Ch. 21

Pursuing (Lone Actor) Terrorists: UK Counterterrorism Law and Policy

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Abstract:

This chapter focuses on three of the methods used in the U.K. to disrupt terrorist operations: prosecution; deportation, and, Terrorism Prevention and Investigation Measures (TPIM). Recognising that special counterterrorism laws and policies are necessary, and that respect for human rights and the rule of law is an essential component of an effective counterterrorism strategy, the chapter explains that counterterrorism powers must therefore, first, be carefully circumscribed and, second, should not unquestioningly be transposed to other areas of criminal justice. Against the backdrop of these two requirements, the chapter criticises the overly broad definitions of a number of the U.K.'s terrorism offences, their reliance on official discretion and their underlying approach to human rights. Turning next to deportation, the chapter welcomes the European Court of Human Rights' insistence that the Article 3 right not to suffer torture or other forms of ill-treatment is absolute, but expresses concern at the U.K. Government's policy of Deportation with Assurances – which places diplomatic relations, as opposed to universal legal prohibitions, at the forefront of efforts to prevent deportees from suffering ill-treatment. Lastly, the chapter describes the TPIM regime, focusing in particular on the process for the making of a TPIM notice and showing how what was originally conceived of as an exceptional measure now not only enjoys semi-permanent status but has also been transposed to other areas of criminal justice.

Keywords: counterterrorism, criminal justice, prosecution, deportation, executive measures,

human rights

Chapter XX: Pursuing (Lone Actor) Terrorists: UK Counterterrorism Law and Policy

1 Introduction

The U.K.'s strategy for countering international terrorism, CONTEST, consists of four strands.[1] Known as the four Ps, these strands are: Prepare (which seeks to mitigate the impact of a terrorist incident by bringing any attack to an end rapidly and recovering from it); Protect (which is concerned with reducing the vulnerability of the U.K. and U.K. interests overseas); Prevent (which aims to safeguard and support those vulnerable to radicalization in order to stop them from becoming terrorists or supporting terrorism); and, Pursue (which seeks to stop terrorist attacks by disrupting terrorists and their operations). The focus of this chapter is the last of these, Pursue.

Given the potential severity of a successful terrorist attack, the need for special counterterrorism laws and powers to disrupt terrorists and their operations is widely accepted. Also widely accepted is the importance of these laws and powers being empirically-grounded in order to ensure both their effectiveness and necessity. A challenge in this regard is the tendency towards security panics.[2] A stark example is the popularisation of the term lone wolf – particularly since the attacks of 22 July 2011 in Norway, when Anders Behring Breivik killed eight people in Oslo and a further 69 at the island of Utøya. In fact, "the term's connotations of a singular, stealthy, and deadly attacker poorly describe the reality."[3] Not only do so-called lone wolves often lack the implied levels of cunning and lethality, they also commonly "maintain plot-relevant social ties that render them vulnerable to detection."[4] Use of this sensationalist term may thus "perpetuate myths about these individuals' capabilities and modalities of attack planning and preparation that can hamper effective detection and interdiction efforts."[5]

Security panics can generate calls for further extension of special counterterrorism laws and policies, creating the possibility of legislative/executive overreach. It is essential to recognise, therefore, that another important component of an effective counterterrorism strategy is respect for human rights and rule of law values. In the years following the 9/11 attacks, for example, it was frequently suggested that the rights of suspected terrorists may justifiably be balanced away in return for an increase in security – a notion that was shown to be both flawed and counterproductive.[6] Today, counterterrorism strategies such as CONTEST emphasise the importance of respect for human rights and the rule of law.[7]

The chapter focuses on two requirements that flow from this respect for human rights and the rule of law. The first is that special counterterrorism laws and policies should be carefully circumscribed. They require principled justification, their scope should extend no further than necessary and safeguards should be put in place to prevent their misuse. The second is that exceptional counterterrorism powers should not unquestioningly be transposed to other areas of criminal justice. The danger here is that, once enacted, laws and policies that were created in the name of counterterrorism become normalised and, in time, begin to permeate and contaminate other criminal law and justice areas.[8]

The chapter's examination of the Pursue strand of the U.K.'s CONTEST strategy focuses on three of the principal methods used to disrupt terrorist activity: prosecution, deportation, and Terrorism Prevention and Investigation Measures (TPIM). The chapter will argue that, in certain respects, each of these methods fails to adhere to the two requirements outlined in the previous paragraph. The chapter begins by discussing prosecution, explaining that the definitions of a number of the U.K.'s special terrorism offences are overly broad, rely unduly on the responsible exercise of official discretion and embody a relativistic approach to human rights. Turning next to deportation, the chapter details how the U.K. Government's attempt to adopt a relativistic approach to the right not to suffer torture and other forms of ill-

treatment was frustrated by the European Court of Human Rights. This led to the adoption of a policy of Deportation with Assurances, which places diplomatic relations, not universal legal prohibitions, at the forefront of efforts to prevent the ill-treatment of deportees. Finally, the chapter discusses TPIM. It explains that TPIM notices are imposed by the Home Secretary, with the court's role limited to a review jurisdiction, and review hearings may include closed sessions. Originally regarded as an exceptional measure, the TPIM regime now not only enjoys semi-permanent status but has also been transposed to other areas of criminal justice.

2 Prosecution

Of the methods of disrupting terrorist activity examined in this chapter, prosecution is the preferred option. This is for several reasons. From a due process perspective, prosecution requires the state to prove its case in open court beyond reasonable doubt and affords the suspect an opportunity to respond to the case against him. From a labelling perspective, a criminal conviction conveys the highest degree of censure. And, from a national security perspective, conviction for a serious criminal offence normally results in a lengthy period of imprisonment, which is more protective of the public than other forms of disruption such as deportation and TPIM.

In cases where a suspected terrorist has inflicted harm, a general application offence (such as murder, kidnap or hijack) will normally apply (with the terrorist connection operating as an aggravating factor that increases the seriousness of the offence, thus justifying a severer sentence).[9] For cases in which a suspected terrorist has been prevented from inflicting harm, there are a number of general application inchoate offences. Whilst these offences have a preventive rationale, efforts to deploy them in terrorism cases (particularly those involving lone actors) raise important practical issues. A defendant may only be

convicted of attempting a crime if he engaged in activity that was more than merely preparatory to the commission of the full offence.[10] This has been interpreted by the courts as requiring that the defendant "embark[ed] upon the crime proper."[11] Hence in *R v Geddes* (1996) the conviction for attempted false imprisonment of a man found hiding in the boys' toilets of a school, in possession of a knife, rope and masking tape, was quashed on appeal on the basis that, since he had not yet come into contact with a pupil, he had not embarked upon the crime.[12] Similarly, in *R v Campbell* (1990) the conviction for attempted robbery of a man stopped just outside a post office, in possession of an imitation firearm and a threatening note, was quashed on appeal on the basis that, until he entered the post office, he had not embarked upon the crime.[13] This narrow scope of the law of criminal attempts means that it will only be relevant in terrorism cases in limited circumstances (such as where someone planted a bomb unaware that it was faulty and incapable of exploding). Given the harm that a terrorist attack might inflict, it is infeasible to expect law enforcement to wait until the suspect has embarked upon the crime before intervening.

