

# Coversheet: Control orders

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|---------------------|---|
| Advising agencies   | <i>Ministry of Justice</i>  |
| Decision sought     | <i>Agreement to introduce new counter-terrorism legislation to manage the risk posed by a small number of returning New Zealanders who engage in terrorism-related activity overseas.</i> |
| Proposing Ministers | <i>Minister of Justice</i>  |

## Summary: Problem and Proposed Approach

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| <b>Problem Definition</b>   |
| <p>A very small number of individuals who engage in, promote or support terrorist or violent extremist<sup>1</sup> activity overseas may pose a high risk to public safety when they eventually return to New Zealand ('returnees').</p> <p>There are a number of approaches to managing returnees on their arrival in New Zealand, including prosecution, risk management, rehabilitation and reintegration. For a range of reasons, prosecution for an individual's terrorism activities when they return to New Zealand may not be practical or feasible. This may be due to the difficulty of collecting evidence or securing witness statements of terrorism activity from conflict zones, there may not be an appropriate offence (eg there is no explicit offence of travelling to join a terrorist organisation), or the person may have already completed a sentence for terrorism-related activity prior to being deported to New Zealand.</p> <p>Prosecution would enable the risks posed by these individuals to be managed effectively by sentence (either via incarceration or home detention) and by parole conditions at the end of their sentence. In the absence of criminal prosecution resulting in a conviction, these returnees will enter the community, and there is limited ability under existing settings to effectively restrict or prevent attempts to engage in or support further terrorism-related or violent extremist activities.</p> |

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| <b>Proposed Approach</b>   |
| <p>Control orders are a tool that can support the prevention of terrorism by enabling New Zealand Police (<b>Police</b>) and other agencies to more effectively manage high-risk returning New Zealanders. Control orders are one part of a wider suite of counter-terrorism legislation reforms aimed at managing the risk of terrorism in New Zealand.</p> <p>For a control order to be issued:</p> <ul style="list-style-type: none"> <li>• Police, in consultation with other relevant agencies, must assess a returnee as posing a high risk to public safety based on past behaviour or activities and apply for a control order;</li> </ul> |

<sup>1</sup> For the purposes of this RIA, *terrorism* is defined as an act of violence intentionally perpetrated on civilian non-combatants with the goal of furthering an ideological, political or religious objective. *Extremism* is defined as any (generally political or religious) theory that hold to uncompromising and rigid policies or ideology.

- Police would consult the Solicitor-General on their proposed application and if the application is assessed as having merit, the Police would apply for a control order from the High Court (civil).
- a High Court judge would have to be satisfied that, on the balance of probabilities, a control order is reasonably necessary and appropriate to assist in managing the risk posed by the returnee.

Court-imposed control orders can impose a variety of restrictions/limitations that can minimise the risks posed by returnees (eg electronic monitoring, restrictions on contact with particular people or places, etc) as well as supporting their reintegration into New Zealand society (eg access to counselling, support into employment etc). Social sector agencies and non-government organisations would develop a programme of 'wrap around' services that would support the reintegration and rehabilitation of the returnee.

Court-imposed control orders are considered the best option as they provide a framework for the Court to impose conditions that are tailored to the risks identified by the Police, are reasonably necessary based on the Courts consideration of the information available and can support rehabilitation and reintegration efforts. The order is time limited, with an initial order for a maximum of two years, although this can be renewed by the Court if the evidence shows that the public safety risk has not diminished. Control orders can be renewed twice if a risk profile remains unchanged or increases.

The proposed order balances the imposition of some restrictions on returnees to manage their risk of engaging in terrorism, while also allowing them to live within the community and reintegrate into New Zealand (lowering the longer-term risk of engagement in terrorism). Supervision of high-risk individuals, in a way that can address changing risk profiles and limits their ability to engage in terrorist-related activity, provides a cost-effective way for government to meet public safety needs while supporting longer term reintegration of returnees into New Zealand society.

The alternative approaches would be to continue to have some monitoring and to provide support services for a returnee residing in the community under current legislative settings (the status quo) or introduce a terrorism registration scheme (where returnees are required to keep Police updated on their current contact details, place of work etc, thereby enabling some oversight).

The control orders proposal would limit some rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990, however limitations are consistent with the Bills of Rights if they are justified under section 5 of the Act. The objective of control orders is to protect the public from people who pose a risk of engaging in terrorist or violent extremist acts, which constitutes a sufficiently important objective to warrant some limitation on the rights and freedoms affirmed in the Bill of Rights. The impact of limiting the rights and freedoms of the individual subject to a control order must be balanced against the right of the whole community to safety. In this case limitations on the rights of the individual are considered justified.

# Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

The main benefit is reducing the risk of a terrorist and violent extremist activity occurring in New Zealand, which in turn increases the safety of the community.

The New Zealand public will be the primary beneficiary from the effective management of terrorism-related risks associated with returnees.

**Where do the costs fall?**

The majority of the direct costs fall to government, including costs of administering a control order regime (supervision and monitoring), cost of judicial time in considering the applications and hearing time, and the Crown’s legal costs in the application and appeal processes. There will be ongoing costs of monitoring of the conditions by Police and other agencies, with costs dependant on the types of conditions imposed on the returnee.

There may also be some costs associated with reintegration support provided to a returnee (eg mental health services, support into employment, housing assistance). However, costs to social agencies could be incurred by a returnee irrespective of the order, depending on an individual’s eligibility and need for such services, and the willingness of the returnee to use services. The order facilitates the co-ordination of social services to support reintegration and can encourage the use of services by the returnee (eg to demonstrate their engagement and ultimately lead to a lower risk profile and less stringent conditions on the order).

The control orders regime may result in some additional court and Corrections costs if any individual on the order breaches their conditions. A breach could result in a short term of imprisonment, home detention or community sentence.

There are also some non-monetised costs to the individual subject to the order (depending on conditions imposed), in terms of reduced freedom of association with people or places, reduced freedom to travel (domestically and internationally), requirements to be at their residence at certain hours, limitations on access to online forums/websites. There may also be some costs for the individual if conditions include regular reporting to Police, which could impact on transport costs, or impact on employment, training/study opportunities or family care responsibilities (depending on reporting times).

**What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?**

The main risk is that the control order is ineffective in minimising the longer term public safety risk posed by the returnee. The conditions imposed by the order are expected to reduce the immediate risk of the person promoting, supporting or engaging in terrorism activity (eg curfews, electronic monitoring, non-associations with certain people or places). It cannot be guaranteed that control orders will prevent a person engaging in terrorism-related activity, however an order would minimise the risk.

However, there is a risk that when the order has expired (orders are for a maximum of two years), the person's mindset and violent extremist views remain unchanged and they continue to pose a risk to public safety. This risk can be mitigated by Police applying for a renewal of the order (with a maximum period someone can be on the order of six years). The risk can also be mitigated by agencies using the time while the person is subject to an order to help their reintegration into New Zealand society, by encouraging the person to engage with various social and health services, employment or education opportunities, cultural and community activities, etc.

