



## Counter-Terrorism and Sentencing Bill HL Bill 129 of 2019–21

The [Counter-Terrorism and Sentencing Bill](#) would provide for changes in the sentencing, release and monitoring of terrorism offenders, including:

- introducing a new serious terrorism sentence;
- removing the possibility of release at the two-thirds point of a custodial sentence for certain categories of terrorism offenders, and ensuring those serving a serious terrorism sentence cannot be released until the end of the custodial part of their sentence;
- increasing the maximum sentence available for certain terrorism-related offences;
- enabling a court to deem that any non-terrorist offence that carries a maximum sentence of over two years can be considered to have a terrorist connection and can receive a more severe penalty as a result, amongst other measures;
- expanding the list of offences that can result in an extended sentence and increasing the maximum extension period that can be given as part of an extended sentence for certain terrorist offenders;
- expanding the list of offences that can result in a ‘sentence for offenders of particular concern’ (SOPCs). SOPCs are given to those whose offences were not serious or dangerous enough for the court to impose a life sentence or extended determinate sentence, but yet whom the Government argues should be recipients of a punishment that is more severe than a standard sentence. The bill would also create new sentences, the equivalent of a SOPC, for Scotland and Northern Ireland and for under 18s UK wide; and
- providing for polygraph testing of certain terrorist offenders when released on licence.

In addition, the bill would change existing terrorism prevention and investigation measures (TPIMs). These would change through lowering the standard of proof required, through expanding the range of conditions available to include polygraph and drug testing, and by removing the two-year time limit on TPIMs. It would also enable the police to apply for serious crime prevention orders (SCPOs) in terrorism cases. In addition, it would remove the statutory deadline for conducting an independent review of the Prevent strategy.

The bill received cross-party support in the House of Commons. However, MPs raised concerns about matters including: the new serious terrorism sentences for adults aged 18 to 21; restricted eligibility of release on licence for terrorist prisoners in Northern Ireland; effectiveness of strategies to deal with lone terrorists; use of polygraph testing; and changes to TPIMs such as the lowering of the standard of proof. No opposition amendments were made to the bill during its passage through the House of Commons. Minor and technical government amendments were agreed without votes at both committee and report stage.

Claire Brader and Nicole Winchester | 2 September 2020

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## I. What is the background to the bill?

### *Threat from terrorism and recent attacks*

The national threat level—the likelihood of a terrorist attack in the UK—is set by the Joint Terrorism Analysis Centre, an independent organisation based at MI5’s headquarters.<sup>1</sup> The UK-wide level is currently set at substantial, meaning an attack is likely.<sup>2</sup> It was reduced from severe (an attack is highly likely) in November 2019, where it had been since September 2017.

In the year to December 2019, the Home Office reported 280 arrests for terrorism-related activity, a decrease of one percent compared to the previous year.<sup>3</sup> The Government has also stated that security services have foiled 25 attacks since March 2017.<sup>4</sup>

However, a number of UK terrorist attacks have taken place in recent years:<sup>5</sup>

- **22 March 2017:** Khalid Masood killed five people in Westminster, including on-duty police officer PC Keith Palmer, before being shot dead by police.
- **22 May 2017:** Salman Abedi killed himself and 22 people when he detonated a homemade explosive in the lobby of the Manchester Arena at the end of a concert.
- **3 June 2017:** Rachid Redouane, Khuram Butt and Youssef Zaghba killed eight people when they drove a van into pedestrians on London Bridge and stabbed victims at Borough Market before being shot dead by police.
- **19 June 2017:** Darren Osborne killed one man when he drove a hire van at a crowd leaving a Mosque in Finsbury Park, North London.
- **15 September 2017:** Ahmed Hassan detonated an improvised explosive device on a tube train during the morning rush hour, injuring 22 people.
- **14 August 2018:** Salih Khater injured three people when he drove at pedestrians and cyclists, and then crashed a car into security barriers outside the Palace of Westminster.
- **11 October 2019:** A man was arrested for terrorism and later detained under the Mental Health Act 1983 after stabbing three people at the Arndale shopping centre in Manchester.<sup>6</sup>
- **29 November 2019:** Usman Khan killed two people after attending a prisoner rehabilitation programme conference held at Fishmongers’ Hall while on licence halfway through a 16-year prison sentence. He was shot dead by police.
- **2 February 2020:** Sudesh Amman, who had been released from prison in January 2020 at the halfway point of his sentence having been convicted of terrorism offences in 2018,

<sup>1</sup> Security Service (MI5), ‘[Threat levels](#)’, accessed 13 August 2020; and ‘[Joint Terrorism Analysis Centre](#)’, accessed 19 August 2020.

<sup>2</sup> HM Government, ‘[Terrorism and national emergencies](#)’, accessed 13 August 2020. There is a separate threat level for the threat of Northern Ireland-related terrorism to Northern Ireland which is currently set at ‘severe’.

<sup>3</sup> Home Office, [Operation of Police Powers Under the Terrorism Act 2000 and Subsequent Legislation: Arrest, Outcomes, and Stop and Search. Great Britain, Year Ending December 2019](#), 5 March 2020, p 4.

<sup>4</sup> [Explanatory Notes](#), p 4.

<sup>5</sup> Sky News, ‘[Terror in the UK: Timeline of attacks](#)’, 26 June 2020.

<sup>6</sup> BBC News, ‘[Manchester Arndale stabbings: Praise for people who “intervened” in attack](#)’, 12 October 2019.

stabbed two people in Streatham, London.<sup>7</sup> He was under surveillance at the time and was shot dead by police 60 seconds after his attack began.

- **20 June 2020:** Three people were killed in a park in Reading. Police have charged Khairi Saadallah, who was known to security services, for the attack, which was declared a terrorist incident.

Some of the most recent attacks—those at Fishmongers’ Hall and in Streatham—have been committed by known terrorist offenders who were automatically released at the halfway point of their sentence, without input from the Parole Board.<sup>8</sup> This led to calls for a change in the law to stop prisoners being released early without approval from the Parole Board.<sup>9</sup>

### **Recent government action**

In response to the attacks at Fishmongers’ Hall and in Streatham, in February this year the Government introduced a Terrorist Offenders (Restriction of Early Release) Bill as emergency legislation. This was subsequently passed by Parliament, becoming the Terrorist Offenders (Restriction of Early Release) Act 2020. The Government said the purpose of the Act was to ensure that terrorist offenders are not automatically released on licence before the end of their custodial term without the Parole Board’s prior agreement.<sup>10</sup> It argued that the legislation was needed “urgently” as further terrorist offenders were scheduled for automatic release at the end of February 2020.<sup>11</sup> It also said further measures would be taken, noting plans to introduce a Counter-Terrorism and Sentencing Bill in the coming months.<sup>12</sup>

### **Counter-Terrorism and Sentencing Bill**

In the Queen’s Speech in December 2019, the Government set out its intention to legislate to “ensure the most serious terrorist offenders stay in prison for longer”.<sup>13</sup> It confirmed these plans in January 2020, stating that a new counter-terrorism bill would be “introduced in the first 100 days of this Government”.<sup>14</sup> The bill was introduced in the House of Commons on 20 May 2020.<sup>15</sup>

The Government said the overall purpose of the bill is to:

Strengthen the approach taken to the sentencing and release of terrorist offenders, and to enhance the management of terrorism risk through civil powers. It will ensure that serious and dangerous terrorist offenders will spend longer in custody, reflecting the seriousness of the offences they have committed, which seeks to provide better protection for the public and more

<sup>7</sup> Vikram Dodd and Dan Sabbagh, ‘[Streatham attacker was released amid fears he felt terrorism “justified”](#)’, *Guardian*, 3 February 2020; and HHJ M Lucraft QC, *R v Sudesh Faraz Amman: Sentencing Remarks*, 17 December 2018.

