**ATC Counter-Terror Module 4: Terrorism Prevention and Investigation Measures (TPIMs)**

## **Prevention of Terrorism Act 2005**

Also known as PTA, Prevention Terrorism Act 2005 was first the kind of legislation that brought in a regime of 'control orders'. Introduced under the Labour government, it aims to prevent terrorist-related activity by individuals, irrespective of their nationality or terrorist cause. This legislation specifically targets individuals suspected of involvement in terrorism but cannot be prosecuted or deported due to insufficient evidence.[[1]](#footnote-0)

The Prevention of Terrorism Act 2005 was created in response to a Law Lords ruling in December 2004 that detaining foreigners without trial under emergency counter-terrorism powers was unlawful. The appeal had been made on behalf of nine men who had been detained at Belmarsh Prison under Part IV of the Anti-terrorism, Crime and Security Act 2001, which permitted foreign terror suspects to be indefinitely imprisoned without trial.[[2]](#footnote-1)

The government said the detainees represented a security threat but that they were unable to prosecute them because of the rules covering secret intelligence. The detainee's lawyers successfully argued that the men's imprisonment breached articles 5 and 14 of the European convention on human rights.

Essentially control orders allowed the Home Secretary to impose a variety of sanctions on individuals who are suspected of being involved in terrorism, including restrictions on employment, residence, travel, communication, and association with others. There are two types of control orders:[[3]](#footnote-2)

1. Derogating:

Derogating Control Orders could only be issued on application to a court, but no such Orders were ever made.[[4]](#footnote-3)

1. Non-derogating:

‘Non-derogating control orders allow the Home Secretary to impose a range of

conditions including a ban on internet or mobile phone use, restrictions on movement and travel, restrictions on associations with named individuals and the use of tagging for the purposes of monitoring curfews.’[[5]](#footnote-4)

The distinction was created so that during a public emergency, the government could derogate from article 5 of the European convention on human rights and restrict individuals to house arrest.[[6]](#footnote-5) The terms imply that the government, or Secretary of state, may impose a control incompatible with the 'controlled' person's right to liberty and security set out in Article 5 of the European Convention on Human Rights (ECHR).[[7]](#footnote-6)

PTA lasted for six years from 2005. In total, 52 individuals were subject to Control Orders; all were men suspected of involvement in Islamist terrorism.43 When Control Orders were introduced in 2005, all the individuals subject to an Order were foreign nationals. [[8]](#footnote-7)

In January 2011, the government published its counter-terrorism review and replaced the control orders with the ‘less’ intrusive TPIMs.

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###  **2. Criticism:**

Control orders relied on civil rather than the criminal standard of proof, thus lowering the standard of proof from ‘beyond reasonable doubt’ (the criminal standard) to ‘on the balance of probability (the civil standard’). Moreover, control orders were imposed based on secret evidence which the person subject to the order cannot dispute. The orders would last for 12 months but can be renewed indefinitely.[[9]](#footnote-8)

In a report published on March 4 2007, the joint committee on human rights strongly criticised the control order regime. The committee claimed that the home secretary was asking parliament to renew a power that it said was routinely exercised in breach of the right to liberty in article 5 of the European convention on human rights.

They argued that in renewing the act on an annual basis, "parliament is being asked to be complicit in a de facto derogation from article 5, without an opportunity to debate whether such a derogation is justified".[[10]](#footnote-9)

##  **3. The Terrorism Prevention and Investigation Measures**

The Terrorism Prevention and Investigation Measures, known as TPIMS, gained notoriety in the wake of the London and Manchester terrorist attacks in 2017.

It is a reviewed piece of legislation that originates from the 'control orders' under the Prevention of Terrorism Act 2005 (2005).

TPIMs allow the authorities to monitor and control people considered to be terrorists - but who are not facing criminal charges. Subjects face measures such as wearing an electronic tag, curfews, relocation, bans on internet use, and limits on who they can meet and where they can go.[[11]](#footnote-10)

Like control orders, TPIMs are instigated by the Home Secretary with the permission of the High Court. They are granted based on a reasonable belief in the subject's involvement in terrorism.[[12]](#footnote-11)

### **TPIMS Mark I:**

Initially, TPIMS were much less rigorous than 'control orders' in that they allowed for much briefer periods of house arrest and did not allow for forced relocation. It also provides a range of more limited restrictions on a suspect's movement, communication, and property. Lastly, TPIM can only be imposed for a two-year maximum period.[[13]](#footnote-12)

