

*These notes refer to the Counter-Terrorism and Security Bill  
as introduced in the House of Commons on 26 November 2014 [Bill 127]*

# COUNTER-TERRORISM AND SECURITY BILL

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Counter-Terrorism and Security Bill as introduced in the House of Commons on 26 November 2014. They 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.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### SUMMARY AND BACKGROUND

3. The Government considers that there is a need to legislate in order to reduce the terrorism threat to the UK. On 29 August 2014, the independent Joint Terrorism Analysis Centre (JTAC) raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE. This means that a terrorist attack is ‘highly likely’. Approximately 500 individuals of interest to the police and security services have travelled from the UK to Syria and the region since the start of the conflict. It is estimated half of these have returned. In the context of this heightened threat to our national security, the provisions in this Bill would strengthen the legal powers and capabilities of law enforcement and intelligence agencies to disrupt terrorism and prevent individuals from being radicalised in the first instance.

4. On 1 September 2014, the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations or engage in terrorism-related activity and subsequently returning to the UK, and to deal with those already in the UK who pose a risk to the public. The proposals in this Bill would ensure that the law enforcement and intelligence agencies can disrupt the ability of people to travel abroad to fight, such as in Syria and Iraq, and control their return to the UK. It would enhance operational capabilities to monitor and control the actions of those in the UK who pose a threat, and would help to combat the underlying ideology that supports terrorism.

5. The UK has a strategy for countering terrorism: 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 continues to be based around four main areas of work:

- Pursue: the investigation and disruption of terrorist attacks;
- Prevent: work to stop people becoming terrorists or supporting terrorism and extremism;
- Protect: improving our 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.

Provisions in this legislation would strengthen powers and capabilities in the ‘Pursue’, ‘Prevent’, and ‘Protect’ areas of work in particular.

6. This Bill brings provisions in six main areas. First, it would strengthen powers to place temporary restrictions on travel where a person is suspected of involvement in terrorism. Second, it would enhance existing Terrorism Prevention and Investigation Measures to monitor and control the actions of individuals in the UK who pose a threat. Third, it would enhance law enforcement agencies’ ability to investigate terrorism and serious crime by extending the retention of relevant communications data to include data that will help to identify who is responsible for sending a communication on the internet or accessing an internet communications service. Fourth, it would strengthen security arrangements in relation to the border and to aviation, maritime and rail transport. Fifth, it would reduce the risk of people being drawn into terrorism, by enhancing the programmes that combat the underlying ideology which supports terrorism through improved engagement from partner organisations and consistency of delivery. Sixth, it would amend existing terrorism legislation to clarify the law in relation to both insurance payments made in response to terrorist demands and the power to examine goods under the Terrorism Act 2000.

## **OVERVIEW OF THE STRUCTURE OF THE BILL**

7. This Bill is in 7 parts.

8. Part 1 of the Bill would bring forward measures on temporary restrictions on travel. Chapter 1 would provide police officers, and Border Force officers under the direction of a police officer, with a power to temporarily seize a passport at the border for a period of time, when it is suspected that an individual is travelling for the purpose of involvement in terrorism-related activity outside of the United Kingdom. Chapter 2 would provide for the creation of a temporary exclusion order to disrupt and control the return to the UK of a British citizen reasonably suspected of involvement in terrorist activity abroad.

9. Part 2 of the Bill would amend the Terrorism Prevention and Investigation Measures Act 2011. The provisions would allow the Secretary of State to require a subject to reside in a particular location in the UK, restrict a subject's travel outside their area of residence, prohibit a subject from obtaining or possessing firearms, offensive weapons or explosives, and require a subject to meet with specified persons or persons of specified descriptions as part of their ongoing management. It would also amend the wording of the test for issuing a TPIM and amend the definition of terrorism-related activity in the TPIM Act.

10. Part 3 would amend the Data Retention and Investigatory Powers Act 2014. It would enable the Secretary of State to require communications service providers to retain the data that would allow relevant authorities to identify the individual or the device that was using a particular internet protocol address at any given time.

11. Part 4 of the Bill would bring forward a number of measures on border and transport security. These provisions would extend the scope for authority to carry ('no fly') schemes, allow the Secretary of State to make regulations in relation to passenger, crew and service information and to give directions in relation to security measures to aviation, shipping or rail transport operating to the UK. It also introduces penalties for failure to comply with requirements to provide passenger, crew and service information, with an authority to carry scheme or, in the case of aircraft, with screening requirements.

12. Part 5 addresses the risk of being drawn into terrorism. Chapter 1 would create a duty for specified bodies to have due regard, in the exercise of their functions, to the need to prevent people from being drawn into terrorism. It would also give the Secretary of State a power to publish guidance to which specified bodies must have regard when fulfilling this duty. The effect would be to put the existing Prevent programme on a statutory footing. Chapter 2 would provide that each local authority must have a panel to provide support for people vulnerable to being drawn into

terrorism. The effect would be to put the existing voluntary programme for people at risk of radicalisation on a statutory footing (in England and Wales this is the Channel Programme).

13. Part 6 of the Bill would make amendments relating to the Terrorism Act 2000. Clause 34 would amend the Terrorism Act 2000 to provide that an insurer commits an offence if they make a payment under an insurance contract for money or property handed over in response to a demand made wholly or partly for the purposes of terrorism, when the insurer knows or has reasonable cause to suspect that the money has been handed over for that purpose. This clarifies the intent of the original legislation to prohibit such payments. Clause 35 introduces Schedule 5, which would amend paragraph 9 of Schedule 7 to the Terrorism Act 2000 regarding the power to examine goods at ports and the border, together with amending other enactments relating to that power. The amendments in the Bill would clarify the legal position in relation to where this power may be exercised and the examination of goods which comprise items of post.

14. Part 7 of the Bill relates to miscellaneous and general provisions. In the miscellaneous provisions, Clause 36 would provide a power that would enable the Secretary of State to establish a Privacy and Civil Liberties Board which will support the statutory role of the Independent Reviewer of Terrorism Legislation. Clause 37 would provide for the review of certain naturalisation decisions by the Special Immigration Appeals Commission, specifically applications for British Overseas Territories citizenship. The general provisions at Clauses 38 to 43 relate to matters such as consequential amendments and territorial extent.

## **TERRITORIAL EXTENT AND APPLICATION**

15. The provisions in Part 5 extend to England and Wales and Scotland. The provisions in Parts 1 to 4 and Parts 6 to 7 extend to England and Wales, Scotland and Northern Ireland. Clause 41(3) states that provisions in Parts 1 and 4 only may also be extended to any of the Channel Islands or the Isle of Man by Order in Council. Clause 41(4) to (8) provides that where this Bill amends legislation which may be extended to the Channel Islands or and Isle of Man, the power may be exercised in relation to any amendments made to those Acts by this Bill.

16. No devolution issues arise in relation to Wales, Scotland or Northern Ireland.

17. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of

the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

## **FAST-TRACK LEGISLATION**

18. The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on *Fast-track Legislation: Constitutional Implications and Safeguards*<sup>1</sup>, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.<sup>2</sup>

### ***Why is fast-tracking necessary?***

19. On 29 August 2014, the independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE. At least 500 British citizens have travelled to Syria and Iraq, many of whom have joined terrorist groups such as ISIL, and many others have travelled from other countries in Europe and further afield. The emergence of the ISIL and the territorial gains they have made in Iraq, present a significant danger not just in the Middle East, but in the UK and across the West. ISIL's murders of British and American journalists have demonstrated the threat the UK faces from terrorism at home and abroad. The police and the security and intelligence agencies need further powers to prevent more people from travelling to Syria and Iraq to fight, and control them on return to the UK, in order to reduce the terrorist threat to the UK.

### ***What is the justification for fast-tracking each element of the Bill?***

20. There is a need to legislate to deal with the increased terrorist threat. At least 500 British citizens have travelled to Syria or Iraq, many of whom have joined terrorist groups such as ISIL, and more are seeking to do so. The proposals in this Bill would give the police and security and intelligence agencies additional powers to disrupt travel. They would temporarily be able to restrict travel by seizing passports. The temporary exclusion order provision would enable the law enforcement and intelligence agencies to disrupt and control the return to the UK of British citizens who have travelled abroad to engage in terrorism-related activity, and place requirements on them once returned, in order to manage the threat they pose at that point.

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<sup>1</sup> House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

<sup>2</sup> House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

21. The TPIM provisions would further enhance the agencies' capabilities to manage the threat from terrorism suspects in the UK, by strengthening capabilities to monitor and control the actions of those in the UK who pose a threat.
22. Communications data has played a significant role in every Security Service counter-terrorism operation over the last decade. Enabling the retention of relevant internet data will close one element of the gap in the retention of communications data by communications service providers, thereby helping law enforcement agencies to carry out their functions.
23. The high numbers of individuals travelling who are engaged in, or seeking to engage in, terrorism-related activity demonstrate the need to bring in further measures to strengthen border and transport security measures.
24. Travellers to, and returnees from, Syria and Iraq have been based throughout Great Britain. This geographical spread has gone beyond traditional Prevent priority areas, and has reinforced the urgent need for all areas of the country to embed the Prevent strategy and improve the quality of the supporting de-radicalisation programme. These measures would help combat the underlying ideology that feeds, supports and sanctions terrorism.
25. Terrorists use kidnapping to raise finance to increase their operational capability. ISIL has raised \$35-45 million in the past year. The measure will make it explicit that reimbursement of terrorist ransoms – which can create an environment which facilitates their payment – is an offence.
26. Schedule 7 to the Terrorism Act 2000 is an important part of the UK's port and border security arrangements and contributes daily to keeping the UK public safe. Given the current threat from Syria and Iraq, there is a need to clarify the legal position in relation to the examination of goods in remote storage outside the immediate boundary of a port and the examination of goods comprising items of post.
27. The Bill introduces a new power to establish a Privacy and Civil Liberties Board to support the Independent Reviewer of Terrorism Legislation, who will chair the Board. The new Board will expand the capacity and breadth of experience available in our oversight arrangements.
28. The measure on the certification of certain naturalisation decisions is an important provision intended to ensure that sensitive material can be protected during any subsequent challenge to the refusal of citizenship. This closes a gap in the legislation and gives the applicant an appropriate right of appeal to the Special Immigration Appeals Commission.

***What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?***

29. These proposals were discussed in draft with the Opposition in order to discuss appropriate time for scrutiny. It has not been possible to extend the timetable for parliamentary scrutiny given the pressing operational need for enhanced powers to respond to the current terrorism threat. Legislation is being brought forward at the earliest opportunity; having consulted law enforcement agencies on what measures would be useful operationally.

30. The statutory Code of Practice on the operation of the passport seizure power will be published for public consultation in parallel with this Bill.

31. The provisions on Terrorism Prevention and Investigation Measures are similar in nature to elements of the draft Enhanced Terrorism Prevention and Investigation Measures Bill, which was submitted for pre-legislative scrutiny in 2012. The joint committee's consideration of that draft Bill is available on the Parliamentary website at  
<http://www.parliament.uk/business/committees/committees-a-z/joint-select/terrorism-prevention-and-investigation-measures-bill/>

32. Parliament recently considered wider data retention in relation to the Data Retention and Investigatory Powers Act 2014. In addition, the Government published a Draft Communications Data Bill in June 2012. A joint committee of both Houses of Parliament scrutinised the draft Bill and reported in December 2012. The committee's report is available on the parliamentary website at <http://www.parliament.uk/draft-communications-bill/>

33. In September 2011, the Government consulted on proposals to introduce a statutory authority to carry scheme, which would prevent individuals who pose a terrorist threat from flying to the UK. The Government published its response in April 2012, together with the final Security and Travel Bans Authority to Carry Scheme, which came into effect in July 2012. The Government's response to the consultation is available on the Government website at  
<https://www.gov.uk/government/consultations/aviation-security-consultation-on-a-statutory-authority-to-carry-scheme>

34. The guidance under Part 5 on the Prevent duty and the panels to support people vulnerable to being drawn into terrorism will be published for public consultation to run in tandem with this legislation.

35. The measures relating to insurance payments for terrorist ransoms and the power to examine goods under Schedule 7 to the Terrorism Act 2000 are intended to

clarify the intent of the current legislation and put its interpretation beyond doubt. The Terrorism Act provisions that are to be clarified were subject to parliamentary scrutiny during the Act's original legislative passage.