There are also practical issues with the general inchoate offences of conspiracy,[14] and encouraging/assisting crime.[15] For a start, these offences are notoriously difficult to prove. It can be difficult to obtain evidence of an agreement or words of encouragement, especially if the suspects observe good communications security. Even if such evidence is obtained, it may not be admissible as a result of the UK's self-imposed ban on the use of intercepted materials as evidence in criminal trials.[16] And even if evidence is obtained and it is admissible, it may lack evidential value (perhaps because the suspects disguised the contents of the communication) and/or there may be public interest reasons not to disclose it in open court (perhaps because it would expose other ongoing investigations or reveal secret techniques or capabilities).[17] In addition, these offences may not fit the facts of a case involving a lone actor. The offence of conspiracy requires proof of an agreement to commit

an offence as a joint collaborative project, which is the very antithesis of acting alone.[18] The offence of encouraging/assisting crime, meanwhile, applies to those who seek to persuade or help others to commit an offence. So, whilst it might apply in some lone actor cases, such as where a suspect tries unsuccessfully to recruit others to join his terrorist plot, it will not apply where the suspect plans and prepares an attack alone.

These practical considerations – coupled with the conviction that, in terrorism cases, it is necessary to "defend further up the field" – have led to the creation of a raft of special, preventive, terrorism-related offences.[19] Found predominantly in the U.K. Terrorism Acts of 2000 and 2006, these "precursor" offences target a range of preparatory and facilitative activities, including: membership of a proscribed organisation,[20] support for a proscribed organisation,[21] fundraising for terrorist purposes,[22] failure to disclose information that might assist in preventing an act of terrorism,[23] collecting information or possessing a document likely to be useful to a terrorist,[24] encouraging terrorism,[25] dissemination of terrorist publications,[26] preparation of terrorist acts,[27] and, training for terrorism.[28] Importantly, unlike the general offences of conspiracy and encouraging/attempting crime, many of these offences may straightforwardly apply in lone actor cases. For example, those who download violent extremist propaganda might be charged with collecting information likely to be useful to a terrorist (maximum sentence: fifteen years' imprisonment), whilst those who download bomb-making instructions or acquire a weapon might be charged with preparing a terrorist act (maximum sentence: life imprisonment). Moreover, research has found that lone actors often interact and have social ties with other radical actors and are "alone largely and only with regard to the actual commission of the act of violence."[29] These wider interactions could potentially result in liability for being a member of, or inviting support for, a proscribed organisation (maximum sentence: ten years' imprisonment), for disseminating terrorist

publications (maximum sentence: fifteen years' imprisonment) or for another of the terrorism precursor offences.

Whilst the terrorism precursor offences may avoid some of the practical difficulties with the general inchoate offences and enable the disruption of terrorist activity, there is concern that in an effort to facilitate early intervention these offences overreach.[30] Some precursor offences encompass activity that is quite far removed from the actual commission of a terrorist attack.[31] An example is the *membership of a proscribed organisation offence* which, as noted above, is punishable by up to ten years' imprisonment. Section 11(1) of the Terrorism Act 2000 states that this offence applies not only to those who are in fact members of a proscribed organisation but also to those who profess to be (but in fact are not). Moreover, proof of membership (or profession of membership) is all that is required to establish liability for the offence. The offence requires no proof of a terrorist purpose or intention and, whilst the statute does provide a defence, this only applies if the defendant adduces evidence that: (a) the organisation was not proscribed on the last (or only) occasion on which he became a member or began to profess to be a member and, (b) he has not taken part in the activities of the organisation at any time while it was proscribed. In *Attorney-General's Reference (No 4 of 2002)*, the offence was described by Lord Bingham as a "provision of extraordinary breadth." He commented:

> It would cover a person who joined an organisation when it was not a terrorist organisation or when, if it was, he did not know that it was. It would cover a person who joined an organisation when it was not proscribed or, if it was, he did not know that it was. It would cover a person who joined such an organisation as an immature juvenile. It would cover someone who joined such an organisation abroad in a country where it was not proscribed and came to this country ignorant that it was proscribed

> here […] It would cover a person who wished to dissociate himself from an organisation he had earlier joined, perhaps in good faith, but had no means of doing so, or no means of doing so which did not expose him to the risk of serious injury or assassination.[32]

It would also apply to a fantasist who falsely claims to be a member of a proscribed group in a misguided attempt to show off.

There are also a number of precursor offences that do not require proof of a sufficient degree of culpability. An example, also punishable by up to fifteen years' imprisonment, is the offence of collecting information or possessing a document likely to be useful to a terrorist. Such documents include bomb-making instructions, information on how to gain unauthorised entry to a military establishment or any other material that "calls for an explanation,"[33] such as advice on how to conceal information from others.[34] Once it has been shown that the defendant collected or possessed such requisite information/documents, the only culpability requirements are that the defendant knew that he was in possession and had control of the information/document, knew the nature of its contents and lacked a reasonable excuse. Notably, there is no requirement to prove a terrorist purpose or intention.[35]

This was a critical element in the outcome in *R v G* (2009).[36] The defendant in this case was a paranoid schizophrenic. He had been detained for a number of non-terrorism offences. While in custody he collected information on explosives and bomb-making, and also drew a map of the Territorial Army centre in Chesterfield and wrote down plans to attack the centre. The items were discovered during a search of his cell. His explanation for collecting the information was that he wanted to wind up the prison staff because he believed they had been whispering about him. The prosecution accepted expert evidence that he had

collected the information as a direct consequence of his illness. The case reached the House of Lords.

