

# **TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 26: Temporary power for imposition of enhanced measures***

133. The Government has published the draft ETPIM Bill, with the intention that this would be introduced as emergency legislation if necessary in the future. It would introduce a system of enhanced TPIM notices, in parallel to the system of TPIM notices provided by this Act, with the key difference being that more stringent restrictions could be imposed on individuals subject to an enhanced TPIM notice where necessary and proportionate to protect the public. There would also be a higher test for imposing such a notice – the Secretary of State must be satisfied ‘on the balance of probabilities’ that the individual is or has been involved in terrorism-related activity (whereas he or she must reasonably believe this to be the case in order to impose a standard TPIM notice).
134. It would not be possible to introduce the ETPIM Bill while Parliament is dissolved, and during the period between a new Parliament being appointed and the first Queen’s Speech of that Parliament. Section 26 provides a power for the Secretary of State to make a “temporary enhanced TPIM order” during such a period if it is necessary by reason of urgency. (Section 27 provides that the Secretary of State must lay a copy of the order before each House of Parliament as soon as is practicable after making it, but the order is not subject to any further Parliamentary procedure. Such an order only remains in force for a period of 90 days.)
135. A temporary enhanced TPIM order would make provision equivalent to that contained in the ETPIM Bill, enabling the Secretary of State to impose (temporary) enhanced TPIM notices on the same basis as that set out in the draft ETPIM Bill. *Subsections (5) to (10)* set out the provisions and matters that must, and may, be secured by the order. These are the provisions that differentiate an enhanced TPIM notice from a standard TPM notice. *Subsection (4)* requires that, other than these matters, the provisions of the order must correspond to the relevant provisions of this Act. The result is that the power to make provision in the order is limited to making similar provision to that in the draft ETPIM Bill, including applying most of the provisions of this Act. See the explanatory notes to the draft ETPIM Bill for a description of the effect of the provisions that will be made.
136. The main difference to the provision in that draft Bill is that a temporary TPIM notice made under an order will only remain in force for as long as the order remains in force (that is, a notice will last for a maximum of 90 days). However, if the circumstances which necessitated the introduction of the enhanced TPIM powers by order still exist after the Queen’s Speech, it is likely that the Government will introduce the ETPIM Bill as emergency legislation as soon as Parliamentary business resumes (and before the 90 days for which the order remains in force expires). In this event, the ETPIM Bill will repeal the order and will make transitional provision in relation to enhanced TPIM notices imposed under the order. Clause 12 of the draft ETPIM Bill provides that the

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

exercise of any power under a temporary enhanced TPIM order is to be treated as the exercise of the corresponding power under the ETPIM Bill. And it includes provision that an enhanced TPIM notice imposed under the order is to continue in force as an enhanced TPIM notice and is to remain in force for a period of a year (less any period for which it was in force prior to commencement of the ETPIM Bill), rather than just for the duration of the temporary TPIM notice – as notices imposed under the draft ETPIM Bill will remain in force for a year.

137. The practical effect of *subsections (12) and (13)* is that the Secretary of State must obtain the consent of the Scottish Ministers before making provision under the temporary enhanced TPIM order for matters that are devolved in Scotland – but that requirement does not apply to such devolved matters contained in the Act (for which the consent of the Scottish Ministers and the Scottish Parliament has already been obtained).