COUNTER-TERRORISM AND BORDER SECURITY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Counter-Terrorism and Border Security Bill as introduced in the House of Commons on 6 June 2018 (Bill 219).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The Queen's speech on 21 June 2017 included a commitment to review the Government's counter-terrorism strategy "to ensure that the police and security services have all the powers they need, and that the length of custodial sentences for terrorism-related offences are sufficient to keep the population safe". Part 1 of the Bill gives effect to legislative proposals arising from the review. The measures in Part 1 will:

- Amend certain terrorism offences to update them for the digital age and to reflect contemporary patterns of radicalisation and to close gaps in their scope;
- Strengthen the sentencing framework for terrorism-related offences and the powers for managing terrorist offenders following their release from custody, including by increasing the maximum penalty for certain offences, to ensure that the punishment properly reflects the crime and to better prevent re-offending;
- Strengthen the powers of the police to prevent terrorism and investigate terrorist offences.

2 In addition, in response to the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018 using a military-grade nerve agent of a type developed by Russia, Part 2 of the Bill provides for a new power to harden the United Kingdom's defences at the border against all forms of hostile state activity.

Policy background

3 The UK national threat level, set by the independent Joint Terrorism Analysis Centre and the Security Service, has been set at SEVERE or higher since 29 August 2014. This means that a terrorist attack is "highly likely". Since the murder of Fusilier Lee Rigby, in May 2013, 25 terrorist attacks in the UK have been foiled. But in June 2016 there was the terrorism-related murder of Jo Cox MP and, between March and September 2017, London and Manchester experienced five terrorist outrages[1]:

- **Westminster (six deaths including the attacker):** On the afternoon of Wednesday 22 March 2017, Khalid Masood drove a Hyundai Tucson SUV into pedestrians who were crossing Westminster Bridge. Three were killed at the time and 32 admitted to hospital, where one died later and several others were treated for life-changing injuries. Masood then took two carving knives out of the vehicle and fatally stabbed PC Keith Palmer who was on duty outside the Palace of Westminster. Masood was shot by armed police and died of his injuries.
- **Manchester (23 deaths including the attacker):** On the evening of Monday 22 May 2017, Salman Abedi detonated an explosive charge in the foyer of the Manchester Arena, at the end of a concert attended by thousands of children. Abedi was killed in the explosion along with 22 innocent people, 10 of whom were aged under 20. A further 116 people required hospital treatment.
- **London Bridge (11 deaths including the three attackers):** On the evening of Saturday

[1] The synopsis of the attacks at Westminster, Manchester, London Bridge and Finsbury Park are taken from the Independent Assessment of MI5 and Police Internal Reviews of the attacks by David Anderson QC, December 2017.

3 June 2017, three men (Briton Khuram Butt, Moroccan Rachid Redouane and Italian/Moroccan Youssef Zaghba) drove a Renault Master van into pedestrians on London Bridge, killing two people. Abandoning unused a store of Molotov cocktails and wearing dummy suicide vests, they then left the van armed with large knives, which were used on an apparently random basis to kill six more people in nearby Borough Market and in the vicinity of Borough High Street. Armed police arrived within eight minutes and shot and killed the attackers. A total of 11 people were killed, and 45 required hospital treatment.

- **Finsbury Park (one death):** Shortly after midnight on Monday 19 June 2017, Darren Osborne drove a Citroen Relay van into a crown of worshippers outside the Finsbury Park Islamic Centre. Makram Ali, who had been taken ill and was lying on the ground, was struck by the vehicle and died soon afterwards. Ten other people received hospital treatment for injuries. Osborne was arrested and charged with murder and attempted murder; he was convicted on 1 February 2018 and sentenced to life imprisonment, with a minimum term of 43 years.

- **Parsons Green (no deaths):** On the morning of Friday 15 September 2017 an explosion occurred on a District line train at Parsons Green Underground Station, London. 23 people received burns injuries, some significant; and 28 people suffered crush injuries. Ahmed Hassan was arrested in Dover, Kent on 16 September and charged with attempted murder and causing an explosion likely to endanger life or property (contrary to section 2 of the Explosive Substances Act 1883). He was convicted of attempted murder on 16 March 2018 and sentenced to life imprisonment, with a minimum term of 34 years.

4 Andrew Parker, the Director General of MI5, in a speech on 17 October 2017, described the ongoing terrorist treat as "multi-dimensional, evolving rapidly, and operating at a scale and pace we've not seen before". In the year ending 31 December 2017, there were 412 arrests for terrorism-related offences in Great Britain, an increase of 58% compared with the 261 arrests in the previous year[2].

5 Against the background of this heightened terrorist treat, the Government considers it necessary to update and strengthen the legal powers and capabilities available to law enforcement and intelligence agencies to disrupt terrorism and ensure that the sentences for terrorism offence properly reflect the seriousness of the crime. On 4 June 2017, following the London Bridge attack, the Prime Minister announced that there would be a review of the Government's counter-terrorism strategy "to make sure the police and security services have all the powers they need". Subsequently, on 3 October 2017, the then Home Secretary announced that counter-terrorism laws would be updated to keep pace with modern online behaviour and to address issues of online radicalisation.

6 The Government's updated counter-terrorism strategy, published on 4 June 2018, is called CONTEST. The aim of CONTEST is to reduce the risk to the UK and its interests overseas from terrorism, so that people can go about their lives freely and with confidence. The strategy is based around four main areas of work:

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[2] Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes, and stop and search, Great Britain, quarterly update to December 2017, Home Office, Statistical Bulletin 05/18.

- **Pursue:** the investigation and disruption of terrorist attacks;
- **Prevent:** work to stop people becoming terrorists or supporting terrorism and extremism;
- **Protect:** improving the United Kingdom's protective security to stop a terrorist attack; and
- **Prepare:** working to minimise the impact of an attack and to recover from it as quickly as possible.

The provisions in Part 1 of the Bill will strengthen powers and capabilities in the Pursue, Prevent and Protect workstreams.

7 The Government separately announced on 22 March 2018 that it would amend the Reinsurance (Acts of Terrorism) Act 1993 ("the 1993 Act") to enable an extension of the cover provided by the government-backed terrorism reinsurer, Pool Re, to include business interruption losses that are not contingent on damage to commercial property (HCWS579). Clause 19 makes the necessary amendment to the 1993 Act.

8 On 4 March 2018, Sergei and Yulia Skripal were poisoned with Novichok, a military-grade nerve agent of a type developed by Russia. On 12 March 2018, the Prime Minister announced that the Government had "concluded that it is highly likely that Russia was responsible for the act against Sergei and Yulia Skripal" (House of Commons, Official Report, column 620). In a subsequent oral statement on 14 March 2018, the Prime Minister further announced that as part of its response to the Salisbury incident, the Government would "urgently develop proposals for new legislative powers to harden our defences against all forms of hostile state activity" (House of Commons, Official Report, column 856). This would include the addition of a power to stop, question, search and detain individuals at the United Kingdom border to determine whether they are, or have been, involved in activity that threatens the UK's national security. Part 2 of the Bill provides for such a power.

Legal background

9 The principal enactments relating to countering terrorism are the Terrorism Act 2000 ("the 2000 Act"), the Terrorism Act 2006 ("the 2006 Act"), the Counter-Terrorism Act 2008 ("the 2008 Act"), the Terrorism Asset-Freezing etc Act 2010, the Terrorism Prevention and Investigation Measures Act 2011 ("the 2011 Act") and the Counter-Terrorism and Security Act 2015 ("the 2015 Act").

10 Amongst other things, the 2000 Act:

- Provides for a definition of "terrorism" (section 1);
- Provides a power for the Secretary of State to proscribe organisations that are concerned in terrorism and sets out associated offences (Part 2);
- Provides the police with powers to arrest and detain suspected terrorists, and powers to search premises, vehicles and pedestrians (Part 5). Schedule 7 provides examination powers at ports and borders; and Schedule 8 provides for the treatment of suspects who are detained (including the taking and retention of fingerprints and DNA samples and profiles) and for judicial extension of the initial period of detention.
- Provides for various terrorism offences (sections 54 to 63), including the collection of information likely to be useful to a person committing or preparing an act of terrorism (section 58) and eliciting, publishing or communicating information about members of the armed forces etc (section 58A), and for the UK courts to have jurisdiction in respect of certain terrorism offences committed abroad by UK nationals or residents (sections 63A

to 63E).

11 Provisions in the 2006 Act relevant to this Bill include:

- Further terrorism-related offences, including encouragement of terrorism (section 1) and dissemination of terrorism publications (section 2);
- A duty on the Secretary of State to appoint a person to review the provisions of the 2000 Act and Part 1 of the 2006 Act[3]. The current Independent Reviewer of Terrorism Legislation, Max Hill QC, took up his post on 1 March 2017.

12 Amongst other things, the 2008 Act:

- Provides for a court, when sentencing an offender convicted under the general criminal law, to treat a terrorist connection as an aggravating factor (sections 30 to 33);
- Makes provision about the notification of information to the police by certain individuals convicted of terrorism or terrorism-related offences (Part 4).

13 The Terrorism Asset-Freezing etc Act 2010 seeks to prevent the financing of terrorist acts by imposing financial restrictions on, and in relation to, certain persons believed to be, or to have been, involved in terrorist activities. The Terrorism Asset-Freezing etc Act 2010 is not amended by this Bill.

14 The 2011 Act confers powers on the Secretary of State to impose specified terrorism prevention and investigation measures on an individual.

15 The 2015 Act includes provision:

- Enabling the Secretary of State to make a temporary exclusion order to disrupt and control the return to the UK of a British citizen reasonably suspected of involvement of terrorism activity abroad (Part 1, Chapter 2);
- Requiring specified bodies (including local authorities, chief officers of police, schools and universities and NHS organisations) to have regard, in the exercise of their functions, to the need to prevent people from being drawn into terrorism (Part 5, Chapter 1). Local authorities are further required to have a panel to provide support for people vulnerable to being drawn into terrorism (Part 5, Chapter 2).

16 This Bill also amends the following legislation:

- The Road Traffic Regulation Act 1984 ("the 1984 Act"), sections 22C and 22D of which makes provision for Anti-Terrorism Traffic Regulation Orders ("ATTROs") under which vehicle or pedestrian traffic can be restricted for counter-terrorism reasons.
- Part 5 of the Police and Criminal Evidence Act 1984 ("PACE"), Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989, Part 2 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") and Chapter 1 of Part 1 of the Protection of Freedoms

[3] The Independent Reviewer of Terrorism Legislation is also responsible for reviewing the operation of Part 1 of the Anti-Terrorism, Crime and Security Act 2001, the 2008 Act, the Terrorism Asset-Freezing etc Act 2010, the 2011 Act and Part 1 of the 2015 Act.

Act 2012 which make provision for the taking, retention and destruction of fingerprints, DNA samples and the profiles derived from such samples. Further such provision is made in Schedule 8 to the 2000 Act, Part 1 of the 2008 Act and Schedule 6 to the 2011 Act.

- Part 12 of the Criminal Justice Act 2003 ("the 2003 Act") which, amongst other things, enables a criminal court, in England and Wales, to impose an extended sentence of imprisonment on a sex or violent offender when certain conditions are met (sections 226A and 226B) or a special custodial sentence for certain offenders of particular concern (section 236A).
- Part 11 of the 1995 Act which, amongst other things, enables a criminal court, in Scotland, to impose an extended sentence on a sex or violent offender when certain conditions are met (sections 210A).
- Part 2 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order") which, amongst other things, enables a criminal court, in Northern Ireland, to impose an extended custodial sentence on a sex or violent offender when certain conditions are met (Article 14).
- Part 1 of the Serious Crime Act 2007 which makes provision for Serious Crime Prevention Orders ("SCPOs"). These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.
- The Reinsurance (Acts of Terrorism) Act 1993 ("the 1993 Act") which authorises the payment of money provided by Parliament to enable the HM Treasury to act as reinsurer of last resort in respect of insurance for damage to commercial property arising from acts of terrorism.

Territorial extent and application

17 Clause 24 sets out the territorial extent of the Bill, that is, the jurisdictions which the provisions of the Bill form part of the law of. The extent of the Bill can be different from its application. Application is about where a provision of a Bill produces a practical effect.

18 Subject to a number of exceptions, the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland. The provisions of the Bill with a more limited territorial extent and/or application are as follows:

- The extension to Northern Ireland of the provisions, in section 30 of the 2008 Act, requiring a court to treat a terrorist connection as an aggravating factor when sentencing for a specified non-terrorist offence (clause 7(2) and (3)) – extends to the whole of the UK but applies to Northern Ireland only;
- The addition of certain offences to the list of offences where a court is required to consider whether there is a terrorist connection (clause 7(5) and (6)) – extends to the whole of the UK but variously apply to England, Wales and Northern Ireland only, Scotland only or Northern Ireland only;
- The amendments made to the provisions of the 2003 Act in respect of extended determinate sentences and sentences for offenders of particular concern (clause 8 and consequential amendments in Part 1 of Schedule 4) – extend and apply to England and Wales only;
- The amendments made to the provisions of the 1995 Act in respect of extended sentences

(clause 9) – extend and apply to Scotland only;

- The amendments made to the provisions of the 2008 Order in respect of extended custodial sentences (clause 10), together with certain consequential amendments in Part 2 of Schedule 4 – extend and apply to Northern Ireland only;
- The changes to the legislative framework governing the retention of fingerprints and DNA profiles - Schedule 2 amends seven enactments some of which extend and apply to England and Wales, Scotland or Northern Ireland only;
- The amendments to the 1984 Act in respect of ATTROs (clause 14) – extends and applies to England and Wales and Scotland only;
- Enabling local authorities to refer persons vulnerable to being drawn into terrorism to panels constituted under section 36 of the 2015 Act (clause 18) – extends and applies to England and Wales and Scotland only;
- The amendments to the 1993 Act (clause 19) – extends and applies to England and Wales and Scotland only.

19 Clause 5 extends extra-territorial jurisdiction for the offences provided for by section 13 of the 2000 Act, section 2 of the 2006 Act and section 4 of the Explosive Substances Act 1883 such that if an individual were to commit one of these offences in a foreign country, they would be liable under UK law in the same way as if they had committed the offence in the UK.

20 Clause 24(7) to (9) confers powers to extend the application of amendments made by the Bill to the 2003 Act and 2006 Act to any of the Channel Islands or the Isle of Man, and those made to the 2011 Act to the Isle of Man, by Order in Council.

21 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)

22 In the view of the UK Government, the matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly, and consequently no legislative consent motion is being sought on such grounds in relation to any provision of the Bill.

23 The provision in new section 22CA of the 1984 Act (inserted by clause 14(2)) enabling traffic authorities (which include Scottish Ministers) to impose charges in respect of ATTROs alters the executive competence of Scottish Ministers and, accordingly, a legislative consent motion is being sought in respect of this provision.

24 If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

25 See the table in Annex C for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Counter-terrorism

Chapter 1: Terrorist offences

Clause 1: Expressions of support for a proscribed organisation

26 Clause 1 amends section 12 of the 2000 Act to make it an offence to express an opinion or belief that is supportive of a proscribed organisation in circumstances where the perpetrator is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

27 Under section 3 of the 2000 Act, the Home Secretary may proscribe an organisation if she believes it is concerned with terrorism (as defined in section 1 of 2000 Act), that is the organisation:

- commits or participates in acts of terrorism;
- prepares for terrorism;
- promotes or encourages terrorism (including through the unlawful glorification of terrorism); or
- is otherwise concerned with terrorism.

