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The Baroness Hamwee  
House of Lords  
London  
SW1A 0PW

26 February 2021

Dear Sally,

### **TPIMs: COUNTER-TERRORISM AND SENTENCING BILL**

Thank you for the questions relating to Terrorism Prevention and Investigation Measures (TPIMs) that you and Lord Paddick raised on 9 February during the Committee stage debate for the Counter-Terrorism and Sentencing Bill. As promised, I will respond to the questions that I was not able to answer during the debate in this letter. I will also, for clarity, provide additional detail about some of the changes we are seeking to make where I know there was particular concern in Committee.

#### *Time limit*

The first question related to the change we are making to remove the current, two-year time limit for a TPIM. As I set out, there are several policy and operational justifications for this clause of this Bill: the first of which is that experience has shown that there are TPIM subjects who pose an enduring risk beyond the current two-year limit. This has meant the imposition of a new TPIM after reaching the current limit and, as a consequence, a dangerous 'cliff edge' has been created, while the individual is at large in the community without the appropriate risk management tools in place before a new TPIM can be imposed. Assistant Chief Constable Tim Jacques spoke to this risk when giving evidence to the Public Bill Committee in the Commons.

In Committee, you asked me to expand upon my comment that this has happened on more than one occasion. I can confirm that there have so far been two different cases when an individual has had to have a second TPIM imposed on them to help manage the risk they pose. In one case, there was a gap of 12 months before the new TPIM could be imposed, and in the second

there was a gap of 16 months. These cases clearly demonstrate why the current, two-year limit is unsatisfactory and to the detriment of public safety.

Extending the maximum duration of a TPIM beyond two years will provide more time and incentive for the TPIM subject to engage in rehabilitative programmes, adopt a different lifestyle, break away from their previous extremist contacts, and demonstrate that the TPIM notice is no longer necessary. Furthermore, removing the time limit will multiply the benefits of the TPIM by restricting the TPIM subject's involvement in terrorism-related activity, supporting efforts to degrade the subject's wider network should they belong to one, and reducing the wider long-term threat from others who may have been influenced by them – were it not for the TPIM measures – in the case of known, charismatic radicalisers.

I can reassure you that the Government has no desire to keep an individual on a TPIM any longer than is necessary and proportionate for the purposes of protecting the public from a risk of terrorism. As I detailed in Committee, there are numerous safeguards for the protection of the civil liberties of those subject to TPIM notices. TPIMs are subject to regular scrutiny, including through quarterly and annual review meetings, which the Independent Reviewer of Terrorism Legislation is invited to attend. Through these regular meetings, key considerations such as the case for the individual's prosecution and their TPIM 'exit strategy' are kept under careful review. This will remain the case following the change to the time limit being made by this Bill. Furthermore, under section 9 of the TPIM Act 2011 all TPIM subjects are granted an automatic review on the imposition of their TPIM notice, while section 16 provides an avenue of appeal for subjects who wish to challenge the decision to extend their TPIM notice for a further year.

### *Appeals*

In Committee, Lord Paddick asked how many times TPIMs have been revoked or restrictions have been eased as a result of section 9 review hearings and section 16 appeal hearings.

I can confirm that no TPIM notices have been quashed or revoked following either type of hearing, and that specific TPIM measures have been eased on 12 occasions following direction from the Court. The relative infrequency in which such orders have been made since the TPIM Act 2011 came into force is testament to the rigorous scrutiny to necessity and proportionality we apply to TPIM notices and their respective measures at the point of imposition and throughout the lifetime of the TPIM, reinforced by the fact that the Court has upheld the decision to impose a TPIM notice in all cases. The Home Secretary has also varied measures in TPIM cases by relaxing or removing them when it has been appropriate to do so.

### *Polygraph measure*

In Committee, a number of questions were asked about the operation of the new polygraph measure that the Bill will add to Schedule 1 of the TPIM Act 2011.



You quite rightly highlighted that the relevant clause in the Bill clearly specifies that any statements or physiological reactions made by the individual while participating in a polygraph examination may not be used in evidence against the individual in any proceedings for an offence. You asked, however, whether such statements or reactions could be used as evidence of a breach of a TPIM or as evidence to extend or impose a further TPIM.

As I set out in Committee, this clause will allow the Home Secretary to impose a requirement on an individual who is subject to a TPIM notice to participate in polygraph examinations for the purposes of: (i) monitoring their compliance with other specified measures; and (ii) assessing whether any variation of the specified measures is necessary for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity. The clause is not designed to allow for information derived from a polygraph examination to be used as evidence in proceedings for breaching a TPIM (which is a criminal offence), to extend the duration of a TPIM notice, or to impose a new TPIM.

Questions were also raised by a number of Peers, including yourself, about a TPIM subject's right to silence during a polygraph examination. Specifically, it was asked whether it would be a breach of an individual's TPIM if they refuse to participate in a polygraph examination or if, during such a test, they refuse to say anything.

We are adding the new polygraph measure to the list of available measures in Schedule 1 of the TPIM Act 2011. I can confirm that following Royal Assent, if the polygraph measure is imposed, a TPIM subject will be required to attend and undertake a polygraph examination, which includes complying with instructions given by a polygraph operator, and that failure to do so would be a breach of the TPIM. TPIM subjects are required to comply with any measures imposed upon them. The polygraph measure will be no different in this regard.

A TPIM subject's right not to self-incriminate is protected by the specific wording within the clause which prohibits the use of information derived from a polygraph examination from being used as evidence in criminal proceedings against that individual. The right to silence more generally is specifically restricted to circumstances where a suspect is being questioned in respect of a criminal charge. A TPIM subject undergoing a polygraph examination would not fall into the ambit of this right as they would not be in police (or other enforcement agency) custody being questioned with a view to bringing potential charges for an alleged criminal offence.

It is important that we harness available technology and provide our operational partners with the tools necessary to protect the public. The availability of polygraphs as a TPIM measure will provide our partners with a potential additional source of information about individuals of terrorism concern, which can assist them with the management of TPIM subjects – and, in doing so, better protect the public.

*Extended residence measure*

In Committee, you also stimulated an interesting discussion about the change we are making to the existing residence measure. You and other Peers, including Lord Anderson of Ipswich, questioned how the updated measure would be applied in practice – specifically, how many hours a day it will be permissible to confine a TPIM subject to their place of residence.

I want to provide further reassurance on this point and underline that in the context of TPIMs, and unlike immigration bail pending deportation or extradition, there is no exception to Article 5 of the ECHR (right to liberty). Instead, there is an established body of caselaw which guides that in practice the residence measure placed on a TPIM subject could not ordinarily exceed 16 hours a day without breaching an individual's right to liberty. Operational partners have in the past confirmed that with respect to some specific TPIM cases greater flexibility than is currently provided for by the existing 'overnight residence measure' would have been desirable. We are addressing this by introducing a requirement for a TPIM subject to remain within his or her residence at specific times during the day, as well as overnight, when this is assessed as necessary and proportionate to manage the risk they pose. We are clear that this measure should not, and will not, amount to an unlawful deprivation of the individual's liberty.

I hope that covers all the questions to which you were seeking answers and I look forward to discussing the Bill with you further as Report stage approaches. I am copying this letter to Lord Paddick, Lord Marks of Henley-on-Thames, Lord Thomas of Gresford, Lord Strasburger, Lord Falconer of Thoroton, Lord Ponsonby of Shulbrede, Lord Anderson of Ipswich, and Lord Thomas of Cwmgiedd. I am also placing a copy in the library of the House.

Yours sincerely,

*Parkinson of Witley Bay*

**LORD PARKINSON OF WHITLEY BAY**