



House of Lords
House of Commons
Joint Committee on Human
Rights

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

Tenth Report of Session 2013–14

Report, together with formal minutes

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Joint Committee on Human Rights

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Contents

Report	<i>Page</i>
Summary	3
1 Background to our inquiry	7
The TPIMs Act	7
Our Reports on the TPIMs Bill	8
Post-legislative scrutiny	8
Evidence received	9
The Independent Reviewer's Report	10
The Government's engagement with the Independent Reviewer	11
2 The operation of the TPIMs Act	13
The priority of investigation and prosecution	13
The lessons to be learnt from the absconding of two TPIMs subjects	15
Use of TPIMs where no direct threat to public in UK	16
Relocation	17
Impact on TPIMs subjects and their families	19
GPS tagging and reporting requirements	20
Restrictions on association	20
Mental health support	21
Unfairness and delay in TPIMs proceedings	21
3 The future	23
Expiry of current TPIMs	23
Exit strategies	24
The continued necessity of TPIMs	25
Conclusions and recommendations	26
Formal Minutes	30
Declaration of Lords' Interests	31
List of Reports from the Committee during the current Parliament	32

Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Background to our inquiry

1. On 20 December 2012 we announced that we would be carrying out post-legislative scrutiny of the Terrorism Prevention and Investigation Measures Act 2011 (“the TPIMs Act”) which came into force on 15 December 2011.¹

The TPIMs Act

2. The TPIMs Act abolished control orders and replaced them with Terrorism Prevention and Investigation Measures (“TPIMs”). TPIMs were said to have two aims: to protect the public from the risk posed by persons believed to have engaged in terrorism-related activity, but who can neither be prosecuted nor deported; and “to ensure that people were better able to find evidence that would lead to prosecutions”.²

3. TPIMs are imposed by the Home Secretary but subject to quasi-automatic review in the High Court. Those reviews are held partly in closed sessions in the presence of special advocates but without the TPIM subject being present. TPIM subjects are subject to restrictions including overnight residence at a specified address, GPS tagging, reporting requirements and restrictions on travel, movement, association, communication, finances, work and study.

4. The Independent Reviewer of Terrorism Legislation, David Anderson QC, has considered the differences between control orders and TPIMs and has observed that:

TPIMs resemble control orders in most respects.

There are however some significant differences, notably:

- Their maximum two-year duration
- The inability to relocate TPIM subjects to places remote from their alleged associates
- Less onerous conditions, especially as regards search powers, overnight residence and the use of electronic communications.

Those differences render TPIMs more rights-compliant than control orders, and less likely to be a focus for community grievance. They also underline the need for alternative strategies to contain the risk from those believed to be dangerous terrorists, especially once TPIMs have expired.³

¹ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/call-for-evidence-on-review-of-terrorism-prevention-and-investigation-measures/>

² Home Secretary, HC Deb 8 Jan 2013 col. 166.

³ D Anderson, *Terrorism Prevention and Investigation Measures in 2012*, March 2013 (hereafter “Independent Reviewer’s First Report on TPIMs.”)

Our Reports on the TPIMs Bill

5. We published two legislative scrutiny Reports on the Bill which became the TPIMs Act during its passage.⁴ We welcomed those aspects of the Bill which would modify in significant ways aspects of the previous control order regime, which, in our view, would make it less likely that the regime will be operated in a way which would give rise in practice to breaches of individuals' human rights.

6. However, we had some significant human rights concerns about the proposed TPIMs regime which were not accommodated by amendments to the Bill before its enactment. Our principal concerns were:

- (1) The lack of prior judicial authorisation—in our view, executive-imposed restrictions on individuals not subject to any ongoing criminal process were such a radical departure from this country's common law constitutional tradition that they should always require prior judicial authorisation after proper legal process.
- (2) The standard of proof—in our view, "reasonable belief" was too low a threshold for the imposition of such intrusive measures as TPIMs, and the standard should have been the higher civil standard of proof "on the balance of probabilities", as it already was in relation to other "civil" preventative orders such as Serious Crime Prevention Orders.
- (3) Full merits review—in our view the *ex post* review to be conducted by the courts should have been a full merits review of whether, in the courts' view, the conditions for imposing TPIMs are satisfied, and not a supervisory review in which the court applies "the principles applicable on an application for judicial review."
- (4) The right to a fair hearing—in our view the TPIMs legislation should have expressly required that the individual who is the subject of the TPIMs be provided with sufficient information about the allegations against him or her to enable them to give effective instructions to their legal representatives and special advocates in relation to those allegations.

Post-legislative scrutiny

7. The control orders legislation required annual renewal, and we and our predecessors reported annually on the operation of the control orders regime to inform the annual renewal debate in Parliament. The TPIMs regime, however, is not subject to a requirement of annual renewal. It provides for annual review by the Independent Reviewer (s. 20), but renewal only every five years (s. 21). The Independent Reviewer published his *First Report on the Operation of the Terrorism Prevention and Investigation Measures Act 2011* on 14 March 2013.

8. While the Home Secretary makes quarterly reports to Parliament on the exercise of the TPIM powers under the Act, these reports are confined to basic statistics and the identification of any relevant court judgments concerning TPIMs. According to the latest

⁴ *Legislative Scrutiny: Terrorist Prevention and Investigation Measures Bill*, Sixteenth Report of Session 2010–12, HL Paper 180/HC 1432 (July 2011); *Legislative Scrutiny: Terrorist Prevention and Investigation Measures Bill (Second Report)*, Twentieth Report of Session 2010–12, HL Paper 204/HC 1571 (October 2011);

quarterly report dated 12 December 2013,⁵ as of 30 November there were 8 TPIM notices in force, all of which were in respect of British citizens. All 8 of the TPIMs on British citizens are in relation to individuals who had been subject to control orders at the expiry of that regime. There have so far been 8 High Court judgments in which TPIM notices have been challenged but upheld.

9. In the Independent Reviewer's last report on the operation of the control order system, he invited parliamentary committees to consider how best he could assist them in future with their task of keeping the necessity for and operation of the TPIMs Act under parliamentary review.⁶

10. In the absence of an annual renewal requirement in the Act itself, we decided that we would undertake post-legislative scrutiny of the Act in order to arrive at an assessment of how the new TPIMs regime is functioning in practice, in terms of its human rights implications, and of the continued necessity for it. In the Independent Reviewer's First Report on the operation of the Act, he very much welcomed our attention to the subject, and hoped that his report would be of some use to us in our deliberations.