In this case, since: (a) the information on explosives that the defendant had collected called for an explanation and would be useful to a terrorist (b) the defendant knew he was in possession and had control of the information and, (c) he knew the nature of the information, the key issue in the case was whether the defence of reasonable excuse was available to him. Here, the House of Lords held that proof of a non-terrorist purpose does not, in itself, constitute a reasonable excuse. The question is not whether the defendant had a terrorist purpose, but whether his excuse for collecting the information is objectively reasonable. Seeking to antagonise prison guards is not reasonable, and could not be rendered *objectively* reasonable by the defendant's mental illness. G was therefore guilty of the offence, notwithstanding the absence of any terrorist purpose or connection. The effect is to "make a terrorist out of nothing," which raises important questions about fair labelling.[37]

The overreach of terrorism precursor offences is an example of a wider contemporary legislative technique, in which deliberately broad powers are vested in the executive alongside an assurance that the powers will be exercised responsibly.[38] In the specific context of terrorism, the U.K. Government has argued that widely drawn powers confer flexibility and that a "flexible statutory framework" is required in order to "ensure that our law enforcement and intelligence agencies can continue to disrupt and prosecute those who pose a threat to the public."[39] Yet such an approach is at odds with a human rights ethos that stresses the importance of tightly constraining state power in order to safeguard against potential abuse and has been criticised by the Supreme Court:

> The Crown's reliance on prosecutorial discretion is intrinsically unattractive, as it amounts to saying that the legislature, whose primary duty is to make the law, and to

> do so in public, has in effect delegated to an appointee of the executive, albeit a respected and independent lawyer, the decision whether an activity should be treated as criminal for the purposes of prosecution. Such a statutory device, unless deployed very rarely indeed and only when there is no alternative, risks undermining the rule of law. It involves Parliament abdicating a significant part of its legislative function to an unelected DPP, or to the Attorney General, who, though he is accountable to Parliament, does not make open, democratically accountable decisions in the same way as Parliament. Further, such a device leaves citizens unclear as to whether or not their actions or projected actions are liable to be treated by the prosecution authorities as effectively innocent or criminal—in this case seriously criminal.[40]

It is for this same reason that the terrorism precursor offences have been dubbed "ouster offences," for the effect of their over-inclusivity is to deprive the trial court of the opportunity to adjudicate on the underlying wrong that the offence is targeting.[41]

3 Deportation

In some cases, prosecution is not an available option due to (a) insufficient admissible evidence to bring a prosecution (b) sufficient admissible evidence but public interest reasons for not disclosing it or, (c) perhaps the individual was convicted of a crime and has served his sentence. One alternative tactic in such circumstances is to use nationality and immigration powers.[42] There are various powers aimed at British nationals who have travelled overseas to engage in terrorism, including Temporary Exclusion Orders and, in the case of dual nationals and naturalised citizens who have a reasonable prospect of attaining another nationality, removal of their British citizenship.[43] Meanwhile, foreign nationals who are suspected of involvement in terrorism-related activity may be deported from the UK.[44] Deportation of

foreign suspected terrorists is intended to protect national security and to send "a strong signal that foreign nationals who threaten our national security cannot expect to be allowed to remain in the UK."[45]

Deportation of a foreign national must comply with the European Convention on Human Rights. Of particular relevance here is Article 3, which states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Importantly, the scope of the Article 3 prohibition is not limited to cases in which the feared ill-treatment would be inflicted by a member state. According to the European Court of Human Rights in *Soering v UK* (1989),[46] Article 3 also prohibits the extradition of a person to a non-member state in circumstances where there is a "real risk" that that person will suffer ill-treatment in the receiving country. The Court said that to hold otherwise would be "contrary to the spirit and intendment of the Article."[47]

In the subsequent case *Chahal v UK* (1996), the UK Government argued that the principle from *Soering v UK* did not apply in cases involving the deportation of a suspected terrorist.[48] The UK wished to deport Mr Chahal, allegedly a Sikh militant, to India on the grounds of national security. Mr Chahal claimed that, if he were returned to India, he would suffer ill-treatment. Before the European Court of Human Rights, the UK Government argued that, in spite of its absolute wording, Article 3 in fact contains an implied limitation that allows member states to deport an individual, even if there exists a real risk of ill-treatment, if the deportation is required on national security grounds. Alternatively, the UK Government argued that in a case like *Chahal v UK*, the gravity of the threat to national security should be balanced against the degree of risk of ill-treatment, so that deportation would be permissible where there is substantial doubt about the risk of ill-treatment and the threat to national security weighs heavily in the balance.

In its judgment, the Court acknowledged the challenges that states face in protecting their communities from terrorism but rejected both of the UK Government's arguments, insisting that the Article 3 prohibition on ill-treatment is absolute. So, applying the principle from *Soering v UK*, it followed from the Court's conclusion that there was a real risk he would suffer ill-treatment if deported to India so Mr Chahal could not be returned there. Moreover, the Court stated that, according to Article 5(1)(f) of the Convention, a person may only be detained pending deportation whilst deportation proceedings are in progress. Since the Court's judgment marked the end of the process, there was therefore no possibility of continuing to detain Mr Chahal until it was safe to return him to India. To do so would have amounted to a violation of his Article 5 right to liberty.[49]

The judgment in *Chahal v UK* was delivered in October 1996. Just over a decade later, in *Saadi v Italy* (2008),[50] the UK sought to persuade the European Court to reconsider its stance in *Chahal v UK*, arguing that the threat posed by international terrorism had increased since the attacks of 9/11. It argued that the "rigidity" of the judgment in *Chahal v UK* caused member states "many difficulties". In particular, it forced states to rely on other measures such as surveillance or restrictions on movement, which offer "only partial protection." In response, the Court acknowledged that member states "face immense difficulties in modern times in protecting their communities from terrorist violence." However, these difficulties do not, the Court insisted, "call into question the absolute nature of Article 3." The prohibition on torture and other forms of ill-treatment "enshrines one of the fundamental values of democratic societies" and applies to all people irrespective of their conduct or the nature of any offence they have allegedly committed.[51]

Whilst some criticised the decision in *Saadi v Italy* for leaving "the UK a safe haven for some individuals whose determination is to damage the UK and its citizens",[52] human rights commentators applauded the decision. As Moeckli has explained, any dilution of the

principle from *Chahal v UK* would have had the effect of creating a distinction between domestic and foreign suspected terrorists.[53] On the one hand, for domestic suspected terrorists the Article 3 right not to be ill-treated would have remained absolute. On the other hand, diluting the principle would have made it possible to expose foreign suspected terrorists to a real risk of ill-treatment. But to apply differing levels of protection on the basis of nationality would have been at odds with the ethos of *human* rights. As Judge Zupančič stated in his concurring opinion in *Saadi v Italy*, the implication would have been that "such individuals do not deserve human rights … because they are less human."[54]

In an effort to facilitate the deportation of foreign suspected terrorists whilst also adhering to the judgments in *Chahal v UK* and *Saadi v Italy*, the UK Government has pursued a policy of Deportation with Assurances (DWA). The idea behind DWA is a simple one: if the UK wishes to deport a foreign suspected terrorist to his country of origin, but there are concerns that he may suffer ill-treatment there, then the receiving country can be asked to provide a diplomatic assurance (or, in UK terminology, *a Memorandum of Understanding*) that no ill-treatment will be inflicted. This assurance will diminish any risk of ill-treatment that may have existed and so enable deportation to proceed consistently with the *Chahal v UK* principle.

