HOUSE OF LORDS Library Briefing

Counter-Terrorism and Border Security Bill HL Bill 131 of 2017–19

Summary

The Counter-Terrorism and Border Security Bill is a government bill which, having completed its legislative stages in the House of Commons, was introduced in the House of Lords on 12 September 2018. It is scheduled to have its second reading on 9 October 2018. The Bill contains a range of counter-terrorism measures, many of which update, amend and add to those already set out in existing legislation. For example, the Bill would:

- make it an offence to express support for a proscribed terrorist organisation when the individual is "reckless" as to whether it would encourage parties to the expression to support such an organisation;
- create an offence of streaming certain terrorism-related material over the internet;
- make it an offence to enter or remain in certain areas as designated by the Secretary of State (eg areas controlled by certain terrorist groups);
- extend extra-territorial jurisdiction and the maximum sentences applicable to certain offences;
- extend the powers of local authorities in connection to the Prevent strategy; and
- amend provisions in relation to retention of biometric data.

The provisions follow the Government's commitment to review and update its counter-terrorism strategy, and are also a reaction to terrorist attacks in the UK over the last few years. In addition, the Bill would provide officials powers to stop, search and detain individuals at ports and borders to determine whether individuals are involved with, or have been involved with, "hostile state activity". The Government has confirmed this is in response to the suspected involvement of Russia in the poisoning of Sergei and Yulia Skripal in Salisbury in March 2018. Although the purpose of the Bill was largely supported by opposition parties in the House of Commons, concerns were raised over the operation and wording of several clauses, for example over the application of the port and border powers and over how some of the new or revised offences may effect innocent people.

This Briefing provides details on each of the Bill's clauses (including consideration by the Joint Committee on Human Rights where applicable) and highlights some of the issues and amendments covered during the Bill's House of Commons stages.

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1. Introduction

The Counter-Terrorism and Border Security Bill is a government bill which received its first reading in the House of Commons on 6 June 2018. Having completed its legislative stages in the House of Commons, it was introduced in the House of Lords on 12 September 2018. It is scheduled to have its second reading on 9 October 2018. The Bill follows the Government's ongoing commitment to regularly review and update terrorism legislation and is in response to recent national security incidents (such as terrorist attacks in Manchester and Westminster). Referring to these incidents, the explanatory notes to the Bill outline the Government's specific belief that counter-terrorism legislation needs updating:

> Andrew Parker, the Director General of MI5, in a speech on 17 October 2017, described the ongoing terrorist treat as "multi-dimensional, evolving rapidly, and operating at a scale and pace we've not seen before". In the year ending 31 December 2017, there were 412 arrests for terrorism-related offences in Great Britain, an increase of 58 percent compared with the 261 arrests in the previous year.
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> Against the background of this heightened terrorist treat, the Government considers it necessary to update and strengthen the legal powers and capabilities available to law enforcement and intelligence agencies to disrupt terrorism and ensure that the sentences for terrorism offence properly reflect the seriousness of the crime. On 4 June 2017, following the London Bridge attack, the Prime Minister announced that there would be a review of the Government's counter-terrorism strategy "to make sure the police and security services have all the powers they need". Subsequently, on 3 October 2017, the then Home Secretary announced that counter-terrorism laws would be updated to keep pace with modern online behaviour and to address issues of online radicalisation.[1]

Part 1 of the Bill would update existing counter-terrorism legislation[2] to address the Government's concerns, and seeks to "strengthen powers and capabilities" contained within the Government's counter-terrorism strategy, 'CONTEST'.[3] The most recent strategy was published on 4 June 2018.[4]

Part 2 has been prepared in response to the poisoning of Sergei and Yulia Skripal in Salisbury in March 2018. The UK Government has accused Russia

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[1] Explanatory Notes, p 1.
[2] For example, the Terrorism Acts of 2000 and 2006, the Counter-Terrorism Act 2008, the Terrorism Asset-Freezing etc Act 2010, the Terrorism Prevention and Investigation Measures Act 2011 and the Counter-Terrorism and Security Act 2015.
[3] Explanatory Notes, p 5.
[4] Home Office, 'Counter-Terrorism Strategy (CONTEST) 2018', 4 June 2018.

of being behind the attack, about which the Bill's explanatory notes states:

> On 4 March 2018, Sergei and Yulia Skripal were poisoned with Novichok, a military-grade nerve agent of a type developed by Russia. On 12 March 2018, the Prime Minister announced that the Government had "concluded that it is highly likely that Russia was responsible for the act against Sergei and Yulia Skripal".[5] In a subsequent oral statement on 14 March 2018[6], the Prime Minister further announced that as part of its response to the Salisbury incident, the Government would "urgently develop proposals for new legislative powers to harden our defences against all forms of hostile state activity".[7]

More recently, on 5 September 2018, the Prime Minister, Theresa May, made a further statement in the House of Commons linking the incident to the Russian state.[8] She also announced that the Crown Prosecution Service (CPS) was now seeking to bring charges against two Russian nationals, who were believed to be linked to the Russian military intelligence service:

> Just as the police investigation has enabled the CPS to bring charges against the two suspects, so the security and intelligence agencies have carried out their own investigations into the organisation behind this attack. Based on this work, I can today tell the House that, based on a body of intelligence, the Government have concluded that the two individuals named by the police and CPS are officers from the Russian military intelligence service, also known as the GRU. The GRU is a highly disciplined organisation with a well-established chain of command, so this was not a rogue operation. It was almost certainly also approved outside the GRU at a senior level of the Russian state.
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> […]
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> [W]ith respect to the two individuals, as the Crown Prosecution Service and police announced earlier today, we have obtained a European Arrest Warrant and will shortly issue an Interpol red notice. Of course, Russia has repeatedly refused to allow its nationals to stand trial overseas, citing a bar on extradition in its constitution. So, as we found following the murder of Alexander Litvinenko, any formal extradition request in this case would be futile. But should either of these individuals ever again travel outside Russia, we will take every possible step to detain them, to extradite them and to bring them to face justice here in the United Kingdom.[9]

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[5] HC *Hansard*, 12 March 2018, col 620.
[6] HC *Hansard*, 14 March 2018, col 856.
[7] Explanatory Notes, p 5.
[8] HC *Hansard*, 5 September 2018, cols 167–70.
[9] ibid, cols 168–9.

However, Russia, and the two suspects, have continued to deny any involvement in the attack.[10]

Part two of the Bill would provide additional powers to stop, question, search and detain individuals at ports and borders to determine whether they are, or have been, involved in any activities that may threaten the UK's national security.

2. Provisions

This section sets out brief details on the main clauses in the Bill. In addition, where the Joint Committee on Human Rights (JCHR) has commented about the clauses in its scrutiny of the Bill these are set out alongside the Government's response.[11] The JCHR published its report on the Bill on 10 July 2018, and considered oral evidence from Liberty and the Independent Reviewer of Terrorism Legislation, Max Hill.

Clause 1: Expressions of Support for a Proscribed Organisation

This clause would amend the Terrorism Act 2000 to make it an offence to express an opinion or belief that is supportive of a proscribed organisation in circumstances where the perpetrator is "reckless" as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation. Organisations believed to be linked with terrorism are proscribed by the Home Secretary and subsequently listed as a proscribed organisation under the 2000 Act (examples include Boko Haram, ISIL/Daesh).[12]

The JCHR raised concerns over this clause, believing it could violate Article 10 of the European Convention on Human Rights (ECHR): freedom of expression. It believed the offence was drafted too broadly:

> There is a careful balance to be struck to ensure that valid freedom of expression is not unintentionally caught by new offences. In that regard it is important to recall that even speech that offends, shocks or disturbs, is still protected. The clause as currently drafted potentially catches a vast spectrum of conduct. An offence must be clearly defined in law and formulated with sufficient precision to enable a citizen to foresee the consequences which a given course of conduct may entail. It is unclear as to what type of expression would or would not be caught by this offence, thus falling foul of the requirements of natural justice requiring clarity in the law and also throwing into question whether this interference with freedom of expression can be said to

[10] BBC News, 'Russian Spy Poisoning: What We Know So Far', 13 September 2018.
[11] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19.
[12] Explanatory Notes, p 9.

> be "prescribed by law" with sufficient clarity. Moreover, there is a very clear risk that this provision would catch speech that is neither necessary nor proportionate to criminalise—such as valid debates about proscription and de-proscription of organisations.[13]

At a minimum, the JCHR called for the clause to be amended to make clear what "expressions of support" would or would not be an offence, and to ensure it did not risk criminalising "unintended debates" in an unnecessary or disproportionate manner.[14]

Although recognising the Committee's concerns, the Government defended the clause as drafted. It stated that it would be impractical to define in legislation what statements or debates would and would not be captured by the offence. In addition, it gave examples as to how the offence, including the recklessness test, would be considered by the courts:

> The recklessness test in clause 1 is well-established, and well-understood by the courts. In this context it would require the prosecution to prove that a person subjectively knew that expressing an opinion or belief in support of a proscribed terrorist organisation in the particular circumstances would cause someone else to support the organisation, and that they nonetheless expressed it where a reasonable person would not do so. On this basis a hypothetical example of a lawful statement might be one to the effect that a proscribed organisation is not, as a matter of fact, concerned in terrorism, and therefore does not meet the legal test for proscription; whereas an example of an unlawful statement, which risks encouraging others to support the same organisation, might be one praising its terrorist activities and suggesting that it should not be proscribed so that individuals in the UK could be free to better emulate such terrorist conduct. Of course, in practice, all the circumstances in which a statement is made will be relevant to its lawfulness.[15]

Referring to the gravity of the threat posed by terrorist activity, and the role that support for them has in the radicalisation of individuals, the Government believed the clause represented a fair balance between the rights of the individual and those of the community.[16]

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[13] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 30.
[14] ibid.
[15] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 4. A similar use of the word 'reckless' is contained in the drafting of the encouragement of terrorism and dissemination of terrorist publication offences under sections 1 and 2 of the Terrorism Act 2006.
[16] ibid, p 3.