There may be unintended impacts of the control order regime. It is possible that an individual order may exacerbate or entrench an individual's existing anti-social and extremist attitudes and behaviours. This risk can be mitigated by a focus on reintegration and rehabilitation, as well as putting effective systems in place for identifying changes in the returnee's risk profile and applying for a variation in the conditions of the order to ensure any conditions remain relevant.

A further unintended impact of the control order regime is that individuals subject to control orders may face social repercussions due to the order being in place. However, this is mitigated by the fact that control orders are not publicised to protect the privacy of the individual. In addition, judges can request an assessment of the reintegration needs of the individual subject to the control order, and consider an individual's need to attend their place of employment or study, when setting any conditions.

There is also a risk that the existence of the control orders regime or the imposition of particular orders may increase ill-feeling by particular communities or groups in New Zealand society. For example, members of a group or community who have a particular ideological or political view point that do not engage in terrorism or violent extremism may perceive that control orders will be used to unfairly target them.

The risk associated with a control order being incorrectly applied (ie a person who has not engaged in, promoted or supported terrorist activity overseas being subject to a control order) is low. To apply for a control order, the Police, in consultation with other relevant agencies, must assess the returnee as posing a high risk to public safety based on past behaviour or activities. The Police would consult the Solicitor-General on their proposed application for a control order. If the application is assessed as having merit, Police can then apply for a control order from the High Court. The Court must be satisfied that, on the balance of probabilities, the order is reasonably necessary and appropriate to assist in managing the risk posed by the returnee. This process and the information required makes it unlikely that someone who has not engaged in terrorist activity overseas could be subject to a control order.

**Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

There is no significant incompatibility with the Government's 'Expectations for the design of regulatory systems.' The proposal conforms to established legal and constitutional principles and supports compliance with New Zealand's international and Treaty of Waitangi obligations. The use of the order will be risk-based, informed by evidence, responsive and proportionate to the risks being managed, and overseen by the courts.

This proposal will limit some rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990. In particular sections 14, 17, 18, 21 and 22 will be engaged by restrictions that may be placed under the regime, and s 27(1) may be engaged by parts of the process of applying orders.

However, limitations under the Bill of Rights Act may be justified under section 5 of the Act, where the limits on rights are:

- (1) In service of a sufficiently important objective to justify some limits on rights, and
- (2) Rationally connected with the achievement of the objective, limiting the right no more than the minimum necessary to achieve the objective, and proportionate to the importance to the objective.

The policy objective of control orders – protecting the public from people who pose a risk of engaging in terrorist or violent extremist acts – constitutes a sufficiently important objective to warrant some limitation on the rights and freedoms affirmed in the Bill of Rights. The impact of limiting the rights and freedoms of the individual subject to a control order must be balanced against the right of the whole community to safety, and in this case we consider limitations on the rights of the individual are considered justified.

The limits on rights proposed under the regime are rationally connected to enabling monitoring of the returnee and creating barriers to the planning and engagement in terrorist activity. Some limits connect to the goal of aiding subjects to be rehabilitated and reintegrated into the community. Procedural limits on rights proposed under the control order regime are rationally connected to enabling orders to be imposed.

We acknowledge there are some issues assessing the effectiveness of such orders in overseas jurisdictions due to their limited use. Overseas evidence has, on balance, supported the use of control orders, while acknowledging that they will not necessarily achieve positive outcomes for all people on orders.

Ensuring that limits on the rights of individuals subject to the control orders regime are proportional and minimally impairing is a key challenge in the design of the proposed regime. In developing the proposal for the order regime we considered a range of less restrictive options for delivering the policy objectives. Options considered included the status quo, surveillance-based approaches under current settings and a regime for registration of returnees. The control order regime was preferred as the alternative options would not provide sufficient management and monitoring powers to protect public safety.

The Ministry of Justice have worked with Police and other agencies to ensure that the regime restrict the rights of returnees only to the extent necessary to protect public safety, eg any curfew restrictions may only be imposed within specified hours.

There are also a range of safeguards within the proposed regime to aid the goal of minimising restriction on the rights of the individual. All restrictions and conditions under the proposed regime are judicially imposed, and the judge must weigh up whether each specific restriction is necessary and proportionate in enabling managing the risk of each individual subject. Orders are time bound and have set processes for appeal and variation of specific conditions, to allow for the order to evolve with the individual's situation.

# Section C: Evidence certainty and quality assurance

## Agency rating of evidence certainty?

Our rating of evidence certainty is low to medium. There is evidence of an existing gap in maintaining public safety arising from future returnees with Police and security agencies identifying instances where it may not be possible or appropriate to file terrorism charges. While surveillance is possible in the short term, ongoing surveillance would not be practical given its resource-intensiveness, leaving a potentially significant unmanaged risk. A control order would enable active supervision and management, tailored for the person's circumstances and risk. This approach would assist in limiting high-risk individuals' continued engagement with terrorism and enhance public safety.

The scale of the problem has been difficult to determine as the number of returnees that could be subject to an order in the future is not able to be accurately estimated. Based on overseas experience on the use of similar orders and the number of foreign terrorist fighters expected to return to New Zealand, the Ministry estimate that the initial use of the order would be very limited (one to five individuals per two years).

There is some overseas evidence that indicates control orders can be an effective tool in managing the risk of terrorism.<sup>2</sup> However, effectiveness analysis of these regulatory approaches has been limited by the small number of people who have been subject to similar orders in other jurisdictions.

## Quality Assurance Reviewing Agency:

Ministry of Justice

## Quality Assurance Assessment:

The Ministry of Justice's RIA QA panel has reviewed the *RIA: Control Orders* prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA partially meets the QA criteria.

## Reviewer Comments and Recommendations:

As stated in the Impact Summary, officials did not have an opportunity to consult outside government on the proposals, including with Māori, lawyers, civil liberties' organisations, and community representatives. The Impact Summary also notes other constraints on the analysis, such as limited evidence of the effectiveness of control orders due to the small number that have been issued overseas. These constraints affect the confidence that Ministers can place on the analysis in the RIA. But as these constraints are clearly identified and the analysis is otherwise complete, clear and convincing, the QA Panel assesses the RIA as partially meeting the Quality Assurance criteria.