Whilst DWA may sound straightforward, it in fact raises a number of difficult issues. Many of the states with which diplomatic assurances might be agreed are already parties to the United Nations Convention against Torture and/or the International Covenant on Civil and Political Rights and so have already committed not to resort to torture or other forms of ill treatment under any circumstances.[55] It has therefore been argued that, by entering into such agreements, the UK Government both undermines these universal legal prohibitions and implies that the ill-treatment of some detainees is more acceptable than the ill-treatment of others.[56] It has also been argued that diplomatic assurances are meaningless, especially as

they are not legally binding and there are examples (such as Maher Arar) of individuals being ill-treated in breach of a diplomatic assurance.[57] The fact that it is felt necessary to seek an assurance is, in itself, an acknowledgement of the risk of ill-treatment and there is little reason to regard as credible an assurance given by a state that disregards its obligations under international human rights law.

In addition, even if the assurance is given in good faith by the central government, in countries where there is a culture or sub-culture of ill-treatment the assurance may be "subverted by local officials who probably believe that their actions are necessary, condoned in practice, and certainly not the subject of potential sanction against them."[58] It is also difficult to monitor compliance, since many forms of ill-treatment are deliberately difficult to detect and a detainee may well be reluctant to make an allegation of ill-treatment. Some have also argued that there is little incentive for either the UK or the receiving country to monitor the agreement: if the UK Government were to allege ill-treatment this could upset the diplomatic relationship with the receiving country and damage the chances of deporting others there in the future, whilst if the foreign government were to discover ill-treatment has occurred this would constitute a breach not only of internationally agreed standards but also the specific promise given to the UK Government.[59]

Perhaps the most high-profile case involving DWA is that of Omar Othman (also known as Abu Qatada).[60] In this case, which was heard by the Fourth Section of the European Court of Human Rights, both Othman's counsel and the third-party interveners (Amnesty International, Human Rights Watch and JUSTICE) expressed grave concern at the use of diplomatic assurances, for the reasons outlined above. In its submissions to the Court, the UK Government responded to these concerns. It argued that to criticise a diplomatic assurance for not being legally binding is to "betray a lack of an appreciation as to how [they] worked in practice between states."[61] The fact that an agreement is a political, not a legal, one could

mean that the receiving country has greater incentive to adhere to it. The obligation in a multilateral treaty is owed to many countries in general, but none in particular. By contrast, a firm political commitment in a bilateral diplomatic assurance is owed to a specific country, so the implications of breaking it could be more acute. This is all the more so if, as in Othman's case, the assurance was agreed at the highest level of government.[62] Nor is it in the interests of the UK Government for breaches of diplomatic assurances to remain undiscovered or hidden. Knowing how deportees have been treated helps the Government assess the risk of ill-treatment in future cases.[63] Moreover, whilst some assurances had in the past proved to be unreliable, it does not follow from this that all assurances inevitably lack credibility. Each case must be assessed individually on its merits. Here, it is important to note that all decisions to deport are subject to appeal to the Special Immigration Appeals Commission (SIAC). SIAC is an independent, expert tribunal. It scrutinises all diplomatic assurances carefully and has in the past stopped the deportation of some foreign suspected terrorists. Decisions of SIAC can in turn be appealed to the Court of Appeal, the UK Supreme Court and, ultimately, the European Court of Human Rights. There are thus "extensive judicial safeguards to ensure that an individual will only be deported where compatible with, rather than in breach or avoidance of, the UK's [international] obligations."[64]

In its judgment in *Othman v UK* (2012), the European Court stated that it is "not for this Court to rule upon the propriety of seeking assurances, or to assess the long term consequences of doing so." Rather, the Court's role is to assess whether the individual faces a real risk of ill-treatment in the receiving country. Any assurances that have been provided by the receiving country "constitute a further relevant factor" in making this assessment. The Court began by noting that, whilst torture is "widespread and routine" in Jordanian prisons, it did not necessarily follow that Jordan would not comply with a diplomatic assurance. The UK and Jordan had historically enjoyed a "very strong" bilateral relationship and the

assurance in Othman's case had the express support of the King of Jordan himself. Othman's high profile also made it more likely that the Jordanian authorities would be careful to ensure that he was treated properly. Ill-treatment would have "serious consequences" for Jordan's relationship with the UK and also cause "international outrage."[65]

The text of the assurance was, the Court said, "superior in both its detail and its formality" to any assurance the Court had previously examined. Importantly, it included provision for an independent monitor: the Adaleh Centre. Whilst the Court conceded that "the Adaleh Centre does not have the same expertise or resources as leading international NGOs such as Amnesty International, Human Rights Watch or the International Committee of the Red Cross", it concluded that "it was the very fact of monitoring visits which was important". It also noted that, thanks to funding from the UK Government, the capacity of the Adaleh Centre had increased significantly and that given the Government's "broader interest in ensuring that the assurances are respected, it can be expected that this funding will continue." So, according to the Court, if Othman was returned to Jordan there was no real risk that he would suffer ill-treatment and therefore deporting him would not violate his Article 3 right.[66]

In should be noted, however, that the European Court did hold that deporting Othman to Jordan would violate his Article 6 right to a fair trial.[67] On his return to Jordan, Othman faced being retried before the State Security Court on charges of conspiring to cause explosions. There was found to be a real risk that the prosecution case at his retrial would include evidence obtained by torture from his alleged co-conspirators. This evidence would be of considerable, perhaps decisive, importance against him. Admitting it at the retrial would, the European Court said, amount to a flagrant denial of justice: "a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article."[68] Following the European Court's judgment, the UK and Jordan agreed a treaty dealing with

mutual assistance in tackling crime, one clause of which addressed the use of torture evidence in criminal trials.[69] Once both countries had ratified the Treaty Othman returned to Jordan voluntarily. At his retrial he was acquitted after the judges ruled that there was insufficient evidence against him.

The *Othman v UK* judgment thus "gave its blessing to DWA in principle".[70] Whilst the European Court did set conditions that require the sending country to "engage deeply with a receptive foreign partner,"[71] some unease remains that "the transfer of the issue into the diplomatic sphere means that human rights are no longer the sole or perhaps predominant issue."[72] At the same time, the engagement involved in agreeing a diplomatic assurance can have wider benefits. In his report on the topic, the UK's then Independent Reviewer of Terrorism Legislation, David Anderson, recounts a conversation with a Jordanian prison governor. Obliged by bilateral arrangements not to hood prisoners sent to him from the UK on their regular journeys from prison to court, the governor ordered the hoods to be removed from all his prisoners making that journey.[73] Yet this level of intensive engagement with a foreign partner is both costly and time-consuming. The litigation surrounding Othman, for example, lasted for eight years and cost roughly £1.7 million.[74] In fact, since 2005 the total number of successful uses of the DWA policy currently stands at twelve: nine to Algeria; two (including Othman) to Jordan; and, one to Morocco. Moreover, following the decision of SIAC in *BB & others v Secretary of State for the Home Department* (unreported, 18 April 2016) that the lack of an effective system of verification meant that six men could not be deported to Algeria and the withdrawal of proceedings in the case of the Jordanian man N2 following Jordan's refusal to provide the requested assurances, there are no DWA proceedings currently in progress. Anderson and his special adviser, Clive Walker, thus conclude that "DWA can play a significant role in counter-terrorism, especially in prominent

and otherwise intractable cases which are worth the cost and effort, but it will be delivered effectively and legitimately in international law only if laborious care is taken."[75]

