EXPLANATORY MEMORANDUM TO

THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011 (CONTINUATION) ORDER 2016

2016 No. 1166

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 As provided for by section 21 of the Terrorism Prevention and Investigation Measures Act 2011 ("the Act"), this Order provides for the continuation of the Secretary of State's "TPIM powers" (as defined in that section) for a period of 5 years.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The Act provides the Secretary of State with the power to impose certain measures on an individual where satisfied, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity; and where the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to impose the measures on the individual. Such measures are imposed by means of a "TPIM notice". In addition to the power to impose a TPIM notice, the Secretary of State has powers to extend and vary a TPIM notice that is in force and power to revive a TPIM notice that has expired. Section 21(8) of the Act defines these as the Secretary of State's "TPIM powers".

4.2 TPIMs are civil preventative measures intended for use to manage the threat posed by terrorists who cannot be prosecuted for a terrorism-related offence, or deported in the case of foreign nationals. The Act:

- repealed the Prevention of Terrorism Act 2005 (the "2005 Act") which gave powers to impose control orders;
- introduced a replacement system of terrorism prevention and investigation measures;
- increased safeguards for the civil liberties of individuals subject to the measures, including a higher test for the measures to be imposed than existed under control orders. TPIMs are valid for one year with the option of being extended by a further year if the conditions for imposition remain satisfied.

Once a TPIM has expired, a further TPIM can only be imposed if there is new terrorism related activity and the other conditions for imposing a TPIM are satisfied;

- specified what types of measures can and cannot be imposed. Restrictions that impact on an individual's ability to follow a normal pattern of daily life are kept to the minimum necessary to protect the public, and must be proportionate and clearly justified. Schedule 1 to the Act prescribes those restrictions that can be imposed which include measures to impose restrictions on overnight place of residence, travel, access to financial services, electronic communication devices and associations or communications with other persons. Schedule 5 contains police powers of entry, search and seizure available in connection with enforcement of a TPIM notice, and these include safeguards against arbitrary interferences with the TPIM subject's rights, such as a requirement for the police to obtain a warrant from a magistrate before they can enter the premises for the purpose of determining whether the TPIM subject is complying with the restrictions;
- provided for broad judicial oversight of the system, including: a requirement for High Court permission to impose the measures (except in cases of urgency, where the notice must be immediately referred to the court for confirmation); an automatic review hearing in each case unless the individual requests the hearing be discontinued; rights of appeal for the individual against the refusal of a request to revoke or vary a measure;
- placed a duty on the Secretary of State to consult on the prospects of prosecuting an individual before measures may be imposed and a duty to keep the necessity of measures under review while they are in force; and
- provided for the Independent Reviewer of Terrorism Legislation to publish regular reviews of the operation of the system.

4.3 In 2015, taking on board the recommendations of David Anderson QC, the Independent Reviewer of Terrorism Legislation, the Counter-Terrorism and Security Act 2015 ("CTSA") made a number of amendments to the TPIM Act to enhance the effectiveness of TPIMs as disruption measures and to strengthen the protections contained in the regime. These recommendations included: raising the threshold for imposing a TPIM notice so that the Secretary of State must be satisfied that on "the balance of probabilities", the individual is or has been involved in terrorism-related activity; and introducing a power allowing the Secretary of State to relocate an individual to premises no more than 200 miles away from their current home address without their consent.

4.4 The Independent Reviewer of Terrorism Legislation has a discretion under section 20 of the Act to produce annual reports on the operation of the TPIM powers, and has produced a number of assessments on the TPIM Act, which are required to be laid before Parliament by the Secretary of State. These can be found at: (https://terrorismlegislationreviewer.independent.gov.uk/category/reports/tpims-control-orders/). The Parliamentary Research Papers 11/46; 11/62 and 14/63 and the Commons Library Standard Notes 6799 and 7073 provide a summary of the policy background to the Act and subsequent amendments.

4.5 Section 21(1) of the Act states that unless provision is made by way of statutory instrument for the continuation of the Secretary of State's TPIM powers, they will expire at the end of a period of five years beginning on the date on which the Act was

passed (14th December 2011). This means that the powers in the Act will expire at midnight on 13th December 2016 unless an order is made which provides for the continuation of the TPIM powers. Section 21(2)(c) of the Act provides that the Secretary of State, by order made by statutory instrument, may provide for the continuation of the TPIM powers for up to five further years, subject to any further order being made. Any order made under this power is subject to the draft affirmative procedure. Section 21(3) requires the Secretary of State to consult with the independent reviewer of the Act, the Intelligence Services Commissioner and the Director-General of the Security Services before making any order providing for the continuation of the TPIM powers.

4.6 Having consulted as required by the Act, the Secretary of State has, due to the significant terrorist threat facing this country, decided to make this statutory instrument to provide for the continuation of the Secretary of State's TPIM powers for a further five year period which is the maximum allowable in the legislation.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Home Secretary, Theresa May, has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Act provides the Secretary of State with powers to impose a TPIM notice on an individual if the conditions set out in section 3 of the Act are assessed by the Secretary of State to have been met. As of the last published set of figures (http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statements/) one TPIM was in force. In total, 12 TPIMs have been imposed since the legislation was introduced (nine of these individuals had been subject to control orders and were moved to TPIMs when the legislation was introduced).

7.2 Section 21(1) of the Act states that the Secretary of State's TPIM powers will expire at the end of five years from the date the Act was passed. Due to the continuing threat to the UK from terrorist related activity, the Secretary of State has concluded, following consultation with the individuals referred to in section 21(3), that the TPIM powers in the Act are still necessary to allow the authorities adequately to address and mitigate the terrorist threat.

7.3 Any person who has a TPIM notice imposed will continue to be able to apply to the courts to challenge the imposition of the TPIM notice (under section 9 of the Act), may apply to vary any of the measures (under section 12) and undertake further appeals (under section 16).

Consolidation

7.4 The Department does not assess that there is any need for consolidation measures.

8. Consultation outcome

8.1 As required by the Act, the Secretary of State has consulted with the independent reviewer of the Act, the Intelligence Services Commissioner and the Director-General of the Security Services. Those persons all agreed that the Secretary of State's TPIM powers should be continued for a further five years.

9. Guidance

9.1 No guidance is necessary in connection with this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The necessity of TPIM powers will be kept under review.

13. Contact

13.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF.