

# Terrorism Prevention and Investigation Measures Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 193 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Theresa May has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Terrorism Prevention and Investigation Measures Bill are compatible with the Convention rights.

# Terrorism Prevention and Investigation Measures Bill

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**B I L L**

TO

Abolish control orders and make provision for the imposition of terrorism prevention and investigation measures.

**B**E 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:—

*New regime to protect the public from terrorism*

**1 Abolition of control orders**

The Prevention of Terrorism Act 2005 (which gives powers to impose control orders) is repealed.

**2 Imposition of terrorism prevention and investigation measures**

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(1) The Secretary of State may by notice (a “TPIM notice”) impose specified terrorism prevention and investigation measures on an individual if conditions A to E in section 3 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).

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(3) In this section and Part 1 of Schedule 1 “specified” means specified in the TPIM notice.

**3 Conditions A to E**

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(1) Condition A is that the Secretary of State reasonably believes 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.

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- (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 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. 5
- (5) Condition E is that— 10
- (a) the court gives the Secretary of State permission under section 6, 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— 15
- (a) if no 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 TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring after that notice came into force; or 20
  - (c) if two or more TPIM notices relating to the individual have been in force, terrorism-related activity occurring after such a notice came into force most recently.
- 4 Involvement in terrorism-related activity**
- (1) For the purposes of this Act, involvement in terrorism-related activity is any one or more of the following— 25
- (a) the commission, preparation or instigation of acts of terrorism;
  - (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
  - (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so; 30
  - (d) conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraphs (a) to (c);
- and for the purposes of this Act it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general. 35
- (2) For the purposes of this Act, it is immaterial whether an individual's involvement in terrorism-related activity occurs before or after the coming into force of this Act.
- Two year limit on imposition of measures without new terrorism-related activity* 40
- 5 Two year limit for TPIM notices**
- (1) A TPIM notice—
- (a) comes into force when the notice is served on the individual or, if later, at the time specified for this purpose in the notice; and
  - (b) is in force for the period of one year. 45

- (2) The Secretary of State may by notice extend a TPIM notice for a period of one year beginning when the TPIM notice would otherwise expire.
- (3) A TPIM notice—
  - (a) may be extended under subsection (2) only if conditions A, C and D are met; and
  - (b) may be so extended on only one occasion.
- (4) This section is subject, in particular, to sections 13 (revocation and revival of TPIM notices) and 14 (replacement of TPIM notice that is quashed etc).

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*Court scrutiny of imposition of measures*

- 6 Prior permission of the court** 10
- (1) This section applies if the Secretary of State—
    - (a) makes the relevant decisions in relation to an individual, and
    - (b) makes an application to the court for permission to impose measures on the individual.
  - (2) The application must set out a draft of the proposed TPIM notice. 15
  - (3) The function of the court on the application is—
    - (a) to determine whether the relevant decisions of the Secretary of State are obviously flawed, and
    - (b) to determine whether to give permission to impose measures on the individual and (where applicable) whether to exercise the power of direction under subsection (9). 20
  - (4) The court may consider the application—
    - (a) in the absence of the individual;
    - (b) without the individual having been notified of the application; and
    - (c) without the individual having been given an opportunity (if the individual was aware of the application) of making any representations to the court. 25
  - (5) But that does not limit the matters about which rules of court may be made.
  - (6) In determining the application, the court must apply the principles applicable on an application for judicial review. 30
  - (7) In a case where the court determines that a decision of the Secretary of State that condition A, condition B, or condition C is met is obviously flawed, the court may not give permission under this section.
  - (8) In any other case, the court may give permission under this section.
  - (9) If the court determines that the Secretary of State’s decision that condition D is met is obviously flawed, the court may (in addition to giving permission under subsection (8)) give directions to the Secretary of State in relation to the measures to be imposed on the individual. 35
  - (10) In this section “relevant decisions” means the decisions that the following conditions are met—
    - (a) condition A;
    - (b) condition B;40

- (c) condition C; and
- (d) condition D.

## 7 Urgent cases: reference to the court etc

Schedule 2 (urgent cases: reference to the court etc) has effect.

## 8 Directions hearing

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- (1) This section applies if the court—
  - (a) gives permission under section 6 for measures to be imposed on an individual, or
  - (b) confirms under paragraph 4(3) of Schedule 2 (whether or not subject to paragraph 4(2) of that Schedule) a TPIM notice which imposes measures on an individual. 10
- (2) The court must, at the hearing where it gives the permission or confirms the notice, give directions for a further hearing (a “directions hearing”)—
  - (a) which is to be held within the period of 7 days beginning with the relevant day, and 15
  - (b) which the individual is to have the opportunity to attend.
- (3) The court may, if the individual agrees, postpone the directions hearing so that it takes place after the end of that period of 7 days.
- (4) In a case where this section applies because the court gives permission under section 6, directions given under subsection (1) may not be served on the individual unless the TPIM notice has been served on that individual. 20
- (5) At the directions hearing, the court must give directions for a further hearing (a “review hearing”) in relation to the imposition of measures on the individual.
- (6) Directions under subsection (5) must provide for the review hearing to be held as soon as reasonably practicable. 25
- (7) In this section “relevant day” means—
  - (a) in a case falling within subsection (1)(a), the day on which the TPIM notice imposing the measures is served on the individual;
  - (b) in a case falling within subsection (1)(b), the day on which the court confirms the TPIM notice. 30

## 9 Review hearing

- (1) On a review hearing held in compliance with directions under section 8(5), the function of the court is to review the decisions of the Secretary of State that the relevant conditions were met and continue to be met. 35
- (2) In doing so, the court must apply the principles applicable on an application for judicial review.
- (3) The court—
  - (a) must discontinue the review hearing if the individual requests the court to do so; and 40
  - (b) may discontinue the review hearing in any other circumstances.

- (4) The court may not discontinue the review hearing in accordance with subsection (3)(b) without giving the Secretary of State and the individual the opportunity to make representations.
- (5) The court has the following powers (and only those powers) on a review hearing— 5
- (a) power to quash the TPIM notice;
  - (b) power to quash measures specified in the TPIM notice;
  - (c) power to give directions to the Secretary of State for, or in relation to,—
    - (i) the revocation of the TPIM notice, or
    - (ii) the variation of measures specified in the TPIM notice. 10
- (6) If the court does not exercise any of its powers under subsection (5), the court must decide that the TPIM notice is to continue in force.
- (7) If the court exercises a power under subsection (5)(b) or (c)(ii), the court must decide that the TPIM notice is to continue in force subject to that exercise of that power. 15
- (8) In this section “relevant conditions” means—
- (a) condition A;
  - (b) condition B;
  - (c) condition C; and
  - (d) condition D. 20

#### *Consultation requirements*

### **10 Criminal investigations into terrorism-related activity**

- (1) The Secretary of State must consult the chief officer of the appropriate police force about the matter mentioned in subsection (2) before—
- (a) making an application under section 6 for permission to impose measures on an individual, or 25
  - (b) imposing measures on an individual in a case to which section 3(5)(b) applies (urgency of the case requires measures to be imposed without obtaining the permission of the court).
- (2) The matter is whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence relating to terrorism. 30
- (3) The “appropriate police force” means the police force—
- (a) that is investigating the commission of any such offence by the individual, or 35
  - (b) by which it appears to the Secretary of State that the commission of any such offence by the individual would fall to be investigated.
- (4) If the Secretary of State serves a TPIM notice on an individual, the Secretary of State must inform the chief officer of the appropriate police force—
- (a) that the TPIM notice has been served, and 40
  - (b) that the chief officer must act in accordance with the duty under subsection (5).
- (5) After being informed of the matters mentioned in subsection (4), the chief officer must—

- (a) secure that the investigation of the individual’s conduct, with a view to a prosecution of the individual for an offence relating to terrorism, is kept under review throughout the period the TPIM notice is in force, and
- (b) report to the Secretary of State on the review carried out under paragraph (a). 5
- (6) The chief officer must consult the relevant prosecuting authority before responding to consultation under subsection (1).
- (7) The chief officer must also, to the extent that the chief officer considers it appropriate to do so, consult the relevant prosecuting authority in carrying out the duty under subsection (5)(a). 10
- (8) The “relevant prosecuting authority” is—
- (a) in the case of offences that would be likely to be prosecuted in England and Wales, the Director of Public Prosecutions;
- (b) in the case of offences that would be likely to be prosecuted in Scotland, the appropriate procurator fiscal; 15
- (c) in the case of offences that would be likely to be prosecuted in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (9) The duty to consult under subsection (1) or (6) may be satisfied by consultation that took place wholly or partly before the passing of this Act. 20
- (10) In this section—
- “chief officer” —
- (a) in relation to a police force maintained for a police area in England and Wales, means the chief officer of police of that force; 25
- (b) in relation to a police force maintained under the Police (Scotland) Act 1967, means the chief constable of that force;
- (c) in relation to the Police Service of Northern Ireland, means the Chief Constable of that Service;
- (d) in relation to the Serious Organised Crime Agency, means the Director General of that Agency; and 30
- (e) in relation to the Scottish Crime and Drug Enforcement Agency, means the Director General of that Agency;
- “police force” means —
- (a) a police force maintained for a police area in England and Wales; 35
- (b) a police force maintained under the Police (Scotland) Act 1967;
- (c) the Police Service of Northern Ireland;
- (d) the Serious Organised Crime Agency; or
- (e) the Scottish Crime and Drug Enforcement Agency. 40

*Review of ongoing necessity*

**11 Review of ongoing necessity**

During the period that a TPIM notice is in force, the Secretary of State must keep under review whether conditions C and D are met.

