Home Affairs Committee - Counter-Terrorism and Sentencing Bill
Written Submission
June 2020

INTRODUCTION

The Crown Prosecution Service (CPS) welcomes the opportunity to contribute to the Committee's consideration of the Counter-Terrorism and Sentencing Bill.

Within the CPS, the Counter Terrorism Division (CTD) is responsible for prosecuting some of the most sensitive, serious and high-profile casework in the CPS. Terrorism, both national and international, forms proportionately the largest part of the workload. The CTD works closely with Counter Terrorism policing and partners, often providing advice at an early stage of investigations. CTD, although based in London, provides a national service, working with all police forces across England and Wales.

In many respects, this Bill differs from other Counter-Terrorism Bills that have introduced new offences, and that could raise evidential challenges for our prosecutors. In contrast, this Bill is mainly focused on sentencing and the monitoring of offenders post release. We therefore assess that much of this Bill will have limited operational impact on the CPS, and this written submission focuses only upon the key provisions in the Bill where our views may be of assistance.

KEY PROVISIONS AND COMMENT

1. **To introduce a new sentence for terrorist offenders; the "serious terrorism sentence", made up of a minimum of 14 years in custody and a seven to 25 year period of extended licence.**

   We were initially concerned that a 'serious terrorism sentence' could capture lower level offending, resulting in a reduction in conviction rates in cases in which a mandatory 14 year custodial sentence was not perceived to be proportionate to the offence. For example, section 5 Terrorism Act 2006 is an effective prosecution tool which creates the offence of preparation of terrorist acts. It covers a very wide range of offending and different levels of preparation, and carries a guideline sentence of between three years and life imprisonment.

   However, we note the qualifying conditions attached to this sentence and set out in the Bill:

   - Where there is a significant risk of serious harm occasioned by the commission by the offender of further serious terrorism offences or other offences specified in section 308 of the Sentencing Code;
   - Where the 'risk of multiple deaths' condition is met, further clarified by requiring that the offender was aware or ought to have been aware that the offending was very likely to result in or contribute to the deaths of at least two people as the result of an act of terrorism, as

defined in section 1 of the Terrorism Act 2000, irrespective of whether or not any deaths actually occurred;

- That the court must impose the sentence unless exceptional circumstances apply in relation to the offence or the offender that justify not imposing a serious terrorism sentence in the aforementioned circumstances.

We consider that these conditions, and in particular the court being able to apply discretion regarding exceptional circumstances in relation to the offence and the offender, will mitigate the risk that conviction rates will decrease, and ensure that lower level offending can still be properly captured by existing sentencing guidelines, as required.

Provision is also made in the Bill for reductions in a custodial term for a serious terrorism sentence following a guilty plea. This sets the maximum reduction at 20%, a reduction to the current maximum provision of 33%. A guilty plea during a prosecution provides certainty, can save time and resource and can achieve quicker recourse to justice. However, it is possible that a shorter sentence reduction will reduce the incentive for a guilty plea.

2. **Provide for polygraph testing of certain terrorist offenders when released on licence.**

The CPS would never attempt to rely upon the results of a polygraph test as evidence in a prosecution. However, there is a potential disclosure risk that information obtained as a consequence of a test would potentially be relevant, and if it undermined the prosecution case or assisted the defence, would fall for disclosure in criminal proceedings, pursuant to the Criminal Procedure and Investigations Act 1996 (CPIA).

While there are already some prohibitions on using such material in a prosecution (s30 of the Offender Management Act 2007), this does not exempt it entirely from our CPIA disclosure responsibilities. We therefore assess that the risk of disclosure will always remain. Should defence counsel seek to introduce such material in criminal proceedings as a line of argument, we would emphasise the limitations of such test results, and that there are different benefits for licence monitoring purposes.

3. **Enable the police to apply for Serious Crime Prevention Orders (SCPOs) in terrorism cases.**

We have discussed this provision with HMG and police colleagues. Currently, applications for a SCPO must be authorised by the Director of Public Prosecutions (DPP), and the Attorney General is consulted before the CPS makes the application to the High Court. We consider current practice to be an important safeguard to help to avoid concerns about their misuse and wider application.

Nevertheless, we recognise the importance of a streamlined process and the operational benefits. We consider that the requirement included in this provision for the DPP to be consulted before an application is made by the police achieves the appropriate balance, and guards against an SCPO being applied for in place of a prosecution. We will work with police

colleagues to agree a joint process to enable DPP delegated consultation with the CPS prior to an application being made.

4. **Revise the scheme for imposing Terrorism Prevention and Investigation Measures (TPIMs) on those suspected of involvement in terrorism, by lowering the standard of proof required; expanding the range of measures available; and removing the two year time limit.**

   Our operational function in TPIM cases is (i) to provide advice on whether there is sufficient evidence to proceed with a prosecution rather than impose a TPIM; and (ii) to prosecute beaches of the measures. We do not consider this provision will alter the first element of our role.

   It is possible that this measure will increase the number of prosecutions for breaches; however, we do not anticipate a disproportionate increase in the number of TPIMs so this is not a significant concern.

5. **Increase from 10 to 14 years the maximum sentence available for the offences of: membership of a proscribed organisation, inviting or expressing support for a proscribed organisation and attendance at a place used for terrorist training.**

   We welcome this proposal. Membership of a proscribed group is an offence that provides the courts with extra-territorial jurisdiction and can be considered against individuals who have travelled overseas to engage in terrorism related activity with proscribed groups, and have then returned to the UK. This may be the only offence capable of proof. An increased sentence may help to act as a deterrent for future travel and will strengthen our judicial response.

6. **Allow for any non-terrorist offence with a maximum sentence of over two years to be found to have a terrorist connection.**

   We welcome this proposal. The current list of offences in which a terrorist connection can be applied is fairly limited, and the range of terrorist related offending can take many forms. Prosecutors use ordinary criminal offences on a regular basis where this is appropriate. Where such ordinary criminal offences fall within the definition of 'terrorism' in the Terrorism Act 2000, this is an aggravating factor that the judge can take into account when sentencing.

CONCLUSION

We hope this written submission is of assistance to the Committee. Our assessment is that the remaining key provisions in the Bill will have a greater impact on other parts of HMG, and we have no further submissions to make on these.