28 Proscribed terrorist organisations are listed in Schedule 2 to the 2000 Act. There are currently 74 proscribed international terrorist organisations (including Al Qa'ida, Boko Haram, Islamic State of Iraq and the Levant (ISIL – also known as Daesh) and National Action) and 14 organisations in Northern Ireland that were proscribed under earlier legislation.

29 Section 12(1) of the 2000 Act provides that it is an offence to invite support for a proscribed organisation (and the support is not, or is not restricted to the provision of money or other property – such conduct is covered by the separate fund raising offence in section 15 of the 2000 Act).

30 The scope of the section 12(1) offence was considered by the Court of Appeal in the case of R v Choudhary and Rahman [2016] EWCA Crim 61. The Court of Appeal was clear that a central ingredient of the offence was inviting support from third parties for a proscribed organisation and that the offence "does not prohibit the holding of opinions or beliefs supportive of a proscribed organisation; or the expression of those opinions or beliefs" (paragraph 35 of the judgment). This clause therefore provides for a new offence which criminalises the expression of an opinion or belief that is supportive of a proscribed organisation (the *actus reus* or criminal act) in circumstances where the perpetrator is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation (the *mens rea* or mental element). The recklessness test is a subjective one, requiring that the perpetrator be aware of the risk. The new offence, as with the section 12(1) offence, is not subject to a minimum number of people to whom the expression is directed, nor is it limited in terms of applying only to expressions in a public place. The new offence is subject to the same maximum penalty as the existing section 12 offences; that is, ten years' imprisonment (section 12(6)).

Clause 2: Publication of images

31 Clause 2 amends section 13 of the 2000 Act to create a new offence criminalising the publication by a person of an image (whether still or moving image) of an item of clothing or

an article (such as a flag) in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation.

32 Section 13 of the 2000 Act makes it an offence to wear clothing, or wear, carry or display articles in a public place in such a way or in such circumstances as to arouse reasonable suspicion that an individual is a member or supporter of the proscribed organisation. Section 121 defines a public place as "a place to which members of the public have or are permitted to have access whether or not for payment".

33 The new offence will apply where an image of the item is published in such a way that the image is accessible to the public. This would, for example, cover a person uploading to social media a photograph of himself or herself, taken in his bedroom, which includes in the background an ISIS flag. It is not clear that the existing offence at section 13 would cover these circumstances because a bedroom is not a public place within the meaning of section 121. The new offence is subject to the same maximum penalty as the existing section 13 offence; that is, six months' imprisonment (section 13(3)).

Clause 3: Obtaining or viewing material over the internet

34 Clause 3 amends section 58 of the 2000 Act to make it an offence to download a document or record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or to view such material on three or more occasions.

35 Under section 58(1) of the 2000 Act it is an offence to: (a) collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or (b) possess a document or record containing information of that kind. A "record" includes a photographic or electronic record (section 58(2)). Section 58(3) provides a reasonable excuse defence.

36 Making a record for the purposes of section 58(1)(a) would include downloading information from the internet on to a computer. New subsection (1A)(a) of section 58 (as inserted by subsection (3) of this clause) makes this explicit. New subsection (1A)(b) makes it clear that the section 58(1) offence will only bite where the person downloads material knowing, or having reason to believe, that the material contains, or is likely to contain, information likely to be useful for terrorist purposes. Unintentional or mistaken downloading of such material would not be caught by the offence.

37 While the existing section 58(1)(a) offence would already capture the downloading of material likely to be useful to a person committing or preparing an act of terrorism, it would not capture the situation where a person viewed such material over the internet, for example by streaming a video, without obtaining permanent access to it by storing a copy of it on his or her computer or other storage media. Subsection (2) of the clause makes it an offence to view such material over the internet on three or more occasions (new section 58(1)(c)). The requirement to view the material on at least three occasions ensures that the new offence deals with a pattern of behaviour, rather than a deliberate but one off action (perhaps sparked by mere curiosity) or the unintended viewing of such material, for example by inadvertently clicking on the wrong internet link. The offence would be committed whether the three occasions involved viewing the same material or different material each time (new section 58(1B) as inserted by subsection (3) of the clause). The offence would be committed whether the defendant was in control of the computer or was viewing the material, for example, over the controller's shoulder.

38 The new section 58(1)(c) offence is subject to a maximum penalty of 14 years' imprisonment (the same as will apply to the existing section 58(1)(a) and (b) offences following the amendments made by clause 6).

Clause 4: Encouragement of terrorism and dissemination of terrorist publications

39 This clause amends sections 1 and 2 of the 2006 Act which provide for offences of encouragement of terrorism and dissemination of terrorist publications respectively.

40 The offence in section 1 of the 2006 Act is concerned with the publication of statements and section 1(1) sets out the type of statements to which it applies. These are statements that are likely to be understood by some or all of the members of the public to whom they are published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences (that is the offences listed in Schedule 1 to the 2006 Act - these represent the parallel offences in UK law to those offences mentioned in the Council of Europe Convention on the Prevention of Terrorism). The term "public", which is defined in section 20(3) of the 2006 Act, includes any section of the public and a meeting or other group of persons which is open to the public (whether unconditionally or on the making of a payment or the satisfaction of other conditions).

41 Section 1(2) sets out the conduct (*actus reus*) and mental (*mens rea*) element of the offence. The offence is committed if a person publishes a statement (as defined in section 1(1)) or causes another to publish such a statement and he or she has the necessary *mens rea*. The *mens rea* is that, at the time of publishing or causing to publish, the person either intends members of the public to be directly or indirectly encouraged or otherwise induced, by the statement to commit, prepare or instigate acts of terrorism or Convention offences, or he or she is reckless as to whether members of the public will be so directly or indirectly encouraged by the statement. The term "publishing a statement" is defined in section 20(4) of the 2006 Act and includes publishing a statement in any manner to the public, providing an electronic service by which means the public have access to the statement, or using an electronic service provided by another in relation to the material supplied by him or her so as to enable the public to have access to the statement. Amongst other things, section 1(5) provides that an offence is committed whether or not any person is actually encouraged or induced to commit, prepare or instigate an act of terrorism or Convention offence.

42 Given the requirement in section 1(1) that the statement must be "likely to be understood" by a member of the public as an encouragement or inducement to them to commission, prepare or instigate an act of terrorism, the encouragement offence will not be made out if the statement is directed at children or vulnerable adults who do not understand the statement to be an encouragement to engage in acts of terrorism. Subsections (3) and (4) of the clause amend section 1 of the 2006 Act to provide instead for a "reasonable person" test so that the offence would be made out if a reasonable person would understand the statement as an encouragement or inducement to them to commission, prepare or instigate an act of terrorism.

43 Section 2 of the 2006 Act creates offences relating to the sale and other dissemination of books and other publications, including material on the internet, that encourage people to engage in terrorism, or provide information that could be useful to terrorists.

44 The conduct element of the offence, as set out in section 2(2), covers: distributing or circulating a terrorist publication; giving, selling, or lending a terrorist publication; offering a terrorist publication for sale or loan; providing a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of gift, sale, or loan; transmitting the contents of a terrorist publication electronically; and possessing a terrorist publication with a view to making it available in any of the ways listed.

45 The *mens rea* is provided for in subsection (1) of section 2 of the 2006 Act. For an offence to be

committed, it is necessary for an individual to carry out any of the actions set out in subsection (2) of section 2 (as described above) and for him or her either to have an intention that an effect of his or her conduct will be a direct or indirect encouragement or other inducement to terrorism, an intention that an effect of his or her conduct will be the provision of assistance in the commission or preparation of acts of terrorism, or for him or her to be reckless as to whether his or her conduct has one of these two specified effects.

46 Section 2(3) of the 2006 Act sets out the definition of terrorist publication. A publication is considered a terrorist publication if it meets one of two tests. The first test is if matter contained in it is likely to be understood by some or all of the persons to whom it is or may become available as a consequence of the conduct in section 2(2) as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism. The second test is if it contains any matter which is likely to be useful in the commission or preparation of such acts, and it is likely to be understood by some or all of the persons to whom it is or may become available as being contained in the publication, or made available to them, wholly or mainly for the purposes of being so useful to them.

47 Given the requirement in section 2(3) that the material contained in the publication must be "likely to be understood" by some or all of the persons to whom it becomes available as an encouragement or inducement to them to commission, prepare or instigate an act of terrorism, the existing dissemination offence would not be made out if a publication was disseminated to children or vulnerable adults who do not understand that its content is an encouragement to engage in acts of terrorism. Subsections (6) and (7) of the clause amend section 2 of the 2006 Act to provide instead for a "reasonable person" test so that the offence will be made out if a reasonable person would understand the content of the publication as being an encouragement or inducement to them to commission, prepare or instigate an act of terrorism.

Clause 5: Extra-territorial jurisdiction

48 Clause 5 extends the circumstances in which terrorist offending abroad may be prosecuted in the United Kingdom, whether the offence is committed by UK citizens or otherwise.

49 Section 17 of the 2006 Act makes provision in relation to extra-territorial jurisdiction for the UK courts for the offences contained in sections 1 (encouragement of terrorism), 6 (training for terrorism), 8 (attendance at a place used for terrorist training) and 9 to 11 (offences involving radioactive devices and materials and nuclear facilities) of that Act, and in sections 11(1) (membership of proscribed organisations) and 54 (weapons training) of the 2000 Act. The overall effect of the section is that if, for example, an individual were to commit one of these offences in a foreign country, they would be liable under UK law in the same way as if they had committed the offence in the UK. In practice, a prosecution would only be instituted in this country if the individual was present in the UK (for example having returned voluntarily from fighting with a terrorist organisation overseas, or having been returned in accordance with extradition procedures). Prosecutions in England and Wales for an offence committed abroad may only be instituted with the consent of the Director of Public Prosecutions, given with the permission of the Attorney General; such prosecutions in Northern Ireland are subject to the consent of the Director of Public Prosecutions for Northern Ireland, given with the permission of the Attorney General for Northern Ireland (section 19 of the 2006 Act). In Scotland, all prosecutions are brought by the Lord Advocate or on his behalf, where to do so is in the public interest.

50 In the case of the offence contrary to section 1 of the 2006 Act, the extra-territoriality is currently limited in that it only applies insofar as the statement encourages the commission, preparation, or instigation of one or more Convention offences (that is the offences listed in Schedule 1 to the 2006 Act - these represent the parallel offences in UK law to those offences

mentioned in the Council of Europe Convention on the Prevention of Terrorism). Subsection (2)(b) amends section 17(2) to extend the existing extra-territorial jurisdiction for the section 1 offence. As a result, a person who does anything outside of the UK which would constitute an offence under section 1 (whether in relation to a Convention offence or terrorism more widely) could be tried in the UK courts were he or she to return to this country.

51 Subsections (2)(a), (3) and (4) amend section 17(2) to provide for extra-territorial jurisdiction for a further three offences, namely those in section 2 of the 2006 Act (dissemination of terrorist publications), section 13 of the 2000 Act (wearing a uniform etc associated with proscribed organisation) and section 4 of the Explosive Substances Act 1883 (making or possessing explosives under suspicious circumstances) so far as committed for the purposes of an act of terrorism.

52 Extra-territorial jurisdiction is considered to be appropriate for these offences because those who perpetrate such conduct are increasingly likely to be located abroad using online channels to promote terrorist organisations and disseminate terrorist publications in order to radicalise individuals within the United Kingdom and elsewhere, and seeking to encourage the commission of acts of terrorism.

Chapter 2: Punishment and management of terrorist offenders

Clause 6: Increase in maximum sentences

53 Subsections (2), (3), (5) and (6) increase the maximum penalty for four terrorism offences, as follows:

Offence	Current maximum penalty	New maximum penalty
Collection of information of a kind likely to be useful to a person committing or preparing an act of terrorism (section 58 of the 2000 Act)	10 years	15 years
Eliciting, publishing or communicating information about members of armed forces etc which is of a kind likely to be useful to a person committing or preparing an act of terrorism (section 58A of the 2000 Act)	10 years	15 years
Encouragement of terrorism (section 1 of the 2006 Act)	7 years	15 years
Dissemination of terrorist publications (section 2 of the 2006 Act)	7 years	15 years

Clause 7: Sentences for offences with a terrorist connection

54 Clause 7 amends section 30 of the 2008 Act to require courts in Northern Ireland to consider whether specified offences have a terrorist connection and to extend the list of offences where such a connection must be considered in England and Wales, and Scotland.

55 Section 30 of the 2008 Act requires that a court in England and Wales considering a person's sentence for an offence listed in Schedule 2 to that Act must, if it appears that there was or may have been a terrorist connection, make a determination (on the criminal standard of proof) as to whether there was such a connection. The court will make this determination on the basis of the usual information before it for the purposes of sentencing, that is the trial evidence or evidence heard at a *Newton* hearing (if necessary) following a guilty plea, and taking account of any representations made by the prosecution or defence. A *Newton* hearing is where the judge hears evidence from both the prosecution and defence and comes to his or her own conclusion on the facts (because the facts are disputed by the other parties) , applying the criminal standard of proof. If the court determines that there was a terrorist connection, it must treat that as an aggravating factor when sentencing the offender. The presence of an aggravating factor would point to the court imposing a higher sentence (within the statutory maximum) than would otherwise be the case.

56 Subsection (2) amends section 30 of the 2008 Act so that the duty imposed on criminal courts in England and Wales is extended to criminal courts in Northern Ireland. (Section 31 of the 2008 Act makes equivalent provision for Scotland.)

57 Additionally, Part 4 of the 2008 Act requires an individual convicted of a terrorism offence or of an offence determined to have a terrorist connection (that is, a terrorism-related offence) and receiving a qualifying sentence to notify specified information to the police (see paragraphs 80 and 81 below for further details). The notification requirements do not currently apply in Northern Ireland where a person is convicted of a terrorism-related offence. As a result of the amendment made by subsection (2) it automatically follows that persons sentenced to a qualifying sentence for a terrorism-related offence in Northern Ireland will henceforth also be subject to the notification requirement. Subsection (3) amends section 42 of the 2008 Act to make this explicit.

58 Subsections (5) and (6)(b) to (d) amend Schedule 2 to the 2008 Act to add offences under the law in Northern Ireland, namely the offences of false imprisonment, blackmail, intimidation and putting people in fear of violence and certain firearms offences, to the list of specified offences for the purposes of section 30 of that Act. Such offences are commonly charged in Northern Ireland in terrorism-related cases. Between February 2001 and March 2016, 403 individuals detained in Northern Ireland under section 41 of the 2000 Act were charged with firearms offences, 32 such individuals were charged with false imprisonment, 31 such individuals were charged with intimidation and 57 such individuals were charged with blackmail.[4]

59 Subsection (6)(a) amends Schedule 2 to the 2008 Act to add the offence of wounding with intent (section 18 of the Offences against the Person Act 1861) to the list of specified offences for the purposes of section 30 of that Act. Between 2012 and 2017, seven individuals have been charged in England and Wales with this offence where the offence was considered to be terrorist related.[5] Schedule 2 to the 2008 Act already lists a number of other offences provided

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[4] Northern Ireland Terrorism Legislation: Annual Statistics 2016/17 (table 9), Northern Ireland Office, November 2017.

[5] Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to December 2017 – annual data tables (table A.05b), Home Office Statistical Bulletin 05/18

for in the Offences against the Person Act 1861; that Act does not apply to Scotland and accordingly subsection (5) also adds broadly equivalent Scottish common law offences to Schedule 2 to the 2008 Act.