An enhanced version called ETPIMS was drafted and published by UK Government in 2011 as emergency legislation, but it was never enacted. The Enhanced TPIM Bill provides the Home Secretary to impose enhanced TPIM notices specifying more stringent restrictions than those available under the TPIM Act if approved by parliament.[[14]](#footnote-13)

### **TPIMs Mark II:**

TPIMs, like control orders before them, were under-used, and only three TPIMs were still in force at the end of August 2015. This led to criticism that they were too ineffective to deploy and recommendations that they needed strengthening. That occurred under the Counter-terrorism and Security Act 2015, which created TPIMs Mark II.[[15]](#footnote-14)

Some of the measures from 'control orders' were reinstated, including forced relocation and travel restrictions. This allows the authorities to remove individuals from their families and communities to be isolated in a town or city they have never been to –in effect a form of internal exile.[[16]](#footnote-15)

The shared feature of control orders and TPIMs is the use of secret evidence in closed hearings to which the affected individual has no access and is deemed unreasonable. [[17]](#footnote-16)

### Data:

One noticeable difference between 'control orders' and TPIMs is reducing the number of measures issued against foreign nationals compared to those issued against British citizens. One might say that this is because the UK Government targets 'homegrown' terrorists who pose more significant threats to society.



There are currently five TPIMs in force as of May 31 2021[[18]](#footnote-17), considerably fewer than at the peak of 20 Control Orders in June 2009.

###  **4. Case study**

### **Case I:**

Between 2012 and 2015, the government imposed a TPIMs notice on DD, a thirty-nine-year-old Somali refugee, for providing material support to the al-Shabaab terrorist group.[[19]](#footnote-18)

The TPIM notice required that he wear an electronic monitoring device, among other measures. In 2015, a British judge found that DD's rights under Article 3 of the European Convention on Human Rights (ECHR) prohibiting inhumane and degrading treatment were breached by this measure.[[20]](#footnote-19)

The judge found that DD, who suffered from mental illness, truly believed the electronic device he wore "was a bomb and contained a camera" and experienced undue suffering. Accordingly, the judge granted DD permission to remove his electronic tag. However, the judge also sustained the TPIMs notice overall because the decision to impose it was "not legally flawed."[[21]](#footnote-20)

### **Case II:**

In 2011, the government alleged that Mohammed Ahmed Mohamed, a twenty-seven-year-old British citizen of Somali origin, had ties with the Al-Shabaab terrorist group.[[22]](#footnote-21)

The government placed Mohamed under a control order in 2011, which was subsequently converted into a TPIMs order. Between 2011 and 2012, Mohamed faced twenty charges of violating his control and TPIMs orders. The measures he broke included failing to report to multiple police stations, possessing a mobile phone without the state's permission, and gaining access to the internet without approval.[[23]](#footnote-22)

 Other TPIMs included confinement to his home for ten hours overnight, wearing an electronic monitoring device, remaining in the United Kingdom, and having only one bank account, phone, computer and landline.[[24]](#footnote-23)

In 2013, Mohamed discarded his electronic tag and fled. In 2014, the Court of Appeals ruled that his original control order should be quashed because it had been based on secret evidence that prevented the government from sufficiently informing Mohamed and his lawyers of the reasons for the original orders’ imposition. A judge subsequently withdrew the warrant for Mohamed’s arrest after the Crown Prosecution Service refused to release this evidence.[[25]](#footnote-24) The government was unable to locate him and it was later reported that Mohamed was killed in Somalia. [[26]](#footnote-25)

###  **5. Criticisms**

While the government claims it is unlike the 'control orders', TPIMs replicate the strategy as it restored the relocation orders and travel restrictions, implying a fine line between the two.

TPIMs threaten civil rights, as the Bill weakens the burden of proof requirements and removes the safeguards and time limitations on the use of TPIMs, thus creating the opportunity for the abuse of TPIMs powers. Additionally, it disregards the long-lasting impact these operations have on innocent civilians who are swept under this new strategy and subjected to social isolation and ostracism.

