

**Draft Enhanced Terrorism
Prevention and Investigation
Measures Bill**



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Prevention and Investigation
Measures Bill**

Presented to Parliament by the Secretary of State
For the Home Department
By Command of Her Majesty

September 2011

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ISBN: 9780101816625

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID: 2450306 09/11 14624 19585

Printed on paper containing 75% recycled fibre content minimum.

Draft Enhanced Terrorism Prevention and Investigation Measures Bill

1. On 26 January 2011, the Home Secretary announced the conclusions of the review of counter-terrorism and security powers.
2. The review concluded that control orders should be repealed and replaced with a less intrusive and more focused system of terrorism prevention and investigation measures. In line with that conclusion, the Government introduced in the House of Commons the Terrorism Prevention and Investigation Measures (TPIM) Bill on 23 May 2011. The Government is also making additional resources available to the Security Service and police for covert investigative techniques, to complement the new regime.
3. The review also concluded that there may be exceptional circumstances where it would be necessary for the Government to seek Parliamentary approval for additional restrictive measures. The Government therefore committed to preparing draft emergency legislation for introduction should such exceptional circumstances arise.
4. The draft Enhanced Terrorism Prevention and Investigation Measures Bill is therefore being published today. It would provide powers for the Home Secretary to impose enhanced TPIM notices specifying more stringent restrictions than those available under the TPIM Bill if approved by Parliament.
5. The draft Bill is being published so that it can be subject to pre-legislative scrutiny.

Enhanced Terrorism Prevention and Investigation Measures Bill

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Make provision for the imposition of enhanced terrorism prevention and investigation measures

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Enhanced regime to protect the public from terrorism

1 Imposition of terrorism prevention and investigation measures

- (1) The Secretary of State may by notice (an “enhanced TPIM notice”) impose specified terrorism prevention and investigation measures on an individual if conditions A to E in section 2 are met.
- (2) In this Act “terrorism prevention and investigation measures” means requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 1 (terrorism prevention and investigation measures).
- (3) In this section and Part 1 of Schedule 1 “specified” means specified in the enhanced TPIM notice.

2 Conditions A to E

- (1) Condition A is that the Secretary of State is satisfied on the balance of probabilities that the individual is, or has been, involved in terrorism-related activity (the “relevant activity”).
- (2) Condition B is that some or all of the relevant activity is new terrorism-related activity.
- (3) Condition C is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for terrorism prevention and investigation measures to be imposed on the individual.
- (4) Condition D is that—

- (a) the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified terrorism prevention and investigation measures to be imposed on the individual, and
 - (b) some or all of the specified terrorism prevention and investigation measures are measures that may not be imposed by a standard TPIM notice.
- (5) Condition E is that—
- (a) the court gives the Secretary of State permission under section 6 of TPIMA 2011 (as it applies to this Act by virtue of section 3), or
 - (b) the Secretary of State reasonably considers that the urgency of the case requires terrorism prevention and investigation measures to be imposed without obtaining such permission.
- (6) In this section “new terrorism-related activity” means—
- (a) if no enhanced TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring at any time (whether before or after the coming into force of this Act);
 - (b) if only one enhanced TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring after that notice came into force;
 - (c) if two or more enhanced TPIM notices relating to the individual have been in force, terrorism-related activity occurring after such a notice came into force most recently.

3 Application of other enactments to this Act

- (1) The following provisions of TPIMA 2011 apply to this Act—
- (a) sections 4 to 16;
 - (b) section 17(1) and (2);
 - (c) section 18;
 - (d) sections 22 to 24;
 - (e) Schedules 2 to 6.
- (2) These enactments also apply to this Act—
- (a) rules of court made under Schedule 4 to TPIMA 2011;
 - (b) any other enactment which is not contained in TPIMA 2011 but which relates to TPIMA 2011 or to standard TPIM notices or anything else to which that Act relates.
- (3) Schedule 2 (modification of enactments) has effect.
- (4) In this section and that Schedule “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
 - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
 - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.

*Relationship with existing regime of terrorism prevention and investigation measures***4 Relationship with TPIMA 2011**

- (1) An individual is not bound by a standard TPIM notice at any time when an enhanced TPIM notice is in force in relation to the individual.
- (2) Subject to subsection (1), the application of TPIMA 2011 in relation to an individual (including the Secretary of State's powers to impose measures on the individual by a standard TPIM notice, in particular by reviving such a notice) is not affected by any imposition of measures on the individual by an enhanced TPIM notice.
- (3) The application of this Act in relation to an individual (including the Secretary of State's powers to impose measures on the individual by an enhanced TPIM notice, in particular by reviving such a notice) is not affected by any imposition of measures on the individual by a standard TPIM notice.

*Reports and reviews***5 Reports on exercise of powers under Act**

- (1) The Secretary of State must—
 - (a) prepare a report about the exercise of the powers mentioned in subsection (2) during each reporting period, and
 - (b) lay a copy of each such report before Parliament.
- (2) The powers referred to in subsection (1) are the powers of the Secretary of State under this Act—
 - (a) to impose measures on an individual by an enhanced TPIM notice under section 1;
 - (b) to extend an enhanced TPIM notice under section 5(2) of TPIMA 2011 (as it applies to this Act);
 - (c) to vary an enhanced TPIM notice under section 12 of TPIMA 2011 (as it applies to this Act);
 - (d) to revoke an enhanced TPIM notice under section 13(1) of TPIMA 2011 (as it applies to this Act);
 - (e) to revive an enhanced TPIM notice under section 13(6) of TPIMA 2011 (as it applies to this Act).
- (3) The duty under subsection (1) in relation to the preparation and laying of a report must be carried out as soon as reasonably practicable after the end of the period to which the report relates.
- (4) The Secretary of State may combine a report under this section with a report under section 19 of TPIMA 2011.
- (5) This section does not require a report to be made in relation to any time which falls after the Secretary of State's enhanced TPIM powers have expired or been repealed under section 9, except for the period of 28 days referred to in section 10(2).
- (6) In this section "reporting period" means—

- (a) the period from the passing of this Act until the first time that a period of 3 months ends for the purposes of section 19(1)(a) of TPIMA 2011, and
- (b) each subsequent 3 month period.

6 Reviews of operation of Act

- (1) The Secretary of State must appoint the independent reviewer to review the operation of this Act.
- (2) The independent reviewer must carry out a review of the operation of this Act in respect of each review period.
- (3) Each review must be completed as soon as reasonably practicable after the review period to which it relates.
- (4) The independent reviewer must send to the Secretary of State a report on the outcome of each review carried out under subsection (2) as soon as reasonably practicable after completion of the review.
- (5) On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.
- (6) The Secretary of State may pay to the independent reviewer –
 - (a) expenses incurred in carrying out the functions of the reviewer under this section, and
 - (b) such allowances as the Secretary of State determines.
- (7) The independent reviewer may combine a report under this section with a report under section 20 of TPIMA 2011.
- (8) This section does not require a review to be carried out in relation to any time which falls after the Secretary of State’s enhanced TPIM powers have expired or been repealed under section 9, except for the period of 28 days referred to in section 10(2).
- (9) In this section –
 - “independent reviewer” means the person who is appointed to be the independent reviewer for the purposes of section 20 of TPIMA 2011;
 - “review period” means –
 - (a) period which –
 - (i) begins with the passing of this Act, and
 - (ii) ends with the end of the calendar year in which this Act is passed; and
 - (b) each subsequent calendar year;
 - “Secretary of State’s enhanced TPIM powers” has the same meaning as in section 9.

