

Response by the Independent Reviewer of Terrorism Legislation

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1. Under section 21(3) TPIM Act 2011, before making an order to extend her TPIM powers for a further five years, the Secretary of State is required to consult the Independent Reviewer of Terrorism Legislation. The Secretary of State's TPIM powers are currently due to lapse on 31 December 2021.
2. Having completed two independent annual reviews of the TPIM powers, it is my view that the Secretary of State's TPIM powers are indispensable for the small number of cases in which individuals cannot be prosecuted but present a significant risk of terrorist harm.
3. However, the powers can only be exercised in accordance with the statutory scheme which provides strong safeguards for strong and exceptional powers. The scheme includes a statutory review of any exercise of the TPIM powers. In my second annual report, Terrorism Acts in 2019, I drew attention to the withholding of legal aid from impecunious TPIM subjects with the effect that some TPIM subjects were unable to secure legal representation for the purposes of a review.
4. Given the nature and complexity of TPIM reviews, and in particular the need for the TPIM subject to participate without full sight of the evidence relied on by the Secretary of State, the refusal of legal aid to impecunious TPIM subjects amounts to a serious impediment or hindrance (*cf.* R. (on the application of UNISON) v Lord Chancellor [2017] UKSC 51, at para 78) on the right of access to the court which is contained in section 9. I recommended that, subject only to means, legal funding should be swiftly made available to all TPIM subjects for the purpose of participating in section 9 review hearings [8.70].
5. I understand that a distinction is being drawn by the Legal Aid Agency between individuals subject to relocation and those who are not. However, the TPIM Act 2011 does not make the right of access to the court for the purposes of the section 9 review dependent on the nature of the TPIM measures imposed.
6. I await the Government's response to my recommendation. Although I support the continuation of the TPIM Act 2011, unless the legal aid position is remedied the position of TPIM subjects will become untenable and the lawfulness of the scheme undermined.

JONATHAN HALL QC  
9 AUGUST 2021