36. The Government is conducting a public consultation on the Privacy and Civil Liberties Board which will support the Independent Reviewer of Terrorism Legislation.

37. The provision for the Special Immigration Appeals Commission to review decisions for naturalisation as a British Overseas Territories Citizen simply brings the legislation in line with that for other citizenship decisions, as previously approved by Parliament.

***To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?***

38. The Home Office met communications service providers to discuss the measure on communications data. The Home Office consulted a sample group of UK airlines on the aviation security measures in the border security proposals. When it is proposed to apply the measures to international rail, shipping and general aviation, these sectors will be consulted formally. In October 2014, the Home Office also held informal consultations with representatives across the UK insurance sector, including the industry regulator, relevant insurance companies, and kidnap and ransom insurance brokers. The Home Office will meet key representatives again to discuss the measure in further detail.

39. The Home Office has engaged other government departments closely on the provisions which affect them. Departments have been engaged extensively on the provision for preventing people being drawn into terrorism. The legislation has also been informed by engagement with the law enforcement and the security and intelligence agencies, local authorities, and devolved administrations. In addition, the Independent Reviewer of Terrorism Legislation has been briefed on the provisions. The Government has discussed the proposals with other governments who might be affected by them; particularly those on temporary exclusion and border security. The proposed legislation is consistent with all our existing international legal obligations.

40. The Home Office will hold public consultations on relevant measures in parallel to the legislative passage of the Bill. These include consultations on the statutory Code of Practice on the operation of the passport seizure power (Part 1 chapter 1), guidance on the duty on specified authorities to have due regard to the need to prevent people from being drawn into terrorism (Part 5 chapter 1), revision of the statutory Code of Practice for Schedule 7 to the Terrorism Act 2000 (Part 6 clause 35), and a public consultation on the Privacy and Civil Liberties Board (Part 7 clause

36). This ensures that interested parties have an opportunity to influence the detail of the proposals.

***Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?***

41. It would not be practical to include a sunset clause for the Bill as a whole.
42. The measures in Part 5 on those at risk of being drawn into terrorism put existing programmes on a statutory footing and are intended to bring greater consistency of delivery to existing programmes. The provision on terrorist ransom payments is intended to clarify existing law. On border security, the Government needs to provide carriers and other countries with long-term certainty, because the measures rely on carriers and other countries making technical changes to supporting security and computer systems. The Privacy and Civil Liberties Board, which will support the Independent Reviewer of Terrorism Legislation, is an additional safeguard so it will not have a sunset clause. The review of certain naturalisation decisions by the Special Immigration Appeals Commission corrects an anomaly in the original legislation, so it would not be appropriate to sunset this provision.

The provisions on Terrorism Prevention and Investigation Measures amend the TPIM Act 2011, which has a sunset clause for the legislation to be repealed on 13 December 2016. The communications data measure amends the Data Retention and Investigatory Powers Act 2014. That Act has a sunset clause which provides that the legislation will be repealed on 31 December 2016.

***Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?***

43. The Home Office will keep its use of these provisions under review. It commits to submit a post-legislative scrutiny memorandum to Parliament five years after Royal Assent, for consideration by the Home Affairs Select Committee.

44. Existing legislation provides for scrutiny. The Independent Reviewer of Terrorism Legislation is required to report at least once in every 12 month period on each of the Acts which fall within his statutory responsibilities. Reports are provided to the relevant Secretary of State, and a copy of the report is laid before Parliament. Of the measures in this Bill, the Independent Reviewer already has oversight of the Terrorism Prevention and Investigation Measures Act and the Terrorism Act 2000. The Bill also contains a regulation-making power which allows the Secretary of State to create a Privacy and Civil Liberties Board which will support and advise the Independent Reviewer. The Intelligence and Security Committee of Parliament

provides scrutiny of policies, administration, spending and past operations of the Intelligence Agencies and the wider government intelligence activity. Additional oversight of the various measures is provided by a number of statutory roles, including: the Intelligence Services Commissioner, the Interception of Communications Commissioner, the Investigatory Powers Tribunal, and the Chief Inspector of Borders and Immigration.

***Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?***

45. The Government has already taken forward a wide range of measures. The Government has stopped British citizens travelling to engage in terrorist related activity by cancelling or refusing passports using the public interest criteria under a Royal Prerogative power, barred foreign nationals suspected of terrorism-related activity from re-entering the United Kingdom, revoked the British citizenship of those who have dual nationality, worked with the internet industry to remove terrorist material online, and enacted emergency legislation to safeguard retention of communications data in this country and overseas. This Bill would bring forward measures which are not provided for in existing legislation.

46. Part 1 of the Bill would introduce two new powers to place temporary restrictions on travel that are not currently provided for in legislation. The first is a power to seize a passport at the border where a police officer has a reasonable suspicion that an individual is about to leave the UK to engage in terrorism-related activity. This is a gap in existing powers. For example, the use of the Royal Prerogative may only be used to cancel or refuse a British passport and due to the process involved it cannot be used to disrupt immediate travel when an individual is at port leaving the UK. The power to examine individuals at ports and the border in Schedule 7 to the Terrorism Act 2000 cannot be used for the purpose of disrupting travel. The second power that Part 1 provides is to control the return to the UK of an individual suspected of engaging in terrorism-related activity abroad. This addresses a gap in capabilities because it would be used to disrupt the return to the UK of British citizens. Current powers can disrupt the travel to the UK of foreign nationals, but not British citizens.

47. Part 2 would amend existing legislation to extend the provisions in the Terrorism Prevention and Investigation Measures Act 2011 in order to strengthen existing arrangements for monitoring and controlling individuals involved in terrorism-related activity in the UK. The TPIM Act does not currently allow TPIM subjects to be moved out of their “locality” and does not compel subjects to meet specified persons to contribute to their management. The provisions would introduce these new powers. A further measure would provide that a TPIM subject may not

possess firearms, offensive weapons or explosives. Existing powers already require the police to assess whether someone is a “fit person” to have a firearms or explosives licence. However, this measure would introduce a specific criminal sanction for breaching this requirement and would provide additional assurance that subjects may not possess these items.

48. Part 3 enables the Secretary of State to require communications service providers (CSPs) to retain data that would allow relevant authorities to link a public internet protocol (IP) address to the person or device using it at any given time. This builds on the existing legislation. The Data Retention and Investigatory Powers Act 2014 requires CSPs to keep allocated IP addresses. However, this is not sufficient to identify who made a connection where an IP address is shared. Thus this measure strengthens capabilities.

49. Part 4 would extend and strengthen existing border security measures in the following ways. First, it replaces the existing power in immigration legislation to make “authority-to-carry” schemes (that is, schemes that require international transport operators to seek authority to transport certain passengers) with a new broader power which is backed up by civil penalties. Secondly, it provides for a new power to make regulations imposing a standing requirement on certain ships and aircraft to provide passenger and service information without service of a written notice. This is intended to be used primarily to gather information from “private” aircraft and ships which do not operate a scheduled service. Thirdly, it provides a power for civil penalties to be imposed on operators of ships and aircraft who fail to comply with statutory requirements to provide information about passengers on board or about the service. Fourthly, it provides a power to require operators who have to provide such information to be able to receive communications about the information (for example querying it or asking for further information) in a certain way. And finally, it makes amendments to the information gathering and direction-making powers in the Aviation Security Act 1982, the Aviation and Maritime Security Act 1990 and the Channel Tunnel (Security) Order 1994, in particular to allow the Secretary of State to require information about services within much shorter timeframes and to make it clear that the Secretary of State may make directions requiring aircraft, ships and trains to have been searched before they enter the UK.

50. Part 5 would put existing programmes on a statutory footing. The Government’s Extremism Taskforce recommended that programmes for people vulnerable to being drawn into terrorism be put on a statutory footing. The intended effect is to enhance engagement and cooperation with partner agencies, and ensure the adoption of best practice.

51. Part 6 would clarify or extend existing legislation relating to the Terrorism Act 2000. The measure on insurance payments makes explicit that reimbursement of

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terrorist ransoms is illegal. On the power to examine goods under Schedule 7 to that Act, the provision in this Bill would ensure legal certainty in relation to where goods may be examined and in relation to goods which comprise items of post.

52. The measures in Part 7 are not provided for in existing legislation. First, Clause 36 enables the creation of a Privacy and Civil Liberties Board which will support the Independent Reviewer of Terrorism Legislation. The appointment of the Independent Reviewer is provided for in section 36 of the Terrorism Act 2006, to provide an annual review of the Terrorism Acts, but that legislation does not provide for a statutory board to support the Independent Reviewer. Second, clause 37 enables applications for British Overseas Territory citizenship to be reviewed by the Special Immigration Appeals Commission (SIAC). The Special Immigration Appeals Commission Act 1997 already provides for certain citizenship applications to be certified so that for refusals which rely on sensitive material any appeal is to SIAC. However, it does not provide that applications for British Overseas Territory citizenship may be certified. This measure removes this anomaly to address the gap in the existing legislation.

***Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?***

53. Detailed memoranda on the legislation have also been provided to the Joint Committee on Human Rights and the Delegated Powers and Regulatory Reform Committee. These memoranda are available on the Home Office's website at [www.gov.uk/government/organisations/home-office](http://www.gov.uk/government/organisations/home-office).

54. Information on the provisions is also being provided to the Intelligence and Security Committee of Parliament and the Home Affairs Select Committee.

**PART 1: TEMPORARY RESTRICTIONS ON TRAVEL**

**SUMMARY AND BACKGROUND**

55. Part 1 would introduce two new powers to place temporary restrictions on travel.

## **COMMENTARY ON CLAUSES**

### ***Chapter 1: Powers to seize travel documents***

#### **Clause 1: Powers to seize passports etc from persons suspected of involvement in terrorism**

56. *Clause 1(1)* introduces *Schedule 1*. This makes provision for the seizure and temporary retention of travel documents where there are reasonable grounds to suspect that a person is at a port with the intention of leaving the United Kingdom for the purpose of involvement in terrorism-related activity.

#### **Schedule 1: Seizure of passports etc from persons suspected of involvement in terrorism**

57. *Paragraph 1* sets out the interpretation of key terms in the Schedule.

58. *Paragraphs 2 and 3:* The search and seizure powers may be used where a constable has reasonable grounds to suspect that a person at a port in Great Britain or Northern Ireland intends to leave Great Britain, or the UK in the case of a person in Northern Ireland, to become involved in terrorism-related activity outside the UK (*paragraph 2(1) and (2)*). This means that the power may be exercised where a person travels within the UK from Great Britain to Northern Ireland for the purpose of involvement in terrorism outside the UK but not where the person is travelling from Northern Ireland to Great Britain. This is so that the power is exercisable against persons who intend to leave the UK by crossing the open land border with the Republic of Ireland. The constable may exercise the search and seizure powers him or herself, or direct that a qualified immigration officer or customs official does (*paragraph 2(3)*). A qualified officer or official is one who is designated by the Secretary of State for the purpose of this Schedule (*paragraph 1(4)*), and will have received training in the exercise of these powers. A person who is searched under these powers must be informed of the constable's suspicion (*paragraph 2(8)*). If an immigration officer or customs official already holds the travel document (for example as a result of a routine passport check), then that officer or official may ask a constable for a direction that the travel document should be retained. If the constable gives such a direction, the documents must be handed over to a constable as soon as possible (*paragraph 2(9) and paragraph 3*). Travel document includes a passport and a ticket for travel from a place in Great Britain to a place outside Great Britain or from Northern Ireland to a place outside the UK (*paragraph 1(6)*). Where a constable (or on the constable's direction, an immigration officer or customs official) is holding travel documents under these powers, the constable must seek authorisation for the

documents' retention from a senior police officer as soon as possible. The senior officer must be of at least the rank of superintendent (*paragraph 1(5)*). The senior officer may grant the authorisation if satisfied that there are reasonable grounds for the suspicion that the person intends to leave GB or the UK in order to become involved in terrorism-related activity outside the UK. If authorisation is not granted, the documents must be returned as soon as possible, unless they can be retained under any other power (for example a power under immigration legislation) (*paragraph 4(6)*).