<sup>2</sup> Examples include: Home Office (UK) (2010), *Memorandum to the Home Affairs Committee: Post-Legislative Assessment of the Prevention of Terrorism Act 2005*, Cm 7797 (2010); Independent Reviewer of Terrorism Legislation (2018), Max Hill QC, *The Terrorism Acts 2017*, para 5.13; Independent National Security Legislation Monitor (2017), James Renwick SC, *Review of Divisions 104 and 105 of the Criminal Code: Control Orders and Preventative Detention Orders*, Sept 2017, para 8.17, 8.19 and 8.21

# Impact Statement: Control orders

## Section 1: General information

| Purpose   |
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| <p>The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise stated.</p> <p>This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.</p>   |
| Key Limitations or Constraints on Analysis  |
| <p>Limitations and constraints on the analysis in this document include:</p> <ul style="list-style-type: none"><li>• The proposal is limited to dealing with New Zealanders<sup>3</sup> who have engaged in terrorist-related or violent extremist activity overseas and continue to pose a high risk to public safety on their return to New Zealand.</li><li>• There is limited information on the effectiveness of control orders in changing behaviours as they have been used relatively infrequently in comparable overseas jurisdictions.</li><li>• The assumptions underpinning the impact analysis is that control orders will only apply to a very small number of individuals and that the legislation will take effect in mid to late 2020. This assumption is based on limited use of control orders in overseas jurisdictions.</li><li>• There is little relevant data about the number of returnees and potential risks in the New Zealand context to inform the analysis. However, the Ministry has considered the overseas experience.</li><li>• The Minister of Justice has requested the Cabinet paper on control orders go to Cabinet committee by the end of August 2019. This timeframe has already been pushed out from an earlier timeframe of June 2019.</li><li>• The Ministry consulted with relevant agencies and consultation will be ongoing as the proposal and implementation plan develops. The Ministry has not been able to undertake targeted consultation with non-government departments due to the timeframes for this work.</li></ul> |

<sup>3</sup> “New Zealander” refers to anyone legally allowed to reside in New Zealand, whether a citizen or permanent resident.

**Responsible Manager (signature and date):**

Brendan Gage  
General Manager, Criminal Justice Policy  
Ministry of Justice

17 July 2019



# Section 2: Problem definition and objectives

## 2.1 What is the context within which action is proposed?

On 15 March 2019 mass shootings took place at two mosques in Christchurch, in which 51 people were killed and many more injured. This event highlighted the threat of terrorism in New Zealand. The Government requires better ways to monitor and supervise people who are a risk of committing terrorist-related offences, and control orders are one of a suite of measures aimed at addressing the risk of terrorism and violent extremism in New Zealand

Due to the weakening of Islamic State (IS), and defeat of the caliphate in the Middle East, some foreigners and their families who travelled to join the IS ranks are seeking to return to their home countries from existing terrorist conflict zones, including those who have been detained by local forces.<sup>4</sup> Internationally, countries are working on approaches to manage the potential return of their citizens. The numbers who may return to New Zealand are not known, nor is it possible to know how many New Zealanders may travel offshore to support or join violent extremist or terrorist networks in the future.

The impact of terrorism and violent extremism activity can be significant and far-reaching, including heightened fear amongst the general public, harm to psychosocial wellbeing, costs of health treatment, loss of reputation of providing a safe place for people to live, work and go about their daily lives.

There is a small number of New Zealanders who travelled overseas to fight with or support terrorist groups, and it is expected some of these people will eventually return to New Zealand. It is possible some of these individuals may be prosecuted for their terrorist activities, however, if this was not possible, these individuals are likely to present a serious risk to the community from continued engagement in or support of terrorist activities or terrorist groups.

Information about the profile, circumstances and legal situation of any returnee will be very limited in cases where the person has been present in a conflict zone. New Zealand Police will determine whether it is likely that a New Zealander suspected of engaging in terrorism activity overseas can be prosecuted on their return to New Zealand. There may be legal and practical challenges to this approach, including gathering of evidence if the person returns from a conflict zone. Travelling to the conflict zone is not itself an explicit offence under current New Zealand law.

Unless individuals have been convicted of an offence in New Zealand or overseas, there is very little agencies can do to monitor the activities and movements of an individual who poses a terrorism risk to the community.

If there is no change to current settings, and high-risk returnees reside in the community, the Government can surveil a limited number of returnees (for the Police to do this a court issued warrant would be required). However, surveillance provides no capacity to impose any conditions or restrictions on individuals, or to support individuals in seeking counselling or other reintegration support services.

Surveillance is highly resource intensive, and there would be a risk that personnel resources would be stretched or prioritised, possibly creating gaps in security agencies and Police oversight of these and other priority individuals, which raises risks to public safety. For

<sup>4</sup> Joanna Dawson, *Returning terrorist fighters* – House of Commons Library, briefing paper number 8519, 15 March 2019, p. 3

Police, there are resourcing challenges if surveillance is required beyond a short-term period, or if surveillance is required for multiple individuals.

It is anticipated that returnees from terrorist conflict zones may be experiencing post-traumatic stress disorder as well as having other health and social needs. Under existing settings, returnees can seek health and social services to support their reintegration. However, there is no requirement that returnees undertake a mental health assessment or avail themselves of the social support services available (assuming they meet the existing eligibility criteria). Reintegration is critical to reducing the long-term risk of terrorism.

## **2.2 What regulatory system, or systems, are already in place?**

Currently, the courts can impose restrictions that would limit potential terrorist activity once a person has been charged or convicted, either as part of bail conditions, by sentencing or via parole conditions. These options are not available where the individual has not committed a crime under New Zealand law or when a prosecution for an offence is not a viable or proportionate option (eg prosecution test under the Solicitor-General's guidelines is not met).

Returning offenders orders (Returning Offenders (Management and Information) Act 2015) could be used to address the risk of terrorism for people convicted of terrorism offences overseas when there is an equivalent offence in New Zealand law. Returning offenders orders enable the supervision of any convicted person returning who has served a sentence (of imprisonment of more than one year) for an equivalent offence under New Zealand law (eg such as a Terrorism Suppression Act 2002 offence).

Police and security agencies can, when authorised, undertake surveillance of individuals who are believed to pose a high-risk to public safety. Surveillance is however inefficient to manage long term risk as it is an investigative tool used to monitor activities for specific evidence of crime. It provides an ability to more rapidly detect if a person has committed an offence and take action to prevent further harm. While surveillance might be possible for managing risk in the short-term, ongoing surveillance is highly resource intensive and not sustainable in the longer term.

Health and social services are available to support the reintegration into New Zealand society of a returnee and any family members (eg mental health services, employment support, assistance to support study and training, housing and income support etc). Services could be provided by both government and non-government agencies. However, there is a risk that an individual may refuse to engage in rehabilitation/reintegration.

## **2.3 What is the policy problem or opportunity?**

The Government's overarching goal is to prevent terrorism and protect the safety, rights and freedoms of New Zealanders from the threat of domestic and international terrorist activity. Agencies with responsibility for national security and public safety need appropriate legislative tools to enable them to limit the opportunities and occurrence of terrorist events in New Zealand and overseas.

Individuals who have engaged in terrorist and/or violent extremist activities overseas can pose a serious risk to public safety when they return to New Zealand. There is the risk that these individuals will resume or continue to support those activities in New Zealand, through

promotion, financial support, recruitment etc, as well as planning terrorist acts. The result can be multiple deaths or injuries, or large-scale damage to property from terrorist acts, either in New Zealand or overseas.

Government has a responsibility to put appropriate systems in place to maintain public safety and ensure the safe integration of New Zealanders back into New Zealand society. Without such systems, there is a significantly higher risk that returnees who have been involved in terrorist-related activity overseas, will plan and engage in terrorism activities (preparatory, promotion, support or attacks) in New Zealand.

