



House of Lords

House of Commons

Joint Committee on Human
Rights

Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011

Tenth Report of Session 2013–14



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Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), Megan Conway (Lords Clerk), Murray Hunt (Legal Adviser), Natalie Wease (Assistant Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Holly Knowles (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Summary

The Terrorism Prevention and Investigation Measures Act 2011 abolished control orders and replaced them with Terrorism Prevention and Investigation Measures (“TPIMs”). TPIMs were said to have two aims: to protect the public from the risk posed by persons believed to have engaged in terrorism-related activity, but who can neither be prosecuted nor deported; and “to ensure that people were better able to find evidence that would lead to prosecutions”. TPIMs are imposed by the Home Secretary but subject to quasi-automatic review in the High Court. Those reviews are held partly in closed sessions in the presence of special advocates but without the TPIM subject being present. TPIM subjects are subject to restrictions including overnight residence at a specified address, GPS tagging, reporting requirements and restrictions on travel, movement, association, communication, finances, work and study.

We considered the Act in two Reports as it was passing through Parliament. We expressed a series of concerns about the legislation: that there was a lack of prior judicial authorisation for TPIMs; that the standard of proof, “reasonable belief”, was too low a threshold for the imposition of such intrusive measures as TPIMs, and should have been higher; that the ex post review to be conducted by the courts should have been a full merits review of whether the conditions for imposing TPIMs are satisfied, and not a supervisory review; and that the TPIMs legislation should have expressly required that the individual who is the subject of the TPIMs be provided with sufficient information about the allegations against him or her to enable them to give effective instructions to their legal representatives and special advocates in relation to those allegations.

Unlike the control orders legislation which required annual renewal, and on which we and our predecessors reported annually to inform the annual renewal debate in Parliament, the TPIMs regime is not subject to a requirement of annual renewal and provides for annual review only by the Independent Reviewer of Terrorism Legislation, with renewal only every five years. We therefore decided to undertake post-legislative scrutiny of the Act to see how the new TPIMs regime was operating in practice—in terms of its human rights implications, and of the continued necessity for it.

Since the TPIMs regime has come into effect, we have become concerned by the Government’s degree of engagement with the work of the Independent Reviewer. The Government’s response to the Independent Reviewer’s First Report on TPIMs was perfunctory and unhelpful. We urge the Government to engage more transparently and substantively with the Independent Reviewer’s recommendations, including those in his forthcoming Report about TPIMs in 2013, by explaining in more detail to Parliament precisely what is proposed in response to each recommendation.

Our post-legislative scrutiny has failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions of terrorism suspects. This confirms the concerns we expressed in our scrutiny Reports on the Bill that the replacement for control orders were not “investigative” in any meaningful sense. We believe TPIMs should be referred to as Terrorism Prevention Orders, or something similar, to reflect the reality that their sole purpose is preventive, not investigative.

We agree with the Independent Reviewer that the very nature of TPIMs carries an inherent risk of the subject absconding, and that the reaction to such incidents must not be allowed to undermine the general principle that restrictions on each TPIM subject must be individually tailored to the risk that they are assessed to present. We also consider that, while the Government's internal report following the review of the recent abscondings will understandably include sensitive material which it is not in the public interest to disclose, it is undesirable that so far there is nothing in the public domain about even the substance of the findings of that review. We recommend that the Government provide an "open" version of the outcome of its internal investigation and review, to enable public and parliamentary debate about and scrutiny of the circumstances of the absconding of two TPIM subjects.

While we accept that TPIMs can be lawfully imposed on an individual if the Secretary of State reasonably considers it to be necessary "for purposes connected with protecting the public from a risk of terrorism", the Home Secretary's statements that the two TPIMs subjects who have absconded do not pose a direct threat to the public in the UK serve as a stark reminder of the breadth of their statutory power. If the sole purpose of a TPIM is to prevent travel to support terrorism overseas, it must at least be questionable whether the full range of restrictions available in a TPIM are justified, rather than specific measures to prevent travel such as notification requirements or surrendering a passport. We recommend that the breadth of the vaguely worded power to impose TPIMs, "for purposes connected with protecting the public from a risk of terrorism", be kept under careful review by the Independent Reviewer. In view of the clear obligation in international law not to render a person stateless, we intend to subject to rigorous scrutiny any proposal to enable the Home Secretary to deprive of their citizenship any terrorism suspect who is a naturalised UK citizen, even if it leaves them stateless.

We accept that, in principle, the risk of absconding is likely to be higher when a TPIM subject remains in the midst of their local community and network, and we acknowledge the fact that, under the control order regime, no relocated individuals absconded. However, we do not consider this to be sufficient to demonstrate that the lack of a power to relocate terrorism suspects leads to such a threat to public safety as to justify re-introduction of the power. Nor have we seen any direct evidence that the absence of a power to relocate TPIM subjects appears to have significantly limited their effectiveness in practice. We remain of the view – which also appears to be that of the Independent Reviewer—that a power to relocate an individual away from their community and their family by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable.

The Government relies heavily on the TPIM Quarterly Review Group as a mechanism for discerning any disproportionate impact of TPIMs on their subjects and their families. However, there is little or no evidence in the public domain to support the Government's assertion about the effectiveness of the Quarterly Review Groups. We therefore recommend that the Government give further consideration to specific ways in which the impact on TPIMs subjects and their families can be mitigated, in the light of all relevant existing and any future recommendations of the Independent Reviewer.

We agree with the Independent Reviewer's recommendation that the special advocates' concerns about closed material procedures in control order and TPIM proceedings be considered in a judicially-chaired forum. Such a process should be initiated in relation to

TPIM proceedings in the High Court, drawing on the positive experience of the process already conducted by Mr Justice Irwin in relation to the Special Immigration Appeals Commission.

We agree with the Independent Reviewer that serious restrictions on liberty, imposed outside of the criminal justice system, cannot be indefinite. The introduction of a statutory time limit fulfils a requirement of human rights law and the expiry of the current TPIMs should not be an occasion for re-opening that question. We call on the Government to reconsider its rejection of the Independent Reviewer's recommendation that the Joint Terrorism Analysis Centre provide a regular, publicly accessible report about the threat from terrorism, to assist Parliament to scrutinise the necessity and proportionality of particular counter-terrorism measures such as TPIMs. However, we reject the suggestion that the Intelligence and Security Committee should make recommendations on whether the current TPIMs should be extended. Parliamentary committees should be concerned with the adequacy of the legal framework to deal with the threat, not operational decisions in individual cases.

We are left with the impression that in practice TPIMs may be withering on the vine as a counter-terrorism tool of practical utility, but we do not feel sufficiently informed about the threat picture to be able to conclude that the power to impose some form of civil restriction orders such as TPIMs is no longer required. We recommend that a broader review of counter-terrorism powers be an urgent priority of the new Government in the next Parliament, and conducted sufficiently in advance of the five year TPIMs renewal date for Parliament to make a fully informed decision about the continued necessity of the powers at that time.