Clause 8: Extended sentences etc for terrorism offenders: England and Wales

60 This clause amends provisions in Part 12 of the 2003 Act which, amongst other things, enables a criminal court, in England and Wales, to impose an extended sentence of imprisonment ("extended determinate sentence" ("EDS")) on an offender when certain conditions are met (section 226A and 226B) or a special custodial sentence for certain offenders of particular concern (section 236A) ("sentence for offenders of particular concern" ("SOPC")).

61 Sections 226A and 226B of the 2003 Act provide for EDSs for adults and persons under 18 respectively. The sentences may be imposed in respect of the sexual and violent offences listed in Schedule 15 to the 2003 Act (referred to as "specified offences") where certain conditions are met. For both sentences, the court must consider that the offender to be "dangerous", that is he or she presents a substantial risk of causing serious harm through re-offending (section 229 of the 2003 Act).

62 For adults, two further conditions apply as alternatives. Either the court must consider that the current offence is serious enough to merit a determinate sentence of at least four years, or at the time the present offence was committed the offender must have previously been convicted of an offence listed in Schedule 15B to the 2003 Act. The second of these alternative conditions does not apply in respect of persons under 18.

63 An EDS is a custodial term which has two operational parts. The first is the appropriate sentence commensurate with the seriousness of the offence, and then secondly an extended licence period on top (although the whole sentence, including the extended licence period, must remain within the maximum penalty for the offence). Where the conditions are made out, the court may impose an extended period for which the offender is to be subject to a licence (an "extension period") of up to five years for a violent offence and up to eight years for a sexual offence. Schedule 15 lists violent and sexual offences separately (Parts 1 and 2 respectively).

64 Sections 246A of the 2003 Act makes provision about the release on licence of persons serving EDSs. Offenders will be considered for release on licence by the Parole Board once the offender has served two-thirds of the appropriate custodial term (compared with automatic release at the half-way point for standard determinate sentences), and will be released automatically at the end of the appropriate custodial term if the Parole Board has not previously directed earlier release.

65 Currently the list of relevant violent offences for the purpose of the EDS regime in Part 1 of Schedule 15 to the 2003 Act includes a number of terrorism offences. Paragraph 9(2) of Schedule 4 removes those offences from Part 1 and subsection (5) of this clause places them in a new Part 3 (specified terrorism offences) along with the following additional terrorist offences:

- Membership of a proscribed organisation (section 11 of the 2000 Act);
- Inviting support for a proscribed organisation (section 12 of the 2000 Act);
- Collection of information useful to a terrorist (section 58 of the 2000 Act);
- Publishing information about members of the armed forces etc (section 58A of the 2000 Act);
- Encouragement of terrorism (section 1 of the 2006 Act);

- Dissemination of terrorist publications (section 2 of the 2006 act); and
- Attendance at a place used for terrorism training (section 8 of the 2006 Act).

66 Amendments to sections 224, 226A and 226B of the 2003 Act (made by subsections (2) to (4)) provide that the EDS regime, with an extended licence period of up to eight years, applies to the offences in the new Part 3.

Extended determinate sentences – example

Person A is convicted of an offence contrary to section 58A of the 2000 Act (eliciting, publishing or communicating information about members of the armed forces etc); as a result of clauses 6 and 8 the maximum penalty for that offence will be 15 years' imprisonment and the offence will be one which may result in an EDS or SOPC.

The court considers the offender dangerous under the test set out in the 2003 Act and sentences the offender to an EDS. The EDS sentence is for 15 years. The sentence is made up of a custodial period of nine years and a six year extension period. This means the offender will spend six years in custody (two-thirds of the custodial period) before being considered for release by the Parole Board. The Parole Board may decide to release the offender between the six and nine year point. If the Parole Board does not release the offender during that period he will automatically be released at the end of the nine year custodial period. If released before the nine year point the offender will spend the remainder of the custodial period on licence in the community plus the extension period. In other words, if the offender is released by the parole board after six years he will spend three years (the rest of the custodial term) on licence followed by a further six years (the extension period), a total of nine years, on licence. If the offender is not released by the Parole Board and is released at the end of his nine year custodial period he will spend six years on licence.

67 When an offender is convicted of an offence listed in Schedule 18A to the 2003 Act and is sentenced to a term of imprisonment, the court must, unless it imposes a life sentence or an EDS, impose a SOPC under section 236A of the 2003 Act. The SOPC regime was created in order to remove automatic release for terrorism and child sex offences, which would have applied to a standard determinate sentence. Similarly to the EDS, it has two operational parts: firstly the appropriate custodial term, and secondly an additional licence period. The effect of a SOPC is that release between the point half-way through the custodial term and the conclusion of the term is not automatic, but is at the discretion of the Parole Board, and on release they must serve a minimum of 12 months on licence (section 236A(2) of the 2003 Act).

68 Subsection (6) inserts the offences listed in paragraph 65 above into Schedule 18A of the 2003 Act. As a result, a person convicted of such an offence in the circumstances described in paragraph 67 will receive a SOPC.

Sentence for offenders of particular concern – example

Person B is convicted of an offence contrary to section 2 of the 2006 Act **(**dissemination of terrorist publications) as a result of clauses 6 and 8 the maximum penalty for that offence will be 15 years' imprisonment and the offence will be one which may result in an EDS or SOPC.

The court decides not to impose an EDS sentence and as a result must impose a SOPC. The

SOPC is for five years. The sentence is made up of a custodial period of four years and a further one year licence period. This means the offender will spend two years in custody (half the custodial period) before being considered for release by the Parole Board. If released after two years the offender will spend the rest of the custodial period on licence (in this case for two years) plus the further one year licence period. If the offender is not released between two and four years he will be released automatically at the four year point (the end of the custodial term) and serve one year on licence in the community.

Clause 9: Extended sentences for terrorism offenders: Scotland

69 This clause amends provisions in Part 11 of the 1995 Act which, amongst other things, enables a criminal court in Scotland to impose an extended sentence on a sex or violent offender when certain conditions are met (section 210A).

70 Under the provisions of section 210A of the 1995 Act the court is able to impose an "extended sentence" on an offender who is convicted of a relevant sexual or violent offence and receives a determinate sentence of imprisonment of any length in respect of a sexual offence or a sentence of four years or more in respect of a violent offence. Imposition of an extended sentence provides for an additional period of supervision on licence in the community over and above that which would normally have been the case. An extended sentence may only be passed where a person is convicted on indictment and if the court is of the opinion that the period of supervision on licence, which the offender would otherwise be subject to, would not be adequate for the protection of the public from serious harm from the offender.

71 An extended sentence is defined, by section 210A(2), as being the aggregate of the term of imprisonment which the court would otherwise have passed ("the custodial term") and a further period, known as the "extension period", for which the offender is to be on licence (and which is in addition to any licence period attributable to the "custodial term"). The extension period must not exceed 10 years and the total length of an extended sentence must not exceed any statutory maximum for a particular offence.

72 The following example demonstrates how the extended sentence arrangements work in practice. A sex offender sentenced to a three-year custodial term and a three year extension period would be released after serving 18 months in prison but will be on licence for the balance of the custodial period, that is 18 months plus a further three years, namely four years and six months in total on licence.

73 Section 210A(10) of the 1995 Act defines sexual and violent offence for the purposes of section 210A. A "violent offence" is defined as "any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence". As such, this definition does not cover all the terrorism offences now listed in the new Part 3 of Schedule 15 to the 2003 Act (inserted by clause 8). The amendments to section 210A provide that the ability of the court to impose an extended sentence will apply to sexual, violent and terrorism offences, with the definition of a "terrorism offence" matching that in the new Part 3 of Schedule 15 to the 2003 Act. The extended licence period of up to ten years will apply to terrorism offences as it does now to sexual and violent offences.

Clause 10: Extended sentences for terrorism offenders: Northern Ireland

74 This clause amends provisions in Part 2 of the 2008 Order which, amongst other things, enables a criminal court in Northern Ireland to impose an extended sentence of imprisonment ("extended custodial sentence" ("ECS")) on a sex or violent offender when certain conditions are met (Article 14).

75 Under the 2008 Order, certain serious sexual and violent offenders judged by the courts, under Article 14, to be likely to commit further similar offences in the future can receive an ECS. An ECS is a sentence of imprisonment which is equal to the aggregate of "the appropriate custodial term", which must be at least one year, and a further period (the extension period) for which the offender is to be subject to a licence. The total term of the sentence must not exceed the maximum penalty available for the offence.

76 The extension period is set by the courts and must not exceed five years for violent offences or eight years for sexual offences, but must be a period considered necessary for the purpose of protecting members of the public from further serious offences. Offenders serving an ECS will be referred to the Parole Commissioners for Northern Ireland approximately six months prior to the mid-point of their sentence and must demonstrate that they can be safely released into the community. If the Parole Commissioners direct release the offender will remain on licence for the remainder of the custodial term as well as the extension period set by the court.

Extended Custodial Sentences - example
Person A is convicted of an offence contrary to section 58A of the 2000 Act (eliciting, publishing or communicating information about members of the armed forces etc); as a result of clauses 6 and 10 the maximum penalty for that offence will be 15 years' imprisonment and the offence will be one which may result in an Extended Custodial Sentence.
The court considers the offender dangerous under the test set out Article 15 of the 2008 Order and sentences the offender to an ECS. The ECS sentence is for 15 years. The sentence is made up of a custodial period of 9 years and a 6 year extension period. This means the offender will spend 4½ years in custody (half of the custodial period) before being considered for release by the Parole Commissioners for Northern Ireland. The Parole Commissioners may decide to release the offender between the 4½ and 9 year point. If the Parole Commissioners do not release the offender during that period he will automatically be released at the end of the 9 year custodial period.
If released before the nine year point the offender will spend the remainder of the custodial period on licence in the community plus the extension period. In other words, if the offender is released by the Parole Commissioners after 4½ years he will spend 4½ years (the rest of the custodial term) on licence followed by a further 6 years (the extension period), a total of 10½ years, on licence. If the offender is not released by the Parole Commissioners and is released at the end of his 9-year custodial period he will spend 6 years on licence.

77 Currently the list of relevant violent offences for the purpose of the ECS regime in Part 1 of Schedule 2 to the 2008 Order includes a number of terrorism offences. Paragraph 14 of Schedule 4 removes those offences from Part 1 and subsection (4) of this clause then places them in a new Part 3 (specified terrorism offences) along with the additional terrorist offences listed in paragraph 65 above.

78 Amendments to Articles 12 and 14 of the 2008 Order (made by subsections (2) and (3)) provide that the ECS regime, with an extended licence period of up to eight years, applies to the offences in the new Part 3.

Clause 11 and Schedule 1: Additional requirements

79 This clause and Schedule 1 make a number of further changes to the notification requirements in Part 4 of the 2008 Act.

80 Part 4 of the 2008 Act makes provision about the notification of information to the police by certain individuals (aged 16 or over) convicted of relevant terrorism offences (listed in section

41) or terrorism-related offences (as provided for in section 42). The notification requirements apply to a person who: (a) is convicted of a relevant offence and receives a sentence of imprisonment or detention for a period or term of 12 months or more in relation to that offence; or (b) is convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged in respect of such an offence punishable by 12 months' imprisonment or more and is made subject to a hospital order. When in the community, such individuals – registered terrorist offenders ("RTOs") - must provide the police with certain personal information, notify any changes to this information, confirm its accuracy periodically and notify any foreign travel. The period for which the notification requirement applies varies depending on the length of the sentence triggering the requirement, as follows:

Length of sentence	Adults sentenced to 10 or more years' imprisonment or detention (including life or indeterminate sentences)	Adults sentenced to five or more years' but less than 10 years' imprisonment or detention	Adults sentenced to 12 months' or more but less than five years' imprisonment, and 16 or 17 year olds (irrespective of the length of sentence)
Period for which notification requirement applies	30 years	15 years	10 years

81 Section 47 of the 2008 Act sets out the information an RTO must supply to the police when first making a notification; this includes the RTO's name (or names) and home address (or addresses), date of birth and national insurance number. Section 60 of the 2008 Act defines "home address". This provides that where an offender is homeless or of no fixed abode his or her "home address" means an address or location where he can be regularly found. This might, for example, be a shelter or a friend's house. Subsection (2) amends section 47 to add further categories of information which must be provided on the initial notification, namely:

- the RTO's contact details (that is, a telephone number (if any) and an email address (if any)) on the date on which the person was dealt with in respect of the offence, sentencing for which triggered the notification requirement;
- the RTO's contact details on the date of notification;
- the identifying information (registration number, model and colour of the vehicle and the location where the vehicle is normally stored when not in use) of any motor vehicle in respect of which the RTO is the registered keeper or otherwise has the right to use (for example, by virtue of the RTO's employment or a car hire agreement);
- details of any bank accounts or equivalent (including accounts held jointly with another person and any business accounts held by the RTO where he or she runs a business through a company) and any debit, credit, charge or prepaid cards held by the RTO (paragraph 1 of new Schedule 3A to the 2008 Act, inserted by Schedule 1 to the Bill, detailing the financial information that must be provided by an RTO);
- details of any passport(s) or other identity document(s) held by the RTO (paragraph 2 of new Schedule 3A to the 2008 Act, inserted by Schedule 1 to the Bill, specifies the required

information that must be provided by an RTO).

82 Section 48 of the 2008 Act sets out the requirement on a person to notify the police of changes to the details they have already notified. As a consequence of the imposition of the new requirements on RTOs to notify the police of their contact details, information about motor vehicles they have a right to use, financial information and information about passports or identity documents they hold, subsection (3)(b) amend section 48 (by inserting new subsections (4A) to (4E)) and subsection (4) inserts new section 48A so that RTOs are also required to notify the police of any changes to such information. Where there is a change to the RTO's financial information or identification documents, the notification of such changes under new section 48A must be accompanied by a re-notification of all the other information required by section 47(2) of the 2008 Act (new section 48A(8)).

83 Under section 48 of the 2008 Act any RTO whose address changes (including if his or her address is a place where he or she may regularly be found, in the case of a person with no sole or main address) must notify the police of the change within three days. Subsection (5) amends section 49 to require a homeless RTO to re-notify the police of his or her information on a weekly basis, rather than annually.

Clause 12: Power to enter and search home

84 This clause inserts new section 56A into the 2008 Act which confers a power on the police to enter and search the home address of an RTO. New section 56A enables a justice of the peace in England and Wales (or a sheriff in Scotland or a magistrate in Northern Ireland), on application from a senior police officer (that is, a superintendent or above) of the relevant force, to issue a warrant to allow a constable to enter and search the home of an RTO for the purposes of assessing the risks that the RTO may pose to the community. The warrant must be executed by a constable of the police force in whose area the premises are located.

85 New section 56A(2) sets out the requirements that must be met before the warrant may be issued. These requirements set out that the address must be one that the RTO has notified to the police as his or her home address or one in respect of which there is a reasonable belief that the RTO can be regularly found there or resides there. The RTO must not be in custody, detained in a hospital or outside the United Kingdom at the time. A constable must have tried on at least two previous occasions to gain entry to the premises for the purpose of conducting a risk assessment and been unable to gain entry for that purpose.

86 New section 56A(5) requires that the warrant specifies each address to which it relates. New section 56A(6) allows a constable to use reasonable force if it is necessary to do so to enter and search the premises. New section 56A(7) provides that the warrant can authorise as many visits as the justice of the peace, sheriff or magistrate, as the case may be, considers to be necessary for the purposes of assessing the risks posed by the offender which, by virtue of new section 56A(8), can be unlimited or limited to a maximum.

