

COUNTER TERRORISM AND SENTENCING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129).

- These Explanatory Notes have been produced by the Ministry of Justice and Home Office to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Counter Terrorism and Sentencing will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. The purpose of the Counter Terrorism and Sentencing 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 provides both better protection for the public and more 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.
2. The provisions in the Act are intended to strengthen the approach to the sentencing of terrorist offenders through:
 - i. The creation of a new type of sentence for the most serious terrorist and terrorism-related offenders (aged 18 or over), with a minimum custodial term of 14 years and an extended licence period of between seven and 25 years.
 - ii. Removing the possibility of any early release from custody for dangerous terrorist offenders who have committed a serious terrorism offence and who receive an extended sentence.
 - iii. Increasing the maximum penalty available for particular terrorism offences.
 - iv. Amending the Counter-Terrorism Act 2008 “2008 Act” and Sentencing Code 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, so that this can be an aggravating factor when sentencing and trigger registered terrorist offender notification requirements in a wider range of cases.
 - v. Adding 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.
 - vi. Adding all terrorism offences with a maximum penalty of more than two years to the Sentence for Offenders of Particular Concern (SOPC) regime, ensuring terrorist offenders sentenced in future are subject to a minimum mandatory period on licence.
 - vii. Creating new equivalents of the SOPC regime for under-18 terrorist offenders in England and Wales, and for terrorist offences (whether committed by adults or those under 18) in Scotland and Northern Ireland.
3. The Act will also improve the government’s ability to manage the threat posed by individuals involved in terrorism and monitor terrorist offenders on release from prison, through:
 - i. Increases to the length of maximum licence periods for serious and dangerous terrorist offenders sentenced to an extended sentence to 10 years in Northern Ireland and England and Wales.¹
 - ii. Strengthened licence supervision for terrorist offenders (aged 18 or over) by extending the application of mandatory polygraph testing for some terrorist offenders released on

¹ In Scotland the current maximum licence period is already 10 years for terrorist offenders.

- licence and extending polygraph use to Scotland and Northern Ireland for some terrorist offenders.
- iii. Amending the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 (as amended by the Counter-Terrorism and Security Act 2015), to lower the standard of proof for imposing a TPIM notice, to specify new measures which can be applied to TPIM subjects, and to extend the length of time for which a TPIM can last from two years to an indefinite period.
 - iv. Amending 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.
 - v. Strengthening the registered terrorist offender (RTO) notification requirements, by adding the offences of breaching a TPIM notice and breaching a Temporary Exclusion Order (TEO) to the list of relevant terrorism offences that trigger the RTO notification requirements.
4. In addition, the Act will remove the statutory deadline for the independent review of Prevent (while maintaining the legislative commitment to undertake the review), to ensure the review has sufficient time to fulfil its terms of reference.

Policy background

5. The terrorism threat level in the UK remains “substantial” – meaning an attack is likely – and there have been 25 attacks foiled since March 2017.² The terror attacks at Fishmongers Hall on 29 November 2019 and in Streatham on 2 February 2020 demonstrated the risk the UK faces from terrorism. Each attack was committed by a known terrorism offender who had been released automatically at the halfway point of their sentence without input from the Parole Board. Following the attack in November, the Government announced its intention to introduce a new approach to the sentencing and management of terrorist offenders.³ This included longer sentences and ending early release for dangerous terrorist offenders; overhauling prisons and probation, including tougher monitoring conditions and the doubling of counter-terrorism probation officers; increasing Counter-Terrorism Police funding; and reviewing support for victims of terrorism, including an immediate £500,000 to the Victims of Terrorism Unit. It also launched an independent review of the way different agencies, including police, probation service, and the security services investigate, monitor and manage terrorist offenders – called Multi Agency Public Protection Arrangements (MAPPA).
6. The Government had already announced its intention to bring forward legislation to change the sentencing and release of terrorist offenders. The Government introduced emergency legislation, the Terrorist Offenders (Restriction of Early Release) (TORER) Act 2020, to ensure that terrorist offenders serving or sentenced to a determinate sentence could not be released before the end of

² Source: Home Office

³ <https://www.gov.uk/government/news/tougher-sentencing-and-monitoring-in-government-overhaul-of-terrorism-response>

their custodial term without agreement of the Parole Board. Due to the nature of the threat posed, these measures were applied to both serving prisoners and prospectively. The provisions of this Act applied in England and Wales and Scotland.

7. Provisions made in the TORER Act applied to Great Britain, but did not extend to Northern Ireland at that time. NI sets determinate custodial sentences differently from the way standard determinate sentences, and short and long term sentences are set in England and Wales, and Scotland, respectively. These issues were not addressed in the emergency timetable as there were no prisoners with impending release, but Ministers committed to returning to this issue for NI. Therefore, provision to rectify that inconsistency is being provided in this Bill.
8. Although the numbers of children convicted of terrorism offences is small, it is clear that some are susceptible to radicalisation and to adopting extremist views and that some pose a threat whilst still under the age of 18. The Government also intends to ensure through this Bill that this threat is reduced by extending measures to youth offenders where appropriate.

Extent

9. Counter-terrorism is a reserved matter, but significant devolution has been in place since 1999 for Scotland and 2010 for Northern Ireland in relation to criminal justice. The UK Government want the CTS Bill to apply UK-wide, both as a reflection of the reserved nature of counter-terrorism and to ensure equal provision across jurisdictions to address the terrorist threat to the UK public.
10. Due to the devolved nature of much of criminal justice to Northern Ireland and Scotland, this Bill has required specific measures for each jurisdiction. Exact details on each provision can be found at Annex A.

Sentencing and release

11. Following the passing of the TORER Act 2020, all determinate terrorist or terrorism-related offenders must now be referred to the Parole Board at the two-thirds points of the sentence before they can be considered for early release. Prior to this, those serving a standard determinate sentence, or for those under 18 serving a section 91 sentence under the Powers of Criminal Courts (Sentencing) Act 2000, were automatically released at the halfway point with no referral to the Parole Board. Once released these offenders would serve the remainder of their sentence in the community on licence. Prior to the TORER Act, those who received a SOPC (currently only applicable to adults) could be considered by the Parole Board for release from the halfway point. Once released, the offenders would serve the remainder of their sentence on licence including a mandatory 12-month licence period. Following the passing of the TORER Act 2020 release by the Parole Board could only be considered from the two thirds point of the sentence. This Bill will extend the scope of the SOPC, and create an equivalent sentence for youths and for Scotland and Northern Ireland, to ensure the new release provision and a minimum period on licence apply consistently for adult and youth terrorist offenders across the UK.
12. The TORER Act 2020 also brought in line the consideration for release by the Parole Board at two thirds for all extended sentences. In England and Wales, those assessed as dangerous may receive an extended determinate sentence (EDS), which comprises a custodial term and an extension period to be served on licence in the community. They may be considered for release by the Parole Board once they have served two-thirds of the custodial element of their sentence. This Bill will remove discretionary early release for the most serious terrorist offenders who receive an EDS or the Scottish and Northern Irish equivalent, where the offence attracts a maximum penalty of life.

13. The maximum penalties for a number of terrorism offences were established in the Terrorism Acts of 2000 and 2006, with some amended in the Counter Terrorism and Border Security Act (CTBSA) 2019. The terrorist threat has continued to evolve, as evidenced by the attacks at Fishmonger's Hall and Streatham, and there remain some offences where the maximum penalty is not aligned to the seriousness of the offence. This legislation will address this discrepancy. It will continue to be for judges to decide what sentence is appropriate in the particular circumstances of individual cases, within the available range and in line with applicable sentencing guidelines.

Monitoring and prevention

14. The TPIM Act 2011 replaced the previous system of control orders. It provides for a number of measures to be imposed on individuals who the Home Secretary believes, have, on the balance of probabilities (as amended by the Counter Terrorism and Security Act 2015), been involved in terrorism related activity. The Counter Terrorism and Security Act 2015 made some amendments to the TPIM Act 2011. These amendments followed recommendations that former Independent Reviewer of Terrorism Legislation (IRTL), David Anderson QC, made in his annual report. These amendments addressed the changing threat picture in 2015. More recently, in response to the Streatham attack, Lord Carlile, a former IRTL called for tougher restrictions on released prisoners, such as the reintroduction of control orders. The Government does not consider it necessary to reintroduce control orders; sufficient amendments can be made to the TPIM Act 2011 to strengthen it. Three of the amendments proposed draw on elements of control orders; changing the threshold back to reasonable suspicion; removing the maximum two-year duration of a TPIM notice, and allowing for a flexible curfew rather than the current overnight measure, however, these amendments will sit within the TPIM Act 2011.
15. In his 2019 report, Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation found that "The power of the High Court to make SCPOs is a seriously underused power generally, and has not been used in connection with suspected terrorists to date". The changes in this legislation are intended to address this by simplifying the process for police to make an application for an SCPO.
16. The 2008 Act provides a notification regime for individuals sentenced to 12 months' or more imprisonment for a specified terrorism offence or (in England, Wales and Scotland) an offence with a terrorism connection. This notification regime was strengthened by the 2019 Act to require Registered Terrorist Offenders to provide further information. This legislation will add further offences to those leading to notification requirements for individuals convicted of terrorism or terrorism-related offences on their release from prison.

Legal background

Sentencing and release

17. Sentences of imprisonment are generally served part in prison and part in the community. Under current legislation, determinate sentenced prisoners in England and Wales must be released in accordance with the provisions contained in Chapter 6 of Part 12 of the Criminal Justice Act 2003 ("the 2003 Act") and the legacy release provisions of the Criminal Justice Act 1991 which are restated in Schedule 20B of the 2003 Act, and indeterminate sentenced prisoners in accordance with Part 2 of the Crime (Sentencing) Act 1997. In Scotland, prisoners must be released in accordance with the terms of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). In Northern Ireland, prisoners sentenced after April 2009 are released pursuant to the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order").

18. The following sentences (expanded upon below), which can currently be applied to those who have committed a terrorist or terror related offence, are subject to changes by the Bill:
- Sentence for Offenders of Particular Concern (England and Wales) where a terrorist offender is eligible to be considered for release by the Parole Board at the two thirds point of the custodial term, and will be subject to an extra 12 month licence period at the end of their custodial term.
 - Extended Determinate Sentence (England and Wales) where a terrorist offender is currently eligible to be considered for release by the Parole Board at the two thirds point of the custodial term and will be subject to an extended licence period at the end of their custodial term.
 - Discretionary Life Sentences (England and Wales) where a terrorist offender is guilty of an offence which has a maximum punishment of life imprisonment, but where the judge has discretion to set the minimum term (tariff) to be spent in custody, after which they are eligible for release by the Parole Board. The subsequent licence period lasts for life.
 - Extended Sentences (Scotland) where a terrorist offender is currently eligible to be considered for release by the Parole Board at the two thirds point of the custodial term and will be subject to an extended licence period on release.
 - Indeterminate Sentences (Scotland) where a terrorist offender is serving a sentence with no set end point, such as a life sentence. Release is discretionary by the Parole Board for Scotland after the minimum custodial term set by the Court is served. Once released, offenders are subject to licence conditions for life.
 - Determinate Custodial Sentences (Northern Ireland) where all offenders are currently released automatically on licence at the halfway point of the sentence.
 - Extended Custodial Sentences (Northern Ireland) where all offenders are currently eligible to be considered for release by the Parole Commissioners at the halfway point of the custodial term and will be subject to an extended licence period after the custodial term ends.
 - Indeterminate Custodial Sentences (Northern Ireland) where offenders are given an indeterminate sentence and become eligible to be considered for release by the Parole Commissioners after the minimum term or 'tariff' has expired. These prisoners are subject to a licence for their lifetime unless revoked.
19. Prisoners who are transferred on an unrestricted basis between the jurisdictions of the United Kingdom are, by virtue of Schedule 1 paragraph 15(2) of the Crime (Sentences) Act 1997, treated for 'relevant purposes' (which include detention, release, supervision and recall) as if the person had been sentenced to an equivalent sentence in the receiving jurisdiction.

Sentencing and release: England and Wales

20. The Sentencing Bill, introduced to the House of Lords on 5 March 2020, will consolidate the law governing sentencing procedure in England and Wales into a Sentencing Code, with a fixed commencement date of 1 October 2020. The Sentencing Code includes procedural provisions which sentencing courts need to rely upon during the sentencing process, including sentences which a court may impose. It will re-enact law that is already in force, and does not alter its substance or effect. It does not include the types of sentence courts in Scotland and Northern Ireland may impose, as sentencing procedure is a devolved matter in those jurisdictions, nor does it include release provisions, which will remain in Chapter 6 of Part 12 of the 2003 Act.

21. The sentencing provisions in the Bill for England and Wales have been drafted in line with those in the Sentencing Bill 2020 (known as the Sentencing Code). Accordingly, statutory references within these explanatory notes for those sentencing provisions for England and Wales have been expressed in line with the provisions drafted to the Sentencing Code. An equivalent reference has also been provided with reference to the currently applicable, as yet unconsolidated law.