*Changes concerning TPIM notices***12 Variation of measures**

- (1) The Secretary of State may by notice (a “variation notice”) vary measures specified in a TPIM notice if—
  - (a) the variation consists of the relaxation or removal of measures; 5
  - (b) the variation is made with the consent of the individual; or
  - (c) the Secretary of State reasonably considers that the variation is necessary for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity.
- (2) The individual to whom a TPIM notice relates may make an application to the Secretary of State for the variation of measures specified in the TPIM notice. 10
- (3) The Secretary of State must consider an application made under subsection (2).
- (4) A variation under subsection (1) takes effect when the variation notice is served or, if later, at the time specified for this purpose in the variation notice.
- (5) The power under subsection (1) is exercisable whether or not an application has been made under subsection (2). 15
- (6) In a case where a TPIM notice—
  - (a) has expired without being extended under section 5(2), or
  - (b) has been revoked,the power under subsection (1) may (in particular) be exercised in relation to the TPIM notice before any revival of the TPIM notice under section 13(6) so as to take effect at the time that the TPIM notice comes back into force on its revival. 20
- (7) In such a case, the question of whether condition D is met is to be determined for the purposes of section 13(6) by reference to the measures specified in the TPIM notice as they would be after the exercise of the power under subsection (1). 25

**13 Revocation and revival of TPIM notices**

- (1) The Secretary of State may by notice (a “revocation notice”) revoke a TPIM notice at any time. 30
- (2) The revocation of a TPIM notice takes effect when the revocation notice is served or, if later, at the time specified for this purpose in the revocation notice.
- (3) The individual to whom a TPIM notice relates may make an application to the Secretary of State for the revocation of the TPIM notice.
- (4) The Secretary of State must consider an application made under subsection (3). 35
- (5) The power under subsection (1) is exercisable whether or not an application has been made under subsection (3).
- (6) The Secretary of State may by notice (a “revival notice”) revive a TPIM notice which—
  - (a) has expired without being extended under section 5(2), or
  - (b) has been revoked,if conditions A, C and D are met. 40

- (7) The power of revival may be exercised –
- (a) under subsection (6)(a) or (b) whether or not the TPIM notice has previously been revoked and revived; and
  - (b) under subsection (6)(b) whether or not the TPIM notice has been extended under section 5(2). 5
- (8) But the power of revival under subsection (6)(b) may not be exercised to revive a TPIM notice which the Secretary of State was required to revoke by directions given by the court in TPIM proceedings.
- (9) A TPIM notice which is revived –
- (a) comes back into force when the revival notice is served or, if later, at the time specified for this purpose in the revival notice; and 10
  - (b) is in force –
    - (i) for the period of one year (in a case where the revived notice had expired), or
    - (ii) for the period of time for which the TPIM notice would have continued in force if it had not been revoked (in a case where the revived notice had been revoked). 15

#### **14 Replacement of TPIM notice that is quashed etc**

- (1) This section applies if –
- (a) a TPIM notice, the extension of a TPIM notice, or the revival of a TPIM notice, is quashed in TPIM proceedings, or 20
  - (b) a TPIM notice is revoked by the Secretary of State in compliance with directions given by the court in TPIM proceedings.
- (2) The replacement TPIM notice is to be in force for the period of time for which the overturned notice would have continued in force but for the quashing or revocation. 25
- (3) The replacement TPIM notice may not be extended under section 5(2) if the overturned notice had been extended under section 5(2) (including where the extension is quashed).
- (4) Terrorism-related activity is to be treated as new terrorism-related activity in relation to the imposition of measures by the replacement TPIM notice if it was new terrorism-related activity in relation to the imposition of measures by the overturned notice. 30
- (5) Terrorism-related activity that occurs after the coming into force of the overturned notice does not cease to be new terrorism-related activity by virtue of the coming into force of the replacement TPIM notice. 35
- (6) Subsections (2) to (5) do not apply to the replacement notice if –
- (a) some or all of the relevant activity (within the meaning of section 3) occurred after the overturned notice came into force, and
  - (b) the Secretary of State determines that those subsections should not apply to that notice. 40
- (7) In this section –
- “new terrorism related-activity” has the same meaning as in section 3;
  - “overturned notice” means the TPIM notice to which the quashing or revocation referred to in subsection (1) relates; 45

“replacement TPIM notice” means the first TPIM notice to impose measures on the individual to whom the overturned notice relates after the quashing or revocation referred to in subsection (1).

## 15 Other provision relating to the quashing of TPIM notices etc

- (1) A power in TPIM proceedings to quash a TPIM notice, the extension of a TPIM notice, the revival of a TPIM notice, or measures specified in a TPIM notice, includes—
- (a) in England and Wales or Northern Ireland, power to stay the quashing for a specified time, or pending an appeal or further appeal against the decision to quash; or
  - (b) in Scotland, power to determine that the quashing is of no effect for a specified time or pending such an appeal or further appeal.
- (2) A decision in TPIM proceedings to quash measures specified in a TPIM notice, or (except as provided in section 14) a decision in TPIM proceedings to quash, or to give directions to the Secretary of State in relation to, a TPIM notice, the extension of a TPIM notice, or the revival of a TPIM notice, does not prevent the Secretary of State—
- (a) from exercising any power under this Act to impose measures (whether or not to the same or similar effect as measures to which the decision relates), or
  - (b) from relying, in whole or in part, on any matters for the purpose of so exercising such a power (whether or not the matters were relied on in exercising powers under this Act in relation to measures or the TPIM notice to which the decision relates).
- (3) Schedule 3 (appeals against convictions) has effect.

### *Appeals and court proceedings*

## 16 Appeals

- (1) If the Secretary of State extends or revives a TPIM notice (see section 5(2) or 13(6))—
- (a) the individual to whom the TPIM notice relates may appeal to the court against the extension or revival; and
  - (b) the function of the court on such an appeal is to review the Secretary of State’s decisions that conditions A, C and D were met and continue to be met.
- (2) If the Secretary of State varies measures specified in a TPIM notice (and the variation does not consist of the relaxation or removal of measures) without the consent of the individual to whom the TPIM notice relates (see section 12(1)(c))—
- (a) the individual may appeal to the court against the variation; and
  - (b) the function of the court on such an appeal is to review the Secretary of State’s decisions that the variation was necessary, and continues to be necessary, for purposes connected with preventing or restricting involvement by the individual in terrorism-related activity.

- (3) If the individual to whom a TPIM notice relates makes an application to the Secretary of State for the variation of measures specified in the TPIM notice (see section 12(2)) –
- (a) the individual may appeal to the court against any decision by the Secretary of State on the application; and 5
  - (b) the function of the court on such an appeal is to review the Secretary of State’s decisions that the measures to which the application relates were necessary, and continue to be necessary, for purposes connected with preventing or restricting involvement by the individual in terrorism-related activity. 10
- (4) If the individual to whom a TPIM notice relates makes an application to the Secretary of State for the revocation of the TPIM notice (see section 13(3)) –
- (a) the individual may appeal to the court against any decision by the Secretary of State on the application; and
  - (b) the function of the court on such an appeal is to review the Secretary of State’s decisions that conditions A, C and D were met and continue to be met. 15
- (5) If the individual to whom a TPIM notice relates makes an application to the Secretary of State for permission –
- (a) the individual may appeal to the court against any decision by the Secretary of State on the application (including any decision about conditions to which permission is subject); and 20
  - (b) the function of the court on such an appeal is to review the decision.
- (6) In determining the matters mentioned in subsections (1) to (5) the court must apply the principles applicable on an application for judicial review. 25
- (7) The only powers of the court on an appeal under this section are –
- (a) power to quash the extension or revival of the TPIM notice;
  - (b) power to quash measures specified in the TPIM notice;
  - (c) power to give directions to the Secretary of State for, or in relation to, –
    - (i) the revocation of the TPIM notice, or 30
    - (ii) the variation of measures the TPIM notice specifies;
  - (d) power to give directions to the Secretary of State in relation to permission or conditions to which permission is subject.
- (8) If the court does not exercise any of its powers under subsection (7), it must dismiss the appeal. 35
- (9) In this section “permission” means permission for the purposes of measures specified in a TPIM notice (see, in particular, paragraph 13 of Schedule 1).

## 17 Jurisdiction in relation to decisions under this Act

- (1) TPIM decisions are not to be questioned in any legal proceedings other than –
- (a) proceedings in the court; or 40
  - (b) proceedings on appeal from such proceedings.
- (2) The court is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 in relation to proceedings all or any part of which call a TPIM decision into question.
- (3) In this Act “TPIM decision” means – 45

- (a) a decision made by the Secretary of State in exercise or performance of any power or duty under any of sections 2 to 15 or under Schedule 1 or 2;
- (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; 5
- (c) a decision by a constable to give a direction by virtue of paragraph 4 of Schedule 1 (movement directions measure);
- (d) a decision by a person to give a direction by virtue of paragraph 12(2)(d) of Schedule 1 (monitoring measure). 10

## 18 Proceedings relating to measures

- (1) No appeal shall lie from any determination of the court in TPIM proceedings, except on a question of law.
- (2) No appeal by any person other than the Secretary of State shall lie from any determination – 15
  - (a) on an application for permission under section 6; or
  - (b) on a reference under Schedule 2.
- (3) Schedule 4 (proceedings relating to measures) has effect.

