

<b>Committee:</b>	<b>Date:</b>
City of London Police Authority Board	20th April 2021
<b>Subject:</b> Counter-Terrorism and Sentencing Bill	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	1, 6, 12
<b>Does this proposal require extra revenue and/or capital spending?</b>	No
<b>Report of:</b> Remembrancer <b>Report author:</b> Kiki Hausdorff	<b>For Information</b>

### Summary

The Counter-Terrorism and Sentencing Bill, which is awaiting Royal Assent, makes provision to strengthen the sentencing of offenders convicted of terrorism offences, strengthen the Government's ability to manage the threat posed by individuals involved in terrorism, and monitor terrorist offenders on release from prison. This Report outlines some of the changes to sentencing provisions which the Bill introduces. Debate on the Bill in Parliament focused largely on amendments which the Bill makes to the standard of proof and time limits for imposing Terrorism Prevention and Investigation Measures (TPIMs). The Bill lowers the existing standard of proof from "balance of probabilities" to "reasonable belief" of involvement in terrorism-related activity, and extends TPIM time limits from two years to five years.

### Recommendation

Members are asked to note the contents of this report.

### Main Report

#### Commencement

1. Both Houses have agreed on the text of the Bill which now waits for the final stage of Royal Assent. A date for the Assent is yet to be scheduled.
2. Most of the Bill's provisions will come into force two months after Royal Assent. Some provisions will be brought into effect on a day to be appointed by Regulations which have yet to be made.

#### Background to the Bill

3. Following the attack at Fishmongers' Hall in November 2019, the Government stated in the December 2019 Queen's Speech that it would legislate to "ensure the

most serious terrorist offenders stay in prison for longer". This was followed in February 2020 by an attack by a man who was under active counter-terrorism surveillance. In both instances, the attackers had recently been automatically released from custody at the halfway point of their sentence for previous terrorist offences.

4. Shortly after the second attack, the Terrorist Offenders (Restriction of Early Release) Act 2020 was passed as emergency legislation to end the automatic early release of terrorist offenders. This was described as the "first stage" of the Government's legislative response to the attacks, with the Justice Secretary at the time indicating that wider measures would follow. This Bill represents the "second stage" of the Government's response, and provides further measures which the Government have said will strengthen "every stage in the process of dealing with terrorist offenders."

### **The Aims of the Bill**

5. The Government have said the Bill will ensure that serious and dangerous terrorism offenders will spend longer in custody, "properly reflecting the seriousness of the offences they have committed, which provides both better protection for the public and more time in which to support their disengagement and rehabilitation." It also aims to "improve the ability to monitor and manage the risk posed by terrorist offenders and individuals of terrorism concern outside of custody, allowing for more effective intervention when this is required."

### **Terrorism Prevention and Investigation Measures**

6. The Bill amends the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 as follows.

#### Standard of proof

7. The Government had originally intended for the Bill to lower the standard of proof for the imposition of a TPIM from "balance of probabilities" to "reasonable grounds for suspecting" involvement in terrorism-related activity.
8. In response to concerns raised about this in Committee stage, the Government amended the test to one of "reasonable belief" of involvement in terrorism-related activity. This amendment still has the effect of lowering the existing standard of proof but leaves a higher standard than that originally proposed by the Bill.
9. Lord Parkinson of Whitley Bay told the Lords that the Government were "confident that this amendment represents a sensible compromise and trust that it addresses the concerns raised about the previously proposed standard of proof and the cumulative effect of the wider package of TPIM changes proposed in the Bill."

#### TPIM Time Limits

10. The Government had originally intended the Bill to extend the length of time for which a TPIM can last from two years to an indefinite period, by providing that a TPIM may be "renewed annually for as long as necessary".