Extended Determinate Sentence

22. The EDS, comprising a custodial term and an extension period to be served on licence in the community, is available to the courts for specified violent, sexual or terrorism offences, and are contained in sections 226A and 226B of the 2003 Act (soon to be consolidated by Chapter 4, sections 254, 266 and 279 of the Sentencing Code which will make provision for extended sentences). Where the offender meets particular criteria, including committing a specified offence, they have been deemed to pose a significant risk of harm, and the court is not required to impose a life sentence, the court may impose an extended sentence.
23. Part 10, Chapter 6 of the Sentencing Code (unconsolidated form in section 229 of the 2003 Act) defines the meaning of a specified offence which may attract an extended sentence in the case of offenders deemed to be 'dangerous', and defines how the assessment of dangerousness is made.
24. The current maximum length of the extended licence period is eight years for specified terrorist offences. The combined length of the custodial term and the extended licence period must be within the maximum penalty for the offence committed. All offenders, including terrorist offenders, must be released at the end of their custodial term but the Parole Board has the discretion to release from the two-thirds point if satisfied that the offender's detention is no longer necessary for the protection of the public.
25. The EDS was introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, imposed under sections 226A or 227 of the 2003 Act for adults and section 226B or 228 of the 2003 Act for under 18s. It states that the court may impose an EDS where an adult or child offender has committed a specified violent, sexual or terrorist offence (as listed in Schedule 15 to the 2003 Act – the equivalent list appears in the Sentencing Code as aforementioned) and the courts find the offender to be 'dangerous'. As enacted, and prior to 13 April 2015, if the custodial term of an EDS was for a period of less than 10 years, and the offence was not listed in Schedule 15B to the 2003 Act, release was automatic at the two-thirds point – with no Parole Board consideration. This was amended by the Criminal Justice and Court Act 2015 which provided for Parole Board consideration of the release of all EDS sentenced offenders sentenced after that Act came into force, and further amended by the TORER Act 2020 provisions bring all prior sentences into line.

Sentence for Offenders of Particular Concern

26. The SOPC was introduced in the Criminal Justice and Courts Act 2015 in England and Wales and must be imposed upon offenders aged over 18 who have committed a terrorist or sexual offence specified in Schedule 18A of the 2003 Act, in circumstances where the Court finds that neither the seriousness threshold for applying a life sentence, nor the dangerousness threshold for applying an EDS, have been met.
27. Under section 244A of the 2003 Act, all non-terrorist offenders serving a SOPC are considered for early release by the Board from the half-way point. The release provisions for SOPCs for terrorist offenders were amended by the Terrorist Offender (Restriction of Early Release) Act 2020 so they cannot not be considered for release before the two thirds point of their custodial sentence. All SOPC offenders, whether terrorist or non-terrorist, must be released at the end of their custodial term and are subject to a further 12-month licence period to manage the assessed risk the

offender poses.

Discretionary Life Sentences

28. Life Sentences for offences excluding murder must be imposed in the following circumstances, using the discretion of the court to decide if a life sentence should apply:
- Under section 225/226 of the 2003 Act; a life sentence should be imposed on a finding of dangerousness and where the offence warrants a life sentence;
 - From a conviction for a second listed offence, known as “automatic life”;
 - Life sentences where sections 225 and 226 of the 2003 Act do not apply, specifically for offending committed before the commencement of the 2003 Act so that the dangerousness provisions do not apply and for offences where there is a maximum penalty of life imprisonment but that offence is not a specified offence for the purposes of Schedule 15 of the 2003 Act.
29. Discretionary Life Sentences, provision for which is set out section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (and will be in section 323 of the Sentencing Code), are available to courts where an offender is guilty of an offence which has a maximum punishment of life imprisonment, but where the judge has discretion to set the minimum term (tariff) to be spent in custody, after which they are eligible for release by the Parole Board. This compares to Mandatory Life Sentences, where starting points for minimum terms are set out in statute (sections 269-277 and Schedules 21 and 22 of the CJA 2003).
30. On giving a discretionary life sentence, the court will set a minimum term that the offender must serve in prison. At the end of that term they can apply to the Parole Board for release on licence but will only be released if no longer considered to be a risk to the public. The term of the licence is for life. If released the offender would be subject to certain conditions and if the conditions are broken or if the offender is considered to be a risk to the public they will be sent back to prison.

Sentencing and release: Scotland

Extended Sentences

31. In Scotland, extended sentences can be given by the court to those who have committed a terrorist or terror related offence, Prisoners who are given this sentence for an offence in Schedule 1A to the 1993 Act must be released at the end of their custodial term but are eligible to be considered for release by the Parole Board from the two-thirds point. Extended sentences were introduced under the Crime and Disorder Act 1998 which inserted section 210A into the Criminal Procedure (Scotland) Act 1995. Under section 210A the court may impose an extended sentence if it is intending to pass a determinate sentence in relation to a sexual offence of any length, or a violent or terrorism offence of four years or more, and considers that the terms of a standard sentence would not be adequate for the purpose of protecting the public from serious harm from the offender.
32. An extended sentence is made up of a custodial term and an extended licence period set by the court (up to 10 years). Terrorist prisoners subject to an extended sentence are eligible for release by the Scottish Ministers on a recommendation from the Parole Board for Scotland at the two-thirds point. As enacted, all prisoners given an extended sentence were entitled to automatic release at the two-thirds point. The Prisoners (Control of Release) Scotland Act 2015 on 1 February 2016 amended this so that all prisoners serving this sentence were entitled to be considered for release by the Parole Board for Scotland from the mid-way point of the custodial term, with automatic release at the end of the custodial term. The TORER Act 2020 further

amended this so that prisoners who have received an extended sentence for a terrorist offence listed in Schedule 1A to the 1993 Act are not considered for release by the Parole Board for Scotland until the two-thirds point of their custodial term. Automatic release for these prisoners remains at the end of their custodial term.

Indeterminate sentences

33. These are sentences that do not have a set end point, such as a life sentence. The court will set a punishment part for such sentences which is the minimum time an offender must spend in prison. 'Discretionary' life is the statutory term introduced under the 1993 Act to distinguish life prisoners sentenced by the court to life from those whose life sentence for murder is mandatory, being fixed by law.
34. A mandatory life sentence must be given for murder whereas a discretionary life sentence can be given for other extremely serious offences at the discretion of the court. For both these types of life sentence, the court sets the minimum custodial punishment time. After that minimum time, they will remain in prison unless the Parole Board for Scotland decides that they are safe to be released into the community under lifelong conditions.

Order for Lifelong Restriction

35. Orders for Lifelong Restriction were implemented by the Criminal Justice (Scotland) Act 2003, and provides a type of life sentence to be imposed where an offender has been convicted of a serious violent offence other than murder, a serious sexual offence, an offence which endangers life, or an offence which indicates a tendency to serious violent, sexual or life-endangering offending. The Court sets the 'punishment part' of the sentence, which is the minimum term to be served in custody. The Parole Board for Scotland will consider release at the end of this tariff period, and on release the offender will remain under intensive supervision, treatment and monitoring by a criminal justice social worker.

Sentencing and release: Northern Ireland

Determinate Custodial Sentences (DCS)

36. DCS for adult offenders are provided for by article 8 of the 2008 Order. The Court sets the sentence length based on the seriousness of the offending, then calculates a supervision period, and deducts that from the sentence, with what's left amounting to the custodial term (which cannot be more than half of the overall sentence). Once the custodial term of the sentence has been served, the offender is automatically released on licence.

Detention in a Young Offenders Centre

37. Detention in a Young Offenders Centre is provided for by section 5 of the Treatment of Offenders Act (Northern Ireland) 1968. This sentence is available for offenders aged 16 to 20 where they have been convicted of an offence which is punishable with imprisonment in the case of someone aged 21 years or over. The sentence will either be the maximum term of imprisonment which the court could impose for the offence in the case of a person aged 21 years or over, or 4 years, whichever is the lesser. Up to half of the sentence is served in custody, with the rest served on licence.

Extended Custodial Sentence (ECS)

38. The ECS was introduced for adult and child offenders by article 14 of the 2008 Order. It is a

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public protection sentence which can be imposed for certain violent or sexual offences listed in Schedule 2 of the 2008 Order, committed on or after commencement, if the court believes that the offender is likely to commit further similar offences in the future. This sentence mandates at least one year in custody and a period under licence. ECS prisoners are referred to the Parole Commissioners (PCNI) six months before the midpoint of their sentence. The extended licence period can be up to five years for violent offences and eight years for sexual offences.

Indeterminate Custodial Sentences (ICS)

39. The ICS was introduced in their current form for adult and child offenders by article 13 of the 2008 Order. These are used in cases where a life sentence is not suitable for a person convicted of a serious sexual or violent offence, but an ECS isn't considered sufficient to protect the public. No release date is given, rather they will be given a "tariff" date which is the earliest date that they may become eligible for consideration by the Parole Commissioners Northern Ireland (PCNI). The tariff must be a minimum of two years. A referral will be made to PCNI by the Department of Justice (DoJ) or the Secretary of State (where matters of national security are involved) to consider release around six months before the tariff date.

Licence Conditions: Polygraph

40. The power to mandatory polygraph test offenders on licence in England and Wales was created in the Offender Management Act 2007 ("the 2007 Act"). It applies to persons aged over 18, serving a relevant custodial sentence (defined in section 28 of the 2007 Act) for specified sexual offences.
41. Evidence gained from polygraph tests cannot be used in criminal proceedings against a released person, and various provisions for regulating polygraph procedure and administration are controlled by the Secretary of State via the 2007 Act and the Polygraph Rules 2009. The power was piloted in relation to nine police areas by the Offender Management Act 2007 (Commencement No.3) Order 2009 between 19 January 2009 and 31 March 2012. Following this successful pilot, the Offender Management Act 2007 (Commencement No. 6) Order 2013 granted the power to impose mandatory polygraph testing licence conditions upon offenders on licence from 6th January 2014.
42. The introduction of polygraph testing for domestic abuse offenders is a measure currently contained in the Domestic Abuse Bill which has been introduced to Parliament.

Statutory sentencing aggravating factor for a terrorist connection

43. Section 69 of the Sentencing Code requires that a court in England and Wales considering an offender's sentence for certain offences, must, if it appears that there is or may have been a terrorist connection, make a finding (on the criminal standard of proof) as to whether there is such a connection. The court will make this determination on the basis of the usual information before it for the purposes of sentencing, that is the trial evidence or evidence heard at a Newton hearing (if necessary), and taking account of any representations made by the prosecution or the defence. A Newton hearing is where the judge hears evidence from both the prosecution and the defence and comes to his or her own conclusion on the facts (because the facts are disputed by the other parties), applying the criminal standard of proof.
44. If the court determines that there was a terrorist connection, it must treat that as an aggravating factor when sentencing the offender. The presence of an aggravating factor may result in a higher sentence (within the statutory maximum) than would otherwise be the case. In addition, by virtue of section 42 of the 2008 Act the offence may fall within the scope of the notification requirements that apply to terrorist offences under Part 4 of the Act. An offence that is determined to have been committed with a terrorist connection also falls within the scope of the

forfeiture provisions under section 23A of the Terrorism Act 2000. A terrorist connection also engages the restriction of early release provisions in the TORER Act.

45. Prior to amendment by this Act, a court was required to consider whether there was a terrorist connection, only in respect of those offences that were specified in Schedule 1 to the Code.
46. Section 30 of the 2008 Act makes equivalent provision to section 69 of the Code, for Northern Ireland; and section 31 does likewise with respect to Scotland. Prior to the amendments made by this Act, a determination of a terrorist connection for these jurisdictions under sections 30 and 31 could be made only in relation to offences listed in Schedule 2 to the 2008 Act.

Registered Terrorist Offender notification requirements

47. Registered Terrorist Offender notification requirements were introduced in the 2008 Act for specified terrorist offences and apply to those aged 16 and above. Part 4 of the 2008 Act makes provision about the notification of information to the police by certain individuals convicted of relevant terrorism offences or offences committed with a terrorist connection. The notification requirements apply to a person who:
 - is convicted of a relevant offence and receives a sentence of imprisonment or detention for a period or term of 12 months or more in relation to that offence; or
 - is 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 12 months' imprisonment or more and is made subject to a hospital order.
48. When in the community, such individuals must provide the police with certain personal information, notify any changes to this information, confirm its accuracy periodically and notify any foreign travel. The period for which the notification requirements apply vary depending on the length of the sentence triggering the requirements.
49. The list of terrorism offences to which these notification requirements apply are in section 41 (terrorism offences) and section 42 (offences having a terrorist connection) of the 2008 Act.

Serious Crime Prevention Orders

50. Serious Crime Prevention Orders (SCPO) were introduced in the Serious Crime Act 2007 and apply to adults only. A SCPO is a type of civil injunctive order which is aimed at preventing serious crime. If a person breaches an order they commit a criminal offence. Section 8 of this Act states that a serious crime prevention order may be made only on an application by the Director of Public Prosecutions (England and Wales); the Director of the Serious Fraud Office (England and Wales); the Lord Advocate (Scotland); the Director of Public Prosecutions for Northern Ireland (Northern Ireland).

Terrorism Prevention and Investigation Measures

51. Terrorism prevention and investigation measures (TPIMs) are preventative civil measures imposed under the Terrorism Prevention and Investigation Measures Act 2011 (TPIMA 2011). They are designed to protect members of the public from the risk of terrorism by imposing restraints on those suspected of involvement in terrorism-related activity.
52. TPIMs replaced control orders. Control orders were another type of civil measure aimed at imposing restrictions on individuals to restrict their involvement in terrorism-related activity. Control orders were governed by the Prevention of Terrorism Act 2005, which was repealed in

its entirety and replaced by TPIMA 2011. Significant differences between control orders and TPIMs included the following:

- The standard of proof for imposing a control order was “reasonable suspicion”; the standard of proof for imposing a TPIM, when TPIMA was enacted in 2011, was “reasonable belief” (this standard was later raised to “balance of probabilities” by the Counter-Terrorism and Security Act 2015 (CTSA 2015));
 - Control orders lasted for one year, but were capable of indefinite extension; under TPIMA 2011, there is a 2-year limit on the duration of a TPIM;
 - Control orders contained a power of relocation. When TPIMA was enacted in 2011, there was no power of relocation (although this was subsequently reintroduced by CTSA 2015);
 - Control orders contained an unlimited power of curfew (although this was limited in practice by caselaw); TPIMA 2011 expressly restricted the curfew power to “overnight”.
53. At the same time as TPIMA 2011 was progressing through Parliament, the Government published a draft Enhanced Terrorism Prevention and Investigation Measures (ETPIM) Bill. The ETPIM Bill is draft emergency legislation containing more stringent measures than TPIMA 2011, ready for introduction should the need arise. The draft bill has not been introduced to-date.
54. TPIMA 2011 was amended by the CTSA 2015. Amongst other things, CTSA 2015: raised the threshold for imposing a TPIM to “balance of probabilities”; reintroduced the power to relocate a TPIM subject (subject to a 200-mile restriction); and introduced a power to mandate attendance at appointments.
55. TPIMA 2011 was amended most recently by the CTBSA 2019, which made amendments to the biometrics provisions for TPIM subjects (fingerprints and samples).

