

TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

EXPLANATORY NOTES

SUMMARY

18. The Act consists of 31 sections and eight schedules.

Sections 1-4 and Schedule 1: New regime to protect the public from terrorism

19. **Sections 1-4** of the Act repeal the 2005 Act and provide that the Secretary of State may impose measures on an individual by serving a notice (a “TPIM notice”) on him or her if certain conditions are met. These include in particular a higher threshold for the imposition of a TPIM notice (reasonable belief that the individual is or has been involved in terrorism-related activity) than existed in relation to control orders (reasonable suspicion of involvement in such activity).

20. **Schedule 1** sets out the types of measures that may be imposed. Only measures described in Schedule 1 may be imposed. This gives the Secretary of State more tightly prescribed powers than the 2005 Act, which provided a non-exhaustive list of the obligations that could be imposed under control orders but allowed the Secretary of State to impose any obligation considered necessary to prevent or restrict an individual’s involvement in terrorism-related activity.

Section 5: Two year limit on imposition of measures without new terrorism-related activity

21. Control orders remained in force for 12 months unless renewed. The 2005 Act did not specify a limit to the number of times that a control order could be renewed, although the statutory test for renewing the control order had to be met in order for it to remain in force – and whether the test was met was considered by the High Court on appeal from the individual.

22. A conclusion of the control orders review was that measures imposed under the replacement system should be subject to a two-year time limit, beyond which they could not remain in force without evidence of further engagement in terrorism-related activity. This section gives effect to that time limit.

Sections 6-9 and Schedule 2: Court scrutiny of imposition of measures

23. **Sections 6-9** and **Schedule 2** provide that, before imposing measures on an individual, the Secretary of State must seek the court’s permission to do so – except in cases of urgency, where the notice must be immediately referred to the court for confirmation. If the court gives permission, or confirms measures imposed urgently, it must give directions for a full review hearing at which the court will review the Secretary of State’s decisions in relation to imposing the measures. This replicates the position in relation to control orders under the 2005 Act. The commentary on sections includes an explanation of the applicable case law.

These notes refer to the Terrorism Prevention and Investigation Measures Act 2011 (c.23) which received Royal Assent on 14 December 2011

24. The relevant court in England and Wales is the High Court; in Scotland the Outer House of the Court of Session; in Northern Ireland the High Court in Northern Ireland (see section 30(1)).

Section 10: Consultation requirements

25. **Section 10** makes provision relating to the duties of the Secretary of State and the police in relation to the prospects for prosecuting an individual subject to, or proposed to be made subject to, a TPIM notice for a terrorism-related offence. The section maintains all the requirements contained in the 2005 Act. In addition, the Coalition Government's review of control orders concluded that these requirements should include a statutory duty on the chief officer to report back to the Secretary of State on the ongoing review of the investigation of the individual's conduct. Section 10 delivers this.

Section 11: Review of ongoing necessity

26. **Section 11** places a statutory duty on the Secretary of State to keep the necessity of the measures under review while they remain in force.

Sections 12-15 and Schedule 3: Changes concerning TPIM notices

27. These sections make provision – equivalent to that in the 2005 Act in relation to control orders – for a person subject to the new measures to apply to the Secretary of State for the revocation of the notice or the variation of the measures imposed by it. There is further provision for the Secretary of State to revoke a TPIM notice or to vary the measures specified in it (including where necessary without the individual's consent). The sections also make provision for the Secretary of State to revive a TPIM notice where he or she has previously revoked it or allowed it to expire. And the sections also make provision in relation to the quashing of a TPIM notice or directions by the court in relation to TPIM notices and the Secretary of State's powers to impose a replacement notice in those circumstances.

Sections 16-18 and Schedule 4: Appeals and court proceedings

28. In addition to the mandatory court review of the imposition of a TPIM notice, sections 16 to 18 provide that a person subject to measures may appeal against the extension or revival of a notice; a variation of a measure specified in a notice without consent; and the Secretary of State's refusal of an application to revoke a notice, to vary a specified measure or to grant permission in relation to a specified measure. This provides similar rights of appeal to those that existed in relation to control orders.

Sections 19-22: Other safeguards

29. **Sections 19** and **20** place requirements – equivalent to those contained in the 2005 Act in relation to control orders – on the Secretary of State to report to Parliament on a quarterly basis on the exercise of his or her powers, and to appoint a person to review the operation of the Act annually. And sections 21 and 22 provide for the operative powers of the Act to expire after five years unless renewed by order. The powers may also be repealed by order.

Section 23: Offence

30. **Section 23** creates an offence of contravening a measure in a TPIM notice without reasonable excuse. This effectively recreates the main offence of the 2005 Act of contravening an obligation imposed under a control order (including the same maximum penalty).

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Section 24 and Schedule 5: Powers of entry, seizure, search and retention

31. **Schedule 5** introduces specific powers of entry, seizure, search and retention in relation to the measures.

Section 25 and Schedule 6: Fingerprints and non-intimate samples

32. **Schedule 6** makes provision for the taking and retention of fingerprints and samples from individuals subject to the measures. These broadly reflect the uncommenced 2008 Act and 2010 Act provisions relating to control orders, but with a shorter retention period.

Sections 26 – 27: Temporary enhanced TPIM order

33. **Sections 26** and **27** provide a power for the Secretary of State to introduce by order powers to impose enhanced TPIM notices. The provision that may be made by such an order would essentially correspond to that set out in the draft ETPIM Bill. This power may only be used between the dissolution of a Parliament and the first Queen's Speech of the next Parliament when the case is urgent.

Sections 28 –31 and Schedules 7 and 8: Final provisions

34. **Section 28** makes provision in relation to the service of TPIM notices and related notices. Sections 29-31 make general provisions concerning financial matters, interpretation, the title of the Act and its extent.