### *Other safeguards*

## 19 Reports on exercise of powers under Act 20

- (1) The Secretary of State must –
  - (a) prepare a report about the exercise of the powers mentioned in subsection (2) during each period of 3 months beginning with the month in which this Act is passed, and
  - (b) lay a copy of each such report before Parliament. 25
- (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 a TPIM notice under section 2;
  - (b) to extend a TPIM notice under section 5(2);
  - (c) to vary a TPIM notice under section 12; 30
  - (d) to revoke a TPIM notice under section 13(1);
  - (e) to revive a TPIM notice under section 13(6).
- (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 3 month period to which the report relates. 35

## 20 Reviews of operation of Act

- (1) The Secretary of State must appoint a person to review the operation of this Act (“the independent reviewer”).
- (2) The independent reviewer must carry out a review of the operation of this Act in respect of each calendar year, starting with the first complete calendar year beginning after the passing of this Act. 40

- (3) Each review must be completed as soon as reasonably practicable after the end of the calendar year to which the review 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
- (5) The Secretary of State must lay a copy of any report received under subsection (4) 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* 10
  - (b) *such allowances as the Secretary of State determines.*

### *Enforcement*

## **21 Offence**

- (1) An individual is guilty of an offence if –
- (a) a TPIM notice is in force in relation to an individual, and 15
  - (b) the individual contravenes, without reasonable excuse, measures specified in the notice.
- (2) 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; 20
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.
- (3) 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); 25
  - (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). 30

## **22 Powers of entry etc**

Schedule 5 (powers of entry, search, seizure and retention) has effect.

## **23 Fingerprints and samples**

Schedule 6 (fingerprints and samples) has effect. 35

*Final provisions***24 Notices**

- (1) In a case where the Secretary of State serves a TPIM notice, a revival notice or an extension notice on an individual, the Secretary of State must, by a further notice, give the following information to the individual – 5
- (a) the period for which the TPIM notice will be in force;
  - (b) the day on which the TPIM notice comes, or came, into force; and
  - (c) the day on which the TPIM notice will expire;
- and, in the case of a revival or extension notice, “TPIM notice” means the TPIM notice which is revived or extended by that notice. 10
- (2) An individual is not bound by –
- (a) a TPIM notice,
  - (b) a revival notice, or
  - (c) a variation notice insofar as it gives notice of a variation that is neither a relaxation or removal of measures, nor a variation with the individual’s consent,
- unless the notice is served personally on the individual. 15
- (3) An individual is not bound by an extension notice unless the notice is –
- (a) served personally on the individual, and
  - (b) so served before the TPIM notice to which it relates would otherwise expire. 20
- (4) Any of the following notices must be served on the individual to whom the notice relates –
- (a) a revocation notice;
  - (b) a variation notice insofar as subsection (2)(c) does not apply to it; 25
  - (c) a confirmation notice.
- (5) Any of the following notices may be proved by the production of a document purporting to be certified by the Secretary of State as a true copy of the notice –
- (a) a TPIM notice;
  - (b) an extension notice; 30
  - (c) a revocation notice;
  - (d) a revival notice;
  - (e) a variation notice;
  - (f) a confirmation notice.
- (6) But that does not prevent the proof of such a notice in other ways. 35
- (7) In this section –
- “confirmation notice” means a notice given under subsection (1);
  - “extension notice” means a notice under section 5(2);
  - “revival notice” has the same meaning as in section 13(6);
  - “revocation notice” has the same meaning as in section 13(1); 40
  - “variation notice” has the same meaning as in section 12(1).

**25 Financial and supplemental 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 TPIM notices.* 5
- (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.* 10
- (3) Schedule 7 (minor and consequential amendments) has effect.
- (4) Schedule 8 (transitional and saving provision) has effect.

**26 Interpretation etc**

- (1) In this Act— 15
- “act” and “conduct” include omissions and statements;
- “act of terrorism” includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000 (see section 1(5) of that Act);
- “condition A”, “condition B”, “condition C”, “condition D” or “condition E” means that condition as set out in section 3; 20
- “court” means—
- (a) in the case of proceedings relating to an individual whose principal place of residence is in Scotland, the Outer House of the Court of Session; 25
  - (b) in the case of proceedings relating to an individual whose principal place of residence is in Northern Ireland, the High Court in Northern Ireland;
  - (c) in any other case, the High Court in England and Wales;
- “measures” means terrorism prevention and investigation measures (which has the meaning given in section 2); 30
- “notice” means notice in writing;
- “terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1(1) to (4) of that Act);
- “terrorism-related activity”, and “involvement” (in relation to such activity), are to be construed in accordance with section 4; 35
- “TPIM decision” has the meaning given in section 17;
- “TPIM notice” has the meaning given in section 2(1);
- “TPIM proceedings” means—
- (a) proceedings on an application for permission under section 6; 40
  - (b) proceedings on a reference under Schedule 2;
  - (c) proceedings on a directions hearing held in accordance with directions under section 8(1);
  - (d) proceedings on a review hearing held in accordance with directions under section 8(5); 45
  - (e) proceedings on an appeal under section 16;
  - (f) proceedings by virtue of section 17(2);

- (g) proceedings on an application made by virtue of rules of court made under paragraph 6 of Schedule 4 (application for order requiring anonymity);
- (h) any other proceedings for questioning a TPIM decision (including any claim for damages or other relief arising out of such a decision). 5
- (2) In a case where—
- (a) a TPIM notice has come into force in relation to an individual, and
- (b) by virtue of the coming into force of that 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 3(6)) in relation to that individual for the purposes of that section, 10
- 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. 15
- (3) For the purposes of the definition of “new terrorism-related activity” in section 3, if a TPIM notice is revived under section 13(6), a reference to the notice coming into force is a reference to it coming into force by virtue of section 5(1) (and not to it coming back into force by virtue of section 13(9)). 20
- (4) For the purpose 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 to which the Secretary of State’s belief for the purpose of condition A relates.
- (5) A failure by the Secretary of State to consider an application by an individual for— 25
- (a) the revocation of a TPIM notice, or
- (b) the variation of measures specified in a TPIM notice,
- is to be treated as a decision by the Secretary of State not to revoke, or not to vary, the TPIM notice. 30
- (6) Subsections (2) to (5) apply for the purposes of this Act.

## 27 Short title, commencement and extent

- (1) This Act may be cited as the Terrorism Prevention and Investigation Measures Act 2011.
- (2) This Act comes into force on the day after the day on which it is passed. 35
- (3) This Act extends to England and Wales, Scotland (subject to subsection (4)) and Northern Ireland.
- (4) The following provisions do not extend to Scotland—
- (a) paragraphs 6(5)(c), 7(4)(b), 8(5)(c), 10(3)(b), 11(2) and 12 of Schedule 5;
- (b) paragraph 13(1)(c) and (d) of Schedule 6. 40
- (5) 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 any of the Channel Islands or the Isle of Man.

## SCHEDULES

### SCHEDULE 1

Section 2

#### TERRORISM PREVENTION AND INVESTIGATION MEASURES

##### PART 1

##### MEASURES

5

#### *Overnight residence measure*

- 1 (1) The Secretary of State may impose either or both of the following –
  - (a) a requirement, applicable overnight or at particular times overnight, for the individual to remain at a specified residence;
  - (b) restrictions, applicable overnight or at particular times overnight, on the individual’s movements outside a specified residence. 10
- (2) The Secretary of State may, in particular, impose any of the following requirements –
  - (a) a requirement to remain at the specified residence –
    - (i) unless undertaking movements outside that residence in accordance with restrictions under this paragraph, or 15
    - (ii) unless specified conditions are met;
  - (b) a requirement not to undertake specified movements, or movements of specified descriptions, outside the specified residence unless specified conditions are met. 20
- (3) The specified residence must be –
  - (a) premises that are the individual’s own residence, or
  - (b) other premises provided by or on behalf of the Secretary of State that are situated in an appropriate locality or an agreed locality.
- (4) An “appropriate locality” is – 25
  - (a) a locality in the United Kingdom in which the individual has a residence;
  - (b) if the individual has no such residence, a locality in the United Kingdom with which the individual has a connection;
  - (c) if the individual has no such residence or connection, any locality 30 that appears to the Secretary of State to be appropriate.
- (5) An “agreed locality” is a locality in the United Kingdom which is agreed by the Secretary of State and the individual.
- (6) 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 35

comply with any specified terms of occupancy of that residence (which may be specified by reference to a lease or other document).