Counter-Terrorism Border and Security Act 2019

56. The CTBSA 2019 committed the government to commission an independent review and report on the Government strategy for supporting people vulnerable to being drawn into terrorism (Prevent). Subsections 8 to 10 to section 20 of this Act states the review must be established within six months of Royal Assent and the report of the review and any recommendations, together with the Government response, must be published within 18 months of Royal Assent. The CTBSA 2019 gained Royal Assent on 12 February of that year, making the statutory deadline for the government to publish the report and response 12 August 2020.

Territorial extent and application

57. Section 51 sets out the territorial extent of the Bill (the jurisdiction of which the law forms a part). The provisions of the Bill extend and apply (where the law produces a practical effect) 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.
58. The Act relates to reserved matters in Scotland and excepted matters in Northern Ireland, as it contains “special powers, and other special provisions for dealing with terrorism”: see paragraph B8 of Part II of Schedule 5 to the Scotland Act 1998, and paragraph 17 of Schedule 2 to the Northern Ireland Act 1998.
59. As some of the measures in the Bill require amendment to sentencing and release provisions within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the Government is of the view that a Legislative Consent Motion is

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required from the Scottish Parliament and the Northern Ireland Executive on the basis that the Act alters the executive functions of the Scottish and Northern Ireland Ministers in relation to sentencing and release of prisoners and imposition of licence conditions.

60. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Sentencing of terrorist offenders

Section 1: Offences aggravated by terrorist connection

61. Section 1 of this Act makes provision so that any offence is capable of being subject to a finding or a determination of a terrorist connection, if the offence is not a terrorism offence and is punishable with a maximum sentence of more than 2 years. This is a change from the previous position that only those offences specified in the relevant Schedules (Schedule 1 of the Sentencing Code for England and Wales or Schedule 2 to the 2008 Act for Northern Ireland and for Scotland) were capable of being subject to such a finding or determination.
62. Subsection (2) of the Act makes amendments to section 69 of the Sentencing Code, which applies to England & Wales, adding new subsections (4) to (6).
63. New subsection (4) provides that an offence falls within section 69 if satisfies paragraphs (a) to (c). Paragraph (a) is satisfied if the offence was committed on or after the day on which section 1 of this Act came into force. Paragraph (b) is satisfied if the offence is punishable on indictment with imprisonment for a term of more than 2 years.
64. Paragraph (c) provides for certain offences listed in Schedule A1 to the Sentencing Code to fall outside of the scope of section 69. These are terrorism offences and therefore it is not necessary for a court to consider whether they have been committed with a terrorist connection.
65. New subsection (5) makes provision in relation to offences committed prior to the date on which this section came into force. Such offences fall within the scope of section 69 of the Sentencing Code only if they are specified in Schedule 1 to the Code.
66. New subsection (6) makes provision in relation to offences committed over a period of two or more days, or at some time during a period of 2 or more days. For the purposes of new subsections (4) and (5) the offence is to be taken to have been committed on the last of those days.
67. Subsection (3) inserts new Schedule A1 (the Schedule set out in Part 1 of Schedule 1 to this Act), which lists offences the court need not consider whether they have a terrorist connection as they are terrorism offences, into the Sentencing Code.
68. Subsection (4) provides for the 2008 Act to be amended by subsections (5) and (6).
69. Subsection (5) amends section 30 of the 2008 Act, which applies to Northern Ireland, adding new subsections (5A) to (5C).
70. New subsection (5A) provides that an offence falls within section 30, subsection 5 of the 2008 Act if it satisfies new paragraphs (a) to (c).
71. New paragraph (a) is satisfied if the offence was committed on or after the day on which this section came into force. New paragraph (b) is satisfied if the offence is punishable on indictment with imprisonment for a term of more than 2 years, or would be so punishable in the case of an offender aged at least 21. These latter words are included to clarify that although an offender aged under 21 would not be imprisoned for the offence, new paragraph (b) applies if the offence is punishable with imprisonment in the case of an offender aged 21 or over. Paragraph (c) provides that offences listed in Schedule 1A to the Counter-Terrorism Act 2008 (inserted by this Act) fall outside of the scope of section 30 of the 2008 Act. These are terrorism offences and therefore it is not necessary for a court to consider whether they have been committed with a terrorist connection.

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72. New subsection (5B) makes provision in relation to offences committed on or after 12 April 2019 but prior to the date on which this section of this Bill came into force. Such offences fall within the scope of section 30 of the 2008 Act only if they are specified in Schedule 2 to that Act (offences committed prior to 12 April 2019 are outside the scope of section 30, as section 30 was extended to Northern Ireland by section 8 of the CTBSA 2019 with effect to offences committed on or after that date).
73. New subsection (5C) makes provision in relation to offences committed over a period of two or more days, or at some time during a period of 2 or more days. For the purposes of new subsections (5A) and (5B) the offence is to be taken to have been committed on the last of those days.
74. New subsection (5)(c) repeals section 30(6) of the 2008 Act. The need for subsection (6) is removed as a result of the insertion of new subsection (5B) (a).
75. Subsection (6) amends section 31 of the 2008 Act, which applies to Scotland, adding new subsections (4A) to (4D).
76. New subsection (4A) provides that an offence falls within section 31 if satisfies new paragraphs (a) to (c).
77. New paragraph (a) is satisfied if the offence was committed on or after the day on which this section came into force. New paragraph (b) is satisfied if the offence is punishable on indictment with imprisonment for a term of more than 2 years, or would be so punishable in the case of an offender aged at least 21. These latter words are included to clarify that although an offender aged under 21 would not be imprisoned for the offence, paragraph (b) applies if the offence is punishable with imprisonment in the case of an offender aged 21 or over. New paragraph (c) provides that offences listed in Schedule 1A to the Counter-Terrorism Act 2008 fall outside of the scope of section 31 of that Act. These are terrorism offences and therefore it is not necessary for a court to consider whether they have been committed with a terrorist connection.
78. New subsection (4B) makes provision in relation to offences committed on or after the relevant date (new subsection (4C) makes provision for the relevant date) but before the date on which this section came into force. Such offences fall within the scope of section 31 of the 2008 Act only if they are specified in Schedule 2 to that Act (offences committed prior to the relevant date are outside the scope of section 31).
79. New subsection (4C) specifies the relevant date for the purposes of new subsection (4B). For most offences the relevant date is 18 June 2009 (the date on which section 31 came into force). For those offences listed in new paragraph (b) the relevant date is 12 April 2019 (the date on which those offences were added to Schedule 2 to the 2008 Act by section 8 of the CTBSA 2019).
80. New subsection (4D) makes provision in relation to offences committed over a period of two or more days, or at some time during a period of 2 or more days. For the purposes of new subsections (4A) to (4C) the offence is to be taken to have been committed on the last of those days.
81. Subsection (6)(c) repeals section 31(5) of the 2008 Act. The need for subsection (5) is removed as a result of the insertion of new subsection (4B)(a).
82. Subsection 7 inserts Schedule 1A (part 2 of Schedule 1 to this Act) into the 2008 Act.

Section 2: Meaning of “serious terrorism offence”: England and Wales

83. Section 2 of this Bill amends the Sentencing Code to create a definition of a serious terrorism offence for the purposes of sentencing an offender to a serious terrorism sentence or an extended sentence and inserts a new Schedule 17A to the Code (Schedule 2 of this Bill), which defines

serious terrorism offences.

Section 3: Offences relevant for provisions of this Act relating to Northern Ireland

84. Section 3 of this Bill amends the 2008 Order to add definitions of offences found to have a terrorist connection and the serious terrorism offence, and inserts a new Schedule 2A into the Order (Schedule 3 of this Bill) which defines the relevant offences.

Section 4: Serious terrorism sentence for adults aged under 21: England and Wales

85. Section 4 creates a new type of sentence for serious terrorist offenders aged 18 to under 21 - a serious terrorism sentence of detention in a young offender institution, comprising of a custodial period and an extension period. It inserts new section 268A, 268B and 268C into the Sentencing Code.
86. New section 268A requires that the serious terrorism sentence of detention in a young offender institution must comprise of the appropriate custodial term (defined in section 268C to be a minimum of 14 years) and an extension period to be served on licence.
87. In new section 268B, subsection (1) outlines the criteria for the court to impose the sentence where the offence was committed on or after the date the provision comes into force, the offender is aged 18 or over when the offence was committed but below 21 at the point of conviction, where there is a significant risk of serious harm occasioned by the commission by the offender of further serious terrorism offences or other offences specified in section 308 of the Sentencing Code, where the 'risk of multiple deaths' condition is met, and where the court does not impose a sentence of custody for life.
88. In new section 268B, subsection (2) provides that the court must then impose the sentence unless exceptional circumstances apply in relation to the offence or the offender that justify not imposing a serious terrorism sentence where the aforementioned circumstances are met.
89. In new section 268B, subsections (3) and (4) define the risk of multiple deaths condition, requiring that the offender was aware or ought to have been aware that the offending was very likely to result in or contribute to the deaths of at least two people as the result of an act of terrorism, as defined in section 1 of the Terrorism Act 2000, irrespective of whether or not any deaths actually occurred.
90. In new section 268B, subsection (5) defines the day on which the offence was committed, if it took place over two days or more, the offence is to be taken to have been committed on the last of those days. As set out in new subsection (1) it applies to offences committed on or after this section comes into force
91. In new section 268B, subsection (6) provides that the pre-sentence report requirements in section 30 of the Sentencing Code apply in determining the risk of serious harm or assessment of dangerousness under new section 268B(1)(d).
92. New section 268C provides for the term of detention in a young offender institution for the new special terrorism sentence for under 21s. New subsection (2) provides that the appropriate custodial term will be 14 years or longer as set in line with section 231 of the Code. New subsections (3) and (4) provide this will be followed by an extended licence period determined by the court according to the need to protect the public from the risk of harm of committing further serious terrorism offences or other specified offences posed by the offender of between 7 and 25 years.

Section 5: Serious terrorism sentence for adults aged 21 or over: England and Wales

93. Section 5 creates a new type of sentence of imprisonment for serious terrorist offender adults

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aged 21 or over comprising of a custodial period and an extension period. It inserts new section 282A, 282B and 282C into the Sentencing Code.

94. New section 282A requires that the serious terrorism sentence of imprisonment must comprise the appropriate custodial term (defined in section 282C to be a minimum of 14 years) and an extension period to be served on licence.
95. In new section 282B, subsection (1) outlines the criteria for the court to impose the sentence where the offence was committed on or after the date the provision comes into force, the offender is aged 18 or over when the offence was committed and aged 21 or over at the point of conviction, where there is a significant risk of serious harm occasioned by the commission by the offender of further serious terrorism offences or other offences specified in section 308 of the Sentencing Code, where the 'risk of multiple deaths' condition is met, and where the court does not impose a life sentence.
96. In new section 282B, subsection (2) provides that the court must then impose the sentence unless exceptional circumstances apply in relation to the offence or the offender that justify not imposing a serious terrorism sentence in the aforementioned circumstances. Subsection (3) and (4) defines the risk of multiple deaths condition, requiring that the offender was aware or ought to have been aware that the offending was very likely to result in or contribute to the deaths of at least two people as the result of an act of terrorism, as defined in section 1 of the Terrorism Act 2000, irrespective of whether or not any deaths actually occurred.
97. In new section 282B, subsection (5) defines the day on which the offence was committed, if it took place over two days or more, the offence is to be taken to have been committed on the last of those days. As set out in new subsection (1) it applies to offences committed on or after this section comes into force.
98. In new section 282B, subsection (6) provides that the pre-sentence report requirements in section 30 of the Sentencing Code apply in determining the risk of serious harm or assessment of dangerousness under new subsection 268B(1)(d).
99. New section 282C provides for the term of the new serious terrorism sentence for those aged 21 or over. Subsection (2) provides that the appropriate custodial term will include a period of detention with a minimum of 14 years or longer as set in line with section 231 of the Code. Subsections (3) and (4) provide this will be followed by an extended licence period, determined by the court according to the need to protect the public from the risk of harm of committing further serious terrorism offences or other specified offences posed by the offender, of between 7 and 25 years.

Section 6: Serious terrorism sentence: Scotland

100. Section 6 creates a new type of sentence of imprisonment for serious terrorist offender adults aged 18 or over in the Criminal Procedure (Scotland) Act 1995 by inserting new section 205ZA to section 205 of the 1995 Act.
101. In new section 205ZA, subsection (1) outlines the criteria for the court to impose the sentence where the offence was committed on or after the date the provision comes into force, the offender is aged 18 or over when the offence was committed and that the court is of the opinion that there is a significant risk to the public of serious harm occasioned by the commission by the offender of further serious terrorism offences, or other terrorism offences specified in 210A of this Bill, the court does not impose a life sentence, and the risk of multiple deaths condition is met.
102. In new section 205ZA, subsection (2) requires that, where the offender is aged 21 or over, the court must then impose a serious terrorism sentence of imprisonment unless there are

exceptional circumstances which justify not doing so where the aforementioned circumstances are met.

