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Liberty's Briefing on the Proposed Renewal of Terrorism Prevention and Investigation Measures (TPIMs)

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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1. Today, the Home Secretary is giving a written statement on the renewal of the 'Terrorism Prevention and Investigation Measures' (TPIMs). The renewal must be done by order, the Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016, and which is subject to the affirmative resolution procedure involving both Houses of Parliament.
2. Introduced to replace the discredited Control Order regime, these new measures allow the Home Secretary to impose a wide range of punitive restrictions on individuals, entirely outside of the criminal justice system, where she is satisfied, on the balance of probabilities, of their involvement in terrorism-related activity. These include overnight curfews, exclusion from certain places or buildings, restrictions on travel, meetings, work, study, contact with others, use of phones, computers, access to financial services, daily reporting at a police station and GPS monitoring.
3. However, TPIMs have been successively amended so as to be now identical with the previous Control Order regime – reintroducing its most punishing and unjust feature, the overnight residence requirement. This allows the authorities to remove individuals from their families and communities to be placed in isolation in a town or city to which they have never been – in effect, a form of internal exile.
4. On any objective assessment, control orders and TPIMs have failed. Far from being a 'temporary but necessary' central plank of our counter-terror strategy, the measures have been circumvented by some and have acted as a visible symbol of injustice and cause of resentment for others. They have been relatively little-used after human rights rulings in the courts and have never led to a terrorism-related prosecution. It is no surprise that only one individual is reported to be currently subject to them.¹
5. In January 2015, the JCHR said that "*we are left with the impression that in practice TPIMs may be withering on the vine as a counter-terrorism tool of practical utility*" and recommended that the next Government urgently review the powers to allow "Parliament to make a fully informed decision about the continued necessity of the powers at that time". But instead of reviewing this discredited system, the Government proposes to renew it.

¹ *The Telegraph*, 'Only one Tpm terror control order is in place in Britain amid 'severe' threat level', 28 July 2016, available here: <http://www.telegraph.co.uk/news/2016/07/27/only-one-tpim-terror-control-order-is-in-place-in-britain-amid-s/>.

Unsafe and unfair

6. TPIMs are both unsafe and unfair. They undermine security by impeding prosecutions of those suspected of terrorism-related offences. The former Director of Public Prosecutions, Lord Macdonald QC, in overseeing the Home Office review of counter-terrorism and security powers, concluded:

“The evidence obtained by the Review has plainly demonstrated that the present control order regime acts as an impediment to prosecution. It places those suspected of involvement in terrorist activity squarely in an evidence limbo: current control powers can relocate suspects and place them under curfews for up to 16 hours a day, they can forbid suspects from meeting and speaking with other named individuals, from travelling to particular places, and from using telephones and the internet. In other words, controls may be imposed that precisely prevent those very activities that are apt to result in the discovery of evidence fit for prosecution, conviction and imprisonment.”²

7. In fact, he gave concrete examples of cases where, had these powers been used, convicted terrorists would have gone free:

“We may safely assume that if the Operation Overt (airline) plotters had, in the earliest stages of their conspiracy, been placed on control orders and subjected to the full gamut of conditions available under the present legislation, they would be living amongst us still, instead of sitting for very long years in the jail cells where they belong.”

8. During their introduction, it was claimed that TPIMs would better reconcile the public policy aim of prosecution with preventative detention. However, the JCHR reported in 2015 that it *“failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions for terrorism suspects.”*³ In fact, in their view, TPIMs have no meaningful investigatory function, to the extent that they recommended that their name should be changed – ‘TPIMS’ being “a misnomer”.

9. These measures can have a devastating impact on those subject to them and their families. They can also undermine long-term security by alienating communities and

² Review of Counter-terrorism & Security Powers, A Report by Lord Macdonald of River Glaven, QC, January 2011, page 9, available at - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97971/report-by-lord-mcdonald.pdf.

³ See JCHR, ‘Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011’, Tenth Report of Session 2013–14, 2014, available here: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/113/113.pdf>.

the next generation. In a number of cases, the courts quashed control orders or found them to be unlawful on the basis that internal exile, in conjunction with other restrictions imposed, amounted to a violation of Article 5 of the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998 (HRA). In the leading Supreme Court case on the issue in 2010, a control order imposing a 150 mile relocation requirement and a 16 hour curfew was ruled unlawful as a result of the detainee's dramatically reduced contact with family and severe social isolation.⁴ This judgment confirmed that the decision as to whether an order is lawful will turn on the impact of the overall package of measures on a detainee.

