

INDEPENDENT REVIEWER OF STATE THREAT LEGISLATION

NOTE ON SENTENCING BILL 2025 and STATE THREATS OFFENDERS

1. This Note isolates some features of the Sentencing Bill, due for 3rd reading before the House of Commons on 29 October 2025, on the treatment of individuals sentenced under the National Security Act 2023 and Official Secrets Acts ('State Threat offenders').
2. In summary, the Bill will ensure that State Threat offenders are treated in certain ways like terrorist offenders. The short point is that there appears limited practical or principled reason as why all State Threat offenders should be treated as terrorist offenders in relation to *future risk*.
3. On that basis these new provisions call for careful scrutiny, especially because of the interaction between the Gauke reforms and these proposals. This Note only deals with England and Wales.
4. The key context is that the sentencing and treatment of terrorist offenders has undergone refinement, especially around the turn of the decade, to deal with the risk posed by terrorist offenders after their release.
5. The Terrorism Acts 2000 and 2006 made no provision for sentencing (other than indicating maximum penalties). But special provision was made for terrorist offenders in:
 - the Counter-Terrorism and Border Security Act 2019 (availability of extended sentences for terrorist offenders).
 - the Terrorist Offenders (Restriction of Early Release) Act 2020 (no automatic release for terrorist offenders).
 - the Counter-Terrorism and Sentencing Act 2021 (introducing serious terrorism sentences, increasing availability of extended sentences, automatic 'special custodial sentence for offenders of particular concern', removal of early release for dangerous offenders).
6. The 2019 Act was part of the tightening of terrorism legislation following the multiple terrorist attacks in 2017, whilst 2020 and 2021 Acts came after attacks by released terrorist offenders, especially at Fishmongers' Hall and Streatham.

The overall premise was that terrorist offenders often showed enduring risk and therefore needed to be managed carefully after conviction, with release ordered (or not) by specialist panels of the Parole Board.

7. The same cannot be said, or at least said yet, as to State Threat offenders.
8. State Threat offenders need not have any ideological commitment, or any connection to violence. They may do, but the National Security Act 2023 and Official Secrets Acts apply just as much to criminal proxies as undeclared intelligence officers, to those who gather protected information or carry out surveillance or assist Foreign Intelligence Services by providing insider chat or breach the requirements of the Foreign Influence Registration Scheme (foreign activity offence), as much as to those who plot sabotage or state-sponsored murder or provide hired muscle, and to those who are able and willing to carry on with State Threat activity after release, as to those who are disillusioned or no longer useful because 'burnt'.
9. There is uncertainty about managing released State Threat offenders and it can be noted that notification provisions (as apply to terrorist offenders under the Counter Terrorism Act 2008) were not included in the National Security Act 2023.
10. In light of this, I draw attention to the following:
 - Effective exclusion from automatic progress under Gauke reforms: Clause 20 . State Threat offenders will be excluded from automatic release at one third and will only be eligible for release at two thirds (if the Parole Board agrees). This puts them in a worse position than sex and violent Standard Determinate Sentence (less than 7 years) prisoners who will be released at the half-way point.
 - Automatic Sentence for Offenders of Particular Concern (SOPC): Clause 7. These will apply where a custodial sentence imposed (other than life or extended sentence) and offence carries more than 2 years. The effect is to exclude the possibility of a suspended sentence which under the Gauke reforms/ Clause 2 would otherwise be available for sentences of up to 3 years. In theory this might persuade courts to impose non-custodial sentences where they might otherwise have passed a suspended sentence.
 - A possible source of the problem is the lack of discretion for identifying State Threat offenders who are dangerous or represent a continuing threat. There is no discretion to make an Extended Determinate Sentence for a State Threat offence unless the offender happened to have committed a

violent, sexual or terrorism offence (Schedule 18, Sentencing Act 2020) that is aggravated by the Foreign Power Condition under the National Security Act 2023, as seen in the recent Russian sabotage sentencing (Earl and others, 24 October 2025, Central Criminal Court). Arguably, a discretionary power in the case of dangerous State Threat offenders would be better than creating a set of *automatic* consequences.

- Without a body of casework that justifies automatic consequences, I question whether these can be justified in terms of offender management. The justification might be *deterrence*, but as far as I am aware deterrence has never been advanced as a reason for special provisions about terrorist offenders with whom State Threat offenders are being assimilated.

11. Separately, the power for the Lord Chancellor, under Clause 255BA(5) to (9) to identify and exclude from 56-day recall individuals who “may be at risk of involvement in foreign power threat activity” risks passing over too much power to the executive without judicial oversight on a new and untested criterion.

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