Enforcement

7 Offence

- (1) An individual is guilty of an offence if –
 - (a) an enhanced TPIM notice is in force in relation to the individual, and

- (b) the individual contravenes, without reasonable excuse, any measure specified in the enhanced TPIM notice.
- (2) If the individual has the permission of the Secretary of State by virtue of Schedule 1 for an act which would, without that permission, contravene such a measure, the individual contravenes that measure by virtue of that act if the act is not in accordance with the terms of that permission.
- (3) An individual guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both;
 - (b) on summary conviction in England and Wales or Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
 - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (4) Where an individual is convicted by or before a court of an offence under subsection (1), it is not open to that court to make in respect of the offence—
- (a) an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge);
 - (b) an order under section 227A of the Criminal Procedure (Scotland) Act 1995 (community payback orders); or
 - (c) an order under Article 4(1)(b) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conditional discharge in Northern Ireland).

Final provisions

8 Financial provision

- (1) The Secretary of State may enter into such contracts and other arrangements with other persons as the Secretary of State considers appropriate for securing their assistance in connection with any monitoring, by electronic or other means, that the Secretary of State considers needs to be carried out in connection with measures specified in enhanced TPIM notices.
- (2) The following are to be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State or Lord Chancellor by virtue of this Act, and
 - (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

9 Expiry and repeal of enhanced TPIM powers

- (1) Except so far as otherwise provided under this section, the Secretary of State's enhanced TPIM powers expire at the end of the period of 12 months beginning with the day on which this Act is passed.
- (2) The Secretary of State may, by order made by statutory instrument—
- (a) repeal the Secretary of State's enhanced TPIM powers; or
 - (b) provide that the Secretary of State's enhanced TPIM powers—

- (i) are not to expire at the time when they would otherwise expire under subsection (1) or in accordance with an order under this subsection; but
 - (ii) are to continue in force after that time for a period not exceeding one year.
- (3) Before making an order under this section the Secretary of State must consult –
 - (a) the independent reviewer appointed for the purposes of section 6;
 - (b) the Intelligence Services Commissioner; and
 - (c) the Director-General of the Security Service.
- (4) An order under this section may not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (5) Subsection (4) does not apply to an order that contains a declaration by the Secretary of State that the order needs, by reason of urgency, to be made without the approval required by that subsection.
- (6) An order that contains such a declaration –
 - (a) must be laid before Parliament after being made; and
 - (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which the order was made, ceases to have effect at the end of that period.
- (7) Where an order ceases to have effect in accordance with subsection (6), that does not –
 - (a) affect anything previously done in reliance on the order; or
 - (b) prevent the making of a new order to the same or similar effect.
- (8) In this section –
 - “40 days” means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946;
 - “Secretary of State’s enhanced TPIM powers” means –
 - (a) the power to impose an enhanced TPIM notice under section 1;
 - (b) the power to extend an enhanced TPIM notice under section 5(2) of TPIMA 2011 (as it applies to this Act);
 - (c) the power to vary an enhanced TPIM notice under section 12(1)(c) of TPIMA 2011 (as it applies to this Act); and
 - (d) the power to revive an enhanced TPIM notice under section 13(6) to (9) of TPIMA 2011 (as it applies to this Act).

10 Section 9: supplementary provision

- (1) This section applies if the Secretary of State’s enhanced TPIM powers expire or are repealed under section 9.
- (2) An enhanced TPIM notice which is in force immediately before expiry or repeal is to –
 - (a) continue in force for the period of 28 days beginning with expiry or repeal; and
 - (b) be treated as if revoked by the Secretary of State at the end of that period.
- (3) Subsection (2)(a) is subject to –

- (a) any variation under section 12(1)(a) or (b) of TPIMA 2011 (as it applies to this Act), and
 - (b) any revocation or quashing.
- (4) Except as provided for in subsection (5) or (6), TPIM proceedings may neither continue nor be begun after expiry or repeal.
- (5) TPIM proceedings of a kind set out in subsection (7) may continue, or be begun, after expiry or repeal, but only for the purpose of determining one or more of the following matters –
- (a) whether a TPIM notice should be quashed;
 - (b) whether measures imposed by a TPIM notice should be quashed;
 - (c) whether to make a declaration under paragraph 4(4) of Schedule 2 to TPIMA 2011 (as it applies to this Act).
- (6) Proceedings for an award of damages or other relief arising out of TPIM proceedings of a kind set out in subsection (7)(a) to (c) may continue, or be begun, after expiry or repeal.
- (7) The TPIM proceedings referred to in subsections (5) and (6) are –
- (a) a reference made under paragraph 3 of Schedule 2 to TPIMA 2011 (as it applies to this Act) before expiry or repeal;
 - (b) a hearing in pursuance of directions under section 8(2) or 8(5) of TPIMA 2011 (as they apply to this Act);
 - (c) an appeal under section 16 of TPIMA 2011 (as it applies to this Act);
 - (d) an appeal, or further appeal, relating to a decision in any proceedings mentioned in any of paragraphs (a) to (c).

11 Interpretation etc

- (1) An expression used in this Act and in TPIMA 2011 has the same meaning in this Act as in TPIMA 2011 unless the context otherwise requires (including where the expression is given a different meaning for the purposes of this Act).
- (2) In this Act –
- “condition A”, “condition B”, “condition C”, “condition D” or “condition E” means that condition as set out in section 2 of this Act;
 - “enhanced TPIM notice” has the meaning given in section 1(1);
 - “measures” (except in relation to a standard TPIM notice) means terrorism prevention and investigation measures (which has the meaning given in section 1);
 - “standard TPIM notice” means a TPIM notice under TPIMA 2011;
 - “TPIM decision” means –
 - (a) a decision made by the Secretary of State in exercise or performance of any power or duty –
 - (i) under section 1 or 2 of, or Schedule 1 to, this Act, or
 - (ii) under any of sections 4 to 15 of TPIMA 2011, or under Schedule 2 to TPIMA 2011, as they apply to this Act;
 - (b) a decision made by the Secretary of State for the purposes of, or in connection with, the exercise or performance of any such power or duty;
 - (c) a decision by a constable to give a direction by virtue of paragraph 5 of Schedule 1 (movement directions measure);

- (d) a decision by a person to give a direction by virtue of paragraph 13(2)(d) of Schedule 1 (monitoring measure);

“TPIM proceedings” means –

- (a) proceedings on an application for permission under section 6 of TPIMA 2011 (as it applies to this Act);
- (b) proceedings on a reference under Schedule 2 to TPIMA 2011 (as it applies to this Act);
- (c) proceedings on a directions hearing held in accordance with directions under section 8(2) of TPIMA 2011 (as it applies to this Act);
- (d) proceedings on a review hearing held in accordance with directions under section 8(5) of TPIMA 2011 (as it applies to this Act);
- (e) proceedings on an appeal under section 16 of TPIMA 2011 (as it applies to this Act);
- (f) proceedings by virtue of section 17(2) of TPIMA 2011 (as it applies to this Act);
- (g) proceedings on an application made by virtue of rules of court made under paragraph 6 of Schedule 4 to TPIMA 2011 (as those rules apply to this Act);
- (h) any other proceedings for questioning a TPIM decision (including any claim for damages or other relief arising out of such a decision);

“TPIMA 2011” means the Terrorism Prevention and Investigation Measures Act 2011.

- (3) In a case where –
 - (a) an enhanced TPIM notice has come into force in relation to an individual, and
 - (b) by virtue of the coming into force of that enhanced TPIM notice, terrorism-related activity which occurred before the coming into force of that notice has ceased to be new terrorism-related activity (within the meaning of section 2(6)) in relation to that individual for the purposes of that section,
 the Secretary of State is not prevented from taking account of that activity for the purposes of the continued imposition, or subsequent imposition, of measures on that individual.
- (4) For the purposes of the definition of “new terrorism-related activity” in section 2, if an enhanced TPIM notice is revived under section 13(6) of TPIMA 2011, a reference to the notice coming into force is a reference to it coming into force by virtue of section 5(1) of TPIMA 2011 (and not to it coming back into force by virtue of section 13(9) of TPIMA 2011).
- (5) For the purposes of determining what measures may be imposed on an individual, it is immaterial whether the involvement in terrorism-related activity to be prevented or restricted by the measures is connected with matters which relate to the Secretary of State being satisfied for the purposes of condition A.
- (6) A failure by the Secretary of State to consider an application by an individual for –
 - (a) the revocation of an enhanced TPIM notice, or
 - (b) the variation of measures specified in an enhanced TPIM notice,

is to be treated as a decision by the Secretary of State not to revoke, or not to vary, the enhanced TPIM notice.

- (7) Subsections (3) to (6) apply for the purposes of this Act.
- (8) In subsection (4), references to provisions of TPIMA 2011 are references to those provisions as they apply to this Act.

12 Short title, commencement, extent and revocation of temporary enhanced TPIM order

- (1) This Act may be cited as the Enhanced Terrorism Prevention and Investigation Measures Act [20..].
- (2) This Act comes into force on the day after the day on which it is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.
- (4) Her Majesty may by Order in Council direct that this Act is to extend, with such modifications as appear to Her Majesty to be appropriate, to the Isle of Man.
- (5) Subsections (6) to (11) apply if a temporary enhanced TPIM order is in force immediately before commencement.
- (6) The temporary enhanced TPIM order is revoked at commencement.
- (7) A temporary TPIM notice which is in force immediately before commencement is to continue in force after commencement –
 - (a) as an enhanced TPIM notice; and
 - (b) for the period of one year, less any period for which the temporary TPIM notice was in force before commencement.
- (8) Subsection (7) has effect –
 - (a) notwithstanding anything to the contrary (including provision in the temporary enhanced TPIM order, the temporary TPIM notice, or anything else under that order); and
 - (b) without the need for the notice to be served again on the individual;but is subject to any quashing, revocation, extension or revival of the notice after commencement.
- (9) Any exercise of a power conferred by the temporary enhanced TPIM order in relation to the imposition of measures on an individual by a temporary TPIM notice (whether or not that notice is in force immediately before commencement) is to be treated, after commencement, as the exercise of the corresponding power conferred by this Act in relation to the imposition of those measures on that individual by an enhanced TPIM notice.
- (10) Any proceedings under any provision of the temporary enhanced TPIM order are to continue, after commencement, as proceedings under the corresponding provision of this Act; and any right under any provision of the temporary enhanced TPIM order to bring proceedings is to be treated, after commencement, as a right to bring proceedings under the corresponding provision of this Act.
- (11) In this section –

“commencement” means the coming into force of this Act;

“temporary TPIM notice” means a notice which imposes measures on an individual by the exercise of the power conferred by a temporary enhanced TPIM order;

“temporary enhanced TPIM order” means an order under section [*temporary power for imposition of enhanced measures*] of TPIMA 2011.

SCHEDULES

SCHEDULE 1

Section 1

TERRORISM PREVENTION AND INVESTIGATION MEASURES

PART 1

MEASURES

Residence measure

- 1 (1) The Secretary of State may impose restrictions on the individual in relation to the residence in which the individual resides.
- (2) The Secretary of State may, in particular, impose any of the following –
 - (a) a requirement to reside at a specified residence;
 - (b) a requirement not to allow others to reside at that residence without the permission of the Secretary of State;
 - (c) a requirement, applicable between such hours as are specified, to remain at the specified residence.
- (3) The specified residence –
 - (a) may be in any locality in the United Kingdom that appears to the Secretary of State to be appropriate;
 - (b) may be a residence provided by or on behalf of the Secretary of State.
- (4) If the specified residence is provided to the individual by or on behalf of the Secretary of State, the Secretary of State may require the individual to comply with any specified terms of occupancy of that residence (which may be specified by reference to a lease or other document).
- (5) A requirement of the kind mentioned in sub-paragraph (2)(c) must include provision to enable the individual to apply for the permission of the Secretary of State to be away from the specified residence, for the whole or part of any applicable period, on one or more occasions.
- (6) The Secretary of State may grant such permission subject to either or both of the following conditions –
 - (a) the condition that the individual remains overnight at other agreed premises between such hours as the Secretary of State may require;
 - (b) the condition that the individual complies with such other restrictions in relation to the individual's movements whilst away from the specified residence as may be so required.
- (7) “Agreed premises” are premises in the United Kingdom which are agreed by the Secretary of State and the individual.
- (8) Sub-paragraph (6) is not to be read as limiting –

- (a) the generality of sub-paragraph (7) of paragraph 14 (power to impose conditions when granting permission), or
 - (b) the power to impose further conditions under that sub-paragraph in connection with permission granted by virtue of sub-paragraph (5) of this paragraph.
- (9) In sub-paragraph (7) “applicable period” means a period for which the individual is required to remain at the specified residence by virtue of a restriction imposed under this paragraph.

Travel measure

- 2 (1) The Secretary of State may impose restrictions on the individual leaving a specified area or travelling outside that area.
- (2) The specified area must be one of the following areas –
- (a) the United Kingdom (in any case);
 - (b) Great Britain (if the individual’s place of residence is in Great Britain);
 - (c) Northern Ireland (if the individual’s place of residence is in Northern Ireland).
- (3) The Secretary of State may, in particular, impose any of the following requirements –
- (a) a requirement not to leave the specified area without the permission of the Secretary of State;
 - (b) a requirement to give notice to the Secretary of State before leaving that area;
 - (c) a requirement not to possess or otherwise control, or seek to obtain, any travel document without the permission of the Secretary of State;
 - (d) a requirement to surrender any travel document that is in the possession or control of the individual.
- (4) “Travel document” means –
- (a) the individual’s passport, or
 - (b) any ticket or other document that permits the individual to make a journey by any means –
 - (i) from the specified area to a place outside that area, or
 - (ii) between places outside the specified area.
- (5) “Passport” means any of the following –
- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971);
 - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

Exclusion measure

- 3 (1) The Secretary of State may impose restrictions on the individual entering –
- (a) a specified area or place, or
 - (b) a place or area of a specified description.

- (2) The Secretary of State may, in particular, impose any of the following requirements in respect of a specified area or place or a specified description of an area or place –
- (a) a requirement not to enter without the permission of the Secretary of State;
 - (b) a requirement to give notice to the Secretary of State before entering;
 - (c) a requirement not to enter unless other specified conditions are met.

Movement restrictions measure

- 4 (1) The Secretary of State may impose restrictions on the individual leaving a specified area.
- (2) The Secretary of State may, in particular, impose either or both of the following requirements –
- (a) a requirement not to leave a specified area without the permission of the Secretary of State;
 - (b) a requirement not to leave a specified area unless other specified conditions are met.

Movement directions measure

- 5 (1) The Secretary of State may impose a requirement for the individual to comply with directions given by a constable in respect of the individual's movements (which may, in particular, include a restriction on movements).
- (2) A constable may give such directions only for the purpose of securing compliance –
- (a) with other specified measures, or
 - (b) with a condition imposed under this Act requiring the individual to be escorted by a constable.
- (3) Directions may not remain in effect for a period that is any longer than the constable giving the directions considers necessary for the purpose mentioned in sub-paragraph (2); but that period may not in any event be a period of more than 24 hours.