Clause 13: Serious crime prevention orders

87 This clause amends Schedule 1 to the Serious Crime Act 2007 ("the 2007 Act") to include an offence for the time being listed in section 41(1) of the 2008 Act in the list of specified offences in respect of which serious crime prevention orders ("SCPOs") may be made. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.

88 An SCPO may be made by the Crown Court (in Scotland, the High Court of Justiciary or the sheriff) where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in a magistrates' court but committed

to the Crown Court for sentencing). Orders may also be made by the High Court (in Scotland, the Court of Session or a sheriff) where it is satisfied that a person has been involved in serious crime, whether that involvement was in England and Wales, Scotland or Northern Ireland (as the case may be), or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales, Scotland or Northern Ireland (as the case may be). A serious offence is one which is listed in Schedule 1 to the 2007 Act, or an offence which is sufficiently serious that the court considers it should be treated as it were part of the list. The clause extends this list of trigger offences to include terrorism offences for the time being listed in section 41(1) of the 2008 Act, namely an offence:

- under section 11 or 12 of the 2000 Act (offences relating to proscribed organisations);
- under sections 15 to 18 of the 2000 Act (offences relating to terrorist property);
- under section 38B of the 2000 Act (failure to disclose information about acts of terrorism);
- under section 54 of the 2000 Act (weapons training);
- under sections 56 to 61 of the 2000 Act (directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom);
- under section 113 of the Anti-terrorism, Crime and Security Act 2001 (use of noxious substances or things);
- under sections 1 and 2 of the 2006 Act (encouragement of terrorism);
- under sections 5, 6 and 8 of the 2006 Act (preparation and training for terrorism);
- under sections 9, 10 and 11 of the 2006 Act (offences relating to radioactive devices and material and nuclear facilities);
- in respect of which UK courts have jurisdiction by virtue of any of sections 62 to 63D of the 2000 Act or section 17 of the 2006 Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc).

89 The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person's travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum penalty of five years' imprisonment or an unlimited fine, or both.

90 Sections 6 to 15 of the 2007 Act contain a number of safeguards, including conferring rights on affected third parties to make representations during any proceedings and protection for information subject to legal professional privilege.

Chapter 3: Counter-terrorism powers

Clause 14: Traffic regulation

91 This clause makes amendments to the 1984 Act in respect of the operation of ATTROs.

92 The 1984 Act enables traffic authorities (broadly speaking local authorities in England, Wales and Scotland, together with Transport for London and Highways England) to put in place various restrictions on traffic within their areas by way of a Traffic Regulation Order ("TRO"). Section 1 of the 1984 Act provides for the making of permanent orders by a traffic authority outside Greater London (section 6 makes equivalent provision for Greater London). Amongst other things, a permanent order may be made for the purpose of:

- avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising (section 1(1)(a)), or
- preventing damage to the road or to any building on or near the road (section 1(1)(b)).

93 Section 14 provides for the making of temporary TROs and Traffic Regulation Notices ("TRNs"). A traffic authority may make a temporary order where they are satisfied that traffic on the road should be restricted or prohibited because of, amongst other things, the likelihood of danger to the public, or of serious damage to the road, which is not attributable to works on or near the road (section 14(1)(b)). A traffic authority may make a temporary notice where it appears to the authority that it is necessary for the reason in section 14(1)(b) that the restriction or prohibition should come into force without delay.

94 Temporary orders made due to the likelihood of danger to the public, or of serious damage to the road, have a maximum duration of 18 months'. Temporary notices may not remain in force for more than 21 days.

95 Under section 2 of the 1984 Act, TROs (or TRNs) may make any provision prohibiting, restricting or regulating the use of a road by traffic or pedestrians, including parking.

96 Section 22C of the 1984 Act makes provision for ATTROs and Anti-Terrorism Traffic Regulation Notices ("ATTRNs"). These are in effect a sub-category of TROs/TRNs and rely on the underlying powers in sections 1, 6 and 14 of the 1984 Act to make permanent or temporary TROs and TRNs, as appropriate. A permanent ATTRO may be made under section 1(1)(a) for the purpose of avoiding or reducing, or reducing the likelihood of, danger connected with terrorism, or under section 1(1)(b) for the purpose of preventing or reducing damage connected with terrorism (section 22C(1) and (2)). Permanent ATTROs may be made in Greater London for the same reasons under the corresponding power in section 6 (section 22C(3)). A temporary ATTRO or ATTRN may be made under section 14 for a purpose relating to danger or damage connected with terrorism (section 22C(4) and (5)). "Terrorism" has the same meaning as in section 1 of the 2000 Act.

Section 1 of the 2000 Act - Terrorism: interpretation

(1) In this Act "terrorism" means the use or threat of action where–

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it–

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or
(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section–
(a) "action" includes action outside the United Kingdom,
(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
(d) "the government" means the government of the United Kingdom, of a part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

97 Section 22D of the 1984 Act makes supplementary provision in respect of ATTROs. In particular, subsection (1) provides that an ATTRO may only be made by a traffic authority on the recommendation of the chief officer of police for the area to which the order relates. A chief officer will typically be advised by the specialist local police Counter-Terrorism Security Advisor or the Centre for the Protection of National Infrastructure.

98 Examples of permanent ATTROs include the control lane outside Parliament along Abingdon Street and Grosvenor Square around the former US embassy. Examples of events where a temporary ATTRO have operated include the annual conferences of the main political parties, the start and end of the London marathon, G8 conferences, the NATO summit and royal weddings.

99 The Local Authority (Transport Charges) Regulations 1998 (S.I. 1998/948), made under section 150 of the Local Government and Housing Act 1989, authorise local authorities to impose charges on specified persons in connection with the costs of orders or notices made under sections 1, 6 and 14 of the 1984 Act. These Regulations do not expressly provide for a power to impose charges where an order or notice is made under section 1, 6 or 14 of the 1984 Act by virtue of the power in section 22C.

100 Subsection (2) inserts new section 22CA into the 1984 Act which provides for an express power to charge in such cases. Such charges may cover the reasonable costs of anything done in connection with or in consequence of the order or notice or the making of the order or notice. Such costs might include, in particular, expenditure in relation to the requirements to advertise the making of an order (see paragraph 102 below). Charges may be imposed either on the promoter or organiser of a relevant event (as defined in new section 22CA(4) – the definition covers, for example, the organiser of a sporting event (such as a marathon) or a Christmas street market) or on the occupier of a relevant site (as defined in new section 22CA(4) to (6) – the definition covers, for example, an oil refinery or power station).

101 As indicated in paragraph 96 above, section 22C(5) enables an ATTRN to be made. The supplementary provisions in section 22D inadvertently only refer to ATTROs made by virtue of section 22C, and not to ATTRNs. Subsections (4), (6), (7), (8) and (9)(a) and (b) amend section 22D so that the provisions in that section also apply to ATTRNs. Those provisions are:

- The requirement that an order made by virtue of section 22C may only be made on the recommendation of the chief officer of police for the area to which the order relates (subsection (1));
- The disapplication of specified provisions of the 1984 Act (for example, the restrictions on a TRO in section 3) in relation to an order made by virtue of section 22C (subsection (2));
- The application of sections 92 to 94 of the 1984 Act (which relate to the placing of bollards and other obstructions) to a temporary order made under section 14 by virtue of section 22C (subsection (3));
- The enabling of an order made by virtue of section 22C to authorise the undertaking of works for the purpose of, or for a purpose ancillary to, another provision of the order (subsection (4)); and
- That an order made by virtue of section 22C may enable a constable to direct that a provision of the order shall be commenced, suspended or revived; confer a discretion on a constable; or make provision conferring a power on a constable in relation to the placing of structures or signs (subsection (5)).

102 The procedure to be adopted by a traffic authority for making permanent orders is set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996/2489), as amended, and the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (SI 1999/614), as amended. Regulation 7 of the England and Wales Regulations and Regulations 5 of the Scottish Regulations specify requirements for publicising proposals to make an order, including a requirement to place a notice in one or more local newspapers. The procedure for making temporary orders is set out in the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (SI 1992/1215), as amended. Regulation 3, which relates to temporary orders (there is no equivalent provision for temporary notices), again requires the traffic authority to publicise the intention to make an order by placing a notice in one or more local newspapers. Subsection (5) of the clause inserts new subsection (1A) into section 22D of the 1984 Act which disapplies any statutory requirement (such as those referenced above) to publicise the making of an ATTRO where the relevant chief officer of police is of the opinion that such publicity would risk undermining the purpose of the order (for example, by highlighting a potential target, revealing the fact of a sensitive visit by a VIP, or indicating the extent of a protective security cordon).

103 Section 22D(5) of the 1984 Act provides that an order made by virtue of section 22C may: (a) enable a constable to direct that a provision of the order shall be commenced, suspended or revived; (b) confer a discretion on a constable; or (c) make provision conferring a power on a constable in relation to the placing of structures or signs. Subsection (9)(c) of the clause provides that an ATTRO or ATTRN may enable a constable to authorise a person of a description specified in the ATTRO or ATTRN to do anything a constable can do by virtue of section 22D(5). Such a description of persons might include, for example, local authority staff, event stewards or security guards employed by a company contracted to provide security for an event to which the ATTRO relates (such as a sporting or musical event). Under such delegated authority, it might be left to a security guard or steward to determine when a provision of an ATTRO is to commence or cease operating on a given day – the ATTRO might, for example, provide for a road to be closed off from 10:00 to 22:00, but a security guard could determine that on a particular day the road can be re-opened an hour earlier. The ability for an ATTRO to confer a discretion on a constable may be used, in particular, to enable a police officer manning a barrier or gate that has closed off a road to exercise his or her discretion to allow accredited vehicles or persons through the barrier or gate; this provision would enable

another authorised person to exercise such discretion.

104 Section 67 of the 1984 Act empowers the police in extraordinary circumstances to deploy temporary traffic signs indicating that prohibitions, restrictions or requirements in respect of vehicular traffic are in operation. Extraordinary circumstances include terrorism or the prospect of terrorism. Where the section 67 power is being exercised for such counter-terrorism purposes, it is available for up to 28 days, thereby giving sufficient time to secure a temporary ATTRO if the terrorist threat was deemed to be continuing. The power conferred by section 67 is only exercisable in relation to vehicular traffic; subsection (10) amends section 67 so that, insofar as the power is exercised in connection with terrorism or the prospect of terrorism, it may also be used to place prohibitions, restrictions or requirements on pedestrians so, for example, prohibiting all access (by vehicles and pedestrians) to a stretch of road.

105 Section 67 does not currently provide for the deployment of obstructions, such as bollards and barriers, to enforce compliance with such prohibitions, restrictions or requirements and the police instead rely on common law powers to deploy such obstructions. Subsection (11) of the clause inserts new section 94A into the 1984 Act which confers a statutory power on the police to deploy bollards or other obstructions where the section 67 power is being used for counter-terrorism purposes. New section 94A(6) preserves the existing common law powers.

Clause 15: Evidence obtained under port and border control powers

106 Schedule 7 to the 2000 Act provides for counter-terrorism port and border controls. It enables an examining officer (who may be a constable, or a designated immigration or customs officer) to stop and question, and where necessary detain and search a person travelling through a port, airport, international rail station or the border area. Such an examination is for the purpose of determining whether the person appears to be someone who is or has been concerned with the commission, preparation or instigation of acts of terrorism. An examining officer may stop, question and search individuals and goods at ports without grounds for suspicion. An examining officer may require a person to answer questions (paragraphs 2 and 3 of Schedule 7) or provide information or certain documents (paragraph 5 of Schedule 7). No period of examination may exceed six hours. Wilful obstruction or frustration of an examination is an offence under paragraph 18 of Schedule 7.

107 This clause amends Schedule 7 to the 2000 Act to give effect to a recommendation made by David Anderson QC, then Independent Reviewer of Terrorism Legislation, that "there should be a statutory bar to the introduction of Schedule 7 admissions in a subsequent criminal trial".[6] The bar applies to oral responses to questions by an examining officer (it remains open to prosecutors to rely on information, for example downloaded from an electronic device, obtained from a person during the course of a search conducted under Schedule 7). The bar is not however absolute; new paragraph 5A(2) enables an answer or information given orally by a person in response to a question asked as part of a Schedule 7 examination to be used in evidence in a criminal trial in the following circumstances:

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[6] See paragraph 7.23(d) of David Anderson's December 2016 report on the Terrorism Acts in 2015. The recommendation originally featured in David Anderson's evidence, in November 2013, to a Home Affairs Select Committee enquiry into counter-terrorism and then in his report on the Terrorism Acts in 2013 (see paragraphs 7.27 and 7.28). The recommendation was endorsed by the Supreme Court in the case of *Beghal v Director of Public Prosecutions* [2015] UKSC 49 (at paragraph 67 of the judgment).

- Proceedings for an offence under paragraph 18 of Schedule 7 (namely, wilful failure to comply with a duty imposed under or by virtue of Schedule 7, wilful contravention of a prohibition imposed under or by virtue of Schedule 7 and wilful obstruction or frustration of search or examination imposed under or by virtue of Schedule 7);
- On a prosecution for perjury (as defined, in the case of England and Wales and Northern Ireland, in new paragraph 5A(4));
- On a prosecution for another offence where, in giving evidence, the defendant makes a statement inconsistent with the answer or information provided by him or her in response to a Schedule 7 examination

Clause 16: Detention of terrorist suspects: hospital treatment

108 Under section 41 of the 2000 Act, a constable may arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A terrorist is defined, in section 40(1), as a person who has committed certain offences under the 2000 Act, or a person who is, or has been, concerned in the commission, preparation or instigation of acts of terrorism. Where a person is arrested under section 41 the provisions of Schedule 8 to the 2008 Act apply. That Schedule makes provision in respect of the treatment of detained persons and the review and extension of their detention. Schedule 8 also contains provisions applicable to persons detained at ports or in the border area under Schedule 7 to the 2000 Act for the purpose of determining whether they are a person concerned in the commission, preparation or instigation of acts of terrorism.

109 Paragraph 36(3)(b)(ii) of Schedule 8 to the 2000 Act provides that the maximum period for which a terrorist suspect may be detained without charge is 14 days from the time of arrest (or, in the case of a person arrested under section 41 following a Schedule 7 examination, from the time the examination begun). Subsection (2) amends section 41 of the 2000 Act to give effect to a recommendation made by David Anderson QC, then Independent Reviewer of Terrorism Legislation, that the law -

> "be changed so as to allow the detention clock to be suspended in the case of detainees who are admitted to hospital. The rule should reflect PACE Code C para 14[7] by stating that a person in police detention at a hospital may not be questioned without the agreement of a responsible doctor. If questioning takes place at a hospital, or on the way to or from a hospital, the period of questioning concerned should count towards the total period of detention permitted. Otherwise, the period of detention should be suspended until questioning takes place or until the person arrives back at the police station, whichever is the sooner."[8]

110 New section 41(8A) of the 2000 Act reflects the existing provision in section 41(6) of the Police and Criminal Evidence Act 1984 ("PACE") regarding the operation of the detention clock (in England and Wales) in respect of a person detained following arrest for a non-terrorism related offence.

111 Subsection (3) amends Schedule 7 to the 2000 Act similarly to provide for the detention clock

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[7] See now paragraph 14.2 of PACE Code C, February 2017.

[8] See paragraph 8.51(b) of David Anderson's December 2016 report on the Terrorism Acts in 2015. The recommendation originally featured in David Anderson's report on the Terrorism Acts in 2011 (see paragraphs 7.74 and 7.78).

to be suspended where a person detained for the purpose of an examination under that Schedule is admitted to hospital. Under paragraph 6A of Schedule 7 to the 2000 Act there is a one hour limit on the period during which a person may be examined without being detained and an overall limit of six hours on the period a person may be examined (including any period of detention).