103. New section 205ZA, subsection (3) and (4) defines the risk of multiple deaths condition, requiring that the offender was aware or ought to have been aware that this could occur through their actions, that the offending was very likely to result in or contribute to the deaths of at least two people as the result of an act of terrorism, as defined in section 1 of the Terrorism Act 2000, irrespective of whether or not any deaths actually occurred.
104. New section 205ZA, subsection (5) requires that the serious terrorism sentence of imprisonment must comprise the appropriate custodial term (defined in subsection (8) to be a minimum of 14 years) and an extension period to be served on licence.
105. New section 205ZA, subsection (6) requires that, where the offender is aged under 21 the court must impose a serious terrorism sentence of detention unless there are exceptional circumstances which justify not doing so where the aforementioned circumstances are met.
106. New section 205ZA, subsection (7) requires that the serious terrorism sentence of detention must comprise the appropriate custodial term (defined in new subsection (8) to be a minimum of 14 years) and an extension period to be served on licence.
107. New section 205ZA, subsection (8) provides that the appropriate custodial term will be a minimum of 14 years. Subsections (9) and (10) provide this will be followed by an extended licence period of between 7 and 25 years, determined by the court according to the need to protect the public from the risk of harm posed by the offender if they were to commit further serious terrorism offences and certain other terrorist related offences.
108. New section 205ZA, subsection (11) requires the court to consider a report by a relevant officer of a local authority about the offender and their circumstances, and where the court deems necessary, hear that officer. New subsection (12) defines “local authority” and “relevant officer” with the meanings given by section 27 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and defines “serious terrorism offence” as an offence specified in part 1 of Schedule 5ZA or in Part 2 of that schedule and has been aggravated by reason of having a terrorist connection under section 31 of the 2008 Act.
109. Section 6 (2) inserts Schedule 5ZA to the Criminal Procedure (Scotland) Act 1995 (Schedule 4 of this Bill), which defines the serious terrorism offences which attract the serious terrorism sentence.

Section 7: Serious terrorism sentence: Northern Ireland

110. Section 7 creates a serious terrorism sentence within the 2008 Order for offenders aged 18 and over by inserting a new 13A to the 2008 order.
111. New section 13A, subsection (1) requires the court to impose the serious terrorism sentence where the offence was committed on or after the date the provision comes into force, the offender is aged 18 or over when the offence was committed and that the court is of the opinion that there is a significant risk to the public of serious harm occasioned by the commission by the offender of further such offences, or other specified offences and the risk of multiple deaths condition is met but the court is not required by Article 13 to impose a life sentence or an indeterminate custodial sentence.
112. New section 13A, subsection (2) requires that the court must impose a serious terrorism sentence unless there are exceptional circumstances which justify not doing so where the aforementioned circumstances are met.
113. New section 13A, subsections (3) and (4) defines the risk of multiple deaths condition, requiring

that the offender was aware or ought to have been aware that this could occur through their actions, that the offending was very likely to result in or contribute to the deaths of at least two people as the result of an act of terrorism, as defined in section 1 of the Terrorism Act 2000, irrespective of whether or not any deaths actually occurred.

114. New section 13A, subsection (5) requires that, where the offender is aged 21 or over, the serious terrorism sentence of imprisonment must comprise the appropriate custodial term (defined in new subsection (8) to be a minimum of 14 years) and an extension period to be served on licence.
115. New section 13A, subsection (6) defines that, where the offender is aged under 21 a serious terrorism sentence is a sentence of detention to be served in a place and conditions as directed by the Department of Justice, and must comprise of the appropriate custodial term (defined in new subsection (8) to be a minimum of 14 years) and an extension period to be served on licence.
116. New section 13A, subsection (7) defines that a person detained under subsection (6) is to be detained in legal custody.
117. New section 13A, subsection (8) provides that the appropriate custodial term will be a minimum of 14 years or if longer the term that would (apart from this Article and Articles 14 and 15A) be imposed in compliance with Article 7 of the 2008 Order.
118. New section 13A, subsection (9) further details that where the court considers it appropriate to do so, they may take into account a guilty plea in accordance with Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 as long as the custodial term is no less than 11 years and 73 days.
119. New section 13A, subsection (10) provides for the court to specify a lesser period for the custodial term than the minimum set out at new subsection (8), or where a guilty plea has been taken into account, if it consider it appropriate, in accordance with section 73(2) of the Serious Organised Crime and Police Act 2005, where the offender has given assistance to the prosecution.
120. New section 13A, subsection (11) provides that the extended licence period must be between 7 and 25 years, determined by the court according to the need to protect the public from the risk of harm of committing further serious terrorism offences or other specified offences posed by the offender.
121. New section 13A, subsection (12) directs that a court that imposes a sentence under this section shall not impose a suspended sentence under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968. New subsection (13) directs that remission shall not be granted under prison rules to an offender sentenced under this section.

Section 8: Reduction in appropriate custodial term for guilty pleas: England and Wales

122. Section 8 provides the court may reduce the custodial term specified in section 2 from the 14-year minimum, to a maximum reduction to 80 per cent, where the offender pleads guilty. Section 8 inserts a new subsection 2(2A) in the Sentencing Code which provides that if the court imposes a serious terrorism sentence of detention in a young offender institution, or a serious terrorism sentence of imprisonment, nothing in the new subsection 268C(2) or 282C(2) prevents the court, after taking into account any matter referred to in subsection (2) of the Code, from imposing the appropriate custodial term of any length not less than 80 per cent of the term otherwise required.

Section 9: Reduction in appropriate custodial term for guilty pleas: Scotland

123. Section 9 insets a new subsection (1B) and (1C) to section 196 of the Criminal Procedure

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(Scotland) Act 1995 to ensure that a guilty plea can be taken into account when setting the sentence, up to 80 per cent of the term otherwise required.

124. New subsection (1B) defines that new subsection (1C) applies where the court is imposing on an offender to a sentence of imprisonment for life under section 205ZB, a serious terrorism sentence of imprisonment under section 205ZA(2) or a serious terrorism sentence of detention under section 205ZA(6) the court may impose as the appropriate custodial term or, as the case may be, specify the punishment part, a term of any length which is not less than 80 per cent of the term otherwise required.

Section 10: Reduction in appropriate custodial term for assistance to prosecution: England and Wales

125. Section 10 of this Bill allows the court to pass a lesser sentence for serious terrorist offenders who have assisted the prosecution and would otherwise have received the serious terrorism sentence with a minimum custodial term of 14 years by inserting a new subsection (4A) to section 74 of the Sentencing Code so that nothing in section 268C(2) or 282C(2) affects the courts power under subsection (2) in determining the appropriate custodial term.

Section 11: Minimum term order for serious terrorism offenders: England and Wales

126. Section 11 requires that where a discretionary life sentence is given to an offender who would otherwise be sentenced to a serious terrorism sentence, the minimum custodial term must be at least 14 years, adjusted for time spent on remand or tagged bail, unless the court finds there are exceptional circumstances which justify a lesser period.
127. Section 11 amends section 323 of the Sentencing Code to include new subsection (3) – (6). New subsection (3) provides that the minimum term in a serious terrorism case must be at least 14 years, subject to subsection 323(5) and (6).
128. New subsection (4) in section 323 defines a serious terrorism case as a case where the court would be required by subsection 268B(2) or 282B(2) (as inserted by this Bill) to impose a serious terrorism sentence, were it not passing a life sentence.
129. New subsection (5) and (6) in section 323 direct that the minimum term may be less than 14 years if the court is of the opinion that there are exceptional circumstances which relate to the offence or the offender and justify a lesser period or, if the court considers it appropriate to account for time on remand or tagged bail and if the court had sentenced the offender under section 268B(2) and 282B(2) the effect Section 73 (reductions for guilty pleas) and section 74 (reductions for assistance to the prosecution) would have had.

Section 12: Minimum punishment part for serious terrorism offenders: Scotland

130. Section 12 creates the minimum 14-year custodial term to be imposed as the punishment part of the sentence for a serious terrorism offender given a life sentence in Scotland. It inserts new section 205ZB into the Criminal Procedure (Scotland) 1993 Act.
131. New section 205ZB, subsection (3) provides that the punishment part may be less than 14 years where the court considers there are exceptional circumstances which justify not doing so.
132. New section 205ZB, subsection (4) sets out that prior to imposing a sentence of imprisonment for life, the court must consider a report by a relevant officer from the local authority about the offender and their circumstances, and if the court thinks it necessary hear that officer. New subsection (5) defines local authority and relevant officer as set out in section 27 of the 1993 Act.

Section 13: Minimum tariff for serious terrorism offenders given life sentences: Northern Ireland

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133. Section 13 creates the minimum 14-year term for a serious terrorism offender given a life sentence in Northern Ireland by amending the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)). It inserts section 5A which introduces a minimum 14-year tariff in serious terrorism cases where the court is imposing a life sentence.
134. New section 5A, subsection (1) requires the court to specify a 14-year minimum as specified under Article 5(1). New subsection (2) provides for the court to specify a lesser period for the custodial term than the minimum of 14 years where the court considers it appropriate to take into account a guilty plea in accordance with Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996, as long as the custodial term is no less than 11 years and 73 days.
135. New section 5A, subsection (3) provides for the court to give a lesser period than the 14 year minimum if it considers it appropriate, in accordance with section 73(2) of the Serious Organised Crime and Police Act 2005, where the offender has given assistance to the prosecution.
136. New section 5A, subsection (4) provides for the court to specify a period of less than 14 years where it finds there are exceptional circumstances that relate to the offence or the offender.
137. New section 5A, subsection (5) defines a serious terrorism case as a case where the court would be required by Article 13A (as inserted by this Bill) to impose a serious terrorism sentence, were it not passing a life sentence or an indeterminate custodial sentence. New subsection (6) defines “indeterminate custodial sentence” under Article 13(4) of the 2008 Order.

Section 14: Minimum custodial period for serious terrorism offenders sentenced to indeterminate custodial sentences: Northern Ireland

138. Section 14 amends Article 13 of the 2008 Order which governs the minimum length of the custodial term to be given in indeterminate custodial sentences for offenders aged 18 and over after the commencement of this Bill. It requires that where an indeterminate custodial sentence is given to an offender who would otherwise be sentenced to a serious terrorism sentence, the minimum custodial period must be at least 14 years, adjusted for time spent on remand or tagged bail.
139. Section 14 (2) and (3) insert paragraphs (3A) to (3E) to Article 13 of the 2008 Order. New paragraph 3A specifies that a serious terrorism case specified under (3)(b) must be at least 14 years, subject to paragraphs (3C) to (3E).
140. New paragraph (3B) defines a serious terrorism case as a case where the court would be required by Article 13A (as inserted by this Bill) to impose a serious terrorism sentence, were it not passing an indeterminate custodial sentence.
141. New paragraph (3C) provides for the court to specify a lesser period for the custodial period than the minimum of 14 years where the court considers it appropriate to take into account a guilty plea in accordance with Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996, as long as the custodial term is no less than 11 years and 73 days.
142. New paragraph (3D) provides for the court to give a lesser period than the 14 year minimum if it consider it appropriate, in accordance with section 73(2) of the Serious Organised Crime and Police Act 2005, where the offender has given assistance to the prosecution.
143. New paragraph (3E) provides for the court to specify a period of less than 14 years where it finds there are exceptional circumstances that relate to the offence or the offender.

Section 15: Additional offences attracting extended sentence: England and Wales

144. Section 15 sets out a number of offences which will now attract an extended sentence, where they are found to have a terrorist connection. Section 15 amends Part 3 of Schedule 18 in the

Sentencing Code.

145. The effect of these changes is that any offender who is eligible for a serious terrorism sentence but who does not receive one may be given an extended sentence.

Section 16: Increase in extension period for serious terrorism offenders aged under 18: England and Wales

146. Section 16 amends section 256(4) to extend the maximum licence period to 10 years for offenders under 18 sentenced to an extended sentence under section 254 of the Sentencing Code, for cases which meet the definition of a serious terrorism offence, as defined in Section 2 of this Bill.

Section 17: Increase in extension period for adult serious terrorism offenders aged under 21: England and Wales

147. Section 17 inserts an extension period of up to 10 years for offenders under 21 sentenced to an extended sentence of detention in a young offender institution into section 268(4) of the Sentencing Code, for cases which meet the definition of a serious terrorism offence, as defined in Section 2 of this Bill.

Section 18: Increase in extension period for serious terrorism offenders aged 21 or over: England and Wales

148. Section 18 increases the maximum extension period to 10 years for adults aged over 21 at the time of conviction who are sentenced to an extended sentence for a serious terrorism offence as defined in Section 2 of this Bill, by amending text at Section 281(4)(b) of the Sentencing Code.

Section 19: Additional terrorism offences attracting extended sentence: Scotland

149. Section 19 sets out a number of offences which will now attract an extended sentence in Scotland, including terrorist offences and where offences are found to have a terrorist connection by the court. It amends section 210A of the Criminal Procedure (Scotland) Act 1995 to add as new Schedule 5ZC, as set out in Schedule 5 of this Act.

Section 20: Extended custodial sentences for serious terrorism offenders: Northern Ireland

150. Section 20 amends Article 14(1) of the 2008 Order to enable serious terrorism offences or other specified offences to attract extended custodial sentences in Northern Ireland, and also amends Article 14(8) to increase the maximum extension period of an extended sentence for a serious terrorism offence to 10 years. This will apply to a serious terrorism offence where convicted after commencement of the provision, and to specified offences where committed after Article 14 came into force.

Section 21: Offences attracting special custodial sentence for offenders of particular concern: England and Wales

151. Section 21 replaces Schedule 13 of the Sentencing Code with the Schedule set out in Schedule 6 of this Act. This Schedule lists offences which require the imposition of a SOPC, where an extended sentence or life sentence is not imposed. This will bring a wider number of offences into the SOPC regime, removing the possibility of them being eligible for a standard determinate sentence.

Section 22: Special custodial sentence for certain terrorist offenders aged under 18 at time of offence: England and Wales

152. Section 22 inserts a new section 252A into the Sentencing Code. This introduces a special sentence of detention for terrorist offenders of particular concern aged under 18, when convicted

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

of a terrorism offence listed in Schedule 13 of the Sentencing Code, where the criteria for a life sentence and an extended determinate sentence are not met. The new sentence comprises a custodial term and a fixed 12-month period on licence. It will apply to offences committed from the date this Bill comes into force.