Clause 2: Publication of Images and Seizure of Articles

Clause 2 would amend section 13 of the Terrorism Act 2000 to create a new offence criminalising the publication by a person of an image of an item of clothing or an article (such as a flag) in a way or circumstances arousing reasonable suspicion that the person is a member or supporter of a proscribed organisation. This would add to the related offence under section 13(1) of the 2000 Act that made it an offence to wear such clothing or display such articles in a public place.[17] Following a government amendment made at report stage, it would also give police the power to seize clothing or other articles as evidence in relation to the existing section 13(1) offence when they believe it is necessary to seize it to preserve the evidence.

The JCHR criticised the wide scope of the clause, believing it similarly risked a disproportionate interference with article 10 of the ECHR. It also expressed concerns over the unintended impact it could have on some individuals:

> In our view, to criminalise the publication of an article which may be worn or displayed in a private place risks catching a vast amount of activity and risks being disproportionate, particularly given the lack of incitement to criminality in the *mens rea* of this offence. It risks a huge swathe of publications being caught, including historical images and journalistic articles, which should clearly not be the object of this clause.[18]

It recommended the clause be removed from the Bill, or it be "amended to safeguard legitimate publications and to give greater clarity as to what acts are, and are not, criminalised".[19]

The Government defended the clause, stating that it was intended to close the gap between the law as it stands, where it would be an offence to wear or display an article in public, to cover situations where images were published online, or elsewhere, and were viewable by the public. It stated it would therefore cover the consequential harm that could flow from such publication, and would update the section 13 offence "for the digital age".[20] The Government also believed the wording already provided "clear and effective safeguards" for those publishing images with legitimate reasons:

> The Government also does not agree that there is a risk of legitimate publications being caught, including historical or journalistic

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[17] Explanatory Notes, p10.
[18] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 30.
[19] ibid.
[20] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 5.

> publications. The section 13 offence, both as it has been in force since 2000 and as amended by clause 2, is absolutely clear that it only bites where the article in question is displayed or published in such a way or in such circumstances as to arouse reasonable suspicion that the person displaying or publishing it is a member of supporter of a proscribed terrorist organisation. It is not committed by the act of displaying an article, or publishing an image, on its own.[21]

Clause 3: Obtaining or Viewing Material Over the Internet

This clause would make it explicit that downloading or streaming material over the internet, where it is of a kind likely to be useful to a person committing or preparing an act of terrorism, is an offence. This would reinforce and add to (in the case of streaming) the offences under section 58 of the Terrorism Act 2000. The offences are subject to a reasonable excuse defence, which would also be amended by the proposed clause, as explained further in the Bill's explanatory notes:

> In the case of *R* v *G* and *R* v *J* ([2009] UKHL 13) the House of Lords held that the defence of reasonable excuse must be an objectively verifiable reasonable excuse to be determined by the jury in the light of the particular facts and circumstances of the individual case. By virtue of section 118 of the 2000 Act, once a defendant has raised the defence, the burden of proof (to the criminal standard, that is beyond reasonable doubt) to disprove the defence rests with the prosecution. New subsection (3A) makes it clear that the cases in which the reasonable excuse defence applies includes those where a person downloads or views by means of the internet material not knowing, or having reason to believe, that the material contains, or is likely to contain, information likely to be useful for terrorist purposes. Unintentional or mistaken downloading or viewing of such material would therefore not be caught by the section 58 offences.[22]

The reasonable excuse defence was attached to the proposed streaming offence by a government amendment made at report stage. Previously, the clause had specified that the streaming offence would apply when an individual had viewed such material three or more times (the 'three clicks' provision). However, the 'three clicks' provision received criticism during committee stage, and the Government stated its amendment was in response.[23] The wording of the reasonable excuse defence itself was also amended by the Government at report stage following comments made at committee.[24]

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[21] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 5.
[22] Explanatory Notes, p 11.
[23] See page 29 of this Briefing.
[24] For further details, see: House of Commons Library, *Counter-Terrorism and Border Security Bill: Committee Stage Report*, 10 September 2018, pp 10–13.

Writing in advance of the amendments, the JCHR report contained comments on the offence more generally, expressing concerns it could capture innocent people and that the reasonable excuse defence should set out specifically what constituted legitimate activity:

> This clause may capture academic and journalistic research as well as those with inquisitive or even foolish minds. The viewing of material without any associated intentional or reckless harm is, in our view, an unjustified interference with the right to receive information protected by article 10 […] We recommend that, at the very least, consideration is given to narrowing the offence to ensure that it only captures those viewing this material with terrorist intent and that the defence of reasonable excuse is clarified as to what constitutes legitimate activity and that this is set out on the face of the Bill.[25]

However, the Government stated that the reasonable excuse defence had operated alongside the other section 58 offences since 2000, and showed that the safeguards were already working well:

> If the existing safeguard was inadequate, we would have seen ongoing prosecutions of academics, journalists and others who have legitimately accessed such material. But we have not; rather the offence has been used sparingly and in a targeted way, with just 61 convictions since 2001. The Government is also unaware of any credible reports of a chilling effect, nor of any substantiated evidence that professionals in those fields have been hampered or deterred in going about their legitimate business.[26]

Clause 4: Entering or Remaining in a Designated Area

Clause 4 was added to the Bill following a government amendment made at report stage. It would insert a new offence where a UK national or resident entered or remained in "designated areas" outside the UK. Areas would be designated by the Secretary of State (under powers provided by the clause) by regulations subject to the affirmative resolution procedure. Details on when the Secretary of State may designate an area are set out in the explanatory notes to the Bill:

> The test for designating an area for the purpose of the offence is that the Secretary of State is satisfied that designation is necessary in order to protect the public from a risk of terrorism. Such a risk may arise, in particular, if a conflict in a foreign country, potentially involving a proscribed terrorist organisation, acted as a draw to UK nationals or

[25] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 30.
[26] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 7.

> residents to travel to that country to take part in the conflict or otherwise support those engaged in the conflict. The Secretary of State is required to keep any designation under review.[27]

The offence would not apply to those in the area acting for or on behalf of the Crown (for example, diplomatic staff, armed forces personnel, or contractors supporting the armed forces), and there would be a one month "grace period" for those travelling to, or already in, an area when the designation regulations come into force. In addition, the offence would be subject to a "reasonable excuse" defence; for example:

> A reasonable excuse could include cases where a person enters or remains in a designated area to provide humanitarian aid, to fulfil an obligation to appear before a court or tribunal, to carry out work for a foreign government (including service in that government's armed forces) or on behalf of the United Nations, to carry out work as a journalist or for exceptional compassionate circumstances (for example, to attend a funeral of a close relative). By virtue of section 118 of the 2000 Act, once a defendant has raised the defence, the burden of proof (to the criminal standard, that is beyond reasonable doubt) to disprove the defence rests with the prosecution.[28]

Clause 5: Encouragement of Terrorism and Disseminating Terrorist Publications

This clause would introduce a "reasonable person" test to the offences already set out in sections 1 and 2 of the Terrorism Act 2006, concerning the publication of statements or dissemination of information likely to encourage individuals to become involved in acts of terrorism. This is intended to strengthen those offences. Currently—as set out in the explanatory notes—the offences require that the act is "likely to be understood" as encouraging or inducing a terrorist act. Therefore, the "likely to be understood" test may not be met when applied to vulnerable adults or children. The clause would replace this with the "reasonable person" test, so that:

> [T]he offence would be made out if a reasonable person would understand the statement as an encouragement or inducement to them to commission, prepare or instigate an act of terrorism.[29]

Clause 6: Extra-territorial Jurisdiction

This clause would extend the extra-territorial jurisdiction provisions applying

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[27] Explanatory Notes, pp 11–12.
[28] ibid, p 11.
[29] ibid.

to certain offences listed under section 17 of the Terrorism Act 2006 to three more offences; namely:

> [T]hose in section 2 of the 2006 Terrorism Act (dissemination of terrorist publications), section 13 of the Terrorism Act 2000 (wearing a uniform etc associated with proscribed organisation) and section 4 of the Explosive Substances Act 1883 (making or possessing explosives under suspicious circumstances) so far as committed for the purposes of an act of terrorism.[30]

This would mean that individuals could be liable for committing these offences abroad, whether a UK citizen or not, in the same way that they could be if they had committed it in the UK. The explanatory notes explain that a prosecution would be reliant upon authorisation from certain officials (eg in England and Wales, the Attorney General and the Director for Public Prosecutions) and, in practice, would only be instituted in the UK if the individual was present in the country (eg having voluntarily returned or due to relevant extradition procedures).[31]

The JCHR expressed concern about the application of extra-territorial jurisdiction provisions where the offence (such as support for a proscribed organisation) was not an offence in the country where the actions took place. It stated that this was in contradiction of natural justice and the sufficient foreseeability of the effect of an individual's actions. It gave the example of an individual attending a protest:

> It would mean a foreign national, with few links to the UK, could be prosecuted in the UK if he/she attended a protest or waved a flag overseas, in support of an organisation that is lawful within that overseas jurisdiction, if that individual then travels to the UK.[32]

As such, it called for further consideration as to the justification of applying extra-territorial jurisdiction in such circumstances.