4 Terrorism Prevention and Investigation Measures (TPIM)

There are a small number of people in the UK that pose a terrorist threat but who can be neither prosecuted (for the reasons explained above) nor deported (either because they are a British citizen or because of a real risk of ill-treatment in the receiving country).[76] In such cases, the UK has resorted to the use of executive measures. In 2001, in the aftermath of 9/11, the power to indefinitely detain foreign suspected terrorists was introduced.[77] After this power was held by the House of Lords to violate Articles 5 (right to liberty) and 14 (prohibition of discrimination) of the European Convention on Human Rights,[78] it was replaced in 2005 by a new system of Control Orders.[79] Control Orders were then themselves replaced in 2011 by Terrorism Prevention and Investigation Measures (TPIM).[80] TPIMs soon began to dwindle and by early 2014 there were no TPIM notices in force at all.[81] In early 2015, amendments created "TPIMs Mk II.".[82]

Although TPIM were intended to be "less intrusive" than the system of Control Orders, they may still impose significant restrictions on an individual's liberty.[83] There are a total of fourteen types of possible measure listed in the legislation. These include an overnight residence measure (effectively a curfew, of up to ten hours' duration[84]), travel and exclusion measures (requiring the individual not to leave, or to enter, a specified area), association measures (restrictions on the individual's association or communication with other persons), an electronic communication device measure (limiting the individual's use and possession of such devices – though, unlike the system of Control Orders, the individual must at a minimum be allowed to possess and use a landline telephone, a computer with internet access and a mobile phone that does not have internet access (subject to any specified

conditions on such use)), a work or studies measure (restrictions on the individual's work or studies), financial services measures (imposing restrictions on the individual's use of, or access to, specified financial services), a reporting measure (a requirement to report to a particular police station at specified times) and, a monitoring measure (such as a requirement to wear an electronic tag).[85]

In addition, a TPIM notice may impose forced relocation. This is particularly significant given that, when the Coalition Government introduced the TPIM legislation in 2011, it heralded the ending of forced relocation as one of the key liberalising measures of the new TPIM regime.[86] Forced relocation requires. the individual to reside in a place of the Home Secretary's choosing and away from their former associates. It was described by some as a form of "internal exile" and was "in some cases very strongly resented by those subject to it, and their families."[87] At the same time, forced relocation could be effective in disrupting terrorist networks that were concentrated in particular areas and was used regularly in practice (23 of the 52 men that received Control Orders from 2005 – 2011 were forced to relocate).[88] By removing an individual from their networks, forced relocation also made absconsion more difficult. So, following two high-profile instances of men subject to TPIM notices absconding (Ibrahim Magag in December 2012 and Mohammed Mohamed in November 2013), the UK's then Independent Reviewer of Terrorism Legislation, David Anderson, recommended that the possibility of forced relocation be reintroduced.[89] This recommendation was reluctantly endorsed by Parliament's Joint Committee on Human Rights, which also urged the importance of "bringing forward ideas about how to mitigate the alienation and resentment likely to be caused in some minority communities."[90] It is the reintroduction of forced relocation in TPIM Mk II (albeit with a stipulation that an individual may not be relocated more than 200 miles from his home) that appears to have led to TPIM's

renewed use. By the end of May 2018 there were a total of eight TPIM notices in force and all eight imposed relocation.[91]

A TPIM notice lasts for a maximum of two years. Following this, a new TPIM notice may only be issued if there is evidence of fresh terrorism-related activity.[92] This is another respect in which TPIM differ from Control Orders. Whilst Control Orders had a maximum duration of one year, there was no limit on how many times an Order could be renewed. In effect, therefore, Control Orders were of indefinite duration. Indeed, the longest period for which someone was subject to a Control Order was 55 months.[93] The Coalition Government explained that the two year maximum duration of TPIM was intended to "emphasise that they are a short term expedient not a long term solution."[94]

When TPIM were introduced, concern was expressed that this could result in the state being forced to rely upon other methods of disruption, such as surveillance, that offer a lesser degree of protection. This concern was exacerbated by the fact that those subject to TPIM at the time included two men who, as members of the airline liquid bomb plot, were at the gravest end of the threat spectrum.[95] A two year maximum duration was, however, supported by the UK's former Independent Reviewer of Terrorism Legislation, Lord Carlile, who stated that, after two years, "at least the immediate utility of all but the most dedicated terrorist will seriously have been disrupted. The terrorist will know that the authorities retain an interest in his/her activities and contacts, and will be likely to scrutinise them in the future"[96] – and by his successor, David Anderson, who in 2014 reported that the two year maximum duration "is now generally perceived [by Home Office officials, MI5 and police] as part of the landscape."[97] Anderson did, however, say that more needed to be done to develop an exit strategy for each individual subject to a TPIM notice: "the question of how best to prevent [terrorism-related activity] in the longer term needs to be addressed not just in the final months, but from the start of a TPIM notice and in the light of the rare opportunity for

dialogue that a TPIM notice provides."[98] In developing an exit strategy, consideration should be given to engagement, as well as coercive, strategies. Whilst it might be naïve to suppose that all TPIM subjects could be diverted from further terrorism-related activity, Anderson stated:

> All are however human beings; all are and will remain members of society; and some have first come under constraint while still quite young. If nothing else, an element of intervention could give them a point of reference distinct from those which are believed to have led them into [terrorism-related activity]. At best, it could help set them on a different path.[99]

Following Anderson's recommendation, TPIM Mk II now include the possibility of appointments measures. These require the individual to attend appointments with specified persons, such as a specialist probation officer, with the aim of deradicalization. However, Anderson's related recommendation that the legislation should state that information gathered in the course of such appointments may not be used in criminal or similar proceedings was not enacted.[100] Parliament's Joint Committee on Human Rights has expressed concern that the lack of such an assurance is at odds with the privilege against self-incrimination and may impede individuals' willingness to engage with deradicalization programmes.[101]

A TPIM notice is imposed by the Home Secretary.[102] Before issuing a TPIM notice, the Home Secretary must first seek permission from the courts (save in urgent cases, where permission may be obtained retrospectively). The permission hearing may take place without the individual concerned being present, without the individual having been notified of the application and without the individual having been given an opportunity to make representations to the court. Once permission has been granted and the TPIM notice issued, a

review hearing must be held. At the review hearing the role of the court is to review the Home Secretary's decision that the conditions for imposing a TPIM notice were met. The conditions are, first, that the Home Secretary is satisfied, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity. As stated above, this must be activity in respect of which no TPIM notice has previously been issued.