Financial services measure

- 6 (1) The Secretary of State may impose restrictions on the individual's use of, or access to, such descriptions of financial services as are specified.
- (2) The Secretary of State may, in particular, impose any of the following requirements –
- (a) a requirement not to hold any accounts, without the permission of the Secretary of State, other than the nominated account (see sub-paragraph (3));
 - (b) a requirement to close, or to cease to have an interest in, accounts;
 - (c) a requirement to comply with specified conditions in relation to the holding of any account (including the nominated account) or any other use of financial services;
 - (d) a requirement not to possess, or otherwise control, cash over a total specified value without the permission of the Secretary of State.

- (3) The Secretary of State must allow the individual to hold (at least) one account (the “nominated account”) if –
- (a) the individual gives notice to the Secretary of State of the holding of the nominated account, and
 - (b) the account is held with a bank.
- (4) In sub-paragraph (3) “bank” means an institution which is incorporated in, or formed under the law of, any part of the United Kingdom and which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 to that Act and any order under section 22 of that Act).
- (5) The reference in sub-paragraph (2)(d) to possessing or otherwise controlling cash does not include any cash that is held in an account with a person providing financial services (in accordance with any requirements imposed under this paragraph).
- (6) In sub-paragraph (2)(d) “cash” means –
- (a) coins and notes in any currency,
 - (b) postal orders,
 - (c) cheques of any kind, including travellers’ cheques,
 - (d) bankers’ drafts,
 - (e) bearer bonds and bearer shares, and
 - (f) such other kinds of monetary instrument as may be specified.
- (7) A reference in this paragraph to the individual holding an account is a reference to an account held with a person providing financial services –
- (a) that is in the individual’s name or is held for the individual’s benefit (whether held solely in the individual’s name or jointly with one or more other persons); or
 - (b) in respect of which the individual has power of attorney or can otherwise exercise control.
- (8) In this paragraph “financial services” means any service of a financial nature, including (but not limited to) banking and other financial services consisting of –
- (a) accepting deposits and other repayable funds;
 - (b) lending (including consumer credit and mortgage credit);
 - (c) payment and money transmission services (including credit, charge and debit cards).

Property measure

- 7 (1) The Secretary of State may impose either or both of the following –
- (a) restrictions on the individual in relation to the transfer of property to, or by, the individual, or
 - (b) requirements on the individual in relation to the disclosure of property.
- (2) The Secretary of State may, in particular, impose any of the following requirements –

- (a) a requirement not to transfer money or other property to a person or place outside the United Kingdom without the permission of the Secretary of State;
 - (b) a requirement to give notice to the Secretary of State before transferring money or other property to a person or place outside the United Kingdom;
 - (c) a requirement to comply with any other specified conditions in relation to the transfer of property to, or by, the individual;
 - (d) a requirement to disclose to the Secretary of State such details as may be specified of any property that falls within sub-paragraph (3).
- (3) Property falls within this sub-paragraph if it is property of a specified description –
- (a) in which the individual has an interest of any kind, or
 - (b) over which, or in relation to which, the individual may exercise any right (including a right of use or a right to grant access).
- (4) A reference in this paragraph to the transfer of property includes a reference to the arrangement of such a transfer.
- (5) In this paragraph “property” includes rights over, or in relation to, property (including rights of use and rights to grant access); and a reference to the transfer of property includes a reference to the acquisition or disposal of such rights.

Electronic communication device measure

- 8 (1) The Secretary of State may impose either or both of the following –
- (a) restrictions on the individual’s possession or use of electronic communication devices;
 - (b) requirements on the individual in relation to the possession or use of electronic communication devices by other persons in the individual’s residence.
- (2) The Secretary of State may, in particular, impose –
- (a) a requirement not to possess or use any devices without the permission of the Secretary of State;
 - (b) a requirement that a device may only be possessed or used subject to specified conditions.
- (3) The conditions specified under sub-paragraph (2)(b) may, in particular, include conditions in relation to –
- (a) the type or make of a device (which may require the individual to use a device that is supplied or modified by the Secretary of State);
 - (b) the manner in which, or the times at which, a device is used;
 - (c) the monitoring of such use;
 - (d) the granting to a specified description of person of access to the individual’s premises for the purpose of the inspection or modification of a device;
 - (e) the surrendering to a specified description of person of a device on a temporary basis for the purpose of its inspection or modification at another place.
- (4) An “electronic communication device” means any of the following –

- (a) a device that is capable of storing, transmitting or receiving images, sounds or information by electronic means;
 - (b) a component part of such a device;
 - (c) an article designed or adapted for use with such a device (including any disc, memory stick, film or other separate article on which images, sound or information may be recorded).
- (5) The devices within sub-paragraph (4)(a) include (but are not limited to) –
- (a) computers,
 - (b) telephones (whether mobile telephones or telephones operated by connection to a fixed line),
 - (c) equipment (not within paragraph (a) or (b)) designed or adapted for the purpose of connecting to the internet, and
 - (d) equipment designed or adapted for the purposes of sending or receiving facsimile transmissions.

Association measure

- 9 (1) The Secretary of State may impose restrictions on the individual's association or communication with other persons.
- (2) The Secretary of State may, in particular, impose any of the following requirements –
- (a) a requirement not to associate or communicate with other persons without the permission of the Secretary of State;
 - (b) a requirement to give notice to the Secretary of State before associating or communicating with other persons;
 - (c) a requirement to comply with any other specified conditions in connection with associating or communicating with other persons.
- (3) A requirement under sub-paragraph (2)(a) must include provision allowing the individual (without seeking permission) to associate and communicate with such persons, or descriptions of persons, as are specified.
- (4) A requirement under sub-paragraph (2)(b) must include provision allowing the individual (without giving notice) to associate and communicate with such persons, or descriptions of persons, as are specified.
- (5) A requirement under sub-paragraph (2)(c) may, in particular, relate to association or communication which is allowed by virtue of provision made in accordance with sub-paragraph (3) or (4).
- (6) An individual associates or communicates with another person if the individual associates or communicates with that person by any means (and for this purpose it is immaterial whether the association or communication is carried out by the individual in person or by or through another individual or means).

Work or studies measure

- 10 (1) The Secretary of State may impose restrictions on the individual in relation to the individual's work or studies.
- (2) The Secretary of State may, in particular, impose any of the following requirements –

- (a) a requirement not to carry out without the permission of the Secretary of State—
 - (i) specified work or work of a specified description, or
 - (ii) specified studies or studies of a specified description;
 - (b) a requirement to give notice to the Secretary of State before carrying out any work or studies;
 - (c) a requirement to comply with any other specified conditions in connection with any work or studies.
- (3) In this paragraph—
“work” includes any business or occupation (whether paid or unpaid);
“studies” includes any course of education or training.

Reporting measure

- 11 (1) The Secretary of State may impose a requirement for the individual to report to such a police station as the Secretary of State may by notice require at the times and in the manner so required.
- (2) Such a notice may, in particular, provide that a requirement to report to a police station is not to apply if conditions specified in the notice are met.

Photography measure

- 12 The Secretary of State may impose a requirement for the individual to allow photographs to be taken of the individual at such locations and at such times as the Secretary of State may by notice require.