The Government argued that the measure was both necessary and proportionate because of the nature of the harm that could be caused by terrorism and the importance of tackling the radicalisation or promotion of terrorist causes. It stressed its case both in relation to foreign nationals coming to the UK and to terrorist fighters seeking to evade UK law:

> Terrorist organisations will often be located in unstable or failed states which may not have functioning systems of government with effective jurisdiction over their territory, or in countries with less effective or

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[30] Explanatory Notes, p 14.
[31] ibid, p 13.
[32] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 31.

> simply different legislative frameworks to that in the UK. Foreign terrorist fighters should not be able to evade justice because the country they travelled to does not have a proscription system equivalent to the UK. Equally, for foreign nationals, it is a legitimate aim to seek to deter from coming here those who may have been engaged in terrorism-related activity in another country by making clear that, even if they gain entry to the UK, they can expect to be investigated and, if there is evidence to support such a charge, be prosecuted.[33]

In addition, the Government stated that any potential prosecution would be looked at on a case-by-case basis and would be subject to a number of safeguards (eg approval by relevant authorities, public interest test etc).[34]

Clauses 7 to 11: Sentencing Provisions

Clauses 7 to 11 contain provisions relating to sentences for certain terrorist offences or offenders. For example:

- Clause 7 would extend the maximum penalty for four offences to up to 15 years, and for one offence to up to ten years.[35]
- Clause 8 would extend the circumstances under which courts must consider whether an offence has a terrorist connection. For example, it would extend to Northern Ireland the need for courts to consider specified offences (set out in the Counter-Terrorism Act 2008) in this light (it already applies to courts in England, Wales and Scotland).[36]
- Clause 9 would extend the number of offences eligible for extended determinate sentences (EDS) or sentences for certain offenders of particular concern (SOPC) in England and Wales. Both these measures include, under differing circumstances and for specified offences, extended licence periods for offenders following custodial sentences (the SOPC also amends the automatic release provisions reached at the halfway point of a custodial sentence).[37]
- Clauses 10 to 11 would make similar changes (as set out in clause 9) to the analogous extended sentence provisions applying to Scotland and Northern Ireland respectively.

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[33] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 8.
[34] ibid, p 9.
[35] Explanatory Notes, pp 14–15.
[36] ibid, pp 15–16.
[37] ibid, pp 16–18. For further details, see: House of Commons Library, *Counter-Terrorism and Border Security Bill 2017–19*, 8 June 2018, pp 18–20.

The JCHR questioned the evidence for change and called on the Home Office to provide why the current sentencing limits were insufficient. The Committee also called for subsection 2 of the clause to be deleted, as this would put "viewing material online (without intent to cause harm) on the same level of culpability as possession of an article (eg materials for bomb-making) for terrorist purposes".[38]

In response, the Government stressed that 15 years' imprisonment (for example) was simply a maximum, and would only be used in cases of the utmost seriousness, as decided by a sentencing judge in the usual circumstances.[39] It also looked to address the concerns over the increased sentencing limits for those who view or disseminate terrorist material, stating that these individuals could rapidly influence others and quickly move to launch an attack themselves. The Government stated:

> The division between preliminary terrorist activity and attack planning is increasingly blurred, and the move from the type of activity covered by these offences to planning or launching an attack can happen quickly and unpredictably, with little or no warning, particularly in the case of spontaneous or volatile individuals.[40]

The Government asserted that the police and intelligence agencies need the strengthened powers to disrupt terrorism at an early stage.

Clause 12 to 13: Registered Terrorist Offenders

Registered Terrorist Offenders (RTOs) are individuals that must keep the police updated about their personal information and whereabouts (for example, if they travel overseas). They are individuals who have been:

- convicted of a relevant offence and received a sentence of imprisonment or detention for a period or term of twelve months or more in relation to that offence; or
- were convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged in respect of such an offence punishable by twelve months' imprisonment or more, and were made subject to a hospital order.[41]

Clause 12 would extend the amount and types of information that RTOs are required to keep the police notified about (for example, contact details, such

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[38] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 31.
[39] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 9.
[40] ibid, p 10.
[41] Explanatory Notes, p 20.

as email addresses and telephone numbers, vehicle information, etc). Clause 13 would allow the police, upon obtaining a warrant and subject to certain conditions (for example, when a constable had unsuccessfully sought entry for that purpose on two or more occasions already), to enter and search the home of an RTO for the purposes of assessing the risks that the RTO may pose to the community.

The JCHR expressed concern about the increased level of "intrusion" this would bring. For example, it noted the length of time RTOs could apply without review, and—in reference to the right to private and family life under Article 8 of the ECHR—recommended for this to be changed:

> Some of the notification and registration requirements last for 30 years, without the possibility of a review […] In light of the increased level of intrusion into private life and the lengthy period of time for which notification requirements are imposed in some cases, we recommend the introduction of stronger safeguards. In particular, we consider that there should be the possibility of review of the necessity of the notification and registration requirements and that each individual subject to these requirements should have the right to make representations at that review.[42]

In addition, the Committee recommended the power to enter and search premises should only be available when "less intrusive options" were unavailable, and that it be subject to a "threshold test" requiring a "reasonable belief" that the individual was in breach of their notification requirements.[43]

In response, the Government said it believed the changes to be proportionate. It described the extra information required as "modest", stating:

> The Government considers that these periods are proportionate, given the seriousness of the offending and the gravity of the risks which the notification requirements are intended to mitigate, set against the low level of intrusion arising from the requirements. We do not agree that the modest expansion to the information which must be notified as a result of the Bill will increase the level of intrusion disproportionately.[44]

It believed the JCHR's recommendation for reviews was unnecessary, as RTOs were not available on an indefinite basis (in contrast to similar

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[42] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 31.
[43] ibid, pp 30–1.
[44] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 11.

provisions set out in the Sexual Offences Act 2003).

On powers of entry, the Government also described these as proportionate, highlighting the safeguards that would already apply to the power (for example, the requirement that a constable must have attended twice previously, and the police processes to obtain a warrant and act in accordance with the *Powers of Entry Code of Practice*).[45] It highlighted the importance of the proposed new powers to the police, referencing comparable powers of entry in the Sexual Offences Act 2003:

> [T]he police must be able to assure themselves that the individual does in fact reside at the address they have notified, and to monitor compliance with other aspects of the notification regime. However, there is currently no requirement on registered terrorist offenders to cooperate with police visits to their registered address, and no power for the police to enter the address without the offender's consent. The police have reported that, as a result, terrorist offenders will rarely cooperate with home visits, and will regularly obstruct officers in conducting home visits in the absence of a power to enter. This situation means that police are currently limited in their ability to monitor terrorists subject to the notification requirements.[46]

The power of entry provided for in clause 12 mirrors that available in relation to registered sex offenders under the Sexual Offences Act 2003, which has not been successfully challenged in the courts. Experience has been that sex offenders are aware of the power and will as a result tend to cooperate with visits by officers, without the power needing to be used. Like sexual offending, the Government considers that terrorism offences fall into a special category of seriousness such that a precautionary approach, with robust powers to monitor and manage risk, is appropriate.[47]

Clause 14: Serious Crime Prevention Orders

This clause would extend the number of specified terrorism offences listed in the Serious Crime Act 2007 for which serious crime prevention orders (SCPOs) could be made. The explanatory notes provide a brief overview of SCPOs, as follows:

> The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing,

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[45] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 12.
[46] ibid.
[47] ibid.

> restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person's travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum penalty of five years' imprisonment or an unlimited fine, or both.[48]

Clause 15: Anti-Terrorism Traffic Regulation Orders

This clause would amend the operation of Anti-Terrorism Traffic Regulation Orders (ATTROs), set out in the Road Traffic Regulation Act 1984. ATTROs are described as a sub-category of a Traffic Regulation Order/Notice, which allows various permanent or temporary restrictions on traffic in a specified area for the purpose of avoiding or reducing the potential impact of terrorism.[49] The clause would amend how this system operates, for example it would:

- Disapply the requirement to publicise an ATTRO in advance where in the opinion of the chief officer of police such publicity would undermine the purpose of the order.
- Allow the discretion of a constable in managing and enforcing an ATTRO to be delegated to third parties such as local authority staff or private security personnel.
- Allow the cost of an ATTRO to be recharged to the beneficiary [such as the organiser of an event].[50]

Following a government amendment agreed during report stage, a charge could not be imposed on organisers of certain public processions or assemblies (for example, the organiser of a public protest).