- (7) The Secretary of State must specify the time for which a requirement or restriction under sub-paragraph (1) is applicable.
- (8) In imposing a requirement under sub-paragraph (1)(a) the Secretary of State must include provision allowing the individual to stay at premises other than the specified residence for the whole or part of any particular overnight period if the Secretary of State grants permission to do so. 5
- (9) The Secretary of State may grant such permission subject to the condition that the individual remains at the other premises between such hours as the Secretary of State may require (in addition to any other conditions that may be imposed under paragraph 13(7)). 10

*Travel measure*

- 2 (1) The Secretary of State may impose restrictions on the individual leaving a specified area or travelling outside that area. 15
- (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). 20
- (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; 25
  - (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. 30
- (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 – 35
    - (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); 40
  - (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. 45

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*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; 5
  - (b) a requirement to give notice to the Secretary of State before entering; 10
  - (c) a requirement not to enter unless other specified conditions are met.

*Movement directions measure*

- 4 (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). 15
- (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. 20
- (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* 25

- 5 (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)); 30
  - (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; 35
  - (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. 40

- (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
- (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). 10
- (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, 15
  - (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 20
  - (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). 30

*Property measure*

- 6 (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 35
  - (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; 40
  - (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; 45
  - (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 5
  - (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. 10

*Electronic communication device measure*

- 7 (1) The Secretary of State may impose either or both of the following— 15
- (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. 20
- (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 (subject to sub-paragraph (3));
  - (b) a requirement that a device may only be possessed or used subject to specified conditions. 25
- (3) The Secretary of State must allow the individual to possess and use (at least) one of each of the following descriptions of device (subject to any conditions on such use as may be specified under sub-paragraph (2)(b))—
- (a) a telephone operated by connection to a fixed line;
  - (b) a computer that provides access to the internet by connection to a fixed line (including any apparatus necessary for that purpose); 30
  - (c) a mobile telephone that does not provide access to the internet.
- (4) 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); 35
  - (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; 40
  - (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.
- (5) An “electronic communication device” means any of the following— 45

- 
- (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
- (6) The devices within sub-paragraph (5)(a) include (but are not limited to) –
- (a) computers,
- (b) telephones (whether mobile telephones or telephones operated by connection to a fixed line), 10
- (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* 15
- 8 (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 specified persons, or specified descriptions of persons, without the permission of the Secretary of State; 20
- (b) a requirement to give notice to the Secretary of State before associating or communicating with other persons (whether at all or in specified circumstances); 25
- (c) a requirement to comply with any other specified conditions in connection with associating or communicating with other persons.
- (3) 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). 30
- Work or studies measure*
- 9 (1) The Secretary of State may impose restrictions on the individual in relation to the individual’s work or studies. 35
- (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 40
- (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. 45

- (3) In this paragraph –  
“work” includes any business or occupation (whether paid or unpaid);  
“studies” includes any course of education or training.

*Reporting measure*

- 10 (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. 5
- (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* 10

- 11 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*

- 12 (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. 15
- (2) The Secretary of State may, in particular, impose any of the following requirements for co-operation with the specified arrangements – 20
- (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; 25
- (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. 30

PART 2

PERMISSION AND NOTICES

*Permission*

- 13 (1) Any application by an individual for permission must be made in writing. 35
- (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. 40

- (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. 5
- (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. 10
- (8) In this paragraph “permission” means permission in connection with a requirement or restriction imposed under Part 1 of this Schedule.

*Notices*

- 14 (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”). 15
- (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. 20
- (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. 25
- (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. 30

*Power of Secretary of State to vary or revoke notices*

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

SCHEDULE 2

URGENT CASES: REFERENCE TO THE COURT ETC

*Application*

- 1 This Schedule applies if the Secretary of State –
- (a) makes the relevant decisions in relation to an individual, and

- (b) imposes measures on the individual.

*Statement of urgency*

- 2 The TPIM notice must include a statement that the Secretary of State reasonably considers that the urgency of the case requires measures to be imposed without obtaining the permission of the court under section 6. 5

*Reference to court*

- 3 (1) Immediately after serving the TPIM notice, the Secretary of State must refer to the court the imposition of the measures on the individual.
- (2) The function of the court on the reference is to consider whether the relevant decisions of the Secretary of State were obviously flawed. 10
- (3) The court’s consideration of the reference must begin within the period of 7 days beginning with the day on which the TPIM notice is served on the individual.
- (4) The court may consider the reference – 15
- (a) in the absence of the individual;
- (b) without the individual having been notified of the reference; and
- (c) without the individual having been given an opportunity (if the individual was aware of the reference) of making any representations to the court.
- (5) But that does not limit the matters about which rules of court may be made. 20

*Decision by court*

- 4 (1) In a case where the court determines that a decision of the Secretary of State that condition A, condition B or condition C is met is obviously flawed, the court must quash the TPIM notice.
- (2) In a case where the court determines that a decision of the Secretary of State that condition D is met is obviously flawed, the court must quash those of the measures which it determines that decision relates to. 25
- (3) If sub-paragraph (1) does not apply, the court must confirm the TPIM notice (subject to any quashing of measures under sub-paragraph (2)).
- (4) If the court determines that the Secretary of State’s decision that the urgency condition is met is obviously flawed, the court must make a declaration of that determination (whether it quashes or confirms the TPIM notice under the preceding provisions of this paragraph). 30

*Procedures on reference*

- 5 (1) In determining a reference under paragraph 3, the court must apply the principles applicable on an application for judicial review. 35
- (2) The court must ensure that the individual is notified of the court’s decision on a reference under paragraph 3.

*Interpretation*

- 6 (1) References in this Schedule to the urgency condition being met are references to condition E being met by virtue of section 3(5)(b) (urgency of the case requires measures to be imposed without obtaining the permission of the court). 5
- (2) In this Schedule “relevant decisions” means the decisions that the following conditions are met –
- (a) condition A;
  - (b) condition B;
  - (c) condition C; 10
  - (d) condition D;
  - (e) the urgency condition.

SCHEDULE 3

Section 15

APPEALS AGAINST CONVICTIONS

- 1 An individual who has been convicted of an offence under section 21(1) may appeal against the conviction if – 15
- (a) a TPIM notice, the extension of a TPIM notice, or the revival of a TPIM notice is quashed, or measures specified in a TPIM notice are quashed; and
  - (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought. 20
- 2 An appeal under this Schedule is to be made –
- (a) in the case of a conviction on indictment in England and Wales or Northern Ireland, to the Court of Appeal;
  - (b) in the case of a conviction on indictment or summary conviction in Scotland, to the High Court of Justiciary; 25
  - (c) in the case of a summary conviction in England and Wales, to the Crown Court; or
  - (d) in the case of a summary conviction in Northern Ireland, to the county court. 30
- 3 (1) The right of appeal under this Schedule does not arise until there is no further possibility of an appeal against –
- (a) the decision to quash the notice, extension, revival or measures, or
  - (b) any decision on an appeal made against that decision.
- (2) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (1), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored. 35
- 4 (1) On an appeal under this Schedule to any court, that court must allow the appeal and quash the conviction. 40
- (2) An appeal under this Schedule to the Court of Appeal against a conviction on indictment –

- 
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction;
- (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and 5
- (c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980, but does not require leave in either case.
- (3) An appeal under this Schedule to the High Court of Justiciary against a conviction on indictment – 10
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction;
- (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and 15
- (c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 for which leave has been granted.
- (4) An appeal under this Schedule to the High Court of Justiciary against a summary conviction – 20
- (a) may be brought irrespective of whether the appellant pleaded guilty;
- (b) may be brought irrespective of whether the appellant has previously appealed against the conviction;
- (c) may not be brought after the end of the period of two weeks beginning with the day on which the right of appeal arises by virtue of paragraph 3; 25
- (d) is to be by note of appeal, which shall state the ground of appeal;
- (e) is to be treated as an appeal for which leave has been granted under Part 10 of the Criminal Procedure (Scotland) Act 1995; and
- (f) must be in accordance with such procedure as the High Court of Justiciary may, by Act of Adjournal, determine. 30
- (5) An appeal under this Schedule to the Crown Court or to the county court in Northern Ireland against a summary conviction –
- (a) may be brought irrespective of whether the appellant pleaded guilty;
- (b) may be brought irrespective of whether he has previously appealed against the conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (case stated); 35
- (c) may not be brought after the end of the period of 21 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and 40
- (d) is to be treated as an appeal under section 108(1)(b) of that Act or, in Northern Ireland, under Article 140(1)(b) of that Order.

SCHEDULE 4

Section 18

PROCEEDINGS RELATING TO TERRORISM PREVENTION AND INVESTIGATION MEASURES

*Introductory*

- 1 In this Schedule –
- “appeal proceedings” means proceedings in the Court of Appeal or the Inner House of the Court of Session on an appeal relating to TPIM proceedings; 5
  - “the relevant court” means –
    - (a) in relation to TPIM proceedings, the court;
    - (b) in relation to appeal proceedings, the Court of Appeal or the Inner House of the Court of Session; 10
  - “rules of court” means rules for regulating the practice and procedure to be followed in the court, the Court of Appeal or the Inner House of the Court of Session.