Monitoring measure

- 13 (1) The Secretary of State may impose requirements for the individual to co-operate with specified arrangements for enabling the individual’s movements, communications or other activities to be monitored by electronic or other means.
- (2) The Secretary of State may, in particular, impose any of the following requirements for co-operation with the specified arrangements—
 - (a) a requirement to submit to procedures required by the arrangements;
 - (b) a requirement to wear or otherwise use apparatus approved by or in accordance with the arrangements;
 - (c) a requirement to maintain such apparatus in a specified manner;
 - (d) a requirement to comply with directions given by persons carrying out functions for the purposes of the arrangements.
- (3) Directions under sub-paragraph (2)(d) may include directions requiring the individual to grant access to the individual’s residence for the purpose of the inspection or modification of any apparatus used or maintained under the arrangements.

PART 2

PERMISSION AND NOTICES

Permission

- 14 (1) Any application by an individual for permission must be made in writing.
- (2) The Secretary of State may by notice specify –
 - (a) the information to be supplied on an application, and
 - (b) the time by which the application is to be made.
- (3) A notice under sub-paragraph (2) may make different provision for different measures.
- (4) The Secretary of State may by notice request the provision, within such period of time as the notice may specify, of further information from the individual in connection with an application received under sub-paragraph (1).
- (5) The Secretary of State is not required to consider an application further unless any information requested under sub-paragraph (4) is provided in accordance with the notice mentioned in that sub-paragraph.
- (6) Permission on an application is granted by the Secretary of State giving notice to the individual.
- (7) Permission may be granted subject to such conditions as the Secretary of State may by notice specify.
- (8) In this paragraph “permission” means permission in connection with a requirement or restriction imposed under Part 1 of this Schedule.

Notices

- 15 (1) This paragraph applies for the purposes of any notice given by the individual to the Secretary of State in connection with measures imposed under Part 1 of this Schedule (“a Part 1 notice”).
- (2) The Secretary of State may by notice specify –
 - (a) the information to be supplied in a Part 1 notice, and
 - (b) the time by which a Part 1 notice is to be given.
- (3) A notice under sub-paragraph (2) may make different provision for different measures.
- (4) The Secretary of State may by notice request the provision, within such period of time as the notice may specify, of further information from the individual in connection with a Part 1 notice received from the individual.
- (5) A requirement on the individual to give a Part 1 notice is not complied with unless and until the individual has received notice from the Secretary of State –
 - (a) that the Part 1 notice has been received, and
 - (b) that no (or no further) information is required under sub-paragraph (4) in relation to the Part 1 notice.

Power of Secretary of State to vary or revoke notices

- 16 The Secretary of State may vary or revoke a notice given by the Secretary of State under this Schedule.

SCHEDULE 2

Section 3

MODIFICATION OF ENACTMENTS

The applied enactments

- 1 In this Schedule “applied enactment” means an enactment which applies to this Act by virtue of section 3.

Modification of enactments

- 2 In the application of any applied enactment to this Act, the enactment has effect subject to paragraphs 4 to 6.
- 3 In its application to this Act and to TPIMA 2011, Schedule 6 to TPIMA 2011 (fingerprints and samples) has effect subject to paragraph 7.

Modification of expressions

- 4 In the application of any applied enactment to this Act, a reference to an expression listed in column 1 of this table has effect as a reference to the expression listed in the corresponding entry in column 2—

<i>A reference in an applied enactment to...</i>	<i>has effect in its application to this Act as a reference to...</i>
a TPIM notice (within the meaning of TPIMA 2011)	an enhanced TPIM notice (within the meaning of this Act)
an offence under section 21(1) of TPIMA 2011	an offence under section 7(1) of this Act

- 5 In the application of any applied enactment to this Act, a reference to any of the following expressions within the meaning of TPIMA 2011 has effect as a reference to that expression within the meaning of this Act—
- condition A;
 - condition B;
 - condition C;
 - condition D;
 - condition E;
 - measures;
 - a TPIM decision;
 - TPIM proceedings.

Modification of cross-references

- 6 In the application of any applied enactment to this Act, a reference to a provision of TPIMA 2011 listed in column 1 of this table (or to a particular part of such a provision) has effect as a reference to the provision of this Act which is listed in the corresponding entry in column 2 (or to the corresponding part of that provision) –

<i>A reference in an applied enactment to this provision of TPIMA 2011...</i>	<i>has effect in its application to this Act as a reference to this provision of this Act...</i>
section 3 or 3(5)(b)	section 2 or 2(5)(b)
Paragraph 7(4)(e) of Schedule 1	paragraph 8(3)(e) of Schedule 1
paragraph 10 of Schedule 1	paragraph 11 of Schedule 1
paragraph 13 of Schedule 1	paragraph 14 of Schedule 1

Fingerprints and samples

- 7 In its application to this Act and to TPIMA 2011, Schedule 6 to TPIMA 2011 has effect as if the following paragraph were substituted for paragraph 8 –

- “8 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual who has no previous convictions or (in the case of England and Wales) only one exempt conviction.
- (2) The material may be retained until the end of the period of six months beginning with the date on which the relevant notice that was in force when the material was taken ceases to be in force (subject to sub-paragraphs (3) and (4)).
- (3) If, before the end of that period, the relevant notice is quashed by the court, the material may be retained only until there is no possibility of an appeal against –
- (a) the decision to quash the notice, or
 - (b) any decision made on an appeal against that decision.
- (4) If, after a relevant notice is quashed or otherwise ceases to be in force, relevant measures are imposed on the individual (whether by the revival of a relevant notice or the imposition of a new relevant notice) –
- (a) within the period for which material in relation to the individual is retained by virtue of sub-paragraph (2), or
 - (b) within, or immediately after the end of, the period for which such material is retained by virtue of sub-paragraph (3),
- sub-paragraphs (2) and (3) apply again for the purposes of the retention of that material (taking references to the relevant notice as references to the revived or new relevant notice).
- (5) In this paragraph –
- “ETPIMA [20..]” means the Enhanced Terrorism Prevention and Investigation Measures Act [20..];

- “relevant measures” means –
- (a) measures” means measures under TPIMA 2011; or
 - (b) measures under ETPIMA [20..], or
- “relevant notice” means –
- (a) a TPIM notice under TPIMA 2011, or
 - (b) an enhanced TPIM notice under ETPIMA [20..];
- “TPIMA 2011” means the Terrorism Prevention and Investigation Measures Act 2011.”

Rules of court

- 8 (1) A power to make rules of court in relation to enhanced TPIM notices may, in particular, be exercised so as to make such rules by modifying rules of court relating to standard TPIM notices which apply to enhanced TPIM notices.
- (2) The first time after the passing of this Act that rules of court relating to standard TPIM notices are modified in accordance with sub-paragraph (1) in relation to proceedings in England and Wales or in Northern Ireland, the modifications may be made by the Lord Chancellor instead of by the person who would otherwise make them.
- (3) Sub-paragraphs (2) to (9) of paragraph 7 of Schedule 4 to TPIMA 2011 apply (with appropriate modifications) to sub-paragraph (2) above as they apply to paragraph 7(1) of that Schedule.

Power to make further modifications etc

- 9 (1) The Secretary of State may, by order made by statutory instrument, –
- (a) modify any enactment (whether in its application to this Act or otherwise), or
 - (b) disapply from this Act an enactment which would otherwise apply to it,
- if the Secretary of State considers that the modification or disapplication is necessary or expedient for the purposes of this Act.
- (2) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Paragraphs 2 to 7 are subject to any provision made under sub-paragraph (1)(a).
- (4) Section 3(1) and (2), and references in this Act to applied enactments, are subject to provision made under sub-paragraph (1)(b).