Liberty finds that TPIMs are unsafe and unfair: they undermine security by impeding prosecutions of those suspected of terrorism-related offences.[[27]](#footnote-26) Liberty’s objections to TPIMs are summarised below:

1. TPIMs are unsafe. Dangerous terrorists should not be in their living rooms but convicted and imprisoned. A genuine terrorist can easily remove plastic tags and disappear, as some controlees have in the past.
2. TPIMs are unfair. Innocent people should not be subjected to years and years of a punishment without trial. TPIMs place dehumanising sanctions on people based on suspicion rather than evidence.
3. TPIMs go against the British traditions of justice and liberty. They undermine the presumption of innocence and the right to a fair trial.
4. There are alternatives to TPIMs which better ensure public safety and respect for civil liberties. Liberty urges the government to use criminal law and the courts to lock up dangerous terrorists and to allow the use of intercept evidence in court.

Another issue concerns the imposition of TPIMs, which are decided by a High Court order where evidence may be held in “closed proceedings” – secret trials. Breaching the conditions of a TPIM is a criminal offence with a maximum potential penalty of ten years imprisonment.

The costs of maintaining subjects under TPIMs are also vast, with the Independent Reviewer saying it ran into the tens of millions annually.[[28]](#footnote-27)

Three men subject to charges for tampering with their tags while on a TPIM had their cases dropped in October and November 2013 after it emerged the tags might have inadvertently come loose, either through wear and tear or repeated kneeling when praying.[[29]](#footnote-28)

A 2015 JCHR report finds that it 'failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions for terrorism suspects', which suggests that TPIMs are ineffective.[[30]](#footnote-29)

Lastly, it contradicts the European Convention of Human Rights under several circumstances:

1. Article 5: The Right to Liberty and Security

The relocation was not included in the 2011 Act due to its restrictions on human rights but was later introduced in the 2015 Act. [[31]](#footnote-30)

1. Article 8: The Right to respect for private life, family life and correspondence relevant to the seizure of travel documents. The power to take and cancel passports already existed. But the 2015 Act extended this power by allowing police and border authorities to seize a person's passport if they are suspected of terrorism. Detaining an individual is more likely to breach Article 8 of ECHR. Still, if the individual in question refuses to give away their passport, this will lead to their detention under the Antiterrorism Crime and Security Act 2001. There is also a danger that the seizure of a passport breaches Article 14 of the ECHR, which prohibits discrimination against any ground. There is an increased risk of racial profiling against the 'suspected' perpetrator.[[32]](#footnote-31)

##  **6. Counter-terrorism and Sentencing Act**

The government has introduced enhanced sentences for those convicted of general criminal offences where terrorism is involved under the Counter-terrorism and Sentencing Act 2021.

This is also applicable in cases where an individual is convicted of an ordinary crime—such as forgery, fraud, or robbery—committed for a terrorism-related purpose.[[33]](#footnote-32)

Some of the key measures include:

* ‘Life Sentence’ refers to the offender who will spend a minimum period or 'tariff' before being considered for release by the Parole Board. In some cases, the offender may never be released. However, if the offender is released, they will spend the rest of their life on licence and can be recalled for custody.[[34]](#footnote-33)
* ‘Serious Terrorism Sentence’ applies to offenders deemed 'most dangerous' and where there is a risk, they will cause multiple deaths. The sentence will be carried for a minimum of 14 years with an extended licence period of 25 years.[[35]](#footnote-34)
* Ending early release for the most serious offenders who receive Extended Determinate Sentences (EDS) – instead the whole time will be served in custody
* Removal of the statutory deadline for completion of the Independent Review of Prevent

How is it different from TPIMs and PTA:

Essentially, this Bill will toughen existing measures of TPIMs and PTA by introducing:

* Longer sentences – an increased maximum penalty from 10 to 14 years for a number of terrorism offences. This includes membership of a proscribed organisation, supporting a proscribed organisation and attending a place used for terrorist training.[[36]](#footnote-35)
* Longer licence periods – offenders will spender linger under supervision in the community, with a minimum period of 12 months on licence for all terrorism offences. Adult offenders on parole are expected to take polygraphs, commonly known as ‘lie detector tests’, to prove they have reformed and are not planning another attack.[[37]](#footnote-36)
* Tougher tools for monitoring suspects – expansion of powers by lowering the standard of proof for imposing the measure, thus removing the maximum length they can last.[[38]](#footnote-37)

Critics argue that this is essentially restoring ‘control orders’ in all but name. The Bill threatens our civil liberties and safety as individuals will be placed on indefinite house arrest without trial, without evidence or proof.[[39]](#footnote-38)

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