Clause 17 and Schedule 2: Retention of biometric data for counter-terrorism purposes etc

112 Clause 17 gives effect to Schedule 2 which amends the legislative regimes governing the retention of fingerprints and DNA samples and profiles by the police for counter-terrorism purposes. Those regimes are to be found in the following enactments:

a) Part 5 of PACE in respect of persons arrested in England and Wales;
b) Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989 in respect of persons arrested in Northern Ireland;
c) Part 2 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") in respect of persons arrested in Scotland;
d) Schedule 8 to the 2000 Act in respect of persons arrested under section 41 of that Act on suspicion of being a terrorist or detained at a port under Schedule 7 to that Act;
e) Section 18 of the 2008 Act in respect of fingerprints and DNA profiles retained on national security grounds and which are not subject to the other schemes listed here;
f) Schedule 6 to the 2011 Act in respect of persons subject to a TPIM notice;
g) Schedule 1 to the Protection of Freedoms Act 2012 ("the 2012 Act") (which prospectively amends provisions in the Police and Criminal Evidence (Northern Ireland) Order 1989) in respect of persons arrested in Northern Ireland.

113 These schemes proceed on the basis that fingerprints and DNA profiles must be destroyed unless they are retained under a power conferred by the applicable regime. Under PACE, where an adult is convicted of a recordable offence his or her biometric material may be retained indefinitely. Where a person is charged with a qualifying offence (broadly speaking serious sexual, violent and terrorism offences), but not convicted, his or her biometric material may be retained for three years, extendable on a case-by-case basis for a further two years with the approval of a District Judge. See Annex B for further details.

114 Section 63M of PACE provides that where a person's biometric material would otherwise fall to be destroyed, it may be retained for up to two years if the responsible chief officer of police determines that it is necessary to retain it for the purposes of national security (a "national security determination"). A responsible chief officer may renew a national security determination in respect of the same material, thus further extending the retention period for up to two years at a time. The regimes under the other enactments are broadly analogous to that provided for in PACE. In particular, each provides for the retention pursuant to a national security determination of biometric material that would otherwise fall to be destroyed.

115 The Commissioner for the Retention and Use of Biometric Material (known as the Biometric Commissioner), appointed under section 20 of the 2012 Act has a function of keeping under review every national security determination made or renewed under the various regimes listed above. The Biometric Commissioner may order the destruction of material subject to a national security determination if he concludes that it is not necessary for the material to be retained. Section 22 of the 2012 Act requires the Home Secretary to issue guidance about

making or renewing national security determinations; the current guidance is available here.

116 Paragraph 2 of Schedule 2 amends section 63F of PACE which provides for the retention of biometric material where a person has been arrested or charged with a qualifying offence, but not convicted of that offence. In the case of a person arrested for, but not charged with, a qualifying offence (and who does not have a conviction for a recordable offence), section 63F(5) provides that biometric material taken in connection with the investigation of the offence may be retained for three years with the consent of the Biometric Commissioner. Paragraph 2 removes the requirement for the Biometric Commissioner to consent to the retention where the qualifying offence was a terrorist offence listed in section 41(1) of the 2008 Act (or a related ancillary offence, such as attempting or conspiring to commit the offence). This change aligns the provisions in PACE with those under paragraph 20B of Schedule 8 to the 2000 Act such that the fingerprints and DNA profile of a person arrested for, but not charged with, a terrorism offence or a terrorism-related offence will automatically be retained for three years, whichever of the two applicable powers of arrest (PACE or the 2000 Act) was used. Paragraph 5 makes a like change to the retention regime under the Police and Criminal Evidence (Northern Ireland) Order 1989 as prospectively amended by Schedule 2 to the Criminal Justice Act (Northern Ireland) 2013.

117 Paragraph 3 of Schedule 2 makes two changes to section 63M of PACE which provides for the retention of biometric material pursuant to a national security determination. As currently drafted, section 63M requires a national security determination to be made by the "responsible chief officer of police", that is the chief officer for the police area where the fingerprints or DNA sample were taken (see section 65(1) of PACE). The first change would enable any chief officer of police to make a national security determination in respect of biometric material. It may be the case, for example, that the person to whom the biometric material relates is under investigation in one police force area and is then arrested in another police force area, but no further action is taken in respect of that later arrest; in such a case, the chief officer of police for the force with an ongoing investigation may be better placed to make a determination. Paragraphs 10(2), (3) and (5), 13(2), (3) and (5) and 16(2) and (4) make a like change to the retention regimes under the 2000 Act, 2008 Act and 2011 Act respectively. Paragraph 7(2) and (3) update section 18G of the 1995 Act to take account of the fact that there is now a single police force in Scotland, the Police Service of Scotland.

118 The second change made by paragraph 3 is to extend the duration of a national security determination from a maximum of two years to a maximum of five years. Paragraphs 7(4), 10(4), 13(4), 16(3) and 19 make a like change to the retention regimes under the 1995 Act, 2000 Act, 2008 Act, 2011 Act and 2012 Act respectively.

119 If a person is, for example, arrested under PACE in April 2017, subsequently detained under Schedule 7 to the 2000 Act in June 2017, and then arrested again under section 41 of the 2000 Act in September 2017, then three different sets of fingerprints may be taken from him or her by the police. The provisions governing the retention of such fingerprints under each of those regimes would currently require each set of fingerprints to be managed as a discreet record, each with its own retention period, so that the police would need to make three separate national security determinations at different times if it was necessary to retain the fingerprints.

120 Where the original set of fingerprints is taken under PACE, new section 63PA of PACE (as inserted by paragraph 4 of Schedule 2), enables a single national security determination to be made covering multiple sets of fingerprints where one of three conditions apply. The first condition is that the second, or subsequent, set of fingerprints was taken under PACE and that one of the sets of fingerprints held by the police (be it the original set or another set) was taken

in connection with a terrorist investigation. The second condition is that the further set (or sets) of fingerprints was taken under Schedule 8 to the 2000 Act, Schedule 6 to the 2011 Act or Schedule 3 to the Bill. The third condition is that the further set of fingerprints is material to which section 18 of the 2008 Act applies. Where one of these conditions is met, the retention regime in sections 63E to 63O of PACE would apply to each set of fingerprints. Consequently, a national security determination made under section 63M of PACE in respect of the original set of fingerprints would also authorise the retention of any subsequent set of fingerprints taken or held under PACE or one of the other regimes. If the original set of fingerprints is required to be destroyed under the provisions in PACE, it may still be possible to retain the second and any subsequent set of fingerprints if the relevant retention regime applicable to those fingerprints so provides. Paragraphs 8, 11, 14, 17 and 20 make analogous provision under the retention regimes provided for in the 1995 Act, 2000 Act, 2008 Act, 2011 Act and 2012 Act respectively. It is a feature of each of the analogous provisions that each set of fingerprints must have been taken from a person arrested or detained or made subject to a TPIM notice in the relevant jurisdiction, or in the case of material to which section 18 of the 2008 Act applies is held under the law of the same part of the UK. So, for example, a single national security determination could not be made in respect of two sets of fingerprints, one taken under PACE by a police force in England and Wales and the other taken by Police Scotland under the 1995 Act.

Chapter 4: Miscellaneous

Clause 18: Persons vulnerable to being drawn into terrorism

121 This clause amends provisions in Part 5 of the 2015 Act which provides the statutory underpinning of the Government's Prevent programme. The purpose of the Prevent programme is to stop people becoming terrorists or supporting terrorism. It deals with all kinds of international terrorist threats to the UK. The most significant of these threats is currently from Daesh and other terrorist organisations in Syria and Iraq. But terrorists associated with the extreme right also pose a continued threat to the United Kingdom's safety and security.

122 Prevent activity in local areas relies on the co-operation of many organisations to be effective. Chapter 1 of Part 4 of the 2015 Act makes delivery of such activity a legal requirement for specified authorities (listed in Schedule 6 to the 2015 Act), including local authorities, the police, prisons and probation providers, and education and health providers. In 2016/17, a total of 6,093 individuals were subject to a referral due to concerns that they were vulnerable to being drawn into terrorism (Individuals referred to and supported through the Prevent programme, April 2016 to March 2017, Home Office Statistical Bulletin 06/18).

123 The "Channel" programme in England and Wales is a multi-agency programme which provides tailored support to people who have been identified as at risk of being drawn into terrorism. Through the programme, agencies work together to assess the nature and the extent of this risk and, where necessary, provide an appropriate support package tailored to individual needs. In 2016/17, 332 people received Channel support following a Channel panel (Individuals referred to and supported through the Prevent programme, April 2016 to March 2017, Home Office Statistical Bulletin 06/18). In Scotland the programme is known as "Prevent Professional Concerns".

124 Chapter 2 of Part 4 of the 2015 Act underpins the Channel arrangements. In particular, section 36 requires local authorities to establish a panel (known as a "Channel panel") to discuss and, where appropriate, determine the provision of support for people who have been identified by the police as at risk of being drawn into terrorism. The panel must determine what support may be provided and in what circumstances. Subsections (3) and (4) amend section 36 to

enable a local authority, as well as the police, to refer an individual who they believe to be vulnerable to being drawn into terrorism to a Channel panel. Section 38 requires the partners of a panel (that is, those bodies listed in Schedule 7 to the 2015 Act) to cooperate with the panel to allow the panel to make informed decisions and carry out its functions. There is an associated duty to cooperate with the police, in particular, in relation to their function of determining whether an individual should be referred to a panel for the carrying out of an assessment. Subsections (6) and (7) amend section 38 so that the duty on the partners of a panel to cooperate with the police in discharging their functions under section 36 extends to a duty to co-operate with a local authority carrying out such functions. The partners of a panel must have regard to statutory guidance issued by the Secretary of State.

Clause 19: Terrorism reinsurance

125 This clause amends section 2 of the Reinsurance (Acts of Terrorism Act) Act 1993 ("the 1993 Act"). The 1993 Act was introduced after the insurance industry withdrew cover for terrorism related damage due to the IRA bombing campaign on London in the 1990s. Businesses were left unable to protect themselves from the costs of future attacks and this put the competitiveness of the UK economy at risk. To address this, the then government worked with the insurance industry to establish a government-backed reinsurer of the risk of damage to commercial property caused by an act of terrorism – the Pool Reinsurance Company Limited, otherwise known as Pool Re. Government support was provided through a government guarantee of Pool Re, ensuring that it would still be able to cover claims resulting from terror attacks even if its own reserves were depleted. Section 1(1) of the 1993 Act provides parliamentary authority for the Government to meet any financial obligations arising from this guarantee. Section 1(2) requires a copy of the agreement with Pool Re to be laid before Parliament; the current agreement, dated March 2015, is available here.

126 As a reinsurer, Pool Re enables insurers to more efficiently manage their terrorism risk. Insurers agree to take on businesses' terrorism-related financial risk in exchange for a premium. The insurers then cede some of the liabilities of this risk, as well as a share of the premiums, to Pool Re. This enables insurers to provide a greater amount of terrorism insurance cover than they would otherwise be able to afford to by reducing their liabilities following a terror attack.

127 Section 2 of the 1993 Act sets out the scope of the reinsurance arrangements to which the Act applies. Under section 2(1) such arrangements can only offer reinsurance cover for costs that are contingent on physical damage to property following an act of terrorism, or any loss that is consequential on such damage. So, for example, the Pool Re scheme would cover bomb damage to commercial premises, including the consequential loss to the business arising from the need to close the business for a period to make good the damage. The extension of the terror threat to cover not only bomb attacks causing physical damage to commercial property but also the use of vehicles and knives targeting individuals has led to a gap developing in the cover that Pool Re offers. In the case of the June 2017 terrorist attack on Borough Market, there was limited physical damage to the market, but traders lost business as a result of the week long closure of the market to enable the police to investigate the crime scene. As the losses incurred by Borough Market businesses were not consequential on physical damage to commercial property, any terrorism-related insurance backed by Pool Re and held by those businesses may not have covered such losses. While Pool Re is not the only reinsurer of terrorism risk in Great Britain, this gap means that some businesses are potentially uninsured for any business interruption losses linked to a terrorist attack but that were not as a result of physical damage.

128 To address this gap, subsections (2) and (3) amend section 2 of the 1993 Act the effect of which is to allow Pool Re to provide reinsurance cover for any financial loss suffered by businesses

that are not directly caused by physical damage to property, although still the result of an act of terrorism (defined, by section 2(2), as "acts of persons acting on behalf of, or in connection with any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government de jure or de facto").

Part 2: Border security

Clause 20 and Schedule 3: Port and border controls

129 Schedule 3 contains powers to stop, question, search and detain a person at ports and borders for the purpose of determining whether the person appears to be someone who is, or has been, engaged in hostile activity. The provisions are modelled on those in Schedule 7 to the 2000 Act which contain similar powers to stop, question, search and detain persons at a port or border area for the purpose of determining whether they are or have been concerned in the commission, preparation or instigation of acts of terrorism.

130 Paragraph 1 vests the powers in examining officers, namely constables or immigration or customs officers designated under the provisions of Schedule 7 to the 2000 Act (see paragraph 57(3)). The powers are exercisable at a port or in the border area in Northern Ireland (see paragraph 57(6)) in respect of a person entering or leaving Great Britain or Northern Ireland, or travelling by air within the United Kingdom (condition 1). They are also exercisable in respect of a person on a ship or aircraft that has arrived at a place in Great Britain (condition 2); as such, the power would apply where, amongst other circumstances, a person had arrived at a sea port in Great Britain having sailed from a port in Northern Ireland (and vice versa).

131 The selection of a person for examination is not conditional upon the examining officer having grounds to suspect that person of being engaged in hostile activity (paragraph 1(4)).

132 Paragraph 1(5) and (6) define "hostile activity" and "hostile act" respectively. A person is engaged in hostile activity for the purpose of this Schedule if he or she is, or has been, concerned in the commission, preparation or instigation of a hostile act carried out for, or on behalf of, a State other than the UK or otherwise in the interests of a State other than the UK. The activity could be carried out wittingly or unwittingly (paragraph (7)(a)), in the latter case perhaps by a person duped into attempting to smuggle something out of the UK that is damaging to national security. A hostile act is one that threatens national security or the economic well-being of the UK or is an act of serious crime. Serious crime for these purposes is defined in paragraph (7)(d). The terms "national security" and "economic well-being" take their ordinary meaning. Acts that would threaten national security would include espionage and sabotage. Acts that would threaten the economic well-being of the UK would include acts that damage the country's critical infrastructure or disrupt energy supplies to the UK.

133 Paragraph 2 contains a separate power to question a person in the Northern Ireland border area in order to establish whether the person is in that area for the purpose of entering or leaving Northern Ireland. This is essentially a pre-cursor power to enable an examining officer to determine whether condition 1 in paragraph 1 is met.

134 Paragraph 3 places certain obligations on a person who is subject to an examination under paragraphs 1 and 2, including providing the examining officer with any information he or she requests and which is in the person's possession. Such information may be provided either by answering the examining officer's questions or providing documents (whether in hard copy or held on an electronic device). Wilful failure to provide information would constitute an offence under paragraph 16 of the Schedule.

135 Paragraph 4 confers ancillary powers to stop a person or vehicle, or detain a person, for the

purpose of conducting an examination. If necessary, paragraph 52 confers a power to use reasonable force to affect a stop or detention.

