

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT TERRORISM PREVENTION AND
INVESTIGATION MEASURES ACT 2011
(CONTINUATION) ORDER 2016

Wednesday 26 October 2016

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The Committee consisted of the following Members:

Chair: ROBERT FLELLO

† Arkless, Richard (<i>Dumfries and Galloway</i>) (SNP)	† Huq, Dr Rupa (<i>Ealing Central and Acton</i>) (Lab)
† Atkins, Victoria (<i>Louth and Horncastle</i>) (Con)	† Kendall, Liz (<i>Leicester West</i>) (Lab)
Campbell, Mr Alan (<i>Tynemouth</i>) (Lab)	McDonagh, Siobhain (<i>Mitcham and Morden</i>) (Lab)
Chapman, Douglas (<i>Dunfermline and West Fife</i>) (SNP)	† Mak, Mr Alan (<i>Havant</i>) (Con)
† Cleverly, James (<i>Braintree</i>) (Con)	Slaughter, Andy (<i>Hammersmith</i>) (Lab)
† Crabb, Stephen (<i>Preseli Pembrokeshire</i>) (Con)	† Throup, Maggie (<i>Erewash</i>) (Con)
† Davies, Byron (<i>Gower</i>) (Con)	† Vaz, Keith (<i>Leicester East</i>) (Lab)
† Davies, David T. C. (<i>Monmouth</i>) (Con)	† Wallace, Mr Ben (<i>Minister for Security</i>)
† Griffiths, Andrew (<i>Lord Commissioner of Her Majesty's Treasury</i>)	Anna Dickson, <i>Committee Clerk</i>
Hammond, Stephen (<i>Wimbledon</i>) (Con)	† attended the Committee

The following also attended (Standing Order No. 118(2)):

Dakin, Nic (*Scunthorpe*) (Lab)

Third Delegated Legislation Committee

Wednesday 26 October 2016

[ROBERT FLELLO *in the Chair*]

Draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016

2.30 pm

The Minister for Security (Mr Ben Wallace): I beg to move,

That the Committee has considered the draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016.

It is a pleasure to serve under your chairmanship, Mr Flello. I hope that the Committee approves the draft order, which will extend the Secretary of State's powers in the Terrorism Prevention and Investigation Measures Act 2011 for a further five years.

The first and foremost responsibility of the Home Secretary is to keep the people of this country safe. As my hon. Friends will be more than aware, the threat from terrorism is ever present. The events in France, Belgium and other parts of the world in recent years bring home to us the very real danger posed by terrorists who would seek to do us harm.

My right hon. Friend the Home Secretary and I are absolutely clear that the police and security services should have the powers that they need to disrupt terrorists. Of course we should always ensure that, wherever possible, we prosecute those individuals who would seek to harm the people of this country, to ensure that they are brought to justice. However, in a very small number of cases, that is not possible, so the police and security services need alternative powers to disrupt terrorist-related activity. That is why I am here today seeking parliamentary agreement to extend for a further five years the powers available to the Secretary of State under the 2011 Act.

The TPIM Act first came into force on 14 December 2011. The Act introduced a new framework for placing restrictions on individuals where it is appropriate to do so. TPIMs are civil preventive measures intended for use only when the prosecution, or deportation—in the case of foreign nationals—of individuals considered to be involved in terrorist-related activity is not possible. The Act allows the imposition of restrictive measures on an individual where the Secretary of State is satisfied, on the balance of probabilities, that the person is or has been involved in terrorism-related activity. Those measures include an overnight residence requirement; a ban on overseas travel and holding travel documents; exclusion from specific places; restrictions on the use of financial services; restrictions on ownership or transfer of properties; limits on the use of telephones and computers, including the internet; limits on association; restrictions on the individual's ability to work and/or study; police reporting; and requirements to be photographed as required and to wear an electronic tag.

Keith Vaz (Leicester East) (Lab): I fully support what the Minister is proposing. These are very important measures. However, in the past couple of years, a number of individuals have gone missing while on these orders, and statements have been made to the House by the Minister's predecessor about the individuals who have gone missing. Can the Minister update the Committee on how many of those individuals have now been apprehended?