<sup>8</sup> [Explanatory Notes](#), p 4; and Sky News, ‘[Terror in the UK: Timeline of attacks](#)’, 26 June 2020.

<sup>9</sup> See for example: Robert Wright and Helen Warrell, ‘[UK plans to delay early release of terror offenders](#)’, *Financial Times* (£), 3 February 2020.

<sup>10</sup> Ministry of Justice, *Terrorist Offenders (Restriction of Early Release) Bill: Explanatory Notes*, 2020, p 2.

<sup>11</sup> *ibid.*

<sup>12</sup> Ministry of Justice, ‘[End to automatic early release of terrorists](#)’, 11 February 2020.

<sup>13</sup> Cabinet Office, *The Queen’s Speech 2019: Background Briefing Notes*, 19 December 2019, p 64.

<sup>14</sup> Home Office and Ministry of Justice, ‘[Tougher sentencing and monitoring in government overhaul of terrorism response](#)’, 21 January 2020.

<sup>15</sup> UK Parliament website, ‘[Bill stages—Counter-Terrorism and Sentencing Bill 2019–21](#)’, accessed 19 August 2020.

time in which to support their disengagement and rehabilitation through the range of tailored interventions available while they are in prison. It will also improve the ability to manage the threat posed by individuals involved in terrorism as well as to monitor terrorist offenders following their release from prison, allowing the Government to intervene more effectively when this is required.<sup>16</sup>

## 2. What would the bill do?

The bill contains 53 clauses, split between four parts. It also has 13 schedules. These include:<sup>17</sup>

- seven new delegated powers;
- one new delegated power inserted into the Offender Management Act 2007; and
- three regulation-making powers to make consequential amendments, commencement provisions, and transitional or saving provision in relation to the bill coming into force.

### 2.1 Part I: sentencing of terrorist and certain other offenders

Part I (clauses 1–26) concerns the sentencing of terrorist offenders.

#### *Current sentencing of terrorism offenders*

The Government believes that the maximum penalties for some offences are not aligned with the seriousness of those offences.<sup>18</sup> The Terrorism Acts of 2000 and 2006 established maximum penalties for certain terrorism offences. Some penalties were subsequently amended by the Counter-Terrorism and Border Security Act 2019. Following the terrorist attacks that took place at Fishmongers' Hall and in Streatham, the Government announced its intention to introduce “tougher sentencing” and a new approach to the management of terrorist offenders.<sup>19</sup>

#### *Provisions in the bill*

Section 69 of the sentencing code requires a court in England and Wales, when sentencing an individual, to consider if the offence had a terrorist connection. If a court believes that the offence was connected to terrorism, this is treated as an aggravating factor and may result in a higher sentence.<sup>20</sup> This offence could then fall within the scope of the notification requirements in the Counter Terrorism Act 2008, the forfeiture provisions under the Terrorism Act 2000, and engage the restriction of early release provisions in the Terrorist Offenders (Restriction of Early Release) Act 2020 (TORER Act).<sup>21</sup>

Clauses 1 to 3 would extend the list of offences that can be sentenced as terror offences.

<sup>16</sup> [Explanatory Notes](#), p 3.

<sup>17</sup> Ministry of Justice and Home Office, [Counter-Terrorism and Sentencing Bill: Delegated Powers Memorandum](#), July 2020.

<sup>18</sup> [Explanatory Notes](#), p 5.

<sup>19</sup> Home Office and Ministry of Justice, '[Tougher sentencing and monitoring in government overhaul of terrorism response](#)', 21 January 2020.

<sup>20</sup> [Explanatory Notes](#), p 11.

<sup>21</sup> *ibid.*

**Clause 1** would enable any non-terrorism offences, punishable with a maximum sentence of more than two years, to be subject to a finding or determination by a court that it has a terrorist connection. Schedule 1 would provide a list of offences for England and Wales, Scotland and Northern Ireland that are already deemed terrorism offences for which a terrorist connection need not be considered.<sup>22</sup> Offences include being a member of a proscribed organisation (section 11 of the Terrorism Act 2000) and encouragement of terrorism (section 1 of the Terrorism Act 2006).

**Clause 2** would create a definition of a ‘serious terrorism offence’ in the sentencing code.<sup>23</sup> The definition would be used when sentencing an offender to a serious terrorism sentence or extended sentence. Schedule 2 would provide a list of serious terrorism offences. These offences are those with a maximum penalty of life imprisonment.

**Clause 3** would amend relevant provisions in Northern Ireland. The clause would add definitions of offences found to have a terrorist connection and the serious terrorism offence into the Criminal Justice (Northern Ireland) Order 2008. Clause 3 and schedule 3 would also define the relevant terrorist offences in Northern Ireland.

**Clauses 4 to 7** relate to serious terrorism sentences:

- Clause 4 would create a new type of sentence for serious terrorist offenders aged 18 or over and under 21 in England and Wales. The penalty would be a serious terrorism sentence of detention in a young offender institution.
- Clause 5 would create a new serious terrorism sentence for adults aged 21 or over in England and Wales. This would comprise a minimum custodial sentence of 14 years and an extension period of between 7 and 25 years on licence.
- Clause 6 would create a new serious terrorism sentence in Scotland. This would have a minimum custodial term of 14 years and an extension period of between 7 and 25 years on licence. The court would not be permitted to impose a serious terrorism sentence if it imposes an order for lifelong restriction or life sentence. Clause 6 would also introduce schedule 4 to provide a list of serious terrorism offences into the relevant Scottish legislation.
- Clause 7 would create a new serious terrorism sentence in Northern Ireland. This would have the same minimum custodial term of 14 years’ imprisonment with an extended licence period of between 7 and 25 years.

**Clauses 8 to 10** would provide supplementary provisions for serious terrorism sentences in England and Wales, and in Scotland. This includes provisions to reduce the appropriate custodial term to 80 percent of the term otherwise required where an offender pleads guilty.

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<sup>22</sup> [Explanatory Notes](#), pp 14–25.

<sup>23</sup> The sentencing code will provide a single statute for sentencing procedure legislation. The Sentencing Bill, currently awaiting its third reading in the House of Lords, will bring the sentencing code into force once the bill receives royal assent. For more information see the House of Lords Library briefing [Sentencing Bill](#) (17 June 2020).