ENHANCED TERRORISM PREVENTION AND INVESTIGATION MEASURES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Enhanced Terrorism Prevention and Investigation Measures Bill that has been published for pre-legislative scrutiny in 2011. They have been prepared by the Home Office in order to assist the reader in understanding the draft Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Terrorism Prevention and Investigation Measures (TPIM) Bill was introduced in the House of Commons on 23 May 2011. The TPIM Bill makes provision to replace control orders with a new system of TPIM notices.
4. That Bill reflects the outcome of the Coalition Government's Review of Counter-Terrorism and Security Powers, which was published on 26 January 2011 in the Government's *Review of Counter-Terrorism and Security Powers Review Findings and Recommendations (Cm 8004)*.
5. Further background on control orders and the replacement regime of TPIM notices can be found in the Explanatory Notes to the TPIM Bill.
6. The Review of Counter-Terrorism and Security Powers also concluded that, in the event of a very serious terrorist risk that cannot be managed by any other means, more stringent measures may be required to protect the public than those available under the TPIM Bill. The Government therefore committed to preparing draft emergency legislation for introduction should such circumstances arise.

SUMMARY

7. The Bill consists of 12 clauses and 2 schedules.
8. The regime for enhanced TPIM notices is to operate in a very similar way to

that for standard TPIM notices. The draft Bill therefore takes the broad approach of applying where appropriate the provisions of the TPIM Bill. The draft Bill also however makes substantive provision to give effect to the differences between the two regimes (in particular the different conditions for imposing an enhanced notice and the different measures that may be imposed), to make provision for reporting and review requirements, to provide for the temporary duration of the powers and to make provision as to how the two regimes interact.

9. The TPIM Bill will, if it receives royal assent as expected before the end of this year, become the Terrorism Prevention and Investigation Measures Act 2011. For sake of clarity in the discussion below, in what follows the TPIM Bill is referred to as “the 2011 Act” and its provisions are referred to as “sections” of that Act. The draft Enhanced Terrorism Prevention and Investigation Measures Bill is referred to as “the Bill” and its provisions are referred to as “clauses” of that Bill.

Clauses 1-2 and Schedule 1: Imposition of enhanced terrorism prevention and investigation measures

10. These clauses provide the power for the Secretary of State to impose enhanced terrorism prevention and investigation measures on an individual, by means of an enhanced TPIM notice, if certain conditions are met.

11. The measures that may be imposed are set out in Schedule 1. These largely replicate those that may be imposed under the 2011 Act, but differ in relation to residence, electronic communications, movement and association, in respect of which more stringent restrictions are available under Schedule 1 to the Bill.

Clause 3 and Schedule 2: Application of other legislation to this Bill

12. Much of the framework of the enhanced TPIM regime relies on the application of provisions of the 2011 Act (and certain other provisions) to the Bill. This clause, and Schedule 2, sets out how those provisions are to be applied.

Clauses 4: Relationship with standard TPIM notices

13. This clause reflects the fact that enhanced and standard TPIM notices are to be treated as separate entities and provides that the Secretary of State’s use of her powers in relation to one type of notice does not affect her ability to use her powers in relation to the other. However, an individual cannot be subject to both types of notices at the same time (see *subsection (1)*).

Clauses 5-6: Reports and reviews on operation of the Bill

14. These clauses contain equivalent provision to that contained in the 2011 Act requiring the Secretary of State to report to Parliament on a quarterly basis on the exercise of her powers and an independent reviewer to be appointed to provide annual reports on the operation of the legislation. The clauses also make provision harmonising the operation of the requirements in these clauses with their counterparts in the 2011 Act.

Clause 7: Offence

15. Clause 7 creates an offence of contravening a measure specified in an enhanced TPIM notice without reasonable excuse. This is substantively the same as

the offence in the 2011 Act of contravening a measure in a TPIM notice (including the same maximum penalty).

Clause 8-12: Final provisions

16. Clause 8 makes general provisions about financial matters. Clause 9 provides that the Bill's provisions will expire after 12 months unless renewed (for up to a further 12 months) by order. There is also a power to repeal the legislation by order. Clause 10 comprises supplementary provision relating to clause 9, making various transitional and saving provisions in relation to the enhanced TPIM regime, in particular in relation to notices that are in force when the Bill's provisions expire or are repealed. Clauses 11 and 12 make general provisions concerning interpretation, commencement, the title of the Bill and its extent.

TERRITORIAL EXTENT

17. The Bill's provisions extend to England, Wales, Scotland and Northern Ireland. In relation to Wales, Scotland and Northern Ireland the Bill addresses reserved or excepted matters, although certain provisions touch on matters that are devolved in Scotland.

18. The provisions that touch on devolved matters in Scotland fall within the terms of the Sewel Convention. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The Scottish Government intends to promote a legislative consent motion in relation to identical provisions in the 2011 Act. The UK and Scottish Governments are considering the most appropriate means of ensuring legislative consent for the same provisions in this draft emergency Bill.

19. No provisions of the Bill relate to devolved matters in Wales or confer functions on the Welsh Ministers.

20. No provisions of the Bill relate to devolved matters in Northern Ireland, or confer functions on the Northern Ireland Ministers.

COMMENTARY ON CLAUSES

21. The commentary on clauses to this Bill focuses on substantive differences to the 2011 Act. Where this Bill simply applies provisions in the 2011 Act, a detailed explanation of those provisions can be found in the Explanatory Notes to that Act.

Clause 1: Imposition of terrorism prevention and investigation measures and Schedule 1

22. Clause 1 creates a power for the Secretary of State to impose enhanced TPIM notices. It replicates section 2 of the 2011 Act, with the exception that it refers to 'enhanced TPIM notices' where the 2011 Act refers to 'TPIM notices'.

23. Schedule 1 replicates much – but not all – of Schedule 1 to the 2011 Act, with

the effect that the Secretary of State may impose many of the same types of measures that may be imposed under a standard TPIM notice. However, Schedule 1 to the Bill also makes provision for some different measures to be imposed.

24. *Paragraph 1* provides for a ‘residence measure’, which allows the Secretary of State to require the individual to reside at a specified residence, which may be in any part of the United Kingdom and which may be provided by the Secretary of State. The individual may be required not to allow others to reside at that address without permission. And the individual may also be required to remain at that residence for a specified period of time each day. This differs from the ‘overnight residence measure’ available under the 2011 Act in that it permits the Secretary of State to require the individual to relocate to Home Office-provided accommodation in another part of the country without his or her consent, and to require him or her to observe a curfew which may fall at any time during the day (whereas the power to confine an individual to his or her residence under the 2011 Act is limited to an “overnight” period). Current case law in the control order context, which it is anticipated will also be applicable for enhanced TPIM notices, allows for the imposition of a curfew of up to 16 hours’ duration per day.¹

25. *Paragraph 4* provides for a ‘movement restrictions measure’ which allows the Secretary of State to specify an area outside of which the individual may not travel without permission or without meeting other specified conditions.

26. *Paragraph 8* provides an ‘electronic communication device measure’ and replicates much of paragraph 7 of Schedule 1 to the 2011 Act. However, unlike the provision in the 2011 Act, it does not specify a minimum level of access to such devices that the Secretary of State must permit. So a total ban on access to devices can be imposed.