Clause 16: Evidence Obtained Under Port and Border Control Powers

Clause 16 relates to the powers (set out in schedule 7 of the Terrorism Act 2000) to stop, question and search individuals at ports and borders for the purpose of determining whether the person appears to be, or has been, concerned with the commission, preparation or instigation of acts of terrorism. This follows a recommendation by the then Independent Reviewer of Terrorism Legislation, David Anderson (now Lord Anderson of Ipswich). The clause would put a statutory bar (subject to limited exceptions) on the use of oral responses to questions by an examining officer being used in subsequent criminal trials.[51]

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[48] Explanatory Notes, pp 22–3.
[49] ibid, p 23.
[50] Home Office, *Impact Assessment: Counter-Terrorism and Border Security Bill*, 9 May 2018.
[51] Explanatory Notes, pp 26–7.

Clause 17: Detention of Terrorist Suspects—Hospital Treatment

This clause also relates to a recommendation made by David Anderson about the maximum 14 day time period in which someone arrested on suspicion of certain terrorist offence can be detained without charge. It would seek to suspend this "detention clock" when a suspect is committed to hospital (and not questioned during that time) until they are taken to a police station or/and questioned.[52] In his recommendation, David Anderson referred to the importance of the rules reflecting the Police and Criminal Evidence codes (PACE):

> The law should be changed so as to allow the detention clock to be suspended in the case of detainees who are admitted to hospital. The rules should reflect PACE Code C para 14 by stating that a person in police detention at a hospital may not be questioned without the agreement of a responsible doctor. If questioning takes place at a hospital, or on the way to or from a hospital, the period of questioning concerned should count towards the total period of detention permitted. Otherwise, the period of detention should be suspended until questioning takes place or until the person arrives back at the police station, whichever is the sooner.[53]

Clause 18 and Schedule 2: Retention of Biometric Data for Counter-Terrorism Purposes etc

Clause 18 would give effect to schedule 2 of the Bill which would amend the provisions governing the retention of fingerprints and DNA samples and profiles by the police for counter-terrorism purposes. In general, the provisions relate to the retention of biometric data and national security determinations (NSDs). As described by the explanatory notes, biometric data should be destroyed unless there is a basis under which to retain it:

> Fingerprints and DNA profiles must be destroyed unless they are retained under a power conferred by the applicable regime. Under PACE, where an adult is convicted of a recordable offence his or her biometric material may be retained indefinitely. Where a person is charged with a qualifying offence (broadly speaking serious sexual, violent and terrorism offences), but not convicted, his or her biometric material may be retained for three years, extendable on a case-by-case basis for a further two years with the approval of a District Judge […]
>
> Section 63M of PACE provides that where a person's biometric material would otherwise fall to be destroyed, it may be retained for up to two years if the responsible chief officer of police determines

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[52] Explanatory Notes, pp 27–8.
[53] Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, *Terrorism Acts in 2015*, December 2016, pp 67–8.

> that it is necessary to retain it for the purposes of national security (a "national security determination"). A responsible chief officer may renew a national security determination in respect of the same material, thus further extending the retention period for up to two years at a time. The regimes under the other enactments are broadly analogous to that provided for in PACE. In particular, each provides for the retention pursuant to a national security determination of biometric material that would otherwise fall to be destroyed.
>
> The Commissioner for the Retention and Use of Biometric Material (known as the Biometric Commissioner), appointed under section 20 of the 2012 Act has a function of keeping under review every national security determination made or renewed under the various regimes listed above. The Biometric Commissioner may order the destruction of material subject to a national security determination if he concludes that it is not necessary for the material to be retained.[54]

Among other matters, the changes would:

- amend the need for consent from the Biometric Commissioner in certain circumstances;
- allow chief officers to authorise the retention of data through NSDs where the data was obtained by a different police force; and
- would extend the duration of a national security determination from a maximum of two years to a maximum of five years.

The proposed changes also seek to align the rules applicable following an arrest under the Terrorism Act 2000 with the rules relevant to an arrest under PACE.[55] Although it welcomed this harmonisation of rules, the JCHR expressed concern over the limitation of the Biometrics Commissioner's role:

> [W]e consider that oversight of the Biometric Commissioner gives the public greater comfort that such powers, and interferences with an individual's right to private life, are being used reasonably and proportionately. Moreover, we have seen no arguments suggesting that the oversight by the Biometric Commissioner in any way impedes the ability of the police to undertake vital counterterrorism work. We would therefore have thought it sensible to harmonise the two powers such as to retain necessary oversight of the Biometric Commissioner in a manner that enables the police to undertake their work. We are concerned that the proposed amendment in the Bill allows for the retention of biometric data of individuals who have neither been charged nor convicted, for three years without any independent

[54] Explanatory Notes, pp 28–9.
[55] ibid, pp 28–30.

> oversight.[56]

It called on the Home Office to provide "compelling justification" for reducing the Commissioner's oversight or, failing this, recommended the powers were instead harmonised to require the Commissioner's oversight in both cases of arrest.[57] It also expressed concern about the extension of the retention period from two to five years without "clear notification and review options", stressing the need for further scrutiny on this point.[58]

In its response, the Government said that the changes were proportionate. For example, "operational experience" had shown that the two year retention time period was often too short and that appropriate checks and safeguards on the retention of biometric material were already in place.[59] It also claimed that the "notification and review" recommendation "would not be in the public interest":

> Such a notification mechanism would effectively mean disclosing to subjects of an NSD that they are of interest to the police and that there is a degree of intelligence coverage of them, thereby potentially compromising sensitive sources or ongoing investigations, with all the national security consequences that would flow from that. This would not be in the public interest.[60]

Clause 19: Persons Vulnerable to Being Drawn into Terrorism

Clause 19 relates to the 'Channel' programme of the Government's Prevent strategy.[61] The Bill's explanatory notes describes:

> The purpose of the Prevent programme is to stop people becoming terrorists or supporting terrorism […] Prevent activity in local areas relies on the co-operation of many organisations to be effective. Chapter 1 of part 4 of the [Counter-Terrorism and Security Act 2015] makes delivery of such activity a legal requirement for specified authorities (listed in schedule 6 to the 2015 Act), including local authorities, the police, prisons and probation providers, and education and health providers. In 2016/17, a total of 6,093 individuals were subject to a referral due to concerns that they were vulnerable to being drawn into terrorism […]

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[56] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 32.
[57] ibid.
[58] ibid.
[59] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, pp 14–15.
[60] ibid, p 15.
[61] For details on the Prevent strategy, see: HM Government, *CONTEST: United Kingdom's Strategy for Countering Terrorism*, June 2018, pp 31–42.

> The "Channel" programme in England and Wales is a multi-agency programme which provides tailored support to people who have been identified as at risk of being drawn into terrorism. Through the programme, agencies work together to assess the nature and the extent of this risk and, where necessary, provide an appropriate support package tailored to individual needs. In 2016/17, 332 people received Channel support following a Channel panel.[62]

Local authorities are required to set up a panel (known as a 'Channel panel') to discuss and determine the provision of support for people who have been identified by the police as at risk of being drawn into terrorism. The clause would allow local authorities, in addition to the police, to refer individuals who they believe may be vulnerable to terrorism to these panels.[63]

Commenting on the proposed provision, the JCHR raised concerns about the additional responsibility that would fall on local authorities and about the Prevent programme more generally. It called for an independent review of the Prevent programme.[64]

In its response, the Government defended the proposed change, stating it was to streamline the process of referrals. It also addressed the Committee's criticism of the Prevent programme, rejecting calls for an independent review because it was already subject to ongoing internal and external scrutiny:

> Prevent continues to be open to public scrutiny; last November, we published data on referrals to Prevent and Channel for the first time, and will continue to do so on an annual basis. Prevent is continually reviewed and updated to reflect the current threat landscape, and it has taken account of recent reviews, both internal and external, of our counter-terrorism strategy, CONTEST. Therefore, the need for an independent review of Prevent is unfounded.[65]

Clause 20: Terrorism Reinsurance

This clause would amend the Reinsurance (Acts of Terrorism Act) Act 1993 to allow the Pool Reinsurance Company Limited (also known as Pool Re) to provide reinsurance cover for any financial loss suffered by businesses as the result of an act of terrorism, even if it was not directly caused by physical damage to property. Pool Re is a government backed reinsurer of the risk of

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[62] Explanatory Notes, p 30.
[63] ibid, p 31.
[64] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 33.
[65] Home Office, *Government Response to the Joint Committee on Human Rights Report Legislative Scrutiny: Counter-terrorism and Border Security Bill"*, 4 September 2018, p 16.

damage to commercial property caused by an act of terrorism, and was set up in response to insurance companies withdrawing cover for damage caused by IRA bombing in the 1990s.[66]

The 1993 Act and the Pool Re scheme cover physical damage, such as bomb damage, and any consequential losses following a need to close a business. However, the Government has said it recognised that the extent of this cover may not now be appropriate:

> The extension of the terror threat to cover not only bomb attacks causing physical damage to commercial property but also the use of vehicles and knives targeting individuals has led to a gap developing in the cover that Pool Re offers. In the case of the June 2017 terrorist attack on Borough Market, there was limited physical damage to the market, but traders lost business as a result of the week long closure of the market to enable the police to investigate the crime scene. As the losses incurred by Borough Market businesses were not consequential on physical damage to commercial property, any terrorism-related insurance backed by Pool Re and held by those businesses may not have covered such losses. While Pool Re is not the only reinsurer of terrorism risk in Great Britain, this gap means that some businesses are potentially uninsured for any business interruption losses linked to a terrorist attack but that were not as a result of physical damage.[67]

The clause aims to ensure that businesses would have been covered under the circumstances specified above, as it would cover losses caused by the interruption of business brought about by an act of terrorism.