Second, the Home Secretary reasonably considers that it is necessary to impose TPIM on the individual to protect the public from a risk of terrorism. Each individual measure imposed on the individual must also satisfy this test. In respect of the first of these conditions, it is worth noting that the current standard of proof (balance of probabilities) is higher than it was both for TPIM Mk I (reasonable belief) and Control Orders (reasonable suspicion). However, David Anderson's recommendation that a TPIM notice should only be imposed if the reviewing court is itself satisfied, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity was not accepted.[103] As such, the court's role is merely to review the decision of the Home Secretary that the conditions are met.

The review hearing may include closed sessions.[104] The purpose of closed sessions is to ensure that information is not disclosed contrary to the public interest, subject to the requirement that the individual must "be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations."[105] The individual and his lawyer are excluded from the closed sessions, with the interests of the individual instead represented by a Special Advocate (a practitioner with security clearance appointed by the Attorney-General).[106] The Special Advocate may make submissions and cross-examine witnesses on behalf of the individual. Yet, whilst independent review has found the contribution of Special Advocates to be valuable in the protection of the individuals whose interests they represent, the Special Advocates themselves have expressed misgivings about their role.[107] Before the Special Advocate is shown the closed materials, he may

communicate freely with the individual and the individual's lawyer. Once the Special Advocate has been served with the closed materials, the individual may still communicate with him (in writing and through his lawyer). But the Special Advocate may no longer communicate with the individual, except in two circumstances. First, to acknowledge receipt (in writing) of any communication received from the individual. Second, following a successful application to the court for authorisation to communicate with the individual or his lawyer.

Before the court decides whether to grant authorisation, however, the Home Secretary must be notified of the request and given the opportunity to object. In practice this means authorisation to communicate with the individual or his lawyer is rarely sought. Not only is permission unlikely to be granted (since it is likely that parts of the closed materials could be inferred from any questions that the Special Advocate might wish to ask), it is also tactically undesirable because of the risk that "it might give away to the opposing party the parts of the closed evidence in relation to which the controlled person does not have an explanation."[108] This restriction on the ability to communicate with the individual (in addition to other concerns including lack of funding and access to justice, the lack of any practical ability to call evidence and the practice of iterative disclosure) led a group of 57 Special Advocates to state that closed materials proceedings "are inherently unfair; they do not 'work effectively', nor do they deliver real procedural fairness."[109] Yet, following the Justice and Security Act 2013, the availability of closed material proceedings has now been expanded to *all* civil proceedings.

Lastly, it is worth noting that the requirement that Parliament review and renew the TPIM legislation every five years.[110] This is significantly longer than for Control Orders. which received Parliamentary scrutiny every 12 months. This means that in contrast to Control Orders, TPIM enjoy a degree of semi-permanence.

5 Conclusion

The starting point of this chapter was that respect for individuals' rights and rule of law values is an essential component of an effective counterterrorism strategy. So, whilst special counterterrorism laws and policies are necessary, these require principled justification and should be carefully circumscribed. It is also important that laws and policies that are created in the name of counterterrorism are not readily and unquestioningly extended to other areas of criminal justice. Yet two recurring themes of the chapter's examination of the principal methods of disruption employed by the Pursue strand of the U.K.'s CONTEST strategy has been the weakening of legal forms of protection of individuals' rights and the normalisation of exceptional counterterrorism laws and powers.

The chapter expressed concern about the overreach of the terrorism precursor offences, both in terms of the conduct they encompass and the level of culpability they require. As the Supreme Court has remarked, official assurances that the breadth of these offences will in practice be tempered by the responsible exercise of the discretion to prosecute are not an appropriate substitute for the safeguard offered by more narrowly drawn offence definitions. A similar reliance on executive judgment was evident in the TPIM legislation. Notwithstanding the onerousness of the measures that can be imposed, a TPIM notice is imposed by the Home Secretary, with the courts' role limited to a review jurisdiction. The recommendation that a TPIM notice should only be imposed if the court, as well as the Home Secretary, is satisfied that the individual is, or has been, involved in terrorism-related activity was rejected. This was a missed opportunity to secure enhanced legal protection of individual liberty.[111] And the policy of DWA places diplomatic relations, not universal legal prohibitions, at the forefront of efforts to prevent torture and other forms of ill-treatment.

The chapter has also highlighted the potential for special counterterrorism laws and policies to become normalised. Closed sessions were originally only used in appeals in immigration and asylum cases for reasons of national security. They were then deployed in TPIM review hearings and certain other settings.[112] They may now be used in any civil proceedings where this is required in the interests of national security and the fair and effective administration of justice. The TPIM regime is also now a semi-permanent part of the U.K.'s legal landscape and has permeated into other areas of criminal justice (e.g., in the form of Serious Crime Prevention Orders). Terrorism precursor offences, meanwhile, may be understood as a form of "enemy criminal law"[113] in which "exceptional measures of the war on terror are legalized and incorporated into criminal law."[114] Enemy criminal law not only presents a danger of contamination of other parts of the criminal law. The underlying premise is that since the enemy can no longer minimally guarantee that he will conduct himself as a loyal citizen, sanctions should be imposed not as retrospective punishment for past wrongdoing but prospectively in order to prevent future harms. This premise presents human rights not as vested in the individual by virtue of their personhood, but as entitlements that have to be earned through loyalty to the law.[115] A similarly relativistic approach was evident in the UK's attempt to overturn the ECtHR's judgment in *Chahal v UK*. Had this attempt succeeded, the nationality of a suspected terrorist would have determined their level of protection against torture and other forms of ill-treatment. Such conditionality is at odds with the universality of human rights.

The scale and severity of terrorist attacks, whether perpetrated by a lone actor or otherwise, warrants special counterterrorism laws and policies. As well as ensuring that these special powers are effective in disrupting terrorism-related activity, it is also important to ensure that they respect individuals' rights and rule of law values. This chapter has argued

that this involves not just maximising legal protection of these rights and values, but also guarding against the normalisation of exceptional counterterrorism measures.