Mr Wallace: After the absconsion of two individuals—I think that that was the number—a review was done, looking at the operational failures that perhaps allowed that to happen, and that review was submitted to David Anderson, the reviewer of terrorism legislation. It would not be appropriate to give the details of the review, because obviously that might expose vulnerabilities in our capability, but certainly the lessons have been learned and addressed.

Keith Vaz: It is always good to learn lessons when mistakes occur, and obviously I do not blame the Minister—the system clearly let us down—but my question was whether those two individuals have been apprehended, or are they still out there in the public space?

Mr Wallace: The right hon. Gentleman may not understand, but we do not comment on individual TPIM cases, for reasons, obviously, of operational security. However, he should take some comfort from the fact that the lessons from what led to those individuals absconding have been learned and measures are in place to do so. I can point him to the statistics for the number of people on TPIMs: there was one, and now we are at six for this year. I can certainly say that, where possible, we use them. We certainly do so as a last resort, but where we need to use them, we will. I think that we are in a better place than we were with control orders.

Under part 2 of the Counter-Terrorism and Security Act 2015, a TPIM notice can require the individual to reside in a property up to 200 miles away from their own residence without their consent, ban the individual from possessing certain weapons and require the individual to attend appointments arranged by the Secretary of State.

A key objective of the TPIM Act was to introduce a more focused regime that protected the public from the risk of terrorism but increased the safeguards in place to protect the civil liberties of those subject to the measures. There are several differences between the TPIM Act and the previous control order regime, including the strengthening of the legal threshold required to impose an order from “reasonable suspicion” under the control order legislation to “reasonable belief” for TPIMs. That threshold was strengthened even further to “the balance of probabilities” under the Counter-Terrorism and Security Act 2015. Additionally, control orders lasted for a maximum of 12 months, but there was no limit to how many times they could be extended. In a small number of cases, they lasted for more than four years. Under the TPIM Act, notices last for a maximum of 12 months and are extendable only for a further year. Evidence of new terrorism-related activity is required to justify a new TPIM notice.

An automatic right of appeal is built into the TPIM legislation. That allows individuals who are subject to TPIM notices to challenge through the courts the Home

Secretary's decision to impose them. However, unlike the previous control order regime, no TPIM has been quashed by the courts. In accordance with section 21 of the TPIM Act, the director general of MI5, the independent reviewer of terrorism legislation and the intelligence services commissioner have all been consulted, and they all recommend the continuation of the Secretary of State's powers. I commend the draft order to the Committee.

2.36 pm

Dr Rupa Huq (Ealing Central and Acton) (Lab): This is my second outing as shadow Minister, although it is my first in Committee. The Minister and I faced each other yesterday, and he will be relieved to know that, as with the Criminal Finances Bill, the Opposition support the draft order.

The draft order will renew for a further five years the Secretary of State's power to issue TPIM notices. Such notices are rarely used, but as was pointed out, they remain a vital last resort in ensuring our national security. As the Minister explained, the Terrorism Prevention and Investigation Measures Act 2011 enables the Secretary of State to restrict an individual's freedom of movement, association and financial action where that person is under suspicion but cannot yet be prosecuted or deported. Those powers enable the Government to prevent and investigate terrorist activity and ensure that our security services never have to wait for a terrorism plot to be carried out before they act. The Secretary of State can use such powers by issuing a TPIM, with the approval of the High Court. As has been explained and the Committee is now aware, TPIMs, like all aspects of our counter-terrorism legislation, were reported upon by the independent reviewer of terrorism legislation in 2013. We have had all that explained to us.

I want to touch on the two fundamental things that were changed as a result of those 2013 recommendations. TPIMs were tightened up, so that the Government could restrict where an individual may reside, which had been part of the control order regime. In the original debate in 2011, the Labour party argued that because of Liberal Democrat forces, or something like that, the Government were softer than we were on that issue, but that has been rectified. That recommendation was important, because individuals might find it easier to abscond if they can keep in touch with their former networks and the usual gang. There are two examples of people absconding: Ibrahim Magag and—this is close to home for me—Mohammed Ahmed Mohamed, who, completely coincidentally, visited the mosque right next to our Labour party office in Acton on a Friday and escaped in a burqa. People in Acton still remember that.