27. *Paragraph 9* largely replicates the ‘association measure’ at paragraph 8 of Schedule 1 to the 2011 Act, in that it allows the Secretary of State to impose restrictions on the individual’s association or communication with other persons. But in addition to the provision in the 2011 Act, it specifies that such restrictions may include a requirement not to communicate or associate with any person without the prior permission of the Secretary of State (subject to any specified exclusions). (The corresponding power under the 2011 Act provides that prior permission is required only in relation to a number of specified individuals or individuals of a specified description – for example individuals who are outside the United Kingdom). *Paragraph 9* also includes provision requiring the exemption of certain persons or descriptions of persons from the requirements for the individual to seek permission or give notice before associating or communicating with other persons. This would be used, for example, to exclude from the requirement members of the emergency services or healthcare professionals who were operating in their professional capacity.

¹ See in particular *Secretary of State for the Home Department JJ & Others* [2007] UKHL 45 (which found that a curfew of 18 hours a day constituted an unlawful deprivation of liberty contrary to article 5 of the ECHR) and *Secretary of State for the Home Department v AP* [2010] UKSC 24 (which made clear that where a curfew of 14 to 16 hours a day is imposed, obligations in a control order other than the curfew are also relevant when determining whether that order amounts to a deprivation of liberty).

Clause 2: Conditions A to E

28. Clause 2 largely replicates section 3 of the 2011 Act, save for two differences.

29. Condition A (in relation to imposing an enhanced TPIM notice) is that the Secretary of State must be satisfied ‘on the balance of probabilities’ – a higher test than in the 2011 Act, which requires ‘reasonable belief’ – that the individual is or has been involved in terrorism-related activity.

30. The other difference is that condition D includes a further element – not only must the Secretary of State reasonably consider that it is necessary, for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity, for each of the specified measures to be imposed on the individual, but at least some of the measures imposed must be measures that cannot be imposed under a standard TPIM notice. This second limb of condition D ensures that the regimes for standard and enhanced TPIM notices are kept separate. So where for example the Secretary of State considers that an individual does not need to remain subject to enhanced measures, but does need to be subject to standard measures available under the 2011 Act, she must revoke the enhanced TPIM notice and impose (or revive) a standard TPIM notice. She may not vary the enhanced TPIM notice such that it no longer contains any enhanced measures.

Clause 3: Application of other enactments to this Act and Schedule 2

31. Clause 3 sets out the provisions of the 2011 Act that apply to this Bill. This includes all provisions of the 2011 Act except for those replaced by substantive provision in this Bill and explained elsewhere in these notes, and section 1 (abolition of control orders) and Schedules 7 (minor and consequential amendments) and 8 (transitional and saving provision) which are unnecessary in the context of this Bill. The explanatory notes to the 2011 Act should be consulted for an explanation of the provisions in that Act which are applied to this Bill.

32. The effect of the application of these provisions of the 2011 Act to the Bill is that the regime for enhanced TPIM notices is to operate in the same way as that provided for in the 2011 Act in relation to standard TPIM notices. So, for example, section 9 (review hearing) of the 2011 Act applies, meaning that the process for the court review as set out in section 9 applies in relation to enhanced TPIM notices just as it applies in relation to standard TPIM notices.

33. The provisions that apply include those relating to the meaning of terrorism-related activity, the two year time limit for TPIM notices (in the absence of evidence of further terrorism-related activity), prior permission of the court (or using the urgency procedure) for imposing a TPIM notice, directions hearing and the full review hearing, the consultation requirements in relation to criminal investigations, the review of ongoing necessity, the variation, revocation and revival of TPIM notices, powers following the quashing of TPIM notices, appeals, closed proceedings, the service of notices, the powers of entry, search and seizure associated with TPIM notices and the taking and retention of biometric material from persons subject to TPIM notices. So in each of these respects, the operation of the enhanced TPIM regime is identical to that in the 2011 Act.

34. *Subsection (2)(a)* applies to this Bill any rules of court made under

Schedule 4 to the 2011 Act (that is rules of court relating to TPIM proceedings, including procedures for the use of closed material and for making anonymity orders). *Paragraph 8* of Schedule 2 to the Bill provides that these rules can be adapted as necessary for the purposes of enhanced TPIM notices (and that the first time they are made in England and Wales or Northern Ireland after the Bill is passed, they may be made by the Lord Chancellor – subject to the provisions relating to the equivalent power in Schedule 4 to the 2011 Act). *Subsection (2)(b)* applies all other relevant enactments, other than the 2011 Act or the Rules of Court made under that Act, to the Bill. This includes enactments which refer to the 2011 Act or to TPIM notices. The result is that all the enactments which are amended by Schedule 7 to the 2011 Act (minor and consequential amendments) will apply to the Bill. For example, the reference to paragraphs 6, 7, 8 or 10 of Schedule 5 to the 2011 Act in section 1(1)(g) of the Counter-Terrorism Act 2008 (as amended by the 2011 Act) will have effect as including a reference to those paragraphs in their application to the Bill.

35. Schedule 2 makes provision for the modification of applied enactments, including the 2011 Act, as they apply to the Bill. *Paragraphs 4, 5 and 6* make provision for how certain terms and references in an enactment applied pursuant to clause 3 should be interpreted. So that, for example, where an applied enactment refers to “TPIM proceedings” this will be taken to mean TPIM proceedings as defined in the Bill when considering the effect of that applied enactment in the context of the Bill (as well as continuing to mean TPIM proceedings as defined in the 2011 Act when considering the enactment in the context of that Act). For example, Schedule 1 to the Senior Courts Act 1981 makes provision that TPIM proceedings are to be allocated to the Queen’s Bench Division (see paragraph 1 of Schedule 7 to the 2011 Act). While the Bill is in force, this reference to TPIM proceedings will be read as also including a reference to enhanced TPIM proceedings – so that such proceedings will also be allocated to the Queen’s Bench Division.

36. *Paragraph 7* modifies Schedule 6 to the 2011 Act (fingerprints and samples) in its application to the Bill and the 2011 Act. Schedule 6 makes provision for the taking and retention of biometric material from individuals subject to a TPIM notice. Reference should be made to the relevant paragraphs of the Explanatory Notes to the 2011 Act. However, in brief, where the individual has no relevant previous convictions, such material may be retained for a period of 6 months after an individual ceases to be subject to a TPIM notice – or a shorter period if the notice is quashed and there is no further possibility of an appeal against the quashing. (The material may be retained for periods of up to 2 years at a time after those retention periods if a chief officer of police determines that this is necessary for purposes of national security). The modifications made by *paragraph 7* are mainly to make the retention periods for biometric material work in cases where an individual is subject to both a TPIM notice and an enhanced TPIM notice (at different times). The effect is that where biometric material is taken from a person subject to either a standard or an enhanced TPIM notice, which then ceases to be in force, but the person is subsequently made subject to the other type of notice, the relevant retention period applies after the individual ceases to be subject to either type of notice.

37. *Paragraph 9* provides a power to modify by order any other enactment in relation to its application to the Bill, or to disapply any enactment which would otherwise apply to the Bill. Such an order would be subject to the negative resolution

procedure.

Clause 4: Relationship with TPIMA 2011

38. Clause 4 makes provision relating to the separation of standard and enhanced TPIM notices. It provides that the application of the 2011 Act and the Bill in relation to an individual is not affected by the imposition of measures under the other enactment. In particular, the Secretary of State's powers under both this Bill and the 2011 Act are not affected by her having previously exercised her powers under the other enactment in relation to the same individual. So for example, if a person has previously been subject to a TPIM notice, this does not prevent the Secretary of State from imposing an enhanced TPIM notice on that person. The effect of the provision at *subsection (1)* is to ensure that a person will not be subject to both types of notice concurrently, so if the Secretary of State were to impose an enhanced TPIM notice on an individual who at that time was subject to a standard TPIM notice, she would revoke the standard TPIM notice at the same time as imposing the enhanced notice. However, the proceedings associated with the standard TPIM notice – including the full court review of the decision to impose that notice – would continue (if they have not concluded already).

Clause 5: Reports on exercise of powers under Act

39. This clause makes corresponding provision to that in section 19 of the 2011 Act, requiring the Secretary of State to report quarterly on the exercise of her powers in relation to enhanced TPIM notices. In addition, there is provision in this clause to ensure that the timing of reports made under this Bill is synchronised with the reports made on the exercise of the powers under the 2011 Act. If this Bill comes into force, the first report made under clause 5 is to be made at the same time as the next quarterly report is made under section 19 of the 2011 Act (on the exercise of the powers in relation to standard TPIM notices). And the Secretary of State must then report on every three month period after that. *Subsection (4)* provides that the Secretary of State may combine the two reports, rather than issuing two separate reports. *Subsection (5)* makes provision for the final exercise of the Secretary of State's duty to report under this clause in the event that the Secretary of State's enhanced TPIM powers expire or are repealed under clause 9. The report must include the transitional period provided for by clause 10. (For further details, see the below explanation of that clause and clause 10.)

Clause 6: Reviews of operation of Act

40. Clause 6 makes corresponding provision to that in section 20 of the 2011 Act, which requires the Secretary of State to appoint an independent reviewer to review and report on the operation of the Bill in each calendar year. Clause 6 provides that the Secretary of State must appoint the same person to act as independent reviewer of this Bill as she has appointed to review the 2011 Act, and that reports on the two enactments may be combined. The first report on the Bill is to cover the period from the time the Bill comes into force until the end of that calendar year. The clause also makes provision for the final exercise of the independent reviewer's duties under this clause in the event that the Secretary of State's enhanced TPIM powers expire or are repealed under clause 9. The report must include the transitional period provided for by clause 10. (For further details, see the below explanation of that clause and clause 10.)

Clause 7: Offence

41. Clause 7 replicates entirely the offence section of the 2011 Act, save that it refers to an enhanced TPIM notice rather than a TPIM notice. Reference should be made to the relevant paragraphs of the Explanatory Notes to the 2011 Act.

Clause 8: Financial provision

42. *Subsection (1)* grants the Secretary of State authority to purchase services in relation to any form of monitoring in connection with measures specified in enhanced TPIM notices. This would include for example electronic monitoring of compliance with the residence requirement provided for in Schedule 1. It and *subsection (2)* replicate provision contained in the equivalent section of the 2011 Act.

Clause 9: Expiry and repeal of enhanced TPIM powers

43. Clause 9 provides that the operative clauses in the Bill (“the Secretary of State’s enhanced TPIM powers”) will expire after 12 months unless they are renewed (for up to a further 12 months) by order subject to the affirmative resolution procedure. The Secretary of State’s enhanced TPIM powers are defined in *subsection (8)*. This in effect replicates the position in relation to the control order powers under the Prevention of Terrorism Act 2005 (“the 2005 Act”), which also expire unless renewed annually (see section 13 of the 2005 Act). The only substantive difference is that, unlike the Secretary of State’s powers under the 2005 Act, the Secretary of State’s enhanced TPIM powers cannot be revived by order if they have expired or been repealed – in such a scenario, new primary legislation would need to be passed.

44. Clause 9 also provides a power for the Secretary of State, by order subject to the affirmative resolution procedure, to repeal the temporary provisions of the Bill at any time.

Clause 10: Section 9: supplementary provision

45. This clause comprises supplementary provision relating to clause 9. It makes transitional and savings provision related to the expiry or repeal of the Secretary of State’s enhanced TPIM powers. It therefore has some similarities to Schedule 8 to the 2011 Act, which makes equivalent provision for the transition from control orders to (standard) TPIM notices.

46. In relation to an enhanced TPIM notice that is in force at the time the enhanced TPIM powers expire or are repealed, *subsections (2) and (3)* provide for a transitional period of 28 days during which the notice will remain in force unless revoked or quashed; variations that relax or remove measures in the notice, or which are made by agreement with the individual, may also be made during the 28 day period. *Subsections (3) to (7)* make provision allowing certain enhanced TPIM notice proceedings under this Bill to continue (or to be brought) after the expiry or repeal of the Bill, but for the purposes only of determining whether quashing of the notice or a constituent measure is appropriate or whether a declaration should be made that the Secretary of State’s decision that the urgency condition for imposing the notice is met is obviously flawed. Damages claims relating to enhanced TPIM notices may be brought or continued.

Clause 11: Interpretation etc

47. Clause 11 sets out the meaning of various terms used throughout the Bill and

makes certain provisions for the application of other clauses. It largely replicates the provisions in the equivalent section of the 2011 Act and reference should be made to the relevant paragraphs of the Explanatory Notes to the 2011 Act.

Clause 12: Short title, commencement and extent

48. Clause 12 sets out the short title of the Bill; provides that it comes into force the day after the day on which it is passed; and that it extends to England, Wales, Scotland and Northern Ireland, and may by Order in Council be extended to the Isle of Man.

49. *Subsections (5) to (11)* make (contingency) provision for circumstances in which the Bill is introduced at a time when an order is in force under the 2011 Act to provide a temporary power for the imposition of enhanced measures during a period when Parliament is dissolved or has not yet resumed business following the Queen's Speech and where the case is urgent. (See the relevant paragraphs of the Explanatory Notes to the 2011 Act relating to the power to make a temporary enhanced TPIM order for a fuller explanation.) That order will bring into force a regime of enhanced TPIM notices but the order only remains in force for a period of 90 days. By this time, Parliamentary business will have resumed and this Bill may be introduced. In these circumstances, the Bill will need to repeal the order and make transitional provision in relation to any temporary (enhanced) TPIM notices which were made under the order. These subsections provide that the exercise of any power under a temporary enhanced TPIM order is to be treated as the exercise of the corresponding power under this Bill. And it includes provision that, rather than ceasing to be in force when the temporary TPIM order expires, a temporary TPIM notice is to continue in force as an enhanced TPIM notice and is to remain in force for a period of a year (less any period for which it was in force prior to commencement of this Bill) – as notices imposed under this Bill will remain in force for a year. *Subsections (5) to (10)* and the relevant definitions in *subsection (11)* will only be included in the Bill as introduced if a temporary enhanced TPIM order under the 2011 Act is in force at the time.

FINANCIAL EFFECTS OF THE BILL

50. The financial implications of the Bill for the public sector will be minimal. This is outlined in more detail in the impact assessment that accompanies the Bill.

SUMMARY OF IMPACT ASSESSMENTS

51. The Bill is accompanied by an impact assessment.

52. The 2011 Act was also accompanied by an impact assessment. And an overarching equality impact assessment has been produced in relation to the Government's review of counter-terrorism powers – *Review of Counter-Terrorism and Security Powers Equality Impact Assessment (Cm 8006)*².

² <http://www.official-documents.gov.uk/document/cm80/8006/8006.asp>

EUROPEAN CONVENTION ON HUMAN RIGHTS

53. The Government has published a separate memorandum to the JCHR with its assessment of the compatibility of the Bill's provisions with the Convention rights, which is available on the Home Office web site.

54. The Government considers that the provisions of the draft Enhanced Terrorism Prevention and Investigation Measures Bill are compatible with the Convention rights.



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ISBN 978-0-10-181662-5



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