136 Paragraph 5 sets separate time limit of one hour on the period during which a person may be examined without being detained and then provides for an overall limit of six hours on the period a person may be examined (including any period of detention). In calculating the time spent in detention, any period spent in hospital receiving medical treatment or in travelling to or from a hospital is to be disregarded provided the detainee is not being questioned during such time.

137 Paragraph 6 debars anything said by a person during the course of an examination being used in a subsequent criminal trial. The bar is not absolute; paragraph 6(2) enables an answer or information given orally by a person in response to a question asked as part of a Schedule 3 examination to be used in evidence in a criminal trial in the following circumstances:

- Proceedings for an offence under paragraph 16 of Schedule 3;
- On a prosecution for perjury (as defined, in the case of England and Wales and Northern Ireland, in paragraph 6(4));
- On a prosecution for another offence where, in giving evidence, the defendant makes a statement inconsistent with the answer or information provided by him or her in response to a Schedule 3 examination

138 This bar only applies to information provided orally to an examining officer. There is no bar (as considerations of self-incrimination do not arise) to prosecutors relying, in criminal proceedings against an examinee, on information, for example downloaded from an electronic device, obtained from the examinee during the course of a search conducted under this Schedule.

139 Paragraphs 7 to 10 make provision for searches. Paragraph 7 enables an examining officer to search a ship or aircraft to ascertain whether there is anyone on board he or she may wish to examine under paragraph 1. Paragraph 8 enables an examining officer to search a person questioned under paragraph 1, his or her possessions (including those that are, have been or are about to be on a ship or aircraft) and any vehicle he or she has travelled in. Such a search must be conducted by a person of the same sex and must not extend to an intimate search (paragraph 8(4) and (7)). Paragraph 8(5) prevents a person from being strip searched (as defined in paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is engaged in hostile activity; and a strip search has been authorised by a senior officer (as defined in paragraph 8(6)). Paragraph 9 confers a power to examine goods entering or leaving the country (including postal items) to determine whether they have been used in connection with hostile activity. This includes goods held at the premises operated by a sea or air cargo agent, and in transit sheds.

140 Paragraphs 11 to 13 provide for the retention of property, which includes documents given to an examining officer by a person subject to an examination or items found in a search under paragraph 8 or an examination under paragraph 9. Any article may be retained for up to seven days to enable them to be examined. An article may alternatively be retained for such period as is necessary where there is a belief that: it may be needed as evidence in criminal proceedings or in connection with a decision whether to make a deportation order; that it could be used in connection with carrying out a hostile act; or that its retention is necessary for the purpose of preventing death or significant injury. The retention rules provided here, and in paragraph 14 in relation to copies, are without prejudice to those provided for under another enactment, for example, the Investigatory Powers Act 2016.

141 Paragraphs 12 and 13 sets out the procedure governing the retention of an article retained on the basis that the examining officer believes it could be used in connection with the carrying out of a hostile act or that it is necessary to retain the article for the purpose of preventing death or significant injury. The Investigatory Powers Commissioner (established under section 227 of the Investigatory Powers Act 2016) must be informed as soon as is reasonably practicable. The Investigatory Powers Commissioner has the power to order that the article is destroyed or retained if he or she is satisfied that there are reasonable grounds to believe that it has been or could be used in connection with the carrying out of a hostile act or that returning the article could result in a risk of death or significant injury.

142 Stronger safeguards apply to the retention and use of confidential material. The definition of confidential material, in paragraph 12(10) and (11), covers:

- confidential journalistic material;
- items subject to legal privilege;
- personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he or she holds in confidence;
- other material acquired in the course of a trade etc. that is held in confidence; and
- human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence.

143 The Commissioner may authorise the retention of confidential material if satisfied that the material will be held securely and will be used only as far as necessary and proportionate for a relevant purpose (that is, if its use is necessary in the interests of national security or the economic well-being of the UK, for the purpose of preventing or detecting serious crime or for the purpose of preventing death or significant injury). In the case of information held on an electronic device, such use could include examination of the information. In determining whether confidential material may be retained and used for a relevant purpose, the Commissioner must consider whether such use is necessary and proportionate. If such consideration favours confidentiality, the Commissioner must exercise the power to order destruction or order the return of the material to the person from whom it was seized. Such a determination by the Commissioner does not preclude the retention of the material where the officer believes that it may be needed for use as evidence in criminal proceedings or in connection with a decision whether to make a deportation order. Even if the Commissioner concludes that it is necessary and proportionate for the material to be used for a relevant purpose, the Commissioner may still impose any conditions he or she thinks necessary as to the use or retention of the material.

144 Before making a determination under paragraph 12, the Commissioner must invite and consider representations from affected parties, including the person from whom the article was seized (see paragraph 13(1)). Where a determination to destroy or retain the article is then made, the Commissioner must inform the person from whom the article was taken.

145 By virtue of section 227(8) the Investigatory Powers Commissioner may delegate his or her functions under this paragraph to a Judicial Commissioner. Where a determination is made by a Judicial Commissioner, an affected party may ask the Investigatory Powers Commissioner to reconsider a determination made by the Judicial Commissioner. A decision of the Investigatory Powers Commissioner may be challenged by seeking judicial review of the decision.

146 Paragraph 14 provides a power to make and retain copies of anything obtained under paragraphs 3, 8 or 9 of the Schedule. The copy may be retained for as long as is necessary: for

the purpose of determining whether a person is engaged in hostile activity; where there is a belief that it may be needed for use as evidence in criminal proceedings or in connection with a decision whether to make a deportation order; where retention is in the interests of national security, the economic well-being of the United Kingdom, where necessary for the purpose of preventing or detecting an act of serious crime, or while there officer believes it is necessary to prevent death or significant injury.

147 Paragraph 15 sets out the procedure governing the retention of copies that consist of or includes confidential material (see paragraph 142 above as to the meaning of confidential material).

148 The Investigatory Powers Commissioner must be informed as soon as is reasonably practicable. The Commissioner may authorise the retention of the copy if two conditions are satisfied. The first is that the Commissioner believes retention is necessary in the interests of national security or the economic well-being of the UK, or for the purpose of preventing or detecting serious crime or preventing death or significant injury. The second condition is that the Commissioner is satisfied that the confidential material will be held securely, that it will be used only as far as necessary and proportionate for a relevant purpose (as defined in paragraph 15(9)). If these two conditions are not met, the Commissioner must order the destruction of the copy. The obligation on the police to then destroy the copy would not apply if the copy was believed to be needed for use as evidence in criminal proceedings or in connection with a decision whether to make a deportation order. Even if the conditions are met, the Commissioner may still impose any conditions the Commissioner thinks necessary as to the use or retention of the copy.

149 Paragraph 16 provides for two criminal offences, as follows:

- Wilful failure to comply with a duty imposed under Part 1 of the Schedule, for example the duty in paragraph 3(a) on a person subject to a Schedule 3 examination to give the examining officer any information that the officer requests;
- Wilful obstruction or frustration of a search or examination under Part 1 of the Schedule, for example a refusal by a person subject to a Schedule 3 examination to provide an examining officer with the password for an electronic device so that the officer can examine its content.

The maximum penalty for the offence is three months' imprisonment, or a fine of £2,500, or both.

150 Paragraph 17 provides that the rights conferred by section 1 of the Immigration Act 1971 are not a barrier to the exercise of the powers in Part 1 of Schedule 3. Section 1 of the Immigration Act 1971 provides, amongst other things, that persons with a right of abode in the United Kingdom are free to come and go into and from the United Kingdom "without let or hindrance" except as required by the Immigration Act to enable a person's right of abode to be established.

151 Paragraph 18 provides that a person detained under Schedule 3 may be detained at a place designated by the Secretary of State under paragraph 1(1) of Schedule 8 to the 2000 Act.

152 Paragraph 19 confers power on an examining officer to take steps to identify a detainee. This paragraph does not confer a power to take the fingerprints of a detainee or take a DNA sample; such powers are instead conferred by paragraphs 27 (in relation to England and Wales and Northern Ireland) and 35 (in relation to Scotland).

153 Paragraph 20 requires the video recording (with sound) of any interview by a constable of a

detainee conducted at a police station. The requirement to video record interviews does not apply to an examination that takes place at a port or border area.

154 Paragraph 21 provides that a detainee is to be considered in legal custody throughout the period of the detainee's detention.

155 Paragraphs 22 to 26 set out the rights of persons detained in England, Wales and Northern Ireland. Paragraphs 30 to 34 make analogous provision for detainees in Scotland. These rights apply to persons detained at ports as well as at a police station. The rights are: the right of a detained person in England and Wales or Northern Ireland to have a named person informed of the fact of his or her detention (paragraph 22); the right of a detained person in England and Wales or Northern Ireland to consult a solicitor in private (paragraph 23); and the right of a detained person in Scotland to have a solicitor or another person informed of the fact of his or her detention and to consult a solicitor in private (paragraphs 30 and 31). These rights may be qualified by paragraphs 24 and 25 in relation to England and Wales and Northern Ireland, and paragraph 30(4) and (7) in relation to Scotland in that a police officer of at least the rank of superintendent may authorise a delay in the exercise of these rights or a non-private legal consultation in certain specified circumstances. For example, where informing a person of the fact of someone's detention under Schedule 3 could lead to interference with or harm to evidence of a serious offence.

156 Paragraphs 27 to 29 make provision for the taking of fingerprints and DNA samples from persons detained in England, Wales and Northern Ireland with or without their consent. Paragraph 35 makes analogous provision for detainees in Scotland by applying the provisions in section 18 of the 1995 Act with necessary modifications.

157 Paragraphs 36 to 44 establish rules governing the retention and destruction of fingerprints, DNA samples and DNA profiles derived from samples.

158 Paragraph 36 sets out the basic rules governing the destruction of fingerprints and DNA profiles ("paragraph 36 material"). Paragraph 36(2) requires the destruction of paragraph 36 material if it appears to the responsible chief officer of police that the material was taken unlawfully. Any other paragraph 36 material must be destroyed as soon as reasonably practicable, subject to the operation of the provisions in paragraphs 37, 39 or 40 detailed below. It is a general feature of these provisions that material must be destroyed unless one or more of those paragraphs applies to that material, in which case the paragraph which delivers the longest retention period will determine the period of retention.

159 Paragraph 36(5) and (6) enables a person's paragraph 36 material, which would otherwise fall to be destroyed, to be retained for a short period until a speculative search of the relevant databases has been carried out. The fingerprints and DNA profile of a detained person will be searched against the national fingerprint and DNA databases respectively to ascertain whether they match any other fingerprints or DNA profile on those databases. Where such a match occurs, it may serve to confirm the person's identity, indicate that he or she had previously been arrested or detained under a different name, or indicate that the person may be linked to a crime scene from which fingerprints or a DNA sample had been taken.

160 Paragraph 37(1) governs the retention period applicable where a person has been convicted of a recordable offence (or, in Scotland, an offence punishable by imprisonment). Where a person has been convicted of a recordable offence (other than a single exemption conviction, as defined in paragraph 38(4)), his or her paragraph 36 material may be retained indefinitely. Paragraph 38 defines what constitutes a conviction for these purposes; the definition includes convictions abroad for offences which would constitute a recordable offence in this country. The definition of a conviction in paragraph 38 includes convictions in overseas jurisdictions. Paragraph 37(3) and (4) provides that where a person has no previous conviction, or a single

exempt conviction, his or her fingerprints and DNA profile may be retained for six months.

161 Paragraph 39 makes provision for the retention of material for the purposes of national security. Where a person's paragraph 36 material would otherwise fall to be destroyed, it may be retained for up to five years where a chief officer of police determines that it is necessary to retain it for the purposes of national security (a "national security determination"). A chief officer may renew a national security determination in respect of the same material, thus further extending the retention period by up to five years at a time.

162 Paragraph 40 deals with the situation where the police hold multiple sets of fingerprints in respect of the same individual. Where the original set of fingerprints is paragraph 36 material, this paragraph enables a single national security determination to be made covering multiple sets of fingerprints where two conditions apply. The first condition is that the second, or subsequent, set of fingerprints is paragraph 36 material or was taken or provided under PACE, the Police and Criminal Evidence (Northern Ireland) Order 1989, the 1995 Act, Schedule 8 to the 2000 Act or Schedule 6 to the 2011 Act. The second condition is that each set of fingerprints must have been taken from a person arrested or detained in the relevant jurisdiction, or made subject to a TPIM notice. Where these conditions are met, the retention regime in Schedule 3 would apply to each set of fingerprints. Consequently, a national security determination made under paragraph 38 in respect of the original set of fingerprints would also authorise the retention of any subsequent set of fingerprints taken under the listed provisions. If the original set of fingerprints is required to be destroyed under the provisions in this Schedule, it may still be possible to retain the second and any subsequent set of fingerprints if the relevant retention regime applicable to those fingerprints so provides.

163 Paragraph 41 provides that all copies of fingerprints and DNA profiles held by the police must be destroyed when the obligation to destroy material set out in paragraph 36 applies.

164 Paragraph 42 provides for the immediate destruction of samples if it appears to the responsible chief officer of police that the material was taken unlawfully. In addition, DNA samples must be destroyed as soon as a DNA profile has been satisfactorily derived from the sample (including the carrying out of the necessary quality and integrity checks) and, in any event, within six months of the taking of the sample. Any other sample must similarly be destroyed within six months of it having been taken. Paragraph 42(6) enables a person's DNA or other sample, which would otherwise fall to be destroyed, to be retained until a DNA profile has been derived from the sample and a speculative search of the relevant database has been carried out.

165 Paragraph 43 restricts the purposes for which fingerprints and DNA samples and profiles may be put, namely they may only be used in the interests of national security, for the purposes of a terrorist investigation, for the investigation of crime or for identification-related purposes. Where a responsible chief officer of police considers that a relevant search (that is, the checking of fingerprints or DNA profiles against other material held) is desirable, paragraph 43(2) provides an express power to carry out such a search. Paragraph 43(3) provides that, once the new requirement to destroy material applies, the material cannot be used in evidence against the person to whom it relates or for the purposes of the investigation of any offence.

166 Paragraphs 45 to 48 provide for the review of detention of a person detained under Schedule 3. Paragraph 45 provides that a person's detention under Schedule 3 must be reviewed periodically by a review officer no later than one hour after the start of detention and at subsequent intervals of no more than two hours. The review officer may authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by paragraph 1 or 2 of Schedule 3 (questioning for the purpose of determining whether the person appears to be a person who is or has been engaged in hostile activity). If

the review officer does not authorise continued detention then the person must be released. The other paragraphs specify that the review officer must give a detained person or their solicitor an opportunity to make representations about their detention (paragraph 46), must ensure that the detained person is informed of any rights that are unexercised or have been delayed (paragraph 47) and must make a written record of the review and must inform the detained person if continued detention is authorised (paragraph 48).

167 Paragraph 49 requires the Home Secretary to issue a code of practice about the training of examining officers, the exercise by examining officers of the powers under this Schedule, the video recording of interviews of detainees and reviews of detention under Part 3 of the Schedule. Examining officers must carry out their functions under the Schedule in accordance with the code of practice. Paragraph 50 provides for the code of practice, any revisions of the code, to be brought into force by regulations (subject to the affirmative procedure).

168 Paragraph 53 enables information acquired by an examining officer to be supplied to the Home Office for use in relation to immigration, customs officers, a police officer, the National Crime Agency or other person specified in regulations (subject to the affirmative procedure). Section 19 of the 2008 Act separately enables any person to disclose information to any of the intelligence services for the purposes of the exercise by that service of any of its functions.