Keith Vaz: I congratulate my hon. Friend on her appointment. She mentioned the so-called burqa case. She will have listened to the Minister's reply to me that lessons have been learned from how that situation arose. We of course accept the Minister's assurances that things have been tightened up, but does she agree that given that both cases resulted in statements to the House to inform Members that those individuals had gone missing, the Committee is entitled to know whether they are still at large or have been found? Does she agree that that would reassure the citizens of not just Ealing but the rest of the country?

Dr Huq: As always, my right hon. Friend makes an excellent point. It is true that we want to know what happened to Mohammed Ahmed Mohamed, who was disguised in a burqa, and Mr Magag, and it is right and proper that we know. My right hon. Friend anticipates my point a little. Although we support these measures, we do not want to give the Government a completely free ride and we believe that TPIMs could be made even better, so I will ask some questions.

The Minister pointed out that the balance of probabilities test replaced the previous one of reasonable belief of involvement in terrorist activity. That is all well and good. The higher legal threshold was enacted, which shows again that the Government were not getting softer; they were getting harder on some things. We are pleased about such changes, and he also pointed out other measures such as the extension of the sell-by date.

I am pleased that both changes I have touched on were acted on by the Government and that those recommendations were implemented under the 2015 Act. The changes to restrict where an individual may reside were accepted in full. The legal threshold was changed, so that the Home Secretary had to be satisfied on the balance of probabilities rather than just reasonable belief. That is not exactly what the independent reviewer asked for. He recognised, however, that that key change to the legislation increased the legal threshold.

I have a couple of questions for the Minister and I will be taking notes on whether he answers. Does he agree that the process was an example of the independent reviewer offering effective post-legislative scrutiny that as a result has made us all more secure and increased public confidence in our counter-terrorism laws? If so, does he also agree that we need that same model of independent post-legislative review if the Government move forward with their proposed counter-extremism legislation? Hon. Members will be aware that that recommendation was made by the independent reviewer to the Home Affairs Committee under the chairmanship of my right hon. Friend.

Section 21 of the 2011 Act allows the Secretary of State's TPIM powers to be renewed every five years so long as she has consulted the independent reviewer, the intelligence services commissioner and the director general of the Security Service. We are now at that five-year date, which is why the draft order is before us. I hope that the Minister can assure the Committee that the Secretary of State has indeed conducted those statutory consultations and that all recommended that the powers be renewed.

I note that the 2011 Act does not require the Government to publish the advice given by the independent reviewer, the intelligence services commissioner or the director general of the Security Service during the consultation. There may be national security issues here, but I wonder whether the Minister is willing to make that advice public, perhaps in redacted form so that nothing too sensitive slips out.

James Cleverly (Braintree) (Con): Does the hon. Lady concede that, particularly when counter-terrorism and national security are involved, the fact that some bits of information are put into the public domain and others are not in itself can give intelligence to the very people we are trying to protect the British people from?

Dr Huq: I thank the hon. Gentleman for his intervention. That is why, had he listened, he would have heard me use the caveat that non-sensitive advice with bits redacted could be published. One of the virtues of having an independent reviewer—not a Labour party person—is that it allows a degree of transparency and scrutiny in counter-terrorism legislation that is not otherwise possible in areas that concern national security. That builds public and parliamentary confidence in our laws. When the Government can be transparent, they should be transparent—the previous Prime Minister was always saying that sunlight is the best disinfectant.

Therefore, although we support the draft order, I have a couple of questions for the Minister about the effectiveness of TPIMs. The security forces have been using TPIMs on fewer and fewer occasions. Between the first quarter of 2012 and the last quarter of 2013, between eight and 10 individuals were controlled by TPIMs at any one point, whereas three people at most have been controlled by them since 2013. In the last written statement to the House, the Minister revealed that there is now just one individual subject to a TPIM. I wish that I could say that that is a result of the terrorist threat having disappeared or receded, but throughout that time we have all seen the annunciator screens in our offices that say the threat level is severe. We have also seen a new wave of Islamist attacks on the continent. The Minister listed Nice and Brussels; there are loads of them, including Paris. The list goes on.

There is a danger that the security forces are using TPIMs on fewer occasions because they do not find them to be a useful tool for tackling terrorism. The previous independent reviewer of terrorism legislation, Lord Carlile, said:

“It is surprising and worrying that we are down to just one T-Pim given the situation appertaining all over Europe. We know that there is a severe risk of a terror attack. I hope that the Government is examining the possibility of increasing the use of T-Pims or toughening them up.”

As we have already heard, TPIMs have already been toughened up in the Counter-Terrorism and Security Act 2015—in particular, the security forces can now restrict where an individual resides. In the impact assessment that accompanied that Act, the Government anticipated that their changes to the TPIM regime would lead to an increase in the use of TPIMs. In fact, they estimated that there would be an

“additional five to 15 TPIM cases per year”.

At the time, there were two TPIMs in use; here we are a year later and there is actually one fewer.

Mr Wallace: There are six now.

Dr Huq: Are there six at the moment, not one? *[Interruption.]*

The Chair: Order.

David T. C. Davies (Monmouth) (Con): I may have misunderstood part of what the hon. Lady is suggesting. Is she accusing the Government of being rather liberal on this issue and suggesting that they need many more TPIMs and to be much more strict?

Dr Huq: No, I did not say that. I said that, counter-intuitively, only one TPIM is in existence at the moment. The impact assessment said there would be between five and 15. It will be interesting to hear the Minister's thoughts on how this inverse square rule seems to have appeared when we are told that there is a severe threat. I am coming to the end. My question related to that observation is: do the Government still anticipate a substantial increase in the use of TPIMs as we move forward? If so, why are we yet to see an increase? If the Minister no longer expects to see an increase, are the Government working closely with security forces to ensure that TPIMs are drawn up in a way that allows them to control the threat of terror?

I really am ending now. I still have vivid memories of 7 July 2005, as most Members here probably do. I am a London MP. Many ordinary Londoners—people of all faiths and none; luckily, none of my constituents—were indiscriminately maimed and killed while on their way to work. Some 52 lives were lost at Aldgate East, Edgware Road, Russell Square and Tavistock Square. It was one of the saddest days in the history of our nation's great capital. I know that every Member wants to give the security forces the powers that they need to prevent such attacks from happening again. That is ultimately why the Opposition supports the draft order. In that spirit, I urge the Minister to take seriously some of the criticisms on independent review and making advice public and to say what he thinks about TPIMs and their declining use. He should work with Parliament to offer an honest and transparent assessment of their continuing utility.

The Chair: It would be very good if Members who wish to catch my eye bobbed in their seats, as I can see being beautifully demonstrated over there.

2.48 pm

Richard Arkless (Dumfries and Galloway) (SNP): It is a pleasure to serve under your chairmanship, Mr Ffello. Many of the points that I intended to make have been adequately made by the Government and the Opposition speakers, so I will try to keep my submission as brief as possible.

We agree that the police should have powers to fight terrorism, which is the great threat that our generation faces, and that the primary role of the Government is, among other things, to keep its citizens safe. We welcome the changes that have been alluded to by the hon. Member for Ealing Central and Acton, which came as a result of recommendations made by the independent reviewer of terrorism legislation only a couple of years ago. We support the changes that she took us through, so I will not seek to divide the Committee this afternoon.

Of course, we do have concerns. The first is about the effectiveness of the orders. I was expecting—perhaps naively, as a new Member—to be taken though how TPIMs have worked over the past five years and how effective they have been in achieving the objective of fighting terrorism. Unfortunately we have not heard that; instead, we have heard a substantive debrief of what the orders can achieve in theory, and while I welcome that, it would have been nice to have a debrief of what has happened over the past five years, so we could assess their effectiveness. Sadly, that has been lacking.