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[1] HM Government. CONTEST: The United Kingdom's Strategy for Countering Terrorism. Cm 9608. London: The Stationery Office; 2018
[2] Sunstein C R. Fear and Liberty. *Social Research*. 2004; 71: 967-996
[3] Schuurman B, Bakker E, Gill P and Bouhana N. Lone Actor Terrorist Attack Planning and Preparation: A Data-Driven Analysis. *Journal of Forensic Sciences*. 2018; 63: 1191-1200, 1191
[4] Schuurman B, Lindekilde L, Malthaner S, O'Connor F, Gill P and Bouhana, N. End of the Lone Wolf: The Typology that Should Not Have Been. *Studies in Conflict & Terrorism*. 2019; 42: 771-778, 772
[5] Schuurman B, Bakker E, Gill P and Bouhana N. Lone Actor Terrorist Attack Planning and Preparation: A Data-Driven Analysis. *Journal of Forensic Sciences*. 2018; 63: 1191-1200, 1191
[6] See, Macdonald S. The Unbalanced Imagery of Anti-Terrorism Policy. *Cornell Journal of Law and Public Policy*. 2009; 18: 519-540; Macdonald S. Why We Should Abandon the Balance Metaphor: A New Approach to Counterterrorism Policy. *ILSA Journal of International and Comparative Law*. 2009; 15: 95-146; Waldron J. Security and Liberty: The Image of Balance. *Journal of Political Philosophy*. 2003; 11: 191-210; Zedner L. Securing Liberty in the Face of Terror: Reflections from Criminal Justice. *Journal of Law and Society*. 2005; 32: 507-533
[7] HM Government. CONTEST: The United Kingdom's Strategy for Countering Terrorism. Cm 9608. London: The Stationery Office; 2018 (e.g. "Successful disruption and prosecution of terrorists depends on effective international collaboration that is underpinned by the rule of law and human rights", para. 279).
[8] Zedner L. Security, the State, and the Citizen: The Changing Architecture of Crime Control. *New Criminal Law Review*. 2010; 13: 379-403
[9] Criminal Justice Act 2003, schedule 21 (murder); Counter-Terrorism Act 2008, section 30 (other offences)
[10] Criminal Attempts Act 1981, section 1
[11] *R v Gullefer* [1990] 1 WLR 1063
[12] [1996] Crim LR 894
[13] (1990) 93 Cr App R 350
[14] Criminal Law Act 1977, section 1
[15] Serious Crime Act 2007, sections 44-46
[16] Regulation of Investigatory Powers Act 2000, section 17. The ban has been reviewed a total of eight times since 1993. For the most recent review see HM Government. Intercept as Evidence. Cm 8989. London: The Stationery Office; 2014
[17] Privy Council Review of Intercept as Evidence. Report to the Prime Minister and the Home Secretary. Cm 7324. London: The Stationery Office; 2008
[18] *R v Mehta* [2012] EWCA Crim 2824
[19] Anderson D. Shielding the compass: how to fight terrorism without defeating the law. *European Human Rights Law Review*. 2013; 233-246, 237
[20] Terrorism Act 2000, section 11
[21] Terrorism Act 2000, section 12
[22] Terrorism Act 2000, section 15
[23] Terrorism Act 2000, section 38B
[24] Terrorism Act 2000, section 58
[25] Terrorism Act 2006, section 1
[26] Terrorism Act 2006, section 2
[27] Terrorism Act 2006, section 5
[28] Terrorism Act 2006, section 6

[29] Schuurman B, Lindekilde L, Malthaner S, O'Connor F, Gill P and Bouhana, N. End of the Lone Wolf: The Typology that Should Not Have Been. *Studies in Conflict & Terrorism*. 2019; 42: 771-778, 773
[30] Macdonald S and Carlile A. Disrupting terrorist activity: What are the limits to criminal methods of disruption? In: Juss S, ed. *Beyond Human Rights and the War on Terror*. Abingdon: Routledge; 2018: 125-142
[31] See, Macdonald S. Cyberterrorism and Enemy Criminal Law. In Ohlin J, Govern K and Finkelstein C, eds. *Cyberwar: Law and Ethics for Virtual Conflicts*. Oxford: Oxford University Press; 2015: 57-75; and, Macdonald S. Prosecuting suspected terrorists: precursor crimes, intercept evidence and the priority of security. In Jarvis L and Lister M, eds. *Critical Perspectives on Counter-Terrorism*. Abingdon: Routledge; 2015: 130-149
[32] [2004] UKHL 43, para. 47
[33] *R v G* [2009] UKHL 13, para. 43.
[34] *R v Muhammed* [2010] EWCA Crim 227
[35] Carlile A and Macdonald S. The criminalisation of terrorists' online preparatory acts. In Chen T, Jarvis L and Macdonald S, eds. *Cyberterrorism: Understanding, Assessment and Response*. New York: Springer; 2014: 155-173
[36] [2009] UKHL 13
[37] Hodgson J and Tadros V. How to make a terrorist out of nothing. *Modern Law Review*. 2009; 72: 984-998
[38] Macdonald S. ASBOs and Control Orders: Two Recurring Themes, Two Apparent Contradictions. *Parliamentary Affairs*. 2007; 60: 601-624
[39] HM Government. The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation. Cm 9032. London: The Stationery Office; 2015, 8
[40] *R v Gul* [2013] UKSC 64, para. 36
[41] Edwards J., Justice Denied: The Criminal Law and the Ouster of the Courts. *Oxford Journal of Legal Studies*. 2010; 30: 725-748
[42] HM Government. CONTEST: The United Kingdom's Strategy for Countering Terrorism. Cm 9608. London: The Stationery Office; 2018
[43] Fenwick H. Terrorism threats and temporary exclusion orders: counter-terror rhetoric or reality? *European Human Rights Law Review*. 2017; 247-271
[44] Immigration Act 1971, section 3
[45] HM Government. Countering International Terrorism: The United Kingdom's Strategy. Cm 6888. London: The Stationery Office; 2006, 18.
[46] (1989) 11 EHRR 439
[47] (1989) 11 EHRR 439, para. 88
[48] (1997) 23 EHRR 413
[49] (1997) 23 EHRR 413
[50] (2009) 49 EHRR 30
[51] (2009) 49 EHRR 30, paras. 127, 137
[52] Carlile A. Sixth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005. London: The Stationery Office; 2011, 31
[53] Moeckli D. *Saadi v Italy*: The Rules of the Game Have *Not* Changed. *Human Rights Law Review*. 2008; 8: 534-548
[54] (2009) 49 EHRR 30, concurring opinion of Judge Zupančič, para. 2
[55] Nowak M. Diplomatic assurances not an adequate safeguard for deportees, UN Special Rapporteur Against Torture warns. United Nations Human Rights Office of the High Commissioner Press Release. 23 August 2005
[56] Joint Committee on Human Rights. The UN Convention Against Torture (UNCAT). 19th Report of 2005-06. London: The Stationery Office; 2006
[57] Joint Committee on Human Rights. The UN Convention Against Torture (UNCAT). 19th Report of 2005-06. London: The Stationery Office; 2006
[58] Walker C. The Treatment of Foreign Terror Suspects. *Modern Law Review*. 2007; 70: 427-457, 446