Government also has a responsibility to respect the rights of individuals and to use the least restrictive means available to protect public safety.

## **2.4 Are there any constraints on the scope for decision making?**

### **What interdependencies and connections with other existing issues or ongoing work?**

There are no specific constraints on the scope of decision-making, however, there are some interdependencies with other counter-terrorism policy work that is part of the Government's response to the Christchurch mosques attacks, including:

- potential new and altered terrorism-related offences in the Terrorism Suppression Act 2002; and
- proposals to protect the use of national security information in court proceedings.

The development of legislation to govern the use of national security information in court proceedings will improve the processes for applying for a control order. However, the very low number of proceedings for control orders involving national security information will mean that the interdependency is limited. The legislation for national security information will be proceeding on a similar timeframe as control orders.

The Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019 is due to report by the end of 2019. The Commission may make some recommendations that affect the design and scope of the proposed control order regime.

## **2.5 What do stakeholders think?**

Key stakeholders include Police and the New Zealand security agencies, the New Zealand Security and Intelligence Service (**NZSIS**) and Government Communications Security Bureau (**GCSB**).

Government interagency consultation has been undertaken in developing the initial policy proposal including with Police, security agencies, the Department of the Prime Minister and Cabinet (**DPMC**), the Ministry of Foreign Affairs and Trade (**MFAT**), Crown Law Office, and the Department of Corrections.

Agencies, including MFAT, DPMC, Police and NZSIS/GCSB are supportive of the need for control orders to address the risks posed by returnees. The Ministry of Social Development noted there could be potential costs associated with the support required for returnees, however this cost would still exist if the individual was not subject to a control order.

Since 15 March 2019, counter-terrorism work has become an increased priority for the

Government, which has created pressure for the timeframes for developing this proposal. The timeframes limited our ability to engage with the wider public, iwi and Māori, and non-Crown organisations who may have an interest in this policy (for example, civil liberties groups). There is no specific public consultation planned prior to introduction of a bill. The public will have the opportunity to make submissions as part of the standard select committee process.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

Three options have been considered to address the problems identified above:

#### ***Option 1: Increased monitoring of high-risk individuals in the community using existing legislation***

- Uses existing legislation and systems (no requirement for new legislation).
- Monitoring of high-risk individuals, but no ability to impose restrictions or requirements on returnees.
- Provision of services to support reintegration, co-ordinated by Police in collaboration with other relevant agencies.

Police and security agencies would monitor the arrival of returnees, who if they are not charged for any offence, would enter the community. Police would determine the nature of risk posed by each returnee and in collaboration with other key agencies tailor a programme for risk mitigation.

The programme could include surveillance and monitoring by Police and security agencies, as well as a variety of support services (delivered by non-government organisations and social agencies) that would support rehabilitation and disengagement from terrorism and violent extremist activities. The programme could also include support services and engagement with the person's family and their local community (where this would aid their reintegration).

#### ***Option 2: Monitor returnees under a terrorism registration notice***

- Requires new legislation.
- Requirement for registration with Police, to support less active monitoring by the Police for those returnees.
- The Police Commissioner would be responsible for determining eligibility for registration, in consultation with other relevant agencies.
- The Register would operate in a similar way to the Child Sex Offender Register<sup>5</sup> which requires eligible child sex offenders to regularly provide a range of personal information to a central register administered by Police.
- Returnees would have to provide up-to-date contact information and report to local Police on a regular basis (eg three-monthly).

The returnee would have to provide Police with a range of personal information as well as being required to report to Police periodically and update them on any changes in personal circumstances (eg address, contact details, telephone numbers etc). The register would not be publicly accessible but could be viewed by relevant staff in key agencies.

In addition to supporting ongoing monitoring, the Register would also enable agencies to identify individuals who would benefit from ongoing support and programmes that will assist returnees with their reintegration and rehabilitation. Any participation in social services would be by consent of the individual (this is the same as for control orders, discussed below). Reintegration into New Zealand society is key to ensuring a longer-term and sustainable reduction in the risk to public safety posed by these returnees.

<sup>5</sup> The Register was established under the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 and commenced operation on 14 October 2016

Support services and programmes for returnees would not be a specific component of registration, but could be delivered, if the person consents, as part of a multi-agency approach that could be put in place to enable comprehensive monitoring and supervision of returnees as well as identifying and delivering services to address the reintegration needs of individual returnees.

While a register would enable effective information collection, it would not provide tools to manage the risk posed by returnees beyond the status quo. There would be no ability to restrict or monitor an individual's internet use or restrict associations.

### **Option 3: Control order scheme**

- Requires new legislation.
- The scheme will use a model similar to bail and returning offenders orders, where conditions are tailored to the risks posed by the individual, recognising that the individual has not yet been convicted. Specific requirements, restrictions and obligations ('conditions') would be based on the risks posed by the returnee, with conditions helping to mitigate those risks.

Similar types of conditions are also imposed under returning offenders orders, extended supervision orders and parole conditions, all of which aim to support reintegration and manage any public safety risks from convicted offenders returning to the community.

A focus on rehabilitation/reintegration of the returnee would enable support services to be provided in a co-ordinated way across social sector agencies, but these services are based on existing services that are provided to all eligible New Zealanders (eg access to emergency housing, support into employment or training, mental health and counselling). The Court can impose a condition requiring a returnee to undertake an assessment to identify any specific needs that if met, could reduce risks (eg mental health assessment, drug and alcohol assessment, rehabilitation needs assessment). Identification of any specific needs would enable Police to co-ordinate with social sector agencies and non-government organisations in developing a programme of 'wrap around' services that would support reintegration and rehabilitation. However, a returnee's engagement in any support or counselling services, would remain voluntary.

Control orders are court-imposed civil orders that can impose conditions to manage the risks of engagement in and support of terrorism-related activities and violent extremism in the immediate period and reduce the risk over time. The Commissioner of Police would determine if a returning individual poses a serious risk to public safety from engagement in terrorist-related or violent extremist activities and apply for a control order. The Solicitor-General would be consulted on the merit of the proposed application. The Police could then apply to the High Court for a control order. Each control order will be tailored to the specific risk and the individual's personal circumstances. The Judge will also determine the duration of the order (with a maximum duration of up to two years, but renewal twice if the risk profile remains unchanged or increases).