59. A person whose passport is retained under these powers must be informed of the constable's suspicion, unless it is anticipated that the application for authorisation will be dealt with immediately so that the period during which the document is withheld will be very short (*paragraph 4(3) and (4)*). *Paragraph 5* makes provision for the retention or return of seized documents. *Paragraph 5(1)* specifies the circumstances in which a travel document may continue to be retained. These are while:

- a) the Secretary of State considers whether to cancel the person's passport;
- b) consideration is given as to whether or not to charge the person with an offence;
- c) consideration is given to making the person subject to an order or measure connected with protecting the public from a risk of terrorism; or
- d) steps are being taken to carry out any of the above.

60. A travel document may not be retained beyond 14 days beginning with the day after the day the document was seized, unless that period is extended by a judicial authority (*paragraph 5(2)*). Documents must be returned to a person as soon as possible where none of the above reasons for retaining them continue to apply or where the 14 day period has expired, unless they can be lawfully retained under another power or provision not in Schedule 1 or detained for criminal or deportation proceedings under *paragraph 7* (*paragraph 5(3)*). *Paragraph 5(4)* provides that the constable in possession of a person's travel document must explain to him or her the grounds on which the document can be retained. There will be a statutory Code of Practice which will provide further detail about the information that must be provided to those stopped or whose documents are retained. *Paragraph 6* provides that when authorisation has been given to retain travel documents and the documents are still being retained at 72 hours (beginning from the time when the travel documents were first taken from the person) a police officer of at least the rank of chief superintendent, and at least as high a rank as the senior police officer who authorised the retention of the travel documents, must carry out a review of whether the decision to authorise retention of the travel documents was flawed (*paragraph 6 (1) to(2)*). The review must begin within the 72 hour period and be completed as soon as possible. The findings of the review must be communicated to the relevant chief constable (*paragraph 6(3)*).

61. The Chief Constable who receives the letter must consider the findings and take any action considered appropriate (*paragraph 6(4)*). If the power under *paragraph 2* were exercised by an accredited officer (as described at *Paragraph 1(7)*) the findings of the review must also be communicated to the Secretary of State (*Paragraph 6 (5)*).

62. *Paragraph 7* provides for the detention of travel documents for certain proceedings. A constable or qualified officer may detain the document while the constable or officer believes that it may be needed for evidence in criminal proceedings or in connection with a decision whether to make a deportation order (*paragraph 7(2)*).

63. *Paragraph 8* provides that the police may apply to a judicial authority to extend the retention period of travel documents beyond 14 days. A senior police officer of at least the rank of superintendent may, prior to the end of the 14 day retention period, apply for an extension (*paragraph 8(1) and (2)*). An application may only be heard if reasonable efforts have been made to notify the person of the time and place the application will be heard (*paragraph 8(3)*). The judicial authority must grant the application if it is satisfied that those involved in considering whether the further action should be taken in relation to the person have been acting diligently and expeditiously. Otherwise, they must refuse the application. An extension must be for a period ending no later than 30 days from the day after the passport was seized (*paragraph 8(6) and (7)*).

64. *Paragraph 9* provides that the person to whom the application relates must be given an opportunity to make oral or written representations about the application and is entitled to legal representation at the hearing (*paragraph 9(1) and (2)*). Where a person is entitled to be legally represented, is not represented and wishes to be represented, the judicial authority must adjourn the hearing to enable the person to obtain legal representation (*paragraph 9(2)*). The judicial authority may exclude the person to whom the application relates and anyone representing that person from any part of the hearing (*paragraph 9(3)*).

65. The police officer applying for an extension of the 14 day retention period may also apply to the judicial authority for an order that specified information upon which he or she intends to rely be withheld from the person whose travel documents are being retained and their representative (*paragraph 10(1)*). *Paragraph 10(2)* sets out the grounds on which the authority may agree that information can be withheld. The judicial authority must exclude from the hearing the person whose travel documents have been retained and their legal representatives (*paragraph 10(3)*).

66. *Paragraph 11(1)* provides that the judicial authority may adjourn the hearing of an application under paragraph 8 only if the hearing is adjourned to a date before

the expiry of the 14 day period unless the adjournment is to enable the person to obtain legal representation, in which case the adjournment must be to a date before the expiry of the 30 day period (*paragraph 11(2)*). If the application is adjourned to a date beyond the 14 day period the judicial authority must extend the retention period until that date (*paragraph 11(3)*).

67. Where a judicial authority makes an order which permits the travel document to be retained for a period which extends beyond the initial 14 day period but which expires before the end of 30 days from the day after the documents were first taken, a police officer may make one further application for an extension to retain the travel documents (*paragraph 12(1)*).

68. *Paragraph 13* restricts repeated use of the power against the same individual. Where a power to retain a document is exercised against a person under this Schedule and any of the powers available under this Schedule have already been exercised in relation to the same person on two or more occasions in the preceding six months, then the travel documents may be retained only for a period of 5 days (*paragraph 13(1) and (2)*). The senior police officer may apply for an extension of this 5 day period, but in these circumstances the application will only be granted if the judicial authority thinks that there are exceptional circumstances which justify the further use of these powers in relation to the same person as well as being satisfied that the investigations about further action are being carried out diligently and expeditiously.

69. *Paragraph 14* applies where a person's travel documents are retained with the result that the person is unable to leave the United Kingdom during the period of the retention. The Secretary of State may make whatever arrangements are considered appropriate during the period of retention of a person's travel documents and on that period of retention coming to an end (*paragraph 14 (2)*). For example, the Secretary of State could use this power to provide accommodation and food. If the person requires leave to lawfully enter or remain in the UK but has none at any point during the period of retention, their presence in the United Kingdom will not be unlawful under the Immigration Act 1971 during the period of retention of documents (*paragraph 14 (3)*).

70. *Paragraphs 15(1) and (2)* create two offences in relation to the operation of the new powers. These are respectively the offence of failing to hand over travel documents without reasonable excuse, and intentionally obstructing or seeking to frustrate a search. Both are summary offences with maximum penalties of six months' imprisonment or a fine (which in Scotland and Northern Ireland may not exceed level 5 on the standard scale), or both (*paragraph 15(3)*).

71. *Paragraph 17* provides that the Secretary of State may designate a qualified immigration officer or customs official as an "accredited" immigration officer or

customs official. These will be officers or officials who have had further training in the exercise of the *Schedule 1* powers. An accredited immigration officer or customs official will have the same powers as a constable to search for and seize travel documents. The accredited officer or official may retain any travel documents taken, while he or she seeks authorisation for their retention from a senior police officer. If authorisation is given, the documents must be handed over to a constable.

72. *Paragraphs 18 to 20* place the Secretary of State under a duty to issue a code of practice with regard to the functions under this Schedule. The Code of Practice will be first issued using the made affirmative procedure because, given the urgency of the need to disrupt travel, the temporary passport seizure power is due to commence on the day after Royal Assent and the Code of Practice needs to be in operation simultaneously.

## ***Chapter 2: Temporary exclusion from the United Kingdom***

### **Clause 2: Temporary exclusion orders**

73. *Subsection (1)* provides for the creation of a ‘temporary exclusion order’ (TEO), which requires the individual on whom it is imposed not to return to the United Kingdom unless their return is in accordance with a permit to return issued by the Secretary of State before the individual began the return, or the return is the result of the individual’s deportation to the United Kingdom.

74. *Subsection (2)* provides that the Secretary of State may impose a TEO only where four conditions have been met. *Subsections (3) to (6)* outline those conditions. The Secretary of State must reasonably suspect that the individual is, or has been, involved in terrorism-related activity outside the United Kingdom and must reasonably consider that it is necessary to impose a TEO for purposes connected with protecting the public in the UK from a risk of terrorism. While the TEO is in place, the Secretary of State must keep under review whether the second of these conditions is met.

75. Additionally, the Secretary of State must reasonably consider that the individual is outside the UK when the order is imposed and the individual must have the right of abode in the UK.

76. *Section 2(1)* of the Immigration Act 1971 provides that British citizens and certain Commonwealth citizens have the right of abode in the UK.

### **Clause 3: Temporary exclusion orders: supplementary provision**

77. *Subsections (1) to (2)* provide for giving notice of a TEO to the person on whom it has been imposed. There is a duty on the Secretary of State to give notice, including an explanation of how the individual can apply for a permit to return (more detail on permits to return is given in *Clause 4*).

78. *Subsection (3)* outlines that an order only comes into force when notice of its imposition has been given and remains in force for a period of two years, unless it is revoked or otherwise brought to an end earlier.

79. *Subsections (4) to (6)* outline how revocation of an order will operate. It provides for the Secretary of State to revoke a TEO at any time and states notice of this must be given to the individual, at which point the order will cease to be in force.

80. *Subsection (7)* makes clear that a TEO remains valid even where an individual has returned to the UK. This is because the order may place some obligations on the individual once they have returned to the country (*Clause 7* provides more detail on this).

81. *Subsection (8)* allows for a TEO to be imposed even where one has been imposed previously. This covers a situation where the TEO may have expired or been revoked, but the Secretary of State later considers that the relevant conditions are met.

82. *Subsections (9) to (11)* provide that any British passport held by the individual subject to a TEO is invalidated as soon as the order comes into force, and any passport issued while the TEO remains in force and the individual is outside the United Kingdom is invalid. These provisions only apply in respect of a “British passport” as defined in *subsection (11)*.

### **Clause 4: Permit to return**

83. *Subsections (1) to (3)* specify that an individual subject to a TEO may be given a permit to return which gives them permission to return to the UK. The document may include conditions that the individual is required to comply with in order for the document to be valid.

84. *Subsections (4) to (6)* specify that a permit to return must state the time at which, or period of time during which, the individual is permitted to arrive on return

to the United Kingdom. It must also state the manner in which the person is permitted to return, and the place where the individual is permitted to arrive.

85. *Subsections (7) to (8)* specify that the Secretary of State can only issue a permit to return in accordance with *Clause 5 or 6* and that it is for the Secretary of State to decide the terms of a permit to return, subject to *subsection (3) of Clause 5*.

### **Clause 5: Issue of permit to return: application by individual**

86. *Subsections (1) to (4)* make clear that there is a duty on the Secretary of State to issue a permit to travel to the subject of a TEO within a reasonable period, if the subject applies for one. It also provides that the return time specified in the permit must be within a reasonable period after the application is made. The Secretary of State may refuse to issue a permit to travel if the Secretary of State has required the individual to attend an interview and the individual has failed to do so. An application is only valid if it has been made following the right procedure.

87. *Subsection (5)* outlines the definitions of “application” and “relevant return time” in this Clause.

### **Clause 6: Issue of permit to return: deportation or urgent situation**

88. *Subsection (1)* provides that the Secretary of State must issue a travel document if the individual is being deported by another country to the UK, whether or not a request has been made by the individual.

89. *Subsection (2)* provides that the Secretary of State may issue a permit to return to an individual if the Secretary of State considers that, because of the urgency of the situation, it is expedient to do so even though no application has been made for one and the Secretary of State does not consider that the individual is to be deported to the United Kingdom.

### **Clause 7: Permit to return: supplementary provision**

90. *Subsection (1)* allows for the Secretary of State to vary a permit to return.

91. *Subsection (2)* provides the conditions under which the Secretary of State may revoke a permit to return.

92. *Subsection (3)* provides that an application for a permit to return under Clause 5 does not prevent a subsequent application from being made.

93. *Subsection (4)* provides that the issuing of a permit to return does not prevent a subsequent permit to return from being issued.

### **Clause 8: Obligations after return to the United Kingdom**

94. *Subsection (1)* allows for the Secretary of State to impose obligations on an individual subject to a TEO when they have returned to the UK. The obligations which the Secretary of State may impose on the individual are outlined at Subsection (2). These include obligations to report to a police station and attendance at appointments, under paragraph 10 or 10A of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011; that paragraph 10A is inserted by clause 15 of this Bill. Attendance at appointments may include de-radicalisation programmes amongst other meetings. The individual may also be required to notify the police of their place of residence and any change of address.

95. *Subsection (4)* provides that the Secretary of State may vary or revoke any notice given under this clause and *subsection (5)* provides that variation or revocation comes into effect when notice is given to the individual.