[59] Human Rights Watch. "Diplomatic Assurances" against Torture: Questions and Answers. 10 November 2006. Available at https://www.hrw.org/news/2006/11/10/diplomatic-assurances-against-torture
[60] *Othman v UK* (2012) 55 EHRR 1
[61] *Othman v UK* (2012) 55 EHRR 1, para. 164
[62] Jones K. Deportations with assurances: addressing key criticisms. *International and Comparative Law Quarterly*. 2008; 57: 183-194
[63] Jones K. Deportations with assurances: addressing key criticisms. *International and Comparative Law Quarterly*. 2008; 57: 183-194
[64] Jones K. Deportations with assurances: addressing key criticisms. *International and Comparative Law Quarterly*. 2008; 57: 183-194, 186
[65] *Othman v UK* (2012) 55 EHRR 1, paras. 186-196
[66] *Othman v UK* (2012) 55 EHRR 1, paras. 194, 203
[67] *Othman v UK* (2012) 55 EHRR 1
[68] *Othman v UK* (2012) 55 EHRR 1, para. 260
[69] UK/Jordan: Treaty on Mutual Legal Assistance in Criminal Matters between the United Kingdom of Great Britain and Northern Ireland and the Hashemite Kingdom of Jordan. Cm 8612. London: The Stationery Office; 2013
[70] Anderson D and Walker C. Deportation with Assurances. Cm 9462. London: The Stationery Office; 2017, 30
[71] Anderson D and Walker C. Deportation with Assurances. Cm 9462. London: The Stationery Office; 2017, 84
[72] Walker C. The Treatment of Foreign Terror Suspects. *Modern Law Review*. 2007; 70: 427-457, 446. See also Grozdanova, R. The United Kingdom and Diplomatic Assurances: A Minimalist Approach towards the Anti-torture Norm. *International Criminal Law Review*. 2015; 15: 369-395
[73] Anderson D and Walker C. Deportation with Assurances. Cm 9462. London: The Stationery Office; 2017
[74] BBC News. Abu Qatada case has cost UK £1.7m, home secretary says. 14 June 2013. Available at https://www.bbc.co.uk/news/uk-22909465
[75] Anderson D and Walker C. Deportation with Assurances. Cm 9462. London: The Stationery Office; 2017, 92
[76] HM Government. Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations. Cm 8004. London: The Stationery Office; 2011
[77] Anti-terrorism, Crime and Security Act 2001, Part IV
[78] *A (& others) v Secretary of State for the Home Department* [2004] UKHL 56
[79] Prevention of Terrorism Act 2005
[80] Terrorism Prevention and Investigation Measures Act 2011
[81] Allen G and Dempsey N. Terrorism in Great Britain: the statistics. House of Commons Library briefing paper number CBP7613; 2018
[82] Anderson D. Terrorism Prevention and Investigation Measures in 2014: Third Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2015, 20
[83] HM Government. Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations. Cm 8004. London: The Stationery Office; 2011, 6
[84] *Secretary of State for the Home Department v BM* [2012] EWHC 714 (Admin).
[85] Terrorism Prevention and Investigation Measures Act 2011, Schedule 1
[86] HM Government. Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations. Cm 8004. London: The Stationery Office; 2011
[87] Anderson D. Terrorism Prevention and Investigation Measures in 2012: First Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2013, 48, 50
[88] Anderson D. Terrorism Prevention and Investigation Measures in 2012: First Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2013

[89] Anderson D. Terrorism Prevention and Investigation Measures in 2013: Second Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2014
[90] Joint Committee on Human Rights. Legislative Scrutiny: Counter-Terrorism and Security Bill. Fifth Report of Session 2014–15. London: The Stationery Office; 2015, 20
[91] Javid S. Terrorism Prevention and Investigation Measures: March – May 2018. House of Commons Written Statement. HCWS851. 12 July 2018
[92] Terrorism Prevention and Investigation Measures Act 2011, s. 3
[93] Anderson D. Control Orders in 2011. Final Report of the Independent Reviewer on the Prevention of Terrorism Act 2005. London: The Stationery Office; 2012
[94] HM Government. Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations. Cm 8004. London: The Stationery Office; 2011, 41
[95] Anderson D. Terrorism Prevention and Investigation Measures in 2012: First Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2013
[96] Carlile A. Fifth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005. London: The Stationery Office; 2010, 44
[97] Anderson D. Terrorism Prevention and Investigation Measures in 2013: Second Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2014, 55
[98] Anderson D. Terrorism Prevention and Investigation Measures in 2013: Second Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2014, 30
[99] Anderson D. Terrorism Prevention and Investigation Measures in 2012: First Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2013, 96
[100] Anderson D. Terrorism Prevention and Investigation Measures in 2014: Third Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2015
[101] Joint Committee on Human Rights. Legislative Scrutiny: Counter-Terrorism and Security Bill. Fifth Report of Session 2014–15. London: The Stationery Office; 2015
[102] Terrorism Prevention and Investigation Measures Act 2011, s 2
[103] Anderson D. Terrorism Prevention and Investigation Measures in 2014: Third Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act 2011. London: The Stationery Office; 2015
[104] Terrorism Prevention and Investigation Measures Act 2011, Schedule 4
[105] *Secretary of State for the Home Department v AF* [2009] UKHL 28, para. 59
[106] Civil Procedure Rules, Part 80
[107] Macdonald S and Carlile A. Disrupting terrorist activity: What are the limits to criminal methods of disruption? In: Juss S, ed. *Beyond Human Rights and the War on Terror*. Abingdon: Routledge; 2018: 125-142
[108] Joint Committee on Human Rights. Counter-Terrorism Policy and Human Rights: 28 Days, Intercept and Post-Charge Questioning. Nineteenth Report of Session 2006-07. London: The Stationery Office; 2007, 53
[109] McCullough A, Chamberlain M, Sadiq T et al. Justice and Security Green Paper: Response to Consultation from Special Advocates. 16 December 2011, para 15
[110] Terrorism Prevention and Investigation Measures Act 2011, s 21
[111] Macdonald S. The Role of the Courts in Imposing Terrorism Prevention and Investigation Measures: Normative Duality and Legal Realism. *Criminal Law and Philosophy*. 2015; 9: 265-283
[112] Ip J. The Rise and Spread of the Special Advocate. *Public Law*. 2008: 717-741
[113] Macdonald S. Cyberterrorism and Enemy Criminal Law. In Ohlin J, Govern K and Finkelstein C, eds. *Cyberwar: Law and Ethics for Virtual Conflicts*. Oxford: Oxford University Press; 2015: 57-75
[114] de Goede M and de Graaf B. Sentencing Risk: Temporality and Precaution in Terrorism Trials. *International Political Sociology*. 2013; 7: 313-331, 328

[115] Macdonald S. Cyberterrorism and Enemy Criminal Law. In Ohlin J, Govern K and Finkelstein C, eds. *Cyberwar: Law and Ethics for Virtual Conflicts*. Oxford: Oxford University Press; 2015: 57-75