10. In another relocation case that reached the High Court in 2010, the Court upheld an appeal against an order that also included a 150-mile relocation requirement and had the effect of separating a man from his wife and two children.⁵ Mr Justice Mitting further ruled, on the basis of evidence provided by the detainee's wife, that the threat he posed would actually be reduced if he were able to remain with his family. The security risk of leaving those suspected of terrorist intent in the community and antagonising and punishing them with enforced separation from their families is clear. Renewed legal challenges to the system of internal exile will come at considerable cost to the public purse.⁶ Following a judgment of the Court of Appeal in 2010, it is possible that those whose orders are quashed may be able to claim compensation.⁷
11. As well as impacting family members, TPIMs have been used against those who pose no direct threat to the public – increasing the potential for alienation and radicalisation. After some individuals subject to TPIMs absconded in 2012 and 2013, the Home Secretary made clear in her statements just how loosely the measures are applied. Parliament was told that the first abscondee was “not considered to represent a direct threat to the British public. The TPIM notice in this case was intended primarily to prevent fundraising and overseas travel”⁸ and in relation to the second abscondee that “the police and security service have confirmed that they do not believe [he] poses a direct threat to the public in the UK. The reason he was out

⁴ *AP* [2010] UKSC 24.

⁵ *CA v Secretary of State for the Home Department* [2010] EWHC 2278.

⁶ The Joint Committee on Human Rights reported in 2010 that approximately £13m was spent on control orders between 2006 and 2009 *excluding the cost of* policing, court hearings, legal representation of controlled persons and other administrative costs. See Joint Committee of Human Rights Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010. Ninth Report of Session 2009-2010 (HL Paper 64; HC 395) (26 February 2010) (TSO: London). Available at <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/64/64.pdf>.

⁷ *AN & Others* [2010] EWCA Civ 869.

⁸ HC Deb 8 Jan 2013 col 161.

on a TPIM in the first place was to prevent his travelling to support terrorism overseas.”⁹ Separate powers and criminal offences have since been introduced to deal with those who seek to leave the UK to commit terrorism overseas, leaving these dubious uses of TPIMs needless.

12. Other aspects of the regime are especially punitive. Travel measures can be imposed by the Secretary of State to prevent people leaving the UK as well as “any area within the UK that includes the place where the individual will be living”. TPIMs thereby prevents individuals from leaving an unspecified locality around them, but now the defence of ‘reasonable excuse’ for those who breach TPIMs by leaving the UK has been removed. Even worse, the maximum sentence for breach has been increased to 10 years’ imprisonment. Criminalisation of those who breach an executive-imposed civil sanction turns our justice system on its head. This was recognised by the jury who heard the criminal case brought against Cerie Bullivant, prosecuted for seven control order breaches after he went on the run.¹⁰ The jury acquitted him on all charges. A ten-year prison sentence is longer than those routinely handed down to serious violent offenders, and is available for those who have never even been arrested, let alone convicted, for a terrorism offence.
13. In view of the failure of TPIMs as a preventative or investigative measure against terrorism, there are real and viable alternatives. One is allowing the use of police bail with conditions relating specifically to terrorism-related offences, allowing police to continue to engage with suspects over time but without the failed and unfair features of the current system. Liberty has also campaigned for many years to allow the use evidence obtained by the interception of communication – known as ‘intercept evidence’ – in court. Despite the intelligence and security services gathering a great deal of this data during their monitoring of suspects of terrorism-related offences, there remains an antiquated and obstructive ban on the use of such evidence in court. Allowing intercept evidence to be used would give prosecutors what they need to properly pursue those who may otherwise be subject to TPIMs, but without recourse to this discredited regime. TPIMs are unsafe, unfair, and needless. Liberty

⁹ HC Deb 4 Nov 2013 col 23.

¹⁰ Cerie Bullivant has written and spoken of his experiences as a contolee. See Annexure Two of Liberty’s submission to the Home Office Counter Terror Review, *From War to Law*, available at <https://www.liberty-human-rights.org.uk/sites/default/files/from-war-to-law-final-pdf-with-bookmarks.pdf>. See also “*Like Mohammed Ahmed Mohamed, I went on the run as a ‘terrorist’*”, 8 November 2013, <http://www.theguardian.com/commentisfree/2013/nov/08/mohammed-ahmed-mohmed-on-the-run-security-services>.

urges Parliamentarians not to allow their renewal by the Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016.

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