153. New section 252A, subsection (1) details that section 252A applies where a person aged under 18 is convicted of a terrorism offence in Schedule 13, the offence was committed on or after the date on which Section 22 of this Bill comes into force, and when the court does not impose a sentence of detention for life under section 250 in accordance with 258(2) in the Sentencing Code, nor an extended sentence of detention under section 254 of the Code. It applies where the court would, apart from new subsection 252A, impose a sentence of detention under 250 or a detention and training order.
154. New section 252A, subsection (2) has the effect that for these purposes the court can disregard any restrictions to imposing a detention and training order on those under 12 (due to section 234(1)(a) of the Code) or under 15 and not a persistent offender (due to section 253(3) of the Code). In these circumstances, new section 252A, subsection (3) confirms that the court must impose a sentence of detention under subsection 252A.
155. New section 252A, subsection (4) defines that the term of the sentence must be equal to the aggregate of the appropriate custodial term as determined by the court and a further period of 1 year on licence. The aggregate of these must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.
156. New section 252A, subsection (5) defines “the appropriate custodial term” as the term which ensures the sentence is “appropriate” in the opinion of the court. New subsection 252A(6) clarifies that in instances where an offence has been committed over a period of 2 or more days, it will be considered as having been committed on the last of those days, .
157. Section 22(3) also consequentially amends sections 265 and 278 of the Code which set out the special sentence of detention in a young offender institution for offenders of particular concern aged 18 to 20, and the SOPC for adults aged 21 and over, respectively. Section 22 amends the provision relating to these sentences for offenders of particular concern to apply to terrorism offenders aged 18 or over at the time of conviction to dovetail with the new section 252A terrorism special custodial sentence. It also preserves the existing approach for adult offenders who commit a specified sexual offence (as listed in part 2 of Schedule 13 to the Sentencing Code). For these sexual offences, the SOPC will continue to apply to those aged 18 or over when the offence was committed.

Section 23: Terrorism sentence with fixed licence period: Scotland

158. Section 23 inserts new section 205ZC to the Criminal Procedure (Scotland) Act 1995, which creates a new terrorism sentence with a custodial term and a fixed licence period of one year.
159. New section 205ZC, subsection (1) requires that the court must impose the new terrorism sentence where a person is convicted of a terrorism offence that was committed on or after the day on which this provision comes into force and the court does not impose a sentence of imprisonment for life, a serious terrorism sentence under section 205ZA as inserted by this Bill, an extended sentence under section 210A or an order for lifelong restriction under section 210F.
160. New section 205ZA, subsection (2) clarifies that this sentence does not apply to offenders aged under 18 at the time of conviction, and where the offence was committed prior to this provision coming into force.
161. New section 205ZC, subsection (3) requires that where the offender is aged 21 or over, the court must impose a sentence of imprisonment comprising the appropriate custodial term and a

further period of 1 year to be spent on licence under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

162. New section 205ZC, subsection (4) outlines that if the offender is at least 16 years of age but under 21 (other than falling within subsection 205ZC(5) or (6) and where the court decides to impose a sentence of detention the court must impose a sentence of detention in a young offenders institution, comprising the appropriate custodial term and a further period of 1 year to be spent on licence under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
163. New section 205ZC, subsection (5) require that if the offender is a child and the court decided to impose a sentence of detention under section 208 the sentence term must comprise the appropriate custodial term and a further period of 1 year to be spent on licence under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
164. New section 205ZC, subsection (6) requires that if the offender is a child and the court decides to make an order under 44(1), the court must make an order requiring that the offender be detained in residential accommodation provided under Part 2 of the Children (Scotland) Act 1995 for the appropriate term and that a further period of 1 year to be spent on licence under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
165. New section 205ZC, subsection (7) defines that the “appropriate custodial term” is the term for the sentence or the order that the court deems appropriate.
166. New section 205ZC,(8) outlines that a sentence of imprisonment or a sentence of detention imposed under section 205ZC must not exceed the term that, at the time the offence was committed was the maximum term permitted for the offence. New subsection 205ZC(9) specifies that where an order is made in relation to an offender under subsection 205ZA(6), section 44(6) does not apply in relation to the offender.
167. New subsection 205ZC(9) defines a terrorism offence to mean an offence that is specified in Schedule 5ZB or any other offence that committed on or after section 23 of this Bill came into force and has been aggravated by reason of having a terrorist connection under section 31 of the 2008 Act.
168. Section 23, subsection (3) inserts Schedule 5ZB to the Criminal Procedure (Scotland) Act 1995 (Schedule 7 of this Bill), which defines the terrorism offences which attract the terrorism sentence with fixed licence period.

Section 24: Terrorism sentence with fixed licence period: Northern Ireland

169. Section 24 inserts a new Article 15A to the 2008 Order to make provision for a new type of sentence for terrorist offenders with a licence period of 12 months.
170. New Article 15A(1) requires that the court must impose the new terrorism sentence, where a person is convicted after the commencement of this provision of a serious terrorism offence, a terrorism offence within Part 4 of Schedule 2A (as inserted by this Bill) that is punishable with more than two years’ imprisonment, or any other offence where a terrorist connection is made.
171. Paragraphs 1(b) and (c) clarify that this new type of sentence must apply where the court is not required to impose a life sentence or an indeterminate sentence under Article 13 of the 2008 Order, a serious terrorism sentence under Article 13A of the 2008 Order or an extended custodial sentence under Article 14 of the 2008 Order, but where the court decided to impose a custodial sentence.
172. Paragraph (2) clarifies that this sentence does not apply to offenders aged under 18 at the time of conviction, and where the offence was committed prior to this provision coming into force.

173.Paragraph (4) defines that if the offender is aged 21 or over, it must comprise the appropriate custodial term and an extension period of one year, for which the offender is subject to licence.

174.Paragraph (5) sets out provisions for when the offender is under 21 at the time of conviction, it must be a sentence of detention at such a place and conditions as the Department of Justice may direct, for a term which is equal to the aggregate of the appropriate custodial term and a further period of one year on licence.

175.Paragraph (6) determines that neither sentence term under paragraphs (4) or (5) should exceed the maximum term of imprisonment with which the offence is punishable (apart from Article 13). New subsection 15A(7) defines that the “appropriate custodial term” is the term for the sentence or the order that the court deems appropriate.

176.Paragraph (8) confirms expressly that detention under paragraph (5) will be detention in legal custody. Paragraph (9) directs that a court that imposes a sentence under this Article shall not impose a suspended sentence under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968. Paragraph (10) directs that remission shall not be granted under prison rules to an offender in respect of this sentence.

Section 25: Corresponding provision under service law

177.Section 25 provides for a corresponding provision Schedule 4 for the sentences and changes in Part 1 of the Bill to apply to those subject to service law (those serving in the Armed Forces).

Section 26: Increase in maximum sentences for certain terrorist offences

178.Section 26 provides for increases in the maximum sentences that are available for conviction on indictment for certain terrorism offences. Subsections (1)(a), (1)(b) and (2) respectively provide for the increases in the maximum sentences available for the three terrorism offences detailed in the table below:

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 ears

Subsection (3) provides that the increases in the maximum sentences are available only in respect of offences that are committed on or after that date on which this section came into force and so will not apply to offences committed before that date.

Part 2: Release of terrorist offenders

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

Section 27: Removal of early release on for dangerous terrorist prisoners: England and Wales

179. Part 2 of the Bill provides for release arrangements for terrorist offenders. Although the clauses which remove early release for dangerous terrorist prisoners refer to UK-jurisdiction specific sentencing provisions, Schedule 1 paragraph 15(2) of the Crime (Sentences) Act 1997 permits prisoners who are transferred on an unrestricted basis are treated for the purposes of release as if the prisoner had been sentenced to an equivalent sentence in the receiving jurisdiction. By referring to all offences available in all UK jurisdictions in the corresponding Schedules, the Bill ensures these transferred prisoners are captured by the removal of early release scheme if they are sentenced and released in two different UK jurisdictions.
180. In February 2020, the TORER Act 2020 made changes to the release of terrorist prisoners subject to fixed-term sentences in England, Wales and Scotland. For England and Wales, it created a new section 247A of the 2003 Act, so that the Secretary of State must refer terrorist offenders serving any determinate sentence to the Parole Board at the two-thirds point of the custodial term. It requires that the prisoner may only be released from the two-thirds point onwards, once the Parole Board has directed that it is no longer necessary for the protection of the public that the offender should be confined. For extended sentence prisoners if the Board do not direct such release will be automatic at the end of their custodial term. The amendments to section 247 of the 2003 Act remove the early consideration by the Parole Board for release for extended sentence prisoners falling into the criteria in new subsection (2A), so such prisoners will serve their full custodial term before release.
181. Section 27(2), paragraph (a) inserts reference to Parts 1 and 2 of Schedule 19ZA into section 247A of the 2003 Act, and section 27(3) substitutes a replacement Schedule 19ZA, specifying the relevant offences which the amended restricted release provisions apply. Section 27(2), paragraph (b) inserts a new subsection (2A) into section 247A of the 2003 Act, disapplying the two-thirds parole referral part of this provision for certain terrorist offenders sentenced to an extended sentence. New subsection (2A), read with subsections (7) and (8) of section 247A, provide that where a terrorist offender is sentenced to an extended determinate sentence or a new serious terrorism sentence on or after the date section 27 comes into force, for an offence with a maximum penalty of life imprisonment, they will not be referred to the Parole Board but will instead be released at the end of their custodial term. The new provision will apply regardless of whether the offender is an adult or under 18, or was sentenced under the 2003 Act or the Sentencing Code.

Section 28: Removal of early release on licence for certain terrorist prisoners: Scotland

182. The TORER Act 2020 amended Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act), to mirror the provisions for England and Wales, so that Scottish Ministers must refer terrorist offenders serving an extended sentence to the Parole Board at the two-thirds point of the custodial term. It requires that the prisoner may only be released from the two-thirds point once the Parole Board has directed that it is no longer necessary for the protection of the public that the offender should be confined. If the Board do not direct such release, extended sentence prisoners will be automatically released at the end of their custodial term. Section 28 makes the corresponding amendments as made under section 27 of this Bill but for Scotland, so reference to the Parole Board for early release is removed for prisoners serving extended sentences falling within the criteria of new subsection (2A), and such prisoners will serve the entire custodial period.

183. Subsection 2 (a) re-references section 1AB to the relevant parts of new Schedule 1A, as inserted by subsection (3) which defines the relevant list of terrorism offences.
184. Subsection 2(b) inserts a new subsection (2A) into section 1AB of the 1993 Act, disapplying the two-thirds parole referral part of this provision for certain terrorist offenders serving an extended sentence. New subsection 2A provides that, where a terrorist offender is sentenced to an extended sentence or a new serious terrorism sentence on or after the date the clause comes into force, for an offence with a maximum penalty of life imprisonment, they will not be referred to the Parole Board but will instead be released at the end of their custodial term. The new provision will apply regardless of whether the offender is an adult or under 18.

Section 29: Further provision about release of terrorist prisoners: Scotland

185. Section 29 ensures that Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies, with modifications, to persons subject to a serious terrorism sentence or a terrorism sentence with fixed licence period, by inserting new section 26ZA into the 1993 Act.
186. New section 26ZA, subsection (1) applies section 26ZA to a person, other than a life prisoner, who is a “terrorist prisoner” and who is serving a terrorism sentence.
187. New section 26ZA, subsection (2) defines a terrorism sentence as a serious terrorism sentence and a terrorism sentence with a fixed licence period (sections 205ZA and 205ZC of the Criminal Procedure (Scotland) Act 1995, as inserted by this Act).
188. New section 26ZA, subsections (4) and (5) provide that where a terrorist prisoner is released, the licence remains in force until the end of the extension period (subject to section 17 of the 1993 Act which provides for the revocation of a licence). New subsection (6) provides for the day on which the extension period begins. Where a terrorist prisoner is released on licence, the extension period begins on the day following the date on which the prisoner would have ceased to be on licence in respect of the custodial term (new section 26ZA(6)(a)). Where a terrorist prisoner would have been released unconditionally at the end of the custodial term, the extension period begins on that day.
189. This ensures that the extension period begins from the day after the end of the licence period of the custodial term, or the day that the prisoner would have otherwise been released unconditionally from the custodial term.
190. New section 26ZA, subsection (7) provides for the extension period to be the aggregate in cases where the terrorist prisoner is serving two or more terrorism sentences.
191. New section 26ZA, subsection (8) provides that new section 26ZA, subsection (7) is subject to section 1A(1)(c) of the 1993 Act which provides for an offender to be subject to a single licence, where serving more than one sentence. It also makes new subsection (7) subject to the new subsection 205ZA (10) and any direction by the court in respect of a serious terrorist sentence.
192. New section 26ZA, subsection (10) clarifies that references to the date on which a prisoner would have served the sentence in full (in sections 1A(1)(c) and 16(1)(a) of the 1993 Act) are to be read as if they were references to the date on which the terrorism sentence as originally imposed by the court would expire. The reference in section 17(5) of the 1993 Act is to be read as reference to a prisoner being liable to be detained until the expiry of the extension period.
193. New section 26ZA, subsection (11) provides for definitions of “appropriate custodial term” and “extension period”.