The proposed change has been welcomed by Pool Re.[68]

Clause 21 and Schedule 3: Port and Border Controls

Clause 21 would give effect to schedule 3 of the Bill, which contains powers concerning the questioning and detention of individuals at ports and borders where suspected of involvement in hostile activity for, or on behalf of, another state. The explanatory notes state these are modelled on those currently contained in schedule 7 of the Terrorism Act 2000 about the questioning and detention of individuals at ports and borders for the purpose of determining whether they are or have been concerned in the commission, preparation or instigation of acts of terrorism.[69]

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[66] Explanatory Notes, p 31.
[67] ibid, pp 31–2.
[68] Pool Reinsurance Company Limited, 'Pool Re Hails Government Action to Close the Terrorism Insurance Gap', 22 March 2018.
[69] Explanatory Notes, p 32.

For example, the schedule in the Bill includes provisions for:[70]

- the powers to lie with constables or immigration or customs official;
- it to be an offence for the individual not to wilfully provide certain information (where it is in the individuals' possession);
- time limits for an individual's questioning or detention;
- the powers for searches and the retention of property or biometric data; and
- the individual's rights (eg an individual's right to legal advice if in detention, subject to a power of delay by someone of a rank of, at least, superintendent under certain specified circumstances).

In addition, it would define "hostile activity" as follows:

> A person is engaged in hostile activity for the purpose of this schedule if he or she is, or has been, concerned in the commission, preparation or instigation of a hostile act carried out for, or on behalf of, a state other than the UK or otherwise in the interests of a state other than the UK. The activity could be carried out wittingly or unwittingly (paragraph (7)(a)), in the latter case perhaps by a person duped into attempting to smuggle something out of the UK that is damaging to national security. A hostile act is one that threatens national security or the economic well-being of the UK or is an act of serious crime. Serious crime for these purposes is defined in paragraph (7)(d). The terms "national security" and "economic well-being" take their ordinary meaning. Acts that would threaten national security would include espionage and sabotage. Acts that would threaten the economic well-being of the UK would include acts that damage the country's critical infrastructure or disrupt energy supplies to the UK.[71]

Paragraph 49 of the schedule would require the Home Secretary to publish a code of practice giving guidance on the use of the powers and the training of the examining officials.

The JCHR stated that the powers amounted to a "severe" interference with several ECHR rights and were "dangerously broad". It continued:

> The definition of "hostile act" is extremely wide and there is no threshold test required before a person is detained and examined. Individual officers could simply act on a "hunch". This is not in itself inadequate, but it is nevertheless troubling given the breadth of the power.[72]

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[70] See pages 32 to 38 of the explanatory notes for full details of these powers.
[71] Explanatory Notes, p 31.
[72] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 33.

It also expressed concerns about the powers, as set out, in terms of access to legal advice:

> The vital safeguard of access to a lawyer is not adequately protected. In particular, it is not clear that individuals will be informed of their right to request access to a lawyer and yet access to a lawyer is apparently only available on request. Importantly, it would seem that access to a lawyer is not available when a person is initially questioned. There appears to be no justification for this from the Home Office. Access to a lawyer can be delayed by officers; we consider that there are more proportionate measures to mitigate risk than delaying access to a lawyer. We are also concerned at the lack of confidential access to a lawyer. Schedule 3 powers unjustifiably interfere with the right to timely and confidential legal advice, and therefore ultimately interfere with the right to a fair trial (if prosecutions are eventually brought). These provisions do not comply with the requirement that the law must contain sufficient safeguards to ensure that powers will not be exercised arbitrarily.[73]

The JCHR recommended:

- the definition of 'hostile activity' be more clearly defined;
- the introduction of a threshold test of reasonable suspicion;
- explicitly providing that the power should only be used where necessary and proportionate; and
- that safeguards be strengthened to provide immediate access to legal advice in private.

It also stressed the importance of the code of practice being published as soon as possible so that it can be scrutinised by Parliament alongside the Bill.[74]

In its response, the Government stated that a reasonable suspicion test would undermine the officers' powers (as they may be in possession of "incomplete" intelligence) and specified that only "accredited officers" who had completed the relevant training would be able to exercise the powers. It explained:

> Officers will not be able to "simply act on a "hunch"; the decision to select a person for examination will not be arbitrary. The decision to stop an individual will be informed by considerations such as the current threat to the UK posed by hostile states, available intelligence, and trends of patterns of travel of those suspected of being involved in

[73] Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill*, 10 July 2018, HL Paper 167 of session 2017–19, p 33.
[74] ibid.

> hostile activity.[75]

It also stated that it intended to publish a draft code of practice in advance of committee stage in the House of Lords.

Regarding access to legal advice, the Government set out how this would operate in some detail. It stated that, subject to specific conditions, individuals would be informed of their right to consult a solicitor, at any time, when they were detained as part of an examination. It also stated that the provisions in schedule 3 largely mirrored those contained elsewhere, such as in the Terrorism Act 2000 and the PACE code.[76]

Clauses 22 to 27: Miscellaneous Provisions

These clauses cover matters such as transitional provisions, commencement provisions, and the territorial extent of the Bill. Regarding the latter, the Bill's provisions vary as to their extent, with some clauses relating to specific areas of the UK only.

3. Second Reading

The Bill received its second reading in the House of Commons on 11 June 2018.[77] Introducing the Bill, the Home Secretary, Sajid Javid, spoke of his role keeping UK citizens safe, and stressed that this was the objective of the "wide-ranging" provisions in the Bill:

> [W]hat I can do as Home Secretary is to take a long, hard, forensic look at the powers available to the police, security services, prosecutors and judiciary, and to make sure that they have what they need, including powers to tackle the evolving threat to the UK from terrorism and from hostile state activity and powers to keep the public safe and protect our national security. This is what the wide-ranging Counter-Terrorism and Border Security Bill is all about; it is about keeping the people of this country safe.[78]

Briefly discussing some of the provisions in the Bill, the Home Secretary outlined: the importance of tackling the use of the internet and social media by terrorists; strengthening powers in relation to charging and sentencing those guilty of terrorism-related offences; and—with reference to the events in Salisbury—introducing powers to stop individuals at ports and borders who are suspected of engaging in "hostile state activities".

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[75] Home Office, *Government Response to the Joint Committee on Human Rights Report "Legislative Scrutiny: Counter-Terrorism and Border Security Bill"*, 4 September 2018, p 17.
[76] ibid, pp 18–20.
[77] HC *Hansard*, 11 June 2018, cols 630–88.
[78] ibid, col 630.

Responding for the Opposition, the Shadow Home Secretary, Diane Abbott, indicated that Labour supported the Bill overall, but had concerns about the impact of certain aspects of it on civil liberties.[79] For example, she stated:

> The question that arises is whether the Bill is necessary, appropriate and proportionate. Although we support the Bill overall, a careful examination will show that it does not necessarily meet all those criteria.[80]

The Shadow Home Secretary then set out reservations about changes to matters such as the retention of biometric data and Prevent referrals, and with the offences connected to viewing videos linked to terrorism and to expressions of support for terrorist organisations.[81] In particular, she questioned whether the wording of clause 1, particularly the use of the word 'reckless', was "unnecessarily wide and vague".[82]

In addition, she spoke of the need to guard against radicalisation of individuals in prisons and expressed Labour's concerns about the proposed powers to stop individuals at ports when suspected of "hostile state activity". Regarding the latter, Ms Abbott stated:

> One of the most worrying aspects of the Bill is the creation of powers of detention, interrogation, search or seizure without any suspicion whatever of crime, but simply while people are crossing borders. That is to treat anyone, British citizen or not, as a potential terrorist simply in the act of crossing the border. Such powers should be granted only with due care.[83]

Based on these concerns, the Shadow Home Secretary indicated that, although Labour would support the Bill, it would be giving it careful scrutiny and would be looking to make a number of amendments.[84]

Speaking for the SNP, Gavin Newlands indicated the SNP's support for updating terrorism legislation in light of the increasing threats to people's safety. However, he also referred to the importance of protecting civil liberties, stating:

> In an increasingly changing and digital world, the SNP supports giving law enforcement agencies the necessary powers to fight serious crime and terrorism. The world is becoming ever more complex, and terrorists are utilising sophisticated measures to plan their attacks. As

[79] HC *Hansard*, 11 June 2018, cols 638–43.
[80] ibid, col 639.
[81] ibid, cols 639–41.
[82] ibid, col 649.
[83] ibid, col 641.
[84] ibid, 639.