Evidence received

11. We issued a call for evidence in December 2012 about how the TPIMs Act has been operating in practice and the necessity for its continuation. In particular, we said we would be interested to hear:

- What has been the impact of TPIMs on those who are the subject of the notices?
- What has been the impact of TPIMs on the families of those subject to the notices?
- Are there examples of unfairness in the operation of the statutory procedures for challenging TPIMs?
- Have there been any cases in which the subject of a TPIM has not been given sufficient information about the allegations against them to enable them to give effective instructions in relation to the allegations?
- Is there evidence that the power of relocation, which is not included in the TPIMs legislation, has been needed in practice?
- Has any person the subject of a TPIM subsequently been prosecuted for any offence other than breach of the terms of the TPIM notice?
- What evidence is there that investigative steps have continued following service of a TPIM notice?
- Are there examples of individuals who are subject to TPIM notices wishing to waive their anonymity?

5 HC Deb 12 Dec 2013 col 63WS.

6 *Control Orders in 2011* (March 2012), Recommendation 7.

- Since the Act came into force, has there been any change in the nature or frequency of immigration bail granted by the Special Immigration Appeals Commission?

12. The Government welcomed our decision to subject the Act to post-legislative scrutiny and provided us with a Memorandum to assist us. The Parliamentary Under-Secretary of State at the Home Office with responsibility for security, Mr James Brokenshire MP, also gave oral evidence to us on 16 July 2013. Although we make some constructive suggestions in this Report of ways in which the Government could facilitate greater parliamentary engagement with keeping TPIMs under review, we are nevertheless grateful to the Government for its engagement with our self-appointed task of post-legislative scrutiny of the Act.

13. However, apart from the Government's Memorandum, we were disappointed to receive only three other written submissions in response to our call for evidence.

14. CagePrisoners describes itself as a human rights organisation dedicated to defending the due process rights of detainees under the War on Terror. It submitted a report based on interviews with TPIMs subjects and their representatives conducted in order to gather evidence in response to the specific questions asked in our call for evidence. CagePrisoners argues that the impact of TPIMs on the lives of those subjected to the measures, and their families, is profound, and causes serious damage to mental health and to family relationships. It argues for the abolition of TPIMs and for the use of criminal prosecution instead. We consider its evidence in more detail later in this Report.

15. Liberty also maintains its opposition in principle to the TPIMs regime: "severe criminal-style punishment imposed by civil order completely divorced from the criminal justice system, in circumstances where the individual is not told details of the case against them [...] is deeply unfair and anathema to the British system of adversarial justice." It regards the TPIM regime as undermining public safety, because TPIMs operate as a barrier to, rather than as a facilitator of, investigation and criminal prosecution.⁷

16. We are grateful to those who took the trouble to submit written evidence to our inquiry.

The Independent Reviewer's Report

17. The Independent Reviewer's overall conclusion in his First Report on the TPIMs regime is that, while nobody could feel entirely comfortable about the TPIM regime, or wish it to survive for any longer than necessary, it represents "a broadly acceptable response to some intractable problems."⁸ In terms of security, the TPIM regime continues to provide a high degree of protection against untriable and deportable people who are judged on substantial grounds to be dangerous terrorists, while acknowledging that it is unacceptable to place people who have not been charged with or convicted of any crime under indefinite constraint. In terms of liberty, the TPIM regime is part of a wider package of measures amounting to a cautious liberalisation of anti-terrorism laws. In operational

⁷ The third written submission we received, from Alida Catcheside, was a copy of a submission which had been made during the passage of the Bill itself and did not address the purpose of our inquiry into the practical operation of the Act since it came into force.

⁸ Independent Reviewer's First Report on TPIMs, Para 11.55.

terms, the Independent Reviewer found that ministers and officials had performed their functions in a thorough, conscientious and restrained manner, and courts had provided the necessary careful scrutiny, if not always as promptly as would ideally be the case.

18. However, the Independent Reviewer identified a number of significant imperfections in the current regime, and made recommendations for improvement. In particular, he recommended that:

- the Joint Terrorism Analysis Centre should consider providing a regular, publicly accessible report about the threat from terrorism, which will assist those whose task it is to scrutinise the necessity and proportionality of particular counter-terrorism measures such as TPIMs.
- A forum should be established, chaired by an experienced judge, to consider procedural concerns raised by special advocates and representatives of TPIMs subjects, concerning in particular the fairness and speediness of those proceedings, and to recommend changes to court rules and practices if it considers necessary
- More work needs to be done on developing exit strategies for TPIMs subjects, especially in view of the fact that at the beginning of 2014 most TPIMs will expire.
- The possibility of changing the standard of proof to “balance of probabilities” should be kept under active review, with a view to possible future legislative change.

19. The Independent Reviewer of Terrorism Legislation gave oral evidence to us on 19 March 2013. We are grateful to him for the assistance he has given us with our inquiry, and for the way in which he has sought to keep Parliament informed of the operation in practice of the TPIMs regime, notwithstanding the lack of any opportunity for regular parliamentary consideration of the regime.

The Government’s engagement with the Independent Reviewer

20. The Government published its response to the Independent Reviewer’s report in May 2013.⁹ The Independent Reviewer’s First Report on the operation of the TPIMs Act in 2012 is a substantial and detailed study running to some 132 pages. Although it only makes eight relatively short recommendations, each of those recommendations is supported by a more detailed analysis of the relevant issue in the substance of the Report. We have found it to be a useful and informative resource which has greatly facilitated our own review of how the legislation is operating in practice.

21. The Government’s response, on the other hand, is very brief and confined to a formal response to each of the eight recommendations made in the Independent Reviewer’s Report. It runs to three and a half pages of text, including the text of the Reviewer’s recommendations. Six of the eight recommendations are “noted” or will be kept “under review”, without the Government agreeing to take any action. Only two recommendations (4 and 7) received a positive response, on the basis that the Government claims to be doing

⁹ The Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2012 (Cm 8614, May 2013)

already what is recommended. In neither case, however, did the Government agree to take any further action to give effect to the Independent Reviewer's recommendation.

22. We asked the Minister whether the Government's brief response to the Independent Reviewer's report was adequate in terms of informing the public and Parliament about how seriously the Government is reflecting on the TPIMs regime, and to give some illustrations demonstrating how the Government is constructively engaging with the Independent Reviewer's recommendations. The Minister congratulated the Independent Reviewer on the thorough job that he does in relation to terrorism legislation generally, and described his TPIMs report as "instructive".¹⁰ As an example of the Government's engagement with the Independent Reviewer's recommendations, he said that the Government is considering seriously the recommendation on developing exit strategies for TPIM subjects and is actively discussing this with the Probation Service (a matter which we consider in more detail below). He also referred to his regular informal contact with the Independent Reviewer to discuss his recommendations.