Section 30: Restricted eligibility for early release of terrorist prisoners: Northern Ireland

194. Section 30 applies release restrictions to specified terrorist offenders in Northern Ireland, equivalent of those established in England and Wales and Scotland in the TORER Act 2020, so they serve two thirds of their custodial term before being referred to the Parole Commissioners to consider release. These restrictions apply to all specified terrorist offenders who have not been released on licence, whether sentenced before or after the date of commencement.
195. Subsection (1) inserts a new release provision into the 2008 Order, Article 20A, applying to all relevant terrorist offenders, standardising their first eligible release point to the two-thirds point of their sentence and referring all such offenders to the Parole Commissioners for consideration of whether they are safe to release from that point, prior to the end of their sentence (or custodial term).
196. New section 20A, subsection (1) provides for the revised release arrangements to apply to all fixed-term prisoners, including those sentenced before commencement.
197. New section 20A, subsection (2) specifies the terrorism and terrorism-connected offences to which the release arrangements of Article 20A will apply, as set out in the new Schedule 2A to the 2008 Order, including corresponding service offences.
198. New section 20A, subsection (3) to (7) provide for restrictions on early release for terrorist offenders serving determinate custodial sentences, extended sentences imposed before commencement of the provisions, or where the maximum penalty for the offence is not life imprisonment, and the new 'terrorism sentence'. New subsections (3) and (4) provide that the Department of Justice must release the prisoner once the relevant part of the sentence is served (defined in paragraph (9)) and the Parole Commissioners have directed release, only once they have determined that it is no longer necessary for the protection of the public that the prisoner should be confined.
199. New section 20A, subsection (5) provides for the terrorist offender's case to be referred to the Parole Commissioners at the two-thirds point of the sentence and then every two years from the original referral unless otherwise specified by the Parole Commissioners (including after recall on licence).
200. New section 20A, subsection (6) clarifies that if a relevant terrorist offender has been referred to the Parole Commissioners and they did not direct the release of the prisoner, they must be referred again by the Department of Justice no later than two years from the date of the last reference.
201. New section 20A, subsection (7) provides that any time spent unlawfully at large will not be counted towards the relevant part of the sentence.
202. New section 20A, subsection (8) provides for automatic 'first release' on licence at the end of the appropriate custodial term for those offenders serving the new serious terrorism sentence, the new 'terrorism sentence' or an extended custodial sentence.
203. New section 20A, subsection (9) defines terms in article 20A, including defining 'relevant part of the sentence' as two-thirds of the custodial term or sentence.
204. New section 20A, subsection (10) provides for relevant extended sentence offenders who have already begun their parole review process before commencement of the Act, bringing them into the scope of the provisions for subsequent referrals to the Parole Commissioners.
205. Section 30 (2) makes it clear that those offenders who have already received a release direction from the Commissioners, who remain in prison, are unaffected by the provisions of the Act.

Section 31: Removal of early release for dangerous terrorist prisoners: Northern Ireland

206. Section 31 amends Article 20A of the 2008 Order (as inserted by section 30). It provides that where a terrorist offender is sentenced to an extended sentence or a new serious terrorism sentence on or after the date the section comes into force, for an offence with a maximum penalty of life imprisonment, they will not be referred to the Parole Commissioners but will instead be released at the end of their custodial term. The new provision will apply regardless of whether the offender is an adult or under 18. This brings Northern Ireland into line with the changes in section 27 for England and Wales and section 28 for Scotland.

Section 32: Polygraph licence conditions for terrorist offenders released on licence: England and Wales

207. Section 32 of the Bill amends section 28 of the Offender Management Act 2007 (the 2007 Act) which provides for specified offenders serving a relevant custodial sentence (defined in section 28(3) of the 2007 Act) to have a condition included in their licence requiring them to undergo polygraph testing. Section 32 extends the provision of polygraph testing to adult terrorist offenders subject to the release provisions of section 247A of the 2003 Act, or those who have committed an offence with a determined terrorist connection (or the service offence equivalent).

208. Subsection (3) amends section 29 of the 2007 Act to provide that rules made under section 29(6) relating to the conduct of polygraph sessions may make different provision for different purposes, consequential and other amendments but precludes those rules from applying to terrorist-related polygraph sessions - these will instead be governed by regulations made by the Secretary of State under section 35(2) of the Act.

Section 33: Polygraph conditions for terrorist offenders released on licence: Scotland

209. Section 33 amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 so Scottish Ministers may impose a polygraph condition as a licence condition for specified terrorist offenders by inserting new section 12AC. Specified terrorist offenders are defined by new section 12AC, subsections (2) and (3) as those aged 18 or over on the day of his or her release, who are serving a sentence of imprisonment for a term of at least 12 months for an offence that is within Schedule 1A of the Prisoners and Criminal Proceedings (Scotland) Act 1993, or an offence that was found to have a terrorist connection as per the new definition in section 1AB (5A) of the 1993 Act.

210. New section 12AC, subsection (4) defines the polygraph condition as a licence condition requiring the released person to participate in polygraph sessions in line with the instructions given from the appropriate officer (defined as the supervising officer in section 12(2)(a) of the 1993 Act) and to comply with instructions given by the polygraph operator. New subsection (5) establishes that statements or physiological reactions of the offender in polygraph sessions cannot be used as evidence in proceedings for an offence against the released person. New subsection (6) refers to section 35 of the Act, which provides for the Secretary of State to make various provision relating to polygraph testing by secondary legislation. New subsection (7) defines terms used within this section.

Section 34: Polygraph conditions for terrorist offenders: Northern Ireland

211. Section 34 amends the Life Sentences (Northern Ireland) Order 2001 (the 2001 Order) to the Department of Justice to include polygraph conditions for terrorist offenders aged 18 or over, serving life sentences for relevant terrorist offences and released on licence.

212. Subsection (1) inserts the new section 8A of the 2001 Order. New paragraphs (1), (2) and (3) of Article 8A specify the Department of Justice may include a polygraph condition in the licence of a relevant life prisoner, being one aged 18 or over on the day of his or her release, who is serving a life sentence for an offence listed in Parts 2 or 5 of new Schedule 2A to the 2008 Order

(terrorism offences carrying a maximum penalty of life), or an offence with a determined terrorist connection (or the service offence equivalent, via paragraph (7)).

213. New section 8A, subsection (4) defines the polygraph condition as a licence condition requiring the released person to participate in polygraph sessions in line with the instructions given by or on behalf of the Department of Justice, and to comply with instructions given by the polygraph operator. New subsection (5) establishes that statements or physiological reactions of the offender in polygraph sessions cannot be used as evidence in proceedings for an offence against the released person. New subsection (6) refers to section 35 of the Act, which provides for the Secretary of State to make various provision relating to polygraph testing by secondary legislation. New subsection (7) defines terms used within the new section 8A.
214. Subsections (2) and (3) of section 34 amend article 24 of the 2008 Order, which lists the types of conditions that may be included in a licence of a fixed-term prisoner, to enable the inclusion of a polygraph condition in the licence of relevant terrorist offenders who fall into new section 24A.
215. Subsection (4) inserts a new section 24A into the 2008 Order. New section 24A, subsection (1) provides for application of the article to offenders aged 18 years or over on day of release, who are serving a custodial sentence for an offence in Part 2, 4, 5 or 7 of new Schedule 2A, for an offence with a terrorist connection, or a corresponding service offence. New section 24A, subsection (2) defines the polygraph condition as a licence condition requiring the released person to participate in polygraph sessions in line with the instructions given by the Department of Justice and to comply with instructions given by the polygraph operator. New subsection (3) establishes that statements or physiological reactions of the offender in polygraph sessions cannot be used as evidence in proceedings for an offence against the released person. New subsection (4) provides these polygraph measures are subject to regulations made under section 35. New subsection (5) defines terms used within the new section 24A.

Section 35: Polygraph licence conditions in terrorism cases: supplementary provision

216. Section 35 gives the Secretary of State the power, by regulations, to limit those who can receive a terrorism-related polygraph condition to certain descriptions of offender, and to make provisions for how terrorist-related polygraph sessions are conducted. It also adds provisions on timing and equipment for Northern Ireland and Scotland to align them with the polygraph provision in England and Wales.
217. Subsection (1) gives the Secretary of State the power, by regulations, to limit those who can receive a terrorism-related polygraph condition to certain descriptions of offender.
218. Subsection (2) gives the Secretary of State the power, by regulations, to make provision for how terrorism-related polygraph sessions are conducted, such as the types of provision listed in subsection (3).
219. Subsection (4) defines “terrorism-related polygraph condition” as a polygraph condition included in a licence by virtue of the legislation enacted by sections 29, 30, and 31 of this Act.
220. Subsection (5) provides that subsections (6) and (7) apply to terrorism-related polygraph conditions in Scotland and Northern Ireland. Subsection (6) allows the Secretary of State to issue guidance about the times at which polygraph sessions should take place. Subsection (7) states that equipment used for such sessions must be of a type approved by the Secretary of State.
221. Subsection (8) contains a power for the Secretary of State to make different provision for different area and incidental, supplementary consequential and transitional provisions in relation to regulations made under subsections (1) and (2).
222. Subsection (9) prescribes that regulations made under (1) and (2) must be made via statutory

instrument subject to the negative procedure. Subsection (10) contains relevant definitions.

Section 36: Release on licence of terrorist prisoners repatriated to the United Kingdom

223. This section refers to Schedule 11, which sets out arrangements for the release on licence of terrorist prisoners repatriated to the United Kingdom, so their release provisions are consistent with the provisions in the Act for those where sentenced in the UK.

Part 3: Prevention and investigation of terrorism

Section 37: TPIMs: condition as to involvement in terrorism-related activity

224. Section 37 amends section 3(1) TPIMA 2011 to lower the standard of proof for imposing a TPIM from “balance of probabilities” to “reasonable grounds for suspecting”. The Secretary of State must therefore have reasonable grounds for suspecting that an individual is, or has been, involved in terrorism-related activity before imposing a TPIM notice.

Section 38: TPIMs: extension of time limit

225. Section 38 amends section 5 TPIMA 2011 to remove the two-year limit on the length of time a TPIM can be imposed. The effect of this is that a TPIM notice will last for one year at a time, but be capable of indefinite renewal (provided the conditions in section 3 of that Act continue to be met). A TPIM notice will therefore only end if it expires without being renewed; is revoked; or is quashed by the court.

226. Section 38(3) to (5) make consequential amendments to TPIMA 2011 flowing from removal of the statutory time limit. In particular, subsection (4) makes it clear that the amendment to section 5 TPIMA 2011 does not apply to TPIM notices in place before this Act is commenced: TPIMs imposed before this date will last for a maximum of 2 years.

Section 39: TPIMs: variation of measures

227. Section 39 inserts an additional ground for variation into section 12 TPIMA 2011. By virtue of this amendment, it will be possible for the Secretary of State to vary the relocation measure in a TPIM notice if considered necessary for resource reasons. This power will only apply where the individual has already been relocated away from his home address, and where the national security reason for requiring relocation still exists.

228. A non-exhaustive example of when this power might be relied on is as follows: a TPIM subject is relocated away from his home address to a residence in area X. During the life of the TPIM, police resources in area X become stretched or more specialist resources are available elsewhere, so the relocation measure is varied to provide for a new residence in area Y, and the TPIM subject is required to move there.

229. Section 39(5) amends section 16 TPIMA 2011 (Appeals and court proceedings) to include this additional ground of variation. Decisions to vary the relocation measure for resource reasons will therefore be capable of appeal. As with other unilateral variations to the TPIM notice, the function of the appeal court will be to review whether the variation was necessary for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity. But additionally, for variations to the relocation measure on resource grounds, the function of the appeal court will also be to review whether the variation was indeed necessary for the efficient and effective use of resource.

230. The amendments in section 39 have no effect on the other grounds of variation provided for in section 12(1). A TPIM notice will therefore continue to be capable of variation if it consists of the relaxation or removal of measures; by consent of the TPIM subject; or to prevent or restrict a

TPIM subject's involvement in terrorism-related activity

Section 40: TPIMs: extension of residence measure

231. Section 40 amends the Overnight residence measure in Schedule 1 TPIMA 2011 to remove the word "overnight". The consequence of this is that the newly named "Residence measure" will now allow the Secretary of State to require a TPIM subject to remain at or within a specified residence between any such hours as are specified. This period could be longer than overnight if considered necessary in a particular case (subject to the overriding restrictions on length of curfews established by caselaw relating to Article 5 of the European Convention on Human Rights).

Section 41: TPIMs: polygraph measure

232. Section 41 inserts a new measure into Schedule 1 TPIMA 2011: a polygraph measure. If this measure were imposed, a TPIM subject would be required to undertake a polygraph test. Polygraphy is a means of measuring certain physiological responses that may be associated with deception. The purpose of the polygraph test is to monitor whether the individual is complying with the other measures specified in the TPIM notice, and to assess whether any changes are required to the package of measures as a result.

233. Section 41(2) provides a power for the Secretary of State to make regulations governing the conduct of polygraph testing.

234. Section 41(4) provides that the information gleaned during the polygraph test (either by way of admission, or by physiological reaction) will not be used in evidence against the TPIM subject for prosecution of a criminal offence.

Section 42: TPIMs: drug testing measure

235. Section 42 inserts a new measure into Schedule 1 TPIMA 2011: a drug testing measure. If imposed, a TPIM subject would be required to submit to drug testing by way of providing a relevant sample. As with the other measures in Schedule 1, this measure may only be imposed if Condition D in section 3 of the Act is met (or by way of variation under section 12).

236. Testing is limited to testing for the presence of specified Class A and B drugs. Those drugs are the same as the Class A and B drugs specified in the Criminal Justice and Court Services Act 2000.

237. The definition of "permitted sample" in subsection (2) sets out an exhaustive list of the non-intimate samples which may be taken, mirroring the definition of "non-intimate sample" in section 65 of the Police and Criminal Evidence Act 1984.

238. Drug testing under this section may only be carried out by a constable at a police station, but subsection (2) contains a power for the Secretary of State to make regulations prescribing additional or alternative testers and places of testing.

Section 43: TPIMs: provision of information

239. Section 43 amends an existing measures and inserts a new measure in Schedule 1 TPIMA 2011, to allow the Secretary of State to require the provision of additional information.

240. Subsection (2) amends the Electronic Communication Device measure in two ways. First, to require the TPIM subject to provide details of electronic communication devices belonging to other individuals in the TPIM subject's residence (for example, mobile phone numbers of family members residing with the TPIM subject). Secondly, to clarify that the definition of "electronic communication device" includes not only those devices which are designed or adapted for connecting to the internet, but also those capable of being adapted to do so (likewise for fax

transmissions).