> such, it is of extreme importance that we keep our response and policies under continual review to ensure that we take the most effective action possible to prevent terrorist acts from occurring, while—crucially—respecting and upholding our civil liberties.[85]

For example, Mr Newlands referred to the operation of the provisions connected to the encouragement of terrorism and the online streaming of terrorist material as areas of concern.[86] Finishing his speech, Mr Newlands referred to the SNP's fears over the potential impact of Brexit on combating terrorism, particularly in relation to cooperation and information sharing:

> I fear that, after the UK leaves the EU, there will be a major risk that any new arrangements will be sub-optimal in comparison with those that exist at present. I hope that the Minister will give a guarantee that any new legislation will be prepared in time to fill any gaps that arise from our leaving the EU, and that he will explain, as far as possible, how he intends to ensure that that happens. We need to ensure that our law enforcement agencies can retain the level of access to Europol that they currently enjoy.[87]

Similar views were expressed by Sir Edward Davey, the Liberal Democrat Spokesperson for Home Affairs, who also spoke of the importance of balancing public protection with safeguarding civil liberties. Referring to his party's concerns, such as about the potential impact of clauses 1 and 2 on freedom of expression and the overall operation of the CONTEST strategy, he stressed:

> Liberal Democrats will not, at this early stage, seek to oppose this Bill, but Ministers and those watching this debate should not take that as agreement, in full or in part, to these proposed laws. We need to scrutinise the Bill to make sure that we get the balance right. It is already clear from this debate that there are serious questions whether some of these proposed laws are necessary, whether they are properly based on sound evidence and whether there are sufficient safeguards to prevent their being abused against totally innocent citizens.[88]

He also considered the potential legal difficulties with interpretation of the term 'reckless' as used in clause 1 of the Bill.[89]

Responding for the Government, Ben Wallace, the twelve, acknowledged the importance of cross-party working during the Bill's scrutiny to ensure

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[85] HC *Hansard*, 11 June 2018, col 647.
[86] ibid, cols 648–50.
[87] ibid, col 651.
[88] ibid, col 669.
[89] ibid, col 674.

the legislation is as effective as possible:

> Every point that I have heard today has been made with passion, consideration and genuine belief. I might not have agreed with some of the points, but I certainly recognise that this is not about posturing or anything other than trying to make an effective piece of legislation that will make us safer. Over time, while we are doing this Bill, I intend to do as much as I can to work with Members on both sides of the House and to be as collaborative as possible. I shall work to see whether there are better ideas to improve the legislation, to ensure that we can deliver it in such a way as to enable the intelligence services, the police and local communities to feel safer than they do today.[90]

He then addressed points raised, including questions over the use of the term "reckless". On this point, he made clear the Government's intention that this should protect against statements being made which may (or may not) negatively influence people, particularly where vulnerable individuals were involved:

> On the issue about recklessness, part of this is about how we deal with those who are targeting people without caring whether they understand or not—I refer to the issue of vulnerability. In March, Umar Haque was convicted of trying to radicalise hundreds of children at school. He got them to swear allegiance to ISIL. He got them to re-enact the Westminster Bridge attack in their classroom and he showed them footage of people being beheaded. He said to those children, "If you tell your parents, you will go to prison." Those people were vulnerable—they were children—and we have to find a way to make sure we close the gap in determining how much intent has to be involved and how much the receiver of that information has to know what they are getting.[91]

The Bill was given a second reading without a vote.[92]

4. Public Bill Committee

The House of Commons Public Bill Committee considered the Bill across seven sittings from 26 June to 10 July 2018. This section sets out brief details on what was covered at public bill committee.[93]

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[90] HC *Hansard*, 11 June 2018, cols 681–2.
[91] ibid, col 685.
[92] ibid, col 687.
[93] Full details of the committee proceedings are set out in the House of Commons Library briefing, *Counter-Terrorism and Border Security Bill: Committee Stage Report* (10 September 2018).

The first two sessions featured evidence from witnesses including: the Crown Prosecution Service; the Metropolitan Police; the Law Society; the Independent Reviewer of Terrorism Legislation, Max Hill; and Liberty.[94] The witnesses considered the workings and extent of a number of provisions in the Bill, such as the "recklessness" requirement in clause 1, the operation of clause 3 (then including the 'three clicks' provision) and a range of matters connected to the provisions in schedule 3 (border stops in connection to "hostile state activity"). For example, regarding the latter, the witnesses discussed the possibility of adding the need for "reasonable grounds" for suspicion and discussed access to legal advice.[95]

The remaining five sessions featured discussion of proposed opposition amendments. None of these proposed changes were made to the Bill, with each opposition amendment either being not called, withdrawn or unsuccessful on division. The five amendments divided on related to:

- Appeals to the Biometrics Commissioner where an individual's data is retained following a mistaken arrest or where they are arrested but never charged.[96]
- The Government initiating an independent review of the Prevent strategy within six months of the Bill's royal assent.[97]
- The right for individuals stopped under the schedule 3 powers to consult a solicitor in private.[98]
- That the continued participation in the European Arrest Warrant be made a formal negotiating objective for the Government in the Brexit negotiations.[99]
- That organisations providing services for raising donations should not profit on those specifically made to support people who have sustained losses due to terrorism.[100]

The Bill passed public bill committee unamended apart from a couple of minor government amendments.

5. Report and Third Reading

Report stage and third reading were both taken in the House of Commons on 11 September 2018.

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[94] Public Bill Committee, *Counter-Terrorism and Border Security Bill*, 26 June 2018, 1st sitting, cols 1–3.
[95] Public Bill Committee, *Counter-Terrorism and Border Security Bill*, 26 June 2018, 1st sitting, cols 1–34 and 2nd sitting, cols 35–62.
[96] Public Bill Committee, *Counter-Terrorism and Border Security Bill*, 3 July 2018, 5th sitting, cols 131–6.
[97] ibid, cols 135–49.
[98] Public Bill Committee, *Counter-Terrorism and Border Security Bill*, 10 July 2018, 7th sitting, cols 203–10.
[99] ibid, cols 223–8.
[100] ibid, cols 213–23.

5.1 Report Stage

Government Amendments

The first of these amendments added clause 4 to the Bill (entering or remaining in a designated area) following a division. Speaking to the proposed new clause, the Minister of State for Security and Economic Crime, Ben Wallace, explained its purpose:

> The essential feature of [the new clause] is to make it an offence for a UK national or resident to enter or remain in an area overseas that has been designated by the Home Secretary. The designation of an area will be given effect by regulations, and any such regulation would necessarily need to come into force quickly, but we recognise the need for full parliamentary scrutiny of any designation. Accordingly, such regulations will be subject to the affirmative procedure.
>
> Once an area has been designated, there will be a grace period of one month, enabling persons already in the designated area to leave before the offence takes effect. Of course, there will be individuals who have a valid reason to enter and remain in a designated area, such as to provide humanitarian aid, to work as a journalist, or to attend a funeral of a close relative. To cover such cases, we have provided for a reasonable excuse defence. Once such a defence has been raised, the burden of proof, to the criminal standard, will rest with the prosecution to disprove the defence. The new offence carries a maximum penalty of 10 years' imprisonment, and it will be open to the court to impose an extended sentence.
>
> The new offence is necessary for two primary reasons. First, to strengthen the Government's consistent travel advice to British nationals, which has advised against all travel to areas of conflict where there is a risk of terrorism. And secondly, breaching a travel ban and triggering the offence will provide the police and the Crown Prosecution Service with a further tool to investigate and prosecute those who return to the United Kingdom from designated areas, thereby protecting the public from wider harm.[101]

The Minister also stated that reasonable excuses will be available in line with ECHR rights (eg access to family). He apologised for the clause being added at a late stage in the Bill's progress through the Commons but noted that it would receive further scrutiny in the House of Lords.[102]

The importance of the clause receiving further scrutiny in the House of Lords was also picked up by Nick Thomas-Symonds, the Shadow Security

[101] HC *Hansard*, 11 September 2018, col 656.
[102] ibid, cols 656–8.

Minister, who stated that although important, it was necessary to consider the details and safeguards in detail:

> While it is essential to deal with this matter by legislation, we will want to look at it in more detail, particularly in the other place. I welcome what the Minister said about being willing to work constructively on this, as he has on other parts of the Bill. We clearly cannot guarantee where future conflicts will take place, but we have to be prepared for those eventualities. We will want to look at the mechanism by which the Home Secretary designates these areas and ensure that we have appropriate safeguards. I am sure that nobody in this House would want to discourage aid workers and other people who we want to be in these areas from going to them.[103]

He indicated that while he was disappointed there was little time to scrutinise the clause in the House of Commons, Labour would not be opposing the measure.[104]

The SNP indicated that it would vote against it.[105] Setting out some of his Party's concerns, Gavin Newlands stated that he was not convinced it was "necessary or proportionate", and questioned the impact on vulnerable people and those who failed the reasonable excuse test:

> A reasonable excuse defence is included in the proposal; however, people travelling to visit family, conduct research, document human rights abuses or undertake humanitarian relief could all be criminalised and imprisoned for up to 10 years should their reasonable excuse be found wanting. Some people will simply opt not to travel, which would have a chilling effect on family relationships, academic inquiry and investigative journalism […]
>
> The offence also risks criminalising vulnerable people who are groomed or otherwise convinced to travel under false pretences, as well as people who are unable to leave an area once it has been designated. In some circumstances, people will simply be unaware that an area has been designated, and may fear returning home once they become aware that they have committed an offence by failing to return within the requisite time period.[106]

He stated that people often travelled to such areas for "varied and complex" reasons, and called for the Minister to agree that, should the clause be accepted, the necessity for the offence and the workings of the reasonable

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[103] HC *Hansard*, 11 September 2018, col 664.
[104] ibid, col 663.
[105] ibid, col 673.
[106] ibid.

excuse test be reviewed a year after implementation.[107]

Concerns were also raised by the Liberal Democrats Spokesperson, Sir Edward Davey, who believed the offence was unnecessary and may not work as intended. For example, he referred to issues with the burden of proof lying with the individual when showing they had a reasonable excuse to be in a designated area.[108] He also referred to David Anderson's rejection of a similar idea in 2016 (relating to the designation of certain areas controlled by ISIS/ISIL as prohibited areas), when he stated that, "on balance, this offence would not be worthwhile for the UK".[109]

In response, the Minister defended the clause. He stated that the burden of proof would lie with the prosecution to disprove the reasonable excuse defence where it is raised and stressed that cases would only be brought when the Crown Prosecution Service decide it is in the public interest.[110]

The new clause was agreed to following division, by 292 votes to 47.[111]

Another set of government amendments which attracted some debate at report stage concerned clause 3 (obtaining and viewing material over the internet). These amended the clause to replace the previous wording that the video must have been watched three or more times, with a reasonable excuse defence. The Government stated this was in response to concerns raised in public bill committee.[112] The Government also amended clause 3 so that it would cover other material, such as audio or written information. The Minister explained:

> The intention behind the three clicks provision was an ambition to ensure proportionality and provide a safeguard for those who might inadvertently access such material, but we recognise the underlying difficulties of this approach and the uncertainty regarding how it will be implemented. That is why we tabled amendment 2.
>
> Amendment 4 complements amendment 2. It is intended to provide a similar safeguard, but in a clearer and more certain way, without relying on a blunt instrument. These amendments will make it clear on the face of the legislation that the reasonable excuse defence would apply if the person does not know, and has no reason to believe, that the information they are accessing is likely to be useful to terrorism. This means that a person would be able to defend themselves on that basis in court. As a result of section 118 of the Terrorism Act 2000, if

[107] HC *Hansard*, 11 September 2018, col 673.
[108] ibid, col 675.
[109] See: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, *Terrorism Acts in 2015*, December 2016, pp 116–17.
[110] HC *Hansard*, 11 September 2018, col 680–1.
[111] ibid, col 683.
[112] ibid, col 661.

> such a defence is raised the court and jury must assume it to be satisfactory, unless the prosecution is able to disprove it beyond reasonable doubt […]
>
> The reasonable excuse defence is a good defence. It will cover journalists and academics, which is important. It would also mean that the prosecution is unlikely to commence in those circumstances, because it would not pass the Crown Prosecution Service threshold test of being in the public interest and of there being a realistic prospect of conviction. The police and the CPS are rightly focused on those who pose a genuine threat, and have no interest in wasting their valuable time investigating and prosecuting people who pose no threat, where there is no public interest and no prospect of conviction.[113]

Speaking for the Opposition, Nick Thomas-Symonds welcomed the change, stating that, although it was not perfect, it represented a better attempt at covering the important issue of streaming:

> This method of taking out the three clicks and amplifying the reasonable excuse defence so that it covers cases where there is no intention to look at terror material, while at the same time keeping all the different aspects of the reasonable excuse defence—journalism, research and other reasons, such as for those conducting investigative journalism—is a better balance than was struck in the original version of clause 3. I am not suggesting for a moment that any piece of legislation is perfect, and the Bill will have its imperfections that the courts will no doubt pick up when it goes on to our statute book. At the same time, however, we have to try to deal with the issue of streaming, and I think this is a better attempt at doing so than the original version of the clause.[114]

However, the SNP raised significant concerns about the amendments, suggesting it changed a three click policy to a one click policy, and did not give adequate protection to those viewing the material without "nefarious intent", such as academics and journalists.[115] In particular, Gavin Newlands referred to his Party's concerns that the defence would not specify a lack of terrorist intent:

> I would like the Minister to address concerns raised by many, not least my hon. and learned Friend the Member for Edinburgh South West (Joanna Cherry), who say that it is possible that the wording will have the perverse impact of narrowing the reasonable excuse defence available to people charged with the offence, as the courts are likely to reason that, in legislating for a reasonable excuse without including lack

[113] HC *Hansard*, 11 September 2018, col 662.
[114] ibid, cols 665–6.
[115] ibid, cols 672–3.

> of terrorist intent within that excuse, Parliament did not intend for lack of terrorist intent to be an available excuse for this offence. We have to ensure that the clause does not criminalise people who may view these documents with no nefarious intent, such as academics and journalists.[116]

Similar concerns were raised by Sir Edward Davey, who also believed the amendments narrowed the defence. Referring to comments made by the current Independent Reviewer of Terrorist Legislation, Max Hill, during public bill committee, he asserted that the whole clause was unnecessary and should be rejected.[117]

In response, the Minister reiterated the Government's belief in the importance of the streaming provisions.[118] He stated that it is a method by which people are being radicalised and that terrorist content is being spread, and therefore needed to be tackled.

The amendments were agreed without division.

Other government amendments covered:

- Traffic authority charges in relation to Anti-Terrorism Traffic Regulation Order or Notice should not be imposed in relation to certain public processions or rallies (under clause 15);
- Increasing the maximum sentence for the offence (under section 38B of the Terrorism Act 2000) of failing to disclose information that might be of material assistance in preventing an act of terrorism or in securing the apprehension, prosecution or conviction of a terrorist (relating to clause 7 of the Bill); and
- Police powers to seize flags or other articles associated with a proscribed organisation (clause 3 of the Bill).

Explaining the latter change, the Minister explained:

> Under section 13 of the Terrorism Act 2000, it is an offence for a person to wear, carry or display an item of clothing or other article in such a way as to arouse reasonable suspicion that they are a member or supporter of a proscribed organisation. By conferring on the police the power to seize such articles, we will ensure that they and the Crown Prosecution Service have the best evidence to pursue a prosecution under section 13.

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[116] HC *Hansard*, 11 September 2018, cols 672–3.
[117] ibid, col 677.
[118] ibid, col 680.

> Of course, the police already have the powers to seize evidence following an arrest, but in the context of policing a march or demonstration, arresting an individual may not always be an option if the tests for making an arrest are not satisfied. Even if arrest is an option, it may not be an appropriate policing response at that time.[119]

Although the Opposition did state that the operation of the latter provision may need to be reviewed (and welcomed the Government's liaison with the police in Northern Ireland on the matter),[120] these amendments were agreed without division.

Opposition Amendments

Opposition amendments were tabled against the Bill at report stage, but none of these were successful. Two of the proposed opposition amendments were defeated on division.

The first of these, supported by Nick Thomas-Symonds and Gavin Newlands, was an amendment calling for there to be an independent review commissioned, within six months of the Bill's royal assent, of the Government's strategy relating to individuals vulnerable to being drawn into terrorism.

Speaking to the amendment, Nick Thomas-Symonds suggested that regular reviews of policies amounted to good governance, and—although he welcomed the news that the Government had conducted internal reviews—believed a full statutory review may highlight where positive improvements could be made to the Prevent programme.[121] For example, he mentioned concerns raised by certain communities about the strategy's aims:

> We have to be clear about its aims, because it is perceived by some communities as an intelligence gathering exercise. If we feel that certain communities have lost confidence in the programme, of course we have to deal with that.
>
> Prevent also has the aim of community cohesion. I have seen some very good work on that within the narrow confines of the programme, but there is concern about whether there is scope for the kind of community cohesion activity that is required, given the swinging cuts we see to local government services, and specifically to children's services and youth clubs—something that local authorities have highlighted to me when I have been out looking at Prevent programmes.[122]

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[119] HC *Hansard*, 11 September 2018, col 660.
[120] ibid, cols 664–5.
[121] ibid, cols 666–7.
[122] ibid, col 666.

He acknowledged that there was excellent work being done but believed some of the low community confidence in the programme needed to be resolved. He stated that this was not about undermining the counter-terrorism strategy, but about improving it.[123] Gavin Newlands also emphasised that the amendment simply asked for a review of the strategy.

In response, the Government rejected the argument for a statutory review of Prevent, with the Minister arguing that the Government were already making the strategy more transparent and that it was already improving:

> It is not necessary to have a statutory review of Prevent at this time. It is improving and becoming more accurate, and people are absolutely becoming champions of it across every sector [...] I would say that the publication and transparency that we are increasingly moving towards with Prevent,[124] and the assurances that Prevent is not an inward reporting system—that is, people do not go into Prevent and get reported to the intelligence services; it is deliberately kept as a separate safeguarding activity—means that the best way forward is to continue improving Prevent as it is.[125]

The amendment was defeated on division by 296 votes to 265.[126]

The second vote on an opposition amendment related to a proposed new clause, again in the name of Nick Thomas-Symonds and Gavin Newlands, that would have required the Government to make it an objective of its Brexit negotiations to secure the UK's continued participation in the European Arrest Warrant (EAW).