96. *Subsection (6)* provides that the validity of a notice under this clause is not affected by travel out of or into the UK and *subsection (7)* provides that the giving of notice under this clause does not prevent any further notice being given to the individual.

### **Clause 9: Offences**

97. *Subsection (1)* provides that it is an offence for an individual subject to a TEO to return to the United Kingdom in contravention of the TEO, without a reasonable excuse.

98. *Subsection (2)* provides that it is irrelevant for the purposes of this offence whether or not the individual has a passport or similar other identity document.

99. *Subsection (3)* makes it an offence for an individual subject to a TEO not to comply with obligations imposed by the Secretary of State as set out in *Clause 8*.

100. *Subsection (4)* provides that deemed service of notice (where the relevant notice has not actually been given to an individual) does not prevent an individual from showing that lack of knowledge of the TEO, or of the obligation imposed under *Clause 8*, was a reasonable excuse for the purposes of this clause.

101. *Subsection (5)* sets out the maximum penalties for conviction of an individual for the two new offences.

102. Definitions of the terms “relevant notice” and “restriction on return” are provided at *Subsection (7)*.

103. *Subsection (8)* amends subsection (1A) of section 2 of the UK Borders Act 2007 to replace “the individual is subject to a warrant for arrest” with “the individual (a) may be liable to detention by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995 in respect of an offence under section 9(1) of the Counter-Terrorism and Security Act 2014 or (b) is subject to a warrant for arrest”. This will mean designated immigration officers in Scotland will have the power to detain any person they think is liable to arrest for the offence of returning to the UK in breach of a TEO. Existing law means this would already be possible in England, Wales and Northern Ireland.

## **Clause 10: Regulations: giving of notices, legislation relating to passports**

104. *Subsections (1) to (2)* provide that the Secretary of State may, by regulations, make provision about the giving of notice under Clauses 3 and 8. Such regulations may make provision about cases in which notice is deemed to have been given.

105. *Subsection (3)* provides that the Secretary of State may make regulations providing for legislation relating to passports or other identity documents to apply (with or without modifications) to permits to return. Given the close parallels between passports and permits to return, as documents confirming the holder’s identity and confirming the holder’s right to return to the UK, it is appropriate that the Secretary of State has such a power, to enable consistency of treatment between them.

106. *Subsections (4) to (5)* provides that regulations made under this clause are subject to the negative resolution procedure.

### **Clause 11: Chapter 2: interpretation**

107. *Subsection (2)* provides definitions for terms set out in *Chapter 2 of Part 1*.
108. *Subsection (3)* makes provision in respect of when an individual is subject to a TEO and when an individual is subject to obligations imposed under *Clause 8*.
109. *Subsections (4) to (5)* define “terrorism-related activity” for the terms of the imposition of a TEO and provide that an individual’s involvement in such activity can have occurred before or after the coming into force of *Clause 2*.
110. *Subsections (6) to (7)* make provision in respect of the terms “return to the United Kingdom” and “deportation”.

## **PART 2: TERRORISM PREVENTION AND INVESTIGATION MEASURES**

### **SUMMARY AND BACKGROUND**

111. The Terrorism Prevention and Investigation Measures Act 2011 (the TPIM Act) allows the Home Secretary to impose measures on an individual she reasonably believes is or has been involved in terrorism-related activity. A TPIM notice must be necessary for purposes connected with protecting the public from a risk of terrorism. The measures are civil and preventative in nature. The specific measures in any TPIM notice can only be imposed for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity.

### **COMMENTARY ON CLAUSES**

112. *Clauses 12 to 16* amend the Terrorism Prevention and Investigation Measures Act 2011 (the TPIM Act). Schedule 1 to the TPIM Act sets out an exhaustive list of the types of measures which may be imposed on an individual served with a TPIM notice. The Secretary of State may impose any or all of the measures that he or she reasonably considers necessary, for purposes connected with preventing or restricting the individual’s involvement in terrorism-related activity.

### **Clause 12: TPIMs: overnight residence measure**

113. *Clause 12(1) to (5)* amends paragraph 1 of Schedule 1 to the TPIM Act to provide that the Secretary of State may either agree with an individual a locality in which that individual must reside or require an individual to live in a residence in a locality that the Secretary of State otherwise considers appropriate. If there are premises that are the individual's own residence at the time when the TPIM notice is imposed, the Secretary of State may only require the individual to live in a residence that is more than 200 miles from those premises if the individual agrees.

114. *Clause 12(5)* provides that the specified residence may be provided by the Secretary of State. There is no requirement that it must be.

### **Clause 13: TPIMs: travel measure**

115. *Clause 13(1) to (2)* amends Section 2 of the TPIM Act to provide that the Secretary of State must publish factors that he or she considers are appropriate to take into account when deciding whether to impose restrictions under paragraph 2 of Schedule 1 to the TPIM Act. Factors could include - this is indicative only - proximity to airports, prohibited associates and other TPIM subjects, variety/number of services within the restricted area.

116. *Clause 13(3) to (4)* amends Section 23 of the TPIM Act, which makes it an offence, without reasonable excuse, to contravene a measure. *Clause 13(3)* provides that an individual subject to a travel measure under paragraph 2 of Schedule 1 to the TPIM Act who leaves the United Kingdom or travels outside the United Kingdom will not be able to rely upon a defence of 'reasonable excuse'. *Clause 13(4)* increases the custodial penalty on conviction on indictment of contravening the travel measure from a term not exceeding five years imprisonment to one not exceeding ten years imprisonment.

*Clause 13(5)* amends paragraph 2 of Schedule 1 to the TPIM Act. Under the TPIM Act, the Secretary of State may, under the travel measure, impose restriction on a person from leaving a specified area which can be Great Britain, Northern Ireland or the United Kingdom. The amendment allows the Secretary of State to impose restrictions on an individual from leaving a specified area which may be either the United Kingdom or any area within the United Kingdom in which the individual's place of residence is located. Restrictions imposed may include a requirement not to leave the specified area without receiving permission from or, as the case may be, giving notice to the Secretary of State.

### **Clause 14: TPIMs: weapons and explosives measure**

117. *Clause 14* allows the Secretary of State to impose on an individual subject to a TPIM notice a prohibition on making an application for a firearm certificate or shotgun certificate, a prohibition on possessing an imitation firearm and a prohibition on possessing offensive weapons or explosives.

### **Clause 15: TPIMs: appointments measure**

118. *Clause 15* allows the Secretary of State to require an individual to attend meetings with such persons as the Secretary of State may specify, at such locations and at such times as the Secretary of State may by notice require. The specified person(s) may also choose the time and place of the meeting.

### **Clause 16: TPIMs: miscellaneous amendments**

119. *Clause 16(1)* amends section 3(1) of the TPIM Act so that the Secretary of State must be satisfied, on the balance of probabilities, that an individual is, or has been, involved in terrorism-related activity to meet condition A. This amends the current wording for the test under Condition A which is that the Secretary of State reasonably believes that the individual is, or has been, involved in terrorism-related activity.

120. *Clause 16(2)* amends section 4 of the TPIM Act so that for the purposes of that Act, involvement in terrorism-related activity does not include conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct which facilitates or gives encouragement to the commission, preparation or instigation of acts of terrorism, or which is intended to do so.

## **PART 3: DATA RETENTION**

### **SUMMARY AND BACKGROUND**

121. Communications data is the who, where, when and how of a communication, but not its content. Internet Protocol (IP) address resolution is the ability to identify who in the real world was using an IP address at a given point in time. An IP address is automatically allocated by a network provider to a customer's internet connection, so that communications can be routed backwards and forwards to the customer. Communications service providers (CSPs) may share IP addresses between multiple users. The providers generally have no business purpose for keeping a log of who used each address at a specific point in time.

### **COMMENTARY ON CLAUSES**

#### **Clause 17: Retention of relevant internet data**

122. *Clause 17* amends section 2(1) of the Data Retention and Investigatory Powers Act 2014 (DRIPA) which provides definitions relating to the retention of relevant communications data under that Act. This will enable the Secretary of State to require communications service providers to retain an additional category of communications data, namely data that will allow relevant authorities to link the unique attributes of a public Internet Protocol (IP) address to the person (or device) using it at any given time.

123. *Subsection (2)* adds an additional limb of “relevant internet data” to the definition of “relevant communications data” which communications service providers can be required to retain under DRIPA.

124. *Subsection (3)* defines the “relevant internet data”, necessary to reliably attribute internet protocol addresses to a person or device, to which *subsection (2)* relates. *Subsection (3)(a)* limits this to communications data which relates to an internet access service or an internet communications service. *Subsection (3)(b)* describes data to be retained as data which may be used to identify, or assist in identifying, the internet protocol address or other identifier which belongs to the sender or recipient of a communication. Such data could include data required to identify the sender or recipient of a communication (which could be a person or a device), the time or duration of a communication, the type, method or pattern of a communication (e.g. the protocol used to send an email), the telecommunications

system used or the location of such a telecommunications system that the person was communicating from. An IP address can often be shared by hundreds of people at once – in order to resolve an IP address to an individual other data (“other identifier” in this clause) would be required. Data necessary for the resolution of IP addresses could include port numbers or MAC (media access control) addresses. *Subsection (3)(c)* specifically prevents a telecommunications operator providing an internet access service from retaining under this legislation data that explicitly identifies the internet communications service or websites a user of the service has accessed. This type of data is sometimes referred to as web logs.

125. *Subsection (4)* adds definitions for “communications”, “identifier” and “person” to section 2(1) of DRIPA.

126. *Subsection (5)* provides that, like the provisions of DRIPA itself, these provisions are repealed on 31 December 2016.

## **PART 4: AVIATION, SHIPPING AND RAIL**

### **SUMMARY AND BACKGROUND**

127. The provisions in Part 4 will allow the Secretary of State to introduce authority to carry schemes which replace the current inbound arrangements with broader inbound and outbound arrangements. They also amend existing legislation to enhance the provision of passenger, crew and service information; provide that carriers may be required to use passenger information systems capable of receiving directions when authority to carry is refused or specific security measures are required and enable enforceable standing requirements for passenger, crew and service information to be imposed on specified categories of incoming and outgoing non-scheduled traffic. New regulations will establish a civil penalty regime for failure to comply with authority-to-carry and passenger, crew and service information requirements. Part 4 also provides for amendments to current provisions for directions relating to aviation, shipping and rail to strengthen our ability to impose security measures on aircraft and rail operators as a condition of their operation to the UK and on shipping operators as a condition of their entry into UK ports and in respect of aviation to establish in aviation a civil penalty for failing to provide information when required to do so or to comply with direction.

## **COMMENTARY ON CLAUSES**

### **Clause 18: Authority-to-carry schemes**

128. *Subsection (1)* enables the Secretary of State to operate an authority-to-carry (ATC) scheme or schemes whereby a carrier must seek authority to carry persons on inbound or outbound journeys who come within the scope of a scheme. An ATC scheme may apply to travel to or from the UK and may apply to aircraft, ships or trains.

129. *Subsection (2)* sets out what any ATC scheme must specify or describe. Any ATC scheme must state the classes of carriers to which it applies, the passengers and crew in respect of whom authority must be requested and the classes of passengers or crew in respect of whom a carrier may be refused authority to carry.

130. *Subsection (3)* provides that a scheme may specify or describe the categories of passengers or crew in respect of whom authority to carry may be refused only if it is necessary in the public interest.

131. *Subsection (4)* allows for different schemes to be made for different purposes, including different types of carrier, journey or person.

132. *Subsection (5)* requires that any scheme sets out the process for carriers to request authority to carry and the process for authority to carry to be granted or refused. This may include requirements for carriers to provide specified passenger or crew information by a specified time before travel, to provide that information in a specified manner and form or to be able to receive communications in a specified manner from the Secretary of State, relating to the information or granting or refusing authority to carry.

133. *Subsection (6)* makes further provision about the information that may be required to be provided by carriers in order for an ATC scheme to work, such as information that a carrier could be required to provide under other statutory provisions (specifically 27 to 27BA of Schedule 2 to the Immigration Act 1971 and sections 32 or 32A of the Immigration, Asylum and Nationality Act 2006 (“IANA 2006”)), or it could specify information without reference to those statutory provisions.

134. *Subsection (7)* provides that a decision about whether to grant authority under the scheme does not indicate whether the person is entitled or permitted to enter the United Kingdom.