**Clause 11** would ensure that an offender who receives a discretionary life sentence in England and Wales,<sup>24</sup> who would otherwise have received a serious terrorism sentence, will be subjected to a minimum custodial term of 14 years. This would be adjusted for any time spent on remand or tagged bail.

**Clause 12** would create a minimum 14-year custodial term for the punishment part of a life sentence or order for lifelong restriction in Scotland, imposed on an offender who would otherwise have received a serious terrorism sentence.

**Clause 13** would create a minimum 14-year term for an offender who receives a life sentence in Northern Ireland, but who would otherwise have received a serious terrorism sentence.

**Clause 14** would create a minimum 14-year custodial term for an indeterminate custodial sentence for offenders aged 18 and over in Northern Ireland who would otherwise have received a serious terrorism sentence.

**Clauses 15 to 20** relate to extended sentences:

- Clause 15 would list several offences that would attract an extended sentence in England and Wales if found to have a connection to terrorism.
- Clause 16 would increase the maximum licence period to 10 years for serious terrorism offenders under 18 years of age who are given an extended sentence in England and Wales under section 254 of the sentencing code.
- Clause 17 would insert an extension period of up to 10 years for adult offenders under 21 years of age who are sentenced in England and Wales to an extended sentence of detention in a youth offender institution for a serious terrorism offence.
- Clause 18 would increase the maximum extension period to 10 years for adults who are over 21 at the time of conviction and receive an extended sentence in England and Wales for a serious terrorism offence.
- Clause 19 would set out additional offences that would attract an extended sentence in Scotland. Schedule 5 would provide a list of these offences.
- Clause 20 would enable those who commit serious terrorism offences or other specified offences to attract extended custodial sentences in Northern Ireland. It would also increase the maximum extension period of an extended sentence for a serious terrorism offence to 10 years.

**Clauses 21 to 24** relate to other custodial sentences for terrorist offenders:

- Clause 21 and schedule 6 would provide for a list of offences that would require the imposition of a sentence for offenders of particular concern (SOPC) in England and Wales, where an extended sentence or life sentence is not imposed. Schedule 6 would bring a wider number of offences into the SOPC regime.

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<sup>24</sup> A discretionary life sentence is a life sentence given to an offender in respect of an offence for which life imprisonment is provided as the maximum penalty. There are a number of offences for which the maximum sentence is life imprisonment, for example manslaughter and robbery, but that does not mean that all offenders convicted of these offences receive a life sentence. A discretionary life sentence differs from a mandatory life sentence which must be given to offenders convicted of murder (Lexis Nexis, '[Discretionary life sentences](#)', accessed 19 August 2020).

- Clause 22 would introduce a special sentence of detention in England and Wales for terrorist offenders of particular concern who are under 18 years old. This would be applicable to individuals who are convicted of certain terrorism offences, but where the criteria for both life imprisonment and an extended determinate sentence are not met.

**Clause 23** would create a new terrorism sentence with a fixed licence period in Scotland. This would comprise a custodial term and a fixed licence period of 12 months. Offenders would be eligible for early release from their custodial term at the two-thirds point of their sentence with the Parole Board's approval. The circumstances in which a court would impose this new terrorism sentence would include: where a court does not impose a life sentence; an order for lifelong restriction; a serious terrorism sentence; or an extended sentence. Schedule 7 would define the terrorism offences that would attract the new terrorism sentence with fixed licence period.

**Clause 24** would make the corresponding amendments to clause 23 in Northern Ireland.

**Clause 25** and schedule 8 would make equivalent provisions for the armed forces under service law.

**Clause 26** would increase the maximum sentences available, following conviction on indictment, for the following terrorism offences:<sup>25</sup>

Offence	Current maximum sentence	New maximum sentence
Membership of proscribed organisation (section 11 of the Terrorism Act 2000)	10 years	14 years
Inviting or expressing support for proscribed organisation (section 12 of the Terrorism Act 2000)	10 years	14 years
Attendance at place used for terrorist training (section 8 of the Terrorism Act 2006)	10 years	14 years

The increased maximum sentences would only apply to offences committed on or after the date that clause 26 comes into force.

## 2.2 Part 2: release of terrorist offenders

Part 2 (clauses 27–36) concerns release arrangements for terrorist offenders. This includes restriction on early release and polygraph conditions in licences for release.

### ***Current release arrangements for terrorist offenders***

Parliament passed the Terrorist Offenders (Restriction of Early Release) Act 2020 (TORER Act) in February 2020. It applies to England and Wales, and to Scotland. The TORER Act means that specified terrorist offenders now serve two-thirds of their custodial term before being referred to the Parole Board for consideration of release on licence.<sup>26</sup> When the TORER Act came into force these provisions were applied prospectively to future prisoners and retrospectively to those already serving a prison sentence.

<sup>25</sup> [Explanatory Notes](#), p 26.

<sup>26</sup> Ministry of Justice, [Terrorist Offenders \(Restriction of Early Release\) Act 2020](#), 2020.

Prior to the TORER Act, those serving a standard determinate sentence, or those under 18 serving a section 19 sentence under the Powers of Criminal Courts (Sentencing) Act 2000, were automatically released into the community on licence at the halfway point.<sup>27</sup> No referral was made to the Parole Board prior to their release. The Parole Board would consider adults who received a sentence for offenders of particular concern (SOPC) at the halfway point of their sentence. If the Parole Board confirmed that an individual, subject to a SOPC, could be released, the individual would serve the rest of their sentence on licence. The mandatory licence period was 12 months.

### **Provisions**

**Clauses 27 to 31** concern the removal or restriction of early release from prison for those convicted of terrorism offences.<sup>28</sup>

- Clause 27 would amend section 247A of the Criminal Justice Act 2003. This would mean that offenders serving a serious terrorism sentence, or an extended determinate sentence for an offence that has a maximum penalty of life imprisonment, would no longer be considered for release by the Parole Board at the two-thirds point of their custodial term. Instead, such offenders would remain in prison for the whole of their custodial term. Schedule 9 details those offences that would attract restricted eligibility for release on licence in England and Wales.
- Clause 28 and schedule 10 would make the corresponding amendments in clause 27 for Scotland.
- Clause 29 would provide further provisions about the release of terrorist prisoners in Scotland.
- Clause 30 would align the release arrangements of terrorist prisoners in Northern Ireland with those provisions put in place in England and Wales, and in Scotland by the TORER Act. This would see specified terrorist offenders serving two-thirds of their custodial term before being referred to the Parole Commissioners for consideration of release. This would apply to all specified terrorist offenders who have not been released on licence, whether sentenced before or after the date of commencement of this clause.
- Clause 31 would see terrorist offenders who are sentenced in Northern Ireland to an extended sentence or a new serious terrorism sentence, for an offence that has a maximum penalty of life imprisonment, released at the end of their custodial term. They would not become eligible for consideration by the Parole Board for early release.