It was my understanding that there was only one TPIM order, but if I am wrong about that I would be grateful if the Minister explained that when he sums up. On the accusation that, because there is only one order, our making that point means that we want things to be more liberal, that is absolutely not the case. We are making that point because these orders can be made only if it is necessary and proportionate to do so, so the inference is that it has not been necessary and proportionate to do so more than once in the past three or four years. If that is the case, that calls into question the effectiveness of the orders. I echo the hon. Lady's point about the statutory consultations and I hope the Minister can clarify that requirement.

The former Chair of the Home Affairs Committee, the right hon. Member for Leicester East, who is no longer in his place, talked about individuals who have absconded. I accept that these cases are sometimes very sensitive and that we must not prejudice the effectiveness of the orders by releasing into the public domain information that could aid the bad guys, but I cannot help but think that if those two individuals were caught, the Government would be very quick to tell us. Surely, if they were caught, telling everybody that they had been caught demonstrates that this process is effective. It is difficult for me not to conclude the opposite—that they have not been caught. I struggle to conceive of anything sensitive unless they have not been caught, because clearly that would make the public think that the orders have not been effective. It is very difficult to escape that conclusion, but any clarity the Minister can give would be very welcome.

I will be grateful if the Minister can address those points. I reiterate that we will not divide the Committee, but we urgently require clarification on those points.

2.52 pm

Stephen Crabb (Preseli Pembrokeshire) (Con): It is a pleasure to serve under your chairmanship, Mr Ffello. I strongly support the continuation of these powers, but I invite the Minister to say a bit more about the circumstances in which TPIMs are used and to clarify the numbers. Will he assure the Committee that the use of one of these measures does not mean that the police or the agencies are giving up on a successful prosecution? In other words, will he assure us that they do not amount to an admission of failure to prosecute, which must surely be the authorities' intent?

A concern has been raised in some quarters that the restrictions placed on an individual subject to one of these measures—for example, they can be removed from their home community, their associates and forms of communication—could undermine efforts to gather information and evidence that could lead to a successful prosecution. Will the Minister say something about how the twin aims of preventing terrorism and pursuing successful prosecutions are brought together in the use of these measures?

2.53 pm

Mr Wallace: We should all recognise that we do not take TPIMs lightly and that they are not our first preference. Our first preference is to achieve a prosecution, but very often in counter-terrorism it is necessary to make a decision about the prosecution and, if that is

not possible, the disruption of individuals who place a threat. Sometimes TPIMs are placed on people released from prison, and sometimes that they are placed on people about whom we have intelligence to indicate they pose a threat but we do not have the criminal prosecution level that we require at that time. It is not easy for either this Government or the Government who bought in control orders to decide to go down that path. Nevertheless, it is something we have all felt that we have to do as the threat has increased over the past 15 years.

As long as safeguards are in place and as long as people can appeal to the court and test the case that is put before them, the courts will uphold the legislation. I think that, in the change from control orders to TPIMs, it was right to have a higher threshold. Good counter-terrorism action has to keep communities onside. We cannot look like we are bending the law for a specific group of people. We have to keep people onside to ensure their support.

TPIMs serve a role in counter-terrorism in this country and they are successful in a number of areas. Size does not matter. The number of TPIMs is not necessarily the issue. What matters is that they are one of the tools in the toolbox that we can use to ensure that we protect the public. We cannot decide whether the policy is successful based on the number of TPIMs issued a year. One individual subject to a TPIM could wreak large amounts of damage to the community if we did not have some level of supervision. Six is the current figure, and that was released today. Two reports—a written ministerial statement and a memorandum to the Home Affairs Committee—were published at 1 o'clock today, and they indicate that there are between one and six active TPIMs. We cannot grade the total number with the threat posed.