135. *Subsections (8) and (9)* provide that the extent to which an ATC scheme applies to Scotland or to Northern Ireland is only for purposes that are, or relate to, reserved matters in Scotland or excepted or reserved matters in Northern Ireland.

136. *Subsection (10)* repeals the existing authority to carry provision at section 124 of the Nationality, Immigration and Asylum Act 2002. The Security and Travel Bans Authority to Carry Scheme 2012 (“the 2012 Scheme”) and the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012 (“the 2012 Regulations”) made under section 124 will also cease to have effect.

### **Clause 19: Penalty for breach of authority-to-carry scheme**

137. *Subsection (1)* allows the Secretary of State to make regulations imposing penalties on carriers for breach of the requirements of an ATC scheme. An ATC scheme may be breached in various ways, such as by a carrier failing to provide the required information, or failing to provide it by the required time, or by carrying a person following a refusal of authority to carry.

138. *Subsection (2)* requires that regulations must identify the scheme to which they refer and must not be laid unless the relevant ATC scheme has been laid before Parliament.

139. *Subsection (3)* states that regulations may make provision about how a penalty is to be calculated; the procedure for imposing the penalty; how the penalty will be enforced, and allow for an appeals process. It also states that the regulations may make different provision for different purposes. Regulations made under this clause will adopt a similar approach to the 2012 Regulations that provide for penalties to be imposed for breach of the 2012 Scheme.

140. *Subsection (4)* requires that provision about the procedure for imposing a penalty in the regulations must include provision allowing a carrier the opportunity to object to a proposed penalty.

141. *Subsection (5)* requires that the regulations must provide that a carrier cannot be penalised for breach of the requirements of an ATC scheme if the breach is a failure to provide information under sections 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and the carrier is already being prosecuted under section 27 of that Act or has been penalised under paragraph 27BB of Schedule 2 to that Act for the same breach. Similarly, where the breach is a failure to provide information under section 32 or 32A of IANA 2006 and the carrier has already been penalised for the

*These notes refer to the Counter-Terrorism and Security Bill  
as introduced in the House of Commons on 26 November 2014 [Bill 127]*

same breach under section 32A or is being prosecuted under section 34 of that Act, they cannot be penalised for the breach under these regulations.

142. *Subsection (6)* requires that any penalties paid must go to the Consolidated Fund.

143. *Subsection (7)* requires that regulations made under this section are subject to the affirmative procedure.

## **Clause 20: Aviation, shipping and rail security**

144. This clause introduces *Schedule 2*, which makes amendments about passenger, crew and service information in relation to aircraft and ships, and makes amendments to existing aviation, maritime and rail security legislation.

## **Schedule 2: Aviation, Maritime and Rail Security**

### **Part 1: Passenger, Crew and Service Information**

#### *Amendments to the Immigration Act 1971*

145. *Paragraphs 1(2) to (5)* of this Schedule amend Schedule 2 to the Immigration Act 1971. These amendments relate to requirements on carriers to provide passenger, crew and service information and provide for civil penalties for failure to comply.

146. *Paragraph 1(2)* amends paragraph 27, which relates to crew information and passenger lists, to introduce a requirement for a carrier to be able to receive communications from the Secretary of State or an immigration officer relating to the information provided in a form and manner specified in regulations.

147. *Paragraph 1(3)* amends paragraph 27B, which relates to passenger and service information, to enable an immigration officer to require a carrier to be able to receive communications from the officer in the form and manner that the Secretary of State directs. In relation to this paragraph and the preceding paragraph, this will enable the Secretary of State to specify the functionality of the system a carrier should have install in order to receive messages about the information provided. Such a system may, for example, enable the Secretary of State to communicate to a carrier whether information has been received and whether it is incomplete or inaccurate.

148. *Paragraph 1(4)* inserts new paragraphs 27BA and 27BB in Schedule 2 to the Immigration Act 1971. New paragraph 27BA is a power to make regulations requiring information from responsible persons (as defined in sub-paragraph (5)) regarding ships or aircraft which have arrived or are expected to arrive in or have left or are expected to leave the United Kingdom. This new paragraph enables a standing requirement for passenger, crew and service information to be imposed on specified categories of aircraft and shipping. This requirement is intended to apply to non-scheduled traffic where the Secretary of State is unlikely to have significant advance warning of their intention to travel. Aircraft and shipping subject to a requirement to provide the same information under paragraphs 27 or 27B will not routinely be subject to this requirement.

149. *Sub-paragraph (2)* specifies that the information referred to in sub-paragraph (1) may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.

150. *Sub-paragraph (3)* provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.

151. *Sub-paragraph (4)* provides that the regulations may require responsible persons in respect of ships or aircraft to be able to receive communications sent by the Secretary of State or an immigration officer in a specified form and manner relating to the information sent. Such communications may be about the information itself and the form in which it was provided.

152. *Sub-paragraph (5)* defines a ‘responsible person’ in respect of a ship or aircraft as the owner or agent, or the captain.

153. *Sub-paragraph (6)* provides that the regulations may make different provision for different purposes and may make provision for different types of carrier, journey or person on board.

154. *Sub-paragraph (7)* provides that the regulations are subject to the affirmative procedure.

155. New paragraph 27BB provides for the Secretary of State to make regulations imposing a penalty on a carrier for failure to comply with requirements to provide passenger, crew or service information under paragraphs 27(2), 27B or 27BA of Schedule 2 to the Immigration Act 1971.

156. *Sub-paragraph (2)* states that regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.

157. *Sub-paragraph (3)* requires that provision is included in the regulations for a carrier to object to a proposed penalty.

158. *Sub-paragraph (4)* prevents a person from being penalised twice (whether by civil or criminal sanctions) for the same failure. Failure to comply with a requirement under Schedule 2 is also a criminal offence under section 27 of the Immigration Act 1971, but if proceedings have been instituted against a person in respect of the failure, a civil penalty may not be imposed. Similarly, a person may be required to provide the same information under other statutory provisions (namely sections 32 and 32A of IANA 2006) or under an ATC scheme (see *clause 18*). The effect of *sub-paragraph (4)* is that if a person has already been penalised (or proceedings have been instituted against him) for failure to provide the same information, a civil penalty may not be imposed under these regulations. There are various other paragraphs in this schedule making equivalent provision in relation to those other statutory provisions to prevent a person being penalised twice (see the amendments to section 27 of the Immigration Act 1971 inserted by *paragraph 2* and subsection (4) of new section 32B of IANA 2006 inserted by *paragraph 7* and the amendments to section 34 of that Act made by *paragraph 8(3)*.) There is also similar provision in *clause 19(5)* as regards civil penalties for breaching an ATC scheme.

159. *Sub-paragraph (5)* requires that any penalties paid must go to the Consolidated Fund.

160. *Sub-paragraph (6)* provides that the regulations are made by statutory instrument subject to the affirmative procedure.

161. *Paragraph 1(5)* repeals paragraph 27C of Schedule 2 of the Immigration Act 1971.

162. *Paragraph 2* amends section 27 of the Immigration Act 1971 to ensure that criminal proceedings may not be instituted against a captain of a ship or aircraft for failure to comply with the requirement to furnish a passenger list or particulars of a member of the crew under subsection (1)(a)(i) or a failure to comply with a requirement imposed by paragraphs 27, 27B or 27BA of Schedule 2 under subsection (1)(b)(iv) where the person has paid a penalty for failure to comply with the same requirement, by virtue of regulations under paragraph 27BB of Schedule 2 to the Immigration Act 1971, under section 32B of the Immigration, Asylum and Nationality Act 2006 or under *Clause 19* relating to the requirements of an ATC Scheme or

where proceedings have been instituted against the person under section 34 of IANA 2006.

163. *Paragraphs 3 and 4* make amendments that are consequential upon the amendments to the Immigration Act 1971 made by paragraph 1.

#### ***Amendments to the Immigration, Asylum and Nationality Act 2006***

164. *Paragraphs 5 to 8* amend the Immigration, Asylum and Nationality Act 2006 (“IANA 2006”). Section 32 of IANA 2006 provides information acquisition powers for the police in respect of ships or aircraft arriving (or expected to arrive) or leaving (or expected to leave) the UK.

165. *Paragraph 6* amends subsection (6) of section 32 of IANA 2006 so that any requirement imposed on an owner or agent of a ship or aircraft by a constable under subsection (2) of that section may include a requirement for them to be able to receive communications relating to the information in a specified form and manner.

166. *Paragraph 7* inserts a new section 32A into IANA 2006 which provides a power to make regulations requiring information for police purposes from responsible persons in relation to ships or aircraft (defined at section 32A(7)) which have arrived or are expected to arrive in or which have left or are expected to leave the UK. This new section enables a standing requirement to be imposed on specified modes and categories of non-scheduled traffic. This requirement is intended to apply to non-scheduled traffic where the Secretary of State is unlikely to have significant advance warning of their intention to travel. Aircraft and shipping subject to a requirement to provide the same information under section 32 will not routinely be subject to this requirement. In new section 32A, *subsection (1)* provides that the Secretary of State may make regulations requiring owners, agents or captains of ships or aircraft arriving in or departing from the UK to provide information to the police.

167. *Subsection (2)* specifies that the information required by *subsection (1)* may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.

168. *Subsection (3)* restricts information that can be required by the regulations to information that is necessary for police purposes (which would cover the prevention, detection, investigation and prosecution of criminal offences and safeguarding national security). The regulations may require information to be given to the police in England and Wales for any police purposes but may only require information to be

given to the police in Scotland for purposes that relate to reserved matters or to the police in Northern Ireland for purposes that related to excepted or reserved matters.

169. *Subsection (4)* provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.

170. *Subsection (5)* provides that the regulations may require responsible persons to be able to receive communications relating to the information provided, sent by the police, the Secretary of State or an immigration officer in a specified form and manner. This will enable the Secretary of State to specify the functionality of the system a carrier should have to receive those messages. Such a system may, for example, enable the Secretary of State to communicate to a carrier whether information has been received and whether it is incomplete or inaccurate.

171. *Subsection (6)* provides that the regulations may apply generally or to specific cases, may make different provision for different cases or circumstances, and shall be made by statutory instrument subject to the affirmative procedure.

172. *Subsection (7)* defines “responsible persons in respect of a ship or aircraft” for the purposes of this section as the owner or agent, or the captain.

173. *Paragraph 7* also inserts new section 32B in IANA 2006. This is a power to make regulations imposing penalties for failure to comply with requirements to provide passenger, crew or service information under section 32(2) of that Act or by virtue of regulations made under section 32A of that Act.

174. *Subsection (2)* states that regulations may in particular make provision about how a penalty is to be calculated; the procedure for imposing the penalty; how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.

175. *Subsection (3)* requires that provision is included in the regulations for a carrier to object to a proposed penalty.

176. *Subsection (4)* prevents a person from being penalised twice for the same failure (see above).

177. *Subsection (5)* requires any penalties to be paid into the Consolidated Fund.

178. *Subsection (6) provides that the regulations are made by statutory instrument subject to the affirmative procedure.*

179. *Paragraph 8 amends section 34 of IANA 2006, which provides that breach of certain preceding provisions, including section 32, is a criminal offence.*

180. *Paragraph 8(2) amends section 34(1) to make failure to comply with obligations imposed by regulations under section 32A without reasonable excuse an offence.*

181. *Paragraph 8(3) inserts a new subsection (1A) into section 34, which prevents a person from being prosecuted for failing to provide information where they have had a civil penalty imposed on them under new section 32B or where the information was also required under an ATC scheme or under Schedule 2 to the Immigration Act 1971 and a civil penalty has been imposed on, or criminal proceedings instituted against, the person in respect of that failure.*

182. *Paragraph 8(4) inserts new subsection (2)(c) in section 34. This provides that a person will not be treated as having committed an offence in Scotland or Northern Ireland where the breach consists of a failure to provide information required by regulations under new section 32A to the police in England or Wales and it does not relate to a reserved (in Scotland, as defined by the Scotland Act 1998) or excepted or reserved (in Northern Ireland, as defined by the Northern Ireland Act 1998) matter.*

## **Part 2: Directions etc. relating to aviation, shipping and rail**

### ***Amendments to the Aviation Security Act 1982: information and directions***

183. *Paragraph 9 of Part 2 of Schedule 2 provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Aviation Security Act 1982 (“ASA”).*

184. *Paragraph 9(2) removes the requirement in section 11 of ASA for the Secretary of State or the Civil Aviation Authority to provide 7 days’ notice when making a request for information for the purposes of aviation security from aircraft operators, aerodrome managers and certain other categories of person involved in the aviation industry.*

185. *Paragraph 9(3) amends the Secretary of State’s direction making power in section 12 of ASA so as to enable directions to be made to aircraft operators and/or*

*These notes refer to the Counter-Terrorism and Security Bill  
as introduced in the House of Commons on 26 November 2014 [Bill 127]*

UK aerodrome managers that aircraft may not fly in or into the UK unless specified searches have been carried out.