Specific restrictions or conditions of the order would be based on the nature of the terrorism risk posed by the individual, and the Court's satisfaction that the conditions are reasonable and appropriate to assist in reducing the terrorism risk, taking into account an individual's personal circumstances. Conditions would enable active monitoring of the returnee and enable restrictions on association with people and places, electronic monitoring, curfews, restrictions on the use of communications devices or particular articles such as weapons, restrictions on disposal of financial and other assets. While comparable overseas regimes

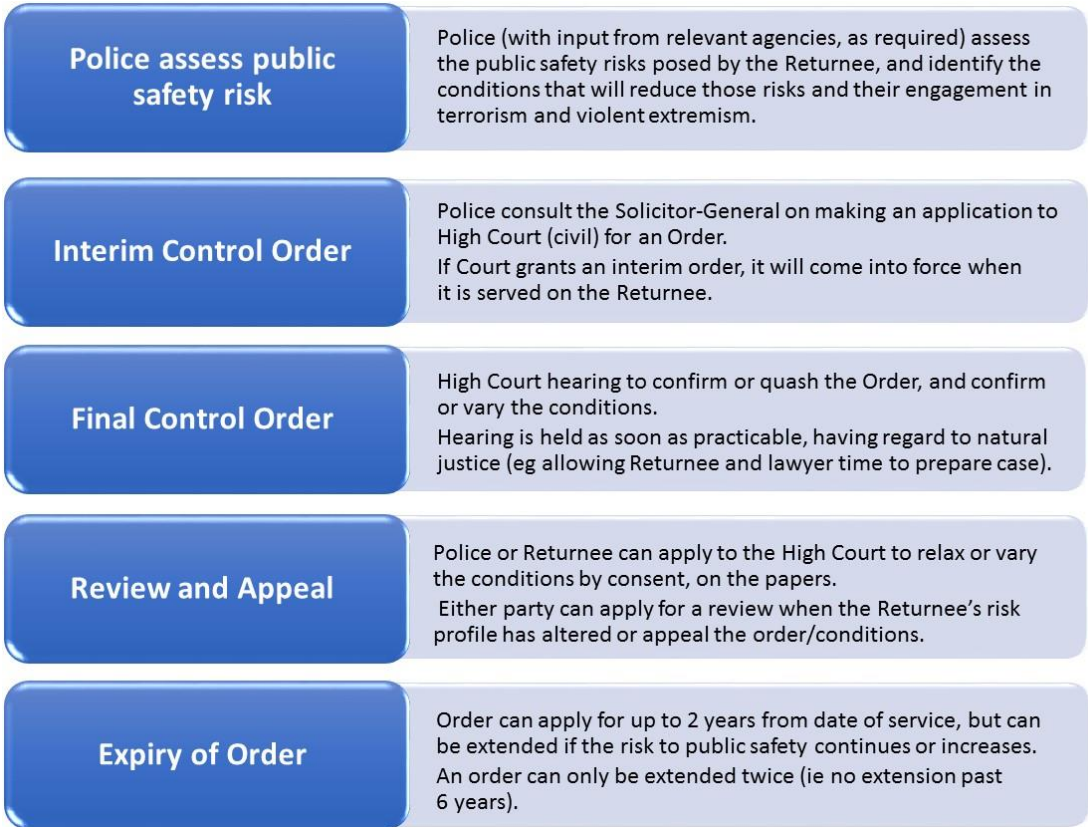
have a standard set of conditions a person can be subject to, under this proposed regime, the conditions would be set by the Court and specifically tailored to manage an individual's risk of engaging in terrorism-related activity.

The control order is a civil order, so the returnee would not have a criminal conviction, improving the ability to secure employment in the future. It is also proposed that the person's details would not be publicised, so that their ongoing reintegration into New Zealand society is not hampered. However, relevant staff in agencies and non-government organisations may be notified of the order to facilitate the Police's ability to monitor compliance with any conditions as well as ensuring that social service agencies have the necessary information to provide relevant services and protect the safety of their staff.

Agencies that will be notified of the order will include Customs, Ministry of Social Development, Ministry of Health and/or the District Health Board, Department of Corrections along with security and intelligence agencies. The non-government agencies notified would depend on the conditions of the order but could include the individual's bank (for the purposes of any financial conditions) or place of study (in relation to monitoring internet use). It may also be appropriate to notify people like local religious leaders, counsellors or treatment providers, for the purposes of providing support and reintegration (although such notifications would be with the consent of the individual and where it would not adversely affect the person's reintegration).

Breaching the conditions of a control order without a reasonable excuse would be an offence and could result in a term of imprisonment not exceeding one year. There is no fine for non-compliance.

The following diagram illustrates how control orders would operate:



### International experience of the use of control orders

The Ministry has considered international experiences of the use of control orders in the development of the proposal and the design of the control orders regime. The Ministry has studied similar regimes in the United Kingdom (UK), Australia and Canada, alongside briefer consideration of other international responses to security threats in France, Belgium and Norway. The UK, Australian and Canadian contexts were selected for more detailed examination on the basis of their similarity to New Zealand in terms of institutional structures, similarity in the types of threat being addressed and the level of information available related to the design, implementation and evaluation of the regimes.

Our study of the UK, Canadian and Australian regimes relied on Ministry analysis of legislation, official policy, case law and academic and non-governmental organisation commentary. The Ministry also engaged with Canadian counterparts in the Justice Department to obtain policy perspectives on the functioning of the Canadian regime and any lessons learnt.

Our consideration of international regimes included:

- first principles and intent of control order regimes
- the balancing of security and human rights considerations
- the application criteria and process for control orders
- design of conditions, monitoring and regulation
- review, appeal and evaluation process for orders
- the process for bringing an individual off an order, and
- roles and responsibilities of different actors in the control order process

A table showing comparisons between different overseas control order regimes is attached as **Appendix One**.

Consultation with relevant agencies has shown that Option 3, control orders, is their preferred option.

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

- Public safety (effectively manages risk to the public)
- Efficiency (in terms of cost-effectively achieving the goal of public safety from terrorism-related activity)
- Impact on individual freedom (does not unduly limit human rights)
- Proportionality (provides a proportionate response to the level of risk)

For this policy, achieving a public safety outcome has resulted in trade-offs for impacts on individual freedom. We consider the policy objective of public safety constitutes a sufficiently important objective to warrant some limitations on the rights and freedoms of individuals subject to control orders.



### 3.3 What other options have been ruled out of scope, or not considered, and why?

An outlier option considered in the early stages of analysis was new powers to remand returnees in custody pending a final determination of prosecution, enabling security agencies and Police time to gather further information overseas of engagement in terrorist-related activities.

The detention of an individual pending the collection of sufficient evidence to prosecute could be an extreme abuse of state powers and would be likely to raise international and domestic concerns. For this reason, this option was deemed out of scope in the preliminary analysis.