23. During a Commons debate on a proscription order on 10 July 2013 the Government's treatment of the Independent Reviewer's recommendations in a different report was the subject of pointed criticism by the Chair of the Home Affairs Select Committee.¹¹ He said that the Government had still not adequately responded to the Independent Reviewer's recommendations about de-proscription more than a year after the recommendations were made, and complained that merely "noting" or "keeping under review" such recommendations was not satisfactory: Parliament needed to know whether the Government accepted or rejected such recommendations. We also note that the Independent Reviewer himself has expressed a degree of disappointment at the Government's limited engagement with his recommendations for reforming Schedule 7 of the Terrorism Act 2000, concerning the no-suspicion power to stop and search at ports.¹²

24. We are concerned by the Government's degree of engagement with the work of the Independent Reviewer. We find the Government's response to the Independent Reviewer's detailed and considered First Report on TPIMs to be perfunctory and unhelpful. Independent review is not an end in itself but a means by which Parliament and others can ensure that their scrutiny of Government is informed by expert advice. Its worth depends on the Government responding promptly and fully to the recommendations which such expert review produces. We urge the Government to engage more transparently and substantively with the Independent Reviewer's recommendations, including those in his forthcoming Report about TPIMs in 2013, by explaining in more detail to Parliament precisely what is proposed in response to each recommendation.

¹⁰ Q1 16 July 2013.

¹¹ HC Deb 10 July 2013 cols 457–8 and 464–5.

¹² See eg the Independent Reviewer's supplementary written evidence to the Home Affairs Committee *Recommendations of the Independent Reviewer on Schedule 7 to the Terrorism Act 2000* 20 November 2013, para. 3 <http://www.parliament.uk/documents/commons-committees/home-affairs/CT%202011a%20David%20Anderson%20QC%20supplementary.pdf>

2 The operation of the TPIMs Act

The priority of investigation and prosecution

25. During the passage of the TPIMs Act, the Government stated that the shift from control orders to TPIMs was to be marked by a renewed emphasis on investigation and prosecution. The Government expressed its hope that the “increased focus on investigation in the TPIMs Bill, and the provision of additional resources to the police and Security Service, will lead to more evidence gathering about suspected terrorists and therefore more prosecutions.”¹³

26. The Home Secretary told the House of Commons on 8 January 2013 that

“one of the purposes of the extra resources that we provided for the Security Service and the police following the introduction of TPIMs was to improve their ability to identify opportunities for prosecution.”

27. The Independent Reviewer’s Report on TPIMs, however, was unequivocal in its finding that TPIMs have not been effective as an investigation measure: so far, TPIMs have been effective in preventing terrorism-related activity but not in enabling such activity to be detected.¹⁴ He found this to be no surprise, given the subjects’ awareness that they were under scrutiny and their knowledge that the constraints will only last for two years maximum.¹⁵

28. The Government, however, has continued to maintain that, in the words of the Home Secretary, one of the purposes of TPIMs was to ensure that people were better able to find evidence that would lead to prosecutions.

29. Lord Taylor of Holbeach, for example, told the House of Lords during a debate on the Government’s draft Enhanced TPIMs Bill that “TPIMs [...] provide a better balance than control orders between controlling people who are engaged in terrorism-related activity and ensuring that if they re-engage in that activity we can collect evidence that can lead to their conviction.”¹⁶ James Brokenshire similarly told the House of Commons on 10 June that “the focus certainly remains on investigating TPIMs subjects.”

30. We asked the Minister for the Government’s best estimate of the number of terrorism prosecutions that have taken place as result of the extra funding.¹⁷ He said that it is difficult to differentiate between prosecutions that would have taken place with or without the additional funding:

In all honesty, I would find it very difficult to segregate out and to say that, as a consequence of the investment, we have seen this many more prosecutions.

¹³ Independent Reviewer’s First Report on TPIMs, para. 1.14.

¹⁴ Ibid., para. 11.5.

¹⁵ Ibid., para. 11.10.

¹⁶ HL Deb 23 April 2013 GC359.

¹⁷ Q2, 16 July 2013.

31. Pressed on whether he could give us any information about whether there has actually been an increase in the number of terrorism prosecutions year on year, he did not claim that there had been, but referred us to the published statistics on arrests, charges and prosecutions for terrorist-related offences. The latest statistics (up to 12 September 2013) show that the number of people charged, prosecuted and convicted of terrorism-related offences did increase between 2010/11 and 2011/12, before falling back again in 2012/13, although to a level still higher than in 2010/11.¹⁸

32. We also asked the Minister to give us some examples of the investigative steps that have been taken in relation to TPIMs subjects with a view to their being prosecuted.¹⁹ He referred to the quarterly TPIM Review Group meetings, at which the evidence or information available is assessed in terms of the potential for a prosecution. However, the Minister confirmed in his evidence to us that “there has been no prosecution to date of a TPIMs subject for a terrorist-related [...] charge.”

33. We also asked the Independent Reviewer about what evidence he had seen of the proactive pursuit of possible criminal prosecution of TPIM subjects for terrorism offence, such as attempts to gather evidence which could be used in such a prosecution.²⁰ He said that each TPIM subject has attached to them a senior investigative officer from the police whose job it is to look for such evidence. He had also observed in the Crown Prosecution Service considerable willingness to take the prosecution route if possible, and he gave an example of a case in which, in the course of preparing for a TPIM application in relation to a particular individual, a CPS lawyer advised that there was in fact sufficient evidence for a prosecution, as a result of which the TPIM was not proceeded with.

34. The Independent Reviewer thought that prosecutors involved in the process do advise with a view to prosecution, and are engaged in a dialogue with both the police and the security service. A representative of the CPS would also usually, although not always, be present at TPIM Review Groups, but, in the view of the Independent Reviewer, “it would not be fair to say that there is usually very much conversation at TRGs about the possibility of prosecution.” On the whole, the picture looked much the same as it had under control orders: people are looking for evidence on the basis of which to prosecute, but they are not finding very much, which, in the Independent Reviewer’s view, is “completely unsurprising” once a suspect is placed on a TPIM.

35. Our inquiry has failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions of terrorism suspects. This confirms the concerns we expressed in our scrutiny Reports on the Bill that the replacement for control orders were not “investigative” in any meaningful sense. In our view it is time to recognise that the epithet “TPIMs” is a misnomer, because they are not investigative in nature. TPIMs should be referred to as Terrorism Prevention Orders, or something similar, to reflect the reality that their sole purpose is preventive, not investigative.

¹⁸ <https://www.gov.uk/government/publications/operation-of-police-powers-under-the-terrorism-act-2000-2012-to-2013/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-searches-great-britain-2012-to-20>

¹⁹ Q3, 16 July 2013.

²⁰ Q2, 19 March 2013.

The lessons to be learnt from the absconding of two TPIMs subjects

36. To date, two T PIMs subjects have absconded: Ibrahim Magag on 26 December 2012 and Mohammed Ahmed Mohamed on 1 November 2013. Neither has yet been traced.