Mr Thomas-Symonds spoke of the importance of the EAW, referring to the issuing of an arrest warrant for the suspects connected to the Salisbury incident and highlighting evidence as to how he believed the UK had generally benefited from it:

> There can be little doubt about the value of the EAW to this country. The Security Minister will be aware, for example, that it was vital to apprehending the man who helped to organise and co-ordinate the London bombings of 7/7. According to the National Crime Agency, between 2010 and 2016, the UK issued 1,773 requests to member states for extradition under the EAW and received 78,776 from member states. Of those the UK issued, 11 related to terror offences,

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[123] HC *Hansard*, 11 September 2018, cols 666–7.
[124] The Minister had previously highlighted the statistics on the operation of Prevent published in November 2017 and March 2018 (see: Home Office, 'Individuals Referred To and Supported Through the Prevent Programme Statistics', March 2018).
[125] HC *Hansard*, 11 September 2018, col 682.
[126] ibid, col 688

> 71 to human trafficking, 206 to child sex offences and 255 to drug trafficking.
>
> According to the Government's own white paper, more than 12,000 individuals have been arrested, and for every person arrested on an EAW issued by the UK, the UK arrests eight on EAWs issued by other states. Without the EAW, extraditions can cost four times as much and take three times as long. The Security Minister will of course be aware that in counter-terror investigations speed really is of the essence, and it is therefore vital that we set the objective of continuing to play a key role on the European security scene.[127]

He asserted that the UK's continued participation "really should be" a negotiating objective, stating that organised crime "knows no borders" and requires cooperation with other states. He believed the clause would not "bind the hands" of negotiators, but would instead send a signal to the EU, and others, that the UK took the subject of security in the negotiations seriously.[128] He also refuted suggestions the clause did not belong in the Bill, arguing that both the Bill and the clause related to national security.[129]

Mr Newlands reemphasised many of the points made in support of the clause, stressing the importance of data-sharing to UK police forces; a factor he feared may be diminished by Brexit:

> Following our exit from the EU, there is a major risk that any new arrangements that are put in place will be suboptimal to those at present. Further to that, there is also an issue with data sharing between the UK and the EU, as the EU will most likely require the UK to maintain data protection and privacy laws that can be deemed equivalent to those in force in the EU. We must ensure that our law enforcement agencies can continue to have the same level of access to Europol as they currently enjoy.[130]

He also believed it was important for legal stability, stating "we cannot afford an operational break in our access to EU cross-border tools, because they are part of the day-to-day work of the police force".[131] He concluded by stating that it was vital for people's safety that the UK was not left outside the EAW (and agencies such as Europol):

> I cannot insist enough that that would be incredibly dangerous to the future security of Scotland, the United Kingdom and, potentially, the EU. We must be able to share vital information to keep people safe

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[127] HC *Hansard*, 11 September 2018, col 692.
[128] ibid, col 693.
[129] ibid, col 694.
[130] ibid, col 700.
[131] ibid.

> from terrorism, human trafficking and organised crime.[132]

Sir Edward Davey also backed the proposed clause. He stated that, although he accepted the Government's view that the EU would want to continue working with the UK on security matters (highlighting the quality of the UK's security services), he was unsure the EU would come to a deal that covered the UK's concerns:

> Whatever the scenario in the future—whether it is a no deal and a crash-out, or some other cobbled-together deal—the real concern is the European Arrest Warrant and whether it will operate on all these issues. I am talking about not just on suspected terrorism, but on suspected fraud and smuggling from where the terrorist organisations get their money.
>
> Ensuring that we get the European Arrest Warrant sorted out in these negotiations on terrorism and on other offences could not be more important for the security of the British people.[133]

In response, the Minister stated that he did not believe the clause needed to go in the Bill. He stated that the Government was already negotiating for the European Arrest Warrant, or something "as identical as possible", to apply.[134] He emphasised the importance of a partnership with the EU on all security matters, and expressed his belief that other EU members realised that importance also.[135]

The proposed new clause was defeated by 293 votes to 255.

Hostile State Activity Powers

There was also further discussion of the hostile state activity powers at report stage (contained in clause 21 and schedule 3 of the Bill), both in light of government and opposition amendments (including, in the latter case, access to legal advice).

Speaking on behalf of the Government, Ben Wallace again highlighted that the provisions largely mirrored those in schedule 7 of the Terrorist Act 2000 relating to those suspected of involvement in terrorism. Although stating that he recognised concerns that the powers did not require specific suspicion, he asserted that this was important in cases where intelligence was incomplete:

> I know that there is concern about having no requirement for

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[132] HC *Hansard*, 11 September 2018, cols 700–1.
[133] ibid, col 702.
[134] ibid, col 705.
[135] ibid, col 706.

> suspicion. That goes to the heart of the ability for us sometimes to action intelligence that is broad. For example, we might know about a certain route that is used or about certain flights in a period of a week, but know no more beyond that. We need to be able to act on that intelligence effectively on the spot.[136]

However, the Minister did give his assurance that he would go away and consider some of the recommendations he had received on individuals' rights to legal advice before the Bill was introduced in the House of Lords.[137]

One of these recommendations related to an amendment supported by Nick Thomas-Symonds. Explaining the amendment, Mr Thomas-Symonds stated that it sought to address concerns raised by the Government that individuals may contact specific lawyers for the purpose of informing and passing on information about the detention.[138] He stated that access to legal advice, in private, was vital to justice, and his proposed amendment would have provided for a panel of regulated lawyers to be available, similar to the duty solicitor scheme available in police stations. He explained:

> In that situation, lawyers would both have the expertise and be properly regulated, meaning that the Minister might not have the same concerns about people's ability simply to contact who they wished.[139]

Nick Thomas-Symonds also raised concerns about how the border stop provisions might apply in Northern Ireland, and asked the Minister to consider this before the Bill came to the House of Lords:

> As I have said, I understand the need for that power in relation to the perpetrators of hostile activity outside the United Kingdom coming in, but we do not want through this provision to somehow create a hard border for people on the island of Ireland, between the north and south. I really hope that, even if the Minister does not respond to this at the Dispatch Box tonight, he will at least go away and look at this issue before the Bill appears in the other place, and indicate what protections he envisages in relation to that power being exercised in Northern Ireland.[140]

Gavin Newlands, speaking for the SNP, also raised both these issues, and expressed hope that the Government would consider the Northern Ireland issue.

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[136] HC *Hansard*, 11 September 2018, col 704.
[137] ibid, col 705.
[138] ibid, col 696.
[139] ibid.
[140] ibid, col 695.

On access to legal advice, Mr Newlands referred to evidence given during committee, and stressed that confidential access to legal advice was a fundamental right:

> Access to a lawyer—fundamental access to justice—is something we should not compromise on. This is not about constraining the powers of the hard-working men and women who work at our borders; it is acting on the concerns that were expressed to us, to ensure that correct and proper due process is followed.[141]

On the issue of concerns over particular lawyers, he suggested that the provisions to obtain an alternative lawyer, as set out in the PACE code, should be utilised.

Tony Lloyd (Labour MP for Rochdale) pressed the Minister on the Northern Ireland issue, asking whether he would, before the Bill went to the House of Lords, "think very long and hard to make sure that there is enough reassurance to those involved that, in the context of Northern Ireland, [the provisions] not be used in a way that leads to misunderstanding".[142] The Minister responded that he would give assurances:

> I am happy to give him as much assurance as he would like. I am very conscious as to the issue around the Irish border and its sensitivities. I will certainly seek to give him that reassurance in writing. If there is any further assurance that we can seek to give in relation to the Police Service of Northern Ireland, I will definitely do that.[143]

5.2 Third Reading

Speaking at third reading, the Minister of State for Security and Economic Crime, Ben Wallace, spoke of the importance of the Bill in relation to national security, asserting that it struck the right balance between maintaining people's rights and keeping people safe. He also noted that it built on legislation introduced by previous governments, and had received backing, for most of its provisions, from across the House:

> Much of the Bill is built on the back of the Terrorism Act 2000, which was brought in by the last Labour Government. We have taken the best elements and learned from our experiences and the threats to produce a piece of legislation that in my view and that of the Government strikes the right balance between liberty, individuals' rights and the security of this nation. It is a balance that we do not take for granted and that we review constantly.

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[141] HC *Hansard*, 11 September 2018, col 699.
[142] ibid, col 705.
[143] ibid.

> If it is passed, this Bill, much of which has the support of all parties in this House, will leave this House doing the right thing to keep people safe, striking the right balance with our rights and allowing us to remember those people who in the last few months and years have lost their lives tragically to terrorism and, lately, to the actions of a hostile state. I am afraid we must remember that out there, there are very bad people, very bad terrorist organisation and, nowadays, some very bad states who wish to do real harm to our values. This Bill protects our values, but deals with the issues and gives our security services and police forces the tools that they need.[144]

Responding for the Opposition, Nick Thomas-Symonds welcomed the consensual approach taken by the Minister. In particular, he said the Minister's willingness to make, or consider, concessions on aspects of the Bill, including on the three click rule, peaceful protests, and his assurances to further consider access to legal advice and the impact at the Northern Ireland border. He hoped this approach would continue in the House of Lords, and that there would be scrutiny of the new designated areas clause.[145]

Gavin Newlands stated that the SNP supported the efforts to improve security and to give UK security and law enforcement agencies the powers they need to maintain public safety. However, he also raised concerns that some of the measures in the Bill went too far in respect of their impact on civil liberties.[146] Speaking for the Liberal Democrats, Sir Edward Davey stated that he had many concerns about the Bill, and that these had increased during the Bill's scrutiny. He again referred to difficulties determining recklessness when applied to speech (clause 1 of the Bill), and expressed concerns over schedule 3 of the Bill, which he believed extended the powers of state officials in a "chilling" manner. He urged the House of Lords to scrutinise the legislation in "even more depth".[147]

The motion for third reading was agreed by 376 votes to 10.[148]

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[144] HC *Hansard*, 11 September 2018, cols 713–14.
[145] ibid, col 715.
[146] ibid, col 716.
[147] ibid, col 718.
[148] ibid, col 719.