## Section 4: Impact Analysis

|                      | Option 1: Status quo – Monitor in the community  | Option 2: Registration notice   | Option 3: Control order regime  |
|----------------------|--|---|---|
| <b>Public safety</b> | <p style="text-align: center;"><b>0</b></p> <p>The tailored programme will have an impact on public safety if the returnee cooperates and participates in the range of services developed as part of the programme.</p> <p>However, some risks (such as association with particular people or places that may heighten risk) cannot be constrained by surveillance alone.</p>  | <p style="text-align: center;"><b>+</b></p> <p>Registration with Police would provide some information to Police and some social sector agencies about the person’s whereabouts, some personal details and advise Police when they are moving address and if they are going to be away from their address for certain periods of time.</p> <p>Whilst registration provides some oversight by Police, it does not provide a tool for placing restrictions on the individual based on their risk profile or support their reintegration.</p> <p>The public safety benefits of the registration scheme are assessed as positive, but relatively minor.</p> | <p style="text-align: center;"><b>+</b></p> <p>Control orders mitigate the risk of terrorist activity posed by certain individuals by</p> <ul style="list-style-type: none"> <li>• enabling electronic monitoring/tracking</li> <li>• limiting a returnee’s ability to engage with certain individuals or places, in person or electronic communication, thereby reducing the influence of people who may be contributing to extremist views</li> <li>• limiting engagement in risky behaviour (eg owning a gun or other weapons).</li> <li>• Incarceration of the individual if they breach their conditions.</li> <li>• A multi-agency framework brings together all the agencies’ relevant tools and enables formal engagement with the person, their family and community to support reintegration/rehabilitation.</li> </ul> |
| <b>Efficiency</b>    | <p style="text-align: center;"><b>0</b></p> <p>Long term surveillance, if authorised, could impose significant resource implications for operational agencies, especially if there are multiple individuals requiring surveillance. Surveillance operations could be stretched, impacting on public safety in other areas which require police resources.</p> <p>Intensive surveillance is an expensive and resource-intensive option for mitigating the public safety risk posed by returnees. Surveillance is inefficient to manage long term risk as it is an investigative tool used to monitor activities for specific evidence of crime. It provides an ability to more rapidly detect if a person has committed an offence and act to prevent further harm.</p> | <p style="text-align: center;"><b>0</b></p> <p>Police would maintain high-level oversight of a returnee’s location, but to manage risk would still have to rely on costly, resource-intensive surveillance, if authorised. Surveillance provides the ability to more rapidly detect if a person has committed an offence and take action to prevent further harm. A registration regime would enable Police to take action for a breach of the registration notice (eg failing to advise Police of any changes in personal circumstances).</p>  | <p style="text-align: center;"><b>+</b></p> <p>Control orders achieve an effective level of public safety given the risk posed, and at a reasonable cost on both the individual and the state.</p> <p>The community setting also supports reintegration, which in turn reduces future risk of terrorism and violent extremist behaviour.</p>  |

|                                     | Option 1: Status quo – Monitor in the community   | Option 2: Registration notice   | Option 3: Control order regime   |
|-------------------------------------|---|---|--|
| <b>Impact on individual freedom</b> | <p style="text-align: center;"><b>0</b></p> <p>There is no impact on an individual returnee’s freedom with the status quo.</p> <p>While surveillance does have human rights implications in terms of being an intrusion into a person’s life, in New Zealand, state intrusion on privacy for law enforcement purposes is closely regulated, able to be audited and only occurs where it is justified.</p>   | <p style="text-align: center;">-</p> <p>The registration scheme will have some impact on individual’s freedom as it imposes obligations on the person to advise Police of changes in personal circumstances and to report periodically to the Police.</p>   | <p style="text-align: center;">--</p> <p>There will be a significant impact on an individual’s freedom and their human rights will be limited in a number of ways, depending on the nature of risk (eg, freedom of action, activities, finances, behaviour).</p> <p>Individuals under a control order may face some social stigma, however control orders are not publicly notified, so this would be limited. Control orders are intended to facilitate an individual’s reintegration into the community and would allow them to attend school or work, which would also limit possible social stigma.</p> <p>A benefit of control orders is that unlike the status quo option 1, surveillance is more transparent, and individuals would be aware they are being monitored.</p>  |
| <b>Proportionality</b>              | <p style="text-align: center;"><b>0</b></p> <p>Bespoke programmes of monitoring and support services are intended to be proportionate to the risk identified. There is a risk that an individual would refuse to engage in the programme and there would be limited options available to government agencies to support and encourage participation. Without active cooperation, the risks posed by the returnee cannot be effectively managed.</p> | <p style="text-align: center;">-</p> <p>The registration regime would not enable a proportionate response to high-risk individuals as all eligible returnees would face the same registration obligations (ie these are standard conditions and there is no tailoring or variation of registration obligations to adjust to the level of risk posed by different returnees).</p> <p>The registration period would be for a finite time, determined by statute (rather than reflecting the risk posed by the returnee).</p> <p>There would be no judicial oversight as the registration requirements would be standard for all returnees. Appeal to the courts would be restricted to challenging whether the returnee was eligible for the registration notice.</p> | <p style="text-align: center;">+</p> <p>Conditions and the time period for an order would be tailored to the specific risk presented by an individual and their personal circumstances, allowing for a proportionate response to that risk. Limitations by the Court on the individual’s actions would be no more than necessary to mitigate the risk.</p> <p>The maximum time period for an order is two years (with renewal if the risk profile is unchanged or increases, up to maximum of six years)</p> <p>An application for an order would be considered by a High Court judge and they will determine which conditions are necessary to mitigate the risk and ensure those conditions are only imposed to the extent required to mitigate the risk and are not too disruptive to the individual’s life. Orders enable individuals to engage in pro-social activities such as paid employment unless there is good reason not to,</p> |

|                           | Option 1: Status quo – Monitor in the community | Option 2: Registration notice | Option 3: Control order regime   |
|---------------------------|---|-------------------------------|--|
|                           |   |                               | such as association with other high-risk individuals.<br>A change in a returnee's risk profile can be reflected in a change to the conditions. For example, participation in counselling or successful PTSD treatment could reduce risk, and an application to the Court to vary conditions or cancel the order. |
| <b>Overall assessment</b> | <b>0</b>  | <b>0</b>                      | <b>+</b>   |

**Key**

- worse than doing nothing/the status quo
- - much worse than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- + better than doing nothing/the status quo
- ++ much better than doing nothing/the status quo

# Section 5: Conclusions

## 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred option is to introduce a statutory control order scheme for Police and other agencies to actively supervise and manage the actions, movements and activities of high-risk individuals to minimise any risks arising from terrorism-related activities. The scheme is considered the best approach as it increases the level of public safety, which is the overarching aim of the regime.

The main stakeholders, namely Police and security agencies, agree that this is the preferred option for managing the risk posed by returning New Zealanders who have previously been involved in terrorism-related and violent extremist activities overseas.

The control orders regime will place limitations on the rights of individuals subject to a control order. This must be balanced against the public's right to safety. This policy objective of public safety is sufficiently important to warrant some limitation on the rights and freedoms of some individuals.

The conditions imposed by a control order will interfere with rights of the individuals subject to the order, however, judicial oversight of the regime will ensure that any restrictions to effectively manage the risk of terrorism activities are proportionate response to the level of risk they pose. The nature of the restrictions, obligations and requirements placed on individuals would only be those that are reasonably necessary and appropriate to manage the specific risk of engagement in terrorism-related activities by the individual returnee. The design of the order can also ensure limitations on a person's rights take account of a person's personal circumstances and risk factors, while still providing the freedoms that will enable the individual to reintegrate into New Zealand society.

## 5.2 Summary table of costs and benefits of the preferred approach

| Affected parties   | Comment<br><i>Nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks</i>  | Impact<br><i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i> | Evidence certainty<br><i>High, medium or low</i> |
|--|--|--|--|
| <b>Additional costs of proposed approach, compared to taking no action</b> |  |  |  |
| Individuals subject to control orders                                      | Some non-monetised costs in terms of some limitations of their freedom and associations. However, individuals are likely to be able to continue to work and study etc. The evidence suggests that the number of people in this cohort will be very low.<br><br>The assumption is that people will only be subject to limitation on their human rights proportionate to the risk they pose. | Low non-monetised costs.   | High   |

|   |   |  |        |
|---|---|--|--------|
| New Zealand Police  | Cost of initial surveillance assessment and ongoing monitoring of returnees, engagement with family and community engagement (average \$244,000 pa for one person on two-year order [Police estimate Year 1 \$291,700 and Year 2 \$196,200])<br>Plus Crown Solicitor costs of preparing and making each application (including appeal costs) and legal representation (estimated by Crown Law at \$95,000). | \$339,000 average per individual   | Medium |
| Reintegration costs   | Costs of any needs assessment order by the Court (MOJ estimate).<br>There are no additional costs of providing health and social services to support reintegration (employment support, mental health services, housing etc) as services are available in the absence of an order.  | \$1,000 to 5,000 for assessment depending on the needs of the individual | Low    |
| Corrections   | Sentence for breach of conditions (MoJ estimate based on costs of breach of Returning Offenders Order).   | \$6,000 per individual   | Medium |
| Court Costs   | Cost based on two hearings and an appeal for each application (eg interim order, final order and appeal).<br>Assume an individual would appeal and/or seek variation in conditions.<br>Estimate based on average cost of High Court civil case and appeal to Court of Appeal.   | \$75,000 per individual  | Low    |
| Justice   | Costs of legal aid (estimated average).   | \$16,000 per individual  | Medium |
| Security agencies, NZ Police, and other agencies party to multi-agency approach | There may be some resourcing implications for agencies party to the multi-agency approach. The resourcing required would depend on the final form of this approach.   | Low  | Low    |
| <b>Total Monetised Cost</b>   | <i>Estimate an average of two orders over two years.</i>  | \$438,500 per individual per order                                       | Low    |
| <b>Non-monetised costs</b>  |   | Low  |        |

| Expected benefits of proposed approach, compared to taking no action |  |        |        |
|--|--|--------|--------|
| Individuals subject to control orders                                | Coordinated access to services to support reintegration.   | Low    | Low    |
| NZSIS  | Costs of surveillance may be reduced.  | Low    | Low    |
| NZ Police  | Greater visibility and monitoring of those subject to a terrorism control order.<br>Increased ability to detect, disrupt and deter terrorist activity. | Medium | Medium |

|                                |   |     |        |
|--------------------------------|---|-----|--------|
| Public of New Zealand          | Increased feeling of safety and security for the public of New Zealand knowing that people who are an identified threat are being supervised and supported to reintegrate. A reduced risk to the public of a large-scale harmful event. | Low | Medium |
| <b>Total Monetised Benefit</b> |   |     |        |
| <b>Non-monetised benefits</b>  |   | Low |        |

### 5.3 What other impacts is this approach likely to have?

The proposals will impact Police costs in terms of monitoring of people on control orders. NZSIS consider this regime may reduce the resourcing costs of surveillance of those individuals under the status quo.

There may be a resourcing requirement for agencies party to the multi-agency approach, however resourcing requirements for this work area exist even if a multi-agency approach is not followed.

The number of people likely to be subject to a control order is unknown but Police and Ministry assumptions suggest that it will be very low (one to five individuals per two years, with costs assuming up to two people per two years). In comparable overseas jurisdictions control orders, which are wider in scope than proposed in New Zealand, have been used in a limited number of occasions:

- In the UK: 18 orders issued since 2011
- In Australia: 6 interim orders issued since 2005 (two of which were later quashed by the court at the hearing to confirm the order)
- In Canada: 16 orders issued since 2001.

Given the human rights implications and based on overseas experience the Ministry anticipates that an application for a declaration of inconsistency with the New Zealand Bill of Rights Act 1990 may be made. The cost of litigation is estimated at up to \$200,000. This would be a one-off cost, rather than an ongoing cost of the regime.

There is a high likelihood with control orders that individuals could end up in prison for breaching a control order, even though there is not sufficient evidence to convict them for a terrorism related offence.

### 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred option is compatible with the Government's 'Expectations for the design of regulatory systems'. While the Control orders scheme will require some interference with individual human rights, the Ministry considers these limitations are justified to ensure the public safety for all New Zealanders.

As noted earlier, this option will limit some rights and freedoms affirmed in the New Zealand Bill of Rights Act, however limitations are consistent with the Bills of Rights if they are justified under section 5 of the Act. The policy objective of control orders is considered to constitute a sufficiently important objective to warrant some limitations on the rights and freedoms affirmed in the Bill of Rights.

# Section 6: Implementation and operation

## 6.1 How will the new arrangements work in practice?

The preferred option could be given effect by way of a stand-alone piece of legislation. Once it is implemented Police, with support from security agencies will be responsible for the ongoing operation and enforcement of the new arrangements. The proposal would be implemented at a national level and there will be no role for local government. It is proposed that the legislation will come into effect in mid-to-late 2020. This will allow affected agencies to prepare an implementation plan.

The Ministry of Justice will have ongoing responsibility for administering the scheme as Justice (along with the MFAT) currently administers the Terrorism Suppression Act 2002. Other government agencies will be required to provide information for applications.

The Ministry of Justice will continue to consult with relevant agencies and stakeholders to prepare an implementation plan and ensure a coordinated approach to operation of the scheme.

Police will be responsible for making an application for a control order based on their risk assessment, following consultation with the Solicitor-General. The High Court will consider the application (which could be a without notice hearing if the individual is still overseas) and impose an interim order. The order comes into effect when served on the returnee. A final order would be issued after a further hearing that would confirm or quash the order (and its conditions), where the returnee has the opportunity to address the court on the assessed risks, length of the order and proposed conditions.

|   |   |
|---|---|
| <b>Police assess public safety risk</b> | Police (with input from relevant agencies, as required) assess the public safety risks posed by the Returnee, and identify the conditions that will reduce those risks and their engagement in terrorism and violent extremism. |
| <b>Interim Control Order</b>            | Police consult the Solicitor-General on making an application to High Court (civil) for an Order. If Court grants an interim order, it will come into force when it is served on the Returnee.                                  |
| <b>Final Control Order</b>              | High Court hearing to confirm or quash the Order, and confirm or vary the conditions. Hearing is held as soon as practicable, having regard to natural justice (eg allowing Returnee and lawyer time to prepare case).          |
| <b>Review and Appeal</b>                | Police or Returnee can apply to the High Court to relax or vary the conditions by consent, on the papers. Either party can apply for a review when the Returnee’s risk profile has altered or appeal the order/conditions.      |
| <b>Expiry of Order</b>                  | Order can apply for up to 2 years from date of service, but can be extended if the risk to public safety continues or increases. An order can only be extended twice (ie no extension past 6 years).                            |



## ***Multi-agency Public Protection Arrangements***

### International approach

The UK context provides an example of using multi-agency networks in the counterterrorism space. Multi-agency Public Protection Arrangements (MAPPA) have been used for post-sentence management of offenders sentenced for terrorist activity since 2009. MAPPA was established through the Criminal Justice Act 2003.

MAPPA management involves Police and probation leading offender management in a joint-responsibility agreement. They investigate and manage risks posed by the offender and set monitoring and release conditions. In a second tier of responsibility, social sector agencies (for example education, employment, housing) operate on a “duty to cooperate” protocol, whereby they engage with Police and probation to ensure that offenders are provided services to give them the best chance at successful reintegration.

Offenders are classified on a three-level schema to determine the risk level they are assessed to pose. The level of interagency contact and ongoing information sharing is based on the assessed threat level of the offender.

### Possible New Zealand approach

Police will use a multi-agency approach to help manage all individuals returning to New Zealand who have been involved in terrorism or violent extremist activities. A multi-agency approach will allow for the provision of co-ordinated, joined-up, cohesive and comprehensive support to ensure a returnee is both actively supervised and reintegrated into New Zealand society.

The multi-agency approach will assist in ensuring an application for an order includes conditions that are considered necessary, proportionate and appropriate to addressing the public safety risk. A multi-agency approach will also assist in the reintegration and rehabilitation needs of the individual by identifying services that could be relevant for the individual. Returnees are likely to need a range of support, including access to mental health services to address any post-traumatic stress disorder, or individual counselling to address violent or extremist views, as well as possibly support for employment, housing and income.

## **6.2 What are the implementation risks?**

There are concerns associated with the treatment of national security information, if this information is required to make the case for a control order. There is a lack of clarity regarding the use of national security information in civil court proceedings. It is not proposed to specify procedures for the use of national security information in the legislation for control orders. High Court judges have inherent jurisdiction and can determine the procedure around national security information on a case-by-case basis. This happens currently in the absence of a standard procedure for dealing with national security information.

A process is being developed to manage this information in court proceedings as part of the wider counter-terrorism work programme, and control orders will be covered by the new national security information process when this is enacted (expected later in 2020).

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

The Ministry of Justice will be responsible for administering the legislation. Police will be responsible for applications for a control order, and monitoring and managing a person subject to the order (in consultation/collaboration with other agencies, particularly in relation to the provision of support services to help reintegration into New Zealand community).

Other government agencies may be required to provide information to support applications (eg support services, information on expected arrival in New Zealand, security information, liaison with other countries agencies etc)

The Ministry of Justice will monitor the implementation of the scheme. Data will be collected on the number of returnees' subject to control orders and the number of breaches of control orders.

Complaints about Police conduct in relation to the regime could be made to the Independent Police Conduct Authority.

## 7.2 When and how will the new arrangements be reviewed?

Given the low numbers of orders that are expected to be issued, it is not proposed to have a specific monitoring or evaluation of the scheme. The proposed control orders regime will be examined periodically in the context of the general oversight of counter-terrorism legislation, emerging terrorism threats and international obligations with regard to counter-terrorism.

The Ministry of Justice, in consultation with Police, will monitor the implementation of the scheme and review the overall effectiveness of the control orders regime

## Appendix One – Comparison tables of control orders in overseas jurisdictions

TABLE ONE: PROCESSES FOR TERRORISM CONTROL MEASURES IN THREE JURISDICTIONS

|                     | United Kingdom  | Australia   | Canada  |
|---------------------|---|---|---|
| <b>Name</b>         | <b>Terrorist Prevention and Investigation Orders (TPIM)</b>   | <b>Control Orders</b>   | 1) <b>Terrorism Peace Bond</b><br>2) <b>Recognizance with conditions</b>  |
| <b>Legislation</b>  | <a href="#">Terrorism Prevention and Investigation Measures Act 2011</a>  | <a href="#">Criminal Code Act 1995</a> (Division 104)   | 1) Criminal Code (Summary Convictions) <a href="#">s.810.011 (Sureties to Keep the Peace – Fear of Terrorism)</a><br>2) Criminal Code (Terrorism) <a href="#">s.83.3 (Recognizance with Conditions)</a>   |
| <b>Application</b>  | Attorney-General  | Australian Federal Police on the authorisation of their Minister  | Police (generally) on the authorisation of the Attorney-General   |
| <b>Authorised</b>   | High Court  | Federal Court   | Provincial Court  |
| <b>Time Limit</b>   | Two years<br>Not able to be reapplied without additional evidence of suspect activity within the order period               | One year<br>Can be reapplied on Police application, with no statutory guidance surrounding this                 | One year<br>Can be reapplied.<br>Longer time period applies if a person has previously been convicted of terrorism offence: <ul style="list-style-type: none"> <li>• Peace Bond can be up to five years</li> <li>• Recognizance can be up to two years</li> </ul> |
| <b>Age Limit</b>    | 18 years or older   | 14 years and older<br>Orders applying to youth (14-17 years of age) can only last three months unless reapplied | Can be applied to youth but within the Youth jurisdiction   |
| <b>Commencement</b> | 2011<br>(NB: Control orders were introduced in 2005, but following a review by Home Office, were replaced by TPIMs in 2011) | 2005  | 2001  |

|   | United Kingdom   | Australia   | Canada   |
|---|--|---|--|
| <b>Numbers issued</b><br>(current regime) | 18   | Six   | 16 (since 2001) Peace Bonds<br>Zero Recognizance with Conditions   |
| <b>Statutory Safeguards</b>               | Consultation between the Secretary of State and the Chief Officer of the appropriate police force to determine whether the evidence that could be used for prosecution of terrorism-related offence.   | Consultation between the Commonwealth Director of Public Prosecutions [CDPP] and Australian Federal Police is matter of practice, rather than statutory requirement. As control order is in lieu of prosecution, CDPP advise on prospects of a prosecution.<br><br>Sunset clause with control orders expiring on 2021 (five-yearly review). | Consent of Attorney General of Canada or of a province is required before Police can apply to a judge for order.<br><br><i>Recognizance with Conditions</i> is subject to five-year sunset clause, with renewal of the provisions required by Parliament. Sunset triggered 25 Oct 2018 with bill to confirm use still proceeding through Parliament. |
| <b>Independent Review</b>                 | <a href="#">Independent Reviewer of Terrorism Legislation</a> reports to Parliament annually on the implementation of terrorism legislation, including control orders ( <a href="#">2018 report</a> ). | <a href="#">Independent National Security Legislation Monitor (INSLM)</a> reviews the effectiveness and appropriateness of counter-terrorism laws, including the <a href="#">control order regime (2018)</a> and other specific topics.   | Recognizance with Conditions is subject to requirement to report annually on its use. No similar reporting requirements for Peace Bonds.   |
| <b>Breach of an Order</b>                 | Indictable – up to five years imprisonment<br>Summary – up to 12 months  | Up to five years imprisonment for contravening an order or interference with tracking device.   | Refusal to enter into conditions can result in up to 12 months in prison.  |