186. *Paragraph 9(4)* is an amendment to section 16 of ASA which limits the scope of directions under sections 12 to 14. Subsection (5) of section 16 is amended to provide that directions may require things to be done outside the UK only where they relate to a UK-registered aircraft or they impose a requirement that an aircraft may not fly in or into the UK unless certain actions (such as conducting specified searches) have been taken.

187. *Paragraph 9(5)* amends section 24 of ASA in order to give the Secretary of State the power to make further regulation in relation to electronic service of directions or information requests made under the ASA.

188. *Paragraph 9(6)* amends the definition of “registered or operating in the United Kingdom” in section 38 of ASA so as to include an aircraft which is assigned to a flight which will fly in UK airspace.

189. *Paragraph 10* makes repeals consequential upon the amendments made to section 11 of ASA by paragraph 9(2).

#### ***Amendments to the Aviation Security Act 1982: civil penalties for breach of directions***

190. *Paragraph 11* inserts a new section 22A into the ASA giving the Secretary of State the power to make a civil sanctions scheme in lieu of criminal proceedings when a directed person does not comply with an aviation security direction or information request. It also makes amendments to the ASA to prevent criminal proceedings from being brought against a person where a civil penalty has been imposed on the person for the same breach.

#### ***Amendments to the Aviation and Maritime Security Act 1990: information and directions***

191. *Paragraph 12* provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Aviation and Maritime Security Act 1990 (“AMSA”). They largely mirror the amendments made to the Aviation Security Act 1982 by paragraph 9.

192. *Paragraph 12(2)* amends section 19(2) and (4) of AMSA so as to extend the existing right of the Secretary of State to require information to provide that such information requests may be made subject to a period for response of any length that the Secretary of State may determine. The amendments achieve this by removing the prescribed seven day minimum period allowed for response.

193. *Paragraph 12(3)* amends section 21(1) of AMSA so as to extend the existing provision allowing the Secretary of State to issue search directions to ships in harbour areas, to ships which appear to the Secretary of State to be likely to enter harbour areas. The clause also broadens the ambit of directions by allowing them to be made so as not to permit a ship to enter or leave a harbour area unless the searches specified in the Secretary of State's direction have been carried out. This extends the present position that allows directions to be made preventing ships in UK harbours from going to sea so that directions may in future also be made to prevent ships from entering UK harbours unless specified searches have been undertaken. *Paragraph 12(4)* amends section 26(5) of AMSA so as to remove limitations to the geographic scope of a direction so that those directions containing a requirement not to cause or permit a ship to enter a harbour area unless certain things have, or have not, been done, will have effect even if they require action to be taken outside the UK (i.e. in a third country).

194. *Paragraph 12(5)* amends section 45 of AMSA, which relates to the service of documents, including directions. The amendments mean that regulations may require a person to accept electronic service in a specified manner and form (such as by means of a specified computer system).

#### ***Amendments to the Channel Tunnel (Security) Order 1994: information and directions***

195. *Paragraph 13* provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Channel Tunnel (Security) Order 1994 ("CTSO"). They largely mirror the amendments made to ASA by paragraph 9 and those made to AMSA by paragraph 12.

196. *Paragraph 13(2)* removes the requirement in article 11 of the CTSO for the Secretary of State to provide 7 days' notice when making a request for information for the purposes of Channel Tunnel security from the Concessionaires of the Tunnel, the owners, operators and managers of Channel Tunnel trains and certain other categories of person connected to the operation of the Tunnel.

197. *Paragraph 13(3)* amends the Secretary of State's direction making power in article 13 of the CTSO so as to enable directions to be made to owners, operators and managers of Channel Tunnel trains that trains may not be moved in or into the UK unless specified searches have been carried out.

198. *Paragraph 13(4)* amends article 36 in order to give the Secretary of State the power to make further regulation in relation to electronic service of directions or information requests made under the CTSO.

199. *Paragraph 14* provides that, although the above amendments have been made by an Act of Parliament, any power to amend or revoke any provision of the CTSO by secondary legislation is unaffected, and can, therefore, apply to them.

## **PART 5: RISK OF BEING DRAWN INTO TERRORISM ETC.**

### **SUMMARY AND BACKGROUND**

200. The purpose of our 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 Al Qai'da-associated groups and from other terrorist organisations in Syria and Iraq. But terrorists associated with the extreme right also pose a continued threat to our safety and security.

201. Prevent activity in local areas relies on the co-operation of many organisations to be effective. Currently, such co-operation is not consistent across Great Britain. In legislating, the Government's policy intention is to make delivery of such activity a legal requirement for specified authorities and improve the standard of work on the Prevent programme across Great Britain. This is particularly important in areas of Great Britain where terrorism is of the most concern but it is clear that all areas need, at the minimum, to ensure that they understand the local threat, and come to a judgement as to whether activities currently underway are sufficient to meet it.

202. 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 programmes, 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.

203. The purpose of Chapter 2 is to underpin existing Channel arrangements in England and Wales to secure effective co-operative from multi-agency partners so as to ensure the Channel arrangements are as effective as they can be in each local authority area. The clauses require local authorities to establish a 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. The clauses also establish that panels and their partners must have regard to statutory guidance issued by the Secretary of State. Schedule 4 sets out which bodies are required to cooperate with the panel to allow the panel to make informed decisions and carry out its functions.

## ***COMMENTARY ON CLAUSES***

### ***Chapter 1: Preventing people being drawn into terrorism***

#### **Clause 21: General duty on specified authorities**

204. *Subsection (1)* provides that a specified authority (listed in Schedule 3 to this Bill) must, when exercising its functions, have due regard to the need to prevent people from being drawn into terrorism.

205. *Subsection (1)* does not apply to the exercise of the functions listed in *subsection (4)*.

206. *Subsection (3)* caters for the possibility that specified authorities have a range of functions, and that it is appropriate that the exercise of only some of those functions is subject to the duty. For example, it may be that an independent school runs profit-making leisure facilities as a separate business. The effect of *subsection (3)* is that the school would only be subject to the duty whilst exercising its education function.

207. *Subsection (5)* provides that the reference to a judicial function in *subsection (4)* includes a reference to a judicial function conferred on a person other than a court or tribunal. This is intended to ensure, for example, that where a specified authority is exercising a quasi-judicial function, it is not subject to the duty in *subsection (1)*.

### **Clause 22: Power to specify authorities**

208. *Subsection (1)* allows the Secretary of State to amend the list of specified authorities in Schedule 3. The Secretary of State does this by making regulations. The regulations may also amend Chapter 1 so as to make consequential or supplemental provision (*subsection (3)*). *Subsection (4)* provides that a draft of these regulations must be approved by each House of Parliament. However, where an amendment to Schedule 3 is required only because a specified authority has ceased to exist, has changed its name or transferred its functions, the regulations will become law without prior Parliamentary approval (although they could be annulled by a resolution by either House of Parliament (*subsections (5) and (6)*)).

209. *Subsection (2)* states that the power to amend Schedule 3 cannot be exercised in order to extend the duty in *clause 21(1)* to the functions and bodies listed in paragraphs (a) to (j).

### **Clause 23: Power to specify authorities: Welsh and Scottish authorities**

210. This clause provides that where the power in *clause 21(1)* is to be used to add Welsh and/or Scottish authorities, or amend or remove an entry that relates to such an authority, the Secretary of State must first consult Welsh and/or Scottish Ministers.

### **Clause 24: Power to issue guidance**

211. *Subsection (1)* provides that the Secretary of State may issue guidance to specified authorities about the exercise of the duty in *Clause 21(1)*.

212. *Subsection (2)* provides that the specified authorities must have regard to the guidance in carrying out the duty in *Clause 21(1)*.

213. *Subsection (3)* provides that the Secretary of State may issue separate guidance relating to separate matters and it may be issued to all specified authorities, particular specified authorities or to specified authorities of a particular type.

214. *Subsection (4)* provides that the Secretary of State must consult with Welsh or Scottish Ministers on the guidance before issuing it where it relates to the devolved Welsh or Scottish functions of a Welsh or Scottish authority. The Secretary of State must also consult with any other person he considers appropriate.

215. *Subsection (5)* provides that the Secretary of State may revise the guidance.

216. *Subsection (6)* ensures that specified authorities are required to have regard to any revised guidance; and that the consultation obligations must be satisfied when the guidance is being revised, unless the Secretary of State considers that the revisions are insubstantial and do not merit consultation (*subsection (7)*).

217. *Subsection (8)* provides that the Secretary of State must publish the current version of the guidance.

### **Clause 25: Power to give directions**

218. *Subsection (1)* gives the Secretary of State the power to issue directions to a specified authority to enforce the performance of the duty in *Clause 21(1)* where the Secretary of State is satisfied that the specified authority has failed to discharge that duty.

219. *Subsection (2)* provides that the Secretary of State can apply to the courts to have a direction under *subsection (1)* enforced by a mandatory order.

220. The Secretary of State must consult the Welsh or Scottish Ministers before giving a direction under *subsection (1)* where the direction relates to the devolved Welsh or Scottish functions of a Welsh or Scottish authority (*subsections (3) and (4)*).

### **Clause 26: Enforcement**

221. This clause provides that where a specified authority fails to carry out the duty under *Clause 21(1)* this does not constitute a cause of action under private law. This clause is designed to make it clear that the duty imposed by *Clause 21(1)* does not create any private law rights for individuals.

### **Clause 27: Chapter 1: interpretation**

222. This clause defines certain terms used in Chapter 1 of Part 5.

### **Schedule 3: Specified authorities**

223. *Schedule 3* lists the specified authorities that are subject to the duty in *Clause 21(1)*.

## ***Chapter 2: Support etc for people vulnerable to being drawn into terrorism***

### **Clause 28: Assessment and support: local panels**

224. *Subsection (1)* requires local authorities to ensure that a panel is in place for its area for the purposes of assessing the extent to which individuals referred to the panel by the police (“identified individuals”, defined in *subsection (2)*) are vulnerable to being drawn into terrorism, and to perform the functions mentioned in *subsection (4)*.

225. *Subsection (3)* provides that referrals to these panels may only be made by the police if they have reasonable grounds to believe that an individual is vulnerable to being drawn into terrorism.

226. *Subsection (4)* provides that the panel should prepare a support plan in respect of any identified individual whom the panel considers should be offered support and if that individual consents, the panel must make arrangements for support to be provided in accordance with the plan. The subsection also makes provision about keeping the plan under review, revising it, withdrawing support under a plan and carrying out further assessments of the person’s vulnerability to being drawn into terrorism.

227. *Subsection (5)* makes provision for what the support plan must cover (for example, the nature of the support to be provided, who is to provide it and how and when it is to be provided).

228. *Subsection (6)* provides that if the panel decides that support should not be provided to an identified individual, the panel should consider whether the individual ought to be referred to a provider of any health or social care services, and if so, make such arrangements as it considers appropriate for the purpose of referring the individual.

229. *Subsection (7)* establishes that the panel must have regard to statutory guidance issued by the Secretary of State about the exercise of the panel’s functions. *Subsection (8)* provides that before issuing any guidance the Secretary of State must consult (a) the Welsh Ministers so far as the guidance relates to panels in Wales; (b) the Scottish Ministers so far as the guidance relates to panels in Scotland (in Scotland

the programme is known as Prevent Professional Concerns); and (c) any person whom the Secretary of State considers appropriate.