169 Paragraph 55 places a duty on the Investigatory Powers Commissioner to keep under review the operation of the provisions in Schedule 3 and report annually to the Secretary of State (in practice, the Home Secretary). The report must be laid before Parliament (subject to a power to redact certain sensitive information). The Investigatory Powers Commissioner was established by section 227 of the Investigatory Powers Act 2016. The Commissioner (supported by other Judicial Commissioners) has a broad remit to keep under review the use of investigatory powers as provided for in section 229 of that Act. As the duty under this paragraph will form one of the functions of the Investigatory Powers Commissioner, it will attract the various ancillary powers in the Investigatory Powers Act 2016, including those in sections 227 (which enables the Investigatory Powers Commissioner to delegate functions to the Judicial Commissioners), 235 (which requires people to provide a Judicial Commissioner with all the information and documents that the Judicial Commissioner may need) and 238 (which enables the Investigatory Powers Commissioner to delegate certain functions to his staff). Paragraph 55(5) applies the provisions in section 229(6) and (7) of the Investigatory Powers Act 2016. Those provisions seek to ensure that the oversight activities of the Judicial Commissioners do not have a negative effect upon the ability of law enforcement agencies and security and intelligence agencies to perform their statutory functions. The Judicial Commissioners will have to decide for themselves if their proposed activity would, for example, prejudice national security or impede the effectiveness of operations.

170 Paragraph 56 amends Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993. The effect of paragraph 56(1) is to modify the provisions in Schedule 3 so as to adapt to rail traffic passing through the channel tunnel the provisions of the Schedule which are framed in terms of movements by sea and air.

Part 3: Final provisions

Clause 21: Minor and consequential amendments

171 Subsection (1) introduces Schedule 4 which makes minor and consequential amendments to other enactments.

172 Subsections (2) to (7) confer on the Secretary of State (in practice the Home Secretary) a power,

by regulations, to make further consequential amendments (that is, additional to those in Schedule 4) to other enactments which arise from the provisions in the Bill. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations made under the power conferred by this clause are subject to the negative procedure.

Schedule 4: Minor and consequential amendments

173 Part 1 of Schedule 4 makes amendments to enactments consequential upon the provisions in clause 8.

174 Section 49 of the Children and Young Persons Act 1933 provides for automatic restrictions on reporting legal proceeding in relation to children and young persons under 18. A court may, in certain circumstances, disapply such restrictions in the case of a child or young person who is unlawfully at large for the purpose of apprehending him or her (section 49(5)(b)). This ability to waive the reporting restrictions applies in the case of a child or young person who has been charged with or convicted of is a sexual offence or a violent offence specified in Schedule 15 to the 2003 Act (or one that is punishable if committed by an adult with a sentence of imprisonment of fourteen years or more). Paragraph 1 amends section 49 of the Children and Young Persons Act 1933 to add a reference to a terrorism offence as listed in the new Part 3 of Schedule 15 to the 2003 Act.

175 Section 3AA of the Bail Act 1976 sets out the conditions that must be satisfied before a court may impose electronic monitoring on a child or young person to ensure compliance with bail conditions. One such requirement is that the offence in respect of which the child or young person has been charged with or convicted of is a sexual offence or a violent offence specified in Schedule 15 to the 2003 Act (or one that is punishable if committed by an adult with a sentence of imprisonment of 14 years or more). Paragraph 3(3) amends section 3AA of the Bail Act 1976 to add a reference to a terrorism offence as defined in the new Part 3 of Schedule 15 to the 2003 Act. Paragraph 3(4) makes a like amendment to section 3AAA of the Bail Act 1976 which provides for a modified version of the conditions in section 3AA in respect of children and young persons concerned in extradition proceedings. Paragraph 3(2) adds a definition of a terrorism offence to the interpretation section (section 2) of the Bail Act 1976.

176 Part 6 of the Licensing Act 2003 establishes a regime for the supply of alcohol to be regulated by the granting of personal licences to individuals. Where an applicant for a personal licence or a licensee has a conviction for a "relevant offence", unless spent, this must be taken into account by a licensing authority in its consideration of an application for the grant or renewal of a personal licence (sections 120 and 121 of the Licensing Act 2003). If an existing personal licence holder is convicted of a relevant offence, his or her licence may be forfeited or suspended (section 129). The list of relevant offences is set out in Schedule 4 to the Licensing Act 2003 and includes violent offences specified in Part 1 of Schedule 15 to the 2003 Act. Paragraph 8 adds specified terrorism offences in the new Part 3 of Schedule 15 to the 2003 Act to the list of relevant offences.

177 Paragraph 10 amends provisions in Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 ("the 2004 Act"). That Chapter confers rights on victims of violent and sexual offences to make representations to and receive certain information from local probation boards. The right to make representations relates to whether the offender should be subject to any licence conditions or supervision requirements in the event of his or her release from custody and, if so, what those licence conditions or supervision requirements should be. The victim then has a right to information about any licence conditions or supervision requirements to which the offender is to be subject on his or her release. The definition of a sexual or violent offence (in section 45 of the 2004 Act), in part, draws on the list of sexual and

violent offences in Schedule 15 to the 2003 Act. The amendments to Chapter 2 of Part 3 of the 2004 Act provide that the rights conferred by that Chapter are extended to the victims of terrorism offences as listed in the revised Schedule 15 to the 2003 Act.

178 Paragraph 11 makes consequential amendments to sections 219A and 221A of the Armed Forces Act 2006 which provide for extended determinate sentences for adult and young offenders respectively convicted under Service law.

179 Paragraph 12(3) repeals spent provisions in section 138 of the Coroners and Justice Act 2009.

180 Paragraph 13 amends provisions in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO Act") which makes provision for the remanding of children to local authority accommodation or youth detention accommodation.

181 Section 94 of the LASPO Act sets out five requirements that must be satisfied before a court may impose electronic monitoring on a child remanded to local authority care. One such requirement is that the offence in respect of which the child has been charged with or convicted of is a sexual offence or a violent offence specified in Schedule 15 to the 2003 Act (or one that is punishable if committed by an adult with a sentence of imprisonment of 14 years or more). Paragraph 13(2) amends section 94 to add a reference to a terrorism offence as defined in the new Part 3 of Schedule 15 to the 2003 Act. Paragraph 13(3) makes a like amendment to section 95 of the LASPO Act which provides for a modified version of the five requirements in section 94 in respect of children concerned in extradition proceedings.

182 Under the LASPO Act, a child can be only be remanded to youth detention accommodation under the provisions of Chapter 3 of Part 3 if at least one of four sets of conditions set out in sections 98 to 101 is met. Section 98 applies to a child charged with or convicted of an offence and describes the first set of conditions that, if met, would allow the court to remand the child to youth detention accommodation. This set of conditions includes a requirement relating to the seriousness of the offence which must be either a violent or sexual offence (or one that is punishable if committed by an adult with a sentence of imprisonment of 14 years or more). Paragraph 10(4) amends section 98 to add a reference to a terrorism offence as defined in the new Part 3 of Schedule 15 to the 2003 Act. Paragraph 13(5) makes a like amendment to section 100 of the LASPO Act which sets out an equivalent set of conditions to those in section 98, this time for a child in an extradition case.

183 Paragraph 13(6) amends section 107 of the LASPO Act to add a definition of a terrorism offence for the purposes of Chapter 3 of Part 3 of that Act.

184 Paragraphs 2, 4, 5, 6, 7 and 12(2) amend provisions in other enactments which directly or indirectly refer to the violent or sexual offences as defined by Schedule 15 to the 2003 Act to provide that the descriptor of those provisions refer to violent, sexual or terrorism offences.

185 Part 2 of Schedule 4 makes amendments to enactments consequential upon the provisions in clause 10.

186 Paragraph 16 amends section 55 of the Justice Act (Northern Ireland) 2015 which enables the courts in Northern Ireland to make a violent offences prevention order in respect of a person convicted of a specified offence where it considers it necessary for the purpose of protecting the public from the risk of serious violent harm. Section 55(3) defines "specified offence" as "an offence for the time being listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences)". The amendments to section 55 provide that the terrorism offences currently contained in Part 1 of Schedule 2 to the 2008 Order remain "specified [violent] offences" for the purposes of section 55 of the Justice Act (Northern Ireland) 2015, thereby ensuring that a violent offences prevention order may still be made in

respect of such offences.

187 Part 3 of Schedule 4 makes amendments to enactments consequential upon the provisions in Part 2 of the Bill.

188 Section 34(2) of the Children and Young Persons Act 1933 requires that where a child or young person is in police detention, such steps as are practicable shall be taken to ascertain the identity of a person responsible for his or her welfare. Paragraph 17 amends section 34 to apply this requirement to a child or young person detained under Part 1 of Schedule 3.

189 PACE makes provision for the treatment of persons in police detention following arrest, including provisions conferring a right to legal advice and provision relating to the taking and retention of fingerprints and DNA samples and profiles. Paragraph 18 amends PACE so that the provisions of that Act do not apply to persons detained under Schedule 3 (which contains equivalent provisions). Paragraph 19 makes like amendments to the Police and Criminal Evidence (Northern Ireland) Order 1989.

190 Paragraph 20 amends Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993. Paragraph 3 of Schedule 4 to that Order modifies the provisions in Schedule 7 to the 2000 Act so as to adapt to rail traffic passing through the channel tunnel the provisions of that Schedule which are framed in terms of movements by sea and air. Paragraph 20(1) re-enacts the provisions in paragraph 3 of Schedule 4 to the Order with further necessary modifications to reflect recent changes made to Schedule 7, in particular by the 2015 Act.

191 Section 18G of the 1995 Act makes provision for the retention of fingerprints and DNA profiles pursuant to a national security determination made by the chief constable of the Police Service of Scotland and section 19C specifies the purpose for which such biometric data may be used, including in the interest of national security. Paragraph 21 amends sections 18G and 19C so that these provisions apply to fingerprints and DNA profiles taken under the provisions of Schedule 3.

192 Paragraph 22(2) amends section 41 of the 2000 Act to provide that where a person detained under Schedule 3 to the Bill is subsequently arrested under section 41 on suspicion of being a terrorist, the period of examination and detention under Schedule 3 is to count towards the maximum period of pre-charge detention (14 days) under the 2000 Act. Paragraph 22(3) amends Schedule 8 to the 2000 Act to enable fingerprints and DNA profiles taken under that Schedule to be subject to a speculative search against fingerprints and DNA profiles taken under Schedule 3 to the Bill.

193 Section 3 of the Regulation of Investigatory Powers Act 2000 authorises certain kinds of interception without the need for a warrant under section 5 of that Act. Paragraph 23 amends section 3 of that Act, the effect of which is to add the interception of mail using the examination power in paragraph 9 of Schedule 3 to the Bill to the categories of interception where a section 5 warrant is not required.

194 Section 104 of the Postal Services Act 2000 provides for mail-bags, packets in the post and their contents, which are not the property of the Crown, to be given the same immunity from examination, seizure or detention, as if they were the property of the Crown. This immunity is subject to exceptions. Paragraph 24 adds the examination of mail under paragraph 9 of Schedule 3 to the Bill to the list of exceptions.

195 Section 18 of the 2008 Act provides a statutory framework for the use and retention of DNA samples and profiles and fingerprints that are not held subject to other "existing statutory restrictions". Paragraph 25 amends section 18 of the 2008 Act to add biometric material obtained under Schedule 3 to the Bill to the list of existing statutory restrictions.

196 Paragraph 26 amends section 20 of the Protection of Freedoms Act 2012 which sets out the functions of the Commissioner for the Retention and Use of Biometric Material (commonly known as the Biometric Commissioner). Those functions include the keeping under review of determinations made by chief officers of police and others that the fingerprints and DNA profiles of a person are required to be retained for national security purposes, and the use to which fingerprints and DNA profiles so retained are being put. The Biometric Commissioner also has a general function of keeping under review the retention and use, by the police and others, of fingerprints and DNA profiles not subject to a national security determination. The amendments bring fingerprints and DNA profiles taken under Schedule 3 to the Bill within the statutory remit of the Biometric Commissioner.

197 Section 15 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 gives the Lord Chancellor the power to prescribe in regulations when advice and assistance must be made available to individuals in connection with criminal proceedings. The relevant regulations are the Criminal Legal Aid (General) Regulations 2013. Paragraph 27 amends those regulations so that persons detained under Schedule 3 are eligible to receive the prescribed advice and assistance where they meet the qualifying criteria.

198 Schedule 6 to the 2011 Act makes provision for the taking, retention and use of fingerprints and DNA samples and profiles from individuals subject to a TPIM notice. Paragraph 28 amends paragraph 5 of Schedule 6 to the 2011 Act to enable fingerprints and DNA profiles taken under that Schedule to be subject to a speculative search against fingerprints and DNA profiles taken under Schedule 3 to the Bill.

199 Section 47 of the Investigatory Powers Act 2016 provides that the interception of postal items is authorised (without the need for a warrant under that Act) where it is carried out by, amongst others, an examining officer under paragraph 9 of Schedule 7 to the 2000 Act. Paragraph 29 amends section 47 so that the interception of postal items by a Schedule 3 examining officer similarly does not require a warrant under the Investigatory Powers Act 2016.

200 Part 4 of Schedule 4 makes other minor or consequential amendments.

201 Paragraph 30 repeals section 13(2) of the 2000 Act. Section 13(2) of the 2000 Act, on the face of it, allows a constable in Scotland to arrest without warrant if he or she has reasonable grounds to suspect that a person is guilty of an offence under that section. However, this power has been superseded by section 1 of the Criminal Justice (Scotland) Act 2016 which contains a general power to arrest without warrant. Section 54 of that Act abolished any previously existing powers of arrest. This had the effect of rendering section 13(2) ineffective.

202 Paragraph 32 amends section 18E of the 2008 Act, which makes supplementary provision relating to the destruction and retention of biometric material, to replace an outdated reference to the Serious Organised Crime Agency with a reference to its successor body, the National Crime Agency.

203 The amendments made by paragraphs 33 to 39 relate to the notification scheme in the 2008 Act.

204 Section 40 of the 2008 Act describes the scope of the notification scheme. Paragraph 33 amends section 40 to include reference to the new power to enter and search the homes of RTOs (as provided for in clause 12).

205 Under section 49 of the 2008 Act, and RTO is required to re-notify the information specified in section 47(2) on an annual basis. The effect of new section 49(1)(ba), inserted by paragraph 35(2)(b), is to re-set the clock in a case where an RTO has re-notified the section 47(2)

information in accordance with new section 48A of the 2008 Act (as inserted by clause 11(4)).

206 Section 50 of the 2008 Act describes how and where a person is required to notify information to the police under the provisions relating to initial notification, notification of change, periodic re-notification and notification on return after absence from the UK. Section 50(2) provides that the person must notify by attending a police station in the person's local police area (as defined in section 51) and making an oral notification to a police officer or other person authorised by the officer in charge of the station. Paragraph 36 amends section 50 to provide that this method of notification also applies to a notification of changes to financial information and identification documents under new section 48A.

207 Under section 54 of the 2008 Act, failure without reasonable excuse to comply with any of the notification requirements, or providing false information in relation to any of the requirements, constitutes an offence (subject to a maximum penalty of five years' imprisonment). Section 54(4) provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given, but a person cannot be prosecuted more than once for the same failure. The amendments made to section 54 by paragraph 37 provides for this offence to apply to a failure to comply with the requirements of new section 48A and to the provision of false information in relation to those requirements.

208 The notification period continues to run whilst an RTO is outside the UK. Section 55 of the 2008 Act sets out how the notification requirements apply in such circumstances. Paragraph 38 amends section 55 consequential upon the provisions in clause 11(5); it provides that the requirement on an RTO to periodically re-notify his or her details does not apply during a period he or she is absent abroad (section 56 provides for re-notification following an absence abroad).

