be under a duty to release them on licence at the end of the custodial part of their sentence if discretionary release is not directed by the Parole Board before that point. If not released earlier by the Parole Board, those serving a standard determinate sentence will be released, without licence conditions, at the end of their sentence.

Relevant terrorist offenders will be those who have been convicted of a terrorism offence specified in a new Schedule 19ZA, or any other offence specified in that Schedule where the court found a terrorist connection. These are listed in **Schedule 1** of the Bill. They include various offences provided for by the Terrorism Acts,<sup>78</sup> such as membership of proscribed organisations, and collecting information likely to be useful for terrorism. Inchoate versions of these offences are also included, namely attempt; conspiracy; assisting and encouraging; incitement; and aiding, abetting, counselling or procuring.<sup>79</sup>

Schedule 1 also lists various violent offences that are not necessarily terrorist offences, but may be deemed to have a "terrorist connection" for the purposes sentencing under provisions in the *Counter-Terrorism Act 2008*. These include common law offences, such as kidnapping, and statutory offences, such as hijacking an aeroplane. Where such offences are deemed to have a terrorist connection they are liable to more severe penalties than when committed without a terrorist connection.

According to the Government's press release 'only a handful of minor offences – where there is a maximum penalty of 2 years or below – will be excluded. It gives the example of wearing a uniform or displaying an article of a proscribed organisation.'<sup>80</sup>

The changes made by the Bill would apply both to sentences imposed in the future and to existing sentences during the custodial period and so would apply to relevant terrorist offenders currently in prison. The changes would not apply to those who have already been released.

**Clause 2** would disapply the current release provision regime for those terrorist prisoners who would be released under the new section 247A.

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<sup>78</sup> The Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001, the Terrorism Act 2006, the Counter-Terrorism Act 2008, the Terrorism Prevention and Investigation Measures Act 2011, and the Counter-Terrorism and Security Act 2015

<sup>79</sup> Inchoate offences are offences where the substantive offence has not been committed

<sup>80</sup> Ministry of Justice, press release, [End to automatic early release of terrorists](#), 11 February 2020

## Scotland

**Clause 3** would insert a new section 1AB into the *Prisoners and Criminal Proceedings (Scotland) Act 1993* to make provisions for Scotland in line with the changes that would be made in England and Wales by clause 1.

Scottish Ministers would be required to refer prisoners serving short term and long term custodial sentences and extended sentences for specified terrorist offenders to the Parole Board at the two thirds point of their sentence. The relevant terrorist and terrorist-related offences are listed **Schedule 2** of the Bill and are similar to those provided for in Schedule 1 in relation to England and Wales.

**Clause 4** would disapply various existing release provisions in Scottish law which would otherwise apply to prisoners to be released under new section 1AB.

## Under 18s

The changes made to the point of eligibility for release would also apply to relevant offenders aged under 18.<sup>81</sup>

## 8.2 Setting licence conditions on automatic release at end of a custodial term

**Clause 5** would transfer responsibility for setting licence conditions to the Secretary of State when a prisoner is automatically released at the end of the custodial term of a SOPC or extended sentence in England and Wales.

## 8.3 Consequential amendments

**Clause 6** would make consequential amendments relating to transitional cases in England and Wales. It would amend Schedule 20B of the *Criminal Justice Act 2003* which preserves applicable release provisions for sentences which have been repealed, but still apply to prisoners serving their sentences.

**Clause 7** would make other consequential amendments to the law in England and Wales. This would include adding the new section 247A to section 128 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* which allows for all parole release test provisions to be altered by affirmative statutory instrument.

**Clause 8** would make transitional provision for terrorist prisoners subject to supervised release orders in Scotland. **Clause 9** would make consequential amendments to the law in Scotland.

For further detail on these clauses see the [Explanatory Notes](#).

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<sup>81</sup> For details see: [Terrorist Offenders \(Restriction of Early Release\) Bill, Explanatory Notes](#), para 2



## 9. Reaction/ commentary

Responding to the initial announcement of emergency legislation on 3 February, the shadow Justice Secretary, Richard Burgon, suggested that funding cuts to the justice system over the last decade had had a negative impact on public safety. He pointed to “huge cuts to prison budgets” and questioned how many of the recommendations from the 2016 review of extremism in prisons had been implemented.<sup>82</sup>

In response to the Bill being presented on 11 February, Labour and SNP expressed support in principle for the Bill. Valerie Vaz, the shadow Leader of the House, stated that the position of the Opposition was that terrorist prisoners should not be released automatically but be subject to Parole Board assessment before release while serving their sentences.<sup>83</sup>

Lord Carlile, the former independent reviewer of terrorism legislation, suggested it was likely that the retrospective element of the legislation would trigger challenges in the Supreme Court and the European Court of Human Rights. He also suggested that there are likely to be questions over the transparency and accountability of the proposed role of the Parole Board.<sup>84</sup>

Lord Anderson QC, another former independent reviewer of terrorism legislation, supported the involvement of the Parole Board in the release of terrorist prisoners and believed that the Government had good reason to fear “copycat” attacks following the recent attacks. However, he suggested that problems could arise if offenders end up serving their entire sentence in custody, because there would be no licence period or opportunity to monitor compliance with licence conditions. TPIMs could be used to avoid this “cliff-edge” scenario.<sup>85</sup>

Lord Carlile had earlier argued in a paper published by Policy Exchange that:

...legislating to prevent seriously dangerous convicted terrorists and possibly some other dangerous offenders from being released early into the community on licence is an idea that deserves serious consideration (and properly informed debate in both Houses of Parliament). It is likely to gain public support but judges must be persuaded of its legal integrity too.<sup>86</sup>

In advance of the Bill being published the Parole Board welcomed news of the proposed changes to ensure that terrorist offenders are not released automatically.<sup>87</sup> Chief Executive, Martin Jones, said that Parole Board expected to take on about 50 terrorist release cases a year under

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<sup>82</sup> [HC Deb 3 February 2020, c58-59](#)

<sup>83</sup> [Business Statement, 11 February 2020](#)

<sup>84</sup> [Race to pass law blocking early release for terrorists](#), *The Times*, 11 February 2020

<sup>85</sup> Ibid

<sup>86</sup> Walton, R, *Justice that protects*, Policy Exchange, 2020

<sup>87</sup> Parole Board, [Parole Board response to events at London Bridge and Streatham](#), 3 February 2020

the proposals. He set this in the context of the 25,000 cases a year the Parole Board deals with currently.<sup>88</sup>

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<sup>88</sup> [Parole Board can cope with planned reforms for terror convicts, chief exec says](#), Civil Service World, 4 February 2020

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