**Clauses 32 to 35** concern the use of polygraph tests as a licence condition.<sup>29</sup> The National Probation Service has used polygraph tests to manage sexual offenders on licence since January 2013.<sup>30</sup> Qualified probation officers carry out the examinations. The tests are used to monitor compliance with other licence conditions. The bill would extend the use of polygraph tests to terror offenders on licence across the UK:

- Clauses 32 to 34 would amend relevant legislation to enable the polygraph testing provision to be extended to terrorist offenders who are released on licence in England

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<sup>27</sup> [Explanatory Notes](#), p 5.

<sup>28</sup> *ibid*, pp 26–9.

<sup>29</sup> *ibid*, pp 29–31.

<sup>30</sup> *ibid*, p 6.

and Wales, Scotland, and Northern Ireland.

- Clause 35 would provide the secretary of state with powers to make regulations that specify who would receive a terrorism-related polygraph condition when released on licence, and how such tests would be conducted.

**Clause 36** and schedule 11 would provide arrangements for the release on licence of repatriated terrorist prisoners who have been sentenced overseas. This would ensure that their release provisions are consistent with the bill provisions for those sentenced in the UK.

### 2.3 Part 3: prevention and investigation of terrorism

Part 3 (clauses 37–47) concerns terrorism prevention and investigation measures (TPIMs), notification requirements under part 4 of the Counter-Terrorism Act 2008, serious crime prevention orders (SCPOs) and the Prevent strategy.

#### *Terrorism prevention and investigation measures (TPIMs)*

TPIMs are preventative civil measures designed to protect the public from the risk of terrorism by imposing restraints on those suspected of involvement in terrorism-related activity.<sup>31</sup> The Government has described them as a “last resort” where prosecution or deportation is not possible, or where an individual who remains a “real threat” has been released from prison.<sup>32</sup> They are currently used in a “very small” number of cases: between 1 March 2020 and 31 May 2020 (the most recent reporting period), six TPIMs were in force.<sup>33</sup>

The Terrorism Prevention and Investigations Measures Act 2011 introduced TPIMs (and in so doing replaced the previous system of control orders), which were then reformed by the Counter-Terrorism and Security Act 2015.<sup>34</sup> Clauses 37 to 43 would provide for further changes to TPIMs, including:<sup>35</sup>

- lowering the standard of proof required by the secretary of state for imposing a TPIM from “balance of probabilities” to “reasonable grounds for suspecting” (**clause 37**);
- removing the two-year limit on the length of time a TPIM can be imposed, so that measures would last for a year, but be indefinitely renewable (**clause 38**);
- enabling the secretary of state to vary the location of a specified residence, imposed as part of a relocation requirement, where necessary for resource reasons (for example, if police resources in an area become stretched making it difficult to manage a TPIM subject, they could be relocated as part of a previous requirement) (**clause 39**);
- amending the overnight residence measure to allow the secretary of state to require a TPIM subject to remain at or within a specified residence between any hours which are specified (**clause 40**);

<sup>31</sup> [Explanatory Notes](#), p 12.

<sup>32</sup> Ministry of Justice, [Terrorism Prevention and Investigation Measures \(TPIM\) Fact Sheet](#), 21 July 2020, p 1.

<sup>33</sup> House of Commons, [‘Written Statement: Terrorism Prevention and Investigation Measures \(1 March 2020 to 31 May 2020\)’](#), 16 July 2020, HCWS374.

<sup>34</sup> [Explanatory Notes](#), p 6.

<sup>35</sup> *ibid*, pp 31–3.

- introducing new measures that could be imposed on TPIM subjects, including requirements for regular polygraph or drug testing (**clauses 41 and 42**); and
- expanding the information a TPIM subject could be required to provide, including details of electronic devices belonging to members of their household or further details about their residence (**clause 43**).

**Clause 44** would add the offences of breaching a TPIM notice, or a requirement imposed by a temporary exclusion order, to those that trigger notification requirements under the Counter-Terrorism Act 2008. This would mean that individuals convicted of these offences would have to inform police of their whereabouts and provide contact details, financial and other information.<sup>36</sup>

### ***Serious crime prevention orders (SCPOs)***

The Serious Crime Act 2007 introduced serious crime prevention orders (SCPOs).<sup>37</sup> An SCPO is a type of civil injunction order aimed at preventing serious crime that applies only to adults. If an individual breaches an SCPO, they commit a criminal offence.

**Clause 45** and schedule 12 would enable chief officers of police to apply directly to the High Court, or the Court of Session in Scotland, for SCPOs in terrorism-related cases.

**Clause 46** would require the secretary of state to publish a review of these changes within three years.

### ***Prevent strategy***

The Prevent strategy was originally created by the last Labour Government and altered by the Coalition Government in 2011.<sup>38</sup> Forming part of the Government's wider CONTEST strategy, the purpose of Prevent is to "safeguard and support vulnerable people to stop them from becoming terrorists or supporting terrorism".<sup>39</sup> Its objectives, as set out in the 2018 version, are to:

- tackle the causes of radicalisation and respond to the ideological challenge of terrorism;
- safeguard and support those most at risk of radicalisation through early intervention, identifying them and offering support; and
- enable those who have already engaged in terrorism to disengage and rehabilitate.<sup>40</sup>

The Counter-Terrorism and Security Act 2015 put Prevent on a statutory footing and placed a duty on certain organisations to stop people being drawn into terrorism. This duty, along with other aspects of Prevent, has been subject to criticism and controversy.<sup>41</sup> For example, its impact on Muslim communities has been criticised. In 2016 the House of Commons Home Affairs Committee said many

<sup>36</sup> [Explanatory Notes](#), p 33–4.

<sup>37</sup> *ibid*, p 12.

<sup>38</sup> HM Government, [Prevent Strategy](#), June 2011, Cm 8092.

<sup>39</sup> HM Government, [CONTEST: The United Kingdom's Strategy for Countering Terrorism](#), June 2018, Cm 9608, p 31.

<sup>40</sup> *ibid*.

<sup>41</sup> House of Commons Library, [Implementation of the Prevent Strategy](#), 31 January 2017, p 3; and Helen Warrell, '[Inside Prevent, the UK's controversial anti-terrorism programme](#)', *Financial Times* (£), 24 January 2019.

people, especially in Muslim communities, viewed the programme as “toxic”, and argued that it should be renamed ‘Engage’.<sup>42</sup>

More recently, the Counter-Terrorism and Border Security Act 2019 (the 2019 Act) required the Government to commission an independent review of the Prevent strategy.<sup>43</sup> Section 20 of the Act required that the review begin within six months of it receiving royal assent. It also required the Government to publish the report of the review, any recommendations, and its response within 18 months.

As the Act received royal assent on 12 February 2019, the Government was due to complete the review by 12 August 2020. In August 2019, Lord Carlile of Berriew (Crossbench) was appointed to conduct the Prevent review.<sup>44</sup> However, in December the same year he stepped down following the initiation of a legal challenge by Rights Watch UK, which objected to his past support of the programme.<sup>45</sup> The Government launched an open recruitment campaign to appoint a new reviewer. It has acknowledged that the deadline of 12 August 2020 would not be met.<sup>46</sup> The Government also said that revised terms of reference would be agreed once a new reviewer had been appointed.

