

KEY POINTS OF THE COUNTER-TERRORISM AND SECURITY ACT 2015

Background and introduction

1. The Counter-Terrorism and Security Act 2015 enshrines in legislation the duty for a number of specified authorities in England and Wales “to have due regard to the need to prevent people from being drawn into terrorism”. In the Act, higher education is included as one of seven specified authorities (the others are: local authorities; schools; further education; the health sector; prisons and probation; the police).
2. HM Government has issued Prevent duty statutory guidance for all specified authorities and higher education-specific guidance. The guidance for all specified authorities notes that the duty does not confer new functions on any specified authority, stating that the term “due regard” as used in the Act means that:

“Authorities should place an appropriate amount of weight on the need to prevent people being drawn into terrorism when they carry out their usual functions.”

However, the impact of the Act is likely to be considerable, particularly in the context of monitoring and enforcement: the secretary of state has appointed monitoring bodies for each specified authority to assess compliance with the Prevent duty.

3. The existing Prevent strategy was published in 2011 and forms part of the government’s overall counter-terrorism strategy, Contest (Counter-Terrorism Strategy). In the 2015 Act, the aim of the Prevent strategy is expressed as the need to “prevent people from being drawn into terrorism”. The strategy was explicitly changed in 2011 to deal with all forms of terrorism, and with non-violent extremism, which “can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit”. The strategy also made clear that preventing people becoming terrorists or supporting terrorism requires challenge to extremist ideas, where they are used to legitimise terrorism, and appropriate interventions to stop people moving from extremist (albeit legal) groups into terrorist-related activity. The inclusion of reference to non-violent extremism presents specific challenges to HEIs, particularly in the context of institutions’ responsibilities relating to freedom of speech and academic freedom.
4. As well as the general guidance, the government has published sector specific guidance for higher education institutions in England and Wales. There is separate guidance for HEIs in Scotland and separate publications relating to further education. The statutory guidance for higher education received parliamentary approval on 18 September 2015, the date on which the duty became effective for relevant higher education bodies (RHEBs). The Higher Education Funding Council for England (HEFCE) has been appointed the monitoring authority for all RHEBs in England, publicly funded, designated, and other. Scottish HEIs will be monitored by both local multi-agency Contest groups and the national Prevent and Contest structures, although the Scottish guidance does note that “there may be a role for the governing body (which is responsible for ensuring that the effective management of the institution and has a role in reviewing compliance with its statutory duties, including compliance with equality and diversity policies)”. The Higher Education Funding Council for Wales (HEFCW) will monitor Welsh institutions.
5. Statutory guidance emphasises that Prevent is intended to cover all kinds of terrorist threats in the UK – it notes that the most significant of these threats is currently from terrorist organisations in Syria and Iraq (ISIS/ISIL/Daesh), and Al Qa’ida associated groups, but also refers to the extreme right. In fulfilling the duty in Section 26 of the Act, it is expected that all authorities will participate fully in work to prevent people from being drawn into terrorism. How they do this will vary, depending on many factors – the age of the individual, how much interaction they have with them, etc. In the case of universities and other higher education providers, the commitment to playing a role in preventing terrorism and violent extremism forms part of a wide-ranging responsibility to ensure the safety and wellbeing of staff, students and the wider community. Many institutions have engaged previously with the Prevent agenda and have strong links with police, security services and local communities. The guidance for higher education institutions notes that universities’ commitment to freedom of speech means they represent “one of the most important arenas for challenging extremist views and ideologies”. It also states that, because young people continue to make up a disproportionately high number of those arrested for terrorist-related offences and of those joining terrorist organisations in Syria and Iraq: “universities must be vigilant and aware of the risks this poses”.

A risk-based approach

6. To comply with the duty, there is an expectation in the statutory guidance that all specified authorities should demonstrate an awareness and understanding of the risk of radicalisation in their area, institution or body. Of course the risk will vary greatly and can change rapidly. The type and scale of activity that will address the risk will vary but all specified authorities are required to give due consideration to it.

Three common themes

7. There are three themes which are discussed in the statutory guidance for all specified authorities, which recur in the higher education-specific guidance:
- **Leadership:** the expectation that those in leadership positions: establish or use existing mechanisms for understanding the risk of radicalisation; ensure staff understand the risk and build the capabilities to deal with it; communicate and promote the importance of the duty; and ensure staff implement the duty effectively.
 - **Working in partnership:** specified authorities must demonstrate effective compliance with the duty through evidence of productive co-operation with local Prevent coordinators, the police and local authorities, and through existing multi-agency forums (eg Community Safety Partnerships).
 - **Capabilities:** appropriate frontline staff should understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it. They need to be aware of what the statutory guidance means by the term “extremism” and its relationship with terrorism. Staff need to know measures available to prevent people being drawn into terrorism and how to challenge the extremist ideology associated with it. All authorities subject to the duty will need to ensure they provide appropriate training for staff involved in the implantation of this duty.

Sharing information

8. The statutory guidance emphasises that the Prevent programme must not involve any covert activity against people or communities. However, the guidance notes that authorities may need to share personal information, and at the same time, ensure that the rights of individuals are fully protected. Information sharing agreements should be in place at a local level. When sharing information specified authorities should take account of: necessity and proportionality; issues around consent; their power to share information; responsibilities under the Data Protection Act; and any other confidentiality obligations that exist.
9. The guidance notes that there may be occasions when specified authorities, in the course of Prevent-related work, identify someone who may already be engaged in illegal terrorist-related activity. People suspected of being involved in such activity must be referred to the police.

Higher education-specific guidance

10. The Act specifies the HEIs covered by the duty, the relevant higher education bodies (RHEBs), namely:
- The governing body of qualifying institutions within the meaning given by Section 11 of the Higher Education Act 2004 (in effect all institutions who qualify for public funding).
 - Private HEIs not in receipt of public funding from the higher education funding councils of England and Wales, but which have similar characteristics; this includes governing bodies or proprietors of institutions that have at least 250 students, excluding students on distance learning courses, undertaking a higher education course.
11. The guidance does not envisage the new duty creating large new burdens on institutions – the intention is that it should be implemented in a proportionate and risk-based way. Compliance with the duty:

“Requires that properly thought-through procedures and policies are in place...which match the general expectations set out in this guidance...Compliance will only be achieved if these procedures and policies are properly followed and applied.”

The statutory guidance does not prescribe what appropriate decisions would be; this will be up to individual institutions to determine, having considered all the factors of the case.

12. The guidance expects all HEIs to be delivering in the following areas:

Partnership

- Active engagement from senior management (including, where appropriate, vice-chancellors) with other partners including police and BIS higher education and further education Prevent coordinators.

- Engagement and consultation with students on plans for implementing the duty.
- Use of internal mechanisms to share information about Prevent across the institution.
- A single point of contact for operational delivery of Prevent-related activity.
- Regular contact with the relevant Prevent coordinator.

Risk assessment

- Universities will be expected to carry out a risk assessment which assesses where and how their students might be at risk of being drawn into terrorism – should include violent and non-violent extremism.
- Risk assessments to look at institutional policies regarding campus and student welfare, including equality and diversity and safety and welfare of students and staff.
- Must also assess the physical management of the university estate – policies and procedures for events held by staff, students or visitors and community groups.

Action plan

- Any institution that identifies a risk should develop a Prevent action plan to set out the actions.

Staff training

- A willingness to undertake Prevent awareness and other training.
- Understanding of the factors that make people support terrorist ideologies or engage in terrorist-related activity.
- To recognise vulnerability and what to do in response, including how to make referrals to the Channel programme (the early intervention multi-agency process designed to safeguard vulnerable people from being drawn into violent extremism or terrorism).

Information sharing

- Procedures (internal and external) for sharing information about vulnerable individuals.

Welfare and pastoral care/chaplaincy support

- Appropriate safeguarding policies and procedures.
- Policies for the use of prayer rooms and other faith-related facilities, outlining arrangements for managing prayer facilities – an oversight committee, for example.

IT policies

- Containing specific reference to the statutory duty.
- Consider the use of filters to restrict access to harmful content.
- Clear policies and procedures for students and staff working on sensitive or extremism-related research in line with UUK guidance.

Students' unions and societies

- Clear policies setting out the activities that are or are not allowed on campus and any online activity directly related to the university.
- Policies to set out what is expected from students' unions and societies in relation to Prevent.
- Expectation that students' unions and societies work closely with their institution and co-operate with institutions' policies.
- Students' unions are charitable bodies subject to relevant laws including those that relate to preventing terrorism – students' unions to consider appropriate training.

Actions required

- 13.** Many institutions have been engaging with Prevent for a long period of time and, in most cases, a “person responsible” will have been identified. Senior officers, including most vice-chancellors/chief executives and secretaries/chief operating officers will have met with the relevant authorities to discuss levels of risk etc. There has been a longstanding legal requirement on publicly funded institutions to have policies in place to ensure freedom of speech on campus and many institutions will have worked with their students' unions on arrangements around external speakers. In many cases though, and where there have not been specific issues to report, this activity may have been “under the radar” of governing bodies/boards. The 2015 Act makes the Prevent duty far more explicit, making boards and proprietors accountable for the effective implementation of the duty. This represents a step change in boards' engagement with this agenda. Although the precise list of actions will need to be determined at each institution, these will include some or all of the following:
- Risk assessment to be undertaken, aligned with the duty as set out in the statutory guidance. A detailed action plan will be one of the outcomes of completing the risk assessment.

- Risk assessment to assess where and how an institution's students might be at risk of being drawn into extremism and terrorism.
- Review safeguarding/student welfare policies and ensure that they are consistent with the Prevent duty.
- Consider appropriate training provision: What? Who? How?
- Review IT policies, and in particular, the regulations for the use of IT and communication services.
- Review policy on freedom of speech and arrangements for managing speaker requests.
- Work with students' unions to ensure effective partnership working and co-operation with institutional policies and their own compliance with charity legislation.
- Review and, where appropriate, revise freedom of speech policy – where necessary develop a new policy.
- Respond appropriately to arrangements for monitoring institutional compliance.
- Review existing or develop new information sharing agreements between the RHEB and external agencies, and consider need for additional agreements.

This list is not exhaustive and will need to be drawn up in the context of individual institutions. RHEBs will need to develop reporting procedures so that boards are provided with a satisfactory level of assurance that the RHEB is taking the required action to implement the duty effectively.

The monitoring framework for England

14. HEFCE consulted widely on a monitoring framework and the framework was published on 30 November 2015, "The Prevent duty: monitoring framework for the higher education sector": HEFCE also published a circular letter to all vice-chancellors and principals of all RHEBs on 7 December 2015. Copies can be accessed at www.hefce.ac.uk/pubs/
15. The framework comprises two phases. Phase one required RHEBs to submit, by 22 January 2016, a preliminary self-assessment of their state of preparedness. This was described in the circular letter as an assessment at a particular point in time and was intended to provide an accurate reflection of the current level of compliance with the duty. It was noted that, "by January 2016 we do not expect or require that every organisation.....will have everything in place, but we do expect that each will be able to indicate the timeframe in which they expect to have finalised the relevant policies, processes or arrangements." This self-assessment will require the authorisation by the accountable officer or chief executive.
16. The second requirement of phase one is the submission of detailed material demonstrating compliance as set out at para. 32 of the framework by:
 - 1 April for HEFCE-funded providers,
 - 1 June for alternative providers with specific course designation, and
 - 1 August for other providers and autonomous colleges (ie of Oxford, Cambridge and Durham universities).
 HEFCE has also asked at this point for data where possible on Channel referrals, events involving external speakers that have been referred for higher level decision making, and staff training. The detailed information required will include risk assessments, action plans, and policies for managing and mitigating the risks around external speakers and events, together with a paper summarising the institution's arrangements in a number of other areas (see para. 32(b)). HEFCE will undertake an assessment process, the scope of which is set out in para. 38-40 of the framework.
17. Phase two is described as "ongoing monitoring". This will involve an annual report from the governing body or proprietor and a detailed assessment of institutional arrangements on a five-yearly cycle. For the detailed assessments, there will be:
 - An annual sample commencing 1 December 2016, for HEFCE-funded providers and autonomous colleges.
 - An annual sample commencing 1 February 2017, for alternative providers (ie alternative providers with specific course designation and other providers).
 The framework also requires that institutions report serious incidents and third-party reports – see para. 49.

John Ryan, Associate, Leadership Foundation for Higher Education