EXPLANATORY MEMORANDUM TO

THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011 (CONTINUATION) ORDER 2021

2021 No. 1386

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.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

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

5. European Convention on Human Rights

5.1 The Home Secretary, Priti Patel, has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Act provides the Secretary of State with the power to impose certain measures on an individual, where she reasonably believes 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 the 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".

6.2 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.

6.3 The Act repealed the Prevention of Terrorism Act 2005 (the "2005 Act"), which gave powers to impose control orders, and introduced a replacement system of terrorism

prevention and investigation measures. The Act included safeguards for the civil liberties of individuals subject to the measures, such as a higher test for the measures to be imposed than existed under control orders and a limit on the imposition of measures without new terrorism-related activity. The Act also 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 an overnight place of residence, travel, access to financial services, electronic communication devices and association or communications with other persons.

6.4 The Act also provided for broad judicial oversight of the TPIM 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; and rights of appeal for the individual against the refusal of a request to revoke or vary a measure. The Act 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. The Act also provided for the Independent Reviewer of Terrorism Legislation to publish regular reviews of the operation of the system.

6.5 In 2015, taking into account 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. These recommendations included: raising the threshold for imposing a TPIM notice to a test of 'balance of probabilities' and allowing the Secretary of State to relocate an individual away from their residence.

6.6 In April 2021, the Government passed the Counter-Terrorism and Sentencing Act 2021 ("CTSA 2021") which delivered the largest overhaul of terrorist sentencing and monitoring in decades. This followed the terror attacks at Fishmongers Hall on 29 November 2019 and in Streatham on 2 February 2020, which were committed by known terrorist offenders. The CTSA 2021 made a number of important enhancements to manage the risks posed by individuals of terrorism concern and this included strengthening TPIMs. The CTSA 2021 made the following amendments to the Act: lowered the standard of proof required under condition A of Section 3 to the Act from 'balance of probabilities' to 'reasonable belief;' extended the maximum time a TPIM notice can be in force from two to five years; added an additional ground to vary a subjects' TPIM measures, based on resourcing; amended two TPIM measures (the overnight residence measure and electronic communication device measure); and created three new TPIM measures; the provision of information measure, drug testing measure and polygraph testing measure.

6.7 The Independent Reviewer of Terrorism Legislation has produced a number of assessments on the TPIM Act and these can be found at https://terrorismlegislationreviewer.independent.gov.uk/page/1/?s=TPIMS

6.8 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). 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. In accordance with section 21(2)(c), the Secretary of State's TPIM powers were continued for a period of five years by the TPIM (Continuation) Order 2016 which came into force on 14 December 2016. This means that the powers in the Act will expire at midnight on 13th December 2021 unless a new order is made under section 21(2)(c) which provides for the continuation of the TPIM powers.

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 (21 October 2021) (http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statements/) five TPIMs were in force. Since the introduction of the Act in 2011 to 31 December 2020 24 TPIMs have been imposed (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. As set out in 6.8, the powers in the Act will expire at midnight on 13th December 2021 unless a new order is made under section 21(2)(c) which provides for the continuation of the TPIM powers. 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 remain a necessary and proportionate tool to allow the authorities to adequately address and mitigate terrorist threats.

7.3 This instrument makes no changes to the TPIM regime itself, and merely extends the existing powers. 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).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

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

10. Consultation outcome

10.1 As required by the Act, the Secretary of State has consulted with the Independent Reviewer of the Act, the Investigatory Powers Commissioner and the Director-General of the Security Services. These persons have all agreed that the Secretary of State's TPIM powers should be continued for a further five years.

11. Guidance

11.1 No guidance is necessary in connection with this instrument.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen. This determination is based on the subject-matter and scope of the instrument and the primary legislation to which it relates.

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

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to the monitoring of this legislation is that the necessity of TPIM powers will be kept under review.

15. Contact

15.1 Specific queries relating to this instrument should be directed to the TPIM Contact Officer at Contact.Officer2@homeoffice.gov.uk. Please note this mailbox has been provided for Parliamentary use in relation to specific technical queries regarding this instrument. It is not a contact point for general enquiries.

15.2 The Deputy Director for CT Pursue Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Home Secretary, Priti Patel at the Home Office can confirm that this Explanatory Memorandum meets the required standard.