*Rules of court: general provision* 15

- 2 (1) A person making rules of court relating to TPIM proceedings or appeal proceedings must have regard to the need to secure the following –
- (a) that the decisions that are the subject of the proceedings are properly reviewed, and
  - (b) that disclosures of information are not made where they would be contrary to the public interest. 20
- (2) Rules of court relating to TPIM proceedings or appeal proceedings may make provision –
- (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing; 25
  - (c) about legal representation in the proceedings;
  - (d) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party); 30
  - (e) enabling the relevant court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
  - (f) about the functions of a person appointed as a special advocate (see paragraph 10); 35
  - (g) enabling the court to give a party to the proceedings a summary of evidence taken in the party’s absence.
- (3) In this paragraph –
- (a) references to a party to the proceedings do not include the Secretary of State; 40
  - (b) references to a party’s legal representative do not include a person appointed as a special advocate.
- (4) Nothing in this paragraph is to be read as restricting the power to make rules of court or the matters to be taken into account when doing so. 45

*Rules of court: disclosure*

- 3 (1) Rules of court relating to TPIM proceedings or appeal proceedings must secure that the Secretary of State is required to disclose –
- (a) material on which the Secretary of State relies,
  - (b) material which adversely affects the Secretary of State’s case, and
  - (c) material which supports the case of another party to the proceedings.
- 5
- (2) This paragraph is subject to paragraph 4.
- 4 (1) Rules of court relating to TPIM proceedings or appeal proceedings must secure –
- (a) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose material otherwise than to the relevant court and any person appointed as a special advocate;
  - (b) that such an application is always considered in the absence of every party to the proceedings (and every party’s legal representative);
  - (c) that the relevant court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
  - (d) that, if permission is given by the relevant court not to disclose material, it must consider requiring the Secretary of State to provide a summary of the material to every party to the proceedings (and every party’s legal representative);
  - (e) that the relevant court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.
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- (2) Rules of court relating to TPIM proceedings or appeal proceedings must secure that provision to the effect mentioned in sub-paragraph (3) applies in cases where the Secretary of State –
- (a) does not receive the permission of the relevant court to withhold material, but elects not to disclose it, or
  - (b) is required to provide a party to the proceedings with a summary of material that is withheld, but elects not to provide the summary.
- 30
- (3) The relevant court must be authorised –
- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State’s case or support the case of a party to the proceedings, to direct that the Secretary of State –
    - (i) is not to rely on such points in the Secretary of State’s case, or
    - (ii) is to make such concessions or take such other steps as the court may specify, or
  - (b) in any other case, to ensure that the Secretary of State does not rely on the material or (as the case may be) on that which is required to be summarised.
- 35
- 40
- (4) In this paragraph –
- (a) references to a party to the proceedings do not include the Secretary of State;
  - (b) references to a party’s legal representative do not include a person appointed as a special advocate.
- 45

*Article 6 rights*

- 5 (1) Nothing in paragraphs 2 to 4, or in rules of court made under any of those paragraphs, is to be read as requiring the relevant court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
- (2) The “Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (see section 21(1) of that Act). 5

*Rules of court: anonymity*

- 6 (1) Rules of court relating to TPIM proceedings or appeal proceedings may make provision for –
- (a) the making by the Secretary of State or the relevant individual of an application to the court for an order requiring anonymity for that individual, and 10
  - (b) the making by the court, on such an application, of an order requiring such anonymity;
- and the provision made by the rules may allow the application and the order to be made irrespective of whether any other TPIM proceedings have been begun in the court. 15
- (2) Rules of court may provide for the Court of Appeal or the Inner House of the Court of Session to make an order in connection with any appeal proceedings requiring anonymity for the relevant individual. 20
- (3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the relevant individual are references to an order by that court which imposes such prohibition or restriction as it thinks fit on the disclosure –
- (a) by such persons as the court specifies or describes, or 25
  - (b) by persons generally,
- of the identity of the relevant individual or of any information that would tend to identify the relevant individual.
- (4) In this paragraph “relevant individual” means an individual on whom the Secretary of State is proposing to impose, or has imposed, measures. 30

*Initial exercise of rule-making powers by Lord Chancellor*

- 7 (1) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by this Schedule in relation to proceedings in England and Wales or in Northern Ireland, the rules may be made by the Lord Chancellor instead of by the person who would otherwise make them. 35
- (2) Before making rules of court under sub-paragraph (1), the Lord Chancellor must consult –
- (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;
  - (b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland. 40
- (3) But the Lord Chancellor is not required to undertake any other consultation before making the rules.

- (4) A requirement to consult under sub-paragraph (2) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (5) Rules of court made by the Lord Chancellor under sub-paragraph (1) –
- (a) must be laid before Parliament, and
  - (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which they were made, cease to have effect at the end of that period. 5
- (6) In determining that period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days. 10
- (7) If rules cease to have effect in accordance with sub-paragraph (5) –
- (a) that does not affect anything done in previous reliance on the rules, and
  - (b) sub-paragraph (1) applies again as if the rules had not been made.
- (8) The following provisions do not apply to rules of court made by the Lord Chancellor under this paragraph – 15
- (a) section 3(6) of the Civil Procedure Act 1997 (Parliamentary procedure for civil procedure rules);
  - (b) section 56 of the Judicature (Northern Ireland) Act 1978 (statutory rules procedure). 20
- (9) Until the coming into force of section 85 of the Courts Act 2003, the reference in sub-paragraph (8)(a) to section 3(6) of the Civil Procedure Act 1997 is to be read as a reference to section 3(2) of that Act.

#### *Use of advisers*

- 8 (1) In any TPIM proceedings or appeal proceedings the relevant court may if it thinks fit – 25
- (a) call in aid one or more advisers appointed for the purposes of this paragraph by the Lord Chancellor, and
  - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers. 30
- (2) The Lord Chancellor may appoint advisers for the purposes of this paragraph only with the approval of –
- (a) the Lord President of the Court of Session, in relation to an adviser who may be called in aid wholly or mainly in Scotland;
  - (b) the Lord Chief Justice of Northern Ireland, in relation to an adviser who may be called in aid wholly or mainly in Northern Ireland; 35
  - (c) the Lord Chief Justice of England and Wales, in any other case.
- (3) Rules of court may regulate the use of advisers in proceedings who are called in aid under sub-paragraph (1).
- (4) *The Lord Chancellor may pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as the Lord Chancellor may determine.* 40
- 9 (1) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise the function under paragraph 8(2)(a). 45

- (2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise the function under paragraph 8(2)(b) –
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act). 5
- (3) The Lord Chief Justice of England and Wales may nominate a judicial officer holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function under paragraph 8(2)(c).

*Appointment of special advocate*

- 10 (1) *The appropriate law officer may appoint a person to represent the interests of a party in any TPIM proceedings or appeal proceedings from which the party (and any legal representative of the party) is excluded.* 10
- (2) A person appointed under sub-paragraph (1) is referred to in this Schedule as appointed as a “special advocate”.
- (3) The “appropriate law officer” is – 15
  - (a) in relation to proceedings in England and Wales, the Attorney General;
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland;
  - (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland. 20
- (4) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent.
- (5) A person may be appointed as a special advocate only if –
  - (a) in the case of an appointment by the Attorney General, the person has a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990; 25
  - (b) in the case of an appointment by the Advocate General for Scotland, the person is an advocate or a solicitor who has rights of audience in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980; 30
  - (c) in the case of an appointment by the Advocate General for Northern Ireland, the person is a member of the Bar of Northern Ireland.

SCHEDULE 5

Section 22

POWERS OF ENTRY, SEARCH, SEIZURE AND RETENTION 35

*Introductory*

- 1 This Schedule confers powers of entry, search, seizure and retention on constables in connection with the imposition of measures on individuals.
- 2 A power conferred on a constable by virtue of this Schedule –
  - (a) is additional to powers which the constable has at common law or by virtue of any other enactment, and 40

(b) is not to be taken as affecting those powers.

3 A constable may detain an individual for the purpose of carrying out a search of that individual under a power conferred by virtue of this Schedule.

4 A constable may use reasonable force, if necessary, for the purpose of exercising a power conferred on the constable by virtue of this Schedule. 5

*Entry and search for purposes of serving TPIM notice*

5 (1) For the purpose of serving a relevant notice on an individual, a constable may –

(a) enter any premises where the constable has reasonable grounds for believing the individual to be, and 10

(b) search those premises for that individual.

(2) A “relevant notice” means –

(a) a TPIM notice;

(b) a notice under section 5(2) extending a TPIM notice;

(c) a notice under section 12(3) varying a TPIM notice as mentioned in paragraph (c) of that subsection; or 15

(d) a notice under section 13(3) reviving a TPIM notice.

*Search of individual or premises at time of serving TPIM notice*

6 (1) This paragraph applies if a TPIM notice is being, or has just been, served on an individual. 20

(2) A constable may (without a warrant) –

(a) search the individual for the purpose mentioned in sub-paragraph (3);

(b) enter and search, for that purpose, any premises mentioned in sub-paragraph (4). 25

(3) The purpose is that of ascertaining whether there is anything on the individual, or (as the case may be) in the premises, that contravenes measures specified in the TPIM notice.

(4) The premises referred to in sub-paragraph (2)(b) are –

(a) the individual’s place of residence; 30

(b) other premises to which the individual has power to grant access.