**Clause 47** of the bill would remove the time limit for conducting the review as set out by the 2019 Act. The provision would apply retrospectively to address any past periods during which the statutory deadline was not met.

## 2.4 Part 4: general

Part 4 (clauses 48–53) relates to: consequential and related amendments; power to amend the sentencing code; power to make further consequential provision; extent; commencement; and short title.

The provisions of the bill extend and apply to England, Wales, Scotland, and Northern Ireland. Counter-terrorism is a reserved matter, although sentencing (including release provisions) is devolved to Scotland and Northern Ireland. Certain provisions can also be extended to the Channel Islands or Isle of Man. Annex A of the bill’s explanatory notes provides further detail on territorial extent.<sup>47</sup>

Some of the bill’s provisions would come into force the day after royal assent. Others would come into force two months from royal assent. The remaining provisions would come into force through regulations.<sup>48</sup>

## 3. What happened in the House of Commons?

The bill was introduced into the House of Commons on 20 May 2020.

<sup>42</sup> House of Commons Home Affairs Committee, [Radicalisation: the Counter-Narrative and Identifying the Tipping Point](#), 25 August 2016, HC 135 of session 2016–17, p 19.

<sup>43</sup> [Explanatory Notes](#), p 13.

<sup>44</sup> Home Office, ‘[Lord Carlile to lead independent review of Prevent](#)’, 12 August 2019.

<sup>45</sup> Owen Bowcott, ‘[Lord Carlile removed from Prevent review after legal challenge](#)’, *Guardian*, 20 December 2019.

<sup>46</sup> Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Committee, Yvette Cooper](#)’, 27 April 2020.

<sup>47</sup> [Explanatory Notes](#), pp 45–8.

<sup>48</sup> Home Office and Ministry of Justice, [Counter-Terrorism and Sentencing Bill: Fact Sheet](#), 20 May 2020, pp 2–3.

### 3.1 Second reading

The bill's second reading took place in the House of Commons on 9 June 2020. Speaking for the Government, Robert Buckland, the Lord Chancellor and Secretary of State for Justice, said the bill would strengthen the process for dealing with those both convicted and at risk of becoming terrorist offenders.<sup>49</sup>

He said that the bill would make changes to terrorism prevention and investigation measures (TPIMs).<sup>50</sup> The Government said it aimed to increase the value of TPIMs as a risk-management tool and support their use by operational partners.<sup>51</sup> Mr Buckland said removing the statutory deadline for the completion of the independent review of the Prevent strategy would enable the Government to appoint an independent reviewer, whilst also allowing the successful candidate time to carry out the review.<sup>52</sup> Mr Buckland also said enabling polygraph testing to be included as a licence condition when an offender was released from prison would "strengthen" licence conditions and support probation staff to monitor compliance.<sup>53</sup>

David Lammy, the shadow Lord Chancellor and shadow Secretary of State for Justice, spoke of opposition support for certain aspects of the bill, including the new serious terrorism sentence and the increase of the maximum penalty from 10 to 14 years for certain terror offences.<sup>54</sup> However, he also raised concerns about the bill's "lack of focus" on deradicalisation:

How can the Government justify their failure to include any new policies on rehabilitation or deradicalisation? Where is the new funding for deradicalisation in our prisons? Where is the extra support for our probation services? We know that the Government believe in stricter sentences, but what do they have to say about defeating the ideology of hate? Only one part of this package touches on this question, and even it does not attempt to solve it. It instead pushes back the legally binding deadline for the completion of an independent review of Prevent. That review was supposed to be completed by August 2020, and yet this summer it will be further delayed until next year.<sup>55</sup>

Mr Lammy also argued that lowering the standard of proof for TPIMs could increase the chance of innocent individuals being subjected to "serious constraints on their freedom".<sup>56</sup> He sought clarity from the Government on this matter, highlighting that the current Independent Reviewer of Terrorism Legislation, Jonathan Hall, said that the courts had not raised concerns about the current TPIMs threshold.<sup>57</sup> Mr Buckland confirmed that the reason for the Government's changes to the threshold was to ensure flexibility in the process.<sup>58</sup>

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<sup>49</sup> [HC Hansard, 9 June 2020, col 202.](#)

<sup>50</sup> *ibid*, cols 204–5.

<sup>51</sup> *ibid*.

<sup>52</sup> *ibid*, cols 209–10.

<sup>53</sup> *ibid*.

<sup>54</sup> *ibid*, col 213.

<sup>55</sup> [HC Hansard, 9 June 2020, col 216.](#)

<sup>56</sup> *ibid*, col 215.

<sup>57</sup> *ibid*.

<sup>58</sup> *ibid*, col 220.

Joanna Cherry, the SNP spokesperson on justice matters, said that the SNP shared similar views to those expressed by the Labour Party.<sup>59</sup> Ms Cherry questioned the use of polygraph tests as a mechanism to monitor compliance with licence conditions, stating that the Scottish justice system chose not to use polygraph tests due to the lack of evidence of their effectiveness.<sup>60</sup> Chris Philp, the Parliamentary Under Secretary of State at the Home Office, stated that the use of polygraph testing had been useful for adult sexual offenders.<sup>61</sup> The Government therefore believed that extending the use of polygraph testing to certain terrorist offenders would help monitor such individuals once they had been released from prison.<sup>62</sup> Ms Cherry also spoke about her disagreement with the changes being made to TPIMs, in addition to the removal of the Prevent strategy review deadline.<sup>63</sup> Ms Cherry discussed these concerns further during a public bill committee debate.<sup>64</sup>

Stephen Farry, representing the Alliance Party of Northern Ireland, raised concerns about the removal of the right to early release for terrorist-related offenders currently serving certain custodial sentences in Northern Ireland.<sup>65</sup> Mr Farry argued that the measures, found in clause 30 of the bill, could be counterproductive and subject to legal challenge. These concerns were later returned to in a report stage amendment.<sup>66</sup>

### 3.2 Committee stage

A public bill committee sat eight times between 25 June and 7 July 2020. The Government made several technical amendments without division during the sittings. No other amendments were made to the bill at this stage.

Three divisions were held on opposition amendments during the bill's committee stage, none of which resulted in changes being made to the bill.<sup>67</sup>

- **Serious terrorism sentences:** the first was on a Labour amendment to clause 4 relating to serious terrorism sentences for offenders aged between 18 and 21 years old.<sup>68</sup> The amendment would have required a pre-sentence report to take into account the age of an offender and other sentencing options when a court is considering imposing a serious terrorism sentence. The amendment was defeated by 8 votes to 6.<sup>69</sup>
- **Independent review of the Prevent strategy:** the second division concerned another Labour amendment to clause 47.<sup>70</sup> The amendment would have inserted a statutory deadline of '1 July 2021' for the reporting of the independent review of the Prevent strategy. The amendment was defeated by 8 votes to 5.<sup>71</sup>

<sup>59</sup> [HC Hansard, 9 June 2020, col 222.](#)

<sup>60</sup> *ibid*, cols 223–4.