Richard Arkless: I accept what the Minister is saying. My point was that if orders are not granted, one has to assume that it is not necessary and proportionate in those circumstances. If six orders have been granted, the inference is that it has only been necessary and proportionate to do that in six cases. I am trying to get an outline of the effectiveness and whether the number is justifiable in terms of effectiveness. It all boils down to necessity and proportionality.

Mr Wallace: If we look at the toolbox to stop someone making or being a threat to the public, there is a broad range of tools—it does not just have to be TPIMs. For example, if someone was trying to leave the country and we suspected that they were going to fight with ISIS in Syria, we could remove their passport. Legislation is in place for a Minister to remove that individual's passport and prevent them from travelling. That is an alternative that could be used. We use a range of powers and tools to disrupt and deter and, if necessary, to restrict people's ability to threaten society.

Moving to the points raised by the shadow Minister, the hon. Member for Ealing Central and Acton, and the right hon. Member for Leicester East, the former Chair of the Home Affairs Committee, I agree that the independent reviewer of terrorism legislation has been a good post. They have done a tremendous number of reports—both open reports and reports that are more sensitive. They inform Government, along with the

[Mr Wallace]

Intelligence and Security Committee, which is a cross-party, independent committee. They challenge Government policy and inform us of changes. The post has been a great success. It has also been successful in providing reassurance that people are not too quickly interpreting intelligence into evidence. I am perfectly open to the hon. Lady's suggestion about whether we should have an independent reviewer for counter-extremism. There is an open consultation on counter-extremism, and I recommend that she and her Front-Bench colleagues contribute to that and put forward her ideas. Discussion will take place once consultation is closed.

Do I anticipate an increase to more than six TPIMs? We should not forget that we have approximately 850 people who we think have gone to fight in Syria. Some of them will come home and it may be a challenge to deal with some of them in another way, so we may see an increase in TPIMs. We may, however, use other tools to ensure that we deal with such individuals. We are pragmatic. The professionals who deal with this issue—the security services and the police—should be free to make those decisions and recommendations. I will not interfere with their professionalism in deciding the appropriate measure or power to use.

On whether we would publish the advice to Ministers from the director-general of MI5, the police and other people, I will certainly reflect on the hon. Lady's point. I would have to satisfy myself that that would not undermine or threaten national security. I suspect that the Intelligence and Security Committee—it could request to see that advice; it has much more powers thanks to the legislation we passed a few years ago—would have the ability to look at the advice. I would not dare to anticipate the Chair of the ISC, but the ability is there. I am open to the point that the hon. Lady made, but I have to check whether we can do that.

I was asked why we will not tell, say, reveal or publish what has happened to those two individuals who absconded from TPIMs. It is an ongoing police investigation, and we have to be careful when commenting on such things. Let me outline some possible scenarios that are not in any way linked to those individuals: they could have

been found, and be abroad or under surveillance; they could have already been dealt with and relocated; or they may not have been found at all. However, publishing that information may threaten our operational capability. If we had people under surveillance abroad, we would want to know who they were mixing with and talking to, and we might not be able to go and get them. If I were to start doing a running commentary on the operational nature of a police investigation, it would seriously undermine the point.

We do not publish the names of individuals who are subject to TPIMs and we do not say if they have relocated or where they have relocated to. The TPIM is as much a tool for us to disrupt terrorist activity as it is about ensuring that we put a protective shield around certain individuals to protect the public from the threat that they may pose. It is easier said than done to say, "Let's tell you what has happened." I am not informing the Committee of what we know; I am just giving some scenarios to show that it may not be in the best interest of the police and the people charged with investigation to make those details public.

Overall, I am grateful for the Scottish National party and Labour party Front-Bench support for the measures, which are not done lightly. They are an important tool in our toolbox to ensure that we deal with the threats posed by terrorism, and they are constantly reviewed. All I can say is that we take such matters very seriously. The Home Secretary and I get advice from the professionals who are out there every day on the frontline, dealing with the dangers that many of us are often a long way from. I take the professionals' views seriously, as do many around the House. That is why TPIMs should be extended, so I urge the Committee to support the order. The measures will be reviewed again as the legislation requires.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016.

3.2 pm

Committee rose.