### **Clause 29: Membership and proceedings of panels**

230. *Subsections (1) to (4)* make provision for the membership of a panel, which must include the responsible local authority and the police for that authority's area. Panels may include other members as considered appropriate by the responsible local authority. Subsection (5) makes provision as to the chairmanship of the panel.

231. *Subsection (6)* provides that where a panel is unable to make a unanimous decision, the question must be decided by a majority of the panel. Where a panel is unable to make a majority decision, the question must be decided by the chair. *Subsection (7)* provides that, other than in respect of the determination of questions on which unanimity cannot be reached, the panel may determine its own procedure.

### **Clause 30: Co-operation**

232. This clause provides that certain organisations are partners of panels and have a duty to co-operate with the panel, including by providing information. *Subsection (2)* provides that the partners (which include local authorities and police forces which are not members of a panel; certain health sector and education partners; and providers of probation services) are listed in Schedule 4. The duty of co-operation extends only so far as the co-operation is compatible with the exercise of the partners' functions under any other enactment or rule of law (*subsection (3)(b)*). *Subsection (4)* provides that the co-operation duty does not require or authorise the disclosure of information (a) which would contravene the Data Protection Act 1998 or (b) which is sensitive information. *Subsection (5)* defines sensitive information. Partners must have regard to guidance issued by the Secretary of State (*subsection (6)*) and *subsection (7)* provides that before issuing any guidance the Secretary of State must consult (a) the Welsh Ministers so far as the guidance relates to panels in Wales; (b) the Scottish Ministers so far as the guidance relates to panels in Scotland; and (c) any person whom the Secretary of State considers appropriate. *Subsection (8)* has the effect of ensuring that partners of panels are required to co-operate with the police when they undertake assessments of persons to decide whether to refer those persons to panels.

### **Clause 31: Power to specify partners of panels**

233. This clause contains a power for the Secretary of State to amend *Schedule 4* by way of regulations, so as to amend the list of those authorities that are partners of panels subject to the co-operation duty. This power could be used to add Scottish bodies to *Schedule 4*. In Scotland the programme is known as “Prevent Professional Concerns”. In cases where an amendment is needed to omit an entry of a body which has ceased to exist, or to vary an entry in consequence of a change of name or transfer of functions, the regulations are subject to the negative Parliamentary procedure (*subsections (6) and (7)*); all other amendments, including the addition of new bodies as panel partners, are subject to the affirmative procedure (*subsection (5)*). Where the power is to be exercised in relation to Welsh or Scottish authorities, the Welsh and/or Scottish Ministers must be consulted first (*subsections (2) and (3)*). *Subsection (4)* provides that regulations made under this clause may amend Chapter 2 to make consequential or supplemental provision.

### **Clause 32: Indemnification**

234. This clause provides that the Secretary of State may indemnify support providers (that is, any person who provides support to an identified individual under a support plan) against any costs and expenses that the support provider reasonably incurs in performing his or her functions. This power is necessary because support providers find difficulty in obtaining appropriate insurance and because of this they are less likely to become, or continue to be, support providers.

### **Clause 33: Chapter 2: interpretation**

235. This clause defines the terms used in *Clauses 28 to 32*.

## **PART 6: AMENDMENTS OF OR RELATING TO THE TERRORISM ACTS**

### **SUMMARY AND BACKGROUND**

236. Sections 15 to 18 of the Terrorism Act 2000 criminalise instances of terrorist financing. It is a criminal offence to provide, use or possess funds or property where an individual intends or has reasonable cause to suspect that such funds/property will be used for the purposes of terrorism. It is also an offence to enter into an arrangement where an individual intends or has reasonable cause to suspect that funds or property will be made available for the purposes of terrorism as a result of that arrangement.

237. With kidnap and ransom insurance the expectation that a ransom payment might be reimbursed might create an environment which facilitates the payment of terrorist ransoms. The provision in this Bill would make clear that insurers may not reimburse ransom payments made to terrorists. This provision would create a new offence which would explicitly prohibit the reimbursement of a payment which they know or have reasonable cause to suspect has been made in response to a terrorist demand.

238. Schedule 7 to the Terrorism Act 2000 ('Schedule 7') allows an examining officer (defined in paragraph 1(1) of Schedule 7) to stop, question and, when necessary, detain and search, individuals travelling through ports, airports, international rail stations or the border area to determine whether that person appears to be someone who is or has been involved in the commission, preparation or instigation of acts of terrorism.

239. Schedule 7 also contains a power, in paragraph 9, for examining officers to examine goods to which that paragraph applies for the purpose of determining whether they have been used in the commission, preparation or instigation of acts of terrorism. The power to examine goods applies to (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland). Goods are defined in paragraph 9(3) as property of any description, and containers. The provisions in *Schedule 5* to the Bill contain measures which clarify this goods examination power.

## **COMMENTARY ON CLAUSES**

### **Clause 34: Insurance against payments made in response to terrorist demands**

240. *Subsection (1)* makes it an offence under the Terrorism Act 2000 for an insurer, under or purportedly under an insurance contract, to make a payment to an insured party where the insurer knows, or has reasonable cause to suspect, that the payment is made in respect of money or property that has been, or is to be, handed over in response to a demand made wholly or partly for the purposes of terrorism. ‘Terrorism’ in these circumstances is defined in section 1(1) of the Terrorism Act 2000, as use or threat of action designed to influence the Government or to intimidate the public or a section of the public; and is done for the purpose of advancing a political, religious, racial or ideological cause.

241. ‘Insurance contract’ is defined for the purposes of the offence and includes reinsurance. The definition follows that contained in International Financial Reporting Standard (IFRS) 4. IFRS is a single set of accounting standards, developed and maintained by the International Accounting Standards Board with the intention of those standards being capable of being applied on a globally consistent basis—by developed, emerging and developing economies. Consequently, IFRS 4 contains an industry accepted definition of ‘insurance contract’ and extends to reinsurance contracts.

242. Liability for this offence arises in the case of a body corporate, where knowledge or suspicion is attributable either to the directing minds of the body corporate or to the person who authorised the payment. Additionally, individual liability will arise in respect of any individual who aids and abets an offence by a body corporate, or in the case of senior officers, where they have consented to or connived in the offence or the offence is attributable to any neglect on their part.

243. Section 63 of the Terrorism Act 2000 will apply to this offence, which means that the offence will have extra-territorial application in the same way that the terrorist finance offences at sections 15 to 18 more generally have extra-territorial application. Consequently, arrangements made to conduct financial transactions outside the UK are liable to be caught.

244. If a person is found guilty of the offence and convicted on indictment the penalty is a prison term to a maximum of 14 years and/or a fine. If found guilty on summary conviction, the penalty is a prison term to a maximum of 6 months and/or a fine.

245. *Subsection (2)* provides that where a person is convicted under this new offence, the court may order the forfeiture of the amount reimbursed by the insurer to

the insured (as part of the contract between them). This subsection will amend section 23 of the Terrorism Act 2000.

246. *Subsection (3)* provides that the offence will apply in respect of insurance contracts that have been entered into prior to Royal Assent. It will also apply in respect of money (such as premiums) or other property that has been handed over before Royal Assent, subject to the proviso that it will not apply in relation to a ransom made before 27 November 2014 (*subsection (4)*).

### **Clause 35: Port and border controls: power to examine goods**

247. *Clause 35* introduces *Schedule 5*.

248. *Paragraph 1* of *Schedule 5* to the Bill amends Schedule 7 to the Terrorism Act 2000 by inserting five new sub-paragraphs after paragraph 9(2) which expressly provide for the locations in which any examination of goods under paragraph 9 may take place.

249. New *sub-paragraph (2A)* of paragraph 9 provides that the reference in sub-paragraph (2)(a) to goods about to leave Great Britain or Northern Ireland on a ship includes goods which are held at premises operated by a “sea cargo agent” and are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship. *Paragraph 1(3)* of *Schedule 5* to this Bill provides that “sea cargo agent” has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990.

250. New *sub-paragraph (2B)* of paragraph 9 provides that the reference in sub-paragraph (2)(b) to goods about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which are held at premises operated by an “air cargo agent” and are to be delivered to a place in Great Britain or Northern Ireland for carriage by an aircraft. *Paragraph 1(3)* of *Schedule 5* to this Bill provides that “air cargo agent” has the meaning given by section 21F(1) of the Aviation Security Act 1982.

251. The effect of these two new sub-paragraphs is to ensure that the Schedule 7 goods examination power can be used to examine goods held in such premises which are not immediately about to leave Great Britain or Northern Ireland but are held by air and sea cargo agents pending the goods’ departure.

252. New *sub-paragraph (2C)* expressly limits the locations in which the Schedule 7 power can be exercised to (a) ports; (b) air and sea cargo agents’ premises; (c) “transit sheds” (*paragraph 1(3)* of *Schedule 5* of this Bill provides that this term has

the meaning given by section 25A of the Customs and Excise Management Act 1979); and (d) any place which the Secretary of State has designated as a place in which goods can be examined under paragraph 9 of Schedule 7.

253. “Transit sheds” are temporary storage facilities, approved by the Commissioners of Her Majesty’s Revenue and Customs, which are used to hold goods which have been imported and not yet cleared out of charge. They include facilities which are beyond port boundaries so new *sub-paragraph* (2C)(c) therefore clarifies that Schedule 7 goods examinations can take place outside the perimeter of a port if in a “transit shed”.

254. New *sub-paragraph* (2C)(d) provides another means by which the power can be used in respect of goods beyond port boundaries. The designation power caters for the possibility that some goods which examining officers wish to examine are stored outside the perimeter of a port, and not in a transit shed or at the premises of an air or sea cargo agent (for example, in distribution depots). The power is only exercisable if the Secretary of State reasonably believes that it is necessary to designate that place in order for examining officers to be able to exercise their functions under paragraph 9. The obligation to publish a list of designations under new *sub-paragraph* (2E) ensures transparency as to which designated locations the Schedule 7 goods examination power may be exercised.

255. *Paragraph 1(4) of Schedule 5* ensures there are powers for examining officers to enter premises operated by an approved air cargo agent, transit sheds, and designated examination locations.

256. *Paragraph 2 of Schedule 5* ensures that the protection from interception afforded to postal communications in the Regulation of the Investigatory Powers Act 2000 ('RIPA') does not restrict the use of the paragraph 9 power in respect of postal packets. The clause inserts a new subsection (3B) into section 3 of RIPA. This makes it clear that there is lawful authority for examinations of postal packets carried out under Schedule 7.

257. *Paragraph 3 of Schedule 5 to this Bill* has the effect of ensuring that in cases where examining officers examine postal items under paragraph 9 of Schedule 7, this does not infringe the “inviolability of mails” principle in section 104(3) of the Postal Services Act 2000 (the principle that mail-bags, packets in the post and their contents, which are not the property of the Crown, enjoy the same immunity from examination, seizure or detention, as if they were the property of the Crown).

## **PART 7: MISCELLANEOUS AND GENERAL**

### **SUMMARY AND BACKGROUND**

258. Under section 36 of the Terrorism Act 2006 the Secretary of State is required to appoint a person to review the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. There are also requirements under section 20 of the Terrorism Prevention and Investigation Measures Act 2011 and section 31 of the Terrorist Asset-Freezing etc. Act 2010 to appoint persons to review the operation of these Acts. A single person is currently appointed under these provisions and is known as the Independent Reviewer of Terrorism Legislation. His primary purpose is to ensure that UK counter-terrorism legislation, and the manner in which it is operated, is fair, effective and proportionate. This is an important part of CONTEST, the UK's counter-terrorism strategy, and the Reviewer's reports to Parliament inform debate and the public. During the passage of Data Retention and Investigatory Powers Bill (which received Royal Assent on 17 July 2014), the Government committed to establish a board that would provide assurance to the public about the current counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns.

### **COMMENTARY ON CLAUSES**

#### **Clause 36: Privacy and Civil Liberties Board**

259. *Clause 36* expressly provides the Secretary of State with a power to make regulations to create a body which will support the Independent Reviewer of Terrorism Legislation. The first set of regulations made under this power, and any subsequent set which amend, repeal or revoke primary legislation, are subject to affirmative resolution; other regulations are subject to the negative Parliamentary procedure. *Subsection (2)* provides that the body would be known as the 'Privacy and Civil Liberties Board'. Regulations made under this power may, amongst other things, provide for the details of the Board's functions, membership and appointment of members, staffing arrangements, its organisation and procedures (*subsection (3)*). To take account of the fact that the statutory responsibilities currently undertaken by the Independent Reviewer of Terrorism Legislation could be undertaken, in practice, by three separate individuals, *subsection (4)* provides that the Board must be chaired by the person appointed under section 36 of the 2006 Act.