241. Subsection (3) inserts a new measure in Schedule 1 TPIMA 2011: to enable the Secretary of State to require a TPIM subject to provide details of their address. This could be required, for example, if a TPIM subject has not been relocated and moves house during the life of the TPIM. Where a TPIM subject resides in a multiple occupancy property, they may be required to give precise details about which room they live in.

242. Subsection (3) inserts new paragraph 12A(2) of Schedule 1 TPIMA 2011 provides a power for the Secretary of State to specify other conditions in connection with the disclosure of the address information. This power could be relied upon to require a TPIM subject to give notice a certain time ahead of a planned move.

Section 44: Additional offences attracting notification requirements

243. Section 44 amends Section 41(1) of the 2008 Act to add the offences of breach of a requirement specified in a TPIM notice (an offence under section 23 of the Terrorism Prevention and Investigation Measures Act 2011) and breaching a restriction or an obligation specified in a temporary exclusion order (an offence under section 10 of the Counter-Terrorism and Security Act 2015) to the list of relevant terrorism offences that trigger the notification requirements under Part 4 of the 2008 Act.

Section 45: Police powers to apply for serious crime prevention orders in terrorism cases

244. Section 45 refers to Schedule 6, which enables the police to make a direct application to the High Court for a Serious Crime Prevention Order (SCPO) in relation to individuals over the age of 18 involved in terrorism, supporting their use in terrorism cases.

Section 46: Serious crime prevention orders: review of operation of police powers

245. Section 46 requires the Secretary of State to review the operation of these amendments and publish a report on the outcome.

Section 47: Persons vulnerable to being drawn into terrorism: timing of independent review

246. Section 47, subsection (1) amends section 20 of the CTBSA 2019 to remove the statutory deadlines relating to the independent review of the Prevent Strategy, that were provided by section 20(8) and (9) respectively. Section 47 does not amend the obligations to which the Secretary of State is subject under those provisions, other than the specified deadlines.

247. Subsection (1) amends section 20(8) and (9) of the Counter-Terrorism Act 2019. Subsection (2) provides that the amendments made by section 47(1) are treated as having had effect from the time when section 20 of the CTBSA 2019 came into force. This provision is included to address any past periods during which the statutory deadline was not met.

Part 4: General: Consequential amendments, power to state effect of amendments in Sentencing Code, extent, commencement, and short title

Section 48: Consequential amendments

248. Section 48 enables Schedule 13 which contains consequential amendments.

Section 49: Power to state effect in Sentencing Act 2020 of commencement of amendments made by this Act

249. Section 49 gives the Secretary of State the power to amend the Sentencing Code to incorporate changes to provisions made by this Act, using the power contained in section 419(1) of the Sentencing Act 2020 (power to state effect of commencement provisions).

Section 50: Power to make further consequential provision

250. Section 50 gives the Secretary of State the power to make consequential, transitional, transitory or saving provision by regulations in relation to any provision in the Act, by statutory instrument. Such provision may amend, repeal, or revoke primary legislation if it has been approved by each House of Parliament. This provision covers legislation made in by Parliament, by the Scottish Parliament, by Senedd Cymru, or through Northern Ireland legislation. Such regulations are to be made by the affirmative Parliamentary process of amending primary legislation, otherwise by the negative procedure.

Section 51: Extent

251. Section 51 explains the territorial extent of the provisions in the Act. The Act contains provisions that extend to England and Wales, Scotland, and Northern Ireland. Provisions in the Act that change existing legislation are only applicable to the territories to which the existing legislation extends. Certain provisions can also be extended to the Channel Islands or Isle of Man as per the powers specified in this section.

Section 52: Commencement

252. Section 52 states when each provision in this Act comes into force. Some provisions commence on the date which the Act is passed; others at two months from the date on which the Act is passed; and remaining provisions come into force on a day the Secretary of State appoints by regulation.

Section 53: Short title

253. Section 53 gives the shortened title by which the Act can be referred to.

Schedules:

Schedule 1: Offences where terrorist connection not required to be considered

254. Schedule 1 Part 1 lists, for England and Wales and service offences, the offences the court need not consider whether they have a terrorist connection as they are terrorism offences. It inserts this list as Schedule A1 to the Sentencing Code.

255. Schedule 1 Part 2 inserts Schedule 1A into the 2008 Act, listing offences that Northern Irish and Scottish courts need not consider whether they have a terrorist connection, as they are terrorism offences.

Schedule 2: Serious terrorism offences: England and Wales

256. Schedule 2 inserts the list of offences covered by the serious terrorism offence into the Sentencing Code as Schedule 17A. The offences listed are those which have a maximum penalty of life imprisonment.

Schedule 3: Terrorist offences: Northern Ireland

257. Schedule 3 sets out the list of relevant terrorist offences in Northern Ireland, to be inserted as Schedule 2A to the 2008 Order. This covers both those offences which bring eligibility for the serious terrorism offence and those offences which bring eligibility for the other sentences in this

Bill, as well as eligibility for the new restricted release regimes introduced by the Bill.

Schedule 4: Serious terrorism offences: Scotland

258. As Schedule 1 does for England & Wales, Schedule 4 inserts the list of offences covered by the serious terrorism offence into the relevant Scottish legislation as Schedule 5ZA to the Criminal Procedure (Scotland) Act 1995.

Schedule 5: Terrorism offences attracting extended sentence: Scotland

259. Schedule 5 inserts, as Schedule 5ZC to the Criminal Procedure (Scotland) Act 1995, the list of offences attracting the extended sentence for Scotland. Part 1 lists the terrorist offences which will attract an extended sentence. Part 2 lists those sentences which will now attract an extended sentence, where they are found to have a terrorist connection, in line with those set out in section 15 of this Act for England and Wales.

Schedule 6: Offences attracting special custodial sentence for offenders of particular concern: England and Wales

260. This Schedule replaces Schedule 13 of the Sentencing Code with a new list of offences which require the imposition of a SOPC, where an extended sentence or life sentence is not imposed. This will bring a wider number of offences into the SOPC regime, removing the possibility of them being eligible for a standard determinate sentence. Part 1 sets out those offences involving or connected with terrorism, while Part 2 sets out the list of sexual offences which can attract a SOPC, which this Bill makes no change to.

Schedule 7: Terrorism sentence with fixed licence period: Scotland

261. This inserts, as Schedule 5ZB to the Criminal Procedure (Scotland) Act 1995, the list of terrorist offences which attract the terrorism sentence with fixed licence period (defined in Section 23 of this Act), including both terrorist offences and those found to have a terrorist connection.

Schedule 8: Corresponding sentence provision under service law

262. Schedule 8 amends the Armed Forces Act 2006 to create equivalents for the serious terrorism sentence for those aged 18 and over, and the special custodial sentence for terrorist offenders of particular concern aged under 18.

Schedule 9: Offences attracting restricted eligibility of terrorist prisoners for release on licence: England and Wales

263. This Schedule inserts a replacement Schedule 19ZA into the 2003 Act. Part 1 covers all offences for which a serious terrorism sentence may be imposed. Part 2 covers all offences for which a serious terrorism sentence may not be imposed but are considered terrorist offences with restricted early release. Part 3 covers all offences for which a serious terrorism sentence may be imposed further to the finding of a terrorism connection. Parts 1 and 3 also list the offences which qualify specified extended sentenced prisoners for the removal of early release regime in section 27.

Schedule 10: Offences attracting restricted eligibility of terrorist prisoners for release on licence: Scotland

264. This Schedule makes the corresponding changes to Schedule 9 for Scotland, by amending Schedule 1A to the Prisoners and Criminal Proceedings (Scotland) Act 1993. Part 1 covers all offences for which a serious terrorism sentence may be imposed. Part 2 covers all offences for which a serious terrorism sentence may not be imposed but are considered terrorist offences with restricted early release. Part 3 covers all offences for which a serious terrorism sentence may be imposed further to the finding of a terrorism connection.

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

Schedule 11: Release on licence of terrorist prisoners repatriated to the United Kingdom

265. This Schedule imposes release restrictions on prisoners who have been sentenced overseas for offences corresponding to certain terrorist or terror-related offences and repatriated to the United Kingdom via a warrant issued by the powers of the Repatriation of Prisoners Act 1984. It also gives the Secretary of State and ministers in Scotland and Northern Ireland powers to amend a warrant to specify if an offence corresponds to a terrorist or terror-related offence. It does this through amending the Repatriation of Prisoners Act 1984 in the following way:

- Subsection (2) inserts text into the Schedule of the Act that applies in relation to prisoners repatriated to England and Wales. The effect of the insertion is that if an offence committed by a repatriated prisoner corresponds to a terrorist offence specified in Part 1 of Schedule 19ZA to the 2003 Act, or to an offence found to have a terrorist connection by definition in subsection (3E), the offender will be subject to the release provisions in Section 247A of the 2003 Act (for extended sentences for offences which carry a maximum penalty of life imprisonment, release will be at the end of the full custodial term; for all other sentences release will be at the discretion of the Parole Board from the two-thirds point of the custodial term). These offenders will also be subject to Section 28 of the Offender Management Act 2007, meaning polygraph conditions can be imposed as part of their licence conditions when released from custody. Subsection (3F) gives the Secretary of State the power to amend a warrant (whether issued before or after commencement of this Bill and whether or not the relevant transfer has taken place) to specify provisions if the offence committed corresponds to a terrorist or terror-related offence, as outlined in the amended Schedule to the Repatriation of Prisoners Act 1984.
- Subsections (3) and (4) insert text to the Schedule that applies equivalent provisions for prisoners repatriated to Scotland, both as it applies in relation to certain prisoners repatriated to Scotland on or after 27 June 2003 in accordance with section 33(2) of the Criminal Justice (Scotland) Act 2003 and otherwise. Prisoners who have committed an offence corresponding to a terrorist offence specified in Schedule 1A to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Scotland Act”) or a terror-related offence as defined in subsection (3D) of this insertion will be subject to the release provisions in Section 1AB of the 1993 Scotland Act and can have polygraph conditions (outlined in Section 12AC of the 1993 Scotland Act) included in their licence conditions. Subsection (3E) of the inserted text gives Scottish Ministers the power to amend a warrant (whether issued before or after commencement of this Bill the provisions in this section come into force and whether or not the relevant transfer the warrant authorises has taken place) to specify if the offence committed corresponds to a terrorist or terror-related offence as per the amended Schedule.
- Subsection (5) inserts text into the Schedule of the Act that applies in relation to prisoners repatriated to Northern Ireland, amending paragraph 2A of the 1984 Act. It sets out that those who have committed relevant equivalent overseas offences will fall under the provisions of this Bill.

Schedule 12: Serious Crime Prevention Orders: Power for the police to apply in terrorism-related cases

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

266. SCPOs are orders intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.
267. Schedule 12 amends the Serious Crime Act 2007 to expand the range of applicant authorities able to apply for an SCPO to include chief officers of police. The functions of chief officers of police are limited to applying in civil courts for SCPOs in terrorism-related cases, and only where they have consulted the relevant prosecuting authority prior to making the application.
268. The inclusion of chief officers of police as an applicant authority does not alter the power of other applicant authorities from also applying for an SCPO in terrorism-related cases.
269. An SCPO may be made by the Crown Court (in Scotland, the High Court of Justiciary or the sheriff) where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in a magistrates' court but committed to the Crown Court for sentencing). Orders may also be made by the High Court (in Scotland, the Court of Session or a sheriff) where it is satisfied that a person has been involved in serious crime, whether that involvement was in England and Wales, Scotland or Northern Ireland (as the case may be), or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales, Scotland or Northern Ireland (as the case may be). A serious offence is one which is listed in Schedule 1 to the 2007 Act, or an offence which is sufficiently serious that the court considers it should be treated as it were on the list.

Schedule 13: Consequential and related amendments

270. Part 1 amends a series of Acts to reflect the courts' ability under this Bill to designate any offence which is not a terrorism offence and has a maximum penalty of over 2 years as having a terrorist connection.
271. Part 1(1) amends the Terrorism Act 2000 to ensure all offences for which terrorism is an aggravating factor can be subject to forfeiture orders.
272. Part 1(2) amends the 2008 Act to remove the power to amend the list of offences where a terrorist connection is to be considered, as this is no longer needed. It also updates other references to offences where a terrorism connection is to be considered to reflect the provisions of this Bill.
273. Part 1(3) amends the Space Industry Act 2018 to remove references to the list of offences where a terrorist connection is to be considered.
274. Part 1(4) amends the CTBSA 2019 so that changes made through section 8 of the CTBSA 2019 to the terrorist connection provisions no longer apply only in relation to an offence committed on or after the day on which the amendment comes into force. Section 8 of the CTBSA 2019 amends section 30 of the 2008 Act to require courts in Northern Ireland to consider whether specified offences have a terrorist connection and to extend the list of offences where such a connection must be considered in England and Wales, and Scotland.
275. Part 1(5) removes references in the Sentencing Act 2020 to the (now removed) power to amend the list of offences where a terrorist connection is to be considered, which is contained in the 2008 Act.
276. Part 1(6) updates section 160(2) the Sentencing Act 2020 to reflect changes to offences which can be found to have a terrorist connection made by this Act. It updates Schedule 1 of the Sentencing Act 2020 to reflect changes made to offences found to have a terrorist connection. It also amends Schedule 23 of the Sentencing Act to remove the ability of the Secretary of State to amend the list

of offences where a terrorist connection to be considered by regulations.