11. However, there were concerns that this would lessen the incentive to prosecute subjects and risk individuals being “warehoused”, and the Government were forced to reconsider TPIM time limits when an amendment was passed by the Lords at Report stage.
12. The amendment, moved by former Independent Reviewer of Terrorism Legislation, Lord Anderson of Ipswich, would have replaced the two-year limit with a four-year limit by providing that TPIM notices may be extended up to three times.
13. Lord Anderson called this the “middle path” which combined a desire for “longer than two years in the most serious cases,” with the recognition that “TPIMs must not be allowed to become a more attractive option than prosecution, that the authorities must be incentivised to work on an exit strategy... and that in a free country, our fellow citizens, however odious we might consider them, cannot be indefinitely confined by the state in the absence of any attempt to put them on trial.”
14. Although the amendment was disagreed to in the Commons, the Lords subsequently agreed to Government amendments which provide for TPIM notices to be extended up to four times, setting an upper limit of five years.
15. Justice Minister Chris Philp told the Commons this “represents a reasonable compromise between a desire to set a reasonable limit on the maximum duration of TPIMs and protecting our fellow citizens.”
16. Lord Parkinson told the Lords that the Government “do not share the concerns that were raised in respect of the Bill’s original proposal to enable TPIMs to be renewed for as long as is necessary for public protection... None the less, we recognise the clear strength of feeling expressed by your Lordships’ House that TPIMs should have a finite limit.”

#### Independent Review of TPIMs

17. The Bill introduces a statutory requirement for the Independent Reviewer of Terrorism Legislation to review the operation of the TPIM Act 2011 on an annual basis for the five years following Royal Assent of the Bill, commencing with a review in 2022. Lord Parkinson explained that this provision, introduced by a Government amendment, was intended to address concerns raised about the importance of independent oversight of the TPIM regime.

#### **Serious Terrorism Sentence**

18. The Bill creates a new type of sentence for the most serious and dangerous terrorist and terrorism-related offenders aged 18 or over. The Serious Terrorism Sentence carries a minimum custodial term of 14 years and an extended licence period of between 7 and 25 years.

#### **Removal of Early Release**

19. The Bill will also remove the possibility of any early release from custody for serious and dangerous terrorist offenders, aged under and over 18, who receive an Extended Determinate Sentence.

#### **Extended Sentences**

20. The Bill adds certain offences to the extended sentence regimes, so that where an offender is deemed dangerous and a terrorist connection is found by the court, they will spend longer in custody and be subject to an extended licence period on release.

### **Increase Maximum Sentences**

21. The Bill also increases the maximum sentence that the court can impose, from 10 to 14 years, for three terrorism offences: membership of a proscribed organisation; supporting a proscribed organisation; and attending a place used for terrorist training.

### **Aggravating Factor**

22. The Bill amends the Counter-Terrorism Act 2008 and the Sentencing Bill 2020 so that a court can find that any offence with a maximum penalty of more than two years has been committed with a terrorist connection. This can be an aggravating factor when sentencing, which may result in a higher sentence than would otherwise be the case.
23. This measure also means that Registered Terrorist Offender notification requirements may be triggered in a wider range of cases. The Bill adds the offences of breaching a Terrorism Prevention and Investigation Measure (TPIM) notice and breaching a Temporary Exclusion Order to the list of relevant terrorism offences that trigger the Registered Terrorist Offender notification requirements.

### **Licence Periods**

24. The Bill increases the length of the maximum licence periods to 10 years for serious and dangerous terrorist offenders aged under and over 18 sentenced to an extended sentence. The Bill also strengthens licence supervision for terrorist offenders aged 18 or over, by extending the application of mandatory polygraph testing for some terrorist offenders released on licence.

### **Sentence for Offenders of Particular Concern Regime**

25. The Bill adds all terrorism offences with a maximum penalty of more than two years to the Sentence for Offenders of Particular Concern (SOPC) regime and creates sentences equivalent to the SOPC regime for terrorist offenders aged under 18. This ensures that terrorist offenders sentenced in future are subject to a minimum period of supervision on licence of 12 months following release.

### **Serious Crime Prevention Orders**

26. The Bill amends the Serious Crime Act 2007 so that Counter-Terrorism Policing can make a direct application to the High Court for a Serious Crime Prevention Order (SCPO) in relation to individuals concerned with terrorism, to reduce the administrative burdens associated with an SCPO and support their use in terrorism cases.

## **Prevent**

27. The Bill will remove the current statutory deadline for an independent Review of the Prevent programme, while maintaining the legislative commitment to undertake a Review, to ensure the review has sufficient time. The aim is to complete the Review by August 2021.

## **Conclusion**

28. As noted above, the Bill currently awaits Royal Assent, the date for which is yet to be scheduled. Most of the Bill's provisions will come into force two months after it becomes an Act of Parliament, but some will be implemented by Regulations.

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