(5) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph –

(a) for the purpose of ascertaining whether measures specified in the TPIM notice are being or are about to be contravened by the individual; 35

(b) for the purpose of securing compliance by the individual with measures specified in the TPIM notice;

(c) if the constable has reasonable grounds for suspecting that –

(i) the thing is or contains evidence in relation to an offence, and 40

(ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

*Search of premises on suspicion of absconding*

- 7 (1) This paragraph applies if a constable reasonably suspects that an individual in respect of whom a TPIM notice is in force has absconded.
- (2) The constable may (without a warrant) enter and search any premises mentioned in sub-paragraph (3) – 5
- (a) for the purposes of determining whether the individual has absconded;
  - (b) if it appears that the individual has absconded, for anything that may assist in the pursuit and arrest of the individual.
- (3) The premises referred to in sub-paragraph (2) are – 10
- (a) the individual’s place of residence;
  - (b) other premises to which the individual has power to grant access;
  - (c) any premises to which the individual had power to grant access and with which there is reason to believe that the individual is or was recently connected. 15
- (4) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph –
- (a) if the constable reasonably believes that the thing will assist in the pursuit or arrest of the individual;
  - (b) if the constable has reasonable grounds for suspecting that – 20
    - (i) the thing is or contains evidence in relation to an offence, and
    - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

*Search for compliance purposes*

- 8 (1) A constable may apply for the issue of a warrant under this paragraph for the purpose of determining whether an individual in respect of whom a TPIM notice is in force is complying with measures specified in the notice. 25
- (2) A warrant under this paragraph may authorise a constable to do either or both of the following –
- (a) to search the individual; 30
  - (b) to enter and search the individual’s place of residence or any other premises that are specified in the warrant.
- (3) An application for a warrant under this paragraph must be made to the appropriate judicial authority.
- (4) The appropriate judicial authority may, on such an application, grant the warrant only if satisfied that the warrant is necessary for the purpose mentioned in sub-paragraph (1). 35
- (5) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by a warrant issued under this paragraph – 40
- (a) for the purpose of ascertaining whether any measure specified in the TPIM notice has been, is being, or is about to be, contravened by the individual;
  - (b) for the purpose of securing compliance by the individual with measures specified in the TPIM notice; 45

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- (c) if the constable has reasonable grounds for suspecting that—
- (i) the thing is or contains evidence in relation to an offence, and
- (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (6) In this paragraph “appropriate judicial authority”, in relation to a warrant, means—
- (a) a justice of the peace, if the application for the warrant is made in England or Wales;
- (b) the sheriff, if the application is made in Scotland;
- (c) a lay magistrate, if the application is made in Northern Ireland.
- 9 (1) This paragraph applies in relation to a warrant issued in England, Wales or Northern Ireland under paragraph 8 so far as it authorises a constable to search an individual.
- (2) In relation to warrants issued under that paragraph so far as authorising the entry and search of premises, see—
- (a) sections 15 and 16 of the Police and Criminal Evidence Act 1984, in relation to warrants issued in England and Wales;
- (b) Articles 17 and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N. I. 12)), in relation to warrants issued in Northern Ireland.
- (3) The constable applying for the warrant must—
- (a) state the ground on which the application is made, and
- (b) identify, so far as practicable, the articles to be sought.
- (4) The application for the warrant is to be made without notice and—
- (a) if made in England or Wales, supported by an information in writing;
- (b) if made in Northern Ireland, supported by a complaint in writing and substantiated on oath.
- (5) The constable must answer on oath any questions that the appropriate judicial authority (within the meaning of paragraph 8) hearing the application may ask of the constable.
- (6) If the warrant is issued it authorises a search of the individual on one occasion only.
- (7) The warrant must—
- (a) specify the name of the constable applying for it, the date on which it is issued and the fact that it is issued under paragraph 8, and
- (b) identify, so far as practicable, the articles to be sought.
- (8) Two copies must be made of the warrant and clearly certified as copies.
- (9) The warrant may be executed by any constable.
- (10) The search under the warrant must be carried out within 28 days of its issue.
- (11) The search must be carried out at a reasonable hour unless it appears to the constable executing the warrant that the purposes of the search may be frustrated if carried out then.

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- (12) The constable seeking to execute the warrant must, before carrying out the search—
- (a) identify himself or herself to the individual,
  - (b) if not in uniform, produce documentary evidence that he or she is a constable to the individual, 5
  - (c) produce the warrant to the individual, and
  - (d) supply the individual with a copy of the warrant (which, in Northern Ireland, must be a certified copy).
- (13) The constable executing the warrant must make an endorsement on it stating— 10
- (a) whether anything sought was found in the course of the search, and
  - (b) whether anything was seized.
- (14) When the warrant has been executed it must be returned to the designated officer.
- (15) The designated officer must retain a warrant returned under sub-paragraph (14) for a period of 12 months from the time of its return and, if requested during that period, allow the individual to inspect it. 15
- (16) The “designated officer” is—
- (a) in relation to a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace who issued the warrant was acting when it was issued; 20
  - (b) in relation to a warrant issued in Northern Ireland, the clerk for the petty sessions district in which the lay magistrate who issued the warrant was acting when it was issued.
- Search of individual for public safety purposes* 25
- 10 (1) A constable may (without a warrant) search an individual in respect of whom a TPIM notice is in force for the purpose of ascertaining whether the individual is in possession of anything that could be used to threaten or harm any person.
- (2) The power of a constable to search the individual under this paragraph may be exercised— 30
- (a) following entry onto premises by virtue of this Act, or
  - (b) at any other time when the constable is in the presence of the individual.
- (3) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph— 35
- (a) if the constable has reasonable grounds for suspecting that the thing may be used to threaten or harm any person;
  - (b) if the constable has reasonable grounds for suspecting that— 40
    - (i) the thing is or contains evidence in relation to an offence, and
    - (ii) it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.
- Power to retain items*
- 11 (1) Anything that is seized under a power conferred by virtue of this Schedule may be— 45

- (a) subjected to tests;
  - (b) retained for as long as is necessary in all the circumstances.
- (2) In particular (and regardless of the ground on which the thing was seized) –
- (a) if a constable has reasonable grounds for believing that the thing is or contains evidence in relation to an offence, it may be retained –
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence; and
  - (b) if a constable has reasonable grounds for believing that the thing has been obtained in consequence of the commission of an offence, it may be retained in order to establish its lawful owner.
- (3) Nothing may be retained for either of the purposes mentioned in subparagraph (2)(a) if a photograph or copy would be sufficient for that purpose.
- (4) Nothing in this paragraph or in paragraph 12 affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.
- 12 (1) This paragraph applies if –
- (a) a device is surrendered by virtue of a condition of the kind mentioned in paragraph 7(4)(e) of Schedule 1 (surrendering of electronic communication devices for inspection or modification purposes), and
  - (b) a constable has reasonable grounds for believing that the device is or contains evidence in relation to an offence.
- (2) The device may be seized and retained for as long as is necessary in all the circumstances.
- (3) In particular –
- (a) the thing may be retained –
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence; and
  - (b) if a constable has reasonable grounds for believing that the device has been obtained in consequence of the commission of an offence, it may be retained in order to establish its lawful owner.
- (4) Nothing may be retained for either of the purposes mentioned in subparagraph (3)(a) if a photograph or copy would be sufficient for that purpose.

## SCHEDULE 6

Section 23

## FINGERPRINTS AND SAMPLES

*Taking of fingerprints and samples: England, Wales and Northern Ireland*

- 1 (1) This paragraph applies at any time when a TPIM notice is in force in respect of an individual in England, Wales or Northern Ireland.

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- (2) A constable may take fingerprints or a non-intimate sample from the individual –
- (a) with the consent of the individual given in writing, or
  - (b) without that consent.
- (3) A constable may use reasonable force, if necessary, for the purpose of exercising the power under sub-paragraph (2)(b). 5
- (4) Before any fingerprints or a non-intimate sample are taken the individual must be informed –
- (a) of the reason for taking the fingerprints or sample,
  - (b) of the fact that the fingerprints or sample are taken under the power conferred by this paragraph, and 10
  - (c) that the fingerprints or sample may be the subject of a relevant search.
- (5) The matters mentioned in sub-paragraph (4) must be recorded as soon as practicable after the fingerprints or non-intimate sample are taken. 15
- (6) The information mentioned in sub-paragraph (4) must be given by –
- (a) the constable taking the fingerprints or non-intimate sample, or
  - (b) if the fingerprints or non-intimate sample are taken at a police station (see paragraph 3), any other officer.
- (7) Where a sample of hair other than pubic hair is to be taken under this paragraph, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample. 20
- 2 (1) A constable may exercise the power under paragraph 1 to take fingerprints or a non-intimate sample from an individual only if at the time when the power is to be exercised – 25
- (a) in the case of fingerprints, the condition in sub-paragraph (2) is met;
  - (b) in the case of a sample, the condition in sub-paragraph (3) is met.
- (2) The condition in the case of fingerprints is that –
- (a) the individual has not had fingerprints taken under paragraph 1 on a previous occasion after the time on which the present TPIM notice came into force, or 30
  - (b) fingerprints were so taken on a previous occasion after that time but –
    - (i) the fingerprints taken do not constitute a complete set of the individual’s fingerprints, or 35
    - (ii) some or all of the fingerprints taken are not of sufficient quality to allow satisfactory analysis, comparison or matching.
- (3) The condition in the case of a non-intimate sample is that – 40
- (a) the individual has not had a sample of the same type and from the same part of the body taken under paragraph 1 on a previous occasion after the time on which the present TPIM notice came into force, or
  - (b) a sample was so taken on a previous occasion after that time but it proved insufficient. 45