<sup>61</sup> *ibid*, col 259.

<sup>62</sup> *ibid*, col 204.

<sup>63</sup> *ibid*, cols 224–5.

<sup>64</sup> [HC Hansard, 7 July 2020, cols 176–80.](#)

<sup>65</sup> [HC Hansard, 9 June 2020, cols 241–2.](#)

<sup>66</sup> [HC Hansard, 21 July 2020, cols 2063–64.](#)

<sup>67</sup> For further information of the committee stage debate, see the House of Commons Library briefing [Counter-Terrorism and Sentencing Bill: Progress of the Bill](#) (17 July 2020).

<sup>68</sup> [HC Hansard, 30 June 2020, cols 104–16.](#)

<sup>69</sup> *ibid*, col 115.

<sup>70</sup> [HC Hansard, 7 July 2020, cols 207–12.](#)

<sup>71</sup> *ibid*, col 212.

- **Deradicalisation programmes in prisons:** the final division was on Labour's new clause 1, tabled by Alex Cunningham, shadow minister for justice.<sup>72</sup> The new clause would have required the Government to review the impact of the bill on deradicalisation programmes in prisons.<sup>73</sup>

### 3.3 Report stage

Report stage was held in the House of Commons on 21 July 2020. Minor and technical government amendments were made to the bill without division. These concerned: polygraph and drug testing requirements as part of TPIM notices; orders for lifelong restriction in Scotland; and further consequential and technical amendments.

Several non-government amendments were also considered. These included proposals on the effectiveness of strategies to deal with lone terrorists and the restriction of early release for specified terrorist prisoners in Northern Ireland. These amendments are discussed in further detail below.

One division was held during the sitting. This related to clause 4 of the bill and considered provisions relating to serious terrorism sentences for adults aged under 21 in England and Wales. This Labour amendment would have inserted the requirement for a pre-sentence report to consider an offender's age and whether a different sentence (other than a serious terrorism sentence) could be more effective. It was defeated on division by 335 votes to 189. The amendment is discussed in greater detail below.<sup>74</sup>

#### **Orders for lifelong restriction**

The Government amended clause 6 of the bill at report stage. Clause 6 would create a new serious terrorism sentence in Scotland and outline the criteria to impose serious terrorism sentences. This includes offenders being over 18 and whose offending had risked multiple deaths.<sup>75</sup> The government amendment inserted an additional criterion that would mean a Scottish court could not impose a serious terrorism sentence if it makes an order for lifelong restriction.<sup>76</sup>

The amendment was based on an SNP amendment debated and then withdrawn during committee stage. The SNP amendment would have had the same effect as the Government's subsequent amendment. When the Government introduced the amendment at report stage, Joanna Cherry welcomed the amendment and spoke of gratitude to ministers for listening to SNP concerns.<sup>77</sup>

The Government made further consequential and technical amendments to clauses 9, 12 and 23 as a result of the change to clause 6.

<sup>72</sup> [HC Hansard, 7 July 2020, cols 261–3.](#)

<sup>73</sup> *ibid*, col 231.

<sup>74</sup> [HC Hansard, 21 July 2020, cols 2098–101.](#)

<sup>75</sup> [Explanatory Notes](#), p 17.

<sup>76</sup> An order for lifelong restriction is a sentence unique to Scotland. It is a lifelong sentence for individuals convicted at the High Court of certain serious offences. Offences include a serious violent offence (excluding murder) and a serious sexual offence (Scottish Sentencing Council, '[Prison sentences](#)', accessed 19 August 2020.)

<sup>77</sup> [HC Hansard, 21 July 2020, cols 2054 and 2111.](#)

### ***Serious terrorism sentence for adults aged under 21: England and Wales***

One division was held during report stage. This was a Labour amendment to clause 4.<sup>78</sup> Clause 4 would create a new type of sentence for serious terrorist offenders aged between 18 and 21 years. The Labour amendment would have inserted the requirement for a pre-sentence report to be carried out that considers an offender's age and whether a sentence other than a serious terrorism sentence could be more effective. This amendment mirrored a similar amendment moved during committee stage.<sup>79</sup>

Introducing the amendment, Alex Cunningham, shadow minister for justice, said that the bill's framework should recognise the difference between young adults and adults.<sup>80</sup> This recognition was not only in relation to relative maturity, but also the potential for rehabilitation. Mr Cunningham referred to several reports that discussed the maturation and rehabilitative prospects of individuals under 21. Referring to a Royal College of Psychiatrists report, he said it had shown that development in areas such as maturity and susceptibility to peer pressure can continue until the mid-20s.<sup>81</sup>

Mr Cunningham also cited evidence given by Jonathan Hall, the Independent Reviewer of Terrorism Legislation, during the public bill committee. He referred to Mr Hall's observation that people who are young and immature are "probably more susceptible to change than adults".<sup>82</sup> Mr Cunningham explained the intention behind the amendment:

[...] by requiring the pre-sentencing report to look at the specific items listed in the amendment and for the court to consider it before sentencing, we will provide the courts with the opportunity of recognising exceptional circumstances and acting in an appropriate and fair manner. This is about a young person's future life. They may well have done the most horrible and tragic things, but even those people deserve an opportunity to prove that they can do better. This amendment would help to achieve that.<sup>83</sup>

Chris Philp, Parliamentary Under Secretary of State at the Home Office, agreed with the general principle and focus on rehabilitation for young people.<sup>84</sup> He said "it is of course the case that younger people are more open to change—particularly as their brains mature—than older people, and it is right that we try to work with them to achieve that".<sup>85</sup> However, Mr Philp stated that clause 4 would only apply to a small subsection of offenders aged between 18 and 21 and said the Government would therefore not support the amendment.<sup>86</sup>

Mr Cunningham had emphasised the need to consider the different rehabilitation prospects between young people and adults.<sup>87</sup> Mr Philp acknowledged the opposition arguments, but spoke of a minority

<sup>78</sup> [HC Hansard, 21 July 2020, cols 2097–101.](#)

<sup>79</sup> [HC Hansard, 30 June 2020, cols 104–16.](#)

<sup>80</sup> *ibid*, col 104.

<sup>81</sup> *ibid*, col 106.

<sup>82</sup> *ibid*, col 104.

<sup>83</sup> [HC Hansard, 30 June 2020, col 109.](#)

<sup>84</sup> *ibid*, col 112.

<sup>85</sup> *ibid*.

<sup>86</sup> *ibid*.