209 Section 56 of the 2008 Act provides that a person must within three days of their return from abroad, provided his or her notification period has not expired, make a full notification to the police (of all the information listed in section 47(2)) if, amongst other things, there has been any change to the information last given to the police. Paragraph 39 amends section 56 so that the re-notification requirement applies where there has been any change to the information about the RTO's banking details or identification documents since last notified in accordance with new section 48A.

210 Section 52(1) of the 2008 Act provides a power for the Secretary of State to make regulations setting out additional notification requirements for persons subject to the notification scheme in relation to foreign travel. Regulation 3(1) of the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulation 2009 (SI 2009/2493) requires an RTO to notify the police in advance if he or she intends to leave the United Kingdom for a period of three days or more. Such a notification must include, amongst other things, the date of departure, the country the RTO is travelling to and the point of arrival in that country. Paragraph 40(1)(a) amends regulation 3(1) so that an RTO must notify the police of any intended travel outside the United Kingdom.

211 Regulation 4 of the 2009 Regulations specifies the minimum period prior to travel when such notifications must be made. Where the travel arrangements are not known seven days prior to travel or subsequently change, a notification must be made at least 24 hours before departure. Paragraph 40(1)(b) amends regulation 4 to reduce this minimum period to 12 hours.

Clause 22: Notification requirements: transitional provisions

212 This clause makes transitional provisions in respect of the changes to the notification scheme for terrorist offenders made by clauses 11 and 12.

213 Subsections (1) and (2) provide that such changes apply to terrorist offenders made subject to the notification requirement before or after the coming into force of clauses 11 and 12. For those already subject to the notification requirements on the commencement data, this is subject to the provisions in subsections (3) to (7).

214 An offender who is already subject to the notification requirements when the provisions come into force who has a sole or main residence in the United Kingdom must provide the police with all the information required to be notified under section 47 of the 2008 Act (that is, re-notify the existing information required to be notified by that section (see paragraph 81 above) and the additional information required to be notified as a result of the provisions in clause 11) (subsections (3) and (4)) within three months from the commencement date. Where the offender who is already subject to the notification requirements does not have a sole or main residence in the United Kingdom and so is required to re-notify weekly, the RTO must do so for the first time within seven days of the provisions coming into force. Failure to apply with these requirements constitutes an offence contrary to section 54(1) of the 2008 Act.

215 The (re-)notification of the information required by section 47 of the 2008 Act, as amended by clause 11, will re-set the clock in terms of determining when the next annual re-notification is to take place.

216 Where an individual has not made his or her initial notification as required by section 47 by the date clause 11 comes into force, he or she will be required to notify all the information required to be notified by section 47, as amended by clause 11, within three days of the date the notification requirement takes effect (usually the date the individual is released from custody). Failure to comply with the initial notification requirements in section 47 (as augmented by clause 11) is an offence contrary to section 54(1) of the 2008 Act.

217 An RTO is required to re-notify his or her details to the police on an annual basis (by virtue of section 49 of the 2008 Act). Where this annual re-notification takes place, in the case of an RTO with a sole or main residence in the United Kingdom, within three months of commencement of clause 11 or, in the case of a homeless RTO, within one week of commencement of clause 11, the RTO will be required to provide the additional information at that point, accordingly the requirement in subsections (3) and (4) will not apply in such a case (subsection (5)). The (re-)notification of the information required by section 47, as amended by clause 11, will re-set the clock in terms of determining when the next annual re-notification is to take place.

218 Paragraph 40 of Schedule 4 amends regulation 3(1) of the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulation 2009 (SI 2009/2493) so that an RTO must notify the police of <u>any</u> intended travel outside the United Kingdom rather than, as now, any intended travel outside the United Kingdom for a period of three days or more. Subsection (7) of this clause provides that this revised requirement does not apply in a case where the intended date of departure is seven or fewer days after the commencement date.

Clause 23: Other transitional provisions

219 Subsections (1) and (2) provides that the changes to certain terrorism offences (clauses 1 to 5) and the sentencing provisions in clauses 6 and 7 do not have retrospective effect.

220 Subsection (3) provides that the changes to extended determinate sentences and sentences for offenders of particular concern in England and Wales made by clause 8, and those made by clause 9 to extended sentences in Scotland, apply to an offender sentenced on or after the date that the clause comes into force, including in cases where the relevant offence was committed prior to commencement.

221 Subsection (4) provides that the changes made by clause 8, and the consequential amendments in Part 1 of Schedule 4, apply only to an offender sentenced for an offence

committed on or after the date that the clause comes into force for the purposes of sections 225 and 226 of the 2003 Act and sections 219 and 221 of the Armed Forces Act 2006 which makes provision for life sentences for certain dangerous offenders.

222 Subsection (5) provides that the changes to extended custodial sentences in Northern Ireland made by clause 10, apply to an offender sentenced for an offence committed on or after the date that the clause comes into force.

223 The effect of subsection (6) is that a court may make an SCPO in respect of a person convicted of a relevant terrorism offence or conduct carried out prior to the commencement of clause 13.

224 Subsections (7) and (8) provides that the amendments made by Schedule 2 extending the duration, from two to five years, of a national security determination in respect of the retention of biometric material only applies to determinations made or renewed after commencement.

225 Subsection (9) provides that the powers in Schedule 3 to stop, question, search and detain a person at a port or border area for the purpose of determining whether that person is or has been engaged in hostile activity are exercisable in respect of hostile acts commissioned, prepared or instigated prior to commencement of Schedule 3.

Commencement

226 Clause 25(1) provides for clause 19 (terrorism reinsurance) and the general provisions in clauses 21(2) to (7), 24, 25 and 26 of the Bill (consequential amendments, extent, commencement and short title) to come into force on Royal Assent.

227 Clause 25(3) provides for the following provisions to come into force two months after Royal Assent:

- Clauses 1 to 5 (terrorist offences);
- Clauses 6 to 13 and Schedule 1 (punishment and management of terrorist offenders);
- Clause 14 (traffic regulation);
- Clause 18 (persons vulnerable to being drawn into terrorism);
- Clauses 22 and 23 and Parts 1, 2 and 4 of Schedule 4 (transitional provisions and minor and consequential amendments).

228 The remaining provisions will be brought into force by commencement regulations made by the Secretary of State (clause 25(2)).

Financial implications of the Bill

229 The main public sector financial implications of the Bill fall to criminal justice agencies, including the police, prosecutors and prisons and probation services. The best estimate average annual cost of the measures in the Bill is £5.3 million. This figure is an estimate based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the overarching impact assessment published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

230 A Money Resolution will be needed in relation to clause 19 of the Bill, which broadens the types of cover available under the government backed terrorism reinsurance scheme provided for in the Reinsurance (Acts of Terrorism) Act 1993. The House of Commons will be asked to agree that any expenditure arising from this clause of the Bill (should it become an Act) incurred by the Treasury will be taken out of money provided by Parliament.

231 A Ways and Means resolution will be needed to authorise the power to impose fees under clause 14 of the Bill in relation to traffic regulation orders or notices that are made for the purpose of protecting certain sites or events from risks associated with terrorism.

Compatibility with the European Convention on Human Rights

232 The Home Secretary, the Rt. Hon. Sajid Javid MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the Counter-Terrorism and Border Security Bill are compatible with the Convention rights".

233 The Government has published a separate ECHR memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

234 The following documents are relevant to the Bill and can be read at the stated locations:

- CONTEST, the United Kingdom's Strategy for Countering Terrorism, HM Government, 4 June 2018;
- Proscribed Terrorist Organisations, Home Office, 22 December 2017;
- Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to December 2017, Home Office Statistical Bulletin 05/18;
- Northern Ireland Terrorism Legislation: Annual Statistics 2016/17, Northern Ireland Office, November 2017;
- Prevent duty guidance, Home Office/Scottish Government, July 2015;
- Individuals referred to and supported through the Prevent programme, April 2016 to March 2017, Home Office Statistical Bulletin 06/18;
- The Terrorism Acts in 2015, David Anderson QC, Independent Reviewer of Terrorism Legislation, December 2016;
- The Government Response to the Annual Report on the Operation of the

Terrorism Acts in 2015 by the Independent Reviewer of Terrorism Legislation, July 2017, Cmnd 9489;

- The Terrorism Acts in 2016, Max Hill QC, Independent Reviewer of Terrorism Legislation;
- Biometric Commissioner annual report 2016;
- Overarching impact assessment;
- Policy equality statement;
- ECHR memorandum;
- Delegated powers memorandum;
- "Keeling Schedule" (showing relevant sections of other Acts as they would be amended by this Bill).

Annex A – Glossary

ATTRNs	Anti-Terrorism Traffic Regulation Notices
ATTROs	Anti-Terrorism Traffic Regulation Orders
ECS	Extended custodial sentence
EDS	Extended determinate sentence
LASPO Act	Legal Aid, Sentencing and Punishment of Offenders Act 2012
PACE	Police and Criminal Evidence Act 1984
RTO	Registered terrorist offender
SCPO	Serious Crime Prevention Order
SOPC	Sentences for offenders of particular concern
The 1984 Act	Road Traffic Regulation Act 1984
The 1993 Act	Reinsurance (Acts of Terrorism) Act 1993
The 1995 Act	Criminal Procedure (Scotland) Act 1995
The 2000 Act	Terrorism Act 2000
The 2003 Act	Criminal Justice Act 2003
The 2004 Act	Domestic Violence, Crime and Victims Act 2004
The 2006 Act	Terrorism Act 2006
The 2007 Act	Serious Crime Act 2007
The 2008 Act	Counter-Terrorism Act 2008
The 2008 Order	Criminal Justice (Northern Ireland) Order 2008
The 2011 Act	Terrorism Prevention and Investigation Measures Act 2011
The 2012 Act	Protection of Freedoms Act 2012
The 2015 Act	Counter-Terrorism and Security Act 2015
TPIMs	Terrorism Prevention and Investigation Measures
TRNs	Traffic Regulation Notices
TROs	Traffic Regulation Orders

Annex B - Biometric Material Retention Schedule

Biometric retention periods as defined under Part 5 of PACE

Individuals convicted of an offence

Situation	**Fingerprint & DNA Retention Period**
Adult convicted (including cautions) of any recordable offence	Indefinite
Under 18 convicted (including cautions, reprimands and final warnings) of a qualifying offence	Indefinite
Under 18 convicted of a minor offence	**1st conviction:** Five years (plus length of any custodial sentence), or indefinite if the custodial sentence is five years or more. **2nd conviction:** indefinite

Individuals not convicted of an offence

Situation	**Fingerprint & DNA Retention Period**
Any age charged with but not convicted of a qualifying offence	Three years + two year extension if granted by District Judge (or indefinite if previously convicted of a recordable offence which is not excluded)
Any age arrested for but not charged with a qualifying offence	Three years if granted by Biometrics Commissioner + two year extension if granted by District Judge (or indefinite if previously convicted or a recordable offence which is not excluded)
Any age arrested for or charged with a minor offence	None (or indefinite if there is a previous conviction for a recordable offence which is not excluded) but speculatively searched against National DNA Database and national fingerprint database
Penalty Notice for Disorder	Two years

Source: National Police Chiefs' Council, ACRO Criminal Records Office, Retention Schedule

Annex C - Territorial extent and application in the United Kingdom

Subject to certain exceptions, the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland. The exceptions are as follows:

- The extension to Northern Ireland of the provisions, in section 30 of the 2008 Act, requiring a court to treat a terrorist connection to a specified non-terrorist offence as an aggravating factor when sentencing (clause 7(2) and (3)) – extends to the whole of the UK but applies to Northern Ireland only;
- The addition of certain offences to the list of offences where a court is required to consider whether there is a terrorist connection (clause 7(5) and (6)) – extends to the whole of the UK but variously apply to England, Wales and Northern Ireland only, Scotland only or Northern Ireland only;
- The amendments made to the provisions of the 2003 Act in respect of extended determinate sentences and sentences for offenders of particular concern (clause 8), together with certain consequential amendments in Part 1 of Schedule 4 – extend and apply to England and Wales only;
- The amendments made to the provisions of the 1995 Act in respect of extended sentences (clause 9) – extend and apply to Scotland only;
- The amendments made to the provisions of the 2008 Order in respect of extended custodial sentences (clause 10), together with the consequential amendments in Part 2 of Schedule 4 – extend and apply to Northern Ireland only;
- The changes to the legislative framework governing the retention of fingerprints and DNA profiles - Schedule 2 amends seven enactments some of which extend and apply to England and Wales, Scotland or Northern Ireland only;
- The amendments to the Road Traffic Regulation Act 1984 in respect of ATTROs (clause 14) – extend and apply to England and Wales and Scotland only;
- Enabling local authorities to refer persons vulnerable to being drawn into terrorism to panels constituted under section 36 of the 2015 Act (clause 18) – extends and applies to England and Wales and Scotland only;
- The amendments to the Reinsurance (Acts of Terrorism) Act 1993 (clause 19) – extend and apply to England and Wales and Scotland only.

In the view of the Government of the United Kingdom, none of the provisions of the Bill are within the legislative competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.[9]

[9] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 7	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 8	Yes	Yes	No	No	No	No	No	No
Clause 9	No	No	Yes	No	N/A	N/A	N/A	No
Clause 10	No	No	No	Yes	N/A	N/A	N/A	No
Clause 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 12	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 13	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 14	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 16	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 17	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 18	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 19	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2	In part	In part	In part	In part	N/A	N/A	N/A	No
Schedule 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 4	In part	In part	In part	In part	N/A	N/A	N/A	No

Minor and consequential effects

There are no minor or consequential effects which are relevant to this analysis.

Subject matter and legislative competence of devolved legislatures

The provisions in Part 1 of the Bill deal with counter-terrorism and, in the case of clause 19, financial services, while those in Part 2 relate to national security. In Scotland, "national security", "special powers, and other special provisions, for dealing with terrorism" and "financial services" are reserved

matters by virtue of sections A3 and B8 of Schedule 5 to the Scotland Act 1998. In Wales, "national security", "special powers, and other special provisions, for dealing with terrorism" and "financial services" are reserved matters by virtue of paragraphs 17, 32 and 33 of Schedule 7A to the Government of Wales Act 2006. In Northern Ireland, "national security" and "special powers and other provisions for dealing with terrorism" are excepted matters by virtue of paragraph 17 of Schedule 2 to the Northern Ireland Act 1998.

Clause 8 amends certain sentencing provisions in the 2003 Act insofar as they relate to terrorism offenders. Sentencing is not devolved to the National Assembly for Wales under the Government of Wales Act 2006 (paragraph 8(1)(c) of Schedule 7A). In relation to Scotland, sentencing is not generally reserved to the UK Government under the Scotland Act 1998, however, certain aspects of the criminal law and therefore sentencing in respect of relevant offences (including where they relate, as here, to special powers for dealing with terrorism (section B8 of Schedule 5 to the Scotland Act 1998)) are reserved. In relation to Northern Ireland, sentencing is not generally an excepted or a reserved matter under the Northern Ireland Act 1998, although certain aspects of the criminal law and therefore sentencing in respect of relevant offences (including where they relate, as here, to special powers for dealing with terrorism (paragraph 17 of Schedule 2 to the Northern Ireland Act 1998)) are excepted. As such, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision to that contained in clause 8.

COUNTER-TERRORISM AND BORDER SECURITY BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Counter-Terrorism and Border Security Bill as introduced in the House of Commons on 6 June 2018 (Bill 219).

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