37. The absconding of two T PIMs subjects has inevitably raised questions about the effectiveness of TPIMs as a counter-terrorism tool, as well as about the operational competence of their enforcement. We have not sought to enquire into the latter, which is something the Home Affairs Committee has been looking into,²¹ but we have considered what lessons should be learnt from these episodes for the future of the TPIMs regime and in particular whether the absconding of two individuals either demonstrates the futility of TPIMs in principle, or the need for the restrictions to be tighter. We consider below the specific question of whether the absconding incidents show the need for the reintroduction of the power forcibly to relocate TPIMs subjects away from where they live.

38. In his Report on T PIMs (published after the first but before the second TPIM subject had absconded), the Independent Reviewer made two general comments about absconding.²² First, the only way to eliminate the risk of absconding is to lock terrorism suspects away in high security prisons, which would clearly be unthinkable in relation to individuals who have not been convicted of any criminal offence. Second, while publicity and political debate are inevitable when a TPIM subject absconds, it is important that the Government does not over-react to media and political pressure, by a general ratcheting up of TPIMs.

39. We agree with the Independent Reviewer that the very nature of TPIMs carries an inherent risk of the subject absconding, and that the reaction to such incidents must not be allowed to undermine the general principle that, in order to be proportionate, restrictions on each TPIM subject must be individually tailored to the risk that they are assessed to present.

40. Following the absconding of Ibrahim Magag on 26 December 2012, the Home Secretary told the House of Commons that “when the dust has settled, we will look again to see whether any lessons need to be learned.”²³ The Independent Reviewer in his First Report on TPIMs said that the Home Secretary would keep him fully briefed on that investigation, and that he would expect to comment on its outcome in due course, but at that time it would have been premature to do so.²⁴ He recommended that “the technical, operational and strategic lessons of (Ibrahim Magag’s) recent abscond should be identified and implemented.”²⁵ In its response to the Independent Reviewer’s Report, the Government agreed that it is important to identify and implement the lessons to be learned from the absconding and says that this work is already in progress, but it did not say what those lessons are.

21 Home Affairs Committee evidence session with Charles Farr, 12 November 2013, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/c231-iii/c23101.htm>.

22 Independent Reviewer’s First Report on TPIMs, paras 8.21-8.23 and 11.28-11.29.

23 HC Deb 8 Jan 2013 col 163.

24 Independent Reviewer’s First Report on TPIMs, para. 8.21.

25 Ibid., Recommendation 4.

41. We asked the Minister about the outcome of the investigation,²⁶ and he said that there had been such a review, but it was not possible to publish the document “because of matters of national security.” However, it had been shared with the Independent Reviewer, who he expected might have something to say about it in his next report on TPIMs. The Home Secretary told the House of Commons, during the debate following the absconding of Mohammed Ahmed Mohamed, that all the recommendations of the review following Ibrahim Magag’s absconding had been accepted, but she did not say what those recommendations had been.²⁷ She also said that there would be a similar review into the most recent case of absconding.

42. We understand that the Government’s internal report will include sensitive material which it is not in the public interest to disclose, but it is undesirable that to date there is nothing in the public domain about even the substance of the findings of that review. We recommend that the Government provide an “open” version of the outcome of its internal investigation and review, to enable public and parliamentary debate about and scrutiny of the circumstances of the absconding of two TPIM subjects.

Use of TPIMs where no direct threat to public in UK

43. After Ibrahim Magag absconded, the Home Secretary told the House of Commons that at this time Magag is not considered to represent a direct threat to the British public. The TPIM notice in this case was intended primarily to prevent fundraising and overseas travel.²⁸

44. Similarly, after Mohammed Ahmed Mohamed absconded, the Home Secretary told the Commons:

The police and Security Service have confirmed that they do not believe Mohamed poses a direct threat to the public in the UK. The reason he was put on a TPIM in the first place was to prevent his travelling to support terrorism overseas.²⁹

45. We were struck by the contrast between these statements that the two TPIM subjects who have absconded do not pose a direct threat to the public in the UK and the statements that were made by the Government at the time of the Bill’s passage, to the effect that TPIMs are exceptional measures justified only by the necessity of protecting the public against the risk of terrorism.

46. When the Minister gave oral evidence to us we therefore asked him in how many cases TPIMs had been imposed on individuals who do not represent a direct threat to the British public.³⁰ We asked him three times but he did not provide a direct answer. He returned to the question in his letter dated 23 July supplementing his oral evidence, pointing out that s. 3 of TPIMA 2011 requires that the Secretary of State “reasonably considers that it is

²⁶ Q4, 16 July 2013.

²⁷ HC Deb 4 Nov 2013 col 24.

²⁸ HC Deb 8 Jan 2013 col 161.

²⁹ HC Deb 4 Nov 2013 col 23.

³⁰ Q5, 16 July 2013.

necessary, for purposes connected with protecting members of the public from a risk of terrorism, for TPIMs to be imposed on the individual”, and that the court has found that this condition has been met in all of the TPIM notices it has reviewed.

47. We accept that, under the Act as passed, TPIMs can be lawfully imposed on an individual if the Secretary of State reasonably considers it to be necessary “for purposes connected with protecting the public from a risk of terrorism”. The Home Secretary’s statements, however, that the two TPIM subjects who have absconded do not pose a direct threat to the public in the UK serve as a stark reminder of the breadth of that statutory power. If the sole purpose of a TPIM is to prevent travel to support terrorism overseas, it must at least be questionable whether the full range of restrictions available in a TPIM are justified, rather than specific measures to prevent travel such as notification requirements or surrendering a passport. The Minister’s repeated references in his oral evidence to the need to provide “assurance” and “comfort” to the public that the Government is meeting its responsibilities in relation to national security raise similar concerns about the strict necessity for TPIMs in all cases.³¹ We recommend that the breadth of the vaguely worded power to impose TPIMs, “for purposes connected with protecting the public from a risk of terrorism”, be kept under careful review by the Independent Reviewer.

48. We note in passing that in the wake of the latest absconding by a TPIMs subject, it was widely reported in the media that the Home Secretary is working on legislative proposals which would enable her to deprive a naturalised UK citizen of their citizenship if they were a terrorism suspect, even if the effect of doing so would be to leave them stateless.³² That this is under active consideration was confirmed by the Director-General of the Office for Security and Counter-Terrorism in the Home Office, Charles Farr, in his evidence to the Home Affairs Committee on 12 November 2013, in which he said:³³

It is not possible for us to deprive someone of their British nationality if they are thereby left stateless. There is some uncertainty, which we are currently looking at, about whether that applies to people who have been naturalised here as well as to citizens who are born here, but I hesitate to comment on that any further because it is an issue that is with the lawyers.