<sup>87</sup> [HC Hansard, 21 July 2020, col 2051.](#)

of offenders aged between 18 and 21 who had committed offences of “extraordinary” seriousness:

Given that small but serious number of offenders, I think a 14-year mandatory minimum sentence is appropriate. Rarely, there is the ability for judges to find exceptional circumstances, but when offences are that serious, it is right to take that action and protect the public. There may be other debates to have another time about how quickly people mature and how we should account for that, but for that small and dangerous cohort it is neither the time nor the place to advance that argument.<sup>88</sup>

The amendment was subsequently defeated on division by 335 votes to 189.<sup>89</sup>

### ***Restricted eligibility of release on license of terrorist prisoners***

Several opposition amendments were considered during report stage relating to clause 30 on the restricted eligibility for early release of terrorist prisoners in Northern Ireland. This issue had been discussed during the bill’s second reading and public bill committee.<sup>90</sup>

Clause 30 of the bill seeks to restrict eligibility for early release from custodial prison terms for specified terrorist offenders in Northern Ireland. This would apply to offenders sentenced both before and after the provision comes into force. This would mirror the changes that took place in England and Wales, and in Scotland, in February 2020, following the commencement of the Terrorist Offenders (Restriction of Early Release) Act 2020.

Stephen Farry, speaking on behalf of the Alliance Party, offered support for the bill, but noted concerns about clause 30 and its application to Northern Ireland.<sup>91</sup> He believed that the retrospective application would be of “little benefit” and “counterproductive”.<sup>92</sup> He said there was potential for individuals to “twist” the Government’s rationale in this regard to an argument that creates a context for “political imprisonment”:

[...] We have had a sad history in Northern Ireland, from internment to the hunger strikes and beyond, of terrorists and their allies using the situation in prisons and framed grievances for wider agitation in the community and recruitment purposes.<sup>93</sup>

Mr Farry also referred to concerns raised about clause 30 from the Northern Ireland Human Rights Commission and the minister for justice in Northern Ireland.<sup>94</sup>

In response, Mr Philp said that, as terrorism measures are reserved, it believed the UK should be treated as one for such matters.<sup>95</sup> The minister confirmed that the Government was in discussions

<sup>88</sup> [HC Hansard, 21 July 2020, col 2074.](#)

<sup>89</sup> [ibid, col 2097.](#)

<sup>90</sup> [HC Hansard, 9 June 2020, cols 241–2](#) and [HC Hansard, 2 July 2020, cols 155–8.](#)

<sup>91</sup> [HC Hansard, 21 July 2020, cols 2063–4.](#)

<sup>92</sup> [HC Hansard, 21 July 2020, col 2063.](#)

<sup>93</sup> [ibid.](#)

<sup>94</sup> [HC Hansard, 21 July 2020, col 2064;](#) and Northern Ireland Human Rights Commission, [Briefing on the UK Counter-Terrorism and Sentencing Bill](#), July 2020, pp 21–3.

<sup>95</sup> [HC Hansard, 21 July 2020, col 2075.](#)

with Northern Ireland Justice Minister Naomi Long on this issue.<sup>96</sup> Mr Farry withdrew his amendments on this basis, but stated that dialogue on this subject should continue when the bill reaches the House of Lords.<sup>97</sup>

### ***Lone terrorists: Review of effectiveness of existing government policy***

A further Labour amendment, new clause 8, sought to require the Government to order a judge-led review into the effectiveness of current strategies to deal with lone terrorists.<sup>98</sup> This would include a review of the current counter-terrorism and sentencing policy amongst other things. Conor McGinn, shadow minister for the Home Office, said that new clause 8 aimed to support the police and security services through a judge-led assessment of the systemic response needed for lone terrorists.<sup>99</sup>

Responding, Chris Philp said that the Prevent review, and the multi-agency public protection arrangements (MAPPA) review by Jonathan Hall, would consider this topic.<sup>100</sup> Referring to the MAPPA review, he confirmed that the report would be published before the bill is considered in the House of Lords.<sup>101</sup>

Mr McGinn subsequently withdrew new clause 8, but said he believed the House of Lords would “no doubt” want to scrutinise the MAPPA review.<sup>102</sup>

### ***Polygraph testing***

Joanna Cherry tabled several amendments to the bill’s polygraph provisions during report stage.<sup>103</sup> This related to concerns about the Government’s intention to use polygraph testing as part of the licensing regime. Labour and the SNP tabled a joint amendment, new clause 9, which would have required the Government to run a pilot of the use of polygraphs on terrorist offenders.

During the debate, Ms Cherry voiced concern over polygraph testing, stating that it could engage article 5 of the European Convention on Human Rights, specifically the prohibition against arbitrary detention.<sup>104</sup> Gavin Robinson, the DUP’s spokesperson for Home Affairs, supported the SNP on this matter. He said that Northern Ireland, like Scotland, would also be cautious about the introduction of such polygraph measures.<sup>105</sup>

In response, the Government said it had taken “compelling” evidence in this area.<sup>106</sup> It said that around 5,000 polygraph tests had been used with sex offenders in England and Wales. In these cases, between 60 and 70 percent of the tests elicited information “that would otherwise have not come

<sup>96</sup> [HC Hansard, 21 July 2020, col 2075](#). Naomi Long is the leader of the Alliance Party, with Stephen Farry as deputy leader.

<sup>97</sup> *ibid*, col 2064.

<sup>98</sup> *ibid*, col 2076.

<sup>99</sup> *ibid*, col 2079.

<sup>100</sup> *ibid*, col 2093.

<sup>101</sup> *ibid*, col 2096. At the time of writing, the MAPPA review had not been published.

<sup>102</sup> *ibid*.

<sup>103</sup> House of Commons, [Counter-Terrorism and Sentencing Bill 2019–21: Report Stage Proceedings as at 21 July 2020](#), 22 July 2020, pp 7 and 14–15.

<sup>104</sup> [HC Hansard, 21 July 2020, col 2055](#).

<sup>105</sup> *ibid*, col 2059.

<sup>106</sup> *ibid*, cols 2074–5.

out”.<sup>107</sup> The Government explained that the information was elicited because the offender volunteered it in the knowledge that a polygraph test was going to be used, or because the test provided a negative reading and a subsequent follow-up investigation was conducted.<sup>108</sup> Mr Philp confirmed that offenders would not be recalled to prison or be deemed in breach of licence conditions as a result of a negative polygraph test.<sup>109</sup>

### ***Terrorism prevention and investigation measures (TPIMs)***

Prior to the report stage, the Independent Reviewer of Terrorism Legislation, Jonathan Hall, gave his view on the bill in a private briefing for the House of Commons Home Affairs Committee. While agreeing with some measures, Mr Hall raised concerns about some provisions, including the proposed changes to TPIMs and some sentencing provisions.

Regarding TPIMs, he highlighted the following concerns:<sup>110</sup>

- The proposed TPIMs would be able to run beyond two years. He felt that there should be a safeguard after the second year.
- There would be a lack of judicial scrutiny of the new TPIMs. He suggested that any TPIM proposed to run beyond two years should require renewed permission from a judge.
- The bill did not propose a maximum time period a TPIM could be in force.

In addition, in a briefing note published on the bill, Mr Hall said that “there is reason to doubt whether there exists an operational case for changing the TPIM regime at this point in time”.<sup>111</sup>

Mr Hall also said during his briefing to the committee that he did not see a need to lower the standard of proof to impose measures on individuals of concern returning to the UK from possible terrorist activity abroad.<sup>112</sup>

During report stage, Joanna Cherry moved an amendment that would have removed clause 37 of the bill. Clause 37 would lower the standard of proof required by the secretary of state for imposing a TPIM from “balance of probabilities” to “reasonable grounds for suspecting”. Ms Cherry said that “the problem with the change in the standard of proof is that no operational case has been made for it”. She argued that the bill committee had heard no evidence to suggest lowering the standard of proof was needed. She said both the Joint Committee on Human Rights and the Independent Reviewer of Terrorism Legislation, Jonathan Hall, shared her concerns about the change.<sup>113</sup> Concluding, Ms Cherry called on the Government to present an operational case based on examples to justify it.

In response, Chris Philp referred to evidence given to the bill committee by Assistant Chief Constable Tim Jacques, a national counter-terrorism policing lead, who had been briefed by the security services.

<sup>107</sup> [HC Hansard, 21 July 2020, cols 2074–5.](#)

<sup>108</sup> *ibid.*

<sup>109</sup> *ibid.* Further insight into the rationale behind polygraph testing for terrorist offenders can be found in Ministry of Justice guidance: [Mandatory Polygraph Tests: Counter Terrorism Bill](#), 12 March 2020.

<sup>110</sup> House of Commons Home Affairs Committee, [Briefing: Counter-Terrorism and Sentencing Bill](#), 29 June 2020, p 4.

<sup>111</sup> Jonathan Hall QC, [Note on Counter-Terrorism and Sentencing Bill: Sentencing Reforms \(2\)](#), 5 June 2020, p 1.

<sup>112</sup> House of Commons Home Affairs Committee, [Briefing: Counter-Terrorism and Sentencing Bill](#), 29 June 2020, p 4.

<sup>113</sup> [HC Hansard, 21 July 2020, col 2086.](#)

Mr Philp said that Mr Jacques' evidence gave three reasons why a lower burden of proof would protect the public:

The first reason he gave is that, where an individual's risk profile is rapidly increasing, there may not be time to establish the higher burden of proof before a threat or a risk materialises. Secondly, he said that where somebody is returning from abroad—for example, from Syria—it is very hard to establish an evidential base that, on the balance of probability, someone has been involved in terror-related activity because, by definition, getting evidence from somewhere like Syria it is very hard, if not impossible. The third reason he gave was where sensitive material needs to be relied on: disclosing that material to get to the balance of probability would potentially endanger sources—confidential sources—and it is clearly easier to get to the reasonable suspicion standard without disclosing the material.<sup>114</sup>

Responding, Ms Cherry also referred to Mr Jacques' comments about quickly escalating situations, where he said “there is no case thus far where the standard of proof has been a blocker”.<sup>115</sup>

Deciding to withdraw the amendment rather than push it to a division, Ms Cherry said that she suspected there would be more debate on the issue in the House of Lords.<sup>116</sup>

### 3.4 Third reading

At third reading, the opposition parties set out their continued support of the bill in principle, and it passed without division.<sup>117</sup>

## 4. What have other commentators said about the bill?

Several organisations and individuals set out their views on the bill in written evidence submitted to the bill committee, including the Prison Reform Trust and Amnesty International.<sup>118</sup>

The Prison Reform Trust raised several concerns about sentencing and release.<sup>119</sup> It highlighted that the Government had not published the serious case reviews into the Fishmongers' Hall and Streatham attacks, “despite these forming a substantive part of the policy and political justification for the measures in the bill”.<sup>120</sup> The charity also set out other concerns including:<sup>121</sup>

- a lack of supporting evidence for the benefits to public protection of increasing custodial sentences for terrorist offenders;
- that the provisions in the bill fail to engage with the evidence that increasing the length of

<sup>114</sup> [HC Hansard, 21 July 2020, col 2093](#); and House of Commons Home Affairs Committee, [Briefing: Counter-Terrorism and Sentencing Bill](#), 29 June 2020, p 2.

<sup>115</sup> [HC Hansard, 21 July 2020, col 2094](#).

<sup>116</sup> *ibid*, col 2111.

<sup>117</sup> *ibid*, cols 2105–13.

<sup>118</sup> A full list of written evidence can be found on the [Parliament website](#).

<sup>119</sup> Prison Reform Trust, '[Written Evidence to the House of Commons Public Bill Committee to the Counter-Terrorism and Sentencing Bill 2019–21](#)', 26 June 2020.

<sup>120</sup> *ibid*.

<sup>121</sup> *ibid*.

- that a number of the provisions fail to account for the particular needs and circumstances of children and young adults.

In its evidence, Amnesty International called for clauses 37, 38 and 40, which relate to TPIMs, to be removed. It argued:

Lowering the standard of proof to the bare minimum capable of being considered a threshold condition; removing entirely the limit on the number of times an order can be re-imposed indefinitely on the basis of the same (increasingly old) evidence; and removing the restriction on the maximum number of hours of curfew (house arrest) the individual can be placed under, amounts to a significant increase in the severity of the measures that may be imposed—while removing a key safeguard.<sup>122</sup>

It also argued that the changes would make “what was already a deeply problematic system far more intrusive”.<sup>123</sup>

Professor Ian Acheson, a former prison governor who conducted a government review of Islamist extremism inside prisons, has also commented on the bill. He claimed that the sentencing and supervision process was “irredeemably broken and doesn’t command public confidence”.<sup>124</sup> In addition, he warned that longer prison sentences alone are not enough to improve public safety:

We do need to see more focus on how extra time for violent extremists in custody will be used to challenge and change their hateful ideologies. If this isn’t effectively addressed, the new measures will simply delay further attacks, and might even inspire them.<sup>125</sup>

Counter-Terrorism Policing—a collaboration of UK police forces working with the intelligence community<sup>126</sup>—welcomed the bill. Commenting on it, Deputy Assistant Commissioner Dean Haydon, Counter Terrorism Policing’s senior national coordinator, said:

This bill would ensure dangerous terrorists serve sentences proportionate to their crimes, as well as bolster our ability to monitor those in the community who might still pose a threat.<sup>127</sup>

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<sup>122</sup> Amnesty International UK, [Counter-Terrorism and Sentencing Bill 2019–21: Submission to the Public Bill Committee](#), June 2020, p 1.

<sup>123</sup> *ibid*, p 2.

<sup>124</sup> Lizzie Dearden, [‘Prison sentences for any serious crime to be increased for ‘terrorist connection’ under government plans’](#), *Independent*, 20 May 2020.

<sup>125</sup> *ibid*.

<sup>126</sup> Counter Terrorism Policing, [‘Our network’](#), accessed 24 August 2020.

<sup>127</sup> Counter Terrorism Policing, [‘CTP welcomes new Counter-Terrorism and Sentencing Bill’](#), 20 May 2020.

## Read more

- House of Commons Library, [Counter-Terrorism and Sentencing Bill 2019–21](#), 8 June 2020
- House of Commons Library, [Counter-Terrorism and Sentencing Bill 2019–21: Progress of the Bill](#), 17 July 2020
- House of Commons Library, [Terrorism in Great Britain: the Statistics](#), 26 March 2020
- Independent Reviewer of Terrorism Legislation, '[Features](#)', accessed 19 August 2020