260. This clause does not alter or amend the existing statutory duties of the Independent Reviewer of Terrorism Legislation.

**Clause 37: Review of certain naturalisation decisions by Special Immigration Appeals Commission**

261. This clause provides for decisions to refuse to issue a certificate of naturalisation as a British Overseas Territories Citizen (BOTC), to be certified so that any challenge to that decision is by way of an appeal to the Special Immigration Appeals Commission (SIAC).

262. *Clause 37* therefore amends Section 2D of the Special Immigration Appeals Commission Act 1997 (jurisdiction: review of certain naturalisation and citizenship decisions), by adding at subsection (1)(a)(i) of Section 2D of that Act, the relevant section of the British Nationality Act 1981 (BNA 1981) relating to applications to naturalise as a BOTC, to the existing list of citizenship decisions that may be certified.

263. The Justice & Security Act 2013 (JSA 2013) introduced the ability for the Secretary of State to certify decisions in certain types of application for British citizenship, so that any challenge to a decision to refuse a certificate of naturalisation or to refuse to grant an application to register as a British citizen, may be heard by SIAC. The effect of such certification is to confirm that the Secretary of State took the decision either wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be publicly disclosed on the grounds of national security, in the interests of the relationship between the United Kingdom and another country, or because it is otherwise not in the public interest to disclose the material.

264. The JSA 2013 created the ability for an applicant to whom such a decision relates, to apply to SIAC to have the decision set aside, with SIAC to apply ‘the principles which would be applied in judicial review proceedings’, when determining whether the decision should be set aside. The Act also gave SIAC the ability in such proceedings, to make the same order or relief provisions as may be made or given in Judicial Review proceedings.

265. The JSA 2013 introduced this certification power with regards to applications to naturalise as a British citizen under Section 6 of the BNA 1981 and with regards to applications to register as a British citizen of the kind mentioned in section 41A of that Act (which includes applications to register an adult or young person as a British citizen or as a BOTC), but it did not make similar provision for applications to naturalise as a BOTC.

266. Clause 37 seeks to address this gap by adding decisions with regard to applications to naturalise as a BOTC under section 18 of the BNA 1981, to the existing list of citizenship application types that may be certified by the Secretary of State.

## **FINANCIAL EFFECTS**

267. The main financial implications of the Bill lie in the areas set out in the paragraphs below. These figures are 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 impact assessments published alongside the Bill.

### **Part 1 chapter 1: powers to seize travel documents**

268. The Home Office estimates that the net present cost of this policy over 10 years would be £1.2m. This is based on the assumption that there will be a one-off staff training course for Border Force officers and police officers. This is estimated to cost between £105,043 and £315,129, with a best estimate of £210,086, based on an assumption that between one and three hours' training would be required. Costs for training new entrants and 'top-up' training would be negligible. There will also be a cost to the Criminal Justice System (CJS) of processing individuals who commit one of the two new offences. Prosecution for either of these new offences could cost the CJS £7,700 per defendant. The cost of a Magistrates' Court reviewing the use of this power has been estimated to be between £0 and £50k per year with a best estimate of £25k. There might be additional Home Office and partner staffing costs in supporting the policy. This has been estimated to be £90k. The Home Office has not monetised the benefits of this measure.

### **Part 1 chapter 2: temporary exclusion from the United Kingdom**

269. We estimate that the net present cost of this measure over 10 years would be £0.1m. This is based on the assumption that it would cost £87k in the first year to ensure that all Border Force officers receive the necessary training and £19.700 for Police Officers. This is based on 7,500 Border Officers receiving 30 minutes of familiarisation training. Due to the number of variables involved, it is not possible to provide an average cost estimate for policing the out-of-country elements of the measure. However, it is estimated that such costs may be in the region of £6,926 to £10,840 in an individual case where the police manage the return of an individual subject to a TEO from a third country to the UK, excluding overtime, use of vehicles, subsistence and accommodation. It is estimated that a prosecution under either of the

new offences could cost the Criminal Justice System between £8,000 and £81,000 per defendant. We do not have enough data to estimate volumes. We have not monetised the benefits of this policy.

## **Part 2: Terrorism Prevention and Investigation Measures**

270. The Home Office estimates that the net present cost over 10 years would be £6.9m. This assumes Home Office staff-related costs estimated at £51,289 per year, Home Office legal costs estimated at £430,000 per year, Legal Aid costs estimated at £315,000 per year, and support organisations costs estimated at £6,280 per year. The Home Office has not monetised benefits.

## **Part 3: data retention**

271. The Home Office estimates that this provision would have a net present cost of £98.9m over 10 years. This comprises the costs of getting the IP data from service provider systems, building a solution to store the IP data at service providers, and running and maintaining these systems. The Home Office has not monetised the net present benefit over 10 years.

## **Part 4: aviation, shipping and rail, and Part 6 clause 35: port and border controls: power to examine goods**

272. The Home Office estimates that the net present cost of these measures would be £34.14m over 10 years. This assumes investment by UK airlines (£9.75m initially and £1.25m annually) and the Government (£1.2m annually) to maintain interactive systems for Advance Passenger Information. It assumes an annual cost of £0.384m for Border Force to continue resourcing a help-desk. We have assumed there would be a negligible cost of increased disruption to the travel of UK nationals through the extension to the ‘no fly’ list. We also estimate that the cost to the justice system would be negligible. For the Schedule 7 examination of goods the only additional cost would relate to the new sticker and leaflet. The Home Office will translate the leaflet into 30 languages at an approximate cost of £6,000. Examining officers would print the stickers and leaflets when required, at a small cost to individual police forces. We estimate that the net present benefit would be £0.95m over 10 years. This is because under this measure, carriers would not need to pay detention and removal costs for individuals who would otherwise have been carried to the UK and then denied permission to enter (£0.120m annually) or refused admission.

## **Part 5 chapter 1: preventing people being drawn into terrorism**

273. The Home Office estimates that the net present cost of this measure would be £119.1m over 10 years. This is based on the following assumptions. These costs are

illustrative and subject to change, and would vary with the level of risk. The Home Office estimates that additional threat and response activity in non-priority local areas would cost £5.3m per year, additional prevent coordinators would cost £1.6m per year, additional regional coordinators would cost £0.8m per year, additional health regional coordinators would cost £0.45m per year, additional Home Office staff would cost £0.5m per year, increasing the regional safeguarding teams would cost £1.2m per year, Prevent Champions in up to 70 prisons would cost £1.9m per year, secondees to prisons from the new Community Rehabilitation Centre would cost £0.6m per year, further education institutions and universities coordinating a response would cost £1.1m per year, providing additional Prevent awareness training to specified authorities would cost £0.3m per year, and it would cost £0.15m to develop Governor training. There are no monetised benefits.

#### **Part 5 chapter 2: support etc for people vulnerable to being drawn into terrorism**

274. There no significant implementation cost associated with this policy because all the local authorities who would be required to establish panels have already done so. The Home Office has not monetised benefits.

#### **Part 6 clause 34: insurance against payments made in response to terrorist demands**

275. The Home Office estimates that the weighted unit cost per case to the Criminal Justice System would be £53.3k, but is not able to calculate the volume of cases. Therefore the Home Office has not estimated the total cost of this measure. There are no monetised benefits for this provision.

#### **Part 7 clause 36: Privacy and Civil Liberties Board**

276. The Home Office estimates that the net present cost of this measure would be £4.5m over 10 years. This assumes that central government would pay the salaries of between three and five board members at an average annual cost of £510k, and one or two members of the secretariat at an annual cost of £78k. There would be transitional recruitment and implementation costs of up to £30k if recruitment consultants are required. There are no monetised benefits for this measure.

#### **Part 7 clause 37: review of certain naturalisation decisions by Special Immigration Appeals Commission**

277. The Home Office has not monetised costs or benefits of this measure. The Home Office estimates that there would be one case per year. The additional cost of

this measure would be the difference in cost between hearing a case in an open court compared to a closed court.

## **PUBLIC SECTOR MANPOWER**

278. The public sector groups affected by this legislation include:

- Law Enforcement Agencies including the police, Border Force and the National Crime Agency;
- Security and Intelligence Agencies;
- Public bodies including local authorities and Job Centre Plus;
- The Criminal Justice System including the Crown Prosecution Service, HM Courts and Tribunals Service, and HM Prison Service;
- Financial Conduct Authority and Prudential Regulatory Authority;
- Independent Reviewer of Terrorism Legislation; and
- Devolved Administrations.

279. The Bill is accompanied by an overarching impact assessment and separate impact assessments for each of the provisions. Further information on the groups affected by the legislation is set out at the relevant sections of these impact assessments.

## **SUMMARY OF THE IMPACT ASSESSMENT**

280. The Bill is accompanied by an overarching impact assessment. A further ten impact assessments are available on the following provisions in the Bill:

- i. New powers to allow operational partners to seize the passport and/or travel documents of an individual suspected of travelling overseas for terrorism-related activity (Part 1 chapter 1);
- ii. New powers to temporarily disrupt individuals suspected of terrorism overseas and control their return to the UK (Part 1 chapter 2);
- iii. Amendments to the Terrorism Prevention Investigation Measures Act 2011 (Part 2);
- iv. Amendments to the Data Retention and Investigatory Powers Act 2014 (part 3);
- v. Amendments to the Immigration Act 1971, Aviation and Security Act 1982, Aviation and Maritime Security Act 1990, Schedule 7 of the Terrorism Act 2000, Nationality and Asylum Act 2002, and Immigration,

- Asylum and Nationality Act 2006 to enhance the UK's border security arrangements (Part 4);
- vi. New statutory requirements on a range of public – and private – bodies to prevent individuals from being drawn into terrorism (Part 5 chapter 1);
- vii. New statutory requirements to ensure consistency of delivery of the UK's counter-radicalisation programme (Part 5 chapter 2);
- viii. Amendments to the Terrorism Act 2000 and the Terrorism Act 2006 to provide for a new offence relating to the reimbursement of insurance payments for kidnap and ransom claims (Part 6 Clause 34);
- ix. A new power for the Secretary of State to create a Privacy and Civil Liberties Board (Part 7 Clause 36); and
- x. Amendments to the Special Immigration Appeals Commission Act 1997 (Part 7 Clause 37).

281. A Privacy Impact Assessment has been carried out to assess the risks to privacy posed by the work carried out on the basis of the proposed legislation. It assessed that implementation of the proposed legislation is capable of being fully compliant with relevant domestic and international law.

282. The impact assessments are available on the Government website at [www.gov.uk/government/organisations/home-office](http://www.gov.uk/government/organisations/home-office).

### **Policy Equality Statement**

283. A Policy Equality Statement has been prepared by the Home Office. It assessed that the policy is compliant, where relevant, with Section 149 of the Equality Act, and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

### **COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS**

284. Section 19 of the Human Rights Act 1998 requires a minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention rights (as defined by section 1 of that Act).

285. The Home Secretary has made the following statement:

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

*These notes refer to the Counter-Terrorism and Security Bill  
as introduced in the House of Commons on 26 November 2014 [Bill 127]*

286. The Government has published a separate memorandum on ECHR issues with an assessment of compatibility of the Bill's provisions with the Convention rights. This memorandum is available on the Government website.

## **COMMENCEMENT DATE**

287. Chapter 1 of Part 1 would commence the day after Royal Assent.

288. Chapter 2 of Part 5 and clause 36 would commence two months after Royal Assent.

289. Part 3, Part 2 of Schedule 2, clause 20 (where it provides for directions relating to aviation, shipping and rail), and chapter 1 of Part 5 would be commenced by statutory instrument.

290. The other provisions would be commenced on the day of Royal Assent.

# COUNTER-TERRORISM AND SECURITY BILL

## EXPLANATORY NOTES

*These notes refer to the Counter-Terrorism and Security Bill as introduced  
in the House of Commons on 26 November 2014 [Bill 127]*

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*Ordered, by The House of Commons,  
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