- (4) In this paragraph “the present TPIM notice” means the TPIM notice in force at the time when it is proposed to exercise the power to take the fingerprints or sample.
- 3 (1) A constable may –
- (a) require an individual to attend a police station for the purposes of taking fingerprints or a non-intimate sample from the individual under paragraph 1, and 5
  - (b) arrest without warrant an individual who fails to comply with such a requirement.
- (2) A requirement under sub-paragraph (1)(a) – 10
- (a) must give the individual a period of at least 7 days within which the individual must attend the police station (subject to sub-paragraph (4)), and
  - (b) may direct the individual to attend at a specified time of day or between specified times of day. 15
- (3) In specifying a period or time or times of day for the purposes of sub-paragraph (2), the constable must consider whether the fingerprints or non-intimate sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 10 of Schedule 1). 20
- (4) In giving a requirement under this paragraph a constable may specify a period of shorter than 7 days if –
- (a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence, and 25
  - (b) the shorter period is authorised by an officer of at least the rank of inspector.
- (5) Where an authorisation is given under sub-paragraph (4)(b) –
- (a) the fact of the authorisation, and
  - (b) the reasons for giving it, 30
- must be recorded as soon as practicable after it has been given.
- (6) If the constable who gives a requirement to an individual under this paragraph and the individual agree, it may be varied so as to specify any period within which, or date or time at which, the individual must attend; but a variation does not have effect unless confirmed by the constable in writing. 35

*Taking of relevant physical data and samples: Scotland*

- 4 (1) This paragraph applies at any time when a TPIM notice is in force in respect of an individual in Scotland.
- (2) A constable may – 40
- (a) take from the individual, or require the individual to provide, any relevant physical data;
  - (b) with the authority of an officer of a rank no lower than inspector, take from the individual any sample mentioned in paragraph (a), (b) or (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 (prints, samples etc in criminal investigations) by the means specified in that paragraph in relation to the sample; 45

- (c) take, or direct a police custody and security officer to take, from the individual a sample mentioned in subsection (6A) of that section by the means specified in that subsection.
- (3) A constable may –
  - (a) require the individual to attend a police station for the purposes mentioned in sub-paragraph (2), and 5
  - (b) arrest without warrant an individual who fails to comply with such a requirement.
- (4) A requirement under sub-paragraph (3)(a) –
  - (a) must give the individual at least 7 days’ notice of the date on which the individual is required to attend the police station, and 10
  - (b) may direct the individual to attend at a specified time of day or between specified times of day.
- (5) In specifying a date or time or times of day for the purposes of sub-paragraph (4), the constable must consider whether the relevant physical data or sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 10 of Schedule 1). 15
- (6) A constable may use reasonable force, if necessary, in – 20
  - (a) taking any relevant physical data under sub-paragraph (2)(a),
  - (b) securing compliance with a requirement imposed by the constable under that sub-paragraph, or
  - (c) taking any sample under sub-paragraph (2)(b).
- (7) A constable may, with the authority of an officer of a rank no lower than inspector, use reasonable force, if necessary, in taking any sample under sub-paragraph (2)(c). 25

*Checking of fingerprints, samples etc*

- 5 Any fingerprints, data or samples obtained under paragraph 1 or 4, or information derived from such samples, may be checked against – 30
  - (a) other such fingerprints, data or samples or any information derived from such a sample,
  - (b) any fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or any information derived from such a sample, 35
  - (c) any relevant physical data taken or provided by virtue of paragraph 20 of that Schedule, any samples taken by virtue of that paragraph or any information derived from such a sample,
  - (d) material to which section 18 of the Counter-Terrorism Act 2008 applies, 40
  - (e) any fingerprints, samples or information mentioned in section 63A(1)(a) or (b) of the Police and Criminal Evidence Act 1984,
  - (f) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
  - (g) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, and 45

- (h) any fingerprints, samples or information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N. I. 12)).

*Requirement to destroy material*

- 6 (1) This paragraph applies to – 5
- (a) fingerprints taken under paragraph 1,
  - (b) a DNA profile derived from a DNA sample taken under that paragraph,
  - (c) relevant physical data taken or provided under paragraph 4,
  - (d) a DNA profile derived from a DNA sample taken under that paragraph. 10
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 6 material”) must be destroyed if it appears to the responsible chief officer of police that the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful. 15
- (3) In any other case, paragraph 6 material must be destroyed unless it is retained under a power conferred by paragraph 8, 9 or 11.
- (4) Paragraph 6 material that ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power that applies to it. 20
- (5) Nothing in this paragraph prevents a relevant search from being carried out, in relation to paragraph 6 material, within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable. 25
- 7 (1) If fingerprints or relevant physical data are required by paragraph 6 to be destroyed, any copies of the fingerprints or data held by a police force must also be destroyed.
- (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the individual to whom the DNA profile relates. 30

*Retention of paragraph 6 material*

- 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 or Northern Ireland) only one exempt conviction. 35
- (2) The material may be retained until the end of the period of 6 months beginning with the date on which the TPIM notice that was in force when the material was taken ceases to be in force (subject to sub-paragraphs (3) and (4)). 40
- (3) If, before the end of that period, the TPIM notice is quashed by the court under this Act, 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. 45

- (4) If, after a TPIM notice is quashed or otherwise ceases to be in force, measures are imposed on the individual (whether by the revival of a TPIM notice or the imposition of a new TPIM notice) –
- (a) within the period for which material in relation to the individual is retained by virtue of sub-paragraph (2), or 5
  - (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 TPIM notice as references to the revived or new TPIM notice). 10
- (5) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (3), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.
- 9 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual – 15
- (a) who has been convicted of a recordable offence (other than a single exempt conviction) or of an offence in Scotland which is punishable by imprisonment, or
  - (b) who is so convicted before the end of the period within which the material may be retained by virtue of paragraph 8. 20
- (2) The material may be retained indefinitely.
- 10 (1) For the purposes of paragraphs 8 and 9 an individual is to be treated as having been convicted of an offence if – 25
- (a) in relation to a recordable offence in England and Wales or Northern Ireland – 25
    - (i) the individual has been given a caution in respect of the offence which, at the time of the caution, the individual has admitted,
    - (ii) the individual has been found not guilty of the offence by reason of insanity, 30
    - (iii) the individual has been found to be under a disability and to have done the act charged in respect of the offence, or
    - (iv) the individual has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence, 35
  - (b) the individual, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept –
    - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
    - (ii) a compensation offer under section 302A of that Act, 40
    - (iii) a combined offer under section 302B of that Act, or
    - (iv) a work offer under section 303ZA of that Act,
  - (c) the individual, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the individual's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995, 45
  - (d) a finding in respect of the individual has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,

- 
- (e) the individual, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid –
- (i) the fixed penalty, or 5
  - (ii) (as the case may be) the sum which the individual is liable to pay by virtue of section 131(5) of that Act, or
- (f) the individual, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995. 10
- (2) Paragraphs 8, 9 and this paragraph, so far as they relate to individuals convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) For the purposes of paragraphs 8 and 9 –
- (a) an individual has no previous convictions if the individual has not previously been convicted – 15
    - (i) in England and Wales or Northern Ireland of a recordable offence, or
    - (ii) in Scotland of an offence which is punishable by imprisonment, and 20
  - (b) if the individual has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the individual was aged under 18. 25
- (4) In sub-paragraph (3) “qualifying offence” has –
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N. I. 12)). 30
- (5) If an individual is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 8 or 9 whether the individual has been convicted of one offence. 35
- 11 (1) Paragraph 6 material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it. 40
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any paragraph 6 material to be retained for the purposes of national security.
- (3) A national security determination – 45
- (a) must be in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
  - (c) may be renewed.

*Requirement to destroy samples*

- 12 (1) This paragraph applies to –
- (a) non-intimate samples taken under paragraph 1, or
  - (b) samples taken under paragraph 4(2)(b) or (c).
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that the taking of the sample was unlawful. 5
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this paragraph applies must be destroyed – 10
- (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken. 15
- (6) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable. 20

*Use of retained material*

- 13 (1) Any material to which paragraph 6 or 12 applies must not be used other than –
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation within the meaning of the Terrorism Act 2000 (see section 32 of that Act), 25
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates. 30
- (2) Material which is required by paragraph 6 or 12 to be destroyed must not at any time after it is required to be destroyed be used –
- (a) in evidence against the individual to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this paragraph – 35
- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which –
- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or 40
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and

- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 5

*Interpretation*

- 14 In this Schedule –
- “DNA profile” means any information derived from a DNA sample;
- “DNA sample” means any material that has come from a human body and consists of or includes human cells; 10
- “fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;
- “non-intimate sample” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;
- “paragraph 6 material” has the meaning given by paragraph 6(2); 15
- “police force” means any of the following –
- (a) the metropolitan police force;
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force; 20
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (e) the Scottish Police Services Authority;
- (f) the Police Service of Northern Ireland;
- (g) the Police Service of Northern Ireland Reserve; 25
- (h) the Ministry of Defence Police;
- (i) the Royal Navy Police;
- (j) the Royal Military Police;
- (k) the Royal Air Force Police;
- (l) the British Transport Police; 30
- “recordable offence” has –
- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
- (b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N. I. 12)); 35
- “relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;
- “relevant search” means a search carried out for the purpose of checking any fingerprints, samples, data or information against any of the fingerprints, samples, data or information mentioned in paragraph 5(a) to (h); 40
- “responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area – 45
- (a) in which the material concerned was taken, or
- (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

- “responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken, the chief constable of the police force for the area –
- (a) in which the material concerned was taken or provided, or 5
  - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;
- “responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland; 10
- “sufficient” and “insufficient”, in relation to a sample, have the same meaning as in Part 5 of the Police and Criminal Evidence Act 1984 (see section 65(1) and (2) of that Act).

## SCHEDULE 7

Section 25 15

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

#### GENERAL

##### *Senior Courts Act 1981*

- 1 In paragraph 2 of Schedule 1 to the Senior Courts Act 1981 (business allocated to the Queen’s Bench Division) – 20
- (a) omit sub-paragraph (ba), and
  - (b) after sub-paragraph (bc) insert –  
    “(bd) all TPIM proceedings (within the meaning of the  
    Terrorism Prevention and Investigation Measures  
    Act 2011);”. 25

##### *Police and Criminal Evidence Act 1984*

- 2 In Schedule 2A to the Police and Criminal Evidence Act 1984 (fingerprints and samples: power to require attendance at police station), omit paragraphs 4 and 12. 30

##### *Criminal Justice Act 1988*

- 3 In section 133(5) of the Criminal Justice Act 1988 (compensation for miscarriages of justice) –
- (a) omit paragraph (d), and
  - (b) at the end of paragraph (e) insert “; or 35  
    (f) *on an appeal under Schedule 3 to the Terrorism Prevention  
    and Investigation Measures Act 2011.*”.

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*Regulation of Investigatory Powers Act 2000*

- 4 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (exceptions to exclusion of intercepted communications etc from legal proceedings) is amended as follows.
- (2) In subsection (1) – 5
- (a) omit paragraph (da), and
- (b) after paragraph (dc) insert –
- “(dd) any TPIM proceedings (within the meaning of the Terrorism Prevention and Investigation Measures Act 2011) or any proceedings arising out of such proceedings;” 10
- (3) In subsection (2) –
- (a) for “(da)” (before “to (f)”) substitute “(db)”,
- (b) omit paragraph (za), and
- (c) after paragraph (zb) insert – 15
- “(zc) in the case of proceedings falling within paragraph (dd), to –
- (i) a person, other than the Secretary of State, who is or was a party to the proceedings, or
- (ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a special advocate under Schedule 4 to the Terrorism Prevention and Investigation Measures Act 2011) represents a person falling within sub-paragraph (i);” 20
- 25

*Counter-Terrorism Act 2008*

- 5 (1) The Counter-Terrorism Act 2008 is amended as follows.
- (2) In section 1 (power to remove documents for examination), in subsection (1) – 30
- (a) omit paragraph (e);
- (b) after paragraph (f) insert –
- “(g) paragraphs 6, 7, 8 or 10 of Schedule 5 to the Terrorism Prevention and Investigation Measures Act 2011.”.
- (3) Omit sections 10 to 13 (power to take fingerprints and samples from person subject to control order). 35

*Crime and Security Act 2010*

- 6 (1) The Crime and Security Act 2010 is amended as follows.
- (2) In section 6(2) (power to require attendance at police station), in Schedule 2A inserted into the Police and Criminal Evidence Act 1984, omit paragraphs 4 and 12. 40
- (3) In section 12(2) (power to require attendance at police station), in Schedule 2A inserted into the Police and Criminal Evidence (Northern Ireland) Order 1984, omit paragraphs 4 and 12.

- (4) Omit section 20 (material subject to the Counter-Terrorism Act 2008 (Scotland)).

*Miscellaneous*

- 7 In consequence of the repeals made by other provisions of this Act, omit sections 78 to 81 of the Counter-Terrorism Act 2008. 5

PART 2

NORTHERN IRELAND

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

- 8 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows. 10
- (2) In Article 26(2) (offences for which an arrest may be made without a warrant in Northern Ireland), in paragraph (o), for “section 9(3) of the Prevention of Terrorism Act 2005” substitute “section 21(1) of the Terrorism Prevention and Investigation Measures Act 2011”.
- (3) In Schedule 2A (fingerprints and samples: power to require attendance at police station), omit paragraphs 4 and 12. 15

SCHEDULE 8

Section 25

TRANSITIONAL AND SAVING PROVISION

*Saving of control orders during transitional period*

- 1 A control order which is in force immediately before commencement is to remain in force until the end of the transitional period (unless revoked or quashed before the end of that period). 20

*Savings during and after transitional period*

- 2 (1) An enactment which is amended or repealed by this Act is to continue to apply after commencement in relation to— 25
- (a) control orders made before commencement, and
- (b) the operation before commencement of the PTA 2005, as if the enactment had not been so amended or repealed.
- (2) Sub-paragraph (1) is subject to paragraph 3(2) and (3).

*Savings etc for court proceedings* 30

- 3 (1) The repeal of the PTA 2005 by this Act does not, after commencement, prevent or otherwise effect—
- (a) the court’s consideration of a reference made under section 3(3)(a) of the PTA 2005 before commencement;
- (b) the holding or continuation of any hearing in pursuance of directions under section 3(2)(c) or (6)(b) or (c) of the PTA 2005; 35

- (c) the bringing or continuation of any appeal under section 10(1) or (3) of the PTA 2005;
- (d) the bringing or continuation of any appeal, or further appeal, relating to a decision in any proceedings mentioned in any of sub-paragraphs (a) to (c) of this sub-paragraph; or 5
- (e) the bringing or continuation of any proceedings for an award of damages or other relief arising out of any such proceedings.
- (2) But, after commencement, proceedings mentioned in any of sub-paragraphs (a) to (d) of sub-paragraph (1) (whether the proceedings began before or after commencement) may not have a purpose other than determining whether one or more of the following should be quashed – 10
- (a) a certificate of the kind mentioned in section 3(8) of the PTA 2005;
- (b) a control order;
- (c) the renewal of a control order; or
- (d) an obligation imposed by a control order. 15
- (3) Except as permitted by sub-paragraphs (1) and (2), no control order proceedings (within the meaning of section 11(6) of the PTA 2005) may be entertained after commencement.

*New powers not affected by previous control order*

- 4 The Secretary of State’s powers under this Act in relation to an individual are not affected by a control order having been made in relation to that individual. 20

*Last review of exercise of powers under PTA 2005*

- 5 (1) Section 14(1) of the PTA 2005 applies to the period that – 25
- (a) begins immediately after the end of the last relevant 3 month period to end before commencement, and
- (b) ends immediately before commencement, as if that period were a relevant 3 month period.
- (2) In this paragraph “relevant 3 month period” has the same meaning as in section 14 of the PTA 2005. 30

*Last review of operation of PTA 2005*

- 6 (1) Section 14(3) of the PTA 2005 does not apply to the last PTA review year.
- (2) But section 14(3) applies to the period that – 35
- (a) begins with the start of the last PTA review year, and
- (b) ends immediately before commencement, as if that period were a PTA review year.
- (3) In this paragraph –
- “last PTA review year” means the last PTA review year to end before commencement;
- “PTA review year” means a period determined in accordance with section 14(3)(b) of the PTA 2005. 40

*Savings of PTA 2005 not affected by expected expiry*

- 7        The fact that sections 1 to 9 of the PTA 2005 would have expired (but for their repeal by this Act) by virtue of section 13 of the PTA 2005 at a time after commencement does not prevent those sections from continuing to apply in accordance with, or for the purposes of, any other provision of this Schedule after the time when those sections would have so expired.        5

*First review of operation of Act*

- 8        (1) The review carried out under section 20(2) in respect of the first review year must also include a review in respect of so much of the preceding calendar year as falls on or after commencement (but for the purposes of section 20(3) that part of the review is to be treated as relating the first review year).        10
- (2) In this paragraph “first review year” means the first complete calendar year beginning after the passing of this Act.

*Interpretation*

- 9        In this Schedule –        15
- “commencement” means the coming into force of this Act;
- “control order” has the same meaning as in the PTA 2005;
- “PTA 2005” means the Prevention of Terrorism Act 2005;
- “transitional period” means the period of 28 days that begins with the day of commencement.        20

# Terrorism Prevention and Investigation Measures Bill

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## B I L L

To abolish control orders and make provision for the imposition of terrorism prevention and investigation measures.

*Presented by Secretary Theresa May  
supported by  
The Prime Minister,  
The Deputy Prime Minister,  
Mr Chancellor of the Exchequer,  
Secretary Kenneth Clarke,  
Danny Alexander and  
James Brokenshire.*

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*Ordered, by The House of Commons,  
to be Printed, 23 May 2011.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx