

KEY POINTS OF THE COUNTER TERRORISM AND SECURITY ACT 2015

Background and introduction

1. The Counter Terrorism and Security Act 2015 enshrined 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 issued Prevent duty statutory guidance for all specified authorities and higher education-specific guidance. The guidance for all specified authorities noted 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 has not been insignificant, 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. 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 higher education institutions, particularly in the context of institutions’ responsibilities relating to freedom of speech and academic freedom.
4. As well as the general guidance the government published sector-specific guidance for higher education institutions in England and Wales. There is separate guidance for higher education institutions 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) was appointed the monitoring authority for all RHEBs in England, publicly funded, designated, and other. (This responsibility will transfer to the Office for Students from 1 April 2018.) Further education colleges that are subject to the duty are monitored separately by the Office for Standards in Education (Ofsted) or the Department for Education (DfE). Scottish higher education institutions 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) is the monitoring authority for 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. 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 cooperation 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 implementation 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 higher education institutions 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 higher education institutions 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 higher education institutions to be delivering in the following areas:-

Partnership

- Active engagement from senior management (including, where appropriate, vice-chancellors) with other partners including police and DfE 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 and maintain a current risk assessment which assesses where and how their students might be at risk of being drawn into terrorism – this 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 to be taken. Action plans should reflect the risk assessment and indicate the scope of any training required. Plans will need to be updated to reflect changes in risk assessments.

Staff training

- A willingness to undertake Prevent awareness and other appropriate 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 the institutional arrangements for escalating individual cases internally and for possible referral 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 cooperate 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 had been engaging with Prevent before the 2015 Act. Senior officers, including most vice-chancellors/ chief executives and secretaries/chief operating officers have met routinely with the relevant authorities to discuss levels of risk etc. In many cases though, and where there had not been specific issues to report, this activity may have been “under the radar” of governing bodies/boards. The 2015 Act made the Prevent duty an explicit statutory function and boards and proprietors became accountable for the effective implementation of the duty. This represented a step change in boards’ engagement with this agenda. A primary responsibility of boards/proprietors in the context of Prevent is to ensure an initial assessment of risk, an action plan and to put in place appropriate reporting procedures to ensure compliance with the statutory duty on an ongoing basis. This should include an overview of the institutional arrangements for approving and reviewing the relevant policies and procedures on which the institution relies to implement the duty. Boards/ proprietors constitute the reporting authority and hold responsibility for providing assurance to the monitoring authority that the institution is compliant. The Committee of University Chairs has published an Illustrative Practice Note to support boards in implementing the Prevent Strategy – available here - www.universitychairs.ac.uk/publications

The monitoring framework for England

14. Hefce consulted widely on a monitoring framework and a first framework was published on 30 November 2015 (Hefce 2015/32). This was subsequently updated in September 2016 (Hefce 2016/24) and again in August 2017 (Hefce 2017/10) to reflect feedback from key stakeholders and a move towards a more risk-based and light-touch approach to monitoring. Further information is available on Hefce’s website at www.hefce.ac.uk/reg/prevent/framework/.

15. A phased approach has been taken to monitoring. **Phase One** was completed by August 2016. Institutions were required to submit an initial self-assessment of their “readiness to implement the duty” and subsequently detailed material demonstrating that they had ‘due regard’ to the Prevent duty.

16. **Phase two** consists of an ongoing monitoring process which includes submission of an annual report by RHEBs summarising any relevant evidence which demonstrates their continuing active and effective implementation of the Prevent duty.

- Responses to outstanding actions and feedback from previous assessment phases.
- Declarations from the governing body or proprietor.
- Evidence of ongoing engagement and active implementation of the Prevent duty (including data returns as appropriate).
- Additional information.

The annual reports should be submitted by **1 December** for Hefce-funded institutions (including the autonomous halls and colleges of the universities of Cambridge, Durham and Oxford) and **1 March** for providers with designated status and those providers that offer higher education to more than 250 students.

Providers will be assessed as having ‘due regard’ to the duty if they satisfactorily demonstrate that they both:

- Have appropriate policies and processes in place in response to the Prevent statutory guidance.
- Are following these policies and processes in practice.

Hefce will assess the reports received and provide feedback identifying any concerns or issues. Where there are significant concerns, this process may trigger a request for further information or this may lead to more intensive scrutiny through a Prevent review meeting. It will be up to institutions to determine what information it is appropriate to include in their annual report. Hefce will write to providers in the summer prior to each annual report submission with more specific guidance for each reporting cycle.

RHEBs should also contact Hefce in a timely manner to discuss **any serious incidents related to their Prevent duty responsibilities**

Further information on the monitoring framework including annual reports, Prevent reviews and serious incident reporting is available on the Hefce website at www.hefce.ac.uk/reg/prevent/framework/.

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