49. It would be premature for us to comment on the human rights compatibility of a policy proposal which has yet to be formulated and presented to Parliament, but in view of the clear obligations in international law not to render a person stateless, we intend to subject any such proposal to the most rigorous scrutiny were it to be brought forward.

Relocation

50. One of the most significant changes made by the TPIMs Act, compared to the previous control order regime, was that the Secretary of State no longer has the power to require relocation. In our scrutiny Reports on the Bill we welcomed the disavowal of this power as

³¹ See e.g. Q5, 16 July 2013.

³² See e.g. “Theresa May plans new powers to make British terror suspects stateless”, The Guardian, 12 November 2013.

³³ Q148.

a significant human rights enhancing measure, noting that internal exile imposed by executive order was a n oppressive measure associated only with the most authoritarian regimes. It was, however, one of the most keenly contested aspects of the legislation during its passage, with some arguing that removing the power to relocate terrorism suspects would pose an unacceptable risk to public safety.

51. On each of the two occasions on which a TPIMs subject has absconded, the debate about the absence of a power of relocation has been re-ignited, with a number of people arguing that absconding has been made easier by the Government depriving itself of the power to relocate terrorism suspects. Following the most recent instance, the absconding of Mohammed Ahmed Mohamed, the Shadow Home Secretary wrote an open letter to the Home Secretary³⁴ alleging that “the decision to end relocations [...] has led directly to two out of ten terror suspects now on TPIMs absconding” and asking the Government to re-introduce the power to relocate suspects in individual cases, if it is justified and with appropriate judicial safeguards.

52. We asked the Independent Reviewer whether, during his review, he had found any firm evidence that the risk of absconding is increased by the lack of a power to relocate.³⁵ He replied that it is obviously easier to abscond if you have friends and associates nearby, and it would not be at all surprising if relocating somebody to a place where he did not know anybody was going to make it more difficult for him to plan to escape. He also pointed out the possible significance of the fact that the seven people who absconded from control orders before 2007 had not been relocated, and that nobody absconded between 2007 and 2011 when relocation was widely used in control orders.

53. The Independent Reviewer was not, however, in favour of relocation being reintroduced: “one can see the utility of something without requiring that it be retained.”³⁶ He had found in his report on TPIMs that relocation was effective in preventing people from associating, but also that it was one of the most resented aspects of control orders and was considered to have the most damaging effect on family life. The Independent Reviewer therefore concluded that “Parliament took a perfectly proper decision by deciding to remove relocation”, especially in view of the additional money made available to the agencies for increased surveillance, which enabled them to say that overall there was no substantial increase in the risk to the public. The Independent Reviewer was not aware of any publicly available account of how much additional money was made available, and the Government refused to say at the time of the passage of the Bill what the relevant amount was; but, according to the Home Secretary, it amounted to “tens of millions”.³⁷

54. The Government has resisted the calls to re-introduce the power to relocate TPIMs subjects. In his evidence to us the Minister did not accept that relocation would have prevented Ibrahim Magag absconding, although he relied in very general terms on the Government’s belief that “the overall package remains appropriate to mitigate the risk”.³⁸

34 Letter dated 12 November 2013 from Rt Hon Yvette Cooper MP to Rt Hon Theresa May MP, http://www.politicshome.com/article/88131/labour_letter_to_theresa_may_from_yvette_cooper_on_the_tpims_regime_and_need_for_credible_measures.html.

35 Q11, 19 March 2013.

36 Ibid.

37 HC Deb 4 Nov 2013, col 24.

38 Q6, 16 July 2013.

The Home Secretary, in the debate in the Commons following the absconding of Mohammed Ahmed Mohamed, similarly rejected the invitation to re-introduce relocation.

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

Impact on TPIMs subjects and their families

56. We received written evidence from Cage Prisoners about the impact of TPIMs both on those who are directly subject to them and their families:

TPIMs continue to have a profound impact on the lives of TPIM subjects and their families. In the following submission, CagePrisoners draws on interviews we have conducted with current TPIM subjects and their solicitors in order to respond to the JCHR's call for evidence. We discuss the impact of many different TPIM regulations on detainees and their families. However, CagePrisoners especially urges the JCHR to consider the following:

- Current TPIM's are in all cases stricter than the first batch of Control Orders placed on Cerier Bulivian and others. Detainees thus rightfully feel that things have stayed the same or worsened under TPIMs (as opposed to control orders) and have a heightened sense of hopelessness.
- Despite the reduction in curfew hours, overnight and meeting restrictions still contribute to profound isolation amongst detainees and their families.
- Specific TPIM regulations and poor communications amongst government agencies make prolonged unemployment amongst detainees inevitable. This contributes to detainees' sense of isolation and worthlessness.
- Police have often responded to "breaches" of these measures by arresting detainees—effectively humiliating them and traumatizing their families—even when it was clear that the breach was unintentional and that no harm to the public existed.
- There is a definite belief amongst TPIM detainees that these measures are designed to be breached and facilitate their arrest, rather than being designed with national security objectives in mind.

- These measures have had a profoundly detrimental impact on the mental health of detainees and their families (including severe depression, anxiety and trauma), and also seriously damage relationships among family members.

We conclude that TPIMs are functionally punitive measures enforced on individuals and families who have never been convicted of any crime. TPIMs do not keep us safer because those who want to abscond will. These measures are undemocratic and poor public policy and as such, CagePrisoners cannot in good faith make any recommendations as to how the regime could be improved. The only solution is scrapping all systems of administrative detention and returning to the criminal justice system since it is perfectly equipped to manage terrorism-related prosecutions.

57. The Independent Reviewer has made recommendations designed to mitigate what he regards as unnecessarily interfering features of TPIMs.

GPS tagging and reporting requirements

58. In his last Report on Control Orders, the Independent Reviewer questioned the need for a requirement that subjects of such orders telephone on entering and leaving the residence where they are required to live, given that subjects were required to wear GPS tags. The telephoning requirement was subsequently removed. However, the requirement to report daily to a police station remains, notwithstanding the GPS tag. In its evidence to us, Cage Prisoners questioned why such reporting requirements continue to be necessary.

59. We asked the Minister why it is necessary to continue to require TPIM subjects to report daily to a police station when GPS tagging now discloses their location.³⁹ The Minister's reply was that it was necessary "to provide different steps of assurance", and he relied on the fact that the courts have found the overall package to be proportionate.

Restrictions on association

60. Although TPIMs have been upheld in all the legal challenges brought to date, the courts have in some cases questioned the proportionality of certain restrictions on association, particularly where prior notification has been required before meeting someone for the first time or inviting them home.⁴⁰ Cage Prisoners argue that blanket restrictions on meetings are very significant interferences with private life.

61. We asked the Minister whether, in view of judicial criticism of the proportionality of certain restrictions on association that have been imposed on individuals, the Government has reconsidered its approach to imposing restrictions such as prior notification requirements as regards meetings. He relied in response on the TPIM Review Group meetings that take place quarterly, which monitor the impact of the measures on each subject and their family and consider whether any variations are required. In other words, regular analysis of the continued appropriateness of the measures already takes place, and the individual also has the opportunity to ask for a variation of the order at any time.

39 HC Deb 4 Nov 2013, col 24.

40 Secretary of State for the Home Department v AM [2012] EWHC 1854 (Admin) para. 30.

Mental health support

62. Cage Prisoners argue that there should be more comprehensive mental health support for TPIM subjects and their families. This does not appear to be an issue that was raised directly with the Independent Reviewer, but we raised this concern with the Minister.⁴¹ The Minister again referred to the Quarterly Review Group meetings, which monitor the impact of the measures on the subject's mental health and physical well-being, although he accepted that there is no specific mental health analysis that is provided there. However, he did say that if evidence were presented, it would be considered as part of the quarterly review.

63. The Government relies heavily on the TPIM Quarterly Review Group as an effective mechanism for picking up any disproportionate impact of TPIMs on their subjects and their families and responding accordingly. However, there is little or no evidence in the public domain to support the Government's assertion about the effectiveness of the Quarterly Review Groups in this respect, and we note that the Independent Reviewer has raised some concerns about the proportionality of certain restrictions, such as reporting requirements and restrictions on association, notwithstanding the Quarterly Review Group meetings. We recommend that the Government give further consideration to specific ways in which the impact on TPIMs subjects and their families can be mitigated, in the light of all relevant existing and any future recommendations of the Independent Reviewer.

Unfairness and delay in TPIMs proceedings

64. The Independent Reviewer reports that the representatives of TPIM subjects point "with justification" to the lengthy periods that can elapse before determinations of the Home Secretary can be tested in the courts. He has identified delay in TPIMs proceedings as one of the most serious sources of unfairness in the legal procedures.

65. The Independent Reviewer told us in his oral evidence that the real problem with the way in which the legal process for challenging TPIMs operates is the time it can take to get to court to challenge a TPIM or a modification of a TPIM, and the fact that this delay seems to be designed into the system because the court's function was not to make the decision itself but to review the reasonableness of the Home Secretary's decision.⁴² The Independent Reviewer contrasted the position in the Special Immigration Appeals Commission, where it was possible to have a challenge to a bail condition determined by the tribunal within a matter of days. The courts have also expressed concerns about the amount of delay in TPIMs cases.

66. The Independent Reviewer favours a forum, chaired by a judge, to address the longstanding concerns of the special advocates about the fairness in practice of close and material procedures in TPIMs and other proceedings, with a view to recommending changes to court rules and practices. The Government, however, prefers less formal ways of addressing the special advocate's concerns. The Minister told us that the Government is working with the special advocates to speed up the process in various ways, for example by

⁴¹ Q8, 16 July 2013.

⁴² Q6, 19 March 2013.

ensuring that administrative communications requests from the special advocates are dealt with within 24 hours.⁴³

67. We understand that something close to the Independent Reviewer's recommendation has taken place in relation to proceedings before the Special Immigration Appeals Commission ("SIAC"). The Chair of SIAC, Mr Justice Irwin, initiated a process of consultation and discussion with SIAC users, including the special advocates, which has culminated in a new "Practice Note" which seeks to address a number of the problems with closed material procedures that have consistently been identified by the special advocates, such as endemic late disclosure.

68. We agree with the Independent Reviewer's recommendation that the special advocates' longstanding concerns about closed material procedures in control order and TPIM proceedings be considered in a judicially-chair ed forum. We recommend that such a process be initiated in relation to TPIM proceedings in the High Court, drawing on the positive experience of the process already conducted by Mr Justice Irwin in relation to SIAC.

3 The future

Expiry of current TPIMs

69. One of the most significant changes to the previous control order regime introduced by the TPIM Act is the introduction of a two year limit to the duration of a TPIM. Under the Act, they can only be renewed if the individual has engaged in “new” terrorist activity.

70. During the course of this month, most of the eight TPIMs currently in force will expire. Indeed, it has recently been reported that over the next few weeks there will be a phased lifting of the restrictions on seven of the current TPIMs subjects.⁴⁴ Considerable anxiety has been expressed, both in Parliament⁴⁵ and the media⁴⁶, about the implications for public safety if the TPIMs are not renewed.

71. Much of the press coverage of the Independent Reviewer’s report on TPIMs focused on the fact that TPIMs have a maximum duration of two years and that a number of highly dangerous individuals would therefore soon be unconstrained, and some of the coverage suggested that the Independent Reviewer in his report was attacking the two year limit. We therefore asked the Independent Reviewer, when he gave oral evidence to us, to clarify whether he is in favour of the two year limit on the duration of TPIMs.⁴⁷

72. The Independent Reviewer was unequivocal in his response. He said that while it was tempting in some cases to wish for longer, he is in favour of the two year limit because even the two year TPIM is a harsh measure, harsher than anything on the statute book, in relation to British citizens, prior to 2005.

People have to realise that there is a limit to how long one can constrain people under these sorts of very oppressive measures, in circumstances where they have not been charged with or convicted of a criminal offence.

He also reminded us that his predecessor as Independent Reviewer, Lord Carlile of Berriew QC, took the same position in his last report on control orders.

73. We agree with the Independent Reviewer that serious restrictions on liberty, imposed outside of the criminal justice system, cannot be indefinite. As we explained in our scrutiny Reports on the Bill, the introduction of a statutory time limit on the duration of TPIMs fulfils a requirement of human rights law. The expiry of the current TPIMs should not, in our view, be an occasion to re-open a human rights compatibility issue on which we believe Parliament took the correct decision in 2011.

74. The Shadow Home Secretary, in her letter to the Home Secretary referred to above,⁴⁸ asked the Home Secretary to inform Parliament whether any of the police, security service or oversight bodies have advised that it would be in the public interest to extend any of the

44 See e.g. “Seven terror suspects free to walk Britain’s streets”, by David Leppard, *Sunday Times* 5 January 2014.

45 See e.g. HC Deb 4 Nov 2013 col 28.

46 “The threat of terrorism has no expiry date”, *Sunday Times editorial*, 5 January 2014.

47 Q9 19 March 2013.

48 Fn. 34

current TPIMs, and to share the full assessment with the Intelligence and Security Committee. That Committee, the Shadow Home Secretary suggests, “should then be free to make recommendations on whether the TPIMs subjects should be free of controls, or whether it would be in the interests of national security to allow for the extension of some of the orders.”

75. We agree that the Home Secretary should provide Parliament and its committees with as much detailed information as possible about the current threat from terrorism to enable them to make an informed assessment of both the necessity for and the adequacy of the current legal framework. Indeed, we support the Independent Reviewer’s call for the Joint Terrorism Analysis Centre to provide a regular, publicly accessible report about the threat from terrorism, to assist Parliament to scrutinise the necessity and proportionality of particular counter-terrorism measures such as TPIMs. We call on the Government to reconsider its rejection of the Independent Reviewer’s recommendation in light of the concerns expressed about Parliament’s practical ability to scrutinise the adequacy of our legal framework in the wake of the Edward Snowden disclosures.

76. However, we do not believe it should be the role of any parliamentary committee, including statutorily created committees such as the Intelligence and Security Committee, to make recommendations about whether particular individuals should be subject to restrictions on their liberty. That is an operational matter for the police and the security services, subject to independent judicial oversight. Parliamentary committees, such as ours, are concerned with the adequacy of the legal framework to deal with the threat.

Exit strategies

77. The Independent Reviewer in his oral evidence to us pointed out that one of the beneficial effects of the two year time limit on TPIMs is that it will focus energies on finding appropriate exit strategies for those subject to the restrictions.⁴⁹ In his Report he drew attention to the lack of dialogue going on between the relevant agencies and TPIMs subjects, recommended that more work should be done on developing such exit strategies and made some imaginative suggestions about how to do so, including by involving “Prevent” officers and probation officers, using their specialist expertise in dealing with convicted terrorists at the end of their sentences. The Government, in its response to the Independent Reviewer’s report, agreed about the importance of exit strategies, and said it was already actively reviewing the strategy for each subject, including possible engagement with both Prevent and the National Offender Management Service. The Minister, in his oral evidence to us, said that the Government was considering seriously the Independent Reviewer’s recommendations on developing exit strategies and was actively discussing this with the Probation Service.⁵⁰ He pointed out that there were challenges involved, such as the lack of any power in the TPIM Act to compel a TPIM subject to engage with any particular intervention at the end of their TPIM, but was reluctant to be drawn to say much more than that the Independent Reviewer’s recommendations were under close consideration and active discussions were taking place with the Probation Service.

⁴⁹ Q9, 19 March 2013.

⁵⁰ Q1 and Qs 14–15, 16 July 2013.

78. With the expiry of most current TPIMs now upon us, we are somewhat surprised not to have heard more from the Government about the sorts of strategies that it has in place for the current TPIMs subjects. We do not expect the Government to give details of individual cases, but we would expect more information of a general kind to be made available. We sought to find out more about the sort of work being done with the individuals concerned, such as how it relates to the Government's wider de-radicalisation work; what sorts of agencies or other organisations the Government has sought to involve in this work; whether any work has been done with the families of TPIMs subjects, given the significant impact of TPIMs on them and the risk of creating a new generation susceptible to the influence of extremist narratives; and whether any TPIMs subjects are being actively helped into work or study to assist with their reintegration when their TPIM expires. On all of these questions, we found the Government to be unforthcoming.

79. In view of understandable public anxiety about the threat to public safety following the imminent expiry of TPIMs, we recommend that the Government put more information into the public domain about the types of work it has carried out with TPIMs subjects with a view to minimising the risk that they may be tempted to engage in terrorism-related activity when their TPIM expires. We invite the Government to provide us with a further memorandum, setting out in more detail the work which the Government has been doing in this respect, and in particular explaining how the Government's work on TPIM exit strategies relates to other initiatives, including the Troubled Families programme and the taskforce established by the Prime Minister to look again at the Government's strategy on extremism and radicalisation in the wake of the murder of Lee Rigby in Woolwich.

The continued necessity of TPIMs

80. At the conclusion of our review we are left with the distinct impression that, in practice, TPIMs may be withering on the vine as a counter-terrorism tool of practical utility. No new TPIM has been imposed since October 2012. Soon there will only be one TPIM in force. It remains to be seen whether any new TPIMs will be imposed in the foreseeable future.

81. We do not feel that we are sufficiently informed about the threat picture, however, to be able to conclude with confidence that the power to impose some form of civil restriction orders such as TPIMs is no longer required, or to recommend that the Secretary of State should exercise the power the Act gives her to repeal it if it is no longer necessary.

82. The Act includes a five year renewal requirement and we note the Government's intention to carry out a review of TPIMs as part of a broader review of counter-terrorism powers. We recommend that such a wider review be an urgent priority of the new Government in the next Parliament, and conducted sufficiently in advance of the five year renewal date for Parliament to be able to make a fully informed decision about the continued necessity of the powers at that time.

Conclusions and recommendations

Background to our inquiry

1. We are concerned by the Government's degree of engagement with the work of the Independent Reviewer. We find the Government's response to the Independent Reviewer's detailed and considered First Report on TPIMs to be perfunctory and unhelpful. Independent review is not an end in itself but a means by which Parliament and others can ensure that their scrutiny of Government is informed by expert advice. Its worth depends on the Government responding promptly and fully to the recommendations which such expert review produces. We urge the Government to engage more transparently and substantively with the Independent Reviewer's recommendations, including those in his forthcoming Report about TPIMs in 2013, by explaining in more detail to Parliament precisely what is proposed in response to each recommendation. (Paragraph 24)

The operation of the TPIMs Act

2. Our inquiry has failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions of terrorism suspects. This confirms the concerns we expressed in our scrutiny Reports on the Bill that the replacement for control orders were not "investigative" in any meaningful sense. In our view it is time to recognise that the epithet "TPIMs" is a misnomer, because they are not investigative in nature. TPIMs should be referred to as Terrorism Prevention Orders, or something similar, to reflect the reality that their sole purpose is preventive, not investigative. (Paragraph 35)
3. We agree with the Independent Reviewer that the very nature of TPIMs carries an inherent risk of the subject absconding, and that the reaction to such incidents must not be allowed to undermine the general principle that, in order to be proportionate, restrictions on each TPIM subject must be individually tailored to the risk that they are assessed to present. (Paragraph 39)
4. We understand that the Government's internal report will include sensitive material which it is not in the public interest to disclose, but it is undesirable that to date there is nothing in the public domain about even the substance of the findings of that review. We recommend that the Government provide an "open" version of the outcome of its internal investigation and review, to enable public and parliamentary debate about and scrutiny of the circumstances of the absconding of two TPIM subjects. (Paragraph 42)
5. We accept that, under the Act as passed, TPIMs can be lawfully imposed on an individual if the Secretary of State reasonably considers it to be necessary "for purposes connected with protecting the public from a risk of terrorism". The Home Secretary's statements, however, that the two TPIM subjects who have absconded do not pose a direct threat to the public in the UK serve as a stark reminder of the breadth of that statutory power. If the sole purpose of a TPIM is to prevent travel to support terrorism overseas, it must at least be questionable whether the full range of

restrictions available in a TPIM are justified, rather than specific measures to prevent travel such as notification requirements or surrendering a passport. The Minister's repeated references in his oral evidence to the need to provide "assurance" and "comfort" to the public that the Government is meeting its responsibilities in relation to national security raise similar concerns about the strict necessity for TPIMs in all cases. (Paragraph 47)

6. We recommend that the breadth of the vaguely worded power to impose TPIMs, "for purposes connected with protecting the public from a risk of terrorism", be kept under careful review by the Independent Reviewer. (Paragraph 47)
7. It would be premature for us to comment on the human rights compatibility of a policy proposal which has yet to be formulated and presented to Parliament, but in view of the clear obligations in international law not to render a person stateless, we intend to subject any such proposal to the most rigorous scrutiny were it to be brought forward. (Paragraph 49)
8. We accept that, in principle, the risk of absconding is likely to be higher when a TPIM subject remains in the midst of their local community and network, and we acknowledge the fact that, under the control order regime, no relocated individuals absconded. However, we do not consider this to be sufficient to demonstrate that the lack of a power to relocate terrorism suspects leads to such a threat to public safety as to justify re-introduction of the power. Nor have we seen any direct evidence that the absence of a power to relocate TPIM subjects appears to have significantly limited their effectiveness in practice. We remain of the view that a power to relocate an individual away from their community and their family by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable, and we note that this also appears to be the view of the Independent Reviewer. (Paragraph 55)
9. The Government relies heavily on the TPIM Quarterly Review Group as an effective mechanism for picking up any disproportionate impact of TPIMs on their subjects and their families and responding accordingly. However, there is little or no evidence in the public domain to support the Government's assertion about the effectiveness of the Quarterly Review Groups in this respect, and we note that the Independent Reviewer has raised some concerns about the proportionality of certain restrictions, such as reporting requirements and restrictions on association, notwithstanding the Quarterly Review Group meetings. We recommend that the Government give further consideration to specific ways in which the impact on TPIM subjects and their families can be mitigated, in the light of all relevant existing and any future recommendations of the Independent Reviewer. (Paragraph 63)
10. We agree with the Independent Reviewer's recommendation that the special advocates' longstanding concerns about closed material procedures in control order and TPIM proceedings be considered in a judicially-chaired forum. We recommend that such a process be initiated in relation to TPIM proceedings in the High Court, drawing on the positive experience of the process already conducted by Mr Justice Irwin in relation to SIAC. (Paragraph 68)

The future

11. We agree with the Independent Reviewer that serious restrictions on liberty, imposed outside of the criminal justice system, cannot be indefinite. As we explained in our scrutiny Reports on the Bill, the introduction of a statutory time limit on the duration of TPIMs fulfils a requirement of human rights law. The expiry of the current TPIMs should not, in our view, be an occasion to re-open a human rights compatibility issue on which we believe Parliament took the correct decision in 2011. (Paragraph 73)
12. We agree that the Home Secretary should provide Parliament and its committees with as much detailed information as possible about the current threat from terrorism to enable them to make an informed assessment of both the necessity for and the adequacy of the current legal framework. Indeed, we support the Independent Reviewer's call for the Joint Terrorism Analysis Centre to provide a regular, publicly accessible report about the threat from terrorism, to assist Parliament to scrutinise the necessity and proportionality of particular counter-terrorism measures such as TPIMs. We call on the Government to reconsider its rejection of the Independent Reviewer's recommendation in light of the concerns expressed about Parliament's practical ability to scrutinise the adequacy of our legal framework in the wake of the Edward Snowden disclosures. (Paragraph 75)
13. However, we do not believe it should be the role of any parliamentary committee, including statutorily created committees such as the Intelligence and Security Committee, to make recommendations about whether particular individuals should be subject to restrictions on their liberty. That is an operational matter for the police and the security services, subject to independent judicial oversight. Parliamentary committees, such as ours, are concerned with the adequacy of the legal framework to deal with the threat. (Paragraph 76)
14. In view of understandable public anxiety about the threat to public safety following the imminent expiry of TPIMs, we recommend that the Government put more information into the public domain about the types of work it has carried out with TPIM subjects with a view to minimising the risk that they may be tempted to engage in terrorism-related activity when their TPIM expires. We invite the Government to provide us with a further memorandum, setting out in more detail the work which the Government has been doing in this respect, and in particular explaining how the Government's work on TPIM exit strategies relates to other initiatives, including the Troubled Families programme and the taskforce established by the Prime Minister to look again at the Government's strategy on extremism and radicalisation in the wake of the murder of Lee Rigby in Woolwich. (Paragraph 79)
15. At the conclusion of our review we are left with the distinct impression that, in practice, TPIMs may be withering on the vine as a counter-terrorism tool of practical utility. No new TPIM has been imposed since October 2012. Soon there will only be one TPIM in force. It remains to be seen whether any new TPIMs will be imposed in the foreseeable future. (Paragraph 80)

16. We do not feel that we are sufficiently informed about the threat picture, however, to be able to conclude with confidence that the power to impose some form of civil restriction orders such as TPIMs is no longer required, or to recommend that the Secretary of State should exercise the power the Act gives her to repeal it if it is no longer necessary. (Paragraph 81)
17. The Act includes a five year renewal requirement and we note the Government's intention to carry out a review of TPIMs as part of a broader review of counter-terrorism powers. We recommend that such a wider review be an urgent priority of the new Government in the next Parliament, and conducted sufficiently in advance of the five year renewal date for Parliament to be able to make a fully informed decision about the continued necessity of the powers at that time. (Paragraph 82)

Formal Minutes

Wednesday 15 January 2014

Members present:

Dr Hywel Francis, in the Chair

Mr Robert Buckland
Mr Virendra Sharma
Sir Richard Shepherd

Baroness Berridge
Lord Lester of Herne Hill
Baroness Lister of Burtersett
Baroness O'Loan

Draft Report (Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011) , proposed by the Chairman, brought up and read.

Ordered, That the Chair's draft Report be now considered.

Paragraphs 1 to 82 read and agreed to.

Resolved, That the Report be the Tenth Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 22 January at 9.30 am

Declaration of Lords' Interests

No members present declared interests relevant to this Report.

A full list of members' interests can be found in the Register of Lords' Interests:
<http://www.publications.parliament.uk/pa/ld/ldreg/rego1.htm>

List of Reports from the Committee during the current Parliament

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014

Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty-third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777