277. Part 2 amends the 2003 Act, Offender Management Act 2007 and Sentencing Act 2020 to ensure references are consistent with the new serious terrorism sentence.
278. Part 3 amends the Sentencing Act 2020 to update references in light of the new offences attracting the SOPC in England and Wales.
279. Part 4 amends a series of Acts to ensure references are included to the new special custodial sentence for terrorist offenders aged under 18 at the time of the offence.
280. Part 5 makes consequential amendments to apply the TORER Act release provisions for specified terrorist offenders. Paragraph 20 amends section 247A(2) of the 2003 Act, and inserts a new section 247A(7A), to enable the restriction on early release provisions in section 247A to apply to offenders who have been convicted of any offence that has been found to have a terrorist connection. It makes supplementary amendments to section 247A and removes several offences from Schedule 19ZA of the 2003 Act which have been determined not to be inherently terrorist in nature, as well as Part 2 (which has been replaced with the new section 247A(7A)). Paragraph 21 amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in light of changes to eligibility for discretionary release made in this Bill.
281. Part 6 makes the equivalent consequential amendments to Scottish legislation. This includes expanding offences that can be found to have a terrorist connection in section 31, from those defined in Part 2 of Schedule 1A to the Prisoners and Criminal Proceedings (Scotland) Act 1993, to any non-terrorist offence that is found to have a terrorist connection per the definition in this Act. Subsection (2) of Paragraph 24 applies this provision to Scotland though amending Section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
282. Subsection (3) of that paragraph relates to the issue of “single terming”. Unlike in the rest of the UK, in Scotland, multiple sentences being carried out either concurrently or consecutively are amalgamated into one sentence with one release date, referred to as single terming. In England and Wales, those serving concurrent sentences can only be released for one of these sentences when they're eligible to be released for all of them. For consecutive sentences, an individual can only be released when they've served the aggregate of their custodial periods for each of the sentences. Due to the provisions of the TORER Act 2020 and this Act, release provisions for terrorism sentences may be different than those for other sentences. To provide clarity in terms of release arrangements, this subsection disapplies single terming for individuals with multiple offences where one of these offences is a terrorism offence as defined by this Bill.
283. The rest of the sections in this Part update other legislation with references to section 1AB. Sections 23 and 25 also update the Prisoners (Scotland) Act 1989 and Criminal Procedure (Scotland) Act 1995 to include reference to the serious terrorism sentence and terrorism sentence with fixed licence period for certain terrorist offenders. Section 30 removes two subsections from the Terrorist Offenders (Restriction of Early Release) Bill that disapplied certain existing release provisions in Scotland, as these no longer need to disapply for the provisions to work.
284. Parts 7, 8 and 9 make the equivalent consequential amendments to the 2008 Order. Part 7 updates sentencing references to include references to the new serious terrorism sentence, Part 8 does likewise for the Sentence for Terrorist Offenders of Particular Concern, and Part 9 disapplies various existing release provisions in Northern Irish law which apply to prisoners who will be released under Article 20A and which would otherwise result in automatic early release. Additionally, paragraph 34(2) inserts a new paragraph (3A) into Article 16 of the 2008 Order, which defines offences designated as having a terrorist connection, and a new paragraph (3B), defining relevant service offences as the same as in section 95 of the 2008 Act.

Commencement

285. A number of provisions will come into force on the day on which this Act is passed:

- (a) section 3 (and Schedule 3), which define the offences relevant for the provisions of this Act insofar as they relate to Northern Ireland, to the extent that they relate to section 26, which comes into effect at the same time;
- (b) section 21, which adds further offences that will attract a SOPC in England and Wales, and Schedule 6 which defines them;
- (c) section 22, which creates a new special custodial sentence with a fixed licence period for terrorist offenders aged under 18 in England and Wales;
- (d) section 23, which creates a new terrorism sentence with a fixed licence period for terrorist offenders in Scotland, and Schedule 7, which defines the offences that will attract this sentence;
- (e) section 24, which creates a new terrorism sentence with a fixed licence period for terrorist offenders in Northern Ireland;
- (f) section 30, which removes automatic early release from custody for terrorist offenders in Northern Ireland, and will apply to both serving prisoners and those sentenced after the Act is passed;
- (g) section 47, which removes the statutory deadline for the completion of the review of the Prevent programme;
- (h) sections 49 to 53 (including this section), which are general provisions essential to the effective functioning of the Act;
- (i) a number of the consequential amendments contained in Schedule 13, and section 48 to the extent that it relates to those paragraphs.

286. A further set of provisions come into force at the end of the period of two months beginning with the day on which this Act is passed:

- (a) section 1, which makes provision so that any offence is capable of being subject to a finding or a determination of a terrorist connection, and Schedule 1, which lists the offences the court need not consider whether they have a terrorist connection as they are terrorism offences;
- (b) section 2, which defines a serious terrorism offence for the purposes of sentencing an offender to a serious terrorism sentence or an extended sentence, and Schedule 2, which inserts the list of offences which will attract this sentence into the Sentencing Code;
- (c) sections 4 and 5, which create the serious terrorism sentence for England and Wales;
- (d) section 6, which creates the serious terrorism sentence for Scotland, and Schedule 4, which sets out the offences that will attract this sentence;
- (e) sections 7 to 18, which make a number of amendments relating to the sentencing of terrorism offenders, including the creation of a new serious terrorism sentence for Northern Ireland, minimum terms for serious terrorism offenders receiving a life or indeterminate sentence, additional offences attracting an extended sentence in England and Wales and Scotland, and an increase in the maximum extension period for serious terrorism offenders in England and Wales;
- (f) section 19, which sets out which sentences will now attract an extended sentence in Scotland, and Schedule 5 which lists these;
- (g) section 20, which enables serious terrorism offences to attract extended sentences in Northern Ireland, and increases their extension period to a maximum of 10 years;
- (h) section 26, which increases the maximum sentence available for certain terrorist offences;
- (i) section 27, which removes the possibility of early release for dangerous terrorist prisoners sentenced to an extended sentence in England and Wales, and Schedule 9, which defines which offences are covered by this;

- (j) section 28, which removes the possibility of early release for dangerous terrorist prisoners sentenced to an extended sentence in Scotland, and Schedule 10, which defines which offences are covered by this;
- (k) section 29, which sets out further provision about the release of terrorist prisoners in Scotland, setting out that they must be subject to minimum licence periods;
- (l) section 31, which removes the possibility of early release for terrorist prisoners sentenced to either a serious terrorism sentence or extended sentence in Northern Ireland;
- (m) section 36 and Schedule 11, covering arrangements for the release of terrorist prisoners repatriated to the UK;
- (n) sections 37 to 44, which amend arrangements associated with TPIMs and notification requirements;
- (o) section 45 and Schedule 12, which provide police powers to apply for a serious crime prevention order in cases of terrorism;
- (p) section 46, which requires a review of the operation of police powers in relation to the use of serious crime prevention orders.
- (q) A number of the consequential amendments contained in Schedule 13.

287. The remaining provisions come into force by regulation.

Financial implications of the Bill

288. It is estimated that these reforms will result in fewer than 50 additional prisoners and fewer than 50 additional cases added to the probation, as a result of longer custodial and licence periods. Expanding the Sentence for Offenders of Particular Concern regime to cover more offences is estimated to increase probation caseloads by fewer than 50 offenders. Any additional prison places will incur an annual running cost of £63,477 (at 2018/19 prices). For the purposes of estimating probation costs, a unit cost of £12,000 has been assumed.

289. It is estimated that polygraph testing of terrorist offenders will affect fewer than 150 offenders per year. The annual costs associated with polygraph testing arise from staff salaries and overheads for the required number of polygraph examiners.

290. Applying inflation, optimism bias, HMT discounting rates, and calculating an average annual cost across a 10-year period means that an upper threshold of £0.9 million per annum is anticipated. Transitional costs of around £4.2m are estimated for building additional prison places.

Parliamentary approval for financial costs or for charges imposed

291. A money resolution is not required for the Act. While it will lead to additional costs as referred to above, these are incidental and a money resolution is not required for increased expenditure of that kind. The Bill does not require a ways and means resolution as it does not authorise any new charge on the people.

Compatibility with the European Convention on Human Rights

292. The Government considers that the Counter Terrorism and Sentencing Bill is compatible with the

European Convention on Human Rights. The Secretary of State for the Ministry of Justice, Robert Buckland QC MP, intends to make a statement under section 19(1)(a) of the Human Rights Act 1998 to that effect. The Convention rights at issue by the Bill are liberty and security of person (Article 5); fair trial (Article 6); retrospective criminal laws (Article 7); private and family life (Article 8) and Article 14 (discrimination).

293. The Bill affects custodial sentences applicable to children and introduces a new sentencing option for children convicted of terrorism offences. This raises issues under the United Nations Convention on the Rights of the Child (UNCRC), in particular, article 3 (best interests of the child should be a primary consideration) and article 37 (no child shall be deprived of their liberty unlawfully or arbitrarily; detention shall be used only as a last resort). The Government has had due regard to the Convention principles and is satisfied that the Bill is compatible with the Convention.

294. The new custodial sentence for those under the age of 18 (SOPC) will only be available where a life sentence, EDS or DTO would not be appropriate, either because the severity of offending does not warrant a life sentence, the dangerousness criteria are not met in the case of an EDS sentence, or where a DTO would be insufficient because of the nature and severity of the offending. In those cases, the custody threshold has been crossed and custody deemed necessary by the court. The 1-year fixed licence period is specifically designed to provide adequate supervision on release, to manage risk and support rehabilitation and reduce the risk of further offending.

295. As with every sentencing decision for those aged under 18, the courts must always take account of the child's age and welfare when deciding on the most appropriate sentencing option: a custodial sentence will continue to be the last resort for children, only when deemed absolutely necessary, and only for the shortest appropriate period. The approach to sentencing should be individualistic and focused on the child or young person. All considerations applicable to youth sentencing remain in place and the SOPC is no exception. Courts will continue to consider maturity and the effect the sentence is likely to have on the child or young person as well as any underlying factors contributing to the offending behaviour when determining the most appropriate sentence and custodial term. A court will always be able to apply mitigating factors and impose a SOPC for 2 years or less. To reflect this, we are giving powers to the youth court to impose a SOPC in those circumstances, to preserve the current sentencing regime where indictable offences can be dealt with by the youth court where possible.

296. The Government has published a separate ECHR memorandum which explains its assessment of the compatibility of the Bill's provisions with the Convention rights.

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion Sought?
Clause 1	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 2	Yes	Yes	No	No	No	No	No	No
Clause 3	No	No	No	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	No	No	No	No	No	No
Clause 5	Yes	Yes	No	No	No	No	No	No
Clause 6	No	No	Yes	No	N/A	N/A	N/A	No
Clause 7	No	No	No	Yes	N/A	N/A	N/A	Yes
Clause 8	Yes	Yes	No	No	No	No	No	No
Clause 9	No	No	Yes	No	N/A	N/A	N/A	No
Clause 10	Yes	Yes	No	No	No	No	No	No
Clause 11	Yes	Yes	No	No	No	No	No	No
Clause 12	No	No	Yes	No	N/A	N/A	N/A	No
Clause 13	No	No	No	Yes	N/A	N/A	N/A	No
Clause 14	No	No	No	Yes	N/A	N/A	N/A	No
Clause 15	Yes	Yes	No	No	No	No	No	No
Clause 16	Yes	Yes	No	No	No	No	No	No
Clause 17	Yes	Yes	No	No	No	No	No	No
Clause 18	Yes	Yes	No	No	No	No	No	No
Clause 19	No	No	Yes	No	N/A	N/A	N/A	No
Clause 20	No	No	No	Yes	N/A	N/A	N/A	No
Clause 21	Yes	Yes	No	No	No	No	No	No
Clause 22	Yes	Yes	No	No	No	No	No	No

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Clause 23	No	No	Yes	No	N/A	N/A	N/A	No
Clause 24	No	No	No	Yes	N/A	N/A	N/A	Yes (See schedule 13: Part 8)
Clause 25	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 26	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 27	Yes	Yes	No	No	No	No	No	No
Clause 28	No	No	Yes	No	N/A	N/A	N/A	Yes
Clause 29	No	No	Yes	No	N/A	N/A	N/A	No
Clause 30	No	No	No	Yes	N/A	N/A	N/A	Yes
Clause 31	No	No	No	Yes	N/A	N/A	N/A	Yes (See schedule 13: Part 7)
Clause 32	Yes	Yes	No	No	No	No	No	No
Clause 33	No	No	Yes	No	N/A	N/A	N/A	Yes
Clause 34	No	No	No	Yes	N/A	N/A	N/A	Yes
Clause 35	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Scot)
Clause 36	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Scot & NI: See Schedule 11)
Clause 37	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 38	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 39	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 40	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 41	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 42	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 43	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 44	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 45	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 46	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 47	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

Clause 48	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (See Schedule 13).
Clause 49	Yes	Yes	No	No	No	No	No	No
Clause 50	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 51	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 52	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 53	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	No	No	No	No	No	No
Schedule 1: Part 2	No	No	Yes	Yes	N/A	N/A	N/A	No
Schedule 2	Yes	Yes	No	No	No	No	No	No
Schedule 3	No	No	No	Yes	N/A	N/A	N/A	No
Schedule 4	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 5	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 6	Yes	Yes	No	No	No	No	No	No
Schedule 7	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 8: Part 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 8: Part 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 8: Part 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 9	Yes	Yes	No	No	No	No	No	No
Schedule 10	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI & Scot)
Schedule 12	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 13: Part 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 13: Part 2	Yes	Yes	No	No	No	No	No	No

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

Schedule 13: Part 3	Yes	Yes	No	No	No	No	No	No
Schedule 13: Part 4	Yes	Yes	No	No	No	No	No	No
Schedule 13: Part 5	Yes	Yes	No	No	No	No	No	No
Schedule 14: Part 6	No	No	Yes	No	N/A	N/A	N/A	Yes
Schedule 13: Part 7	No	No	No	Yes	N/A	N/A	N/A	Yes (See Section 31)
Schedule 13: Part 8	No	No	No	Yes	N/A	N/A	N/A	Yes (See section 24)
Schedule 13: Part 9	No	No	NO	Yes	N/A	N/A	N/A	Yes

These Explanatory Notes relate to the Counter Terrorism and Sentencing Bill as introduced in the House of Commons on 20 May 2020 (Bill 129)

COUNTER TERRORISM AND SENTENCING BILL

EXPLANATORY NOTES

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